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January 10, 1975

MEMORANDUM TO HOWARD P. WILLENS

Subject: Marianas

Attached is a copy of Adrian's version of the simplified explanatory memorandum. It appears already to have been partially translated into Chamorro, for any resemblance to English is purely coincidental. In short, it is worthless in those places where it is not incorrect. I will attempt a revision this weekend.

My meeting with the U.S. lawyers yesterday was very productive and I think that we are very close to agreement on the negotiating history. The major outstanding issue is the form the agreed notes will take -- whether they will be the report of the Joint Drafting Committee or a separate statement issued by the negotiating parties themselves. Do you have views on this question?

For your information, Jim Wilson's mother died yesterday. I'm not sure what effect this will have on the speed with which we are expected to proceed.


Michael S. Helfer

Attachment

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AdeGraffenried: 75:mjw

→ M. KEEFER
HOW Wilson's mother died today

Preamble

The right of the Northern Mariana Islands to choose their own political status as guaranteed by the Trusteeship Agreement is recognized by the United States which supports the desire of the Marianas to exercise their right of political self-determination by becoming a U.S. territory. Because the values and goals of the American system of government based on the ideas of government by consent of the people, and on individual freedom and democracy are shared by the people of the Northern Mariana Islands and because the people of the Northern Mariana Islands for over twenty years have formally expressed their desire for political union with the United States, representatives of the Northern Mariana Islands and the United States Government have agreed to the attached Covenant to establish a Commonwealth of the Northern Mariana Islands.

ARTICLE I

At the end of the trusteeship of the Pacific Islands the Mariana Islands District will become a Commonwealth territory in political union with the United States. The Commonwealth will be fully self-governing under a locally drafted constitution.

The United States will hold sovereignty (all paramount authority and power) in the political relationship as it does in all the states, territories and the Commonwealth of Puerto Rico. The United States will also have authority over foreign affairs and defense and may extend laws to the Mariana Islands if the laws apply generally to all the states. Other federal laws will be extended only if the federal laws specifically include the Mariana Islands by name. The United States also agrees to respect the right of the Mariana Islands to local self-government by limiting the exercise of its authority to enact federal legislation extending to the

Mariana Islands in certain other areas. Thus, fundamental provisions of the Covenant which outline the rights of the Mariana Islands and the obligations of the United States in the political relationship can be changed by federal legislation only with the consent of the Mariana Islands and the United States. Generally these fundamental provisions are:

- Establishment of Self-Governing Commonwealth of the Northern Mariana Islands upon termination of trusteeship.
- Guarantee of right of local self-government and authority to adopt a local constitution.
- Application of provisions of the U.S. Constitution, including the bill of rights.
- Right of the Mariana Islands to regulate for twenty-five years the alienation of land so as to restrict the acquisition of permanent and long term interests to persons of Northern Marianas ancestry.

Both parties agreed that the supreme law of the Commonwealth will be the provisions of the Covenant and the provisions of the U.S. Constitution, treaties, statutes, and other laws that are to be extended to the Mariana Islands.

ARTICLE II

Constitution of the Northern Mariana Islands

The right of the people of the Northern Mariana Islands to local self-government is guaranteed by the United States.

The people of the Northern Mariana Islands to draft a Constitution for the Commonwealth that will create a local government for the Mariana Islands according to the wishes of the local people.

The Constitution will be in agreement with the provisions of the

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Covenant and the United States Congress will have a right to review the Constitution to assure only that the Commonwealth Constitution follows the agreements reached between the representatives of the United States and the Mariana Islands in the Covenant and that the Commonwealth Constitution follows the provisions of the U.S. Constitution, treaties and federal laws extended to the Mariana Islands. The United States Congress cannot otherwise state that the Mariana Islands Constitution must be changed or amended.

The local Commonwealth Constitution will contain a Bill of Rights to protect the people from unwarranted government action into their daily affairs and to guarantee their rights to freedom and liberty.

The Constitution will provide for separate executive, legislative and judicial branches of Government.

There will be a popularly elected Governor for the Mariana Islands and other elected officials as the people of the Marianas may provide in the Constitution.

Members of the Commonwealth Legislature will be popularly elected. How each island is to be represented in the Legislature will be determined by the Constitution but it can insure that all islands have an equal voice in how the affairs of their government are conducted.

NO
Local courts will be established as the Constitution or laws determine and they will resolve legal cases involving only local law.

A U.S. court will also be created for the Northern Marianas to hear cases involving U.S. federal law and to hear local cases as the local legislature may decide. The cases decided in the federal court involving local law can be appealed to the federal court system in the mainland United States as the legislature decides so that they could reach the United States Supreme Court.

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ARTICLE III

U.S. Citizenship and Nationality Provisions

Upon termination of the Trusteeship, the following persons and their children under 18 will become U.S. citizens:

- Persons born in the Northern Mariana Islands and living here or in the U.S. or a U.S. territory or possession.
- Persons who are citizens of the Trust Territory who have been permanent residents of the Northern Mariana Islands continuously for at least five years and who have registered to vote prior to status agreement signing.

Any person who becomes a U.S. citizen upon termination may choose to become a U.S. national instead.

After termination, persons born in the Northern Mariana Islands will be U.S. citizens.

Provision will also be made to permit close relatives of Marianas citizens to become U.S. citizens.

ARTICLE IV

Judicial Authority

The United States agrees to establish a federal district court in the Mariana Islands with the same authority as other federal courts in the United States. The local federal district court will thus be able to resolve legal issues that concern the federal laws extended to the Mariana Islands and those matters involving the Covenant. The federal court will also be able to resolve legal disputes arising under laws passed by the local legislature but first the local legislature will determine what local matters the federal court can resolve.

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Aliens

NO

As in American Samoa there will be no requirements in the local Commonwealth courts that there must be jury trials in civil or criminal cases. As in the Virgin Islands there will also be no requirement that a grand jury first decide there is sufficient evidence to show a person has committed a crime before a person can be charged with a crime; instead a criminal case can be brought in the court if the district attorney or prosecutor determines that there is sufficient evidence to show that a person has committed a crime.

After a legal dispute has been resolved in the highest Commonwealth court the dispute can be taken before the federal courts for their review.

During the first fifteen years of the Commonwealth a federal court, a legal dispute may be taken directly from the highest Commonwealth court to the Federal Court of Appeals that has the authority to hear the case (such as in San Francisco), but otherwise the legal case may be taken from the highest Commonwealth court to the Federal district court established for the Commonwealth. Other federal procedures and laws governing the operation of federal district courts in Guam will be extended to the federal court system in the Mariana Islands.

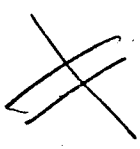
ARTICLE V

Applicability of Laws

As in other U.S. territories some provisions of the United States Constitution, but not all, will be specifically extended to the Commonwealth. The Mariana Islands will be treated as if it were a state for purposes of the application of these provisions of the Constitution. This will include all the bill of rights of the U.S. Constitution. Other provisions essential to permit the operation of the federal government in the Commonwealth and

so as to permit it to extend its necessary authority to fulfill its obligations and commitments to the Commonwealth will also be extended. These provisions will fully and legally clarify the Commonwealth status relationship.

By extending certain provisions of the United States Constitution and including the Bill of Rights, there will be express limitations on federal and local government power so as to guarantee to local citizens: freedom of religion, speech, press and assembly; protection against unreasonable search and seizure; prohibition against taking property without just compensation; and that persons accused of crimes have certain rights including guarantee of due process of law, prohibitions against self-incrimination, double jeopardy, and cruel and unusual punishment.



Special provisions are also included to provide exceptions to U.S. Constitutional requirements so as to permit the local Commonwealth Government to regulate land alienation; to permit each island to have membership in the local legislature in excess of the number they would be permitted on a strict population basis; and to permit local laws to determine whether indictment by grand jury will be required for criminal prosecutions or whether trial by jury will be required in a criminal prosecution or a civil action.

making membership impossible

discuss above

Other federal laws will be extended to the Mariana Islands if the federal laws have also been extended to both Guam and the States. The federal programs and services, certain grant provisions of the social security act, and the federal banking laws as they apply only to Guam and not to the States will be extended to the Mariana Islands. The following are examples of federal programs and services that will be extended to the Mariana Islands: in the area of public health and welfare: public health

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services, health maintenance organization assistance, aid for dependent children, old age assistance, medicaid, food stamp program, child nutrition program, school lunch program; in the area of education: school construction in areas affected by federal activity assistance, national defense education program, basic education for adults grants, vocational education grants, public library grants; in the area of community development: community development act grants, airport and airway development act grants, mortgage insurance, sewage treatment grants, rural electrification and telephone service assistance, disaster relief; in the area of public services: post office, federal aviation administration assistance, public works or facilities assistance, law enforcement assistance, solid waste disposal act assistance, assistance for road construction; and in the area of employment and economic development: aid to small business, economic opportunity programs, and manpower development and training.

CONFUSING

The Public Health Service Act which provides grant assistance to the Virgin Islands for hospital construction will also be extended as will the Micronesian Claims Act as now applicable to the Trust Territory to provide extratia payments for World War II related damages. All the other federal laws as are extended to the Trust Territory on the date of the Covenant and the Commonwealth Constitution have been approved will remain available to the Mariana Islands but amendments to them after that date will not apply.

Certain federal laws (the coastwise and fisheries laws, immigration and naturalization and the minimum wage laws) that do not now apply to the Trust Territory will not be extended to the Mariana Islands until after the end of the trusteeship and the United States Congress determines whether and how they should be extended. However, the Immigration and

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Naturalization Act will apply to close relatives and U.S. nationals and citizens residing permanently in the Mariana Islands. Federal laws regulating the shipment of United States Government goods and regulating employees and contractors of the United States Government may, however, be extended before the end of the trusteeship by the United States Congress.

The President will appoint four persons from the Mariana Islands and three United States citizens to a special commission to review all laws that might be extended to the Mariana Islands. The Commission will make its recommendation within one year after the end of the Trusteeship and the recommendations will consider how each law will affect local conditions in the Mariana Islands. The costs of operating the Commission and the salaries of the U.S. citizen members will be paid by the United States.

Special provisions will enable close relatives of Marianas citizens to become U.S. citizens and will enable local federal district courts to naturalize local residents.

ARTICLE VI

Revenue and Taxation

*cut tax
as in
Guam
debate
defaults*

The internal revenue laws of the United States available to Guam will be extended to the Mariana Islands in the same manner they are in effect in Guam. The Commonwealth will also be explicitly granted the authority to enact local internal revenue taxes. The Commonwealth government will be authorized to return taxes paid on income from all local sources to all its taxpayers. Taxpayers in the Mariana Islands will file a tax return under the new simplified procedures that permit a taxpayer to file only one tax return with the place where he resides at the end of the tax year.

English or Chamorro?

The Mariana Islands will not be in the customs territory of the United States so that it will be a duty free port status like Guam. The Commonwealth may enact duties on articles brought into the Commonwealth if the article is not from the U.S. or its territories and if the duty follows the practice of the United States in meeting its international trade obligations. The Commonwealth may also enact duties on any articles sent to other areas from the Mariana Islands; however, if goods are sent to the United States from the Mariana Islands, the United States will receive goods as if they were sent from Guam so that it receives the same favorable tax treatment. The United States will try to obtain from other foreign countries favorable treatment for goods from the Mariana Islands and will try to persuade other countries to treat the Mariana Islands as if it were a developing territory rather than as a fully developed country for purposes of international trade.

Like Guam, the Commonwealth may enact taxes on goods made, sold or used in the Mariana Islands and may also enact taxes on work or services performed in the Mariana Islands.

After the Covenant is approved the Mariana Islands share of the taxes paid to the Trust Territory Social Security Fund will be transferred to a special trust fund to be administered separately by the United States Social Security Administration. A person entitled to social security benefits under the Trust Territory system will also be entitled to his social security benefits when the new fund is created. How these social security taxes and benefits will be returned to local residents entitled to social security benefits will be determined by the local Commonwealth legislature which will use the United States social security laws as a guide. At the end of the trusteeship, the federal laws establishing the social security system will

entitled assigned

be extended to the Mariana Islands to permit the residents to take full advantage of all the benefits of the U.S. social security system. The U.S. guarantees that there will be no loss of social security benefits to local Marianas residents when the U.S. social security system is extended to the Mariana Islands.

As in other U.S. territories, the Commonwealth government may issue local bonds to raise money for local public projects for the benefit of the residents of the Mariana Islands. These bonds cannot be taxed by the United States or any of the other territories. As in the other territories, the local government bonds will be sold only if the local government debt does not exceed 10% of the total value of all the property in the Mariana Islands so as to avoid excessive government debt.

ARTICLE VII

Financial Assistance

The United States will guarantee annual budget support to the Government of the Mariana Islands by providing money during a seven year period. The United States will give \$8.25 million annually to help in paying for the operation of the Commonwealth Government and which can be used to assist in paying the salaries of local government officials; some \$250,000 of these sums will be reserved for a special education training fund that will be used by the Commonwealth Government to help train local workers for new jobs that may be needed because of the change in government operations due to the new political status. Some \$4 million will be given by the United States for public work projects such as new roads, schools, water systems and hospitals; out of the total of the \$4 million, \$500,000 each year will be given to Tinian and \$500,000 each year will be given to Rota for public work projects. Another \$1,750,000 will be given for an economic development

loan fund; of this amount, \$500,000 each year will be put into a special fund for loans to farmers and fishermen and \$250,000 each year will be put into a special fund for loans for housing for low income families.

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This total grant of money from the United States each year will be \$14 million. This level will be guaranteed for the first seven years of the new political status and after that time it will continue at the same level until the United States Congress decides another amount is appropriate.

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The full range of federal programs and services available to the U.S. territories will be made available to the Northern Marianas. The value of federal programs and services to be available to the Northern Marianas is estimated to be at least \$3.0 million (1975 constant dollars) annually. Where federal programs require that the local government give matching funds to help in the program to be used together with federal grants before a federal program can be extended, the grant money given annually to the Commonwealth can be used by the Commonwealth as the Marianas share of the program money. This will avoid having to raise local money for federal programs from taxes on income by local people.

As in the other territories there will be a return of all federal taxes collected in the Mariana Islands to the Government of the Mariana Islands. This would include all U.S. ^{income} revenue taxes paid by U.S. military personnel who are in the Marianas Islands and would also include all customs duties, excise taxes and administrative fees collected by the federal government of the Mariana Islands.

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If the Commonwealth Government cannot spend all the money the United States grants to the Mariana Islands each year, the Commonwealth Government may keep the money for use next year rather than returning all unspent money to the United States at the end of the year. The United States will grant more money to the Mariana Islands if inflation raises the costs of operating government or of purchasing material above the cost of these figures as set in Guam in 1975.

ARTICLE VIII

Property

At the end of the trusteeship, all real property (land and buildings) that are owned or used by the Trust Territory Government in the Mariana Islands will be given to the new Commonwealth Government. At the same time, all personal property (desks, chairs, typewriters, paper, etc.) that is owned or used by the Trust Territory Government in the Mariana Islands will be distributed equally between all the districts of the Trust Territory and the Commonwealth Government. After the new Commonwealth Government is established and before the end of the trusteeship, all lands now used by the United States in the Mariana Islands will be returned to the Commonwealth.

Adm Land Policy

The United States will be permitted to use, but not purchase, the following land parcels for defense purposes: on Tinian in the northern portion of the island, 7,203 hectares; on Saipan, 72 hectares at Tanapag Harbor along its southernmost edge; and Farallon de Medinilla, 83 hectares. The United States notes that it has no other present land needs in the Mariana Islands for defense purposes and that it has no present intention to acquire any additional land or acquire ownership of the land to be used to carry out its defense responsibilities.

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The United States will pay to the Government of the Mariana Islands a lump sum total of \$19,520,600 for a 50 year lease on the lands required for defense purposes and for the right to renew the leases to the lands. The money paid is divided as follows:

\$17,500,000 for Tinian lands; \$2,000,000 for Tanapag Harbor lands which will be placed into a trust fund to pay for development of a memorial park and maintenance of that park on 133 acres of this tract of land; and \$20,600 for use of Farallon de Medinilla.

The United States recognizes the importance of land to the residents of the Mariana Islands and has therefore agreed to lease back to the Government of the Mariana Islands some of the land it will obtain for defense purposes. For a nominal sum of one dollar per acre, the United States will lease back to the Government of the Mariana Islands for uses that are not obstacles to future use of these lands by the United States approximately 6,400 acres on Tinian and 44 acres in Tanapag Harbor.

A separate agreement ^{AXA} sets out the specific details on the use of these lands and the terms of the lease back agreements that will be executed. Generally, the agreements tates that there will be maximum leaseback, maximum accessibility to natural resources, joint use of Tinian Harbor and air field, joint planning and development of utilities on Tinian, park and recreational facilities at Tanapag, safety and environmental protection, joint civilian-military committee, and cancellation of use and occupancy agreements on other military retention land (approximately 1,900 hectares).

It has been agreed that the United States will be able to continue to use Isely Field as federal law requires but that if the military use is substantial then the United States will provide a reasonable share of the costs of operating and maintaining the facilities.

Because of the special importance of land to the residents of the Mariana Islands and the need to protect the people against exploi-

U.S. Power

tation and to promote their economic advancement and self-sufficiency, the Government of the Northern Mariana Islands during the first 25 years of the status relationship will regulate all property so that permanent and long-term interests will remain with persons of Mariana Islands descent. The Government of the Mariana Islands may also regulate how much public land in the Mariana Islands a person may own or use.

STATES

The United States will also recognize and respect the scarcity and special importance of land to the Mariana Islands and has agreed that in obtaining additional lands in the future, it will follow the policy of seeking only the minimum area and interest in land that is needed for the public project, that it will obtain ownership in Marianas lands only if the public purpose cannot be met by a lease, and that it will first seek to obtain Mariana Islands public land before any private land in the Mariana Islands is obtained for the public project. The United States will hold and may exercise, with proper legal protection to land owners in the Mariana Islands, the same power of eminent domain as it holds in the other States and territories of the United States. (It can also purchase, lease, or receive land by a gift before it exercises the eminent domain power.) The United States Congress must first authorize the government agency to obtain the land and must provide funds for payment to the land owners.

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ARTICLE IX

Washington Representation

The Mariana Islands will be entitled to elect or appoint a representative in Washington who will be given official recognition by all the departments and agencies of the U.S. Government. The representative will represent issues concerning the Mariana Islands to the U.S. Congress but will not be a formal member of the Congress. The representative must be a citizen and resident of the Mariana Islands and at least 25 years of age. After termination of the trusteeship the representative must be a U.S. citizen.

There will be regular consultations between the Government of the U.S. and the Government of the Northern Mariana Islands concerning the status relationship. There will also be formal meeting of special representatives at least every ten years and when needed to consider levels of U.S. financial assistance.

Any issue involving the Covenant and the responsibilities of the United States and the Government of the Mariana Islands under the Covenant may be taken to the federal courts for their decision.

The United States will give ^{SMIP} consideration to the views of the Mariana Islands on international matters directly affecting the Mariana Islands and may permit the Marianas to directly present its views if other U.S. territories are also permitted. Likewise if other territories are permitted, the United States will on the request of the Mariana Islands permit the Commonwealth Government to participate directly in regional or other international organizations concerned with social, economic, educational, scientific, technical and cultural matters.

ARTICLE X

Approval, Effective Dates; and Definitions

The Covenant will be approved first by the Mariana Islands District Legislature. After this it will be approved by a majority of the citizens of the Mariana Islands District of the Trust Territory voting in a local plebisicte. These citizens must be domiciled in the Mariana Islands and must be eligible to vote in elections for members of the Mariana Islands District Legislature if the elections were held on the date the people vote on the Covenant. Both houses of the United States Congress and the President will review the Covenant and approve it for the United States Government.

70 At the end of the trusteeship for Micronesia, the Commonwealth territory will be formally established. The President will determine when the trusteeship will be formally terminated and his decision is final and cannot be taken to the courts for their review.

After the Covenant is approved by the Mariana Islands Legislature and the people of the Mariana Islands and the United States, certain provisions of the Covenant will be effected, specifically those which permit the United States to enact federal legislation for the Mariana Islands; permit the Mariana Islands to adopt their own Constitution and provide for its approval; permit certain exemptions to the extension of federal laws to the Mariana Islands and which creates the Statutory Review Commission; permits the Mariana Islands social security system to be administated by the United State; permits land and personal property used by the Trust Territory Government to be transferred to local control; permit the courts to hear disputes on the interpretation of the Covenant; and that relate to the

effective date and approval of the Covenant.

Other provisions of the Covenant will be effected after the Covenant has been approved and the Constitution has been adopted and approved; these are as follows: those which establish the supreme law for the Mariana Islands and guarantee the right of local self-government to the Marianas under a locally drafted Constitution; which state that all officers and employees of the Commonwealth will support the status agreement and the provisions of the federal laws extended to the Mariana Islands; which grant the citizens of the Mariana Islands all the privileges and immunities provided the citizens of the States of the Union; which establish the local judicial system and the federal judicial system in the Mariana Islands; which extend certain provisions of the United States Constitution and the federal statutes to the Marianas; which grant the Mariana Islands legislature the right to amend the existing trust territory laws that will apply to the Mariana Islands; which establish the internal revenue and customs laws of the Mariana Islands; which permit the Mariana Islands Government to issue bonds to raise money for local public projects; which authorize the United States to provide financial assistance to the Mariana Islands; which permit the United States to use and which provide for the payment for certain lands in the Mariana Islands; which provide that lands under use by the United States in the Mariana Islands under agreement with the Trust Territory Government will be returned to the Commonwealth Government; which permit the Commonwealth Government to regulate the transfer of permanent and long-term interests in land so as to limit them to persons of Marianas descent; which permit the Marianas to

appoint or elect a representative to Washington; and, which establish regular consultations between the Commonwealth and the United States.

The remainder of the Covenant will be effected when the Trusteeship is terminated so that the Commonwealth of the Mariana Islands will be fully established. These relate to U.S. citizenship and U.S. sovereignty.

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The President is given the authority to determine whether a federal law should not apply until the end of the trusteeship if he determines that it would conflict with the provisions of the Trusteeship Agreement. He is also given the authority to suspend any provision of the Constitution of the Mariana Islands if it also may conflict with the provisions of the Trusteeship Agreement.

The Constitution of the Mariana Islands will otherwise be in operation in the Mariana Islands to establish a local government within 180 days after both the Covenant and the Constitution have been adopted and approved. The Commonwealth Constitution will be completely effective on the end of the Trusteeship.