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MEMORANDUM

Marianas Meeting
May 4, 1976

Persons present: from Wilmer, Cutler & Pickering,
Howard Willens, Deanne Siemer, Paul Koffsky,
Neal Solomon.
From R. Nathan & Associates, James Leonard,
Dr. Irving Swerdlow, Richard Maurice.
From the U.S. Department of Interior, Steve
Loftus and Jim Berg.

Consultants present: Professor Frank Grad, Columbia Law
School, Professor Dick Howard, University of
Virginia Law School, and Professor John Wheeler.

Following introductions of those present, Mr.
Willens described the Marianas situation. There is presently
a constitutional convention bill pending in the Marianas
District Legislature. The bill is expected to provide for a
convention to begin in late July or August of this year and
to last no longer than 60 days.

It is expected that the bill will provide for two
delegates to be chosen from each of 16 districts, making
a total of 32 delegates to the convention.

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The meeting turned to a discussion of the bibliography to be used by lawyers to prepare briefing papers for delegates to the convention. Mentioned were the Model State Constitution, the Index Digest of State Constitutions, and constitutions of the States of Alaska, Hawaii, Illinois, Maryland, Texas and Virginia. Briefing papers from those states might also be useful. Professor Grad warned not to overload delegates with materials to read. He suggested that simple pamphlets might be the best idea. Mr. Willens noted that a two-tiered library system worked well in revising the Virginia constitution. Professor Wheeler said that very few delegates will visit a library during the constitutional convention.

Discussion turned to the pre-convention committee. Professor Wheeler proposed an early organizational session of the delegates. During this session the delegates would elect their leadership (the convention officers) and would adopt rules. The newly elected officers would then be free to begin committee selection. Professor Grad said there was a need to get information to the delegates before the organizational session. Rules and committees established at that time will define where the convention goes. It would not be good to turn the delegates loose to choose their leadership without briefing them first. Professor Wheeler, drawing on his Maryland experience where there was a pre-convention school, suggested

that an early organizational session would also serve a social function. He also emphasized that the setting up of the committee structure is crucial. He suggested the possibility of starting with a lesser number of committees including a catch-all committee that could be divided up as needs arose. He said in a convention with only 30 to 35 delegates there will be a substantial problem with committee membership overlap.

The availability of media in the Marianas was discussed. Mentioned were the Pacific Daily News, the Marianas Variety (weekly), bi-lingual radio stations, and TV. Professor Wheeler thought it important to educate the media, particularly newspapermen who are going to cover the convention, along with the delegates before the convention convenes.

Mr. Willens said that we are counting on the OTSP and the Marianas District Legislature to arrange physical facilities necessary for the convention. Professor Grad emphasized the need for rooms at the convention where staff and delegates can do quiet work away from meeting work. At previous conventions privacy has often been difficult to obtain.

Professor Grad thought 30 days too short for a constitutional convention. He thought 60 days would be sufficient if it was accepted that the convention delegates would not meet every day. A recess during which the drafting group could do its work would break up the 60 days. Professor Wheeler also thought

30 days too short, but cited Parkinson's rule in stating that the convention will expand its duration to fit the time limit allotted, particularly if delegates are receiving a per diem.

The need for a recess during the convention was discussed. Two principal possibilities were mentioned: town meetings at which the delegates' constituent could be informed of the Convention's work, and drafting sessions at which the language of alternative and final constitutional provisions could be work on.

Necessary prepared materials for the delegates to a constitutional convention were discussed. The Municipal League publishes a compilation of convention rules. State constitutions are contained in a two-volume set published by Oceana and in the Index Digest of State Constitutions. Professor Grad thought a few state constitutions should be reproduced in full, perhaps one-half dozen of the briefer and better state constitutions. He suggested Hawaii, Alaska and Connecticut as states with constitutions that might be reproduced. A copy of the Model State Constitution should be given to each convention delegate. Professor Wheeler warned that the Model State Constitution does not look like any real constitution; delegates should be emphatically told that it is only to be used as a discussion document.

A discussion of briefing papers began with a listing

of issues peculiar to the Marianas. Among these were land alienation, the relationship of island municipalities to the central government, the use of public lands, and the use of ocean fish and mineral resources. Professor Grad opposed debating the issue of ocean resources at the constitutional convention. Professor Howard noted that a section on fisheries is included in the Hawaiian constitution.

Professor Grad said that briefing papers should be kept as brief as possible, preferably brief and simple enough to be communicated orally. They should be "very brief summaries and pointed analyses." Professor Wheeler said that the briefing papers prepared for the Alaska convention would serve as good models. He stressed that each delegate must get some initial package. This package would contain rules of the convention, names of the delegates, descriptions of facilities available for delegates, and the compilation of cover memos. Mr. Willens suggested that cover memos be given to delegates before the convention and that all attachments be put in the convention library instead of being given to all delegates. This idea received support. The consultants recommended having a library available to all delegates. The library should contain materials backing up the cover memos for those convention delegates who become interested in specific areas.

Professors Grad and Wheeler opposed the preparation of a draft constitution to be given to the delegates. Their

opinions derived from experiences in Rhode Island and Maryland. Professor Howard, on the other hand, thought it important that convention delegates have a specific product to work from. His experience with revising Virginia's constitution led him to believe that drafted alternatives can be very helpful to delegates. He supported the idea of shorter cover memos containing potential alternatives.

Professor Wheeler said that the elected president of the convention would be another person who would have to bring pressure to bear on the delegates, keep an eye on everything, and be a strong presence at the convention. Particularly with the committee scheduling problem, i.e., multiple delegate assignments, someone will be needed to oversee the scheduling process. This could be done by the president of the convention and an assistant to him. Professor Wheeler said that normally there are three periods to a constitutional convention. First is the time for committee action, then a period when committees report to the convention floor, and finally a period of final action and compilation. Dividing the convention into periods, however, cannot be done in advance; scheduling will have to be done day by day. Nor is there a typical pattern regarding what committees take a long time and what committees act quicker. This is more a function of personnel and what issues concern the Marianas most.

Discussion turned to organization of the convention. The idea of holding the convention entirely as a committee of the whole was discussed. Professors Wheeler and Grad pointed out that this had never been done before in their experiences. Professor Wheeler was afraid that working as a committee of the whole might lengthen the convention instead of shortening it. An alternative was proposed: that only three or four committees be established instead of a higher number or none. Professor Grad reconsidered the idea of the committee of the whole. If the Marianas would duplicate committee work anyway, then committees might not be worth it. But if the convention functioned as a committee of the whole, concrete alternatives might be necessary to guide the convention delegates.

Mr. Willens suggested the following format. Delegates meeting as a committee of the whole would have one day per briefing paper to review the papers and ask questions. All problems that would be faced in the convention would thus be covered in the first several weeks. A break would ensue, during which time the staff would be available to revise briefing papers and prepare proposals. Revised papers, containing two to three proposals per subject area, would then be presented to the convention. The convention meeting as the committee of the whole would discuss these proposals. Following this stage the proposals would go back out to staff. Eventually nearly completed proposals would be returned to the convention floor, hopefully for the final time. Professor Grad suggested three

problems with this approach. One, it makes the staff visible; two, it works the staff hard; and three, it works the delegates hard. Mr. Leonard noted the advantage that it gives all the delegates a chance to hear everything, think the proposals over during the breaks, and then return to them. Professor Wheeler thought the idea an interesting experiment and would like to see it tested. Professor Grad said that in any case, even if there were committees, a regular chairmen's meeting is a good idea. Professor Wheeler said that if the convention starts without committees and the need for committees arises, then committees will generate themselves, and everyone will know quickly whether the idea of working as a committee of the whole is going to work. Professor Grad stressed the need in any case for a committee on style.

Assuming there are committees, the choice of committee members is usually done according to the convention rules. In past conventions the rules have given this job to the president of the convention. Following the organizational meeting, delegates should be given a chance to indicate their subject area preferences.

Committee meetings should be open to the public, according to Professors Wheeler and Grad. Professor Howard said that secrecy could only be an irritant. Similarly, consultant papers should not be made confidential. Consultants,

however, should not be mentioned in debate. This caveat should either be put in the convention rules or should be established by a basic understanding at the convention.

Public hearings in the community were discussed, particularly as to the role of expert consultants at such hearings. Professor Grad said that if the hearings were in the form of a forum, then academics are useful. Other than that, experts are much more useful in committee hearings. Professor Wheeler feared exposing consultants to the possibility of association with partisan views. Professor Howard said that in Virginia at public committee hearings an expert was often introduced as the first witness with the role of summarizing the problems facing the convention and setting the parameters of the ensuing discussion. This idea received approval from Professors Grad and Wheeler.

Personnel needs of a constitutional convention, particularly the roles that non-lawyers can play, were discussed at length. Professor Grad thought that political scientists can be useful, especially those political scientists who have experience working with lawyers. Ms. Siemer expressed her opinion that political science is little more than common sense. Professor Grad thought nonetheless that in the area of local government, public finance, and public administration, a political scientists might be of use. He can supply names. A few names were mentioned: Samuel Gove, Illinois Convention;

Scott Campbell, President of the Society of Schools of Public Administration, Washington, D. C.; Troy Westmaier; Dick Netzer, NYU Grad School, Public Finance. Professor Wheeler warned that consultants should be chosen for their expertise and not to fit categories.

The consultants agreed that support help for the convention is crucial. Producing materials for the convention is important. A good duplication set-up is important. A duplicating staff is needed, errand people are needed, and approximately six good secretaries and one chief secretary are needed. The OTSP, the Resident Commissioner, and/or the Marianas District Legislature should be responsible for securing adequate support help as well as for adequate facilities. Professor Wheeler said that inheriting the legislative staff of the Marianas Legislature should be avoided. A secretarial pool might be made available for delegates as a courtesy, but delegate use of scarce facilities should not be encouraged.

Publicity for the convention should include a journal, a daily schedule, and periodic press releases. Publicity requires planning.

The timing between completion of the constitution and the vote in the Marianas to ratify the constitution was discussed. All agreed that a three-to four-month hiatus was too long. Professor Wheeler thought 30 days to six weeks a

better schedule given the small size of the Marianas and their population. Mr. Berg described the problems raised by the scheduled November election of the Marianas District Legislature. Potential partisan problems could arise because of the scheduled election.

Following this discussion the meeting adjourned.

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