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WILMER, CUTLER & PICKERING
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June 14, 1976

MEMORANDUM FOR THE OFFICE OF TRANSITION STUDIES AND PLANNING

Subject: Status Report

Pursuant to oral authorization from Messrs. Tenorio, Santos and Pangelinan in April 1976, Wilmer, Cutler & Pickering has undertaken to provide professional services in connection with the Constitutional Convention of the Northern Mariana Islands scheduled for the summer of 1976. The scope and terms of this representation were set forth in our letter dated April 15, 1976 and in the response dated May 24, 1976 from the Office of Transition Studies and Planning. This memorandum contains a brief status report regarding the firm's activities to date.

Personnel

Wilmer, Cutler & Pickering has assigned four new lawyers on a full-time basis to this project: Paul Koffsky, Robert A. Major, Neal S. Solomon, and A. Mark Weisburd. Each of these has outstanding academic credentials: three are employed as associates by this firm and one (Mr. Solomon) has

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been retained as a consultant to work on this project. In addition, we are using the part-time services of two second-year law students who have been employed by this firm as summer associates. I am supervising the work of these lawyers, assisted by my two partners, Jay F. Lapin and Deanne C. Siemer.

Because of the unusual nature of the assignment, we have endeavored to consult with persons possessing special expertise in the area of constitutional conventions. On May 4, 1976 we convened a full-day meeting to secure the advice of three such experts: Frank P. Grad, A. E. Dick Howard and John P. Wheeler, Jr. Mr. Grad is a professor of law at the Columbia Law School and currently Director of the Legislative Drafting Research Fund at Columbia University; he served as a consultant to the Rhode Island, Pennsylvania, and Illinois constitutional conventions. Mr. Howard is a professor of law at the University of Virginia Law School and served as Executive Director of the Virginia Commission on Constitutional Revision. Dr. Wheeler is a political scientist who served as Dean of the Faculty at Hollins College in Virginia and as a consultant to the Maryland Constitutional Convention. Dr. Wheeler, whose resume is enclosed as Attachment A, has agreed to serve as a consultant to this law firm in connection with the Northern Marianas Constitutional Convention and to

give approximately two months of his time in this connection, including attendance at the Convention in Saipan.

We are also considering the retention on a consultant basis of the Institute of Public Administration, a non-profit organization which has provided extensive consulting services to various government agencies at the Federal, state and local levels. If satisfactory arrangements can be made with the Institute, its work would be generally supervised by Howard N. Mantel, whose resume is enclosed as Attachment B. Through Mr. Mantel and the Institute we would be able to tap the expertise of a large number of persons with academic or practical experience in many of the subject areas to be covered in the briefing papers being prepared for the Convention.

Briefing Papers

Our primary assignment in advance of the Convention is to prepare a series of briefing papers for the delegates. We reviewed this particular task, along with other aspects of our representation, at the meeting of May 4, 1976 referred to above. For your information we are enclosing as Attachment C a copy of our internal memorandum summarizing that meeting.

We are presently intending to prepare briefing papers on the following subjects: (1) Executive Branch, (2) Legislative Branch, (3) Judiciary Branch, (4) Local

Government, (5) Bill of Rights, (6) Suffrage and Elections, (7) Taxation and Public Debt, (8) Amendment Process, (9) Land Alienation, (10) Public Lands, Environment and Other Natural Resources, (11) Civil Service, (12) Public Education, and (13) Schedule and Transitional Problems.

In preparation of this list, we have examined the briefing papers prepared for other constitutional conventions and have considered some problems of particular interest to the Northern Marianas which may be dealt with in the proposed constitution. The above list is not final, of course, and may be changed during the next month. If there are other areas which should be the subject of a briefing paper in your opinion, we would like you to advise us to that effect.

Our approach in preparing these briefing papers is different in at least three significant respects from other briefing materials which we have examined. First, we are making every effort to identify for the delegates the full range of alternatives which the Convention should consider in drafting the various articles of the Constitution. Second, we are trying to be as objective as possible; the briefing papers will not contain any specific recommendations to the Convention as to which alternatives should be adopted. Third, we are not planning to submit in advance any draft articles for the Constitution reflecting the views either of this firm or

other experts as to how the Northern Marianas Constitution should be written.

As this basic approach reflects, we believe that the Convention has a broad range of decisions to make regarding the basic provisions of their Constitution. Contrary to some published reports, the Constitutional Convention has a most difficult and complex assignment. The Covenant and the U.S. Constitution do impose some general restraints, but in each area covered by a briefing paper there remains a large number of fundamental decisions to be made which will determine the direction of the Commonwealth in the years to come. Our briefing papers have been prepared in order to provide an agenda for discussion which will enable the delegates to perform their responsibilities as well as possible.

With respect to each briefing paper, we are requiring that an outline be prepared and approved, a first draft be written and reviewed, a second draft be prepared incorporating the suggestions made during the review process, and that an outside review by one or more consultants be completed before a final draft is prepared. We are proposing to identify and have available various materials, such as illustrative articles from other constitutions and excerpts from particularly useful treaties or law review articles, which can be used by delegates who have a particular interest

in exploring the background or issues involved in each of the areas covered by a briefing paper.

The present status of our work on the briefing papers is as follows:

<u>Briefing Paper</u>	<u>Current Status</u>
1. Executive Branch	second draft being reviewed
2. Legislative Branch	first draft being reviewed
3. Judicial Branch	second draft in process of preparation
4. Local Government	first draft being reviewed
5. Bill of Rights	first draft being reviewed
6. Suffrage and Elections	second draft in preparation
7. Taxation and Public Debt	first draft in preparation
8. Amendment Process	first draft in preparation
9. Land Alienation	outline being reviewed
10. Public Lands, Environment and Other Natural Resources	outline being reviewed
11. Civil Service	unassigned
12. Public Education	unassigned
13. Schedule and Transitional Problems	unassigned

The preparation of these briefing papers is a very substantial undertaking, especially in view of the

time limitations involved. Although it is difficult to estimate, it is likely that the briefing papers listed above will total somewhere between 700 and 1,000 typewritten pages without attachments. If the money is available, it would be very desirable to print these papers in a single volume which could be handled easily by the delegates to the Convention. It is our view that each delegate should have a complete set of the briefing papers. As to the attachments, we believe that they will be useful principally to those delegates with specific responsibilities for working on the articles relating to a particular topic. Any suggestions from the Office of Transition Studies and Planning regarding these questions would be appreciated.

Other Responsibilities

Although the preparation of the briefing papers is fully occupying our time, we are aware that our undertaking involves certain other responsibilities. In advance of the Convention, we will try to prepare a draft set of procedures for consideration by the delegates and be in a position generally to advise regarding the actual operations of the Convention. As is reflected in our memorandum of the May 4 meeting, there are several alternative approaches which might be used by the Convention. It is my view that these subjects should be discussed with the Pre-Convention Committee once

the delegates have been elected. In addition, we will be anticipating the drafting needs of the Convention and will be prepared to propose alternative language for the Convention once the delegates begin to focus on the issues and provide direction as to the alternatives discussed in the briefing papers which appear most promising or practical for the Northern Marianas. If there are any other projects which the Office believes should be undertaken by this firm in the time remaining before the Convention, we would like to be advised.

WILMER, CUTLER & PICKERING

By Howard P. Willens
Howard P. Willens