

20 June 1976

MEMO

to: Howard Willens

ffrom: Jake Wheeler

subj: Comments on Memo for Mr. Lapin and Ms. Siemer dated 8 June.

1) The subject matters of the ten briefing papers seem fine to me. They certainly cover those structural and "power" factors which should be in a constitution. And I suspect that the subjects of #9 and #10 are so fundamental out there as to deserve constitutional consideration.

I certainly support what I think is the implication of a paragraph on the second page. It seems unnecessary—and maybe dangerous—to break the legislative aspects into so many pieces, as Hawaii did. And I would argue strongly against giving the ~~initiative~~ <sup>referendum</sup> and referendum more than a passing swipe for fear of interesting them too much in those devices. "Taxation and public debt" might be expanded to cover the other fiscal matters. In general I feel that the broader the coverage and the more limited the number of separate papers the better.

2) I realize that our obligations extend to counsel on policy as well as on constitutional matters. But to the extent that these can be separated, both I think will benefit. I hope I am not belaboring this point but I think it is very important. For example, they may need a lot of help and advice on an educational system—but not for inclusion in a constitutional document. The medical service reference must be a local matter of which I have no knowledge.

The references to "Public Education" and "Civil Service" in the Model State Constitution deserve some explanation. The purists among those of us revising the model in the late 50s and 60s did not feel that these provisions were necessary—or very wise for fear they might stimulate provisions on other subjects. We did write these in the least harmful fashion possible, just committing the state to recognize them and not projecting detail. Timing and NML politics conditioned these articles. Timing: the desegregation squabble was growing crescendo-like and we feared that the dropping of the provision might be used ~~against~~ by the critics of public education. Pure and simple. NML P olitics: many of the old heads around the League were early proponents of the reforms advocated by the progressives in the early 20th. Some had been active in the National Civil Service League. Richard Childs—now still active at 94—was adamant. Actually they may be right. A civil service, based on merit, nonpartisan in nature, professional may now be so fundamental an idea as to deserve constitutional status. But that is why those things are in there.

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P.T.07

3) Transition ~~is~~ is an extremely important matter and deserves attention by someone. Maryland handled this well. Someone might want to read the brief treatment I gave it in my book--on pp60-62--and well ~~as to~~ review the actual statements. Those should be in the <sup>materials</sup> materials you have collected for the library. I do not have them here. Also Victor Fischer describes the Alaska efforts and reprints their transitional articles in his book on that convention available from the NML.

4) Finally, I raise again the question of the impact of "territorial" or commonwealth status for all this. Maybe this is just my problem. But I have found myself in a quandary at times wondering whether what I am writing really applies to this strange, fairly new animal. How much of the state experience is limited to the "states," and how much might be brought to bear on this new creature.

20 June 1976

MEMO

from: Jake Wheeler

to: Howard Willens

subj: Summer schedule and production schedule

1) Assuming you will still want my services after reading my first product may I inquire about the summer schedule. Has the convention opening date been set? When will you want me in Washington? How long will you want me? (I have worked things out so that I might stay as long as ~~it~~ might allow me time to be back here on 12 September.

2) What is the production schedule for the papers and what process will they be put through? Will I have a chance to rework my stuff before it goes to press? Will you be sending material here for me to review? Will the stuff be reproduced before I come to DC? Will it be sent to the Marianas before the group goes out? Etc.

3) The best "outsider" I know of for looking over the stuff is John E. Bebout, probably the most experienced and knowledgeable person in this field. Now in his seventies John has retired from more jobs than I can list, including being assistant director of the National Municipal League, the director of the Urban Affairs Institute at Rutgers, and something similar at the Universities of Houston and Texas. He was director of New York constitutional commission, consultant in Alaska and a dozen other states. He has written and spoken everywhere on various aspects of the matter. He and I have worked together closely for years. Indeed he got me into the business. The New York Times once dubbed him "The Constitutional Wizard," a title that some of us won't let him live down. I think he is at his summer place in Wellfleet, Mass, but Bill Cassella at the NML could put you on to him.

Suggestions for your consideration: I am sure he would be interested in looking over anything you might want to send up to him. If time permits--and the schedule allows--I would like to work with him in Washington (or Wellfleet) for two or three days, going over the products before they reach the printer, if that would serve any purpose for you. I think he is likely to be of more use to you if I work with him--and keep the pressure on--than alone. Just a suggestion. At the very least you would find a conversation with him interesting and rewarding.

4) Query about style of writing. May one assume that the Marianans will not be offended by being included in the collectivity "Americans"? May I assume that by opting for a closer relationship with us that they desire to ape American institutions and practices--to a considerable extent anyway?

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One Hedgerley Close  
Cambridge

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Mr. Howard P. Willens  
Wilmer, Cutler and Pickering  
1666 K Street NW  
Washington, D.C.

Dear Howard,

The enclosure should demonstrate that I have gone to work for you; you will have to judge the quality of that work. I am working on the "overview" chapter, of which this might be a part. This is certainly not all that I have at the moment but it is the only thing that I have put through the second working. Normally I submit the third draft so judge this with that in mind.

Some questions about this section occur to me off hand. First, you might think this is not appropriate. If so, fine. Second, since I have been working from the parts of the covenant which I have--Article II, IV, V, VI, VII, VIII, IX and X of an undated Xeroxed copy--I may not have the full story and may not even be interpreting properly that which I do have. If so, then please with your blue pencil save us both from embarrassment. Third, is the style of writing appropriate?

I am rushing this to you so that you will have something in hand from me upon your return from the Pacific. As soon as you have an opportunity please share your reactions. Over the weekend I hope to put the rest of the chapter in shape and to post a copy Monday morning.

Mr. Stern arranged for me to have lunch with a friend of his who has had a great deal of experience with British efforts in its former colonies. I will not spend much time on this but would like to determine whether there is stuff that which might be of help to the cause. Incidentally Stern has been very friendly and I like him very much. Sorry he is leaving so soon.

Thanks for the money. After I talked with you by phone I had second thoughts about raising the question. I think I raised it because of concern that the Pacific experience might have fallen through in the light of the threatened Labor convention date. Anyway thanks again and I will give you a statement about my labors for you shortly.

Sincerely,

  
Jean P. Wheeler, Jr.

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One Hedgerley Close  
Cambridge  
20 June 1976

Mr. Howard P. Willens  
Wilmer, Cutler and Pickering  
1666 K Street NW  
Washington, D. C.

Dear Howard,

This note will be largely personal and I will deal with business matters in a couple of enclosed memos.

Hopefully that first batch of stuff I sent was on your desk when you returned. I had slept fitfully Friday night and when the sun starting streaming into the bedroom about 4:30 am--as it is wont to do this time of the year--I gave up, got up, finished it up and pedalled over to the posting station to see that the letter got off properly. I pedalled because I like to bike--but also because my car--which is accident prone--is in the shop again. Each of my three sons has had a go at it this year. The youngest last summer in France sought to help me by starting the car, in reverse gear 18 inches from a stone wall. My oldest at Christmas time--the first time he took the car out alone--failed to manipulate an English round-about properly, jumped a curb~~and~~ and ripped out the gear-box. Three weeks. While I was over with you, number two son took the car out--for the first time--looked the American way at a "give way" corner and fixed up the front end, when an Englishman with slow reflexes came from the other direction. Already two weeks.

I am not wasting time with all this. Actually I have been working hard for you all weekend, save for a bit of time I took off to see a student revue yesterday, to help my son celebrate his 14th birthday at noon, and to listen for about an hour to a Salvation Army band playing on--appropriately--Jesus Green. I have been back at the typewriter for sometime but frankly was getting tired of my prose.

One final bit of nonsense and I will get on to the memos. I will share a little experience of a week ago that demonstrates Cambridge's delightful ~~stiffness~~ or perhaps intellectual jadedness. Our septuagenarian neighbors, the Sanbachs (pronounced "Sand-batch")--he a retired professor of classics and fellow at Trinity College and still director of the Trinity Fund at 75, she very active as the translator of the Bergman scripts for the English dubbings--took up to a symphony program at Trinity, part of May week celebrations which in typically inexplicable English fashion come in June. As we rode from the backs toward the fellows' parking lot we came to the bridge over the Cam, much too small for two cars to use at the same moment. Of course, we came face to face with another auto. Professor Sanbach sat rigidly at his wheel obviously waiting for the other to move from his path. This impasse continued for a couple of minutes. Finally, the good professor exasperated with antagonist said, "Well, he may

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be able to win a Nobel prize but he certainly can't operate an automobile!"  
Impressed, I asked, "Did he really win a Nobel?"

"Yes," came the reply.

"In what field?" I asked.

"Mathematics.....or physics.....or some such thing."

Cheers.

Sincerely,



John P. Wheeler, Jr.

*I plan to post another batch tomorrow - Monday.*

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