

48, Nevers Square
London SW5
17 August 1976

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Mr. Howard P. Willens
Wilmer, Cutler and Pickering
Washington, D. C.

Dear Howard,

As I noted in my letter to Deanne I will be in your office on the morning of August 30. I also requested that some housing arrangement be made for me effective the night before. The additional assignments you suggested in your letter of 4 August are certainly acceptable to me. However, they will require that I spend about two days in a library somewhere and/or with my stored notes. May I suggest that if you do not have plans for me to work there over the Labor Day weekend that I run down to Roanoke where the library is adequate and my notes are good. Or I could go down the following week when work there is finished. Whatever you say.

Now, let me respond to the other items in your letter of 4 August, following your numbering.

1.a. While I am toning down the judgmental quality of my paper I am including a description--which is implicitly judgmental--of how state constitutions got to be as they are. State constitutions are essentially products of the times in which they were written, reflecting the hopes and fears of the people and more importantly the interests of those who wrote them. What might have seemed sound constitutional construction in 1902, may not seem so in 1976. Yet the 1902 pattern--with the subsequent and inevitable accoutrements added--produce the 1976 model in too many cases. I am re-viewing all the papers with the purpose in mind of nothing such matters for whatever use that might be.

b. I can appreciate your feeling in regard to objectivity. I can only answer that I feel that I am arguing for a degree of objectivity as well. One is not being objective to point out there are two sides to a question when really there are not. Let me use the simplest, most obvious example. You can put dollar figures into a constitution, for salaries, or otherwise; obviously you can because it is done. But it is absurd to do so, contrary to sound theory and explicit experience.

2. As I think I wrote to Deanne I did not intend to pose "political science" material against "law" material. I am talking about anything material which somehow talks about the realities of the governmental operation. When I was there I reviewed a bibliography with Neil which contains a lot of the stuff I would suggest looking at. In addition, an awful lot of work has been done on legislatures recently and on local government matching what was done earlier on the executive. Revenue matters have received considerable attention. (On the latter Brookings has some good stuff and the NML has a pub out by Ecker-Racz which may give some insights). I will review for pertinent articles when I am there.

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a. One or two comments on our "values" discussion. By values I think I mean primarily those things the islanders want to accomplish, the goals they have in mind. Secondly, I refer to their attitudes and expectations--whether they are fearful and untrusting or hopeful and trusting. If you know something about these matters you can better advise them. You will have some idea how they will come out "on particular issues" and indeed advise them how to do so without abandoning the stance of objectivity. You have said something to me in the comment, "a reasonably responsive and efficient government which accords proper respect to local Marianas tradition." I can certainly tell you some things in state constitutions which make for or hamper reasonably responsive and efficient government, according to contemporary standards. I can tell you nothing about the local Marianas tradition at this point--but neither do most of the papers thus far written.

I have been trying to think of some kind of an analogy which might be meaningful. This may seem as naive to you as an occasional comment in the papers does to me. But I will try it. Suppose you have a client who wants you to prepare a contract for him. I suspect that the first thing you want to know is what he hopes to accomplish through the contract. Then you set about writing a contract to do just that, following what you know to be the best guidelines for contract writing. You would not lay out the alternatives which are available at every step in the process, particularly when you know that some of them are downright bad ideas. (As I continue with this I become increasingly sorry I started it!!)

Now, I know this analogy breaks down in at least two respects. First, you are writing the contract and the delegates the constitution. Yet I am not certain this distinction is fundamental. Second, in a contract you will be trying to plug every loophole and you certainly will not in a constitution. Let me lay this aside before I get too far behind!

b. I have already commented a bit on this. Let me add a note and make a presumptuous suggestion. I am beginning to feel that this is something of a David and Goliath situation with me as David, of course, but with my slingshot back home in the file. I feel as if I have assumed or been assigned the responsibility for defending a whole body of opinion if not a profession! I am not certain that, even with access to a good library and my files, that I could meet your standards of evidence implicit in your "word of caution." So much in this area is a matter of judgment and experience. As a so-called "authority" I can make that available to you and feel that I should or I am certainly not earning my keep. I will do my best though to mobilize sources to support my arguments.

My suggestion is that you consider getting the response of someone else to at least one of the papers--not the land alienation one--at this time. Al Scanlon, fellow lawyer of yours across town, had a good deal of experience in Maryland but I know his view--he is far more of a purist than I am. George Braden has had more and broader experience in constitution writing than any lawyer I know and I am not wholly certain of

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his position. Braden, a former professor of law at Yale, has worked on constitutions in Connecticut, New York, and Illinois and most extensively perhaps on the recent Texas effort. I am not sure of his present ^{location} but I am sure that he could be reached through the Institute of Urban Studies, University of Houston.

Or since some contact has been made with the IPA folks in New York, why not have someone there look at a copy?

I said this was presumptuous so I will not be surprised if you treat it as such.

As I re-read my letters and memos to you I realize that they on balance have a heavy negative quality. Part of that is, of course, intentional for I have reservations about the approach which is being used. Some of it though results from the natural tendency to respond to those things with which one disagrees and to ignore the areas of agreement. Let me assure you there are some of the latter! Perhaps I can take a more positive stance when I am there next.


I should confess though to some biases. I realize that you are totally committed to your client as you should be, and perhaps I should be to your effort--as I think I am. Yet, in the background looms both the scholar and the reformer. I am interested in these materials becoming part of the general literature of the field--as they will for better or for worse--and that those of us, though participating anonymously, receive a good judgment for the investment of time made. As a reformer I am also interested in the Marianas doing as good a job as possible. I know they should be free to make their own mistakes but I hope we can help them avoid the more obvious ones. I would also like to see them come up with something that would make the rest of the system take note. Those 14,000 people can teach the rest of us something. I am not starry eyed; just hopeful.

May I close on a wholly irrelevant note, though an amusing one. Recently I was invited to be the "Speech Day Guest" at the Park School in Barnstaple, Devon. I know little of this enterprise save for what I have seen in English movies about the public school. Anyway the letter of invitation contained the following paragraph:

"Our Speech Day guest is usually a person of some calibre and I thought that this year, because of the Bicentenary, it would be very appropriate, as an illustration of the close links between our two countries, if an American could visit our school for this important occasion. I think this feeling has been heightened by the Queen's visit to your country....."

Have you ever had to assume such a responsibility?

Sincerely,


John P. Wheeler

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