WILMER, CUTLER & PICKERING
1666 K STREET, N. W.
WASHINGTON, D.C. 20006

CABLE ADDRESS: WICRING WASH., D.C.
INTERNATIONAL TELEX: 440-239
TELEX: 89-2402
TELEPHONE 202 872-6000

EUROPEAN OFFICE
5 CHEAPSIDE
LONDON, EC2V 6AA, ENGLAND
TELEPHONE 01-236-2401
TELEX: 851 883242
CABLE ADDRESS: WICRING LONDON

MANUEL F. COHEN (1912-1977)

LLOYD N. CUTLER
JOHN H. PICKERING
HUGH R. H. SMITH
LOUIS F. OBERDORFER
J. ROGER WOLLENBERG
CHARLES C. GLOVER, III
MARSHALL HORNBLOWER
HENRY T. RATHBUN
REUBEN CLARK
SAMUEL J. LANAHAN
WILLIAM R. PERLIK
SAMUEL A. STERN
ARNOLD M. LERMAN
ROBERT P. STRANAHAN, JR.
MAX O. TRUITT, JR.
JOEL ROSENBLOOM
HOWARD P. WILLENS
ANDREW T. A. MACDONALD
ROBERT A. HAMMOND, III
DANIEL K. MAYERS
TIMOTHY B. DYK

DAVID R. ANDERSON
J. RODERICK HELLER, III
ARTHUR F. MATHEWS
JAMES S. CAMPBELL
DENNIS M. FLANNERY
JAMES ROBERTSON
RAYMOND C. CLEVENGER, III
LOUIS R. COHEN
MICHAEL R. KLEIN
STEPHEN A. WEISWASSER
TIMOTHY N. BLACK
SALLY KATZEN
F. DAVID LAKE, JR.
PAUL J. MODE, JR.
STEPHEN F. BLACK
C. BOYDEN GRAY
RONALD J. GREENE
JAY F. LAPIN
GARY D. WILSON
C. LORING JETTON, JR.
WILLIAM T. LAKE

EZEKIEL G. STODDARD
ARTHUR Z. GARDINER, JR.
COUNSEL

STEWART A. BLOCK
LACKLAND H. BLOOM, JR.
LYNN BREGMAN
MICHAEL L. BURACK
RICHARD G. BURT
RICHARD W. CASS
WILHELMINA REUBEN COOKE
MICHELE B. CORASH
MARY CAROLYN COX
PATRICIA D. DOUGLASS
S. ALLEN EARLY, III
JAMES R. FARRAND
NANCY C. GARRISON
NEAL M. GOLDBERG
CORNELIUS J. GOLDEN, JR.
EDWARD T. HAND
ALLEN H. HARRISON, JR.
JOHN H. HARWOOD II
MICHAEL S. HELFER
A. STEPHEN HUT, JR.
DAVID R. JOHNSON
JAMES T. KILBRETH, III
NEIL J. KING
PAUL S. KOFFSKY
WILLIAM J. KOLASKY, JR.
CANDACE S. KOVACIC
VICKI E. LAND

DONALD C. LANGEVOORT
ELWYN C. LEE
CHRISTOPHER R. LIPSETT
RICHARD A. LOWE
ROBERT A. MAJOR, JR.
BRUCE E. MAXIMOV
ROBERT B. McCAW
MARY A. McREYNOLDS
A. DOUGLAS MELAMED
LOWELL B. MILLER
WILLIAM J. PERLSTEIN
PHILLIP L. RADOFF
RENÉ TOWNSEND ROBINSON
JOHN ROUNSAVILLE, JR.
MICHAEL S. SCHOOLER
GAIL F. SCHULZ
KAREN KOSER SCHWARTZ
ARTHUR B. SPITZER
ALAN B. STERNSTEIN
ERICA A. WARD
ARTHUR M. WEISBURD
CAROL DRESCHER WEISMAN
ALAN S. WEITZ
ANN O. WILLIAMS
ROBERT G. WILSON
ROGER M. WITTEN

September 15, 1977

C. Brewster Chapman, Jr., Esq.
Assistant Solicitor, Territories
Division of General Law
Department of the Interior
18th and C Streets, N.W.
Washington, D.C. 20240

Dear Brewster:

I recently had the opportunity to review the draft legislation dated August 17, 1977, to establish a district court for the Northern Mariana Islands pursuant to section 401 of the Covenant. Although I have not had the opportunity to evaluate this legislation from a technical standpoint, I do have one serious problem with it that I wish to bring immediately to your attention.

As proposed, the legislation is cast in the form of an amendment to section 401 of the Covenant. I disagree with this approach and see no need for it. I believe the legislation can appropriately be characterized as implementing section 401 and should be recast in those terms. My reasons are as follows:

First, amendments to the Covenant should be limited to those matters of substance where Congress concludes that the Covenant was either in error or should be amended to reflect a different policy judgment. Neither of these circumstances exists in this case; section 401 obligates the United States to establish a district court and the Executive Branch and the Administrative Office of the United States Courts have apparently concluded that legislation is necessary to fulfill this commitment. If the amendment approach is followed in this instance, there is no

reason to doubt that all future laws implementing the Covenant would also be in the form of amendments. As you can imagine, the end result after a few years would be a Covenant that bears no visible relationship to the document that was laboriously negotiated between the parties over a two year period and signed into law on March 24, 1976.

Second, I am concerned that any amendment to the Covenant on this subject would be misunderstood by the people of the Northern Mariana Islands. They understandably attach considerable legal and symbolic importance to the Covenant as negotiated and approved by Congress. Although they recognize that some provisions of the Covenant can be altered unilaterally by the United States Government, there were representations made during the negotiations that such action would not be taken lightly by the United States. To amend section 401 of the Covenant, therefore, when it is not strictly required may suggest to the Northern Marianas people that the United States intends to treat the Covenant as simply another federal law or organic act that can be amended at will, without any need of even consulting with the Northern Marianas people. I believe this would be a most unfortunate result and should be avoided if at all possible.

Very few changes in the proposed draft would be required to accomplish my objective. I offer the following for your consideration:

1. Most importantly, the first paragraph of the draft should be amended along the following lines:

> "Whereas Section 401 of the Covenant to establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, approved by Section 1 of the Joint Resolution of March 26, 1976, Public Law 94-241, 90 Stat. 266, provides that the United States will establish a District Court for the Northern Mariana Islands, the following implementing provisions are hereby enacted:"

2. The sections would have to be renumbered. The section presently numbered 401(a) should be Section 1 of the proposed law.

3. I suggest that Section 2 of the proposed draft be eliminated as unnecessary. I think it is particularly offensive to amend Sections 402 and 403 of the Covenant by substituting the word "shall" for the word "will" -- even assuming that the proposed change is grammatically preferable.

4. Section 3 of the proposed draft should be renumbered as Section 2 and the reference to section 402(c) of the Covenant should be eliminated.

5. The reference to subsection 401(b)(2) in former Section 3 should be changed to refer to subsection 1(b)(2).

6. Section 4 of the proposed draft should be renumbered as Section 3 and the adjective "amendatory" should be stricken.

I hope that you will see fit to make these changes before the draft legislation is sent to OMB for review. If it is not changed, I will recommend to my clients that they oppose the legislation when it is considered by Congress for the reasons set forth above.

Sincerely,

Howard P. Willens

cc: Representative Phillip Burton
Mr. Edward DLG. Pangelinan
Mrs. Ruth G. Van Cleve
Herman Marcuse, Esq.
William E. Foley, Esq.