

October 4, 1977

MEMORANDUM TO HOWARD P. WILLENS

RE: Federal District Court - Marianas

I accompanied Eddie Pangelinan today during his testimony regarding creation of the federal district court for the Northern Marianas before the Senate Judiciary Committee. Brewster Chapman delivered a statement on behalf of the Departments of Interior and Justice and of the Administrative Office. Stafford Ritchie presented a supplemental statement in which he recommended that appeals to the Ninth Circuit be by certiorari rather than as of right. His statement made clear, however, that neither the Administrative Office nor the Judicial Conference would object to legislation that does not include a certiorari provision.

Senator Dennis De Concini presided and was the only Senator attending. Mr. Westphall of the Judiciary Committee staff conducted the bulk of the questioning. Both are highly favorable to the rapid enactment of this legislation. In fact, following the hearing, Mr. Westphall said that he will draft the Committee's report by the close of business today and that he hopes the Committee will report the legislation to the full Senate tomorrow.

Copies of Senator De Concini's opening statement, Mr. Ritchie's supplemental statement and the printed version of S. 2149 are attached. For your convenience, a copy of

the joint statement delivered by Mr. Chapman, which you already have, is also attached.

After the hearing, Eddie and I visited with Pat Krause. She suggested that Congressman Burton may desire legislation that unifies the court systems of Guam and the Northern Marianas. Although she declined to elaborate further on Mr. Burton's present thinking, she did say that he had not reached a firm position and might very well end up supporting S. 2149 as it now stands. Eddie left copies of the testimony presented before the Senate Judiciary Committee and the printed bill with Mrs. Krause for the Congressman's use.

Regardless of Mr. Burton's views, Mr. Westphall reports that Chairman Rodino of the House Judiciary Committee supports the creation of a separate district court for the Northern Mariana Islands and is willing to expedite consideration of the matter.

Paul S. Koffsky



Attachments

OPENING STATEMENT OF
DENNIS DE CONCINI, U.S.S.
ON S. 2149

The Committee on the Judiciary today will consider S. 2149, the bill to create a district court for the Northern Mariana Islands.

This bill, which was introduced by Chairman Eastland at the request of the Administration, would implement Article IV of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States, Public Law 94-241.

The President is expected to issue a proclamation early next year announcing the termination of the present territorial agreements and signalling the date upon which the Commonwealth and its new constitution will come into existence.

Under the terms of the Commonwealth covenant, the United States is required to establish a court of record known as the "District Court for the Northern Mariana Islands." Because it is extremely desirable to have such a court established at the time the Commonwealth comes into existence, and thereby prevent a disruption in its legal system, it is important that the Congress act on this legislation prior to January of next year.

The court sought to be created by this legislation will have essentially the same jurisdiction as a district court of

the United States, including jurisdiction over matters involving federal questions and federal crimes. This district court will also have original and appellate jurisdiction over all civil and criminal cases arising in the Northern Mariana Islands, except as the Commonwealth's constitution and laws shall otherwise provide.

This constitution, which will be implemented upon the commencement of Commonwealth status, requires the legislature of the Northern Marianas to establish a local, Commonwealth court. The Commonwealth court will have original jurisdiction over local civil and criminal matters where the amount in controversy or the fine involved does not exceed five thousand dollars or the term of imprisonment is less than five years. Until the legislature establishes the Commonwealth court, the district court will exercise jurisdiction over these matters.

Once the Commonwealth and the constitution come into existence, it will, understandably, take some period of time for the legislature to meet and establish the Commonwealth court. Therefore, absent U. S. Congressional action to establish a district court, the Government of the Northern Mariana Islands may find itself, for some time, without a judiciary to handle civil and criminal matters. Even after the Commonwealth legislature acts to create a local court, the Commonwealth would be without a court with jurisdiction over federal matters and with powers of appellate review, absent Congressional action on this legislation.

The bill before us, S. 2149, provides in subsection (a) for the establishment of the district court and the location at which it will be held. Subsection (b) (1) authorizes the President to appoint, with the advice and consent of the Senate, a judge for the district court and sets the judge's salary. Subsection (b) (2) of the bill authorizes the Chief Judge of the Ninth Judicial Circuit to assign a judge to the District Court of the Northern Mariana Islands for a period of time should such prove necessary for the court to carry out its functions. It also provides that such an assigned judge may appoint statutory court officers if necessary. Subsection (b) (3) makes provision for Presidential appointment of statutory court officers and subsection (b) (4) establishes the terms of office of such officers and the judge in the case that these persons are also serving in like capacities in another judicial district. Subsection (c) provides that certain rules promulgated by the Supreme Court and certain provisions of law will apply to the District court and to appeals therefrom.

Section 2(a) specifies jurisdiction in all causes arising under the constitution, treaties, and laws of the United States, regardless of the amount in controversy. Subsection (b) specifies that jurisdiction lies in the district court for all other cases not vested by the law or

constitution of the Northern Mariana Islands in courts of the Northern Mariana Islands.

Section 3 vests appellate jurisdiction with the district court as the constitution of the Northern Marianas may provide.

Section 4(a) provides for the relationship between the district court and the local courts with respect to appeals, certiorari, removal, habeas corpus and other proceedings. Subsection (b) specifies the applicability of pertinent administrative portions of 28 U.S.C. to the district court.

Section 5 relates to the effective date of the legislation.

The legislation before us has been drafted by representatives of this Committee with consultation of representatives of the Administration and the judicial branch.

We will now receive testimony from C. Brewster Chapman of the Department of the Interior; Herman Marcuse of the Department of Justice; Stafford D. Richie, II, of the Administrative Office of the United States Courts; and Edward Pangelinan, Esquire, and Howard Willins, Esquire, representatives of the Northern Mariana Islands.

Mr. Chairman, Members of the Committee:

I am Stafford D. Ritchie, II, Assistant General Counsel, Administrative Office of the United States Courts. Thank you for the opportunity to appear here today to express the views of the Administrative Office of the United States Courts and the Committee on Pacific Territories of the Judicial Conference of the United States. I appear on behalf of the Honorable Richard H. Chambers, United States Circuit Judge for the ninth judicial circuit and chairman of the Committee on Pacific Territories.

On behalf of the Administrative Office and the Pacific Territories Committee, I have joined the Departments of Interior and Justice in the joint statement already presented to your committee. We recognize the urgency of this legislation, and appreciate your current efforts to ensure enactment of S. 2149 before adjournment.

On September 16, 1977, the Judicial Conference of the United States acted upon the recommendations presented to it by the Committee on Pacific Territories on the subject of the judicial establishment to be created in the Northern Mariana Islands. The Conference approved all recommendations made by the committee.

That S. 2149 satisfies all but one of these recommendations is not coincidence. We have worked closely with the Departments of Interior and Justice, and the proposed legislation submitted by the Department of Interior incorporates our recommendations, except for the recommendation that appeals to the United States Court of Appeals from the appellate division should be by writ of certiorari.

Section 3 of S. 2149 establishes the procedural framework to guide the operation of the appellate division of the District Court for the Northern Mariana Islands. The framework is analogous to that provided for the District Court of Guam. In conjunction with section 1(b)(2), section 3 limits participation on the appellate division to one judge of a court of record of the Northern Mariana Islands, who is a licensed attorney in good standing. We believe the procedural framework and the representational limitation will ensure that the appellate division will be a competent and impartial appellate tribunal for appeals from the local Commonwealth Trial Court, and also will have the appearance of impartiality.

Having ensured these attributes of the appellate division, the committee recommended, and the Judicial Conference adopted the recommendation, that appeals to the United States Court of Appeals for the Ninth Circuit should be by writ or certiorari.

The Commonwealth Trial Court will be a court of limited original jurisdiction. The court will have jurisdiction over actions involving land in the Northern Mariana Islands and other civil actions except those in which the value of the matter in controversy exceeds five thousand dollars. The court also will have original jurisdiction over criminal actions except those in which the defendant, if convicted, may be fined an amount that exceeds five thousand dollars or may be imprisoned for a term that exceeds five years. Constitution of the Northern Mariana Islands art. IV, §2. Assuming the establishment of the District Court for the Northern Mariana Islands, the Commonwealth Trial Court may be invested with additional criminal and civil jurisdiction only after the constitution has been in effect for five years.

Those litigants whose cases fall within the limited original jurisdiction of the Commonwealth Trial Court will be provided one appeal as of right to the appellate division of the District Court for the Northern Mariana Islands. We believe that review by writ of certiorari is necessary to truncate appeals, in the discretion of the court of appeals, in cases not involving substantial questions or sums of money, and in cases where the cost of the appeal to the parties would be disproportionately large in relation to the matter in controversy. In this context, the logistics of the appellate process are important. In Guam, for

example, the time and expense of perfecting an appeal to the United States Court of Appeals for the Ninth Circuit at San Francisco can be large. A litigant who prevails in both the Commonwealth Trial Court and the appellate division of the District Court may have no more than a Pyrrhic victory if he is required by a litigious losing opponent to make his case again in San Francisco.

Because of the apprehension of the Departments of Interior and Justice that such an appellate procedure should have the express or tacit approval of the people of the Northern Mariana Islands, the proposal submitted by Interior and S. 2149 continue to provide for appeal as of right to the United States Court of Appeals for the Ninth Circuit from decisions of the appellate division. We continue to believe that review by writ of certiorari to the appellate division would be in accordance with sound principles of judicial administration, and that this procedure could be accommodated in S. 2149 without substantial change. However, should your committee determine to postpone consideration of this issue to a later date, we will not object to this course of action. Our primary concern, of course, is to assure the presence of a functioning judiciary in the Northern Mariana Islands without interruption.

We also would like to take this opportunity to clarify several other issues in respect of the provisions of S. 2149.

Section 1(b)(2) authorizes the Chief Judge of the Ninth Judicial Circuit of the United States to assign "justices of the High Court of the Trust Territory of the Pacific Islands or judges of courts of record of the Northern Mariana Islands who are licensed attorneys in good standing or a circuit or district judge of the Ninth Circuit" to serve temporarily as a judge in the District Court for the Northern Mariana Islands. Since judges so assigned are authorized to sit on the appellate division, we feel that a proper qualification is licensure as an attorney. As a technical matter, however, the bylaws of some state bars may require an attorney to resign his bar membership upon assuming a judicial office. While the language of section 1(b)(2) could be construed to proscribe assignment of a judge in such a situation to the District Court for the Northern Mariana Islands, that construction is not intended. Rather, if the judge were a licensed attorney in good standing at the time of appointment to the judicial office and if he resigned his bar membership exclusively as a consequence of appointment to judicial office, he will be qualified for assignment to the District Court for the Northern Mariana Islands.

Section 1(b)(2) further authorizes the assignment of a district judge of the Ninth Circuit to serve temporarily on the District Court for the Northern Mariana Islands. In the context of this bill, the phrase "district judge" is not constrained by the definitions found in title 28, United

States Code, and specifically by the definition of judge found in section 451 of that title. The phrase "district judge of the Ninth Circuit" is intended to comprehend any judge for the District Court of Guam who is appointed by the President. To make this point clear, we are offering an amendment for your committee's consideration which defines the term "district judge of the Ninth Circuit" for purposes of this bill.

Finally, we recently have confronted the question of the applicability of the Criminal Justice Act of 1964, as amended (18 U.S.C. §3006A (1970 & Supp. V 1975)) to the District Court for the Northern Mariana Islands. The Criminal Justice Act applies to Guam. 18 U.S.C. §3006A(k) (1970). Accordingly, we conclude that the Criminal Justice Act will be applicable to the District Court for the Northern Mariana Islands by virtue of the operation of section 502(a) (2) of the Covenant To Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, as approved by H.R.J. Res. 549, Pub. L. No. 94-241, 90 Stat. 263 (March 24, 1976). The Criminal Justice Act therefore will provide for the furnishing of representation for any person financially unable to obtain adequate representation in the classes of cases, primarily criminal, covered by the Act. Representation will be provided regardless of whether the District Court is exercising federal jurisdiction or local jurisdiction, or is sitting

as the appellate division in review of criminal prosecutions in the Commonwealth Trial Court.

For purposes of clarity and compilation of all provisions concerning the judicial establishment in S. 2149, your committee may wish to make express the applicability of the Criminal Justice Act of 1964, as amended, by inclusion of an appropriate provision in S. 2149. Accordingly, we are offering an amendment for your committee's consideration which defines the term "district court" as used in the Criminal Justice Act to include the District Court for the Northern Mariana Islands.

Thank you for the opportunity to appear today. I stand ready to answer any questions you may have.

Sec. _____. As used in this Act:

The term "Covenant" means the Covenant to establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, as approved by H.R.J. Res. 549, Pub. L. No. 94-241, 90 Stat. 263 (March 24, 1976).

The term "district judge of the Ninth Circuit" includes any judge for the District Court of Guam who is appointed by the President.

Sec. _____.

The term "district court" as used in the Criminal Justice Act of 1964, as amended (18 U.S.C. §3006A) includes the District Court for the Northern Mariana Islands.

BEFORE THE JUDICIARY
COMMITTEE OF THE UNITED STATES
SENATE

JOINT STATEMENT OF C. BREWSTER CHAPMAN, JR., FOR THE DEPARTMENT OF THE INTERIOR, HERMAN MARCUSE FOR THE DEPARTMENT OF JUSTICE, AND STAFFORD D. RITCHIE, II, FOR THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS AND FOR THE COMMITTEE ON PACIFIC TERRITORIES, JUDICIAL CONFERENCE OF THE UNITED STATES, IN SUPPORT OF S. 2149 - A BILL TO CREATE THE DISTRICT COURT FOR THE NORTHERN MARIANA ISLANDS IMPLEMENTING ARTICLE IV OF THE COVENANT TO ESTABLISH A COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS IN POLITICAL UNION WITH THE UNITED STATES OF AMERICA

Mr. Chairman, we are pleased to appear here today to testify in support of S. 2149, a bill to create the District Court for the Northern Mariana Islands.

This bill is necessitated by the fact that Article IV of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America (H.J. Res. 549, Public Law 94-241, 90 Stat. 266) provides that "The United States will establish for and within the Northern Mariana Islands a court of record to be known as the 'District Court for the Northern Mariana Islands'."

In accordance with the provisions of Article IV this District Court will have the jurisdiction of a district court of the United States except that in all causes arising under the Constitution, treaties or laws of the United States it shall have jurisdiction regardless of the amount in controversy. In addition, it will have original jurisdiction in all causes in the Northern Mariana Islands jurisdiction over which is not vested by the Constitution or laws of the Northern Mariana Islands in a court or courts of the Northern Mariana Islands. Finally, the District Court will have such appellate jurisdiction as the Constitution or laws of the Northern Mariana Islands may provide.

The Covenant represents the culmination of over twenty years of efforts by the people of the Northern Mariana Islands to achieve official recognition and acceptance of their repeatedly expressed desires to become a part of the United States. It is the product of careful and serious negotiations between the people of the Northern Mariana Islands and the United States. It has been approved by the Congress and the President of the United States. It is now the law of the land, and its provisions are mutually binding on the parties.

In accordance with Article II of the Covenant the people of the Northern Mariana Islands have framed and approved a constitution for the Northern Mariana Islands, and have submitted it to the United States Government for approval. In accordance with the provisions of Article II of the Covenant, the constitution will be deemed to have been approved on October 22, 1977, unless earlier approved or disapproved. Thus the constitution could become effective as early as January 9, 1978, in accordance with Article X of the Covenant.

Article IV of this constitution provides for the establishment of the judicial branch of the local government. It calls for the creation by the legislature of a Commonwealth trial court with original jurisdiction over, among others, civil actions where the amount in controversy is five thousand dollars or less and criminal actions where the fine is five thousand dollars or less or the imprisonment is for no more than five years. It also permits the establishment of an appeals court after the constitution has been in effect for five years. In the event, no

District Court for the Northern Mariana Islands is available under Article IV of the Covenant, the legislature is authorized to expand the civil and criminal jurisdiction of the Commonwealth trial court and establish an appeals court without reference to the five year waiting period.

The legislature of the Northern Mariana Islands will have no authority to act until the Constitution of the Northern Mariana Islands has become effective. After the constitution becomes effective, it will take the legislature an undetermined amount of time to create the court authorized by Article IV of the constitution and to establish it as functioning branch of the local government. Transitional provisions of the constitution will enable the current, local courts to hear and determine cases that will be within the limited jurisdiction of the Commonwealth trial court. However, unless the District Court for the Northern Mariana Islands is established by S. 2149 in this session of Congress, there will be no court in the Northern Mariana Islands to hear serious criminal and important civil cases, arising under local law. Moreover, there would be no court to hear causes involving Federal questions or Federal crimes, and there would be no appellate tribunal.

The urgent need for enactment of S. 2149 in this session of the Congress is readily apparent. If action on the bill is deferred until the next session of the Congress there could be an unacceptable void in the judicial functions of the new government for the Northern Mariana Islands.

The language of S. 2149 follows closely the corresponding provisions of the Organic Act of Guam (48 USC 1424 and 1424b), and Article IV of the Covenant which was approved by the Congress a year and a half ago.

In closing we would like to thank the Committee for its prompt action on this matter and especially the members of the Committee's staff for their outstanding cooperation and assistance in expediting the presentation of S. 2149 both in the Senate and before this Committee.

95TH CONGRESS
1ST SESSION

S. 2149

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 27 (legislative day, SEPTEMBER 22), 1977

MR. EASTLAND introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To create the District Court for the Northern Mariana Islands, implementing article IV of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America.

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:

Now, therefore,

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*
- 3 That (a) there is hereby established for and within the
- 4 Northern Mariana Islands a court of record to be known as

1 the District Court for the Northern Mariana Islands. The
2 Northern Mariana Islands shall constitute a part of the same
3 judicial circuit of the United States as Guam. Terms of court
4 shall be held on Saipan and at such other places and at such
5 times as the court may designate by rule or order.

6 (b) (1) The President shall, by and with the advice
7 and consent of the Senate, appoint a judge for the District
8 Court for the Northern Mariana Islands who shall hold office
9 for the term of eight years and until his successor is chosen
10 and qualified, unless sooner removed by the President for
11 cause. The judge shall receive a salary payable by the United
12 States which shall be at the rate prescribed for judges of the
13 United States district courts.

14 (2) The Chief Judge of the Ninth Judicial Circuit of
15 the United States may assign justices of the High Court of
16 the Trust Territory of the Pacific Islands or judges of courts
17 of record of the Northern Mariana Islands who are licensed
18 attorneys in good standing or a circuit or district judge of
19 the ninth circuit, or the Chief Justice of the United States
20 may assign any other United States circuit or district judge
21 with the consent of the judge so assigned and of the chief
22 judge of his circuit to serve temporarily as a judge in the
23 District Court for the Northern Mariana Islands whenever
24 such an assignment is necessary for the proper dispatch of
25 the business of the court. Such judges shall have all the

1 powers of a judge of the District Court for the Northern
2 Mariana Islands, including the power to appoint any person
3 to a statutory position, or to designate a depository of funds
4 or a newspaper for publication of legal notices.

5 (3) The President shall appoint, by and with the ad-
6 vice and consent of the Senate, a United States attorney and
7 United States marshal for the Northern Mariana Islands to
8 whose offices the provisions of chapters 35 and 37 of title 28,
9 respectively, United States Code, shall apply.

10 (4) If the President appoints a judge for the District
11 Court for the Northern Mariana Islands or a United States
12 attorney or a United States marshal for the Northern Mari-
13 ana Islands who at that time is serving in the same capacity
14 in another district, the appointment shall, without preju-
15 dice to a subsequent appointment, be for the unexpired
16 term of such judge or officer.

17 (c) The provisions of chapters 43 and 49 of title 28,
18 United States Code, and the rules heretofore or hereafter
19 promulgated and made effective by the Congress or the
20 Supreme Court of the United States pursuant to titles 11,
21 18, 28, United States Code, shall apply to the District Court
22 for the Northern Mariana Islands and appeals therefrom
23 where appropriate, except as otherwise provided in articles
24 IV and V. The terms "attorney for the government" and
25 "United States attorney" as used in the Federal Rules of

1 Criminal Procedure (rule 54(c)) shall, when applicable
2 to cases arising under the laws of the Northern Mariana
3 Islands, include the attorney general of the Northern Mari-
4 ana Islands or any other person or persons as may be au-
5 thorized by the laws of the Northern Marianas to act therein.

6 SEC. 2. (a) The District Court for the Northern Mariana
7 Islands shall have the jurisdiction of a district court of the
8 United States, except that in all causes arising under the
9 Constitution, treaties, or laws of the United States, it shall
10 have jurisdiction regardless of the sum or value of the mat-
11 ter in controversy.

12 (b) The district court shall have original jurisdiction in
13 all causes in the Northern Mariana Islands not described
14 in subsection (a) jurisdiction over which is not vested by
15 the Constitution or laws of the Northern Mariana Islands
16 in a court or courts of the Northern Mariana Islands. In
17 causes brought in the district court solely on the basis of
18 this subsection, the district court shall be considered a court
19 of the Northern Mariana Islands for the purposes of deter-
20 mining the requirements of indictment by grand jury or
21 trial by jury.

22 SEC. 3. The district court shall have such appellate juris-
23 diction as the Constitution and laws of the Northern Mariana
24 Islands provide. Appeals to the district court shall be heard
25 and determined by an appellate division of the court consist-

1 ing of three judges, of whom two shall constitute a quorum.
2 The judge appointed for the court by the President shall
3 be the presiding judge of the appellate division and shall
4 preside therein unless disqualified or otherwise unable to
5 act. The other judges who are to sit in the appellate division
6 at any session shall be designated by the presiding judge
7 from among the judges assigned to the court from time to
8 time pursuant to subsection 1 (b) (2) : *Provided, however,*
9 That only one of them shall be a judge of a court of record
10 of the Northern Mariana Islands. The concurrence of two
11 judges shall be necessary to any decision by the district
12 court on the merits of an appeal but the presiding judge
13 alone may make any appropriate orders with respect to
14 an appeal prior to the hearing and determination thereof
15 on the merits and may dismiss an appeal for want of juris-
16 diction or failure to take or prosecute it in accordance with
17 the applicable law or rules of procedure.

18 SEC. 4. (a) The relations between the courts established
19 by the Constitution or laws of the United States and the
20 courts of the Northern Mariana Islands with respect to ap-
21 peals, certiorari, removal of causes, the issuance of writs of
22 habeas corpus, and other matters or proceedings shall be
23 governed by the laws of the United States pertaining to the
24 relations between the courts of the United States and the
25 courts of the several States in such matters and proceedings,

1 except as otherwise provided in article IV of the covenant:
2 *Provided*, That for the first fifteen years following the estab-
3 lishment of an appellate court of the Northern Mariana Is-
4 lands the United States court of appeals for the judicial circuit
5 which includes the Northern Mariana Islands shall have juris-
6 diction of appeals from all final decisions of the highest court
7 of the Northern Mariana Islands from which a decision could
8 be had in all cases involving the Constitution, treaties, or
9 laws of the United States, or any authority exercised there-
10 under, unless those cases are reviewable in the District Court
11 for the Northern Mariana Islands pursuant to section 3 of
12 this Act.

13 (b) Those portions of title 28 of the United States Code
14 which apply to Guam or the District Court of Guam shall be
15 applicable to the Northern Mariana Islands or the District
16 Court for the Northern Mariana Islands, respectively, except
17 as otherwise provided in article IV of the covenant.

18 SEC. 5. This Act shall come into force upon its approval
19 or at the time proclaimed by the President for the Constitu-
20 tion of the Northern Mariana Islands to become effective,
21 whichever is the later date.