news release
Senate Select Committee
on Intelligence

STATEMENT BY THE SENATE SELECT COMMITTEE ON INTELLIGENCE AND SUMMARY FINDINGS OF ITS INVESTIGATION INTO CIA INVOLVEMENT IN MICRONESIA

Over the past four months, the Senate Select Committee on Intelligence has conducted an investigation of CIA activities in Micronesia. The investigation included extensive interviews with principals from the CIA, the State Department, the Department of the Interior, and the National Security Council, examination of documents, and three days of executive session hearings. CIA intelligence reports on Micronesia were studied, and legal opinions from CIA, Justice, and State Department attorneys were reviewed. The investigations arose from allegations which suggested that the CIA had conducted electronic surveillance over the period from 1973 to 1976 against Micronesian officials. The Committee's preliminary findings include the following:

-- The CIA engaged in clandestine intelligence collection operations in Micronesia from early 1975 until December, 1976. The program included recruitment of Micronesian residents, some with affiliations with Micronesian political entities and some of whom were paid for their information. None was informed that they were reporting to the CIA. At least one of the persons served on one of the island government entities involved in developing a compact with the United States as to future status.

-- The CIA conducted one microphone surveillance for three months during this period intended to produce

information bearing on the status negotiations. CIA's records reflect that this operation was wholly unproductive and that no information resulting therefrom was ever made available to the American negotiators. The President's Personal Representative to the Micronesian Future Status Committee from March 1971 until July 1976, F. Haydn Williams, testified before the Committee that he was unaware of the microphone surveillance operation and that to his knowledge he never received any information therefrom. According to a December 1976 memorandum in CIA files, the surveillance tapes were destroyed as worthless in October 1976 in accord with regular procedures.

-- Considerable general political and economic intelligence about Micronesia was provided to a limited number of American officials by the CIA. However, in their testimony before the Committee, Ambassador Williams and other American officials stated that they received no CIA reports concerning the Micronesians' strategy, tactics, or negotiating positions. The same assurances were given by Philip Manhard, Williams' successor.

-- The overall CIA program in Micronesia was conducted under Executive Branch authorization and received normal procedural review. The Deputy Assistant to the President for National Security Affairs, General Brent Scowcroft, asked the CIA to initiate clandestine collection activities in Micronesia. A legal opinion was sought by CIA prior to initiation of its collection activity, and such activity was found to be lawful by the then General Counsel of the CIA--an opinion disputed in May 1976 by the State Department Legal Adviser. The CIA sought and received in October 1973 from the Assistant to the President for National Security

Affairs, Dr. Henry Kissinger, approval for collection operations in Micronesia as well as permission "to assess the possibility of exerting covert influence on key elements of the Micronesian independence movement and on those other elements in the area where necessary to promote and support United States strategic objectives."

-- According to CIA records and personnel, and so far as the Committee can determine from our investigation, the CIA undertook no covert action or influence in Micronesia.

-- Appropriate Congressional Committees of that time were informed in July and October 1973 of the plans to institute intelligence collection activity. The Committees were not later informed of the microphone surveillance which was approved by the Director of Central Intelligence in 1975; nor was any Executive Branch official outside of the CIA informed of the microphone surveillance. The CIA advised the Committee that it was not the practice at that time to report such activities to Congressional Committees.

-- The Status Liaison Officers of the Office of Micronesia Status Negotiations, stationed on Saipan, did not engage in any clandestine intelligence collection activities.

Overall, the Committee questions several aspects of the decision to engage in clandestine collection activities in Micronesia:

(1) Insofar as the information collected by the CIA was of general political and economic nature, it is the Committee's judgment that it would have been more properly obtained openly by other government agencies such as the Department of State or the Department of the Interior.

(2) The Executive Branch should have sought opinions from the Departments of State and Justice as well as from the CIA as to whether the proposed activities would violate the spirit of the 1947 Trusteeship Agreement before instructing CIA to undertake such activities. The Committee believes that this necessity to seek opinion is especially so with respect to such a highly intrusive technique as microphone surveillance which, in our judgement, in future cases of this sensitivity, should warrant appropriate Congressional consultation as well.

(3) Responsible officials failed to differentiate between intelligence techniques appropriate for use against an armed adversary and those proper for use against a people under U.S. administration and protection.

The Committee believes that no information obtained by the CIA influenced the course of the status negotiations or any of the agreements which have been reached.

We are satisfied that the Agency's operations have been completely terminated and that all parties should make every effort to restore those vital elements of mutual trust and confidence which are absolutely essential to a successful resolution of the talks.

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DEPARTMENT OF DEFENSE
OFFICE OF GENERAL COUNSEL
WASHINGTON, D. C. 20301

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In reply refer to:
I-5251/77
5 May 1977

MEMORANDUM FOR CAPT. JAMES M. ELSTER, USN
EAST ASIA AND PACIFIC AFFAIRS, ISA

SUBJECT: The Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States - and the Proposed Constitution

Introduction

The General Counsel of the Department of Defense has requested that we review the constitutional and covenant implications, their conformance with the United States Constitution, and their general legal adequacy. Copies have been sent to Capt. Harlow and to other lawyers in OGC for these purposes. I am setting forth here my own preliminary questions, comments or issues which have occurred to me, bearing in view however that the primary legal and constitutional review must be undertaken in the Department of Justice. I am therefore sending a copy of this memorandum to Mr. Marcuse of that agency. The policy elements in these issues might be the subject of ISA review.

1. General Comments. The Constitution refers to meeting requirements "provided by law," or subject to "limits provided by law," in various Sections. From a practical point of view how does the Constitution ensure that these law requirements also meet general constitutional requirements? Is this left to the judicial review process?

2. General Comment as to the Covenant (PL 94-241; 90 Stat. 263 Mar. 24, 1976). The Covenant refers to self-determination by the peoples of the islands. The Covenant places the commonwealth into force with the termination of the Trusteeship Agreement. But that Agreement calls for self-determination. Can the US therefore argue under the UN Charter framework that termination must automatically occur when self-determination takes place, and therefore any acts in carrying out this process of termination, apart from UN (Trusteeship Council) assurance of a proper set of procedures

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for adopting self-determination are free from Security Council review and veto?

3. Note that the Constitution for Alaska (Sec. 2 PL 85-508, 72 Stat. 339, July 7, 1958) must not be "repugnant to the Constitution of the United States and Declaration of Independence." Is there any reason why such a provision is required, and if so, why it should not be added here?

4. Under Sec. 202 of the Covenant the new Constitution is to be approved by the US Government, but must also be subject to judicial review (see Articles IV and V of the Covenant). But suppose a Court after approval finds a serious repugnancy. What effect does this have on the Constitution as adopted and upon the approval made by the USG?

5. With respect to the islands included in the Northern Marianas: How are these identified? Are they all part of the archipelago? Are some of them too distant, but to be part of the Commonwealth in any event? Cf Puerto Rico Constitution, Art. I., Sec. 3.

6. With respect to the oath of office: See Sec. 204 of Covenant and Art. XVII of the Constitution. How can an oath extend to "applicable" provisions of US Constitution, laws and treaties? Is this too vague?

7. The following comments are addressed to the proposed Constitution. A section by section analysis has been provided. What is the legal effect of this? Is it the authoritative source for interpretation? Does it replace the negotiating or "legislative" record? Did Micronesians participate in adopting it?

8. The rights are referred to as "personal" rights in the Constitution. Why not the "Bill of Rights," following past practice? The rights are more extensive than those provided US citizens under their own Constitution. Such presumably is not repugnant to the US Constitution?

9. Can Micronesians secure protection on the basis of the US Constitution and laws as well as under their own? How are the limitations on this established?

10. Art. IV of the Covenant refers to the establishment of US District Courts. The Constitution does not refer to such an arrangement. Article IV seems to have been ignored.

11. The US Constitution and the Covenant and the Northern Marianas Constitution must be consistent, with the US Constitution the overriding framework. It is not clear how issues of this nature are to be resolved under the judicial process established.

12. Art. I of the Puerto Rico Constitution contains a number of introductory provisions (q. v.). Should there be a similar article here?

13. New provisions have been added to the bill of rights ("personal rights") made part of the Constitution. These include rights concerning the environment and privacy. Are these appropriate for such a constitution? Are they too vague? How are they to be implemented?

14. Art. III, Sec. 10, sets forth emergency powers which the Governor of the islands may exercise. How does the exercise of these powers dovetail with US concerns - can the Governor establish a crisis which calls for the US to exercise defense or foreign affairs powers? Or must he "coordinate" this with the US in some way?

15. Provision is made for a representative to the US (Art. IV, Sec. 1). But this is not clear. Should such a person be guided by more detailed provisions in the Constitution, or by policy guidelines? What is his task, and terms of reference?

16. Arts. X and XI concern lands. These have been directed to I&L lawyers in OGC, but the provisions might be reviewed by JAG lawyers because of their particular importance to the US. When first adopted, I provided an opinion to Mr. Abramowitz indicating that they were in general acceptable.

Harry H. Almond, Jr.
Office of Assistant General Counsel
International Affairs

cc: Mr. Herman Marcuse, Justice
Col. Green, JAG-A
Capt. Harlow, JAG-N
Col. Thorpe, JAG-AF