



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

March 3, 1986

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer-
Office of Micronesian Status Negotiations
Department of State
Department of Defense
Department of the Interior
National Security Council

SUBJECT: Justice letter concerning legal jurisdiction over
defense sites in the Marshall Islands and Federated
States of Micronesia.

The Office of Management and Budget requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

A response to this request for your views is needed no later than MONDAY, MARCH 31, 1986.

Questions should be referred to Randy Coleman (395-6194), the legislative analyst in this office or to Dave Allen (395-4993).

RONALD K. PETERSON FOR
Assistant Director for
Legislative Reference

Enclosures
cc:

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U.S. Department of Justice

Office of Legislative and Intergovernmental Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

Daniel Bent, Esquire
United States Attorney
District of Hawaii
Room C-242, United States Court House
300 Ala Moana Blvd.
Box 50283
Honolulu, Hawaii 96850

Dear Mr. Bent:

This responds to your letter of November 27, 1985, and your recent telephone conversation with Mr. Marcuse of the Office of Legal Counsel, concerning section 202 of Pub. L. 99-239. Section 202 confers on the United States District Court for the District of Hawaii jurisdiction over crimes committed on the defense sites in the Marshall Islands and the Federated States of Micronesia. You expressed the fear that this grant of jurisdiction would place a severe strain on the already overburdened District Court for the District of Hawaii, and suggested that we might explore the possibility of amending section 202 to transfer that jurisdiction to the District Court for the Northern Mariana Islands.

We do not believe that section 202 would add noticeably, if at all, to the present case load of the District of Hawaii. The only defense site in the Federated States of Micronesia and the Marshall Islands is located at Kwajalein, and it is not expected that any new ones will be established in those Freely Associated States. Even now, serious crimes committed at Kwajalein are being prosecuted in the District of Hawaii, although the jurisdiction of that court is somewhat open to question. Section 202 would put that jurisdictional issue to rest. We have been advised by the United States Strategic Defense Command that, on the average, three or four serious crimes committed at Kwajalein are tried in the District of Hawaii each year. There is no reason to assume that this number will increase in the future. Lesser crimes may be tried locally at Kwajalein in the Magistrates Court provided for in section 202(b)(4) without burdening the District Court at Honolulu.

The District of Hawaii is preferable to the Northern Mariana Islands for several other reasons. First, Section 202(b)(1) provides that the defense sites in the Federated States of Micronesia and the Marshall Islands are within the special maritime and territorial jurisdiction of the United States to which few provisions of title 18, United States Code, apply. Hence, it was necessary to provide for an assimilated crime provision,

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analogous to 18 U.S.C. § 13. The law of the State of Hawaii was selected for that purpose because the recently enacted penal code of Hawaii is superior to that of the Northern Mariana Islands. Having selected the criminal laws of Hawaii for purposes of assimilation, those cases should be tried in Hawaii, rather than another jurisdiction which is not familiar with Hawaiian law.¹

Second, even though Kwajalein is geographically somewhat closer to Saipan in the Northern Mariana Islands than to Honolulu, as a matter of transit time and convenience, Honolulu is closer to Kwajalein. The flight from Kwajalein to Saipan requires a change of planes on Guam, which may result in a delay of several hours; on some days, there is not even a connecting flight to Saipan. Moreover, in connection with the transport of prisoners, the change of planes on Guam and the flight through the territory of the Federated States of Micronesia may create security problems. On the other hand, the Armed Forces could serve the convenience of the witnesses and facilitate the transport of the defendant by flying them directly from Kwajalein to Honolulu on a military plane. Finally, there may be some drawbacks in trying criminal cases involving Kwajalein contractor personnel before a jury comprised of inhabitants of the Northern Mariana Islands.

Taking all these considerations into account, the Department of Justice would be reluctant to suggest an amendment of Section 202 that would confer on the District Court for the Northern Mariana Islands jurisdiction over the defense sites in the Pacific.

Sincerely,

John R. Bolton
Assistant Attorney
General

¹ While the present district judge in the Northern Mariana Islands is a former Hawaiian State judge, the other officers of that court are not likely to be familiar with the laws of Hawaii.



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March 4, 1986

MEMORANDUM FOR THE RECORD

SUBJECT: Proposed Executive order entitled "Management of the Compact of Free Association with the Republic of the Marshall Islands, the Federated States of Micronesia and the Republic of Palau".

Ms. Francis Bolden, Office of Personnel Management, GC office (632-4682) phoned today to advise that they have "no objection" to the proposed Executive order.

Bess Weaver