



cc: Lutting Files  
Simpson  
McGinnis  
Marcuse  
Murphy  
Reading File  
Ret. [Marcuse] Ltr. Guerrero

U.S. Department of Justice  
Office of Legal Counsel

Office of the  
Deputy Assistant Attorney General

Washington, D.C. 20530

May 29, 1990

The Honorable Lorenzo I. DeLeon Guerrero  
Commonwealth of the Northern Mariana Islands  
Capitol Hill, Saipan, MP 96950

Dear Governor Guerrero:

I have been asked to answer your letter of March 27, 1990, in which you appear to suggest a limitation on the authority of the federal courts to interpret the Covenant to Establish a Commonwealth of the Northern Mariana Islands. I understand that your request is based on the belief that the federal courts have been allowed to establish a political policy, a function that should be exercised only by the Executive and Legislative branches.

Compliance with your suggestion, of course, would require an amendment to, or the repeal of, section 903 of the Covenant, pursuant to which legal controversies arising under the Covenant may be decided by the federal courts. As pointed out in the section-by-section analysis of the Covenant prepared by the Marianas Political Status Commission, this access to the courts is not barred by the consultation provisions of section 902. I would seriously question the wisdom and indeed the constitutionality of an amendment to section 903 that would limit the courts' authority to decide cases arising under the Covenant, or to require that such cases be stayed during the pendency of protracted section 902 consultations and the enactment of legislation implementing decisions reached in such discussions.

I do not agree that the judicial decisions you cite impermissibly establish political policy. Wabot stands for the obvious proposition that the Commonwealth Legislature cannot divest the U.S. Court of Appeals for the Ninth Circuit of jurisdiction over a case that already had been briefed and argued in it on appeal from the Appellate Division of the District Court for the Northern Mariana Islands, another federal court. Indeed, Governor Tenorio was of the same view when he signed the Judicial Reorganization Act of 1989 and recommended the repeal of the provision depriving the federal courts of jurisdiction of cases pending in them. As to the other decisions, you will observe that their interpretations of the Covenant are in full accord with the section-by-section analysis of the Covenant prepared by

the Marianas Political Status Commission, documents approved by that Commission, and representations to Congress made by witnesses officially testifying on behalf of the Commonwealth at the time Congress was approving the Covenant.

Please let me know if I can be of any further assistance to you.

Sincerely,

A handwritten signature in cursive script that reads "Lynda Guild Simpson". The signature is fluid and includes a long, sweeping horizontal flourish at the end.

Lynda Guild Simpson  
Deputy Assistant Attorney General  
Office of Legal Counsel