

INTERVIEW OF PAUL C. WARNKE

by Howard P. Willens

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- Willens: Paul C. Warnke has agreed to be interviewed regarding his experience as counsel to the Joint Committee on Future Status that was formed by the Congress of Micronesia to represent the Micronesians in negotiations with respect to their future political status after conclusion of the Trusteeship Agreement. Paul, thank you very much for being available.
- Warnke: Happy to do it.
- Willens: I have in front of me some of the basic biographical information. Let me just review it, and you tell me if it's accurate. I understand that you received your undergraduate degree from Yale in 1941, that you received your law degree from Columbia in 1948, that you have received numerous honorable degrees, that you began practice with Covington and Burling as an associate in 1948, that you became a partner in 1957 and served in that capacity until 1966. I understand you went into the Department of Defense in 1966 and served initially as General Counsel, and then in 1967 became Assistant Secretary of Defense for International Security Affairs and served in that capacity until the new Administration came into power in 1969.
- Warnke: And even two months after that.
- Willens: And you served two months into the new Administration. Is that basically the raw data?
- Warnke: That's basically the raw data.
- Willens: It occurred to me, Paul, after I did this outline, that you might have encountered some issues relating to the Trust Territory during your Department of Defense service in the 1966-69 period. Do you have any recollection of the status of the Trust Territory coming over your horizon during those years?
- Warnke: I think my principal deputy, Ralph Earle, one time went out to Micronesia. I think that that was when the Congress of Micronesia had been formed, and I think it was just sort of a courtesy call, but there was no specific issue that ever came up.
- Willens: There was in the last few years of the Johnson Administration an ongoing debate between State and Interior as to how best to deal with the future political status issues in Micronesia. These centered around a proposed Presidential Commission to examine future political status. Do you have any recollection of hearing Defense and Interior arguing about these issues?
- Warnke: No, I do not.
- Willens: There also is something in the materials about a request made on behalf of Japanese fishermen to have access to the waters in the Trust Territory, and the Joint Chiefs of Staff took a very stern position that access should be denied. Does that strike any bells?
- Warnke: No, it does not.
- Willens: Did you ever have any contact during those years with Congressman Aspinall, who was a key Congressional figure with respect to the future status of Micronesia?
- Warnke: Well, I was in the government now.

- Willens: In 1968, at the end of the Johnson Administration, the Joint Chiefs of Staff made a very interesting assessment of the situation. They pointed out that in 1962 President Kennedy had issued a directive that steps be taken by the agencies of the Government to bring about a plebiscite in Micronesia during the 1960s that would result in bringing all of Micronesia under the sovereignty of the United States. Six years later, the Joint Chiefs commented that virtually no progress had been made to achieve that objective. Were you aware when you were in the Government that there had been this previously articulated Executive Branch policy?
- Warnke: No.
- Willens: After you left the government, did you have any contact with the Micronesians until your firm was retained as counsel in 1971?
- Warnke: None at all.
- Willens: What is your recollection as to how you and your firm first became involved in the negotiations?
- Warnke: Sometime in late 1971, Howard, I was approached by a fellow by the name of Eugene Mihaly. I don't know how he became that, but he was sort of an informal counselor and advisor to the Congress of Micronesia and specifically Lazarus Salii. He thought that the Micronesian Congress should receive legal representation, and he got in touch with me. I'm not quite sure why.
- Willens: He contacted you personally?
- Warnke: He contacted me personally.
- Willens: Did that lead to a meeting with Chairman Salii that you participated in?
- Warnke: Yes. Eugene Mihaly brought in Lazarus Salii, and I asked Clark to sit in on it.
- Willens: What is your recollection of that initial meeting?
- Warnke: Lazarus was very nervous. He told me later that he'd never been in the distinguished company of somebody like Mr. Clifford, so he was quite inarticulate.
- Willens: How did Mr. Clifford respond to this invitation that you and therefore the firm become involved in this representation?
- Warnke: He thought that it was interesting, and he thought that if I was interested in doing it, that there was no reason why we shouldn't do it.
- Willens: Did you have any reservations about undertaking the representation?
- Warnke: Not a bit. It struck me as being an interesting assignment.
- Willens: Gene Mihaly shares your recollection that there was some awkwardness about the meeting and that subsequently Chairman Salii found it somewhat easier to deal with you than he had with Mr. Clifford.
- Warnke: Yes.
- Willens: As a way of getting initially involved in that representation, how did you go about trying to familiarize yourself with the previous negotiations and what the current issues were as between the parties?
- Warnke: A lot of it I got from Gene Mihaly, and it really was just conversations. I don't recall much in the way of documentation at all.

- Willens: I understand that you were retained after the parties had completed what was called their third round of negotiations in Hawaii in the fall of 1971.
- Warnke: That's correct. I was not in Hawaii. I think I was retained in either early December or very late November.
- Willens: The negotiations in Hawaii in late 1971 were initially viewed as reasonably successful by both parties. After the negotiations concluded, however, there was some adverse publicity with respect to them that was fostered by critics of United States policy in the Trust Territory. Were you aware that there had been criticism of the negotiations?
- Warnke: Yes. What I was told (and I think I saw some documentation on it) was that there were some young Americans in the Trust Territories who were very much opposed to any continued U.S. control of the Trust Territories, that they were strong advocates of total independence, and that therefore they were critical of any kind of an effort to reach some kind of agreement with the United States that would give the United States some sort of continuing control and interest in the Trust Territories.
- Willens: Some of the government documents that I have seen indicate that Ambassador Williams was very concerned about Chairman Salii's inability or unwillingness to deal with that kind of criticism in Micronesia. He wrote some memoranda to the concerned agencies within the Executive Branch suggesting that Chairman Salii didn't have the support that Ambassador Williams thought was necessary to continue the negotiations. What was your sense as you got into it as to whether Chairman Salii did have a good feeling as to where his constituents would permit him to go within these negotiations?
- Warnke: I think he realized that there were going to be a lot of different views. Although he was quite uneasy at times when he was in an unfamiliar situation, he was basically a pretty secure guy. I think he relished his position as Chair of the Joint Committee, and I think he thought he could bring them along.
- Willens: And if he thought he could bring the members of the Joint Committee along, was it also the underlying assumption that they, as Micronesian leaders, could bring the voters along?
- Warnke: That's correct. Right.
- Willens: Gene Mihaly was present at the third round of negotiations in Hawaii before you were retained. He told me that the issue of termination, of course, was discussed in some detail.
- Warnke: The termination of the Trusteeship?
- Willens: Termination of any proposed relationship.
- Warnke: Right.
- Willens: And as you know, one of the so-called Four Principles of the Micronesians was that unilateral termination was necessary to any agreement that they would enter into with the United States. Mihaly recalls that Ambassador Williams thought that he was very close to getting the Micronesian representatives on the Joint Committee to abandon that principle and to agree to some form of mutual consent as to termination. Did you have any sense as you entered the picture that the Joint Committee might waiver on that particular principle, or did you think it was truly as non-negotiable a principle as one could have?

- Warnke: My recollection, Howard, is that I thought it was a question of time, that there would be some termination provision, but the question was, was it going to be five years, ten years, 25 years, whatever.
- Willens: But is your recollection that Chairman Salii and the other Joint Committee members were going to insist on unilateral termination after some period of time?
- Warnke: That's right. Of course, there was a lot of difference of view within the Committee. There were some people, like Andon Amaraich and Tosiwo Nakayama, who really felt that independence was the only way.
- Willens: How did you assess those pro-independence views? Did you regard them as sincerely held, or did you perceive them in part as bargaining chips in the negotiations?
- Warnke: I think as far as Nakayama is concerned, that he thought it was a matter of principle.
- Willens: Nakayama. He felt it was a matter of principle.
- Warnke: That's right. He didn't think that any kind of arrangement of free association was going to give them the degree of sovereignty that he thought they should have.
- Willens: And when he discussed sovereignty, did he focus in particular on foreign affairs, internal government, or whatever?
- Warnke: Not so much; it was internal affairs and foreign affairs to the extent that they might impact on domestic concerns of the Micronesians.
- Willens: Nakayama was from what's now the Federated States?
- Warnke: I think both he and Andon were from Truk.
- Willens: Truk comes across in the materials as being the center of the independence alternative...
- Warnke: Yes, that's right.
- Willens: . . . both within the Congress of Micronesia and within the Joint Committee.
- Warnke: Right.
- Willens: Did you ever get any sense that the constituents on Truk were urging their leaders in this direction, or did you have the sense that it was largely a personal view held by the two individuals that you've mentioned?
- Warnke: I really never really got any genuine sense as to what the rank and file of the Trukese or any of the other Micronesians might have in mind.
- Willens: There also is reference in the material to some Jesuits and the high school educational facilities in Truk as being the center of much of this independence agitation. Had you heard that and formed an opinion about it?
- Warnke: Yes. Later on I met with some Jesuits who were out there. They were quite pleasantly surprised that it had worked out with reasonable satisfaction.
- Willens: Some of the materials . . .
- Warnke: I think that they felt that the United States wanted to continue to use Micronesia as basically a military base, and there was much more concern than there was interest in the United States about maintaining the Trust Territory for military purposes. I never heard anybody talk about stationing nukes there or anything of that sort.
- Willens: From the U.S. side.

- Warnke: Yes.
- Willens: But what you heard then in Truk, for example, suggested a concern that the principal interests of the U.S. were not just denial of the area to foreign powers and the selected use of land for military purposes, but an overall plan to develop . . .
- Warnke: To make it a military base.
- Willens: Some of the reports about Micronesian sentiments that I've seen were written by John Dorrance, who served out there as sort of a political reporter for the State Department.
- Warnke: Right.
- Willens: Did you have the occasion to meet Dorrance from time to time?
- Warnke: Yes.
- Willens: What was your sense about his reliability and accuracy as a reporter?
- Warnke: I don't have too much of a recollection. I found him personally a perfectly agreeable kind of a guy, and I don't think that he had any particular bias.
- Willens: The materials I've seen actually are quite detailed and strike me as being as accurate as one can see 20 years after the fact. But I never dealt with him, and I'm just trying to get some sense from those who did whether there's any reason why what he wrote should not be accepted at face value.
- Warnke: I'd be fairly comfortable with relying on it.
- Willens: Before you got retained, on November 11, Ambassador Williams did meet with Chairman Salii in San Francisco. Gene Mihaly and Captain Crowe were also present. Ambassador Williams had the style both in the Micronesian negotiations and the Marianas negotiations to solicit meetings from time to time with the leaders of the Micronesian negotiating entity in the absence of counsel. Did you have any sense that these were meetings in which your client might be at a disadvantage?
- Warnke: I don't recall them happening after I was retained. Maybe they did, but I don't recall it. I got along quite well with Haydn.
- Willens: Did you have sort of a personal line of communication with Ambassador Williams that you could pursue from time to time?
- Warnke: Sure.
- Willens: After you got involved, did you take any steps to try to define with more specificity what the Defense Department's interests were in Micronesia?
- Warnke: Yes.
- Willens: What success did you have in that effort?
- Warnke: I thought pretty good success. I found that they were far less interested in any wholesale use of Micronesian territory than the Micronesians feared. Bill Crowe, of course, was a first-rate guy. He's our current Ambassador to England, and he was Chairman of the Joint Chiefs, and a very good one indeed. He was a very bright, very agreeable kind of a guy, and he was a boyhood friend of Tom Finney, who was a partner of mine. So we had a pretty good, pretty easy relationship. At one time, I had a lovely picture of Bill Crowe with his hat on sideways chewing beetle nut in the Stone Islands in Palau.
- Willens: Has he asked you to burn the negative?

- Warnke: I can't find it. I wanted to bring it when I met him in London the last time. But they really did not have any tremendous concern about the use of the Territory. The Marines wanted to use that big island on Palau, not Koror, but . . .
- Willens: Babelthuap. Yes, right.
- Warnke: They wanted to use it for training exercises.
- Willens: Then during the negotiations there, you became involved in discussions about what kind of training and how many people, what weaponry would be involved and so forth and so on.
- Warnke: That's correct. But Bill Crowe just kind of pooh-poohed that. I remember I was talking to him one time, I said, "Look, are they planning another island hopping campaign to invade Japan? What is the purpose of this?" and he said, "None."
- Willens: That it did not have any purpose.
- Warnke: It really did not have any genuine purpose. Their real concern was to keep the Trust Territory out of the hands of any foreign power. They didn't want any foreign power—Japan, China, whoever—to have any control over. That was their dominant concern.
- Willens: There seemed to be some reluctance at the Department of Defense to become very specific about its needs for land in Palau or for Tinian and a few other locations. The other departments, State and Interior, and Ambassador Williams' staff, kept pushing the Defense Department to be specific. Is that your recollection of the process?
- Warnke: Yes.
- Willens: Did there come a time when they did lay out their needs in a way that you thought was realistic?
- Warnke: Pretty much, yes.
- Willens: When did that occur, if you can remember?
- Warnke: Fairly early; I think in 1972.
- Willens: That might have been at the first session you attended at Palau?
- Warnke: Yes.
- Willens: There is a memorandum of a meeting that you took part in at State in December of 1971. It appears to be the first record of your appearance on behalf of the Micronesians.
- Warnke: I think it was.
- Willens: There was some discussion there about the role of the United Nations. Was this a matter that you attached much importance to?
- Warnke: No.
- Willens: Was it raised by Chairman Salii? Do you remember how it came up?
- Warnke: I think it was raised by State. Looking at the documents, it seemed to me that the United Nations was not going to be particularly important, that they did not have to be a participant in the negotiations, that they obviously were not going to be a financial backer, and therefore I just didn't pay any attention to them.
- Willens: Was in your assumption as you got into the matter that the fixed U.S. policy was to terminate the Trusteeship as a whole and not do it piecemeal?

- Warnke: That's right.
- Willens: There's one document here that suggests you advanced a legal position that the power to terminate as a whole embraced the power to terminate partially, and the response from the government was, "Well, that's a reasonable legal position, but politically it's not attainable."
- Warnke: "We don't want to do it." That's right.
- Willens: Ironically, as it worked out, that's in fact more or less what they did.
- Warnke: What happened. Sure. I thought it was quite interesting, because they terminated the Trusteeship without having reached any kind of agreement with Palau.
- Willens: Right. And that ran against the standard U.S. position they had urged with you and with me for more than a decade.
- Warnke: Yes.
- Willens: Lindsey Grant appears to have played a fairly significant role in these discussions. I've not met Mr. Grant. He now lives in Arizona.
- Warnke: My recollection is he dropped out at a fairly early stage. Was he at Palau?
- Willens: I don't know that.
- Warnke: I don't believe he was.
- Willens: Well, he was in the negotiations that took place after Palau, yes. The notes here of the drafting sessions that were prepared by a State Department lawyer in July of 1972 reflect Grant's active participation. It may be that he fell out shortly thereafter. What was your impression of his role and his contribution?
- Warnke: I'm trying to recall him. I think he was at Palau. He was a pretty central figure at that point. He seemed to be sort of the chairman of the U.S. delegation, if I've got the right guy in mind.
- Willens: And how about the young man, Tom Whittington from Interior? Do you have any recollection of him?
- Warnke: Yes.
- Willens: What was his role in this?
- Warnke: I would say quite junior.
- Willens: A Mr. Froebe was there from the National Security Council. Do you have any recollection of him?
- Warnke: No.
- Willens: Who are the principal U.S. representatives that you do have a recollection of?
- Warnke: Well, the one who was pretty much in charge, of course, was Haydn.
- Willens: How would you describe Ambassador Williams as a negotiator, both with respect to his strengths and any weaknesses?
- Warnke: I thought he was honest. I thought he was interested in being helpful and reaching some kind of a reasonable solution that was agreeable to both sides. He was handicapped by the strong feeling that some people had that he'd been a CIA representative, that the Asia Foundation (of which he was the President) was regarded as a CIA front.

Willens: So that was known to the Micronesians or some of the people that advised them, and so that gave them some initial concern with his orientation?

Warnke: That's right. And he was not particularly easy with people like Lazarus or Ekpap Silk or any of the Micronesian delegation. He was a little stiff and I think that they found him to be rather condescending. I don't think that was an accurate reading, but just in terms of manner. I remember one time in Monterrey or someplace near Monterrey where we had a session at one point, he got a few drinks under his belt and loosened up quite a bit, and they were all quite delighted with him.

Willens: I see.

Warnke: We ought to get him drunk more often was the general . . .

Willens: Was the feeling. Well, one thing he did, of course, was to try to bring together the various agencies of the federal government, and he seems to have had great success in doing that.

Warnke: I think he was very good.

Willens: He did end up processing papers through the National Security Council to get instructions in a reasonably systematic way, so that was (as I looked at the papers) a major contribution that I wouldn't have necessarily perceived from the outside.

Warnke: Yes.

Willens: Were these initial meetings with the government basically efforts by you to get some sense of who they were?

Warnke: Who they were and what their bottom line was. Of course, they were strongly opposed to independence, but frankly so was I. I just didn't think that they were ready to make a go of it as a genuinely independent nation.

Willens: Was it your sense that the lack of resources was the principal obstacle to that objective?

Warnke: Lack of resources and lack of a sufficient number of skilled people. You know, like any developing country, there's a thin layer of people who have the necessary skills to run things. And I saw no sign that there was that or that it was being developed. I'll tell you one thing that made quite an impression on me. When we were in Palau, there was a fishing boat that was ready to set sail. I was talking to one of the Palauans, and I said that it must be sort of hard for their family to have them gone for that period of time, because they're going to be gone for something like four weeks, five weeks. And he said, "They are not Palauans. They're Koreans." He said, "No Palauan is ever going to get into that kind of a job." I said, "Well, what do you do?" He said, "Well, we think quite a bit about love." And they were basically kind of flower children, and I thought given a sufficient period of education and training, that they could come around. But also it just struck me that this was a terribly, terribly difficult area to make a country. It was principally water. To get to Yap, you've got to do quite a bit of sailing or flying or whatever. And to put Yap together with Truk, and the Marshall Islands, and make this somehow an independent country, struck me as a proposition that I certainly would not want to undertake. So I thought they needed some sort of a protector. And I was all in favor of having a treaty of free association with the United States that would give the United States some fiscal responsibility for the area and would enable them to evolve. But I frankly just couldn't see it as a country.

Willens: And when you speak of it as an entity, what was your sense as you became involved in the negotiations of the differences among the districts that were represented on your Committee?

- Warnke: Well, one thing that I felt quite early on was that the Marianas were not going to be part of any kind of Federated State of Micronesia.
- Willens: How did you come to that conclusion?
- Warnke: Oh, talking with Eddie Pangelinan and talking with some of the other members of the Committee. I mean I think that the Marianas figured that they were very important to the United States and that they could do better having a separate agreement. So I did my best to hold them in, because I felt that the chances of their being a successful country were lessened if you split off the Marianas, which was potentially one of the more productive areas. I also thought that if you split off the Marianas, it was going to be very difficult to hold the rest of them in. The Marshall Islands, of course, had a strong feeling that they weren't sure they wanted to be tied in with the Trukese and the Ponapeans. And Amata Kabua, who of course was very much in control . . .
- Willens: Was he very much a force for separate status for the Marshalls?
- Warnke: I think that he was headed in that direction, yes.
- Willens: Did you raise in any of these early meetings with U.S. representatives before the Palau session as to whether the United States was going to agree to separate negotiations with the Northern Marianas?
- Warnke: I don't believe so. I didn't really know enough at that point. I learned a great deal in Koror, as I spent a lot of time with the members of the delegation, of course.
- Willens: Did you go out in advance of the session in order to meet with the client?
- Warnke: Yes.
- Willens: Just a couple of days? The government reports of these initial meetings with you attribute to you, for example, the view that the Micronesians had not yet faced up to the realities of forming a totally separate entity and had not yet begun to think in any detail about accounting and disbursing procedures.
- Warnke: Right.
- Willens: Is that a fairly accurate construction?
- Warnke: Yes. That's what I was just trying to say.
- Willens: Although Haydn Williams thought that general agreement had been reached at the 1971 round as to U.S. responsibilities for foreign affairs and defense, that continued to be a major issue as you went into the Palau round, is that right?
- Warnke: Yes.
- Willens: What was your understanding as to the Micronesian position going into the Palau round as to whether they were willing to delegate to (or leave with) the United States responsibilities for both foreign affairs and defense?
- Warnke: Well, as I say, there were different points of view, including (as I've said) some that were strongly in favor of independence. So that there was considerable opposition to a complete delegation of responsibility for foreign affairs. Defense fine. I forget who it was, I think it was Bailey Olter, who said "Basically we are indefensible."
- Willens: So the real battle in the Committee was over foreign affairs responsibilities and the extent to which the U.S. position would among other things intrude on the rights of local self-government.

- Warnke: That is correct. That plus the fact that there was concern about defense from the standpoint of the United States getting the Micronesians involved in a war.
- Willens: I saw that in some of the memoranda. You tried to explain to the U.S. that the Micronesian position was essentially that if the U.S. went to war with Australia, the Micronesians did not want to have to join in that effort. Was that the way it was viewed by the Joint Committee?
- Warnke: Yes.
- Willens: What generally was the U.S. view to that?
- Warnke: They didn't take it seriously at first, because they didn't think there was any possibility of that happening. Why would the United States want to have a handful of Micronesians as part of a war effort? But they wanted the ability to use Micronesian territory in case of war.
- Willens: Which of course subjects the Micronesians then to the costs of war.
- Warnke: That's right.
- Willens: Which your client understood.
- Warnke: That's right.
- Willens: You've mentioned Chairman Salii and given me some assessment of his views and leadership. Deputy Chairman Silk attended many of the meetings with the Ambassador but rarely said anything. What contribution, if any, do you recall his making to the Joint Committee?
- Warnke: Ekpap became a good friend of mine. He would quite faithfully represent my views.
- Willens: Did he understand your views and where you were trying to lead the client, so to speak?
- Warnke: Yes. And he was very much in favor of Micronesian unity, I mean not specifically the Marianas, but not having a separate Marshall Islands.
- Willens: Was he at odds then with some of the political leaders in the Marshalls?
- Warnke: To the extent you could find out, yes.
- Willens: To the extent you could find out what?
- Warnke: Well, I mean to the extent that there was some kind of reflection of the possible views of Amata Kabua.
- Willens: Was that difficult to ascertain?
- Warnke: Yes. I only met him once. He was at one session in Hawaii, not then an official member of the delegation. He was just there.
- Willens: You mentioned Andon Amaraich before. He is currently the Chief Justice of the Supreme Court of the Federated States of Micronesia.
- Warnke: That does not surprise me.
- Willens: I hope to see him some time next year. What was your sense of his participation in the work of the Committee?
- Warnke: Oh, he was very important. He was the brightest, a very, very bright guy. Just unusually able.
- Willens: Would he help the Committee to bridge the differences among the members?

- Warnke: Yes, he would. I think that he became persuaded as time went on that independence was just not in the cards. And that was instrumental in bringing Nakayama along.
- Willens: What else would you say about Nakayama in terms of his participation in the Committee?
- Warnke: Important. He of course was the first President of the Federated States of Micronesia, and he was very popular.
- Willens: I think he's still alive.
- Warnke: I think he's still alive. He was fairly young. Andon was really quite a fellow.
- Willens: How about Bailey Olter?
- Warnke: Quiet. I could never quite figure out what—oh, I'm sorry. I've got Bailey Olter and Olter Paul all mixed up. Bailey Olter was a spitfire. He was genuinely funny, engaging.
- Willens: Was he substantively engaged in the work of the Committee?
- Warnke: Yes, very much so.
- Willens: Did he have any particular views as to free association vs. independence?
- Warnke: He wanted the greatest degree of independence that they could have.
- Willens: He's the one you made reference to earlier suggesting they were indefensible.
- Warnke: Indefensible, that's right.
- Willens: How about Olter Paul, about whom I've heard so little?
- Warnke: Not much. He didn't speak much. When he did, he was rather droll. Attractive looking fellow, but didn't have a great deal to say.
- Willens: I have heard John Mangefel described as a very colorful fellow.
- Warnke: Colorful, yes.
- Willens: What was your assessment of his contribution?
- Warnke: He took sort of a—I wouldn't say a negative kind of position, but he didn't really think there was anything that the Micronesians could do, except sort of go along with the United States.
- Willens: There did come a time when actually he maintained that the negotiations shouldn't be resumed and he seemed skeptical about what could be accomplished. Is that consistent with your recollection?
- Warnke: Yes, I think he was perfectly happy having the Trusteeship continue.
- Willens: That is a view that many Micronesians are reported to have had, even as late as the early 1970s. Did you find yourself from time to time trying to deal with that sentiment?
- Warnke: Yes, because I thought that the Trusteeship was going to terminate, that the United States felt that it was an embarrassing thing to have this Trusteeship continue, and that they wanted some change. I thought they could work out a document of free association that would give you the benefits of the Trusteeship with some colorable sovereignty.
- Willens: In the 1960s the United States seemed concerned by potential criticism in the United Nations, and particularly the new members of the United Nations that expressed an anti-colonial view. Was there any such concern about the United Nations in the 1970s that you were aware of?

Warnke: Well, I think there was still the feeling that the United States was in a vulnerable position. It was seen as trying to maintain the Trusteeship. You see, trusteeship is kind of a dirty word as far as the former colonial states are concerned. I mean, it's sort of, you know, the white guy exercising total paternal control.

Willens: Was it also accompanied by the thought that the United States wanted to preserve the Trusteeship for military purposes?

Warnke: That's right.

Willens: How about Mr. Tun?

Warnke: Again, I have very little recollection of him being any kind of a party.

Willens: How about Mr. Tmetuchl?

Warnke: Roman Tmetuchl? I always had the feeling that Roman was playing his own game.

Willens: Was that a Palauan characteristic?

Warnke: Yes. Gene Mihaly told me once that Lazarus Saliu had once said to him, "Never trust a Palauan."

Willens: Now that observation, which I've heard in a different light from time to time, is sort of inconsistent with your recollection of them as flower children and innocence, because they prided themselves on being very politically astute and manipulative.

Warnke: Some were.

Willens: Are these inconsistent views?

Warnke: No, some were.

Willens: Some were of both persuasions.

Warnke: That's right. I remember Roman Tmetuchl one time was talking on the telephone. He was talking in English, and I had a great deal of difficulty understanding what he was saying. So I turned (I think it was) to Bailey Olter and said, "Can you understand Roman?" He said, "I can't understand Roman in any language including my own." But Roman always had some deal in mind. You know, he was a strong advocate of creating some sort of an oil-unloading site in Palau.

Willens: Did he have an economic interest in trying to do that?

Warnke: I'm sure he did.

Willens: Were there other advisors to the Joint Committee during the period that you served as its counsel?

Warnke: I don't recall any.

Willens: You didn't have any economic or political advisors? There was a history of some academics from Australia and Hawaii (I believe) in advising the Micronesians during the 1960s. Dr. Gladwin and . . .

Warnke: I've heard of them. I never had any contact with them.

Willens: At the Palau negotiations, there was discussion of the foreign affairs and defense issues and the initial attitude of the United States side was that there was no serious problem in reaching agreement with the Micronesians on these fronts. Was it your understanding that progress was made there?

- Warnke: Yes.
- Willens: Did you think it was real progress, or did you think that the devil was going to be in the details?
- Warnke: No, I thought it was genuine progress.
- Willens: Had there been compromises made there from your client?
- Warnke: I think it was more of a clarification than anything else. I think that the Micronesians went into the negotiations deeply suspicious of just what the U.S. objective was.
- Willens: With respect to defense?
- Warnke: With respect to using the Trust Territory as some kind of a military base.
- Willens: So you recall that it was at the Palau round that some of the details were laid out that served to allay those concerns.
- Warnke: That's right. That there were going to be no tremendous land requirements.
- Willens: With respect to foreign affairs, it seems difficult to reconcile the sense that there was progress made here when ultimately there seemed to be serious disagreement as to what U.S. responsibility for foreign affairs really meant. What's your recollection of what progress was made on that front at the negotiations?
- Warnke: Again, I would say sort of an indication that the United States did not have some sort of secret agenda.
- Willens: Were the Joint Committee members of a view that they wanted to preserve control over foreign affairs that related to Micronesia?
- Warnke: That's right.
- Willens: How did they think they could reconcile that with the U.S. insistence on uncircumscribed control over foreign affairs?
- Warnke: I think that they felt that you could work out some kind of an agreement under which commercial repercussions that would arise from conduct of foreign affairs would somehow be partially within the control of the Micronesians.
- Willens: Was that an objective that you thought could be achieved?
- Warnke: Yes.
- Willens: And did you think that, if that could be achieved, it might go a long way to bridge the gap?
- Warnke: Yes.
- Willens: Is it your sense then that commercial development, and having responsibility for it reside solely in the Micronesians, was an important concern of theirs?
- Warnke: That's right. As far as trying to conduct foreign affairs in foreign capitals, I don't think they had any illusions about that at all. What they were concerned about more was fishing licenses. And the ability to let Japanese investment come in.
- Willens: How about the Law of the Sea issues that seemed to figure so importantly in the Micronesian negotiations? Was that something that they wanted to protect so they'd have the rights of a sovereign nation in deciding what the Law of the Sea was going to be?
- Warnke: That's right.

- Willens: What was the U.S. position on that subject?
- Warnke: I think the U.S. position was that if you're dealing with an archipelago of the size of Micronesia, that if you gave them the right to determine what the territorial limits were, that you'd end up with an area twice the size of the United States in which the United States had no ability to control.
- Willens: There didn't seem to be much give on the U.S. side in that area.
- Warnke: No, there wasn't.
- Willens: With respect to the termination issue, the parties seemed to have accomplished what they described as a breakthrough in the sense at least that the United States agreed in principle to unilateral termination.
- Warnke: To unilateral termination, that's right.
- Willens: Were you aware that the United States was going to adopt that position before the negotiations?
- Warnke: No.
- Willens: Did it come as a surprise to you?
- Warnke: No, I thought they had to.
- Willens: Why did you think so?
- Warnke: Because they couldn't see how you could write a document that was going to be perpetual. Circumstances were going to change, and you had to have, I think, some sort of time limit on any doctrine of free association. I thought it was a reasonable position on the part of the Micronesians.
- Willens: Did you think that unilateral termination was sort of an essential component of free association?
- Warnke: Right.
- Willens: So any effort on the U.S. to require mutual consent to termination would be inconsistent with the idea of free association.
- Warnke: It would really be the Trusteeship under another name.
- Willens: Did Ed Pangelinan and Herman Guerrero advise you in advance before they submitted their letter of April 11, 1972 to the U.S. requesting separate negotiations?
- Warnke: No.
- Willens: Did you have any indication that this issue was going to come to a head in Palau?
- Warnke: I thought it would, yes.
- Willens: What prompted you to think that it would come to a head now when it had not earlier?
- Warnke: Well, I didn't have any feeling about it coming up earlier because I wasn't involved earlier. But it was just clear to me that Eddie did not feel that he was part of the Committee.
- Willens: Did he participate in the work of the Committee?
- Warnke: He did.
- Willens: And did Herman?
- Warnke: Yes.

- Willens: What was your assessment of those two individuals?
- Warnke: I don't have any clear recollection of Herman. Eddie I thought was very bright.
- Willens: Was he able to deal as an equal with the other members of the Joint Committee who were much more senior to him?
- Warnke: I really didn't think in terms of seniority, though I would say that Bailey Olter may have been the oldest.
- Willens: Did the fact that Eddie was a lawyer serve him usefully as a member of the Committee?
- Warnke: Probably.
- Willens: But you don't have any real sense of the personal relationships?
- Warnke: No, I don't. He was always a little withdrawn as far as the other members of the Committee were concerned. And I think that they all figured that the Marianas were going to try and go their own separate way.
- Willens: Chairman Salii back in 1971 actually had made a very gracious statement during the negotiations in Hawaii reflecting the Committee's awareness of the separate Marianas aspirations. Did Chairman Salii indicate to you from time to time that he was more or less reconciled to the Marianas going off on their own?
- Warnke: Yes.
- Willens: You and Mike White signed a letter dated April 11, 1972 addressed to Chairman Salii in response to his request for your opinion concerning the legal and political implications for the Joint Committee of the presentation of a separate statement of position by the Marianas delegation. Do you remember being asked to write such a letter?
- Warnke: Yes.
- Willens: Did Chairman Salii indicate to you what prompted it?
- Warnke: He had been given a letter by Eddie Pangelinan and Herman Guerrero (I think) that they wanted him to transmit to the United States calling for separate negotiations. My position was that that wasn't anything that Lazarus had any authority to do at all. That if it was going to be presented, it had to be presented by the Marianas and not by the Joint Committee.
- Willens: Right. The letter makes that clear. The aspect of the letter that interests me in particular is the further opinion that the United States could not really conduct negotiations with the Marianas unless the Marianas negotiating entity has received authorization from the Congress of Micronesia.
- Warnke: That's right.
- Willens: Was it your view that the Trusteeship Agreement or the laws of the Congress of Micronesia preempted any separate status efforts by individual Districts?
- Warnke: Yes.
- Willens: Was it your view that the United States therefore was legally prohibited from negotiating with the Marianas?
- Warnke: I'd put it the other way around, that the Congress of Micronesia was legally prohibited from letting any of the individual Districts negotiate separately. The United States would not be bound by the laws creating the Congress of Micronesia.

- Willens: Well, the Congress of Micronesia could have modified its charter to the Joint Committee and given its approval to the Marianas conducting separate negotiations.
- Warnke: Sure.
- Willens: But as I understand you, and as reflected in this letter, you were not taking the position at this point that the United States was prohibited under the Trusteeship Agreement or any other source of authority from entering into separate negotiations with the Marianas?
- Warnke: I don't recall. Did I say that in the letter?
- Willens: No, you didn't say that in the letter. The reason I raised it is (1) you didn't say it in the letter and (2) some three years later that legal proposition was put before the court in the Marianas by Mike White on the part of a Marianas representative in the Congress of Micronesia, and I had to go to court the day before the signing ceremony to resist this effort to enjoin my client, the Commission, from signing this document. I just wondered whether that was a legal position you considered and rejected, or basically saw no use in advancing.
- Warnke: I saw no use, yes.
- Willens: After Ed Pangelinan and Herman Guerrero made their requests to the U.S. delegation, Ambassador Williams responded the next day on April 12 affirmatively. What was your reaction to that action by the U.S. delegation.
- Warnke: I didn't like it much. I thought that it was heavy handed.
- Willens: Could you elaborate on that?
- Warnke: Yes. I thought that there should have been more discussion first and that the United States was probably being, as I say, heavy handed in so readily responding to a request that the Marianas have a separate negotiating status.
- Willens: Did it give you the sense that it had all been arranged?
- Warnke: All been pre-cooked.
- Willens: During the interim? "Pre-cooked" was the word you used?
- Warnke: Yes.
- Willens: The documents do reflect a very substantial exchange of documents and internal think-pieces from the State Department as to what to do in response to such a request.
- Warnke: Yes. I didn't see those documents, but that certainly was my strong reaction.
- Willens: What was the sense of your client to this action by the United States?
- Warnke: There was a certain sense of inevitability as far as Lazarus was concerned.
- Willens: Was there any effort by Chairman Salii or other members to argue with the United States about it?
- Warnke: No. I don't recall any.
- Willens: Did you personally express your views to Ambassador Williams?
- Warnke: I'm sure I did.
- Willens: Do you recall any response?
- Warnke: He made it very clear right in the very beginning that the Marianas was going to

- be a separate negotiation, that the Marianas would not be part of any treaty of free association.
- Willens: When do you first recall hearing that from him?
- Warnke: When I first met him.
- Willens: And that would have been before this round of negotiation.
- Warnke: Yes.
- Willens: So you had at least that indication that if a separate request was made, the U.S. position had been determined.
- Warnke: Yes. I think my feeling was that it sort of demeaned the Committee because of the fact that it was so pre-cooked. I thought it was something that should have been discussed. Did I feel the Marianas were going to be part of any Micronesian entity? No. I'm sure if I had been a Marianas representative, I would have figured, why tie myself in with this disparate collection of widely-separated islands when I'm more important to the United States as a separate entity?
- Willens: Well, you made that point earlier. When you say that the Marianas had the sense of their own importance, are you referring specifically to the U.S. desire to have access to all or most of Tinian?
- Warnke: Yes.
- Willens: How about the Marianas position over the years that they were willing to accept U.S. citizenship and the sovereignty of the United States and that those differences distinguished them from the other districts?
- Warnke: Oh, they did, yes. But I thought that the reason for that was that they thought that they were valuable to the United States and that they could cut a deal by having something that was a closer association than the rest of the Micronesians were willing to accept.
- Willens: There is some suggestion that from time to time you thought that a Commonwealth relationship like the Marianas ultimately agreed to might have been a preferable status for all of Micronesia.
- Warnke: Yes.
- Willens: Was that your view at the time?
- Warnke: Yes. It was not the view of my clients, so I couldn't really push it.
- Willens: But to some extent your view is not based on any military needs of the United States but it is based on the sense that they might have a better opportunity for economic and political development as a commonwealth under U.S. sovereignty than they would under any other status.
- Warnke: Yes. I still feel that way.
- Willens: So you were not opposed in principle to what the Marinas ultimately decided to do.
- Warnke: Oh no.
- Willens: Do you have any other recollections of the Palau round or, more specifically, did you leave it with the sense that putting the Marianas issue aside, that it had been a substantive accomplishment?
- Warnke: I thought that it had been productive, yes.

- Willens: There was some published statement attributed to Carl Heine saying that it was “a substantial victory for Micronesians”. I suppose he had reference to the unilateral termination point.
- Warnke: That’s right.
- Willens: Did you have any dealings with Carl Heine?
- Warnke: Oh, yes.
- Willens: I have not. Do you have any recollection now as to what his assignment was and what contribution he made?
- Warnke: I think he regarded himself as a loyal member of the Committee. I don’t think that he wanted separate status for the Marshalls. I thought that he was somewhat at odds with Amata Kabua.
- Willens: Was he a member of the Committee or sort of a staff director?
- Warnke: I think that he was the secretary or something of that sort.
- Willens: But did he participate in deliberations of the Committee?
- Warnke: Yes.
- Willens: I see. And was he an articulate spokesman?
- Warnke: Yes.
- Willens: So you have a generally favorable recollection of his contributions?
- Warnke: Yes. He later was the Marshallese representative to the United Nations, and he is now the Marshallese ambassador to China.
- Willens: Marshallese ambassador to China. So if I want to see him, I have to go to Beijing.
- Warnke: Beijing.
- Willens: All right. It’s on the agenda.
- Warnke: I had some dealings with Carl within the last couple of years. He was very concerned about a proposal to use the Marshall Islands for the disposition of atomic waste.
- Willens: That came up recently, did it not?
- Warnke: Yes.
- Willens: I forget whether it’s been resolved. So he continues to be politically active in the Marshalls.
- Warnke: Yes.
- Willens: Ambassador Williams made a series of reports back to the United States agencies and he expressed a concern about the lack of Micronesian unity. He was not referring to the Marianas; he was referring to either his impressions or advice from Chairman Salii that there were differences among the Committee members that threatened to become a problem for the negotiations. Did you share his view at the time about a lack of unity within the Committee?
- Warnke: Oh, yes.
- Willens: Do you recall any discussion with Ambassador Williams on that subject?
- Warnke: No, I wouldn’t have done that.

- Willens: On the grounds that that dealt with private matters within the client.
- Warnke: Yes.
- Willens: He also expressed some concern about the pace of the negotiations and I guess was sharing the view that to some extent, as some of these earlier reports indicate, the Micronesians were given to talking in principles rather than getting down to the specific details of an agreement.
- Warnke: To the concrete details. That's right.
- Willens: And you're cited here from time to time as someone who thought that the drafting was an important task and you couldn't really confront the problems until you did that. Is that your view?
- Warnke: Yes.
- Willens: I did come across these notes of the drafting group that met on several occasion in July of 1972. This was the fifth round of negotiations during the summer of 1972, when I think among other things you may have entertained these people at your house . . .
- Warnke: Yes.
- Willens: . . . and invited me to join you. And these were notes that were written by Mr. Stowe, who I think was from the Legal Advisor's Office at State.
- Warnke: I don't recall.
- Willens: This is an incredible amount of detail. Let me just ask you a few general questions.
- Warnke: Sure.
- Willens: One issue that comes up throughout these notes goes to the foreign affairs and defense issues.
- Warnke: Yes, I think we had quite a series of talks at that point at Interior.
- Willens: What was interesting to me was that for the first time the Micronesians seemed to be asserting a desire for more control over foreign affairs than the United States had previously assumed was their position.
- Warnke: Yes.
- Willens: Was there a conscious decision within the client to articulate these interests in a different way than they had before?
- Warnke: No, I think that it was consistent with their previous position. It was just that the issue had not come up that specifically before.
- Willens: At one point Lindsey Grant, according to these memos, went into a long song and dance, if I may call it that, as to the fact that the United States had been slow to agree to free association but they were ready to agree to free association and that free association involved leaving with the United States responsibility for foreign affairs. And he went on to complain (politely I'm sure) that the Micronesians had changed their position. Did you and your client think there had been a change in the Micronesian position?
- Warnke: No.
- Willens: You played an active role in these drafting sessions . . .
- Warnke: Yes.

- Willens: . . . as the document reflects.
- Warnke: I think I was at most of them.
- Willens: Jim Stovall, whom I've recently interviewed, and Michael White were also present.
- Warnke: Right.
- Willens: Did Mike White play an active role in these . . .
- Warnke: Yes.
- Willens: What kind of contribution did he make?
- Warnke: He tended to represent the more extreme sentiment of the Committee.
- Willens: I notice that there were members of the Joint Committee present at all these sessions. Did they typically remain pretty quiet?
- Warnke: Pretty quiet.
- Willens: While the lawyers carried the burden of the argument?
- Warnke: Yes.
- Willens: And with respect to the U.S. side, one sees Lindsey Grant and Bill Crowe as active participants, but one doesn't see much of a contribution from Herman Marcuse, Ronald Stowe or Thomas Whittington.
- Warnke: That's correct.
- Willens: What was your assessment over the years of Herman's contribution to the U.S. delegation?
- Warnke: I think pretty strictly as legal advisor. He didn't seem to regard himself as a negotiator. But just to give an opinion as to the legality of certain proposals. He was always quite quiet.
- Willens: He was then and continues to be the repository of all this institutional memory within the federal government.
- Warnke: I'm sure that's true. Is he still in the federal government?
- Willens: He apparently is now, although he's retired serving as an occasional consultant for the Justice Department, I understand. He still religiously attends various meetings and hearings on the Hill.
- Warnke: Does he?
- Willens: About the insular areas.
- Warnke: He's got to be reasonably old at this point.
- Willens: Yes, he's aged, like the two of us, and his memory changes over time. As a result of these discussions, did you feel that there was the potential for agreement on the foreign affairs issues?
- Warnke: Yes.
- Willens: Did you? They ended rather inconclusively.
- Warnke: That's right.
- Willens: What did you think was going to be the outcome on the foreign affairs issue?
- Warnke: That we'd have to give some.

- Willens: And did you think the client was willing to do that?
- Warnke: Yes.
- Willens: Another issue that comes up in these discussions, but not as frequently or fervently, was the question about land and whether the specificity of the U.S. needs for land was going to be addressed in the Compact itself or in an annex. I don't understand what the significance of that was.
- Warnke: Frankly, none. I didn't care.
- Willens: Did the U.S. care one way or the other?
- Warnke: I think the U.S. didn't want to put it in the Compact.
- Willens: Well, at some point they wanted to put something in the Compact that you thought would end up dictating what was in the leases or unduly restricting what was in the leases.
- Warnke: That's right.
- Willens: And they seemed to be afraid that you wanted the freedom to put in the leases something that would contravene the Compact.
- Warnke: Something that was in the Compact. That's right.
- Willens: Is that a fair way of stating the difference?
- Warnke: That's a fair way of stating it.
- Willens: Another issue that came up in the Palau round and in these Committee discussions was the question of money.
- Warnke: Yes.
- Willens: The Micronesian delegation at Palau had advanced for the first time, I think (or was it back in Hawaii?) the figure of \$100 million.
- Warnke: I think that was in Hawaii.
- Willens: I think they had mentioned it in Hawaii, and I think the United States at an early point indicated this was . . .
- Warnke: Too much.
- Willens: . . . Too much and out of sight so far as they were concerned. Do you know how that figure was arrived at?
- Warnke: I think it was strongly a grab figure. Aim high. I don't think anybody really expected \$100 million.
- Willens: What was your sense of how the financial issue would be resolved?
- Warnke: I thought it would be a compromise, that we'd get more than the United States thought it was worth. But you're really not talking about money in any kind of realistic sense. What the United States was more concerned about was not the amount of money, but the precedent.
- Willens: The precedent.
- Warnke: The precedent, yes. If you're going to give these few people \$100 million, then if you have some other arrangement with somebody else, are they going to insist on a pro rata distribution of about this same amount?

- Willens: Well, they did make that point from time to time as how the per capita value of that figure was far more than was available to the people of Gibraltar.
- Warnke: That's right.
- Willens: But I don't quite understand what other entity they might have thought of negotiating about.
- Warnke: Well, that's what they said. I said, "A precedent for what? I mean, how many Trust Territories do you have?"
- Willens: One thing they kept asking for was some documentation as to how the figure was arrived at or what the needs were for government operations, for capital improvement projects, and so forth.
- Warnke: Nobody knew.
- Willens: Did you think at that time or at some subsequent time that retaining a consultant to try to bolster these figures would be useful?
- Warnke: Yes.
- Willens: Did you do that?
- Warnke: Yes.
- Willens: Was it your sense that you could really negotiate a dollar amount without getting into the nitty-gritty?
- Warnke: That's right.
- Willens: You did seem to agree, at least if these documents are accurate, that the dollar amount related to the whole relationship and was not simply a payment with respect to land. Was that your position?
- Warnke: That's right.
- Willens: Was that also the U.S. position?
- Warnke: I was never quite clear what the U.S. position was.
- Willens: Was your client generally aware that there was going to have to be some negotiation?
- Warnke: Some give. Yes.
- Willens: And I think as the negotiations unfolded, they did make some give later on.
- Warnke: Sure.
- Willens: Near the end of these various drafting sessions, though, you and others made two points. One, you wanted some counter-proposal from the United States and it was not forthcoming. Did you understand what the U.S. position was on financial support?
- Warnke: No.
- Willens: Did you ever approach them between sessions to try to get some guidance as to what would be acceptable?
- Warnke: Right.
- Willens: Did you get any answer?
- Warnke: None.
- Willens: Would it interest you to know, and the answer has to be yes, that Ambassador Williams

had authority in his negotiating instructions to offer up to a particular amount but seems to have decided that it was premature to do that.

Warnke: Yes. That's the impression I had.

Willens: What do you think he was waiting for?

Warnke: I have no idea. I tried to persuade him that we'd make progress if he were a little more forthcoming, but he wasn't.

Willens: From your client's standpoint, you took the view, it appears, that the question of money was all tied up with termination authority and that unless the United States really showed some progress on the termination point, there was no point to really pursuing these discussions much further. I may have overstated it, but was that your view?

Warnke: That's a slight overstatement, but that's basically true.

Willens: You do recall the relationship being advanced on behalf of the Micronesians along those lines.

Warnke: That's right.

Willens: What was your general strategy at this point in time, when you thought there was potential agreement on foreign affairs, there seemed to be no real disagreement about defense, the parties seemed to be far apart on money, and the parties seemed to be reaching towards some potential compromise on termination. Was it your sense in the summer of 1972 that this was a doable deal?

Warnke: Yes. I thought to get a longer term, they'd come up with more money. That's why I was not prepared to agree on termination without agreeing on financial terms.

Willens: And your position was that at least 15 years time frame, that's what they wanted.

Warnke: Initially I think it was five and 20. And I thought five was too short.

Willens: Wasn't it your client who wanted the short time frame?

Warnke: Yes, that's right.

Willens: And they wanted a longer one, the United States delegation.

Warnke: I think initially they wanted about 25.

Willens: I see. After these sessions ended in July of 1972, did you then embark on some further drafting effort in terms of a working group, or was there a recess here for some time, if you remember?

Warnke: I think there was a recess for some time.

Willens: It was after these sessions in 1972 that the Congress of Micronesia met in Ponape, and there was an action taken by the Congress of Micronesia that was critical of the Compact steps that had been taken to date and an instruction to the Committee that it should negotiate independence as an alternative. These developments came as a considerable surprise to the U.S. representatives, and they loomed large in advance of the next round of negotiations which was scheduled for October of 1972. I have shared with you a couple of internal memoranda that the U.S. side prepared reflecting two conversations that Ambassador Williams had with Senator Sali, one on October 2, 1972, and one on October 5, 1972. These were meetings I think at which you were not present.

Warnke: Yes.

- Willens: When Senator Salii would go to meetings of this kind, would he alert you in advance to the fact that he was going to a meeting and advise you after the fact?
- Warnke: No.
- Willens: Did you become aware from your client of these actions taken by the Congress of Micronesia? After the actions taken by the Congress of Micronesia in August 1972, how did you first become aware of the direction that your client should now negotiate independence as well as free association?
- Warnke: It must have been from Lazarus.
- Willens: Do you remember?
- Warnke: I don't. I know I did become aware of it.
- Willens: What was your reaction?
- Warnke: I thought it was a mistake. I thought it would just set back the negotiations. I thought you could not negotiate independence.
- Willens: Was he concerned by these actions by the Congress?
- Warnke: I think he was, yes.
- Willens: What strategy then did the Committee with your advice develop and anticipate that the United States was probably going to respond strongly to these developments? Did you have some sense as to how best to handle them?
- Warnke: I thought we could use it as a bargaining lever. "My clients are very unhappy about all of this, and if you're going to get some sort of a free association agreement, you're going to have to be more forthcoming."
- Willens: Specifically with respect to . . . .
- Warnke: Money and termination.
- Willens: Did you personally make any such presentation either in a session of the negotiations or in private to Ambassador Williams or his staff?
- Warnke: I think I did to Haydn.
- Willens: What is your recollection of how the United States responded to these developments?
- Warnke: My recollection is that things stalled pretty badly just about at that stage.
- Willens: There were very strong statements issued by Haydn both in private with Senator Salii and in the public sessions to the effect that his authority didn't . . .
- Warnke: Didn't extend to that.
- Willens: . . . didn't extend to negotiate independence. This cast doubt on the good faith of the Committee, the ability of the Committee to represent the wishes of its constituencies, and so forth and so on.
- Warnke: Yes.
- Willens: Did you make any private efforts to persuade Ambassador Williams to go forward with the drafting and work on the Compact notwithstanding his position?
- Warnke: My recollection is that I did, yes.
- Willens: Do you recall why he refused to do that?

- Warnke: I have no idea.
- Willens: Do you think your Committee as your client was willing to continue with the negotiations on the Compact?
- Warnke: Yes. I think what happened at that point is (and your recollection is going to be much better than mine) that it got pretty much diverted by the Marianas negotiations and those took priority.
- Willens: Well, the Marianas negotiations did begin in a formal sense in December of 1972 or a short time thereafter, and then there was a major round in the spring of 1973. But it looks as though from these memoranda that Ambassador Williams made all these points in private to Senator Salii that you and I have just reviewed, but there seemed also to be a considerable interest now in the return of public lands and in the difference of views about whether the United States would be allowed in Palau to conduct a survey of its land needs. I've never quite understood how the Palau survey issue assumed such importance. Do you have any recollection of that at all?
- Warnke: I have none.
- Willens: Senator Salii and other members of the Joint Committee seemed now to focus on the return of public lands to the districts by the United States. Did you play any role in that process?
- Warnke: No.
- Willens: Was it in fact a matter of concern to the members of the Joint Committee?
- Warnke: I have no idea.
- Willens: It's your sense that, if the United States wanted to go back and reassess its position, these negotiations were going to be stalemated for some period of time?
- Warnke: Yes.
- Willens: Ambassador Williams went back and reported these developments and hoped that the negotiations might be resumed even before the Congress of Micronesia met in January of 1973. Chairman Salii wanted him to resume the negotiations.
- Warnke: Right.
- Willens: And to continue working on the Compact. But back in the United States the agencies were so concerned about these new developments that they wanted to re-study the issue and decide what the U.S. position should be.
- Warnke: Yes.
- Willens: Did you meet with U.S. representatives back here in Washington in late 1972 or early 1973 in order to try to persuade them to go forward with the drafting of the Compact?
- Warnke: I don't recall. I know I did talk to Haydn about it.
- Willens: Is it your recollection that he was prepared to go forward?
- Warnke: I think he was, yes.
- Willens: Did he give you any indication that there were differences among executive agencies that he had to worry about?
- Warnke: He hinted that, yes.

- Willens: Was there anything more you could do at this point on behalf of your client other than simply wait for the United States?
- Warnke: I couldn't think of anything.
- Willens: When the negotiations ended and you came back to Washington and Salii would go back to Palau, did you have regular contact with him as to what was happening and what he desired you to do?
- Warnke: Yes, he'd keep in touch, or Ekpap would.
- Willens: There finally was a decision to defer the next round until after the Congress of Micronesia met in early 1973. And the next round of negotiations, just to refresh your recollection, took place in November 1973. Do you have any recollection as to why the delay occurred, although I think certainly the Marianas negotiations played some role.
- Warnke: My impression was that that was one of the reasons. I was aware of sort of a lessening of interest on the part of the United States. Why, I'm not quite sure.
- Willens: The public lands issue was eventually resolved. There was a meeting that took place in Honolulu in October of 1973, and Senator Salii and Congressman Silk were there, at which time they discussed such things as the return of public lands, political education in Micronesia, and looking forward to scheduling the next session, and it happened in November 1973. Do you have any recollection of these meetings and discussions taking place in that time frame?
- Warnke: Yes.
- Willens: What is your recollection as to what was going on?
- Warnke: The sound of a broken record at that point.
- Willens: Who was saying what to whom?
- Warnke: I think we were still debating the same old issues.
- Willens: Finances, termination, foreign affairs.
- Warnke: Finances, termination, control of foreign affairs.
- Willens: Was it your sense that by this time the Joint Committee was prepared to go back to the drafting of the Compact?
- Warnke: Yes.
- Willens: It's your view that they always were ready to draft it irrespective of what the Congress of Micronesia had said or done.
- Warnke: That's right.
- Willens: Interestingly, that's what happened. The United States made clear that it couldn't negotiate independence and the Joint Committee under Salii's leadership and presumably with your advice said, "Well, let's go forward and try to produce a document." Is that your sense of what was going on?
- Warnke: Yes. I didn't feel that we were bound by the decision of the Congress of Micronesia. I mean there was no way you could negotiate independence, so I didn't try.
- Willens: Did the members of the Committee who espoused independence views agree?
- Warnke: They were pretty much persuaded by that point.

- Willens: By that point in time?
- Warnke: Yes. Certainly Andon Amaraich, who as I say was the brains on the Committee, was not at that point saying, "Okay, now we've got to go ahead, follow the mandate of the Congress of Micronesia and negotiate independence." He didn't do it.
- Willens: Was it his sense that he could achieve most of what he wanted in a compact of free association?
- Warnke: In a compact of free association.
- Willens: And that related specifically to the foreign affairs area but perhaps to some others as well.
- Warnke: That's right. And of course he was right.
- Willens: Well, that's something I've just learned actually, just come to realize that the relationship that ultimately emerged . . .
- Warnke: Was pretty much what we had negotiated.
- Willens: Well, it was what you had negotiated. It also seemed to have reflected some concessions by the United States on the foreign affairs side that they had not been willing to make while you were working with the Joint Committee.
- Warnke: Yes.
- Willens: And we'll come back to that. In terms of political education, did you have any involvement in dealings with the Trust Territory or your client in deciding how best to let people to become informed of political education?
- Warnke: No.
- Willens: When the negotiations did resume in November of 1973, the Joint Committee took the position that it was still negotiating for six districts. The United States was taking the position with respect to its financial offer, for example, that there were only five districts.
- Warnke: That's right.
- Willens: What was your sense and rationale for continuing to assert the Joint Committee's position of negotiating for six districts?
- Warnke: Because they were unwilling to give up as far as the Marianas was concerned.
- Willens: There's some thought in the materials that, if the Joint Committee could negotiate a compact in a timely fashion, that the Marianas people might be given a choice between a compact of free association or whatever emerged from its negotiation.
- Warnke: Or the Covenant. That's right.
- Willens: Did you think that was a serious possibility?
- Warnke: No.
- Willens: No?
- Warnke: No.
- Willens: Was it because you didn't think the compact could be negotiated on that time frame, or what?
- Warnke: No, I just thought that the Marianas had decided that they wanted to be separate from the rest of Micronesia. I believed that from the moment I got into the negotiations.

- Willens: So even if there was a terrific compact of free association, you thought the Marianas would stay separate?
- Warnke: That's right. But I was not prepared to tell my client that.
- Willens: I see.
- Warnke: I mean, that was my opinion. I could have been wrong. But I thought, you know, having talked with Eddie and Herman and having seen what was happening as far as the Marianas was concerned, that the Marianas had no intention of being part of a Micronesian unit.
- Willens: Even if it were a commonwealth.
- Warnke: That's correct.
- Willens: I mean that's sort of the view I'm getting through interviews with the benefit of hindsight.
- Warnke: Yes.
- Willens: Did you think as a matter of lawyering that in light of the issues that remained to be resolved you could in fact negotiate a compact within the next year, year and a half?
- Warnke: I thought we could.
- Willens: There was a sharp difference of view over financial support in November 1973. The parties still remained very distant. Were you still of the view that there was an accommodation that could be reached here if the United States would put a figure on the table?
- Warnke: That's right.
- Willens: By the time I believe your client had reduced its figure to something like \$80 million.
- Warnke: I think that's right.
- Willens: And they were still asking the United States to put some dollar figure on the table, and the United States was not doing that.
- Warnke: And my recollection, Howard, is that one of the reasons was that they figured that the Marianas was not going to be part of it.
- Willens: And so the \$80 million made some sense.
- Warnke: Right. 100 is five times 20. And 80 is four times 20.
- Willens: Right. Now Chairman Saliu took a position during these negotiations that either the United States ought to improve its offer on financial assistance or the Joint Committee ought to reconsider alternatives to free association. Was that a sincerely-held view?
- Warnke: I think he realized that there wasn't any alternative. The only alternative would be independence.
- Willens: So to assert that in a negotiating session in your opinion was unlikely to be very persuasive.
- Warnke: That's right.
- Willens: Did you get the sense that he and the other members of the Joint Committee would like to conclude the negotiations within a year or two at the most, or did you get the sense on occasion that they were prepared to extend this process for years to come?
- Warnke: At the time I think that I was of the impression that they wanted to conclude the negotiations within a year or so.

- Willens: Did there come a time when you had a different view?
- Warnke: Increasingly I got the impression that Lazarus didn't think that Palau was going to go along.
- Willens: Did he tell you that?
- Warnke: No.
- Willens: I forget when it was that Palau created its own separate political status commission.
- Warnke: It was after my time.
- Willens: I guess somewhat later. After these negotiations ended with unresolved issues that included the financial assistance levels, Salii and Williams met in December of 1973 to discuss prospects for reconvening negotiations, and they made some judgment that they ought to use some experts on the financial issues.
- Warnke: Yes.
- Willens: Did Chairman Salii discuss with you who you might turn to for help on the financial side:
- Warnke: No. I don't believe he did.
- Willens: And did you at this point think that this might be useful?
- Warnke: Yes. But I thought it was not essential, Howard, because I thought really what we were doing was presenting a package to the United States. And in part they were paying a certain amount of money for the right to have the rights that they had in a former Trust Territory. I thought it was a buy-out, that we couldn't justify it by any kind of financial records. You couldn't justify it on a pro rata basis, so I really thought it was a question of naming a high figure and getting as much of that high figure as you could.
- Willens: Well, I understand that point. You made another point, though, during some of these sessions (as I read these documents), and that was that there was a serious need for CIP [capital improvements] money that reflected the limited investment that the United States had made in the Trust Territory over the years. And you made the point at one time that your client was entitled to something more than having a third-rate territorial government. Did you feel that the United States had under-invested in the Trust Territory and that your client justified a substantial amount up front?
- Warnke: That's right. I think I talked about it in terms of priming the pump.
- Willens: Right. And did the United States ultimately agree to that?
- Warnke: I think so.
- Willens: One of the key breakthroughs seemed to have been the sense that there would be some period of perhaps four or five years before termination of the Trusteeship during which these investments would be made.
- Warnke: They'd put some money in. That's right.
- Willens: That was something that came up later in the negotiations, as I recall.
- Warnke: Yes.
- Willens: Then there was also the sense as to some differences as to how much government operations would take.
- Warnke: Yes.

Willens: Were you aware of the complexity of governmental institutions that your clients were looking toward?

Warnke: Oh, yes.

Willens: And you were aware that a good deal of money was going to be spent on those?

Warnke: A good deal of money was going to be poured into that.

Willens: Was there anything you felt one could do with your client to keep those to reasonable expectations?

Warnke: I'd hoped I could, yes.

Willens: What was your ultimate judgment as to your ability to do that?

Warnke: I guess I thought it was quite uncertain. I did have the strong feeling that the United States had neglected the Trust Territory or had not done what it should have done in terms of providing educational facilities and trying to get some kind of investment in there to give rise to jobs. It was consistent with my view that independence was just a totally absurd idea.

Willens: Well, you also made the point earlier that there was a need to educate more people who could assume positions of responsibility in these new institutions of government.

Warnke: That's right.

Willens: Did you think five or ten years was necessary before termination to address that?

Warnke: At least. Yes.

Willens: And your answer is "at least"?

Warnke: Yes.

Willens: Did you then from time to time take issue with the United States objective of terminating the Trusteeship in 1981?

Warnke: Yes.

Willens: Did you ever come to learn where that date came from?

Warnke: I have no idea.

Willens: That makes two of us.

Warnke: I have no idea. I think it was basically a political decision.

Willens: Going back to the U.S. need to get rid of this albatross (so to speak) and establish relationships for the future that would protect its defense interests.

Warnke: Right.

Willens: The next session of the negotiations didn't take place for more than 2 ½ years. The eighth round occurred in May of 1976, and there was a negotiated document that was initialed by the parties.

Warnke: That's right.

Willens: It seemed to include provisions on almost all subjects except Law of the Sea.

Warnke: Where was that negotiation?

Willens: I'm not sure, and I don't have my materials with me to tell me that. It's not an area I've gone into with anyone except just to talk to Jim Stovall briefly about it recently. But I

guess my first question is, what accounted for the substantial recess of more than two years? Was it the drafting complexities that were going on at the time, or were there some other factors at play?

Warnke: I could not understand it.

Willens: Did you remain actively engaged in the drafting process?

Warnke: Well, there was no drafting process going on. Was I putting down some ideas? Yes. That's why we were able to come up with a document in 1976.

Willens: But your firm carried the laboring oar here. Who was working with you at this time?

Warnke: Jim Stovall.

Willens: Was there a Terry Fortune who was involved?

Warnke: Terry Fortune. Yes.

Willens: So is it your recollection that the drafting really extended over more time than was required and could have been done in a shorter time frame?

Warnke: Yes.

Willens: Did you think that your clients' interests lay in trying to proceed more expeditiously?

Warnke: Yes, I did.

Willens: Was the United States doing anything on the financial support side during this interim that was helpful to your client in terms of additional investment or anything?

Warnke: Not much.

Willens: Did your client perceive that this was an unnecessary delay, or were they comfortable with this schedule?

Warnke: As I say, I kind of had the impression that Lazarus didn't have his heart in it to the extent that he had before.

Willens: What do you think accounted for that?

Warnke: I think sort of a feeling that Palau was going to go its own separate way. The co-chairmen were from respectively Palau and the Marshalls, neither one of which became part of the Federated States of Micronesia.

Willens: When did your representation of the Joint Committee come to conclusion? I assume it was when you went into the government in 1977.

Warnke: No. I was involved in it briefly when I came back. When I got out of the government in 1979, I went to at least one meeting in Hawaii with the members of the Joint Committee.

Willens: Was that a meeting at which there also were representatives of the Marshalls Commission present and the Palauan Commission present?

Warnke: I don't recall them being there.

Willens: Was Ambassador Rosenblatt on assignment at that time, or was it Ambassador Manhard?

Warnke: Manhard.

Willens: There apparently was a meeting in Hawaii in May of 1977. Was that a meeting that you attended or was that when you were in the government?

- Warnke: No.
- Willens: And apparently at that time there were decisions of the Marshalls and Palau to proceed separately, and the United States was making a last-ditch effort to try to hold them together.
- Warnke: Yes. But I was not there.
- Willens: You were not there.
- Warnke: I went into the government in March of 1977.
- Willens: So after the initialing of the Compact in May of 1976, did you have any further involvement with the negotiations before you went into the government?
- Warnke: No.
- Willens: It's unclear to me from the documents exactly what remained to be done.
- Warnke: I thought it was a done deal.
- Willens: And was it necessary in your view to deal with the Law of the Sea issues in the Compact?
- Warnke: No.
- Willens: How did you think that could be resolved?
- Warnke: Separately.
- Willens: So did you have the sense then in mid-1976 that the deal was now sufficient negotiated, precisely drafted, that it could now go back to the two parties for review?
- Warnke: Yes.
- Willens: Was it your hope that your client would take it back then to the Congress of Micronesia?
- Warnke: Right.
- Willens: Do you know what Chairman Salii did, if anything, in that direction?
- Warnke: I don't.
- Willens: Was the Compact ever really given careful scrutiny by any of the districts?
- Warnke: You might ask Jim Stovall that. You see, after May of 1976, I was more involved in the Carter campaign than I was in my law practice, so that I really was getting ready to go in the government.
- Willens: When you came back then, Paul, from the government in 1979, you recall attending one meeting in Hawaii.
- Warnke: Yes.
- Willens: What is your recollection as to the status of the negotiations at that time?
- Warnke: I thought we were pretty far along.
- Willens: By this time who was your client?
- Warnke: The one I really dealt with most of all was Andon Amaraich.
- Willens: So by this time, as you recall, were there separate negotiations going on by the Marshalls and Palau?
- Warnke: Yes, I think there were.

- Willens: So you were basically dealing with what became ultimately the Federated States.
- Warnke: The Federated States.
- Willens: What happened then subsequently? Did you continue with the representation and, if so, how did it come to conclusion?
- Warnke: I did, but I turned it pretty completely over to Jim Stovall. I was involved in trying a case for General Foods, which was a Federal Trade Commission case that involved daily hearings for a period of a couple of years.
- Willens: Then there came a time when Mr. Stovall left the firm.
- Warnke: Jim Stovall and Dick Strandland left the firm, which would have been I think in 1983.
- Willens: And they took this representation with them.
- Warnke: Right.
- Willens: Did you continue to advise them from time to time or were you pretty much out of it?
- Warnke: I was out.
- Willens: Just stepping back for a moment in concluding this, how do you think it all worked out with the Trust Territory ending up with four separate entities, one Commonwealth in the Northern Marianas and three freely-associated entities?
- Warnke: I guess not too badly, Howard.
- Willens: Do you think there was anything that the United States could have done at an earlier stage to try to keep the entire area together?
- Warnke: I thought if we had concluded a Compact in 1974 that there might have been some way of keeping at least Palau in.
- Willens: At least Palau, but perhaps not the Marshalls.
- Warnke: Perhaps not the Marshalls.
- Willens: Did you perceive the separatist inclinations in the Marshalls being stronger?
- Warnke: Yes.
- Willens: Is that because of the presence of the military facilities there and that source of income?
- Warnke: Yes.
- Willens: Were there other reasons that you can think of?
- Warnke: I think the only other reason was personal reasons. I think Amata Kabua felt that he was more of a big shot in a separate Marshalls than he would be in a Federated States of Micronesia.
- Willens: Well, I've certainly heard people speak about the natural instincts of "nation-building" and the sense that it would be nice to have your own nation, where there could be a president and ambassadors and foreign affairs ministers. Those sound like very human instincts. Are those some of the factors that you think were in play?
- Warnke: Yes. Besides, there was less affinity between the Marshalls and say the Trukese or the Palauans and the Trukese and the Ponapeans.
- Willens: Are these cultural differences that you think led almost inevitably to this division of political views?

- Warnke: Pretty much, yes.
- Willens: Mr. Stovall certainly has the opinion that the cultural differences were profound and almost impossible to bridge.
- Warnke: Oh, they were. I mean, you know, they spoke different languages.
- Willens: What do you think was the role of the clans and the tribal entities within these areas? Were the tribal chiefs and the tribal traditions factors leading to . . .
- Warnke: Leading to separatism. Yes.
- Willens: Did you ever get any sense in the Marshalls or Palau for example as to whether the elected representatives would ultimately be able to achieve the powers that the chiefs now held, or were they going to have to defer to the chief?
- Warnke: I thought there was a very good chance they might have to defer to the chiefs. And then of course in Palau so much corruption came about.
- Willens: Was it your view that there was much more corruption potential and in fact in Palau than in the other areas?
- Warnke: Yes.
- Willens: Any judgment as to how that developed?
- Warnke: "Never trust a Palauan." Could have been cultural. I mean there were political assassinations. Lazarus blew his brains out.
- Willens: Did Lazarus ever consult you with respect to the difficulties he was getting into with the Congressional hearings and the allegations of bribery?
- Warnke: No.
- Willens: Did you have any involvement with any of the entities?
- Warnke: I had no involvement at all up to 1983, and very little up to 1979.
- Willens: Looking back to the separation of the Marianas, I gather from what you've said earlier that you don't regard that as a major contributor to the subsequent divisiveness, although it certainly didn't help.
- Warnke: I had the feeling that, if the Marianas split off, it would be more difficult to maintain a single unit.
- Willens: Have you been out to Micronesia in the last 10 or 12 years?
- Warnke: No.
- Willens: You want to drop by and take a look at Saipan sometime.
- Warnke: Oh really? What's it like?
- Willens: You have nearly 4,000 hotel rooms and a very developed economy. There still are some political problems, but the economy has grown from the time when I first went out there and they had a million dollars of locally-raised revenue; they're now dealing with a budget of \$260 million and have 600,000 tourists coming in every year. They're diversifying the economy to some extent, although not without controversy. The medical care has improved significantly.
- Warnke: I'm sure that's true.

- Willens: The education still lags behind the mainland U.S. but seems to be getting more and more attention. There have been some problems in dealing with the federal government under the new status, but on the whole I think you could look at it as a substantial success.
- Warnke: Yes. Well, I'm quite sure that if I'd been a Marianan that I'd not have wanted to have a single Micronesia of which I was a part.
- Willens: There came a time when Eddie and Herman may have approached you with respect to separate representation, and although everyone's being pleasantly oblique about it, my guess is that you might have put together a list of law firms for them to inquire with about representing them and that you were kind enough to put me and my firm on the list. Is that sort of the way it all happened?
- Warnke: That's right. Yes. I think it was Eddie, and he said he had met you at my house and what did I think of you, and I said you'd be great. So I don't think he considered anybody else.
- Willens: Well, he met with some of the people, but he ended up meeting with Howard Westwood at Covington and Burling and a few other people. My partners were sufficiently receptive, perhaps in an innocent way, as to what this was going to cost them over the years. But in any event, is there anything else, Paul, that you recall or would like to say?
- Warnke: I can't think of anything. I'm sorry that my memory isn't better on this, but it's a long time back.
- Willens: It's a long time back, and you really did an amazing job, and I thank you for that, and I thank you for getting me involved.
- Warnke: Good! Hope you enjoyed it.