

MARSHALL ISLANDS LEGISLATURE  
Office of the Legislative Counsel

June 3, 1968

INFORMATION DELETED UNDER 5 U.S.C. 552 (b) (5).  
THE FREEDOM OF INFORMATION ACT, AS AMENDED IN  
1974 BY PUBLIC LAW 93-502.

DP-CORR.  
FILE  
6/7/68

MEMORANDUM

TO : JIM HITTAR

FROM : [REDACTED]

SUBJECT : PEACE CORPS LEGAL PROGRAM IN THE MARSHALLS;  
PRESENT AND FUTURE.

REFERENCES:

- (1) Memorandum from Roger Flather dated April 25, 1968 and May 3, 1968.
- (2) Letter from R. L. Shoecraft dated March 26, 1968.
- (3) Letter from Donald Tindal dated April 24, 1968.

This memorandum will be largely confined to a discussion of the points raised by Roger Flather in his memorandum on the subject. I have added a listing of specific legal activities for your convenience.

No evaluation of our local program can achieve anything like the necessary degree of accuracy without a proper emphasis on the unique position of each district. I would thus begin by making this postulate: No single formula can yield maximum results; no one approach will enable the Peace Corps to bring the full weight of its legal talent to bear on the problems that press these people. This postulate would seem to be self-evident and unnecessary. Yet I find, time and time again, that the very people who should keep this consideration uppermost in their minds persist in viewing the Trust Territory as a single, unified entity; one in which problems may be solved by the application of across-the-board solutions.

We begin with the assumption that every Volunteer lawyer can and should be assigned to some specific organizational entity. The practical benefits of such an assignment are clear. The lawyer needs an office, office supplies and perhaps a secretary. In a word, he needs support, the kind of support that an organization is best able to provide.

In a deeper sense, the Volunteer lawyer requires an organizational framework. It may be the tight structure of an organization such as the Attorney General's office. It may be a fairly loose structure such as that envisioned by the Peace Corps Legal Services Office or the Peace Corps Legal Aid Office. The organization provides the lawyer

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with a means of relating the other organizations. It gives him a position in the system which enables others to "recognize" him and gives them the information necessary to determine their relation to him. No lawyer in the United States can practice law outside the framework of his professional association. The term "lawyer", as it is commonly used, implies membership in a State Bar Association.

There is another way in which a Volunteer lawyer can be assigned to an organizational entity. In this sense his assignment becomes a limitation, a restriction on the range and type of services he can provide. Obviously any person is subject to restrictions when he joins an organization. In most cases he is willing to accept these restrictions in order to obtain the benefits that the organization can provide. It is at this point, I think, that we come to the essence of the difficulty.

In all that has been written, and in much that has been said regarding the Peace Corps legal program to date, there has been an underlying concern with the place of the Volunteer lawyer in certain organizational structures. Part of this is no doubt attributable to the legitimate need that certain organizations, the Judiciary and Attorney General's Office for example, have for Volunteer lawyers. There are simply not enough lawyers to fill the needs of these organizations. But the greater part of this concern seems to have been directed at the possible damage a free and non-assigned lawyer could do to existing organizations. Unfortunately this aspect of the situation assumed a certain dominance very early in the program. Peace Corps lawyers in training were led to feel that the Trust Territory Government was trying to put them into slots where their impact would be minimal; to subject them, as it were, to a dampening process designed to prevent "boat docking". At the same time, many Trust Territory Government personnel seemed to give this aspect of the lawyer's role an exaggerated importance. In many cases this has resulted in a failure to utilize the services of the Volunteer lawyer where the lawyer was ready and more than willing to render his services.

Any discussion of future placement of Volunteer lawyers must take these factors into account:

- (1) The lawyer can be most effective as part of an organization.
- (2) Few Volunteer lawyers will accept assignment to an organizational entity with good grace if they feel that such an assignment primarily reflects a desire to restrict their freedom of action.
- (3) Most organizational units slated to receive Volunteer lawyers should re-examine the role of the Volunteer lawyer presently serving in the organization. Is the lawyer being effectively utilized as a lawyer?

As I mentioned before, the role of the lawyer can be effectively evaluated only in terms of his district. Lawyers working at the district level may find certain organizations wary of the lawyer's role. Other lawyers working for the same organization in other districts may find a more positive approach. These lawyers may find an enlightened perception of their role and a real desire to make use of their talents. Obviously organizations are made up of people who will tend to vary widely in their perception of the Volunteer lawyer and his role in the organization. This perception determines their reaction to the lawyer and, in the long run, his reaction to them and to the organization they represent.

While differences between districts and between organizations will continue to exist, there are certain measures the Peace Corps and the Trust Territory can take now to minimize negative perceptions of the lawyer's role.

- (1) Any organizational entity desiring the assignment of a Volunteer lawyer should submit a detailed job description with its request. This requirement will force the organization to think about the lawyer and his role. It will enable the Peace Corps to place lawyers on the basis of indicated requirements and it will give the lawyer a preview of the work he will be doing. I have not yet seen a job description which meets the above requirements. Few organizations seem to understand the role of the Volunteer lawyer and fewer still, to relate this role to their own requirements.
- (2) Lawyers should have the opportunity to work with members of the organization during training. This area has been sadly neglected in the past training programs. Communication was largely limited to lectures given by members of legal or quasilegal organizations. At no time, so far as I know, were the lecturers given the opportunity to work with the trainees. In other words, at no time were members of the organization in a position to watch the lawyer-trainee at work and to observe his feelings and reactions to real legal problems. This lack of a meaningful dialogue has contributed in large measure to later misunderstandings of the lawyer's role and his place in the Trust Territory organizational hierarchy.

The training program is an ideal place to begin the sort of cooperative effort that leads to understanding. It is largely free of the tensions which exist within the organizational structure. It is an ideal place for the trainees and their PT counterparts to develop working relationships which will carry over to the job.

- (3) The organization should structure the role of the Volunteer lawyer so as to recognize the unique position which he will

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occupy within the organization.

This measure will be the most difficult to implement and will depend largely on the ability of the organization to recognize the role of the volunteer lawyer qua volunteer. The benefits of such a measure should be obvious. It will tend to dispel any tendency on the part of the lawyer to consider himself nothing more than a money saving device to fill a slot. It will also give the organization an opportunity to make use of the special role which the lawyer brings to the job as a Peace Corps Volunteer.

Many organizational entities apparently feel that this aspect of the lawyer's role is of no importance or perhaps even negative importance. I believe this feeling reflects the failure of the organization to think about the Volunteer lawyer in a way that clearly perceives his role. It can be overcome by a greater emphasis on an adequate job description and interaction during the training phase of the program.

The above assumes that the lawyer can bring something to his job which reflects the role he plays as a Volunteer. I think the Peace Corps should require the requesting organizational entity to consider this factor in any program or job description. Perhaps lawyers should not be assigned to organizations which cannot see the need for the lawyer as a Volunteer.

To sum up; the volunteer needs an organizational structure for support and recognition. Organizational entities which need lawyers can take certain basic steps to maximize the utilization of the volunteer lawyer. The Peace Corps can and should require certain of these steps as a prerequisite for placement. At the same time, the Peace Corps, in evaluating the effectiveness of its legal program for future programming purposes, must be aware of differences between organizations and between districts. It is highly doubtful that any single formula for programming and placement can take these differences into account.

I have attached a list of focal points for the Peace Corps lawyer. I have given the history of my work at each point in some detail and added my comments and recommendations as to the possible directions the program might take in the future.

INFORMATION DELETED UNDER 5 U.S.C. 552 (b) (6),  
THE FREEDOM OF INFORMATION ACT, AS AMENDED IN  
1974 BY PUBLIC LAW 93-502.

I. OFFICE OF THE PUBLIC DEFENDER

A. SUMMARY OF ACTIVITIES

I was officially assigned to work in this office on my arrival in November, 1966. I worked with the Public Defender's Representative (Marshallese) on a full time basis for a period of about five months. I am presently providing assistance part time on request.

I have assisted the Public Defender's Representative in;

- (1) Preparing criminal cases for trial,
- (2) preparing motions for presentation at trial and on appeal,
- (3) petitions for stay of execution, reduction of sentence etc.,
- (4) requests for parole and probation,
- (5) and various matters involving the preparation and trial of civil actions.

I have not personally appeared as trial counsel in any criminal litigation and have usually made it a point not to be present in court during the trial of criminal cases. I have given advice to the district judges on questions arising in criminal actions only when so requested by the presiding judge.

B. RECOMMENDED AREAS FOR FUTURE EMPHASIS.

- (1) Continued assistance in the preparation and conduct of criminal litigation.
- (2) Preparation of standard procedural forms.
- (3) Recommend improvements in parole and probation procedure.
- \*\* (4) Evaluate present method of handling mentally ill persons charged with the commission of a crime. Recommend substantial changes.
- (5) Bring deficiencies in the criminal sections of the Trust Territory Code to the attention of the Code Revision Committee (Office of the Attorney General). Recommend changes.

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C. PROGRAMMING.

One Peace Corps lawyer on a part time basis. Support should be provided by the Public Defender's Office for work done in connection with the Public Defender Program. Office space and secretarial support will probably be unavailable.

The Peace Corps lawyer should not appear as trial counsel in any criminal litigation except in cases where an American lawyer will prosecute and an American public defender is not available. In questionable cases the Peace Corps lawyer should contact the Public Defender in Japan for advice.

\*\*This matter deserves the immediate consideration of the Peace Corps lawyer. The present system is illegal and useless for rehabilitation purposes.

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II. DISTRICT LEGAL OFFICE  
(Attorney General)

OFFICE OF THE PUBLIC PROSECUTOR

A. SUMMARY OF ACTIVITIES.

The District Legal Offices were established as a part of the Office of the Attorney General in 1967. The Marshalls District Office has not been set up due to a present lack of office space and housing in Majuro. This is a matter that should be worked out between the district administration and Trust Territory Headquarters.

I have had some correspondence with John Mc Comish, District Attorney for the Trust Territory, regarding the establishment of a Public Prosecutor's Office for the Marshalls District. This office would be set up parallel to the Public Defender's Office and would be run by a Marshallese District Attorney's Representative or Public Prosecutor. This office would take over the prosecuting function now being exercised by the District Sheriff and would leave the Constabulary free to investigate crimes and make arrests.

B. RECOMMENDED AREAS FOR FUTURE EMPHASIS.

The Public Prosecutor's Office can and should be set up as soon as possible. The present situation is detrimental to the interests of fair play and justice and gives the public the impression that our system of law sanctions the use of the police to prosecute persons those same police have accused of a crime.

Mr. Mc Comish and I are in complete agreement on the idea of a Public Prosecutor's Office and I am presently engaged in selecting persons who could do the job.

At some time in the future, the Public Prosecutor's Office could become a part of a District Legal Office under the Attorney General. I agree with the plan to have legal offices in each district but have not seen any detailed plan for setting up such an office here in Majuro. I would hope that the Attorney General or some representative from his staff could sit down with members of the district administration and work out a district legal program. Such a program should include:

- (1) Provision for supporting a District Legal Office at the local and headquarters levels,
- (2) staffing such an office,

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- (3) Provision for the integration of this office with the Attorney General's organization, and
- (4) a clear and explicit description of the role the District Legal Office will play at the local level.

The District Legal Office should be staffed by at least one American supervisor who would represent the Attorney General. He could advise and assist a number of Micronesians who would be chosen to head up offices in the organization such as the Office of the Public Prosecutor.

C. PROGRAMMING.

One Peace Corps lawyer should be available to work with the Public Prosecutor's Office on a part time basis. Support can be provided in the same manner as for the Public Defender's Office.

The same restrictions should apply as apply to the lawyer working for the Public Defender. He should not appear as trial counsel except in very special circumstances.

This same Peace Corps lawyer could work for the District Legal Office at such time as one is set up in the Marshalls.

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### III. MARSHALL ISLANDS DISTRICT COURT

#### A. SUMMARY OF ACTIVITIES.

I have been devoting about fifty percent of my time to district court matters since Joe Radford, the Peace Corps lawyer assigned to the court, went to Saipan in February, 1968.

My work has consisted mainly of advising the two district judges and the clerk of courts on legal questions arising in individual cases. I have, from time to time, given assistance to trial assistants in the preparation of cases for trial, and have consulted with a number of private parties on matters such as the drafting of wills and land contracts, presentation of claims against the Government, and settlement of disputed claims.

I have been asked at times to sit with the presiding district judge for the trial of both civil and criminal cases. I have been careful in all such cases not to usurp the function of the judge and to reserve all questions or comments from the bench unless specifically called upon by the judge to question witnesses or comment on the progress of the case.

I have drafted a number of decisions and orders for the judges when questions of Trust Territory or United States law were involved. However, I have never attempted to affect the outcome of a case by suggesting, in any form or manner, that the judge should decide a case one way or the other. If I am asked to comment on a case, I find it best to do so only in terms of the general questions of law involved and not in terms of the facts in that particular case.

#### B. RECOMMENDED AREAS FOR FUTURE EMPHASIS.

- (1) Continue to assist the district judges in cases involving questions of Trust Territory or U.S. law.
- (2) Begin work on a series of standard procedural forms for use by the judges in conducting pre-trial examinations and in issuing orders and notices in special types of cases.
- (3) Assist the clerk of courts in maintaining accurate records of each stage of a case. A standard checklist of procedures is recommended for this purpose.
- (4) Maintain the court library. Recommend additional volumes and sets from time to time. Assist persons who want to use the legal materials available.

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- (5) Give all possible support to the district judges by way of helping them carry out their duties.
- (6) Give necessary aid and assistance to the justices during sittings of the High Court.

C. PROGRAMMING.

Good programming requires the assignment of one Volunteer lawyer on a full time basis. Adequate support can be provided by the Judiciary and the lawyer should have whatever support he needs to get the job done. Unfortunately, good programming assumes the presence of at least two lawyers in the district. One lawyer cannot hope to give the court his full time support and will have to allocate his time as circumstances permit.

In his role as court advisor, the Volunteer lawyer would do well to remember that the district judges have had extensive experience with the people and the culture, experience the lawyer cannot hope to match. The lawyer will probably find it best in the long run to withhold judgement in disputed situations until he knows he has all the facts. This is often more easily said than done.

The lawyer should also bear in mind the fact that he is an advisor, not a judge. He should be careful to avoid any situation in which it might ever appear that he is taking over the functions of the judge. This too is often more easily said than done but the lawyer's effectiveness is going to depend in large measure on his ability to stay within the limits of his advisory role.

#### IV. MARSHALL ISLANDS BAR ASSOCIATION

##### A. SUMMARY OF ACTIVITIES.

The Majuro branch of the Marshall Islands Bar Association held its first meeting on April 19, 1968. It has been meeting regularly twice each week since that time so that the members can attend my course in basic Trust Territory law and procedure.

The Bar Association now has some thirty seven members in Majuro. Of this number, twenty to twenty-five members regularly attend the law course which is given on two afternoons each week. The Association has a Constitution and By-Laws and is now in the process of forming standing committees.

The course is held from 3:30 to 5:30 p.m. on Tuesday and Thursday afternoons each week. It is primarily a lecture course but ample opportunity is given for questions and discussion. I have given a few demonstrations and plan to expand this area of the course after the other Peace Corps lawyer returns from Saipan.

I have laid the course out around basic units, each corresponding roughly to one Chapter in the Trust Territory Code. The class has completed the first unit which dealt with the Trusteeship Agreement and the Trust Territory Bill of Rights. The class is now studying the second section of Unit II which deals with crimes against property, (T.T.C., Chapter 6, Section C). I plan to give a brief examination on Units I and II during the last week in June. The examination will be given in Marshallese and will be optional for any member of the Bar Association who wishes to take it. Certificates of completion will be given to all those who successfully pass the examination.

##### B. RECOMMENDED AREAS FOR FUTURE EMPHASIS.

- (1) Assist the Bar Association in setting up standing committees and in working out the role of each committee.
- (2) Help the Association establish a Code of Ethics to govern the conduct of its members.
- (3) Continue the present course in basic Trust Territory law and procedure. Expand the number of weekly sessions if possible and make greater use of work programs to increase class participation.
- (4) Aid and assist the Bar Association in building up a law library and instruct the members in the use of legal periodicals.

- (5) Go to Ebeye when time permits and help the prospective members of the Ebeye branch of the Bar Association establish their organization.

C. PROGRAMMING.

All Peace Corps lawyers in the Marshalls District should devote as much time as they can to Bar Association activities. Much of the work will have to be done on a spare time basis and the lawyer should be prepared to give over his time in the evenings and on weekends whenever necessary.

Organizations like the Bar Association represent the best hope for developing a true legal profession in Micronesia. The Volunteer lawyer must be prepared to face considerable frustration to reap the meager rewards that can only be gained by hard work in this area.

No two Volunteer lawyers would agree on the proper method of teaching a law course in Micronesia or anywhere else. There is no single "best" method of teaching and there are no really meaningful rules that can be laid down to guide the lawyer to the right approach. About the most that anyone can say on the subject is that the lawyer as a teacher and the members of the Bar Association as students must reach their own understanding. This will require considerable patience and understanding on the part of the Volunteer lawyer.

One more word here might be in order. It is vital that the Volunteer lawyer maintain his commitment. If he is going to teach, he should be available when he says he will be. If he is not going to be available, he should notify the class in advance. He should avoid making any commitment that he cannot carry out regardless of the reason. The Trust Territory has far too many people already who are fond of making excuses for their failures.

V. MARSHALL ISLANDS LEGISLATURE

DARRIT - ULIGA - DALAP MUNICIPAL COUNCIL

A. SUMMARY OF ACTIVITIES.

I have worked with both of the above organizations since my arrival in Majuro. I class the two organizations together because I have done similar work with both although the bulk of my time has been spent with the Legislature.

I am presently designated as the official legislative counsel to the Legislature. I have a desk in their offices and share the services of one secretary. Most of my time has been spent working with a committee known as the Hold-Over Committee of the Marshall Islands Legislature. The Legislature itself has not met in regular session since 1965.

I am satisfied to report that I was able to advise and assist the Hold-Over Committee in amending the Charter of the Marshall Islands Congress. Through a series of initial meetings and, later, a second set of meetings with the district administration, we were able to arrive at a compromise amended charter which should meet with the approval of the High Commissioner. The full membership of the Legislature will meet in August for the first time in nearly three years and will consider ratification of the new charter.

Most of my work with members of the Legislature and Municipal Council has been directed toward helping them understand the meaning of Trust Territory laws and regulations and the way in which such laws and regulations restrict the power of these bodies to legislate in certain areas, and in helping them draft new legislation to carry out their programs.

B. RECOMMENDED AREAS FOR FUTURE EMPHASIS.

- (1) Assist the Municipal Council in drafting health and safety ordinances and in drafting zoning and construction ordinances in accord with the Majuro Master Plan.\*\*
- (2) Help the Marshall Islands Legislature draw up a Marshall Islands Code. This would be a compendium of all district laws and regulations now in force and would be similar in format to Codes recently drawn up in Yap and Truk.
- (3) Begin work on a codification of district land law. This is an extensive project which may take many years to complete but should be begun as soon as possible. Sections of the land code can be presented

to the Legislature at each regular session until the entire code has been enacted.

- (4) Give all necessary aid and assistance to the Legislature during regular session and to committees and individual members at times when requested. Specific attention should be given to standardizing procedural rules for legislative sessions and committee meetings.

C. PROGRAMMING.

One Peace Corps lawyer should work with the Legislature and Municipal Council on a full time basis. This recommendation is probably unrealistic and could be modified in practice so that the lawyer would be available full time only during legislative sessions or committee meetings and Council meetings. The lawyer could supply his services on a part time basis at other times depending on the work required and his availability.

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INFORMATION DELETED UNDER 5 U.S.C. 552 (b) (3).  
THE FREEDOM OF INFORMATION ACT, AS AMENDED IN  
1974 BY PUBLIC LAW 93-502.

\*This Plan was presented to the Municipal Council through the Interim Planning Commission by a representative of Hawaii Architects and Engineers, Inc. [REDACTED]

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