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May 14, 1975

MEMORANDUM FOR MARIANAS POLITICAL STATUS COMMISSION FILE

Subject: Meeting at Interior Department

I met for about two hours this afternoon with Emmett Rice, Adrian deGraffenried, Chuck Schmitz, Steve Sander, and Brewster Chapman to discuss the legal problems faced by the Plebiscite Commissioner.

We discussed in great detail representation for the Plebiscite Commissioner in the forthcoming lawsuit by Legal Services on behalf of the United Carolinian Association. We finally agreed that Chapman will attempt to get a Justice Department lawyer with appellate, if not trial experience, and perhaps some exposure to territorial affairs, to go to Saipan as counsel to the Plebiscite Commissioner by the beginning of next week. The highlight of this conversation was Brewster's modest proposal that, Dean Acheson being unavailable, he would go to the Marianas himself. A concerted effort by the remaining participants persuaded Brewster that he was needed in Washington, instead. We also agreed, subject to a review of the precise issues raised in the lawsuit and the interests of our respective clients at the time, that the Plebiscite Commissioner's counsel should be the lead counsel for the defense. Rice said that the likely issues in the lawsuit would be registration procedures and requirements generally, and the wording of the "No" alternative on the ballot. I told him that we had given some thought to these issues and that we would be prepared to assist consistent with our client's direction and interests. In response to his direct question, said to be asked on behalf of the Ambassador, I told him that neither Howard nor I could go to the Marianas in the foreseeable future.

Rice distributed a telegram he received from Canham, a copy of which is attached. We discussed both issues the telegram raises. With respect to the first, we concluded that domicile in the Marianas is not negated unless the potential registrant has sought permanent immigration status in the United States or otherwise demonstrated his intent not to return to the Marianas. With respect to the second, we concluded that a potential registrant's acceptance of the benefits which the TT government gives to persons who do not ordinarily live in Saipan is highly persuasive evidence that the person is not domiciled in Saipan. We also concluded that Canham should say nothing about the potential loss of such benefits if a person attempts

14303

to register -- this on the ground that any such announcement by Canham would inevitably appear to be an attempt to discourage registration by the United States. I undertook to discuss with our client both its procedures for challenging such registrants, and the advisability of it making a public announcement that these benefits may be lost by persons who register or vote in the plebiscite.

Canham's telegram indicated that he had misinterpreted Section 6(d) of the Secretarial Order, which called for challenges to be made three days after the registration panel had published its decision. Apparently Canham intends to withhold "publication" until the close of all registration on May 16. We agreed that at this point nothing could be done about Canham's decision and that we would have to follow the legal fiction that the registration decisions had not been published, or else we would risk losing the opportunity to challenge improperly registered voters. Canham's decision in this regard reinforced our view that we should get competent legal counsel out to him quickly.


Michael S. Helfer

cc: Howard P. Willens
Jay Lapin
Roger Witten
James Leonard

*Sent to msn
immediately
upon receipt
5/14/75 9:30 am.*

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248613 DOTA UR
5258 HICOTT MN

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DOTA
WASHINGTON DC

PLS PASS IMMEDIATELY TO EMMETT RICE. THANKS FOR CALL. GRATEFUL FOR LEGAL COUNSEL AS DISCUSSED. IF COUNSEL IS TO COME FROM GUAM WE WILL CONSULT HIM AS CIRCUMSTANCES DEMAND. SUGGEST AT YOUR END LEGAL BACKGROUND WORK SUPPORTING PHRASEOLOGY OF NEGATIVE VOTE EXPLANATION ON BALLOT. IMMEDIATE LEGAL PROBLEMS ARE TWO-FOLD. FIRST, ARE PERSONS NOW LIVING GUAM WHO ATTEST TO MARIANAS DOMICILE ON PLEBISCITE REGISTRATION FORM INVALIDATED BY POSSESSION OF ALIEN REGISTRATION CARD ON GUAM OR APPLICATION FOR U.S. CITIZENSHIP? SECOND PROBLEM: IF TRUST TERRITORY EMPLOYEES NOW RESIDENT IN MARIANAS TAKE OATH ON PLEBISCITE REGISTRATION FORM THAT THEY ARE DOMICILED IN MARIANAS, DO THEY THEREBY DEPRIVE THEMSELVES OF BENEFITS THEY RECEIVE FROM TT GOVT BY VIRTUE OF DOMICILE ELSEWHERE? IF THEY DO THUS DEPRIVE THEMSELVES, WILL THEIR ACT OF REGISTRATION BE CRUCIAL STEP OR WOULD ACTUAL VOTING? WHAT BEARING WOULD FAILURE OF PRIOR NOTIFICATION TO THIS HAVE? SHOULD THEY BE NOTIFIED NOW? SHOULD NOTIFICATION BE ON PART OF TT GOVT? SHOULD WE SET UP OPPORTUNITY FOR THEM TO RETRACT THEIR REGISTRATION? MY RECOMMENDATION, ASSUMING THEY WOULD DEPRIVE THEMSELVES OF EXISTING PRIVILEGES BY DOMICILE IN MARIANAS, IS THAT TT GOVT MAKE THIS ANNOUNCE . THEN MY OFFICE WOULD ANNOUNCE THAT SINCE REGISTRANTS WERE NOT AWARE OF CONSEQUENCES WHEN THEY REGISTERED AND SINCE DOMICILE DECLARATION IS A MATTER OF INTENT, ANY WHO WISH MAY RETRACT THEIR REGISTRATION. IF SUCH ANNOUNCEMENT COULD BE MADE BY MAY FIFTEEN HERE, IT MIGHT FORESTALL LAST MINUTE FLOOD OF QUESTIONABLE REGISTRATIONS. OBVIOUSLY, WE MUST AVOID ANY KIND OR APPEARANCE OF INTIMIDATION. CANHAM SENDS.

14305