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December 21, 1976

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Honorable Richard H. Chambers
Circuit Judge
United States Court of Appeals
for the Ninth Circuit
U.S. Court of Appeals and Post Office
Building
Seventh and Mission Streets
San Francisco, California 94101

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Dear Judge Chambers:

Thank you for your letter of December 6, 1976. I note with interest your comment concerning the role Judge Maris undoubtedly played in the final formulation of the language of Section 22 of the Guam Organic Act. It is my suspicion that his letter was considered in the Committee of Conference and neither Justice or Interior had any opportunity to comment on it before the bill was reported.

In regard to the current situation in the Northern Mariana Islands. This is largely the product of negotiations for future political status which led to the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America which was approved by Joint Resolution of Congress in March of this year (P.L. 94-241), and has the force and effect of law. A copy of Article IV of the Covenant which deals with the Judicial Authority is enclosed.

The negotiations that led to this language were conducted on behalf of the United States by Ambassador Franklin Hayden Williams, the President's personal representative. The Northern Mariana Islands were assisted in their negotiations by Howard P. Willens, a partner in the Washington law firm of Wilmer, Cutler & Pickering. I had virtually nothing to do with these negotiations. The Ambassador was supported by a staff drawn primarily from an interagency group made up of representatives from State, Defense, Interior and Justice. This interagency group has had a shifting cast of characters over the years. I have in the past served on it, but at the times reasonably relevant to the final negotiations for the Covenant the principle people would have been:

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|------------------------|------------------------------|
| Chairman, James Wilson | - State Department |
| Andre Surena | - " " |
| Tom Johnson | - " " |
| Morton Abramowitz | - Department of Defense |
| Capt. Ed Whelan (USN) | - " " |
| Antonin Scalia | - Department of Justice |
| Herman Marcuse | - " " |
| Emmett Rice | - Department of the Interior |
| James Berg | - " " |

The Ambassador also had his own staff. During this period Capt. Richard Scott (USN) was director. Others were: Adrien de Graffenraid (legal), Col. Al Smith (DOD), Mary Vance Trent (State), Ed Archer (State), and miscellaneous others.

The Ambassador would take people selected from these groups with him on his negotiating sessions. Those with him during the final round were James Wilson, Herman Marcuse, James Berg, Emmett Rice, Capt. Whelan, and Ed Archer.

It is my understanding that Mr. Willens was recently in Saipan advising the Northern Mariana Islands Constitutional Convention in their efforts. This Convention has recently completed its work. A proposed Constitution has been prepared and will be presented to the people for approval, probably this Spring. A copy of Article IV of the proposed Constitution dealing with the Judicial Branch, is enclosed. ✓ 2.

With regard to the amendment to the Judiciary section of the Guam Organic Act, it is my understanding and belief that this was almost entirely a local Guamanian product. Of course, they may have had some advice and assistance from stateside sources. For example, the Washington law firm of Hogan & Hartson represents Guam in several matters, and they very well may have helped out. Of one thing I am certain, I had absolutely nothing to do with preparing the legislation, and I am reasonably certain that no one from the Department of Justice was in the act.

The first time, the Department of Interior got into the act was after the bill had been introduced into Congress, and we were asked for our comments. Previously, Tony Won Pat, the elected non-voting delegate to Congress from Guam, had asked me for my views on a very rough draft. I advised him as I later testified before the House Judiciary Committee, the Department of Interior had no objections so long as the bill reflected what the people of Guam wanted, in which case it was entirely up to the Congress.

So far as I am aware, the Department of Justice similarly was asked for its views, and, except for making some recommendations for amendments to

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clarify Federal jurisdiction and removal, they took about the same position as we did. I believe there is a letter in the record to that effect.

It was always my understanding, not because of personal knowledge, but because it was the normal course to follow in such cases, that the proposed bill had been cleared through the Administrative Office of the U.S. Courts.

Now, however, the bill is dead, and, before it is revived, I hope you and I will have a chance to exchange views; particularly as they may relate to expanding the jurisdiction of the District Court of Guam (should we change the name to the District Court for our Western Pacific Territories?) to include the incipient Commonwealth of the Northern Mariana Islands.

In the meantime, I intend to proceed with my initiative to provide for certain appeals from the High Court of American Samoa to the Ninth Circuit by way of a writ of certiorari. Incidentally, in that regard Justice Robert Hefner sent me a copy of his letter to you concerning the legal authority for such a proposal. I am enclosing, for your information a memorandum prepared by a young lawyer which, among other things, addresses itself to that question; although more broadly, it addresses the question of the constitutionality of exempting from our proposed appellate process Samoan land and title matters. ✓ 3

Please let me know if I can be of further help to you and your Committee.

Merry Christmas and a Happy New Year!

Sincerely yours,

C. Brewster Chapman, Jr.
Assistant Solicitor, Territories
Division of General Law

3 Enclosures

As stated

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CBCHAPMAN, JR.: lb:12/20/76

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