Memorandum

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cc: Cooper
Kmiec*
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Gerson
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Murphy
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Ret.

Subject: Investigative Authority of the Federal Bureau of Investigation in Certain Areas no Subject to the Sovereignty of the United States

Date: DEC 18 1986

To: Joseph R. Davis
Assistant Director - Legal Director
Federal Bureau of Investigation

From: Douglas W. Kmiec
Deputy Assistant Attorney General
Office of Legal Counsel

I am responding to your memorandum dated September 10, 1986, date stamped in this Office October 10, 1986, prompted by the investigative assistance given by your Bureau to the local authorities in the Trust Territory of the Pacific Islands in connection with the assassination of President Remeliik of Palau. You asked for advice on the jurisdictional basis for such assistance and asked for guidance on how to proceed should similar situations arise in the future.

On the basis of conversations with your Office of Congressional Liaison, we understand that your inquiry related to the basis of your investigative authority in the Trust Territory of the Pacific Islands, which at that time consisted of the Northern Mariana Islands, the Federated States of Micronesia, the Marshall Islands, and Palau. As we explained to your Office of Congressional Liaison, we delayed answering your inquiry in light of then-impending changes in the status of the Trust Territory which were bound to affect our response.

On November 3, 1986, the President issued Proclamation No. 5564 which determined that the Trusteeship of the Pacific Islands is no longer in effect with respect to the Northern Mariana Islands, the Federated States of Micronesia, and the Marshall Islands. As the result of that Proclamation, the Northern Mariana Islands have become a Commonwealth in political union and under the sovereignty of the United States, while the Federated States of Micronesia and the Marshall Islands have become self- governing Freely Associated States that are not under sovereignty of the United States, and in which the authority of the United States extends in general only to matters of security and defense. The Trusteeship, however, has remained in effect with respect to Palau. In view of those developments the legal authority for your activities in these areas is as follows.

1. Commonwealth of the Northern Mariana Islands.

The Northern Mariana Islands are under United States sovereignty. Your authority therefore is essentially based on 28 U.S.C. 533, 534, 28 C.F.R. § 0.85 as in any other part of the United States. We should point out, however, that not all federal statutes apply to the Northern Mariana Islands, the principal exceptions being statutes applicable to intra-state commerce and immigration. Finally, you also have investigative jurisdiction in appropriate cases pursuant to 18 U.S.C. 7 and 13 over crimes committed on the lands made available to and utilized by the United States pursuant to section 802 of the Covenant to establish the Commonwealth of the Northern Mariana Islands, 48 U.S.C. 1681 note.

2. Federated States of Micronesia and Republic of the Marshall Islands.

These two areas have basically the status of independent countries. The United States, however, has concluded two law enforcement agreements with those governments, copies of which are attached, which authorize certain investigative activities by your Bureau in those areas. In addition, Section 202 of the Joint Resolution to approve the Compact of Free Association of January 14, 1986, Pub. L. 99-236, 99 Stat. 1835, places the defense sites in the Federated States of Micronesia and the Marshall Islands under the special maritime and territorial jurisdiction of the United States as set forth in 18 U.S.C. 7, with respect to U.S. citizens and resident aliens. At present such defense sites are located only on Kwajalein Atoll.

3. Palau

The Trusteeship remains in effect with respect to Palau. In our view, the strongest authority for your conduct of investigative functions in that area is section 3 of Executive Order 11021 of May 7, 1962, pursuant to which the executive departments and agencies of the Government shall cooperate with the Department of the Interior in the effectuation of the provisions of that Order, which charges the Secretary of the Interior, with the responsibility for the administration of the Trust Territory. The authority for the issuance of Executive Order 11021 derives from the Joint Resolution of July 18, 1947, 61 Stat. 397, which authorized the President to approve the Trusteeship Agreement for the Pacific Islands; section 3 of that Agreement confers on the United States full powers of administration, legislation, and jurisdiction over the territory. 61 Stat. (Part 3) 3301, 3302.

We hope that this response to your inquiry is sufficient. Please do not hesitate to get in touch with us should any further questions arise.