February 25, 1953

Honorable Jose Trias Monge
Attorney General
San Juan, Puerto Rico

Dear Pepe:

As I have discussed with you by telephone, and as I believe Fernos has discussed with the Governor, we ran into a great deal of difficulty at the Department of State.

The difficulty was entirely initiated by Mrs. Fleming in the office of the Legal Adviser of the State Department. The position of the Legal Offices has boiled down to this: They believe that the changes that Fernos and I proposed on January 30, to the draft of January 27, commit the State Department to the view that there is a compact between the Government of the United States and the Commonwealth of Puerto Rico. They say that it is equally arguable that there is something "in the nature of a compact" and they do not want to take a position on the subject. Fernos and I have discussed the matter with Mr. Tate, Assistant Legal Adviser in charge, Mrs. Fleming and other officials of State as well as Interior. Fernos, subsequently, at my suggestion, had a personal talk with Tate who took him in to see Mr. Phleger, the new Legal Counsel of the State Department. I today talked with Gerig who tells me that the consensus at the Department is that the memorandum should be revised so as to eliminate any characterization of the status of Puerto Rico in respect of whether there is a "compact" or something "in the nature of a compact".

Although Mrs. Fleming raised a great many other points -- most of them transparently unsound -- I gather that the compact controversy is the only real issue.

I repeated to Gerig the strong statements that I have previously made to Tate and others, namely: that in my opinion, unless the line were maintained as to "compact" -- or at least, unless some meeting of the minds between the Governor of Puerto Rico and the State Department were secured, the Governor might feel it necessary to consider a request that the notification to the U.N. be withdrawn. I stated that although I could not speak for the Governor, I myself felt that a serious question might be raised as to whether Puerto Rico had the requisite degree of self-government unless it were
agreed that a compact existed. Although I feel that Mrs. Fleming would prefer to take the position that there is no compact, other officials of the State Department insist that they do not pass upon this question; that they hope that the legal effect is that a compact exists; but that they do not wish to put the State Department on record in the matter.

Gerig told me that his staff was working on some revisions of the January 30 draft. I told him that I assumed that nothing would be sent forward as a State Department memorandum without the concurrence of the Governor of Puerto Rico, and he seemed to agree. I also told him that I had made notes as to a possible revision, and that I would send them on to him. The reason for this is that I am confident that, left to their own devices, the Department will produce a document with which we cannot agree. I emphasized to him that the notes I would send to him should not be regarded as coming to him officially; that I had no authority to modify or propose modification of the January 30 draft; that any change on the "compact" issue in the January 30 draft might be rejected by the Governor with the serious consequences which I have described; but that I would send my notes along merely for his assistance.

My draft of the notes is enclosed, keyed to the paragraphs of the January 30 draft. Fernos is due here this afternoon, and if he agrees with my suggestions, I will send them along to Gerig. If not, I will communicate with you further.*

Fernos tells me he is going to Puerto Rico Saturday night and he wishes me to come down as soon thereafter as possible in order to discuss legislation and possibly the U. N. situation. I shall make every effort to do so and will advise you of my plans.

My warm regards.

Sincerely,

(signed) Abe Fortas

* Cleared in advance with enclosed draft

Enclosure