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STATEMENT OF  
THEODORE R. MITCHELL AND DONALD JUNEAU  
OF  
MICRONESIAN LEGAL SERVICES CORPORATION  
BEFORE THE  
COMMITTEE ON ENERGY AND NATURAL RESOURCES,  
96th CONGRESS,  
1st SESSION,  
ON  
H.R. 3756

October 10, 1979

## INTRODUCTION

We are honored to appear before your Committee on behalf of our Micronesian clients who have an interest in this important legislation.

The Micronesian Legal Services Corporation was founded nine years ago by a group of Micronesians, for the purpose of providing civil legal representation for those Micronesians who do not have the means to employ an attorney. We are wholly supported by the Legal Services Corporation which, as you know, is a creature of this Congress. With offices throughout Micronesia, our attorneys have assisted thousands of Micronesians with all manner of legal problems.

We are here today because of the interest of our clients in three of the provisions in this bill. We are counsel for the people of Enewetak, the people of Rongelap and the people of Utirik, who are all vitally interested in the radiological health and monitoring program which would be created by section 103.

We represented many Micronesians in proceedings before the Micronesian Claims Commission and we are counsel for the plaintiffs in the pending federal litigation which seeks to correct the injustices which resulted from the failure of the Micronesian Claims Commission to carry out its work in accordance with the clear statutory mandate of the Congress. On their behalf, we support passage of section 102.

Throughout Micronesia people have come to our offices to express concern and even consternation with the unilateral decision of the Department of the Interior to curtail and eliminate federal programs. In addition to providing very needed employment, many of these programs have increased the quality of education, improved the delivery of health care, and otherwise met needs which would never have been addressed by the ordinary Trust Territory programs. Thus, we support enactment of section 104.

We will now turn to a brief discussion of the Trusteeship Agreement, which is of course the fundamental basis of the presence of the United States in Micronesia, then we will discuss each of the three provisions referred to above.

#### THE TRUSTEESHIP AGREEMENT

The events leading up to the United States Trusteeship of Micronesia are very familiar to this Committee, as are the precise provisions of the Trusteeship Agreement itself. We briefly sketch that history and those obligations in order to provide an appropriate context for what we have to say about the specific provisions of the measure before this Committee.

In the immediate post-war period, while Micronesia was still administered by the United States Navy, the question of Micronesia's future was debated at the highest level of government. Advocates for annexation of the area argued the

imperative necessity of avoiding a recurrence of the surprise attack on Pearl Harbor. Others insisted that the area should be submitted to the trusteeship system which was to become part of the United Nations Charter. Ultimately, President Truman worked out a compromise which rejected annexation but resulted in the only trusteeship which permitted the administering authority to use the area for military purposes, a so-called strategic trust.

We have been unable to find any historical evidence of consultation with the Micronesians about their future, prior to establishment of the Trusteeship. The Trusteeship Agreement itself was drafted by the United States and ultimately approved in essentially the same form as originally submitted to the Security Council. 1 Whiteman, Digest of International Law 788 (1963); see also, H.Rep.No. 889, 80th Cong., 1st Sess. 3-4 (1947).

It would be hard to improve, nonetheless, on the language in Article 6 of the Trusteeship Agreement, which embodies the principal aims of the entire Trusteeship and the humanitarian obligations undertaken by the United States. Couched in mandatory terms, the United States agreed to:

Foster the development of such political institutions as are suited to the trust territory and shall promote. . . self-government or independent . . .

Give the Micronesians a progressively increasing share in the administrative services in the territory . . .

Develop their participation in government . . .

Give due recognition to the customs of the Micronesians . . .

Promote the economic advancement and self-sufficiency of the inhabitants.

Improve the means of transportation and communication . . .

Promote . . . social advancement.

Protect the health of the Micronesians . . .

Promote the educational advancement of the Micronesians.

The juridical status of the Trusteeship Agreement has been the subject of litigation in the federal courts three times. In 1958 the United States District Court for the District of Columbia, in an action brought by Dr. Linus Pauling and Dwight Heine, refused to enjoin the Hardtack series of nuclear weapons tests at Enewetak. Pauling and Heine argued that the detonation of the nuclear weapons would "produce radiation or radioactive nuclei [which] will inflict serious genetic and somatic injuries upon [the] plaintiffs and the population of the world in general, including unborn generations." Pauling v. McElroy, 164 F. Supp. 390, 392 (1958).

Among other things, Pauling and Heine argued that the nuclear testing program was a violation of the Trusteeship Agreement. The court disagreed and dismissed their complaint. On appeal, a panel of judges which included now Chief Justice Warren E. Burger, disposed of the matter on different grounds, holding that the plaintiffs did not have standing to bring the lawsuit in the first place. Pauling v. McElroy, 278 F.2d 252 (D.C. Cir. 1960), cert. denied, 364 U.S. 835 (1960). A similar attempt by the same plaintiffs to accomplish the same purpose was also rejected in 1964. Pauling v. McNamara, 331 F.2d 796 (D.C. Cir. 1964).

The first case to squarely reach the question of enforceability of the terms of the Trusteeship Agreement was People of Saipan v. U.S. Department of the Interior, 356 F. Supp. 645 (D. Hawaii 1973), aff'd. as modified, 502 F.2d 90 (9th Cir. 1974). The United States Court of Appeals for the Ninth Circuit held that:

The preponderance of features in this Trusteeship Agreement suggests the intention to establish direct, affirmative, and judicially enforceable rights.

\* \* \*

Moreover, the Trusteeship Agreement constitutes the plaintiffs' basic constitutional document. . . . 502 F.2d at 97-98. The Government sought review of this decision in the United States Supreme Court, but was refused. 420 U.S. 1003 (1974).

Thus, this Trusteeship Agreement which was written by the Executive and approved by the Congress, gives rise to an affirmative obligation on the part of the Executive Branch to fulfill the purposes of the Trusteeship Agreement. For a failure to do so, the Executive can be held accountable to the Micronesians, in the federal courts.

We believe that sections 102, 103, and 104 of H.R. 3756, if enacted, will make an important contribution to fulfillment of the obligations of the United States under the Trusteeship Agreement.

SECTION 103 -

RADIOLOGICAL HEALTH AND ENVIRONMENTAL  
MONITORING PROGRAM

We applaud the inclusion of this radiological health and environmental program in the legislation and strongly recommend its approval by this Committee, with some relatively minor modifications which we offer in the hope of improving the program somewhat.

The plight of the peoples of Bikini, Enewetak, Rongelap and Utirik is very well known to this Committee and need not be recounted by us in any detail. It may be helpful, however, if we briefly describe the circumstances of each as it relates to this program.

The atolls of Bikini and Enewetak were used by the United States in its nuclear weapons testing program during the

period from 1946 to 1958. At Bikini there were a total of 23 nuclear tests conducted, most of them on barges anchored either in the lagoon or on the exterior reef. Normally there would not have been very much radioactive contamination of the land surfaces of the atoll, but on March 1, 1954 there was considerable radioactive fallout from the thermonuclear explosion known as the Bravo test of the Castle series. This was the second experimental thermonuclear device constructed and detonated by the United States, the first having been the Mike explosion of the Ivy series at Enewetak in 1952.

These atolls had been chosen, among other reasons, for their remoteness and the prevailing northeasterly winds, but on this occasion there was an unfortunate "combination of circumstances involving the energy yield of the explosion, the height of burst, the nature of the surface below the point of burst, the wind system over a large area and to a great height, and other meteorological conditions." S. Glasstone, ed. The Effects of Nuclear Weapons 464 (rev. ed. 1962).

In particular, the upper level wind direction was miscalculated and substantial amounts of radioactive fallout were deposited on the eastern rim of the Bikini atoll and significant amounts were detected as far away as 300 miles east of Bikini. Id. 462. Within the first 96 hours following the detonation, Bikini island at Bikini atoll received at least 2100 roentgens. Id. 462.

After their removal from Bikini, the people were taken to various places including Rongerik and Kwajelein, but eventually were resettled at the exceedingly inhospitable island of Kili in the southern Marshalls, a very small place without a lagoon. Such efforts as the government has made to fulfill the wish of the people of Bikini to resettle their atoll have been marked by poor coordination among the relevant executive agencies, poor planning and even more disappointing execution. The people of Bikini have never actually excepted the return of the atoll from the United States, because they have never been satisfied that everything that can reasonably be done to clean up the atoll and redevelop it has been done. After the resettlement of the atoll by a few Bikinians nearly 10 years ago, the atoll was ordered evacuated last August by the Department of the Interior, putting the entire project right back where it started in 1968 with the announcement by President Lyndon B. Johnson that the people would be resettled to their homeland.

During the time those few Bikinians were living at Bikini atoll, they received some radiation exposure, but the Department of Energy has never published a scientific or technical report on the matter. As we have said, we are not counsel for the people of Bikini, but we are informed that they have a strong desire to return to and resettle Bikini atoll.

The People of Enewetak

The people of Enewetak were unceremoniously removed from their atoll on December 21, 1947 and taken directly to Ujelang atoll where they have lived to this day. In their absence, 43 nuclear tests were conducted at Enewetak atoll, including the world's first thermonuclear explosion on November 1, 1952, the Mike test. That explosion and the later Koa explosion completely "vaporized" three islands.

The decision to permit the return of the people to their atoll was announced in 1972. An elaborate program for the clean-up, rehabilitation and resettlement of the atoll has been underway for several years and is, in fact, scheduled for completion in the spring of 1980. The clean-up program, conducted under the auspices of the Defense Nuclear Agency, is an outstanding success and we have enjoyed a very productive and cooperative relationship with the Director of the Defense Nuclear Agency, Vice Admiral Robert R. Monroe, and his staff. The program has exceeded all original objectives.

This Committee was kind enough to authorize the rehabilitation and resettlement program for Enewetak atoll in 1977. That program, under the auspices of the Department of the Interior, has gone reasonably well.

Return to Engebi

The Enewetak resettlement program, as currently planned, does not include resettlement of Engebi island, the traditional

community of the Engebi subgroup. Last month, in a meeting at Ujelang atoll, the people of Enewetak decided that for their part they would like to reestablish the Engebi community. Their decision has been communicated to this Committee and more detailed information will follow in due course.

Radiological Needs of Enewetak  
and Bikini

The needs of the people of Bikini and Enewetak are approximately the same. We do not expect anyone in either group to receive anything like a large dose of radiation. On the other hand, the natural environment at both atolls has been studied considerably and deserves further study in order to increase understanding of the concentration of the radionuclides and their behavior in the ecosystem. Of special significance is the movement of the radioactive materials from the soil, through the food web, to man.

What is believed about ionizing radiation sometimes bears little relation to what is actually known by those knowledgeable in field. This is and can be a rather complex and troublesome problem. Even if there may be no danger whatsoever, or a danger so slight that it gets lost in the ordinary dangers of everyday life, a person living at Bikini or Enewetak could become unnecessarily worried. A person might simply begin to worry about it. At the same time, radiation is the subject of considerable public debate, world-wide, including in the Marshall Islands, and is likely to continue to be so for many years

to come. The people of Enewetak and Bikini are certain to be affected by that kind of public debate. Some will advocate that radiation constitutes no danger at all. Others will express great alarm and fear with even that amount of radiation which is quite naturally part of the environment anywhere in the world.

The private worry and anxiety and public embarrassment can be very real individual problems, in the absence of any detectable health effects. The only solution is true understanding and an education program to impart that understanding.

#### The People of Rongelap and Utirik

The cloud formed by the Bravo explosion at Bikini atoll in 1954 was carried by the winds so far eastward that it deposited significant amounts of radioactive material at the atolls of Rongelap, Ailinginae and Rongerik. At its eastern-most extension, there was fallout at Uterik atoll. Since there were no measuring instruments on those islands at the time, the precise dosimetry is not available, but various personnel were sent to each of those islands within about two days to arrange for evacuation of the people and to attempt to determine the extent of radiation exposure.

Deposition of radioactive material varied considerably from atoll to atoll and among the islands at each. The

northwestern part of Rongelap received at least 3,300 roentgens during the first 96 hours of fallout from the cloud, while across the atoll amounts as low as 170 roentgens were measured. The people of Rongelap, who were living in the south, are estimated to have received a dose of "up to 175 roentgens before they were evacuated." S. Glasstone, ed., op cit. 463. This was the estimated whole body exposure to gamma radiation. At Utirik the whole body gamma exposure was estimated at 14 rads. R.A. Conard, A Twenty-Year Review of Medical Findings in a Marshallese Population Accidentally Exposed to Radioactive Fallout 11 (Brookhaven National Laboratory 1975) [hereinafter referred to as "Brookhaven Report"].

At Rongelap, within 4 to 6 hours after the Bravo explosion, the radioactive ash began to reach the ground. To these people of the tropics, the strange, snowlike material fluttering down from the sky gave no hint of its true nature. Children played in it as it collected in large amounts on the ground. The curious touched it and tasted it in an effort to understand this heretofore unknown phenomenon.

At Ailinginae and Rongerik, 4 to 8 hours after the explosion, radioactive fallout of a mistlike quality was observed by the people.

The estimated dose of gamma radiation received by the people at these atolls was between 69 and 79 rads.

All in all, the effects varied with the amount of radiation dose received, with the greatest exposure at Rongelap and the least amount at Utirik. There were early acute effects at Rongelap, including skin burns, loss of hair, vomiting and depression of blood elements. Exposure of the thyroid gland occurred in people at Rongelap, Ailinginae and Utirik from gamma radiation during the initial fallout and from other radionuclides ingested with food and water. Brookhaven Report 5-10.

Because of the latency period between exposure and the onset of cancer and genetic effects, it is reasonable to be concerned about health effects in the Rongelap, Ailinginae and Utirik populations for some time to come. This is also true if there is residual radiation at those islands which could result in exposure via food.

#### Biological Effects of Ionizing Radiation

In this country the standard work on the subject of human health effects as a result of radiation exposure is a report entitled, The Effects on Populations of Exposure to Low Levels of Ionizing Radiation. This report was prepared by the prestigious National Academy of Sciences Advisory Committee on the Biological Effects of Ionizing Radiations in 1972, after thorough review of all of the scientific data available. We shall refer to this Committee as the "BEIR Committee" and its report as the "BEIR Report."

The BEIR Committee studied the effects of long-term, low-level radiation exposure. With the exception of the acute effects suffered by the people of Rongelap in the weeks and months immediately following their exposure, the information and findings of the BEIR Committee are relevant to the conditions at Rongelap, Ailinginae, Rongerik, Utirik, Bikini and Enewetak.

From the BEIR Report we learn that there are two principal concerns that one should have about radiation exposure at low levels. First, although the precise mechanisms are not understood, it is known that radiation increases the risk of cancer and of genetic abnormalities. BEIR Report 46-48, 86. Second, the relation between the amount of radiation to which one is exposed and the risk of ill-effects is such that even small amounts of radiation can cause harm. BEIR Report 51, 64, 89.

Radiation does not create any new health problems. Both cancer and birth defects are known to occur in conditions where nothing more than background radiation is present. It is also observed that any number of nonradioactive substances can play a part in causing both cancer and genetic defects. Radiation simply increases the risk of cancer and genetic defects, but because the underlying biological mechanisms are not fully understood, the precise role of any form of carcinogen or mutagen cannot be fully understood.

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But because of the great value we place upon human life and health, the BEIR Committee recommends the use of the linear hypothesis for the purpose of estimating health risks associated with radiation at low levels. Simply put, this means that for a given unit dose of radiation exposure, a given health effect can be expected and as the dose increases or decreases, the likely effect changes in direct proportion.

One more observation is important to this topic of the health effects of radiation. A cancer or a birth defect which may have in fact been induced by ionizing radiation, that is, without the presence of the radiation it would not have occurred when it did, is indistinguishable from the same type of cancer or the same type of birth defect which has occurred spontaneously. BEIR Report 46, 86. Until there is a full scientific understanding of the human organism, the link between radiation and deleterious health effects is a statistical one. The ill effects are observed as an increase in the otherwise normal rate of gene mutations, chromosomal aberrations, and malignant tumors.

Thus, if the normal incidence of cancer and birth defects in these Marshallese populations is the same as that observed in the United States, we can expect approximately 15% of the people to die of cancer and 11% of the live births to be afflicted with some kind of genetic anomaly. As a result of the radiation exposure at Rongelap, Utirik and

Bikini, and any exposure which may occur at Enewetak, however slight, we can expect the incidence of these conditions to increase in direct proportion to the amount of the exposure. BEIR Report 58-60, 87-91.

#### The Sources of Ionizing Radiation

The sources of ionizing radiation with which we are concerned here are of two kinds. First, the relatively brief, high exposure of the people as a result of the fallout from Bravo. Second, the long-term, low-level exposure at all of the islands from terrestrial sources of radiation and, of greater significance, the internal exposure of residual radiation via the food web.

For those who received relatively high exposures, there is nothing to be done but observe and treat any ill effects that may have resulted from the initial exposure. Future potential doses through the diet, however, are subject to modification, if enough is known about the environmental sources of the radiation and the movement of the radionuclides through the food web.

#### Summary of Needs

It seems to us that, in varying degrees, the people of Enewetak, Bikini, Rongelap and Utirik have the same needs. They are four-fold:

(1) There is a need for medical screening and comprehensive health care. In one way the medical needs of the people varies in direct proportion to the amount of the exposure, for the reason that the health effects are directly proportional to the dose. In another way, however, even those who have or will experience low to exceedingly low doses, can still have worries and fears and can be the object of unrealistic fear on the part of others, as lepers were once feared.

Thus, the people at Utirik, or the people at Enewetak, for example, may need medical screening in an effort to establish the absence of any serious problem.

(2) As a result of the nuclear weapons tests, there is radiation in the environments of each of these atolls and there is simply no way to remove it. It can be studied and understood, however, and the information derived can be used to estimate the risk to the people and develop any protective measures which appear to be necessary.

This is the means by which the radiation will be discovered and understood before it finds its way into the human being, so that measures can be instituted to reduce or prevent exposure.

(3) From time to time it will be necessary to take all that is known about the presence and transport of the radionuclides in the environment, to put that together

with what is known of the diet and living patterns of the people, and perform what the scientists call a "dose assessment." This is an exceedingly elaborate process which attempts to take measurements and perform calculations so as to predict the future exposure. Only by this means can one make a judgment whether it is within acceptable limits, or whether some protective measures must be undertaken.

(4) Unfortunately perhaps, the people of these islands cannot afford to be ignorant about radiation. They must understand a fair amount about the physics of radioactive materials, they must be educated about radionuclides in the environment and they must be informed about the health effects of ionizing radiation.

At Bikini and Enewetak we would expect the program to give greater emphasis to environmental study, dose assessment, and education. At Rongelap all four elements would receive equal, high emphasis.

For those who need medical care, such as the people at Rongelap, it makes no sense to try to take care of only what is thought to be their "radiation-related" problems. As we have said, there is no way to search for and find the problems which may have in fact resulted from the radiation and distinguish those from any others. Nor is it humane for a health care program serving Rongelap to examine the patient for a thyroid

problem or a tumor and ignore the patient's diabetes, or polio or broken arm. At the same time, medical attention which is not justified can do more harm than good, because it makes the people think that there is something seriously wrong when that is not the case at all. It creates what is referred to as the "worried well" syndrome, which has been a serious problem for the delivery of medical care in this country. S.R. Garfield, et al., "Evaluation of an Ambulatory Medical-Care Delivery System," 294 New England Journal of Medicine 426 (1976). The consumption of health care services by those who are well and nevertheless worried, is a luxury which we cannot afford in a program of this kind. Furthermore, it is simply a way of creating a new and unneeded problem for the people themselves.

In order for the program to provide for each group and each atoll that which is appropriate, and no more, the entire program will have to be carefully and thoroughly integrated under centralized management. All four elements of the program are essential to all of the people concerned, but at the outset and over time the emphasis of each or several will necessarily vary.

#### Program Administration

Although the bill does not prescribe any particular structure for the management of this radiological program, we think that it will require both a group to set policy and

a clear staff organization for implementation and management of the program. Indispensable to success of the program is involvement of representatives of the people to be served. Representatives of each of the groups should be included in a formal way in both policy formulation and in the actual implementation of the program. Part of the educational effort should be to train and education a few people on each island so that they can educate others and assist in the actual work of the program.

In this connection, there is a very serious omission from subsection (b) (1), the provision which has to do with planning and implementation of the program. It completely overlooks the people of the islands affected by the program, while it enumerates the various governmental officials who are to participate. Surely this is an inadvertent oversight which can be remedied by the addition of a few words to provide for the selection of representatives from each of the islands.

Plan First, Execute Later

We strongly urge your approval of this provision in essentially its present form, so that the program will be authorized and can be eventually instituted. With equal force, however, we urge you to modify the language of section 103(b) (1), to provide a distinct planning phase during which

the governmental, scientific and Marshallese representatives will develop a program design. We think that this plan should be developed as quickly as possible and should be submitted to the Congress for its review and approval prior to the appropriation of funds.

The plan should include a detailed description of what the program plans to do for each group and for each atoll with respect to each of the four principal elements of the program. The governing body of the program and its organizational structure should be set out with clarity and careful cost estimates should be developed.

The development of the plan can and should be done in consultation with the relevant Committees of the Congress.

#### Summary and Recommendation

We think section 103 of H.R. 3756 is an extremely important piece of legislation, founded on humanitarian concern for some innocent people whose lives have been radically affected in one way or another by the nuclear weapons testing program. The United States used those Micronesian islands for nuclear testing so as to minimize the risk of harm to its own people. With little thought for the welfare of the native inhabitants, there were wholesale forced migrations, years of exile and actual exposure to radioactive fallout. Amends have been made in some ways and for that the people are deeply grateful. In a very real sense, this kind of long-

range, radiological program is the one thing which remains to be done. It is infinitely more valuable than the disbursement of even large amounts of cash. It would, if properly planned and wisely executed, provide the best and only remedies known to us, for the actual losses suffered by the people as a result of the testing program.

#### WAR CLAIMS

This Committee is eminently well informed about the Micronesian War Claims program, but we would like to touch upon one issue raised by section 102 of H.R. 3756, and support its approval.

You are familiar with the decisions of the United States Court of Appeals for the District of Columbia, holding that the Micronesian Claims Commission utterly failed to adjudicate the claims of Micronesians in the manner prescribed by this Congress. Ralpho v. Bell, 186 U.S.App.D.C. 368, 569 F.2d 607, reh. denied, 186 U.S.App.D.C. 397, 569 F.2d 636 (1977); Melong v. Micronesian Claims Commission, 186 U.S.App.D.C. 391, 569 F.2d 630, reh. denied sub nom Ralpho v. Bell, 186 U.S.App.D.C. 397, 569 F.2d 636 (1977). We have provided members of the Committee and your staff with copies of the eloquent opinions in those cases, written by Judge Spotswood W. Robinson, III.

Those actions were brought by Ralpho and Melong on behalf of all of the Micronesians who had been similarly ill-treated

by the Micronesian Claims Commission. Instead of receiving each claim and the evidence to support it, and making a judgment based upon the merits of each case, the Commission at the very outset of the program set up arbitrary values for every conceivable kind of loss. It then proceeded to grind out the decisions one after another in exactly the same amounts, without regard to the specific losses suffered by each claimant, despite the clear statutory mandate that the Commission was to "render final decisions in accordance with the laws of the Trust Territory of the Pacific Islands and international law." 50 U.S.C.App. §2019c(a).

When the plaintiffs in Melong and Ralpho were successful on appeal, the cases were remanded to the District Court, where for the first time the class action issue was reached by the trial judge. Despite the fact that all of the Micronesian claimants had received the same standardized mistreatment by the Commission, the District Court denied relief for anyone other than those who had actually been named in the complaint. We have appealed that decision, the briefs are all in for both sides and we expect the Court to hear the appeal sometime in the next few months. Copies of our briefs and the briefs filed by the government have been provided to this Committee.

We are aware that two years ago, in its deliberations upon the Omnibus Territories Act of 1977, this Committee felt that because of the pendency of this litigation, legislation

to pay the outstanding and unpaid final awards of the Micronesian Claims Commission should not be enacted. S.Rep.No. 95-332, 95th Cong., 1st Sess. 7 (1977). We must respectfully disagree with this conclusion. In the original legislation, a total of \$10 million was available for the payment of awards under Title I, for losses suffered during the actual hostilities. 50 U.S.C.App. §2019(a). One-half was a contribution from Japan and the other one-half was contributed by the United States. The total of all claims filed by Micronesians under Title I is about \$2.5 billion. 1976 FCSC Ann. Rep. 102. The total amount awarded by the Commission was only \$34.3 million, or 98% less than the total of all claims. Id.

Under Title II, the total amount claimed was about \$11.1 billion. Id. The total of all awards granted by the Commission under Title II is \$32.6 million, a difference when compared with the total amount claimed of over 99%. Id.

To a great extent, the disparity between the amount claimed and the amount awarded is the result of the arbitrary manner in which the Commission ignored solid evidence and the applicable legal measure of damages. That is the issue which is being litigated by our clients. If they are successful, each and every claimant who elects to do so must be given the opportunity to have his claim reopened, properly heard and correctly decided. This can only result in an increase in the total amount of the awards.

It seems to us that the awards of the Commission which are outstanding and unpaid are a bare minimum of the actual amount of the losses suffered, which the Micronesian Claims program was intended to compensate. Payment of these losses by the United States was, to be sure, ex gratia and we do not advocate approval of section 102 on any other basis than that it is the morally right and proper thing to do, just as was the original \$5 million appropriation. Enactment of the original program was seen as another way of the United States to fulfill its "responsibility for the welfare of the Micronesian people" under the Trusteeship Agreement. 85 Stat. 92; 117 Cong. Rec. 18973-90 (daily ed., June 9, 1971).

In that same spirit, we urge you to authorize at least that amount of money necessary to pay the United States' 50% share of the outstanding, unpaid claims awards.

### FEDERAL PROGRAMS

Section 104 of H.R. 3756 would prohibit the executive branch of the United States from reducing any federal program before or after the termination of the Trusteeship. This section is a reaffirmation of the positive promises of the Trusteeship Agreement. It is especially necessary now, in view of the unilateral decision of the Department of the Interior to reduce and terminate all federal programs by 1981, the year when it is proposed that the Trusteeship will end.

#### The Unilateral Decision

There is no doubt that it is now departmental policy at Interior to curtail and eliminate all the federal programs in Micronesia. On December 8, 1978, during a radio interview, Ambassador Peter Rosenblatt stated: "Federal programs will end with the Trusteeship with the exception of a few technical programs to be identified in our compact with the Micronesian governments." And in a letter dated February 27, 1979, Interior Under Secretary James A. Joseph told then H.E.W. Secretary Califano that the Interior Department "will not seek or recommend new authorization for Federal programs to

be extended to the Trust Territory," will request other Federal agencies not to increase their existing programs to the Trust Territory" and will eliminate or phase out the existing federal programs.

This decision has raised a storm of protest from citizens and elected political leaders of the Trust Territory. For example, the Speaker of the Congress of the Federated States of Micronesia, the Honorable Bethwel Henry, in a letter to Interior Secretary Andrus dated July 17, 1979, stated that "there is no provision in [the Trusteeship Agreement] that would justify a phasing-down of programs which promote the economic and educational advancement and the health of the inhabitants of the Trust Territory during the life of the Agreement." There have also been numerous resolutions, petitions and memorials from various Micronesian groups and associations. There has been no meaningful response to any of this by the Department of Interior.

#### The Programs Cut

The reductions can be briefly summarized. As of Fiscal Year 1979, \$21,395,664 was budgetted for the federal programs in Micronesia; Fiscal Year 1980, \$12,091,622, a reduction of 43%; and Fiscal Year 1981, the supposed last year of the Trusteeship, \$9,489,622, a reduction of 22%.

There are approximately 77 categorical federal programs now operating in the Trust Territory. A list of them, and a program description of each has been provided to this Committee

for its perusal. Also provided is another list of programs which sets out how each is to be terminated.

The programs are addressed to concerns in social welfare, health, education and culture, and to merely read their names is to see how the programs are part of the specific performance by the United States of its promises in the Trusteeship Agreement.

Education Programs

For example, in the area of education, there was \$945,651 in Fiscal Year 1978 for Bilingual Education under Title VII of Elementary and Secondary Education Act, \$527,608 for Fiscal Year 1979, and none for 1980 and 1981. Another example is the scaling down of three different programs for the handicapped.

Vocational Rehabilitation

FY 1978	FY 1979	FY 1980	FY 1981
\$400,000	400,000	0	0

Vocational Rehabilitation Innovation and Expansion

FY 1978	FY 1979	FY 1980	FY 1981
\$ 50,000	50,000	0	0

Education for the Handicapped

FY 1978	FY 1979	FY 1980	FY 1981
\$732,554	732,554	400,000	400,000

The Trusteeship Agreement obligates the United States "to promote the education advancement of the inhabitants, and to this end [the United States] shall take steps towards the

establishment of a general system of elementary education; facilitate the vocational and cultural advancement of the population; and shall encourage qualified students to pursue high education, including training on the professional level." 61 Stat. 3303 (1947).

#### Health Programs

In the area of health, where the United States in the Trusteeship Agreement promised to "protect the health of the inhabitants," 61 Stat. 3303, there was \$302,374 budgeted for Maternal and Child Health for Fiscal Year 1978, \$575,800 for Fiscal Year 1979, \$475,000 for Fiscal Year 1980, and \$375,000 for Fiscal Year 1981, a yearly decline of \$100,000. The Comprehensive Public Health Service grant of \$413,500 for Fiscal Year 1979 would be reduced to \$400,000 for each of Fiscal Years 1980 and 1981.

#### The Right of Self-Determination

There are numerous other specific examples. But there is a more fundamental problem here. Before stating it, it is important to realize that these programs are not exercises in altruism, that we are not dealing here with eleemosynary activities on the part of the United States, that the people of Micronesia are not mendicants. The United States drafted the Trusteeship Agreement which gave it the right to establish military bases and station armed forces in Micronesia (see

Article 5 of the Trusteeship Agreement, 61 Stat. 3302). In return for this, it imposed upon itself the series of specific obligations which we set forth at the outset. Paramount among these is the promise to foster the development of political institutions in the Trust Territory, and to promote the development of the people of the Trust Territory toward self-government or independence. Towards this end, the United States agreed to give to the people of the Trust Territory a progressively increasing share in the administrative services and develop their participation in government.

This new policy of the Department of Interior is a retrograde step against the development of democratic institutions in the Trust Territory, since in effect it says that it will decide what is and is not good for the people of Micronesia. It also will put the fledgling governments in Micronesia on a weakened basis, at one of the most crucial times of nationhood, that of birth. It is hard to think of a more undemocratic and anti-democratic act by the Interior Department, especially in view of the consistent support Congress has given the people of Micronesia by extending these federal programs to the Trust Territory.

#### Violation of Congressional Policy

The decision by the Department of Interior to terminate the federal programs in the Trust Territory also violates the constitutional power vested in Congress to appropriate

mopies, and it is further a discriminatory act depriving the people of Micronesia of equal protection of the laws, in violation of the Due Process Clause of the Fifth Amendment to the Constitution.

The Human Consequences

The effect of the policy is not only destructive of the developing political institutions in the Trust Territory, but it has a devastating impact upon the human beings who are the beneficiaries of these federal programs. A sworn statement by one of our clients, Teresita Gilibpin of Yap, is a poignant example of this. Ms. Gilibpin has a seventeen year-old son who is enrolled in the Yap Vocational Rehabilitation Program because his left leg was amputated at the hip. Vocational Rehabilitation was to have terminated at the end of September last. Ms. Gilibpin's affidavit says:

If the program is eliminated in September of 1979, as is projected, my son is likely to suffer greatly. Sometime in late July my son is scheduled to visit Majuro Hospital, Marshall Islands, to be measured for a prosthetic device. In that the program will soon be terminated, his scheduled trip to the Marshalls may be cancelled. Even if he is successfully measured for the prosthetic device, the program may not be able to order it before its scheduled termination.

Even if he is measured for, and does receive the prosthetic device, he will only be in the middle of his comprehensive plan, which calls for continued medical evaluation, counselling services, and a new prosthetic device if he continues to grow at the same rate that he has been growing.

#### A Recommendation

Since the many federal programs which have been reduced or eliminated have such far reaching effects, we think it is imperative that this Committee condemn the unilateral decision of the Department and call upon the Secretary to appear before it in a special hearing to explain his actions. Let him provide detailed information on precisely which programs are being curtailed and the exact effects of such reductions.

If any federal assistance programs are to be denied to Micronesia, let that be a decision of the Congress, after due deliberation, not a decision in camera by the Secretary of the Interior. He has abused his discretion. Let his powers be curtailed accordingly.

#### CONCLUSION

Thank you very much for the opportunity of appearing before this Committee. We will be happy to confer with you or your staff upon request.