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Kaleb Udui & Micronesian Delegation
 Park Central Hotel
 Washington, D.C.

Dear Kaleb et al:

You have asked me the answer from my research some 19 questions. I shall try to, shortly, but first I shall try to point out a basic issue or two, to which I do not think you are paying sufficient attention:

A. I have tried to say to the Status Committee and Congress previously, that I do not think the U.S. Congress has the power to enact a Constituent Act or draft a Constitution for Micronesia. I think the whole present procedure should be looked upon as merely preliminary negotiations as to what the U.S. will accept. Let me briefly outline this:

Charter of the U.N., Ch. XI, Art. 73, Ch. XII, Arts. 75-85 makes it clear that Trusteeship territories are under and controlled by the U.N. The Trustee is merely allowed to administer under contract. Art. 87 states the actions the General Assembly (Security Council) and Trusteeship Council can take, including "other actions in conformity with the terms of the trusteeship agreements".

The Trusteeship Agreement states that the territory is hereby "placed" under the trusteeship system and the U.S. is "designated" as the administering authority.

The administering authority may make laws of the U.S. applicable "subject to any modifications which the administering authority may consider desirable", but this is for current operations, not to change the trustee agreement.

Art. 6 requires the trustee to promote "self government or independence" and Art. 14 requires the trustee "to applyinternational conventions and recommendations" to achieve the objectives of Art. 6. The U.N. Trusteeship Council and Security Council for the past three years have recommended independence and self government.

Art. 16 makes it clear that the trusteeship is by agreement between the U.N. and the U.S. Now, normally, the U.N. might terminate a trusteeship without the consent of the U.S. In Art. 15 it is said: "the terms or terminated without the consent of the administering authority (U.S.)". Now, I read that as meaning that no part of the agreement can be changed without U.S. consent. I do not read it as meaning that the Trusteeship cannot be brought to an end under Art. 6 without U.S. consent; for the very purpose of the Trusteeship is to terminate under Art. 6 and you are not altering, amending or terminating its terms but are fulfilling its terms when you give independence or self government. But if U.S. "consent"

is required, it is "consent" to U.N. action, not separate U.S. Acts.

The Joint Resolution of Congress and Congressional Enabling Act (48, Ch. 14 USC) merely authorizes the President to approve the Trust Agreement and continues the government of the Islands; it does not create the Trusteeship or transfer anything from the U.S. to Micronesia. Exec. Order 11021 recognized that the islands were "placed under the Trusteeship system....by means of a trusteeship agreement" and this would be served by placing civil authority in the Interior Department. All this emphasizes the U.N. as the source of authority and the U.S. as merely exercising delegated authority.

B. I have always thought that it was the President of the United States, who is charged with fulfilling our obligations in the United Nations, who should formulate what should be submitted to terminate the Trusteeship and set up Micronesian self-government or independents. (He may use Congress or any Department to study and recommend on this).

A very good Law Review Article in 66 Mich. L. Rev. 1277 faced this in 1968. The writer says, in part: "The Trusteeship agreement under which the TTPI is governed provides that the inhabitants of the islands must be allowed to choose their future form of government. Thus the question arises whether the President may formulate a program to determine the future status of the TTPI without obtaining prior congressional authorization." He then goes on to examine a great deal of law (and I have done further research) and concludes: "Given the trusteeship agreement's requirement that the inhabitants of the TTPI be given a choice of self-government or independence, the Executive is empowered and obligated to formulate a program--with or without congressional authorization--which will give them that choice. The Executive's authority to act alone is a consequence of his duty faithfully to execute our obligations under the trusteeship agreement and the UN Charter."

C. I have never thought that the future status of Micronesia was anything really to be negotiated with the United States (though certainly you will get farther ahead with its approval). Basically, the U.N. created the Trusteeship; and the U.N. will terminate it.

Therefore, questions such as whether the U.S. can sign a "treaty" with Micronesia, is to me beside the point. We went through that hassle with the American Indian cases; with the argument that the Indians were not recognized as "sovereign nations." It may be that beneficiaries of a trusteeship are not sovereign nations. But that is exactly where the difference has occurred due to modern international government (the U.N.). The U.N. is a recognized international government entity that stands in place of the Micronesians and executes the trusteeship on behalf of the Micronesians. Thus the Trusteeship was brought into existence, and thus it will be terminated.

On the accompanying pages you will find my answers to most of your questions. Research will continue on others.

Sincerely yours,

Harrop A. Freeman

HAF/pc

Mr. Freeman's Mandate

There are two documents spelling out Mr. Freeman's power to negotiate, sue, settle:

S.J.R. No. 52, which contains this authorization: "does hereby appoint and retain Professor Harrop A. Freeman of New York to represent, defend and enforce the rights and interest of the people of Micronesia".

The Original Retainer Agreement:

"Mr. Freeman is authorized to advance by all means available to him the Resolutions heretofore passed and filed or any other resolution, request, case or other act adopted or approved by the Micronesian Congress or the majority of Senators and Representatives of the Micronesian people; to file, advance and enforce any claim or claims or rights or interests of any or all Micronesian people and, or the Trust Territory of the Pacific; to negotiate, mediate, arbitrate or conduct suit thereon, any settlement being subject to confirmation by the Congress of Micronesia and not to be binding on any Micronesian people until so confirmed. Freeman shall report to an consult with the Congress or Congressman not less than once every six months and shall be governed by the instructions given him in writing by such Congress from time to time. No Micronesian individual, District officers or representatives, or Micronesian representatives shall settle any matter or claim covered by this agreement without consultation with and advice from Dr. Freeman.

"This retainer may be cancelled by either party in writing on thirty days notice, subject to protecting the rights of each party in all claims matters herein involved and for payment for any services rendered to the date of cancellation. But, this retainer shall not be cancelled by any other person acting or claiming to act on behalf of the Micronesian people other than the majority of the Congress of Micronesia, and Mr. Freeman need not respect any such attempted cancellation."

ESTIMATE OF CLAIMS

Perhaps it would next be helpful if we outlined how the estimate of amount of appropriate settlement was arrived at. Asteriks (*) indicates individual claims which should be paid to the Micronesian government so that it can settle with the individuals and save the United States harmless as has usually been done in such cases (e.g. U.S.-Japan agreement as to atomic damages).

Land Claims:

- 1) Individuals paid less on taking land than equitable amount \$10 million
- 2) Land taken for too extensive period e.g. 99 years Hotel, base, etc., depriving Micronesia of reversion and use rights (like eminent domain) \$120 million
- 3) Land kept out of use or used by the U.S. 1947-1970, claimed from the Japanese, taken by U.S., (declared unsafe (Saipan), etc.). Figured on use value for 20 years and about 40-50% of useable land area (224,000 acres X \$5,000 per acre = \$4,400 million; \$1,120 million value; rent at 1/10 - 1/5 per year = \$110-220 million X 20 years = \$2,200 to

4,400 million

- 4) Injury to land, beaches, seabed, use of sea, etc., by atomic, missile and military testing and use (Bikini, Enawetok, missile corridor, Kwajelein, etc.) \$300 million
- 5) Land claims against Japan pre 1945 (World War I, Mandate, World War II, etc.), which the United States should have negotiated as Trustee for the Micronesians, similar to above claims. \$4,000 million

Damage Claims

- *1) Individual persons damaged (dead, injured, property destroyed or injured). \$100 million
 - a) Claims against Japan - mandate period, war period
 - b) Claims against U.S. - war, post war, trusteeship periods
- 2) Claims for World War II damage, U.S. and Japan (computed on basis similar to other settlements, e.g. Thailand) \$400 millions
 - a) Included are injuries to property, beaches, seabed, etc.
 - b) Injuries to persons, break-up of families and culture structure, loss of population.
 - c) Exploitation or stagnation of economy.
- 3) Post World War II (Trusteeship) claims: Damages similar to (2) but occurring since the War. \$300 million
- 4) All other damages and claims not otherwise included (?)

Trusteeship Claims:

- 1) All claims not covered by the above and based on mismanagement of the Trusteeship, or on Trustee acting in violation of its trust. \$1,000 million
 - a) Failing to bring the Micronesians to self government and/or independence promptly
 - b) Self dealing in all its forms (e.g. military bases, atomic testing, etc)
 - c) Failure to provide adequate health education, AID and like assistance.
 - d) Threats to peace and security of Micronesia by including Micronesia in the American defense perimeter.
 - e) All other improper acts of trustee.