October 13, 1969

MICRONESIAN CLAIMS AND THEORY OF RECOVERY

In order that we may have a preliminary statement of Micronesian claims and theory it may be best to set forth the original advice (January 1969) to the Micronesian Congress on which Mr. Freeman's retainer is based; to supplement this with the assumption stated in June 1969, when the Political Status Committee appointed Mr. Freeman its Attorney.

Original Opinion to Micronesians January 1969

1) The Micronesian culture is a very close relationship of people, land and waters. Originally, the land was owned by the whole people. Much of the land was owned by the whole people; even when held by a chief, he held in trust for the people and could not alienate it from the people.

2) When Germany or its predecessors seized land, no valid title against the Micronesians passed, at least until and unless recognized by the World Community. Seizure of land, or acquisition of land under duress or for an inadequate consideration is frowned upon as outmoded imperialism (against which two great wars were fought).

3. When Germany was defeated in World War I, the World Community took back the land and governance from Germany and asserted the International Community's control on behalf of the Micronesians by mandating the territory to Japan. Japan acquired no rights except as trustee for the Micronesians.

4) When Japan tried to seize land and governance contrary to her trust, she was condemned by the United States and the International Community, and upon defeat by the Allies, the property and governance passed to the United Nations through the Allies, the United Nations acting as the temporary representative of the Micronesian people. The United Nations then put the territory and governance into a Trusteeship with the U.S. as Trustee. The United States could not and did not have any property or governance rights in any of the territory except as Trustee. Nor could she acquire any in contravention of the Trust.

5) The fundamental principle of Trusteeship is that the Trustee cannot profit at the expense of the beneficiary; it must exercise extreme good faith, it must do everything for the beneficiary's best interest; it must always account for what it has done; the trust must come to an end when the purpose of the trust is fulfilled and the beneficiary can take charge of its affairs; in no way must the Trustee have interests or claims contrary to the beneficiary.

6) These principles are embodied in the U.N. Trusteeship system and the Micronesian Trusteeship Agreement, and in the laws and orders for the Trust Territory. Any provision in any of these must be interpreted to further these principles. For example, Art. V, dealing with military bases can not be interpreted in contravention to the rights of the people in Art. VI. And it should be clear that the United States as such, whether as military or otherwise, cannot acquire land, or govern, or rearm any islands for the good of the United States sovereign--but only for the good of the Micronesian people and their relationship to the international community.

7. The Code recognizes that no foreign person can acquire title to land in the Trusteeship--that is as it should be: the title must always be kept for Micronesians. The Trustee, <u>as trustee</u>, may acquire land because it eventually

holds it for the Micronesians. But, the United States in any capacity other than as Trustee is like any other foreigner, without any rights to land.

8) It is possible that both Japan and the United States as Trustees have on numerous occasions in the past tried to acquire land and other rights in violation of the above principles. If so, much acquisitions are illegal and should now be set aside. Examples would be: a) acquisition of Kwajalein, where the amount paid was probably inadequate, probably paid to be chief on the theory of his ownership without taking care of his wards, probably an attempt of a foreigner (United States) to acquire title (or equivalent 99 years) when it could only acquire short term lease rights. b) Acquisition of many individual parcels or islands, where the agreement was not understood by the person contracting because it was in a language he could not understand, contained words like "indefinite" or "perpetual" or "fee" or "title" which were beyond his understanding or experience. c) Attempts to assert title to "public" land seized or held by Japan or Germany or the United States, without clearly treating this as Trust property. d) Inadequate compensation for items taken, a double standard being imposed by the Trustee as between indigenous and white persons and institutions. e) Failing to observe the distinct ownership by the Micronesians and their interest therein as to lagoons, land under shallow water, rights in the Continental Shelf and rights to the deep seas. An example would be the missile corridor. f) Outright fraudulant leases and other acquisitions. g) Many other examples could be given.

9) It is in the nature of a Trusteeship that it can and must always be subject to adjustment and renegotiation at the request of the beneficiary. For the nature of a Trust is that the Trustee can have no rights against the beneficiary. Thus, in so far as the present trust agreement or the Trustee attempts to prevent the Micronesians from demanding renegotiation of any prior action or acquisition or grant,it must be illegal. There must always also be some final authority to control a Trustee; it is no Trust if the Trustee is not subject to control. The United Nations has such control in this Trust territory.

10) Probably it is in the spirit of Trusteeship that the beneficiary has the right to declare independence, ask for an end to the Trusteeship, for a return of all property and governance to it, and demand that the agency which set up the Trusteeship determine when the independence and transfer should occur. It is the basic assumption of the United Nations that people shall have self-governance. It could probably be easily proved that many of the former trust territories which have been brought into the U.N. as new and independent countries had neither the economic stability nor the trained leadership that Micronesia now has when they were so brought in.

11) The Micronesians have waited twenty-five years for the simplest kind of cases to settle war and similar damage claims. They do not have the funds to properly press the thousands of individual claims needed in all respects to accomplish justice. It may well be that certain claims belong to private individuals, but it is believed that all these should be included in the present grievances and settled in this case (just as the United States promptly settled all atomic damage claims with the Japanese government and required it to determine the interests of private persons). It seems clear that the Micronesian people would prefer this way of handling all their rights.

12) These claims must go back to the earliest days of contact of foreign powers with the Micronesians and to the earliest days of the mandate-trusteeship. There can be no statute of limitations in this type of action and this type of claim.

13) This is an extremely complex case. It will take a lot of time. It can be expected that the United States will try to buy off individuals or parties with various partial concessions. No person's interest should be allowed to embarass or be superior to the rights of the Micronesian people as a whole. Therefore, neither the representative of the Micronesian people, nor any individual or segment of the people should propose, accept or work out any compromise or settlement without the substantial agreement of all who are putting their efforts into this case. The Micronesian people are up against the greatest powers in the world. To gain justice will not be easy.

14) The Congress of Micronesia has recently taken a great step on these matters by trying to repeal the eminent domain laws and by adopting the two resolutions on grievances and renegotiation of the Trust Agreement. These resolutions and the facts of United States mismanagement of the Territory were brought to the attention of Dr. Harrop Freeman. He also completely reviewed, in the time available the documents and history of the Trust Territory.

The recent Micronesian Senate Joint Resolution is excellent. It sets a good foundation for argument of the Micronesian case. But, it ought not to be just filed in the U.N. and U.S. Someone should appear before the Security Council, the Trusteeship Council, Department of State, U.S. Senate, Department of Interior, etc., and force consideration of the resolution and means of redressing these and other grievances. Mr. Freeman is ready to so appear and represent the Micronesian people and to report to the Micronesian Congress soon after he receives authorization.

15) But, it may take much more than this to get results. Micronesia ought not to think that it can only petition. It may have actual legal rights, rights that can be enforced by cases brought in the Security Council, Trusteeship Council, World Court, U.S. Court of Claims, other U.S. or Japanese Courts. And within his time and ability, Professor Freeman will be willing to begin and supervise these.

## Assumptions Under which Operating June 1969

1) I am representing the Micronesian People and only the Micronesian People. I should not try to advance the claims or case of any specific Micronesian claimant. I should not permit myself to be an instrument of the United States or any group in the United States.

2) I am representing the Micronesian Congress and any Committee of Congress that specifically requests my representation. Therefore, I represent the Political Status Committee.

3) All claims and charges against the United States, the United Nations, Japan, should be treated as a whole, belonging to the Micronesian People (Congress) as a whole. As Mandate; Trustee; for pre-war, war, post-war damages; land issues; military issues; mismanagement; failure to give AID adequate for independence or other status. The strength or leverage of Micronesia in negotiating will depend on refusing to sell or settle one claim (the strongest) and leave the others unsettled. No claim should be settled irrevocably except as a total package.

4) The United States will try to buy off Micronesian opposition person-by-person and item-by-item. They will do this by giving roads, water, electricity, money awards, cleaning up live ammunition, etc. I favor taking all these advantages but surrendering no claim and making no promises in return.

5) Some groups in Micronesia want to be like Guam; at the other extreme some want to be independent. One of the reasons I want to see one total settlement made to the Micronesian Congress (People as a whole) is so that no part of Micronesia can make its settlement and leave the total organization. Ownership of a total fund in common, from which no group can withdraw, will be the greatest force for unity.

6) I hope the total settlement might equal $500 million to $2 billion. I would hope that income therefrom would provide the full cost of Micronesians governing themselves and developing their territory, so that no taxes need be levied and a fairly high standard of living could be achieved.

7) I would hope that even such statements as the Report of the Political Status Committee would make it clear that the recommended first choice was contingent on the United States doing a great deal (see above) in all other areas; otherwise independence or other position less favorable to the United States would result.

8) I would hope that Micronesia was not willing to agree on Military bases except on a very short term basis and at great cost to the United States. Better still, not al all. I do not believe Micronesians are aware of the United States sentiment, of the international dangers involved, of the degree to which their economy would be spoiled, etc.

9) I see the United States here already doing many things which assume it can control Micronesia and get anything it wants. These are being done behind the backs of Micronesians while telling them all the United States is going to do for them. I refer to what the Task Force is going ahead with in Hawaii, the draft of a bill to make Micronesia a part of Hawaii, etc.

10) I am presently holding the line for the Micronesian People. I lodge formal complaint against any action which seems to me to be about to occur (e.g. ratification of the Japanese-American Treaty on War Damages). Senator Fulbright has heard my complaints to his Committee.

11) I must be prepared to file an injunction or holding action against the United States if it attempts to do anything against the wish of the Micronesians (e.g. build bases, settle claims for an inadequate amount, bar such independence as Micronesians want, adopt an unapproved organic Act). Such legal procedure is very difficult and may not be successful, but I must be prepared.

12) I hope such holding action will be enough till the Status Commission comes here and we go to Washington together. I await advice and instructions from the Micronesian People and the Status Commission.

## Where and How Settlement to be Made

Our approach to settlement of the Micronesian matters can be put in perspective by the copy of my October 4th letter of advice to the Micronesian Delegation: