

**STATEMENT OF JONATHAN M. WEISGALL
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BEFORE THE SENATE ENERGY
AND NATURAL RESOURCES COMMITTEE
June 26, 1996**

Mr. Chairman:

My name is Jonathan Weisgall, and I have served as legal counsel for the people of Bikini since 1975.

Thank you for providing the people of Bikini an opportunity to testify before you today on S. 1804. With me today are Senator Henchi Balos, Johnny Johnson and Jack Niedenthal.

I. BACKGROUND

Most of you are familiar with the Bikinians' odyssey. The 167 islanders were moved off their atoll by the U.S. Navy in March 1946 to facilitate Operation Crossroads, the world's third and fourth atomic bomb explosions. Between 1946 and 1958, a total of 23 atomic and hydrogen bomb tests were conducted at Bikini Atoll, and 71.8% of the total yield of the 66 tests conducted in the Marshall Islands at Bikini and Enewetak was at Bikini.¹ Half the tests at Bikini were hydrogen bomb shots with explosive yields greater than one megaton, and the explosive yield of the largest test at Bikini, the 1954 Bravo shot, was more than 200 times greater than the explosive yield of the largest test ever conducted at the Nevada Test Site (74,000 kilotons).²

The Bikinians were moved by the U.S. Navy in 1946 to Rongerik Atoll, 125 miles east of Bikini, where they nearly starved to death. In March 1948 they were moved again, to a temporary camp at Kwajalein Atoll, and then in September of that year to Kili, an island some 425 miles south of Bikini.

Next Monday, July 1, will mark the 50th anniversary of the first U.S. nuclear test in the Marshall Islands. Sadly, Kili remains home to most Bikinians a half-century after the testing began, and life there has been difficult. Kili is an island, not an atoll. It has neither a lagoon nor sheltered fishing ground, so the skills the people developed for lagoon and ocean life at Bikini, with its many islands and 243-square mile lagoon, are useless on Kili. Moreover, the island runs parallel to the northeast tradewinds, so it has no leeward side and is thus virtually inaccessible by sea for six months of the year. This drastic change from an atoll existence, with its abundant fish and islands as far as they eye could see, to an isolated island with no lagoon and inaccessible marine resources, continues to take a severe psychological toll on the people.

¹Findings Of The Marshall Islands Nationwide Radiological Study Summary Report (December 1994) at 3.

²Id.

Following President Johnson's August 1968 announcement that Bikini was safe and that resettlement of Bikini would "not offer a significant threat to [their] health and safety," he ordered the atoll rehabilitated and resettled.³ The first Bikinians returned to their atoll in 1969. They lived there until 1978, when medical tests by U.S. doctors revealed that the people may have ingested the largest amounts of radioactive material of any known population, and they determined that the people had to be moved immediately.⁴ What went wrong? An Atomic Energy Commission blue-ribbon panel, in estimating the radiation dose the returning islanders would receive, relied on an erroneous 1957 AEC report that assumed a daily consumption of only nine or ten grams of coconut, which is only about one-third of a spoonful. "Obviously the people eat much more than that," admitted the AEC's Gordon Dunning, the author of the report, whose typographical error put his numbers off by a factor of nearly 100. "We just plain goofed," he said.⁵ The AEC was dead wrong in 1967.

History sadly repeated itself in late August 1978, as U.S. ships once again entered Bikini lagoon, and the 139 people then living on the island packed up their possessions and left. They remain scattered throughout the Marshall Islands and the United States, with the largest number of the nearly 2,200 Bikinians still living on Kili.

Thanks in large part to efforts by members and staff of this Committee, the Bikinians are the beneficiaries of a Resettlement Trust Fund, whose income is earmarked for the ongoing needs of the people on Bikini as well as the radiological cleanup of Bikini Atoll. The Resettlement Trust Fund has been extremely well managed, and the Bikinians hope to commence major radiological cleanup activities next year. At the same time, as part of an economic development plan, the Council has opened up Bikini Atoll to commercial dive tourism, and regular trips began just a few weeks ago.

This commitment to and responsibility for the people of Bikini is summarized in Section 103(l) of the Compact of Free Association Act of 1985, P.L. 99-239, which declares "that it is the policy of the United States . . . that because the United States, through its nuclear testing and other activities, rendered Bikini Atoll unsafe for habitation by the people of Bikini, the United States will fulfill its responsibility for restoring Bikini Atoll to habitability"

The U.S. government's commitment to the people of Bikini has been steadfast and bipartisan for more than two decades. Both you, Mr. Chairman, and Senator Akaka

³Shields Warren, "Report Of The Ad Hoc Committee To Evaluate The Radiological Hazards Of Resettlement Of The Bikini Atoll," DOE/CIC document number 41847; New York Times, August 13, 1968, page 1; draft memorandum for the President from Bromley Smith entitled "Return Of The Bikini People," August 2, 1968, National Security file, Lyndon B. Johnson Library.

⁴Washington Post, April 3, 1978, page 1, and May 22, 1978, page 1.

⁵Los Angeles Times, July 23, 1978, page 3.

visited Bikini just four months ago to examine the cleanup situation first hand, and the Bikini people will always remember your heartfelt statements of support.

II. U.S.D.A. FOOD PROGRAM

In passing the Compact of Free Association Act, Congress continued for five years the long-standing policy of providing supplemental U.S.D.A. food for the peoples of the four atolls. P.L. 99-239 § 103(h)(2). This provision was amended in 1991 to extend the program for an additional five years, and that provision will now expire at the end of this fiscal year unless it is extended again by Congress.

For the people of Bikini, this program was instituted in the 1960s, before they were moved back to Bikini, because Kili is less than one-ninth the size of Bikini. The program was continued during the 1970s when they were on Bikini, but when the field trip ships were late with deliveries the people ate locally grown crops, which resulted in what U.S. scientists described as an "incredible" one-year increase in the Bikinians' body burdens of cesium-137.⁶

Today the U.S.D.A. program is critical to the survival of the Bikini people on Kili, which remains the home of most Bikinians. Conditions for those people have not changed, except that the population has almost doubled in the last thirteen years. In addition, with radiological cleanup of Bikini set to commence this fall, imported food is essential to resettlement plans, as the continuation of the U.S.D.A. program will ensure that there will no repeat of the unfortunate events of the 1970s, when inadequate food supplies led to over consumption of locally grown foods.

The language in S. 1804 stating that the program "shall ensure . . . that the commodities provided reflect the changes in the population that have occurred since the effective date of the Compact" is imperative, because the dollar level of the program has been frozen for the ten years since this provision was first made part of Public Law 99-239. As a result, the Bikinians and peoples of the other four atolls have taken a double beating on the ability of this program to meet their needs, because its buying value has continuously declined as a result of both the shrinking value of the dollar through inflation and the increasing populations of the four atolls. A proper census is needed as a baseline measurement now to bring the program in compliance with these population increases, and a regular census will ensure against the erosion of the program.

⁶Washington Post, April 13, 1978, p. 1, and May 22, 1978, p. 1.

III. HEALTH CARE

As you consider Senator Murkowski's proposed amendments to S. 1804, I believe it would be useful to review the legislative history of P.L. 96-205, the so-called "four-atoll" health care program passed by Congress in 1980. Section 106(a) of that Act provides:

In addition to any other payments or benefits provided by law to compensate inhabitants of the atolls of Bikini, Enewetak, Rongelap, and Utirik, in the Marshall Islands, for radiation exposure or other losses sustained by them as a result of the United States nuclear weapons testing program . . . , the Secretary of the Interior . . . shall provide for the people of the atolls of Bikini, Enewetak, Rongelap, and Utirik . . . a program of medical care and treatment and environmental research and monitoring for any injury, illness, or condition which may be the result directly or indirectly of such nuclear weapons testing program. The program shall be implemented according to a plan . . . [that] shall set forth . . . an integrated, comprehensive health care program including primary, secondary, and tertiary care with special emphasis upon the biological effects of ionizing radiation

Partisan politics played a minimal role in this bill, which was supported by both liberal Democrats and conservative Republications. Representative Phillip Burton (D-CA) stated that "[b]ecause of our special moral responsibility to these people it is intended that this provision be construed . . . to provide the utmost protection to these people -- and that this provision remain valid and subsisting even after the termination of the trusteeship."⁷ Similarly, Representative Robert Lagomarsino (R-CA) pointed out that "[s]ome of the inhabitants of Bikini, Enewetak, Rongelap and Utirik were subjected to radiation hazards as a result of U.S. nuclear testing," and that, "for the first time, [the bill] establishes a comprehensive medical program to ensure proper medical treatment in the future."⁸

On the Senate side, Senator Mark Hatfield (R-OR) stated that the "United States owes a solemn responsibility to the innocent victims of our nuclear testing program" in expressing his support for the medical program.⁹

⁷125 Cong. Rec. H2754 (daily ed., May 7, 1979).

⁸Id. H2755.

⁹126 Cong. Rec. S2065 (daily ed., February 28, 1980).

As this Committee's report on that bill noted, the "situation at the individual atolls differs considerably," pointing out that the people of Rongelap and Utirik were directly exposed to excessive levels of radiation while the people of Bikini "have a potential problem from exposure during their stay on Bikini prior to their emergency evacuation [in 1978]."¹⁰

The Executive Branch strongly supported this legislation. In a letter to this Committee, James A. Joseph, Under Secretary of the Interior, wrote that the "Administration strongly believes that it is the responsibility of the United States to ensure that the people of the Marshall Islands who have been exposed to radioactive hazards resulting from nuclear testing at Bikini and Enewetak receive proper medical follow-up and, where appropriate, medical care."¹¹

The people of Bikini had a special interest in being included in the four-atoll health care program, because of their recent removal from Bikini. At a May 8, 1984 hearing on the Compact before the House Interior and Insular Affairs Committee, the U.S. Department of Energy's Deputy Director of Military Applications explained the four categories of people covered by DOE's medical monitoring program in the Marshall Islands: the "exposed group" of residents of Rongelap and Utirik, the control group, the unexposed relatives of the exposed group who live with the exposed group, and "the group of Bikinians who were evacuated from Bikini in August 1978." As the DOE official explained: "At the request of the Department of the Interior, a limited sick call visit for these Bikini evacuees was added to our program."¹²

Despite the fact that President Carter signed Public Law 96-205 into law on March 12, 1980, and despite repeated requests from Congress and others, including the Bikini people, the Secretary of Interior delayed implementing the legislation.¹³ The

¹⁰Senate Report No. 96-467, 96th Cong., 1st Sess., at 8-9 (December 7, 1979).

¹¹October 9, 1979 letter from Under Secretary James A. Joseph to Hon. Henry M. Jackson, Chairman, Senate Committee on Energy and Natural Resources, reprinted in Legislative History of the Omnibus Insular Areas Act of 1979-1980 (H.R. 3756) (Public Law 96-205), 96th Cong., 2nd Sess., at 87-88 (May 1980). See also Omnibus Territorial Legislation - 1979, Hearing Before The Senate Energy And Natural Resources Committee, 96th Cong., 1st Sess. 128 (October 10, 1979) (statement of Ruth G. Van Cleve, Director, Office of Territorial Affairs).

¹²Compact Of Free Association: Section 177 Of The Proposed Compact Of Free Association: Compensation For Victims Of U.S. Nuclear Testing In The Marshall Islands, Before the House Interior And Insular Affairs Subcommittee On Public Lands And National Parks, 98th Cong., 2nd Sess., at 91 (May 8, 1984) (statement of Dr. Maurice J. Katz) (hereinafter referred to as "Compact Section 177 Hearing"). See also Health Care Systems Of The Trust Territory Of The Pacific Islands: Oversight Hearing Before The House Interior And Insular Affairs Subcommittee On Public Lands And National Parks, 98th Cong., 1st Sess., at 40-41 (October 25, 1983) (hereinafter referred to "Trust Territory Health Care Hearing").

¹³As this Committee asked in 1984, "If the U.S. accepts the responsibility for compensation [under Section 177], why has the Administration consistently resisted any efforts to fund the provisions of . . . P.L. 96-205?" To Approve the Compact of Free Association, Hearing Before the Senate Energy and Natural

explanation given by both the Carter and Reagan administrations was that this law would be implemented under the Compact Of Free Association. For example, at an October 25, 1983 hearing, more than three and one-half years after President Carter signed the bill, Rep. John Seiberling (D-OH) called a hearing to determine, in part, why no action had occurred on implementing Public Law 96-205:

In March 1984 it will be 4 years since Congress passed and the President signed into law a bill providing for a comprehensive health care program for the people from the four atolls and the Marshall Islands who were affected by U.S. nuclear testing in the 1940's and 1950's.

To date the Department of the Interior has failed to take any action or to meet any deadlines to implement this plan, so we need to talk about this, not only with the Interior Department but also with the Energy Department which under law is required to fund this program.¹⁴

During that hearing, Rep. Seiberling, who chaired the House Subcommittee on Public Lands And National Parks, emphasized that it was "the position of this committee when Public Law 96-205 was passed that that expressed a continuing obligation of the United States . . . which would continue regardless of any subsequent arrangements between ourselves and the Marshall Islands as set forth in the compact." Rep. Seiberling went on to add that "the bill went beyond just the radiation-affected health. Public Law 96-205, as I interpret it, covers all health care needs for those people."¹⁵

As matters turned out, the Interior Department admitted that "we have not developed a specific health plan program to address those four [atolls]."¹⁶ Instead, the U.S. government delegated responsibility to carry out Public Law 96-205 to the Marshall Islands government pursuant to the Compact Section 177 agreement. Indeed, the preamble of the so-called "Section 177 agreement" ("Agreement Between the Government of the United States and the Government of the Marshall Islands for the Implementation of Section 177 of the Compact of Free Association") provides in part that it is "the expressed desire of the Government of the Marshall Islands to include in its integrated, comprehensive and universal medical health-care system, the health-care and surveillance programs and radiological monitoring activities contemplated in . . . United States Public Law 96-205."

Resources Committee, 98th Cong., 2d Sess. at 998 (May 24, 1984) (Administration Responses to Questions Raised During May 24, 1984 Hearing).

¹⁴Trust Territory Health Care Hearing, supra n. 12, at 2 (October 25, 1983).

¹⁵Id. at 43.

¹⁶Id. at 56.

Unfortunately, the \$2 million annual grant to the government of the Marshall Islands to conduct this program has been wholly inadequate, due largely to the huge and unexpected enrollment of individuals in the four-atoll program. At the time of the passage of the Compact in 1984, the estimated population of the four atolls was 2,300 people, broken down as follows:

<u>Atoll</u>	<u>Population (1983)</u>
Enewetak	600
Bikini	1,100
Rongelap	250
Utirik	350 ¹⁷

Today, however, five times as many people -- 11,474 -- are enrolled in the program, including 10,919 people from the four atolls as well as an additional 555 people from atolls other than the four listed above who are automatically covered by the four atoll health care program as a result of receiving radiation-related compensation as determined by the Nuclear Claims Tribunal:

<u>Atoll</u>	<u>Enrollment (1996)</u>
Enewetak	1,561
Bikini	2,191
Rongelap	4,384
Utirik	2,783

These numbers speak for themselves, and my purpose is not to assess blame. The fact of the matter is that the Marshall Islands government was instantly overwhelmed by the size of the four-atoll health care program. It could not -- and cannot -- deliver the necessary services. The state of the system was best summed up last month by Majuro Senator Tony deBrum, who stated: "We have a health care system that's falling apart as we speak. Rats almost outnumber Tylenol in our main hospital."¹⁸

I have reviewed this lengthy history in order to demonstrate that the U.S. government has long recognized its obligations to the peoples of the four atolls, but has never delivered fully with respect to the peoples of Bikini and Enewetak. As noted during the Compact hearings (see page 5, above), the Bikinians were briefly included in Brookhaven National Laboratory's monitoring program following their evacuation from Bikini in 1978, but they fell between the cracks around 1980 and have not been included in the program since then. With the Bikinians prepared to commence a radiological cleanup of their atoll next year, it is even more imperative that their health care be

¹⁷Compact Section 177 Hearing, *supra* n. 12, at 345 (questions for the Department of Energy).

¹⁸*Marshall Islands Journal*, May 31, 1996, page 3.

monitored -- at a minimum to provide baseline measurements to ensure that the abortive return of the 1970s not be repeated.

Assuming this Committee accepts in principle U.S. government responsibility to care for the peoples of the four atolls, I offer the following suggestions with regard to implementation:

- Who should run the program, the Marshall Islands government or the U.S. government? As noted above, the U.S. government switched responsibility for oversight of the four-atoll health care program to the Marshall Islands government in 1987, when the Compact came into law. I recommended against that decision thirteen years ago, stating that the United States should not "wash its hands forever of the entire nuclear legacy The United States has ongoing direct responsibility to these people, and it should not seek to discharge these responsibilities by writing out a check and turning the issues over to the Marshalls Government, which did not create the nuclear problem and which is wholly lacking in resources and expertise to provide the care these people need."¹⁹ I stand by that view today.

- Assuming the U.S. government takes on this responsibility, which agency should oversee the program? While some would probably suggest that either the Department of Energy or the Department of Interior should run this program, I would strongly urge this Committee to consider funding such a program through the U.S. Public Health Service, which is well qualified to oversee all types of health care programs. These funds could either be appropriated directly through the Interior Department (which has fiscal oversight for all Compact funding), or perhaps through the mechanisms of program assistance of Sections 221 and 232 of the Compact. In any case, given the small staffs currently running the Interior Department's Office of Insular Affairs and the Department of Energy's Office of International Health Programs, I think it would make the most sense to have the U.S. Public Health Service develop and oversee the RFP to run such a program. Given the good, long-standing relationship between the four-atoll health care system and Mercy International, I would also recommend that some system of preference be given to Mercy in bidding on such a program.

- Should Brookhaven National Laboratory oversee the program? Only that portion related to radiological diseases. Because of the specialized nature of the work performed by Brookhaven's doctors, it would be prohibitively expensive to have Brookhaven run a primary and secondary health care program. Instead, this part of the program should be bid out through an RFP to qualified health care providers (perhaps with a special preference for Mercy International, as suggested above). This is not meant as a criticism of Brookhaven, which has continually performed valuable services with

¹⁹Trust Territory Health Care Hearing, supra n. 12, at 309 (November 15, 1983 letter from Jonathan M. Weisgall to Rep. John F. Seiberling). See also Compact of Free Association: Current Status of Health Care in Micronesia as Well as the Outlook for Health Care Under the Proposed Compact of Free Association, 98th Cong., 2d Sess. at 184-191 (December 12, 1984) (statement of Jonathan M. Weisgall).

respect to radiogenetic diseases. Rather, it is simply a way of recognizing that dollars can be more effectively spent by hiring for the primary and secondary program a health care company that is in the business of delivering such health care.

- Should health care for the people of Bikini be on a reimbursable basis? The people of Bikini did not detonate 23 atomic and hydrogen bombs at their atoll, vaporizing three islands and contaminating many others; the U.S. government did. It seems strange to ask the people of Bikini, who have been exiles from more than 50 years and who have seen their lands destroyed, to pay the U.S. for medical care resulting from the U.S. nuclear testing program. The Bikini and Enewetak peoples should no more be asked to pay for this program than should the peoples of Rongelap and Utirik, who were showered with fallout from the Bravo shot.

On this issue, permit me to quote Rep. Seiberling, who responded to this question in 1984 as follows:

There will be questions raised I am sure as to whether there is a less costly way of taking care of the people who were affected by our nuclear testing, and there will be a question as to whether we should go as far as some of us think we need to go, including the restoration of Bikini. I would only say that the costs of this program are a tiny fraction of the costs of that nuclear testing program that went on²⁰

- How should the program be funded? I would recommend mandatory funding, as opposed to discretionary or full faith and credit. This will ensure that funds flow directly to the program and that there be no discretion over their use.

- Is there any way to control the large numbers of people enrolled in the current program? Yes. I think there is a need to set strict eligibility criteria to limit the program to inhabitants of or workers at the four atolls and their descendants. Alternatively, this Committee might consider cutting the Gordian Knot of Marshallese politics and cultural values by simply dividing the program's funding four ways among the four atolls. I realize that this might hurt the people of Bikini, given the fact that they were the largest population group at the time of Compact passage (see page 7, above), but such a decision would force the four local atoll governments either to take a tough, hard look at their own eligibility criteria or else recognize that health care delivery to those truly in need may be lacking.

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I would be pleased to answer any questions you may have.

²⁰Compact Section 177 Hearing, supra n. 12, at 3 (statement of Rep. Seiberling).