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THE LEGAL ADVISER

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MEMORANDUM

January 14, 1972

TO : Ambassador Hummel  
FROM : L/UNA - Ronald F. Stowe *RFS*

SUBJECT: TTPI: Nationality and Citizenship

At Hana the Micronesian delegation proposed that after the change in political status the inhabitants of Micronesia should be considered as citizens of Micronesia. Although it was not expressly stated, their intent was clearly that Micronesian citizenship should be adopted rather than U.S. citizenship, not in addition to U.S. citizenship. We suggested that it was quite doubtful that the U.S. could extend all of the rights and privileges sought by the Micronesians unless they were also nationals, although not necessarily citizens, of the United States. Our subsequent research reinforces our conclusions at Hana.

Although Micronesians could not be given the status of non-citizen nationals under our present laws, an appropriate amendment of the U.S. Code is a fairly simple matter to draft and would probably meet with congressional approval as part of a legislative package concerning establishment of a new political relationship with Micronesia.

As U.S. nationals, Micronesians would be entitled to free entry into, residence in and exit from the United States, consular services and diplomatic protection abroad, employment opportunity in most jobs within the U.S. (non-citizens cannot hold public governmental

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REVIEWED BY J. FELDMAN DATE 1/8/86

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positions or certain other state-regulated occupations such as the practice of law). As a non-citizen, a Micronesian could not vote or hold political office in the U.S. but I suspect this is rather low on their priority list and should cause no difficulty, particularly since at least within the jurisdiction of the U.S. they would presumably have the option of applying for U.S. citizenship.

In addition, under the U.S. Code a non-citizen national is deemed to owe "permanent allegiance to the United States." Although at first glance that phrase may send tremors of fear through the Micronesian ranks, in fact a few words of explanation should reassure them. First, although "permanent" means a relationship of a lasting rather than a temporary nature, a relationship may be permanent even though it is one that may be dissolved eventually in accordance with law. Second, Micronesian "allegiance" to the United States would simply involve obligations such as that not to seek nationality or citizenship of another country (to which Sali's draft compact agrees); not to support the interests of another foreign country against those of the United States (which would appear to be embodied already in Micronesian acquiescence that we should have authority over foreign affairs); and the general intangibles that the U.S. Supreme Court has called "fidelity" and "obedience" in return for the protection afforded.

Although allegiance traditionally would also include the obligation to serve in the U.S. Armed Forces, we have agreed to exempt Micronesians in Micronesia from that duty. In sum, therefore, it does not appear that duty of "permanent allegiance" would impose much of a practical hardship on anyone, except perhaps the Uludongs.

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Also at Hana the Micronesians proposed that they have the authority to regulate and restrict if necessary the flow of non-Micronesians, including U.S. citizens, into Micronesia. Our delegation replied that free entry into the U.S. should be reciprocated by free entry into Micronesia. Investigation since our return from Hana has revealed that we have consented in the past to Samoan restrictions on the entry of U.S. citizens into Samoa while at the same time allowing Samoans free entry into the U.S. This precedent, therefore, offers flexibility which we may wish to exercise on this point when we next meet with the Micronesians.

The Micronesian delegation also stated that it was their position that the Micronesian Government alone should have the authority to set the standards for Micronesian citizenship. Although there is no indication that they contemplate providing an easy naturalization process which, coupled with free entry of Micronesians into the United States, could offer a gaping loophole in our immigration policies, it is essential that we make clear in our own presentations to them that this privilege must not be abused. I suggest that we be a bit tough on this issue and that we specify in the compact what the qualifications for becoming a U.S. national in Micronesia shall be. If they in turn wish to adopt by legislation easier standards for Micronesian citizenship we will be obligated to accept into the U.S. only those persons qualifying by our standards, the compact taking legal precedence over Micronesian domestic legislation.

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