DENATURALIZATION BASED ON DISLOYALTY AND DISBELIEF IN CONSTITUTIONAL PRINCIPLES

By D. E. Balch*

Four months after war was declared, the Attorney General of the United States announced the inauguration of a nation-wide Denaturalization Program. It was undertaken as the result of previous investigation conducted by the Federal Bureau of Investigation and studies by the Immigration and Naturalization Service which revealed that American citizenship had been granted to sizeable numbers of former German and Italian nationals whose adherence was still to National Socialism or Fascism and whose loyalty was still to those regimes. The potential threat of such persons to the internal security of the United States during the early stages of the war was not known but, in the face of the eloquent effectiveness of the so-called Fifth Column in Europe, it could not be discounted.

The Denaturalization Program was undertaken primarily as an internal security measure to be used in conjunction with the Alien Enemy Control procedure. With the divesting of citizenship of those persons of German or Italian extraction who had manifested their hostility to the United States, they became alien enemies and could be interned and rendered impotent to interfere with our war preparation. However each individual case was separately reviewed and passed upon by the Alien Enemy Control officials before internment was ordered, in spite of the fact that a federal district court had already heard the evidence and had ordered naturalization revoked.

From the inception of the denaturalization work in March,

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1Title 50 U.S.C. Sec. 21-24.
1942, some 11,000 cases were examined of which almost ten thousand were closed with a determination that the facts did not warrant action. On June 12, 1944, the Supreme Court handed down its decision in the Baumgartner Case\(^2\) which, with the earlier decision of the Supreme Court in the Schneiderman Case\(^3\) had the effect of

\(^2\) Baumgartner v. United States, (1944) 322 U. S. 665, 64 S. Ct. 1240, 88 L. Ed. 1525. In this case all members of the court concurred, reversing both courts below which had ordered citizenship revoked. Baumgartner was a native of Germany, a German war veteran and officer and a highly educated and intelligent person. He entered the United States in 1927 at the age of 32 and was naturalized five years later. The evidence introduced showed his enthusiasm for the Hitler movement as early as 1927, when it was in its very early stages, and the continuation of that feeling from 1932 to the time of the trial. He expressed his preference for the German form of government, his contempt for the United States and democracy repeatedly in public speeches, in private conversations with friends and associates, and throughout his diary which he maintained from December 1938 to June 1941. The Supreme Court ruled that the evidence was insufficient to show that Baumgartner had knowing reservations when he foreswore allegiance to Germany in 1932 and that the evidence lacked the “solidity of proof which leaves no troubling doubt in deciding a question.” The court pointed out that the proof of disloyalty was predominantly subsequent to naturalization rather than contemporaneous with it. It also held that in cases involving non-fulfillment of specific conditions such as residence, no problem is involved, whereas in cases such as this one involving issues of belief or fraud, “weighty proof” is required and even objective judgment is precarious. Pp. 670, 675, 677.

\(^3\) The case of Schneiderman v. United States, (1943) 320 U. S. 118, 63 S. Ct. 1333, 87 L. Ed. 1796, was handed down by the Supreme Court on June 21, 1943. It involved an active leader of the communist party in California who came to the United States from Russia when a small boy and was naturalized in 1927. His communistic activity began at least five years before his naturalization, continued to the date of the trial and included such positions as educational director, executive secretary, organizer and official spokesman, member of the communist party’s national committee and state secretary. He admitted that during all of the time of his membership in the communist party, he subscribed to the principles of the organization. The Supreme Court’s decision, reversing both of the courts below which had ordered Schneiderman’s naturalization cancelled, was based upon the ground that “the evidence was not clear, unequivocal, and convincing . . . which does not leave the issue in doubt.” This the court enunciated in the Schneiderman case to be the burden of proof in such cases. The court also held that the proof of the communist party doctrines were subject to two possible interpretations, one reprehensible and the other not, and that it had not been proved which of the two possible interpretations was accepted by Schneiderman. The majority opinions also raised two additional questions and gave considerable attention to them without deciding them. (1) The court emphasized the fact that an award of naturalization is a solemn judgment and expressed doubt whether another court could subsequently in a denaturalization proceeding, properly set it aside except upon evidence of the type which traditionally vitiates judgments. (2) The court also considered the question of whether attachment to the principles of the United States Constitution was a subjective requirement for naturalization or whether the statutory provisions could be met merely upon a finding by the naturalization court that the subject had behaved as a person so attached irrespective of what his true sentiment might be. This case evoked a wide divergence of opinion among the eight members of the court participating. There were three separate opinions for the majority and a strong dissenting opinion by the Chief Justice and two of the Associate Justices.
rendering denaturalization based upon lack of allegiance or lack of attachment to constitutional principles impossible in all but a few of the pending cases. Accordingly June 12, 1944, marked the virtual close of the Denaturalization Program. In all 543 complaints had been filed in the various federal district courts, resulting in the denaturalization of 165 persons and in the award of judgment in favor of the defendants in 45 cases. An additional 81 had been tried and were then under advisement or were pending upon appeal, while 169 were awaiting trial and 83 had been withdrawn by the government.

In relation to the wide scope of the program and the large number of cases which had been investigated, the number of actions instituted was kept at a low figure in a careful effort to proceed only in the most aggravated cases where denaturalization seemed clearly warranted from the evidence and the threat presented to the safety of the United States and its war operations. The greatest care was exercised through the policies formulated by the Department of Justice to elevate the Denaturalization Program above the influence of any possible war hysteria. It was undertaken only after a careful survey of its need and its feasibility, begun a year or more before the outbreak of war, and upon evidence developed by investigation of the F.B.I. extending back several years.

Denaturalization is not a type of action necessarily confined to periods of war. It is equally applicable and usable during peacetime. Yet cancellation of naturalization based upon evidence of disloyalty to the United States was first undertaken during the period of World War I and was scarcely used again until the outbreak of the present hostilities. This fact may lead to the conclusion that it is in reality a war measure used as a sanction or punitive measure against those who support the enemy subsequent.

1 Among other things, determination regarding the cases in which suits to cancel citizenship were to be instituted was governed by the principles expressed by Judge Woolsey in United States v. Marini, (D. C. N. Y. 1936) 16 F. Supp. 963, 965. The fraud or illegality charged must be "proved by the clearest and most satisfactory evidence, for it is obviously unfair that an alien who has become a citizen should feel that his citizenship is an unstable status which can be easily destroyed by government proceedings against him, irrespective of how long he may have lived here or of the ties of family or property by which he may have become bound."

to their naturalization. There is no principle more firmly fixed or clearly recognized than that naturalization once legally obtained is not subject to revocation. When naturalization has been legally obtained, it may be forfeited for desertion in time of war, conviction of treason or conviction of "attempting by force to overthrow or by bearing arms against the United States." Nationality also may be voluntarily relinquished by acts of expatriation. Both forfeiture and expatriation however are wholly unrelated to denaturalization. Denaturalization is confined to those cases where the individual was not qualified for naturalization at the time of its procurement. The judgment revoking naturalization is a determination that the certificate of naturalization was void ab initio. It might be considered an annulment.

THE STATUTE AND JUDICIAL PRECEDENTS

The Denaturalization Program was undertaken with a recognition that the legal theory had received but limited acceptance, with a statute so general in its terms as to leave many questions in doubt as to its meaning, and with a dearth of judicial precedents and those sharply conflicting. The statute is no more definitive than to provide that naturalization may be revoked in suits instituted by the United States district attorney in the district of the defendant's residence and in any court having the power to grant naturalization, "on the ground of fraud or on the ground that such order and certificate of naturalization were illegally procured."

Congress, having the exclusive right under the Constitution to prescribe the qualifications for naturalization, has provided that naturalization shall be granted in the manner prescribed by law and not otherwise. The requirements for naturalization thus are to be strictly construed, as the courts have repeatedly held, since naturalization is a privilege and not a right. The Supreme Court has stated that no alien has the slightest right to naturalization unless all statutory requirements are met, and that every certificate


7Title 8, U.S.C., Sec. 801 (g), (h).

8Idem, Sec. 801.

9Title 8, U.S.C., Sec. 738.

0Title 8, U.S.C., Sec. 701(d) ; cf. Sec. 4 of Act of June 29, 1906, 34 Stat. 596.
of naturalization must be treated as having been granted upon
the condition that the government may demand its cancellation
unless issued in accordance with such requirements. If naturaliza-
tion is procured when the required qualifications have no existence
in fact, it is subject to cancellation.

The cases leave no doubt of the strict construction the Supreme
Court has placed upon the requirements and qualifications for
naturalization. While recognizing that citizenship is a precious
privilege and its loss a grievous one, the courts have not hesitated
to cancel any certificate of naturalization procured without meeting
the procedural or formal requirements prescribed by Congress.

Thus the Supreme Court affirmed the revocation of naturaliza-
tion where the defendant had not resided in the United States the
full five years prior to naturalization. Naturalization was cancelled
where the subject, during the five-year statutory period subsequent
to naturalization, went to South Africa and established residence,
where the petition for naturalization was filed more than seven

Ed. 321; Maney v. United States, (1928) 278 U. S. 17, 49 S. Ct. 15, 73 L.
Ed. 156; Tutun v. United States, (1926) 270 U. S. 568, 578, 46 S. Ct. 423,
70 L. Ed. 738. See also United States v. Schwimmer, (1929) 279 U. S. 644,
49 S. Ct. 448, 73 L. Ed. 889; United States v. MacIntosh, (1931) 283 U. S.
605, 51 S. Ct. 570, 75 L. Ed. 1302; United States v. Bland, (1931) 283 U. S.
636, 51 S. Ct. 569, 75 L. Ed. 1319.

12 The statutory requirements for naturalization can be briefly sum-
marized as follows: First. Procedural requirements, such as the filing of a
certificate of arrival, declaration of intention to become a citizen, petition
for naturalization, affidavits of witnesses, preliminary and final hearings.
Second. Residence requirements, including lawful entry into the United
States for permanent residence, intention to reside permanently in the United
States, continuous residence within the United States for the statutory
period immediately preceding the date of the petition for naturalization (5
years in most instances). Third. Absence of any military disqualifications.
Belief in organized government (8 U.S.C. 705, 732a; cf. Sec. 7, Act of
June 29, 1906 (34 Stat. 596) ). Eighth. Attachment to the principles of
the United States Constitution and willingness to support and defend it. (8
U.S.C. 707 (a), 732(a), 735 (a) (b); cf. Secs. 4 & 27, Act of June 29,
1906 supra). Ninth. Renunciation of all foreign allegiance and the bearing
of true faith and allegiance to the United States (8 U.S.C. 735(a) (b); cf.
Sec. 4, Act of June 29, 1906 supra). For special provisions waiving certain
of the above requirements in the case of persons serving in the armed forces
of the United States, see 8 U.S.C.A. 723-725, 1001-1005. For special pro-
visions regarding alien enemies see 8 U.S.C. 726, 1003.

13 Johannessen v. United States, (1912) 225 U. S. 227, 32 S. Ct. 613,
56 L. Ed. 1066.

years after the filing of the declaration of intention, where there was a failure to file the certificate of arrival with the petition for naturalization, and in another case cancellation of naturalization was affirmed where the certificate of arrival was not attached to the petition for naturalization when the latter was filed in spite of the fact that the certificate of arrival subsequently was filed and accepted by the naturalization court. Naturalization has been cancelled where the subject had not known one of his witnesses for the prescribed five years, and was cancelled even in a case where the subject was in no way at fault himself and was wholly ignorant of the fact that the court was departing from the prescribed procedure in holding the naturalization hearing in chambers instead of in open court.

Allegiance and Attachment to Constitutional Principles

The disqualifications for naturalization involved in the above described cases are all important, yet in no sense do they go to the heart and to the essence of citizenship. If the naturalization requirements are to be so strictly construed and rigidly enforced in regard to these procedural and regulatory requirements, how much more important that the requirements of attachment to the United States Constitution and allegiance to the United States, which are the very essence of citizenship, be uncompromisingly insisted upon. Acceptance of complete and undivided allegiance to the United States and its institutions and willingness to defend this country at all times without reservation, have been described by the Supreme Court to be matters which are of the "essence of statutory requirements for naturalization."

As stated by Chief Justice Stone in his dissenting opinion in the Schneiderman case, "what could be more important in the selection of citizens of the United States than that the prospective citizen be attached to the principles of the Constitution." These things go to the very heart of citizenship.

3United States v. Maney, United States, supra, footnote 11.
4Schwinn v. United States, (C.C.A. 9th Cir. 1940) 112 F. (2d) 74, aff'd (1940) 311 U.S. 616, 61 S.Ct. 70, 85 L.Ed. 390.
5United States v. Ginsberg, supra, footnote 11.
6United States v. MacIntosh, supra, footnote 11. See also Luria v. United States, supra, footnote 14, and United States v. Schwimmer, supra, footnote 11.
7320 U.S. 118, at p. 176.
DENATURALIZATION PROGRAM

In the majority opinion of Mr. Justice Murphy and in the concurring opinion of Mr. Justice Douglas in the Schneiderman case, rather strong doubt was expressed that any real and substantive attachment to constitutional principles is required under the statute. Considerable credence was given to the theory that the requirements of the statute were satisfied in this respect merely upon a finding by the naturalization court that the subject had behaved as one attached to constitutional principles irrespective of how antagonistic his subjective beliefs and personal feelings might be. In the dissenting opinion, Chief Justice Stone and two concurring members of the Court, termed this an "emasculating" of the statute.

Previously the Supreme Court had held that under the 1906 Act the requirement of attachment created a test of belief and that the subject must not only behave as one attached to constitutional principles but in fact must be attached. It is believed when all of the pertinent provisions of the 1906 Act are read together, even without considering the subsequent amendments, which leave no possible doubt of the Congressional intent, the conclusion becomes inevitable that Congress had no intention of admitting persons to citizenship who were not in fact attached to constitutional principles, as the earlier Supreme Court decision had held.

In expressing the view that the test of attachment to constitutional principles may not be subjective beliefs and attitude, but rather objective behavior and the finding of the naturalization court regarding behavior, the majority in the Schneiderman case stressed the provision of the 1906 statute which, in specifying the requirements for naturalization prescribed in part, "It shall be made to appear to the satisfaction of the court . . . . he has behaved as a man . . . . attached to the principles of the Constitution of the

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23Idem, p. 175.
24United States v. MacIntosh, supra, footnote 11; United States v. Schwimmer, supra, footnote 11; Luria v. United States, (1913) 231 U.S. 9, 22-23, 34 S.Ct. 10, 58 L.Ed. 101. See also United States v. Tapolsanyi, (C.C.A. 3rd Cir., 1930) 40 F. (2d) 255; United States v. Morelli, (N.D. Calif. 1938) 55 F. Supp. 181; In re Van Laaken, (N.D. Calif. 1938) 22 F. Supp. 145. In the case of In re Saralieff, (E.D. Mo. 1932) 59 F. (2d) 436, the Court said: "The expression 'well disposed' refers particularly to the mental attitude of the applicant, with intent to exclude from citizenship persons disbelieving in our form of government or hostile to it. Attached to the principles of the Constitution means attachment to the principles of free government as exemplified in that instrument. 'Attachment' is a stronger word than 'well disposed' and implies a depth of conviction which would lead to an active support of the Constitution." (p. 436)
Standing alone, this might properly be construed as setting up an objective test rather than a subjective one, but it must be read in conjunction with the balance of the section and with the balance of the act. The same section continues, "In addition to the oath of the applicant," the testimony of two witnesses "to the facts" of attachment to the principles of the Constitution and other matters shall be required. The Act further sets out the form and provisions of the Petition for Naturalization which is to be subscribed and verified under oath by the applicant. The petition reads in part, "... I am attached to the principles of the Constitution of the United States ..." The Act then prescribed the contents of the oath to be taken before admission to citizenship which required among other things a sworn declaration, "that he will support the Constitution and laws of the United States against all enemies, foreign and domestic, and bear true faith and allegiance to the same." Manifestly none of the latter requirements of the 1906 Act could be satisfied unless the subject was in fact attached to and subjectively believed in the principles of the United States Constitution. Read collectively it is believed that the various provisions of the Act compel the interpretation that attachment to constitutional principles is a subjective requirement as the earlier cases held.

Emphasizing the fact that the Congressional intent was in accordance with the above interpretation, the basic act was amended in 1929 by deleting the words "It shall be made to appear to the satisfaction of the court admitting an alien to citizenship.

The test is the possession of the necessary qualifications for naturalization and not a finding by the court which may be contrary to the true facts. Further emphasizing that attachment in fact

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29 Act of Mar. 2, 1929, c. 536, Sec. 6 b, 45 Stat. 1513.
30 If the test were merely the objective one of behavior and a finding by the naturalization court that the subject had behaved as a person attached to the principles of the United States Constitution, then it follows that naturalization would have been legally obtained and would not be subject to revocation in the case of a person who admitted, subsequent to his naturalization, that he came to the United States for the single purpose of organizing peaceful opposition to constitutional government and desired the security of American citizenship before making any overt act. The same result would follow with respect to the allegiance requirements for natural-
was required as contrasted with behavior, the provisions of the 1906 statute were again amended when the Nationality Act of 1940 was adopted. At that time the word "behaved" was eliminated entirely, the requirement now reading that the subject "has been and still is ... attached to the principles of the Constitution ...".

The legislative history of this amendment points out that this was not a change in substance but one of form only to clarify and better express what had been the requirement of the statute all along.

While the Schneiderman decision did not actually hold that attachment in fact is unnecessary for valid naturalization, it cast such doubt upon this question, which previously had been considered settled law, as seemingly to weaken the rigidity of that requirement and with it probably to question the unqualified nature of the requirements pertaining to allegiance to the United States. Thus since the Schneiderman decision, in one judicial district twenty-two denaturalization cases were ordered dismissed, the court holding that behavior is the test of attachment and also holding that a case will not lie even where the oath of allegiance is a false and perjured one since the decree awarding naturalization was held to be res judicata against a subsequent denaturalization suit predicated either upon lack of attachment to Constitutional principles or lack of allegiance to the United States. Similarly the Circuit Court of Appeal for the Second Circuit has recently held that "attachment to the principles of the Constitution which the law exacts at naturalization is not addressed to the heart; it demands no affection for, or even approval of, a democratic system of government" and that allegiance need not entail any of the patriotism and affection such as is ordinarily associated with it.

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30Title 8, U.S.C., Sec. 707(a); Sec. 307(a), Nationality Act of 1940 (54 Stat. 1142).
31Report Proposing a Revision and Codification of the Nationality Laws of the United States, prepared by the Sec. of State, Attorney General and Sec. of Labor at the request of the President, June 13, 1938 at p. 23.
33United States v. Rossler, (C.C.A. 2nd Cir. 1944) 144 F. (2d) 463.
The statutory requirements that all foreign allegiance be renounced and that true faith and allegiance in fact be accepted to the United States would seem to be fully as categoric and uncompromising as those respecting attachment. The statute is not satisfied merely by the taking of an oath, but repeatedly throughout the naturalization process declarations of intent and purpose are required at each step. In his first papers or declaration of intention, the applicant under oath must swear “that it is bona fide his intention to . . . renounce forever all allegiance and fidelity to any foreign prince, potentate, state or sovereignty . . . .” Under oath in the petition for naturalization, he must swear that it is his intention “to renounce absolutely and forever” all foreign allegiance. Finally in his oath in open court at the time of naturalization, he must again swear that “he absolutely and entirely renounces and abjures all allegiance and fidelity to any foreign . . . state . . . that he will support and defend the Constitution and laws of the United States against all enemies, foreign and domestic, and bear true faith and allegiance to the same.” The above provisions have remained substantially unchanged since the 1906 Act was passed.

It is believed that these provisions indicate the Congressional intent that absolute and entire allegiance and belief in constitu-

34"Allegiance" is a generic term, difficult of precise definition. As stated by Mr. Justice Frankfurter in the Baumgartner case, supra, footnote 2, "Allegiance to this Government and its laws, is a compendious phrase to describe those political and legal institutions that are the enduring features of American political society. We are here dealing with a test expressing a broad conception . . . being nothing less than the bonds that tie Americans together in devotion to a common fealty." See also Carlisle v. United States, (1872) 16 Wall. 147, 154, 21 L.Ed. 426; United States v. Wong Kim Ark, (1898) 169 U.S. 649, 659, 18 S.Ct. 456, 42 L.Ed. 890. "It is fundamental that one can owe allegiance to a single country only . . . when one swears allegiance to one country, he necessarily denies allegiance to another." United States ex rel. Fracassi v. Karnuth, (W.D. N.Y. 1937) 19 F. Supp. 581, 583.


36Title 8, U.S.C., Sec. 732; cf. Sec. 4, Act of June 29, 1906, 34 Stat. 596. In the case of United States v. Siegel, (D.Conn. 1945) 59 F. Supp. 183, the court recognized the subjective obligation of bona fide intention to renounce foreign allegiance as sworn to in the petition for naturalization as well as the actual renunciation of foreign allegiance in the oath at the time of naturalization. Accordingly the defendant's certificate of naturalization was ordered cancelled both on the ground that at the time of his petition for naturalization he did not intend to forswear allegiance to the German Reich, and that at the date of the taking of the oath he did not in fact renounce allegiance to the German Reich or assume allegiance to the United States without mental reservation.

tional government are to be firm and uncompromising requirements for valid naturalization. There is to be total abjuration of foreign allegiance and real and personal attachment to the principles upon which our constitution is based. Divided concepts and meaningless oaths are not enough. “American citizenship is a priceless possession, and one who seeks it by naturalization must do so in entire good faith, without any mental reservation whatever, and with the complete intention of yielding his absolute loyalty and allegiance to the country of his adoption. If he does not, he is guilty of fraud in obtaining his certificate of citizenship.”

Judge Fee of the District of Oregon emphasized the obvious when he stated that Congress provided in the procedure for admission to citizenship, not the repetition of the mere form of words, but an essential change of mental attitude extending over five years prior to the filing of the petition for admission. As the Supreme Court stated in one of the early leading cases it was intended that a person “if admitted, should be a citizen in fact as well as in name” and that his naturalization would be “mutually beneficial to the Government and himself.” Persons naturalized were to assume and bear the obligations and duties of citizenship as well as to enjoy its rights and privileges. All citizens owe their allegiance to the government and it in turn owes them protection. They are reciprocal obligations conditioned upon each other. This does not mean that Congress intended that an alien, upon becoming a citizen, should not retain memories and affection for his native

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2. United States v. Kramer, (C.C.A. 5th Cir. 1919) 262 Fed. 395. As the court recently stated in United States v. Ackermann, (W.D. Tex. 1943) 53 F. Supp. 611, 616, "There can be no divided allegiance. To become a true citizen through naturalization, the applicant must 'absolutely and entirely' renounce and abjure all allegiance and fidelity to his native land. There can be no reservation in any particular and to any extent."


land. It merely means that the oath of allegiance to the United States is to be full, complete and undivided with no reservations.

Res Adjudicata

From the time of the enactment of the basic 1906 statute, the troublesome question has been present of the finality of a naturalization decree and the findings of the naturalization court regarding a subject’s qualifications for naturalization: The 1906 Act provided for the admission of aliens after a final hearing in which the applicant and his witnesses were “examined under oath before the court.” Section 11 of the Act gave the government the right to intervene in the naturalization proceedings and to be heard in opposition to the petition for naturalization. Section 15 gave the government the further power to institute suits to cancel certificates of naturalization which had been illegally or fraudulently obtained. Thus the government is afforded two separate opportunities to introduce evidence tending to show a subject’s disqualification for citizenship, and the decision in each instance is appealable.

That a naturalization decree is a judgment is clear. Similarly, there can be no doubt that Sections 11 and 15 of the 1906 Act were intended to afford cumulative protection against fraudulent or illegal procurement of naturalization or that Section 15 was intended to afford a remedy broader than otherwise would have been present in equity. Any other interpretation would render Section 15 meaningless.

The finality of a naturalization decree has accordingly been confusing, and is a problem which the Supreme Court has dealt with several times in the past. As indicated above however, the majority and concurring opinions in the Schneiderman case reopened the questions decided in these earlier cases. In reconsidering the question of whether the statutory prerequisite is attachment in fact or merely a finding by the naturalization court that the subject had behaved as a person attached to the principles of the Constitution, the court was necessarily also reopening the question of whether a naturalization decree is res adjudicata of the question of attachment. The court went further however, and

42 Sec. 9, 34 Stat. 596, 599; now Title 8, U.S.C., Sec. 734(a).
43 34 Stat. 596, 599; now Title 8, U.S.C., Sec. 734(d).
44 34 Stat. 596, 601; now Title 8 U.S.C., Sec. 738(a).
45 Johannessen v. United States, supra, footnote 13; Tutun v. United States, supra, footnote 11.
47 Supra, footnote 22.
without deciding, expressed doubt whether a naturalization decree can be set aside in any case, "aside from grounds such as lack of jurisdiction or the kind of fraud which traditionally vitiates judgments." The effect has been to again throw open the question of res adjudicata or estoppel by judgment, resulting in widely divergent views among the lower courts. Some light can be thrown upon the matter by reviewing the development of previous judicial precedents and the facts upon which they were based as well as by examining pertinent parts of the naturalization process itself.

The constitutionality of Section 15 of the 1906 Act was first before the Supreme Court in the Johannessen and Luria cases and was upheld in both. In the Johannessen case, the defense of estoppel by judgment was raised and was specifically rejected. The decision recognized and cited previous cases to the effect that the decision of a naturalization court is a judgment, as such is immune from collateral attack, and is complete evidence of its own validity. It held however that this fact did not preclude the constitutional power of Congress to authorize direct attacks upon certificates of naturalization in independent proceedings as under Section 15. In the Johannessen case, the ground on which the cancellation suit was based (lack of proper residence) had not been made an issue in the naturalization court.

Subsequently in 1916 in the Ginsberg case, it was held that the statutory requirements had not been met when the naturalization proceedings were held in chambers rather than in open court. The Supreme Court laid down the principle that a mistake of the naturalization judge cannot supply missing qualifications prescribed for naturalization or render them non-essential. The decision continued that every certificate of naturalization is considered as having been granted upon the condition that the government can challenge it under Section 15 if it was not issued in accordance with the statutory requirements.

In the Ness case which followed in 1917, the Supreme Court had before it the specific question of an issue which had been
raised and passed upon by the naturalization court being made the
ground of the subsequent suit to revoke naturalization. Mr. Justice
Brandeis, speaking for a unanimous Court, pointed out that
Section 15 is not only cumulative rather than alternative to Section
11, but that its application is broader in scope than the remedy
afforded independently in equity for setting aside judgments. The
opinion recognized and cited the leading cases which the Schneider-
man decision referred to as the basis for its doubt that a naturaliza-
tion decree can ordinarily be set aside in a subsequent suit to
revoke citizenship. The Ness case held that the relief afforded
under Section 15 however is narrower than the protection provided
under Section 11. The opinion pointed out that the purpose of the
Act would be defeated if in each instance the government had to
refrain from objecting to naturalization in order to protect its
subsequent right to enter suit for cancellation. Section 11 was in-
tended to minimize the number of suits necessary under Section
15. The opinion concluded that wherever fraud or illegality is
involved, a suit to cancel is in order.

The issues were next considered by the Supreme Court in 1926
in the Tutun case. Mr. Justice Brandeis again spoke for the Court
on the question of whether a right of appeal exists from the decree
of a naturalization court. It was held that the naturalization court
exercises its judicial powers and that its decree is therefore an
appealable judgment. The case further pointed out that the scope
of a suit to cancel naturalization is narrower than the review
afforded by direct appeal from the order granting naturalization.
This case was heavily relied upon by the Supreme Court in the
Schneiderman case in intimating that a naturalization decree is a
judgment which ought not be set aside except upon the type of
fraud which traditionally is ground for reopening judgments.
However it should be noted that the Tutun case involved merely
the narrow question of the right of appeal from a naturalization
decree, which right of appeal was held to exist because the nat-
uralization decree was an exercise of judicial power. That this case
was not intended to overrule the previous decisions cited above, is
clearly indicated by the tenor of the decision and the fact that it
cited those cases with approval, i.e. the Ness, Johannessen, Gins-
berg and Luria cases.

54 Idem.
55 United States v. Trockmorton, (1878) 98 U.S. 61, 25 L.Ed. 93;
Kibbe v. Benson, (1874) 17 Wall. 624, 21 L. Ed. 741.
738.
The applicability of the doctrine of res adjudicata in the instance of naturalization decrees was again before the Supreme Court in the Manev case in 1928. Mr. Justice Holmes, speaking for a unanimous Court, clarified the Tutun decision by pointing out that, while a naturalization decree is a judgment, it differs from other judgments in that it does not determine an existing right but grants one which did not previously exist. The case held that the special nature of the judgment was sufficient reason for rejecting the defense of res adjudicata against the statutory provision to cancel naturalization fraudulently or illegally acquired. It concluded, however, following the rationale in the earlier cases, that this was not special treatment since the absence of a qualification prerequisite for naturalization precluded its valid award. Otherwise, the decision pointed out, the naturalization court would be permitted to enlarge its own jurisdiction against the sovereign that granted and defined its jurisdiction by making findings that qualifications for naturalization existed, which Congress had made prerequisite, when in fact they were lacking. The principles and reasoning enunciated in this and other cases discussed above have been followed in the lower courts.

The nature and construction of a naturalization decree are further revealed by a careful examination of the history and development of the denaturalization process and the purpose of each amendment of the statutes. Prior to 1906 there had been wholesale frauds and irregularities in obtaining naturalization. It was to
correct such abuses and to prevent their recurrence that the Act of June 29, 1906 was passed. It was the first general overhauling of the naturalization laws for many years and it provided for the first time the right to cancel or revoke naturalization fraudulently or illegally procured. Uniform naturalization procedures were set up in the Act and the Bureau of Naturalization was created to supervise naturalization on a national basis.

As indicated above, the Act provided that at the final hearing the applicant and witnesses were to be examined under oath before the court. In the succeeding years it became apparent that the courts did not have the facilities nor the time to investigate the qualifications of applicants for naturalization and that even the brief inquiry which took place in open court pursuant to the statute was causing a great deal of congestion. The Secretary of Labor and the Commissioner of Naturalization for many years recommended legislation "to relieve the courts in the large cities from the disorderly congestion of the unnecessary number of witnesses with the applicants at naturalization hearings," and in 1926 a group of federal judges appeared before the House Committee on Immigration and testified that the district courts did not have the necessary facilities for determining the facts as to each of the many applicants for citizenship. At this same time a letter was written by Chief Justice Taft, dated May 25, 1926 to the Chairman of the House Committee on Immigration and Naturalization, in false impersonation, and the sale and use of false and counterfeit certificates of naturalization. ... In order to correct the abuses that have been disclosed it is imperative, in the judgment of this committee, that a law should be enacted prescribing a fixed and uniform system and a code of procedure in naturalization matters.  

Supra, footnote 44. Representative Goulden, one of the sponsors of the legislation, during the debates stated, "If any alien shall impose upon the court by perjured testimony, or if a certificate has been issued in violation of the law, the bill makes the certificate invalid and authorizes proceedings in any court of competent jurisdiction to cancel certificate of citizenship. ... A certificate tainted with fraud is in the sense of the law no certificate at all." (40 Cong. Rec. 7040).

Supra, footnote 42.

H. Rep. No. 1328, 69th Cong., 1st Sess. The committee report also showed, "The naturalization examiners have for many years conducted administrative examinations of the applicants and their witnesses and reported the results to the courts. In almost all instances the favorable reports of the examiners are accepted by the courts."

These included Judges Learned Hand, Augustus N. Hand, George W. Anderson and Edward J. Henning. Judge Augustus Hand, now a member of the Circuit Court of Appeals for the Second Circuit testified, "I do not think it (the preliminary naturalization proceeding) is judicial work at all; I would like to see it treated as purely administrative work, with a review as to questions of law in the court." (House Committee Hearings, Vol. 427, Pt. 4, p. 7.) Infra, footnote 75.
which he expressed his belief that the granting of naturalization should be entirely removed from the courts and handled by naturalization examiners as a purely administrative function. 64

In recognition of the problem, Congress amended Section 4 of the Act of June 29, 1906, setting up an entirely new procedure for naturalization. 65 Under the new amendment, the courts were authorized to permit the entire inquiry into the qualifications of applicants for citizenship to be conducted by designated naturalization examiners, and where this procedure was utilized, the examination of the applicant and his witnesses “before the court and in the presence of the court” as previously required, was waived. The naturalization court was merely required to administer the oath. 66 This was Congressional recognition that the courts did not have adequate facilities to determine the eligibility of each applicant for naturalization and the need for an administrative organization to ascertain the facts. It is interesting to note that this amendment was enacted only about two months after the Supreme Court on April 12, 1926 in the Tutun case, supra, had held a naturalization decree to be an appealable judgment, and accordingly it should be recognized that the Tutun decision, so heavily relied upon in the Schneiderman case, was based upon the old procedure prior to the 1926 amendment.

In 1929 Congress again expressed the intent inherent in the 1926 amendment, and further manifested its recognition of the

64 The letter read: “I have examined Senate bill 4251 as it has been submitted to the House, and I sincerely hope that it will pass, because I think it will very much shorten the time which the Federal district judges have had to take in the matter of naturalization. I could have wished that the necessity for administering the oath by a Federal judge might also have been dispensed with, because in great centers where there are many applicants for naturalization there is much interference with the regular business of the court in criminal and civil matters by the presence in the corridors and in the court rooms of the applicants for naturalization, their witnesses, and their families. The time of one district judge in some districts for 2 or 3 days in the week is consumed with the hearings of naturalization cases. It can be just as well done by the examiners selected by the senior district judge, as provided in this bill, and the hanging about the court rooms and the court corridors of the applicants and the witnesses can be very largely avoided by requiring them to attend upon the examiners at a different place. If there are to be but few personal examinations by the judges, as this act indicates, the matter of administering of the oaths of allegiance to those who are admitted can be disposed of in very much less time than under the present system. I earnestly hope that the bill will pass.” (H. Rep. 1328, 69th Cong., 1st Sess., p. 2.)


66 The procedure under the new act is summarized in the Report Proposing a Revision and Codification of the Nationality Laws of the United States, supra, footnote 31, pp. 45-46.
difficulty of definitely ascertaining in advance of naturalization all facts bearing upon the eligibility of the applicant for citizenship. The statute as amended deleted the words "it shall be made to appear to the satisfaction of the court admitting any alien to citizenship" which phrase had previously been a prefix to the enumerated qualifications for naturalization. The amendment substituted the words "No alien shall be admitted to citizenship unless" possessed of the prescribed qualifications. The 1929 amendment would clearly seem to evidence the Congressional intent that a decree of naturalization was not to be considered as an inviolable finding of eligibility and qualification for citizenship, but rather that the validity of naturalization is to be entirely dependent upon the actual possession in fact of the prerequisites laid down by Congress.

At the present time the naturalization court usually does not pass on the facts at all. The Report of the President's Committee regarding the Naturalization Laws shows that from 1927 to 1934 inclusive, in over three quarters of a million cases, the recommendations of the designated naturalization examiners were approved without any examination by the court in 98.89 per cent of the cases. Thus the nature of the inquiry and the extent of the investigation conducted by the naturalization examiners becomes pertinent. The report of the Immigration and Naturalization Service for the year 1943, Table 21, shows that in the years from 1930 through 1940 there were from 113,000 to over 235,000 persons who were naturalized annually, and in these same years the number of naturalization examiners ranged from 92 to 142. Not all of these men spend full time on this work. Those assigned to examine into the qualifications of prospective citizens have an average daily assignment per man to interview 17 applicants and their witnesses. This constitutes an average of 51 interviews daily and enables the examiner to spend less than one-half hour on the average case. No further investigation is ordinarily conducted.

During the short time available for each case, the applicant and his witnesses are interrogated concerning the competency and credibility of witnesses, immigration status, residence, validity of

67 Act of March 2, 1929, c. 536, Sec. 6b., 45 Stat. 1513, see Title 8 U.S.C. Sec. 707 (a).
68 For a very able review of the history and changes in the law and the procedure used in naturalization cases, see United States v. Scheurer, (D. Ore. 1944) 55 F. Supp. 243.
69 Supra, footnote 31.
the declaration of intention, moral character, arrest record, marital status, obedience to law, educational qualifications, attachment to the principles of the Constitution, etc. It is apparent that these subjects can not be fully explored in the time available or in fact without the opportunity for actual investigation and verification of the information received.

The above makes it apparent that in the ordinary case, naturalization is granted without either the court or the Immigration and Naturalization Service having an opportunity fully to explore the qualifications of the applicant for citizenship nor to make more than the most cursory inquiry. It further indicates a Congressional recognition that to investigate each prospective citizen prior to naturalization was impossible for the courts and was administratively unfeasible for the Immigration and Naturalization Service because it would require setting up a huge investigative staff and sizeable appropriations. The alternative employed has been to facilitate naturalization with minimum delay and expense, retaining the right to revoke naturalization in those relatively few instances where it is subsequently established that citizenship was fraudulently or illegally obtained by persons in fact not eligible. The Congressional intent seems to have been as stated in the Ginsberg case, "every certificate of citizenship must be treated as granted upon the condition that the Government may challenge it . . . and demand its cancellation unless issued in accordance with such requirements."

If a naturalization decree is to be considered as a judgment of the ordinary type, as discussed in the Schneiderman case and as held in the Kusche case, and which can be set aside only upon the grounds which traditionally vitiate judgments, or even if a burden of proof is to be required which can be met in relatively few instances, the result in practice is to award naturalization without more than a cursory check into the applicant's eligibility and with practically no recourse later if the subject is subsequently

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71 With regard to allegiance, there is little to investigate prior to naturalization. Allegiance is not actually owing to the United States until the oath of allegiance and renunciation is taken at the time naturalization is conferred. Accordingly the truth or falsity of the oath of allegiance cannot be ascertained until after it has been taken, or after naturalization has been obtained.


found to have been lacking in certain of the prescribed qualifications. From the above it is believed that the observation can properly be made that a naturalization decree is a judgment and a judicial function merely because of the procedure set up for granting it, and therein lies the basic legal problem. By nature, it is believed to be an administrative function and would be considered as such if not assigned to the courts.

Burden of Proof

It is readily apparent that denaturalization cases predicated upon lack of allegiance or lack of attachment to constitutional principles, must be given the most careful analysis by the courts and must provide the defendants with every possible safeguard. This is so not only because loss of citizenship is extremely serious in its consequences, but also because the evidence will involve political beliefs and will be closely related to freedom of thought and freedom of expression. The Schneidernian decision for the first time enunciated the burden of proof in denaturalization cases as requiring "clear, unequivocal and convincing evidence which

\textsuperscript{74} Cf. Tutun v. United States, (1926) 270 U. S. 568, 46 S. Ct. 423, 70 L. Ed. 738.

\textsuperscript{75} In discussing the bill which became the Act of June 29, 1906, the Congressional debates reveal the following statement by Mr. Bonyngue: "... The fact is that the United States and Canada, so far as I know, are the only countries in the world that use the courts at all for the naturalization of aliens. It is really an executive and not a judicial proceeding. In all other countries it is done through the department of state, and probably would have been in this country had it not been for the fact that our Department of State has no machinery scattered all over the country, and for the lack of machinery the original statute in regard to naturalization conferred this power upon the courts. It partakes somewhat of a judicial proceeding it is true, and the courts have held that a decree admitting an alien to naturalization has the force and effect of a judgment. But in its essence the proceeding is really not judicial; it is executive." (59th Cong. 1st Sess., May 17, 1906, 40 Cong. Rec. 7057). Cf. supra, footnotes 63, 64.

\textsuperscript{76} It has been contended by some that a denaturalization suit of this type is violative of the constitutional rights of freedom of speech. On the contrary, no attempt is made to curb the defendant's freedom of thought or expression nor to punish him for his political views or attachments to Germany. The proceeding is equitable in nature and not penal, Luria v. United States, (1913) 231 U. S. 9, 27, 34 S. Ct. 10, 58 L. Ed. 101. It is merely to test the validity of naturalization including allegiance to the United States and attachment to the principles of the constitution. Since these matters obviously enter the field of political thought, the question immediately narrows down to the Congressional power to define political beliefs and political allegiance as tests of the right of naturalization and cancellation of naturalization. This right can scarcely be doubted. Cf. Turner v. Williams, (1904) 194 U. S. 279, 24 S. Ct. 719, 48 L. Ed. 979; Lopez v. Howe, (C.C.A. 2d Cir. 1919) 259 Fed. 401, appeal dismissed and certiorari denied, (1920) 254 U. S. 613, 650, 41 S. Ct. 63, 65 L. Ed. 438.
DENATURALIZATION PROGRAM

...denationalization program does not leave the issue in doubt. Subsequently in the Baumgartner case, the majority opinion described the evidence as lacking the "solidity of proof which leaves no troubling doubt." In these two cases the Supreme Court has laid down a burden of proof which is difficult indeed to meet in cases involving such intangible and indefinite matters as allegiance and attachment to constitutional principles, on which concepts men's minds differ very greatly.

In the facts which must be proved in order to revoke naturalization, the Baumgartner case also stressed the fact that the gravamen of that case was a "consciously withheld allegiance to the United States and its Constitution and laws" and that to prove "such intentional misrepresentation" the evidence pertained only to "objective falsity" as contrasted with "perjurious falsity" of the oath of allegiance and renunciation. While the dicta in the body of the opinion purported not to pass upon the question of whether "purjurious falsity" as contrasted with "objective falsity" of the oath is required for denaturalization, the concluding paragraph of the opinion indicates that the holding was predicated at least in part upon the fact that there was insufficient proof of "knowing reservations" in the oath of allegiance. The complaint in the Baumgartner case alleged both fraud and illegality to be present in the defendant's false oath of allegiance and in his lack of attachment to constitutional principles. This case accordingly presents the sharply defined question of whether there need be the element of intent or perjury to constitute a false oath of allegiance.

"Fraud connotes perjury, concealment, falsification, misrepresentation or the like. But a certificate is illegally, as distinguished..."
from fraudulently, procured when it is obtained without compliance with a 'condition precedent to the authority of the Court to grant a petition for naturalization.' *Maney v. United States, 278 U. S. 17, 22.* The difference between illegality and fraud in denaturalization cases is *intent* or *wilfulness.* Knowing and intentional illegality thus becomes fraud. Facts that would otherwise constitute fraud, but from which wilfulness or intention to falsify are absent, constitute illegality.83

We have discussed above the fact that the oath of allegiance requires the divesting of foreign allegiance *in fact* and the acceptance of allegiance to the United States in its stead. It is a condition precedent to valid naturalization. If the oath is taken with a *conscious* mental reservation or a *conscious* intent to retain foreign allegiance and not to accept full allegiance to the United States, *fraud* is obviously present. If the element of willfulness or conscious falsification is lacking, but no actual divesting of foreign allegiance is made and no complete transfer of allegiance to the United States is *in fact* made, naturalization is nevertheless *illegally* obtained because a "condition precedent" to valid naturalization has not been met.84 It is believed that the conclusion must follow that intent or perjury is not a necessary element in a de-

83"As it was clear to the learned trial judge, who saw and heard the witnesses, and is equally clear to us that he was not attached to its principles at the time he applied for naturalization, the respondent did not meet that condition. Therefore as his statement in his petition to the contrary, however honestly made in view of his peculiar notions, amounted in law to a false representation, the order admitting him to citizenship must stand vacated and his certificate of citizenship remain cancelled." *United States v. Tapolcsanyi, (C.C.A. 3d Cir. 1930) 40 F. (2d) 255, 257-8.
84The Circuit Court of Appeals in the *Baungartner* case expressed this principle very well: " . . . The great importance of the proceeding to the United States and the fact that only the alien can know what his real allegiance to this country is, compel the conclusion that, if the alien mistakenly swears to an allegiance which he does not possess or which perhaps, for reasons overlooked by or unknown to him at the time of his naturalization, he can never possess, he has failed to satisfy this requirement for his admission to citizenship. It is the fact of the alien's allegiance to this country at the moment of naturalization and not his belief concerning it upon which the right to naturalization depends." *Baungartner v. United States, (C.C.A. 8th Cir. 1943) 138 F. (2d) 29, 34. Several other cases have held similarly although variously describing the false oath of allegiance as "legal fraud"; *United States v. Herberger, (W.D. Wash. 1921) 272 Fed. 278, 291; United States v. Mickley, (E.D. Mich. 1942) 44 F. Supp. 735, 738; as "constructive or implied fraud"; *United States v. Fischer, (S.D. Fla. 1942) 48 F. Supp. 7, 8; or as "latent reservation"; *United States v. Haas, (N.D. N.Y. 1943) 51 F. Supp. 910, 911. See also United States v. Wurzenberger, (D. Conn. 1944) 56 F. Supp. 381.
naturalization case based upon false oath of allegiance or upon lack of attachment to constitutional principles.\(^5\)

If it were necessary to prove, in each case based upon false oath of allegiance, that there was a willful falsification, virtually all of the elements essential to establish a criminal violation would also have to be met in order to revoke naturalization. Criminal penalties have been provided in the case of any person who "knowingly procures naturalization in violation of the provisions of this Act" or in other words who knowingly procures naturalization without meeting the statutory requirements.\(^6\) Conviction under the 1906 Act further required that the certificate of naturalization be adjudged void, thus revoking naturalization as well as imposing criminal penalties for willful falsifications. For denaturalization cases, the burden of proof laid down by the Supreme Court is "clear, unequivocal and convincing evidence which does not leave the issue in doubt." This would seem to be no less stringent than the burden of proving "beyond a reasonable doubt" as required in criminal cases. If willfulness and intent were necessary to denaturalize for false oath of allegiance, the effect thus would be much the same as requiring that a criminal offense be proved in each case.

**Consolidation of Cases**

More than 145 of the denaturalization cases which were brought to trial involved members of the German American Bund. Upon a showing that these persons had full knowledge and were in full accord with the aims and objectives of the Bund, it became an important part of their cases to prove the disloyal character of the organization and the fact that its doctrines and program were repugnant to and incompatible with allegiance to the United States and with attachment to constitutional principles.

Under the statute, the venue in each denaturalization case is the judicial district in which the defendant resides at the time of bringing suit.\(^7\) Defendants who were Bund members lived in no

\(^5\)In other words, if the applicant retains his old allegiance at the time of his declaration, of his petition, and at the time of his oath, does that state of mind, in itself, constitute fraud, or does it constitute a failure to fulfill a requirement of the Act which makes the naturalization illegal because the naturalization of a person who did not, in fact, fulfill the conditions upon which the decree could have been granted legally? I believe that it does both." United States v. Wurzenberger, (D. Conn. 1944) 56 F. Supp. 381.


\(^7\)Title 8 U. S. C. Sec. 738(a).
less than 18 separate judicial districts. Each denaturalization suit
is an individual case against a single defendant and there is no way
of filing one complaint against a group of several defendants, no
matter how similar the proof might be establishing their fraudulent
or illegal procurement of citizenship.

The voluminous nature of the evidence necessary to describe
each phase of the Bund and to demonstrate its true significance
made it physically and financially impracticable, if not impossible,
to present it 145 times or more. To overcome this difficulty, the
consolidation procedure provided for under Rule 42, Federal Rules
of Civil Procedure, was utilized wherein cases may be consolidated
for trial for the purpose of hearing evidence on questions of law
or fact common to all. Under this procedure, separate complaints
were filed against the persons whose denaturalization was sought,
in the various districts where they resided. In each district where
there were defendants who had been members of the German
American Bund and proof of the disloyal character of the organi-
zation was one of the elements to be proved, a petition was filed
with the court prior to trial, requesting that the cases be ordered
consolidated for the single purpose of introducing evidence regard-
ing the Bund and that thereafter they be severed, with the balance
of each case being tried separately. Almost without exception, the
Courts granted such petitions. In the Southern District of Cali-
ifornia, consolidation of this type was agreed to by most of the
defendants. This limited consolidation had the advantage to the
government and to the defendants, as well as to the courts, of saving
a great deal of time and reducing the trial expenses by making
it necessary to introduce the evidence regarding the Bund only
once for the entire group of cases. At the same time, the separate

88,92 Exhibits and 381 witnesses were used in the case of United States

89"CONSOLIDATION. When actions involving a common question
of law or fact are pending before the court, it may order a joint hearing
or trial of any or all the matters in issue in the actions; it may order all
the actions consolidated, and it may make such orders concerning proceedings
therein as may tend to avoid unnecessary costs or delay." Rule 42(a), Fed.

v. Sautter et al, (N.D. Ill. 1943) 54 F. Supp. 22; United States
May 1945).

identity of each case was preserved and the evidence pertaining to each defendant's personal activities was heard separately.

Using the above procedure, the cases ordinarily began with the government introducing evidence to prove the aims and program of the German American Bund as a national organization and also evidence describing the activities of the local unit, in which the particular defendants were active. Each of the defendants had the right of separate cross examination of the government's witnesses and the separate right to object to the introduction of evidence. The right of introducing rebuttal testimony at that time was also present, although little effort was made to disprove the rather overwhelming evidence of the Bund's un-American activities.

When this evidence pertaining to the nature of the organization had been concluded, the trial of the cases was severed and separate trial dates were set for the remaining portion of each case. In the separate hearings, evidence was offered of the defendant's membership and activities in the Bund, proof to show his knowledge of and agreement with its doctrines and program, and other proof to establish his fraudulent or illegal procurement of naturalization. If the Court found that the proof was sufficient to charge the defendant with having knowledge of and being in accord with the Bund's National Socialist objectives, the evidence relating to the organization became a part of the case against him. Otherwise it was disregarded in so far as his case was concerned. Upon the evidence found to be admissible and applicable to each separate defendant, the Court then made individual findings of fact and issued separate judgments in each case.

For use in trying these cases in the various judicial districts, a trial brief of the oral and documentary evidence was prepared in the Department of Justice in Washington and mimeographed copies were made for all of the United States Attorneys or other trial attorneys who were to present the cases. This trial brief, digesting the testimony of witnesses and containing excerpts from the exhibits, comprised almost 1,000 pages and from one week to several weeks were consumed in introducing this evidence, depending upon the number of defendants involved and the amount of cross examination and the number of objections to the admission of evidence.

Further to facilitate the preparation and trial of the cases, attorneys who had spent months in studying all of the written documents, interrogating the witnesses at great length and assist-
ing in organizing the evidence and writing the trial brief, were successively assigned from one judicial district to the next where cases were to be tried, in order to aid in their preparation and presentation.

Since several of the same witnesses were used in all of the trials, it became necessary to formulate an itinerary for them and frequently to arrange for them to travel from one trial to the next on successive days. For a time these witnesses virtually had to give up their businesses because testifying as government witnesses was occupying most of their time. Use of the same documentary exhibits at the numerous trials also posed a problem. Several of them were voluminous instruments from 50 to 100 pages in length and of which there was but one original copy. Most of them were in the German language and had to be translated. In order to make their use possible, a large number of photostatic copies of each exhibit with its translation were prepared, and the photostatic copies of the exhibits were made up into sets and sent to the several districts where trials were to be held. In pre-trial conferences provided for under Rule 16 of the Federal Rules of Civil Procedure, the defendants were asked to agree that the photostatic copies of the exhibits would be as equally admissible as the originals. Had this concession been refused in any case, the originals were available for trial purposes. At the pre-trial conferences exhibits and translations were made available to the defendants and their attorneys and for an agreed period of time prior to trial they were also made available for inspection and study.

The above procedure in substantially the same form was used in some 14 separate judicial districts from Connecticut to Los Angeles, in at least two of which the evidence was twice introduced. It is believed that this organization and preparation of evidence in such a way that it could be introduced in one judicial district after another by different trial attorneys each time, was somewhat unique in trial procedure.

The German American Bund
National Socialism

A significant accomplishment of the Denaturalization Program was that the trials, and the press and radio accounts of the evidence introduced by the government, served to acquaint many people with the tangible facts regarding the German American
Bund. Whereas persons frequently had only hazy and inaccurate impressions of the Bund, the concrete evidence presented in court in the various cities, provided a first hand tangible picture of the organization and its efforts to promote the doctrines of National Socialism in the United States. Among the former leaders of the Bund who testified as government witnesses were Peter Gissibl, one of the original founders; Severin Winterscheidt, national press officer and editor of the Bund newspaper; Willy Luedtke, national secretary; and John C. Metcalfe, newspaper correspondent who joined the Bund to investigate it and who became acquainted with most of the Bund officials and who toured the country visiting the various units. Corroborating these witnesses was the testimony of members or former members of the various local units and official Bund documents. Among the exhibits introduced were such basic documents as the "Bundesbefehle" or 50 "Bund Commands" issued by the "Fuehrer" (The Bund's National Leader) to the local units; the Structural Orders or regulations for the various branches of the Bund such as the "Ordnungs Dienst" (Order Division or Storm Troops), "Die Jugendschaft" (Youth Group), etc.; the official Bund yearbooks; convention minutes; membership books; song books and the official Bund newspapers recording its activities and objectives.

This evidence, put together piece by piece, traced the history of the Bund from its organization in Chicago in 1924 until its formal disbanding after war was declared in 1941, at which time its activities and objectives were to be continued by its members forming singing societies, athletic groups, etc.

The organizers of the Bund were a small group of N.S.D.A.P. or Nazi party members who had come to the United States from Germany and who had settled in the Chicago area. The first organization was called the "Free Society of Teutonia" and its leader was Fritz Gissibl who had taken part in the unsuccessful Munich Beer Hall Putsch the previous November 9th. In 1926 the name of the group was changed to the "National Socialist Society of Teutonia." This change in name reflected the progress of Hitler's National Socialist movement in Germany as did also the further change in 1932 to "Friends of the Hitler Movement." Hitler having achieved power in Germany in January, 1933, the name of the organization in the United States was changed that same year to "Friends of the New Germany." In 1936 the name was changed to "Amerikaddeutscher Volksbund" (German-American Bund).
During this entire period of time, the objectives of the organization remained the same except that originally the purpose was to aid in Hitler’s rise to power. After Hitler became head of the German state, the aim became one of extending the precepts of National Socialism to the entire German-American element in this country.

During the early years of the Bund, the members were also members of the Nazi Party. By 1933 however the N.S.D.A.P. local units in the United States were disbanded and absorbed into the Friends of the New Germany, and Nazi party dues were paid through that organization. In fact until Hitler came to power, the Bund had a program of annually sending to him the equivalent of one week’s earnings of each member of the group.

The structural organization of the Bund in the United States was identical with the parent organization in Germany. At its head was the Fuehrer or national leader. The United States was divided into three districts or “Gaus” over each of which was a “Gauleiter.” Under the “Gaus” were the local units or “Ortsgruppe” headed by “Ortsgruppen Leiters.” As in Germany, there were the “Jugendschaft” and “Maedchenschaft” or boys and girls groups which were the counterpart of the Hitler Youth. The same type of camps and athletic programs was provided and the youth were similarly indoctrinated with National Socialist doctrines. The Bund had its “Ordnungs Dienst” or Order Division, counterpart of Hitler’s Storm Troops, both wearing substantially the same uniforms.

The Bund used the Nazi salute and the swastika symbol. Their songs were the official Nazi anthems. Holidays celebrated were January 30—the date of Hitler’s accession to the German Chancellory, April 20—Hitler’s birthday, November 9—anniversary of the Munich Putsch. American holidays were generally unnoticed. The Bund used the slogan “Ein Volk, Ein Reich, Ein Fuehrer,” meaning one German people or race, one Reich, and one leader, thus characterizing the Nazi philosophy that all persons of German blood throughout the world are a part of the “superior” German race, are a part of the German Reich, and are under the leadership of one Fuehrer—Hitler.

With regard to the Nazi salute, “Heil Hitler,” Nazi swastika, emblems, etc., used by the Bund, Judge Goodman in United States v. Holtz et al, (N.D. Calif. 1944) 54 F. Supp. 63, said: “It cannot be disputed that this salute and salutation implied allegiance to Hitler, the Fuehrer . . . It is crystal clear that the emblems, slogans, salutes and flags, so used, typified and symbolized the pledge of allegiance on the part of the Bund members to the leadership, or Fuehrer, principle.”

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The Bund was not only the counterpart of the National Socialist party in the United States, but was officially recognized by Germany as taking the place of the Nazi party in this country. The policies of the Bund from the beginning were dictated from Germany. Bund leaders were in frequent contact with representatives of the Nazi party and later of the Hitler government. The change in name from “Friends of the Hitler Movement” to the “Friends of the New Germany” was dictated by the Nazi party, and the final change of name to the “German-American Bund” in 1936 was made in the presence of a German official sent here to supervise it.

The principles and doctrines of the German American Bund were those of National Socialism and Mein Kampf. They have been variously expressed but probably no more succinctly and forcefully than in United States v. Sautter et al:54 “The aims and purposes of the German-American Bund were (a) to act as an arm of the Nazi Party and of the government of Germany in the distribution of Nazi propaganda in the United States; (b) to promote race hatred and class discrimination along Nazi lines in the United States; (c) to band people of German extraction in the United States together and under the ‘volk’ or ‘blood’ theory to teach them that they owe primary allegiance to Germany regardless of their actual citizenship; (d) to establish the supremacy of the German ‘volk’ as a super-race destined to rule the world; (e) to promulgate, foster and teach the principles, philosophy, rituals, insignia, procedures, songs, slogans and government of the Nazi Party of Germany in the United States; and (f) to form and have ready the nucleus of a German National Socialist Government in

53For an authoritative treatise on the tenets of National Socialism, its citizenship laws, and its attitude toward naturalization in other countries, etc., see “NATIONAL SOCIALISM, Basic Principles, Their Application By The Nazi Party’s Foreign Organization, and The Use of Germans Abroad for Nazi Aims,” Department of State, Publication No. 1864, Dec. 1, 1942.

54(N.D. Ill. 1943) 54 F. Supp. 22.

55In 1940 there was published in the Bund newspaper an article entitled “Das Blut ist Heilig” (Blood is Sacred) by G. Wilhelm Kunze, subsequently national leader of the Bund. The article was later distributed in pamphlet form in large numbers throughout the Bund. It is a very expressive statement of the Bund’s advocacy of National Socialist doctrines and its disparagement of American citizenship. It enunciates clearly the basic Nazi doctrine that German blood is superior to citizenship in a foreign national. It maintains that there are no persons who are racially Americans but only persons racially German, Italian, etc., that America is predominantly German in a racial sense and that those of German extraction have the duty of preserving their racial integrity.
the United States in the event an opportunity to establish such a
government should ever present itself.”

The foregoing summary of the evidence relative to the German-
American Bund was found to be true by the numerous courts where
it was introduced.96 Similarly, no court to our knowledge which
has considered the facts has doubted that National Socialism, as
enunciated by Hitler and as embraced by the German-American
Bund, is the antithesis of constitutional democracy and that no one
can validly take the oath required of naturalized citizens and at
the same time believe in the principles and practices of National
Socialism. The two are repugnant, inconsistent and incompatible.97

**CONCLUSION**

The most basic and important requirements for citizenship
are loyalty and allegiance to the United States and sincere belief
in our free, democratic form of government. The courts have in-
sisted that applicants strictly comply with the letter of the pro-
cedural requirements for citizenship, such as the prescribed resi-
dence and witnesses. However, the courts had considerable difficulty
in strictly enforcing the requirements of allegiance and attachment
to constitutional principles. This has been due in a large part to
the intangible nature of allegiance and belief in democratic doctrines
and their close relationship to freedom of thought and expression.

96United States v. Wurzenberger, (D. Conn. 1944) 56 F. Supp. 381;
United States v. Holtz et al, (N.D. Calif. 1944) 54 F. Supp. 63; United
States v. Schuchhardt, (N.D. Ind. 1943) 49 F. Supp. 567; United States
1944) 56 F. Supp. 71; United States v. Milmovski, (N.D. Ind. 1944) 56 F.

97United States v. Schotfield, (C.C.A. 7th Cir. 1943) 136 F. (2d) 935;
United States v. Wezel, (S.D. Ill. 1943) 49 F. Supp. 16, 19; United States
v. Ritzen, (D.C. Tex. 1943) 50 F. Supp. 301; United States v. Ebell, (W.D.
Tex. 1942) 44 F. Supp. 43. As stated in United States v. Holtz et al, 54 F.
Supp. 63, 71: “... Allegiance to the Fuehrer, (Hitler), blood supremacy,
liquidation of Jews and Negroes were not ideals, but programs—viciously
at variance with the principles of the Constitution and the Bill of Rights
...” After describing the doctrines of National Socialism as embraced
by the Bund, the Court in United States v. Scheurer, 55 F. Supp. 43, con-
cluded: “... The mind which could harbor the principles above outlined,
which were so subversive of freedom of thought, could not at the same
time be loyal to the fundamental principles of this government ... If no
remedy exists for such illegal acquisition of citizenship, a weak spot has
been discovered in our system ...”
At the present time the statutes and the facilities available make it extremely difficult, if not impossible, in many cases to ascertain in advance of naturalization whether the prospective citizen does in fact meet these requirements. Under the judicial decisions, cancellation of citizenship once granted, requires such overwhelming proof—virtually the proving of a criminal case—that denaturalization for lack of allegiance or lack of attachment to constitutional principles is possible in relatively few instances.

The result is that at the present time it is altogether possible that persons lacking allegiance to the United States and who have no attachment or affection for our democratic institutions, in fact persons serving as advocates of foreign ideologies in the United States, may be successful both in obtaining and retaining American citizenship.