Revocation of Citizenship - "Denaturalization"

Walter Stein

Follow this and additional works at: http://scholarship.law.marquette.edu/mulr

Part of the Law Commons

Repository Citation
Available at: http://scholarship.law.marquette.edu/mulr/vol28/iss2/2
REVOCATION OF CITIZENSHIP—
"DENATURALIZATION"

WALTER STEIN.*

VERY few legal proceedings have been subjected to such thorough
scrutiny as has the judicial revocation or cancellation of natural-
alization. Decisions were fairly numerous and the subject was thought
fairly uncontroversial prior to the Schneiderman case. The Supreme
Court, though rendering a fairly sweeping decision on the subject, left
several essential points unresolved which have resulted in subsequent
conflicting decisions, even in appellate courts. This paper is intended
to give an up-to-date but rather general review on the subject in the
light of rendered decisions, though it is recognized that—judicially at
least—the last word has not yet been spoken. Although the writer has

* B.S. of Economics, University of Pennsylvania; LL.B., University of Penn-
sylvania; Member of Pennsylvania and Federal Bars; former Assistant Deputy
Attorney General, Commonwealth of Pennsylvania; in charge of denaturaliza-
tion unit, Immigration & Naturalization Service, United States Department of
Justice.

1796 (1943).

been engaged in denaturalization work for the Immigration and Naturalization Service since November 1942, views expressed in this article are purely his personal views.

Revocation or cancellation of naturalization is a judicial proceeding instituted for the purpose of revoking the order admitting a person to citizenship and cancelling the certificate of naturalization on the ground that naturalization was fraudulently or illegally procured. The proceedings culminate in a judicial finding that naturalization was obtained by fraud or illegality, that it would never have been granted had that fraud been known, and therefore the naturalization was void from the beginning.³

All revocations are now statutory,⁴ but revocation proceedings were sustained even prior to the first statute which went into effect in 1906.⁵ The constitutionality of the revocation statute has been raised and its constitutionality upheld by the Supreme Court of the United States.⁶

The words "cancellation," "revocation" and "denaturalization" have been used to describe the proceedings. The early statute used the word "cancellation"; the Nationality Act of 1940, in effect since January 13, 1941, speaks of "revocation"; and "denaturalization" has been used in recent fraud cases, where the grounds are lack of attachment to the principles of the Constitution and lack of allegiance to the United States.⁷

Revocation proceedings can naturally only be instituted against the very person who procured the naturalization, since fraud or illegality in the procurement and at the time of the procurement must be proven. A person who derived citizenship through a parent or spouse, could not have practiced fraud or illegality, since he was not a party to the procedure. Nevertheless, his citizenship status may be affected by revocation proceedings against the person through whom he derived citizenship.⁸

Revocation proceedings may now be instituted only by United States District Attorneys. Actions may not be brought by private indi-

⁶ Johanessen v. United States 225 U. S. 227, 32 Sup. Ct. 613, 56 L.Ed. 1066 (1911) and Luria v. United States 231 U. S. 9, 34 Sup. Ct. 10, 58 L.Ed. 101 (1913) are the two leading cases on the subject.
⁷ See infra.
⁸ Infra derivative cases, footnote 73.
viduals,9 nor by State's Attorneys,10 nor by naturalization officers.11 The early statute was amended in 1918,12 allowing institution of actions by the Commissioner or Deputy Commissioner of Naturalization. However, the Nationality Act of 1940, in effect since January 13, 1941, returns to the original language of the 1906 Statute, limiting such authority to United States District Attorneys.

Since revocation proceedings are in equity, the courts have wide latitude allowing intervention. Persons who derived citizenship through the defendant and whose citizenship may be affected are usually allowed to intervene, but such intervention must be timely.13 However, intervention has been allowed, even where the applicant would not be affected, though he derived citizenship through the defendant.14

All revocation proceedings are now under the Nationality Act of 1940, since the statute provides for its applicability not only to certificates issued thereunder, but also to any certificate issued under any prior law.15 The Supreme Court has held that the retroactive feature of the statute is not unconstitutional.16 Though this question arose under the 1906 Act, it is still authority for the present law, since the retroactive feature of the early Act was reenacted by the Nationality Act of 1940.

Jurisdiction in revocation actions is conferred by statute upon all courts which have authority to naturalize persons as citizens of the United States.17 The suit must be brought in the jurisdiction where the naturalized person last resided, regardless of where the naturalization took place.18 Where the defendant resides abroad, suit should be instituted in the district of his last known residence in this country,19 and if he is incarcerated, in the district of his last voluntary residence.20

A suit to revoke an order of admission and cancelling the certificate of naturalization, regardless of the consequences, is a civil and not a criminal action.21 Moreover, it is in the nature of special pro-

15 Sec. 338(g) of the Nationality Act of 1940; 8 U.S.C.A. 738(g).
17 Sec. 338a of the Nationality Act of 1940; 8 U.S.C.A. 738(a).
Revocation proceedings are in equity and the rules of equity jurisprudence and procedure are applicable and the defendant is not entitled to a jury trial. The procedure is now entirely governed by the Federal Rules of Civil Procedure.

Revocation proceedings are in rem and not in personam. The status of the naturalized person and not the individual is the subject matter of the action. Hence, a citizen abroad is subject to jurisdiction in this country to litigate his status and personal service is not necessary. There is due process where the subpoena is served by publication.

Revocation, in order to become effective, requires a judicial proceeding and an order or court decree. However, where a naturalized citizen has been convicted of knowingly procuring naturalization in violation of the law, jurisdiction is conferred upon the court having jurisdiction of such offense to enter an order cancelling the certificate of naturalization and revoking the order admitting the defendant to citizenship without a separate judicial proceeding.

The revocation procedure is a direct, and not a collateral attack on the judgment granting naturalization. It is a special, separate and distinct remedy provided by Congress. Because of this, it has certain features which distinguishes it from naturalization procedures or from criminal proceedings resulting from naturalization frauds; and certain defenses, such as time limitations, viz., the statute of limitation, laches, estoppel, the doctrine of res judicata or double jeopardy are not available.

The doctrine of res judicata does not apply to a decree of naturalization since Congress has provided for a special remedy for the cancellation of naturalization. The decree of naturalization is not res judicata where the naturalization is granted ex parte. Even where the United

---

25 Sec. 338(b) of the Nationality Act of 1940; 8 U.S.C.A. 738(b).
26 Sec. 338(f) of the Nationality Act of 1940; 8 U.S.C.A. 738(f).
27 Sec. 338(e) of the Nationality Act of 1940; 8 U.S.C.A. 738(e).
32 See infra fn 34 and ff.
33 See infra fn 42 and 43.
States appears in the naturalization proceedings, it is not bound by the decree of naturalization and can institute revocation proceedings. Language in the Ness case, however, indicates that on minor questions such as weight of evidence, credibility of witnesses or mere irregularity in procedure, a decision of a court of naturalization, though clearly erroneous, is conclusive as against the United States, if it entered an appearance.

There is conflict among the lower federal courts as to what matters constitute findings of fact which cannot be reviewed in a cancellation suit, and what matters are jurisdictional requisites as to which a decree of naturalization cannot be res judicata. Some of the lower courts have gone far beyond the language of the Ness case and have violated the principle of the Ginsberg case which holds that a naturalization court cannot supply prescribed qualifications that have no existence in fact, such as racial eligibility, good moral character, and five years' continuous residence in the United States immediately proceeding naturalization, all of which are express substantive requirements of the naturalization law. To the same effect as the Ginsberg case appears the recent Baumgartner case.

In the Schneiderman case the Supreme Court uses language describing the findings of the naturalization court as a judgment, which gives rise to the question whether it is a judgment which stands in full force and effect. The answer to this question would appear to be in the negative. Aside from the fact that Congress by Statute provides for a direct attack thereon and aside from the fact that there is an inherent power in Courts to set aside a judgment fraudulently or illegally obtained, a naturalization judgment differs materially from any other judgment. Unlike the common run of judgments, it does not vindicate an existing right. It is a judgment granting a right which did not exist prior to its pronouncement and which the court had no right to grant except upon full and complete compliance by an alien with every condition imposed by the act authorizing the grant. The principles of res judicata would therefore seem not to apply, as against the statutory provisions for review and revocation of the judgment of naturalization.

39 Carl Wilhelm Baumgartner v. United States. (U. S. Supreme Court, June 12, 1944).
An acquittal in a criminal prosecution for fraudulent procurement of a naturalization certificate under Section 338 and 346 of the Nationality Act of 1940 constitutes neither res judicata, estoppel, nor double jeopardy to bar the government from instituting proceedings to cancel such naturalization.

Under the current statutory naturalization proceedings the United States may appear for the purpose of cross-examining the petitioner and his witnesses, producing its own witnesses and evidence and be heard in opposition to granting of any petition in naturalization proceedings. However, there is no specific provision for an appeal. In spite of earlier contradictory decisions it is now well settled that an appeal will lie. The remedy afforded by the statutory provision looking toward revocation is an alternative and cumulative means of protection against illegal and fraudulent naturalization, and may be resorted to, whether or not the original naturalization decree was appealed.

The order of naturalization can be revoked for fraud or illegality which obtained in the procurement of that naturalization. Such fraud or illegality must have existed either at the time of naturalization or during the probationary period and must pertain to a material fact. Theoretically, "material facts" are all naturalization requirements and qualifications which must be complied with under the law.

The scope of this article makes an extended discussion of naturalization requirements and qualifications impractical. Therefore they are listed here briefly and without citations.

An alien must have been admitted lawfully for permanent residence to be eligible for naturalization. An exception is the soldiers' naturalization, where only lawful admission is required, although not for permanent residence. Legislation is now pending which would make members of the armed forces eligible for naturalization, almost regardless of their manner of entry. In all instances, except soldiers' naturalizations, the law requires certain residence requirements which the alien must have fulfilled. Furthermore, he must intend to reside permanently in the United States. Desertion of the armed forces in time of war, on leaving the United States with the intent to avoid a lawfully ordered draft renders an alien ineligible to naturalization, as does a claim for relief from military service as a neutral alien.

The law provides that no person shall be naturalized who cannot speak the English language, except for persons physically unable to

42 8 U.S.C.A. 738 (e) & 746.
46 All naturalization qualifications may be found in the Nationality Act of 1940.
do so. It should be noted, however, that courts have denied naturalization to illiterates in certain cases, on the ground that they could not understand the principles of the Constitution. The law further requires certain racial eligibility, and imposes certain restrictions on naturalization of enemy aliens in time of war.

An applicant for citizenship must have behaved as a person of good moral character during the required residence period. The applicant must believe in organized government and be attached to the principles of the Constitution and it is required that he swear allegiance to the United States, and that he declare his willingness to support and defend the Constitution of the United States against all enemies foreign and domestic, which includes a willingness to bear arms.

In addition all procedural requirements of the naturalization laws, as found in the Act of June 29, 1906 (34 Stat. 596), as amended by the Act of March 2, 1929 (45 Stat. 1513), and as recodified in the Nationality Act of 1940, must be strictly complied with.

Since strict compliance with the statute is mandatory, any failure to do so could result in revocation proceedings. Since the first revocation statute in 1906, the law has always used the words "upon affidavit showing good cause" as a prerequisite to the institution of revocation proceedings. Although "good cause," technically speaking, is any procedural or jurisdictional failure, the Government has consistently taken the position that "good cause" exists only in cases where revocation will result in the betterment of the citizenry.

Recent decisions\(^4\) have laid particular stress on the preciousness of citizenship. Language in the Meyer case\(^4\) would seem to indicate that cancellation proceedings are lightly instituted by the Government. A more dispassionate concurring opinion in that case by Judge Holmes, deciding the case purely on the question of evidence, should dissipate that view. The burden of proof on the Government in revocation cases is extremely great. It must prove its case by evidence which is "clear, convincing and unequivocal and which does not leave the issue in doubt."\(^4\) Under the circumstances, therefore, when a case is reviewed for the purpose of determining whether the Government will prevail, only cases where there is considerable evidence could be considered. The institution of capricious suits is altogether eliminated, unless of course, the Government should be wholly unmindful of the existing law.

\(^{47}\) United States v. Schneiderman, 320 U.S. 118, 63 Sup. Ct. 1333, 87 L.Ed. 1796 (1943); United States v. Meyer, 141 F. (2d) 825 (C.C.A. 5th 1944) and many others.

\(^{48}\) Supra in 45.

\(^{49}\) United States v. Schneiderman, 320 U.S. 118, 63 Sup. Ct. 1333, 87 L.Ed. 1796 (1943) which adopts and records a requirement long previous in existence.
But even without the compulsion which the law imposes and by which the institution of a revocation proceeding is circumscribed, the Government has not changed its policy concerning the institution of suits and it has ever been mindful of the high privilege which is represented by citizenship, and the grave consequences which result to the person who is deprived of his citizenship.

While due safeguards should be provided for the naturalized citizen, and while due regard should be had for such a high privilege, by the same token the Government should not be rendered impotent to protect itself against imposition and barriers should not be erected making it possible for aliens to acquire citizenship when they full well know they are not entitled to it, and then making remedial procedures against them impossible.

An excellent discussion on the subject of existing naturalization procedure may be found in Judge Fee's opinion in the case of United States v. John Hans Scheurer. True enough, the requirements of an alien are inquired into before he is advised to file a petition for naturalization and he and his two witnesses are heard both by a preliminary examiner, who goes over the case prior to the filing and a designated examiner, who acts somewhat in the capacity of an advisory master to the court. However, both these hearings are extremely perfunctory and do not lend themselves to ferret out the bad from the good in all instances, though many aliens have been advised not to file, and many petitions have been denied on the basis of evidence there discovered.

Naturalizations run into six figures annually. The number of naturalization examiners, who acted both as preliminary and designated examiners, never exceeded 600 for the entire United States, Hawaii and Puerto Rico. More often, the number was considerably less. It takes no great mathematician to figure out how hard pressed for time naturalization examiners were and how little time could be given to each case. On the one hand there is an understandable and proper public clamor for greater promptness in naturalizations and on the other hand there is the limited resources of personnel, which Congress has annually held to a minimum.

The figures relating to budgetary requirements and the ability of Congress to meet them are not available. Congress, too, has a budget and there is a limit to what it can do. It all adds up, however, to the final fact, that naturalization can often be easily obtained and that

---

51 Total number naturalized in the last 4 years: 1940—235,260; 1941—227,294; 1942—270,364; 1943—317,508.
it is not impossible for a cunning alien to conceal facts, which if known, would have prevented his naturalization.

Before discussing the quantum and quality of evidence required, the grounds for revocation, viz., fraud and illegality will be treated.

The word fraud as used in the statutes includes a wilful misrepresentation of virtually any fact which governs and determines whether naturalization is to be granted and as a result of which naturalization has been accomplished. Two main categories have been recognized in that respect:

(1) Mental reservation and
(2) Other misrepresentations and concealments.

The differentiation between the two categories is wholly arbitrary and made for convenience only. Both are misrepresentations. The distinction is found in the fact that the first category concerns itself with subjective facts, such as fraudulent intent, state of mind or mental attitude, incapable of direct extraneous proof. It relates to allegations in the petition for naturalization or in the oath of allegiance, such as forsaking allegiance to one's former sovereign, accepting allegiance to the United States, the profession of attachment to the principles of the Constitution, the intention to reside permanently in the United States or the willingness to bear arms.

The second category concerns itself with misrepresentations and concealments of objective facts, subject to proof by direct and extraneous evidence, facts such as manner of entry into the United States, marital status, commission of crimes, etc. These cases bear a much closer resemblance to usual cases involving fraud.

The Nationality Act of 1940 uses the term "presumptive fraud" which is held to refer principally to cases of persons who take up residence abroad within five years after naturalization, since there arises a presumption that they did not intend to reside permanently in the United States at the time of naturalization. "Presumptive fraud," however, is a misnomer. There is no such thing as a presumptive fraud. Either there is fraud or there is not. The presumption goes to the evidence, not the fraud. The use of the term is unfortunate, since it has led to a great deal of confusion. All the statute provides for is a rule of evidence that under given circumstances certain facts shall be sufficient to establish fraud, unless countervailing evidence is produced.

A mental reservation in the renunciation of allegiance to the petitioner's former country is fraud which will support revocation pro-

52 Sec. 319(b) 8 U.S.C.A. 719(b).
53 Sec. 338(c) of the Nationality Act of 1940, 8 U.S.C.A. 738(c).
ceedings, as is the mental reservation in the profession of allegiance to the United States.\textsuperscript{55}

Mental reservation of allegiance has been held to exist where the subject sided with his country of origin rather than the United States, when the two were at war,\textsuperscript{56} or where he worked against the United States and in the interest of his country of origin where the two interests sharply diverged, though they were not at war,\textsuperscript{57} or where the subject indicated his preference for his country of origin, particularly where the latter's form of government was inconsistent with constitutional government as prevalent in the United States;\textsuperscript{58} or where the subject was unwilling to take up arms for the United States against his country of origin.\textsuperscript{59}

It has likewise been held that one who subscribed to the principles of national socialism at the time of naturalization could not take an oath of allegiance without mental reservations since national socialism demands primary allegiance to the German Reich.\textsuperscript{60}

A mental reservation in professed attachment to the principles of the Constitution is fraud within the meaning of the revocation statute.\textsuperscript{61}

The decided cases allow no definite conclusion on the question as to how complete the attachment to the United States Constitution must be since it expressly provides for its own amendment and also guarantees freedom of speech and freedom of the press. Criticism of the United States Government and Constitution, and the advocacy of changes therein by constitutional means do not in themselves constitute a lack of attachment to the Constitution.\textsuperscript{62} On the other hand, advocacy of the forcible overthrow of constitutional government, or the commission of offenses against existing provisions of the constitution or


\textsuperscript{58} United States v. Krause, 136 F. (2d) 935 (C.C.A. 7th, 1943).


\textsuperscript{60} United States v. A. H. Wolter, 53 F. Supp. 400 (W. D. Pa., 1943) appealed to C.C.A. 3rd.


against laws enacted pursuant to such provisions are clear indications of a lack of attachment to the principles of the Constitution.\textsuperscript{63}

The measure of attachment required for naturalization should be, but is not the guide for revocation proceedings. The proof as to lack of attachment must be far greater in revocation proceedings, and evidence on which a petition may reasonably be denied at the time of the final hearing on the petition is usually not sufficient to sustain a cancellation suit, though in theory it should be.

Lack of attachment to the principles of the Constitution has been held to exist where the subject was a Communist and where he had stated that he believed in the overthrow of the Capitalist class and that he was opposed to organized government,\textsuperscript{64} and where the subject subscribed to a governmental philosophy such as national socialism which is the antithesis of the democratic form of Government as it exists in the United States.\textsuperscript{65}

On the other hand, mere membership in the Communist Party is not in itself sufficient unless it can be shown that the subject at the time of naturalization subscribed to such of its principles as are inconsistent with attachment to the principles of the Constitution.\textsuperscript{66} Likewise, mere membership in a national socialistic organization, such as the German American Bund, is not sufficient indication of the subject's lack of attachment to the principles of the Constitution, unless it can be shown that he knew of and subscribed to the national socialistic principles of that organization.\textsuperscript{67}

Petitioner's mental reservation as to his intention to reside permanently in the United States is fraud which will warrant revocation proceedings.\textsuperscript{68} However there need to be no unalterable determination to stay a lifetime in any particular place or country of residence, regardless of considerations of economic self-preservation.\textsuperscript{69} Foreign residence within five years after naturalization raises a rebuttable presumption that the petitioner at the time of naturalization did not in good faith intend to reside permanently in this country.\textsuperscript{70} Likewise a

\textsuperscript{63} United States v. Tapolscanyi, 40 F. (2d) 255 (C.C.A. 3rd, 1930); Turlei v. United States, 31 F. (2d) 696 (C.C.A. 9th, 1929).


\textsuperscript{68} United States v. Ellis, 185 Fed. 546 (C.C. E.D., Louisiana, 1911); United States v. Martin, 10 F. (2d) 585 (D.C. Wts., 1925).

\textsuperscript{69} United States v. Teresa & Robert Kuhn, 50 F. Supp. 400 (D.C. E. Pa., 1943).

\textsuperscript{70} Sec. 338(c), Nationality Act of 1940, 8 U.S.C.A. 738(c).
mental reservation as to willingness to bear arms is fraud which will warrant revocation proceedings.®

Volumes may be written about the other misrepresentations. We have gone into greater detail about lack of attachment and lack of allegiance, because they are of timely interest. They are the grounds upon which the recent "denaturalization trials" are based. They are, true enough, part of a wartime program, but they are not born of war hysteria, for the theory is an old one and denaturalizations on these grounds were maintained even during peace time, as the perusal of dates and decisions above will indicate.

The present "denaturalization program" found its inception in a report on the German-American Bund written, in October 1941, by members of the Immigration and Naturalization Service. This report has been supplemented by voluminous investigations of the Federal Bureau of Investigations, which now conducts all denaturalization investigations. Members of the Immigration and Naturalization Service act as trial assistants to United States Attorneys and the entire program is supervised by the Criminal Division of the Department of Justice.

In addition to fraud, illegality, as previously stated, is likewise grounds for revocation proceedings. No alien has a right to naturalization unless all statutory requirements are complied with and every certificate of citizenship must be treated as granted upon condition that the government may challenge it and demand its cancellation, unless issued in accordance with such requirements. If procured when prescribed qualifications have no existence in fact, it is illegally procured.® Illegality is present in all cases where naturalization was fraudulently obtained, whereas in cases of illegal procurement, fraud need not be necessarily present.

Judge Pierson M. Hall in a recent decision® devoted considerable space to a breakdown of all cancellation cases prior to World War No. 2. In this breakdown he lists the grounds of cancellation either under fraud or illegality or both. The breakdown, though very interesting, is too lengthy to be reprinted here. In studying it, it becomes obvious that the words fraud and illegality have not always been used with strict accuracy by the courts.

It is now very important that an accurate determination be made whether a revocation proceeding is decided on the ground of illegality or fraud since it will make a difference under the Nationality Act® in its effect on derivatives.

® Sec. 338(d) Nationality Act of 1940, 8 U.S.C.A. 738(d).
In view of the fact that a revocation of an order admitting a person to citizenship amounts to a finding that the subject was never a citizen\textsuperscript{75} it carries in its wake a number of consequences both for the person whose citizenship has been revoked and for those persons who have derived certain rights through the alleged citizenship of the subject. In addition to the loss of citizenship, it may also effect the legality of status of persons who gained entry as the wives or children of the naturalized subject and may render them subject to deportation.

Prior to January 13, 1941, the effective date of the Nationality Act, derivatives would be deprived of their citizenship if the person through whom they derived it lost his citizenship. Since the Nationality Act, however, citizenship acquired through the naturalization of a husband or parent is not lost except in a case of actual fraud.\textsuperscript{76} In all revocation cases the loss of citizenship dates from the date of its acquisition.

A special ground of revocation—and in addition to any other—is the dishonorable discharge from military or naval forces of the United States after March 27, 1942.\textsuperscript{77} The application of this act, however, is limited to persons naturalized while serving in the military or naval forces of the United States during the present war and under the special provisions of the Second War Powers Act.\textsuperscript{78}

The problems of rules of evidence in revocation cases are no different from any other civil action in equity. The courts exercise a wide discretion in the field of admissibility of evidence and the practical application of the rules of evidence. The importance of citizenship has been uniformly recognized. Consequently, in practice the courts have required the government to meet an unusually high standard of proof and conform with the strict application of the accepted rules of evidence. On the other hand, the courts as a matter of practice have tended to be liberal with respect to defendants, allowing a wide latitude both in substantive matter of defense and rules of evidence.

The character of the evidence varies in each case, depending upon the ground upon which the action is instituted. It may range from documentary proof in cases of illegality to a general presentation of statements and conduct of an individual over a period of many years in cases based upon fraud or mental reservation. It is the latter category which is currently of interest. The former cases present little trouble. According to the latest decision of the Supreme Court in the case of


\textsuperscript{77} 8 U.S.C.A. 1004.

\textsuperscript{78} Ibid.
United States v. Baumgartner, the courts have little discretion in such cases.79

In cases involving fraud, the state of mind of the defendant at the time of naturalization is the all important issue for determination. It may be proved by statements, acts and conduct concurrent with naturalization, prior or subsequent thereto. The relevancy of the first two categories is virtually self-evident. Concurrent evidence, is, of course, the strongest,80 and no less probative is evidence during the probationary five year period, or whatever the probationary period might be.81

The greatest controversy has raged, however, over the introduction of evidence subsequent to naturalization. It has been uniformly held, that such evidence is admissible.82 Just what probative value it has is another question. The precedents are in conflict just how soon after naturalization such conduct must have taken place to raise the inference of fraud. Courts have cancelled citizenship on the basis of acts occurring 30 years after naturalization83 while in others the courts have held that acts occurring 8-10 years after naturalization are not sufficient to establish fraud in naturalization.84

With the recent Baumgartner case85 the Supreme Court has greatly limited the probative value of evidence subsequent to naturalization unless, of course, it be used in connection with other evidence either during the probationary period or concurrent with naturalization.

The theory of admissibility of such evidence has been on the argument that loyalty to a new country is of slow growth and hence should be stronger as time goes on.86 Where the existence of a condition is shown, in the absence of a showing to the contrary, it is presumed to have existed for a reasonable time.87 It has also been held that the attachment to the principles of the Constitution could not have been very deep or sincere where it is easily supplanted within a few years by an ideology, such as national socialism which is the complete antithesis of everything for which our Constitution stands.88

79 Karl W. Baumgartner v. United States (Supreme Court June 12, 1944).
85 Karl W. Baumgartner v. United States (U. S. Supreme Court, June 12, 1944).
In a number of cases the defendants have been asked whether their attitude toward the principles of the Constitution or their loyalty to the United States had changed at any time since naturalization. Such inquiries have usually been answered in the negative and courts have found such statement probative to the effect that evidence of a particular attachment or a state of loyalty at any time subsequent to naturalization was the same as at the time of naturalization, since by the defendant's own admission it had remained unchanged.89

It would appear from reading the Baumgartner decision90 as if this "relation back theory" has been greatly emasculated. The language both in that case and in the Schneiderman case91 did not eliminate the use of such evidence but it has greatly curtailed it.

Early cases have made a distinction whether disloyal statements were made prior or subsequent to outbreak of war between subject's country of origin and the United States. These are principally World War I cases.92 The situation now is different. The interests of Germany for instance and the United States differed sharply even prior to the outbreak of hostilities and in some instances it was quite impossible to side with Germany without being disloyal to the United States. This has been recognized judicially.93

A considerable number of words have been spoken or written on the question of "free speech."94 Justice Rutledge's concurring opinion in the Schneiderman case95 seem to have given impetus to that argument. Yet, it would appear as if that issue were not involved. The colloquy between Chief Justice Stone and Harold Evans of Philadelphia appointed defense counsel during the argument before the Supreme Court in the Baumgartner case, perhaps best illustrates the point. During the argument of counsel that admission of Baumgartner's statements violated the constitutional guarantee of free speech, the Chief Justice asked Mr. Evans whether he would contend that the use of defendant's statement to the effect that he had procured naturalization fraudulently would be inadmissible under that theory. Mr. Evans replied in the negative, whereupon the Chief Justice inquired what the

95 Ibid.
difference was between such an unequivocal statement and other statements from which such an inference might fairly be drawn.

The question of free speech, however, is irrelevant in denaturalization cases. The defendant's right to say what he pleases is not being contested. He is not being penalized for what he says. His own statements and acts are merely the best evidence of what is in his mind and are most probative of the issues to be determined.

The interest which the "Denaturalization Program" has evoked has given rise to statements that it was in the nature of a general purge. According to the latest census there were 7,280,265 naturalized persons in the United States as of 1940. Of those, 10,978 were investigated under this program. The investigation proved groundless as to 9,815 of those cases. Of the remainder, 164 lost their citizenship through court action. There are still 620 cases to reach court (and of those, very few ever will, in the light of recent decisions); 169 are awaiting trial; 67 are under advisement in the district courts; 45 were decided in favor of the defendants and 14 are on appeal. These figures are as of June 15, 1944.

The program is and was principally one of security. Denaturalization renders the defendant an enemy alien and subject to internment. The evidence in these cases was such that the defendants were thought dangerous to internal security. In many cases, where the Department of Justice did not consider the evidence sufficient to institute action, or where decision was rendered adverse to the Government, the Army had independently concluded the subjects unsafe to remain in vital areas and had excluded them from the East Coast or West Coast defense areas.

A survey of this subject discloses several interesting situations. It is apparently very easy to become naturalized, whereas revocation is extremely difficult. Paradoxically, it is very easy to denaturalize a person for the least significant reasons, such as illegality where the defendant may have been entirely innocent of any wrong doing, whereas it is extraordinarily difficult to revoke a man's citizenship for far more weighty reasons such as lack of attachment to the principles of the Constitution or lack of allegiance to the United States.

Naturally it is regrettable that a person may be permitted to retain citizenship where he is not entitled to it, because the Government is unable to muster a sufficient quantum of evidence to prove a state of mind at a given time. Remedial legislation in that respect has been considered and rejected. This would appear for the best. It gives emphasis to our democratic form of government. It is better that ten wrongdoers retain their citizenship, than that one innocent person be deprived of it.