June 29, 1989

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: P G S

The Department of State determined on April 16, 1986 that P G S expatriated himself on May 2, 1972 under the provisions of section 349(a)(1) of the Immigration and Nationality Act by obtaining naturalization in Canada upon his own application. 1/ S entered a timely appeal from that determination.

For the reasons given below, it is our conclusion that appellant obtained naturalization in Canada voluntarily with the intention of relinquishing his United States nationality. The Department's determination that he expatriated himself accordingly is affirmed.

I

Appellant, P G S , became a United States citizen by birth at [redacted]. He attended primary and secondary school in the United States. In 1964, when he was 16 years old, his father took him to Canada. He acquired landed immigrant status upon arrival. Upon reaching his 18th birthday, appellant registered for United States Selective Service at the United States Consulate General in Toronto. A few months later he was classified 1-A, but reportedly was not called for induction.

Appellant states that he studied at the University of Alberta for one year, and in 1968 returned to Toronto where he lived with and worked for his father. Around the end of 1971

1/ In 1972, when appellant obtained Canadian citizenship, section 349(a)(1) of the Immigration and Nationality Act, 8 U.S.C. 1481(a)(1), read in pertinent part as follows:

> Sec. 349. (a) From and after the effective date of this Act a person who is a national of the United States whether by birth or naturalization, shall lose his nationality by --
>
> (1) obtaining naturalization in a foreign state upon his own application,...

Pub. L. 99-653, 100 Stat. 3655 (1986), amended subsection (a) of section 349 by inserting "voluntarily performing any of the following acts with the intention of relinquishing United States nationality:" after "shall lose his nationality by".

appellant moved out of his father's house and obtained employment in a social services youth program which was funded by a grant from the Canadian government. As stated in his opening brief, appellant was informed in early 1972 that in order to retain his position in the program he would have to become a Canadian citizen. Therefore, "[i]n order to keep his job and to pay for his living expenses, he applied for and became a naturalized Canadian citizen." Before his application was approved, appellant allegedly inquired of Canadian and United States authorities (the Consulate General in Toronto) whether there was any legal bar to holding the citizenship of Canada and the United States. He reportedly was informed that there was none.

On May 2, 1972 appellant was granted a certificate of Canadian citizenship after he made the following declaration and oath of allegiance:

> I hereby renounce all allegiance and fidelity to any foreign sovereign or state of whom or which I may at this time be a subject or citizen.
>
> I swear that I will be faithful and bear true allegiance to Her Majesty, Queen Elizabeth the Second, her Heirs and Successors, according to law, and that I will faithfully observe the laws of Canada and fulfil my duties as a Canadian citizen, so help me God. 2/

2/ There is no copy in the record of the document which appellant, like other applicants for naturalization in Canada in 1972, was required to sign, renouncing all other allegiance and pledging allegiance to Canada. However, there is a copy of a letter addressed to appellant from an official of the Canadian Citizenship Registration Branch, dated October 17, 1984, which states that appellant was granted Canadian Citizenship on May 2, 1972 "at which time the Oath of Allegiance was subscribed to. Following is the wording of the Oath:" The letter then quoted the text we set forth above. The official concluded by noting that the requirement that an applicant for Canadian naturalization renounce all previous allegiance (section 19(1) of the Canadian Citizenship Regulations) had been declared ultra vires by the Federal Court of Canada on April 3, 1973.

Sometime in 1972 or 1973, according to appellant, he obtained a Canadian passport but never used it. He became director of a children's mental health center in Toronto in 1974 and worked there until 1977. In the summer of 1978 he moved to California and has lived there since.

In the spring of 1979 appellant applied for a passport at the San Francisco Passport Agency. (His previous passport was issued in April 1972 by the Consulate General at Toronto one month before he was granted Canadian citizenship.) When he applied in 1979, he indicated that he had obtained naturalization in a foreign state. Since appellant's foreign naturalization raised the question whether he was entitled to hold a U.S. passport, the San Francisco Passport Agency informed appellant's attorney that the State Department would have to make a determination of appellant's citizenship status. On April 13, 1979 counsel for appellant forwarded to the Department his client's passport application; an affidavit setting forth the facts and circumstances surrounding his naturalization in Canada; and a completed questionnaire to determine U.S. citizenship. Counsel contended that based on appellant's submissions, "it is apparent that Mr. S has never lost his U.S. citizenship. Federal courts....have held that the mere act of naturalization is not sufficient for the subjective intent which the Constitution requires for the expatriation of an American citizen." Counsel therefore requested that the Department promptly issue the requested passport.

On August 29, 1979, the Department replied to appellant's counsel, stating in part as follows:

> Section 104(a) of the Immigration and Nationality Act, 8 U.S.C. 1104(a), grants to the Department of State jurisdiction over determinations of nationality of persons not in the United States.

2/ (cont'd.)

On February 2, 1989 the Canadian citizenship authorities sent a statement to the Consulate General at Toronto at the latter's request, declaring that the records of Citizenship Registration and Promotion, Department of the Secretary of State, had been searched and indicated that P G S acquired Canadian citizenship on May 2, 1972, that an oath of allegiance was taken on that date, and that "oath [sic] of renunciation taken."

> Jurisdiction over such determinations for persons in this country is granted to the Department of Justice under Section 103(a) of the Act, 8 U.S.C. 1103(a), and has been delegated by the Attorney General to the Immigration and Naturalization Service. You must contact that service for a final determination of Mr. S 's United States citizenship status.
>
> For your information, it is the Department's understanding that the oath taken by all applicants for Canadian naturalization prior to 1973 included a renunciation of previous nationality, which would constitute additional evidence that Mr. S voluntarily relinquished his United States citizenship.
>
> If Mr. S needs to travel, he may be issued a passport limited for three months validity in view of his performance of an expatriating act and the need to determine his intent at the time of his naturalization.

A passport valid for three months was issued to appellant in September 1979. According to appellant's testimony during oral argument on August 1, 1988, his counsel did not show him the Department's letter or tell him in any detail about its contents. Upon receiving the temporary passport, appellant stated,

> I of course questioned Mr. M [his counsel] about why it was only three months. And my recollection is at that point that he had some discussions -- either with the passport people or with the State Department -- and told me that as far as he was concerned, whenever I reapplied for a passport when I knew I needed one, that the issue had been resolved and I would not have any trouble getting a passport.

> So I was under the impression at that point that there was no difficulty with my citizenship. 3/

On the Department's instructions, the Consulate General at Toronto obtained confirmation from the Canadian authorities in September 1979 that appellant had been granted naturalization in 1972, pursuant to the provisions of section 10(1) of the Canadian Citizenship Act. There is no indication in the record whether appellant or his counsel communicated with the Immigration and Naturalization Service (INS) about appellant's citizenship status, as the Department suggested be done. Nor is there any indication that the Department further investigated appellant's case at that time or discussed it with the INS.

In 1980 appellant moved to the Los Angeles area where he still lives. He applied for a passport at the Los Angeles Passport Agency in May 1984. As requested, he completed a questionnaire titled "Information to Determine U.S. Citizenship," and submitted a copy of the affidavit he executed in support of his 1979 passport application. According to appellant, "I was told that the file seemed to be lost; from 1979 there was no record of a questionnaire that I had filled out or the letter or any correspondence with Mr. M ." 4/ In July 1984 a passport was issued to appellant, valid for three months. In November it was amended to expire in March 1985. Meanwhile, it appears that around the summer of 1984 appellant wrote to the Canadian citizenship authorities to obtain clarification of his citizenship status. He received a reply dated October 17, 1984, confirming his naturalization and quoting the renunciatory declaration and oath of allegiance he made on that date

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3/ Transcript of Hearing in the Matter of P G S before the Board of Appellate Review on August 1, 1988. (Hereafter referrred to as "TR"). TR 33.

4/ TR-39.

Appellant wrote to his representative in Congress, Congressman Mel Levine, on June 11, 1984 to request assistance in the issuance of a passport. He stated that he had just filled out "very similar forms" to the ones he completed in 1979. "It seemed to me," appellant wrote, "through discussions with my lawyer that the State Department had on hand all the information it needed to make what would be a fairly simple determination...." He closed by asserting that "I certainly never had any intention of giving up my U.S. citizenship."

See note 2 supra. The record, which obviously is incomplete, sheds no light on the circumstances that led appellant to write to the Canadian authorities. Nor does the record indicate why the Department evidently took no action in connection with the issuance or extension of his passport to bring to a head the issue of appellant's United States citizenship status.

In January 1986 appellant applied at Los Angeles for another extension of his passport. On January 31, his passport was extended for 3 months.

A telephone/telex log maintained by the Department's Passport Office shows that a Departmental official advised the Los Angeles Passport Agency in March 1986 that the Department had determined that a certificate of loss of nationality should issue in appellant's name. Meanwhile, "application should be disapproved, repeat, disapproved for extension," the Department stated. The Department instructed the Consulate General at Toronto to execute a certificate of loss of nationality in appellant's name. 5/ The Department's instructions read as follows:

> Enclosed is a copy of the entire file of Mr. S . Dept has over a period of two years obtained all the evidence believed to be needed to show that Mr. S intended to relin-

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5/ Section 358 of the Immigration and Nationality Act, 8 U.S.C. 1501, reads as follows:

> Sec. 358. Whenever a diplomatic or consular officer of the United States has reason to believe that a person while in a foreign state has lost his United States nationality under any provision of chapter 3 of this title, or under any provision of chapter IV of the Nationality Act of 1940, as amended, he shall certify the facts upon which such belief is based to the Department of State, in writing, under regulations prescribed by the Secretary of State. If the report of the diplomatic or consular officer is approved by the Secretary of State, a copy of the certificate shall be forwarded to the Attorney General, for his information, and the diplomatic or consular office in which the report was made shall be directed to forward a copy of the certificate to the person to whom it relates.

quish U.S. citizenship. He himself has steadfastly stated that he never took a renunciatory oath. Dept requests that a CLN be prepared and submitted for final action together with the Conoff's opinion. Mr. S 's extension application has been disapproved.

A consular officer executed a certificate of loss of nationality on April 4, 1986, therein certifying that appellant became a United States citizen by virtue of birth at Suffern, New York; that he obtained naturalization in Canada upon his own application; and that he thereby expatriated himself under the provisions of section 349(a)(1) of the Immigration and Nationality Act. The record does not disclose whether, as instructed, the consular officer submitted an opinion on appellant's case. As evidence of appellant's expatriation, the consular officer attached to the certificate of loss of nationality a copy of the October 17, 1984 letter that the Canadian Citizenship Registration Branch sent to appellant confirming his naturalization (note 2 supra). The Department approved the certificate on April 16, 1986, approval constituting an administrative determination of loss of nationality from which a timely and properly filed appeal may be taken to the Board of Appellate Review. Appellant entered the appeal through counsel in March 1987 and requested oral argument which was heard on August 1, 1988. 6/

II

Section 349(a)(1) of the Immigration and Nationality Act prescribes that a national of the United States shall lose his nationality by voluntarily obtaining naturalization in a foreign state upon his own application with the intention of relinquishing United States nationality. 7/

6/ Disposition of the case was delayed while the Department, at the Board's request, endeavored without success to obtain from the Canadian authorities, a copy of the declaration of renunciation/oath of allegiance appellant purportedly signed on May 2, 1972. See note 2 supra.

Further delay ensued after the Chairman, for compassionate reasons, substituted a new member for one of those who heard oral argument. The decision which we render today reflects our thorough and careful review of the entire record, including the transcript of the hearing.

7/ Text note 1 supra.

The record makes it clear that Stanford duly obtained naturalization in Canada upon his own application. He thus brought himself within the ambit of the relevant provisions of the statute. The first issue to be addressed therefore is whether he obtained naturalization voluntarily.

In law it is presumed that one who performs a statutory expatriating act does so voluntarily, but the presumption may be rebutted upon a showing by a preponderance of the evidence that the act was not voluntary. 8/

Appellant contends that economic pressures forced him to become a Canadian citizen. The child-care program in which he was working was funded by the Canadian government which required him to obtain Canadian citizenship or lose his position. In the circumstances, he had no choice but to obtain naturalization. The child-care job was the sole source of his income; he had no training to obtain a job in a different field; nor had he the resources to return to the United States. In brief, appellant alleges that he had no viable alternative to obtaining naturalization in Canada.

Economic duress may render an expatriating act void. Stipa v. Dulles, 223 F.2d 551 (3rd Cir. 1956); Insogna v. Dulles, 116 F.Supp. 437 (D.D.C. 1953). Plaintiffs in those

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8/ Section 349(b) of the Immigration and Nationality Act, 8 U.S.C. 1481(b), reads as follows:

> (b) Whenever the loss of United States nationality is put in issue in any action or proceeding commenced on or after the enactment of this subsection under, or by virtue of, the provisions of this or any other Act, the burden shall be upon the person or party claiming that such loss occurred, to establish such claim by a preponderance of the evidence. Any person who commits or performs, or who has committed or performed, any act of expatriation under the provisions of this or any other Act shall be presumed to have done so voluntarily, but such presumption may be rebutted upon a showing, by a preponderance of the evidence, that the act or acts committed or performed were not done voluntarily.

cases performed expatriative acts in Italy during and after World War II. The courts held that the plaintiffs acted involuntarily; they had no choice but to jeopardize United States citizenship by accepting employment in a foreign government (a statutory expatriative act) in order to subsist. Thus, as the court declared in Stipa v. Dulles, supra, at 556, the fact that the plaintiff faced "dire economic plight and inability to find employment" rendered his act of expatriation involuntary. Counsel for appellant here argues that Richards v. Secretary of State, 752 F.2d 1413 (9th Cir. 1985) made less stringent the standard of proof of economic duress. In Richards, the court said that:

> ...Conditions of economic duress, however, have been found under circumstances far different from those prevailing here. [Here the court cited Insogna v. Dulles, supra and Stipa v. Dulles, supra.] Although we do not decide that economic duress exists only under such extreme circumstances, we do think that, at the least, some degree of hardship must be shown.
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> 752 F.2d at 1419.

From the foregoing, counsel argues that the standard that should be applied in his client's case is whether appellant was subjected to some degree of hardship. We disagree. In Richards the Court of Appeals was required to determine only whether the district court had erred in finding that Richards had been subjected to no economic pressures of any kind when he obtained naturalization as a Canadian citizen in order to advance his career. The court was not called upon to decide nor did it reach the issue of the standard of proof of duress. The Ninth circuit concluded simply that the district court had not erred, and held that Richards had failed to prove he had been subjected to any economic duress. 752 F.2d at 1419.

In our opinion, the theory that merely some degree of economic hardship need be shown is totally inconsistent with the proposition, which we consider sound, that only the most exigent circumstances may excuse doing an act that places the priceless right of citizenship in jeopardy. Furthermore, the District Court for the District of Columbia made it clear in a recent case that extreme economic hardship must be proved before an expatriative act may be deemed to be involuntary. Maldonado-Sanchez v. Shultz, Civil No. 87-2654 memorandum opinion (D.D.C. 1989). There the court stated: "While economic duress may avoid the effect of an expatriating act, the plaintiff's plight must be 'dire.' See Stipa v. Dulles, 233 F.2d 231 (5th Cir. 1956.)"

On the scant evidence presented, appellant's plight, if plight it was, fell short of "dire." And it would appear that he did not lack alternatives. He has not shown, for instance, that he could not have returned to his father's house and been assisted while he looked for employment that would meet his economic needs without putting his citizenship at risk.

In brief, it appears to us that, as a matter of law, appellant had a choice between jeopardizing his United States nationality and attempting to solve his economic and career problems in ways that would not have caused his expatriation. If one has a viable alternative to doing an expatriative act, there is no duress. Jolley v. Immigration and Naturalization Service, 441 F.2d 1245, 1250 (5th Cir. 1961): "[o]pportunity to make a decision based upon personal choice is the essence of voluntariness."

We hold that appellant was not coerced to become a Canadian citizen. It therefore follows that he has not rebutted the presumption that he obtained naturalization in Canada upon his own application voluntarily.

III

Finally, we must determine whether appellant intended to relinquish his United States nationality when he became a citizen of Canada.

Intent to relinquish citizenship is an issue that the government has the burden to prove. Vance v. Terrazas, 444 U.S. 252 Intent may be proved by a person's words or found as a fair inference from proven conduct. 444 U.S. at 260. The standard of proof is a preponderance of the evidence. Id. at 267. Proof by a preponderance means that the government must show that it was more probable than not that appellant intended to forfeit his United States nationality when he acquired Canadian citizenship. 9/ The intent the

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9/ "The most acceptable meaning to be given to the expression, proof by a preponderance, seems to be proof which leads the jury to find that the existence of the contested fact is more probable than its non-existence. 12/ Thus the preponderance of evidence becomes the trier's belief in the preponderance of probability."

[Footnote omitted].

McCormick on Evidence (3rd ed.), Section 339.

government must prove is the party's intent at the time the expatriative act was performed. Terrazas v. Haig, 653 F.2d 285, 288 (7th Cir. 1981).

The Department contends that the facts do not support appellant's contention that he lacked the requisite intent to relinquish United States nationality. Nothing could be more conclusive on the issue of intent, the Department submits, than the renunciatory declaration and oath of allegiance to which appellant subscribed in 1973. Furthermore, in the Department's opinion, appellant acted knowingly and intelligently when he obtained naturalization in Canada. Finally, the Department suggests that appellant's conduct reflects such lack of concern about United States citizenship as to permit one to infer that he intended to relinquish citizenship. Had he been concerned about his citizenship he would have acted promptly in 1979 after being advised that obtaining naturalization in Canada raised the question whether he had expatriated himself.

If a United States citizen voluntarily obtains naturalization in a foreign state, such an act may be persuasive but not conclusive evidence of an intent to relinquish United States nationality. Vance v. Terrazas, supra, 444 U.S. at 261. And if a citizen also makes an express declaration of renunciation of all other allegiance, the courts have consistently held that such words constitute very compelling evidence of intent to relinquish citizenship. 10/ The rule was clearly stated in Richards v.

10/ Counsel for appellant argues that there is no copy in the record of any document appellant is alleged to have signed on May 2, 1972 renouncing all other allegiance.

Counsel is correct. As stated in note 2 supra, the Board requested that the Department obtain a copy of the document appellant signed. Appellant signed a release in the autumn of 1988, but the Canadian authorities would not make a copy of the document in question available to the Consulate General, only to appellant. Instead, on February 2, 1989, the Canadian authorities sent to the Consulate General the communication referred to in note 2 supra. By that time seven months had passed since oral argument was heard on the appeal. The Board therefore decided that since the Canadian authorities had certified that appellant subscribed to the renunciatory declaration, it would delay unnecessarily disposition of the appeal to press appellant to obtain from the Canadian authorities a copy of the document he signed.

In brief, the evidence simply demonstrates that appellant made a declaration on May 2, 1972 renouncing all other allegiance.

Secretary of State, 752 F.2d 1413, 1417 (9th Cir. 1985). "[T]he voluntary taking of a formal oath that includes an explicit renunciation of United States citizenship is ordinarily sufficient to establish a specific intent to renounce United States citizenship." See also Meretsky v. U.S. Department of Justice, et al., No. 86-5184. Memorandum Opinion (D.C. Cir. 1987). There the plaintiff made a declaration of allegiance identical to that made by appellant in the case before us. It was the court's conclusion that: "The oath he took renounced that [United States] citizenship in no uncertain terms." At 5.

In short, the case law is clear that adverse legal consequences for United States citizenship ordinarily will ensue if one voluntarily makes an express renunciation of United States nationality while performing a statutory expatriating act.

Through counsel appellant argues that since the renunciatory declaration was declared invalid by the Federal Court of Canada (see note 2 supra), the declaration should not be considered in determining appellant's citizenship status. The argument has no merit, having been disposed of in 1987 in another loss of nationality proceeding by the Court of Appeals for the District of Columbia Circuit in Meretsky v. U.S. Department of Justice, et al., No 86-5184, memorandum opinion (D.C. Cir. 1987).

> Meretsky also advances the novel argument that because renunciation of other citizenships is no longer required by Canadian law, the U.S. government should ignore the fact that he actually did renounce U.S. citizenship. Essentially he argues, that because the highest court in Canada has declared the requirement that an applicant for Canadian citizenship renounce all other allegiances was ultra vires, 2/ his act, taken in compliance with that now void requirement, should be given no effect. We disagree. In 1976, Canadian law required Meretsky to renounce his U.S. citizenship in order to become a Canadian citizen. Meretsky did so, knowing what he was doing, and with the requisite frame of mind. The mere fact that if he had not become a Canadian citizen in 1967 but instead tried to become one today,

> he would have to renounce 'allegiance and fidelity' to the United States, does not undo his prior action. What matters for purposes of deciding whether he has lost his citizenship is whether he performed an expatriating act with the intent to renounce U.S. citizenship. The oath he took renounced that citizenship in no uncertain terms. 3/ [Footnotes omitted].

Memorandum opinion at 4 and 5.

The trier of fact may not, however, conclude that one who performed an expatriative act intended to relinquish his citizenship, unless satisfied that the person acted knowingly and intelligently, as well as voluntarily, and that there are no other factors that would warrant a finding that the requisite intent was lacking. Terrazas v. Haig, supra; Richards v. Secretary of State, supra.

The evidence leaves no doubt that appellant acted knowingly and intelligently when he obtained naturalization in Canada. He was then 24 years old, and evidently educated, having studied at university. Furthermore, as he has acknowledged, he knew he had to obtain naturalization in order to keep his employment. Nothing, in short, suggests that appellant lacked full awareness of the nature of the act he performed.

The final inquiry to be made is whether there are other factors that raise sufficient doubt about appellant's intent on May 2, 1972 to warrant our concluding that appellant, more probably than not, did not intend on that day to forfeit his United States nationality.

The intent to relinquish citizenship that the government must prove is, of course, the party's intent at the time the expatriative act was done - in the case before the Board, appellant's intent on May 2, 1972. The evidence that appellant intended to relinquish his United States citizenship is strong. Not only did he perform an expatriative act but he also made an oath of allegiance to a foreign sovereign and declared that he renounced all other allegiance. Nonetheless, the trier of fact is charged to establish the party's intent by weighing all the evidence, not simply evidence contemporaneous with the expatriative act. See Vance v. Terrazas, 444 U.S. at 260: "If [the party fails to prove he acted involuntarily], the question remains whether on all the evidence the Government has satisfied its burden of proof that the expatriating act was performed with the necessary intent

to relinquish citizenship." Plainly, the Supreme Court meant that no single act should be dispositive of the issue of one's intent to relinquish United States citizenship. Reason would suggest that this is a sensible conclusion, for gauging the state of a person's mind at one particular moment is fraught with uncertainties; one's words may express one thing, while one may conceivably harbor different thoughts. Therefore, the only fair test is to weigh the totality of the evidence.

Appellant contends that his conduct before and after naturalization is more probative of his state of mind on May 2, 1972 than are the words to which he subscribed on that date.

After he applied for naturalization but before it was granted, appellant states that he made inquiries at the United States Consulate General in Toronto about the implications of naturalization in Canada, thus, in his opinion, demonstrating that he intended to retain his U.S. citizenship. At the hearing he said that when he picked up a passport application in the spring of 1972 at the Consulate General (he contemplated making a trip to Europe the following summer), "I inquired if there was any prohibition that the American government had in terms of its citizens having dual citizenship and was told that there was not." 11/ He therefore did not believe that becoming a Canadian citizen would "impact" on his United States citizenship. However, when asked whether he had inquired if naturalization would jeopardize his U.S. citizenship or had been informed that it might do so, appellant responded in the negative. 12/

The only evidence that appellant made prior inquiries about the effect of naturalization upon his United States citizenship is his own statement made some sixteen years after the event. We know the Consulate General in Toronto issued him a passport immediately before he became a Canadian citizen, so it is possible he did mention his forthcoming naturalization at that time. But there is no independent evidence to confirm that appellant sought and obtained the official advice which he found reassuring and upon which he says he relied. And it might be observed that if appellant told a responsible official that he contemplated becoming a Canadian citizen, he surely would have been advised that naturalization in a foreign state is expatriative and he might therefore jeopardize his United States citizenship.

11/ TR 21.

12/ TR 52, 53.

In the circumstances, we are unable to give probative weight to appellant's unsupported claim that he showed a lack of intent at or near the relevant time to relinquish United States citizenship because he discussed the matter shortly before the event with someone at the Consulate General.

Aside from naturalization, the only substantiated evidence dating from 1972 is the fact that appellant obtained a United States passport a month before he became a Canadian citizen. At the hearing, appellant said that when the prospect of going to Europe came up, there was never any question in his mind that "I would be traveling as an American, which is why I went to get the passport." 13/ Possibly, by obtaining a passport, appellant wanted to make a statement before naturalization that he wished to remain an American citizen. Obtaining the passport therefore suggests that he did not intend to relinquish United States citizenship. Standing alone, however, it cannot outweigh the evidence of a renunciatory intent inherent in the oath of allegiance that he made a few weeks later. his applying for and obtaining a United States passport would be entitled to significant evidential weight only if it were to form a part of a pattern of conduct demonstrating a will to preserve United States citizenship.

Appellant lived in Canada for six years after he obtained naturalization. During that time, the only other act he performed that might be described as derogatory of United States citizenshhip was to obtain a Canadian passport, although he alleges he never used it. At the same time, however, there is no credible evidence that he took any steps to demonstrate that he considered himself to be a United States citizen.

After appellant returned to the United States in 1978, he consistently and in many respects held himself out as a United States citizen. It is at that point and only at that point, however, that the record begins to show an affirmative will on appellant's part to be a United States citizen. The essential inquiry therefore is whether appellant's proven conduct in the period that began six years after he obtained naturalization in Canada and abjured all allegiance to the United States is entitled to such probative weight as to negate or at least cast significant doubt upon his words and conduct in 1972.

13/ TR 22.

See also his affidavit of April 9, 1979: "I applied for this passport with the intention of remaining a U.S. citizen."

The basic difficulty we have to assign probative weight to appellant's conduct from 1978 with respect to the issue of his intent in 1972 is that it is so remote from the critical event - his naturalization in Canada. What does it prove about his intent in 1972 that appellant wanted to and did return to the United States in 1978 and thereafter conducted himself as a United States citizen? That he did not intend in 1972 to relinquish United States citizenship? Possibly. But, on the evidence, it is equally possible (in our view, probable) that he intended in 1972 precisely what the objective evidence shows he intended - to relinquish American citizenship - and decided to return to the United States because he found it congenial or advantageous to do so, not necessarily because he wanted to demonstrate that he never intended to relinquish citizenship. Once in the United States, appellant had every incentive to behave as a United States citizen,not a Canadian citizen; every incentive to assert a claim to United States citizenship.

In short, we see no nexus between appellant's conduct after 1978 and his words and conduct in 1972. One might intend to relinquish United States citizenship in 1972 and nonetheless later decide to come to the United States to live as a citizen.

The oath of allegiance appellant made to Queen Elizabeth the Second in 1972 renounced United States citizenship"in no uncertain terms." After carefully reviewing all the evidence presented to us, we find no factors that would warrant our concluding that appellant probably did not intend to renounce all allegiance and fidelity to the United States. From this it follows that the Department has sustained its burden of proving that appellant intended to relinquish his United States citizenship when he obtained naturalization in Canada upon his own application.

IV

Upon consideration of the foregoing, we hereby affirm the Department's determination that appellant expatriated

Alan G. James, Chairman

Frederick Smith, Jr., Member

George Taft, Member