November 14, 1986

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: B[redacted] A[redacted] M[redacted]

B[redacted] A[redacted] M[redacted] appeals an administrative determination of the Department of State holding that he expatriated himself on January 20, 1984 under the provisions of section 349(a)(5) of the Immigration and Nationality Act (the Act) by making a formal renunciation of his United States nationality before a consular officer of the United States in Mt. Crawford Prison at Wellington, New Zealand. 1/

We are confronted at the outset with the question whether M[redacted] renunciation of his United States nationality was carried out as envisioned by the Act and applicable federal regulations. It is our conclusion that M[redacted]s renunciation was legally ineffective because it was made in prison. Accordingly, we will reverse the Department's determination of his expatriation.

I

M[redacted] acquired United States citizenship by virtue of his birth at Santa Rosa, California on January 27, 1949. According to his submissions, he graduated from high school in 1967, and took a summer job in the Merchant Marine serving on a liberty ship delivering ammunition and supplies to U.S. forces in Viet Nam. He obtained a United States passport in 1969. He states that he graduated from college in 1974. In November 1974 he obtained a new passport at San Francisco. In the application he gave his occupation as biologist.

1/ Section 349(a)(5) of the Immigration and Nationality Act 8 U.S.C. 1481(a)(5), reads:

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 --

. . .

(5) making a formal renunciation of nationality before a diplomatic or consular officer of the United States in a foreign state, in such form as may be prescribed by the Secretary of State; . . .

In his submissions to the Board, M[redacted] states that "[h]e became part of the disillusioned group of young people during this Viet Nam period," and that he joined a commune in Oregon where he lived two years. In March 1981 M[redacted]y went to New Zealand "to escape," as he put it, "from an outstanding warrant for his arrest in Maine." At the time he went to New Zealand, two other warrants for his arrest were outstanding, all three apparently stemming from indictments on drug-related charges. M[redacted] claims that he applied for and was issued a passport in the name of Mark Smith at San Francisco in late 1980 or early 1981 and destroyed it upon arrival in New Zealand. Since he arrived in New Zealand without a visa, he fraudently obtained a New Zealand passport.

Mc[redacted] was arrested in February 1983 and in March 1983 convicted by the High Court in Wellington of possession and cultivation of cannabis and forgery. He was sentenced to serve three and one half years in Mt. Crawford Prison. There he was visited regularly by a consular officer of the Embassy at Wellington. He seems to have been a model prisoner. The consular officer who visited him December 1983 reported to the Department that the prison superintendent had observed that if the pattern of M[redacted]y's conduct continued, he would be eligible for the maximum remission of sentence for good behavior. The consular officer's report continued:

> ...
>
> 2. In addition, the Superintendent commented that M[redacted] wants to marry, and that it seems likely that the application will be approved. Mr. MacDonald is tentatively planning to hold the wedding in his garden.
>
> 3. M[redacted], himself, seems well adjusted and reasonably happy in his environment. He is looking forward to marriage, although there seems little chance that he will be able to be much with wife in the near future (there are no conjugal visits in New Zealand, and prison leave is not available to persons under order of deportation). M[redacted] would like to remain in New Zealand, but it seems that even his marriage will not allow residence here. He is obviously concerned about this and the prospect of facing additional criminal charges upon his return to the United States....

In December 1983 the Embassy was notified by the New Zealand Department of Labor that an order of deportation against M[redacted] had been signed in November.

A consular officer visited M[redacted] in early January **1984** and on January 10th reported to the Department by immediate cable as follows:

> 1. The consular officer visited B[redacted] M[redacted], at his request, on January **6, 1984.** M[redacted] has received a final order of deportation against which he has appealed. The appeal is based on M[redacted] recent marriage to a New Zealand citizen; his advisors, however, have held out slim chance of the appeal's success even in his changed circumstances. M[redacted] has consequently begun to consider the possibility of renouncing his U.S. citizenship so as to place himself in a position in which deportation to the United States would be impossible. The consular officer, while affirming that M[redacted] had the right to renounce his citizenship, cautioned him not to take any serious and irrevocable step until it was clear that his appeal would fail, and he had legal assurances that the renunciation of his citizenship would permit him to remain here. The possibility of extradition to the Un States to face pending charges against M[redacted] in Maine was also discussed. On the morning of January 10, M[redacted] called the consular officer to formally request to renounce his citizenship at the earliest possible time.
>
> 2. Unless the Department poses objection or suggests an alternate course of conduct, the consular officer proposes to administer the oath of renunciation and have documents appropriately executed on January 20 at Mt. Crawford Prison....

No reply having been received from the Department by the opening of business the consular officer went to Mt. Crawford Prison on January **20, 1984.** There he explained to M[redacted] the serious consequences of formal renunciation of his United States nationality. M[redacted] thereafter read and signed a statement of understanding, attesting that he had decided to exercise his right to renounce his citizenship and was acting voluntarily; that the serious consequences of renunciation had been explained to him by the consular officer, and that he understood the consequences. M[redacted] signed the statement in the presence of the consular officer and two witnesses, both prison officials. He also executed the following written statement explaining why he was renouncing.

> I, B[redacted] A[redacted] M[redacted], renounce my U.S. citizenship on the following grounds. I believe solemnly that it is the duty of every child of the planet earth to stand up for the preservation and survival of our home. I do not believe that the policies of the United States Government reflect the reality of our present situation. The government is now spending in excess of 350 billions dollar every year for the annihilation of our mother earth. As a statement of conscience in regard to the laws of our creator, no nation is more important than the survival of the planet as a whole. A nation founded on the principles of our constitution should have more respect for our own survival as a species. Therefore in regard to this along with the support of puppet dictators everywhere in the self-delusion of freedom, I willingly become a stateless person. Hoping in the long term that more people will realize that nation states are out of date and that the earth, her children and our resources are the most important perameters [sic] for our lives.

At around 10:15 A.M. local time the oath of renunciation was then administered to [redacted] by the consular officer in the presence of the two prison officials. At approximately 11:00 A.M. the Embassy received the following immediate telegram from the Department:

> Consular officer should not administer oath of renunciation to Mr. B[redacted] A[redacted] [redacted] in Mt. Crawford Prison at this time. Further guidance will follow septel.
>
> Does New Zealand intend to deport Mr. [redacted] immediately (as soon as his appeals are exhausted) or will he be required to serve his full prison sentence in New Zealand prior to deportation?

The Embassy replied to the Department that its message had arrived too late. It added that:

> The New Zealand Government has consistently held that [redacted] must complete his sentence before deportation. While the post has no indication that this position has changed in any way, recent government communications do not specify any particular time for [redacted] deportation.

In compliance with the requirements of the Act, the consular officer who administered the oath of renunciation executed a certificate of loss of nationality in [redacted] name on January 20, 1984. 2/ The consular officer certified that [redacted] acquired United States nationality at birth; that he made a formal renunciation of his United States nationality; and thereby expatriated himself under the provisions of section 349(a)(5) of the Act. The Embassy forwarded the certificate of loss of nationality under cover of the following memorandum:

> In addition to the reasons enumerated in Mr. [redacted] statement concerning his desire to renounce his U.S. citizenship, he has indicated on several occasions that his fundamental motivation in seeking to lose his citizenship is to block his deportation from New Zealand. An order of deportation has recently been lodged against [redacted] who has a New Zealand citizen wife, and it has appeared that he would not be allowed to stay in this country, his wife's nationality notwithstanding. [redacted] seems clearly to prefer life in New Zealand, but the possibility of prosecution in connection with outstanding warrants of arrest in the United States also seems to have figured in his decision. [redacted] expressed no hostility to the United States or its officials other than is contained in his statement.

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

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.

On June 25, 1984 the Department approved the certificate of loss of nationality. In informing the Embassy of its decision, the Department stated that it considered that [redacted] had acted voluntarily in making a formal renunciation of his nationality; that there were no "special circumstances connected with his imprisonment which could be considered coercive;" and that he had intended to relinquish his United States nationality. The Department instructed the Embassy to inform the Ministry of Foreign Affairs, in response to the Ministry's inquiry, that [redacted] would be readmitted if New Zealand decided to deport him.

On June 17, 1985 [redacted] initiated this appeal through New Zealand counsel. He was deported to the United States three months later, and according to his own statement, was placed on probation in the spring of 1986. On October 2, 1986 he appeared before the Board for oral argument accompanied by counsel.

II

Section 349(a)(5) of the Immigration and Nationality Act of 1952, as amended, is the present legal authority for formal renunciation of United States citizenship abroad. 3/ That section provides that a person who is a national of the United States shall lose his nationality by making a formal renunciation of nationality before a diplomatic or consular officer of the United States in a foreign state, in such form as may be prescribed by the Secretary of State. There is no dispute that [redacted] endeavored to make a formal renunciation of United States nationality on January 20, 1984 in Mt. Crawford Prison at Wellington, New Zealand before a consular officer of the United States. Whether a formal renunciation made in prison is valid as a matter of law is the first issue we must address.

The Department argues that [redacted] act was valid.

> ...section 349(a)(5) which prescribes the form in which renunciation must be done is not an encumbrance upon the right of renunciation, but a procedural safeguard to prevent the performance of renunciation from being undertaken by mistake or carelessness.
>
> The statute requires that renunciation be performed outside the United States in a form prescribed by the Secretary of State. Appellant's renunciation was made at the Mt. Crawford Prison in Wellington. There are no written

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3/ Text supra, note 1.

> guidelines which prohibit the taking of an oath of renunciation outside the Embassy or Consulate. The statute requires only that the oath be taken before a consular officer abroad in the form prescribed by the Secretary. Neither the Code of Federal Regulations nor Volume 8 of the Foreign Affairs Manual (8 FAM) specifies where the consular officer is to be located during the process. Admittedly, the action was at variance with the procedure generally followed. However, this by itself, does not render the renunciation invalid since the standard procedure is not a matter of law and thus is not prescriptive. While the location of the renunciation could be considered to bear on the issue of duress, the Department satisfied itself that the prison setting did not detract from the voluntariness of Mr. M[redacted] act.

As the Department points out, neither the Act, federal regulations nor the Department's internal guidelines in effect on January 20, 1984 (the Foreign Affairs Manual) specify where formal renunciation shall take place. Nonetheless, can it be doubted that the venue of formal renunciation is a material consideration in determining whether the act was validly carried out? At the hearing on October 2, 1986 counsel for [redacted] correctly pointed out why venue is a very relevant consideration. Counsel asserted that:

> ...Even the Government, in its brief, acknowledges that the setting, the environment respecting the renunciation, was not in accord with standard operating procedures and that it lent itself to duress.
>
> I quote from the Government's brief: 'Admittedly the action was at variance with the procedure generally followed.' And a further quote 'while the location of the renunciation could be considered to bear on the issue of duress, the Department otherwise satisfied itself that the prison setting did not detract from the voluntariness.' At the least, I submit to you that this is indeed a Government admission of doubt as to the propriety of the renunciation under those circumstances.
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> Unquestionably, we submit, the prison setting was not the most amenable environment for such a momentous decision. 4/

4/ Transcript of hearing in the Matter of [redacted] October 2, 1986 (hereafter referred to as "TR"), 62, 63.

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It is settled that the words of a statute are law, and only when the words are difficult of understanding can what happened when Congress passed the act be resorted to for aid. United States v. Ogilvie Hardware Co., 155 F.2d 577 (5th Cir. 1946), aff'd 330 U.S. 709 (1947). However, when a statute is silent on the point at issue, it is necessary to analyze the statute as a whole and its history and purpose to ascertain what interpretation must be ascribed to silence. N.L.R.B. v. Lewis, 149 F.2d 832 (9th Cir. 1957), aff'd. 357 U.S. 10 (1958). In Shelly v. United States, 120 F.2d 734 (D.C.C. 1941), the court found it proper to "[r]esort to the usual evidence of congressional intent" (reports and debates) in order to interpret the statute for repatriation of an expatriated wife in light of the Government's contention that what the statute expressed and the actual intent of Congress were different.

So, we consider it proper to turn to the legislative history of the Act to determine whether it casts any light on the issue of where formal renunciation may take place.

Section 349(a)(5) of the Act, which sets forth the requirements for loss of nationality by formal renunciation, is identical with section 401(f) of the Nationality Act of 1940, which provided the first statutory procedure for formal renunciation of citizenship. 5/ Prior to enactment of the Immigration and Nationality Act of 1952 the Senate Committee on the Judiciary investigated the immigration and naturalization system of the United States. With respect to the statutory procedure of the formal renunciation prescribed by section 401(f) of the Nationality Act of 1940, the Committee stated:

5/ Section 401(f) of Chapter IV of the Nationality Act of 1940, 8 U.S.C. 801(f), reads:

> Sec. 401. A person who is a national of the united States, whether by birth or naturalization shall lose his nationality by:
>
> . . .
>
> (f) Making a formal renunciation of nationality before a diplomatic or consular officer of the United States in a foreign state, in such form as may be prescribed by the Secretary of State....

> formal renunciation by a native-born or a naturalized citizen abroad may be made only at a consulate of the United States before diplomatic or consular officers. The form for making such renunciation is prescribed by the Secretary of State, and is to be in affidavit form and includes pertinent data relating to the person's place and date of birth, his residence, the manner in which he acquired United States citizenship, that he desires to renounce such citizenship and that he does so renounce, absolutely and entirely. [Emphasis added] 6/

The Committee did not recommend to the Congress that the statutory procedure of section 401(f) be amended.

Section 104(a)(3) of the Act authorizes the Secretary of State "to establish such regulations...as he deems necessary for carrying out" the provisions of the Act. Pursuant to that authority, the Secretary's designee has promulgated federal regulations which leave no doubt that formal renunciation shall take place at a consular establishment of the United States.

Section 50.50 of Title 22, Code of Federal Regulations, 22 CFR 50.50 (1979), provides in pertinent part as follows:

> Sec. 50.50 Renunciation of nationality.
>
> (a) A person desiring to renounce his U.S. nationality under section 349(a)(6) [sic] of the Immigration and Nationality Act shall appear before a diplomatic or consular officer of the United States in the manner and form prescribed by the Department....

"Shall appear before..." is a term of art with precise meaning. See Black's Law Dictionary, 5th Ed.: "Appear: To be properly before a court...coming into a court by a party to a suit...." See also the Oxford English Dictionary: "Appear. 4. To present oneself formally before an authority or tribunal; to put in an appearance." Plainly, under the federal regulations which implement the Act and which, in distinction to the Department's internal guidelines, have

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6/ Senate Committee on Judiciary, THE IMMIGRATION AND NATURALIZATION SYSTEMS OF THE UNITED STATES, S. Rep. No. 1515, 81st Cong., 2nd Sess. 750 (1950).

the force of law, the renunciant shall appear before the competent official at his place of business.

Only a few years ago the Department took the position that the statement of the Senate Committee on the Judiciary that formal renunciation may take place only at a consular establishment was a clear expression of the intent of Congress. In response to a request of the then-Chairman of the Board of Appellate Review, the Department in 1981 addressed a memorandum of law to the Board explaining the Department's position on the significance of procedural defects in loss of nationality cases, specifically in renunciation cases. 7/ The memorandum stated that:

> The Department's position is that Section 349(a)(5) of the Immigration and Nationality Act establishes the sole criterion necessary for a valid renunciation. The criterion is that the renunciation be made in the prescribed form before a U.S. consular officer abroad. The phrase "form prescribed by the Secretary" in Section 349(a)(5) refers only to the oath of renunciation affidavit; it does not encompass the procedure in 8 FAM 225.6...
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> The 8 FAM 225.6 procedures were designed as internal guidelines to assist consular officers in processing renunciations and to assist the Department in its approval of the corresponding CLNs. These procedures are not designed to confer rights on the renunciant since renunciation is a right in itself and is not an adversarial process. Thus, the 8 FAM procedures are not intended to be binding.

The memorandum further asserted that: "The legislative history of section 349(a)(5) indicates that Congress intended that formal renunciation be accompanied by complying with simple requirements." It continued:

7/ Memorandum of J. Donald Blevins, Deputy Assistant Secretary of State for Consular Affairs (Passport Services) to Ms. Julia W. Willis, Chairman, Board of Appellate Review, October 23, 1981.

> A party who asserts that requirements over and above those articulated by the Congress need be met in order to accomplish a valid renunciation bears a particularly heavy burden. In reviewing the legislative history of Section 349(a)(5), there is no indication that Congress envisioned a complex regulatory scheme to implement the literal language of the formal renunciation statute. The Senate Judiciary Committee, in describing renunciation procedures under Section 349(a)(5)'s nearly identical predecessor statute, Section 401(a) [Nationality Act of 1940, Ch. 876, Sec. 401, 54 Stat. 1147 (repealed 1952)], noted:
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> > Formal renunciation by a native-born or naturalized citizen abroad may be made only at a Consulate of the United States before diplomatic or consular officers.
> >
> > ....
> >
> > S. REP. No. 1515, 81st Cong., 2d Sess. 750-51 (1950).

The Department's memorandum concluded as follows:

> There is no reason to believe that Congress saw any defect in this simple, straight-forward process since it enacted legislation with the same requirement, presumably to be administered in the same fashion, when it passed the Immigration and Nationality Act.

It is difficult to conceive that the Act and the regulations promulated pursuant to the Secretary's statutory authority to implement the Act which prescribe that a United States citizen shall appear before a diplomatic or consular officer in order to make a formal renunciation of United States nationality, would sanction the taking of the oath of renunciation at any place other than an embassy or consulate. A United States citizen, it is true, may not be denied his "natural and inherent right" to divest himself of his United States citizenship. 8/ Although the Act is silent on where

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8/ Act of July 27, 1868, Ch. 249, 15 Stat. 223.

formal renunciation may take place, it seems evident that Congress did not consider requiring a citizen to go to a consular establishment would in any way abridge the right of every citizen to relinquish citizenship.

In a post-hearing memorandum dated October 15, 1986 the Department noted that the report of the Senate Committee on the Judiciary, supra, was issued two years before the introduction of the legislation that later became the Immigration and Nationality Act of 1952. 9/ The memorandum continued:

> When researching the legislative history addressing this particular section of the 1952 Act, both the Senate and House Judiciary Committees' reports did not contain the same limitation that a renunciatory oath be taken only at a Consulate post as the Judiciary hearing report. 10/ The reports are in conformity with the statute as enacted.

The 1950 report of the Senate Committee on the Judiciary is, beyond any question, an integral part of the legislative history of the 1952 Act. As we pointed out above, where an act of Congress is silent on a material point, the proper course for a court or administrative tribunal is to review the entire documentation that forms the legislative history of the act to determine whether any of it sheds light on the point at issue. The silence of the 1952 House and Senate Committee reports on the venue of formal renunciation is not, in our opinion, inconsistent with the proposition that it was the intent of Congress that formal renunciation should only take place at a diplomatic or consular establishment. In any event, the requirement of where formal renunciation can be made should not be left to conjecture in the face of Congressional silence and the rights of citizenship are not to be destroyed by ambiguity. 11/

9/ Memorandum from W. B. Wharton, Director, Office of Citizenship Appeals and Legal Assistance, to Chairman, Board of Appellate Review, October 15, 1986.

10/ The citations are, respectively, Senate Committee on the Judiciary, Revision of Immigration and Nationality Laws, S. Rep. No. 1137, 83 Cong., 2d Sess. 46 (1952); and House Committee on the Judiciary H. Rep. No. 1365, 82nd Cong., 2nd Sess. 1656 (1952).

11/ See Yuichi Inouye, et. al., v. Clark et. al., 73 Fed. Supp. 1000 (S.D. Cal. 1947).

The consular officer who handled [redacted] case apparently sensed that if he were to administer the oath of renunciation in prison, there might be a question about the validity of the act; for, as we have seen, he sent a high priority telegram to the Department on January 10, 1984 stating that unless the Department objected or suggested a different course, he would administer the oath of renunciation to [redacted] in Mt. Crawford Prison on January 20th. Having received no instructions by the opening of business that day, he obviously considered he was free to proceed.

The Department quite properly did object, but for some unexplained reason was unable until eight days had passed to instruct the Embassy not to administer the oath of renunciation. 12/

Three weeks after [redacted] renounced his nationality, the Department sent a circular instruction to all diplomatic and consular posts cautioning them against accepting formal renunciation by United States citizens in foreign jails. The guidance reads in pertinent part as follows:

> ...
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> 2. Under prevailing law, the critical issues in loss of nationality cases are voluntariness and intent. A formal renunciation of U.S. nationality before a consular officer, in the form prescribed by the Department, constitutes unmistakable evidence of intent to relinquish. However, prison renunciations, although arguably valid, may, because of the environment in which they occur, raise serious questions concerning voluntariness. In consequence, prison renunciations are discouraged and may not be taken except upon authorization from the Department.

12/ We find it incomprehensible the Department could have been so grossly inefficient in acting on the Embassy's telegram. The telegram was received in the Department on January 10th and on the same day was assigned to a specific officer for action. Yet eight days passed before the action officer could draft, clear and dispatch a simple cautionary message. The dilatoriness of the action officer is even more difficult to understand in view of the fact that a year and a half earlier the Board of Appellate Review had reversed the Department's determination of expatriation in the case of a person who renounced his United States nationality in prison in another rule-of-law state, Canada. Case of Donald Wayne Lawrence, decided June 30, 1982.

> 3. If a U.S. citizen insists on renouncing his citizenship while in a foreign prison, the consular officer should inform the prisoner that whenever possible the renunciation must be executed in an U.S. Embassy or Consulate, If the prisoner persists, the consular officer should approach host government authorities to ascertain whether they could escort the renunciant to the Embassy/Consulate. If the host country agrees, and if otherwise feasible, the oath should be administered to the renunciant following 8 FAM 225.6 procedures in an office apart from the prison guards, who may also not be used as witnesses to the taking of the oath. If the host government does not agree, post should cable Department background of case and, if appropriate, request authorization to administer renunciation oath in prison. 13/

In light of the foregoing instructions, which seem eminently sensible, we cannot understand why the Department did not disapprove the certificate of loss of nationality that the Embassy had executed in [redacted] name. The Department would have been on perfectly sound ground had it instructed the Embassy to inform [redacted] that (a) his renunciation was invalid because it was made in prison; and (b) if he still wished to renounce, the Embassy would approach the prison authorities with a request that he be permitted to do so at the chancery. Such a course of action would in no way have abridged [redacted] "natural and inherent right" to expatriate himself, but would have ensured that his act complied with the evident intent of Congress.

13/ State Department Telegram 54795 to all diplomatic and consular posts, 2/24/84.

When the Foreign Affairs Manual was revised in March 1984, a section on the site of renunciation was included. 7 FAM 1253(a) 3/31/84. It reads as follows:

> Whenever possible, the renunciation should be administered at the post. Problems have arisen when oaths have been taken at the renunciant's home or in prison. Oaths taken outside the post are more easily subject to allegations that they were made involuntarily or given improperly. The officer should urge the potential renunciant to appear at the post. The oath may be taken outside the post only as a last resort and only if the person is physically unable to travel to the post or if other unusual circumstances require it. If at all possible the post should report all

The legislative history of the Immigration and Nationality Act of 1952 does not disclose the public policy reasons that led the Senate Committee on the Judiciary to assert in 1950 that formal renunciation of United States nationality abroad might take place only at a united States diplomatic or consular establishment. One may reasonably surmise, however, that out of recognition that formal renunciation is the most categoric of all acts of alienage, it was believed vital for the act to be performed in a completely neutral, dignified environment where the renunciant could act, and be perceived to act, completely of his own free will. Prison is by definition a hostile environment. For the act to be witnessed by prison officials inevitably adds disturbing overtones to the whole proceeding. 14/

At the oral hearing, the Department's counsel addressed the issue of venue of formal renunciation as follows:

> In addition, the renunciation at the Embassy is not a requirement by statute. The FAM is a guideline, not a regulation. We contend that Mr. [redacted] was fully aware of what he was doing at the time of his renunciation and therefore it is incontrovertible that he made a choice.

13/ Cont'd

> such circumstances in advance to the Department (CA/OCS/CCS) by telegram.

14/ The Department's guidelines for formal renunciation in effect in January 1984 stated that

> Witnesses may be diplomatic or consular officers, local employees, companions of the would-be renunciant, or other private persons who may be available. a/

Neither of the witnesses could be considered to fall in any of the foregoing categories. The Department argues, however, that the procedures set forth in the Foreign Affairs Manual are not binding as a matter of law and therefore that the witnessing of the act by prison employees is not material error. Technically, the Department may be right. However, having prison employees witness an act of formal renunciation hardly reinforces the Department's assertions that the act was perfectly valid, particularly in light of [redacted] claim (unrefuted by the Department) that one of the witnesses, the Acting Prison Superintendent, "hated me." TR 20.

a/ Volume 8, Citizenship and Passports, Foreign Affairs Manual, Department of State, Section 225.6(g); 8 FAM 225.6(g).

> No coercion, except that which he created, was present. Appellant has failed to rebut the presumption that he acted voluntarily. 15/

To argue that it is conceptually possible for a renunciant to act freely in an environment other than a consular office, and that in this case [redacted] renunciation was on its face voluntary because he seemed to know what he was doing, simply begs the question. The intent of Congress was that formal renunciation should take place only at a consular office. Since [redacted] did not make his renunciation at such a place, his act did not, in our judgment, comply with the requirements of law and was therefore without legal effect.

III

Upon consideration of the foregoing, we conclude that the Department's determination that [redacted] expatriated himself on January 20, 1984 should be and hereby is reversed.

Alan G. James, Chairman

Edward G. Misey, Member

J. Peter A. Bernhardt, Member

15/ TR 49.