

TO AMEND THE NATIONALITY ACT OF 1940

HEARINGS

BEFORE A

SUBCOMMITTEE OF THE
COMMITTEE ON IMMIGRATION

UNITED STATES SENATE

SEVENTY-SEVENTH CONGRESS

SECOND SESSION

ON

H. R. 6250

AN ACT TO AMEND THE NATIONALITY ACT OF 1940

FEBRUARY 17, 18, AND 19, 1942

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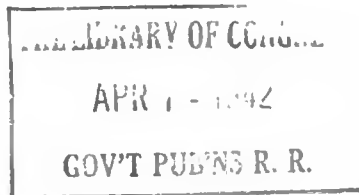
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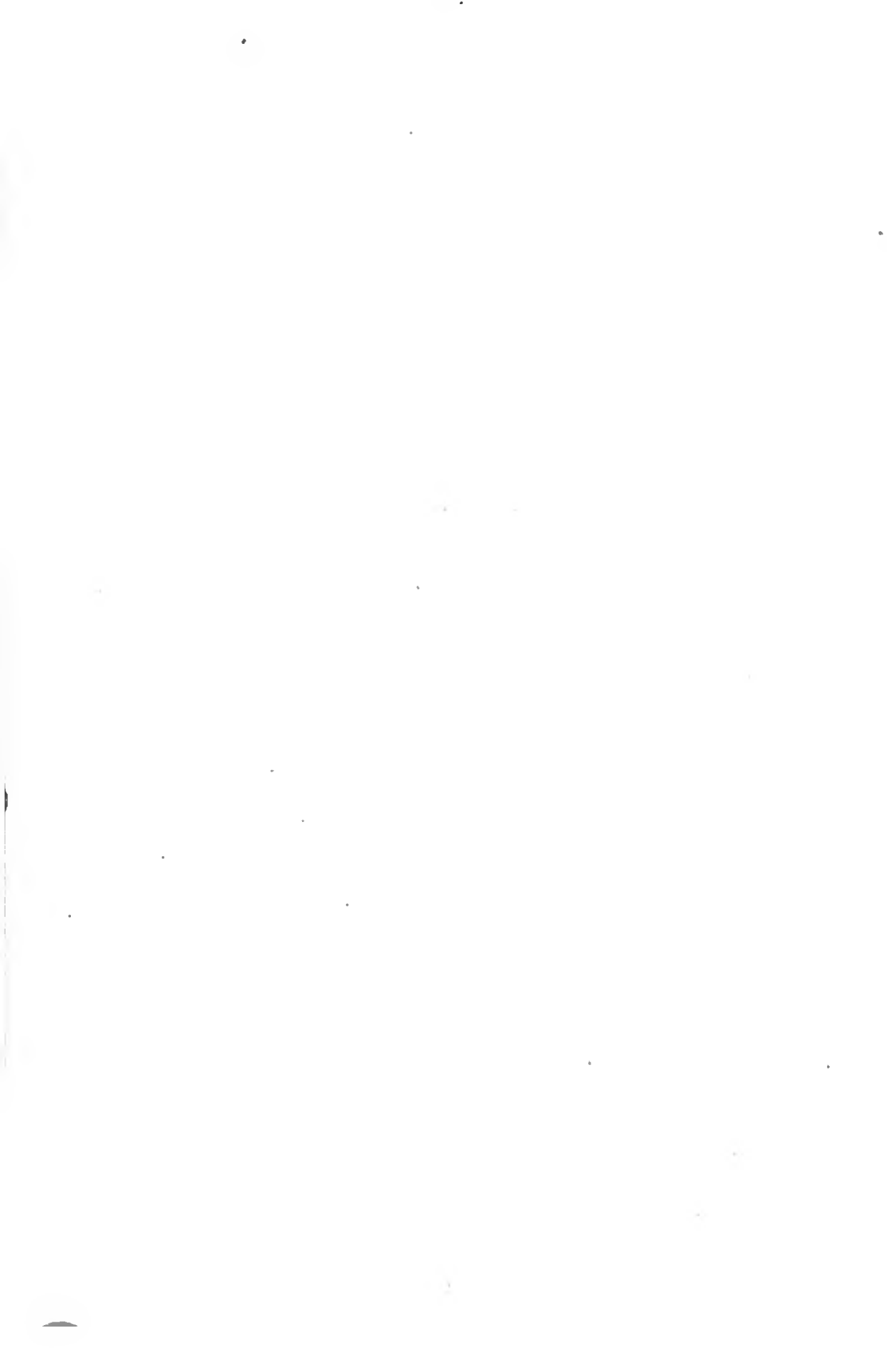
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CONTENTS

Statement of—	Page
Bennett, William S.	15
Criscuolo, Luigi	25
Finerty, John F.	3
Fleischman, Ernest	23
Hazard, Dr. Henry B.	77
Hershfield, Isidore	73
Holtzoff, Alexander	29
Oppenheimer, Reuben	20
Shaughnessy, Edward J.	76
Schlesinger, Sidney C.	41
Shoemaker, Thomas B.	33
Smith, L. M. C.	43



TO AMEND THE NATIONALITY ACT OF 1940

TUESDAY, FEBRUARY 17, 1942

UNITED STATES SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON IMMIGRATION,
Washington, D. C.

The subcommittee, consisting of Senators Maloney, Herring, and Ball, met pursuant to call at 10:30 a. m., Hon. Francis Maloney (chairman) presiding.

Present: Senators Maloney (chairman) and Ball.

Also present: Senator Holman.

Senator MALONEY. The meeting will come to order.

This is a meeting of the subcommittee appointed by Chairman Richard Russell of the Committee on Immigration to hear those who want to be heard on H. R. 6250.

(The bill referred to is as follows:)

[H. R. 6250, 77th Cong., 2d Sess.]

AN ACT To amend the Nationality Act of 1940

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 307 (a) of the Nationality Act of 1940, approved October 14, 1940 (54 Stat. 1142), be, and it hereby is, amended by adding the following: "Provided, That the requirement that a person shall have resided for a period of six months within the State in which the petition is filed shall not apply to members of the military and naval forces of the United States: And provided further, That any member of the military or naval forces of the United States may file his petition for naturalization in any naturalization court, regardless of his place of residence, and such petition may be heard immediately by the naturalization court if the petitioner and his witnesses shall have appeared before, and been examined by, a representative of the Immigration and Naturalization Service."

SEC. 2. Subdivision (1) of subsection (b) of section 307 of the Nationality Act of 1940, approved October 14, 1940 (54 Stat. 1142), is hereby amended to read as follows:

"(1) Prior to the beginning of such period (whether such period begins before or after his departure from the United States) the alien has established to the satisfaction of the Attorney General that his absence from the United States for such period is to be on behalf of such Government, or for the purpose of carrying on scientific research on behalf of such institution, or to be engaged in the development of such foreign trade and commerce or whose absence abroad is necessary to the protection of the property rights in such countries of such firm or corporation."

SEC. 3. The Nationality Act of 1940, approved October 14, 1940 (54 Stat. 1137), is hereby amended by adding, immediately following section 304 thereof, a new section to be numbered 304A and reading as follows:

"SEC. 304A. An alien, if eligible to naturalization, fifty years of age or over, who has resided in the United States continuously since prior to July 1, 1924, and who, on or prior to the effective date of this section, has made a declaration of intention to become a citizen which is not more than seven years old, or who, within two years from the effective date of this section, shall make a declaration of intention, may thereafter file petition for naturalization and be admitted to

citizenship upon full and complete compliance with all requirements of the naturalization laws, except that he shall not be required to speak the English language, sign his declaration or petition in his own handwriting, or meet other educational requirements."

SEC. 4. Section 320 of the Nationality Act of 1940, approved October 14, 1940 (54 Stat. 1148), is hereby amended to read as follows:

"SEC. 320. A person not an alien enemy, who resided uninterruptedly within the United States during the period of five years next preceding July 1, 1925, and was on that date otherwise qualified to become a citizen of the United States, except that such person had not made a declaration of intention required by law and who during or prior to that time, because of misinformation regarding the citizenship status of such person, erroneously exercised the rights and performed the duties of a citizen of the United States in good faith, may file the petition for naturalization prescribed by law without making the preliminary declaration of intention, and upon satisfactory proof to the court that petitioner has so acted may be admitted as a citizen of the United States upon complying with the other requirements of the naturalization laws."

SEC. 5. Section 328 (c) of the Nationality Act of 1940, approved October 14, 1940 (54 Stat. 1152), is hereby amended to read as follows:

"(c) For the purposes of the immigration laws and naturalization laws an alien, in respect of whom a record of registry has been made as authorized by subsection (b) of this section, shall be deemed to have been lawfully admitted to the United States for permanent residence as of the date of such alien's entry."

SEC. 6. The first paragraph of section 332 (a) of the Nationality Act of 1940, approved October 14, 1940 (54 Stat. 1154), is hereby amended to read as follows:

"SEC. 332. (a) An applicant for naturalization shall, not less than two nor more than seven years after such declaration of intention has been made, make and file in the office of the clerk of a naturalization court, in duplicate, a sworn petition in writing, signed by the applicant in the applicant's own handwriting if physically able to write, and duly verified by witnesses, which petition shall contain substantially the following averments by such applicant."

SEC. 7. Section 334 (c) of the Nationality Act of 1940, approved October 14, 1940 (54 Stat. 1156), is hereby amended to read as follows:

"(c) Except as otherwise specifically provided in this Act, no final hearing shall be held on any petition for naturalization nor shall any person be naturalized nor shall any certificate of naturalization be issued by any court within thirty days after the filing of the petition for naturalization, nor within thirty days preceding the holding of any general election within the territorial jurisdiction of the naturalization court."

SEC. 8. Section 338 (a) of the Nationality Act of 1940, amended by substituting a comma for the period at the end thereof and by adding the following: "or on the ground that his utterances, writings, actions, or course of conduct establishes that his political allegiance is to a foreign state or sovereignty."

SEC. 9. Section 338 (b) of the Nationality Act of 1940, approved October 14, 1940 (54 Stat. 1158), is hereby amended by adding the following sentence at the end thereof: "When the United States is at war or during the existence of a national emergency proclaimed by the President, a naturalized person shall in any proceeding brought under subsection (a) of this section have thirty days' notice in which to make answer to the petition of the United States, if such notice is served upon him personally in the continental United States."

SEC. 10. Section 338 of the Nationality Act of 1940, approved October 14, 1940 (54 Stat. 1158-1159), is amended by relettering subsections (d), (e), (f), and (g) to read subsections (e), (f), (g), and (h), respectively, and by adding thereto a new subsection to be lettered "subsection (d)" and reading as follows:

"(d) An action may be maintained under the provisions of this section to secure a judgment canceling the certificate of naturalization of any person whose loss of nationality has occurred under the provisions of section 404 of this Act."

SEC. 11. The first sentence of the second proviso of section 401 (a) of the Nationality Act of 1940, approved October 14, 1940 (54 Stat. 1168-1169), is hereby amended to read as follows:

"(a) *Provided further*, That a person who has acquired foreign nationality through the naturalization of his parent or parents, and who at the same time is a citizen of the United States, shall, if he is abroad, and has not theretofore expatriated himself as an American citizen by his own voluntary act, be permitted within two years from the effective date of this Act to return to the United States and take up permanent residence therein, and it shall be thereafter deemed that he has elected to be an American citizen."

SEC. 12. Section 403 (a) of the Nationality Act of 1940, approved October 14, 1940 (54 Stat. 1169-1170), is hereby amended to read as follows:

"SEC. 403. (a) Except as provided in subsections (g) and (h) of section 401, no national can expatriate himself, or be expatriated, under that section while he is within the United States or any of its outlying possessions, but expatriation shall result from the performance by him within the United States or any of its outlying possessions of any of the acts or the fulfillment of any of the conditions specified in that section if and when the national thereafter takes up a residence abroad."

SEC. 13. The Nationality Act of 1940 is hereby amended by inserting therein a new section immediately following section 316, to be known as section 316A:

"SEC. 316A. A person born of alien parents in a foreign country, who entered the United States as a minor prior to July 1, 1924, and who on or before the effective date of this Act was a registered voter in any State and a bona fide resident in any State or of the District of Columbia and who claims citizenship through the naturalization of a parent, upon proof satisfactory to the Immigration and Naturalization Service, of the naturalization of such parent, shall be held to have been legally admitted into the United States for permanent residence."

Passed the House of Representatives January 13, 1942.

Attest:

SOUTH TRIMBLE, *Clerk.*

The first witness is Mr. John F. Finerty, who appears as a representative of the Civil Liberties Union.

STATEMENT OF JOHN F. FINERTY, COUNSEL, AMERICAN CIVIL LIBERTIES UNION, NEW YORK CITY

Senator MALONEY. Mr. Finerty, please tell the reporter your full name and just identify yourself otherwise for the record, and then you may proceed in your own way.

Mr. FINERTY. Thank you. John F. Finerty, 35 Sutton Place, South, New York City; lawyer, with offices at Barr Building, Washington, D. C., and 120 Broadway, New York City.

Mr. Chairman, I am one of the signers of the brief filed by the American Civil Liberties Union, and signed in addition by Edward Borchard, Yale University Law School; Zechariah Chafee, Jr., Harvard University Law School; Morris L. Ernst, general counsel, American Civil Liberties Union; Osmond K. Fraenkel, of the New York Bar; Lloyd K. Garrison, dean, University of Wisconsin Law School; Arthur Garfield Hays, general counsel, American Civil Liberties Union; William Draper Lewis, director, American Law Institute; Karl N. Llewellyn, Columbia University Law School; Robert K. Matthews, Ohio State University Law School, and Reuben Oppenheimer, of the Maryland bar.

While I signed the brief in question, I did not prepare it and, as my testimony will indicate, while I think it entirely sound, I believe it does not quite reach the fundamentals of the questions which I will discuss.

I am briefly to give my qualifications. I am a member of the bars of Illinois, Minnesota, District of Columbia, and United States Supreme Court. I have spent 34 years in the practice of constitutional, international, and transportation law. From 1920 to 1925 I was assistant general counsel of the United States Railroad Administration, in charge of all rate litigation before the Interstate Commerce Commission and the United States Supreme Court for the Government. Prior to that I was assistant general counsel of the Great Northern Railway and counsel for the New York Central Railway.

Since 1925, when I resigned from the Railroad Administration, I have been in private practice, representing the smaller railroads and the larger shippers.

I also represented Tom Mooney before the Supreme Court of the United States and the Supreme Court of California. I also made the last argument for Sacco and Vanzetti on habeas corpus the night they were executed, the argument being before Mr. Justice Holmes. I was counsel for Eamon de Valera in the Supreme Court of New York in the Irish bond litigation, involving intricate questions of international law. And I have been counsel for the American Civil Liberties Union in numerous cases before the Supreme Court and other courts.

In my opinion, section 8 of H. R. 6250 would be unconstitutional, based on three decisions of the Supreme Court of the United States and on the fourteenth amendment.

These decisions are that of Chief Justice Marshall in *Osborn v. Bank of United States*, (9 Wheat, 738); *United States v. Wong Kim Ark*, (169 U. S., 649); *Mackenzie v. Hare*, (239 U. S., 299). I shall also find it necessary to refer briefly to two other decisions of the Supreme Court, in *Johannessen v. United States* (225 U. S. 227) and *Luria v. United States* (231 U. S., 9). And in reading from these cases, the amount I will read will be a sentence or two.

In *Osborn v. Bank of the United States*, Chief Justice Marshall said at page 827:

A naturalized citizen is indeed made a citizen under an act of Congress, but the act does not proceed to give, to regulate, or to prescribe his capacities. He becomes a member of the society, possessing all the rights of a native citizen, and standing, in the view of the Constitution, on the footing of a native. The Constitution does not authorize Congress to enlarge or abridge those rights. The simple power of the national legislature, is to prescribe a uniform rule of naturalization, and the exercise of this power exhausts it, so far as respects the individual.

I call your attention to the exercise of the power in naturalization exhausts the power of Congress. The Chief Justice continues:

The Constitution then takes him up, and, among other rights, extends to him the capacity of suing in the courts of the United States, precisely under the same circumstances under which a native might sue.

In *United States v. Wong Kim Ark*, the court said at page 703:

The power of naturalization, vested in Congress by the Constitution, is a power to confer citizenship, not a power to take it away.

Then the Court quotes from Chief Justice Marshall's decision. It then proceeds to discuss the fourteenth amendment.

I now want to direct your attention to the language of the Court in *Mackenzie v. Hare*, which so far as I know is the latest decision in which the Supreme Court—

Senator HOLMAN. May I inquire: Citizens do lose their citizenship, however, by being convicted of certain crimes, do they not?

Mr. FINERTY. Yes; and I will touch on that, Senator. Those provisions apply alike to naturalized and native-born citizens. For instance, desertion from the Army and naval forces.

Senator HOLMAN. Your contention is that when once a citizen there is no qualification, that is, no limitation to the rights of citizenship?

Mr. FINERTY. Yes.

Senator HOLMAN. Regardless of how they were made a citizen?

Mr. FINERTY. That is correct.

Senator HOLMAN. Or their origin relative to citizenship?

Mr. FINERTY. That is correct; and in that connection I am going to refer, after referring to the *Mackenzie case*, to the fourteenth amendment.

However, I want first to direct your attention to the language of the court in *Mackenzie v. Hare*, where the court said at pages 311 and 312:

It may be conceded that a change of citizenship cannot be arbitrarily imposed, that is, imposed without the concurrence of the citizen. The law in controversy does not have that feature.

That was the law depriving a married woman of her citizenship by marriage to an alien.

It deals with a condition—

Senator HOLMAN. Pardon me just a minute. A female citizen, single, marries an alien; she does not then lose her citizenship?

Mr. FINERTY. Yes; she did at the time, under that act, the act of 1906, she lost her citizenship unless she did certain acts. She lost her citizenship in any event, if she married, but can regain it by doing certain acts involved in the act itself. And the question involved in the *Mackenzie case* was whether she lost her citizenship though she continued to reside in the United States where she would have a right, after the dissolution of her marriage, if she did reside in the United States, to restoration of her citizenship.

Senator HOLMAN. The reason I asked the question, I knew of two particular cases in the last war.

Mr. FINNERTY. Yes.

I want to re-read that last sentence:

The law in controversy does not have that feature. It deals with a condition voluntarily entered into, with notice of the consequence.

Then skipping down, without omitting anything:

The marriage of an American woman with a foreigner has consequences of like kind, may involve national complications of like kind, as her physical expatriation may involve. Therefore, as long as the relation lasts, it is made tantamount to expatriation. This is no arbitrary exercise of government. It is one which, regarding the international aspects, judicial opinion has taken for granted would not only be valid, but demanded. It is the conception of the legislation under review that such an act may bring the Government into embarrassments, and it may be, into controversies.

And I direct your attention again to this last sentence:

It is as voluntary and distinctive as expatriation and its consequence must be considered as elected.

In other words, the Supreme Court on the question before it in the *Mackenzie case* conceded that the Congress was without power to deprive either a naturalized or any citizen of his citizenship without his concurrence. And I shall point out later that Congress has never attempted to do that except where, upon the theory of the *Mackenzie case*, it has given notice in advance that certain acts would constitute what might be called a concurrence in the deprivation of citizenship.

Now, the fourteenth amendment, section 1, the first sentence reads:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.

Now it is that, to my mind, that makes it impossible to say that, whatever was the situation before the fourteenth amendment, there

cannot any longer be two classes of citizens of the United States. The Constitution prior to the fourteenth amendment contained no definition of what was or would be a citizen of the United States. The fourteenth amendment supplies that definition and it is noted that it creates one class known as citizens of the United States, and it does not create two classes known, as some people would try to make it appear, as native-born citizens and naturalized citizens. Those terms, so far as they are now used in congressional legislation or otherwise, must be considered as used wholly for convenience and, as I will indicate, in certain instances to differentiate between conditions that could not possibly affect a native-born citizen, such as residence abroad in the country of his birth; but would only affect naturalized citizens. Those are not discriminations which would be very abundant and are simply realizing or giving recognition to certain differences in the origin of one class of citizens.

Senator HOLMAN. Any place in your argument are you going to touch upon citizens of dual nationality?

Mr. FINERTY. I don't think there is such a thing. And I might as well say here, Senator, that as shown in the very exhaustive study of the questions of the right to surrender citizenship or to become a naturalized subject or citizen, the majority and minority opinions in the *Wong Kim Ark case* practically exhaust the subject. They show there that certainly up to the passage of the expatriation act by the Congress, in 1868 (that is sec. 800, title 8, U. S. C.) there was the greatest dispute; not whether a citizen could be deprived of his citizenship, but whether he could even surrender it if he wanted to.

The opinion of the Supreme Court in the *Wong Kim Ark case* quotes the statutes of China, under the Empire and prior to the Republic, that made it a crime to become naturalized in another country, and provided for the beheading of the naturalized citizen and any accessory to the naturalization—including apparently the immigration inspectors in this country, if the Emperor of China could have apprehended them; and provided for the family of the expatriated Chinese to become slaves of high officials, and for anyone knowing of his expatriation and not informing the Government they are to be strangled.

Well, that was fairly drastic, but was not more drastic in reality than the attitude of the British Government which, as late as 1856, as I recollect it, through the British Ambassador informed the United States Government that it was the opinion of His Majesty's Government that no Englishman could become a naturalized citizen of the United States, and that to do so would be treason. That opinion is quoted in the *Wong Kim Ark case*.

So I think that I am fairly safe in saying that there is no decision of the Supreme Court of the United States, and no decision anywhere, recognizing the right of Congress to deprive involuntarily anyone of his citizenship, and that any provisions for the deprivation of citizenship are based on the doing of specific acts which, under the *Mackenzie case*, it would be assumed in doing the citizen, native or naturalized, would indicate as an acquiescence in their losing of the citizenship. I think it is a fairly thin theory, but that is the only theory, was that Congress at any rate could suspend the statute on those indications in the *Mackenzie case*.

I do want to point out that it may be contended that the decisions of Chief Justice Marshall in *Osborn v. The Bank* and Mr. Justice Gray in the *Wong Kim Ark case*, were in those cases dictum. Well, that is entirely true in *Osborn v. The Bank*, and it is not true in the *Wong Kim Ark case*, because it would seem the only distinction or one of the basic distinctions between the majority and minority opinions in that case was based on this very opinion of the majority that Congress had no power to deprive a naturalized citizen of his citizenship.

I therefore want to submit—and I will be very brief after this—that Congress is without power to deprive either a naturalized or a native-born citizen of citizenship against his will, and may not provide for loss of citizenship by either except on a basis applying to both.

Now, may I very briefly say that the decisions in the *Johannessen* and *Luria cases* are in no way inconsistent to that proposition. In both of those cases Congress recognized that irrespective of any act of the Congress a court had inherent jurisdiction to set aside a decree of naturalization on the ground of fraud. One of the questions involved in those cases was whether the Congress could authorize another court, a new naturalization court, to set aside such a decree; it being alleged that that was a collateral attack. But the court said that that was well within the power of Congress, and it also held that the retrospective features of those acts were not contrary to the ex post facto provisions of the Constitution, holding that those provisions applied merely to criminal statutes.

Now, I want to call attention to the fact that sections 401, 402, and 404 of the Nationality Code are not inconsistent with the recognition either of the necessity of uniformity in the treatment of naturalized and native-born citizens, or with the recognition that the consent of the citizen is necessary before he can be deprived of his citizenship.

Section 800, U. S. C., is not properly a part of the Nationality Code, but is so codified in the U. S. C., and that is the provision or the act of 1868, Revised Statutes 1999, in which the Congress recognizes expatriation as a natural right. As I say, there has been a dispute between the English Government, the Chinese Government, and the United States Government as to that, and especially in the English Government on the civil law. But Congress declared in section 800, U. S. C., that that was a natural right of all persons.

Now, obviously, that applies both to naturalized and native-born citizens.

I call your attention, also, to the fact that section 401, providing a general means of losing United States nationality, applies both to naturalized and native-born citizens. And I also call your particular attention to the fact that every act by which nationality can be lost under that section is specifically denoted. There is no doubt left; no room for construction. Certain substantive acts constitute grounds for assuming the assent of the citizen to losing his citizenship.

Section 404, it is true, applies only to naturalized citizens, and provides additional grounds for expatriation on naturalized citizens by residence abroad. Now, the first two of those grounds both refer to residence in the place of birth of the naturalized citizen or the place of birth of his parents, or where he was formerly a national. Now that could not, of course, apply to a native-born citizen, and therefore

is not inconsistent with the general recognition of the right of all citizens under section 800, U. S. C., to expatriate themselves.

There is a question whether section 404 (c), providing for residing continuously for 5 years in any foreign state, except as provided in section 406 hereof, in applying only to naturalized citizens is not in conflict with the provisions of section 402, which merely makes the same thing a presumption of expatriation as to a native-born citizen.

I think it is possible to argue that to that extent section 404 (c) is unconstitutional. But as it is merely a matter really of evidence, the question could never be raised and is not pertinent to the immediate question here.

What I do want to call to your attention is the fact that in every one of those sections there is not the slightest doubt left as to what acts constitute a surrender of citizenship or what acts constitute expatriation.

And if I may just conclude by a couple of paragraphs: As against these existing definite provisions as to the specific acts and conditions which will constitute concurrence of the citizen, both native and foreign born in loss of nationality, or shall constitute voluntary expatriation, section 8 of H. R. 6250 proposes to deprive a naturalized citizen of his citizenship "on the ground that his utterances, writings, actions, or course of conduct establishes that his political allegiance is to a foreign state or sovereignty." There is nothing to define what utterances, what writings, what actions, or what course of conduct shall establish his political allegiance to a foreign state or sovereignty.

In other words, this proposed amendment to section 338 (a) of the Nationality Act of 1940, aside from individually discriminating against naturalized citizens, affords such citizens no adequate knowledge, in the language of the court in *Mackenzie v. Hare*, "a condition voluntarily entered into, with notice of the consequence." Whether the utterances, writings, actions, or course of conduct will or will not establish that political allegiance of such naturalized citizen to a foreign state or sovereignty cannot possibly be known by such citizen in advance, unless such acts are within the specific acts already defined in sections 401 and 404 and the other sections on expatriation and surrender of citizenship in the Nationality Act, which I have already read.

Now, those specific acts are substantive acts, such as the taking of an oath of allegiance to a foreign state, or entering its armed forces without authority of the laws of this country, or a formal renunciation of nationality before a diplomatic or consular officer in a foreign state.

As to such acts, the proposed amendment is unnecessary. As to any other, on the utterances, writings, actions, or course of conduct, it is unconstitutional; since their nature is not defined by the proposed amendment, and therefore cannot be known to the citizen at the time he performs them, but can only be specifically determined by the construction which may be placed upon them by a given court, with the great possibility that another court might reach an entirely opposite construction.

I most respectfully submit, therefore, that the proposed amendment to section 338 (a) is either unnecessary or unconstitutional. And I am greatly obliged to you.

Senator MALONEY. Thank you very much, Mr. Finerty.

Mr. FINERTY. Senator Maloney, I have this brief which I have prepared and which I would like to file as a supplement to the American Civil Liberties Union brief.

Senator MALONEY. Very well; that will be made a part of the record. (The briefs referred to are in full as follows:)

BRIEF OF AMERICAN CIVIL LIBERTIES UNION WITH REGARD TO H. R. 6250

The American Civil Liberties Union is concerned with only one section of H. R. 6250, namely, section 8, and is concerned with this because it believes that the changes proposed in that section gravely affect freedom of opinion and assembly of naturalized citizens.

As originally introduced at the request of the Department of Justice, and as approved by the Committee on Immigration and Naturalization of the House of Representatives, section 8 of the proposed bill sought to amend section 338 (a) of the Nationality Act of 1940 by adding thereto the following words: "or on the ground that his conduct establishes that his political allegiance is, to a foreign state or sovereignty." Section 338 (a) is the section which authorizes the institution of judicial proceedings for the revocation of the citizenship of any naturalized citizen on the ground of fraud or illegality. The bill was passed by the House of Representatives with the addition of certain words so that the new matter now reads: "or on the ground that his utterances, writings, actions or course of conduct establishes that his political allegiance is to a foreign state or sovereignty."

It will thus be noted that the proposals expand the ground for revocation of citizenship from fraud or illegality in extraordinary ways. Fraud and illegality are both matters which under all prior law and legal theory relate only to occurrences at the time of naturalization. They are in the original proposal extended to conduct occurring thereafter, without limitation of time. The present bill proceeds now, in addition, to permit revocation merely for words or utterances. Nor is any test given which is capable of giving real guidance in a period of emotional stress, as to what utterances, or what kind of utterances, are envisaged.

1. In the opinion of the American Civil Liberties Union such a bill is unnecessary, dangerous, and unconstitutional. The ostensible necessity for the bill is referred to in the report of Mr. Dickstein (No. 1544; 77th Cong., 1st sess.). He says (p. 4):

"This will enable the Government not only to take away the citizenship of persons who succeeded in getting naturalized although their true allegiance was to a foreign state or sovereign, but it should enable the Government, upon revocation of naturalization, to classify them in many instances, as alien enemies and, accordingly, subject them to the laws and regulations affecting alien enemies in time of war or during national emergencies."

It will be noted at the very outset that Mr. Dickstein's characterization of this bill is not correct. This bill does not forfeit the citizenship only of persons who became naturalized, although their true allegiance was to a foreign state or sovereignty. To accomplish this objective, existing law is wholly adequate, since a person who became naturalized and did not in good faith renounce his allegiance to a foreign state, was clearly guilty of fraud. And if it was considered desirable to call express attention in the law to this particular variety of fraud, the law should have been formulated in terms so as to indicate that citizenship could be revoked only if it appeared that at the time of naturalization there had not been an honest intent to abjure allegiance to a foreign state.

2. Before considering further objections to the bill, it may be helpful to point briefly to the existing provisions of law dealing with loss of citizenship. In addition to section 338, to which we have already referred, there are three statutory provisions. The first of these, section 401, affects both native-born and naturalized citizens, the other two sections, 402 and 404, affect nationals and naturalized citizens respectively. Under section 401 citizenship may be lost by a number of acts, such as naturalization elsewhere, voting elsewhere, or formal renunciation—formerly marriage by a woman to an alien was included in this category. The significant feature of this section of the law, however, is that it does not decree loss of citizenship except on proof of definite and specific acts concerning which there can be no substantial doubt. Even when, as in subdivisions "g" and "h," loss of citizenship is based on more doubtful factors, such as desertion in time of war or treason, the loss of citizenship results not from proof of these facts in a proceeding dealing with citizenship, but only after conviction for the offense charged.

3. The provisions which deal only with naturalized citizens also rest on specific and definite acts. Thus section 404 creates a presumption of loss with regard to certain of the grounds specified in section 401 where the naturalized citizen has lived 6 months or more in a State of which either parent may have been a national. And section 404 provides for the loss of citizenship (with certain exceptions) after residence of a definite number of years in a foreign country, the length of time depending on whether or not it was the country of the naturalized citizen's birth.

4. It is apparent from the foregoing that until now Congress has been careful not so to condition loss of citizenship as to infringe the rights of naturalized citizens to take an active part in the affairs of this country. Such part must, of course, include the right to the fullest discussion of public matters, including matters of international interest and concern. The proposed law does away with all that. It makes it impossible for a naturalized citizen, with any safety, to enter into any discussion which might be interpreted as an approval of something done or proposed by a foreign country, lest this be held by some court, in a time of excitement, to show that his political allegiance is to such country. Particularly is this so since there is no time limit in the bill, nor is it confined to war or other emergency situations.

Indeed, it is possible that under the bill, as drawn, proceedings might be instituted to cancel the citizenship of a person because of opinions expressed many years before the bill became law. It is easy to conjure up situations in which the citizenship of persons of German or Italian birth might be challenged because of opinions expressed many years ago favorable to the regimes now existing in those countries. So the citizenship of persons of Spanish birth might be challenged because of positions taken by them on one side or the other of the recent Spanish civil war. Indeed, the citizenship of persons of Irish birth might even be challenged because of their strong views in favor of Irish neutrality in the present war.

And it is no answer to say that many of these fears may not be realized, or that if unwarranted litigation ensues, the court will protect the naturalized citizen. In the absence of real need, no law should be enacted under which such proceedings might take place. And the fear of such proceedings is bound to restrict the freedom of all naturalized citizens. As Representative Fish is quoted as having said, this creates "second class" citizenship.

5. In view of the fact that naturalized citizens are, like native-born citizens, subject to jail sentences if they do anything which is harmful to the country, and in many cases lose civil rights in consequence, no sound reason seems to exist for singling out naturalized citizens for further penalties. And, as we shall show, we believe that this proposed legislation is unconstitutional both as denial of due process and as invading freedom of speech and of assembly.

6. That the bill even in its original form would not meet the objections heretofore made is clear. To penalize only the naturalized citizen, the penalization involving loss of citizenship, for conduct which occurs after naturalization would be unfair discrimination. Our objections apply to the unequal treatment which would thereby be accorded to citizens of this country. Furthermore, the word "conduct" standing alone is vague and nebulous. Many prosecutions could be undertaken, proof of which might rest solely on words or writings. The same evil situation might result as though the bill in its present form were in effect.

7. A reason advanced in support of section 8 of the bill is that the Government should be able to withdraw its privilege of citizenship from those who are later shown to be disloyal. The recent espionage convictions in Brooklyn where the majority of the defendants were naturalized Americans of German origin are cited as an example. If Congress had wished to make a conviction for espionage a means for loss of citizenship it could have done so. There could be no objections if the penalty were to apply equally to native as well as foreign-born citizens, and if it applied only to acts committed after such penalty was created. But to impose the heavy penalty of loss of citizenship upon only one class of citizens for actions which did not constitute grounds for loss of citizenship when the acts were committed would be a breach with our historic past, and a violation of the great American tradition which has always placed the naturalized and native-born Americans on the same footing and basis and which has always condemned ex post facto laws.

8. That a naturalized citizen has (with the exception of the right to become President) all of the rights of a native-born citizen is well settled. See *Luria v. United States* (231 U. S. 9). In that case an attack was made upon the provisions of the 1906 Naturalization Act, which provided that if a naturalized citizen

returned to the country of his nativity or took permanent residence in any other foreign country, that should be prima facie evidence of a lack of intention to become a permanent citizen of the United States.

The Supreme Court upheld the law on the ground that it did not affect the substantive right of citizenship, but merely provided a method of establishing the absence of one of the requisites of citizenship, namely, an intention to become a permanent resident here. The Court stressed the fact that the statute created merely a presumption and that it applied for only 5 years after the issuance of the original certificate. The Court expressly noted that the statute did not disturb rights acquired through lawful naturalization.

That statute thus differed from the one here under consideration, since the latter permits cancellation of naturalization without any proof that at the time of naturalization the alien had failed to comply with the requirements. Finally, the Court stressed the fact that the statute was limited in time and particularly emphasized that the value of the presumption decreased as the period lengthened. However, we have here neither a presumption nor a limitation of time. Therefore, the various considerations which induced the Court to sustain the statute in the *Luria case* are all now absent.

9. Attention should also be called to *Johannessen v. United States* (226 U. S. 227). There a proceeding was instituted to cancel a certificate on the ground that it had been fraudulently and illegally procured. The chief constitutional objection was that the statute was an ex post facto law because retrospective. While this was overruled, the Court pointed out that it did not doubt that a law would be void which deprived a citizen of a substantial right because of something in his past conduct which was not an offense at the time it was committed. The law now under consideration does deprive a naturalized citizen of a substantial right which he may lawfully have obtained merely because of some act committed by him in the past.

10. In this connection we call attention to the case of *Mackenzie v. Hare* (239 U. S. 299). In that case the former provision of law by which women lost their citizenship when they married foreigners was challenged. The Court upheld that law because of the peculiar nature of the marriage relationship. Mr. Justice McKenna said:

"It may be conceded that a change of citizenship cannot be arbitrarily imposed; that is, imposed without the concurrence of the citizen. The law in controversy does not have that feature. It deals with a condition voluntarily entered into, with notice of the consequences."

We believe that the proposed amendment is void, either as a denial of due process or as an ex post facto law, if it should be construed to apply to persons already naturalized, particularly if proceedings be taken against them because of opinions uttered or acts done prior to the enactment of this law.

11. But our basic objection to the proposed law is that, as last amended, it is bound to impose serious restrictions on freedom of speech and of assemblage. These restrictions will exist regardless of the actual legal proceedings taken under the act. The mere existence of the act will operate in terrorum. Naturalized citizens will be forced to weigh their words and actions, not with a view to the best interests of the country as a whole, but with a view to their own status only. In this way, free and needed discussion will be hampered and its areas seriously restricted. Restraints will have been imposed upon these citizens as effectively as though the statute carried criminal penalties with it. Yet no one could doubt that such a statute would be unconstitutional.

The Supreme Court has in recent years recognized the great importance to a democratic community of the provisions of the first amendment. It has held void acts of both legislatures and courts which interfered with this guaranty. *Herndon v. Lowry* (301 U. S. 342); *Schneider v. Irvington* (308 U. S. 147); *Thornhill v. Alabama* (310 U. S. 88); *Carlson v. Alabama* (310 U. S. 106); *Cantwell v. Connecticut* (310 U. S. 296); and *Bridges v. California*, decided December 8, 1941.

But that these cases all arose from the States and were, therefore, strictly under the fourteenth amendment rather than the first does not detract from the principle involved. However, if the Congress enacts bills of the character now proposed, it is fair to assume that to this list of State cases will be added cases arising under acts of Congress as well.

12. The amendments proposed by section 8 of this bill should be defeated in the Senate as an unnecessary, undesirable, and unconstitutional departure from existing law. The risks of mistakes under such a bill are incalculable. The need for such a bill has not been demonstrated. And it is bound to create cleav-

ages between groups of citizens rather than the unity so demanded in our present crisis.

Respectfully submitted.

AMERICAN CIVIL LIBERTIES UNION.

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CONGRESS IS WITHOUT POWER TO DEPRIVE EITHER A NATURALIZED OR A NATIVE-BORN CITIZEN OF CITIZENSHIP AGAINST HIS WILL, AND MAY NOT PROVIDE FOR THE LOSS OF CITIZENSHIP BY EITHER, EXCEPT ON BASES APPLYING TO BOTH

In *United States v. Wong Kim Ark* (169 U. S. 649, p. 703), Mr. Justice Gray, speaking for the majority, said:

"The power of naturalization, vested in Congress by the Constitution, is a power to confer citizenship, not a power to take it away."

The Court then refers to the following language, used by Chief Justice Marshall in *Osborn v. United States Bank* (9 Wheat. 738, p. 827):

"A naturalized citizen becomes a member of society, possessing all rights of native citizens and standing, in view of the Constitution, on the footing of a native. The Constitution does not authorize Congress to enlarge or abridge those rights. The simple power of the national legislature is to prescribe a uniform rule of naturalization, and the exercise of this power exhausts insofar as respects the individual. The Constitution then takes him up, and, among other rights, extends to him the capacity of suing in the courts of the United States precisely under the same circumstances under which a native might sue."

The opinion in the *Wong Kim Ark* case then continues:

"Congress having no power to abridge the rights conferred by the Constitution upon those who have become naturalized citizens by virtue of acts of Congress, a fortiori no act or omission of Congress as to providing for the naturalization of parents or children of a particular race, can affect citizenship acquired as a birth-right, by virtue of the Constitution itself, without any aid of legislation."

It is to be noted that the dissents of Chief Justice Fuller and Justice Harlan in the *Wong Kim Ark* case do not contain any dissent from that portion of the majority opinion holding the Congress is without power to take away citizenship, once conferred.

It may be suggested that both in the *Wong Kim Ark* case and in *Osborn v. United States Bank*, supra, this holding was dicta. This, however, is by no means clear in the *Wong Kim Ark* case. It may very well be said to have been essential to the chain of reasoning by which the majority, in that case, held that a child, born here, of Chinese parents becomes a citizen, although his parents could not be naturalized.

However this may be, the fourteenth amendment puts it beyond question that Congress, once having exercised its constitutional power under article 1, section 8, clause 4 of the Constitution, to naturalize a person, is without power to deprive such naturalized citizen of his citizenship, without his consent. The first sentence of section 1 of the fourteenth amendment reads:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside."

Prior to the fourteenth amendment, there was, as shown by the majority and minority opinions in the *Wong Kim Ark* case, no definition of what constituted a citizen of the United States. That amendment supplied such definition, and it is particularly to be noted, makes no distinction in this respect between persons born and persons naturalized in the United States. In other words, so far as constitutional definition is concerned there is only a single class, "citizens of the

United States," and not two classes, "native-born citizens" and "naturalized citizens." It is therefore beyond the power of Congress to make a distinction in substantive rights based upon any such unconstitutional classification.

Moreover, in the latest case in which the Supreme Court has considered the question of loss of citizenship, *Mackenzie v. Hare* (239 U. S. 299), the Court says, p. 311:

"It may be conceded that a change of citizenship cannot be arbitrarily imposed, that is, imposed without the concurrence of the citizen."

In that case, the Court held that no exception in favor of an American-born woman who marries a resident foreigner and remains within the jurisdiction of the United States may be read into the provisions of the act of March 2, 1907 (34 Stat. et al. 1228, ch. 2534), that—

"Any American woman who marries a foreigner shall take the nationality of her husband, but may resume her American citizenship, at the termination of the marital relation, if within the United States, by continuing to reside therein, and, if abroad, by returning to the United States or by registering as an American citizen."

The Court held that the Congress could validly forfeit the citizenship of such American-born woman, even though she remained within the jurisdiction of the United States.

The Court, after using the language just quoted, continued (pp. 311-312):

"The law in controversy does not have that feature. It deals with a condition voluntarily entered into, with notice of the consequences. * * * And this is an answer to the apprehension of counsel that our construction of the legislation will make every act, though lawful, a renunciation of citizenship. The marriage of an American woman with a foreigner has consequences of like kind, as her physical expatriation may involve. Therefore, as long as the relation lasts, it is made tantamount to expatriation. This is no arbitrary exercise of government. It is one which, regarding the international aspects, judicial opinion has taken for granted would not only be valid, but demanded. It is the conception of the legislation under review that such an act may bring the Government into embarrassments, and, it may be, into controversies. It is as voluntary and distinctive as expatriation and its consequences must be considered as elected."

It is true that *Johannessen v. United States* (225 U. S. 227), decided in 1911, and *Luria v. United States* (231 U. S. 9), decided in 1913, hold that a naturalized alien may be deprived of his citizenship, where a fraud was practiced upon the court which naturalized him.

In the *Johannessen case*, the alien had applied to the court for naturalization, less than 4 years after his first arrival in this country in 1892, and a certificate was issued based upon perjured testimony, that he had resided within the United States for a period of 5 years at least. The facts were not discovered by the Government until 1908. Proceedings were brought under the act of June 29, 1906 (34 Stat. et al., 596-601), authorizing district attorneys to apply to any Federal court to set aside naturalizations obtained by fraud. The Court, in effect, held that the State court which had originally granted naturalization, would itself have had inherent right to set aside its decree because obtained by fraud. It further held (p. 236), that Congress had power to authorize an attack, in a court other than the one granting a certificate of citizenship, if it had been obtained by fraud. The court likewise held that the fact that the act authorizing the proceedings to cancel such naturalization was specifically retrospective, did not make it void as an ex post facto law. The court stated that the prohibition of Act 1, section 9 of the Constitution against ex post facto law applies only to criminal punishments and has no relation to retrospective legislation of any other description.

Luria v. United States upheld the act of June 29, 1906, section 15 (34 Stat. et al., 596, 601), which provides that taking up a permanent residence in a foreign country, within 5 years after granting of a certificate of citizenship, shall be considered prima facie evidence of lack of intention to become a permanent citizen of the United States, at the time of the application for citizenship, and shall be, in the absence of countervailing evidence, sufficient to warrant the cancellation of the certificate as fraudulent. The Court held that this provided a rule of evidence and not of substantive right. Here again, the Court merely upheld the power of Congress to cancel naturalization because of fraud existing at the time such decree of naturalization was procured, and held it, likewise, within the power of Congress to make it prima facie evidence of fraud for the naturalized alien, within 5 years after naturalization, to take up permanent residence abroad.

In this connection, the Court, it is to be noted, stressed the 5-year limitation upon the power of cancellation. The Court said, p. 26:

"That the taking up of a permanent residence in a foreign country shortly following naturalization has a bearing upon the purpose with which the latter was sought, and affords some reason for presuming that there was an absence of intention at the time to reside permanently in the United States, is not debatable. No doubt, the reason for the presumption lessens as the period of time between the two events is lengthened. But it is difficult to say at what point the reason so far disappears as to afford no reasonable basis for the presumption. Congress has indicated its opinion that the intervening period may be as much as 5 years without rendering the presumption baseless. That period seems long, and yet we are not prepared to pronounce it certainly excessive or unreasonable. But we are of opinion that as the intervening time approaches 5 years, the presumption necessarily must weaken to such a degree as to require but slight countervailing evidence to overcome it. On the other hand, when the intervening time is so short as it is shown to have been in the present case, the presumption cannot be regarded as yielding to anything short of a substantial and convincing explanation. So construed, we think the provision is not in excess of the power of Congress."

It may be suggested that section 8 of H. R. 6250, in proposing to amend section 738 (a) of the Nationality Act of 1940 (title 8, sec. 738, U. S. C.) by providing for suits for revoking citizenship of a naturalized alien "on the ground that his utterances, writings, actions, or course of conduct establish his political allegiance to a foreign state or sovereignty" is not inconsistent with the concession of the Supreme Court in *Mackenzie v. Hare*, that a citizen cannot be deprived of his citizenship without his concurrence. It may be urged that such naturalized citizen by "utterances, writings, actions, or course of conduct" establishing "his political allegiance to a foreign state or sovereignty" thereby indicates his concurrence in the revoking of his citizenship.

In the *Mackenzie case*, however, the Supreme Court was only able to uphold the act depriving an American-born woman of her citizenship by marriage to an alien, on the ground, as stated by the Court, p. 212:

"It deals with a condition voluntarily entered into with notice of the consequences.

"* * * It is as voluntary and distinctive as expatriation and its consequences must be considered as elected."

In other words, Congress, by providing that marriage to an alien should deprive an American-born woman of her citizenship, could at least have been said to have made a definite act, the exact consequence of which the woman knew in advance, tantamount to the woman's concurrence in the surrender of her citizenship.

This may also be said of section 401 (title 8, sec. 801, U. S. C.), which provides for "General means of losing United States nationality." There, every act indicating surrender of nationality is definitely defined. It is to be observed, moreover, that section 401 expressly applies both to naturalized and to native-born citizens.

Furthermore, it will be noted that (title 8, sec. 800, U. S. C.), in recognizing the right of voluntary expatriation by all persons, and sections 404, 405, 406, and 407 of the Nationality Act of 1940 (respectively title 8, sec. 804, 805, 806, and 807, U. S. C.) in providing for the expatriation of naturalized citizens, expressly define the specific acts which shall constitute expatriation, and make definite exceptions of certain specific conditions which shall not imply expatriation. Moreover, it is to be noted that section 408 of the Nationality Act (title 8, sec. 808, U. S. C.) specifically provides that, "the loss of nationality under this chapter shall result solely from the performance by a national of the acts or fulfillment of the conditions specified in this chapter."

As against these existing definite provisions as to the specific acts and conditions which shall constitute concurrence of citizens, both native-born and naturalized, in loss of nationality, or shall constitute voluntary expatriation, section 8 of H. R. 6250 proposes to deprive a naturalized citizen only of his citizenship, "on the ground that his utterances, writings, actions, or course of conduct establish his political allegiance to a foreign state or sovereignty."

There is nothing to define what utterances, what writings, what actions, or what course of conduct shall "establish his political allegiance to a foreign state or sovereignty". In other words, this proposed amendment to section 338 (a) of the Nationality Act of 1940, aside from unconstitutionally discriminating against naturalized citizens, affords such citizens no adequate knowledge, in the language of the Court in *Mackenzie v. Hare*, of " * * * a condition voluntarily entered into, with notice of the consequences."

Whether the utterances, writings, actions, or course of conduct, will or will not establish that the political allegiance of such naturalized citizen is to a foreign state or sovereignty, cannot possibly be known to such citizen in advance, unless such acts come within the specific acts already defined in section 401 of the Nationality Act, such as taking an oath of allegiance to a foreign state, or entering its armed forces without authority of the laws of this country, or a formal renunciation of nationality before a diplomatic or consular officer in a foreign state. As to such acts, the proposed amendment is unnecessary. As to any other "utterances, writings, actions, or course of conduct," it is unconstitutional, since their nature is not defined by the proposed amendment and therefore cannot be known to the citizen at the time he performs them, but can only be subsequently determined by the construction which may be placed on them by a given court, with the possibility that another court might reach an entirely opposite construction.

It is submitted, therefore, that the proposed amendment to section 338 (a) is either unnecessary or unconstitutional.

Respectfully submitted.

JOHN F. FINERTY,

Counsel for American Civil Liberties Union.

FEBRUARY 17, 1942.

Senator MALONEY. Mr. Bennett, I think we will give you a chance to be heard now, and I will hear Mr. Oppenheimer next.

**STATEMENT OF WILLIAM S. BENNETT, ATTORNEY, BENNETT,
HOUSE & COURTS, NEW YORK**

Mr. BENNETT. Mr. Chairman, I have already given you a copy of the amendment that I suggest.

Senator MALONEY. You have a copy here, yourself?

Mr. BENNETT. Yes.

Senator MALONEY. Will you please identify yourself for the record and then submit the copy of your suggested amendment?

Mr. BENNETT. Yes. William S. Bennett, 25 Broadway, New York City. I happen to be the only surviving member of the Fifty-ninth Congress that drafted the Naturalization Act, and therefore I am in a position to give the genesis of this situation.

When we came to drafting the act, we found, to the amazement of those who live on the eastern seaboard that from Ohio west the constitutions of the States, several of the States—Indiana, Michigan, and Nebraska—for very good and sufficient reasons permitted the people to vote who had merely filed declarations of intention.

Senator MALONEY. I would like to know what those good and sufficient reasons are.

Mr. BENNETT. Yes. Well, they are these: The territories were being settled up very rapidly and settled up by immigrants from very good countries, as they thought and as events proved. And they adopted as a policy that since they evinced enough interest in becoming permanent citizens to file declarations of intention that they ought to be permitted to take a part in the government.

The State of Nebraska elected a governor who was not a citizen of the United States, and the right so to do was contested and upheld by the Supreme Court of the United States in the case of Ward against Nebraska.

Well, the inevitable result was that where these people found that they could exercise all the rights of citizenship by merely filing a declaration of intention, and it was difficult to become—it was annoying, at least, to become a citizen, and file applications for second papers; and there was no uniform rule—they just went ahead and filed,

and considered themselves citizens, and were not harmed or did not harm anybody.

When we drafted our uniform Naturalization Act——

Senator MALONEY. May I interrupt you there?

Mr. BENNETT. Certainly.

Senator MALONEY. I knew it happened, but I was wondering what led you to believe there were good and sufficient reasons for permitting any such thing to happen?

Mr. BENNETT. Those were good and sufficient reasons. You take a State—take States like the Dakotas or Nebraska itself, and in the earlier days in Michigan and Indiana, although in a lesser degree—where a large proportion of the people who were clearing the land and doing the actual work of citizenship could not become citizens for 5 years after they arrived in the country; and yet it was felt they ought to have some voice in the Government. That became the State policy. I am not saying it was right.

Senator HOLMAN. That is, particularly in local government of which they were a component part.

Mr. BENNETT. Exactly.

Senator HOLMAN. I can get that theory.

Mr. BENNETT. Yes.

Senator HOLMAN. Applicable to the pioneering of our country, and the immigrants came pretty generally and are the sources of the hardy pioneers that went out and would work in the open spaces.

Mr. BENNETT. Yes, sir.

Senator HOLMAN. But today we have entirely different conditions, of a different kind of people coming, that swarm together in cities and bring on all the congestion and untoward conditions incident to slums and such. And I sometimes think the Government has got to cut, got to make the Government fit the conditions.

Mr. BENNETT. With that argument I have no quarrel at the moment.

Senator HOLMAN. Yes.

Mr. BENNETT. Because this proposed amendment does not touch on that at all, it relates entirely to one of those races sometimes called Nordic. And you have those who came here many years ago as German nationals. We in our bill protected every one of that kind, by permitting the declarations of intention to retain their validity, the old declarations of intention; although we provided as to the new declarations of intention, in our bill, that they should only remain valid for 7 years, and if a man did not exercise his right within those 7 years his declaration of intention became invalid for all purposes. So of course he could not vote if he filed a new declaration under our bill.

But it was soon found by the Congress that in order to protect this older immigrant there was additional legislation necessary, and in 1918 the Congress passed a bill which is substantially the same as section 320 of the Nationality Act of 1940. I think the wording is identical, except that the 5 years mentioned in the act are the years 1909 to 1914. Subsequently the Congress amended the 5-year period to be the 5 years preceding July 1, 1920, and now the House has made the period the 5 years preceding July 1, 1925.

But the act of 1918, having been passed on the 18th day of May 1918—when we were at war with the Germans and the Austrians; as unfortunately we are again—for the first time introduced into the

law the words "a person not an alien enemy." Well, those few words did not remain effective very long, because we were soon at peace with both Germany and Austria. So up until the 8th of December, I think it was, this year—

Senator MALONEY. When we declared the existence of a state of war; yes.

Mr. BENNETT. Up until the 8th of December 1941, we had no alien enemies, and the law was applicable to everybody.

When this H. R. 6250 got on the floor of the House, they found that those words made necessary a new section for the protection of some very excellent people who had come to this country when young as Germans.

The specific case of the amendment proposed by Representative McCormack and Representative Martin, practically jointly, was of a man who thought he was a citizen, who had come here young and who had been here at the time his father was naturalized, and who would have become a citizen if his father had not negligently failed to write his name in the proper space in the proper paper. This man went ahead and voted and exercised other acts of citizenship, and today would be doing the same thing if it had not happened that he went around and wanted to act as a sponsor of another man applying for naturalization and described himself as a citizen of the United States. They checked up and found out his father had not written his name in the proper place in the application.

So that the House inserted Section 13, which merely says "A person born of alien parents in a foreign country." They had to do that, because by the 8th of December—

Senator HOLMAN. Will you enlighten me, please? What is the exact meaning? Is there a prohibition about citizenship of native-born of alien parents, and what is that? I did not get the reference that you just made. I did not get your point.

Mr. BENNETT. Here is the reason why the existing law does not cover these people: Section 320 is in the law now, and has been in the law since 1918. It says:

A person not an alien enemy, who resided uninterruptedly within the United States during the period of five years next preceding July 1, 1920, and was on that date otherwise qualified to become a citizen of the United States, except that such person had not made a declaration of intention required by law and who during or prior to that time, because of misinformation regarding the citizenship status of such person, erroneously exercised the rights and performed the duties of a citizen of the United States in good faith

—may not become a citizen, but—

may file the petition for naturalization prescribed by law without making the preliminary declaration of intention, and upon satisfactory proof to the court that petitioner has so acted may be admitted as a citizen of the United States upon complying with the other requirements of the naturalization laws.

The trouble arises, Senator Holman, that the law which protected everybody up until the 8th of December 1941, since that date, because of the declaration of war, is no longer a protection to men who have resided in this country for years and exercised the rights and been under the impression that they were citizens, because technically they are now alien enemies, although they may have sons in every branch of the armed services.

So that the gentlemen from Massachusetts—the majority and the minority leaders of the House, it just happened—found that in order to protect their Massachusetts people, and they found there were others similarly situated, and they joined and introduced, and I may say it was passed unanimously, an amendment which does not say anything about alien enemies, but says, “a person born of alien parents in a foreign country,” and so forth; which is the same thing.

Senator HOLMAN. May or may not do what?

Mr. BENNETT. In that particular case it is this:

who entered the United States as a minor prior to July 1, 1924, and who on or before the effective date of this Act was a registered voter in any State and a bona fide resident of a State or of the District of Columbia and who claims citizenship through the naturalization of a parent, upon proof satisfactory to the Immigration and Naturalization Service in the declaration of such party shall be held to be lawfully admitted into the United States for permanent residence.

I may say for the record, gentlemen, that the amendment was referred to the Department of Justice and approved by it because of the obvious validity of it. It did not cover all of the cases; they never do.

So there are some cases which do not fit those exact situations, and to cover them I have drafted one. Because there are in New York City some of these people who lived in Middle Western States and who voted in Middle Western States under the laws out there, and who came to New York State under the impression that they were American citizens, and only found that they are not when the Alien Registration Act was passed and they consulted attorneys to find out whether they were citizens, and for the first time found out that they were not citizens of the United States although they had exercised the rights of citizenship under misinformation. In order not to make it too broad, I have drawn a rather rigid statute, so it would cover only people who have been here a long time. Well, I will read it:

A person born of alien parents in a foreign country, who first entered the United States as a minor prior to July 1, 1912—

Thirty years ago—

and who on or before the effective date of this Act has resided uninterruptedly within the United States for more than twenty years and was at the time of his entry into the United States and still is qualified to become a citizen of the United States, except that a declaration of intention required by law heretofore filed by such person prior to January 1, 1920, expired by operation of law while, because of misinformation regarding the citizenship status of such person, such person was erroneously exercising the rights and performing the duties of a citizen of the United States in good faith, may file the petition for naturalization prescribed by law without making the preliminary declaration of intention, and upon satisfactory proof to the Court that petitioner has so acted may be admitted as a citizen of the United States upon complying with the other requirements of the naturalization laws.

I would like to call to your attention that the latter paragraph is——

Senator HOLMAN. May I interrupt you there?

Mr. BENNETT. Certainly.

Senator HOLMAN. The thought that occurs to me: You make one of your conditions that through misinformation he votes erroneously.

Mr. BENNETT. That is right.

Senator HOLMAN. Suppose they have been exercising these functions of a citizen, not through misinformation, but deliberately; who

is going to determine whether—I don't like that qualification—who is going to be the judge of whether they are doing it through misinformation, or otherwise?

Mr. BENNETT. Well, the reason I took that, that is the existing law. This is section 320 of the existing law—

because of misinformation regarding the citizenship status of such person, erroneously exercised the rights and performed the duties of a citizen of the United States in good faith.

Senator HOLMAN. Yes; but suppose, on the contrary, they exercised these functions of citizenship, knowing that they had not compiled and knowing just exactly what their status was?

Mr. BENNETT. Because the law places the burden on them to prove to the court affirmatively that they did this because of misinformation.

Senator HOLMAN. Well, if they are perfectly honest about it and were not making any subterfuge at all, wouldn't they be permitted to continue, on that citizenship?

Mr. BENNETT. No, Senator; I do not make my amendment that broad, because I do not want to make it any broader than the existing law.

Senator HOLMAN. Well, it is going to lead to perjury.

Mr. BENNETT. Well, so far it has been on the——

Senator HOLMAN. I know of a particular case, and that is why I am questioning about it.

Mr. BENNETT. Yes. It has been in the statute.

Senator HOLMAN. I know of a case where a man has been perfectly honest and truthful about it, and if you are going to take in all these other people I would like to take in a man of character.

Mr. BENNETT. Well, you could change the amendment. I felt I did not want to go further than the existing statute. I am perfectly willing and if it ought to be broadened to cover some existing case I have no objection. I have furnished a copy of the amendment, and I did not think I ought to go any further than the existing law. This confers no rights other than the existing statute, and the only reason that it is necessary at all, if H. R. 6250 is passed in the form in which it is, is because these persons have been living here 20 and 25 years and are technically alien enemies although, as the Attorney General points out, they have got sons in the armed services and everything of that sort and are just as loyal as we are.

Senator HOLMAN. A lot of them haven't, too.

Mr. BENNETT. I beg your pardon?

Senator HOLMAN. A lot of them haven't sons in the armed services.

Mr. BENNETT. That I don't know.

Senator HOLMAN. And don't intend to have.

Mr. BENNETT. A great majority of them have. And the Federal Bureau of Investigation, out of 400,000 or 500,000 Germans have only been able to pick out 1,500, which is a negligible percentage. So that is the situation.

Senator MALONEY. Thank you very much.

Senator MALONEY. Mr. Oppenheimer, will you come forward now, please?

**STATEMENT OF REUBEN OPPENHEIMER, ATTORNEY, BALTIMORE,
MD., COUNSEL FOR AMERICAN CIVIL LIBERTIES UNION**

Mr. OPPENHEIMER. Mr. Chairman and members of the committee, with Mr. Finerty I am one of the signers of the brief of the American Civil Liberties Union, which I ask to be placed in the record of this proceeding. Mr. Finerty has already offered it.

As to my qualifications, if any——

Senator MALONEY. Will you give us your name, first?

Mr. OPPENHEIMER. Reuben Oppenheimer. I am an attorney at 1508 First National Bank Building, Baltimore, Md.; in practice in Baltimore for 20 years.

Senator MALONEY. In what capacity do you appear here, Mr. Oppenheimer?

Mr. OPPENHEIMER. As one of counsel for the American Civil Liberties Union.

Senator MALONEY. Yes; I find your name written in here.

Mr. OPPENHEIMER. I don't know if I have any particular qualifications in the matter. I did write the report on deportation for the Wickersham Commission, and have made some study of immigration and naturalization matters since. I am not engaged in immigration practice. I have represented the Civil Liberties Union in various matters.

The opposition of the Civil Liberties Union is only to section 8 of H. R. 6250, and my remarks will be quite brief because Mr. Finerty has covered the ground so thoroughly. That section proposes to add a phrase to the present law, section 338 (a) of the Naturalization Code, which is title 8, section 738 (a) of the United States Code.

That section at present provides that it shall be the duty of the United States district attorneys for the respective districts to institute proceedings in the proper court for the purpose of revoking and setting aside the order admitting such person to citizenship and canceling the certificate of naturalization on the ground of fraud or on the ground that such order and certification of naturalization were illegally procured. That is the act as it reads at present.

The proposed amendment in the House bill is to add at the end of that sentence the following words:

or on the ground that his conduct establishes that his political allegiance is to a foreign state or sovereignty.

I propose only briefly to analyze the character and probable effect of this proposed amendment. Let me point out, first, that unlike the other provisions with respect to the revocation of naturalization, or expatriation, it does not refer to any specific act. At the present time the citizenship of either a native-born American or a naturalized citizen can be taken away for certain definite acts; for example, to take just a few, treason or desertion or residence abroad under certain circumstances. But they are all specific acts.

This proposed section, for the first time, would introduce a reason for a grievous act which the Government can do in connection with the rights of citizens which is not possible on a specific act. Furthermore, this section, amending as it does the provisions for revocation of naturalization, does not relate to what took place at the time that naturalization was obtained. It is not in the nature of a presump-

tion such as was considered by the Supreme Court in the *Luria case*. It has no limitation in time; it extends indefinitely.

It marks a radical departure from our entire policy in connection with naturalization, and for the first time does it seek to make a ground for the revocation of naturalization something which is not a concrete act, easily ascertainable and capable of proof, such as residence for an exact period of time in a foreign country, or conviction of treason in a court of the United States.

But also for the first time, it seeks to introduce a distinction between native-born Americans and citizens who have acquired their citizenship by naturalization.

What would be the probable effect of this act, apart from what we believe to be its unconstitutionality? First, why is it needed? At the present time, if an alien secures his naturalization by fraud, that naturalization can be set aside. And surely if after he has obtained his naturalization by such fraud he indulges in acts or utterances which show that his allegiance is to a foreign country, that is additional proof that his original application was fraudulent. For that, no act is needed, or if an act were thought advisable it could easily be framed in the language of a presumption relating back to the time of naturalization. So the act certainly is not needed for that.

What categories of cases, then, does it cover? Only this, so far as I can see, which is not covered by the present law—the case of a man or a woman who obtains his naturalization in good faith, intending to renounce his allegiance to some foreign country, and afterward for some reason changes his position and gives up allegiance to this country which he has undertaken in good faith and goes back to his old allegiance. Only that. And yet, if that class of cases is to be covered, why is it any worse for a naturalized citizen to become, in effect and in actuality, a subject of a foreign nation, than for a native-born American? Is not a native-born American to be not only as much criticized but as much punished as a naturalized citizen? Why should a distinction be made?

The proposed act, we submit, not only goes too far in certain directions, but in other directions does not go far enough. If Congress determines that certain acts are so serious in effect that, in addition to the criminal penalties already provided by law they should result in loss of citizenship, the same way that desertion from the armed forces or conviction of treason is punished, we submit that such definite act should also be punishable by revocation of citizenship for native-born citizens if naturalized citizens are to be so punished.

I believe that a few months ago—and this may be the reason for that suggestion—in New York a number of naturalized citizens, formerly nationals of Germany, were convicted of sabotage or under the Espionage Act. If such a conviction is to be a ground for revocation of citizenship—and we don't say that it should not, for the protection of our own democracy—then that conviction should apply in the same way, as a like penalty to native-born citizens as much as to naturalized citizens.

Our point there is that there should be no difference; that if a definite act is to be made an additional cause of revocation of citizenship, that additional act and the penalty should apply to all persons who are citizens.

If I may take the act in the other aspect, what would be the effect—though we have a great majority of our naturalized citizens who are loyal to the United States, and I think there is no doubt in the minds of Congress that that characterization is true of the tremendous majority of naturalized citizens, they are loyal to the United States; and, if at all, only a very small proportion of them who are not—but what would be the effect of this act, if passed, upon these loyal American citizens? It would defeat, we submit, the very purpose of naturalization, which is to make these persons whom the United States has admitted as citizens at home in our institutions, with all the rights which are given to citizens, not only for the benefit of the individuals but for the benefit of the rest of us. It would largely revoke those rights of free speech and free assembly, because no naturalized person could feel that he could freely express himself upon any international problem without risking that in some time of emergency, some time of excitement, this amendment, if passed, would be invoked to revoke his naturalization—his most prized possession.

Let me be concrete and take some possible specific instances: An Englishman who has become naturalized may in some discussion wish to criticize the Government for not giving more aid to England, and wish to criticize the Government as an American citizen; yet he would be stultified in the free expression of his views because such criticism might be construed as a violation of this act. Or take another example, a naturalized German who came over before Hitler, at the beginning of the Hitler regime to find the refuge which our shores offer and he has become a good American citizen. When this war is over—and, as we confidently expect, we are victorious—the question of the kind of peace we want will come up, and that is a question in which all citizens are expected and wanted to give their views, because only out of a free discussion can we establish any true faith in our democracy. And the question comes up whether Germany should be crushed as far as possible and deprived of maintaining economy and substance on the one hand, or on the other hand given access to certain resources, natural resources, and to try or an attempt be made to set up Germany as a useful member of the society of nations. That question may be discussed. Is a naturalized German to be prevented from expressing his views on that question, if they are in favor of a more liberal treatment of Germany, because he happens to be a naturalized rather than a native-born citizen? And those examples could be multiplied.

There is a double harm in it, we submit, not only in the restriction of free speech among the naturalized citizens, but in the introduction into our whole system of government of an attitude which deliberately suppresses free speech. Because all of us as citizens are entitled to hear, as much as we are entitled to speak. The Bill of Rights is two-edged; that is, for those who wish to speak and those who wish to listen. Fundamentally, of course, is a recognition of the great constitutional policy of free speech and free assembly for all. And this act, we submit, would be the greatest blow at the very kind of free speech, the very essence of free speech for which we are fighting. Thank you.

Senator MALONEY. Thank you very much, Mr. Oppenheimer.

Mr. FINERTY. Before Mr. Oppenheimer concludes his testimony, could I speak to him?

Senator MALONEY. Yes; surely.

Mr. FINERTY (after conferring). Thank you very much.

Senator MALONEY. Thank you, Mr. Finerty and Mr. Oppenheimer.

I would like to say for the benefit of those here that it is my intention to close this hearing shortly before 12 o'clock. There are some important matters to come up in the Senate and I expect all members will want to be there. We will meet again tomorrow unless the subcommittee objects.

We can, it seems to me, briefly hear someone else now. How much time to you intend to take?

Mr. FLEISCHMAN. About 5 minutes.

STATEMENT OF ERNEST FLEISCHMAN, ATTORNEY, NEW YORK CITY, REPRESENTING WORKERS DEFENSE LEAGUE

Mr. FLEISCHMAN. My name is Ernest Fleischman. I am an attorney, at 305 Broadway, New York City. I represent the Workers Defense League, and since this is the first time this league has appeared before this particular Senate committee, I want to identify it. It is a national nonpartisan organization in defense of labor's rights.

Of course, many people would immediately say, "Well, maybe it is a communist organization." I want to put it on record that it is not, and I will submit a copy of the talk I will give and on the back of the first page is a list of the board of directors and the members of the national executive board. I may also state that Mr. Finerty, who spoke before, is appearing for the Workers Defense League in one particular case, and since he is well known as being opposed to communism and the Communist Party, I hope that will sufficiently identify the character of the organization.

I appear on behalf of the Workers Defense League, a national nonpartisan membership organization dedicated to the defense of labor's rights.

The Workers Defense League urges the deletion of section 8 from H. R. 6250. Said section provides that any naturalized citizen may have his citizenship canceled at any time if it is proved that "his utterances, writings, actions, or course of conduct establishes that his political allegiance is to a foreign state or sovereignty." The objections to this bill are numerous, but I will stress only the dangers of this bill as it affects labor's rights in the United States.

There are over 10,000,000 naturalized citizens in the United States, and it is common knowledge that most of them have entered the ranks of labor and depend upon their continued employment for a livelihood. The recent phenomenal expansion of the Government's personnel, together with the growth of our defense industry and the further requirements for licenses in many trades and professions, has made citizenship an indispensable requirement for many types of employment.

Senator HOLMAN. May I interpose a question? I am interested in your statement of more than 10,000,000 aliens in this country. And my question is; is that the census? What is your authority for that?

Mr. FLEISCHMAN. The World Almanac of 1942.

A noncitizen finds his field of employment restricted as never before, and when he has devoted himself to the acquisition of certain skills, the revocation of his citizenship will literally take away his opportunity of earning a livelihood. Thus a threat to revoke his citizenship would be as powerful a weapon as the threat of a revocation of a work

card in Germany, Italy, or Russia. I need not labor the fact that where this threat hangs over the head of a person he will long consider before he will exercise those basic civil and labor rights accorded him under the laws of the Constitutions of the United States and the several States.

Labor's rights, as differentiated from civil rights, are the rights of labor to organize and bargain collectively, yet in reality they are only an extension of our civil liberties. And there is a definite relation between the two; where labor's rights are denied, civil rights are also limited. The Bill of Rights grants those same rights to citizens when as workers they seek to hold organizing committees, print and distribute leaflets, select unions of their own choice, and bargain collectively. To deny these rights closes peaceful avenues for adjusting differences. In times of national emergency this is of greater importance than ever before. Were this bill to be passed, the enemies of labor would quickly grasp upon this section of the bill and by threats of denunciation effectively silence any person who wishes to exercise these lawful rights. Who among us is so brave as to gamble with his future, knowing that his conduct may condemn him and his family to perpetual unemployment?

Another objection to this bill is that it is vaguely worded—

Senator HOLMAN. You used another expression that I wonder what your authority is: Who are the enemies of labor?

Mr. FLEISCHMAN. Well, the recent committee—

Senator HOLMAN. As far as I know, the American people are laboring people who spring from the hewers of wood and the drawers of water, and I don't know of any class or group that are known as enemies of labor. Now, you just be specific.

Mr. FLEISCHMAN. May I refer you, Senator, to the hearings of the La Follette committee on unfair labor practices, in which there are volumes and volumes of testimony concerning acts of sabotage, violence, and so forth, to compel or prevent or coerce the labor people from exercising their rights under the laws.

Returning to my second objection to this bill; namely, that it is vaguely worded, even so it is not effective in correcting the evils it aims at. A naturalized citizen who advocates doctrines repugnant to democracy but fails to associate himself with any foreign state cannot be punished under this section.

Now suppose Fritz Kuhl, for example, says he is in favor of fascism?

Senator HOLMAN. Who is he?

Mr. FLEISCHMAN. He is the gentleman who is in jail now, I think on some technical charge of violation of the law in doing away with funds; but he is a known Fascist.

Senator HOLMAN. He is no friend of mine; I don't know him.

Mr. FLEISCHMAN. If this man expressed a doctrine in favor of nazism or fascism but does not associate himself with Germany or any political country, he could not be prosecuted under the law.

In the same way, any sympathy expressed for a foreign state, including England, Sweden, or Canada, can be construed as grounds for the revocation or cancelation of citizenship under the law. In normal times this bill would open the door to prejudicial interpretation, but in these times it would be seized upon by enemies of civil and labor rights as the weapon par excellence.

Still a third objection is that this bill creates classes of citizenship. We have all been taught that there is an equality under the laws of

the United States for all citizens, whether native or naturalized. In fact, the only disability to naturalized citizens is that one must be native-born to become President of the United States. This bill directly borrows from Fascist teachings and, as in Germany, creates two classes of citizens. Whereas the native citizen can be prosecuted for unlawful acts, described in detail, the naturalized citizen can in addition be threatened with the loss of his citizenship for conduct vaguely defined. This is repugnant to our conception of democracy.

In view of these pertinent objections, and with the sincere effort to defend democracy with the United States, the Workers Defense League urges the deletion of section 8 from H. R. 6250.

Thank you.

Senator MALONEY. Thank you very much.

Mr. FLEISCHMAN. May I leave this copy?

(The copy referred to of the statement was filed with the committee.)

Senator MALONEY. The Committee is about to recess until tomorrow.

Senator HOLMAN. Before you recess, I have something to submit—

Senator MALONEY. Just a moment, Senator. Mr. Luigi Criscuolo desires to be heard briefly, and after he has concluded the committee will recess until 10 o'clock tomorrow morning.

Senator HOLMAN. Prior to my being able to put this in the record?

Senator MALONEY. Oh, no, Senator Holman; you may put anything you want in the record. I made the announcement because I am going to the Senate right away.

Senator HOLMAN. You say immediately upon his statement you are going to adjourn, and I want to put this in the record.

Senator MALONEY. You can put anything you desire in the record.

STATEMENT OF LUIGI CRISCUOLO, NEW YORK CITY

Mr. CRISCUOLO. Mr. Chairman, my name is Luigi Criscuolo. I want to place myself before this committee as an example of the person who might be affected by this legislation; that portion specifically revoking the citizenship of a naturalized person by reason of something that he might have said over a period of years which in the light of present events, in the light of our being in war, might look bad, but which at the time was a perfectly legitimate and rational statement to make.

I want to say that my father came to this country in 1880 and went back to Italy, where I was born, and then came back, and I have lived here since 1889 and have never been back to Italy, although I have taken a great deal of interest in Italian-American relations. During the Great War, I organized the first Liberty Loan Committee amongst citizens of Italian origin, and that activity resulted in \$850,000,000 worth of Liberty bonds being bought by Italians. I also was very much interested in stimulating interest of Italian-Americans in the war effort at that time, and in doing that I wrote a great many articles on the subject, then and since.

At the time that Mussolini came into power, many of us, including myself, welcomed the change because we thought Italy needed a firm man to guide her through her troubles. And of course many of us wrote some very—I won't say "glowing"—but very nice things about Italy at the time. In 1926, when the Fascist organization took place, some of us changed our position. I was among those who changed their

position and criticized the Fascist government very violently. And then in 1934, when the violence had ceased, I said that from then on if I could not say something good about Italy I wouldn't say anything.

But I do want to point out again that there are people besides myself who might be hurt by a law of this sort.

I am going to leave with the committee; it is too long to read but I am going to leave with the committee an address before the Foreign Policy Association made by Otto H. Kahn, which Mr. Kahn sent to me under date of November 4, 1926. It was an address he delivered before the Foreign Policy Association January 23, 1926. In that address he made the most glowing statements about what he thought about fascism.

Now Mr. Kahn was born in Germany and became a British subject before he became an American citizen and he lived and had been in Italy and knew a lot of Italians here, and he was quite an objective speaker also on matters of this sort. He said, and I want to quote this short part:

In formulating judgment on Fascismo, two things should be kept in mind: First, it so happens that Italy is inhabited by Italians and not by Americans or Britishers, and what applies and appeals to us need not necessarily apply and appeal to them; secondly, in the case of every people, more essential even than liberty, and therefore taking precedence over it, is order and national self-preservation, actual and spiritual. Indeed, true liberty is impossible unless there is order and an adequately functioning government.

And later on he says:

To anyone who knew Italy then, the change which came over the country with the advent of Mussolini, is little short of miraculous.

And he goes on that way all the way through. He says:

I am convinced that Mussolini is no passing phenomenon but that the spirit which long must have been latent among the Italian people and which he and his associates have mobilized and called into action, has roots so deep in the national consciousness and aspirations and especially is so ardent in the minds and souls of the youth of the country that even if he were no longer there to guide and express it, it would still assert itself and be a potent force.

And the last thing I want to quote here:

Mussolini found a people, whose past had been glorious, faltering and failing under the weight of the present. Equipped with nothing but the genius of his brain, the force of his character, and the ardor of his patriotism, he, with a handful of comrades, flung himself against that sinister portent and set the Italian nation once more upon the highroad to national achievement. That is a towering feat; and being, as I freely profess myself to be, a worshipper of greatness in all its manifestations, I bow in homage before the man who encompassed it.

Now, the subject of this correspondence was a pamphlet which I published at the time in which I jumped the Italians for what was going on and said I did not like fascism. I will not read that but I will leave it so the committee can get an idea of just how I felt. I haven't got it here, but will give it to you later.

(The speeches and pamphlets referred to are on file with the committee.)

Then, having done that, I would like to leave with this committee a speech by a Member of Congress, made in Congress on Thursday, January 14, 1926, by the Honorable Sol Bloom. Mr. Bloom, as you know, is also a naturalized citizen, and of considerable distinction; he is the chairman of the Foreign Relations Committee of the House. He went to Italy back in 1919 with his daughter, when Mussolini did not exist as a leader, and he got a passport to go to Fiume and received certain information and his daughter wrote an article on the subject.

In this speech you will find something that, with all due respect to Mr. Bloom, I believe he wishes he had not said. Because these "chickens come home to roost," and it is a most favorable side about Mr. Mussolini, as you will find by reading it.

Now, mind you, I am not saying Mussolini has not done a great many things for Italy.

In 1934 I decided maybe I was wrong and that numerous Americans at that time, Thomas Lamont, Otto Kahn, and Thomas J. Watson, all very prominent American leaders, must know more about Italy than I knew and must have known more about Italian psychology than I knew; so I decided maybe I had better soft-pedal my opinions on that. So I wrote an article in the New York Times in November 1934, from which I want to read just one paragraph:

He who writes was an open supporter of Mussolini from 1922 to 1926. In 1926 he criticised certain objectionable phases of Fascist policy, particularly the muzzling of the press and the extension of propaganda to the United States through the Fascist League of North America. The writer was for years a personal correspondent of ex-Premier Nitti and was in great part responsible for the visit to the United States of the ex-Premier's son, Dr. Vincenzo Nitti, on a lecture tour in 1927. As time went on it became evident that the constitutional group headed by Nitti, Sforza and others could not accomplish anything by their speeches and writings abroad. I wrote Signor Nitti that I and other friends of his felt he should return to Italy to collaborate with Mussolini. I had good reason to believe that his great financial experience would have given him a portfolio in which he could have been useful. Nitti wrote me that he would never return to Italy while fascism was in power. That attitude is characteristic of many opponents of Mussolini who would not return to help save their country unless they led the rescuing squad.

I went on to say as a footnote that I felt that if that sort of people went back to Italy, they might make a mistake, and that this sentiment would not hasten any different policies.

Senator HOLMAN. I apologize to the witness. I have got to go to the Senate. I am very much interested in your presentation, as I have been in the presentations of the former witnesses. I would like to have been able to remain to have heard it all.

Mr. CRISCUOLO. I am going to continue this in the record. If I may, I would like to continue it a few minutes, and it will be in the record.

Senator HOLMAN. Thank you very much.

Mr. CRISCUOLO. Now, at the end of my little article I said:

I therefore decided that in the future, if I could not say good of Italy, I would say nothing—particularly to Americans—and I would hope that some good could come out of fascism, for the sake of Italy. This attitude might be followed profitably by Americans of Italian origin. We should leave Italy's destiny to Italian subjects who are in Italy fighting in the front lines to maintain European civilization against onslaughts from Asiatic barbarians.

Now, I have not got very much more to say, excepting this, that Mr. Otto Kahn and Congressman Sol Bloom were both decorated by Mussolini. I was never decorated by Mussolini, because I maintain myself absolutely free of any entangling alliances and because I did not feel it was fitting when I was criticizing the government and I wanted to keep myself a free agent and have succeeded in doing so. And not one word of criticism has been made anywhere during this time from 1934 up to the present time.

Now, my objection to this bill lies in this fact, that not only myself—I could defend myself—but Mr. Kahn and Mr. Bloom might some day find themselves confronted—we might have a different kind of

government in this country and might have a different set-up; I mean, different Senators and Congressmen who might not agree with a lot of things—and somebody might fish out this statement of Mr. Bloom's. Of course they could not do anything with Otto Kahn; he is dead. They might fish out this statement of Sol Bloom's and say, "You are a great friend of Mussolini's, and you have a fifth-column activity right here in the United States for him, and therefore we question what you are saying. You are talking about a new treaty and we think you are leaning toward Italy, or somebody else. Therefore, we are going to propose your citizenship be revoked, because we don't think you are a friend of the United States."

For that reason I cannot see why section 8 should be placed in the bill. It is very easy just to talk about the attitude and what somebody said years ago being harmless. But these things have a way of "coming home to roost."

But it is my belief that there are enough laws on the statute books today which provide for remedies or punishment for treason, and I don't think we should pour it on and repeat the sort of policy they have in despotic countries in Europe. I think if anybody is committing any crime or any infraction of any law, that there are sufficient laws on the statute books to punish that person, and I don't think we ought to go "witch-hunting". And I don't think we ought to deprive the people of the Bill of Rights, as one gentleman said before; the right not only to speak, but the right of the people fully to be heard.

I would regret very much ever having been brought to this country if I did not feel that my parents in coming here brought me to a country which was a little different. I am told that my family in Italy has the background of at least a thousand years of achievement in every phase of government, and really there was no reason why they should have come here excepting moral reasons. For that reason I would regret very much to see in this country, influenced by hysteria and influenced by a hatred of one group toward another, influenced by people who at one time liked fascism but who were mistaken and when Mr. Mussolini alined himself with Hitler are against fascism for that particular reason—that such a thing would be done on the statements of people who would like to forget some of the things they said in 1926, when events were only beginning.

I think that is all I want to say, but in saying what I have said I am speaking only for myself. I am not retained by anybody in connection with this—in fact, we have been retained by the Federal Government. And, as I said, I have never received any favor from Mr. Mussolini. But I know that in speaking that I speak for a great many loyal Americans of Italian origin all over the country.

I want to thank you and the committee for permitting me to appear. Senator BALL (acting chairman). Maybe you better give your home address for the record.

Mr. CRISCUOLO. Yes; I will give my address. It is 12 East Eighty-seventh Street, New York, and my office address is 25 Broadway, New York.

Senator BALL. The committee will adjourn until 10 o'clock tomorrow.

(Whereupon, at 12:10 p. m. the hearing was adjourned to Wednesday, February 18, 1942, at 10 a. m.)

TO AMEND THE NATIONALITY ACT OF 1940

WEDNESDAY, FEBRUARY 18, 1942

UNITED STATES SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON IMMIGRATION,
Washington, D. C.

The subcommittee, consisting of Senators Maloney, Herring, and Ball, met pursuant to adjournment, at 10 a. m., Hon. Francis Maloney (chairman) presiding.

Present: Senators Maloney (chairman) and Ball.

Senator MALONEY. Mr. Holtzoff, do you want to make a statement?

**STATEMENT OF ALEXANDER HOLTZOFF, SPECIAL ASSISTANT TO
THE ATTORNEY GENERAL**

Senator MALONEY. All right; you may proceed. Please give your full name and title to the reporter.

Mr. HOLTZOFF. Senator, I presume that the best way for me to proceed, unless you prefer that I should proceed in some other way, would be to summarize very briefly and very succinctly the purport of each section of the bill.

Senator MALONEY. I would like to have you do that. And will you give your name and title for the record.

Mr. HOLTZOFF. Alexander Holtzoff, special assistant to the Attorney General.

Many of the sections of the bill contain only minor amendments of the Nationality Act of 1940. One or two of the sections contain some substantial changes, that go to the substance.

Section 1 is an amendment to the naturalization provisions of the Nationality Act and is intended to ameliorate the difficulties with which members of the military and naval forces are at times confronted. This section would exempt members of the military and naval forces from the requirement of 6 months' residence in the State in which the petition for naturalization is filed.

The reason for that exemption appears to be obvious, because men in the military and naval forces are frequently shifted around and they find on occasion difficulties in conforming to the residence requirements.

The second provision of that section would simplify the naturalization proceedings of soldiers and sailors by permitting the petition for naturalization to be filed in any naturalization court regardless of the place of residence of the applicant; and permits an immediate hearing on such application.

Senator BALL. Have you any idea how many aliens are affected by that provision?

Mr. HOLTZOFF. I don't know. I wonder if you have an estimate, Mr. Shoemaker?

Mr. SHOEMAKER. I could not give you any definite estimate, but there are a considerable number of aliens in the armed forces who would be affected. Now, that applies particularly to those in the military, as differentiated from the naval.

Mr. HOLTZOFF. There are quite a number of men who have taken out their first papers.

Senator BALL. Aliens were not subject to the draft, until this last amendment.

Mr. HOLTZOFF. Well, those aliens who have taken out their first papers are subject to the draft; are they not?

Senator BALL. Well, they are now. Any alien is now.

Mr. HOLTZOFF. Yes; but all aliens who have taken out their first papers were subject to the draft, in the beginning.

Senator BALL. Were they?

Mr. HOLTZOFF. And this would facilitate their getting their final papers.

Senator BALL. Yes.

Mr. HOLTZOFF. Now, section 2 proposes to change only one word in the existing law on page 2, line 16. The existing law uses the word "residence," "whose residence abroad"; and the bill proposes to strike out the word "residence" and substitute the word "absence" to make it "absence abroad".

The provision relates to an alien residing in this country who goes abroad for a temporary visit, and prescribes the conditions under which such a temporary absence abroad may be counted as part of his 5 years' residence which is a necessary qualification for naturalization. And the only change that the bill makes, as I said a moment ago, is to change the phrase "residence abroad" to "absence abroad," so it would not be necessary to show that he is actually a resident of a foreign country if he goes on a temporary visit.

Senator MALONEY. Would he have to maintain a home in this country to qualify?

Mr. HOLTZOFF. No; he has to be permanently a resident of this country, and would require a domicile but not a physical place of abode.

Section 3 would make an important change in the Naturalization Act. It is intended for the purpose of ameliorating the situation in which many elderly aliens find themselves who have lived here for a great many years and who are unable to become citizens because they cannot comply with the educational tests. There are quite a number of aliens in that position, and this would permit any alien who is 50 years of age or over and who has lived in this country continuously since prior to July 1, 1924, to become naturalized without complying with the educational requirements; provided, of course, he is otherwise eligible.

I think this will open up citizenship to a great many worthy people who would make very good American citizens, who are loyal and patriotic Americans today, but who cannot become naturalized because they are unable to meet the educational test and they are too old to learn.

Senator MALONEY. Some people feel that that is making American citizenship pretty cheap, Mr. Holtzoff?

Mr. HOLTZOFF. Well, of course that is a matter of policy and judgment for the Congress to determine. I venture this suggestion, that I do not think anything should be done to make American citizenship cheap. American citizenship is one of the greatest gifts, the greatest privileges that any man can have.

I do suggest this, however, that if you have a person who has lived in this country a great many years—this would require residence for over 17 years—he has passed the time of life where he could learn to read and write, and yet, if he is perfectly loyal to our form of government, loyal to this country, the fact that he is unable to meet the literacy test does not make him any the worse subject for naturalization than he would be if he could meet the test.

Senator BALL. Why? It seems to me he is in kind of a tough literacy spot in trying to vote on the complex issues we have in elections today if he cannot read or write or speak or understand English and cannot meet the educational requirements for naturalization.

Mr. HOLTZOFF. Of course he is at a great disadvantage; I don't believe anyone can successfully controvert that. On the other hand, he may be perfectly loyal to our form of government, perfectly loyal to democracy and loyal to American ideals.

Senator BALL. Well, we need something more than just loyalty today, I think, and we have for the last 8 years. That is one reason we are in this mess.

Mr. HOLTZOFF. Don't you think loyalty is a primary consideration? I should not be answering your question with a question of my own, I know.

Senator BALL. Just being loyal doesn't mean being a citizen today, and has not for the last 8 years, in my opinion. I think we have gotten into a lot of trouble because people have not taken their duties as citizens seriously enough, and haven't thought about the issues we are up against enough.

Mr. HOLTZOFF. Well, I don't believe, Senator, that anyone can successfully controvert what you have just now said. Of course, I venture this suggestion, if I may, that sometimes the more educated person may not be substantially as solid and reliable a citizen as a person of less education. Education is, of course, a means to an end, very often a means to an end.

Senator BALL. Well, there are exceptions all the time, but on the whole a person who can read and write and has a minimum of educational background is more likely to be a good citizen than one who has not.

Mr. HOLTZOFF. He is more likely to have the advantages of knowledge of the issues, as you have said. Of course, many people misuse their educational advantages.

Senator BALL. Oh, yes. I can see where it would be nice for these people to become citizens.

Mr. HOLTZOFF. Yes.

Senator BALL. But I am trying to think of what the effect on the country is going to be; whether it is a good thing for the United States.

Mr. HOLTZOFF. I am wondering whether there is not an advantage to the United States, and I think the Department had this advantage in mind, that if these people are loyal—and of course, we would eliminate by investigation anyone who is not—would it not be better

for this country that they should be full-fledged citizens, than that they should permanently remain in the status of alienage, although their permanent residence is here and they expect to spend their lives here and are good Americans in spirit and want to continue to be. That is the thought that was back of the recommendation. It is for you Senators to determine whether the thought is valid or not.

Senator MALONEY. Will you tell us whether the suggestion or idea originated recently, or is it something that has been considered for a long time?

Mr. HOLTZOFF. This has been considered for a long time. There have been bills in the House, I think, along the same lines. I am under the impression that once or twice the House passed some bills along this line.

Senator MALONEY. Do you know whether, insofar as this bill is concerned, it originated in the Department of Justice, or whether it is a congressional suggestion?

Mr. HOLTZOFF. This bill originated—

Senator MALONEY. I mean, this section of the bill?

Mr. HOLTZOFF. This section of the bill, I think, originally originated in the House of Representatives. This bill itself, in its present form, was indeed drafted in the Department, and in drafting it in the Department there was included this section which had for a number of years been urged in the House of Representatives.

Senator MALONEY. So that the Department recommends it now? Wants it and recommends it?

Mr. HOLTZOFF. Yes; it does.

Senator MALONEY. Do you know offhand what peculiar and special advantages this section of the bill, if enacted into law, gives to these people who are not now citizens, but could qualify thereunder?

Mr. HOLTZOFF. Well, specifically, of course they would have all the rights of citizenship; they would have rights of suffrage—

Senator MALONEY. I mean, what peculiar advantages? I think that is the word I used.

Mr. HOLTZOFF. Yes. Well, of course, there are certain employments that are closed to aliens, and if they could become citizens they would no longer be barred from those appointments.

Senator MALONEY. Are they barred by law from those appointments now?

Mr. HOLTZOFF. Yes. And there is a statute which bars aliens from certain types of defense contracts except with the consent of the head of the Department or agency which has placed the contract.

Senator MALONEY. That is the law?

Mr. HOLTZOFF. That is the law.

Senator MALONEY. Then it permits, of course, as I understand it, several people to qualify for certain other privileges, such as pensions, and so forth?

Mr. HOLTZOFF. Yes; Government employment, old-age pensions, and certain other privileges of that type.

Senator MALONEY. Thank you. Please go ahead.

Mr. HOLTZOFF. Before I pass on to the next section, I would like, with your permission, to have Mr. Shoemaker say a word on this section, because this is a matter with which he is very familiar.

Senator MALONEY. I would be pleased if he would.

STATEMENT OF THOMAS B. SHOEMAKER, DEPUTY COMMISSIONER, IMMIGRATION AND NATURALIZATION SERVICE, DEPARTMENT OF JUSTICE

Senator MALONEY. Please fully identify yourself for the record Mr. Shoemaker.

Mr. SHOEMAKER. Thomas B. Shoemaker, Deputy Commissioner, Immigration and Naturalization Service.

I think, in answer particularly to the question you ask as to the peculiar advantages to persons concerned which would accrue to the persons concerned, it was represented to us by more than one Congressman, and by many welfare workers as well, that persons who are covered by this clause are in the position of being looked down upon by their own people, their own children. They are people who came here years ago and worked hard to gain a competence, and after they had gained a few dollars the education of their children to their minds was foremost, and they went ahead to educate them. Some of the children, when they secured such education, were inclined, not necessarily showing such a fact, but mentally they said they felt that the parents were looked down upon by the children, and they thought it would be an excellent idea to give the parents an opportunity to become citizens and recognize them. That those parents, by reason of the fact they never have had any education, never been schooled in trying to secure a better mentality, would be unable to acquire these facts insofar as knowledge of the Government and the principles of civic organization are concerned. Therefore, they felt they should not remain neither "fish nor fowl," and they should be given an opportunity to acquire American citizenship. Primarily because they expected to remain here the rest of their lives, and there was no particular reason why we could anticipate in all the days to come that they would ever acquire any knowledge sufficient to pass these tests which are applied to an applicant for citizenship.

Many of the courts themselves felt so inclined, and have so expressed themselves to our men.

Senator MALONEY. You have had a long-time experience in this field, Mr. Shoemaker?

Mr. SHOEMAKER. Yes.

Senator MALONEY. And you feel it is a wise move?

Mr. SHOEMAKER. I think it would in a way be of advantage to the country.

Senator MALONEY. I have noted some cases which for sentimental reasons prompt me to feel very sympathetic. I read recently of a plan to move certain aliens out of certain areas in California. And I think I read in Time, last week, of one man of Italian extraction, not a citizen, who was being compelled or likely to be compelled to abandon his farm; and he had a son in the Army, a son in the Navy, perhaps a son in the Marine Corps, and a daughter in the Red Cross.

Is that in part the sort of situation that first prompts your feeling in this matter?

Mr. SHOEMAKER. That is not the first. It is primarily, in my mind, a unity of the peoples here. In other words, I have felt—and that has been induced by the facts which have been communicated to me by those in that line, particularly coming from the welfare workers and people looking after Americanization generally—that if you have

people, such for instance as those you refer to, who must move back out of restricted zones, you have people who are likely to have a wrong feeling about America and feel they are being discriminated against and not on the same plane as other people, and they are being looked down upon by everyone with whom they come into contact, particularly their own children.

Senator MALONEY. Of course, I think I can see some danger in the plan, unless the Government is extremely careful.

Mr. HOLTZOFF. I might say this, that every applicant for naturalization is very carefully investigated.

Senator MALONEY. How can you be sure of that, Mr. Holtzoff?

Mr. HOLTZOFF. Oh, well, you cannot be 100 percent sure, of course, Senator; but the Immigration and Naturalization Service very carefully investigates every applicant for naturalization. In addition to subjecting him to cross-examination, there is a preliminary investigation made of him. Undoubtedly, sometimes the investigation might not disclose facts that are detrimental to the alien, but on the whole I think they weed the applicants out pretty thoroughly.

Senator MALONEY. Would that be true under such a bill as this? How many people would be affected by this; do you know, Mr. Holtzoff, or do you know, Mr. Shoemaker?

Mr. SHOEMAKER. No. There have been figures, just simply throwing one figure at another. Some have estimated as many as 300,000.

Senator BALL. Where would they be?

Mr. SHOEMAKER. Primarily in industrial cities.

Senator MALONEY. 300,000?

Mr. SHOEMAKER. Yes.

Senator MALONEY. We have had many protests on this particular legislation, and more, by the way, than we have had on section 8, which up to now has been the target of criticism. It seemed to me I had a communication from someone in my State saying there were 75,000 in Connecticut alone. I wonder if that is possible?

Mr. SHOEMAKER. I think it is possible. Of course, it is more or less throwing one figure at another. You take out in California, I have been all over California and have met many people out there on the shores who are people who will possibly proceed under this clause. And I think those people could be good workers for the Government if they were given the opportunity. And the fact that they come from enemy countries does not necessarily mean they are enemies.

Mr. HOLTZOFF. Of course, if that section is enacted, every one of this group who makes application will have to be subjected to investigation before the application is granted. That is the usual process with all applications for naturalization today.

Senator BALL. Well, would these people that would come under this be residents of these very tight little foreign communities in cities, largely, or are they scattered throughout?

Mr. SHOEMAKER. I should think more likely they would be in the larger industrial centers, in what you call the tight little spots.

Mr. HOLTZOFF. I think you find them in New York, Chicago, and some of the cities of Pennsylvania.

Senator BALL. Where they have sections which are entirely Italian or German or Swedish—not so much Swedish. But I know in Minnesota we have them where one boarding house would be Lithuanian, and another one Hungarian and another one Montenegrin.

Mr. SHOEMAKER. I think you would have quite a few of them that enter into those places.

Senator MALONEY. I don't want to delay you—

Mr. HOLTZOFF. Shall I proceed with the next suggestion?

Senator MALONEY (continuing). But I want to make this suggestion: Before the hearings are closed I am going to ask unanimous consent, and I am now granting myself unanimous consent, to put in the record various communications referring to this particular subject. And it is my thought, if the other members of the subcommittee agree, that we will publish the hearings and make them available to the members of the entire committee.

I think you might note many of these protests and perhaps be prepared, when Senator Russell decides to call a meeting of the entire committee, to discuss this further.

Mr. HOLTZOFF. Yes.

Senator MALONEY. Some of them go into some detail. And all of us had a lengthy telegram this morning from the American Legion protesting on this particular section of the bill, and a number of educational groups and patriotic societies have registered protests by way of letter or telegram or brief. I think it would be wise to include those in the hearing.

You may proceed, Mr. Holtzoff.

Mr. HOLTZOFF. Section 4 represents the existing law, and proposes merely to change a date in existing law. In line 16 on page 3, in existing law the date of July 1, 1920, and the bill proposes to change it to July 1, 1925. Otherwise, the rest of the section is existing law.

This section of existing law relates to the situation of a person who has been in this country for a great many years and was qualified to become a citizen, but was sincerely laboring under the understanding that he was a citizen and who erroneously exercised the rights of a citizen, and who later on discovered that actually he was not a citizen.

This section of the law permits a short-cut naturalization, so to speak, for that type of person. Under existing law they have had to be residents of this country for 5 years prior to July 1, 1920; and the only amendment that the bill would make in the existing law would be to move up the date from July 1, 1920, to July 1, 1925.

It affects especially some women, because prior to the enactment of the Cable Act in 1922 the women followed the citizenship of their husbands, and now they have their own citizenship status.

Section 5 just corrects, or clarifies rather, the phrasology of existing law. It inserts in line 9, page 4, the words "subsection (b) of." The existing law provides "authorized by this section," and the bill would make the existing law more accurate by providing "authorized by subsection (b) of this section." I think that is just a stylistic correction.

Now, section 6 of the bill proposes to make a correction of what is a patent error in the Nationality Act. In line 17, the words "seven years" is "ten years" in existing law. In existing law there is one section which provides, in effect, that the life of a declaration of intention is to be 7 years, and in this section by some mistake, evidently inadvertent, it provides for 10 years. And in order to make that correction, this section of the bill would change "ten years" to "seven years."

The next section relates to the period of hearings, the time of hearings on petitions for naturalization. Under the Nationality Act

of 1940, it is provided that no petition for naturalization may be heard within 60 days preceding the holding of any general election, within the jurisdiction of the naturalization court. The bill proposes to change the 60-day period to a 30-day period, and in that respect to restore the law as it existed prior to 1940. It has been found that the 60-day period is too long in actual practice.

Now, section 8 is a section concerning which I understand some testimony has been given yesterday. When I complete my testimony I would ask the privilege of Mr. Smith being heard on this section, because he is particularly interested in it. However, I want to summarize it very briefly.

It would establish an additional ground for cancelation of naturalization; namely, if the utterances, writings, actions or course of conduct of a naturalized citizen establishes that his political allegiance is to a foreign State or sovereignty, that fact should be a ground for canceling his certificate of naturalization.

I might say this, if I may, in this connection: Under existing law a certificate of naturalization can be canceled for fraud, and the courts have held that if it can be shown by intrinsic evidence, statements of the applicant and his conduct, that he took the oath with reservations, that his state of mind at the time he took the oath was that he was doing it without intending to live up to it, and that he actually was retaining his allegiance to a foreign country; those facts constitute fraud, and they are sufficient to warrant the cancelation of the certificate of naturalization. Now, that is the existing law.

The only change that this section 8 would make would be that it would no longer be necessary to establish that this state of mind existed at the time that the applicant took his oath of allegiance. That fact is sometimes difficult to establish. If it can be shown by his course of conduct or by his utterances at the time the proceeding is tried, that actually his real allegiance is to a foreign state, that proof would be sufficient to warrant his being deprived of his citizenship.

Now, I want to call attention to this fact: When the bill was first introduced, as drafted in the Department of Justice, this section did not have the words in it, "utterances, writings, actions, or course of"; it read as follows: "or on the ground that this conduct establishes that his political allegiance is to a foreign state or sovereignty." On the floor of the House the words "utterances, writings, actions, or course of" were inserted.

I would like to pass this and leave to Mr. Smith to enlarge upon this section, if I may.

Now, section 9 refers to service of papers, service of process in actions brought by the Government to cancel a certificate of naturalization. Under existing law the defendant in such action has 60 days to answer the petition or the complaint. This section would cut down the time to 30 days in time of war if the process is served on the defendant personally in the continental United States. The purpose of this provision is to permit expedition in proceedings to cancel naturalization.

Senator MALONEY. Why does it make so much difference, as to whether or not it is 30 days or 60 days?

Mr. HOLZOFF. Well, it makes this difference, Senator: It makes it possible to bring the proceeding to a head 1 month or 30 days quicker than it otherwise would be possible to do so.

If I may take a supposititious case by way of illustration, suppose it appears that a particular naturalized citizen who happens to be a subversive individual obtained his naturalization in such manner that it is subject to cancelation. If his naturalization is canceled, then he becomes an alien, and if he happens to be a citizen or a subject of an enemy country he becomes an alien enemy and we can treat him as an alien enemy and possibly detain him if he is a dangerous person. It gives the Department of Justice an additional weapon against subversive individuals.

Senator MALONEY. Only to the extent of 30 days.

Mr. HOLTZOFF. Oh, yes; yes.

Senator MALONEY. Well, now, if he is charged with a serious offense he is going to be kept in custody during that period of time, isn't he?

Mr. HOLTZOFF. Well, suppose he is not charged with any crime, but suppose he is a subversive individual generally. If he is an American citizen, he is not subject to incarceration. There is no way of arresting an American citizen who is not charged with crime, even though—

Senator MALONEY. It would seem to me any of the things he would be charged with under this law would be a crime, would they not?

Mr. HOLTZOFF. Not necessarily. His conduct may be such as to show that he is an Axis sympathizer, for example, taking a supposititious case. That in itself makes him dangerous, but does not constitute a crime.

Senator MALONEY. What would you charge him with at that point?

Mr. HOLTZOFF. You might bring a proceeding to cancel his naturalization on the ground that his course of conduct establishes that his political allegiance is to a foreign state or sovereignty. Now, if that is established by evidence at the trial, by a preponderance of evidence at the trial, his naturalization may be canceled. That is not necessarily sufficient to sustain any criminal charge or even to warrant any criminal prosecution.

Senator MALONEY. This section ties in with section 8, does it?

Mr. HOLTZOFF. It does, although it is broader. It applies to any ground of cancelation of citizenship.

Senator BALL. Would not fraud in obtaining naturalization be a criminal offense?

Mr. HOLTZOFF. I am sorry; I did not hear you.

Senator BALL. The other ground in the subsection under section 9 there is fraud in obtaining naturalization. Wouldn't that be a criminal offense?

Mr. HOLTZOFF. Fraud in this sense, that if a person signed a petition for naturalization containing false statements, undoubtedly that would be a criminal offense. But suppose the fraud consisted in the fact that the oath was not taken in all sincerity. I am not sure that would be a criminal offense, although it would be ground for canceling the certificate of naturalization.

Mr. SHOEMAKER. There are plenty of cases—if I may interrupt just a minute—there are plenty of cases where individuals have been naturalized years ago and as to whom later it is manifest that they did not take the oath in good faith; and the statute of limitations has run against any criminal prosecution. In those cases it would be better to divest them of their status as quickly as we can, in order to take

them into custody and handle them as they should be handled, and not as American citizens.

Senator MALONEY. I suppose you agree that this gives tremendous powers to the officers of the Federal Government, Mr. Holtzoff?

Mr. HOLTZOFF. Well, I agree that it does give very serious powers. But I want to say this: After all, we have to have faith, and I see no reason why we should not have faith in our Federal judges. These cases could be tried in the Federal courts, and if the action is improvident or without basis the Department of Justice would soon learn that from the disposition that would be made by the Federal judge.

Senator BALL. What happens to those naturalized citizens who were convicted of espionage in New York? Is their citizenship revoked?

Mr. HOLTZOFF. They lose certain rights of citizenship, but they do not lose their citizenship as such; they do not become aliens.

Senator BALL. Native-born citizens are exempted, except for treason?

Mr. HOLTZOFF. Yes. Of course, in most States a person convicted of felony loses the right of suffrage, and that would apply in those cases as it does in the case of other felonies.

The next section—

Senator BALL. Well, as a matter of fact, don't you pretty much cover this, if you are going to charge a man with fraudulently taking the oath, your basis would be exactly what you provide in section 8, wouldn't it?

Mr. HOLTZOFF. In that section; yes. Except that if you charge a naturalized citizen with fraudulently taking the oath, your evidence has to establish the existence of that fraud on the date he took the oath; whereas under section 8 it would be sufficient to establish the state of mind as of the date the proceeding has been instituted. That is the only difference.

Mr. SHOEMAKER. I would like to say something about that.

Mr. HOLTZOFF. Mr. Shoemaker, I think, wants to add to it.

Mr. SHOEMAKER. To answer specifically your question, Senator: We have evidence of citizens coming in and inducing the applicant to swear falsely and we have evidence where they secure a visa to come into the United States fraudulently; and the statute of limitations has run against that and we cannot do anything about the criminal prosecution, except in the latter case section 9 is much broader than section 8, and it would allow us to cancel the certificate within 30 days, where ordinarily we were 60 days, where a naturalized citizenship has been secured fraudulently, but the case may not involve subversive activities.

Senator BALL. Yes.

Mr. SHOEMAKER. So it is much broader.

Senator BALL. I can see the point in section 9, but I don't know, section 8 seems to almost invite a "witch hunt."

Mr. HOLTZOFF. If I may, Senator, I would like to leave to Mr. Smith, who will follow me, the privilege of discussing section 8. I think he is more familiar with the difficulties of the problem than I am.

Now, section 10 is a purely procedural matter. It amends section 404 of the Nationality Act. Section 404 provides that under certain circumstances, by residing abroad for certain periods, a naturalized citizen shall lose his nationality; and all that section 10 does is to per-

mit than an action to establish that fact and obtain a judgment to that effect may be procured by legal proceedings, instead of leaving the matter to administrative determination as is the law today.

Section 11 relates to those former American citizens who have acquired a foreign nationality through the naturalization of their parents. It makes only minor amendments in order to straighten out the grammar. It does not change the text of the law at all, except to correct a misprint that has created some grammatical errors. In line 17 of page 6 the words "he is" are inserted, and the word "heretofore" is changed to "theretofore." And later on, in line 20 "this act" was "his act" in the present law, and that is a misprint. This only, in other words, corrects some purely typographical errors.

The next section, section 12, also corrects errors of that kind. It does not change the law in any respect.

Section 13 was inserted on the floor of the House, I believe. It is directed to those persons who, although born of alien parents in a foreign country, entered the United States as minors prior to July 1, 1924, and who claimed citizenship through the naturalization of the parents, and who have been registered voters, but who find difficulty in establishing their citizenship. This provision would authorize the Immigration and Naturalization Service, upon satisfactory proof of the naturalization of the parent, to hold that the person has been legally admitted to the United States for permanent residence.

My understanding is that this situation has arisen in Massachusetts, where there are a good many persons in that group who came to this country as children many years ago and whose parents have become naturalized, but who cannot establish all these facts by documentary evidence.

Senator BALL. Well, this would not naturalize them?

Mr. HOLTZOFF. No; this would not naturalize them. This would give them a legal residence, that is all.

Senator BALL. I see.

Mr. HOLTZOFF. That is all I wish to say.

Senator MALONEY. Have you any questions, Senator Ball?

Senator BALL. Yes. I wanted to go back to section 10. I wondered, just in reading those two sections; 404 is primarily people who resided outside the country, naturalized citizens who resided outside the country and thereby lose their citizenship, and section 338 is more or less of a criminal implication of fraud, or something like that. I wondered why you wanted to tie 404 into that?

Mr. HOLTZOFF. Well, the only purpose is to make it possible to bring a civil action to establish, to procure a judgment, or establish the fact that a person has become a naturalized citizen, has become expatriated by reason of the facts set forth in section 404. Today, we have no way of bringing such action. Is my understanding right?

Senator BALL. You can expatriate them by administrative action.

Mr. HOLTZOFF. I beg your pardon?

Senator BALL. Can't you expatriate them by administrative action?

Mr. HOLTZOFF. Oh, yes. Today it is self-operative, but sometimes it is advantageous to make that a matter of record. And the only thing section 10 would do would be to permit us to bring action to determine a proceeding in order to make the expatriation a matter of record.

Senator BALL. I cannot quite see why. I mean, it is a matter of record in the Department anyhow, isn't it?

Mr. HOLTZOFF. It may be a matter of record in the Department, but the person interested, the naturalized citizen may contest that, and it is advantageous to secure the record.

Senator BALL. Does he have the right of appeal now, to the ruling of the court?

Mr. HOLTZOFF. No; he hasn't.

Senator BALL. He hasn't?

Mr. HOLTZOFF. This is self-operative.

Senator BALL. He has no appeal to the courts for their determination?

Mr. HOLTZOFF. He has this right: he can come back to the United States under the Nationality Act, if a passport or visa is denied him on the ground he is expatriated, he can come back to the United States and contest the matter in the courts; whereas this provision would enable the Government to initiate proceedings to cancel citizenship. It is not a matter of vital importance, but it would be of some advantage.

Senator MALONEY. Have you finished?

Senator BALL. Yes.

Senator MALONEY. We are very grateful to you, Mr. Holtzoff. Had you planned to testify, Mr. Shoemaker?

Mr. SHOEMAKER. No.

Senator MALONEY. I would like to make this suggestion on my own responsibility: that you be afforded a chance to discuss at such length and in such detail as you desire, section 3. It was section 3?

Mr. HOLTZOFF. Yes.

Senator MALONEY. You have discussed it with the committee and been over it, but it is a very controversial question and I would like to have the record show everything that the Department or its representatives would like to have it show. I am not asking you to go into that further, but inviting you to be more definite if you care to.

Mr. HOLTZOFF. We appreciate the opportunity and we will take advantage of it and present more material on that.

Senator MALONEY. You mean by way of a brief?

Mr. SHOEMAKER. I think we could do that.

Mr. HOLTZOFF. I beg your pardon?

Senator MALONEY. You mean by way of a brief?

Mr. HOLTZOFF. Well, whichever way.

Senator MALONEY. We hope to conclude today. We only have one more witness, aside from the Departments of Government. We can meet tomorrow if it will suit your convenience.

Mr. HOLTZOFF. No; we can present in brief form just as well.

Mr. SHOEMAKER. Do you want it today, Senator?

Senator MALONEY. I want to suit your convenience. If you are prepared to go ahead and tell it to us now, I would be glad to have it. It is not something I intend to press, but I do know that a controversy exists and it will become stronger and more intense before this full committee meets here, and the members will want to know all they can about it. And I am just affording the Department, or anyone else, a chance to go into so much detail as they desire.

Mr. HOLTZOFF. Well, would it be satisfactory to submit a written statement in a day or two?

Senator MALONEY. Entirely. Thank you very much, gentlemen.

Mr. Smith, we have one other witness. It is your turn and your choice, but I thought perhaps you would like to be last.

Mr. SMITH. That is fine.

STATEMENT OF SIDNEY C. SCHLESINGER, REPRESENTING NATIONAL LAWYERS GUILD, WASHINGTON, D. C.

Senator MALONEY. You are Mr. Popper?

Mr. SCHLESINGER. I am not Mr. Popper, but appearing for Mr. Popper. My name is Sidney C. Schlesinger and I am appearing on behalf of Mr. Martin Popper, executive secretary of the National Lawyers Guild.

The National Committee on American Citizenship, Immigration and Naturalization Service has made a study of this House Resolution 6250, and has asked me to submit the results of its study to this committee.

There are only two portions of these amendments which it feels are of sufficient importance to warrant consideration. The first of these changes deals with section 3 and it relaxes the educational requirement in connection with the naturalization of aliens over 50 years of age who have resided in the United States continuously since on or before June 30, 1924, and have valid first papers or acquire them within 2 years of the effective date of the act. The committee believes that this change in the law is desirable. However, the committee believes that the provision is unfortunately more limited than originally drawn. Originally the bill required only 10 years continuous residence and the present bill requires 16 years; and the committee believes that the 10-year provision is sufficient and should remain in the bill.

The more important change that I was asked to take up with this committee is—

Senator MALONEY. Might I interrupt you there? You say that you feel that 10 years is sufficient?

Mr. SCHLESINGER. Yes.

Senator MALONEY. I wanted to be sure I understood you. I am sorry; please proceed.

Mr. SCHLESINGER. The more important question that the committee concerned itself with is embodied in section 8 of the bill, which I understand is a controversial section and has received some consideration already from this committee.

Section 8 deals with section 338 (a) of the Nationality Act of 1940, and it would substitute a comma for the period at the end thereof and add the following proviso:

or on the ground that his utterances, writings, actions, or course of conduct establishes that his political allegiance is to a foreign state or sovereignty.

If the intent of the provision was to reach persons who swore allegiance to the United States when, in fact, they continued to owe allegiance to a foreign government, then the provision is unnecessary. Such a person is guilty of fraud, and existing statutes have always authorized cancellation for such fraud.

However, if the amendment intends, as may be gathered from its language, to subject naturalized citizens to loss of citizenship after it

has been lawfully obtained, then it is not only harmful to the national interest, but a violation of the Constitution.

The committee assumes that Congressman Dickstein intended, by his amendment, to help protect the United Nations from the agents of the Fascist countries who are waging war against us, Germany, Italy, and Japan; yet actually the amendment applies to all the naturalized citizens and, inferentially brands them as the source of danger which requires action by Congress.

In essence, this amendment is class legislation in its most dangerous form. The House, in its zeal, has erred in assuming that the danger to our Nation requiring legislative protection comes from naturalization and not fascism. Had the House kept in mind the real source of our danger, it would never have introduced a bill which is a blow at 8,000,000 citizens who, through an accident of birth, are citizens by naturalization rather than nativity; and, as to the Fascists and fifth columnists, native and naturalized alike, who prey upon the people, the present criminal statutes are adequate to deal with them and, if found wanting, the Criminal Code is where the remedy should be applied, not the Nationality Act.

If section 8 becomes law, the conduct of the naturalized citizen after naturalization would constantly be the subject of investigation. Our naturalized citizens should be free and fearless. As stated above, for any fraud in connection with becoming citizens, naturalized citizens can, as the law stands now, be deprived of their citizenship rights. Enactment of House Resolution 6250 would inaugurate an entirely different status, an inferior group of American citizens who would never be safe in that citizenship.

To quote the words of Mr. Justice William O. Douglas in a speech before the San Francisco Commonwealth Club on June 20, 1941:

There must not grow up in this country any second or fourth class of citizenship. There is only one class of citizenship in this country. There is no room for any inferior grade. Where one has been allowed, the result has been the downward spiral of disunity. Then hate and intolerance have been incorporated. Under those conditions, the enemies of democracy invariably have risen to power. Under those conditions, there is an insistence on a conformity which is the beginning of a disintegrating process.

As long ago as 1824 it was said by Chief Justice Marshall in *Osborn vs. United States Bank* with reference to the naturalized citizen:

He becomes a member of society possessing all the rights of a native citizen and standing in the view of the Constitution on the footing of a native. The Constitution does not authorize Congress to enlarge or abridge those rights. The simple power of the National Legislature is to prescribe a uniform rule of naturalization and the exercise of this power exhausts it so far as respects the individual. He is distinguishable in nothing from a native citizen except so far as the Constitution makes the distinction. The law makes none.

An equally important argument against this provision is its unconstitutionality. Except for the fact that he cannot be President of the United States, a naturalized citizen, once he has been legally admitted to citizenship, has the same status exactly as a native-born citizen.

Congressman Dickstein, when he introduced the bill, and the House of Representatives, when it passed the bill without opposition and without a roll call, could not have realized that they were making so great and unconstitutional a departure in American law. The nature of citizenship of the United States is determined by the Federal

Constitution. The essential nature of the status of citizenship cannot be determined or modified by statute.

The character of citizenship is fixed by the first sentence of the first section of Article XIV of the Constitution:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.

The same section of the same article of the Constitution specifically prohibits any modification of the status of United States citizenship by State statute:

No State shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States—

Nor can a Federal statute determine or modify the nature of the status of citizenship. The Constitution, in determining the essential character of citizenship and excluding such determinance from the power of Congress, assigns a limited field relating to the subject of citizenship, but not touching upon its essence, in which Congress is specifically authorized by the Constitution to determine by statute the practical methods of applying the fundamental principles. But these fundamental principles are determined by the Constitution alone.

Any statutory influence upon the status of United States citizenship is invalid. That status having been completely determined by the Constitution, and Congress having been given a specifically limited field in which it can legislate on the subject of citizenship, all legislation is confined within that limited field; a field that does not touch the essential character and nature of that status established by the Constitution under the term "citizenship."

The essential nature of citizenship is fixed as an indivisible status of all persons who are citizens. This status is given without distinction to all persons born or naturalized in the United States. It is not said that all persons born in the United States are citizens, and added that other persons may conditionally or partially share in this status. All persons are equally citizens if born or naturalized in the United States, with one condition applicable to all, that they be "subject to the jurisdiction" of the United States; and there is but one kind of citizenship. As far as statutory law is concerned, citizenship is one and the same citizenship when once lawfully obtained whether by native birth or by naturalization.

That concludes the statement.

Senator MALONEY. Thank you.

We have been extremely anxious that everyone who desires to do so may be heard. I am assuming all have been heard who said they desired an opportunity.

So I guess, Mr. Smith, we may hear you now.

**STATEMENT OF L. M. C. SMITH, CHIEF, SPECIAL DEFENSE UNIT,
DEPARTMENT OF JUSTICE**

Mr. SMITH. My name is L. M. C. Smith. I am chief of the Special Defense Unit of the Department of Justice.

In the first place, let me say that I am very sympathetic with the fears of those who come here to testify against this particular section

8, because I have been active for a good many months in working with a number of alien groups in trying to protect them, particularly against discriminations in employment; which discrimination exists, despite the very strenuous efforts of the Attorney General to prevent it, and in my opinion tends to create a bigger fifth column than would be created by following a sound policy of providing employment for all aliens unless there is definite evidence of disloyalty, when that should be turned over to the F. B. I.

The problem we are talking about here is not 99 percent of the naturalized citizens, and we certainly do not want to do anything to disturb them or to shake their loyalty. This bill concerns only a very small proportion of the total group.

I see the number of cases that we have of subversive activities, and there are just as many, in my opinion, among the naturalized citizens of the German and Italian, particularly the German, group, as there are of aliens. That is shown by not only analysis of the cases, but it is based upon a definite recognition of what the Germans, particularly the Germans, and Italians have done.

The Germans have based their present regime on the theory of blood and race, and they do not recognize that that allegiance can be broken down. That is shown in the prosecutions in New York. Out of the 29 defendants who were convicted of espionage in New York, 23 were naturalized citizens. They go to jail, but they are not treated as alien enemies during this wartime period, although I cannot imagine any group who have demonstrated their allegiance more clearly to a foreign country.

Since 1933, Hitler has sent Germans to the United States with the specific instructions to become naturalized; we know that. We know that since 1938 the German-American Bund has permitted only citizens to become members. We know that the Axis states have operated not only in America, but also in South America—from where I have just returned—to continue to encourage the allegiance of the nationals residing in the surrounding territory and to try to encourage activities of the allegiance, such as the return immigrant program of Germany in which they have through their consuls engaged in a widespread activity, both here and in South America, to encourage people to send funds abroad and doing definite acts of allegiance to their state, contemplating their return immediately after the war is over.

Now, with people engaged in such definite activities as that, I don't think under the present circumstances they should be treated as citizens, but should be in the same category as alien enemies if they are nationals of such countries.

Now, coming down to the particular bill, however, I think anything that can be done in the drafting of it to put additional safeguards in for the great mass of naturalized citizens, I would be in favor of. Thus, for instance, when the bill was in the House you did not have "utterances or writings" in there and, quite frankly, if there is a possibility of abuse of that, I would rather see that left out. Because I think the utterances and writings should form the basis of establishing the conduct, and that cancellation of citizenship should not be on "utterances" alone. In other words, I think you should merely use that as evidence of the conduct of a person, to show his allegiance.

Now, there have been——

Senator MALONEY. Might I ask you a question there, Mr. Smith?

Mr. SMITH. Yes.

Senator MALONEY. If we struck the language to which you have just referred, "utterances and writings" and there is left "or course of conduct," would you feel that that would be retroactive, or would that be current conduct, in your judgment?

Mr. SMITH. I would think that would be current conduct. But evidence of his conduct, however, could be established by past actions, and it would merely be evidence, and the burden of proof would be to establish that his present conduct established his allegiance.

That is, I think, one of the protections of this act. It does not say that his conduct at any time has established his allegiance, but that his present conduct establishes his allegiance. Now you may, as evidence of what his conduct is, go back and show that over a period of years he has been furnishing information to Germany, something that may not be within the espionage laws, or been the head of a band or other organization, or been working with the consuls to return certain people to Germany after the war, and a great many other activities. But still you would have to show that the conduct was in existence at the present time, and not in the past time.

Now that test, as I see it, is a fairly difficult one to prove. It is practically the same test that we have had with the fraud section, except that with the fraud section you show present conduct and then try to establish it continuously all the way back to the time when the man took his original oath of allegiance, to show that he had a mental reservation. Whereas under this it seems to me it is the same test that is in the fraud, except that it is a more realistic one and certainly is one that will be a certain amount easier to prove, than going back to the original date and trying to show that 5 or 7 years before when he entered into a certain document that he had a certain state of mind. So you prove that state of mind in any case by his conduct subsequent to that act, and it is really the same facts.

Now, whether it is going to be abused or not, or whether we would be able to do very much under it, I don't know. I was insistent, and I think the rest of the group were, that this would be in the court, and subject to court review, because I don't think that the Department of Justice should be left, and I think the whole matter should be reviewed by our judiciary, just as the fraud actions have been.

Secondly, the burden of proof is definitely on the Department to establish this, and it is not just what he has done but as the word indicates, it says "establishes," and I think the burden is on us to show allegiance.

Furthermore, it does not mean that a person can just be disloyal to the United States. That is not enough. This is not intended to cover any naturalized citizen or anybody else who is just disloyal to the United States. It is a positive burden on us to show allegiance and a definite foreign connection, a definite connection with a foreign state or sovereignty. Otherwise, I would not think that we had established political allegiance to a particular state. So that unless this man has been engaged in some definite program which indicates his connection with a foreign state I don't think that he would have anything to fear.

Now, in regard to the constitutional aspects, I have not made an exhaustive study of the cases, but from what examination I have made,

there is a difference, both in the existing Nationality Act and in other places, section 401, between naturalized citizens and citizens. Secondly, in the *Mackenzie v. Hare* case which was cited yesterday, it was argued or it was stated as to the native-born American woman who lost her citizenship under our statutes by marrying a Canadian that it was unconstitutional to deprive her of her citizenship except by her own voluntary act of expatriation; and the court overruled her and held that her constructive knowledge of the law was enough to permit loss of citizenship through marriage to a foreigner.

This section does not attempt to impose loss of citizenship, but to establish a judicial and definite finding by the Government that a person by his own acts has engaged in certain activities which establish his allegiance to a foreign state. In the same way with domicile: The various facts of domicile will be established by the court and will be proved by the court, but they will be voluntary acts that he did.

Secondly, as far as making it applicable to native-born citizens as well, I would have no objection to that if that were the real problem. But I would like to affect citizenship as little as possible in these times, and if this were only as to American citizens during the national emergency it would not bother me. But I cannot see a great many of these naturalized citizens causing trouble in this country, a great many of them being potential threats which are not within the criminal laws and yet are definite acts of loyalty or allegiance to a foreign government; and not think that they ought to lose their citizenship thereby, if that can be judicially established in a court.

Senator BALL. Is the predominant majority of such cases that come to your attention naturalized citizens, rather than native-born?

Mr. SMITH. There is at the present time, we feel, a little problem with the native-born, as far as my section is concerned; but the big problem is with the aliens and the naturalized citizens of these particular countries, and much more so with the Germans than with the Italians.

All I am trying to do is to be realistic. I have spent many days trying to work with the alien groups who handle that and we have done a great deal in the Department to try to prevent discrimination against them; but I think we have got to be realistic, we are right in the middle of the war now and we have got to take the necessary steps for our protection.

Now, as I say, if there is any limitation that the Committee feels would improve the statute and still would accomplish this effect, I am not "sold" necessarily on the particular language; although we have struggled over it and spent a good deal of time over it and I think it is satisfactory from my point of view.

Senator MALONEY. Do you think that the citizenship of these 23 convicted citizens in New York could be revoked on the ground of fraud?

Mr. SMITH. I don't see how you could revoke them on the ground of fraud unless you could establish that by these acts that is an indication of their present mind, and then you would have to go back—supposing they became citizens 7 years ago—you would have to go back and have a course of conduct going back right up to the time when they came into the country.

Senator MALONEY. I see.

Mr. SMITH. And you would have to have witnesses as of that time, and the further back you would go the easier it would be to break that thread. Now, that is a practical matter.

Senator BALL. Would it be a better legal approach to this thing if, instead of adding new grounds, you simply provided that proof that the naturalized citizen's actions establishes that his political allegiance is to a foreign state or sovereignty shall be prima facie evidence of fraud in obtaining the certificate?

Mr. SMITH. Well, I would defer on that to Mr. Holtzoff.

Mr. HOLTZOFF. I think that would accomplish the same result.

Mr. SMITH. It might accomplish the same result although, quite frankly, I have always had a little difficulty with the legal argument, and the courts have adopted it for 2 or 3 years, that a man's conduct today is necessarily evidence of fraud and a mental reservation 7 years ago.

Senator BALL. That is your problem now, under the present statute; the problem is to hook it up with the time when they become naturalized.

Mr. SMITH. Well, that is under the present law. But this present amendment, section 8 here, is based upon a theory of expatriation, in effect, as recognized and established by the conduct of the man himself in the voluntary acts he is engaged in, as established by the Government in a court.

Now, he has done certain acts, just as in section 401 he has done. It says:

A person who is a national of the United States, whether by birth or naturalization, shall lose his nationality by:

(d) accepting, or performing the duties of any office, post, or employment under the government of a foreign state or political subdivision thereof of which only nationals of such state are eligible.

Well—

Senator MALONEY. There are Members of Congress who, as you know, are naturalized citizens, and while you could not reach them for any statements they made in the House or the Senate, you could, and perhaps this is far-fetched, reach them if you found they harshly criticized action or failure on the part of some of our allies in the war, in speeches outside. Do you think you would have grounds for reaching them?

Mr. SMITH. No; I do not, because that is no evidence of political allegiance to a foreign state. It may be evidence of criticism of the present government, or even if it were done deliberately it might be evidence of disloyalty. But I mean, it would not be—of course, Members of Congress have a right, anyway—but assuming that it was somebody who was really trying to overthrow the Government by force or violence or special war effort by any means whatsoever, he still would not come within this section, I would not think, no matter what he said; unless you could show that by his conduct, that he owed allegiance to a particular state. And that speech or any speeches along those lines, I would not think would be evidence of political allegiance. Would you?

Senator MALONEY. Now, let me ask you the next question in order: Suppose that some other person, who was regarded as politically or socially insignificant, criticized our allies, and the conduct of the war,

but happened to have once lived in a state with which we are now engaged in war. What would your attitude be in such a case?

Mr. SMITH. I still would not think that that sort of action, without some positive evidence of affirmative allegiance of one sort or another—for instance, if that man were sending funds back to Germany, as a number of naturalized citizens have done, plus sending maybe information and working with the consul. You might have some evidence there as to his political allegiance. But even there you would have to find that his primary political allegiance was to Germany, as opposed to the United States; and all of that same sort of difficulty, I would think, would come up in a fraud case. I mean, in the same way with the same difficulties, all of the acts would come up in a fraud case, and the courts have been quite consistent, as far as I know, in protecting the citizens in those cases.

Senator MALONEY. I can vaguely remember some of what went on during the World War.

Mr. SMITH. You had a lot of experience with this problem, I know.

Senator MALONEY. I can remember some prosecutions and persecutions of individuals at that time.

Mr. SMITH. But those prosecutions, I think, were under the sedition statutes, if I remember right, rather than under the fraud statutes. And the big criticism of the last war cases, if I remember right, were directed at the old sedition acts and the prosecutions that were made under those.

Senator MALONEY. The kind of speeches to which I just referred, probably insofar as Members of Congress are concerned, would not be taken seriously from the standpoint of the law; but individuals making that kind of speech or criticism might be reached under the sedition act; is that right?

Mr. SMITH. Well, they would have been reached under the sedition acts in the cases which were being tried in 1918, and there were—

Senator MALONEY. They are in effect now, aren't they? Weren't they restored by the war powers?

Mr. HOLTZOFF. No; the 1918 amendments to the Trading with the Enemy Act, which contained the provisions with reference to sedition, were enacted for the duration of the war and they are not now in effect.

Senator MALONEY. Were they not in the war powers act and were they not reenacted?

Mr. HOLTZOFF. No.

Mr. SMITH. I think somebody has introduced them in Congress.

Mr. HOLTZOFF. Oh, yes; there has been a bill introduced a short time ago to reenact those provisions for the duration of the present emergency, during the present war; but they are not now in effect.

Senator MALONEY. You would not think that under the passage of this language that you would create the same kind of broad powers and the same kind of situation that prevailed in 1917 and 1918?

Mr. SMITH. I do not think so, sir. I do not see that the type of case and the proof in the case would be substantially different than the type of cases that the courts have already passed upon, and I am familiar with a certain number of these fraud cases.

I am a little worried, I will be frank with you, about the inclusion of the phrase "utterances, writings" or any other acts that may be used as a basis.

Mr. HOLTZOFF. I would rather see those words go out.

Mr. SMITH. I would rather see those words go out.

Senator MALONEY. As a matter of fact, I believe you would have a lot of trouble within the Government right now if you left that language in.

Mr. SMITH. Yes. But as to the constitutionality of this, I believe it is constitutional. I don't say it is free from doubt and I don't profess to be a profound constitutional lawyer; but we have considered the question very carefully and also the cases that are involved, and do believe that it is perfectly constitutional; and that it is perfectly consistent with the other provisions relating to expatriation, about a person and about his act.

Senator MALONEY. Don't you think its constitutionality should be free from doubt?

Senator BALL. Wouldn't you free it from doubt if you put it under section 401, which provides that: "A person who is a national of the United States, whether by birth or naturalization, shall lose his nationality"? Nationality means—wait a minute; that means citizenship, doesn't it, there?

Mr. SMITH. Yes. Well, in that respect.

Senator BALL. Simply include it.

Mr. SMITH. In that respect, it would not bother me if you put it there, as long as you provide for judicial determination. The difficulty that I have with that section is that a person does certain acts and he enters into an indefinite state and he never knows whether he has lost it or not. And the way it is now—

Senator BALL. If you add subsection 2.

Mr. SMITH. If you add a provision for judicial determination of it.

Senator BALL. Section 10 of the bill would provide that, wouldn't it?

Mr. SMITH. As I understand—

Senator BALL. What you said when I asked you the question a while ago was this was more a matter of expatriation than of revoking naturalization.

Mr. SMITH. Well, it is a—

Senator BALL. I mean, when I asked you whether it would not be advisable simply to relate this back to the fraud at the time of obtaining the certificate.

Mr. SMITH. Do you want to comment on that?

Mr. HOLTZOFF. I venture to suggest that section 8 does provide for a form of revocation, and I am quite sure it is not necessary to suggest it is automatic expatriation.

Your suggestion, Senator, as I understand it, is that, instead of making section 8 in the form of a separate ground or an additional ground for cancelation, you would create a presumption—a rebuttable presumption, to be sure—that a person whose course of conduct establishes that his allegiance is to a foreign country; create a presumption that such person's conduct, that he took his oath with such a reservation as to constitute obtaining naturalization by fraud.

It seems to me that that would achieve the same result as the one we have in mind, and from that standpoint it would be entirely satisfactory to substitute. Whether you accomplish the result by creating an additional ground for revocation of citizenship, or by providing that such facts shall create a presumption of fraud, it seems to me

from our standpoint is not a material one. Whichever you prefer, we would go along with.

Senator BALL. You could also make it apply to native-born citizens.

Mr. HOLTZOFF. I beg your pardon?

Senator BALL. You could also make it apply to native-born citizens. For instance, it seems to me everyone would favor taking away the citizenship of the men convicted under the espionage trial in New York. I assume that under the present laws you cannot do it, either to the naturalized citizen or to the native-born, that were involved?

Mr. HOLTZOFF. That is correct.

Mr. SMITH. That is correct.

Senator BALL. And what you would do, perhaps you would need a new section in section 4, because 401 does not relate to court procedure.

Mr. HOLTZOFF. Well, of course——

Senator BALL. I would like to look over an attempt to handle it that way.

Mr. HOLTZOFF. Section 8, if you got that in the law in its present form or the form you suggest, Senator, under that it seems to me that those persons in the espionage case who are naturalized citizens could have their citizenship revoked.

Senator BALL. Yes.

Mr. HOLTZOFF. Because carrying on espionage for a foreign country is certainly, it seems to me, a course of conduct which would establish allegiance to that country.

Mr. SMITH. That is right.

Senator BALL. Yes; but what I mean——

Mr. HOLTZOFF. But this could not be done under the law as it now exists, unless you can connect their activities——

Senator BALL. But you certainly would remove any doubt as to its constitutionality if you put it under chapter 4 and made it apply to that type and made it a matter of expatriation. Of course, I don't know whether it belongs to the Naturalization Act or not, that way.

Mr. HOLTZOFF. I am a little bit afraid, while sentimentally I might see a good reason for making this applicable to native-born citizens. I am a little bit afraid of such a provision. Suppose a person comes of a family that has been in this country for a great many generations. Would you deprive him of citizenship under a provision of this sort? I wonder about that.

Senator BALL. Surely; I know a lot in Minnesota I would just as soon ship back to Russia; that is where they take their orders.

Mr. HOLTZOFF. Well, most of them are either aliens or naturalized citizens, are they not?

Senator BALL. No; I don't think so.

Mr. HOLTZOFF. Second and third generation?

Mr. SMITH. Native-born, some of them.

Senator BALL. Surely. I don't say I know a lot, but I know a few who do follow the Party lines and take their directions from Moscow.

Mr. HOLTZOFF. Second and third generation citizens, who are pro-Axis. That was the way in the First World War.

Mr. SMITH. Yes; there are. But my approach to it was trying not to upset the citizenship status any more than necessary under the present circumstances; and that is why I say that it would seem

to me that if you cover the naturalized citizen at the present time you will have covered a huge portion of the problem.

Senator BALL. You take care of most of the problem, but you say it raises this constitutional question.

Mr. SMITH. Yes.

Senator BALL. And also raises the question of unequal treatment of two citizens who are both equally guilty of disloyal acts; one happens to be naturalized, and the other native-born.

Mr. SMITH. Would you like to consider those two suggestions of his there, and see if we can work it out?

Mr. HOLTZOFF. Yes. This is something we have not given thought to, and I should hesitate to make any observation on it at this time. They would not be worth very much because they would not be the result of any reflection.

Senator BALL. Yes.

Mr. HOLTZOFF. I would like to think about it some more.

Mr. SMITH. Now, I say that this is a very serious problem that we are facing right now, and whether you want to broaden it out to cover possibly other cases which are not bothering us at the present time is a matter of judgment.

I do want to call your attention—

Senator MALONEY. You would get a lot of bother if you did do it.

Mr. SMITH. Yes.

I do want to call your attention to the fact that in the final act of the third meeting of Ministers of Foreign Affairs of the American Republics at Rio de Janeiro, where I went with Mr. Welles, they adopted an attachment to resolution XVII, Memorandum on the Regulation of Subversive Activities, and one of the standards is as follows:

It is recommended to the American Republics that, as far as practicable in view of present conditions and those which may be foreseen, they take comprehensive regulatory measures, that are not in conflict with their respective constitutional provisions, and that these measures include the following, it being recognized that many of them are already in force:

(A) To control dangerous aliens by—

I will not read that.

(B) To prevent the abuse of citizenship by:

And 2 says:

Causing the status of citizenship and the inherent rights with respect thereto of those citizens of non-American origin who have been granted the privilege of becoming citizens of an American state to be forfeited if, by acts detrimental to the security or independence of that state or otherwise, they demonstrate allegiance to a member state of the Tripartite Pact or any state subservient to them, including the termination of the status of citizenship of such persons recognizing or attempting to exercise dual rights of citizenship.

Now, of course, that was a resolution in which we were primarily interested, but it was also adopted by the other nations and throws some light on the general situation. I know in Brazil, for instance, one of their big problems has been with the naturalized German citizens there, particularly. There, again, the Italian is not so much of a problem; but the naturalized Germans. And they have issued some decrees just recently in which they have closed out any organizations in which aliens belong unless the board of directors and the

officers are native-born citizens. So they have brought that out and made that difference.

That is just some background material on this situation.

Senator MALONEY. Have you concluded, Mr. Smith?

Mr. SMITH. Yes, sir.

Senator MALONEY. We thank you very much.

I think we have heard all who have expressed a desire to be heard, with the exception of the two Senators from Oregon, and the committee will meet to hear them at 11 o'clock tomorrow morning. They found it inconvenient, because of the pressure of their work, to be here up to now, and they want to present some material to the committee.

Mr. HOLTZOFF. Mr. Chairman, Mrs. Alan Cranston is here; she represents the Common Council for American Unity. She has requested me to ask in her behalf for the privilege of submitting letters on this bill, particularly as to section 3.

Senator MALONEY. Do you have those letters now, Mrs. Cranston?

Mrs. ALAN CRANSTON. No. They should reach here in the next couple of days. I wonder if you could include those with the other letters that you mentioned?

Senator MALONEY. Yes; we can, but it will depend upon what time you get them. We are anxious to have the hearings printed as quickly as we can, but I think 2 or 3 days will allow you plenty of time.

Mrs. ALAN CRANSTON. Fine. They will be mailed directly to you.

Senator MALONEY. You might give them to the clerk of the committee, Miss Smith, if you will.

That concludes the hearing this morning, until 11 o'clock tomorrow morning.

I offer the following letters, telegrams and briefs:

[Western Union Telegram]

WASHINGTON, D. C., February 17, 1942.

HON. FRANCIS MALONEY: The American Legion is unalterably opposed to section 3 of H. R. 6250 now undergoing hearings your subcommittee. This section would exempt from literacy requirements of nationality law aliens 50 years of age or older. It would also waive the requirements of a declaration of intention in respect to these aliens. Section applies to aliens in this country prior to July 1, 1924. Such aliens have had ample opportunity to meet present naturalization requirements through our alien education system. House Report No. 1544 which accompanied H. R. 6250 fails to reveal number of elderly aliens that would immediately benefit under our social security law or the number that would be benefited at later date. American Legion sympathetic toward these aliens but believes the present is certainly no time to liberalize our naturalization laws. Our organization will appreciate anything you may do to have section 3 of H. R. 6250 stricken from the bill.

FRANCIS M. SULLIVAN,
Acting Director, National Legislative Committee.

THE AMERICAN BATTLE MONUMENTS COMMISSION

JANUARY 19, 1942.

The Honorable RICHARD B. RUSSELL,
Chairman, Committee on Immigration,
United States Senate.

MY DEAR SENATOR RUSSELL: I am transmitting for your consideration the enclosed letter addressed to you by Mr. John M. Weneta, an employee of the European office of the American Battle Monuments Commission, whose case has recently been brought to my attention.

Mr. Weneta's statement of the facts in his case is verified by the official records of the Government, and, I may add, he has served to the entire satisfaction of the American Graves Registration Service and the American Battle Monuments Commission. If there is anything further that I can do to assist in regularizing the citizenship status of Mr. Weneta, I hope you will not hesitate to advise me.

Sincerely yours,

JOHN J. PERSHING, *Chairman.*

WASHINGTON, D. C.,
January 17, 1942.

The Honorable RICHARD B. RUSSELL,
United States Senate.

SIR: For the consideration of the Committee on Immigration I desire to submit this statement of facts in my case for such action as may be taken in my favor by the committee in order to settle the question of my citizenship.

I was born in Hungary in 1890 and came with my parents to the United States about 1900-03. My family settled in Chicago, and I went to school there. In 1911 I enlisted in the United States Army, and during the following years lost contact with my family.

In June 1917 I went to France with the American Expeditionary Forces, served with the Infantry, and later became a sergeant in the Quartermaster Corps. While still in the American Expeditionary Forces in France, and not being entirely certain of my status as an American citizen, I, on November 22, 1918, made out a form which, as I now know, was merely a petition for naturalization, but which I at that time thought was sufficient to admit me to citizenship.

After the armistice I remained in France, after obtaining permission from the Army authorities to do so, and having procured work with the American Graves Registration Service.

I applied for an American passport through the American Consulate at Bordeaux. I was first granted a temporary passport, and some time later a regular passport was issued to me through the Embassy in Paris. Since I was discharged from the United States Army in 1919 I have been working in France in various capacities for the Graves Registration Service and the American Battle Monuments Commission. My present position is that of assistant superintendent of the St. Mihiel American Cemetery, near Thaincourt, France.

In June 1941 the American personnel of the American Battle Monuments Commission establishments in France and Belgium was ordered to return to the United States, and I, together with my wife and children, returned on American passports. I am now assigned to temporary duty with the Commission's office in Washington.

Upon my arrival in Washington I contacted the Immigration and Naturalization Service of the Department of Justice in order to obtain documentary proof of my naturalization. My case was investigated and I have been informed that I was never actually admitted to citizenship; that the four American passports granted me, as well as those provided to the members of my family, were issued in error; and that I never had any legal right to consider myself an American citizen. Thus, due to misunderstanding on my part, and misinformation or lack of information on the part of the Government agencies concerned, I now find myself and my family in a distressing position, and perhaps even without the right to reside in the United States.

For more than 30 years I have faithfully served the interest of the Government and people of the United States as a soldier in the Government service. I have, during these same years, considered myself to be a loyal American citizen and have discharged the obligations of American citizenship. I hereby appeal to your committee in order that my case may be considered in the light of the foregoing circumstances and that any possible action be taken in order that I and my family may be properly admitted to citizenship in the United States. I understand that your committee has before it a bill (H. R. 6250), recently passed by the House of Representatives, to amend certain provisions of the Nationality Act of 1940. If your committee should deem it to be appropriate to amend the bill to provide for the formal naturalization of former American soldiers, I am sure that all veterans in my circumstances, and certainly I and my family, would be eternally grateful for the recognition thus extended to us.

I should like to add that I did not present my case to the House of Representatives, because I have only recently been informed that H. R. 6250 was pending in Congress.

Respectfully yours,

(Signed) JOHN M. WENETA.

FEBRUARY 12, 1942.

HON. JOHN J. PERSHING,
*Chairman, The American Battle Monuments Commission,
 Washington, D. C.*

MY DEAR GENERAL PERSHING: I have your letter of January 19, 1942, requesting advice as to the relationship of the provisions of H. R. 6250 "to amend the Nationality Act of 1940", to the program of the President, and submitting a draft of a proposed letter to the chairman of the Senate Committee on Immigration, regarding the status of one John M. Weneta, an employee of the European office of the American Battle Monuments Commission.

The originals of Mr. Weneta's letter and your proposed letter are returned herewith, and you are advised that there would be no objection to the submission thereof to the committee. There is enclosed, for your information in this connection, a copy of a letter dated February 9, 1942, from the Attorney General setting forth his views on the subject.

Very truly yours,

(Signed) HAROLD D. SMITH, *Director.*

Enclosures: Original of letter to Senate Committee on Immigration. Original of Mr. Weneta's letter. Copy of Attorney General's letter dated February 9, 1942.

FEBRUARY 9, 1942.

HON. HAROLD D. SMITH,
*Director, Bureau of the Budget,
 Executive Office of the President, Washington, D. C.*

MY DEAR MR. SMITH: This acknowledges your letter of January 21, 1942, concerning the enclosed proposed letter of the Chairman of the American Battle Monuments Commission to the chairman of the Senate Committee on Immigration, together with a copy of a letter dated January 17, 1942, from John M. Weneta to the chairman of the Senate Committee on Immigration, relating to the desire of Mr. Weneta to become a naturalized citizen of the United States.

It appears from the accompanying letters that Mr. Weneta has been an employee of the American Battle Monuments Commission since 1919 when he was honorably discharged from the United States Army.

The files of the Immigration and Naturalization Service of this Department disclose no information concerning this matter other than the fact that on November 22, 1918, Mr. Weneta, while still in France, executed a petition for naturalization and took an oath of allegiance to the United States before an officer of the United States Army. This was done pursuant to the act of May 9, 1918 (40 Stat. 542), which permitted an alien serving in the armed forces of the United States to file a petition for naturalization without making a preliminary declaration of intention and without proof of 5 years' residence in the United States.

It also appears that the petition was never filed in a naturalization court in the United States and that no court order was entered admitting Mr. Weneta to citizenship, although it was later determined that such action was necessary. Consequently, he did not acquire United States citizenship.

The President, in a veto message, transmitted to the Congress on October 10, 1940, returning a private bill (H. R. 7179) to permit the naturalization by private act should be permitted, of a specified alien, stated: "Resort to naturalization by private act should be permitted, if at all, only in unusual and unique situations."

Whether or not a private bill permitting Mr. Weneta to become a naturalized citizen of the United States by taking the naturalization oath before any court having jurisdiction over such matters and without complying with the other requirements of the naturalization laws, involves a situation which may be properly regarded as being within the exceptional group, is a matter concerning which I prefer not to make any suggestions at this time. I find no objection to the transmittal of the proposed letter to the chairman of the Senate Committee on Immigration.

Sincerely yours,

ATTORNEY GENERAL.

FEBRUARY 6, 1942.

HON. FRANCIS MALONEY,
Senate Office Building, Washington, D. C.

DEAR SENATOR MALONEY: I thank you for your letter of January 29, 1942, advising me that Senator Russell, chairman of the Immigration Committee, has referred to you my letter of January 22, commenting upon H. R. 6250. You were also good enough to advise me that you would submit my views to the subcommittee considering the bill.

Should your subcommittee feel that section 307 (b) of the Nationality Act of 1940 needs clarification, I shall be glad to appear before it to amplify my views on the subject; or, if you prefer, I shall be happy to submit a written statement.

Thanking you for your kind consideration, I am,

Yours very truly,

(Signed) KOENIGSBERG.

JANUARY 29, 1942.

Attorney JOSHUA S. KOENIGSBERG,
New York, N. Y.

MY DEAR MR. KOENIGSBERG: Senator Russell, chairman of the Immigration Committee sent to me your letter of January 22, commenting upon H. R. 6250. I shall submit your views to the subcommittee considering the bill.

Sincerely yours,

FRANCIS MALONEY.

JANUARY 22, 1942.

HON. RICHARD B. RUSSELL,
*Chairman, Committee on Immigration,
 Senate Office Building, Washington, D. C.*

DEAR SENATOR RUSSELL: There is pending before your committee, H. R. 6250, which passed the House on January 13, 1942. This bill is substantially the same as S. 2130, of which you are the author. Inasmuch as one of the purposes of this legislation is to express the intention of Congress more exactly than the existing law, I respectfully desire to take this opportunity to suggest one further amendment relating to one of the subjects dealt with in the bill aforementioned.

I address myself to section 307 (b) (1) of the Nationality Act of 1940, which is sought to be amended by section 2 of H. R. 6250 and section 2 of S. 2130. The change advocated is by substituting the word "residence" for "absence" in the phrase "residence abroad." In my opinion, the entire section needs clarification. I have had occasion to study this legislation in connection with an application for the benefits of the Act of June 25, 1936, in behalf of a client, an alien declarant, who left the United States on July 1, 1936, without having applied to the then Secretary of Labor for the benefits of the act.

In my humble opinion, the said act is ambiguous and confusing, and Congress, while dealing with this provision, should give serious consideration to changing its phraseology so that there may be carried out the intention of aiding such classes of persons who are engaged in work for the Government or in business which benefits our foreign commerce.

This was the purpose of the act of June 25, 1936. There are two reported cases construing this act, both of which contain lengthy opinions and one disapproving the other. The first is a district court opinion of Judge Igoe reported (34 Fed. Supp. 940), *In re Zaoral*. The other is a circuit court decision of the Ninth Circuit Court of Appeals, *In re Schwartz*, (121 Fed. (2) 225) which specifically disapproves the *Zaoral* case, and which is in conflict with the administrative interpretation as promulgated by rules of the Attorney General. In the concurring opinion of Circuit Judge Haney in the *Schwartz* case, he, too, finds a portion of the act of June 25, 1936, as being uncertain as to its meaning.

The facts in the case of my client are different from the facts in the reported cases, in that my client left the United States a few days after the act was signed, at which time there was no administrative machinery for the handling of an application of this type. My client was in England on behalf of an American company which exported approximately 25 percent of all the iron and steel scrap from the United States to Europe during the period he was abroad, and, although, the Immigration and Naturalization Service denied the application on a question of law, it was conceded that he was engaged in the development of our foreign commerce and trade.

Offhand, I know of no mode of judicial review from the decision of the Immigration and Naturalization Service, and, it is apparent, that while Congress intended to aid certain classes of persons engaged in the development of our foreign trade, yet, such relief cannot be had because of the uncertainty of the law.

It is my humble suggestion that while your committee is now dealing with this section, that it further be amended by providing that any alien declarant who has heretofore left the United States for any of the purposes mentioned in the act, and who is now in the United States, may make an application for the benefits of the act at any time prior to filing a petition for citizenship. In short, it is my contention that an absence abroad should be thoroughly gone into after his return so that the two branches of the Government charged with the enforcement of this section, to wit, the Attorney General and the court should conduct its inquiry and make its findings when the applicant is ready for citizenship, at which time positive proof should be adduced that the absence was for one of the purposes enumerated in the statute.

As a matter of fact, Congress found fault with the act of June 25, 1936, because certain aliens did not obtain the approval of the Secretary of Labor in good faith, as their purpose was merely to obtain the approval for subsequent naturalization purposes and then left the United States and engaged in other activities.

The following is quoted from the bottom of page 3 of Report No. 2659 accompanying House Joint Resolution 681 (75th Cong., 3d sess.), which ultimately became the act of June 29, 1938.

"Experience with the administration of the 1936 enactment has shown the following: That aliens employed abroad within the categories described in the act, but who have apparently not maintained residence in the United States or have not been in the United States, apply for immigration visas, secure leave of absence from their employment, come to the United States where they ostensibly secure lawful admission for permanent residence, make declaration of intention, apply to the Secretary of Labor for a finding that "absence from the United States * * * is to be" for one of the purposes described in the act, thereafter depart from the United States and resume the performance of the duties in which they have been previously engaged."

The Immigration and Naturalization Service in my client's case, ruled that it is a mandatory requirement of the statute that an applicant of the classes designed to be benefited by the act, must first obtain approval. Under such construction, the bona fide businessman or Government employee would break the continuity of his residence, in my opinion, the moment he departed, if he did not, prior thereto, establish to the satisfaction of the Attorney General that he is of the excepted class. His failure to do so operates as a fatal break in the continuity of his residence; while another alien, not a declarant, may absent himself for a whole year for business or pleasure without breaking the continuity of his residence, under section 307 (b) of the Nationality Act of 1940, which was the fourth subdivision of section 4 of the act of June 29, 1906, as amended by the act of March 2, 1929.

I think you will agree that the subject needs clarification, and while I have not taken up with the Attorney General's office the suggested amendment, I doubt if his office would have any objection thereto.

Should you desire, I will be very happy to submit a further memorandum on the subject, or, if you wish, I will be glad to appear before your committee in support of such an amendment.

Yours very truly,

KOENIGSBERG.

FEBRUARY 16, 1942.

MISS CLARA E. SMITH,

*Clerk, Committee on Immigration,
Senate Office Building, Washington, D. C.*

MY DEAR MISS SMITH: A court engagement prevents me from appearing before the Committee on Immigration on Tuesday, February 17, 1942, which is considering H. R. 6250, notice of which you were good enough to send me.

May I ask you to be good enough to submit the enclosed statement to the committee, and should it desire to examine me further, I will be glad to appear before the committee some day next week.

Thanking you for your courtesy, I am,

Yours very truly,

KOENIGSBERG.

STATEMENT

Mr. CHAIRMAN. I respectfully address myself to section 2 of H. R. 6250, now being considered by your committee, which deals with an amendment to section 307 (b) (1) of the Nationality Act of 1940, which would substitute the word "absence" for the word "residence" in the phrase "residence abroad." It appears from a letter by the Attorney General to the Speaker of the House, dated December 6, 1941, that the purpose of this amendment is to express the intention of Congress more exactly than the existing law.

It is my opinion that this section, with the proposed amendment, is ambiguous and confusing, and while your committee is dealing with this provision, I respectfully suggest that its phraseology be changed so that there may be carried out the original intention of Congress, when the act of June 26, 1936 was under consideration before it, which was to aid such classes of persons who were engaged in work for the Government or in a business which benefited our foreign trade and commerce (see H. Rept. No. 516 on H. R. 4900, 74th Cong., 1st sess., and S. Rept. No. 2159 on H. R. 4900, 74th Cong., 2d sess.).

There are two reported cases construing this law, both of which contain lengthy opinions, and one disapproving the other. The first is a district court opinion of Judge Igoe reported in 34 Federal Supplements 940, *In re Zaoral*. The other is a circuit court decision of the ninth circuit court of appeals, *In re Schwartz* (121 Fed. (2) 225), which specifically disapproves the *Zaoral* case, and which is in conflict with the administrative interpretation as promulgated by rules of the Attorney General. In the concurring opinion of Circuit Judge Hancy in the *Schwartz* case, he, too, finds a portion of the act of June 25, 1936, as being uncertain as to its meaning.

I had occasion to study the provisions of section 307 of the Nationality Act of 1940, in connection with an application submitted in behalf of a client who left the United States a few days after the act of June 25, 1936, was signed, at which time there was no administrative machinery for the handling of an application of this type. My client was in England on behalf of an American company which exported approximately 25 percent of all the iron and steel scrap from the United States to Europe during the period he was abroad, and, although the Immigration and Naturalization Service denied the application on a question of the construction of the law, it was conceded that he was engaged in the development of our foreign commerce and trade.

I respectfully suggest that section 307 of the Nationality Act of 1940 be amended by having it read in the past tense, as hereinafter set forth. Subsection (c) of section 307 should also be amended for the following reason: Between June 25, 1936, and the passage of the act of June 29, 1938, it was not necessary for an alien who had made a declaration of intention to have resided in the United States for at least 1 year to obtain the benefits of this relief measure. The joint resolution of June 29, 1938, amended the act of June 25, 1936, to apply to those declarants who had resided here for at least 1 year.

Section 307 (c) of the Nationality Act of 1940, which originally was part of the act of June 25, 1936, was aimed to extend the benefits of the act to those who were out of the country at that time, and under this paragraph the alien had to prove to the satisfaction of the Attorney General and the court that he was absent for one of the reasons mentioned in said act.

Inasmuch as the entire section deals with residence requirements of an alien who has applied for citizenship, it is earnestly urged that the proper time to pass upon his absence is the time he is applying for citizenship and not years in advance, particularly and unfortunately, because there are no statutory requirements compelling an alien to become a citizen. As a matter of fact, a requirement that the alien must have resided in the United States for 1 year as provided for in the act of June 29, 1938, does not cure the evil which Congress set out to remedy by its enactment.

The following is quoted from the bottom of page 3 of Report No. 2659 accompanying House Joint Resolution 681, (75th Cong., 3d sess.), which ultimately became the act of June 29, 1938.

"Experience with the administration of the 1936 enactment has shown the following: That aliens employed abroad within the categories described in the act, but who have apparently not maintained residence in the United States or have not been in the United States, apply for immigration visas, secure leave of absence from their employment, come to the United States where they ostensibly secure lawful admission for permanent residence, make declaration of intention, apply to the Secretary of Labor for a finding that 'absence from the United States * * * is to be' for one of the purposes described in the act, thereafter depart from the

United States and resume the performance of the duties in which they have been previously engaged."

As stated above the proper time to delve into an applicant's qualifications for citizenship is the time he is applying for citizenship, and the administrative agency charged with the enforcement of this act should oblige the applicant to prove to its satisfaction not only that he possesses the educational and moral standards, but also the residence requirements. At this time there can be passed upon not only what his intention was when he left the United States, but what his activities were, and if such applicant proves to the satisfaction of the administrative agency that he was absent from the United States because he had been carrying on one of the activities exempted by statute, then that agency can pass on a finished product and make its recommendation to the court.

A close study of section 307 of the Nationality Act of 1940, leads to the conclusion that it was the intent of Congress to deal with an applicant as to his eligibility for naturalization at the time he formally applies for citizenship. The very opening sentence of section 307 states, "No person, except as hereinafter provided in this chapter, shall be naturalized unless such petitioner, (1) immediately preceding the date of filing petition for naturalization, * * *." There are many more similar references in said section, for instance, "admission to citizenship," "filing petition for citizenship," "final hearing," etc., which clearly shows that residence requirements were to be gone into at the time the applicant petitions for citizenship.

The two branches of the Government charged with the enforcement of the section, to wit, the Attorney General and the Court, should conduct its inquiry and make its findings when the applicant is ready for citizenship, at which time positive proof should be adduced that his absence was for one of the purposes enumerated in the statute.

In view of the foregoing, it is respectfully suggested that section 307 be amended by striking out the comma after the word "residence" in the phrase "shall break the continuity of such residence" in subsection (b), and placing a period in lieu thereof. The remaining portion of said subdivision as well as subdivision (1), (2), and (2c) should be stricken out, and in their stead, the following:

"No period of absence from the United States for which continuous residence in the United States is required by the naturalization laws, shall break the continuity of such residence if such alien proves to the satisfaction of the Attorney General and the Court that during all such periods of absence he has been employed by, or under contract with the Government of the United States, or an American institution of research recognized as such by the Attorney General, or was employed by an American firm or corporation engaged in whole or in part in the development of foreign trade and commerce of the United States or a subsidiary thereof, or whose absence abroad was necessary for the protection of the property rights in such countries of such firm or corporation, and such alien proves to the satisfaction of the court that his absence from the United States for such period or periods has been for such purposes."

Such an amendment would be in harmony with Section 308 of the Nationality Act of 1940, relating to clergymen, etc., whose absence abroad is not passed upon until he returns to the United States and applies for citizenship.

Respectfully submitted.

JOSHUA S. KOENIGSBERG,
Attorney at Law, New York, N. Y.

NEW YORK, N. Y., February 17, 1942.

SENATE IMMIGRATION SUBCOMMITTEE ON H. R. 6250,
Senate Office Building, Washington, D. C.

GENTLEMEN: We are submitting for the record of the hearings on H. R. 6250, a statement for the American Committee for Protection of Foreign Born.

Sincerely yours,

ABNER GREEN, *Secretary.*

STATEMENT CONCERNING H. R. 6250 FOR THE RECORD OF THE PUBLIC HEARINGS HELD BY THE SUBCOMMITTEE OF THE SENATE IMMIGRATION COMMITTEE ON TUESDAY, FEBRUARY 17, 1942, AT 10:30 A. M.—ENTERED BY THE AMERICAN COMMITTEE FOR PROTECTION OF FOREIGN BORN, NEW YORK, N. Y.

H. R. 6250, introduced by Representative Samuel Dickstein, of New York, was passed by the House of Representatives without a record vote on January 13, 1942. The bill provides for several technical changes in the Nationality Act

of 1940 and contains a remedial provision granting special naturalization privileges to noncitizens who are 50 years of age or older and who entered the United States before July 1, 1924.

However, the bill contains one provision (sec. 8) which, if enacted, would seriously affect the status and democratic rights of more than 10,000,000 naturalized American citizens.

Section 8 of H. R. 6250 provides that a naturalized citizen may have his citizenship canceled at any time if it is proved that "his utterances, writings, actions, or course of conduct establishes that his political allegiance is to a foreign state or sovereignty."

This provision is unnecessary. The Federal courts sustained action by the United States Government during the first World War canceling the American citizenship of pro-Germans on the ground that their conduct after naturalization establishes that they were guilty of fraud in renouncing allegiance, when in fact they did not give up their allegiance to their country of origin.

We believe that no citizen, whether native-born or naturalized, who seeks to help the enemies of our country should be permitted to be free but should be punished under the laws covering treason already on our statute books and enacted in order to defend the country and to protect us against disloyal Americans.

However, section 8 of H. R. 6250 would undermine the security and the status of naturalized citizens and, thereby, would serve the Axis plans for disuniting the American people by spreading unwarranted suspicion against Americans of foreign birth—the majority of whom are wholeheartedly loyal and devoted to our democracy and anxious to do whatever they can to help win this war.

Under section 8 of H. R. 6250, the conduct of the immigrant after naturalization could be the subject of constant investigation. We want our naturalized citizens to be free and honest Americans. Once an immigrant becomes a citizen, he must be accorded equal treatment with native-born Americans. Any other procedure establishes, in effect, two kinds of American citizens and seriously weakens our unity and democracy in our country by singling out foreign-born citizens for special treatment—a procedure alien to our Constitution and our Bill of Rights.

The American Committee for Protection of Foreign Born supports every measure that will serve to protect America and that will help to insure victory in our war against Hitlerism. Since this provision will hurt, rather than help, our war effort for victory, we urge that section 8 of H. R. 6250 be deleted from the bill and that it be reported to the United States Senate by your committee in amended form.

[Telegram]

STAMFORD, CONN., *February 12, 1942.*

SENATOR MALONEY: The Lions Club of Stamford, Conn., went on record today as being unanimous against H. R. 6250, section 304, and request your support against same.

DR. J. STARRETT,
President Stamford Lions Club.

[Telegram]

STAMFORD, CONN., *February 17, 1942.*

Messrs. DANAHER and MALONEY,
United States Senators:

We, the Stamford Business and Professional Womens Club, Inc., affiliated with the National Federation of Business and Professional Womens Clubs, Inc., protest most strongly against the bill, H. R. 6250—a bill to amend the Nationality Act of 1940, section 304A.

MADELINE H. MACMAHON, *President.*

[Telegram]

BRIDGEPORT, CONN., *February 17, 1942.*

FRANCIS T. MALONEY, Senator:

The Catholic Daughters of America in Connecticut, numbering over 300 members, protest the passage of the bill granting citizenship to people who cannot read or write the English language.

MABEL A. LAVEY, *State Regent.*

[Telegram]

STAMFORD, CONN., February 10, 1942.

HON. FRANCIS T. MALONEY,
Senate, Washington, D. C.:

Stamford Rotary Club today voted 100 percent against bill, H. R. 6250, section 304A. May we have your reaction.

K. F. MERLIN, *Secretary.*

FIRST PRESBYTERIAN CHURCH,
Stamford, Conn., February 14, 1942.

Senator FRANCIS T. MALONEY,
The Senate, Washington, D. C.

MY DEAR SENATOR MALONEY: A good many of us who work with the foreign-born and are trying to make good American citizens out of them are worried over House bill H. R. 6250, section 304A.

If this bill goes through as it now stands a great deal of the work of many of us who have given time trying to train people for citizenship will be completely stultified. One of the problems we have with the foreign-born is that our citizenship is held too cheaply.

I understand that you are connected with this bill and hope very much that you will give it scrutiny from the point of view which I have mentioned.

Sincerely yours,

GEORGE STEWART, *Minister.*

[Telegram]

BRIDGEPORT, CONN., February 9, 1942.

Senator MALONEY,
Senate Office Building, Washington, D. C.

Because time is short Mary Silliman Chapter, Daughters of the American Revolution of Bridgeport, Conn., is appealing to you directly to veto section 304A of House bill 6250 which provides that any alien fifty years old resident since July 1924 shall not be required to speak English or sign his petition for citizenship in his own hand writing or meet other educational requirements.

MARGUERITE STRONG, *Regent,*
KATHERINE T. WADSWORTH,
Chairman of Americanization.

DEPARTMENT OF ADULT EDUCATION,
Hamden, Conn., February 16, 1942.

HON. FRANCIS MALONEY,
United States Senate, Washington, D. C.

DEAR SIR: At a meeting of the State directors of adult education at the New Haven Teachers College, Saturday, February 7, a discussion was held relative to section 304A of H. R. 6250 which, as you know, deals with the naturalization of alien-born people. It was the consensus of the meeting that a committee be appointed by the State supervisor, Dr. E. W. Ireland, with power to act in the submission of objections to this particular section of this bill. The writer was appointed chairman of this committee, assisted by Miss Katherine Finnegan, of New Haven and Miss Bernice Schrader, of Fairfield.

I am enclosing, herewith, a summary of these objections so that you may be enlightened as to the viewpoint of the State directors. It was also felt that it would be an excellent idea if the State department of adult education could be informed in some way of similar acts so that the opinion of people whose business is concerned to a great extent with alien adults in Connecticut might furnish their opinions upon matters of this type. These viewpoints would naturally be based upon many years of experience in this area.

Auent this point, it perhaps would not be out of place here to cite the passage last year of a bill dedicating the Government to the expense of \$14,000,000 for the purpose of assisting in the education of aliens, and so restricting the funds that they were of no practical value to the State or the country whatsoever. Incidentally, these funds were probably of no practical value to the State or the country, anyone anywhere; and it was the opinion of the group that this type of thing is characteristic and is very much to be criticized, since people who make

these laws are prone at times to fail in consulting people with experience in matters of this kind. It is the hope of the directors of adult education in the State of Connecticut that before any further action is taken upon section 304A that very close consideration be given to the enclosed, and that if necessary, people who are in the business be requested to appear personally and express their views in this matter, which is a very important one. It is our feeling that section 304A of this bill should be deleted when it comes up for action on Tuesday, February 17.

Very truly yours,

EDWARD J. BROWN,

For the Committee, State Directors of Adult Education.

At a meeting of the directors of adult education in Connecticut at the State Teachers College on Saturday, February 7, the following dissenting opinions were expressed in reference to section 304A of H. R. 6250. There were no favorable or supporting arguments:

I. This bill is contrary to a fundamental and basic philosophy which has been the guiding force in the field of alien education for many years. Briefly, this philosophy has had for its primary purpose and effective outcome, the education of aliens to the end that they might become good and valuable American citizens, not only as far as the community, State, and Nation are concerned, but also in relationship to their personal lives. Since the close of the last World War, there has been a tremendous hue and cry for the education of aliens that they might be properly assimilated in the great "melting pot" known as America.

II. Last year, following the registration of aliens, it was found that millions of people residing within our boundaries were, in a certain sense, in our country rather than of it. Then Congress, in characteristic fervor, appropriated \$14,000,000 to enlarge and increase the scope of work in this field based, unquestionably, upon the philosophy briefly enunciated above. The passage of section 304A would unquestionably make the use of these funds considerably less effective, since the number of people who could profit from their use would be cut in half. On this basis alone, it perhaps might be advisable to return \$7,000,000 to the Government.

III. The bill states that the alien (lines 4 to 10) "may thereafter file petition for naturalization and be admitted to citizenship upon full and complete compliance with all requirements of the naturalization laws, except they shall not be required to speak the English language, sign declaration or petition in their own handwriting, or meet other educational requirements." This statement immediately poses the questions, "In what language will the oath of allegiance be given?" "Who will sign the petition?" In the State of Connecticut, if it may be assumed, and, I think it well may, approximately 75,000 aliens will be affected by this bill, and it is a matter of policy that an investigation of the application be made. Will it not be necessary to investigate the signer of the petition? If this should be necessary, and it would certainly seem advisable, it would mean that it would have to be an investigation of 150,000 people, etc., ad infinitum. In this connection, may I say that the naturalization services of the State of Connecticut are already working at a tremendous pace and, if this large number of prospective citizens should try to make application on the same day, or the same week, or even the same month, you can well imagine the confusion that will arise. And since, of course, these people are not required to speak English, it must be borne in mind that they will then be subjected to the influence of language newspapers such as Italian, Polish, etc., without the counteracting influence of the American press. To our way of thinking, this is certainly not a desirable situation for American citizens. A newspaper can be insidiously effective at times.

IV. It has already been demonstrated that the effect of this bill upon the aliens has been something like this: you can buy American citizenship for a \$5 bill. One such occasion has already been cited of the individual who came into the court, put down his \$5, and said he wanted to be a citizen. It seems to us to have a deleterious effect, and combined with other circumstances of the moment, might tend to lessen among the foreign classes the high feeling which we hold in respect to the great privileges of American citizenship.

V. In defense of this bill, unquestionably you have heard the examinations are too difficult for people of this age, and consequently they should not be subjected to such rigors. For your information, no one has ever been dismissed from the privileges of citizenship in the New Haven district for 18 years at least, who has indicated that he has made the effort. This destroys the argument.

VI. How many people would be affected by this bill? At the last registration of aliens there were 150,000 aliens in Connecticut, and it is estimated that 50 percent of these would be affected, making a total of about 75,000. While this is not an accurate number it is based upon a survey of New Haven, which in its night schools has an enrollment of 2,100 people of whom 1,100 were found to fall within this group. We should be glad to submit through the State Department more exact figures in this respect.

VII. Finally, it seems to us that the passage of this bill would destroy the moral force which the law as it now stands contains by virtue of its insistence that the alien be educated as far as possible, not only that he may be able, to a certain extent, to appreciate the fullness of American life through the medium of the written and the spoken word but that he may be made to understand that American citizenship is a sacred privilege and one to be striven for with the greatest effort. It is not, indeed, a scrap of paper signed by proxy, and it is more than a declaration to one country of meaningless words in the language of another whose value finally is a \$5 bill.

We, therefore, urge that section 304A on the basis of the aforementioned statements, and others which unquestionably could be added, be stricken from H. R. 6250.

[Telegram]

STAMFORD, CONN., *February 16, 1942.*

Senator F. T. MALONEY,
Senate Office Building, Washington, D. C.

Our council protest section 304A, H. R. 6250. We have worked for years for an intelligent citizen. Citizenship has responsibilities not just privileges. You cannot be for America if you do not know her language, her history, and her Government.

SARAH F. SMITH,
President, Connecticut Council of Adult Education.

[Telegram]

STAMFORD, CONN., *February 16, 1942.*

Senator F. T. MALONEY,
United States Senate, Washington, D. C.

Protest bill H. R. 6250, section 304A. Preparation necessary for citizenship. This plan completely disrupts our program of immigrant education in Connecticut. Measures of this kind weaken our defense and make citizenship meaningless.

LEON C. STAPLES,
Superintendent of Schools.

JANUARY 26, 1942.

HON. FRANCIS MALONEY,
*United States Senator from Connecticut,
Washington, D. C.*

DEAR SENATOR: I understand legislation is pending to allow ignorance for persons over 50 years of age to be a badge of American citizenship. I have charge of the naturalization office in Fairfield County and I have had a good opportunity to observe the pitifully few requirements necessary to pass a citizenship examination. Are we going to eliminate even them?

I have always been sympathetic toward the person seeking citizenship, but I believe it is foolish to encourage sentimentality on the problem, or to make American citizenship so cheap that its value in the minds of the newly made as well as the old citizens is exactly the price of \$5 paid upon filing of the petition.

The proposed legislation will discourage persons from even making the effort to learn. They will own a piece of paper making them citizens, but they will never know what American stands for. If even the simple requisites of citizenship now in existence are abolished, I should also suggest the elimination of the oath of allegiance. Even today, unfortunately, a number of new citizens do not understand the words in the oath of allegiance. If the bars are completely let down, it is ridiculous to act out in open court the mummery of speaking words to persons over 50 which they do not understand, and furthermore, are not interested in understanding. I believe the judges of the individual courts can take care of

deserving cases over certain age limits. They have been doing it in the past. To make this mandatory simply because of one's reaching a certain age limit after living here for a certain number of years, is indeed foolish.

I trust you will do your best to defeat such a proposal.

Very sincerely yours,

GEORGE A. SADEN.

STAMFORD, CONN., February 13, 1942.

Hon. FRANCIS T. MALONEY,
Senator from Connecticut, Washington, D. C.

SIR: As chairman of the Americanism Committee of Stamford Chapter, Daughters of the American Revolution, I feel I must write to you immediately to express my disapproval of H. R. 6250 which I understand is now under consideration by the Senate.

Section 304A seems particularly dangerous. If persons over 50 who entered America before July 1, 1924, are allowed to become citizens without meeting the usual requirements as to an understanding of English and ability to write their signatures, it will be an injustice to all those who have been admitted to citizenship through their own striving to learn our language and to understand the principles of our Constitution. Moreover, it will be an injustice to themselves, for they may easily become prey, perhaps unwillingly, to the pressure of disloyal groups.

Is the oath to be administered in English, or in what language? Can it possibly be constitutional to admit a citizen who does not know to what oath he is swearing?

The National Society of Daughters of the American Revolution has for many years encouraged the newcomers to our land, and any such proposal as that embodied in H. R. 6250 runs in direct opposition to the constructive principles for which it stands.

Thank you for your consideration of this matter.

Respectfully yours,

RACHEL B. (Mrs. W. D.) CANADAY.

JANUARY 30, 1942.

Senator MALONEY,
Washington, D. C.

DEAR SENATOR: In behalf of the many thousands of women, now unable to take advantage of the right to file for citizenship, without first filing first papers, under the acts of and pertaining to that statute which recites (sec. 320 (54 Stat. 1148)) approved October 14, 1940, now before your committee to amend the date to include the year 1925, we urgently solicit your support for an early passage of same. Same bill now before your committee and known as House bill 6250, Nationality Act.

WOMENS VOTER LEAGUE OF SUFFOLK COUNTY.
Mrs. FRANK A. ROCHE, *Executive Secretary.*

HOUSE OF REPRESENTATIVES,
Washington, D. C., February 3, 1942.

Hon. RICHARD B. RUSSELL,
*Chairman, Senate Committee on Immigration,
Washington, D. C.*

DEAR MR. CHAIRMAN: On April 18, 1941, I introduced H. R. 4417, which provides that any alien eligible for citizenship who is 50 years of age or older, who has made a declaration of intention or filed a petition for naturalization, and who has lawfully admitted to the United States for permanent residence prior to February 5, 1917, and has ever since said lawful entry maintained a bona fide residence in the United States, may be naturalized upon full and complete compliance with all requirements of the naturalization laws, with the following exceptions: "Petition for naturalization may be filed without regard for the 7-year limitation on the declaration of intention and the applicant shall not be required to sign his petition in his own handwriting or to speak the English language, and he shall be exempt from all educational requirements. Nothing herein shall be held to waive or in anywise relax the requirement for good moral character."

H. R. 6250, which is now before your committee, is a similar bill and contains most of the provisions of my bill. I therefore ask your committee to vote for the

passage of this bill, because it gives relief from the stringent naturalization laws to the real forgotten people of our Nation. Some of these people came to this great America in the 1880's and 1890's, young, honest, industrious people, who never really had the time or the opportunity to learn how to read and write. They married, had large families, and have given their best years in honest labor. Many are property owners and taxpayers. Many had sons and daughters who served our great country in the World War and are today giving their lives in the great battle in which we are now engaged, for the preservation of our free institutions. The sons and daughters of others are today in the vanguard of America's progress. Yet these same clean-living people of America cannot become citizens unless they pass an examination that would probably "flunk" a high-school graduate or perhaps a college graduate. If the only requirements for citizenship were contributions to national wealth through honest labor and love for democracy, almost all of our noncitizens could easily become citizens.

There are thousands of people in the United States who have made application for their first and second papers but who failed to pass the examination. In making application they renounced allegiance to their native countries, and yet they are not citizens of the United States. They love America, they belong to America, they are willing to fight to defend America and keep it democratic and free, so why deny them citizenship?

The Committee on Immigration and Naturalization of the House, to whom this bill had been referred to amend the Naturalization Act of 1940 so as to strengthen our national defense, approved it with the recommendations of the Attorney General and the Navy and War Departments, and it was passed unanimously by the House on January 13. I hope your committee will favorably consider H. R. 6250 at an early date.

Thanking you for your kind attention to my request, I remain,

Sincerely yours,

THOMAS D'ALESSANDRO, M. C.,
Third District, Maryland.

[Telegrams]

DAYTON, OHIO, *February 20, 1942.*

Senator FRANCIS MALONEY,
Senate Committee on Immigration, Washington, D. C.

International Institute Committee of Dayton Young Women's Christian Association urges favorable consideration of H. R. 6250, especially section 3, waiving educational requirements for naturalization of aliens over 50 years.

EVELYN C. BASSETT, *Secretary.*

GREENWICH, CONN., *February 19, 1942.*

Senator MALONEY: The Third District Department of Connecticut, the American Legion, meeting, held February 18, voted unanimously in opposition to section 304A of H. R. 6250 which would permit the making of citizens without the requirement to read write and to speak English.

GEO. C. DELAGE,
District Adjutant.

DULUTH, MINN., *February 20, 1942.*

Senator FRANCIS MALONEY: We urge your support of H. R. 6250 especially section 3.

INTERNATIONAL INSTITUTE OF THE Y. W. C. A.,
H. TIBBETTS, *Chairman.*

PATERSON, N. J., *February 19, 1942.*

Hon. FRANCIS MALONEY: Nationalities communities committee, Young Women's Christian Association, Paterson, N. J., urges passage of bill H. R. 6250, section 3, knowing great difficulties of old people of foreign births, loyal, with American-born children, to meet educational requirements on account of lack of early training in native country.

LEONA C. HAGEN.

PATERSON, N. J., *February 19.*

Hon. FRANCIS MALONEY: Young Women Christian Association, Paterson, N. J., urges passage of bill, H. R. 6250, especially urge passage of section 3. Because of our experience in working with loyal aliens. Over 50 with American-born children, realize imperative need for adjustment education requirements.

NELL DOREMUS.

SAN ANTONIO, TEX., *February 20, 1942.*

Senator FRANCIS MALONEY: We urge you support and work for H. R. 6250.

MARIE S. WATKINS,
Executive, International Institute.

NEW YORK, N. Y., *February 19, 1942.*

Senator FRANCIS MALONEY: Out of my experience as field secretary for 30 local Y. W. C. A. branches and departments working directly with foreign-born women, I strongly urge passage of section 3, H. R. 6250, as the only solution to the problem of elderly illiterates.

ETHEL BIRN,
National Board, Y. W. C. A.

NEW YORK, N. Y., *February 19, 1942.*

Senator FRANCIS MALONEY: The public affairs committee, drawing on the experience of 30 years of work with women of foreign birth through the national board of the Y. W. C. A., urge the passage of section 3 of H. R. 6250 as the only realistic way of lifting the older-age group out of alien classification.

Dr. EMILY HICKMAN, *Chairman.*

COMMON COUNCIL FOR AMERICAN UNITY,
New York City, February 18, 1942.

Hon. FRANCIS MALONEY,
United States Senate, Washington, D. C.

DEAR SENATOR MALONEY: In connection with the hearings which you have been holding on H. R. 6250, to amend the Nationality Act of 1940, I want to express the support of our organization for this important measure.

From the standpoint of the present emergency, one of its most important provisions, we believe, is section 3 which would facilitate the naturalization of aliens, 50 years of age or over, who have resided in the United States for at least 17 years and who meet all of the requirements of our naturalization laws other than the so-called educational requirements. Some doubt, we understand, has been expressed regarding this particular provision, but from long experience with work in this field, we believe the provision is desirable, particularly at this time. Most of those affected are men and women who were denied educational opportunities in their home countries and who are beyond the years when it is easy to learn a new language. Where these men and women desire to become citizens and meet the rigid tests of character and loyalty, we believe it will be an important contribution to national unity and sound citizenship and morale, if their naturalization is permitted.

Section 8 of the bill permitting the cancelation of naturalization on the ground that a person's "utterances, writing, actions or course of conduct, establishes that his political allegiance is to a foreign state or sovereignty" raises a number of serious questions in the field of civil liberties. Perhaps the war emergency justifies so far-reaching a provision, but we believe it should be limited to the war period and not made a part of our permanent legislation. We hope your committee will give favorable consideration to such an amendment.

Sincerely yours,

READ LEWIS, *Executive Director.*

THE MIDDLETOWN CITY SCHOOL DISTRICT,
Middletown, Conn., February 11, 1942.

SENATOR FRANCIS T. MALONEY,
Senate Office Building, Washington, D. C.

MY DEAR SENATOR: For many years city and State governments have believed it desirable to educate the adult alien. To this end, sums of money have been appropriated for the establishment of public schools at which the adult alien has opportunity to learn our language, customs, and ideals. The action of the United States Congress, in making available somewhat more than ten million dollars to aid in wiping out illiteracy and preparing aliens for good citizenship, indicates that our National Government shares this belief.

Recently I have heard rumors, for which I have been unable to find any confirming reports in the newspapers, that the House of Representatives has passed a bill which would eliminate all educational requirements for naturalization of aliens over 50 years of age who have fulfilled certain other requirements.

If this rumor has foundation, I wish to express my opposition to the passage of any such bill. The opportunities for meeting educational requirements are present today as they have been for many years. Unwillingness on the part of some aliens to avail themselves of these opportunities should not be rewarded, and thus lower the standards for citizenship both educationally and morally.

If it is desirable to admit to citizenship a larger number of aliens, may I suggest that this could be accomplished by increasing the personnel of the Immigration and Naturalization Service so that the tremendous backlog of candidates, presumably well qualified, could be acted upon. Whereas the law requires a waiting period of 90 days from the time the petition is presented until the candidate may appear in court, it is usually well over a year before he is called.

If a bill such as I have described above is under consideration, kindly send me a copy of it.

Yours truly,

EDWARD B. FILLBACH.

GOVERNOR JOHN WINTHROP CHAPTER,
DAUGHTERS OF THE AMERICAN REVOLUTION,
Stamford, Conn., February 13, 1942.

HON. FRANCIS T. MALONEY,
Washington, D. C.

MY DEAR MR. MALONEY: I wish to enter a protest for myself and 50 members of the Governor John Winthrop Chapter, Daughters of the American Revolution, against H. R. 6250, section 304A, which amends the Nationality Act, 1940.

This amendment if passed will let down the bars to such an extent that what has been gained in past years is simply destroyed. To my mind this is a very weak legislation, and should not have been passed in the House without it being brought to the attention of the American people.

We have tried to educate our aliens through the night schools. If they are allowed to become citizens without speaking the English language or writing their names, how in God's name are they going to vote intelligently?

Very truly yours,

LILLIE M. WILKINSON, Regent.

THE FELLOWSHIP OF RECONCILIATION,
New York City, February 4, 1942.

HON. RICHARD B. RUSSELL,
Chairman, Senate Immigration Committee,
Washington, D. C.

MY DEAR SENATOR RUSSELL: I am confident that the 10,000 members of the Fellowship of Reconciliation in the United States would wish me to express to your committee their strong disapproval of H. R. 6250, the bill which would permit our courts to revoke the citizenship of any naturalized American whose "utterances, writings, actions, or course of conduct establishes that his political allegiance is to a foreign state or sovereignty."

I urge that your committee give a full hearing on the bill and that report against so un-American a proposition as the proposal just cited. If we wish for American unity it would be the greatest mistake to discriminate between different classes of American citizenship as the above bill tends to do. Democratic procedure makes it necessary that naturalized citizens be regarded as just as good

native-born citizens by our law. No class of American citizens should have special privileges and no class be subject to arbitrary discrimination.

Hoping that your committee and Members of the Senate may see the thing this way, I am

Yours very truly,

JOHN NEVIN SAYRE, *Secretary.*

YALE UNIVERSITY SCHOOL OF LAW,
New Haven, Conn., February 5, 1942.

HON. FRANCIS T. MALONEY,
United States Senate, Washington, D. C.

DEAR SENATOR MALONEY: I am informed that you are the chairman of the subcommittee before which H. R. 6250 is pending. In that bill there is a very objectionable provision which I have taken the liberty to discuss in a letter written last week to Senator Danaher, copy of which I herewith enclose. There is already adequate provision in the statutes for canceling certificates procured through fraud or illegally. If the objectionable paragraph of H. R. 6250 were included it would open the field to witch-hunting.

With kind regards, I am,
Very sincerely yours,

EDWIN M. BORCHARD.

YALE UNIVERSITY SCHOOL OF LAW,
January 28, 1942.

HON. JOHN A. DANAHER,
United States Senate, Washington, D. C.

DEAR MR. DANAHER: The House has passed and Senate will shortly consider H. R. 6250 permitting the courts to revoke the citizenship of any naturalized Americans whose "utterances, writings, actions or course of conduct establishes that his political allegiance is to a foreign state or sovereignty."

Operating under the old law, the Department of Justice during the last war brought a number of actions under the act of 1906 for the cancelation of naturalization certificates because of alleged fraud in obtaining them where the citizen had declined to purchase Liberty bonds or had expressed his belief that the war was not sensible or sound and that it would not produce the advertised results. In other words, the proceedings were directed against naturalized citizens, many of whom had been citizens for decades, who had expressed opposition to the war. The "fraud" was found in the alleged concealment of the supposed fact that at the time of attaining naturalization they had concealed their implicit allegiance to the Kaiser.

These prosecutions were not a credit to the United States nor should the courts have yielded to the importunities of the Department of Justice. There are today members of the Federal bench who doubted the advisability of the 1917 war and declined to purchase Liberty bonds on that account. With this new H. R. 6250 the Department of Justice would have a free hand in canceling naturalization certificates of people who express doubt about this war. The words "utterances, writings, actions, or course of conduct" are so broad as to permit any unpopular people or group to be attacked. Even if the issue is left to a jury, times of excitement will permit the Government to ride roughshod through naturalizations if they have as broad a mandate as this act affords. Although Attorney General Biddle is not an A. Mitchell Palmer, his subordinates throughout the country may readily construe an unpopular utterance or act as an indication of political allegiance to a foreign state, whatever that may mean.

This opportunity for witch-hunting should be prevented. I am surprised that Attorney General Biddle has permitted it to be presented as a bill. The bill as it stands might pretty effectively cripple the freedom of speech of naturalized American citizens. I hope you will use your influence to prevent it from being adopted by the Immigration Committee, which I understand has the bill in charge, or by the Senate should the committee approve.

Very sincerely yours,

EDWIN BORCHARD.

UNITED STATES SENATE,
COMMITTEE ON NAVAL AFFAIRS,
January 31, 1942.

HON. FRANCIS MALONEY,
United States Senate, Washington, D. C.

DEAR SENATOR MALONEY: I am enclosing communication sent me by J. Chafee, Jr., of the Law School of Harvard University, which I wish you would consider when taking up for action H. R. 6250, pending before you as subcommittee of the Senate Immigration Committee.

With kindest regards,
Sincerely yours,

DAVID I. WALSH.

LAW SCHOOL OF HARVARD UNIVERSITY,
Cambridge, Mass., January 20, 1942.

HON. DAVID I. WALSH,
Senate Office Building, Washington, D. C.

DEAR SENATOR WALSH: Naturalized citizens in the United States appear to be gravely affected by sec. 8 of H. R. 6250, the nationality bill which has passed the House and is now pending in the Senate. I understand that it may be called up for action this week. Consequently I am taking the liberty of calling the matter to your attention with the hope that you will have the problem in mind for consideration when the bill comes up.

Section 8 amends section 338 (a) of the Nationality Act of 1940 by extending the grounds for revoking naturalization. The new provision as amended on the floor of the House by Representative Graham (Congressional Record, vol. 88, p. 313, January 13, 1942) would make section 338 (a) read as follows, with numerals inserted by me and with the new part in italics at the end:

"It shall be the duty of the United States district attorneys * * * to institute proceedings in any court * * * in the judicial district in which the naturalized citizen may reside at the time of bringing suit, for the purpose of revoking and setting aside the order admitting such person to citizenship and canceling the certificate of naturalization (1) on the ground of fraud or (2) on the ground that such order and certificate of naturalization were illegally procured or (3) on the ground that his utterances, writings, action, or course of conduct establishes that his political allegiance is to a foreign state or sovereignty."

The important point is, that the proposed new ground for canceling naturalization is entirely different in its nature from the two existing grounds. These existing grounds of fraud or illegality mean that there was something wrong with the naturalization itself. The new ground has nothing to do with the validity of the original naturalization, but merely requires that a single judge sitting without a jury shall find that there is something wrong with the man himself. If he says or does something 20 or 30 years after he became a citizen, and this is held to show his disloyalty, then he can be turned into an alien subject to deportation.

In other words, the existing law requires proof that the naturalization itself was vitiated by fraud or illegality. Subsequent conduct of the naturalized citizen is material only as evidence of conditions at the time of the naturalization. For example, if a German becomes a citizen on Monday, and on Tuesday joins a Nazi band where he yells "Heil Hitler" this indicates that he really did not intend to fore swear allegiance to Germany. In some cases the courts have gone pretty far in drawing an inference at fraud at the time of the naturalization from conduct several years later, but at least the judge was always bound to find a connection between the subsequent behavior and the date of naturalization. The proposed new ground does away with all need for such a connection. The district attorney and the judge may be fully convinced that everything about the naturalization was legal and honest, and that what they believe to be attachment to a foreign state did not begin in the man's mind until years after he became a citizen. Even so, he can be denaturalized.

Is this big departure from the existing law desirable?

In the first place, there is a serious risk of mistakes. In times of excitement, arguments in favor of a foreign country which happens to be unpopular may be regarded as proof of allegiance to that country. Different countries are unpopular at different times and places. Italians who stood up for Mussolini during the invasion of Ethiopia may find their words used now as a basis for denaturalization. Suppose that the Government of the United States requests the use of ports in

Eire for its battleships, and President De Valera prefers to maintain neutrality. A naturalized Irishman who makes a heated defense of De Valera's position in opposition to that of our own Government might be charged with utterances establishing that his political allegiance was to a foreign state, Eire. If the Irish ports were badly needed by our Navy, an emotional judge might conceivably sustain the charge.

In the second place, is the change necessitated by any present danger? If a naturalized citizen commits treason, or violates the Espionage Act, or fails to register when he is affiliated with some foreign government or organization, then he is subject to criminal penalties just like a native-born citizen. The present legislation seems amply sufficient to reach disloyal conduct on the part of any citizen, whether born here or abroad. Hence there does not seem any strong reason for subjecting naturalized citizens to the additional punishment of the proposed bill.

In the third place—and this is the biggest objection to the new provision—I feel very strongly that it has been a great tradition in the United States since the very beginning that naturalized citizens are just as much citizens as those who are born here. We are all Americans. So long as his naturalization was not vitiated by fraud or illegality, he has every privilege of a native citizen with the single exception that he cannot become President. Otherwise all citizens are treated alike. The proposed provision is a bad break with this great tradition. It singles out naturalized citizens for a special kind of punishment from which native-born citizens are immune. I like Representative Fish's statement that it sets up a "second-class citizenship." This policy seems to me a terrible thing to do even if there were no risks of bad mistakes in the actual administration of denaturalization. The proposed provision says to millions of citizens: "Just because you are naturalized, you cannot behave like those who are born in this country. You must watch your step when you talk or write. Even if you do not violate any criminal law, you may find yourself an alien again, even an enemy alien if you came from one of the countries we are now fighting. Then you can be deported or handled in some other way like an alien. So watch your step. Don't think you have the privileges of those born in this country. You are just a naturalized citizen, remember that." In short, whatever safeguards may seem necessary in the present crisis should be applied to all citizens without any discrimination.

I shall be very grateful if you will give the provision study.

With warm regards, I am

Yours sincerely,

J. CHAFEE, Jr.

SALEM, CONN., *January 29, 1942.*

HON. FRANCIS T. MALONEY,
Senate Office Building, Washington, D. C.

DEAR SENATOR MALONEY: I am writing you about a matter in which the American Civil Liberties Union is much interested. You may remember that I am a member of the board of that organization, which believes that "eternal vigilance is the price of liberty."

As I understand it, H. R. 6250, now before a subcommittee of the Senate Judiciary Committee, of which you are a member, provides among other, laudable objectives, that citizenship can be taken away from a naturalized citizen if his "utterances or writings" show him to owe allegiance to another country. We have always felt that legislation of this kind is likely to restrict freedom of speech unnecessarily, and constitutes a dangerous departure from established civil rights. In this case, too, the Civil Liberties Union feels concerned at the notion of conditional citizenship that seems to be established by the fact that naturalized citizens can have their citizenship revoked if they don't behave.

This is not the same as the procedure which permits citizenship to be revoked because of fraud in obtaining it; for the legal concept there seems to be that citizenship was never really obtained. The proposed new law would put naturalized citizens in a lower class of citizenship than those native born.

Very sincerely yours,

ALFRED M. BINGHAM.

CHICAGO CIVIL LIBERTIES COMMITTEE,
January 29, 1942.

Senator RICHARD B. RUSSELL,
Chairman, Senate Immigration Committee,
Senate Office Building, Washington, D. C.

DEAR SENATOR RUSSELL: Our committee of over 1,000 civic leaders in the Chicago area urges you to speak and vote against H. R. 6250, which would permit the courts to revoke the citizenship of any naturalized Americans whose "utterances, writings, actions, or course of conduct establishes that his political allegiance is to a foreign state or sovereignty."

This bill is now before your committee—Senate Immigration Committee. We request that a hearing be held on this bill, and that you speak against the bill before the committee.

This proposal is unprecedented. The courts may now revoke citizenship only for fraud committed at the time of naturalization. Under this bill any evidence of allegiance to a foreign government years after naturalization could be used to revoke citizenship. In times of excitement, it could be used against persons belonging to any unpopular nationality group. Its dangers are almost limitless. It could be a weapon of intolerance and prejudice on the part of judges, who alone would decide cases without a jury; and it would open the doors wide to private informers, misinterpreting chance remarks or attitudes. The law should be left to stand as it is. This proposal would create two classes of American citizens with differing rights—one native-born and the other naturalized citizens whose every utterance or writing would be a possible subject for suspicion—and action.

With best regards, I am,

Yours sincerely,

(Signed) IRA LATIMER,
Executive Secretary.

NORRIS RELIGIOUS FELLOWSHIP,
Norris, Tenn., January 27, 1942.

Senator RICHARD B. RUSSELL,
Chairman, Senate Immigration Committee, Washington, D. C.

DEAR SENATOR RUSSELL: As chairman of the Senate Immigration Committee you have before you a bill passed by the House (H. R. 6250) which would permit the courts to revoke the citizenship of any naturalized American whose "utterances, writings, actions, or course of conduct establishes that his political allegiance is to a foreign state or sovereignty."

I am in favor of maximum civil liberties consistent with national safety but this bill, particularly section 8, could and might be interpreted in ways prejudicial to millions of naturalized citizens bringing them under all sorts of suspicion. It certainly would raise in the minds of naturalized citizens grave doubts about their own standing, the value of forswearing their allegiance to the government of the land of their birth and their solemn oath of allegiance to our own Government.

Naturalized and native-born citizens are fighting together in all branches of our armed forces, and together they are shouldering responsibilities for the common cause in civilian undertaking so essential to victory. This unity of purpose and effort might be imperiled if the entering wedge of a divisive wedge should be driven into the common effort by making distinctions between native-born and naturalized citizens. Let us all be Americans.

I sincerely hope that H. R. 6250 will be given a public hearing soon, that it will have your wholehearted opposition and that the law as it now stands will have your wholehearted support.

Sincerely yours,

T. B. COWAN.

Hon. RICHARD B. RUSSELL,
Chairman, Senate Immigration Committee, Washington, D. C.

DEAR SIR: As a native-born American citizen, and supporter of the American Committee for Protection of the Foreign Born, I disapprove section 8 of proposed nationality statute, H. R. 6250, providing for cancellation of citizenship at any time if it is proved that "his utterances, etc., establish that his political allegiance is to a foreign state or sovereignty."

The repugnance of this section lies in making the immigrant after naturalization constantly the subject of investigation. The foreign-born should not be singled

ROCHESTER, N. Y.

out for special treatment. On a democratic basis once naturalized he should be accorded equal treatment with the native-born.

May I urge you to arrange public hearings on the measure?

Yours very truly,

JAMES L. BREWER.

AMERICAN CIVIL LIBERTIES UNION,
January 21, 1942.

Senator RICHARD B. RUSSELL,
Washington, D. C.

DEAR SENATOR RUSSELL: We are writing you as chairman of the Senate Committee on Immigration to request that a full hearing be held on the measure which is now before you for consideration, namely, H. R. 6250, amending the Nationality Act of 1940.

After studying section 8 of this bill, we are convinced that its provisions conflict sharply with our traditional views as to freedom of speech. If a former alien's citizenship may be canceled by the method set forth in this section it will jeopardize the citizenship of millions of people and will do it on perhaps flimsy ground.

We should be slow indeed to tamper with a matter of such consequence as a person's citizenship. Revocation measures should be taken only after it has been proven that fraud at the time of naturalization was committed. In time like these when hysterical moves may be made against naturalized citizens, we should be extra careful to safeguard their status.

For these reasons we strongly urge you to permit lengthy discussion of this bill before it is brought before the Senate for action. We hope that the measure will be opposed by you as chairman of the committee for the reasons set forth above.

Sincerely yours,

CLINTON J. TAFT, *Director.*

NATIONAL FEDERATION FOR CONSTITUTIONAL LIBERTIES,
Washington, D. C., February 18, 1942.

DEAR SENATOR MALONEY: The enclosed statement on H. R. 6250 has been submitted to a subcommittee of the Senate Committee on Immigration, which has just completed hearings on the legislation.

May we ask that you give this statement your careful consideration?

Sincerely yours,

GEORGE MARSHALL, *Vice Chairman.*

STATEMENT OF NATIONAL FEDERATION FOR CONSTITUTIONAL LIBERTIES
BEFORE A SUBCOMMITTEE OF THE SENATE COMMITTEE ON IMMIGRATION ON
H. R. 6250

The National Federation for Constitutional Liberties, as an organization devoted to the defense of civil liberties, regards the winning of the war against the Axis, in which our country is now engaged, as the first requirement for the maintenance and extension of civil liberties in this country and for their reestablishment all over the world. For this reason, the national federation unreservedly supports the President's war policy.

Because of the detrimental effect it would have upon the success of our war effort, we are concerned about section 8 of H. R. 6250, the bill now being considered by your subcommittee.

Section 8 provides that any naturalized citizen may have his citizenship revoked at any time "on the ground that his utterances, writings, actions, or course of conduct establishes that his political allegiance is to a foreign state or sovereignty."

In effect, this section would provide for a kind of provisional citizenship, always subject to revocation. It would bring into constant, unending question the status of over 10,000,000 naturalized American citizens. It would make them insecure in their citizenship, with suspicion and the threat of investigation always hanging over them, even though the very act of becoming naturalized tested their worthiness to be American citizens.

In other words, this section would create for the first time two classes of citizenship. The first class, being native, would be forever protected from those who seek to deprive them of their citizenship. The second class, comprising more than 10,000,000 naturalized citizens, would become a group with lesser right, an inferior class, for they would hold their citizenship on sufferance.

One hundred and eighteen years ago Chief Justice John Marshall of the Supreme Court wrote on the subject of the naturalized citizen:

"He becomes a member of the society possessing all the rights of a native citizen, and standing, in the view of the Constitution, on the footing of a native. The Constitution does not authorize Congress to enlarge or abridge those rights. The simple power of the National Legislature is, to prescribe a uniform rule of naturalization, and the exercise of this power exhausts it, so far as respects the individual * * *. He is distinguishable in nothing from a native citizen, except so far as the Constitution makes the distinction. The law makes none."—*Osborne v. U. S. Bank*, 9 Wheaton 738 (1824).

To depart from this policy would serve the Axis well. It would disrupt the unity which was welded between all loyal Americans by the tragedy of Pearl Harbor.

From the point of view of safeguarding the country against proenemy individuals, section 8 of this bill has not been shown to be necessary. We believe that procedures under the laws covering treason already on our statute books are entirely adequate in the present emergency.

We ask your committee to bear in mind the histories of many of our 10,000,000 naturalized citizens. They came to the United States seeking refuge from oppression. When they were naturalized, they accepted all the duties and responsibilities of full citizenship. Singling them out for treatment different from that accorded native-born citizens is a procedure which the Bill of Rights and the fourteenth amendment to the Constitution sought to prevent. For this reason, their American citizenship has become their most cherished possession. To preserve the rights they deem to be inherent in that citizenship, they are offering their energy, their work, their very lives, in the war in which we are engaged today.

For these reasons, we ask that section 8 be deleted from H. R. 6250, in order that we may speed the day of victory over the Axis enemy.

Submitted February 18, 1942.

NATIONAL FEDERATION FOR CONSTITUTIONAL LIBERTIES,
1400 L Street N.W., Washington, D. C.,
1123 Broadway, New York City.

378 COLLEGE STREET,
Lewiston, Maine.

Senator FRANCIS MALONEY,
Washington, D. C.

DEAR SIR: I am authorized by the International Institute Committee of Lewiston and Auburn, Maine, to write you that we are in favor of H. R. 6250 which you are sponsoring. We believe that it is a service both to our country and to aging aliens, many of whom have lived here a long time and are loyal Americans who had in the old country no opportunity for early education, to admit them to citizenship without the usual educational requirements.

Sincerely yours,

MIRIAM MABEE,
Chairman, International Institute Committee.

THE YOUNG WOMEN'S CHRISTIAN ASSOCIATION,
Baltimore, Md., February 20, 1942.

Senator FRANCIS MALONEY,
Chairman of the Subcommittee of the Senate Immigration Committee,
United States Senate, Washington, D. C.

MY DEAR SENATOR MALONEY: The bill H. R. 6250 is now in the Immigration Committee. I am very much interested in its passing, and especially concerned about section III. It does seem rather artificial to force people who have proven themselves good citizens for many years to read and write in English, when they have great difficulty to read and write in their own language.

What we need now is people who really believe in American principles, without placing too great hardship on them at minor points. I think we sometimes forget that we have a lot of American-born citizens who can neither read nor write, although I fully realize that this is not a thing which we want to encourage.

Sincerely yours,

GLADYS M. KENSLEK,
Program Administrator.

(Whereupon, at 12:05 p. m., the hearing was adjourned to Thursday, February 19, 1942, at 11 a. m.)

TO AMEND THE NATIONALITY ACT OF 1940

THURSDAY, FEBRUARY 19, 1942

UNITED STATES SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON IMMIGRATION,
Washington, D. C.

The subcommittee, consisting of Senators Maloney, Herring, and Ball, met pursuant to adjournment, at 11:10 a. m., Hon. Francis Maloney (chairman), presiding.

Present: Senator Maloney (chairman).

Senator MALONEY. The meeting will come to order.

I have a memorandum here that Mr. Isidore Hershfield, 1317 F Street NW., representing the Hebrew Immigrant Aid Society, would like to be heard.

Mr. HERSHFIELD. Yes, sir.

STATEMENT OF ISIDORE HERSHFIELD, COUNSEL AND WASHINGTON REPRESENTATIVE, HEBREW IMMIGRANT AID SOCIETY, WASHINGTON, D. C.

Senator MALONEY. You may proceed, Mr. Hershfield. If you will just verify what I have said, and identify yourself, for the reporter.

Mr. HERSHFIELD. My name is Isidore Hershfield. I am the counsel and Washington representative of the Hebrew Immigrant Aid Society, and my office is at 1317 F Street NW.

Our society is a national welfare organization, in existence 55 or 56 years, and its work is indicated by its name; it looks after immigrants and their difficulties at the time of arrival and before coming here and their difficulties after they are here while they are still aliens and assisting them in becoming American citizens. Our Americanization and naturalization work is an important part of our activities. We have about 9 or 10 branches in various parts of the United States, in the East and the West. It is a nonprofit organization, supported entirely by voluntary contributions.

I am here today to speak on H. R. 6250, and I understand that the subcommittee are particularly interested only in two sections thereof, which have been controversial and have been under discussion; those are section 3 and section 8. I shall, therefore, address myself to those sections only, unless the Senator wishes to ask me anything about any other part of the bill.

Section 8 is the provision under which the citizenship of an alien, or a naturalized citizen, could be canceled or revoked upon proof satisfactory to the court that his real loyalty and allegiance is to some foreign country.

We favor that provision. We do not believe that any man should become and continue to be a citizen of the United States through naturalization if in his heart he really is a subject of some other country and if his loyalty and allegiance is to some other country. He would not have dual allegiance, necessarily, but he would have worse than dual allegiance; he would have a nominal paper allegiance to the United States, evidenced by a certificate of naturalization, but if his course of conduct shows that he really owes allegiance to a foreign country I don't think he should be permitted to masquerade as an American citizen and have the benefit of American citizenship, and that his citizenship should be revoked.

It would enable our Government to deal effectively with many naturalized citizens, like Fritz Kuhn of the Bund, and others who are not subject to any laws or regulations as aliens simply because they are naturalized citizens. If their citizenship can be revoked and their certificate canceled, why then our Government and the Department of Justice and the other departments could deal with them as aliens, and in many cases as enemy aliens, and restrict them as to travel and other things, all for the welfare of the United States.

Now, as to section 3: Section 3 permits the naturalization of aliens who have been in the United States before 1924 and who are 50 years of age or upwards, without requiring them to be able to speak, read, and write the English language.

Now, while primarily we would offhand say that every man who seeks to become an American citizen should speak, read, and write the English language, as a matter of fact there are a large number of aliens who, through no fault of their own, have not acquired speaking and writing ability of the English language. That is particularly true of the older ones. And this act would refer only and give advantages and benefits only to aliens who are 50 years of age and over and who came here at least 18 years ago, in 1924.

Now, a man who came here in adult life and who at once had to devote himself to earning a livelihood, and frequently living in foreign groups of a single nationality, is under a great handicap in acquiring a new language. He does acquire a workaday knowledge of the English language, so he can talk and get along with people. But he cannot get an education such as is required in the Naturalization Bureau.

In these cases, and these cases only, this bill would seek to waive that requirement for men of that kind.

It would be interesting, Senator, for me to refer to some figures very briefly. I am not a great advocate of statistics, but I think these brief statistics are very enlightening.

In 1940, Congress enacted an alien registration law, requiring all aliens of every kind to register. That gives us at least the number of aliens in this country. The total number registered was—6,000,000?

Mr. SHAUGHNESSY. No; 4,700,000.

Mr. HERSHFIELD. Four million seven hundred thousand; which showed at once that the figures used by some people who do not like aliens, that there are ten or twenty million or more aliens in the United States; that those figures are entirely untrue. Practically every alien did register. I think that the Department would say there are very few aliens who did not register in 1940.

Now, of these 4,700,000 who registered, 698,000 signed their registration applications by a mark; they could not write their signature in full. Of those 698,000, 634,000 were men over 45 years of age. In rough figures, 90 percent of those illiterate aliens were men who were 45 years of age and over. Indicating that they had come here at such an age that they could not go to school very well, and in many of those places there was no night school and no facilities for learning.

I will continue these figures. Now, as to the age group of 634,000 who were 45 years of age and over, as to their date of arrival, 239,000 of this 634,000 had entered the United States before 1906. Now, they were men, many of them 60, 65, and 70 years of age and over, that had been in this country before 1906; a minimum of 34 years' residence in the United States. Another 308,000 had arrived here between 1906 and 1917—1917 was the date of the test in the immigration law. And only 86,000 came here between 1917 and 1924.

So you see that their inability to speak English well and write English at all, perhaps is not due to their unwillingness to acquire the language of our country, but to their inability to acquire it.

You want to recall also, Senator, that many of these men did not have opportunities for much schooling in their own countries. Illiteracy is a reflection, not upon the individual; it is a reflection upon the social and educational conditions of the country from which he came. Nobody wants to be illiterate. In our country we have very little illiteracy. And the percentage of illiteracy in a country depends very much upon the social and educational conditions of the State. In the State that has a good educational system and where people have their public schools, you find very little illiteracy. States that have not so good an educational system or don't follow it up with universities available to the public and things of that kind, have a much higher illiteracy. So that illiteracy is not due to the fact that the individual wants to be illiterate, but that he could not become literate. In the old country there were no free public schools or no opportunity to get this education.

Now, we have this large mass of men of older ages who are loyal to the United States; and whose loyalty will have to be established at the time of their naturalization. We are not waiving anything else under this bill. And it is not good for the country—and I speak not only as the representative of our society on that point, but as an individual, as a native-born American interested in the welfare of my country—it is not good for our country to have an indistinguishable mass of noncitizens, whose loyalty is unquestioned, who in their family life have led good lives, whose children are citizens, whose neighbors are citizens, who are interested in community work of one kind or another, and who in all respects are good citizens except they have no naturalization certificate and could not get that naturalization certificate because of this educational disqualification.

Pass this act and these people will become citizens, and when they become citizens they are not only gaining an advantage for themselves, but our country gains an advantage. We have the right, under our various laws, State, national, and local, to demand many things from citizens that we cannot demand from aliens—jury duty; the right to bear arms in an emergency like this, or at any time; to be called out by the sheriff of the county to aid in preserving peace—these things

are obligations of a citizen, and only a citizen is required to give them. Now, if we can make citizens of these people, we put them under the same obligation.

I think that covers about what we wish to say, unless you have anything more to ask me, Senator.

Senator MALONEY. No. The situation has been fairly well covered by earlier witnesses. I think you have so presented your view as to give new light on the bill. But I don't have any questions. I want to thank you very much for coming, Mr. Hershfield.

Mr. HERSHFIELD. Not at all, sir.

Mr. SHAUGHNESSY. Mr. Chairman, may I say just a word?

Senator MALONEY. Yes, Mr. Shaughnessy.

STATEMENT OF EDWARD J. SHAUGHNESSY, DEPUTY COMMISSIONER, IMMIGRATION AND NATURALIZATION SERVICE, DEPARTMENT OF JUSTICE

Mr. SHAUGHNESSY. Edward J. Shaughnessy, Deputy Commissioner, Immigration and Naturalization Service, Department of Justice.

With the permission of the Chair, I would like to have this brief memorandum explaining section 3 of H. R. 6250 made a part of the record.

Senator MALONEY. Is that submitted as a result of the request which I made to Mr. Shoemaker yesterday?

Mr. SHAUGHNESSY. That is correct, sir; this is the memorandum on it.

Senator MALONEY. That will be made a part of the record. (The memorandum referred to is in full as follows:)

MEMORANDUM RE EXEMPTION FROM THE EDUCATIONAL REQUIREMENTS FOR NATURALIZATION OF PERSONS AT LEAST 50 YEARS OF AGE

Section 3 of H. R. 6250 to amend the Nationality Act of 1940, as passed by the House of Representatives January 13, 1942, reads as follows:

"SEC. 304A. An alien, if eligible to naturalization, fifty years of age or over, who has resided in the United States continuously since prior to July 1, 1924, and who, on or prior to the effective date of this section, has made a declaration of intention to become a citizen which is not more than seven years old, or who, within two years from the effective date of this section, shall make a declaration of intention, may thereafter file petition for naturalization and be admitted to citizenship upon full and complete compliance with all requirements of the naturalization laws, except that he shall not be required to speak the English language, sign his declaration or petition in his own handwriting, or meet other educational requirements."

This section would permit many elderly persons whose loyalty to the United States is unquestioned but who through lack of opportunity or age are unable to pass the educational test for naturalization to become citizens.

That many members of this group are deeply interested in preparing themselves for citizenship is evidenced by the reports from citizenship classes in various States to the effect that a considerable number of the older group of students have attended classes faithfully, but who through failing eyesight or other disabilities of age are unable to make the progress that is easy for the young and the vigorous.

Many of the children of these older immigrants have been able through the devotion and unstinted labor of the parents to acquire advanced education and to take honored places in the professions.

A great number of the sons of immigrant parents who were born in this country have either volunteered for service in the armed forces or are serving because of the selectee system. These members of the military and naval forces would be

able to perform their allotted tasks with better spirit if the opportunity to obtain citizenship were granted to their parents.

One of the greatest needs during the present emergency is national unity. The passage of this proposed measure would go far in that direction.

Mr. SHAUGHNESSY. There is just one more point, Mr. Chairman. There may be some misconception about the result of section 3 if it should be enacted into law so far as it relates to the Federal and State educational and Americanization program. I would like to have permission for Dr. Henry B. Hazard, Director of Research, Information, and Education of the Immigration and Naturalization Service of the Department of Justice, who represents our Department on an interdepartmental committee dealing with adult education and Americanization, to say just a few words for the purpose of the record.

Senator MALONEY. Mr. Hazard, please proceed.

STATEMENT OF DR. HENRY B. HAZARD, DIRECTOR OF RESEARCH, INFORMATION, AND EDUCATION, IMMIGRATION AND NATURALIZATION SERVICE, DEPARTMENT OF JUSTICE

Mr. HAZARD. Mr. Chairman, in connection with the educational phase of the naturalization laws, the Congress as far back as 1918 enacted a provision by which the Immigration and Naturalization Service was directed to cooperate with the public schools and State and national organizations concerned with education, with a view to aiding in providing facilities for applicants for naturalization to prepare themselves for citizenship. That authority included the distribution free to applicants for naturalization of citizenship textbooks.

During the period from 1918 to 1940 that work went on, growing in intensity during the first World War, but gradually slacking up from about 1922 or 1923, until in the late twenties and during most of the thirties there was no great stress placed upon it.

When the Nationality Act of 1940 was passed, the educational provisions of the law were strengthened and more attention has been paid, both by the Immigration and Naturalization Service and by the public schools and other educational agencies, to that particular phase of our public administration.

My own contact with this work has been very close. I have been in charge of it since 1918 for the Immigration and Naturalization Service, and I have had occasion to visit the public schools of many of the States, to encourage the organization of classes and to assist as far as we could within the law the local communities in making these facilities available.

Some States have proceeded very far in establishing splendid education facilities in this particular field. It is not necessary to name them, but half a dozen of them are outstanding. Other States have provided some facilities. Some have provided none at all. There have been reasons satisfactory to the communities, usually due to reduced school budgets; and in those situations many of the social service agencies and the patriotic organizations have themselves attempted to step into the breach and to provide what the public schools have not been able to do.

Last year there was provided under the W. P. A. a joint endeavor, on the part of the W. P. A., the public schools of the various States and the Immigration and Naturalization Service, a joint effort known

as the National Citizenship Education Program, by which these three agencies were to endeavor to strengthen these facilities for preparation for citizenship. Dealing, however, with each one of the States as a local unit so that the working facilities of teaching and of selection of materials should be entirely autonomous in the States, and not an attempt on the part of the Federal Government to tell any State how it should teach or develop its program.

That work has gone along very successfully, and many applicants for naturalization have been taking advantage of these classes, as well as of the regular public-school classes. But we have observed, as naturalization officials, that in many communities there are groups of persons who, either because of age or of physical disability, sometimes both—failing eyesight, the lack of the opportunities of which Mr. Hershfield spoke—an inability on their part to take advantage of these opportunities. Of if they did show enough interest to attend a class, they are unable to successfully pursue the work.

I know of cases of persons up in the sixties and seventies who have attended these classes sometimes for a period of 2 or 3 years in faithful attendance, but never have been able to pass this rather formal test that is prescribed by the law and the regulations. We have felt that these individuals have demonstrated in almost every instance entire loyalty to this country, and we have rather, in connection with our work, stressed the two elements of good moral character and favorable attitudes toward our Government as being even more important than the formal requirements of the law.

The question of the effect on these persons who are getting along in years of being unable to become citizens has been one which has reacted frequently on the family. Because I know of many instances where these parents, who themselves are unable to become citizens because of the single lack in connection with education, have given their children the finest of educations; children who have made and are making their mark in the various professions.

I recall one very concrete instance when one of our examiners objected to the naturalization of an individual in one of our Federal courts because the examiner thought he did not measure up to the educational standard that was required; and having the judge say to him, "I believe I can appreciate this person's situation, because my own father, who was born abroad, could not read or write." That was an extreme instance, but an indication of the fact that the inability of a person to successfully negotiate this test, which involves an examination upon the principles of the Government of the United States, an indication that possibly in some cases, at least in these extreme cases where the persons are along in years, the Government might be justified in relaxing that particular requirement.

I think there has been possibly some lack of sympathy with this measure on the part of some of the educators. I know that in my contacts with them as a rule they have been rather strict in their feeling that a person ought not to be admitted to citizenship unless he can pass not only these other requirements as to residence and good character, but he must educationally be able to pass a pretty stiff examination.

I think that, on the whole, the interests of the United States would probably be best served by the permission for these persons to become naturalized on this theory, that in other operations of the naturaliza-

tion laws credit is given in the elimination of some of the requirements of local residence, for instance, to persons who are married into American families. For instance, there are three classes of husbands or wives of citizens who are relieved from the 5-year residence clause; one in which only 3 years' residence is required, another only 2 years and another only 1 year, provided the applicant is married to a citizen of the United States; on the theory that this close contact in an American home with American ideals serves the same purpose as a much longer period of residence. And these persons who are encompassed within this particular section 3 are persons all of whom must have been here from at least 1924, and most of whom will have been here many, many years longer than that. Thank you.

Senator MALONEY. Thank you very much, Doctor.

It appears now that we have heard all who desire to be heard. As I announced yesterday, the meeting this morning was called for the purpose of affording an opportunity to Senators McNary and Holman to testify, or to present statements. Senators McNary and Holman have, because of the fact that so much else is going on today, found it impossible to be here. Senator McNary is to talk with me and others later. He has been in touch with me.

But Senator Holman was represented by his secretary and advised the clerk of the committee that he wanted to note objection to the language in line 7 of page 3, which I will read:

except that he shall not be required to speak the English language, sign his declaration or petition in his own handwriting, or meet other educational requirements.

Senator Holman asked that there be printed in the record a letter written to Senator Russell, the chairman of the Committee on Immigration and Naturalization, by G. Q. D'Albini, an attorney at law and a certified public accountant, at 45 Quince Street, Medford, Oreg.; and that letter will be included in the record.

(The letter referred to is in full as follows:)

G. Q. D'ALBINI,
Medford, Oreg., February 6, 1942.

HON. SENATOR RUSSELL,
Chairman, Immigration and Naturalization Committee,
Washington, D. C.

DEAR SIR: H. R. 6250 recently passed by the House of Representatives and now in your committee has a most tragic provision; viewed in the light of present events it is even vicious.

I cannot understand our Representatives passing such a law at this time. I refer to the provision in this bill which would grant citizenship privileges to aliens over 50 years and residing here since July 1924 even though they cannot speak our language, read or write, and cannot even sign their own name. Are we ready to turn over our Government to the illiterate foreign element?

Honorable Sir, I am not opposing this measure through blind prejudice; my maternal grandparents were foreign born, my paternal side are Americans who helped establish this great Nation, but even this has not influenced me; it is because I can speak from years of experience.

I taught in foreign communities in the South where third generation Americans started to school unable to speak the English language. Will we true Americans encourage the continuous indifference on the part of foreigners to accept our way of life?

For the past 17 years I have taught citizenship classes in this community; I have had over 50 persons, from 50 to 70 years of age. Not one has ever failed to pass the test the very first time they were examined by immigration officials and they had attended only 1 class a week from 5 to 8 weeks term.

Anyone with I. Q. so low he cannot learn, or so indifferent to our great citizenship privileges should certainly not be granted citizenship.

I earnestly beg and plead with you and your committee to reject this part of H. R. 6250.

Sincerely yours,

Mrs. G. Q. D'ALBINI.

Senator MALONEY. Now, because I want to give everyone who desired it a chance to present his views to the full committee, I am going to have inserted in the record a telegram addressed to me and signed by Angela M. Carlozzi, executive secretary, Italian Welfare League, 345 Lexington Avenue, New York City:

The Italian Welfare League, Inc., urges passage of H. R. 6250. Especially interested section 304-A as many aged and loyal Italians will benefit by it. Many unnaturalized Italians are women, who because of home duties and the rearing of their children were unable to take advantage of the benefits of citizenship. Now, in their old age, because of world conditions, passage of this bill would give them a sense of security and of belonging to the country in which they have spent the greatest part of their life and to whom they have given labor and fealty and are now giving their sons for the defense of this great Nation.

A telegram, which I regret is not signed by an individual, but is signed by the National Council of Jewish Women:

We urge support of H. R. 6250, section 3, to add amendment 304-A to Nationality Act.

A telegram signed by Fifteenth Ward, Women's Republican Club, New Haven, Conn., Mrs. George Post, chairman:

Please register our disapproval of section 304-A in H. R. 6250.

A telegram from Mrs. John L. Kennelly, president, Bridgeport Council of Catholic Women:

The Bridgeport Council of Catholic Women strongly oppose the bill giving citizenship to illiterate and previously uninterested persons.

A telegram from William O. Kellner, adjutant, Oscar H. Cowan Post 3, American Legion, Stamford, Conn.:

At our meeting February 13 we voted to notify you that we oppose bill H. R. 6250 section, 304-A. Trust that you will vote against this bill.

A letter signed by Paul Kuliek, executive director of the Stamford Jewish Center:

I have just learned of those provisions of House bill 6250, which will allow aliens over 50 years of age, who came to this country prior to 1924, to become citizens without being able to speak the American language. I believe that the specific part of the bill is known as section 304-A.

I want to voice my opposition to this bill because it will mean the negation of all our efforts to place meaning and importance to the acquisition of American citizenship. The meaning of citizenship would be weakened because it seems to me it would be impossible for an individual who does not know the language to make an intelligent citizen.

I hope that when the bill comes up for consideration in the Senate that you will use your best offices to see to it that this phase of the bill is revised so that such a step as the bill allows will not be possible.

A letter signed by the secretary of the Latvian Unity Club, 2061 Lexington Avenue, New York City, Pauline Nussbaum:

As unanimously passed at its regular membership meeting, February 15, 1942, at 2061 Lexington Avenue, New York City, the Latvian Unity Club (of 106 members) wishes to register with you its resolute opposition to section 8 of the Dickstein bill, H. R. 6250.

The provisions of this section of the bill are unnecessary. The existing laws are sufficient for dealing with enemy agents and abettors. If enacted without deletion of this section, the bill would undermine the status and jeopardize the rights of more than 10,000,000 naturalized American citizens. It would play

directly into the Axis plans against our country, since it would serve to disunite our people and to endanger our war effort by creating insecurity and by spreading unwarranted suspicion against all naturalized American citizens.

Please use your influence to have this section deleted from the bill.

I shall also have printed in the record, for the benefit of the entire committee and those others who are interested in this subject, an editorial which appeared in the New York Herald Tribune, Wednesday, February 18, 1942:

DEALING WITH ALIEN CITIZENS

A bill allowing the courts to revoke citizenship of a naturalized citizen "on the ground that his utterances, writings, action, or course of conduct establishes that his political allegiance is to a foreign state or sovereignty" has passed the House of Representatives and is now under consideration by a Senate Judiciary Subcommittee. The bill was asked by the Department of Justice, is advocated by the Departments of War and Navy, for a specific and important purpose. There are in the country persons who have come here with the sole purpose of becoming naturalized so that they may work against this Government under the cloak of citizenship; and it is the contention of the Justice Department that they did this in anticipation of this war. In support of this contention is the fact that 24 of the 33 persons convicted in the recent New York spy trials, were naturalized citizens. They will emerge from prison still citizens. Under the proposed bill the Department of Justice could, presumably, institute court action to have their citizenship revoked.

The American Civil Liberties Union sees a grave threat to free speech of all naturalized citizens in this bill—and, indeed, the times make that danger real. The House amended the bill as it came from the Attorney General by adding the words "utterances, writings" which seem to point the threat to free discussion, although that was not their intention. In view of the need to protect our bona fide naturalized citizens, the Senate committee will do well to examine the wording of the bill with care, not, however, overlooking its purpose—to make possible the revocation of citizenship of men whose allegiance is in fact to a foreign state or sovereignty.

For what is incontrovertible is that the fact that an agent of a foreign government has been sufficiently successful in dissimulation to get by the naturalization authorities should not entitle him to citizenship forever after.

As I said earlier, all seem to have been heard who desired to be heard. Unless someone who is here now has a further word, we will bring the hearings to a close.

At an early day the subcommittee will meet again. I hope there will be a meeting of the full committee soon thereafter to give further consideration to this proposal.

Mr. HERSHFIELD. Will there be a hearing before the full committee?

Senator MALONEY. No, Mr. Hershfield, I cannot think of any reason why there should be. I cannot speak for the chairman, but I very much doubt it. We have been generous with our time, and offered to give everyone all of the time he wanted in the hearings on the bill. I cannot think of any reason for further hearings. At least, no reason now appears, and it is not the custom.

Mr. HERSHFIELD. I see. Thank you.

Senator MALONEY. We will not deny anyone a chance to be heard, you may be sure, if there is any special and good reason for opening up the matter again.

(Whereupon, at 11:45 a. m. the hearings were concluded.)