
Michael G. Heyman

John Marshall Law School
I. INTRODUCTION

Statelessness is abhorrent. Even though stateless people may enjoy some rights and freedoms, many elude them. Stateless people stand at the edge of society, not within it. Dissociated from the community before them, they are part of no community at all. Fortunately, only a few aliens are stateless even though they do not enjoy the benefits of full membership in our polity.

Under American law, permanent resident aliens cannot vote; nor can they hold an American passport, or most political offices. Employment opportunities available to them are similarly limited. Still, permanent
resident aliens can be deported. Yet, these aliens remain citizens some-
where, often in their native land and, therefore, have a homeland to
which they may return. Stateless aliens, on the other hand, do not en-
joy citizenship anywhere, and are therefore without a homeland.

Thus, one would expect statelessness to be a discouraged condition,
not easily attained. This is generally true. United States’ citizens lose
citizenship through only two means: (1) voluntary expatriation and (2)
denaturalization. Moreover, only a naturalized citizen can be
denaturalized, a rare proceeding. Still, one would also expect our legal
system to jealously protect United States citizenship through both its
legislation and decisional law. Sadly, this expectation has been only
partially realized.

Denaturalization legislation in the United States is strangely sparse
and virtually silent on critical issues. It thus creates only vague stan-
dards for assertion of this power. To make matters worse, the Supreme
Court has been inconsistently protective of citizenship, having taken an
odd turn in its interpretation of the governing statutes. Perhaps this has
been driven by the types of denaturalization cases it has taken recently
which involve, for the most part, war criminals or suspected war
criminals. Nevertheless, the naturalized citizen, as of late, has fared
poorly in the Court.

This essay will examine this phenomenon of a vague statute and Su-
preme Court opinions which afford little protection to the alien facing
denaturalization. First, it will explain the relevant statutory law and
elucidate the substantive and evidentiary burdens borne by the govern-
ment. It will then analyze the major denaturalization cases of the re-
cent decades, exploring their ambiguities and difficulties. The essay will
focus squarely on the Court’s latest decision, Kungys v. United States,
and examine closely the methodology by which the Court reformulated
the law of denaturalization. In doing so, this section will focus on the
form of statutory interpretation used by the Court and conclude that
the Court, locked into a mechanical form of statutory interpretation,
failed to vindicate the critical values at stake. The section will make
clear that the Court failed to recognize that a discussion of values is
vital to meaningful, effective discourse in this area. Although this over-
sight is understandable, it is nonetheless unfortunate. Finally, this essay
will recommend that Congress change the relevant statutes to provide
clarity and wisdom in an area riddled with problems.


5. GORDON & MAILMAN, supra note 4, at §11.3e (discussion of statelessness).

II. THE STATUTORY BASIS FOR DENATURALIZATION

Although denaturalization may proceed through one of various avenues, the chief basis for denaturalization lies in section 340(a) of the Immigration and Nationality Act (INA).7 A naturalized citizen may be denaturalized if the citizenship was "illegally procured or [was] procured by concealment of a material fact or by willful misrepresentation."8 The burden squarely falls on the government to prove its case by "clear, unequivocal, and convincing" evidence.9 Unfortunately, although the evidentiary burden is clear, it is far less clear just what the government must prove.

Interpreted literally, a misrepresentation, in order to form the basis for revocation of citizenship under the statute, need only be willful, not also material. Yet this strict interpretation has been rejected.10 On its face, the term "illegally procured" seems to invite tautology, providing no standard for denaturalization. It appears to stand simply for the proposition that any illegality involved in the procurement renders the citizenship illegal, thus forfeitable. Until recently, this did not pose a serious problem. However, the Court's decision in Kungys changed that.

The provision relating to the concealment of a material fact is of paramount concern since it has engendered considerable controversy and has been the focus of frequent litigation. The obvious question has been, "What does material mean?" Does it bear an evidentiary meaning, denoting something of importance? Does it more likely signal the notion that the citizen concealed a fact which, if revealed, would have disqualified him for citizenship? If the latter view is adopted, "material" plainly means disqualifying. However, if Congress intended that meaning, it could easily have said so, instead of using the word "material."

These problems have plagued the courts. Strikingly, for thirty years, case law has been awash in disagreement, not with a convoluted section or a controversial policy, but with the meaning of the word "material." Yet, only recently, in Kungys, did the Court definitively gloss that term. Unfortunately, rather than clarifying matters, Kungys compounded the problem immeasurably. To understand fully the enormity of the problem, one must trudge back to the first Supreme Court case that attacked this problem, a case as striking for its opacity as Kungys is for its confusion.

8. Id.
III. Chaunt and Costello

Chaunt v. United States\(^1\) was decided under a somewhat different statute from the current one. When Chaunt was decided, there was no provision for the revocation of citizenship because of illegal procurement. Citizenship was revocable only upon a showing of willful misrepresentation or concealment of a material fact. However, concealment undoubtedly took place.

Chaunt was admitted to citizenship in 1940, after having been in the United States since at least the late 1920s. When he applied for citizenship, he was asked whether he had ever been "arrested or charged with violation of any law of the United States or State or any city ordinance or traffic regulation."\(^2\) Chaunt replied that he had not. Yet, he had been arrested three times for violating the laws of New Haven, Connecticut, regarding, *inter alia*, the distribution of leaflets and public orations. None of these arrests had remotely serious criminal consequences.

For naturalization purposes, however, Chaunt's Connecticut arrests may have had a particular significance, for, as the government claimed, had he disclosed the arrests, an investigation would have followed and the Immigration and Naturalization Service (INS) could have discovered that Chaunt was a district organizer of the Communist Party in Connecticut, a fact which was presumably relevant to his qualifications for citizenship. Thus, if his political affiliations were relevant to his qualifications for citizenship, the government's argument seems compelling. Moreover, the very fact that Chaunt lied about the arrests seemed to negate good moral character, a prerequisite for citizenship.\(^3\) However, this was not the law at the time. Under the prevailing law, the government had to prove concealment of a *material* fact, not the forestalling of an investigation.

As one journeys through the points and counterpoints of the case, one keeps returning to the question of just what was—or what might have been—so wrong with Chaunt's conduct as to justify denaturalization. The Court's majority concluded that no basis for denaturalization existed. It observed that, even if Chaunt's communist connections were relevant, he had revealed them elsewhere in his application for naturalization, including his membership in the International Workers' Order, an organization said to have been communist controlled. Thus, in the majority's view, any concealment was otherwise neutralized by Chaunt's inclusion, in his application for naturalization, information

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12. *Id.* at 351.
13. It should be noted, however, that the government could not argue that the citizenship was "illegally procured" because the law contained no such provision. Thus, the Court's position was somewhat peculiar, for it was never clear precisely which qualification for citizenship was at issue.
concerning his communist affiliation.

Assuming, then, that communist membership, in itself, was not disqualifying and that concealment of that fact lacked telling, independent significance, none of the majority's views seems exceptional. However, in the penultimate paragraph of its opinion, the Court did something truly exceptional: it enunciated a two-part test for determining materiality.\footnote{1} Under this test, the government fails to establish the materiality of factual omissions if it is unable to prove either "(1) that facts were suppressed which, if known, would have warranted denial of citizenship, or (2) that their disclosure \textit{might} have been useful in an investigation \textit{possibly} leading to the discovery of other facts \textit{warranting} denial of citizenship."\footnote{18}

Although debate over this language has become wearisome,\footnote{16} the ambiguity is manifest. The first prong of the test is clear, but the second prong is susceptible to two interpretations. Two schools of thought have emerged from the ongoing debate over the meaning of the second prong of the \textit{Chaunt} test. In one "camp" are those who believe that materiality is proven if the government can demonstrate that the citizen forestalled what might have been a promising investigation. Thus, proponents of that interpretation urge that the test can have significance only if the government need only prove the forestalling of a potentially damning investigation. If the government must also prove the disqualifying facts, this test is redundant.\footnote{17}

\textbf{14.} The characterization of this test is itself controversial. Indeed, some commentators have suggested that both prongs of the test are merely different ways of asking the same question: was the citizen unqualified for citizenship?

\textbf{15.} \textit{Chaunt}, 364 U.S. at 355 (emphasis added).


\textbf{17.} Moreover, proponents argue that this is a sensible policy, since evidence disappears and memories fade over the years. Were this not the test, they maintain, there would be an unfortunate and compelling incentive to lie. See, e.g., KRISTIN E. HENNES, \textit{Comment, Concealment of Facts and Forestalling an Investigation in Denaturalization Proceeding}, 47 U. \textit{Chi. L. Rev.} 588 (1980).
Those in the second “camp” find this view nonsensical. Reminding us that the government should only denaturalize those who were ineligible for naturalization, proponents argue that part two of the Chaunt test is simply another way of asking whether citizenship should have been denied initially. They argue that the test is expressed in the disjunctive only because a concealment may, ipso facto, seem innocuous, but may lead to the disclosure of other facts that would have been disqualifying. For example, although Chaunt’s Connecticut arrests were not material, his party membership was potentially material. Thus, if the Chaunt test did not have this second prong, denaturalization could be thwarted by complex layers of previrications and facts.

Shortly after Chaunt was decided, Congress changed the law to include illegal procurement as a basis for denaturalization, but that did not settle the controversy, fueled in part by the belief that one who conceals the truth is unworthy of citizenship. Though this moral tone has long hovered over the debate, it has become more prominent and strident in recent decisions.

Indeed, in the next term immediately following the Chaunt decision, the Court decided a denaturalization case involving a citizen who had been less than fully candid on his naturalization application. In his application for naturalization, Frank Costello swore that his occupation was real estate, when, according to the District Court, “his true occupation was bootlegging.” Since Costello was naturalized in 1925, during Prohibition, when federal law proscribed the manufacture, sale, or transportation of alcoholic beverages in the United States, the Court concluded that a known bootlegger probably would not have been naturalized had he told the truth, since he “did not meet the statutory criterion that an applicant must have behaved as a person ‘of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same.’” Implicitly, the Court was saying that a party has willfully

19. To the dissenters in Chaunt, the government had a right to expect honest answers from applicants for citizenship. Chaunt, 364 U.S. at 360. Justice Clark, writing for the dissenters, noted:

We should exact the highest standards of probity and fitness from all applicants. American citizenship is a valuable right. It is prized highly by us who have it and is sought eagerly by millions who do not. It is asking little enough of those who would be vested with its privileges to demand that they tell the truth.

21. Id. at 267.
22. See U.S. CONST. amend. XVIII, repealed by U.S. CONST. amend. XXI.
misrepresented or concealed a material fact if honest disclosure would have revealed the absence of good moral character. Yet, however important moral probity is for citizenship, it is unclear just what fact Costello had concealed or misrepresented which made his citizenship revocable.

The Court was obviously walking a narrow, if existent, line between revocation based on the absence of good moral character and revocation based on the concealment of a fact which, if revealed, would have rendered the applicant ineligible for citizenship. This confusion, even conflation, of standards has plagued the Court’s opinions throughout these cases. Justice Douglas, the author of Chaunt, dissented, denying that bootlegging per se could possibly have been a ground for denying naturalization. Nevertheless, the Court was obviously injecting a moral note into an area that warranted moral analysis (indeed has a moral component) but required guidance by statutory criteria and precise standards, lest these decisions be little better than a jumble of ad hoc moral posturings.

Chaunt and Costello, though doctrinally important, lacked the emotional impact of cases yet to come. It mattered little, or so one might think, whether a former communist retained his citizenship, or whether crime figure Frank Costello was stripped of citizenship. What did matter was how the United States defined itself by its treatment of suspected—or actual—war criminals. Many thought the United States impermissibly slow in its legal reaction to former war criminals in its midst, and the cases of Demjanjuk, Walus, Linnas and others drew national attention. However, the first case to reach the Supreme Court on the merits was that of Feodor Fedorenko.

IV. **Fedorenko And The Pursuit Of Nazi War Criminals**

Despite the drama surrounding the trials at Nuremberg, suspicions ran high thereafter that numerous Nazis were living here in the United States, seemingly free from any fear of detection and expulsion. Many
felt that these "quiet neighbors"\(^\text{30}\) led lives of unrelinquished insignificance with seeming impunity. Thus, despite its noble declarations following World War II, the United States did little to expel these criminals from its shores.\(^\text{31}\) Two events changed that dramatically: the amendment of the Immigration and Nationality Act in 1978\(^\text{32}\) and the establishment of the Office of Special Investigations within the Department of Justice.

The passage of the Holtzman Amendment\(^\text{33}\) precluded the admission of former war criminals into the United States and provided for their deportation.\(^\text{34}\) Though some claimed that this amendment created the specter of an *ex post facto* law,\(^\text{35}\) such claims were unavailing. Thus, former war criminals were excludable and deportable. Besides, they seemed susceptible to denaturalization under the scheme previously discussed.\(^\text{36}\)

Indeed, one year after the passage of these amendments, former Attorney General Benjamin Civiletti provided for the creation of the Office of Special Investigations (OSI) within the Criminal Division of the Department of Justice.\(^\text{37}\) Because of the work of OSI, Feodor Fedorenko was eventually brought to trial. This proceeding ultimately resulted in his denaturalization and deportation to the Soviet Union where he was subsequently executed. When the case began, many

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31. The United States, along with France, the United Kingdom, and the Union of Soviet Socialist Republics signed the London Agreement "for the Prosecution and Punishment of the Major War Criminals of the European Axis," 8 August 1945, 59 Stat. 1544, E.A.S. No. 472. However, the fact remains that the United States probably knew of the presence of Nazi's here, and unquestionably made use of them during the Cold War era. The employment of Klaus Barbie, "the butcher of Lyon," by our army's Counter-Intelligence Corps in Bolivia between 1947 and 1951 was not only known but defended. *See generally Allan A. Ryan, Jr., U.S. Dept. of Justice, Klaus Barbie and the United States Government: A Report to the Attorney General of the United States* (1983).
33. *Id.* This amendment is named the Holtzman Amendment after its sponsor, former Congresswoman, Elizabeth Holtzman.
36. They could be denaturalized had they gained entry to the United States through deceptions, and, as will be explained below, their admissions to citizenship were traceable to the misrepresentations or concealments of material facts.
37. *Order of the Attorney General, Transfer of Functions of the Special Litigation Unit Within the Immigration and Naturalization Service of the Department of Justice to the Criminal Division of the Department of Justice, No. 851-79, Sept. 4, 1979.* In a more recent development, on October 19, 1989, Richard Thornburgh and Alexander Sukharev signed, in Moscow, a Memorandum of Understanding Between the Union of Soviet Socialist Republics Office of the Procurator General and the United States Department of Justice Concerning Cooperation in the Pursuit of Nazi War Criminals. *See Marian Nash Leich, Contemporary Practice of the United States Relating to International Law, 84 Am. J. Int'l L. 536 (1990).*

hoped that the Court would resolve the growing conflict among the circuits as to the meaning of *Chaunt*. That was not to be, for the Court took an unexpected track in deciding the case.

Feodor Fedorenko applied for admission to the United States in 1949 as a displaced person. At that time, he lied about his activities to investigators from the Displaced Persons Commission. Though he had served as an armed guard at the concentration camp in Treblinka, Poland, he claimed to have been deported to Germany and forced to work at a factory until the conclusion of the war. He was granted a visa and admitted to permanent residence in 1949.

In 1969 Fedorenko applied for United States citizenship but concealed his wartime activities from the INS. His petition was granted, and he became an American citizen in 1970. Seven years later, the government brought suit against him, claiming, as was customary, that he illegally procured his citizenship and willfully misrepresented or concealed material facts in his application for naturalization. In short, the government claimed that Fedorenko had illegally procured both his visa and his citizenship.

As might have been expected, the lower courts disagreed on the government's claims. Construing the *Chaunt* test to require actual proof of ineligibility, the District Court found for petitioner. The Court of Appeals for the Fifth Circuit reversed, finding that Fedorenko had foreclosed an investigation that might have led to the discovery of facts which might have resulted in the denial of his visa petition. The Supreme Court affirmed the Fifth Circuit on other grounds, thereby leaving many of the difficulties posed by *Chaunt* unresolved and many observers dissatisfied.

Though the Court discussed the differences over the meaning of *Chaunt*, it proceeded, nonetheless, to avoid confronting them squarely. Instead, it took the seemingly straightforward, logical view:

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38. That is, the courts wrangled over whether *Chaunt* signaled two standards or one. Indeed, they even disagreed about the likelihood that the concealed facts would have led to a further and disqualifying investigation. While some have argued that the standard was "possibility," others maintained the it was "probability." See generally, WOLF, supra note 25.
40. Id.
41. The Displaced Persons Commission (DPC) was established pursuant to the Displaced Persons Act (DPA). Act of June 25, 1948, ch. 647, 62 Stat. 1009 (1948). The DPA "enable[d] European refugees driven from their homelands by ...[World War II] to emigrate to the United States without regard to traditional immigration quotas." Fedorenko, 449 U.S. at 495. The DPC was established "to oversee and administer the resettlement program envisaged" by the DPA. Id. at 496 n.6.
42. Fedorenko, 449 U.S. at 494, 496-97.
43. Id. at 497.
44. Id.
46. United States v. Fedorenko, 597 F.2d 946, 953 (5th Cir. 1979).
47. Fedorenko v. United States, 449 U.S. at 508-09.
Since Fedorenko had procured his visa illegally, the citizenship that flowed from his permanent resident status was also illegal. Therefore, since he did not have a valid unexpired visa at the time of naturalization, his citizenship was revoked because it was procured illegally.

This approach ignited something of a firestorm within the Court, for several Justices clearly wanted to see the Chaunt problem resolved. Justice Blackmun, who concurred in the Court's judgment, wrote separately to underscore that Chaunt signaled but one standard: It merely asked, albeit in different ways, whether the citizen was ineligible.

Two Justices who later played an important role in Kungys v. United States dissented in Fedorenko. Justice White thought that the inquiry should have been into Fedorenko's deceit at the time he applied for citizenship, not at the visa stage. However, he was troubled by the possibility that the materiality requirement would compel the government to prove the ultimately disqualifying facts. Thus, turning to the District Court's definition of materiality, Justice White noted that "[t]his definition of 'materiality,' by greatly improving the odds that concealment would be successful, would encourage applicants to withhold information, since the Government would often be unable to meet its burden by the time the concealment was discovered."

Justice Stevens, the other dissenter, expressed the view that the Court had misinterpreted the Displaced Persons Act by finding that even involuntary service (as Fedorenko claimed his was) barred the lawful issuance of a visa. Stevens insisted that whether it was at the visa stage or the citizenship stage, the government had to prove that a "disqualifying circumstance actually existed." Indeed, for him "[t]he story of this litigation is depressing." That view was not to change seven years later when the Court again addressed these issues. No doubt, the Court's refusal to decide the Chaunt issue definitively was particularly unsatisfying. The Court had failed to interpret the crucial term "material," thereby potentially exposing many unsuspecting citizens to denaturalization.

Although the Court took an important step in Fedorenko on the issue of illegal procurement, its failure to resolve Chaunt was troubling, as was the logic of the opinion. In the Court's view, any illegality involved in the path from alien status to citizenship could vitiate the

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48. Id. at 514-15.
49. Id. at 518-526.
52. Id. at 529.
54. Fedorenko, 499 U.S. at 530-538.
55. Id. at 537.
56. Id. at 530.
citizenship and thus render it revocable. This was true, said the Court, so long as "the true facts would have made the applicant ineligible for a visa." This view could erode, if not eviscerate, the core of section 340(a) of the INA, for illegal procurement could easily be used as a substitute for the potentially more rigorous test of misrepresentation or concealment in ways not easily foreseen in 1981.

V. Kungs v. United States

If any doubt remained that the Court might dramatically change the face of denaturalization, it was laid to rest by the odd procedural history of this case. The case was argued originally on April 27, 1987. Yet, two months later, the Court restored the case to the calendar for re-argument, directing the parties to file supplemental briefs addressing several questions apparently left unanswered by the prior briefs and arguments. Specifically, the Court required the parties to address two issues: whether denaturalization could be based on absence of good moral character, and whether the "false testimony" establishing that lack of good moral character need concern a material fact. In addition, the Court invited discussion on whether Chaunt's test for materiality should be abandoned and, if so, what standard should govern materiality under section 340(a). Thus, the manner in which the Court restored this case clearly showed its inclination to reconsider Chaunt, an understandable reaction considering its obscurity and its disturbing facts. Moreover, the passage of time inevitably worked to the advantage of the naturalized citizen and posed a substantial obstacle to the government.

Juozas Kungys applied for a non-preference quota immigration visa in Stuttgart, Germany in 1947. He obtained a visa in 1948 and became a naturalized citizen in 1954. At both the visa and naturalization stages, Kungys provided false birth records by listing a false date and place of birth. Kungys also made false statements about his occupation and provided falsified records of his residence between 1939 and August 28, 1941.

Kungys' deceit as to his residence and occupation is especially troubling, since the government did not pursue Kungys because of his deceit per se but because of his suspected participation in wartime atrocities. On August 28, 1941, the town of Kedainiai in Lithuania had a popula-
tion of about 8,500 people, of whom approximately 2,500 were Jewish. Shortly after the Nazi’s invasion, local men were grouped in civilian auxiliary detachments to assist the police. On August 28, these civilian detachments, along with local workers, ordered the people of Kedainiai to assemble to be taken to their place of execution nearby. Nazi records recite the killing of 710 Jewish men, 767 Jewish women, and 599 Jewish children in Kedainiai on that day. Kungys allegedly participated in those mass executions. His deceit may have simply covered up his participation in these atrocities.

OSI and the Soviet Union investigated these atrocities and discovered several witnesses. Their depositions were taken on videotape in the Soviet Union for use in this case. These depositions were conducted in the presence of a Soviet Procurator, and the evidence was excluded by the District Court in this case because the judge thought that, due to an overzealous investigation, the evidence was unreliable. However, he also noted that the deponents’ testimony, if believed, “would be strong evidence of the truth of the government’s charges that defendant was an active participant in the killing.”

In the end, the District Court judge admitted this evidence only to prove that the atrocities took place, not to establish Kungys’ complicity. The judge concluded that, under Chaunt, Kungys had not misrepresented or concealed a material fact. Accordingly, the judge ruled against the government. The Third Circuit reversed for reasons not relevant to this essay. Thus, when the case came before the Court, the Justices did not sit in judgment of a known war criminal, but only a known liar. Limited by the statute to be interpreted, unaided by any usable facts revealing Kungys’ participation in wartime atrocities, the Court was to add yet another chapter to those on materiality and denaturalization.

A. The Court’s Opinion

If one adopts, however provisionally, Ronald Dworkin’s notion that judges who interpret statutes are like authors of a chain novel, the Chaunt Court faced a daunting task. Taken together, extant cases provided little guidance and coherence, often seemingly driven by the per-
ceived moral, rather than legal, status of the defendants. However, the composition of the Court has changed since 1981, when *Fedorenko* was decided. Antonin Scalia, a new member of the Court and a major proponent of the textual approach to statutory interpretation, tackled in *Kungys* the problems posed by *Chaunt*.

Quickly dispelling any notion that he would join the wearisome debate on the meaning of *Chaunt*, Justice Scalia virtually repudiated it. Turning to the difficulties of working with *Chaunt*, he concluded that “[w]ith the wisdom of experience, we now conclude that the attempts to construct a standard from the *Chaunt* dicta have been both unnecessary and unfortunate.” Thus, rather than embellishing *Chaunt*, Justice Scalia placed the term “material” in a larger legal context, implicitly positing a coherence in legal usage that some may doubt.

Refusing to confine the discussion to the immigration statute, Scalia ranged farther afield, noting the use of the term throughout Anglo-American legal history. Tracing the law of false testimony to the days of Lord Coke, he noted that materiality had always denoted something of importance, something that had a “natural tendency to influence, or was capable of influencing, the decision of the decision-making body to which it was addressed.” Perjury statutes were particularly persuasive for Scalia since they seemed to represent the same type of statute as section 340(a) of the INA. Both penalized someone for speaking falsely on an important issue. Accordingly, Scalia noted that “[w]hile we have before us here a statute revoking citizenship rather than imposing criminal fine or imprisonment, neither the evident objective sought to be achieved by the materiality requirement, nor the gravity of the consequences that follow from its being met, are so different as to justify adoption of a different standard.”

For Scalia and the four Justices who joined him in this part of the opinion, concealment or misrepresentations were material if they had a natural tendency to influence the decisions of the INS. According to Scalia, “the test more specifically is whether the misrepresentations or

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77. *Id.* at 770 (citing United States v. Corsino, 812 F.2d 26, 30-31 (1st Cir. 1987)); see also *Weinstock v. United States*, 231 F.2d 699, 701-02 (D.C. Cir. 1956).


79. Justices Brennan, O'Connor, White, and Chief Justice Rehnquist joined Justice Scalia in this part of the opinion.

concealment had a natural tendency to produce the conclusion that the applicant was qualified."^{81} Moreover, the misrepresentations or concealment must be made at the time of naturalization. Thus, the government cannot rely on any suspicion aroused by discrepancies between what was said or sworn to at the visa and at the naturalization stages.^{82} The concealment or misrepresentations must have occurred at the naturalization phase; otherwise, it wasn't the "citizenship" that was procured by the deceitful conduct.

This approach is only superficially appealing. Scalia's positing of uniformity in the word "material" as cutting across all statutes and contexts throughout time seems plainly counter-intuitive. It seems more likely that beleaguered members of Congress, anxious to rewrite the prior fraud section of the act,^{83} might use a convenient, though imprecise, term such as "material." Scalia's very assumptions rest on notions of legislative drafting and usage that are probably belied by reality. Thus, he exalted the ultimate weasel word, the ultimate chameleon, "material," permitting it to take on any meaning, depending upon the beliefs of the decision-maker.

Prior decisions, especially Chaunt, had sought to give "material" a determinate meaning and content.^{84} Implicitly, those decisions subscribed to the notion of a symmetry between naturalization and denaturalization by which the subject of a denaturalization action must have failed to meet the standards for naturalization. Here, Scalia failed to enunciate a substantive standard, choosing, instead, to give the word its evidentiary meaning: that which is "important." Thus, the Court has rendered the word an empty vessel, bereft of fixed meaning and offering little guidance to anyone.

Justice Scalia thought that he had given "material" its appropriate meaning. Thus, he asserted that materiality is a question of law and proceeded to decide this legal question for the Court. Necessarily, he insisted that materiality does have a meaning, one which he proceeded to apply. Significantly, he commanded only two votes from his colleagues in this section of the opinion, the votes of Justices Rehnquist and Brennan. Here, his foundation seemed least secure.

Turning to the ultimate question, Justice Scalia concluded that Kungys' lies about his date and place of birth were immaterial within the meaning articulated by the Court. Scalia noted that:

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81. Id. at 771-2.
82. Id. at 775-6.
83. See INA of 1940, ch. 876, § 338, 54 Stat. 1158 (repealed 1952). Under that section, naturalization could be revoked "on the ground of fraud or on the ground that such order and certificate of naturalization were illegally procured." Id.
84. That is so regardless of which view of Chaunt is adopted. However interpreted, Chaunt and its progeny focus on qualifications for citizenship; that is, whether the applicant was substantively qualified.
There has been no suggestion that those facts were themselves relevant to his qualifications for citizenship. Even though they were not, the misrepresentations of them would have a natural tendency to influence the citizenship determination, and thus be a misrepresentation of material facts, if the true date and place of birth could predictably have disclosed other facts relevant to his qualifications. But not even that has been found here.  

Here, Scalia seems to be repudiating Chaunt, and this may disturb many. Admittedly, one's date and place of birth may be innocuous facts from the perspective of the denaturalization court. However, had the truth been disclosed at the naturalization phase, an investigation might have revealed severely damning facts about one's participation in war crimes which would have otherwise been concealed by lies about one's origin. Thus, wandering vaguely between the now-discredited Chaunt standard and utter confusion, Scalia erected a presumption of disqualification. Accordingly, a person who "obtained his citizenship in a proceeding where he made material misrepresentations was presumably disqualified." The citizen, thus, bears the burden of refuting this presumption "by showing through a preponderance of the evidence, that the statutory requirement as to which the misrepresentation had a natural tendency to produce a favorable decision was in fact met."  

Although Scalia's presumptive disqualification standard seemed to effect an adequate balance by failing to reward the successful prevaricator, it, nonetheless, failed to establish either what was material or what the citizen had to refute after the burden had shifted. Thus, Justice Scalia was on a high wire without a net. Refusing to accede to the view that the government must prove ineligibility, Scalia seemingly moved between statutory analysis and moral posturing. Not surprisingly, Scalia disagrees.  

Since denaturalization may take place if either citizenship was procured illegally, or was procured by concealment or misrepresentation, Scalia found the concealment or misrepresentations significant in and of themselves. For him, such conduct served as a partial basis for denaturalization, notwithstanding the ultimate facts themselves. Thus, an adoption of Justice Stevens' view that ineligibility must be proven, would amount to a violation of the "cardinal rule of statutory interpretation that no provision should be construed to be entirely redundant." A rule to the contrary would render the concealment or misrepresentation unnecessary; illegal procurement would now suffice.

85. Kungys, 485 U.S. at 774.  
86. See Hennes, Comment, supra note 17, at 601.  
88. Id.  
89. Id. at 778.
Therefore, one may be stripped of citizenship, at least in part, because of the lying itself. Scalia staunchly defended this position by refusing to recognize the possibility that the statute was indeed redundant.

Justice Scalia was fearful that the effective liar could successfully defeat denaturalization. Said Scalia,

[W]orse than making an enigma of the statute, Justice Stevens' concurrence's position makes a scandal of the results the statute achieves: Proof that an applicant lied when he said he was not an SS officer at Dachau would not suffice for denaturalization without clear, unequivocal, and convincing proof—after 40 years of disappearing evidence—that he was guilty of war crimes. 90

However, in resisting Stevens' view, Justice Scalia refused to recognize that, in reality, all of INA section 340(a) condemns the citizen who procured that status illegally. 91 Focusing on the language without reference to statutory purpose, Scalia strove for a statutory coherence on a purely verbal level and attempted to give independent significance to every term used. Yet, properly viewed, misrepresentation and concealment are but two ways of procuring citizenship illegally, thus constituting a subset of illegal procurement. However, because of his commitment to pure textualism, Scalia refused to look beyond the verbal confines of the statute. Ironically, by pursuing this track, he only supplanted substantive confusion with evidentiary chaos—and substantive confusion.

On a concrete level, one wonders just what government proofs would create this rebuttable presumption of ineligibility, and what burden the citizen must shoulder to prove the opposite. This tension only grew when the Court considered the issue of denaturalization and good moral character. Indeed, this tension often reflects the complete chaos of the statute and attempts by others, including the Court's, to resolve that situation.

This discussion may be academic or futile, for the government may now seek denaturalization through a very different means. Good moral character is a requirement for citizenship. 92 A naturalization applicant who falsely testifies, lacks good moral character. 93 Therefore, quite logically, citizenship procured through the use of false testimony is revocable because it was illegally procured. The Kungys Court agreed. Hav-

90. Id. at 779. This sentence itself is an enigma, for proof that someone was an "SS" officer would provide a basis for denaturalization and deportation under Fedorenko v. United States. 449 U.S. 490 (1981).
ing asked the parties to address the question of whether false testimony had to have been related to a material issue, the Court decided that it did not. Referring to section 101(f)(6) of the INA, the Court concluded that "[l]iterally read, it denominates a person to be of bad moral character on account of having given false testimony if he has told even the most immaterial of lies with the subjective intent of obtaining immigration or naturalization benefits. We think it means precisely what it says." Justice Scalia thought that a strict application of section 101(f)(6) would cause little hardship, since three conditions must be met before citizenship is revocable because of illegal procurement. First, the false testimony is limited to oral statements made under oath. Second, revocation based on illegal procurement applies only to misrepresentations made with the subjective intent of obtaining immigration benefits. Third, this section applies only to misrepresentations, not concealment. Thus, "[w]ith all these built-in limitations, and given the evident purpose of the provision . . . [, the Court saw] no reason for straining to avoid its natural meaning." Though a logical parsing of these statutes, the argument is unconvincing, for the person who misrepresents an inconsequential fact—as was the case here—cannot be denaturalized under section 340(a) alone, but may be denaturalized through the operation of sections 340(a) and 101(f)(6) operating in tandem.

Viewed in isolation, that seems unexceptional, for the sections cover different territory. However, their commonality is pressing. Irrespective of how cast, both avenues of denaturalization condemn the morally derelict citizen; each provides a penalty, though perhaps partial, for the deceitful conduct itself. Yet, while one section requires materiality, the other does not. Only through the application of a mechanical jurisprudence did the Court create or countenance this distressing anomaly. In so doing, it avoided any reference to the critical values possessed not just by the naturalized citizen but firmly embedded in the very statute which provided for loss of citizenship.

B. Justice Stevens and Value-Oriented Jurisprudence

Because citizenship is important, its involuntary removal is deeply

94. Id.
96. Id. at 780.
97. Id.
98. Id. at 781.
99. Id.
100. Perhaps because of the indeterminacy of these tests, the parties agreed to a consent judgment of denaturalization based on the government's agreement not to seek deportation. See 65 Interpreter Releases 1283, 1287-88 (Dec. 12, 1988).
troubling. As Professor Aleinikoff said, “[w]hen the state strips an individual of her citizenship, it may well be tearing the self apart.”101 Mindful of that, Justice Stevens began his concurrence by reminding us of the loss occasioned by denaturalization. Drawing his inspiration from the public value of being free from grievous loss unless the government can unmistakably prove its case, Stevens concluded that “denaturalization is far too heavy a sanction to impose on an otherwise innocent citizen for making false statements in 1948 and 1953.”102 It is a “punishment that is tantamount to exile or banishment [and is] patently excessive.”103

Reasoning from a public values perspective, Stevens rejected all of Scalia’s conclusions, choosing, instead, to denaturalize only the miscreant who was ineligible for citizenship by having either concealed the basis for ineligibility or by having falsely testified on a material issue. Reasoning from criminal procedure analogies, he concluded that the burden and burden shifting mechanism created by Scalia would never be countenanced in a criminal context and should not be permitted here. The fundamental difference between Scalia and Stevens, then, lay in the visions they brought to statutory interpretation.

Justice Scalia strove mightily for a verbal coherence in the law that harmonized the language within and between statutes, and other sources of law. For him, language was the overriding, if not the sole, master to be followed. He sought a horizontal coherence in the law in which meaning was fixed, uniform, and determinate. Implicitly, he ascribed this uniformity of usage—an almost divine circumspection and consistency—to those who chose that language, the legislatures and other sources of law. Language was determinate, and the task for the judge is simply to interpret it properly, for surely it has been used that way. Viewed thusly, Scalia is an intentionalist,104 finding intention not in legislative history, but in the written word itself that presumably embodies those intentions.

This was not so for Justice Stevens. His mission was to vindicate the values at stake in this fray. His analogies to criminal procedure precedent were telling, for he thought that denaturalization occasions a loss as surely as does conviction. Moreover, Stevens believed that an interpretation that readily yielded denaturalization and invoked burden shifting violated precious values. Thus, what for Justice Scalia was a verbal coherence in the law, Stevens implicitly saw as short-sighted and

101. T. ALEXANDER ALENIKOFF, Theories of Loss of Citizenship, 84 Mich. L. Rev. 1471, 1495 (1986). Though Aleinikoff analyzed loss of citizenship from a communitarian perspective, the harm of which he spoke exists regardless of one’s theoretical inclinations.

102. Kungys, 485 U.S. at 791 (Stevens, J., concurring).

103. Id.

104. A term, perhaps used loosely here, to designate someone who feels the interpreter of statutes should vindicate the intentions of their authors.
as ignoring entirely the policies law seeks to promote.\textsuperscript{105} While not ignoring the statutory language, Justice Stevens thought it should be read to further larger goals and values, and not deified as an end in itself.

Justice Stevens, in seeking a consonance of policy in law, implicitly subscribes to the notion of a legal system. For him, law is not a hodgepodge of various rules and principles extracted from a careful parsing of language. Instead, it is a system built upon certain unifying principles, presumably embodied in the language of statutory and decisional law. Conversely, Justice Scalia, who focused solely on internal verbal consistency, implicitly rejected the notion of a legal system in which seemingly disparate threads were but a part of a consistent whole. Thus, unlike Scalia, Justice Stevens' coherence of policy envisions law as an enterprise with direction and purpose. The mission of the judiciary is, therefore, to detect and vindicate these overarching purposes. Here, Justice Stevens felt several values had been impermissibly trampled upon by the majority.

Two related values prominently emerge, though not discussed as such by Justice Stevens. The first is the so-called rule of lenity. The second is the principle of proportionality. By the first view, statutes, especially criminal statutes, should be interpreted favorably to the individual, lest they visit an unwarranted hardship upon the accused. Thus, for example, in \textit{United States v. Campos-Serrano},\textsuperscript{106} the Supreme Court refused to allow an alien to be convicted for possession of a counterfeit entry document when he had possessed a counterfeit alien registration receipt card, or "green card."

The statute under which Campos-Serrano was prosecuted made it a crime, among other things, to possess fraudulently any "document required for entry into the United States,"\textsuperscript{107} after having listed various forms of qualifying documents. Making the specious distinction between entry and re-entry documents, the Court concluded that this document did not fall within the coverage of the statute. Congress promptly changed the law in the face of this nearly preposterous decision,\textsuperscript{108} but the case nonetheless provided a good example of a court seeking an interpretation protective of the potentially unwitting. In \textit{Kungys}, Justice Stevens acted similarly in requiring more than a show-
ing of moral distastefulness before a citizen could be stripped of citizenship. For him, policy was a surer and fairer guide than arid language. Though this can be regarded as anti-majoritarian, it is not. Rather, Justice Scalia’s vision posits legislative conduct that is plainly counter-intuitive. At the very least, given the relative indeterminacy of language, in Stevens’ view, policy should trump forced literalism. In fact, of course, judges constantly pour policy into statutes that are facially unclear. Scalia’s view is quixotic in its assumptions about the determinacy of both language and judicial behavior.

Second, Justice Stevens’ insistence on materiality being part of section 101(f)(6) reveals a sensitivity to a principle of proportionality. All “liars” do not stand on the same moral footing. It may be that one, harried and fearful that some inconsequential fact may count against her, would swear falsely about it. Yet, is she as bad as the person who lies about something truly serious? Perhaps not, but the mechanical application of the statute leads ineluctably to the conclusion that they are the same, neither deserving to retain citizenship because both procured it illegally. In some sense, that may be faithful to these sections, but it violates the view that the loss suffered should be commensurate with one’s blameworthiness, a view too entrenched in the law to require citation to authority.

The INA is replete with provisions for forgiveness.109 Thus, though the denaturalization sections do not per se provide forgiveness, a metapurpose of the statute is to allow people to retain their status so long as their wrongdoing was within the the executive discretion contemplated by the INA.110 A recent decision111 of the Board of Immigration Appeals (BIA),112 a tribunal which continuously deals with im-


110. The INA contains numerous forms of relief including excludability and deportability. INA §§ 101 et seq., 8 U.S.C. §§1101 et seq. (1988). Although most relief is discretionary, the INA’s very existence exhibits a pervasive theme of forgiveness. Moreover, the civil lawyer would feel most comfortable discerning this overriding policy of forgiveness after having determined the “equity” of the statute. See generally ARTHUR T. VON MEHREN & JAMES T. GORDLEY, THE CIVIL LAW SYSTEM 81-82 (2d ed. 1977).

111. Matter of Hernandez-Casillas, A17-963-863 (BIA Jan. 11, 1990), rev’d, Matter of Hernandez-Casillas, Int. Dec. 3147 (AG Mar. 18, 1991) (unreported decision of the BIA). Although the Attorney General reversed the BIA at the request of INS Commissioner, Gene McNary, the Board’s decision is still noteworthy for two reasons. First, the BIA deals with immigration appeals on an ongoing basis, and its opinions are probably more reflective of public sentiment than those of the Attorney General, who only rarely exercises appellate jurisdiction. Second, although the Commissioner asked the Attorney General to reconsider earlier precedent decisions of the BIA, he declined to do so. Thus, the earlier expansions of section 212(c) of the INA were left undisturbed.

Moreover, it may be noteworthy that the BIA’s extension of section 212(c) to encompass entries without inspection (EWI) would have had a potentially enormous impact on relief from deportation. That is so because EWI is by far the most common basis for deportation. See 1988 Statistical Yearbook of the Immigration and Naturalization Service, Table 66, p. 119.

112. Although not specifically provided for by the INA, the BIA has appellate jurisdiction over a vast array of immigration cases.
migration law, underscores this policy.

Section 212(c) of the INA\textsuperscript{113} waives excludability for long-term residents who have become excludable since admission or who face exclusion upon seeking re-entry to this country. Its requirement of departure and attempted re-entry was successfully challenged in Francis v. Immigration and Naturalization Service.\textsuperscript{114} After Francis, the INS adopted the position that section 212(c) waivers were also available to those facing deportation who had not left the country. To be operational, however, the basis for deportation must have had an analogue in the exclusion section. That policy was effective until Matter of Hernandez.\textsuperscript{115}

Hernandez-Casillas, a long-time resident, was charged with entry without inspection in 1985. As a basis for deportation, it has no analogue in the exclusion section of the INA. Remarkably, the BIA agreed with him that relief should be available. Troubled that section 212(c) could sometimes forgive a more serious offense while leaving the less blameworthy alien without remedy, the BIA extended its ambit to cover all but the most serious grounds for deportation. Thus, “given the unusual history of section 212(c), and the long distance already traveled from the ‘plain language’ of that statute, it makes little sense now to adhere to strict rules of statutory construction.”\textsuperscript{116}

Hernandez was a major contribution to the chain novel of section 212(c) interpretation. The opinion preserved the spirit of forgiveness that pervades the statute and maintained a coherence of policy to which decision-makers should aspire. Justice Stevens acted in Kungys in a manner similar to the BIA in Hernandez by relying on this useful paradigm for statutory interpretation. Sometimes it is much easier to follow the language of the statute. However, faced with linguistic indeterminacy, courts must look beyond the narrow, often unhelpful, confines of language to vindicate the larger policies of which the language is only an imperfect reflection.\textsuperscript{117}

C. Through the Looking Glass

Setting aside the jurisprudential differences within the Court, one

\textsuperscript{113} INA § 212(c), 8 U.S.C. § 1182(c), as amended by Immigration Act of 1990 § 601 (West Supp. 1991).

\textsuperscript{114} Francis v. Immigration and Naturalization Service, 532 F.2d 268 (2d Cir. 1976).


\textsuperscript{116} Id.

\textsuperscript{117} Professors Eskridge and Frickey attack the single-minded approach to interpretation, characterizing it as “foundationism.” Instead, they recommend a recourse to practical reasoning that deploys a variety of available interpretive tools. See generally William N. Eskridge, Jr. & Philip P. Frickey, Statutory Interpretation as Practical Reasoning, 42 Stan. L. Rev. 321 (1990).
fact emerges which renders all of these cases somewhat surreal. Though Justice Stevens' approach to linguistic indeterminacy is surely more sound than Justice Scalia’s, even he ignored a matter quite central to this dispute: the qualifications for citizenship themselves. Throughout the cases discussed, courts have vaguely alluded to qualifications for citizenship, attempted to fashion appropriate tests, and applied those tests. Yet, despite this maundering prose, no Justice has recognized just how little is required for an alien to acquire citizenship. Accordingly, discussions of the various formulations of Chaunt and the new test from Kungys are strangely empty. Debate has occurred in a complete intellectual and factual vacuum.

The real screening for admission to the United States occurs when someone first effects entry, ordinarily as a resident alien. The visa applicant must pass the thirty-four bases for admissability. Having done so, to become a citizen, she must satisfy certain objective tests, such as lawful residency in the United States for a specified period of time and continuous residency in the state of application for a particular period. Beyond that, she must have been a person of good moral character for a specified period, and must not fall within a class of people ineligible for citizenship, such as those who are presently communists. Then, so long as the applicant has basic literacy in English and a grasp of American history and civics, she is eligible for naturalization upon taking an oath of allegiance.

Incredibly, then, all members of the Court have completely ignored how citizenship is achieved, while engaging in heated debate over the meaning of materiality and its relationship to the qualifications for citizenship. Even more remarkably, Justice Scalia decided the materiality issue in Kungys as a matter of law without making even passing reference to the real naturalization process. Indeed, he failed to demonstrate any familiarity with naturalization law itself. Yet, having committed himself to the finding that the concealment must have taken place at the naturalization stage, his concerns were limited to concealment or

122. Kungys, 485 U.S. at 757-58. Arguing that the concealment provision only applied to the acquisition of the certificate of naturalization, the Court stated that “[p]rocurement of other benefits, including visas, is not covered. Especially in light of this contrast with [INA]§ 1101(f)(6), we are unpersuaded by the Government’s argument that a misrepresentation in the visa proceeding
misrepresentations which took place at that stage.

Thus, all of the moral posturing in these opinions is really quite meaningless, for the naturalization process is virtually pro forma and only a few meaningful concealments can possibly take place at that stage. Seen in this manner, Kungys should add nothing to existing case law on materiality, though its melange of opinions surely obscures this fact. Perhaps that is why the case "settled" on remand. Indeed, it may be the ultimate irony that in trying to punish the willful prevaricator and provide clarity in the face of confusion, Justice Scalia accomplished neither. Although he attributed independent significance to the very act of concealment apart from what was concealed, he failed to recognize the triviality of this move, and never assigned a separate weight and significance to the dissembling itself. Failing in that alone, the case is a doctrinal failure, for the Court devised standards without realizing their real life applications.

VI. CONCLUSION AND RECOMMENDATIONS

The Kungys court, confused and fragmented, finally settled on an odd approach to the problems of the statute and achieved little. Yet this approach, in struggling to prove the certainty and clarity of language, only revealed a muddled statute and produced a vain effort to establish its meaning. Rather than furthering values and larger legislative purposes, the Court wrestled with language until it lost.

Ideally, legislative purpose, language, and policy will be congruent and will cause few problems for courts. Given the inexactitude of language, legislative inertia, and changes in policy that cannot be matched by legislative efforts, current policies must be vindicated by the courts, lest they languish entirely. The Court failed here, but its failure should be instructive. Courts should follow the example of judges like Justice Stevens and thus further the ongoing dialogue with legislatures, thereby adding to the chain novel of legislative interpretation. However, in light of the failure in Kungys, Congress should act to fix this statute. It acted to create criminal liability after the decision in Campos-Serrano, and it should act here to safeguard citizenship from being lost too easily and create clear, sensible legal standards to guide the decision-maker. However, this very assertion is ambiguous and in-

‘procures’ the naturalization because it obtains United States residence, which in turn is a prerequisite to naturalization.” Id. at 777. This reasoning precludes any inquiry into the lawfulness of the citizen’s residence, despite the fact that lawful residence is a precondition to admission to citizenship. To the extent that this reasoning is inconsistent with prior case law, this case must control. See also Matter of Longstaff, 716 F.2d 1439 (5th Cir. 1983), cert. denied, 467 U.S. 1219 (1984) (discussion of the relationship between eligibility for naturalization and lawful admission to permanent residence).

vites explanation.

The discourse on denaturalization has focused on two categories of people, the morally undeserving and the objectively ineligible. Though this distinction is frequently blurred, it is present nonetheless. This distinction should provide Congress with its organizing principle for the much-needed amendments to the Immigration and Nationality Act.

Indisputably, a polity may rightly establish its moral criteria for membership. Since we act as a people politically, we may insist that new members possess certain moral traits before being permitted to join in the national process of self-definition and self-determination. The two statutory elements relevant to this process of selection of members (and, therefore, denaturalization) are good moral character and concealment or misrepresentation.

Congress must decide whether a violation of section 101(f)(6) of the INA automatically disqualifies someone for citizenship and is, therefore, a basis for the revocation of citizenship. Arguably, Justice Scalia was correct in that the absence of good moral character, as evidenced by false swearing, renders citizenship illegally procured. However, it is not at all clear whether Congress foresaw this possibility, or, at least, carefully considered the implications of illegal procurement providing this avenue to denaturalization. It must be considered now, and Congress must decide whether all lying disqualifies for denaturalization purposes, or whether only the more serious lies count. Thus, Congress must decide whether materiality is an element of section 101(f)(6) and, if so, it must carefully define that term for these purposes.

Assuming Congress retains the basic scheme, it must decide what weight, if any, to assign to the conduct of the concealment or misrepresentation. There is little doubt about Justice Scalia's purity of linguistic analysis. Fortunately, he did not have to confront the issue of just how much the dissembling counts against the naturalized citizen. While he accused Justice Stevens of having rendered the statute a scandal, unless Congress decides just what deceptions count against the citizen and how heavily the conduct itself weighs against her, there will continue to be a standardless statute with most pernicious consequences.

Once Congress has resolved these matters of moral qualifications, it must decide on the relationship between qualifications for citizenship and denaturalization. That is, it must address that old bugaboo of materiality and decide whether only the material concealment or misrepresentation counts against the citizen. However, if Congress properly addresses the moral issues, this matter may virtually take care of itself. Unless Congress accedes to the view that the passage of time and the attenuation of evidence should burden the citizen, presumably only the citizen who lacked the objective qualifications for citizenship can be denaturalized. Thus, if one removes the unfortunate baggage that has
burdened the law of denaturalization, only the unqualified citizen can be denaturalized, and that decision is made by simply parsing the requirements for citizenship themselves.

Finally, if it seems harsh to denaturalize someone based on such a mechanistic model, perhaps Congress should insert a provision which forgives some forms of ineligibility. As mentioned earlier, forgiveness is a pervasive theme of the INA, and perhaps it should, under appropriate circumstances, play some role here. It may well be that the loss of citizenship is simply too disabling a hardship to visit upon the citizen of long standing.

Although commentators have argued against the significance of citizenship, under current law it is important. No doubt, the spectacle of the person without a country is deeply troubling. Since statelessness is so thoroughly abhorrent, citizenship must receive the protection it deserves. Confronted by statutory silence on critical issues, the Supreme Court has imposed a rational construct which is a disservice to both linguistic theory and value-based jurisprudence alike. Congress must act to restore citizenship to its proper place in the American value system.

124. For a commentary on the constitutional aspects of citizenship, see supra notes 1-3.
125. Unquestionably, Kungys suffers just that fate, for he cannot safely return to the Soviet Union. Therefore, he has no citizenship.