Cult-Induced Renunciation of United States Citizenship: The Involuntary Expatriation of Black Hebrews

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In the seventeen years from 1973 to 1990, approximately 400 United States citizens, members of a small, obscure religious cult known as the Original African Hebrew Israelite Nation of Jerusalem (formerly Black Hebrews), or, more commonly, the Hebrew Israelite Community (hereinafter Community), renounced their United States nationality in Israel. Most, if not all, of this unusually large class of renunciants surrendered their United States citizenship at the behest of the leadership of the Community. Fifteen members of this group successfully appealed to the Board of Appellate Review of the Department of State from the Department's decision that they expatriated themselves. Most of the rest have had their citizenship restored by the Department of State pursuant to a policy decision which recognized the inherently involuntary character of renunciations made at the behest of the leadership of the Community.

To understand why so many United States citizens surrendered their United States nationality with seeming docility, it is important to begin with an inquiry into the nature of the Community.[1]

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1. A now defunct English language paper published in Israel gave this background of the Hebrew Israelites:

> As early as World War One, a movement had developed of American Blacks who considered themselves Israelites. Negroes and Jews probably first came into contact when Eastern European Jews, fresh off the boat, ended up in the same New York neighborhoods with southern Blacks who had moved north for shelter. By the early 1920s, some eight or nine Jewish synagogues had sprung up in Harlem. But then, as now, the stronghold of Black Judaism was Chicago,

I. ANATOMY OF A CULT

The first members of the Hebrew Israelite Community arrived in Israel about twenty years ago. They were led by Ben Ami Carter, a foundry worker from Chicago who reportedly had a vision in 1966 that he should lead an exodus of Black Jews to Israel to establish a Kingdom of God. Because Israel is the Promised Land to Hebrew Israelites, who trace their ancestry to the original twelve tribes of Israel, the first members of the Community believed that black Jews could escape oppression in the United States and find salvation in Israel.

Ben Ami Carter, reportedly a man of some charisma and regarded as a black Moses by some of his followers, established the principal seat of the Community in Dimona, Israel, where most of the 1,500 members live.[2] The Community is in the mold of a typical cult: a group of people who share a common vision and who see themselves as separate from the rest of the world.[3] It has attributes shared to a greater or lesser extent by all such cults: "an authoritarian structure, the regimentation of followers, renunciation of the world and the belief that adherents alone are gifted with the truth."[4]

The hierarchy of the Community descends from Carter as "spiritual father" through various "minister" levels (subordinate officials) to the "souls" at the bottom. Carter has the final say about finances, marriages, location of residence, division of labor, access to outside medical help and travel outside the Community. Members live in a closed, oppressive environment with no private life. They must surrender their personal documents to the Community for safekeeping, and turn over their earnings. In return they receive a small and inadequate monthly stipend. There is one central postal address at Dimona. Members' mail reportedly is censored. It is not uncommon for the leadership to intercept incoming mail and withhold it from the addressee. Deviations from the Community's code of discipline often result in physical punishment of varying degrees of severity. Men are allowed five wives. Violations of the code of chastity among women whose husbands are sent abroad by Carter are reportedly frequent; violators have had their heads shaved. Although there is

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where it had been largely a storefront and basement operation since 1925. In the U.S. today, Black Jews number between 25,000 and 40,000, and are found in all the major urban centers. Ten thousand live in Chicago, the city from which the majority of Dimona's Black Hebrews come.

Roberta Elliot, *The Black Hebrews*, NEWSVIEW, Feb. 14, 1984, at 12.

2. Office of Citizens Consular Services, Hebrew Israelite Community (formerly Black Hebrews) (April, 1991) (unpublished paper on file in the Office of Citizens Consular Services of the Department of State) [hereinafter referred to as "OCS/CCS briefing paper."].

3. W. APPEL, CULTS IN AMERICA: PROGRAMMED FOR PARADISE 4 (1983).

4. *Id.* at 17.

limited health care competence within the Community, Carter has often refused to allow members access to outside medical assistance, on occasion with tragic results. Not surprisingly, mental illness is a problem.

The essential appeal of a cult lies in the way it simplifies life for its members.

> [A cult] promises to provide, and indeed does provide for the convinced convert, the assurance and absolutism the large society so conspicuously lacks. Once the initial decision is taken - to join - the rest comes ready-made: what is right, what is wrong, who shall be saved and who not, how to eat, how to dress, how to live.[5]

What the Hebrew Israelite Community cult offers its members and what it demands of them was vividly described by one disillusioned renunciant who left the Community and later took an appeal to the Board of Appellate Review.

> In 1973, I was working . . . in Detroit, Michigan. I had just begun going through a divorce from my wife and was emotionally upset. At this time, one of my friends from work invited me to a dinner at his home, where I could meet some new people. At the dinner, I was surrounded by members of a group known as the Original Hebrew Israelite Nation of Jerusalem. They were extremely supportive of me emotionally and drew me to them. They spoke about America being destroyed by nuclear war, using passages from the Bible, and created a fear about remaining in the United States.
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> I was drawn to them because of the great comfort they provided me. They seemed to believe that my problems were not my fault, that I was just a victim of circumstances. They began to talk with me about their religion. I began to attend bi-weekly meetings and tried to keep the lifestyle demanded by the group leader, Ben-Ami Carter. We were required to fast on the sabbath, give up liquor, tobacco and meat.
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> The group began to demand more and more of my time. When I tried to resist, they would all shun me and tell me to go back to my wife. They had become such an important part of my life that I felt if they were to shun me, I would have nowhere to go. The more time I spent with them, the greater their demands of time and devotion became.
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> Late in 1973, they told me to prepare to flee the United States. At their direction, I quit my job. They then instructed me to make purchases for my new life. I ran up huge bills buying clothing and goods when I had no means of paying for my purchases. I was directed not to pay any bills and to turn all of my savings over to the group. I left my apartment and possessions and moved in with the group. They then advised me that the police were looking for me and that I would have to leave. I was ordered not to tell my family or friends about leaving, I was just to disappear.
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> I was given a ticket to Israel by the group. I entered Israel on a tour composed solely of members of the group. After entering Israel, the whole tour disappeared into the group's facilities there.
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> I was given a new identity in Israel. I was ordered not to have any con-

5. C. KRAUSE, GUYANA MASSACRE 118 (1978) (quoting S.P. Hersh & Ann MacLeod, Cults and Youth Today (unpublished material, on file with authors at National Institute of Mental Health or University of Maryland, respectively)).

> tact with my family in the United States. I was shut off from the real world and drawn more deeply into the world of the group. I was put on a very limited diet. I could not eat meat or dairy products and lived off of fruits, grains and dried beans. I was expected to work in the outside community and turn all of my proceeds over to the group.[6]

Until recently, the existence and activities of the Community have been viewed as an irritant to the relations between United States and Israel. Most members of the Community entered Israel as tourists and have remained in violation of Israel's immigration laws. In 1972, the Israeli High Court refused to recognize the Hebrew Israelites as Jewish and ruled that they did not qualify for Israeli residency or citizenship under the Law of Return.[7] The Israeli government accordingly refused to issue members of the Community work permits, thus forcing them either to work illegally or subsist on charitable contributions and assistance from Israeli social service agencies.

As illegal immigrants, Hebrew Israelites lived under the threat of deportation to the United States by Israeli authorities, particularly if they worked on the Israeli economy. Cult members thus were in constant jeopardy of being separated from a way of life which they presumably found companionable and spiritually elevating. Following rumors of mass deportations in 1973, a group of about seventy members formally renounced their United States citizenship, evidently at the direction of Ben Ami Carter. Apparently, Carter reasoned that renunciations would forestall deportation by rendering members stateless and thus keep his Community intact. Subsequent rumors of deportations led Carter to order more renunciations. Evidently, the ploy was effective. When forty-six members of the cult were arrested in 1986, the Israeli government deported only those members with United States citizenship. Those who had renounced their citizenship were released. Over the past fifteen years, slightly over 400 Community members have renounced their United States citizenship. However, for unknown reasons, not all members of the cult renounced their citizenship. Possibly many members did not work on the Israeli economy, but subsisted on charity, and therefore did not risk arrest for working illegally. Many other members were children.

The renunciation of United States citizenship by so many cult members attests to Carter's and the Community's effective mind control over their well-conditioned subjects. It may be assumed that Carter was able to maintain the conversion of members to the tenets of the Community by various techniques - prayer, creating fear, in-

6. Affidavit of Michael E.G. at 1-2, *In re* Michael, 12 Bd. App. Rev. 73 (Dept. of State, Feb. 13, 1986).

7. By contrast, the Israeli government acknowledges the Black Falashas of Ethiopia as co-religionists and has welcomed them to settle in Israel. In 1990, the press reported extensively on the airlift of Falashas from Ethiopia to Israel where they were welcomed as Jews.

stilling feelings of guilt - which prolonged the dissociated condition produced by those tactics. The intensity and prolongation of these techniques made it possible for him to possess an extreme degree of control over the minds of members.[8] "Brainwashing" is the colloquial term to describe the effect of Carter's control over his followers.[9] It is not difficult to accept that as a consequence of effective brainwashing, Carter's followers were unable to make voluntary, considered judgments when ordered to renounce United States citizenship.

Members of the Hebrew Israelite Community who renounced their citizenship are exemplars of the proposition that "human beings may be innately susceptible to certain persuasive techniques."[10] Carter succeeded in convincing so many of his flock to renounce citizenship because he was a charismatic leader, able to inculcate fear of the consequences of disobedience in members of the sect who, for the most part, were artless, ill-educated and pre-disposed to abnegation. Carter's comminations thus probably seemed quite real to them. Furthermore, the controlled environment Carter created in the isolation of Dimona intensified the herd instinct in his followers.

II. HOW FORMAL RENUNCIATION OF NATIONALITY IS ACCOMPLISHED

The Immigration and Nationality Act prescribes expatriation as a consequence of making a formal renunciation of one's nationality before a diplomatic or consular officer of the United States in a foreign state, in the form prescribed by the Secretary of State.[11] Pro-

8. W. APPEL, *supra* note 3, at 163.

9. "[Brainwashing] does not necessarily imply robot-like behavior, but rather, dramatically altered behavior. As parents and psychiatrists have observed, cult members are changed from their former selves. Their behavior is typically flat, passive, without humor or vitality. They have difficulty concentrating and are at a loss when asked to make independent judgments or decisions." *Id.* at 164.

10. C. KRAUSE, *supra* note 5, at 119 (quoting from W. SARGANT, BATTLE FOR THE MIND; W. SARGANT, THE MIND POSSESSED).

11. Immigration and Nationality Act § 349(a)(5), 8 U.S.C. § 1481(a)(5) (1988), provides that:

> Sec. 349. (a) A person who is a national of the United States whether by birth or naturalization, shall lose his nationality by voluntarily performing any one of the following acts with the intention of relinquishing United States nationality —
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> . . .
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> (5) making a formal renunciation of nationality before a diplomatic or consular officer of the United States in a foreign state, in such form as may be prescribed by the Secretary of State. . . .

vided the prospective renunciant is competent and acts voluntarily, knowingly and intelligently, no diplomatic or consular office may deny one the right to expatriate himself or herself. It has been the law for more than a century that expatriation is "a natural and inherent right of all people" and anything done or said by any United States official which might deny that right is "inconsistent with the fundamental principles of the Republic."[12]

Since formal renunciation of United States citizenship is an act fraught with grave consequences, the Department of State has devised procedures to better ensure that there is no reasonable doubt that the renunciation was done voluntarily, knowingly and intelligently.[13] Consular officers are to counsel prospective renunciants about the serious consequences of renunciation and to advise them to reflect carefully before proceeding. Once it is clear that the individual is determined to renounce, he or she is asked to execute, in the presence of the officer and two witnesses, a sworn statement of understanding of the consequences of the act. In particular, the individual is asked to acknowledge that renunciation is a right which the person wishes to exercise and freely does so, that the act will leave the person an alien toward the United States, and that the ramifications of renunciation have been carefully explained to the person and he or she fully understands them. Only then does the officer administer the oath of renunciation. The form of oath prescribed by the Secretary of State reads as follows:

> . . . I desire to make a formal renunciation of my American nationality, as provided by section 349(a)(5) of the Immigration and Nationality Act and pursuant thereto I hereby absolutely and entirely, without mental reservation, coercion or duress, renounce my United States nationality together with all rights and privileges and all duties of allegiance and fidelity thereunto pertaining.

Recognizing that the circumstances involved in renunciation by

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12. Revised Statutes of the United States § 1999 (originally enacted as Act of July 27, 1868, ch. 249, § 1, 15 Stat. 223), *reprinted in* 8 U.S.C. § 1481 at 1384, *and in* 8 U.S.C.A. § 1481 at 225. Revised Statutes of the United States § 1999, also known as the Right of Expatriation, reads as follows:

> Whereas the right of expatriation is a natural and inherent right of all people, indispensable to the enjoyment of the rights of life, liberty, and the pursuit of happiness; and whereas in the recognition of this principle this Government has freely received emigrants from all nations, and invested them with the rights of citizenship; and whereas it is claimed that such American citizens, with their descendants, are subjects of foreign states, owing allegiance to the governments thereof; and whereas it is necessary to the maintenance of public peace that this claim of foreign allegiance should be promptly and finally disavowed: Therefore any declaration, instruction, opinion, order, or decision of any officer of the United States which denies, restricts, impairs, or questions the right of expatriation, is declared inconsistent with the fundamental principles of the Republic.

13. 7 FOREIGN AFFAIRS MANUAL 1251-53 (1984) (prescribes the procedures for formal renunciation of nationality).

Hebrew Israelites were unusual in that most were probably advised, if not ordered, to give up their citizenship, the Department of State, in an attempt to ensure that the renunciations were voluntary, required from the outset that consular authorities in Israel ask renunciants to complete an additional affidavit supplementing the statement of understanding. In September, 1973, the Department of State sent the following instruction to the Embassy in Tel Aviv regarding use of the supplemental affidavit.

> In view of the circumstances involved, embassy must make certain that renunciation be voluntary and not performed under duress, coercion or influence. Request Black Hebrews who wish to renounce to answer following questions in supplemental affidavit:
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> 1. Have you retained an attorney to represent you in this matter of renunciation? If not, why not? Do you want additional time to consult with an attorney, friends, or family advisors?
> 2. Is your decision to renounce in any part based:
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> (A) On the fact that the GOI [Government of Israel] is considering deporting you? If so, explain.
> (B) On your present financial condition? If so, explain.
> (C) On personal or family problems and/or living conditions? If so, explain.
> (D) On influence, force and/or coercion that is being brought upon you by any person or persons? If so, explain.
>
> If the Consul believes that the renunciant may have any reservations, do not, repeat, do not administer the oath of renunciation, but send to the Department for decision all documents and a memorandum of conversation in the event of refusal to sign affidavits. If no reservations are apparent, administer the oath of renunciation and send all documents to the Department.[14]

Renunciants usually went to the Embassy in groups of four or five, under escort of an official of the Community. Renunciations were handled in two stages. During the first stage, the renunciant was given copies of the oath of renunciation, the statement of understanding, and the supplemental affidavit to read. An Embassy employee explained the procedure and assisted each one as necessary to complete the forms. During the second stage, the consular officer, renunciant, and witnesses met privately in a separate office. The consular officer read each question orally to the renunciant, explained difficult words, answered any questions, stressed the gravity of the act, and attempted to ascertain whether the renunciation was voluntary or if there was an element of coercion. Signatures on the three documents were reportedly taken only after the consular officer was

14. Telegram Number 19236 from United States Department of State to Embassy Tel Aviv (Sept. 26, 1973) (regarding renunciation of U.S. Citizens).

satisfied that the renunciant understood the entire process and acted freely.[15] The similarity of responses to questions posed by consular officers indicates that there probably was, as all appellants before the Board asserted, prior coaching in Dimona. Answers to oral questions of the consuls were generally given in a monotone. Answers to written questions about voluntariness in the supplemental affidavit were uniformly terse and invariably identical from one renunciant to another.

It is evident that consular officers followed an elaborate procedure intended to establish whether the renunciations were voluntary. Perhaps they could not have done more to ascertain whether the Community member was indeed acting freely.

In loss of nationality proceedings, there is a statutory legal presumption that a person who performs a statutory expatriative act does so voluntarily. The presumption may be rebutted, however, upon a showing by a preponderance of the evidence that the act was not voluntary.[16] The statute and case law also provide that in such proceedings, the government bears the burden of proving by a preponderance of the evidence that the actor intended to relinquish citizenship.[17] Where formal renunciation of citizenship is involved, the dispositive legal issue almost invariably is whether the renunciation was a free and unfettered act. If it is established that the act was

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15. It does not appear that consular officers refused to accept the renunciations of any Hebrew Israelites. However, a few years ago, two prospective renunciants told a consular officer that they were reluctant to renounce but feared the consequences if they did not do so. Both were given copies of their signed oaths of renunciations (presumably to show the leadership that they had obeyed orders). The documents of one were not sent to the Department; the other individual in the end, decided to follow through and actually renounced citizenship. The embassy completed the steps necessary to permit him to do so.

No general policy was adopted with respect to individuals like the two referred to above. In any event, after 1989, formal renunciations dropped off sharply. Telegram Number 03965 from Embassy Tel Aviv to the United States Department of State (Mar. 16, 1988).

16. 8 U.S.C. § 1482(b) provides that:

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

Under the preponderance of the evidence rule, an appellant must establish that the existence of the contested fact - the claim that he or she was forced to renounce citizenship - is more probable than its non-existence. K. BROUN, G. DIX, E. GELHORN, D. KAYE, R. MEISENHOLDER, E. ROBERT, J. STRONG, MCCORMICK ON EVIDENCE § 339 (3d ed. 1984).

17. 8 U.S.C. § 1481(b). *See also* Vance v. Terrazas, 444 U.S. 252 (1980).

voluntary, it follows almost ineluctably that the government can succeed in establishing that the citizen intended to relinquish citizenship. By definition, formal renunciation, made voluntarily, knowingly and intelligently, bespeaks an unambiguous intent to forfeit citizenship.[18]

After the formalities have been completed, the consular officer concerned is required to execute a Certificate of Loss of United States Nationality (CLN) in the name of the renunciant.[19] The CLN sets forth briefly the essential facts of the case and the section of law under which loss of nationality is held to have occurred. After the case has been developed, the CLN and ancillary documents are forwarded to the Department of State for adjudication.

In none of the Hebrew Israelite cases appealed to the Board of Appellate Review ("Board") did the Embassy make a substantial report on the case, or even indicate that the circumstances surrounding the particular renunciation had been examined. The Embassy apparently assumed the Department would accept without elaboration its judgment that the renunciation was voluntary, as attested by the renunciant's statements. Repeatedly the Embassy forwarded the CLN and supporting papers to the Department under cover of a memorandum which stated merely:

> Enclosed for the Department's approval is a certificate of Loss of Nationality which was executed by the Embassy in the case of _____, a Black Hebrew, who made a formal renunciation of his U.S. nationality on _____.
>
> The certificate is accompanied by an Oath of Renunciation, a statement of understanding and an additional Affidavit as requested in reftel. Mr./Ms. _____ U.S. passport is also enclosed.

Evidently sharing the judgment of the Embassy, the Department of State saw no need to look behind any of the renunciations; in none of

18. "A voluntary oath of renunciation is a clear statement of desire to relinquish United States citizenship. . . ." Davis v. District Director, Immigration & Naturalization Service, 481 F. Supp. 1178, 1181 (D.D.C. 1979), *aff'd without opinion*, 652 F.2d 195 (D.C. Cir. 1981), *cert. denied*, 454 U.S. 942 (1981).

19. 8 U.S.C. § 1501 provides:

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

the cases appealed to the Board, at least, did the Department instruct the Embassy to develop the case more thoroughly.

In recent years, the Department of State has made about 800 determinations of loss of nationality annually, of which some 200 are based on formal renunciation of nationality.[20] From 1980 through 1990, ninety-two appeals were taken to the Board of Appellate Review from determination of loss of nationality as a consequence of formal renunciation of nationality. Fifteen were filed by members of the Hebrew Israelite Community.

Over the past ten years, the Board held that forty-eight of the ninety-two cases appealed to it were time-barred and accordingly dismissed them for want of jurisdiction.[21] The Board affirmed the Department's determination of expatriation in twenty and reversed its determination in sixteen. Seven cases were remanded to the Department at the latter's request to vacate the CLN, the Department having submitted that it could not carry its burden of proof. One case was dismissed as moot after the Department informed the Board that it believed it appropriate to vacate the CLN pursuant to a new (1990) policy for adjudicating Hebrew Israelite renunciations.

The Hebrew Israelite renunciation cases aside, the Board has, as a rule, insisted that pleas of coercion be supported by detailed evidence and that there be a credible showing that the actor had no reasonable or viable alternative to forfeiting United States nationality. Formal renunciation of United States nationality being such an explicit, unambiguous and final expatriative act, the Board believes it fair and right to accept nothing less.[22]

Obviously, the Board did not consider that any of the twenty appellants, whose loss of nationality it affirmed, met its criteria to prove duress. Interestingly, in only one of those twenty cases did an

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20. Telegram 121931 from United States Department of State to all Diplomatic Consular Posts (Apr. 16, 1990) (on file with Department of State Board of Appellate Review, rec'd May 4, 1990).

21. The fact that the Board has determined that the appeal is time-barred and has dismissed it on the grounds that it lacks jurisdiction does not in itself bar the Department of State from taking further administrative action. Leich, *Contemporary Practice of the United States Relating to International Law*, 77 AM. J. INT'L L. 298, 302 (No. 2, Apr. 1983) (quoting David R. Robinson, Legal Adviser of the Department of State, in his memorandum to the Board of Appellate Review):

> [W]here the Board of Appellate Review has dismissed an appeal in a citizenship case as time barred, that fact standing alone does not preclude the Department from taking further administrative action to vacate a holding of loss of nationality. This continuing jurisdiction should be exercised, however, only under certain limited conditions to correct manifest errors of law or fact, where the circumstances favoring reconsideration clearly outweigh the normal interests in the repose, stability and finality of prior decisions.

Id.

22. *In re* Tibor S., 12 Bd. App. Rev. 53 (Dept. of State, Jan. 23, 1986) (illustrative of the Board's general approach, particularly where, as in *In re* Tibor S., economic duress is pleaded).

appellant plead that she gave up her American citizenship as a result of the influence of another.[23] With respect to the sixteen whose loss of nationality the Board reversed, only one pleaded that he renounced because of the influence of another - his father. In that case the appellant was sixteen years old when he renounced his citizenship. His father, a devout Muslim, had reared his son to obey him without demur as prescribed by Islamic law.[24] In the Board's view, the appellant made a persuasive case that he had renounced only to obey his father. The others whose loss of nationality the Board reversed were adjudged incompetent to perform the act, had not knowingly or intelligently renounced, or performed an act of renunciation that the Board deemed invalid.

The Hebrew Israelite renunciation cases thus presented the Board with novel issues of fact. They were the first appeals the Board heard involving multiple renunciations which were part of an unmistakable common pattern.

III. HEBREW ISRAELITE COMMUNITY RENUNCIATIONS BEGIN TO TURN TO THE BOARD OF APPELLATE REVIEW FOR RELIEF

Not until 1980 did any one of the many Black Hebrews who had renounced citizenship seek appellate review of the Department's determination of loss of his or her citizenship. By 1980, Michael E.G., who renounced his citizenship in 1974 (one of the first to do so) had become disillusioned with the Community. Although he was still living at Dimona, he approached the Embassy in confidence to express the wish to cancel his renunciation. His request was referred to the Board, whose Chairman wrote him in August 1980 to explain how to file a proper appeal. Fearing the repercussions if the leadership were to learn that he was trying to recover his citizenship, Michael had asked the Embassy not to forward any reply from Washington to him at Dimona, but rather, to hold it for him to pick up. However, the Embassy apparently did not do as he requested. Instead, it allegedly sent the letter to the Community's central postal address in Dimona where it probably was intercepted by the leadership and withheld from Michael. Michael maintained that the interception was the reason he never received the Board's letter. Allegedly not knowing how to do so, he made no further attempt to obtain review

23. *In re* Elizabeth M. V., 6 Bd. App. Rev. 112 (Dept. of State, Aug. 25, 1982) (appellant claimed that her husband exerted influence over her).

24. *In re* Hussam H.L., 11 Bd. App. Rev. 55 (Dept. of State, Aug. 8, 1985).

of his case until he broke with the Community and returned to the United States. He then obtained counsel and filed a proper appeal in 1985.[25]

Michael E.G. asserted that he renounced his citizenship under coercion and duress. The Community exercised such a strong psychological hold on him that he lacked the requisite mental state to relinquish citizenship voluntarily, thus performing the act without comprehending its consequences.

The Board did not reach the merits of Michael E.G.'s appeal. It concluded that the appeal was time-barred and dismissed it for lack of jurisdiction.[26] The Department of State thereafter vacated the certificate of loss of nationality on the grounds that the evidence submitted by the appellant had overcome the statutory presumption that he acted voluntarily.[27]

Nearly three years passed before other Community renunciants noted an appeal to the Board. Ina Y.A. and Markham A.I., who renounced their citizenship in 1986, filed timely appeals in 1987.[28] In neither case did the Department of State file a brief within the time prescribed by the regulations. The Board therefore decided each appeal solely on the submissions of the appellant. Both Ina Y.A. and Markham A.I. alleged that they were forced to renounce their citizenship by the Community leadership. To defy Ben Ami Carter, Ina Y.A. stated, would mean suffering severe consequences. Markham A.I. stated that to remain in good standing in the Community, one had no choice but to renounce upon being told to do so. Ina Y.A. supported her allegations with sworn statements of two persons who knew her. Markham A.I. submitted only his own uncorroborated statement. In both cases, the Board concluded, with minimal analysis, that the appellant had not made a credible case of duress and thus had not rebutted the presumption of voluntariness. Although the Board held that the renunciations of both Ina Y.A. and Markham A.I. were voluntary, it reversed the Department of State's holding of loss of citizenship in both cases on the grounds that the Department of State, having made no submission within the time allowed, failed to carry, let alone undertake, its statutory burden of proving that the renunciants intended to relinquish citizenship.

A year later, two more Hebrew Israelite Community renunciants filed appeals. In the first case, *In re Shirley J.P.*,[29] the Department

25. *In re* Michael E.G., 12 Bd. App. Rev. 73 (Dept. of State, Feb. 13, 1986).

26. *Id.* at 82.

27. *See* Leich, *supra* note 21, at 302 (regarding the authority of the Department of State to vacate the CLN after the Board dismissed the appeal).

28. *In re* Ina Y.A., 16 Bd. App. Rev. 200 (Dept. of State, June 30, 1988); *In re* Markham A.I., 16 Bd. App. Rev. 208 (Dept. of State June 20, 1988).

29. *In re* Shirley J.P., 18 Bd. App. Rev. 247 (Dept. of State, June 30, 1989). Appellant joined the Hebrew Israelites in the United States in 1978. In 1979, she took

of State requested that the Board remand the case so that the certificate of loss of nationality (CLN) might be vacated. The Department of State based this request on the grounds that it was unable to prove that Shirley J.P. intended to relinquish her citizenship. The Board dismissed the appeal for lack of jurisdiction, having found it time-barred. Thereafter, the Department vacated the CLN.[30]

Ironically, the second case, *In re Lenise P.C.*, concerned the daughter of the spiritual leader of the Community who renounced her citizenship in 1973 when she was fifteen years old.[31] The statute does not specify an age below which formal renunciation of citizenship is not permitted.[32] However, the statute permits one who renounces citizenship under the age of eighteen to nullify renunciation upon attaining majority.[33] Department of State guidelines prescribe an arbitrary limit of age fourteen. Below this age children are held to be incapable of understanding the consequences of their acts. In addition, consular officers are instructed to proceed very circumspectly in taking the renunciation of a minor over age fourteen and are to examine exhaustively all evidence to establish whether the act is being done voluntarily, knowingly and intelligently.[34]

In Lenise P.C.'s case, the record showed that the consular officer followed the prescribed procedure to the letter. He counseled her about the seriousness of the act, advised her of the legal ramifications of renunciation by a minor, and explained the provisions of the law to her. As he reported to the Department:

> I spoke to [Lenise P.C.] privately and she struck me as being relatively mature. She seemed to be cognizant of the effect of her contemplated act. [Lenise P.C.] stated at the time that she had not been coerced or pressured

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her two children with her to Israel and began life in the Community at Dimona. At age 22, she renounced her citizenship, allegedly under pressure from Ben Ami Carter.

30. *See supra* note 21.

31. *In re* Lenise P.C., 19 Bd. App. Rev. 1, 2 (Dept. of State, July 5, 1989). Appellant's father took her to Israel when she was 12 years old, apparently without her mother's agreement that she might live there with him. At age 15, she renounced her citizenship, under pressure of her father, as she alleged to the Board.

32. The Nationality Act of 1940 § 403(b), 8 U.S.C. § 803 (1940) (repealed 1952) (provided that no person under the age of 18 might expatriate himself by performing any statutory expatriative act). The Immigration and Nationality Act of 1952, 8 U.S.C. § 1481 (1989), has no express provisions regarding the age above which a citizen may make a formal renunciation of citizenship. However, section 351(b) of the Immigration and Nationality Act of 1952, 8 U.S.C. § 1483 (1988), provides that a person who renounced citizenship prior to his or her 18th birthday shall not be deemed to have expatriated himself or herself if within six months of attaining the age of 18, he or she asserts a claim thereto in the manner prescribed by the Secretary of State.

33. Immigration and Nationality Act § 351(b), 8 U.S.C. § 1483 (1988).

34. 7 FOREIGN AFFAIRS MANUAL 1254.1 (1984).

into making her decision by her father or any other members of the Black Hebrew movement.[35]

When she returned to the Embassy a few days later, her mind evidently made up, the officer accepted her renunciation, avowedly convinced that this fifteen-year-old, with little education, knew what she was doing and was acting independently of any pressure from her father, known to all as leader of the sect.[36] The Department of State, without recording its grounds for doing so, accepted the recommendation of the consular officer and approved the CLN.[37] After the appeal was filed in 1989, the Department of State viewed the case from a different perspective, and requested that the Board remand the appeal so that the CLN might be vacated.[38] It was the Department's view that:

> [A]t the time of [Lenise P.C.'s] renunciation she was fifteen and a half years of age, and never understood the ramification of her actions or fully grasped the seriousness of her renunciation. The Department believes that appellant was too young to have formed the requisite intent to relinquish her U.S. citizenship.[39]

Having concluded that the appeal was time-barred and that it lacked jurisdiction to remand, as requested, the Board dismissed the appeal, observing: "The Board has great sympathy for appellant, and applauds the Department's decision. . . . Had the appeal been timely, the Board would have remanded the case with alacrity. . . ."[40] After the Board dismissed the appeal, the Department vacated the CLN.[41]

IV. Eight Early Appellate Determinations

The following year, the Board decided eight appeals, reversing the Department of State's determination in five and affirming it in three.[42] However, after appellants in the latter three filed motions for reconsideration, the Board reversed itself and restored citizenship.[43]

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35. *In re* Lenise P.C., 19 Bd. App. Rev. at 2-3 (Dept. of State, July 5, 1989).
36. *Id.* at 3.
37. *Id.* at 4.
38. *Id.* at 1.
39. *Id.* at 4.
40. *Id.* at 6.
41. *See supra* note 21.
42. *In re* Terri A.H., 20 Bd. App. Rev. 7 (Dept. of State, Jan. 23, 1990); *In re* Michael J.S., 20 Bd. App. Rev. 41 (Dept. of State, Feb. 2, 1990); *In re* Velma P.A., 20 Bd. App. Rev. 80 (Dept. of State, Feb. 22, 1990); *In re* Gwendolyn J.P., 20 Bd. App. Rev. 118 (Dept. of State, Mar. 22, 1990); *In re* Marshall T.B., 20 Bd. App. Rev. 219 (Dept. of State, May 15, 1990); *In re* Nathaniel R.S., 20 Bd. App. Rev. 255 (Dept. of State, June 25, 1990); *In re* Anthony G.P., 20 Bd. App. Rev. 268 (Dept. of State, June 28, 1990); and *In re* Deborah A.B., 20 Bd. App. Rev. 279 (Dept. of State, June 29, 1990).
43. The five cases where the Board reversed the Department's determination of loss of nationality involved a very young man and four young women. The cases of the

There was no direct evidence in these cases that the Community leadership ordered appellants to renounce citizenship. However, the Board took notice that in the past, the Community reportedly had directed many members to renounce citizenship in order to frustrate deportation by the Israeli authorities. Consistent accounts of pressure in previous appeals heard by the Board lent credibility to the claims of these eight appellants.

Additional factors supported their allegations of duress. In the past, disobeying the Community leadership has resulted in punishment, often severe. Further, before the renunciants went to the Embassy, they were unquestionably rehearsed by a Community leader. The most blatant evidence of influence is the fact that a Community leader invariably accompanied the renunciants to the Embassy, waited while they renounced citizenship, and afterwards escorted them back to the Community's compound.[44]

V. GUIDING PRECEPTS

In deciding these appeals, the Board was guided by certain well-established legal principles. For example, it was well-established that "the right of citizenship being an important civil one can only be waived as the result of free and intelligent choice."[45] It had also been determined that a voluntary act is one "proceeding from one's own choice or full consent unimpelled by another's influence. To determine whether an act is voluntary, the trier of fact must examine all relevant facts and circumstances which might cause the actor to depart from the exercise of free choice and respond to compulsion from others."[46]

The Board was also mindful of Justice Frankfurter's injunction in

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young man, *In re* Michael J.S., and one of the young women, *In re* Gwendolyn J.P., are illustrative. *In re* Michael J.S., 20 Bd. App. Rev. 41 (Dept. of State, Feb. 2, 1990), *In re* Gwendolyn J.P., 20 Bd. App. Rev. 118 (Dept. of State, Mar. 22, 1990). The other cases involved older men; *In re* Michael T.B. is representative. *In re* Marshall T.B., 20 Bd. App. Rev. 219 (Dept. of State, May 15, 1990).

44. In response to an inquiry of the Board of Appellate Review, the Embassy at Tel Aviv reported that "since 1985, a HIC [Hebrew Israelite Community] official has escorted all prospective renunciants." Telegram No. 10597 from the Embassy at Tel Aviv to United States Dept. of State (July 28, 1989).

45. Yuichi Inouye v. Clark, 73 F. Supp. 1000, 1004 (S.D. Cal. 1947), *rev'd on procedural grounds*, Clark v. Inouye, 175 F.2d 740 (9th Cir. 1949).

46. Kasumi Nakashima v. Acheson, 98 F. Supp. 11, 12 (S.D. Cal. 1951). *See also* Akio Kuwahara v. Acheson, 96 F. Supp. 38, 43 (S.D. Cal. 1951) (held: "[T]he trier of fact must consider all evidence relating to the mental condition of the actor to determine whether this act was 'unimpelled by another's influence.' ").

Nishikaw v. Dulles:[47] "[w]here a person who has been declared expatriated contests that declaration on grounds of duress, the evidence in support of this claim must be sympathetically scrutinized. This is so both because of the extreme gravity of being denationalized and because of the subtle, psychologic factors that bear on duress."[48] In all eight cases, because the psychological factors were important, the Board attempted to give them close scrutiny.

The Board saw similarities between the cases of these eight appellants and the cases of the dual United States - Japanese citizens who renounced American citizenship in the United States during World War II.[49] *Tadayasu Abo v. Clark*[50] seemed apposite. There, the citizenship-claimants alleged that they renounced due to duress and coercion exerted by disloyal internees at the infamous Tule Lake internment camp.[51] They also alleged that alien parents pressured their children to renounce United States citizenship in order to prevent family break-up and avoid draft induction.[52] In *Tadayasu Abo*, the parties agreed that a combination of factors led to the citizenship renunciations at Tule Lake camp. Such factors included threats and the notoriously bad camp conditions.[53] What disagreement there was, the court stated, concerned which factors were primary, and which subordinate, and as to the effect and impact upon the citizenship-claimants. In holding that citizenship should be restored, the court declared that: "[s]uch factors, *singly or in combination*, cast the taint of incompetency upon any act of renunciation made under their influence by American citizens interned without Constitutional sanction, as were plaintiffs."[54]

VI. The Board's Decisional Rationale

The appellant in *In re Michael J.S.*[55] was only twenty years old when he renounced his citizenship.[56] Taken to Israel by his mother when he was seven years old, he was reared and educated in the

47. 356 U.S. 129 (1958) (Frankfurter, J. concurring).
48. *Id.* at 140.
49. The Nationality Act of 1940, § 401(i), 8 U.S.C. § 801(i)(1940) (repealed 1952), provided for loss of citizenship as a result of formal renunciation in the United States in wartime in such form and before such officer as the Attorney General should designate. Section 349(a)(6) of the Immigration and Nationality Act of 1952 § 349(a)(b), 8 U.S.C. § 1481(a)(6) (1988), has a similar provision.
50. 77 F. Supp. 806 (N.D. Cal. 1948), *aff'd, rev'd and amended in part*, 186 F.2d 766 (9th Cir. 1951), *cert. denied*, 342 U.S. 832 (1951).
51. *Id.* at 806.
52. *Id.* at 808.
53. *Id.*
54. *Id.* (emphasis added).
55. *In re* Michael J.S., 20 Bd. App. Rev. 41 (Dept. of State, Feb. 2 1990).
56. *Id.* at 41.

Community.[57] He submitted that living in the Community for so many years had "programmed" him to do whatever the other members did.[58] He felt completely under the influence of the Hebrew Israelite Community and was afraid to disregard their rules and regulations.[59] The backdrop against which Michael S. renounced his citizenship was of paramount relevance to the issue of voluntariness.[60] Given the nature of the Community, the Board did not consider it speculative to believe that appellant's fears and concerns were genuine.[61] Through no fault of his own, he found himself in a bizarre world.[62] The Board reasoned that someone so conditioned to give obedience to his superiors was not likely to resist the commands of authority, adding that "[f]eebleness on one side and overpowering strength on the other imply duress."[63]

Gwendolyn J.P. was thirty years old when she renounced her citizenship in 1986.[64] She joined the Hebrew Israelite Community in 1979 and married a fellow member. They had two children.[65] According to Gwendolyn J.P., she had been made to believe that the Community was "the establishment on earth of the Kingdom of God."[66] In 1986 when the Israeli government deported a number of Hebrew Israelite Community members, she was instructed, along with a number of others, to renounce her citizenship to prevent deportation.[67] "All 'loyal' members" were expected to obey the command to renounce.[68] In rebuttal of the presumption that she acted voluntarily, appellant asserted that the leadership convinced her that renunciation was the only way she could ensure that she would not be deported, and thus be separated from her children and husband. Apparently, her husband was not willing to leave the Hebrew Israelite Community at that time and would not allow appellant to remove their children from the Community.[69] She claimed her husband threatened her life if she attempted to take the children.[70]

57. *Id.*
58. *Id.* at 46.
59. *Id.*
60. *Id.* at 51.
61. *Id.* at 52.
62. *Id.*
63. *Id.* at 52 (quoting Yuichi Inouye, 73 F. Supp. at 1003).
64. *In re* Gwendolyn J.P., 20 Bd. App. Rev. 118 (Dept. of State, Mar. 22, 1990).
65. *Id.*
66. *Id.*
67. *Id.*
68. *Id.*
69. *Id.* at 125.
70. *Id.*

In light of the circumstances, the Board concluded that renunciation plainly was not appellant's freely formulated decision.[71] The Board accepted that the leadership pressured her to renounce and that she had a genuine fear that she could be deported and separated from her children.[72] All factors considered, it was evident that she saw no reasonable alternative to renunciation. Here too there was "feebleness on one side" and "overpowering strength on the other."[73]

The Board's approach in the later appeals of three men[74] focused on their ages and, in contrast to the cases of Michael J.S. and Gwendolyn J.P., their putative capacity to defy the Hebrew Israelite Community leadership without suffering adverse consequences. At the time of renunciation, the youngest of the three men was thirty years old; the other two were thirty seven and thirty nine.[75]

Marshall T.B. went to Israel in 1977 at age thirty after serving in the United States Army in Viet Nam.[76] In 1986, when a number of Community members were arrested by the Israeli authorities and held for deportation, the Community leadership allegedly told Marshall T.B. that the only way he could avoid the same fate was to renounce his citizenship.[77]

Marshall T.B. claimed he acted under duress: "I was in fact pressured/coerced under threat of reprisals by the leadership of the Black Hebrew Community to renounce my U.S. citizenship."[78] He pointed out that the Hebrew Israelite Community was rigidly controlled,[79] and likened the living conditions to those in Iran under the Ayatollah Khomeini.[80] "If he had not renounced his citizenship as directed, 'it would have been tantamount to being exiled from the Community.' "[81] In particular, he feared if he did not renounce, as instructed, he would be deported, as many Community members had already been.[82] Appellant claimed he had seen many families in the Community destroyed when deportation had separated either the father or mother from the family. His main concern was the fate of his

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71. *Id.* at 133.
72. *Id.* at 132.
73. *Id.* at 133 (quoting *Yuichi Inouye*, 73 F. Supp. at 1003).
74. *In re* Anthony G.P., 20 Bd. App. Rev. 268 (Dept. of State, June 28, 1990) (appellant was 30 years old at renunciation); *In re* Nathaniel R.S., 20 Bd. App. Rev. 255 (Dept. of State, June 25, 1990) (appellant was 37 years old when he renounced); and *In re* Marshall T.B., 20 Bd. App. Rev. 219 (Dept. of State, May 15, 1990) (appellant was 39 years of age at the relevant time).
75. *See supra* note 74.
76. *In re* Marshall T.B., 20 Bd. App. Rev. at 219 (Dept. of State, May 15, 1990).
77. *Id.* at 220.
78. *Id.* at 226.
79. *Id.*
80. *Id.*
81. *Id.*
82. *Id.*

family.[83]

The Board accepted that Marshall T.B. probably had been directed to renounce, had been coached on how to act and speak, and had gone to the Embassy under escort.[84] Weighing against Marshall T.B.'s claims of duress and coercion were the two statements he signed declaring that his renunciation was voluntary.[85] However, although those statements were important, they were not dispositive. The Board weighed the statements against "all the relevant facts and circumstances in the cases that bear on the issue of voluntariness."[86]

The Board saw its task as determining whether the quantum of influence brought to bear on Marshall T.B. was sufficient to render his act involuntary.[87] This determination entailed making a judgment whether Marshall T.B. had a reasonable alternative to relinquishing his citizenship.[88] The Board concluded that despite the fact that Marshall T.B. was probably ordered to renounce his citizenship, he did not confront a situation where he was left with no choice.[89] The Board noted that he was nearly forty years old when he renounced and was a decorated veteran.[90] Continuing, the Board reasoned:

> Presumptively, appellant was a person of more than average courage, experience and resourcefulness. Thus, the situation in which he found himself in 1986 was stronger and therefore patently different from those of several other Black Hebrews (a very young man and several young women) whose appeals we have heard and decided in their favor.
> Futhermore, there is no evidence that appellant would have been physically abused or restrained if he had tried to remove himself and his wife and children from the confines of the Community. What apparently constrained appellant from defying the Community leadership was not lack of courage or capacity to fend for himself and his family, but a perception that because the Community fulfilled some kind of spiritual or psychological need, being forced to leave it as punishment for disobedience would be intolerable. Outside influence there may have been. Appellant's failure to stand up to it, however, sprang not from his being in a position of weakness vis-a-vis the Community leadership, but rather from what appears to have been his perception that loss of his citizenship was of lesser import than possible loss of his rights and privileges as a member of the Community. In short, appellant has not shown that the pressure to which he says he was subjected was so

83. *Id.*
84. *Id.* at 227.
85. *Id.* at 228.
86. *Id.*
87. *Id.*
88. *Id.*
89. *Id.* at 225.
90. *Id.*

strong as to negate his freedom of choice.[91]

Having rejected Marshall T.B.'s argument that his renunciation was involuntary, the Board proceeded to determine whether Marshall T.B. intended to relinquish his citizenship, an issue the government bears the burden of proving by a preponderance of the evidence.[92]

"Formal renunciation of United States citizenship in the manner mandated by law and in the form prescribed by the Secretary of State is, on its face, unequivocal and final," the Board stated, citing the rule that "[a] voluntary oath of renunciation is a clear statement of desire to relinquish United States citizenship."[93] The Board observed that intent to abandon citizenship is inherent in the act, and the words of the oath of renunciation are unambiguous.[94]

The Board's sole inquiry therefore was whether Marshall T.B. executed the oath of renunciation knowingly and intelligently.[95] The record showed that Marshall T.B. acted in full consciousness of the consequences of his act. He signed two statements acknowledging that he knew what he was doing and knew what the consequences were.[96] Furthermore, he knew that deportation to the United States could probably be avoided by renouncing his United States nationality.[97] The Board perceived no inadvertence or mistake of law or fact on Marshall T.B.'s part and therefore affirmed the Department's holding of expatriation.[98]

The Board decided the cases of the other two men on the same general rationale of *In re Marshall T.B.*, although neither of the other men had served in the United States Army.[99]

The last case in the series of eight was decided by the Board in late June 1990.[100]

VII. The Department's Special Policy for the Hebrew Israelite Community

Earlier in the spring of 1990, as a result of negotiations between the U.S. Embassy and Israeli officials, the Government of Israel

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91. *Id.*
92. 8 U.S.C. § 1481(b).
93. *In re* Marshall T.B., 20 Bd. App. Rev. at 230 (quoting Davis v. District Director, Immigration and Naturalization Serv., 418 F. Supp. 1178, 1181 (D.D.C. 1979), *aff'd*, 652 F.2d 195 (D.C. Cir. 1981), *cert. denied*, 454 U.S. 942 (1981)).
94. *In re* Marshall T.B., 20 Bd. App. Rev. at 230.
95. *Id.*
96. *Id.*
97. *Id.*
98. *Id.*
99. *In re* Nathaniel R.S., 20 Bd. App. Rev. 255 (Dept. of State, June 25, 1990); *In re* Anthony G.P., 20 Bd. App. Rev. 268 (Dept. of State, June 28, 1990).
100. *In re* Deborah A.B., 20 Bd. App. Rev. 279 (Dept. of State, June 29, 1990).

adopted a new policy toward the Hebrew Israelite Community. Under the new policy, all Community adults with valid United States passports would receive status and work permits.[101] Stateless renunciants of United States citizenship would receive initial status and work permits, but continued residency was dependent upon such persons re-acquiring United States citizenship within a six-month period.[102]

The Government of Israel's new policy toward the Hebrew Israelite Community plainly was a watershed in the Community's long confrontation with the Israeli authorities. Nonetheless, it was apparent that it might be difficult for 400 renunciants to complete the process incident to the adjudication of their claims to citizenship within the prescribed six-month period.[103] Specifically, if appeals were taken to the Board of Appellate Review, their disposition might be more time-consuming. Further, there was no assurance that the Board would restore citizenship in every case, as its disposition of the eight appeals discussed above showed. Furthermore, the Board must decide each case on its merits. The Department of State therefore decided that it would be within its competence to review administratively its determinations of loss of nationality, thus obviating the need for appeals to the Board.[104]

Under the new procedure, individuals who wished to regain citizenship were to execute affidavits setting forth their reasons for having renounced citizenship.[105] The Department of State would review the cases under the premise that in all but the most extraordinary circumstances the renunciations were presumptively involuntary because of the pervasive climate of coercion within the Community.[106] In effect, the Department of State undertook to weigh the renunciants' statements in light of the Department's own knowledge of the history of the Hebrew Israelite Community and its methods of operating.[107] Since adoption of the new policy in June, 1990, the Department of State has vacated loss of nationality holdings in over 300 renunciation cases.[108] No Hebrew Israelites have made formal re-

101. OCS/CCS briefing paper, *supra* note 2, at 3.
102. *Id.*
103. *Id.* at 2.
104. *Id.* at 5.
105. *Id.*
106. *Id.*
107. *Id.* at 4.
108. *Id.* at 5.

nunciations of citizenship since the new policy went into effect.[109]

However, the Department of State concluded that it would not be appropriate to vacate the CLNs issued for Ben Ami Carter and the other leaders.[110] The Department asked each of the leaders to submit further affidavits to determine whether they had been pressured to renounce citizenship.[111] In all cases, the Community leaders conceded that they acted freely. The Department therefore concluded there was no basis on which to overturn its prior holdings of expatriation.[112]

Two appeals by Community members remained on the Board's docket after the Department adopted its new policy of administrative review. In *In re Kemael W.*, the Board remanded, at the request of the Department of State, so that the certificate of loss of nationality might be vacated.[113] In that appeal, the Department took the position that:

> In light of recent decisions of the Board, ruling on this same issue in parallel cases, the Department judges that appellant has rebutted the legal presumption that section 349(b) of the Immigration and Nationality Act of 1952, as amended, (INA), that his renunciation of U.S. citizenship was voluntary. Viewing Mr. [W.]'s appeal in light of these recent Board decisions, the Department has concluded that appellant has shown by those standards that it is more probable than not that his renunciation of U.S. citizenship was impelled by the influence of the BHC [Black Hebrew Community] and his mother as a BHC member, that he had no reasonable alternative to renunciation. . . .[114]

The Board dismissed the second appeal as moot after the Department informed the Board it believed the CLN should be vacated.

VIII. The Board Revisits Three Decisions

After the Department enunciated its new policy, the Board developed reservations about its past rulings concerning the three men and their loss of nationality.[115] Accordingly, the Board decided to invite them to move for reconsideration of the Board's decisions.[116]

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109. *Id.* at 3.

110. Letter from R. Bevins, OCS/CCS, to Alan G. James, Chairman of the Board of Appellate Review (Aug. 20, 1991) (discussing Hebrew Israelite Community).

111. *Id.*

112. *Id.*

113. *In re* Kemael W., 21 Bd. App. Rev. 44 (Dept. of State, July 12, 1990).

114. *Id.* at 46-47.

115. *In re* Marshall T.B., 20 Bd. App. Rev. 219 (Dept. of State, May 15, 1990); *In re* Nathaniel R.S., 20 Bd. App. Rev. 255 (Dept. of State, June 25, 1990); and *In re* Anthony G.P., 20 Bd. App. Rev. 268 (Dept. of State, June 28, 1990).

116. The Chairman's letter of July 27, 1990 to each of the three men reads in part as follows:

> The Department of State has recently made a policy decision affecting the handling of the cases of members of the Black Hebrew Community in Israel who have made a formal renunciation of their United States nationality. Such persons may, upon making a satisfactory statement of their reasons for believing

The three duly submitted motions for reconsideration. *In re Marshall T.B.* is illustrative of the Board's disposition of the three motions.[117] Appellant argued that the Board had not fully appreciated the nature of the duress to which he was subjected.[118] He credibly detailed the nature of the pressure exerted on him, stressing his fear of deportation and separation from his family.[119] The Department of State did not file a memorandum in opposition. Instead, it urged the Board to take notice that since adoption of the new policy, holdings of loss of nationality had been reversed in a large number of cases.[120] It also urged the Board to take into consideration the environment of the Community which, in the Department's view, raised doubts whether a free choice was possible.[121]

The Board saw no need to analyze Marshall T.B.'s case *in extenso*. It stated simply:

> We find the Department's position - the environment of the Community at Dimona is not conducive to permit a free, unfettered and rational choice to renounce American citizenship - persuasive. Upon further review of the record and reconsideration, we are now unable to conclude that appellant's formal renunciation was wholly without taint of coercion. In our opinion, a renunciation procured by pressure, even pressure exerted on a presumptively strong, resourceful person cannot stand as a matter of law.[122]

On the same rationale, the Board reversed its prior decisions affirming the Department's holding of loss of nationality in the other two cases.[123]

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that they were coerced to renounce their nationality have their loss of nationality cases reviewed administratively by the Department, without making a formal appeal to this Board. Your case does not qualify for such review since the Board's decision on your appeal is final within the Department. However, in light of the Department's new policy, the Board considers it fair that you be given an opportunity to have your case reviewed by the Board. Accordingly, this letter is sent to advise you that the Board is prepared to entertain a motion for reconsideration of its decision on your appeal.

In re Marshall T.B., 21 Bd. App. Rev. 132, 134 (Dec. 20, 1990) (motion for reconsideration).

117. *Id.* at 132.
118. *Id.* at 133.
119. *Id.*
120. *Id.*
121. *Id.*
122. *Id.* at 135.
123. *In re* Anthony G.P., 21 Bd. App. Rev. 136 (Dept. of State, Dec. 20, 1990); *In re* Nathaniel R.S., 21 Bd. App. Rev. 140 (Dept. of State, Dec. 20, 1990).

IX. CONCLUSION

The Department's special policy and procedures to facilitate restoration of citizenship to interested Hebrew Israelite renunciants is a welcome development. Pressure by the Community leadership to renounce citizenship, whether intense or nominal, whether there were alternatives or not, is *ipso facto* coercion. United States citizenship is a right of such inestimable value that one should not be permitted to waive it under a cloud.

Still, the question arises: why did the Department of State, which now regards most of the Hebrew Israelite renunciations as tainted, not so regard them years earlier? While the circumstances of the Hebrew Israelites and the Japanese Americans who renounced citizenship at the infamous Tule Lake interment camp differ in obvious respects, the observation of the court in *Tadayasu Abo v. Clark*[124] is not inapposite to the renunciations considered here.

> [T]he Government was fully aware of the coercion by pro-Japanese organizations and the fear, anxiety, hopelessness and despair of the renunciants; and yet accepted the renunciations. Any one of the various factors, the existence of which is admitted by the affidavits, was adequate to produce, at least, a confused state of mind on the part of the renunciants and in which considered decision became impossible.[125]

Likewise, from the first, the Department of State had facts which suggested questions about the spontaneity of Hebrew Israelites' renunciations. Indeed, the Department of State designed the supplemental affidavit precisely because it suspected the renunciations might be influenced by the Hebrew Israelite Community leadership.[126] The records of the cases appealed to the Board offer no explanation why the Department of State approved CLNs issued in the names of Black Hebrews. Perhaps, the consular and departmental officers concerned were indiscriminatingly deferential to the prescription that expatriation is a natural and inherent right and that anything that denies, restricts or questions that right is inconsistent with the fundamental principles of the Republic. Perhaps, too, the officials involved were too easily satisfied that the renunciations were voluntary; maybe they did not consider probing more deeply into voluntariness simply because the renunciants readily attested to the voluntariness of the act. Whatever the reasons, it is safe to assume that in the future the Department of State will subject all the evidence of a cult member's renunciation to rigorous examination before deeming the renunciation to be expressive of the free will of the citizen.

The Hebrew Israelite renunciations have also been instructive for

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124. 77 F. Supp. 806 (N.D. Cal. 1948) *aff'd, rev'd and amended in part*, 186 F.2d 766 (9th Cir. 1951), *cert. denied*, 342 U.S. 832 (1951).

125. 77 F. Supp. at 811.

126. *See supra* note 14 and accompanying text.

the Board of Appellate Review. When the Board initially heard the appeals of Marshall T.B. and the two men similarly situated, it gave relatively little consideration to the environment in which they acted. Arguably, these men had alternatives to renunciation; clearly they were better able to stand up to the Community leadership than the young women and young men whose appeals the Board decided favorably. Yet, that approach begged the question. The salient consideration was the fact that the three men were pressed to renounce their citizenship; absent such pressure, it is doubtful they would have surrendered their citizenship. In the particular circumstances of their cases, the Board ought not to have required the three to show lack of alternatives after it determined that leaders of the Community forced them to follow through with an unwanted choice. Their renunciations, like those of their fellow cult members, were tainted *ab initio*, and should not have been accepted as considered and voluntary decisions. Plainly, it was fair and equitable for the Board to encourage the three to return to the Board for re-examination of their cases, and, upon reconsideration, to reverse its original decisions.