

BEFORE THE BOARD OF IMMIGRATION APPEALS

Oral Argument: June 18, 1980

In Re: BOLESLAVS MAIKOVSKIS

File: A-8 194 566

Board: Mr. Milhollan, Mr. Maniatis
and Miss Maguire

Heard: For Respondent: Ivars Berzins, Attorney
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Babylon, New York 11702

For Immigration Service: Jeffrey N. Mausner,
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Request: Order the Taking of Depositions

Mr. Milhollan: This is a government appeal and we will hear from you first, Mr. Mausner. Extra time has been granted so you each have 30 minutes to argue the case. If you would like to reserve part of it for rebuttal, you may.

Mr. Mausner: I would like to reserve 5 minutes for rebuttal. This matter is a deportation proceeding pending in the Immigration court in New York before Judge Lyons. The order to show cause alleges that the respondent is subject to deportation under 2 provisions of the I&N Act, section 241(a)(1) and 241(a)(19). The latter provision is a new section of the Act which provides that any person who ordered, incited, assisted, or otherwise participated in the persecution of any person on the basis of race, religion, national origin or political opinion, during World War II, in connection with the Nazi government of Germany, is subject to deportation.

The factual allegations are these. The respondent was chief of a police precinct in Latvia during World War II. However, when he entered the U.S. he claimed he had been a bookkeeper for the Latvian Highway Department during that time. In his position as Chief of a police precinct it is alleged that the respondent took part in murders and assaults on Jewish civilian inhabitants of Latvia including women and children.

It is also alleged that the respondent took part in the burning of the village of Audrini, Latvia, and the arrests and executions of all of the peaceful civilian inhabitants of this village. The government cited an order from the Immigration court pursuant to 8 CFR, section 242.14(e) to take the depositions of witnesses residing in Latvia where these crimes allegedly took place. Judge Lyons ruled that the government could not take these depositions in Latvia. In effect, what he has done is rule that evidence is inadmissible even before he has examined the evidence.

We ask this Board to order the taking of depositions in Latvia. Before I get into the legal argument I would like to say a few words about what we expect the testimony of these witnesses to be. Most of these witnesses were questioned in 1978 by Immigration Service attorneys who went to Latvia. These witnesses were questioned under oath and a verbatim transcript was made. These witnesses testified that they had been residents of Latvia during World War II, and that Maikovskis, the respondent, had been their Chief of Police.

They also testified that they saw Maikovskis take part in large-scale massacres of innocent civilians. The witnesses in Latvia are the only potential witnesses who served on the police force with the respondent; they knew him, they came into contact with him on a regular basis and they will be able to positively identify him.

Mr. Maniatis: How do you relate that identification after so many years and the fact that they will be in one part of the world and the respondent will be in another part of the world?

Mr. Mausner: The identification is mainly based on his name, they know his name, and on his position. Mr. Maikovskis has admitted under questioning from the Immigration Service investigators that he was Captain of the police precinct in question, and these people are saying that a man named Boleslavs Maikovskis, who was Captain of this police precinct, did this, this, and this. We also will show them a photographic spread and see if they can pick his picture out of the spread.

Miss Maguire: How do you intend to establish the identity of the witnesses?

Mr. Mausner: The Soviets have told us who these witnesses are.

Miss Maguire: Any other evidence?

Mr. Mausner: That is one of the things the cross-examination is for, and that is why we are asking that depositions be allowed with cross-examination. During cross-examination Mr. Berzins can go into the identity of these witnesses to establish if they are the persons they are claiming to be.

Furthermore, the depositions will be videotaped. It has been 35 years since Mr. Maikovskis has seen these people, and he may be able to recognize them from the videotapes, if that is or is not the person. Because of these reasons the testimony of these witnesses is absolutely essential to the government's case, and in fact Judge Lyons held in his order denying our motion that the testimony of these witnesses is essential to the government's case.

Miss Maguire: Has there been any testimony in this case so far?

Mr. Maushner: Yes, there has. There has been testimony by 5 witnesses who are survivors of the Holocaust who alleged the respondent committed atrocities on them. Because the witnesses we seek to depose knew respondent and came into contact with him on a regular basis over the 4-year period that they both worked on the police force, we think that the identification that these witnesses make of the respondent will be a very strong identification and that is what we are concerned with.

Also these witnesses in Latvia are testifying to a completely different set of crimes than the witnesses who have already testified in the case. The witnesses who have already testified, testified about incidents that occurred in the town of Audrini, Latvia. The witnesses who were in Latvia, we seek to depose, will testify about incidents that occurred in the town of Rezekne, Latvia, where respondent was the Chief of the police precinct.

For example, Ianis Kalnin'sh, one of the witnesses we seek to depose, testified that he was the leader of a police unit from 1941 to 1944 in Latvia, and that Boleslavs Maikovskis was his superior. Kalnin'sh testified that Maikovskis ordered the extermination of all Jews within his police precinct, and that the police carried out this order. I would like to read to you from the statement made by Mr. Kalnin'sh in 1979. This is from pages 15 and 16, and questioning is being conducted by Tom Belote, an Immigration Service attorney.

Miss Maguire: Was this ever before the Immigration Judge? These statements were taken after the government had submitted its motion to Judge Lyons?

Mr. Mausner: That is correct, not submitted.

Miss Maguire: This evidence that is before the Board and was not before the Judge, was ruled on in the motion, is that correct?

Mr. Mausner: That is correct. The question by Mr. Belote was: "Did the witness receive an order from Maikovskis to exterminate the Jews?" Answer - "He didn't order me to shoot the Jews myself, but he demanded that as leader of the Kaunatskaia Volost vigilance group and later the Police Z group, I organize the extermination of all the Jews in Kaunatskaia Volost."

"Were these orders carried out by the members of the group who were under your command?"
Answer - "Yes."

Going back to your question, Miss Maguire, there were previous statements made by these witnesses that were submitted to Judge Lyons. The reason I am reading from this statement is these are the statements taken when the Immigration Service attorneys were present at the questioning and conducted the questioning.

Miss Maguire: Which are the statements that were before Judge Lyons?

Mr. Mausner: The statements taken in 1976 by the Soviets in response to questions by the Immigration Service, and these were the statements that were submitted to the Judge.

Miss Maguire: Are they essentially the statements, the contents are the same or similar to the statements taken by the Immigration Service attorneys?

Mr. Mausner: Yes. Another witness we seek to depose,

Anton Zhukovskis, testified he was a policeman in Latvia from 1941 to 1944, and that Maikovskis was his chief of police. He testified that in December, 1941 or January, 1942 two policemen were shot in the village of Audrini, Latvia; to avenge this, according to Zhukovskis, Maikovskis organized an execution squad which shot between 200 and 300 of the peaceful civilian inhabitants of the village of Audrini.

I would like to read from Mr. Zhukovskis's testimony briefly, I am just reading excerpts. "When the guards had been posted Maikovskis arrived. I informed him everything was in order and he informed Eikhelis, who came out to the hills himself." Question - "Did the leaders of the other groups also inform Maikovskis of their readiness when you did?" Answer - "Yes, they did. Then the policemen who had agreed to participate in the shooting--the executioners---arrived. After that the firing squad was posted and the Audrinians arrived in trucks. There was a wooden shed near the execution site and inside it a group of policemen who began herding the people out of the trucks. Policemen from the 1st and 2d precincts of the Rezekne police were there."

Question - "Who was in charge of all this?" Answer - "Maikovskis had gotten everything ready. Eikhelis was higher in rank and authority than Maikovskis so he gave the command for the execution to begin,....." Question - "How was the execution carried out?" Answer - "The first truckload of Audrinians, including old men, women and children, arrived. Many of them were weeping and screaming. They were herded into the shed and ordered to take off their outer clothes, after which they were herded in groups of 10 to open trenches and placed along the edge of the trench. The command to shoot was given by a chief especially chosen to take charge of the execution at the site. Each victim was shot by two men, one aiming at the chest, the other at the head."

Question - "Where was Maikovskis at this point?"
Answer - "Maikovskis was standing nearby with Eikhelis and the Germans."

Mr. Zhukovskis also described a large-scale massacre of Jews that he claims Maikovskis took part in. I won't read from that, this kind of testimony, if credible, is certainly enough by itself, to order deportation.

Now I will discuss the legal issues.

Miss Maguire: Before you get to that I have some questions on jurisdiction. First of all there is no record in this case before the Board. All we have is your brief and the exhibits, where is the record?

Mr. Mausner: The record of the testimony taken, I assume, is with Judge Lyons.

Miss Maguire: Why wasn't it filed before the Board if he was seeking Board review?

Mr. Mausner: We didn't feel the record was relevant. There is nothing in the record dealing with this appeal on the issue of depositions in Latvia.

Miss Maguire: The second question is one which goes to the methods by which the case arrives here. Judge Lyons' order is dated in August of 1978. In March, 1980 Mr. Crosland, as Acting Commissioner, certified it to the Board, a good 19 months later. What is the government's position on jurisdiction, in view of the litigation on appeal time?

Mr. Mausner: This case was certified rather than appealed. The Board can accept jurisdiction by certification after the 10-day time limit for appeal and.....

Miss Maguire: What about the regulation in 8 CFR 3.3(a) which says that the right to certify a matter will not extend the appeal time?

Mr. Mausner: I believe that relates to final rulings by an Immigration Judge. I don't know if there are any cases on it but I would argue it doesn't apply to certification of an interlocutory appeal. If the Board does want to take jurisdiction of this case, it is clear it is not bound by the 10-day appeal period. They may take jurisdiction at any time according to Matter of Slade, in 10 I&N Dec.

Miss Maguire: One of the reasons the government wants to preserve the testimony of these witnesses is because of the age and ill health of several. Why did it take so long then to come before the Board on this matter?

Mr. Mausner: Since Judge Lyons' ruling that we could not take depositions we have been making very strenuous efforts to get these witnesses to come to the U.S. to testify. This has to be done through diplomatic channels and it takes a long time. Discussions have been held at levels as high as the Attorney General and the Chief Justice of the Soviet Union on this question. It wasn't until the beginning of this year that we received an absolutely definitive answer these witnesses would not be coming to the U.S. to testify.

I think another reason for the delay might be the shift in jurisdiction over these cases from the Immigration Service to the Criminal Division, the changes in personnel that required. There are only 2 prerequisites found in 8 CFR for the taking of depositions; one, that the witness not be available at the place of hearing; and two, that the testimony of the witness be essential. Judge Lyons found one, that the witnesses are not available to testify in the U.S., and two, that their testimony was essential to the government's case. Notwithstanding that finding Judge Lyons held the

government could not take the depositions of these witnesses in Latvia. The basis for his ruling is that fair depositions in the Soviet Union with a full opportunity for cross-examination, are impossible. This is what the Judge held: "To suggest that the process of confrontation and cross-examination would be available even if the respondent and his attorney were present, is to suggest the impossible."

Mr. Maniatis: Wasn't it also a question of positive identification too?

Mr. Mausner: Positive identification by the witnesses?

Mr. Maniatis: Yes, as far as the Judge was concerned he was also concerned with the fact whether or not these witnesses could positively identify the respondent.

Mr. Mausner: This is something that would be brought out in the examination of the witnesses. They claim that a man named Boleslavs Maikovskis who lived in this town in Latvia and was Chief of a police precinct there committed certain acts. Mr. Maikovskis has admitted that he was Chief of a police precinct in this town. We would ask these witnesses during the examination to describe the respondent, to try to identify him from the photo spread and whatever other ways there are to identify somebody. That is the way any identification of a witness is made, by a witness is made.

There is absolutely no support in the record or anywhere else for Judge Lyons' conclusion that fair depositions cannot be taken in the Soviet Union. In fact all of the available

evidence points to just the opposite conclusion, that fair depositions with a full opportunity for cross-examination can be taken in the Soviet Union.

First, we have been assured by the Soviet authorities that respondent's attorney can be present at these depositions, and can conduct a full cross-examination. Second, West German courts and Dutch courts have taken testimony in the Soviet Union in war crimes cases and have relied on this testimony to convict defendants of criminal charges.

Third, right at this time attorneys from our office are taking depositions in the Ukraine, U.S.S.R. They are taking these depositions and videotaping them under an order from the U.S. District Court for the Eastern Division of Pennsylvania. Defendants' attorney is present and conducting cross-examination. Another point on the fairness of these depositions, the government received Mr. Berzins' brief on Friday. The brief is based in large part on material that is not in the record before the Immigration court, and all but one of the exhibits that he submitted are not of record.

Miss Maguire: Not all of your exhibits are of record either, why do you object?

Mr. Mausner: Most are. There are 3 he objected to as not being of record. What I am going to ask is that the Board apply the same standard to both parties, either accept all of this non-record material or reject it all. Among the non-record material that we submitted was an affidavit of a West German Judge who.....

Mr. Berzins: Objection. This has already been ruled upon and it is ~~improper~~ for counsel to bring that up. These tactics do not belong here.

Mr. Milhollan: Mr. Mausner, the affidavit that you submitted has been returned to you, it has not been examined by the Board because it was specifically objected to by counsel prior to these proceedings, and therefore we will not hear any argument in reference to that particular affidavit.

Mr. Mausner: We would like to object then to the non-record material that has been submitted by Mr. Berzins, arguing the same standard should be applied to that.

Miss Maguire: Also then you would withdraw your non-record exhibits, I would conclude, is that correct?

Mr. Mausner: Yes, if the Board decides not to rely on any of this non-record material that would then apply not to all our exhibits but the ones that are not of record.

Mr. Milhollan: Is there a clear indication as to which exhibits are a matter of record and which are not?

Mr. Mausner: He pointed out things in his brief which of course are not of record. The only exhibit in Mr. Berzins' brief which is of record is the first one.

Miss Maguire: The material you quoted from at length before is not in the record, is that correct?

Mr. Mausner: That is correct.

Mr. Milhollan: The objection to the exhibits and the material that has been submitted will be made a matter of record and will be ruled upon at a later date.

Mr. Mausner: Thank you. I would like to say one thing in connection with the material I was reading from,

that is not of record, we were not, these are not depositions, they were statements and without cross-examination. We are not offering them as evidence in the proceedings, I merely read from them to show that the government is not engaging in a fishing expedition here, that the testimony of these witnesses is very relevant and essential to the government's case.

One last point on fairness of these depositions. Mr. Berzins claims that nothing coming out of the Soviet Union in connection with Latvian war criminals can be believed in the slightest. However, there is one piece of prior testimony made by these Latvian witnesses which has been shown to be true. These Latvian witnesses testified that Mr. Maikovskis was Chief or Captain of a police precinct in Latvia during World War II. As I stated, Mr. Maikovskis claimed that he had been a bookkeeper for the Latvian Highway Department during this time. However, when Mr. Maikovskis was questioned by the Immigration Service investigators after the statements of these Latvian witnesses were known, upon questioning by the Immigration Service investigators, he admitted that he had been Captain of a police precinct in Latvia, and at least in one instance the testimony of these Latvian witnesses has been shown to be true, or admittedly true.

The government's position that the fairness of these depositions cannot be determined until after the depositions are taken and a full opportunity for cross-examination has been tested, is not only right as a matter of logic, it is also clearly the law. The Board has never decided this issue. However, every Federal and state court which has been faced with precisely this issue, has held that a motion to take depositions in a Communist country should not be denied simply because the depositions

are to be taken in a Communist country. These cases are cited on pages 22 to 25 of the government's brief. For example, Danisch v. Guardian Life Ins. Co., a Federal District Court case in the southern district of New York, attorneys for the plaintiff sought to take the depositions of witnesses in Poland by letters rogatory. This defendant objected to this on the basis that the testimony would be without value because the witnesses were residents of a police state which would not allow them to testify freely and truthfully.

The District Court rejected this argument and granted the motion for the taking of depositions by letters rogatory. Here is what the District Court held: "It may well be true that the testimony thereby obtained will be of little or no value because it was taken in a police state. This is something for the trier of the facts to consider; it does not make the testimony inadmissible."

In Bator v. Hungarian Commercial Bank of Pest, a New York Appellate Division case, the trial court refused the taking of testimony in Hungary on the basis the judicial process in Hungary was suspect. The Appellate Division reversed that, stating: "We see no reason why the interests of justice in this case cannot be properly served by an examination of the defendant's officers on written interrogatories in Hungary. The fact that the interrogatories are taken in Hungary will be a matter for consideration by the triers of the facts." Other cases are cited in the government's brief.

Mr. Berzins doesn't cite any cases upholding Judge Lyons' position, and we were not able to find any cases either. In short, these cases hold that any improper influence which may be exerted by the Soviet authorities, would affect the weight and not the admissibility of these depositions. These cases hold that a motion to take testimony in the Soviet Union should not be denied simply on the basis that it is to be taken in the Soviet Union.

In conclusion the government is very much aware that the charges against this respondent are very grave ones. However, we are absolutely convinced that these depositions will result in reliable testimony by eye witnesses that the respondent was a murderer and war criminal of the first order. The Immigration Judge must ultimately decide what weight is to be given these depositions, but that is not the question before the Board now.

The question before the Board now is whether there is good reason to deny the government any opportunity to take these depositions. For the reasons we have argued, there is not. We ask this Board to order the taking of depositions in Latvia.

Mr. Berzins: Mr. Chairman, I am somewhat unfamiliar with the procedure here. Has the Board actually reviewed the record and the briefs before argument or not?

Mr. Milhollan: Yes, the entire material that has been submitted, with the exception of the affidavit you objected to, have been examined.

Mr. Berzins: Mr. Chairman, I would like to address myself to a couple of procedural points if I may, and that is the contents of the record and the briefs. I want to emphasize that I did not initiate this pernicious practice of including in briefs and in the so-called record, material which was never

before the Immigration Judge. The government initiated that procedure and they invited retaliation in kind, and if that be condemned, well, I am surely guilty, I let them have it because they were the ones who opened the door. It also seems to me that at this stage it is well nigh impossible to separate out the off-record and on-record materials in both records and briefs. I think they have become kind of intertwined and intermixed. Be that as it may, I think it is an unfair way to proceed with an appeal, and I also think that it is very unfair to bring this appeal up in the manner it has been brought up, and I am referring now to the time lag and I will say no more of it.

Now turning to the merits or rather lack of them. Let me begin by observing that the government attorneys here seem to have led a sheltered life in an ivory tower far removed from the realities of life. They seem to think that the Soviet Union is a civilized nation. I submit to you, Mr. Chairman, that it is not, that it is a jungle ruled by nothing but a pack of vicious animals, and their handiwork we see every day. There are hardly a day goes by when we don't read in our newspapers or magazines or somewhere else about a political show trial taking place behind closed doors in the Soviet Union, and I specifically refer you to my brief to those sections which deal with the more infamous show trials of recent vintage.

I am not so much referring back to the 1930's when we had regular circuses staged in Moscow. The government, in its naive fashion, just goes along and believes that in a situation where the Soviets have already staged one of the biggest show trials of modern times in Riga, Latvia, that by going back there now a third time and conducting

a third deposition, we can really have justice. Now this is the essence of my learned adversary's argument, that just order the taking of depositions and we will sort out later whether we can have justice or whether we can't. Just let us go to Riga and the rest will simply fall in its own place. That seems to me the essence of the argument, and it seems to me that the argument completely misses the point.

My learned adversary says I cite no cases. I don't need to, I think the case speaks for itself, it is rather plain. The government is inviting us to go to the Soviet Union now for a third set of depositions. They already had one set of depositions in 1970, 1976, they needed another set of depositions in 1978, and they are suggesting now that they are going to embellish these depositions with the presence of videotapes and with my humble presence.

Well, thanks for the invitation but how come the invitations were left out on the first two occasions? How come no one from the respondent's side was invited to Riga in 1976 or 1978? Maybe the 4th time they suggest depositions they will invite the Immigration Judge. I don't know what is on their minds, but it seems to me that the whole procedure is ludicrous. They have two depositions already, now they are going back for a third, and they think this one is really going to be the epitome of fairness. How can it be, because they say the Soviets assure them it will be fair, do they expect the court to believe it? No one else on this earth would.

I don't know how the government can so glibly pass over these completely beside the point arguments. The record of the Soviet judicial system again speaks for itself. All we have to do is see what happened to Orlov and others who are in Soviet mental hospitals, and everyone was convicted of a crime. They all get Soviet due process, strict socialist legality, right up to the madhouse.

They say that the Soviets have assured the government that respondent's attorney will be fully cross-examined. Where are they going to find a respondent's attorney who will have the guts to go over there and really attack head-on those entire show trials they staged back in 1965 and expose it for what it is? How will he ever survive sentence in the (Russian word is used), that is slander under Soviet law. There is no privilege under their judicial proceedings. One cannot go in there before the Soviet prosecutor under the procedure they propose and start attacking heads on what they have done and how they did it. How can that be possible?

Can the government assure anyone this can actually be carried on and the respondent's attorney can come back here safely? I think the government's simplistic approach leaves quite a bit to be desired. They just simply don't have their feet on the ground when they make this argument, and these cases they cite, they don't stand for any proposition that is applicable in this instance. We have heard a political matter and if the Soviets are going to change their colors it is not going to be tomorrow or the day after. They have shown us what they are and I think they will remain what they are all through whatever depositions are ever taken under their judicial system.

I get carried away a little bit, I hope you will forgive me, but getting back again to the procedural aspects of it, I submit that the government has not carried the burden of demonstrating, which I submit they had to do, is that the Immigration Judge abused his discretion. I submit that the regulations give a certain latitude to the Immigration Judge, certain amount of discretion. Now I am not really certain just how wide is this

latitude, and how wide is this discretion. Quite frankly I found no cases on it. But I submit to you that the discretion goes well within the bounds of what was decided in this case. That the Immigration Judge fairly considered all the factors that were before him then when he ruled and made a fair determination, exercised his discretion in a fair and judicial manner, based on what was given to him, and he decided the case on that occasion almost two years ago.

And I submit to you that the government has shown nothing today in their briefs, records or anything else, that they would even want to put in the record, that would in any way undermine the soundness of that decision based on the facts that were before the Judge, and I thank you for your attention.

Mr. Mausner: Mr. Berzins mentioned today, and he goes into in great length in his brief, Soviet trials of dissidents in Soviet courts. Those trials are totally irrelevant to the proceedings we want to conduct. The respondent in our case is not being tried by a Soviet court, he is being tried by an American court. Immigration Judges every day have witnesses testifying in their court where they have to determine if the witness is testifying through fear, prejudice, bias, there is no reason that an Immigration Judge cannot make that determination in our case.

Mr. Maniatis: But ^{if} he had a perfect right of cross-examination, would they interfere?

Mr. Mausner: They told us they would not interfere. Of course if they do interfere, ~~it~~ that goes to the weight of the testimony that has been taken. If it doesn't, like a full cross-examination that was allowed when the videotapes are examined, then the weight of the testimony would be very little.

Miss Maguire: Is there a right to cross-examination under Soviet procedure?

Mr. Mausner: In a Soviet court? Procedure, I don't know.

Miss Maguire: Wouldn't the depositions be conducted in accordance with Soviet procedures?

Mr. Mausner: The procedures that the Soviets said would be followed in this proceeding is that it would be presided over by an official of the court of Latvia; that official would start off the questioning of the witness and then allow the lawyers for each of the parties to ask whatever questions they wanted to.

Miss Maguire: Doesn't that make it unlike a regular deposition that would be taken in this country, that there is someone other than attorneys for the parties involved in the questioning?

Mr. Mausner: Yes, if the Board wishes it could include in its order that part of the deposition would be totally hopped over and we could start from the place where we start questioning the witnesses, so that it would appear to be a normal procedure followed in the U.S. I would like to note that under the Federal Rules of Evidence when depositions are taken in a foreign country there is a provision for that allowing depositions to be conducted before an officer of the country in which the depositions are taken, if that country doesn't allow depositions to be taken before anybody else, and the Federal Rules state that this procedure was implemented to allow depositions in countries that do not have exactly the same procedures that our country follows.

Miss Maguire: What is the feasibility of a ruling that would delete that portion of the transcript related to those questions? How would the Soviets react to that?

Mr. Mausner: They wouldn't have to know about it.

Miss Maguire: Would one presume they will have access to the Board's position if subpoenas are ordered?

Mr. Mausner: I assume they would have access to it because it is a public record.

Miss Maguire: I take it you have not discussed this possibility with them? When you made the suggestion perhaps I erroneously assumed you had discussed it with them. Is that something you discussed with them?

Mr. Mausner: I don't think the Soviets care what we do with the transcript once we get it back to the U.S., or with the videotapes we will have. In any case everything that goes on there can be taken into account by the trier of the facts in determining whether it was fair or not. If the questions by the Procurator are not fair that is something to be taken into account by the trier of the facts. We are just speculating now as to what would happen. Let's take these depositions and see what happens, then make a determination on fairness.

Mr. Berzins mentioned that we had previously taken depositions 2 times in Latvia and this was our third crack at it. The prior statements

that were made by these witnesses are not depositions, they are merely statements because there was no cross-examination. We want fair depositions taken where there is an opportunity for cross-examination.

Secondly only once has the government gone over to Latvia, the previous statements were taken by the Soviets in response to a request we made for statements. As far as Mr. Berzins' argument that an American lawyer attempted to conduct a full cross-examination in the Soviet Union, that attorney would be arrested. I think that it is obvious that arresting a U.S. citizen attorney in the Soviet Union for conducting cross-examination in a proceeding they have allowed, would cause a major international incident, that the Soviets would not risk.

As far as Mr. Berzins' argument that the cases cited by the government involved political matters, that our case involves a political matter, while the cases cited by the government do not involve political matters, this is not a political matter. It is an American deportation proceeding. The cases cited by the government in the brief are American legal cases and there is no reason that the principles established in those American legal cases should not apply to this case. That is it. Thank you.

Mr. Milhollan: Thank you gentlemen. I think you are both familiar with what we have before us, your briefs, both briefs, the material that was submitted along with the briefs. The one affidavit that was objected to by you, Mr. Berzins, has been returned to the government and has not been examined by the Board. Your motion, I believe, had a copy of

that affidavit, accordingly that motion was also returned to you, so the question is moot. We will take the case under consideration.

mb - 6/25/80