

IVARS BERZINS. P. C.
ATTORNEY AT LAW
484 WEST MONTAUK HIGHWAY
BABYLON, NEW YORK 11702
516 - 661-3540

August 14, 1984

Joint Baltic American National Committee
P. O. Box 432
Rockville, Maryland 20850

Ladies and Gentlemen:

I represent Mr. Karl Linnas, an Estonian who has lost his United States citizenship and has been found deportable. At United States Government request, the Immigration Judge ordered him deported to the U.S.S.R. We appealed to the Board of Immigration Appeals. The Board in its July 31, 1984 decision, affirmed the deportation order, but questioned the designation of U.S.S.R. as the place of deportation. The Board said:

"Lastly, the respondent has argued that the immigration judge's designation of the U.S.S.R. is unreasonable in light of the fact that the United States has refused to recognize the legitimacy of the Soviet annexation of Estonia. We are unable to assess the merits of this argument because the immigration judge's decision is silent as to the basis for his designation of the U.S.S.R. Moreover, on appeal the Service failed to state its position on the effect of the Soviet annexation of Estonia upon designation of a country of deportation. 11/ Thus, a remand on this issue is appropriate.

ORDER: The appeal is dismissed as to all of the issues except that of the reasonableness of the immigration judge's designation of the U.S.S.R. as the country of deportation. Inasmuch as we are unable to ascertain the reasons for that designation, the case is remanded to the immigration judge so that he may consider the implications of the United States' refusal to recognize the Soviet

annexation of Estonia, designate a country of deportation pursuant to the appropriate provisions of section 243(a) of the Act, 8 U.S.C. 1253(a), and articulate the statutory basis for selecting whichever country is designated. Upon remand both the respondent and the Service may be given an opportunity to submit additional evidence or arguments on these issues.

11/ In Matter of S-Y-L-, 9 I&N Dec. 575 (BIA 1962), we refused to deport a national of Communist Mainland China to that country because the United States did not recognize the legitimacy of the Communist government there. Our policy against deporting aliens to Communist China was not discontinued until we recognized the legitimacy of that government. Matter of Cheung, 10 I&N Dec. 690 (BIA 1979)."

We now have another opportunity to present to the Immigration Judge evidence and arguments why nationals of Estonia, Latvia and Lithuania ought not be deported to the U.S.S.R., while the United States does not recognize the illegal Soviet occupation of those countries. Unfortunately, all the evidence and all the arguments may be to no avail, if this Administration, through the Department of Justice and its Office of Special Investigations, persists in asking the Immigration Judge to order deportation to the U.S.S.R. We are faced with a political, not a legal issue. If sufficient political pressure is applied to this Administration, perhaps they will relent. The elections, after all, are not far away.

* If a Baltic national is deported to the U.S.S.R., it would constitute discrimination of the most invidious sort. While the United States did not recognize Mainland China, no Chinese nationals were deported to Mainland China. The United States ought to adhere to the same policy concerning deportable Baltic nationals. Anything less than that would make a mockery of the policy of nonrecognition of the Soviet annexation of the Baltic states.

To the best of my knowledge, the case of Karl Linnas is the first case where a Baltic national has been ordered deported

to the U.S.S.R. Consequently, this is a test case and if it is lost, similar deportations to the U.S.S.R. will follow. This first attempt at deportation to the U.S.S.R. should be resisted vigorously. We seek your support.

Very truly yours

A handwritten signature in cursive script, appearing to read "Ivars Berzins".

Ivars Berzins

IB:ah

United States Senate

WASHINGTON, D.C. 20510

September 28, 1984

The Honorable George P. Shultz
Secretary of State
Department of State
2101 C Street, N.W.
Washington, D.C. 20520

Dear Secretary Shultz:

It has recently been brought to my attention that the deportation case of an Estonian national has come before the Board of Immigration Appeals. In its decision, the Board questions the designation of the Soviet Union as the place of deportation, since it would mean recognizing the Soviet annexation of Estonia.

The United States maintains a long-standing policy of not recognizing the illegal incorporation of Estonia, Latvia, and Lithuania into the Soviet Union. The current Administration has strongly endorsed this policy. As a result, to designate the Soviet Union as the place of deportation for Baltic nationals would be an outright violation of this policy.

I respectfully ask that you issue a request to the Attorney General that the Justice Department not deport Baltic nationals to the Soviet Union in order to comply with the stated views on U.S. Baltic policy.

Thank you for your attention to this matter.

Sincerely,



Alfonse D'Amato
United States Senator

AD:ssr

BEFORE THE UNITED STATES IMMIGRATION COURT
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES DEPARTMENT OF JUSTICE

UNITED STATES OF AMERICA:

File A8 085 626

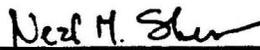
In the Matter of
KARL LINNAS

Respondent

MOTION FOR A POSTPONEMENT OF HEARING DATE

The Government hereby moves this Court to grant a postponement of the hearing date in the above-referenced matter from October 26, 1984 to December 27, 1984. The reason for this motion is set forth in the attached letter from the State Department to the Department of Justice.

Respectfully submitted,



Neal M. Sher
Director

Office of Special Investigations
Criminal Division
U.S. Department of Justice
1377 K St., N.W., Suite 195
Washington, D.C. 20005
(202) 633-2502

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OCT 22 1984

IVARS BERZINS, P.C.



United States Department of State

Washington, D.C. 20520

October 16, 1984

Mark M Richard, Esquire
Deputy Assistant Attorney General
Criminal Division
U.S. Department of Justice
Washington, D.C. 20530

Dear Mr. Richard:

This is in response to your letters of August 20 and October 11, 1984, concerning the Karl Linnas case. Those letters requested the Department of State's position on the question whether deportation of Linnas to the U.S.S.R. would be contrary to or have an effect on the U.S. policy of non-recognition of the Soviet Union's forcible annexation of Estonia. We understand that your inquiry arises from the July 31, 1984 decision of the Board of Immigration Appeals remanding the case for consideration of the recognition policy issue. We further understand that the immigration judge has scheduled a hearing on the issue for October 26.

Questions involving State recognition are inherently complex and uniquely political. See generally 2 Whiteman, Digest of International Law 1-753 (1963). United States policy regarding non-recognition of the forcible annexation of the Baltic States by the Soviet Union is especially delicate. See e.g., Latvian State Cargo & Passenger S.S. Line v. Clark, 80 F. Supp. 683 (D.D.C. 1948), aff'd, 188 F.2d 1000 (D.C. Cir. 1951).

Considering the special sensitivity of the issues involved, we believe it would be in the interest of the United States for this Department more fully to explore the feasibility under the terms of Section 243(a) of the Immigration and Nationality Act, 8 U.S.C. §1253(a) of deporting Linnas to another country.

Mark M Richard, Esquire
October 16, 1984
Page 2

Therefore, we ask that you seek a 60-day continuance of the October 26 hearing, in order to allow the Department sufficient time to make inquiries with other countries and to permit a careful and fully informed decision regarding this important matter.

Thank you for your cooperation.

Sincerely,



Daniel W. McGovern
Acting Legal Adviser

IVARS BERZINS, P. C.
ATTORNEY AT LAW
484 WEST MONTAUK HIGHWAY
BABYLON, NEW YORK 11702
516 - 661-3540

November 1, 1984

Joint Baltic American National Committee
P. O. Box 432
Rockville, Maryland 20850

Ladies and Gentlemen:

The Immigration Judge in the Karl Linna's deportation proceeding scheduled the hearing for October 26, 1984. On October 22, 1984 I received the government's motion papers requesting that the hearing be adjourned to December 27, 1984. On October 22 I submitted my affirmation opposing the adjournment. Copies of those papers are enclosed.

On October 26, 1984 the government's attorneys and I appeared before the Immigration Judge and I asked the government's attorneys to join me in a motion that the U.S.S.R. not be designated as an alternate place of deportation for Mr. Linna's. The government's attorneys said that they could not respond to my request because they have not yet received advice from the State Department, as explained in the October 16, 1984 letter from Daniel W. McGovern to Mark M. Richard, which is attached to the government's motion papers. In light of this claimed inability on the part of the government to state its position, the Immigration Judge adjourned the hearing to January 8, 1985.

In my opinion, the government's position, or rather the lack of a position, is untenable and represents a new low in this administration's handling of the United States policy of non-recognition of the forcible annexation of the Baltic States by the U.S.S.R. They have chosen the "low road" in election year politics.

It must be remembered that on April 28, 1983 an attorney from the Office of Special Investigations got up before the Immigration Judge in open Court where the following occurred:

"THE COURT:Mr. Mausner, I want to inform you that Mr. Berzins has designated the Republic of Estonia as the country of deportation and that's in Exhibit 33, correct Mr. Berzins?

MR. BERZINS: Yes, Your Honor.

THE COURT: Does the Government wish any special designation since the Order to Show Cause alleges stateless?

MR. MAUSNER: Yes, Your Honor, it is the Government's position that the defendant is stateless and for that reason the Government then goes on to the next alternative of countries that are designated under section 243 of the Immigration and Nationality Act, and would designate the Union of Soviet Socialist republics under section 243(a)(4)..."

Where did Mr. Mausner get his authority on April 28, 1983 to make that designation? Had the State Department been consulted? If it had, what was its position? Who makes United States policy, the State Department or the OSI? If Mr. Mausner exceeded his authority, has he been disciplined? If not, why not? Does the OSI have a blank check to do as it pleases or is this administration exercising any control over it? How come the State Department now needs 60 days to ponder its Baltic States policy, doesn't it know what that policy is? Did the State Department know what its policy was on April 28, 1983? Did it inform the OSI of its policy?

It is an insult to label "stateless" an Estonian with a valid Republic of Estonia passport in his pocket. When uttered by a representative of the government, this insult is unforgivable!

I have heard it said by people who mean well that my concerns are premature and exaggerated in any event, because nobody has been deported to the U.S.S.R. and surely Mr. Linnas will not be sent there. The apologists for the Reagan administration also like this view, especially at election time. The problem with this view is that it diverts our attention from the real issue: United States policy regarding the Baltic States. The fate of Mr. Linnas is not the issue. It is a slap in the face to every Estonian, Latvian and Lithuanian for a government attorney to even ask that an Estonian be deported to the Soviet Union. The mere asking demonstrates that the so-called nonrecognition policy is disregarded when it comes time to apply it. Whether the deportation is ever actually accomplished is irrelevant in this context.

November 1, 1984

I urge you not to let this issue rest. We ought not let the Reagan administration get away with telling us lies, or keeping silent and telling us nothing, which is just as insulting.

Very truly yours



Ivars Berzins

IB:ah

JOINT BALTIC AMERICAN NATIONAL COMMITTEE

REPRESENTING

ESTONIAN AMERICAN NATIONAL COUNCIL
AMERICAN LATVIAN ASSOCIATION, INC.
LITHUANIAN AMERICAN COUNCIL, INC

November 19, 1984

The Honorable George P. Shultz
Department of State
2201 C St., N.W.
Washington, D.C. 20520

Mr. Secretary:

We understand that certain State Department officials along with the Department's attorneys are reviewing the deportation case of an Estonian national, Mr. Karl Linas, and are concluding that the deportation of the individual to the U.S.S.R. has no effect, in the context of U.S. foreign policy, on the non-recognition policy of the Soviet Union's illegal incorporation of the Baltic states.

We strongly challenge this view and request that you personally review such findings, and in any event we ask that such a conclusion be provided. We respectfully urge you to look into this pressing matter.

Gunars Meierovics
Latvian Representative

Maido Kari
JBANC Chairman
Estonian Representative

John B. Genys
Lithuanian Representative

Algis Silas
Director of Public Relations

For further inquiries relating to the documentation entitled, "Exhibits Documenting the U.S. Department of Justice's Office of Special Investigations Cooperation With Soviet KGB/Procurators", an exhibit which was submitted to all members of the House of Representatives and all U.S. Senators on March 28, 1984 to their Washington, D.C. offices, please contact:

S. Paul Zumbakis, Esquire
7 S. Dearborn
Chicago, Ill. 60603
312-641-3428

Ivars Berzins, Esquire
484 West Montauk Highway
Babylon N.Y. 11702
516-661-3540

David E. Springer, Esquire
200 East Randolph
Chicago, Ill. 60601
312-861-3256

Americans For Due Process
P.O. Box 85
Woodhaven, N.Y. 11421

Mrs. Rasa Razgaitis
516-671-7573

JOINT BALTIC AMERICAN NATIONAL COMMITTEE

REPRESENTING
ESTONIAN AMERICAN NATIONAL COUNCIL
AMERICAN LATVIAN ASSOCIATION, INC.
LITHUANIAN AMERICAN COUNCIL INC.

DEC 3
Mr. Shultz
633.25.02

The Honorable George P. Shultz
Secretary of State
Department of State
2101 C St., NW
Washington, D.C. 20520

Dear Mr. Shultz:

It has recently been brought to my attention that the deportation case of an Estonian national has come before the Board of Immigration Appeals. In its decision, the Board questions the designation of the Soviet Union as the place of deportation, since it would mean recognizing the Soviet annexation of Estonia.

The United States maintains a long-standing policy of not recognizing the illegal incorporation of Estonia, Latvia and Lithuania into the Soviet Union. The current Administration has strongly endorsed this policy. As a result, to designate the Soviet Union as the place of deportation for Baltic nationals would be an outright violation of this policy.

I respectfully ask that you issue a request to the Attorney General, that the Justice Department not deport Baltic nationals to the Soviet Union in order to comply with the stated views on U.S. Baltic policy.

Thank you for your attention to this matter.

Sincerely,

Lithuanian: Physj collect.

*falsified papers coming to U.S.
issue: have deported.*

ref. Indep. Rep of Estonia

- 1. requests own country*
- 2. US work for country*
- 3. SU has said not request.*

*not in non-recog. policy.
int. people = OTHW.*

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DEC 1984

OFFICE OF
SPECIAL INVESTIGATIONS

United States Senate

WASHINGTON, D.C. 20510

RECEIVED

DEC 19 1984

OFFICE OF
SPECIAL INVESTIGATIONS

December 14, 1984

Mr. Neal M. Sher, Director
Office of Special Investigations
Criminal Division
U.S. Department of Justice
1377 K Street, N.W. Suite 195
Washington, D.C. 20005

Dear Mr. Sher:

I am writing you today concerning the case of Mr. Karl Linnas and the problem of World War II war criminals in America. It has come to my attention that Mr. Linnas has exhausted his appeals process and will be deported for illegally procuring his U.S. citizenship and for engaging in persecution during World War II. If, as it states in the records from his trial, Mr. Linnas is guilty of committing war crimes, I urge your office to pursue swift and effective legal action against him, as we should against all those accused of Nazi war crimes and atrocities.

I understand Mr. Linnas came to the United States in 1951 under an application which falsely stated that he was a student and a technical artist in Estonia. His application knowingly concealed the facts regarding his World War II activities. According to court findings in this case, Mr. Linnas was a member of the Selbstschutz, or Estonian Home Guard, which carried out arrests and executions of Jews and others in Estonia. The most notorious place of execution was the Tartu concentration camp.

As I stated in a letter to Secretary Shultz on September 28 of this year, I do not believe that any Baltic national should be deported to the Soviet Union. To do so would violate the U.S. policy of not recognizing the illegal incorporation of Estonia, Latvia, and Lithuania into the Soviet Union. I do believe, however, that if Mr. Linnas is guilty of war crimes, he should be immediately deported from the United States, perhaps to Israel.

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DEC 19 1984

OFFICE OF
SPECIAL INVESTIGATIONS

Mr. Neal Sher
December 14, 1984
Page Two

I firmly believe our nation should actively pursue all war criminals in the United States and deport them as soon as possible. Crimes of the magnitude of those committed by Nazis during World War II, especially against Jews, must be dealt with firmly by the United States. I look toward your office for leadership on this issue of immense importance, and I offer my assistance. I look forward to working with you.

Sincerely,



Alfonse M. D'Amato
United States Senator

AMD:ssm

JACK

ANDERSON

D'Amato, Officials Halt Deportation Of Nazi Camp Chief

A FORMER NAZI concentration camp commandant, who concealed his past to gain admittance to the United States, has been hunted down and stripped of his U.S. citizenship. But just as he was about to be booted out of the country, several members of Congress, including New York Republican Sen. Alfonse D'Amato, intervened to stop his deportation.

They joined Dr. Edward Rubel, a director of the Captive Nations Committee, in protesting the deportation order. Rubel's letter to Secretary of State George Shultz has the acrid stench of anti-Semitism, accusing the Justice Department's investigators of collaborating with "Jewish Zionists" and the Soviet secret police.

The congressional dignitaries wrote more moderate letters to Shultz on the former Nazi's behalf, or otherwise showed sympathy for his supporters' cause.

They include House Foreign Affairs Committee Chairman Dante Fascell (D-Fla.); D'Amato; Sen. Pete Domenici (R-N.M.); Sen. Dennis DeConcini (D-Ariz.); Rep. Don Ritter (R-Pa.) and, before he was defeated, Senate Foreign Relations Committee Chairman Charles Percy, (R-Ill.)

D'Amato, apparently fearing the wrath of New York's Jewish voters, later repudiated his original letter of support. An aide to D'Amato asked my associate Lucette Lagnado not to report either the senator's initial support or his later repudiation, pleading constituent sensitivity.

At the center of the deportation battle is 65-year-old Estonian-born Karl Linnas, who immigrated to this country after World War II and now lives on Long Island.

Evidence gathered by the Justice Department's Nazi-hunting Office of Special Investigations revealed that Linnas had been a concentration camp commandant and had ordered the mass executions of Jews and other prisoners. He participated personally in some of the executions, according to the documents.

Because he failed to mention this when he entered the United States, a federal court has stripped him of his U.S. citizenship, and he faces deportation to the Soviet Union, of which Estonia is now a de facto constituent republic.

Linnas has appealed the deportation order on the grounds that the United States has never officially recognized the Soviet takeover of Estonia. He states that he would be willing to be sent back

to his homeland but that he can't be deported to a country that doesn't officially exist in U.S. eyes.

Linnas's congressional supporters insist they have no sympathy for him but agree with his technical argument. But the State Department's legal office, whose lawyers seldom agree on points of law, unanimously rejected the argument, suggesting that it is a smokescreen.

Eastern European emigre groups have also unfurled the banner of anti-communism to win congressional support for Linnas. The most virulent letter was written by Rubel, himself an Estonian immigrant, who described Stalinist Russia as "exclusively ruled by Marxist Zionist Jews." The truth is that Jewish Soviet leaders were systematically exterminated during the Stalinist purges.

In his letter to Shultz, Rubel also describes Baltic Jews who managed to escape the Nazi death squads and join local guerrilla bands as "leaders of extermination battalions, killing innocent people and burning their abodes."

Rubel accuses "the OSI with its U.S.A. Zionist System" of "direct collaboration with the Soviet government" and the KGB secret police.

Without mentioning the Linnas case, DeConcini has written to the Justice Department, noting criticism of the OSI and suggesting he might hold hearings on the charges.

Linnas's congressional supporters, of course, are neither Nazi sympathizers nor anti-Semitic bigots. Fascell, for example, has been a champion of Jewish rights. Apparently, the members of Congress have been influenced by the intense lobbying of the emigre groups.

Officials of the Captive Nations Committee and other emigre groups supporting Linnas also denied any anti-Semitism. But they would not take issue with any of the virulently anti-Semitic statements in Rubel's letter to Shultz. An official of the Joint Baltic Committee characterized Rubel as "a colorful individual."

Jaw 14, 1985

JACK ANDERSON

Lawmakers Aid Former Nazi Officer

A former Nazi concentration camp commandant, who concealed his past to gain admittance to the United States, has been hunted down and stripped of his U.S. citizenship.

But just as he was about to be booted out of the country, several distinguished members of Congress intervened to stop his deportation.

They joined Dr. Edward Rubel, a director of the Captive Nations Committee, in protesting the deportation order. Rubel's letter to Secretary of State George P. Shultz has the acrid stench of anti-Semitism, accusing Justice Department investigators of collaborating with "Jewish Zionists" and the Soviet secret police.

The congressional dignitaries wrote more moderate letters to Shultz on the former Nazi's behalf, or otherwise showed sympathy for his supporters' cause. They include House Foreign Affairs Committee Chairman Dante B. Fascell (D-Fla.), Sen. Alfonse M. D'Amato (R-N.Y.), Sen. Pete V. Domenici (R-N.M.), Sen. Dennis DeConcini (D-Ariz.), Rep. Don Ritter (R-Pa.) and, before he was defeated, Senate Foreign Relations Committee Chairman Charles H. Percy (R-Ill.).

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Because Linnas failed to mention this when he entered the United States, a federal court has stripped him of his U.S. citizenship, and he faces deportation to the Soviet Union, of which Estonia is now a constituent republic.

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TO THANK YOU
FOR AWARD...



I SPILLED
SOME. YOU
CAN SUCK IT
OUT OF MY
SWEATER.



THE PART OF

D'Amato: I Was Duped for Alleged Nazi

By Judith Bender and Alan Eysen

Sen. Alfonse D'Amato said yesterday that he was duped into writing a letter in support of a Long Island man facing deportation for concealing his alleged role in the executions of 1,000 people in a Nazi concentration camp.

In the letter, sent to Secretary of State George P. Shultz last September, the New York Republican said he had become aware of the impending deportation to the Soviet Union of an "Estonian national." Such a move would run counter to U.S. policy of not recognizing the incorporation of the Baltic nations of Estonia, Latvia and Lithuania into the Soviet Union, he said, urging Shultz to "issue a request to the attorney general that the Justice Department not deport Baltic nationals to the Soviet Union" in order to comply with this policy.

The letter was disclosed yesterday in a syndicated column carried in Newsday by Jack Anderson. Anderson noted that other senators and members of Congress had sent similar letters.

D'Amato said yesterday he was unaware that the "Estonian national," Karl Linnas of Greenlawn, had been stripped of his citizenship in 1981 for concealing from immigration officials that he had served in a concentration camp where, according to the Justice Department, he had taken part in the firing squad executions of 1,000 persons. Linnas is now fighting deportation

to the Soviet Union, where he has been condemned to death.

D'Amato said that when he learned in December his letter was being used on behalf of an alleged Nazi collaborator, he wrote a second letter to Shultz saying: "It has come to my attention that some individuals may have misinterpreted my letter to you . . . as an attempt to protect Nazi war criminals from prosecution and deportation. I find such an interpretation outrageous . . . It is inconceivable that Nazi war criminals should seek protection under our captive nation policy."

The senator charged that the Joint Baltic American National Committee "came in and deceived my staff." Staff aide Seawn Smeallie, who interviewed committee officials, said: "I had not known at any time that Mr. Linnas was a potential war criminal." However, Algis Silas, a spokesman for the committee, said: "That is not the case. We did not deceive him. We did not misrepresent the issue."

According to Neal Sher, head of the Justice Department's Office of Special Investigations, his office has filed a brief with the immigration court hearing Linnas' final appeal saying, "The State Department has concluded that his deportation would not conflict with our Baltic policy." Sher said it may be several months before the legal proceedings are concluded.

Ed Lurie, an official of the State Republican Committee, doubted whether D'Amato would be hurt politically by the incident. "Al has gone out of his way to nurture and promote Jewish interests," Lurie said. Rabbi Israel Mowshowitz, Gov. Mario Cuomo's assistant for community affairs, added: "It's an honest mistake, and I feel confident the Jewish community will not hold this against him."

Leaders of Jewish organizations in Washington and New York City said they were surprised and disturbed by the Anderson story. Philip Baum, associate executive director of the American Jewish Congress, said: "I am appalled. Given the nature of the congressmen involved, I can only assume that

they were not informed of the true nature of the Linnas case . . ."

At least two members of Congress, Rep. Dante Fascell (D-Fla.), chairman of the House Foreign Affairs Committee, and Rep. Don Ritter (R-Pa.), knew of Linnas' background before asking Shultz to stop his deportation.

"Mr. Fascell knew he was a Nazi," said Fascell's press secretary, Barbara Burris. "He wasn't happy about it." But, she said, U.S. policy has never recognized the annexation of the Baltic countries. "You can't deport him because there's no Estonia to deport him to."

D'Amato 'Deceived' on Nazi

Sen. Alfonse D'Amato (R-N.Y.) said yesterday that he was duped into writing a letter in support of a man facing deportation on charges of concealing his role in the executions of 1,000 people in a Nazi concentration camp.

In the letter, sent to Secretary of State George P. Shultz in September, D'Amato said he had become aware of the impending deportation to the Soviet Union of an "Estonian national." Such a move would run counter to U.S. policy of not recognizing the incorporation of Baltic into the Soviet Union, he said, urging Shultz to "issue a request . . . that the Justice Department not deport Baltic nationals" in order to comply.

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The senator charged that the Joint Baltic American National Committee "came in and deceived my staff." However, committee spokesman Algis Silas said: "That is not the case. We did not deceive him. We did not misrepresent the issue."