

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

_____)	
UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 77-118
)	
SERGE KOWALCHUK, a/k/a)	
SERHIJ KOWALCZUK,)	
)	
Defendant.)	
_____)	

GOVERNMENT'S PRE-TRIAL MEMORANDUM
SUBMITTED PURSUANT TO LOCAL RULE 21(c)

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TABLE OF CONTENTS

	<u>Page</u>
I. NATURE OF THE ACTION AND JURISDICTIONAL BASIS	1
II. FACTS	
A. Defendant's Activities Prior To And During World War II	2
B. Defendant's Unlawful Efforts To Obtain United States Citizenship	4
III. RELIEF	8
IV. LEGAL THEORIES OF THE CASE	9
A. Defendant's Citizenship Was Illegally Procured	10
1. Defendant Was Not Lawfully Admitted to the United States	11
(a)(b) Disqualification for Persecution and Voluntary Assistance to the Nazis	12
(c) Disqualification for Membership or Participation In A Movement Hostile to the United States	13
(d) Misrepresentation in Obtaining a Visa	13
2. Defendant Lacked the Good Moral Character Required for Citizenship	14
B. Revocation on the Basis of Concealment of a Material Fact or Willful Misrepresentation	16
V. WITNESSES	18

	<u>Page</u>
VI. EXHIBITS	25
VII. SOVIET DEPOSITIONS	32
A. The Oath	33
B. Presence of the Soviet Procurators	35
C. Other Objections to the Form of the Soviet Depositions	36

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GOVERNMENT'S PRE-TRIAL MEMORANDUM
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I. NATURE OF THE ACTION AND JURISDICTIONAL BASIS

This is an action brought pursuant to Section 340(a) of the Immigration and Nationality Act of 1952, as amended, 8 U.S.C. §1451(a), to revoke and set aside the order of this Court admitting Serge Kowalchuk (hereinafter "defendant") to United States citizenship, and to cancel defendant's Certificate of Naturalization No. 8250996.

Jurisdiction is conferred upon this Court by 28 U.S.C. §1345 (except as otherwise provided, the United States district courts shall have original jurisdiction of all civil actions commenced by the United States), 8 U.S.C. §1421(a) (jurisdiction to naturalize persons as citizens is conferred on United States District Courts), and 8 U.S.C. §1451(a) (action to revoke citizenship to be brought in any court specified in 8 U.S.C. §1421(a)).

Denaturalization actions under 8 U.S.C. §1451 are tried by the Court, without jury. The Seventh Amendment right to jury trial does not attach in such cases. United States v. Luria, 231 U.S. 9, 27-28 (1931). See also United States v. Matles, 247 F.2d 378, 381 (2d Cir. 1957), rev'd on other grounds, 356 U.S. 256.

The plaintiff is the United States of America.

Defendant resides at 224 West 67th Street, Philadelphia, Pa., within the jurisdiction and venue of this Court.

It is the Government's burden to prove its case by clear and convincing evidence. Schneiderman v. United States, 320 U.S. 118, 123-125 (1943).

II. FACTS

A. Defendant's Activities Prior To and During World War II

Defendant was born in 1920 in Kremenets (Kremianec), Poland. At some time during the 1930's he moved to Lyuboml, Poland, where he resided until 1944. Lyuboml was a town of about 10 to 12,000 people; approximately half the population was Jewish.

In September 1939, Poland was invaded by Germany and the U.S.S.R. and its territory was divided between them. After about two weeks of German occupation, Lyuboml fell under Soviet control. In June 1941, Nazi Germany invaded the Soviet Union and occupied the Ukraine, including Lyuboml. The Nazi occupation lasted until 1944.

Within a few weeks of the occupation of Lyuboml, the Nazi occupation forces established a police force consisting of Ukrainians (hereinafter referred to as the "Ukrainian police"). Defendant served as Deputy Commandant of the Ukrainian police in Lyuboml from 1941 to 1944.

During the German occupation, severe restrictions were imposed on the Jews of Lyuboml. They were required to wear markings that identified them as Jews. They were not allowed on the streets at night. In late 1941, the Jews were forced to move into a ghetto. They were not allowed out of the ghetto without an escort. They lived in extremely crowded conditions (as many as 15 to a room) and were allowed only 100 to 200 grams of bread per day. The Ukrainian police guarded the ghetto and enforced these restrictions on the Jews under orders from defendant. Ukrainian policemen and German gendarmes would often conduct searches for valuables and beat Jews in the ghetto. Jews were taken out of the ghetto by Ukrainian police and German gendarmes and were never seen again. The defendant often participated in these activities.

In October 1942, the Jewish ghetto was liquidated. Ukrainian police (including the defendant), German gendarmes, and other units drove all the Jews remaining in the ghetto to the town square and then to a brick factory several kilometers from Lyuboml, at the village Borki. Large pits had already been dug at this sight. Ukrainian policemen,

under orders from the defendant, guarded this area while Germans shot the Jews. The shooting was conducted as follows: several Jews at a time were forced to undress and led to the pits by Ukrainian policemen, under the direction of the defendant. They were forced to lie down in the pit face down, and were shot in the back of the head by the Germans. The next group of Jews would be forced to lie on top of those already shot.

This killing lasted the whole day. Several thousand Jews were shot.

As Deputy Commandant of the Ukrainian police, defendant also took part in beating and torturing persons suspected of underground activities.

Defendant terminated his employment with the Ukrainian police in 1944 when he voluntarily fled from Lyuboml with the retreating Nazi forces.

B. Defendant's Unlawful Efforts to Obtain United States Citizenship

In 1949, defendant initiated proceedings to obtain entry into the United States under the Displaced Persons Act of 1948, ch. 647 -- Public Law 774, 62 Stat. 1009 (1948) (hereinafter "DP Act"). He first obtained certification from the International Refugee Organization (IRO), the United Nations agency charged with the welfare of war refugees and displaced persons and with assisting them in finding new homes, that he was a bona fide displaced person. To be

certified by the IRO as a displaced person, an applicant had to have been a victim of the war and could not have assisted the Nazis in their persecution of civilians. In obtaining this certification, defendant concealed his service in the Ukrainian Police and maintained he had been an "Apprentice tailor" in Kremianec (165 kilometers from Lyuboml) during the war.

On April 19, 1949, as part of the process to obtain a visa for entry into the United States under the DP Act, defendant executed a "Fragebogen" (questionnaire). This Fragebogen contained the following warning:

"I declare that the above information and answers are correct and complete according to my best knowledge and conscience. I sign this declaration in the certain knowledge that the veracity of the information given here will be checked, and if it is found to be untrue, incomplete, or misleading in any point, I may be denied entry into the United States."

In spite of this warning, defendant misrepresented and concealed the following in the Fragebogen:

1. Defendant stated that he had lived in Kremianec, Poland from 1939 to 1944, thereby concealing his residence in Lyuboml.
2. Defendant stated that from 1939 to 1944 he had been a tailor assistant at Kremianec, Poland, thereby concealing his service in the Ukrainian police and his involvement in persecution of civilians.

3. Defendant stated that he was forcibly transported by the Germans to Czechoslovakia in March 1944, thereby concealing the fact that he had voluntarily fled with the retreating Nazi forces.
4. Defendant answered "no" to the following question on the Fragebogen (item #38): "Have you ever been arrested, or have you ever criminally, morally or politically violated a law?" Defendant thereby concealed his participation in murders, assaults, arrests and detention of unarmed civilians.
5. Defendant answered "none" to the following question on the Fragebogen (item #30): "Military service. (List service in any or all military organizations)." Defendant also answered "none" to the following question on the Fragebogen (item #39): "List here all political, non-political, or paramilitary organizations to which you have ever belonged, or to which you applied for membership." Defendant thereby concealed his service in the Ukrainian police and his involvement in persecution of civilians.

As a result of these concealments and misrepresentations, the United States Displaced Persons Commission 1/

1/ The U.S. Displaced Persons Commission was the body statutorily charged under the DP Act (62 Stat. 1009) with certifying the eligibility of displaced persons for immigration to the U.S.

found that defendant was a displaced person eligible for admission into the United States under Section 2(c) of the Displaced Persons Act of 1948 and so reported to the United States immigration authorities. On December 29, 1949, defendant appeared before a vice consul of the United States at Salzburg, Austria and made under oath an Application for Immigrant Visa and Alien Registration in which he claimed eligibility for entry into the United States under the Displaced Persons Act. Defendant was granted an immigrant visa pursuant to the Displaced Persons Act on December 29, 1949. On February 2, 1950, defendant entered the United States.

On or about August 19, 1960 defendant filed with the Immigration and Naturalization Service (hereinafter "INS") an "Application to File Petition for Naturalization" and attached "Statement of Facts for Preparation of Petition" (INS Form N-400). The Form N-400 was sworn to by defendant on September 13, 1960.

In his Form N-400 defendant willfully concealed the fact that he had participated in murders and assaults by stating that he had not committed any crime or offense in the United States or any other country. Defendant willfully concealed his membership in the Ukrainian police by stating that he had not been a member of any organization in the United States or any other country.

On September 13, 1960 defendant filed in the United States District Court for the Eastern District of Pennsylvania a Petition for Naturalization in which he swore that he had been lawfully admitted to the United States and that he was a person of good moral character. The Court granted defendant's "Petition for Naturalization" on November 30, 1960 and issued to him Certificate of Naturalization No. 8250996. Since November 30, 1960 defendant has remained a United States citizen.

III. RELIEF

Under Section 340(a) of the Immigration and Nationality Act, 8 U.S.C. §1451(a), citizenship must be revoked and a Certificate of Naturalization must be cancelled if citizenship was either:

- a. Illegally procured, or
- b. Procured by concealment of a material fact or by willful misrepresentation.

Although procurement by any one of these methods is sufficient to warrant revocation and cancellation, each of these methods of procurement was employed by defendant. Defendant's citizenship was procured both illegally and by concealment of material facts and willful misrepresentation.

Accordingly, the Government seeks:

1. A declaration that defendant procured his citizenship and Certificate of Naturalization illegally and by concealment and willful misrepresentation of material facts.

2. Judgment revoking and setting aside the November 30, 1960 Order of the United States District Court for the Eastern District of Pennsylvania admitting defendant to United States citizenship and cancelling Certificate of Naturalization Number 8250996.

3. Judgment forever restraining and enjoining defendant from claiming any rights, privileges, or advantages under any document evidencing United States citizenship.

4. Judgment requiring defendant immediately to surrender and deliver Certificate of Naturalization Number 8250996 to the Attorney General.

5. Judgment granting plaintiff such other relief as may be lawful and proper.

IV. LEGAL THEORIES OF THE CASE

Under Section 340(a) of the Immigration and Nationality Act, 8 U.S.C. §1451(a), defendant's citizenship must be cancelled if it was either:

- a. Illegally procured, or
- b. Procured by concealment of a material fact or by willful misrepresentation.

In pertinent part, 8 U.S.C. §1451(a) provides as follows:

"It shall be the duty of the United States attorneys * * * to institute proceedings * * * for the purpose of revoking and setting aside the order admitting [a naturalized citizen] to citizenship and cancelling the certificate of naturalization on the ground that such order and certificate of naturalization were illegally procured or were procured by concealment of a material fact or by willful misrepresentation * * *."

In this case, the government will establish that the defendant's citizenship was both illegally procured and procured by concealment of a material fact or willful misrepresentation, although only one such ground need be established.

A. Defendant's Citizenship was Illegally Procured

If at the time of naturalization the petitioner lacked any requirement for citizenship, naturalization was illegally procured and must be revoked. H.R. Rep. No. 1086 87th Cong., 1st Sess. 39 (1961); United States v. Fedorenko, ____ U.S. ____, 66 L.Ed.2d 686, 701 (1981); United States v. Osidach, 513 F.Supp 51 (E.D. Pa., 1981); United States v. Demjanjuk, ____ F.Supp ____ (No. C77-923, N.D. Ohio, June 22, 1981), slip op. at 33 (copy attached); United States v. Linnas, ____

F.Supp. ____ (No. 79 C 2966, E.D.N.Y., July 30, 1981) (copy attached). In this case defendant lacked two of the requirements: lawful admission to the United States (8 U.S.C. §1427(a)(1), 1429) and good moral character (8 U.S.C. §1427(a)(3)).

1. Defendant Was Not Lawfully Admitted to the United States

Defendant was admitted to the United States under the Displaced Persons Act of 1948. His admission thereunder was illegal for four reasons:

- a. He assisted Nazi forces in the persecution of civilians (and thus was barred from entry under Section 2 of the DP Act).
- b. He voluntarily assisted Nazi forces during the Second World War in their operations against the United Nations (and thus was barred under Section 2 of the DP Act).
- c. He was a member of, or participated in, a movement which was hostile to the United States or the form of government of the United States (and thus was barred under Section 13 of the DP Act).
- d. He made misrepresentations for the purpose of gaining entry to the United States under the DP Act (and thus was barred under Section 10 of the DP Act).

a, b. Disqualification for Persecution and
Voluntary Assistance to the Nazis

Only "refugees" or "displaced persons" were eligible to enter the United States under the DP Act. The DP Act incorporated the definition of "refugees or displaced persons" contained in Annex I to the Constitution of the International Refugee Organization of the United Nations (IRO). The IRO Constitution provided that the following persons would not be eligible for refugee or displaced person status:

- "1. War criminals, quislings and traitors.
- "2. Any other person who can be shown:
 - "(a) to have assisted the enemy in persecuting civil populations of countries, Members of the United Nations; or
 - "(b) to have voluntarily assisted the enemy forces since the outbreak of the second world war in their operations against the United Nations." ^{2/} Annex 1, Part II, 62 Stat. 3051-3052.

See United States v. Fedorenko, *supra*, 66 L.Ed. at 694, n 3-4; United States v. Osidach, *supra*, 513 F.Supp. at 65; United States v. Linnas, *supra*.

^{2/} The Manual for Eligibility Officers of the International Refugee Organization, which defined those activities and memberships rendering an applicant ineligible for assistance by the IRO, states (P, 33):

"'Enemy forces' are the Armed Forces (including foreign legions or units fighting on the enemy side), occupation authorities (civil and material), police, para-military and auxiliary organizations." (emphasis added.)

c. Disqualification for Membership or Participation In A Movement Hostile to the United States

Section 13 of the Displaced Persons Act provided that:

"No visas shall be issued under the provisions of this Act to any person who is or has been a member of, or participated in, any movement which is or has been hostile to the United States or the form of government of the United States."

The court in Osidach held that:

"mere willing membership without proof of personal acts of persecution in a movement which assisted the Germans in the persecution of civilians during WWII was sufficient under §13 of the DPA to warrant a denial of eligibility as a displaced person." 513 F.Supp. at 78-79. 3/

The court further held that the Ukrainian police in the town of Rawa Ruska constituted a movement that assisted the Germans in the persecution of innocent civilians, and that defendant Osidach's citizenship therefore had to be revoked. 513 F.Supp. at 83-96.

d. Misrepresentation in Obtaining Visa

Section 10 of the DP Act provided that:

"Any person who shall willfully make a misrepresentation for the purpose of gaining admission into the United States as an eligible displaced person shall thereafter not be admissible into the United States."

The Supreme Court in Fedorenko held that a misrepresentation, in order to disqualify an applicant from admission under the

3/ The government, however, will also prove by clear and convincing evidence that defendant personally took part in persecution.

DP Act, must be material. 66 L.Ed. at 702. The Court further held, however, that a misrepresentation as to service as a concentration camp guard is a material misrepresentation, and that a person who made such a misrepresentation and was admitted to the United States was illegally admitted. 66 L.Ed. at 704. The court in Osidach held that defendant's misrepresentation, on documents submitted to the IRO, as to his membership in the Ukrainian police in Rawa Ruska, was a material misrepresentation made for the purpose of gaining admission into the United States as an eligible displaced person. 513 F.Supp. at 101-103. ^{4/} His citizenship therefore had to be revoked.

2. Defendant Lacked the Good Moral Character Required for Citizenship

In addition to the requirement of lawful admission, the Immigration and Nationality Act required that the petitioner be a person of good moral character. 8 U.S.C. §1427(a)(3).

"In determining whether the petitioner has sustained the

^{4/} The court in Osidach specifically found that misrepresentations made in IRO forms were made for "the purpose of gaining admission into the United States as an eligible displaced person." 513 F.Supp. at 101-102. While the Linnas and Demjanjuk decisions did not specifically address the issue of whether misrepresentations in IRO forms constituted "misrepresentation for the purpose of gaining admission into the United States as an eligible displaced person," it should be noted that some of the misrepresentations in those cases were on IRO forms. Demjanjuk, slip op at 31; Linnas, slip op at 24-25.

burden of establishing good moral character * * *, the court shall not be limited to the petitioner's conduct during the five years preceding the filing of the petition, but may take into consideration as a basis for such determination the petitioner's conduct and acts at any time prior to that period." 8 U.S.C. §1427(e).

The court in Osidach held that the defendant illegally procured his citizenship because he lacked good moral character at the time he became a citizen in 1963, because of his service in the Ukrainian police and participation in persecution during World War II. 513 F.Supp. at 103, n. 31. See also U.S. v. Linnas, slip op at 31 (defendant lacked the good moral character required for naturalization in 1960 because of his involvement in atrocities during World War II); U.S. v. Demjanjuk, supra, slip op at 36, n. 45.

In addition, the Immigration Act specifically provides that, for purposes of naturalization, no person shall be found to be of good moral character who has, during the period for which good moral character is required, given false testimony for the purpose of obtaining benefits under the Immigration and Nationality Act. 8 U.S.C. §101(f)(6). In Osidach, the court held that defendant's misrepresentation on IRO documents in 1949 concerning his service in the Ukrainian police resulted in a lack of good moral character in 1963 when he applied for citizenship. 513 F.Supp. at 103,

n. 31. In United States v. Demjanjuk, supra, slip op at 36, n. 45, it was held that defendant's misrepresentations as to his service as a concentration camp guard established that he lacked good moral character, although this particular false testimony occurred in the process of obtaining his visa, over fifteen years before his naturalization. See also U.S. v. Linnas, supra, slip op at n. 35.

B. Revocation on the Basis of Concealment of a Material Fact or Willful Misrepresentation

Naturalization must be revoked not only if it has been illegally procured, but also if it has been procured by willful concealment or misrepresentation of material facts. ^{5/} In this context, "material facts" are those facts which, if disclosed, "(1) * * * would have warranted denial of citizenship or (2) * * * might have been useful in an investigation possibly leading to the discovery of other

^{5/} Misrepresentation may also be the basis for revocation of citizenship on grounds that it has been obtained illegally. This is true, for example, if the illegality is based on lack of lawful admission, because the visa was obtained by misrepresentation (see Section IV.A.1.d. above), or if the illegality is based on lack of good moral character because the defendant gave false testimony for the purpose of gaining benefits under the Immigration and Nationality Act (see section IV.A.2 above). The law specifies concealment or misrepresentation as a separate basis for revocation, however, and in fact this basis broadens the grounds for denaturalization.

facts warranting denial of citizenship." Chaunt v. United States, 364 U.S. 350, 355 (1960). 6/

It has not been clearly established whether the two-pronged materiality test outlined in Chaunt applies to misrepresentations on visa applications as opposed to naturalization applications. The Supreme Court in Fedorenko, supra specifically declined to resolve this question, holding that since the defendant's misrepresentations in obtaining a visa made his entry -- and thus his naturalization -- illegal, it was unnecessary to decide whether Chaunt applied to visa misrepresentations.

There is no question at all, however, that Chaunt's two-pronged test of materiality does apply with full force and effect to misrepresentations made when an individual applies for citizenship. As we will show at trial,

6/ The second prong of the Chaunt test of materiality has been interpreted in many ways. The district court in the Fedorenko case held that the second prong, as well as the first prong, requires that the government prove facts at the denaturalization trial which would have warranted denial of citizenship at the time of application. 415 F.Supp. 893, 916 (S.D. Fla. 1978). The Court of Appeal in Fedorenko reversed, holding that the second Chaunt test requires only proof that a) disclosure of the true facts would have led to an investigation and (b) the investigation might have uncovered other facts warranting denial of citizenship. 597 F.2d 946, 951 (5th Cir. 1979). The Supreme Court did not have to reach this issue in its decision, since it held that Fedorenko illegally procured his citizenship. The government will argue, if the Court feels that it is necessary to resolve this issue, that the Fifth Circuit's interpretation in Fedorenko is the correct one.

defendant's application for citizenship concealed and misrepresented material facts within the meaning of Chaunt. See Linnas, slip op at 31-32. 7/ The court need not reach that question, of course, if it finds that petitioner entered the country illegally because he was ineligible for a visa.

V. WITNESSES

Professor Raul Hilberg (expert)
Department of Political Science
University of Vermont
Burlington, Vermont

Professor Hilberg, an expert in the history of the Nazi program of extermination of European Jews, will testify generally on that program. His testimony will also cover the conduct of Nazi occupation forces in the Soviet Union during World War II including, but not limited to, organizing local governments and police and militia forces, actions against the civilian population, actions against partisans and underground groups, and the eventual Nazi retreat. His testimony will focus specifically on the role of the

7/ The court in Linnas held:

"In stating (1) that he had never 'committed a crime involving moral turpitude,' * * * and (2) that he was and had been 'during all periods required by law, a person of good moral character,' * * * defendant knowingly concealed, among other things, the facts of his service at the concentration camp in Tartu, Estonia during World War II. These facts were material under any view of the test of materiality as announced in Chaunt v. United States, 364 U.S. 350 (1960). See Fedorenko v. United States, supra."

Ukrainian police in the extermination of Ukrainian Jewry. He will also testify on the captured German war documents being introduced into evidence, and as to inferences that can be drawn from those documents concerning defendant's participation in persecution.

Dem'yan Markovich Fedchuk (videotaped deposition)
Krasnodar Territory, U.S.S.R.

Mr. Fedchuk testified that he joined the Ukrainian police in Lyuboml in late 1941. He stated that Serhij Kowalchuk was Deputy Commandant and secretary of the police from the time he joined until the Germans left Lyuboml. He testified about the role of the Ukrainian police and Kowalchuk in guarding the Jewish ghetto in Lyuboml. He also testified about the role of the Ukrainian police and Kowalchuk in rounding up the Jews from the Lyuboml ghetto, driving the Jews to the execution site at Borki, and the mass shooting of Jews at Borki.

Gerasim Kaptonovich Kotsura (videotaped deposition)
Ordzhonkiaze, Ukraine, U.S.S.R.

Mr. Kotsura testified that he joined the Ukrainian police in Lyuboml in autumn 1941. He stated that the Deputy Commandant of the Ukrainian police from the time he joined until the German retreat was Serhij Kowalchuk. He also testified about the role of the Ukrainian police and

Kowalchuk in the rounding-up of Jews in Lyuboml, their transport to the execution site at Borki, and the mass shooting of Jews at Borki.

Alexandr Sidorovich Trofimovich (videotaped deposition)
Lyuboml, Ukraine, U.S.S.R.

Mr. Trofimovich lived in Lyuboml and knew Serhij Kowalchuk since about 1936. Mr. Trofimovich testified that Serhij Kowalchuk was Deputy Commandant of the police during the German occupation. He testified concerning the role of the local police in guarding the Jewish ghetto and enforcing ghetto restrictions. He also testified about the role of Kowalchuk and the local police in escorting Jews to be shot. He testified that he saw Kowalchuk shoot a Jewish man and woman on one occasion. He correctly identified the defendant from a photospread.

Aleksandr Alekseyevich Voloshkevich (videotaped deposition)
Lyuboml, Ukraine, U.S.S.R.

Mr. Voloshkevich testified that he knew Serhij Kowalchuk since about 1933 and that he went to school with him in Lyuboml prior to the war. Mr. Voloshkevich lived in Lyuboml during the German occupation. He testified that Kowalchuk was deputy head of the police for Lyuboml. He also testified about the role of the Ukrainian police in rounding up Jews and driving them to the brickworks at Borki.

Petr Kotovich (videotaped deposition)
Lubomyl, Ukraine, U.S.S.R.

Mr. Kotovich testified that he knew Serhij Kowalchuk since 1936 and that he went to school with him in Lyuboml prior to the war. He stated that Kowalchuk was Deputy Commandant of the police department during the German occupation. Mr. Kotovich described how he was arrested and tortured by Kowalchuk and other policemen for underground activities. He correctly identified the defendant from a photospread.

Akim Silovich Yarmolyuk (videotaped deposition)
Zgorani village, Lyuboml District, Ukraine, U.S.S.R.

Mr. Yarmolyuk testified that he was arrested near Lyuboml in May 1942. He stated that he was beaten and tortured by German Gendarmes and by Kowalchuk, who was Deputy Commandant of the police. He also testified about Kowalchuk's role in taking Jews to be shot. He identified the defendant from a photospread.

Shimeon Koret (videotaped deposition)
Jerusalem, Israel

Mr. Koret testified that he was a Jew who lived in Lyuboml during the German occupation, up until the time of the liquidation of the Jewish ghetto. He knew Serhij Kowalchuk from before the Soviet and German occupations. He

testified about activities of the Ukrainian police and Serhij Kowalchuk. In particular, he stated that he saw Serhij Kowalchuk and other Ukrainian policemen beat his father and shoot his brother. He also testified that the Ukrainian police guarded the Jewish ghetto and beat Jews.

Moshe Lifschutz (videotaped deposition)
Tel Aviv, Israel

Mr. Lifschutz is a Jew who lived in Lyuboml during the German occupation, up until the time the Jewish ghetto was liquidated. He knew the Kowalchuk family, including Serhij, from the 1930's. He testified that Serhij Kowalchuk was head of the Ukrainian militia (or police) during the German occupation. He testified about the role of the Ukrainian militia and Serhij Kowalchuk in enforcing restrictions against Jews, guarding the ghetto, conducting searches of the ghetto, beating Jews, and escorting Jews out of the ghetto (presumably to be shot). In one case, Mr. Lifschutz was beaten by Serhij Kowalchuk and other members of the Ukrainian militia because he was caught not wearing his yellow badge identifying him as a Jew.

Nathan Sobel
Resides in the U.S. (Address will be provided to the Court
and defense counsel upon request.)

Mr. Sobel will testify that he is a Jew who resided in
Lubomyl during the Nazi occupation. He will testify about
the activities of the Ukrainian police and the defendant.

Abraham Getman
Resides in the U.S. (Address will be provided to the Court
and defense counsel upon request.)

Mr. Getman will testify that he is a Jew who resided in
Lubomyl during the Nazi occupation. He will testify about
the activities of the Ukrainian police and the defendant.

John Chapin
209 E. 66th Street
New York, New York

Mr. Chapin was an employee of the State Department
between 1942 and 1951 and his service included assignment as
a vice consul at Salzburg, Austria in 1948 and 1949. He will
testify concerning the procedures and standards applied by
vice consuls in Salzburg in issuing visas under the Displaced
Persons Act.

Michael R. Thomas (deposition)
1 Poplar Street
Bridgeport, Ohio

Mr. Thomas was an official of the International Refugee
Organization and its predecessors (United Nations Relief and

Rehabilitation Administration and then the Preparatory Commission for the International Refugee Organization). At one time he served as Chief Eligibility Officer for the IRO and was an author of the IRO Manual for Eligibility Officers. His testimony covers the role of the International Refugee Organization and the determination of IRO eligibility for applicants such as the defendant.

George L. Warren (videotaped deposition)
Geneva, Switzerland

Mr. Warren worked as a case analyst and then as deputy senior officer for the U.S. Displaced Persons Commission in Salzburg, Austria from 1949 to 1952. He was the case analyst who certified that the defendant was a displaced person eligible for admission to the U.S. under the DP Act. He testified concerning the procedures and standards applied by the DP Commission in determining eligibility under the DP Act.

Herbert L. Levy
612 North Jefferson St.
Tuscon, Arizona

Mr. Levy is the naturalization examiner who examined defendant's petition for naturalization and recommended him

for naturalization. He will testify as to procedures and standards employed in determining eligibility for naturalization.

VI. EXHIBITS

P1. Raul Hilberg, The Destruction of the European Jews (New York: Harper and Row Publishers, 1979).

P2. Raul Hilberg, Documents of Destruction (Chicago: Quadrangle Books, 1971).

P3. Serge Kowalchuk's "Fragebogen" and translation.

P4. Serge Kowalchuk's "Application for Immigration Visa and Alien Registration," with attachments.

P5. Serge Kowalchuk's Application to File Petition for Naturalization (Form N-400).

P6. Serge Kowalchuk's Petition for Naturalization.

P7. Record of Sworn Statement of Serge Kowalchuk dated 12/11/75.

P8. Serge Kowalchuk's "Application for Assistance" and translation (including form entitled "Employment for Last 10 Years").

P9. Displaced Persons Commission Report on Serge Kowalchuk (Form CA-1).

P10. Record of Sworn Statement of Mykola Kowalchuk dated 5/4/66.

P11. International Refugee Organization, Manual for Eligibility Officers.

P12. Map of Lubomyl.

P13. Serge Kowalchuk's Certificate of Naturalization.

P15. Sworn Statement of Mykola Kowalchuk dated 7/21/66.

P16. Sworn Statement of Herbert L. Levy, dated 7/12/76.

P17. Yizkor Book of Lubomyl.

P18. Himmler Decree, 25 July 1941 (German and English).

P19. Daluge Decree, 31 July 1941 (German and English).

P20. Supplement to Himmler and Daluge Decrees, dated 6 November 1941 (German and English).

P21. Order, 14 November 1941, from the Commander, Army Group South Rear Area (German and English).

P22. Order, Security Division 213, 9 April 1942 (German and English).

P23. Set of Orders from Feldkommandantur 679, 5 August 1942 (German and English).

P24. Report from Gendarmerie Gebietsfuehrer, Brest-Litowsk, 6 October 1942 (German and English).

P25. Statement from Internal German Investigation, 12/41 (German and English).

P26. Report from Feldkommandantur 198, 29 November 1941 (German and English).

P27. Report from Feldkommandantur 198, 2 February 1942 (German and English).

P28. Operation Report, 19 September 1941 (German and English).

P29. Report from Ruestungskommando Luzk October 1942 (German and English).

P30. Report from Ruestungskommando Luzk, October 1942 (German and English).

P31. Report from Gebietskommissar in Brest-Litowsk, 31 December 1942 (German and English).

P32. Nuremberg Document 2992-PS (German and English).

P33. Nuremberg Document 3257-PS (German and English).

P34. Nuremberg Document NOKW 3147 (German and English).

P35. Nuremberg Document NOKW 1598 (English and German).

P36. Nuremberg Document NOKW 2852 (German and English summary).

P37. Preliminary Guidelines for the Deployment of Gendarmerie in the Occupied Eastern Territories (German and English).

P38. Nuremberg Document No. 2861 (German and English.)

P39. List of Persons Killed or Shipped to Germany.

P40. Videotaped deposition of Dem'yan Markovich Fedchuk taken on January 19 and 20, 1981 in Lutsk, Ukraine, U.S.S.R.

P41. Videotaped deposition of Gerasim Kaptonovich Kotsura taken on January 20 and 21, 1981 in Lutsk, Ukraine, U.S.S.R.

P42. Videotaped deposition of Alexandr Sidorovich Trofimovich taken on January 19, 1981 in Lutsk, Ukraine, U.S.S.R.

P43. Maps drawn by Mr. Trofimovich at his deposition (Exhibit D-1 to the deposition).

P44. Photospread shown to Mr. Trofimovich at his deposition (Exhibit G-1 to the deposition).

P45. Videotaped deposition of Akim Silovich Yarmolyuk taken on January 22, 1981 in Lutsk, Ukraine, U.S.S.R.

P46. Protocol of photospread shown to Mr. Yarmolyuk by Soviet Procurators (Exhibit G-2 to the deposition).

P47. Photospread shown to Mr. Yarmolyuk at his deposition (Exhibit G-1 to the deposition).

P48. Videotaped deposition of Aleksandr Alekseyevich Voloshkevich taken on January 21, 1981 in Lutsk, Ukraine, U.S.S.R.

P49. Videotaped deposition of Petr Kotovich taken on January 22, 1981 in Lutsk, Ukraine, U.S.S.R.

P50. Protocol of photospread shown to Mr. Kotovich by Soviet Procurators (Exhibit G-2 to the deposition.)

P51. Photospread shown to Mr. Kotovich at his deposition (Exhibit G-1 to the deposition).

P52. Videotaped deposition of Shimeon Koret taken on June 12, 1980 in Philadelphia.

P53. Statement of Szymon Koret dated October 28, 1975 (Exhibit G-1 to the deposition).

P54. Affidavit of Szymon Koret dated September 8, 1976 (Exhibit G-2 to the deposition).

P55. Map drawn by Mr. Koret at his deposition (Exhibit A to the deposition).

P56. Videotaped deposition of Moshe Lifschutz taken on November 8, 1979 in Philadelphia.

P57. Affidavit of Moshe Lifschutz dated September 7, 1976 (Exhibit G-1 to the deposition).

P58. Eight photographs or copies of the photographs shown to Shimeon Koret and Moshe Lifschutz.

P59. Videotaped deposition of George L. Warren taken on Demcember 27, 1979 in Philadelphia, and the exhibits thereto.

P60. U.S. Displaced Persons Commission form E-1 for Serhij Kowalchuk (Exhibit G-1 to the deposition of Mr. Warren).

P61. Fragebogen of Mykola Kowalchuk (Exhibit G-2 to the deposition of Mr. Warren).

P62. Personal Data (Personalien) form for Mykola Kowalchuk (Exhibit G-3 to the deposition of Mr. Warren).

P63. Application for Immigration Visa and Alien Registration for Mykola Kowalchuk and attached documents (Exhibit G-5 to the deposition of Mr. Warren).

P64. Letter dated 1 April 1948 from the Counter Intelligence Corps concerning Mykola Kowalchuk (Exhibit G-6 to the deposition of Mr. Warren).

P65. Letter dated 2 December 1949 from the Salzburg Branch Office, Displaced Persons Screening Project, CIC, concerning Mykola Kowalchuk (Exhibit G-7 to the deposition of Mr. Warren).

P66. Deposition of Michael R. Thomas taken on August 5, 1981 in Bridgeport, Ohio, and the exhibits thereto.

P67. Interoffice Memorandum, U.S. Displaced Persons Commission, British Zone, dated 20 May 1952, concerning the rejection of August Schimann.

P68. Interoffice Memorandum, U.S. Displaced Persons Commission, British Zone, dated 15 May 1952, concerning the rejection of Alex Eling.

P69. Interoffice Memorandum, U.S. Displaced Persons Commission Headquarters, Frankfurt, dated February 13, 1951, concerning the rejection of Wolodymyr Karpiak.

P70. Interoffice Memorandum, U.S. Displaced Persons Commission, British Zone, dated 15 May 1952, concerning the rejection of Karl Heinrich Wermuth.

P71. Memo, U.S. Displaced Persons Commission Area 2, Ludwigsburg, dated 13 October 1951, concerning the rejection of Leonid Vencewski.

P72. Memo, U.S. Displaced Persons Commission Area 2, Ludwigsburg, dated 23 August 1951, concerning the rejection of Edita Skaistlauks.

P73. Interoffice Memorandum, U.S. Displaced Persons Commission, British Zone, dated 13 May 1952, concerning the rejection of Reinhold Hefke.

P74. Interoffice Memorandum, U.S. Displaced Persons Commission Headquarters, Frankfurt, dated January 31, 1951, concerning the rejection of Michael Bugara.

P75. Interoffice Memorandum, U.S. Displaced Persons Commission, Austria, dated 2 July 1951, concerning the rejection of Anton Bence.

P76. Interoffice Memorandum, U.S. Displaced Persons Commission, Austria, dated 25 April 1952, concerning the rejection of Andreas Schauer.

P77. U.S. Displaced Persons Commission Area #2, Ludwigsburg, dated 26 September 1951, concerning rejection of Zilvestris Skurulis.

P78. U.S. Displaced Persons Commission Area 2, Ludwigsburg, dated 16 April 1951, concerning the rejection of Jonas Repsys.

P79. Interoffice Memorandum, U.S. Displaced Persons Commission, British Zone, dated 17 April 1951, concerning the rejection of Hristodor Blagojevic.

P80. Memo, U.S. Displaced Persons Commission Area 2, Ludwigsburg, dated 13 March 1951, concerning the rejection of Vladas Bulevicius.

P81. Interoffice Memorandum, U.S. Displaced Persons Commission, French Zone, dated 9 August 1951, concerning the rejection of Jonas Kusnerevicius.

P82. Memo, U.S. Displaced Persons Commission Area 2, Ludwigsburg, dated 28 September 1951, concerning the rejection of Alexander Vellamal.

P83. Interoffice Memorandum, U.S. Displaced Persons Commission Headquarters, Frankfurt, dated 18 February 1951, concerning rejection of Peteris Kursis.

P84. Interoffice Memorandum, U.S. Displaced Persons Commission, dated December 8, 1950, concerning the rejection of Karlis Siljakovs.

P85. H.-J. Neufeldt, J. Huck, G. Tessin, Zur Geschichte der Ordnungspolizei 1936-1945 (Published by the German Federal Archives), Part II.

P.86. Report on strength of the Schutzmannschaft, 1 July 1942.

P.87. Order conferring duties of the SS and Polizei-gebietsfuhrer to Gendarmerie Gebietsfuhrer, 18 May 1942.

VII. SOVIET DEPOSITIONS

The government will offer into evidence videotaped depositions of six witnesses taken in the Ukraine, U.S.S.R. Soviet depositions have been introduced into evidence in several recent denaturalization cases involving alleged Nazi war criminals. The claim has been raised by the defense in each of these cases that the testimony of any person in the U.S.S.R. is inherently untrustworthy, and that the depositions are therefore inadmissible. This argument has been rejected in every case in which a court has decided the issue and the depositions have been accepted into evidence. See U.S. v. Linnas, supra; U.S. v. Osidach, supra. While the weight accorded to the Soviet depositions in this case will depend on the court's evaluation of the videotapes in this case, it should be noted that the Soviet depositions were given great weight in the Linnas and Osidach cases.

As is the case in all foreign depositions, the Soviet depositions were conducted on the understanding that the parties to the action would honor the judicial sovereignty of the host nation. Soviet law provided the oath that was administered to the witnesses. In addition, officials from the Procurator's office were present during the depositions. Neither of these factors affects the admissibility of the depositions.

A. The Oath

The oath administered to Mr. Fedchuk is substantially identical to the oath taken by all the Soviet witnesses:

"Mr. Dolotov (Soviet Procurator): In accordance with Article 167 Criminal Procedure Code of the Ukrainian S.S.R., I explain to you the duty of the witness, specified in article 70 of the same code.

"As a witness, you are obliged to give true evidence known to you personally, or known from other personal circumstances concerning this case. I warn you about the criminal amenability for the refusal to give evidence and for giving deliberately false evidence so specified in the Articles 178, 179, of the Criminal Code of Ukrainian S.S.R.

"Witness Fedchuk, do you understand your duty to say the truth, nothing but truth?"

"A: Yes, I understand."

(Page 6, lines 6-21.)

Rule 603 of the Federal Rules of Evidence states:

"Before testifying, every witness shall be required to declare that he will testify truthfully, by oath or affirmation, administered in a form calculated to awaken his conscience and impress his mind with his duty to do so."

Affirmation is simply a solemn undertaking to tell the truth; no special verbal formula is required. "Oath" includes affirmation, 1 U.S.C. §1. See 3 Weinstein's Evidence, §602[03], pp. 602-7-602-10. It is clear that the oath taken by the Soviet witnesses was "in a form calculated to awaken [their] conscience and impress [their minds] with" their duty to "testify truthfully." And it is clear that when depositions are taken in a foreign country, the oath may be administered "before a person authorized to administer oaths in the place in which the examination is held, either

by the law thereof or by the law of the United States." Rule 28 F.R.C.P.

Additionally, it is to be noted that the oaths fully conformed with Rule 43(d) of the Federal Rules of Civil Procedure which similarly provides that wherever "these rules" require an oath, a solemn affirmation may be accepted in lieu thereof. A witness who does not believe in God is not for that reason incompetent. See Gellars v. United States, 182 F.2d 962, 969 (1st Cir., 1950). Nor does the oath requirement necessarily entail the raising of the hand, an appeal to God, or even the word "solemn." Moore v. United States, 348 U.S. 966 (1955). It is accordingly clear that the oaths administered to the Soviet witnesses conformed in all respects to federal requirements.

Objections to the form of oath given to the Soviet witnesses were specifically rejected in Osidach (513 F.Supp. at 89-90, n. 22). While the court in Linnas did not specifically rule on this question, it accepted into evidence and heavily relied on Soviet depositions in which the oath was similar to that given in the depositions in this case.

B. Presence of the Soviet Procurators

The presence of a foreign official to administer the oath is expressly permitted by Rule 28(b) of the Federal Rules

of Civil Procedure. The presence of officials of the host country is an expression of the judicial sovereignty of the host country and presented no interference with the conduct of the depositions. In any event, any interference caused by the presence and alleged participation of the Soviet officials would affect the credibility of the depositions and not their admissibility. See Danisch v. Guardian Life Insurance Company of America, 19 F.R.D. 235, 237 (S.D.N.Y. 1956). Defendant had full opportunity to demonstrate his allegations of undue influence caused by the presence of Soviet officials in the course of his cross-examination, which was unbridled in scope. Review of the videotapes will show that there was no such intimidation or interference.

Objection to the presence of Soviet procurators during the taking of the depositions was specifically rejected in Osidach (513 F.Supp. 89-90, n. 22). While the court in Linnas did not specifically rule on this question, it accepted into evidence and relied on Soviet depositions in which Soviet procurators were also present.

C. Other Objections to the Form of the Soviet Depositions

Even if the procedures employed in the Soviet depositions differ somewhat in form from that ordinarily

followed in federal courts, the depositions would not as a result be inadmissible. A certain amount of departure from customary American practices is to be anticipated. Rule 28(b) thus provides that evidence obtained in response to a letter rogatory "need not be excluded merely for the reason that it is not a verbatim transcript or that the testimony was not taken under oath or for any similar departure from the requirements for depositions taken within the United States under these rules."

In light of the flexible policy under the Federal Rules of Civil Procedure for the taking of testimony abroad, the Soviet depositions are clearly admissible.

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Respectfully submitted,

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