BEFORE THE BOARD OF IMMIGRATION APPEALS

Oral Argument: January 31, 1984

In re: MAIKOVSKIS, Boleslavs

File: A8 194 566

Board: Mr. Milhollan, Chairman, Mr. Morris and Ms. Dunne

Heard: For Respondent : Ivars Berzins, Esquire
484 West Montauk Highway
Babylin, New York 11702

For Immigration Service: Jeffrey N. Mausner
Appellate Trial Attorney

Request:

Mr. Milhollan: Mr. Mausner you may continue at this time.

Mr. Mausner: Thank you. Mr. Chairman and members of the Board I would like to reserve twenty minutes of my time for rebuttal.

Mr. Milhollan: Fine.

Mr. Mausner: This an appeal from the order of immigration judge Francis J. Lyons, determinating deportation proceedings against the respondent. Three briefs have been filed in connection with this appeal with which I will refer to in the course of this argument. They are the government's brief, the respondent' brief, and the government's response brief. The government alleges that the respondent is deportable under sections 241(a) and 241(a)(19) of the Immigration and Nationality Act. The three main reasons for deportability alleged by the government are first, that the respondent procured his visa by wilful material misrepresentation making him ineligible under section 10 of the Displace Persons Act. Second, that the respondent ordered insided and assisting in the persecution of innocent

Mr. Mausner: civilians making him deportable under sections 13 and 2 of the DPA and third, the respondent was a member of the movement hostile to the United States or form of government of the United States making him deportable under section 13 of the DPA. The following facts are uncontested. First, the respondent served as the Chief of police for the Second Police Precinct in Rezekne, a city in Latvia. From 1941 to 1944 during the Nazi occupation of Latvia. Second, when the respondent applied for his visa to come to the United States he repeatedly lied to the United States authorities concerning his employment and residents during this period of 1941 to 1944. The respondent claimed that he had been a bookkeeper for the Latvia Highway Department or Latvia Railway Department during this period. During the entire course of his immigration to the United States the respondent never revealed the truth about his employment and residence. Third of these uncontested facts. While he was Chief of Police of the Second Police Precinct in Rezekne, the respondent participated in the arrest of all of the inhabitants of the villiage of Audrini, Latvia and the burning of the entire villiage to the ground. This was done as a reprisal against the killing of one or more Latvian policeman. All of this is not disputed. As well as these uncontested facts the government introduced evidence showing the direct participation of Maikovskis police unit, and the direct participation of the respondent himself in the murder and persecution of Jews. Maikovskis testified that immediately after the Russian retreated from Latvia in 1941, in join the Latvian self-defense in Rezekne and that his superior was named Captain Macs. This unit was later formally organized into the Latvian Auxiliary Police, and the respondent admittedly served as the chief of the Second Precinct for the Auxiliary Police in Rezekne. Exhibit 24-4 the documents from the U.S. National Archives that were used at the Nuernberg Trials. It is a captured Nazi/ German war record. This document states the the local Police Chief in Rezekne was named Matsch, and that "Police Chief Matsch has taken over the liquidation of the Jews," document reports that 80 Jews were liquidated. Exhibit 24-6 is another document from the U.S. National Archives that were

Mr. Mausner: (Continued)

use at the Nuernberg trial. This is also a captured Nazi German war record. This document states that on August 1, 1941, "200 Communists and Jews from the district of Rezekne were shot in the morning hours by the Latvian Self-Defense." And several days later that "On the early morning of August 5, several hundred Jews were shot in Rezekne by the Latvian Self-Defense." Those two documents state unequivocally that the police unit in which the respondent served the Latvian Self-Defense in Rezekne which later became known as the Latvian Auxiliary Police. Participated in the murder of Jews during the time of Maikovskis served in them. Even Miakovskis admitted that local Latvian Police from Rezekne were involved in the killings of Jews in Rezekne. (Transcript pages 361-362). The immigration judge did not even mention these two exhibits 24-4 and 24-6 in his opinion. The remainder of the Nuernberg trial documents from the U.S. National Archives were introduced into evidence are discussed on pages 12-13 of the Governments brief. Those documents conclusively demonstrate that the Latvian Self-Defense that became known as the Latvian Auxiliary Police assisted in the killing of Jews throughout Latvia. In denaturalization cases involvng Ukrainian policemen and specifically United States v. Koziy, 540 F.Supp 25 (S.D. Fla. 1982); United States v. Kowalchuk, 571 F.Supp 72. Documents were introduced demonstrated that the Ukrainian police throughout the Ukraine took part in the murder of Jews. In neither of those case was there a document anywere near as specific as the documents in this case, showing that the police in the specific town in which the defendant served took part in the killing. The document from the U.S. National Archives in this case are the most specific documents which the government has even used from Western sources. Dealing with the participation of the police in the specific city in which the defendant served. There is more evidences of the rule of the respondent police unit in these killings. First of all the government expert Dr. Wolfgang Scheffler testified that local police in Latvia were always used by the German police to assist in these killings. (Trial transcript page 73). The government also introduced into evidence the testimony video tape testimony of witnesses in Latvia. These witnesses

Mr. Mausner: (continued)

very strongly corroborated these documents from the National Archives. They testified that the police in Rezenke in which the respondent served took part in the killing of Jews. They also testified that the respondent himself participated in these killings. Most of these Latvian policemen worked in the police in Rezekne. Maikovskis was their immediate superior and they saw him often. They identified the respondent by name, discription, and photospread. The identifications of the respondent by these witnesses were highly reliable. Two of these witnesses Zhukovskis and Miglinieks testifed that they themselves participated in the mass killings of Jews in the autumn of 1941 on order from Maikovskis. At the very least the government has prove by overwhelming evidence that the police which the respondent served in participated in the murder and the persecution of Jews. This resulted in the respondent's ineligibility under section 13 of the DPA for two reasons. First, section 13 of the DPA prohibited the entry of any person who assisted in the persecution of any person because of race, religion, and national orgin. Because of his position in a police force that assisted in persecution, the respondent assisted in persecution. That is the holding of United States v. Kowalchuk, and United Stated v. Osidach. In Osidach the court held that Osidach rule as an armed uniform Ukrainian street policemen interpreter for the Ukrainian police constituted persecution under section 13 of the DPA even though no specific arrest or other specific acts against Jews by the defendant were proven. Osidach was a rank in file policeman. In United States v. Kowalchuk, no specific acts of persecution by the defendant were proven, but the defendant because of his position in the police was held to have assisted in persecution. Kowalchuk was order denaturalized for holding a responsible position all be it largely clerical in a police organization that persecuted Jews. Certainly Maikovskis who was chief of a precinct held a much more responsible position. His position as a captain or Chief of Police in a police organization that engaged in wide-spread persecution and murder certainly constitutes greater persecution then that found in Osidach and Kowalchuk. The government contends that the immigration court's rejection of the analysis in Kowalchuk and Osidach is errored. Section

Mr. Mausner: (continued)

13 of the DPA also prohibited the entry of any person who belonged to a movement hostile to the United States or form of government to the United States. The government introduced into evidence actual decision of rejection by the Displaced Persons Commission in which persons who served in the Latvian police were rejected under section 13, because they were members of a movement hostile to the United States or form of government in the United States. These are exhibits 100, 102, 103, and 104. It is also the governments contention that even on the undisputed fact found by the immigration court the respondent is deportable. The respondent is deportable first because he made a material misrepresentation for the purpose of entering into the United States and second because of his involvement in the arrest of all of the inhabitates of Audrini and the burning of the villiage. The immigration court held that respondent's misrepresentation as to his employment and residence during the period of 1941 to 1944 were not material. The standard of materiality applied by the immigration judge was the following: "The Government must establish not only a misrepresentation which would cut off a relevant line of enquiry, but one which would have lead to a proper determination that he was ineligible for a visa." (Page 17 of the decision). This is a incorrect statement of the standard of immateriality and lead to an incorrect determination by the immigration judge. The standard of materiality in a deportation proceeding is set forth in the Attorney-General's opinion in Matter of S and BC, 9 I&N Dec. 436 (BIA 1960, Attny. Gen. 1961). That decision holds that misrepresentation is material if either, one, the alien is excludable on the true facts, or two and three, if a relevant line if inquirey has been cut off might that enquiry have resulted in a proper determination, that the alien be excluded. The immigration judge in his formulation of the standard of materiality ruled that the government must prove the first step of S and BC. That is under the true facts the respondent would be excludable. The judge's ruling total and inexplicity ignored the second and third steps delineated in S and BC. There was no question that if Maikovskis had admitted his police service to immigration authorities a further investigation or enquiry would have been conducted. The immigration

Mr. Mausner: (Continued)

court conceded this on page 10 of its decision. Even the respondent's witnesses so testify. Defense witness Robert Printz who served as the Deputy Chief of Security for the DP Commission in Wentorf, were the respondent received his visa, testified that at the very least any local policemen would have been investigated to determine whether he took part in atrocities. (Page 30 of the Printz deposition which is Exhibit 23). Judge Lyons stated in his opinion that if the respondent had revealed his police service the respondent and other persons in the DP camp who were familiar with the situation in Latvia would have been questioned concerning the Latvian police. (Page 10 of the decision). This investigation at the very least might have resulted in discovery that the fact the respondent had participated in the arrest of all of the villiagers of Audrini, and the burning of the villiage. And also might have resulted in discovery of the fact that the Latvian police throughout Latvia had taken part in the killings of Jews as is shown by the documents by the Nuernberg trials. Even the defense witness Robert Printz testified that if he had known that the respondent had taken part in the burning of a entire village and the arrest of all its inhabitates he would have not approved his application for a visa. (Page 33 of Printz deposition). The defense witness Printz also testified that if he had known that an applicant had been a Chief of a Police unit that had engaged in persecution of civilians he would have not approved his visa application. That is also at page 33. Mr. Printz testimony was supported by the government witnesses and in fact was uncontradicted. It is therefore clear that the misrepresentation was material even on the basis of facts that were proven at trial, which is the first step of S and BC. It is also clear that an investigation which was conducted in 1951 closer to the events in question might have lead to other facts resulting in ineligibility, the second, and third steps of S and BC. It should also be noted that the actually vice counsel who granted the respondent's visa Rosemary Carmini testified at trial that if she had known that the respondent had served as Chief of the Second Police Precinct in Rezekne, she would not have granted a visa to him. Two high level officials of the DP Commission testified at trial, Mr. Conan who was a senior officer for the British zone, which included the area

Mr. Mausner: (Continued)

were respondent contained his visa, and Mr. Charig who was a member of the DP Commission review panel, the highest authority on the question of eligibility. They testified that any Latvian policemen would have been excluded under the DPA, unless he could clearly show that he had been conscripted and had not engaged in persecution or atrocities. As stated early the government also introduced into evidence actually decisions by the DP Commission which show that members of the Latvian police were rejected as a matter of policy under section 13 of the DPA, because they were deemed to members of a movement hostile to the United States towards form of government. These rejection specifically states that the person was rejected because he served in the Latvian police. These are exhibits 100, 102, 103 and 104. These exhibits are discussed at pages 48-50 of the governments brief. The government also introduced into evidence the DP Commission Inimical List which were exhibits 75-76. The Inimical List contain the organization Schutzmannschaften under the heading for Latvia. Any member of the Latvian Schutzmannschaften was to be excluded according to this list unless he could prove that he had been conscripted and that he had not engaged in atrocities or persecution. Both Mr. Conan and Mr. Charig, the DP Commission officials, testifed that the term Schutzmannschaften included local Latvian police forces and specifically that it included the Latvian Auxiliary police in Rezeken. Exhibit 100 is a decision of rejection by the DP Commission which also stated that the Schutzmannschaften was Latvian police. Exhibits. 24-13, 24-14, 24-15, which were captured Nazi German documents show that the Germans during the war referred to the local Latvian police as the Schutzmannschaften. Judge Lyons even ruled that these documents "make clear that Schutzmannschaften covered all personnel such as local police." (Page of 11 of his decision). However Judge Lyons held that even thought the organization which the respondent served in and lied about was on the Inimical List. The misrepresentation still was not material. It is the government contention that the immigration court decision on the materiality issued is clearly erroneous. As the respondent points out, there were members of the Latvian police who admitted their police service, but were allowed to enter the United States under the DPA. As Mr. Charig testimony makes clear,

Mr. Mausner: (Continued)

either these people were able to prove that they were conscripted and did not engage in persecution as required by the Inimical List or a mistake was made in their case. The fact that another person was allowed to enter, does not make the respondent eligible or mean that his misrepresentation was not material. If those persons were allowed to enter because they were able to prove that they had been conscripted and did not persecute, then certainly that would not relate to the respondent since by his own story he voluntarily joined the police. (Trail transcript pages 348, 376-377). Respondent also did not demonstrate at that time, the time he entred, that he did not persecute. If those persons were allowed to enter because of a mistake that also does not effect the respondent's case. Clearly, there can be no question that the respondent, who was admitted because he lied cannot raise possible mistakes committed in other cases where the applicate told the truth. Turning now to the events at Audrini. Audrini was a villiage near Rezekne within Maikovskis jurisdiction in the Second Police Precinct. Several inhabitant of the villiage harbored some Red Army Soldiers who shot and killed a least one Latvian policeman. In reprisal for this, the entire villiage was burned. All of the inhabitant man, women, and children, numbering over 200 were arrested and shot. 30 of the inhabitances were shot publicly in the town square in Rezekne. The remainder were shot at mask rays in the Anchupani Hills, which was admittedly another area within Maikovskis jurisdiction. The facts admitted by the respondent and found by the immigration court that respondent participated in the arrest of all of the villiagers and the burning of the villiage. Rendered the respondent ineligible under the DPA. It must be remembered that the DPA was a Humanitarian Act passed by Congress to aid the victims of the Nazis. It was not meant to help persons who assisted the Nazis. Especially, persons who assisted the Nazis in persecuting civilians and carrying out reprisal actions against the civilian population. Section 2 of the DPA excluded any person who assist in the persecution of civil populations. Respondent's participation in arresting all of the inhabitants of a villiage, men, women, and children and buring the entire villiage to the ground certainly constitutes assistance in persecution of civil populations. Section 2 of the DPA also prohibited

Mr. Mausner: (Continued)

the entry of any person who was a war criminal. The Nuernberg International Military Tribunal defined war crimes to included the want and distruction of cities, towns, and villiages, and the imprisonment of civilian population. That Control Council Law number 10 of the Nuernbery Military Tribunal. The Haid Regulations specifically state that no general penalty shall be inflicted upon the population on account of acts of individauls from which they cannot be regarded as jointly and separately responsible. All of the villiagers of Audrini were arrested. Not just the villiagers who had harbored the Red Army soldiers, and all of the houses were burned down. Section 2 of the DPA also prohibited the entry of any person who voluntarily assisted the enemy forces. Respondent's service in the police standing alone constituted vountary assistance to the enemy which made him ineligible under the DPA. That is the holding of the United States v. Koziy, 540 F.Supp 25, and United States v. Kowalchuk. In both of those cases defendants were members of the local Ukrainian Police. Both court held that by reason of Service in the Ukrainian Police alone, the defendants voluntarily assisted the enemy forces of Nazi Germany. In addition to his service in the Latvian Police standing alone, defendant's admitted rule in the Audrini incident also constituted assistance to the enemy forces. Maikovskis was not merely a soldier fighting for the freedom of Latvia. He voluntarily served as an officer in a police forces whose main function was to keep the civil population under Nazi control. He admittedly took part in one reprisal action in which an entire villiage was burned and all of its inhabitance were arrested. It is utterly inconceivable to think that such a person would have been admissible under the DPA. Even the defense witness, Robert Printz testifed that he would not have approved a visa application if these facts had been known. The immigration judge's treatment of the Latvian deposition's also constituted error. In 1979 this Board heard an interlocutory appeal considering the taking of deposition's in Latvia. The immigration court had ruled that the deposition's in the Soviet Union could not even be taken since it was impossible that those deposition's could be conducted fairly or that the witnesses would tell the truth. The BIA reversed that decision holding that the deposition could be taken and that the admissibility

Mr. Mausner: (Continued)

of the deposition's and the wait that they should be accorded should be determined by the immigration court after viewing the deposition's. It is obvious from the comment's of the immigration court's in final decision that the court was merely attempting to get around this Board's order. Some of the criticism's of the court are totally meritless and extremely far fetched. For example, Judge Lyons makes a statment that "The picture quality if poor." I ask this Board to view a portion of one of the video tapes and make its own determination concerning the picture quality. I would like to know that these deposition's, these video tapes were made on video tape equipment belonging to the Justice Department costing more than four thousand dollars. I urge the Board to view the video tapes and make its own determination concerning the credibility of these witnesses and the picture quality. The judge in this case expressed his opinion prior to viewing the video tapes that it was impossible for these witnesses to testify truthfully. His criticism's of the video tapes are totally without merit and these two factors, his prior opinion, and his criticism's of the video tapes raise serious question's concerning his ultimate findings regarding the Latvian witnesses. The immigration judge's total rejection of the Latvian witnesses should be contrasted with United States District Court's which credited the testimony of Soviet witnesses. Which are United States v. Linnas, 527 F.Supp 426 (E.D.N.Y. 1981) aff'd, 685 F.2d 427 (2d Cir. 1982), cert. denied 103 S.Ct. 179 (1982); United States v. Kozily, and United States v. Osidach. West German Court's have also credited Soviet deposition's and murder trial in West Germany. On pages 19-20 the government response brief one of these decisions is quoted from people the Viktor Arajs in which deposition were also taken in reLatvia. The testimony of the Latvian witnesses in this case was very strongly corroborated by the documents from the National Archives, which clearly shows that the Latvian Police did engage in the murder of Jews, just as the Latvian witnesses testified. The credibility of the Latvian witnesses is also strongly buttress by the fact that the respondent has admitted the veracity of some of there testimony. After first having denied it and claiming that it was all part of a KGP fabrication. The Latvian witnesses testified that the

Mr. Mausner: (Continued) respondent served as Chief of the Second Precinct in Rezekne from 1941 to 1944. The respondent lied about this repeatedly. He lied about when he applied to enter the United States. Then he lied about again when he was question by INS investigators in the United States. It is the Latvian witnesses not the respondent who have always been truthful on this point. The Latvian witnesses also testified that the respondent participated in the arrest of the Audrini villiagers and the burning of the villiage. The respondent lied about his participation in these activities when he wa first questioned about it by the immigration Service in 1975. Exhibit 47 is a Latvian language document and exhibit 62 is the English translation. This document is a report from Maikovskis to the Vice Prosecutor in Daugavpils, in which Maikovskis wrote that "On orders of the German authorities all the resident's of Audrini villiage were imprisioned but the villiage itself was burned." When the respondent was questioned about this document in 1975 under oath, he denied he had written it or signed it and he claimed that he had no involvment whatsoever in the burning of Audrinin villiage or the arrest of the villiagers. That found in exhibit 15, pages 4-6. At trial after the handwriting expert had testified that there was no question that the respondent had signed this document, the respondent changed his story. He admitted that he had in fact signed this document and he had in fact been involved in the burning of the villiage and the arrest. Once again it is the Latvian witnesses who have proved to be truthful and the respondent has proven to been a lier. The government brief in appendix 1 contains 8 pages of misrepresentation's and contradictory statements made by the respondent under oath in different proceedings. I urge the Board to read that. In conclusion the government believes that the factual and legal findings of the court below are erroneous. The opinion below should be reversed and the respondent ordered deported. Thank you.

Mr. Milhollan Mr. Berzins

Mr. Berzins (Counsel) Mr. Chairman I respectively seek leave to file a reply brief, the reason I'm seeking leave at this point is that I receive the government's brief rather late and until today I didn't really get a chance to serve them with a copy. I would like to with your permission serve a

Mr. Berzins: (Counsel) copy on the government's attorney now and file three copies.

Mr. Mausner: I would object to that your honor. The appellate under the rules of appellate procedures the appellate can file a response brief but the appellee has no right to do so.

Mr. Milhollan: Serve your copy and leave the other copies here. The Board will rule on your request.

Mr. Berzins: Thank you. I should note that I did receive the govenrment's brief only sometime last week. So I just didn't get an early chance to apply. Mr. Chairman, Mr. Mausner in his presentation made a repeated references to the record. But I am sorry to say he did not really address so very crucial portion of the record that I'd had hoped he would have address. The crucial portion that I would like to invite you to examine are the very beginning of this particular deportation proceedings. We had on October 18, 1977, the testimony of Mr. Jacob Noy, who said that the respondent was guarding the gates of the Riga Ghetto. Now Riga is a city far awary from Rezekne were the government now places the respondent. On October 29, 1977, we have the testimony of Mrs. Chava Ljak, who placed the respondent during atrocities in the Daugavpils Ghetto, another removed place from Rezekne. On October 21, 1977, we have the testimony of Mrs. Ida Treger, again having the respondent commit atrocities in Daugavpils. Then on December 12, 1977, we have the testimony of Mrs. Lea Keenan, who again testified to atrocities by the respondent in the Daugavpils ghetto. And then of course on December 14, 1977, we have the testimony of Mrs. Lea Gordon, once more having the respondent commit atrocities in the Daugavpils ghetto. Now Mr. Chairman I must confess there is no way up until this time that the respondent could have effectively disprove the stories of these five witnesses. The respondent in a sense is really defenseless against accusation of that type 40 years later. All he can say is well I wasn't in Riga and I wasn't in Daugavpils, that about all he can say. There is no other evidence at this point and time no other effected evidence that we can gather to disprove these folks. Fortunately the government has abandoned these witnesses. Otherwise we may really be in trouble becasue we can't very well attack their stories. Now before the

Mr. Berzins: (Continued)

government abandond the story of these five witnesses, they surely had a copy of the Soviet conviction, convicting the respondent back in the early 60's of all sorts of atrocities when a show trial was stage in Riga Latvia. The government had at least a portion of all the witness statements that these Soviet witnesses who Mr. Mausner now call Latvian witnesses. They gave way back when. The government had access to all of this material or at least part of it. We do not know how must. Before they put on these five witnesses back in 1977. Now they are telling this Board that these five witnesses don't count. That what Mr. Mausner now calls Latvian witnesses they count. Now Mr. Chairman I submit to you that all of these people are Soviet witnesses. The first five witnesses except Mr. Noy, they got out of the Soviet Union rather late. They got out in late 60's early 70's in a sense they can be call Soviet witnesses. The problem that we have here is that we are trying to create clarity in the situation were clarity is impossible after all these years. It cannot be done. The record in this proceeding is not clear and so the immigration court found and I urge you to follow that finding and not distrub it. There is amble reason for the immigration court to have discounted the Soviet witnesses and the Soviet judgment and the Soviet involvement in this proceeding. Mr. Chairman we simply cannot ignore what the Soviet actually have done and what they do. I invite you to consider the testimony of Mr. Fredrick Neznansky who was part of the Soviet judicial scene at least procurator office for quite a number of years. He had some very damaging things to say about the Soviet judgment in this proceeding and the way it was arrived at and I specifically refer you to transcript page 489 where Mr. Neznansky said the following: "It was assigned a discitedly political character which follows for example from the fact that the trial was held in what the Soviets' call a palace of culture. It was a public show trial and the palace of culture of the Soviet Union is a kin to the biggest hockey arena in New York City." This man was referring to the place were the respondent's trial was held in Riga. He called it a show trail. He is one to know, because he was a part of the Soviet Judicial System for a long period of time. He also made some very uncomplementary remarks about the opinion of the Soviet Court. The remarks that he made I

Mr. Berzins: (Continued)

think are rather striking and I again invite you to consider them. I'm reading from page 488 of the transcript, so what I find wrong was this document is lack of conrete proof and evidence against each of the defendant's which are listed in the sentence. This is not idel observation this come from a man who is familiar with the way Soviet juridical opinions are written. Up to this point the government has never address these patent infirmities in this whole proceeding. The government would prefer that all of this goes away and disappears, but it hasn't it is there. It can't possiblity go away. The Soviet chicanery permeates this whole proceedings. Now let me invite you to consider another example. Mr. Mausner refers to the distruction of the Audrini villiage and the shooting of the villiagers. Now isn't it a co-incident that here is the respondent all of this takes place in his police precinct. Yet the Soviets' don't place him in the market square where the 30 males were executed. Silence, no one has really placed him there in anyway involved with that shooting. Now that it very strange because logic would dictate that he be there, if he is the man we are talking about, this monster, he should have been there. Yet he testified that he was in church, no one has refuted that, why not? Very strange. Now on the other hand when there is no public spectacle where there are witnesses around who could later on due with the Soviet version. They place him in the world shooting people right and left or at least guarding the ones that are being shot. Now I submit to you that the Soviets' can do that with impunity because there is really know way on earth we can challenge them on it. Now Mr. Mausner keeps referring to the Latvian witnesses. I don't know how he comes to that conclusion. Other than the fact that they did testify on video tape in Rezekne. Weather they are Latvian or they are of some other extraction, we really don't know. Weather the faces we see on the video tape screen belong to the people they say they are, there is no way that the government can say yes. They don't know. It's just the person that comes and faces a video camera, who he is, how he got there that in unknown. There is no way for us to know. The Soviets' are at liberty to really do what ever pleases them in a proceeding of this type. They can marshall such evidence as they wish presented to the government and the government picks and chooses

Mr. Berzins: (Continued) whatever it wishes to use. Now Mr. Mausner refers to the Osidach case. I submit that that case is not good president and I urge you not to follow it. There are several reasons, the first one is that Osidach died before his appeal could be perfected, so the case never got tested on appeal. For that reason alone I think it's presidential value has been diminished. And the second thing is that really that is a farout piece of legal writing because the case stand for the proposition that by standing on the street corner in uniform one has persecuted people. I urge you not to follow that case. Now as far as Kowalchuk case is concern it seems to me that the judge there, Judge Fullem did not really embrace the Soviet evidence quite as closely as the government wished he had. Now there are some other cases also were Soviet evidence has not been embraced gingerly and the one that comes to mind is the Kungys case in Newark. There the Soviet evidence and particularly the manner in which the OSI has a prepensity to handle it with severally criticized and I submit to you that the criticism was well deserved. The case of course the Kungys case is on appeal so what the outcome of that appeal will be remains to be seen. But the Soviet evidence as such has certainly not received the type of open arms reception that the government would like to see it receive and for obvious reasons. We have had years and years of experience with the Soviets, we have seen what that do in all fields of endeavor. Now what reason do we have to believe today that in this particular field of endeavor they are above their usual selves. I submit to you that they are not. Now the respondent attached as an appendix to the brief some publication put out by our State Department. The State Department calls the Soviets forgers. There have been umpteen hearing on the Hill calling the Soviets forgers.

Mr. Milhollan: A note of objection?

Mr. Mausner: Yes sir, those document are not in evidence and I would object to any reference to them.

Mr. Milhollan: Objection noted. Continue Mr. Berzins

Mr. Berzins: Well, If Mr. Mausner wishes to object to the State Department I hope he wouldn't object to the President of the United States and what he has had to say regarding the Soviet propensity

Mr. Berzins: (Continued)

to due things their way. I would like to invite Mr. Chairman and the Board attention to the President's February 2, 1981 news conference were he used the following language: Well, so far the detente been a one way street but the Soviet Union has used to persue it's own games. I don't have to think of an answer as to what I think there intention are. They have repeated it, I know of no leader of the Soviet Union since the revolution and including the present leadership that has not more than once repeated in the various Communist Congress they hold their determination that their goal must be the promotion of world revolution and a one world socialist communist state, which ever one you want to use. Now as long as they do that and as long as they at the same time have openly and publicly declared that the only morality the recognize is what will further their cause reasoning they reserve on to themselves the right to permit any crime to lie, to cheat, in order to obtain that and that is moral not immoral and we operate on a different set of standards. I think when you do business with them even at a detente you keep that in mind." Mr. Chairman I urge this Board to follow what the President so aptly stated here and that is when you deal with the Soviets, when you examine Soviet evidence keep in mind were it comes from. Don't lose track of the source regardless of what the government calls them, Latvian witnesses now. Mr. Chairman they remain Soviet witnesses. That what they have been and that is what they are. And their testimony should be viewed in that light. Now a brief word about the DP rejection. There was mention my Mr. Charig of policemen being permitted to come in if they could show that the were conscripted and that they did not participate in any wrong doing. Now no where in the record do we find any reference to this ludicrous situation of local policemen being conscripted. There is no evidence whatsoever that any policemen ever got conscripted. On the contrary the record is permeated with various references were policemen were are volunteers they weren't conscripted. So what is Mr. Charig talking about. I submitted to you that the testimony was in this instance a very conveniently tailor to fit the question that was asked. Now regarding the testimony of the defense witness Robert G. Printz, I submitted to you that a very careful reading of what the question were put to Mr. Printz or reveal that

Mr. Berzins: (Continued)

the conclusion he drew were not in the general context in which they are being used now, but they were in response to the specific question that were but to him. So that has to be taken in it's context. If the respondent had unlimited resources which he obviously did not have, he could perhaps examine all of the DP commission rejection and all of the DP commission approvals to come with a statistical analysis of how many Latvian policemen were permitted to enter the United States under the DP Program after they admitted their police service. Well, Mr. Chairman the only one that could come up with those statistic is the government. The government failed to do that. They pulled out of their rejection boxes were, I don't know how many they have, some exhibits that Mr. Mausner mention 100 thru 104 about 5 or 8 exhibits. And on this showing they are now basing this statistical argument. Mr. Chairman I submitted to that's unfair, that unfair to the respondent because the respondent does not have equal access to this type of data on which to base an argument. So the argument that we present to you is that the record is quite equivocal. As to the reasons why some policemen got passed and other rejected, it is not at all clear. The government has not sustained its burden of proving clarity. There argument on that point should not be given much weight at this point and time. Now another comment regarding the difference between Latvian and the Ukrainian policemen. There of course have been cases involving Ukrainian policemen as Mr. Mausner mentioned. I submitted to you that the parallels that have been drawn are not quite in point because the DP Commission at all time treated the Latvian, Lithuanian, and Estonian cases somewhat differently. Those where countries that had been occupied, those were countries that were still recognized as independent states of the United States and they did receive somewhat different treatment. One I think is a very good example is DP Commission decision of September 1, 1950, regarding the ? legions. That is a prime example or other an illustration of what I'm referring to. The materiality argument now advances should have properly been directed to the immigration court in a form of evidence. But the immigration court really found is that the governments proof was simply insufficent. They left the record inadequate and they left record in

Mr. Berzins: (Continued) a complete state of flux as to the materiality of the misrepresentation regarding police service. The record that the government created is to blame, not the immigration court. The government should be blaming itself for doing a poor job of presenting the proceeding rather than now pointing a finger at the immigration court. It is to late to due that, they should be criticizing themselves and not the immigration court. Thank you.

Mr. Milhollan: Thank you Mr. Berzins. Mr. Mausner

Mr. Mausner: Mr. Chairman, I'd like to note that the Soviet conviction which defense attorney referred to was not introduced into evidence by the government, it was introduced into evidence by the respondent. Government does not rely on it in any way. The government relied only on evidence which it presented in the United States court. It did not rely on the Soviet conviction. The respondent mentioned the decision by the District Court in the United States, the Kungys, that case is distinguishable on many factors from this case. The first point is that Kungys was not a member of a formally organized police unit as was Maikovskis. This is significant for two reasons. First of all the documents which I discussed early from the U.S. National Archives dealing with the rule of the police in the murder of the Jews. In this case that places Maikovskis into a police unit that engaged in persecution of the Jews. In the Kungys case there were no similiar documents because Kungys was not a member of the police and the court in Kungys specifically noted the absences of that type of document. The second reason that is significant is because Maikovskis lied about his police service when he sought to entered the United States and that misrepresentation is material. There was not similiar lie in the Kungys case. The court in Kungys ruled that the Soviet deposition's were admissible and he did credit them to prove that the killing of Jews took place, and that the deponents took part in those killings. In this case even that limited crediting of the Soviet witnesses would result in proof of the fact that Maikovskis served in a police unit, that did take part in this killings because there is no question that these people served in the police under Maikovskis. The court in Kungys did not except the Soviets deposition that proved that Kungys himself

Mr. Mausner: (Continued)

took part in these killings. One of the reasons it didn't do so was that there was no cooroborating documents as there are in this case. But the other reasons for not doing so are specific criticism that the court had of the Soviet deposition's. Those factors for which the court criticizes Soviet deposition are not present in the Maikovskis case. First of all prior protocols. The court in Kungys was very critical of the fact that the prior statements or protocols of the deponents had not been turned over by Soviet authorities to the Justice Department. In this case all prior protocols or statements had been turned over to the Justice Department by the Soviet authoritites prior to the taking of the Soviet depostion's. The respondent never requested those prior protocols and in fact decided not to attend the Soviet depositions. The court in Kungys also held that there were significant mistranslations of the depositions which indicated bias on the part of the interpreters. In this case defense counselor had not point out any similiar mistranslation and it should be noted that defense counselor is fluent in Latvian and in fact has conducted examination of witnesses in Latvian in other cases such as Lapienieks, which was before this court early. The court in Kungys also pointed out that the government counsel repeatedly asked leading questions. In the Maikovskis case defense counselor did not object to any of the question asked during the Soviet depositions. The court in Kungys distinguished that case, the Kungys case from the Linus case by noting that in Linus defense counsel had choosen not to attend the Soviet depositions. That is also true in this case, the defense counsel decided not to attend the depositions in Latvia. Another distinguishing factor is that in the Kungys case there was a claim and in fact there was evidence introduced that the defendant had served in the resistance during World War II. There is no such evidence and in fact not even a claim of that in this case. In the final distinguishing point, is that Maikovskis entered the United States under the DPA, the DPA specifically excluded anyone who engaged in persecution, voluntarily assisted the enemy forces, or belonged to a movement hostile to the United States. Under the DPA there was the DP Commission Inimical List, which prohibited the entry of certain groups. Kungys entered the United States under the Immigration Act of 1924 which had none of these excluded factors.

Mr. Mausner: (Continued) Defense counselor states that he has not been able to perform a statistical analysis of how many Latvian policemen were allowed to enter the United States and how many were excluded. It is the respondent who created any uncertainty there might be here. It was the respondent who made the misrepresentation about his police service. Now the distinction that respondent draws between the Ukrainian police and the Latvian police and it's treatment by the DP Commission would probably go the other way toward making Latvian police more excludable. If the Board will look at the Inimical List which are exhibits 75 and 76 you will note that Ukrainian Schutzmannschaften is not included on the inimical list. The court in Kowalchuk especially make it clear that Ukrainian police is the Ukrainian Schutzmannschaften. In that case the respondent was ordered denaturalized even though Ukrainian Schutzmannschaften does not appear on the inimical list because there were DP Commission rejections of members of the Ukrainian Schutzmannschaften just as there are rejection in evidence in this case of member of Latvian police. Latvian Schutzmannschaften does appear on the inimical list. Ukrainian Schutzmannschaften does not. The criticisms that defense counsel make of the Soviet Union do not relate to the specific things that we are dealing with in this case. No witness has ever testified that the Soviet Union provides forged documents are false testimony to Western courts of for use in these Nazi war crime cases. All as I noted for certain facts in this case, all of the Soviet evidences which has been allowed to be tested by defendant's or respondent's admissions in certain cases has proven to be true. In this case the respondent has in fact admitted that he signed the documents from the Soviet Union which porport to contain his signature. But even putting aside all the Soviet evidence, respondent's own admissions standing alone after first having lied about all of these things for years supports his deportablility and no amount of anti-Soviet readeract should obscure the fact that the respondent participated in the arrest of all the villiagers of a villiage and the buring of that villiage to the ground, lied about that, served in a police force, lied about that repeatedly. Thank you.

Mr. Milhollan: Thank you both.