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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Civil Action No. 80 C 4302
	)	
LIUDAS KAIRYS,	)	(Hon. James B. Moran)
	)	
Defendant.	)	

DEFENDANT'S POST-TRIAL REPLY BRIEF

DATED: November 18, 1982

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The Government neither accepts nor understands its burden of proof. Throughout its reply brief, it attempts to shift the burden of proof to Kairys. It argues that he should lose his citizenship because

> [he] makes no affirmative showing that an error has been made. He merely attacks the sufficiency of the Government's evidence, claiming that "troubling doubts" remain.

(Gov't R.Br. 5). But denaturalization defendants need not affirmatively show that "an error has been made" to save their citizenship from Government attack. Rather, the Supreme Court has held that it is the Government that "carries a heavy burden of proof," and that the Government's evidence must be "clear, unequivocal and convincing" and "not leave the issue in doubt." As the Court has stressed: "Any less exacting standard would be inconsistent with the importance of the right that is at stake in a denaturalization proceeding." Fedorenko v. United States, 449 U.S. 490, 505-06 (1981).

The Government must meet this burden of proof as to every fact necessary to support the offenses charged. Cf. In re Winship, 397 U.S. 358 (1970). "Troubling doubts" as to any necessary fact under these theories requires judgment for the citizen. Baumgartner v. United States, 322 U.S. 665, 670 (1944).

Such doubts infect the Government's case against Kairys. The lack of any survivor identification creates a substantial question whether he ever served as a guard at Treblinka. This doubt is compounded rather than removed by the Government's "identification" evidence: documents produced by the Soviet Union, a known forger who would regard Kairys as a "prime target" for a disinformation effort,[1/] and photo "identifications" based on leading photospreads shown under questionable circumstances. This insufficient proof on identification, standing alone, requires dismissal of the Complaint.

The Government's proof as to each of the elements of illegal and fraudulent procurement of citizenship is equally weak. The evidence shows that Kairys was probably never asked to disclose guard service, even if he had any. Moreover,

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1/ The Government suggests hopefully that "[d]efendant now appears to have largely abandoned the claim that he is the victim of a Soviet disinformation campaign . . . ." (Gov't R.Br. 2). Hardly so. The numerous unanswered questions about the Soviet-produced documents, coupled with the testimony of a witness with personal knowledge that the Soviets would treat Kairys as a "prime target" for a disinformation campaign, give rise to substantial doubts concerning the authenticity of the Soviet-produced documents and the reliability of the witnesses under Soviet control.

according to the Government's own naturalization expert, guard service, as such, was not a bar to citizenship. The Government needs more than this shaky evidence to take away the citizenship Kairys has held for twenty-five years.

I. THE GOVERNMENT FAILS TO PUT TO REST THE SUBSTANTIAL DOUBTS LEFT BY THE "IDENTIFICATION" EVIDENCE.

A. No Survivor Identified Kairys.

During trial, this Court repeatedly emphasized that if the Government had a survivor identification of the defendant, it should produce it. (Tr. 1393). The Government never did because no such identification exists.

The Government mistakenly claims that one of the two survivors who testified, Simon Friedman, identified defendant's photograph. (Gov't R.Br. 16). Friedman, however, could only state that several pictures in the Government's photospread looked familiar. He could not even say where he saw those men, much less that any one of them served as a Treblinka guard. (Tr. 63).[2/]

2/ Friedman's actual testimony was:

> "Q. Is it true that when you looked at the pictures that the Government showed you, that you were unable to associate any of the faces that you saw with any act of atrocity which you had seen at Treblinka?
>
> A. I stated before that's what I said. I cannot point out this man did this, this man. I saw faces, which I am stating again, I looked at all these pictures and I saw some faces which they are very familiar to me. Where I saw them, I don't remember."

(Tr. 63). (All emphasis is added throughout this Brief unless otherwise indicated).

Friedman's refusal to identify defendant was by no means an aberration. To the contrary, the Government offered no identification testimony by any of the sixteen Treblinka survivors it interviewed.

This absence of survivor testimony fatally undermines the Government's case. As Dr. Niederland emphasized, concentration camp survivors are unusual in that they can reliably recall events of forty years ago. (Def. Br. 4-6). The Government attempts to avoid the impact of Dr. Niederland's testimony by suggesting that age, health, and subsequent life experience might somehow affect a survivor's hyperamnesia. (Gov't R.Br. 17). Dr. Niederland testified, however, that hyperamnesia is an indelible imprint that does not fade:

> Q. Now, this indelible character, is this something that doesn't dim as an ordinary memory would 30 or 35 years later? Would it be just as vivid as the day it happened?
>
> A. Yes.
>
> * * *
>
> Q. To clarify my own mind, doctor, what you are saying is there is no time limit to this hyperamnesia?
>
> A. No.
>
> Q. Fifty, seventy years?
>
> A. Yes. It is an indelible imprint.

(DX 536, pp. 23-24, 51-52).[3/]

3/ Contrary to the Government's assertion (Gov't R.Br. 17 n.20), Dr. Niederland's testimony is in evidence. Both sides designated passages and the deposition was submitted to and received by the Court. (Tr. 1029-30).

The Government also suggests that few survivors suffer from hyperamnesia. Its own expert found otherwise. Hyperamnesia makes up an integral part of the "survivor syndrome" which plagues concentration camp victims. Dr. Niederland found it present in the "great majority" of the nearly 2,000 survivors he interviewed. (DX 536, pp. 8, 25).

The Government misleadingly asserts that the sixteen survivors it interviewed included "people" who were not at Treblinka when it claims Kairys served there. (Gov't R.Br. 16). The Government identified only one survivor it interviewed, Beno Benari, as having escaped Treblinka before Kairys allegedly arrived. The fifteen other Treblinka survivors -- Simon Friedman, Fred Kort, Mieczyslaw Chodzko, Wanda Cwiklinka, Edward Sypko, Wanda Kacak, Wolf Szejnberg, Abraham Katz, Roman Weglinski, Szymon Cegiel, Stefan Smolak, Hirsh Nashevski, Jonie Figowy, Mendel Rzepka, and Genia Hochberg -- were all there during the relevant time.[4/] The Government talked to all of them, yet none could identify defendant at trial.

4/ See Government's Response to Defendant's First Request for Admissions (filed May 1, 1981); Government's Response to Defendant's First Set of Interrogatories (filed March 13, 1981); Government's Response to Defendant's Second Set of Interrogatories (filed June 9, 1981); Government's Supplemental Answers to Defendant's Interrogatories (filed September 28, 1981).

B. The Government Used Leading Photospreads and Relies on Doubtful Identifications.

Given the hyperamnesia that is part of the "survivor syndrome," the silence of the survivors is much more probative than any identification by former guards, even if such identifications were otherwise untainted. Here, moreover, Kairys has detailed the specific problems with the Zvezdun, Latakas, and Amanaviczius photospreads and identifications. (Def. Br. 9-27). In reply, the Government only glosses these problems and argues that the identifications are permissible in "the totality of the circumstances." (Gov't R.Br. 18-22). But each step in the identification process -- the photospread, the procedure surrounding its display, and the absence of corroborating in-court identification -- compounded the substantial risk of misidentification. The resulting "identifications" are valueless. Manson v. Brathwaite, 432 U.S. 98, 114 (1977).

The Government simply asserts at the outset that the Personalbogen photograph used in each photospread undoubtedly depicts defendant. (Gov't R.Br. 18). The Government's own photographic expert, however, could not say with "any degree of scientific certainty" that this was the case. (Tr. 386). He couched his final conclusion only as "more probably than not." (Tr. 381). This testimony, reminiscent of the civil standard of proof rather than the more exacting standard applicable here, undermines each subsequent identification. Substantial

doubt exists as to whether the photospreads even presented a picture of defendant.

Moreover, the individual photospreads shown Zvezdun, Latakas, and Amanaviczius are impermissibly suggestive. Each display contrasts a "Kairys" garbed in a closed-collar military tunic with younger men sporting white shirts, coats, and ties. Contrary to the Government's assertion, this is not an "insignificant" distinction. (Gov't R.Br. 20). The Government gains no support from its citation of United States v. Robertson, 606 F.2d 853 (9th Cir. 1979), where the defendant's distinctive hairstyle made no difference:

> Because the robbers wore knit caps, completely hiding their hair, the differences in hairstyle could not have been a substantial factor in identifying Robertson as one of them.

(606 F.2d at 857). Here, of course, uncontradicted testimony corroborates what common experience suggests: SS guards did not wear white shirts, coats, and ties.[5/]

The Second Circuit's decision in Styers v. Smith, 659 F.2d 293 (2d Cir. 1981), provides a direct analogy to this case, where differences in clothing and appearance are crucial. In Styers, the Court struck down a photographic identification because "none of the other men pictured in the photographic display remotely resembled [the suspects], or answered the broad

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5/ The Government ignores the Seventh Circuit's instruction that the risk of misidentification is substantially increased when defendant is the only individual wearing distinctive clothing. Israel v. Odom, 521 F.2d 1370, 1374 (7th Cir. 1975). See also Def. Br. 12-15.

general descriptions given earlier by [two witnesses]." (659 F.2d at 297-98).

The procedures employed by the Soviets during their questioning of Zvezdun and Latakas increased the likelihood of misidentification. (Def. Br. 21-27). Before their "identifications," both Latakas and Zvezdun were questioned at length outside the presence of Government or defense counsel. Since even seemingly innocuous American police comments can fatally prejudice an identification, what Soviet officials told the witnesses takes on critical importance. In United States v. Jarvis, 560 F.2d 494, 500 (2d Cir. 1977), cert. denied, 435 U.S. 934 (1978), the Second Circuit held an FBI agent's suggestions that a witness's identification was correct or incorrect could constitute reversible error. With the Soviets' documented hostility toward Kairys, Soviet "suggestions" appear likely.

The possibility of Soviet "suggestions" becomes a strong probability in light of the Soviets' refusal to allow cross-examiation into their dealings with the witnesses. The Soviet procurator repeatedly "overruled" defense counsel's inquiries on this topic:

> Q. Have you had discussions with officials of the Soviet Government regarding these proceedings?
>
> A. [By the Procurator:] Overruled equally.

(GX 80, p. 73). Moreover, after defense counsel elicited that a KGB agent had delivered a subpoena to the witness, the Soviet

procurator barred all further questioning on the subject. (GX 80, p. 75).

The Supreme Court has held that the accused must rely on free-ranging cross-examination into the "totality of the circumstances" surrounding a photo identification to test the admissibility and reliability of a photo identification. Simmons v. United States, 390 U.S. 377, 384 (1968). (See Def. Br. 21-27.) Preclusion of such cross-examination necessarily draws the "identification" into doubt.

The forbidden subjects during cross-examination precluded inquiry into not only the possibility of "innocent" misidentification, but also the possibility of Soviet-engendered hostility toward Kairys. The Soviet procurator barred questioning into Zvezdun's motivations. (GX 80, pp. 71-72). The opportunity to attack a witness's motivations, however, is central to the right of cross-examination. As the Supreme Court concluded in Davis v. Alaska, 415 U.S. 308, 316-17 (1974):

> The partiality of a witness is subject to exploration at trial, and is "always relevant as discrediting the witness and affecting the weight of his testimony." 3A J. Wigmore, Evidence §940, p. 775 (Chadborn Rev. 1970). We have recognized that the exposure of a witness' motivation in testifying is a proper and important function of the constitutionally protected right of cross-examination.

Accord, United States v. Gambler, 662 F.2d 834, 838 (D.C. Cir. 1981); United States v. Nez, 661 F.2d 1203, 1206 (10th Cir. 1981).[6/]

Cross-examination into a witness's motivations becomes especially important when a Government "star witness," such as Zvezdun, is involved:

> This Court has recognized on a number of occasions that when a "star" government witness is involved, the importance of cross examination is amplified. . . . The prohibition on cross-examination imposed here prevented defendant from developing his defense. He was not able to reveal to the jury the fact that Czapla was not a credible witness. There is no way to evaluate the harm of the limitations imposed. We cannot allow a conviction to stand where we are left in doubt about so important an issue as Czapla's trustworthiness and credibility.

United States v. Wesevich, 666 F.2d 984, 990 (5th Cir. 1982). Here, the Soviet Procurator's preclusion of defense questioning into Zvezdun's prison history and contacts with Soviet officials hostile to defendant unfairly cut off Kairys's ability to challenge Zvezdun's trustworthiness and credibility.

Finally, the absence of any corroborating in-court identification aggravates the doubts the suggestive photospreads created. An in-court identification becomes vital when, as

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6/ The Government cites United States v. Dow, 457 F.2d 246 (7th Cir. 1972), to support its claim that questioning about Zvezdun's prior prison record was properly barred. But Dow involved a prosecution attempt to "destroy the character of the accused, and not merely to impeach him as a witness." (457 F.2d at 250). Zvezdun, of course, is not accused of anything in this case, and thus requires no special protection from impeaching questions that might unduly prejudice a jury.

here, the witness's initial identification proves uncertain (e.g., Zvezdun, Def. Br. 18) or when over four decades have passed since the events in issue. United States v. Cueto, 611 F.2d 1056, 1064 (5th Cir. 1980).

This point is underscored by one of the cases on which the Government itself relies, United States v. Boston, 508 F.2d 1171 (2d Cir. 1974), cert. denied, 421 U.S. 1001 (1975) (cited at Gov't R.Br. 22). There, a corroborating in-court identification answered the defendant's claim that pre-trial publicity had tainted the earlier photo identification:

> [T]he in-court identifications of Boston were made over two years after the newspaper episode and cannot realistically be deemed tainted by that exposure.

(508 F.2d at 1178). In contrast, no ex-guard took the witness stand here to corroborate his questionable out-of-court identification. Coupled with the absence of any survivor identification, in court or out, this failure dooms the Government's case.

C. The Soviet Documents Remain Rife with Doubt

The Government's reply brief fails to address, let alone explain, the numerous erasures, interlineations, fiber disturbances, torn-off picture, and mysterious print characters which riddle the Soviet documents. (Def. Br. 31-62). Instead, the Government claims that, since no expert called the Soviet documents definite "forgeries," this Court must accept them as trustworthy. This presents another example of the continuing

Government effort to shift, rather than meet, its burden of proof.

The Government remains silent on why, how, and by whom the picture on the "critical" Personalbogen was torn off. (Def. Br. 33). Rather, it hopes that because no expert positively concluded that the picture had been removed, the document must be reliable. (Gov't R.Br. 10-11). The experts, however, agree that the photo may have been removed. They differ only as to the likelihood that that occurred. Purtell testified that the tearing of the paper behind and around the Personalbogen photograph was "most likely" from the removal of the photograph. (Tr. 987). Government expert Richards noticed "scarring" around the picture. (Tr. 383). Dr. Cantu accepted the removal of the picture as a possibility. (Tr. 559). The evidence demonstrates the probability that the Personalbogen picture was removed.

Nor does the Government deny that the Personalbogen contains over a dozen erasures. It simply chants its unsubstantiated theory that the document was initially filled out in pencil, erased, and re-typed. The record does not support this hypothesis. Dr. Scheffler, the Government's expert on German military procedure, never addressed this issue. Rather, the Government relies exclusively on Epstein's and Purtell's observations that such a "typed over" theory was "possible." Of course, their testimony about a "possibility" does not constitute evidence that the "theory" occurred in practice. Kirschner v. Broadhead, 671 F.2d 1034, 1039-40 (7th Cir. 1982) ("[A] mere

possibility is not an affirmative basis for a finding of fact"). Epstein's testimony, in fact, tips the probabilities against the Government "theory." He found no similar erasures on any of the other five sets of "German documents" he had examined. (Tr. 486-47).

Purtell's testimony further undercuts the Government theory. (Def. Br. 37-38). First, stray pencil remnants appear on the document which do not correspond with any typing. Second, entire lines of the Personalbogen were erased without any re-typing. Third, there are disturbed fibers, possibly erasures, around the signature line. Finally, a mysterious print character from an unknown source found its way onto the back of the Personalbogen. The character does not align with any existing printing and cannot be explained by any source, yet another fact which Epstein missed and the Government does not deign to discuss. These anomalies undermine the Government's theory and place the Personalbogen under a cloud of doubt.[7/]

7/ In addition, several inconsistencies appeared on the Personalbogen photograph. (Def. Br. 33-35). While Purtell could not affirmatively conclude that the picture was doctored, these peculiarities raise further doubt. This doubt is not dispelled by examination of copies of yet other unsubstantiated documents. Purtell explained the originals, not Government photocopies, are required for any comparison of the Personalbogen with similar documents. Such originals were never provided. Defendant's opening brief catalogued still more problems with the Soviet documents. (Def. Br. 31-62.)

D. The Lietuva Articles Substantiate Kairys's Testimony.

From 1972-73 Kairys served as editor-in-chief of Lietuva, a Lithuanian philatelic magazine. During that time he received, from inside Lithuania, an article entitled "Vilnius Post Office 1939 -- Between September 17th and October 28th" by K. Milvidas.[8] The text excoriates the Russian plunder of Lithuania in World War II. If it were published under his name, the article would have endangered Milvidas in Lithuania. (Tr. 1208). Consequently, as editor-in-chief, Kairys signed the article to preserve the true author's anonymity. (Tr. 1204).

The Government cites another Lietuva article, "The First Lithuanian Stamps," which was written and signed by Milvidas, as evidence that Milvidas could write for Lietuva without risk of Soviet reprisal.[9] (Gov't Br. 81). Consequently, the Government implies that Kairys, not Milvidas, wrote the first article concerning life in Vilnius in 1939.

A review of the Vilnius article, however, substantiates Kairys's testimony. Milvidas naturally refused to sign the Vilnius article because of its strong anti-Soviet tone. He lambasts the 1939 Russian invasion of independent Lithuania and refers to the advancing Russian phalanx as the Bolshevik "devils" whose "primary purpose" was to:

8/ GX 109T is a complete translation of this article.

9/ A certified translation of this article appears as Appendix A.

> plunder the Territory and take into the Soviet Union whatever possible, and, on returning the Vilnius Territory to Lithuania, a small country which could in no way restore the ruined economy, to peacefully occupy all of Lithuania under the pretense of aiding the population.

(GX 109T, p. 3). An individual still residing in Lithuania would hardly want these remarks attributed to him.

In contrast, the signed Milvidas article recounts the origins of the Lithuanian postal system in the early 1900's. (See Appendix A). It is a scholarly, analytical piece with no anti-Soviet rhetoric. Thus, the articles themselves confirm defendant's testimony that Milvidas could safely sign this neutral piece, even though he was forced to remove his name from the anti-Bolshevik article.[10/]

10/ The Government continues to assert that, on its face, defendant's identity card (DX 1) is not exculpatory. (Gov't R.Br. 1 n.1). As shown in defendant's opening brief, however, the identity card is both authentic and exculpatory. (Def. Br. 71-81). Initially, both experts agreed that the signature on the card is Kairys's known signature. ((DX 123, p. 1)(Epstein); (Tr. 913)(Purtell)).

In addition, unlike the Soviet documents, DX 1 correctly depicts defendant's hair and eye color as well as his age and birthplace. This information flatly contradicts the material on the Soviet-produced Asmen Zinios (GX 41) and Vidaus Reikalu Ministui (GX 40), two documents with signatures that neither expert could identify.

Finally, the Government's effort to explain away the contradictions between DX 1 and the Personalbogen ignores the simple geographics of what defendant must have done in the first two weeks of June. Defendant's card undeniably attests that he arrived in Vainutas on May 15, 1942, just one month before the beginning of his alleged service at Trawniki. Defendant stayed in Vainutas for "a couple of weeks," even by the Government's story. Then, according to the Government, he was captured, placed in Hammerstein,

(Footnote continued on following page)

II. "TROUBLING DOUBTS" INFECT THE GOVERNMENT'S "PROOF" THAT KAIRYS MADE WILLFUL MISREPRESENTATIONS OR CONCEALMENTS IN HIS IMMIGRATION AND NATURALIZATION.

To sustain its claim of "illegal procurement" of citizenship, the Government needed to prove, by "clear, unequivocal, and convincing evidence that does not leave the issue in doubt," that Kairys made willful misrepresentations or concealments of material facts in obtaining his visa.[11/] To prove that Kairys obtained his citizenship by "willful misrepresentation or concealments of material facts," the Government needed to prove similar misrepresentations or concealments in connection with his naturalization.[12/] The Government proved

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(Footnote continued from preceding page)

introduced to Zajanckauskas, contracted dysentery, recovered, was selected for guard service, taken to Trawniki, Poland, and inducted into the Waffen SS -- all within two weeks. Such geographical hopscotch strains credulity even in the abstract. The Government, of course, offers no support that this scenario ever occurred.

11/ This same proof is required to sustain the Government's alternative theories: (i) that Kairys obtained his citizenship by "willful misrepresentation or concealment of material facts" when he denied on his naturalization papers that he had given false testimony to secure benefits (namely, his visa) under the immigration laws; and (ii) that Kairys illegally procured his citizenship and procured his citizenship by willful misrepresentation or concealment because he lacked good moral character by reason of having given false testimony to secure his visa. (See Def. Br. 92 n.60).

12/ "Willful misrepresentations or concealments" to obtain a visa cannot sustain a claim of procurement of citizenship by "willful misrepresentation or concealment." In the first case, only a visa was procured, not citizenship. The Supreme Court has recognized "the distinction between false statements in a visa application and false statements in an application for citizenship." Fedorenko, 449 U.S. at 509 n.30.

neither. Rather, the evidence shows that Kairys was never asked about guard service. Moreover, the fact of guard service, standing alone, was not a bar to citizenship. Both its claims of "illegal procurement" of citizenship and "procurement by willful misrepresentation or concealment" must, therefore, be dismissed.

A. A "Presumption of Official Regularity" Does Not Overcome Kairys's Evidence That He Was Not Questioned About Guard Service in Applying for a Visa.

Kairys's opening brief (Def. Br. 82-91) showed that the Government did not prove that Kairys made willful misrepresentations or concealments of material facts in connection with his visa application. The Government now seeks refuge behind a "presumption of official regularity." Such a "presumption," however, does not overcome Kairys's uncontradicted testimony that he was not questioned about the challenged entries on his visa application, GX 5.

The Government states that "the material misrepresentations made by defendant are on his visa application." (Gov't R.Br. 29). Government witness Rhodes admitted, however, that the visa application contains no question which required an applicant to disclose camp-guard service. (Tr. 710). In an attempt to cover over this obvious hole in its misrepresentation/concealment theory, the Government claims that Rhodes testified "that the 'uniform' practice was to obtain the information from 'a full interrogation (of the applicant concerning) . . . all aspects of his eligibility.'" (Gov't R.Br. 30). The

Government then attempts to ground its "presumption of official regularity" on this questionable testimony.

The Government's selective quotation of Rhodes's testimony distorts the record. Rhodes failed to show that any "regular procedure" existed or was followed. Rhodes never testified, nor could he,[13/] that the procedures other visa officers followed were "uniform." In fact, the Court would not allow Rhodes to speculate about what other consular officials did. (Tr. 703).

Also, any "presumption of official regularity" has no force since here the evidence refutes it. Rule 301 of the Federal Rules of Evidence provides:

> In all civil actions . . . a presumption imposes on the party against whom it is directed the burden of going forward with evidence to rebut or meet the presumption, but does not shift to such party the burden of proof in the sense of the risk of nonpersuasion, which remains throughout the trial upon the party on whom it was originally cast.

Kairys testified that, in his case, the Vice Consul did not follow what the Government claims were "regular" procedures. He was asked at most a "few" questions about "himself." (Tr. 1173). He expressly denied (Tr. 1175) that the Vice Consul questioned him about his "wartime whereabouts," which the Government states is "[t]he only critical information [on the

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13/ Kairys demonstrated in his opening brief (Def. Br. 87 n.53) that Rhodes was unqualified to testify about the practices followed by other consular officials in issuing visas under the DP Act. The Government's reply makes no effort to revive Rhodes's testimony.

visa application] which is incorrect . . . ." (Gov't Br. 77-78).[14/]

The Government's retreat to a "presumption of official regularity" does not relieve the Government of its obligation to adduce "clear, unequivocal and convincing evidence that does not leave the issue in doubt." Kairys testified that "regular procedures" were not followed in his case. This evidence more than met, it overcame, any "presumption." The Government simply failed to prove that Kairys misrepresented or concealed material facts from the Vice Consul.

The Government's belated claim that the entry "farmer" under "occupation" represents a "material misrepresentation" does not supply the missing proof. As an initial matter, the Government has no answer to the legal rule that, since the Government said nothing about the "farmer" entry in its Complaint, nothing can turn on this charge now. "[W]e think the Government should be limited [in a denaturalization case], as in a criminal proceeding, to the matters charged in its complaint." Schneiderman v. United States, 320 U.S. 118, 160 (1943).

Moreover, the Government's extract of Rhodes's testimony does not prove that the entry "farmer" under "occupation" on the visa application (GX 5) constitutes a "material" misrepresentation. The extract reads (Gov't R.Br.32):

14/ Thus, this case bears no resemblance to United States v. Dercacz, 530 F.Supp. 1348 (E.D.N.Y. 1982), on which the Government relies, which applied the presumption only because "the defendant [could] not recall the events which transpired." (530 F.Supp. at 1352).

Question: In your opinion, if an applicant said he was a farmer during the war and you learned he had actually been a concentration camp or labor camp guard for the Nazis, would he have been eligible for a visa under the Displaced Persons Act?

Answer: No he would not. (Tr. 701).

The Government offered no evidence, however, that Kairys ever told consular officials that "he was a farmer during the war." The application itself does not ask for "occupation during the war." It simply asks for "occupation."[15/] The Government also ignores Rhodes's admission that a misstatement, even willful, of wartime occupation was not, standing alone, a sufficient basis on which to deny a visa. (Tr. 708).

The Government thus failed to show, by "clear, unequivocal, and convincing evidence that does not leave the issue in doubt" that Kairys willfully made any material misrepresentations or concealments in applying for his visa. It's claims of "illegal procurement" of citizenship therefore fail.

B. The Government Leaves Unanswered Kairys's Showing That it Failed to Prove He Made "Willful Misrepresentations or Concealments of Material Facts" to Obtain Citizenship.

The Government's reply brief is strangely taciturn on the subject of the only claim it can make under the statute, that Kairys procured his citizenship by "willful misrepresentations

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15/ The answer "farmer" hardly amounts to a "willful misrepresentation" in any event. Kairys had worked as a farmer and the Army had given him training and tests which qualified him as a farmer. (Tr. 1175-78; DX 7). Army personnel told Kairys he could therefore give his occupation as "farmer." (Tr. 1177).

or concealments of material facts."[16/] The Government limits itself to a footnote assertion (Gov't R.Br. 32 n.33) that, according to Judge Petrone, "defendant was required to reveal his membership in the SS Wachmannschaft and that, based on the revelation and the fact that he had given false testimony to secure his visa, he would have been denied citizenship." The Government overlooks Judge Petrone's concession that no question on the naturalization papers required disclosure of concentration camp guard service. (Tr. 594). Presumably, the Government still rests on Judge Petrone's "assumption" that the preliminary examiner, Irving Schwartz, had asked Kairys whether he had served in a concentration camp. (Tr. 579, 596).

Judge Petrone's "assumption" about what Irving Schwartz asked Kairys is not "clear, unequivocal, and convincing evidence that does not leave the issue in doubt." Irving Schwartz works in the same building in which this trial was held. The Government could have called him to testify as to what questions he had actually asked Kairys, or any citizenship applicant. The Government's failure to do so creates the strong inference that he never asked anyone, including Kairys, about camp guard service. As in Interstate Circuit, Inc. v. United States, 306 U.S. 208, 226 (1939), "The production of weak evidence when strong is available can lead only to the conclusion that the strong would have been adverse."

16/ As Kairys shows in Section III, infra, principles of statutory construction and the ex post facto clause require dismissal of the Government's four "illegal procurement" counts.

The Government similarly avoids any discussion of the "materiality" of a concealment of service in the SS Wachmannschaft. As Judge Petrone himself testified, service as a labor camp guard was not, by itself, a bar to obtaining American citizenship. He would have recommended a grant of citizenship to a Baltic emigre whom the Germans had coerced to serve as a guard and who had committed no atrocities. (Tr. 597-98). Failure to disclose such service was not, therefore, a "material" concealment.

The Government failed to prove, by "clear, unequivocal, and convincing evidence that does not leave the issue in doubt," that Kairys willfully concealed or misrepresented material facts in connection with his naturalization. Count I, therefore, must also fall.

III. THE GOVERNMENT HAS NOT JUSTIFIED RETROACTIVE APPLICATION OF THE "ILLEGAL PROCUREMENT" GROUNDS FOR DENATURALIZATION.

The Government offers only a disjointed and confused array of assertions to avoid the "first rule of statutory construction" barring use of the 1961 addition of "illegal procurement" to strip Kairys of his 1957 citizenship. So too, it simply rehashes the discredited holdings of Luria and Johannessen to dodge the ex post facto bar to its approach, despite Kairys's showing that those cases are no longer controlling.[17/]

17/ Principles of statutory construction and the ex post facto clause provide separate, independent grounds barring retroactive use of "illegal procurement." In fact, courts look first to principles of statutory construction to avoid possible constitutional problems with legislation. See, e.g., Ashwander v. Tennessee Valley Authority, 297 U.S. 288, 347 (1936) (Brandeis, J., concurring).

The Government's argument does nothing to cure a fatal flaw in four of its five counts against Kairys.

A. The Government Does Not Overcome the "First Rule of Statutory Construction" Barring Retroactivity.

The Government's reply fails to avoid the "first rule of statutory construction" precluding retroactive application of the "illegal procurement" grounds for denaturalization. At the outset, the Government mischaracterizes Kairys's position on this issue as a "defense" in an attempt to shift the burden to him. It states:

> Defendant contends (pp. 97-109) that the retrospective application to him of the "illegal procurement" ground of 8 U.S.C. §1451(a) would violate both statutory intent and the ex post facto clause of the Constitution.

(Gov't R.Br. 37). Kairys need not show, however, that retroactive application of the 1961 amendment to his 1957 citizenship "violate[s] . . . statutory intent." Rather, under ancient principles of statutory construction, the Government must show that, in enacting the 1961 amendment, Congress intended its provisions to apply retrospectively.

> [A] retrospective operation will not be given to a statute which interferes with antecedent rights or by which human action is regulated, unless such be "the unequivocal and inflexible import of the terms, and the manifest intention of the legislature."

Union P.R.Co. v. Laramie Stock Yards Co., 231 U.S. 190, 199 (1913), quoting, United States v. Heth, 7 U.S. (3 Cranch) 399, 413 (1806).

The fact that "illegal procurement" was added by way of a 1961 amendment to 8 U.S.C. §1451(a), rather than through a wholly new statute, does not avail the Government. The same principles of statutory construction apply to amendatory legislation:

> In accordance with the rule applicable to original acts, it is presumed that provisions added by the amendment affecting substantive rights are intended to operate prospectively. Provisions added by the amendment that affect substantive rights will not be construed to apply to transactions and events completed prior to its enactment unless the legislature has expressed its intent to that effect or such intent is clearly implied by the language of the amendment or by the circumstances surrounding its enactment.

1A Sutherland, Statutory Construction, §22.36 at 200 (4th ed. 1972)(footnotes omitted). See also Winfree v. Northern P.R.Co., 227 U.S. 296 (1913); United States Fidelity and Guaranty Co. v. Struthers Wells Co., 209 U.S. 306 (1908).

Indeed, the Government's own cited authorities (Gov't R.Br. 39) confirm that the rule against retroactive application applies to amendments as well as original enactments.

Thus, in Blair v. Chicago, 201 U.S. 400 (1906), the Supreme Court stated:

> The rule is correctly stated in Endlich on Statutes, section 294, as follows: "A statute which is amended is thereafter, and as to all acts subsequently done, to be construed as if the amendment had always been there, and the amendment itself so thoroughly becomes a part of the original statute, that it must be construed, in view of the original statute, as it stands after the amendments are introduced and the matters superseded by the amendments eliminated.

(201 U.S. at 475). Similarly, 1A Sutherland, Statutory Construction §22.35 at 197 (4th ed. 1972), on which the Government also relies, provides:

> The original section as amended and the unaltered sections of the act, code, or compilation of which it is a part, relating to the same subject matter, are to be read together. The act or code as amended should be construed as to future events as if it had been originally enacted in that form.

In short, while an amendment should be construed as if it were part of the original enactment, this principle refers, by its terms, only to prospective applications of the amendment.

The Government also advances the curious contention that, when Congress enacted Section 340(i) of the Immigration and Nationality Act (8 U.S.C. §1451(i)) in 1952, it somehow expressed its intent that the later 1961 amendment should apply retroactively. (Gov't R.Br. 39). The Government ignores the basic principle that it is the language of the 1961 amendment and the intent of the 1961 Congress in enacting it which determine whether an amendment applies retroactively. 1A Sutherland, Statutory Construction, §22.36 at 200 (4th ed. 1972)(quoted at p. 24, supra).

The Government next mistakenly claims that "the clear language of [§340(i)] shows that retrospective application is to be given to 'the provisions' of [8 U.S.C.] §1451, without any limitation." (Gov't R.Br. 39).[18/] When Congress enacted

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18/ The Government erroneously claims that Simons v. United States, 333 F.Supp. 855, 864 n.13 (S.D.N.Y.), aff'd, 452 F.2d 1110 (2d Cir. 1971), supports its assertion that "[t]here can be no question . . . that the intent of

(Footnote continued on following page)

Section 340(i), however, "the provisions" of 8 U.S.C. §1451 said nothing about civil denaturalization for "illegal procurement" of citizenship. To the contrary, the 1952 Congress intentionally eliminated "illegal procurement" from the grounds for civil denaturalization. (Def. Br. 99 n.65). The Government thus argues, paradoxically, that the 1952 Act eliminating "illegal procurement" shows a Congressional intent in 1952 that an amendment nine years later restoring "illegal procurement" should be given retroactive application. Law and logic will not be tortured that far.

As a last ditch, the Government claims that "Congress has always intended its denaturalization statutes to have retrospective application, without regard to the date of the challenged naturalization." (Gov't R.Br. 39). It therefore

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Congress is that [8 U.S.C.] §1451(a) is to apply to all naturalization [sic] without any limitation of time." (Gov't R.Br. 38). In Simons, the Court rejected the Government's claim that the plaintiff, who wished to have her own and her late husband's naturalizations cancelled as obtained by fraud, could not rely on §340(j) of the Immigration and Nationality Act of 1952, 8 U.S.C. §1451(j) to support jurisdiction of her suit. The Government argued that since the naturalizations had been obtained in 1946, the plaintiff could not rely on §340(j), which was enacted in 1952. The Court found this Government claim "without merit" since "8 U.S.C. §1451(i) specifically provides that the entire section (§1451) applies 'to all certificates of naturalization and citizenship which may have been issued heretofore by any court or by the Commissioner based upon naturalization granted by any court.'" (333 F.Supp. at 864 n.13). Congress made no such expression of intent with regard to retroactive application of the 1961 illegal procurement amendment.

asserts that "retrospective construction of §1451(a) is supported by the history of the predecessor denaturalization statutes." (Gov't R.Br. 39). The 1961 amendment to §1451(a) adding illegal procurement differs sharply, however, from the history of the predecessor statutes. The Government overlooks the fact that in the case of every denaturalization statute but the 1961 amendment, Congress expressly provided for retroactive application of its denaturalization laws by an explicit statutory provision. Compare Section 15 of the Act of June 29, 1906 (34 Stat. 601 (1907)), Section 338(g) of the Nationality Act of 1940 (54 Stat. 1137, 1160 (1940)), and Section 340(i) of the Immigration and Nationality Act of 1952 (8 U.S.C. §1451(i), 66 Stat. 163, 262 (1952)) with Pub. L. 87-301 (75 Stat. 650, 656 (1961)).

Thus, far from supporting the Government's assertion that the earlier statutory provisions support retroactive application of the 1961 amendment, the history of the denaturalization laws shows that when Congress intended retroactivity, it explicitly provided for it. It did not do so in the case of the 1961 amendment adding illegal procurement. The Supreme Court's observation in Struthers Wells, 209 U.S. at 315, thus applies to bar retroactivity:

> If Congress had intended otherwise, we think it would have still further amended the original act by providing in plain language that the amendment should apply to all cases, and not be confined to the future.

To justify retroactive application of the 1961 amendment, the burden rests on the Government to point to "unequivocal and inflexible terms" of the amendment and "the manifest intention" of Congress supporting retroactivity. It has done neither. Counts II through V of the Complaint must, therefore, be dismissed.

B. Johannessen and Luria No Longer Govern Whether the Ex Post Facto Clause Applies.

The Government offers nothing new to rebut Kairys's showing (Def. Br. 105-09) that retroactive application of the 1961 "illegal procurement" grounds for denaturalization to Kairys's 1957 citizenship also offends the ex post facto clause of the Constitution. Rather, the Government simply reiterates the "civil" label affixed to denaturalization proceedings and retreats to the dated holdings in Johannessen v. United States, 225 U.S. 227 (1912), and Luria v. United States, 231 U.S. 9 (1913).

The labels "civil" or "criminal" resolve nothing. In Trop v. Dulles, 356 U.S. 86, 94 (1958) (plurality opinion), a case finding a Government cancellation of citizenship "penal," Chief Justice Warren cautioned:

> How simple would be the tasks of constitutional adjudication and of law generally if specific problems could be solved by inspection of the labels pasted on them!

Kairys demonstrated that, under modern Supreme Court precedents, denaturalization also amounts to a "penalty." (Def. Br. 106-07). Retroactive application of "illegal procurement" to denaturalize

Kairys would therefore violate the ex post facto clause. The Government leaves these points totally unanswered.

Rather than facing up to Kairys's arguments, the Government simply recites the holdings of Johannessen and Luria, both decided 70 years ago. Those decisions likened citizenshp to an industrial patent and called the citizenship certificate merely "an instrument granting political privileges." Subsequently, however, the Supreme Court expressly disavowed the patent analogy. Schneiderman, 320 U.S. at 124 n.3. It now calls citizenship a "precious right," Schneiderman, 320 U.S. at 125, and a "priceless treasure." Fedorenko, 449 U.S. at 507.

In light of the Supreme Court's repudiation of the Luria-Johannessen view of citizenship, this Court need not slavishly follow those decisions. As the Seventh Circuit recently stated:

> Constitutional law is very largely a prediction of how the Supreme Court will decide particular issues when presented to it for decision. Ordinarily the best predictor of how the Court will decide an issue in a future case is how it decided the same issue in a past case, and when that is so the law is what is stated in the earlier decision. But sometimes later decisions, though not explicitly overruling or even mentioning an earlier decision, indicate that the Court very probably will not decide the issue the same way the next time. In such a case, to continue to follow the earlier case blindly until it is formally overruled is to apply the dead, not the living, law.

Norris v. United States, 687 F.2d 899, 904 (7th Cir. 1982).

Today's "living law," not the "dead law" on which the Government relies, means that the ex post facto clause bars

retroactive use of "illegal procurement" to strip Kairys of the "priceless treasure" of citizenship.

IV. LACHES IS AVAILABLE AND APPROPRIATE TO BAR THIS PROSECUTION.

Faced with its own concessions that "these cases should have been brought thirty years ago" and that its Army "erroneously destroyed" documents vital to Kairys's defense, the Government tries to slip away from the necessary conclusion that laches bars this prosecution. The Government claims that "[i]t is well settled that laches is not a defense in a denaturalization proceeding" (Gov't R.Br. 43), citing Costello v. United States, 365 U.S. 265 (1961), as its only supporting authority. If Costello makes the issue so "well-settled," why did the Supreme Court consider it necessary -- despite lower-court opinions ruling out the defense altogether -- to go on to say that Costello had not satisfied the elements of laches? (365 U.S. at 282-84). The Government never answers this question.19/

Moreover, Costello itself suggests that the rationale for the rule precluding use of laches against the Government does not apply here:

19/ Kairys stands by his statement in his opening brief that "[t]he only subsequent appellate opinion has likewise refused to rule out the availability of laches to an American threatened with confiscation of his citizenship. United States v. Oddo, 314 F.2d 115 (2d Cir.), cert. denied, 375 U.S. 833 (1963)." (Def. Br. 114). The Government's cases (Gov't R.Br. 44) do not show otherwise. Simons v. United States, 452 F.2d 1110 (2d Cir. 1971), was not a denaturalization case. Rather, the citizen there

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The reason underlying the principle, said Mr. Justice Story, is "to be found in the great public policy of preserving the public rights, revenues, and property from injury and loss, by the negligence of public officers." United States v. Hoar, 26 Fed.Cas. 329, 330 (No. 15,373) [(C.C.D.Mass. 1821)]. This Court has consistently adhered to this principle. See, for example, United States v. Kirkpatrick, [22 U.S.] 9 Wheat. 720, 735-737 [(1824)]; United States v. Knight, [39 U.S.] 14 Pet. 301, 315 [(1840)]; see also United States v. Summerlin, 310 U.S. 414, 416 [(1940)]; Board of County Commissioners v.United States, 308 U.S. 343, 351 [(1939)]; United States v. Thompson, 98 U.S. 486, 489 [(1879)].

(Footnote continued from preceding page)

sued to have her own and her late husband's citizenship cancelled as fraudulently procured. The District Court held (and the Court of Appeals affirmed) that laches barred her suit. The Court of Appeals simply observed that Costello, "holding laches not to be a defense to a denaturalization proceeding by the Government, does not assist her." (452 F.2d at 1117). Similarly, United States v. Weintraub, 613 F.2d 612 (6th Cir. 1979), cert. denied, 447 U.S. 905 (1980), was a Government tax case, not a denaturalization proceeding. In United States v. Trifa, 662 F.2d 447 (6th Cir. 1981), cert. denied, 102 S.Ct. 2239 (1982), the Court of Appeals affirmed the denaturalization solely on the basis of the consent decree Bishop Trifa had signed agreeing to his denaturalization. Laches played no part in the Sixth Circuit's decision. In United States v. Fedorenko, 455 F.Supp. 893, 919 (S.D.Fla. 1978), rev'd, 597 F.2d 946 (5th Cir. 1979), aff'd, 449 U.S. 490 (1981), the District Court merely observed that "in Costello . . . the Court found no reason to apply the equitable principles of laches in favor of defendant." Fedorenko had not even asserted laches as a defense. Similarly, in United States v. Walus, 453 F. Supp. 699, 716 (N.D.Ill. 1978), rev'd, 616 F.2d 283 (7th Cir. 1980), Judge Hoffman did not hold, as the Government represents, that there was "'nothing to indicate' that there was any merit to the defense. . . ." (Gov't R.Br. 44). Rather, he only ruled that since the Government had sued only six years after Walus's naturalization and there was "nothing to indicate a lack of diligence by the United States," the laches defense "is not available in this denaturalization proceeding." The unreported Koziy opinion is not presently available to Kairys.

(365 U.S. at 281). The cases the Supreme Court cited each involved a Government effort to recover property, such as a surety on a bond or taxes.[20] None involved a Government attack on an individual's liberty, as in the case here. Since the rationale for the rule against use of laches against the Government has no application here, and since "the facts and the law should be construed as far as is reasonably possible in favor of the citizen," Schneiderman, 320 U.S. at 122, laches is an available defense.[21]

The Government next argues that Kairys cannot assert laches because "the primary cause for any delay in bringing this proceeding is his own fraudulent concealment and misrepresentation about his identity and background." (Gov't R.Br. 45, 47). The Government's argument assumes what it must prove. Had the Government not delayed thirty years in bringing this suit, now deceased witnesses would have testified for Kairys. And had the Government not "erroneously destroyed" them over the years, now unavailable documents would have strengthened his defense. Having deprived the defendant of this key evidence,

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20/ United States v. Hoar, 26 Fed.Cas. 329 (action in assumpsit for money had and received); United States v. Kirkpatrick, 22 U.S. (9 Wheat.) 720 (action in debt on surety bond); United States v. Knight, 39 U.S. (14 Pet.) 301 (action in debt); United States v. Summerlin, 310 U.S. 414 (action on claim against an estate); Board of County Commissioners v. United States, 308 U.S. 343 (action to recover taxes paid in violation of federal Indian rights); United States v. Thompson, 98 U.S. 486 (action in debt on surety bond).

21/ The Costello court probably declined to rule out laches as a defense in denaturalization cases on principle because such cases do not involve "preserving public rights, revenues, and property."

the Government cannot claim the evidence would have made no difference.

Nor can the Government escape its lack of diligence. The Government Accounting Office investigated and found just such a lack of diligence. The Immigration and Naturalization Service's "investigations of most cases before 1973 were deficient or perfunctory. In some, no investigation was conducted." (DX 389, p. 162).

The Government's fault in long delay prejudiced Kairys. Witnesses for his cause have died. The Government erroneously destroyed vital documents. If this case remains in any sense "equitable," as the Government claims, then the equitable defense of laches bars this prosecution.

Conclusion

American citizenship is the right that "makes life worth living." Ng Fung Ho v. White, 259 U.S. 276, 284 (1922). Before it is stripped away, the Government must make a powerful showing under the most exacting standards of proof. The Government has made no such showing here. Troubling doubts infect the Government's evidence on the threshold question of identity, as well as the questions of illegal and fraudulent procurement.

The Government's approach is to sweep these doubts aside, apparently because of the gravity of the offense with which defendant is charged. The Government has it backwards. Our system of justice is grounded on the principle that the more serious the charge, the more persuasive must be the proof.

This principle underlies the different standards in civil and criminal cases. It is at the core of the special standard fashioned by the Supreme Court for denaturalization cases -- proof that is "clear, unequivocal and convincing" and does "not leave the issue in doubt."

The issue is in doubt here. Consequently, the Complaint should be dismissed, and Liudas Kairys and his family should be permitted to live out the rest of their lives in their adopted country.

DATED: November 18, 1982

Respectfully submitted,

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APPENDIX

The First Lithuanian Stamps

K. Milvydas

During the First World War, in September of 1915, the Post Offices of the Lithuanian Territory were taken over by German military-occupational administration "Ober Ost", which published special stamps for the occupied Eastern czarist Russian countries, marking some of them - published edition of 1905-1915 -- with the stamp print "Postgebiet Ob-Ost". These redone stamps were valid in the Lithuanian Territory from January 1916 intil the end of 1918.

By the end of 1918 the collapsing German army, pursued and attacked by the Red army, started to flee. On November 16, 1918, the first efforts were started in Vilnius to establish the Lithuanian Postal Service. But the Germans did everything in their power to prevent it.

It was essential for the Lithuanian Postal Service to provide their offices with stamps. Therefore in the beginning it was suggested that German stamps of the smallest nominal value be purchased and a special imprint be made over them. But again the German Postal Service refused flatly to sell them.

Then it was decided to print the stamps the simplest way, without any design, just with a plain overprint. For that purpose, there was contacted one of the oldest Lithuanian publishers - Martynas Kukta, who has his printing shop in Vilnius.

On December 25, 1918, Kukta was visited by A. Sruoga, the Assistant Postmaster of the Postal Service and was asked to print stamps in a rush - by the next morning.

Right there the overprint was discussed and it was agreed that the stamps should be of two nominal prices (10 and 15 sk.) and the quantity would be as much as it was possible to print overnight, but in no case less that 10,000.

At Kukta's printing shop there were published books, newspapers and other printed matter, but it was small, quite primitive and poor - having very poor printing equipment. Therefore the frames of the stamps were made from simple circles (from the letter "o"). Inside the frames was put the text of 4 lines, "Lithuanian Post 10 (or 15) skatikų".

While printing the word "Skatikų" there was difficulty in finding the Lithuanian letter "u". Because of this, that letter was printed three different ways ("u", overturned "h" and overturned "n"). This shortage of letters has made for the stamp collectors the socalled three types of stamps.

Altogether there were arranged 20 stamp printing matrixes (size 1.8 x 2.25cm) which were typeset into 4 lines of 5 matrixes each. That way 20 stamps made one printed sheet. It was used for printing of both prices of the stamp - only the numerals were then changed.

Printing was made with a flat printing press. The stamps were printed on large sheets of plain book-newspaper paper, of a yellowish-gray color, which later were perforated (little teeth like rows of 11½ size) and cut into sheets of 20 stamps, 12.2 x 11.5 cm size. The cut sheets did not have perforation in the corners, therefore the corner stamps of each sheet were perforated only from two sides, and the side stamps from three sides, and only the 6 middle stamps of each sheet were perforated from all four sides. The stamps were not covered with glue.

The first Lithuanian stamps were published December 25, 1918 (during the night into the 26th day), and December 26 early in the morning Kukta personally took them to the Postal Service of Lithuania, where they were recognized as suitable for use. By counting them it was realized that there were not quite 10,000 of them, therefore right away additional stamps were published so that for each price there would be at least 5,000 stamps.

On December 27 these stamps were already sold in the post office of Vilnius, and on December 28 in Kaunas and in some other cities.

In a couple of days the stamps were sold out completely and there was a strong need again to go to Kukta with a request to publish a second edition of stamps. For that purpose there was used a typographical selection of the first edition. Only the numerals of the price were changed in that edition - they were printed much thicker.

The order read to publish the stamps of different prices: 10, 15, 20, 40 and 50 "Skatiku", 20,000 of each. But their circulation was different. The stamps of the second edition were first presented to the public on December 31, 1918.

In spite of very rush work and lack of control the printing was quite neat and orderly. Because of the printing and perforating mistakes it could be mentioned only (see the price list): 1) Horizontal couple of stamps, Nos. 1, 4, 6, perforated through the middle. Of the vertical perforation some lines are missing. 2) Stamps of the numbers 6, 7, 8 have double printing. Also there are some stamps with pushed away (moved) perforation, with some of the sheets of the stamps some perforation of corners and overturned printing on the other side.

The first very primitive and humble Lithuanian stamps reflected in all fullness how poor the country was, swept over and destroyed by the war and German occupation. The simplicity and primitiveness of the stamps created another problem - the forgery of them.

At first glance, it would seem that to produce such forged stamps is really not a complicated matter, yet in reality it was found that to notice the difference between the false stamps and the reals ones was very easy.

To find and choose such a worn out publisher's script and even such a paper of very poor quality as was used in 1918 seemed later on almost impossible - not to mention that every stamp from the sheet of 20, because of the worn out printing script, has identifying marks from which could even be judged their place in the sheet. The script of all the forged stamps does not have exceptionally worn out identifying marks, their paper is much whiter and it is immediately noticeable by comparing them with the original stamps. Mostly there are forgeries of the first type, perforated from all four sides.

Now the first Lithuanian stamps happen to be rarities; most rare are Nos. 1 - 4. In spite of this, that circulation of the stamps of numbers 3 - 4 is much bigger than circulation of numbers 1 - 2, they are found quite a bit less than the last ones. This can be explained by the fact that stamp collectors did not pay much attention to them in the beginning and they did not see any difference between them and Nos. 1 - 2. Therefor the largest part was used for ordinary correspondence and they did not find their way into the hands of stamp collectors. At that time the collecting of used stamps was much more popular. Even the unused stamps were specially stamped for collections. Because of that, unused first Lithuanian stamps can be found very seldom now.

Lithuanian

10

Skatiku

Post

The Price List of the Fir Lithuanian Stamps

Edition	Stamp No.	Stamp Price	Full Circulation	CIRCULATIONS Three different types, identified by the letter "u" Type I "ų" 7 stamps on the sheet	Type II "ų" 12 stamps on the sheet	Type III "ų" 1 stamp on the sheet
First December 27, 1918	1	10 sk.	5,000	1750	3000	250
	2	15 sk.	5,000	1750	3000	250
Second December 31, 1918	3	10 sk.	15,960	5586	9576	798
	4	15 sk.	16,080	5628	9648	804
	5	20 sk.	23,000	8050	13800	1150
	6	30 sk.	20,000	7000	12000	1000
	7	40 sk.	13,780	4823	8268	689
	8	50 sk.	17,700	6195	10620	885

This article was printed in the Russian language in the Moscow monthly magazine "Filatelija SSSR", No. 5, 1973.
J. Dainauskas translated it into the Lithuanian language.

NOTICE of our "Biuletenio" Editor.

Once in a while there appear articles in the Soviet papers about Lithuanian stamp collecting. The first two editions of Lithuania, called Vilnius, and their history are still not completely explored.

K. Milrydas did not mention that the Lithuanian "whities" stamps mostly were sold out to the German soldies of the occupational army. That is why they are not such a rarity in the West now as they are in Lithuania. Besides, collections of Lithuanian stamps, among other things, were destroyed by the Second World War and with that war were connected the Soviet Communist Russian and German occupations, destroying of people, deportations, etc. Only sometime in the future might there be an opportunity and then it will become clear what has been the fate of the Lithuanian stamp collections.