THE WHITE HOUSE

WASHINGTON

December 4, 1984

MEMORANDUM FOR: GEORGE SHULTZ, SECRETARY OF STATE
JAMES BAKER, CHIEF OF STAFF
ROBERT MCFARLANE, ASSISTANT TO THE PRESIDENT
FOR NATIONAL SECURITY AFFAIRS

FROM: FAITH WHITTLESEY, ASSISTANT TO THE PRESIDENT
FOR PUBLIC LIAISON FRW

SUBJECT: Baltic-Americans' Concern Regarding the Deportations by the USG to the Soviet Union of Baltic Nationals Accused of War Crimes

Background

The Baltic-American communities have contacted the White House over the past month to express grave concern regarding the possible forced deportation by the USG to the Soviet Union of Baltic nationals accused of committing war crimes in the Baltic States during World War II.

I have been informed that a report is currently being prepared at the Department of State which will make recommendations as to whether or not persons of Baltic origin should be deported to the Soviet Union by the USG. The purpose of this memorandum is to summarize the salient issues surrounding this case as expressed to my office by representatives of Baltic-American organizations.

Major Issues

The Baltic-American communities fully share our opposition to the harboring of war criminals in the U.S., and are sincere in their desire to see such people expelled from their communities and brought to justice. They are not opposed to the deportation of such individuals from the U.S. However, in light of the President's repeated and very strong statements reitterating our policy of "non-recognition," they are truly perplexed by what they see as an effort to shirk political responsibility for developing a solution to this problem which will both demonstrate our continued support of efforts to deport war criminals without violating the long-standing policy of "non-recognition."

The Baltic-American community's position is that the issue which the State Department must resolve is not simply whether or not a Baltic national is technically deportable to the Soviet Union, but whether or not such a deportation would violate our policy of

"non-recognition" as it has developed over the past forty years through Presidential statements and the perceptions of the Baltic-American community, Congress, the international community and the Soviet Union itself.

The Baltic-American communities are especially concerned about the Department's intent to define "non-recognition" on purely technical legal grounds. They argue that policy of non-recognition is, in fact, defined and affected by many factors, including:

1. Statements and acts of the Executive Branch of the USG
2. Domestic U.S public perception
3. Perception of the Congress
4. Statements and acts of the Soviet Government
5. Perception of other foreign governments and the international community
6. Legal considerations

Legal Considerations

The Department of State's General Counsel's (DOS GC) office has determined that the deportation of a Baltic national to the Baltic States would violate the policy of "non-recognition." Because the U.S. does not recognize the Soviet governments in the Baltic States, Baltic nationals must be deported to a third country.

However, in this case, according to the State Department staff, no country, save the U.S.S.R., is willing to accept the Baltic national. According to the guidelines set forth in Section 1253 (a) of Title 8 of the Immigration and Nationality Act, the U.S. must deport the individual to "any country which is willing to accept such alien into its territory." Thus, DOS GC argues that the U.S. could transfer a Baltic national to Soviet authorities not on the basis of Soviet claims of authority over that individual, but only because no other third country is willing to accept him.

Baltic Americans argue that such a determination would deny an obvious direct relationship between the government of the U.S.S.R. and the Soviet imposed governments in the Baltic States. They further argue, that it is ludicrous to deny that relationship as it is precisely because of that relationship that the U.S. does not recognize the governments in the Baltic States in the first place. To deny this relationship is to simply refuse to address the central issue.

Public Perceptions

While such a determination might make legal sense to DOS GC, the Baltic American communities argue that this formal legal distinction would not hold up against all of the other factors which determine the concept and policy of "non-recognition." In short,

they believe that, if the State Department relies solely on a legal argument (the Baltic-American groups would consider it a technicality) to define the U.S. policy of "non-recognition," then the Department is abdicating its executive authority, thereby reducing the policy of "non-recognition" to little more than words on paper.

International Perceptions

The Baltic-American community also believes that our policy of "non-recognition" is also dependent on perceptions held by the international community. There is strong belief that foreign governments would interpret the deportation of a Baltic national to the Soviet Union as the gutting of the U.S. policy of "non-recognition."

Soviet Perceptions

The Soviet government has claimed that the Baltic States voluntarily joined the Soviet Union and that it has legal jurisdiction over the citizens and affairs of the Baltic States. The Soviet government would not accept Baltic nationals under the assumption that it is a third country, but rather, that such nationals are its rightful citizens.

In fact, at a meeting called by the National Security Council on November 16 to discuss this matter, the representatives from the Department of Justice stated that the Soviet government has indicated that unless it receives custody of the Baltic national in the pending case, it may refuse to cooperate with the Justice Department in future cases. This could be an indication of Soviet interest in "breaking" or at least severely weakening our non-recognition policy.

Conclusion

In seeking a resolution of this problem, the Baltic-American community feels strongly that the Department of State must not allow the USG to designate the Soviet Union as the country of deportation, and should strive instead to find a non-Soviet dominated third country.

LITHUANIAN-AMERICAN COMMUNITY of the U.S.A., Inc.

NATIONAL EXECUTIVE COMMITTEE

PUBLIC AFFAIRS COUNCIL

Please reply to: The writer at:
708 Custis Rd.
Glenside, Pa.
19038
(215) 886-5649

November 28, 1984

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Faith Whittlesey
Assistant to the President
for Public Liaison
The White House
1600 Pennsylvania Ave. N.W.,
Washington D.C. 20500

Dear Ms. Whittlesey:

We urgently request an emergency meeting with President Reagan to discuss the possible imminent deportation of denaturalized American citizens of Baltic descent to the Soviet Union, and the far-reaching consequences of that action on the official U.S. policy of non-recognition of forcible incorporation of the Baltic States into the Soviet Union.

In the event that the President's immediate schedule will not permit our meeting with him, we would appreciate the opportunity to present our views concerning this matter to Mr. Edwin Meese, Councelor to the President.

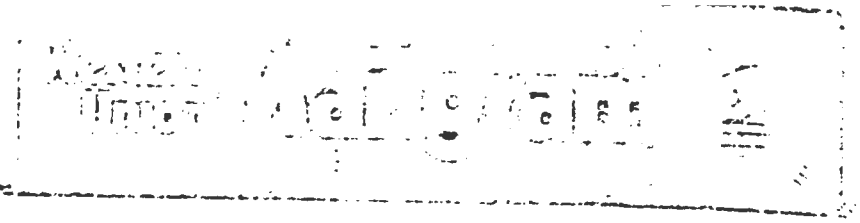
Sincerely yours,

Ausra M. Zerr

Ausra M. Zerr
Co-chairman
Public Affairs

included:
copy of telegram sent
to President Reagan and
to Secretary of State
George Shultz

MAILGRAM SERVICE CENTER
MIDDLETOWN, VA. 22645
20AM



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708 CUSTIS RD
GLE[illegible] PA 19038

THIS IS A CONFIRMATION COPY OF THE FOLLOWING MESSAGE:

2156865849 MGMB TDMT GLENSIDE PA 114 11-20 0407P EST
ZIP
MR LINAS KOJELIS
ASSOCIATE DIRECTOR
OFFICE OF PUBLIC LIAISON
WHITE HOUSE
WASHINGTON DC 20500
THIS IS COPY OF MESSAGE SENT TO PRESIDENT REAGAN THIS DATE.

MR PRESIDENT

IN BEHALF OF WORLD LITHUANIAN COMMUNITY AND LITHUANIAN AMERICAN COMMUNITY, WE RESPECTFULLY REQUEST AN EMERGENCY MEETING WITH YOU TO CLARIFY THE CHANGES IN U.S. POLICY OF NONRECOGNITION OF THE FORCIBLE INCORPORATION OF THE BALTIC STATES INTO THE SOVIET UNION. THE DEPARTMENT OF STATES MOST RECENT STATEMENTS AND EXPLANATIONS OF THEIR INTERPRETATION OF THIS POLICY HAVE CAUSED GREAT ALARM AND OUTRAGE IN OUR COMMUNITY AND SEEM TO CONTRADICT YOUR OWN OFTEN STATED POLICY.
LITHUANIAN PUBLIC AFFAIRS COUNCIL COCHAIRMAN MRS AUSRA M ZERR
708 CUSTIS RD
GLENSIDE PA 19038

16:07 EST

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MIDDLETOWN, VA. 22645
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GLENSIDE PA 19038

THIS IS A CONFIRMATION COPY OF THE FOLLOWING MESSAGE:

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ZIP
LINAS KOJELIS ASSOCIATE DIRECT
OFFICE OF PUBLIC LIAISON
WHITE HOUSE
WASHINGTON DC 20500
THIS IS A COPY OF A MAILGRAM SENT TO SECRETARY OF STATE GEORGE SHULTZ

THE INTENDED DEPORTATION OF KARL LINNAS REFLECTS AN OBVIOUS CHANGE IN THE NON-RECOGNITION POLICY OF THE FORCEABLE INCORPORATION OF THE BALTIC STATE INTO THE SOVIET UNION. THE LITHUANIAN AMERICAN COMMUNITY IS ALARMED AT THIS CHANGE AND EMPHATICALLY PROTESTS IT

LITHUANIAN AMERICAN COMMUNITY NATIONAL EXECUTIVE COMMITTEE PUBLIC AFFAIRS COUNCIL CO-CHAIRMAN MRS AUSRA M ZERR

11:57 EST

MGMCOMP

file

THE WHITE HOUSE

WASHINGTON

June 4, 1985

Dear Ausra Mrs. Zerr:

Pat Buchanan has asked me to reply to your letter of May 20 concerning U.S. Government efforts to uncover and prosecute war criminals. Mr. Buchanan has asked me and other members of his staff to review the complaints and comments we have received from ethnic and civic groups. You may be assured that we will give every appropriate consideration to your views as we conduct this review.

As regards to your recommendation for Congressional oversight hearings on the Justice Department's efforts in this area, I have taken the liberty of forwarding copies of your memorandum to the appropriate White House offices for their consideration.

Please feel free to contact me at (202)456-2741 should you have any further questions on this matter.

Sincerely,

Linas Kojelis
Associate Director
Office of Public Liaison

Mrs. Ausra M. Zerr
Co-chairman
Lithuanian-American Community of the U.S.A., Inc.
708 Custis Rd.
Glenside, PA 19038

bcc: John Roberts, OGC

LITHUANIAN-AMERICAN COMMUNITY of the U.S.A., Inc.

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Antanas Janusis
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Manager
16778 Rougeway Dr.
Livonia, MI 48154

May 20, 1985

Mr. Patrick J. Buchanan, Director
White House Communications
The White House
Washington, D.C. 20500

Dear Mr. Buchanan:

For the past several years we have attempted, on numerous occasions, to communicate our concerns directly with the Office of Special Investigations, however, its representatives have never seriously considered the issues which we addressed. We believe the time has come to request a Congressional investigation to probe:

whether the use of Rule 44 (a) of the Federal Rules of Civil Procedure and Rule 903 (3) and (4) of Rules of Federal Evidence in admitting Soviet-source documentary evidence into an American Court should be used:

whether the Justice Department exercises sufficient supervisory control over OSI and whether the staff of OSI has become so involved with these matters that they have lost their professional objectivity.

These are just several areas of concern to the Lithuanian-American Community regarding the Office of Special Investigations.

We respectfully request your assistance in bringing these issues to the public forum through Congressional oversight hearings.

Respectfully,

Ausra M. Zerr

AMZ/vc

Enclosures

cc: Mrs. Linda Chavez, Director
Office of Public Liason

Mr. Linus Kojelis, Associate Director
Office of Public Liason

LITHUANIAN-AMERICAN COMMUNITY of the U.S.A., Inc.
NATIONAL EXECUTIVE COMMITTEE
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May 1, 1985

TO: MEMBERS OF CONGRESS

RE: **URGENT REQUEST FOR CONGRESSIONAL OVERSIGHT HEARINGS INTO THE CONDUCT OF THE OFFICE OF SPECIAL INVESTIGATIONS**

The Lithuanian-American Community of the USA, Inc. ("LAC") is a not-for-profit corporation dedicated to the preservation of Lithuanian culture, and committed to the ideal of Lithuania's independence. During the past several years LAC has become increasingly distressed by the conduct of the Office of Special Investigations ("OSI") of the US Department of Justice.

OSI's mission is to identify, locate and prosecute so-called "Nazi War Criminals." We do not dispute the mandate given to OSI but we strongly believe that in the conduct of its investigations OSI has disregarded this country's strong commitment to the independence of Lithuania and the other Baltic republics. We believe that OSI has demonstrated insensitivity and indifference to the concerns of LAC and other Eastern European ethnic groups. We are hereby requesting that the Congress initiate oversight hearings into the conduct of OSI.

We believe that OSI has become a vehicle by which the Soviets are able to further their own national interests; among them being the increasing domination of the Baltic republics. OSI has refused to acknowledge these Soviet self-interests so as not to taint the courtroom evidence which the Soviets supply to them.

The attached paper describes:

- the circumstances surrounding OSI's agreement with Moscow;
- the serious infirmities of the documentary evidence as supplied by the Soviet government;
- the conduct of depositions held in the USSR and defense counsel's inability to cross examine witnesses.

OSI is either unaware of, or has chosen to ignore, warnings concerning involvement of various organs of the Soviet judiciary when handling political cases. Of special concern is OSI's continuing belief that the KGB is uninvolved with these matters. The paper presents substantial evidence that the KGB is more than involved with these cases — it helps orchestrate the proceedings.

This paper explains the legal theory of OSI's cases. These cases are not "war crimes" cases of the type held at Nuremberg. The overwhelming majority of these cases are concerned with people who occupied positions of minor importance during the Nazi occupation of their respective regions. These cases are concerned with whether the defendant concealed or misrepresented information on his visa and/or naturalization applications. This paper describes the chaotic conditions of the refugee camps following the Second World War, and helps explain the reason for these discrepancies — foremost of these being the language barrier.

This document demonstrates how the conduct of the Office of Special Investigations is contrary to our long-held policy of independence of the Baltic republics. Furthermore, this paper indicates how this conduct has manipulated our judicial system. American citizens are threatened with loss of their citizenship based on evidence which has been gathered in proceedings with no due process safeguards. Their precious citizenship may be lost for no reason other than their inability to pay the costs of effective legal representation — since the right to counsel has not been afforded in these matters. Because of certain laws, which we believe to be unconstitutional, these same persons may be subject to forcible repatriation to the USSR where they face hard labor or even execution.

The conduct of OSI has become of concern to a broad based coalition of Americans. The time is now for the Congress to probe the operations of this agency. We question whether various OSI staff members have lost their objectivity over time and presently conceive of their mission with such zeal that violations of Constitutional safeguards become acceptable. We believe that Congressional hearings should delve into the issue of whether OSI has inadvertently, or intentionally as a matter of policy, added to the sensationalism of these cases; thereby increasing the already heightened tension surrounding these matters. This is evident from OSI's references to these matters and defendants as "Nazi war crimes" and "Nazi war criminals." OSI staff members have been frequent public speakers and have popularized their operations in similarly emotional terms.

We would like to reiterate that we do not seek to deter OSI from its proper course. We do not seek clemency or other forms of mitigation which are not warranted by either the facts or the law. However, we do seek a full and frank Congressional hearing into the operation of OSI. We believe such a hearing is necessary to protect the Constitutional rights of the defendants, the integrity of the American judicial system and the long-held foreign policy of non-recognition of the forcible incorporation of the Baltic Republics into the Soviet Union. We believe that OSI has made an agreement with the Soviet Union with little or no concern for the manner in which such assistance is rendered, or the effects of such cooperation on the foreign policy of this country, or its effects on ethnic populations both in the Soviet Union and in this country. Moreover, since the Office of the Attorney General has exercised minimal supervisory control over OSI, we are left with no avenue of redress other than by this direct appeal to the Congress.

We are aware of the many demands on your time and attention. However, we strongly hope that you will take the time to read the enclosed document. We believe firmly that, after reading this document, you too will be deeply troubled by the operation of this agency. We urge you to demand that OSI explain its conduct. We believe that the only appropriate forum for this discussion is the Congress.

Respectfully Submitted,

Lithuanian-American
Community of the USA, Inc.

By: _____
Jonas Urbonas
Chairman
Public Affairs Council

LITHUANIAN-AMERICAN COMMUNITY of the U.S.A., Inc.
NATIONAL EXECUTIVE COMMITTEE
PUBLIC AFFAIRS COUNCIL

Please reply to: Mrs. Ausra Zerr
708 Custis Road
Glenside, PA 19038
(215) 886-5849

May 1, 1985

MEMORANDUM OF CONCERNS REGARDING THE CONDUCT OF THE OFFICE OF SPECIAL INVESTIGATIONS

This paper is presented by the Lithuanian - American Community of the USA, Inc. ("LAC"), in order to promote the goals and purposes of the organization. LAC was founded in 1951 and incorporated in Hartford, Connecticut on February 14, 1952. LAC now represents Lithuanian Americans through its 73 chapters in the United States. Any person of Lithuanian descent can qualify for membership in the organization.

During its existence, LAC has steadfastly pursued three major objectives:

- To promote active participation in American society;
- To foster and maintain Lithuanian culture and heritage;
- To aid in re-establishment of an independent Lithuania.

Consistent with these goals and purposes, LAC has become aware of, and increasingly concerned about, the activities of the Office of Special Investigations ("OSI"). If these practices were known to the American people, we are sure that they would share our concern. Already a broad based coalition of informed Americans has expressed serious concern about the methods used by OSI in carrying out its responsibilities. Of concern to us are certain practices used by OSI in the prosecution of so-called "Nazi war criminals." As you will see from later portions of this paper, this reference is inappropriate when you consider the legal issues present in these cases.

Our concerns are not related directly to the individuals under investigation. Our concerns deal with the conduct of OSI in the course of investigating these cases and the ramifications of such conduct. We are concerned that OSI's conduct is contrary to this country's long-held commitment to the independence of Lithuania and the other Baltic republics. Because of the zeal with which OSI has prosecuted these cases, that agency has lost sight of various issues. When we have brought our concerns to their attention, OSI has demonstrated indifference and insensitivity. We must, therefore, turn to the Congress in order to express, and seek redress, for these concerns. Before we direct our attention to these issues, some background information will be helpful to your understanding.

Background

The Office of Special Investigation ("OSI") was created in September 1979, as a part of the Criminal Division of the Department of Justice. OSI was created in order to more vigorously locate persons living in the United States who may have been involved with, or assisted in, the persecution of Jews and other minorities during World War II. Typically such persons entered the U.S. as a displaced person under the Displaced Persons Act of 1948.

The purpose of the Displaced Persons Act ("Act") was to waive various country quotas in order to resettle these people in an expeditious manner. Many of these people were of East European descent, who fled westward from their native countries in order to escape the approaching armies of the Soviet Union. Among these displaced persons were many from the Baltic countries of Lithuania, Latvia and Estonia, as well as from the Ukraine and elsewhere. These people, many of whom were staunch nationalists, were convinced that they would be persecuted by the on-rushing Soviets, who in fact had occupied and forcibly incorporated these independent Baltic states into the Union of Soviet Socialist Republics (USSR). It is instructive to note that the official position of the

United States government continues to refuse to recognize Soviet annexation of these countries. To this day, the United States confers diplomatic status on the three Baltic Republics by recognition of the legates and consular representatives of those states.

It is also imporant to note that even today the Soviets are concerned that nationalistic forces both within and outside of the Baltic republics refuse to submit to their control. In fact, the activities of our organization, in support of Lithuanian independence, is exactly the sort of activity of concern to Soviet authorities. It is our firm belief that the Soviets are manipulating OSI in order to discredit our organization, and other similar organizations, and thereby attempt to strengthen their control over the Baltic Republics.

It is our further conviction that OSI is permitting itself to be manipulated by the Soviets in exchange for evidence, both documentary and testimonial, without which OSI would be unable to function. OSI has consistently insulated itself from any hint of Soviet intrigue, and today continues to believe in the honest and sincere motives of the Soviet Union in cooperating with OSI. OSI continues to believe that it is dealing wholly with the office of the Chief Procurator of the USSR and that the KGB has no interest in these matters. We will demonstrate that OSI's confidence is so misguided as to lead reasonable men to believe that OSI has fostered the appearance of Soviet innocence in exchange for evidence from the Soviet Union ("Soviet-source evidence"). This liaison between OSI and the Soviets has become so complete as to lead a Federal District Court judge in New Jersey to refer to it as a partnership*.

Before we leave these introductory comments, it is imperative to state that the LAC is not disputing the existence or mandate of OSI. We would like to point out that many members of LAC had family members or close relatives who suffered or

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*Statement of Federal District Court Judge Debevoise in the case of US v. Kungys 571 F. Supp. 1104 at 1128 (USDCNJ 1983).

were executed by the Nazi regime in their respective localities during Nazi occupation from June 1941 to September 1944. We do, however, believe that OSI has conducted itself in a manner which is contrary to the official American policy of non-recognition of the Baltic Republics, totally disregards the effect of its activities on organizations such as LAC, and disregards the Constitutional rights of American citizens.

We believe that you will find the substance of this paper to be of grave concern to yourself and all Americans. It is a true story of an agency of the United States government which lacks an appropriate level of supervision. It is an agency dealing in international politics without adequate coordination with the State Department. It is an agency so committed to its mission that it utilizes discovery tactics that offend our concept of due process. It is an agency which, in order to carry out its mandate had to strike a bargain with the USSR, but in so doing failed or refused to consider issues of concern to our judicial system.

The Moscow Agreement

Shortly after its formation in 1979, the two top officials of OSI, Walter Rockler and Alan A. Ryan, Jr., recognized the need for Soviet cooperation in the identification and prosecution of suspected Nazi collaborators of East European descent. Soviet government assistance was required since the overwhelming majority of witnesses and documentary evidence were within territories under Soviet domination. Therefore, in January 1980, Rockler and Ryan travelled to Moscow to meet with high level Soviet officials including Chief Procurator, General Rudenko*.

*The first director of OSI was Walter Rockler. Mr. Ryan was appointed as Director of OSI in 1980 after the trip to Moscow. Ryan had previously served as an assistant to the United States Solicitor, and brought all his knowledge of trial tactics with him to OSI. Mr. Ryan resigned as OSI's Director in 1983 and was succeeded by Neal Sher, Esquire.

The details of this meeting in Moscow have been detailed by Ryan in his recently released book entitled Quiet Neighbors (Harcourt, Brace, Jovanovich, 1984). What one finds most interesting in his account is Ryan's keen awareness of surrounding events. Rockler and he were the first high level American officials to visit Moscow following President Carter's denouncing of the Soviet invasion of Afghanistan. The world spotlight was focused on the Soviet treatment of Andrei Sakharov and his banishment to the closed city of Gorky. President Carter's emphasis on human rights had re-focused attention on the issues of Soviet Jewry and other nationalities living within the Soviet borders. Given this particular setting in time, Ryan was seriously concerned that the Soviets would take the opportunity of this visit to embarrass the United States. However, when General Rudenko agreed that the Soviet Union would cooperate fully with OSI, Ryan weakly dismisses his concerns by reference to some ill-defined resurrection of wartime comradery. As Ryan put it, instead of fighting the Nazis in the battlefield, the U.S. and Soviet Union would once again be allies - this time in bringing alleged Nazi collaborators to justice.

One is actually shocked at the naivete expressed by Ryan in his book. He states, "It was now official that Walter (Rockler) and I were no longer representing the Soviet Union's 1980 adversary. We were representing Russia's wartime ally, the common enemy of the Hitlerites. We were over the hump." Quiet Neighbors, pp. 78-79. Ryan expressed no skepticism; no question of ulterior motives; no doubts whatsoever. It is beyond our ability to imagine that the Soviets would cooperate with their 1980 adversary based on some nostalgic sentiment concerning the Great Patriotic War. Remember that shortly thereafter the United States announced its boycott of the 1980 Summer Olympic Games which were held in Moscow.

This reaction is even more incredible and difficult to accept when you realize that the Soviets had, twenty-five (25) years before, granted blanket amnesty to

Soviet citizens who were Nazi war criminals. Edict on Amnesty for Soviet citizens who collaborated with the Occupying Powers During the Great Patriotic War 1941-1945, Vedmosti Verkhovnogo Sveta SSR [official law gazzete of the USSR] No. 17 at 345 (1955). One must also consider Ryan's comments in light of the strongly held belief that various ranking East German officials were active participants in the Nazi persecution of the Jews and other groups. We must also remember that, today, world attention continues to be focused on the Soviets' harsh treatment of the Jewish population in the USSR. In light of this evidence, how can anyone seriously believe that the Soviet Union agreed to cooperate with OSI out of altruism, or sentimentalism for a previous wartime alliance. One is left with the feeling that such comments are a weak excuse offered only to mask OSI's own concerns about its agreement with the Soviet Union and the credibility and/or completeness of evidence supplied by Soviet officials.

This refusal to consider the reasons behind the Soviet's eager cooperation has been a consistent element of OSI doctrine. Quite frankly, it has to be. Recognition of Soviet interests in cooperating with the United States would so taint Soviet-source evidence as to render such evidence practically valueless in an American court. Therefore, OSI has chosen to shield itself from information which would lead a person of reasonable intelligence to refuse to give such evidence any weight. Let us consider the self-interests of the Soviet Union in order to assess the conduct of OSI and its uncritical acceptance of this evidence.

Soviet Interests

The Soviet Union has been characterized, and is aware of and concerned about its characterization, as the most repressive government of a major world power for the past several decades. This repression is even more effective because of its refusal to let foreign news information into the country, and restrictions placed on foreign correspondents stationed inside the USSR. This repression, however, is most severe in those

regions where the nationalism of the indigenous population is greatest, including the Soviet-occupied Baltic region. The Soviet Union, therefore, would welcome the opportunity to cast the United States in a light which could be considered damning. In this regard, there could be nothing more damning than portraying the United States as sheltering Nazi war criminals*. This need to discredit the United States was especially great at the time of the meeting in Moscow in order to defuse President Carter's strong positions on human rights.

Another substantial self-interest of the Soviet Union is to discredit the work of Baltic ethnic groups in this country and elsewhere; thereby reducing the credibility of these groups in their respective coutries, but more importantly, destroying their credibility among the populations of the Baltic Republics. Although Ryan scoffs at the activities of the Baltic ethnic groups in his book (see Quiet Neighbors, footnote, p. 68), the Soviet Union considers the work of these groups as a threat to the stability of these occupied territories. This concern is well documented in a deposition of a former agent of the Latvian KGB who has since defected to this country and is working with the CIA on matters of national security. This former KGB agent, Imants Lesinskis, was deposed in the government's case against Liudas Kairys in the Federal District Court in Chicago (Civil Action No. 80 C4302). In the course of his deposition, Mr. Lesinskis related that he was involved in work against Latvian emigre groups abroad. An excerpt from that deposition is instructive:

"Q. What did he (KGB Major Burgs) tell you your job would be?

A. To engage in propaganda work against Latvian emigre communities in the free world.

. . . .

Q. What kind of propaganda work were you told to do against these emigres?

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*See United States v. Kowalchuk 571 F. Supp 72 at 78 (USDC ED PA 1983) where Federal District Court Judge Fullam makes a similar observation.

A. To describe them as war criminals or having membership in organizations led by war criminals, . . .

. . . .

Q. Were you told why you should accuse these people of being Nazi war criminals?

A. It was done in order to discredit them in the eyes of the Latvian community abroad, to discredit them before the Latvian people in Latvia, and as a third objective, I was to discredit them in the eyes of public opinion of Western coutries. I mean, native opinion.

Q. What was the objective for discrediting these emigrees in the eyes of Latvians living in Latvia?

A. Latvian nationalism is still alive and the activities of Latvian political emigres abroad is considered a danger to the Soviet occupation regime in Latvia.
. . ."

Mr. Lesinskis also related that similar elements were also at work within the Lithuanian and Estonian KGB in order to carry out similar activities for similar purposes.

Another element of self-interest at work underneath this Soviet cooperation was the desire to enhance the reputation of the Soviet justice system. That system has never been considered as an independent branch of government as in most Western democracies. Rather it operates as an alternative avenue of carrying out government policy. In his deposition Mr. Lesinskis indicates his awareness of political trials, i.e., trials where the results are more or less dictated by the KGB or other arms of Soviet government. Later on, Lesinskis made it clear that, by the act of working with the Soviet Procurator's office, the U.S. was validating the Soviet system of justice.

In this regard, it is important to note that the KGB takes an active role in the handling of special cases within its borders. This involvement is chronicled in an article which appeared in the Manitoba Law Review entitled "The Role of Defense Counsel in Political Trials in the USSR" 7 Manitoba Law Journal 307 (1976-77). This article was written by Yuri Luryi who is a Professional Associate of the Manitoba Legal Research Institute and Lecturer at Osgood Hall Law School, York University. Prior to his teaching position Mr. Luryi had practiced law in the Soviet Union and was engaged as defense counsel in various Soviet political trials. A revelation of particularly shocking dimensions to our free society is the fact that a special license is required for a lawyer

to act as defense counsel in political trials. Mr. Luryi notes that the KGB is intimately involved in this licensing process.

It is not difficult to believe that the KGB is controlling the flow of information from the Soviet Union to the United States. In light of the deposition testimony of Mr. Lesinskis quoted above, it is quite probable that the KGB is orchestrating the entire Soviet relationship with OSI. In fact, the Soviet publication, Izvestia, in February 1983, chronicled the relationship between the KGB and OSI. Yet in spite of this and other evidence, OSI maintains, without qualification or suspicion, that the KGB is uninvolved with the conduct of various OSI activities within Soviet controlled territories. We are deeply troubled by OSI's stubborn adherence to this position. OSI's response to any of our contentions has been to demand strict proof of KGB's invisible hand in these matters. Since KGB's covert activities are highly sophisticated, no "hard" evidence is available. However, if we heed the words of the former KGB agent, Lesinskis, a powerful suspicion begins to grow and is supported by surrounding and supporting evidence. For OSI to ignore such evidence leads one to question whether OSI has any cause to maintain this facade. We believe that OSI utilizes this facade in order to insulate Soviet-source evidence from skepticism.

While OSI has chosen to ignore the Soviet Union's self-interests in providing us with its cooperation, it cannot ignore the manner in which Soviet-source evidence has been procured. To understand the issues concerning Soviet-source evidence, it is best to divide it into two categories - documentary and testimonial (deposition) evidence.

Soviet-source Documentary Evidence

Soviet documentary evidence is typically obtained from the various archives of the republics under Soviet control. It is instructive to note the conditions under which this evidence is procured. The documents are selected by an archivist in the employ of the Soviet or Soviet-dominated government. Neither OSI nor counsel for the

defense is advised of the instructions which are given to the archivist. Even more subject to criticism, is the fact that neither OSI nor defense counsel is permitted access to these archives. This means that the Soviets could provide OSI, and through OSI to our judicial system, with a document which is one in a series, or even an excerpt from a more complete document. The fact that the Soviets will not allow any independent verification of their archival search means that OSI must simply accept what they get as first being authentic, and secondly as being representative of the truth of the matter. Without independent verification, and because of Soviet self-interest in these matters, OSI's acceptance of these materials is unwarranted.

In this context it is interesting to note how OSI has consistently turned this issue around. In various correspondence and during the questioning of witnesses on deposition, OSI has consistently asked whether there is any proof that the USSR has ever submitted forged documents to OSI. Of course, there can be no such evidence. First, the Soviet Union does not permit independent verification of the contents of their archives. Second, the Soviet Union provides photocopies of archival documents, thereby destroying the ability of OSI or defense counsel to perform various chemical tests routinely performed on documentary evidence for purposes of authentication. The photocopying of documents also has the effect of blurring various markings on the documents, making it difficult to determine when or by whom such markings were made. By taking the offensive in this fashion, OSI has consistently let the real question go begging. That is, does OSI know, with any level of assurance, that the documents as submitted by the Soviets are copies of authentic documents, unaltered from the date of their original creation.

Again the answer to this question must be in the negative. How can they know; OSI performs no independent verification of authenticity*.

This lack of authentication is most obvious in the way OSI uses various procedural rules in entering this evidence into court. The question arises as to how these documents are admitted into evidence in the first instance. The answer is that these documents are admitted into evidence under Rule 44(a)(2) of the Federal Rules of Civil Procedure and Rules 903(3) and (4) of the Federal Rules of Evidence. These rules indicate that foreign documents under the seal of appropriate foreign government officials will be admitted as self-authenticating. This means that the OSI need not be put to the test of laying a proper foundation to establish a chain of custody of the document, or setting forth any proof concerning the integrity of the foreign document. These rules were established for purposes of making trials more expeditious, considering the presumption of truthfulness which generally attaches to documents under seal of a foreign government authority. However, given the inability of OSI and defense counsel to independently verify the archival search, and given the substantial questions regarding the self-interests of the Soviet Union as related above, it seems highly inappropriate to permit these documents to be admitted into evidence under the self-authenticating rules.

We also wish to point out that our own State Department has published a document, Special Report No. 88 entitled "Soviet Active Measures, Forgery, Disinformation, Political Operations," October 1981. In that Special Report the State Department has documented various instances in which various elements of the Soviet government have promulgated information which was known to be untrue at time of its dissemina-

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*For a fairly complete picture of the production and use of Soviet documentary evidence, it would be advisable to read the Deposition of Mr. Allan A. Ryan, Monday, December 14, 1981 in the case of United States of America v. Palciauskas (U.S. District Court, Middle District of Florida, Case No. 81-547 C12 T-GC). In that deposition Ryan details how Soviet-source documentary evidence is received from the USSR, the lack of independent verification for authenticity, and the use of various trial tactics including utilization of the rules concerning self-authenticating documents.

tion. Therefore, it seems highly incredulous for OSI to accept documents from the Soviet Union under circumstances discussed in this paper without critical analysis. Similarly, it seems more inappropriate for OSI to offer these documents under the self-authenticating rules of evidence. To permit this documentary evidence to be admitted under the self-authenticating rules, is to permit our judicial system to be manipulated in a highly improper fashion. We must recognize that the evidence being offered is not imbued with the characteristics generally associated with documents of other foreign governments. Instead, this evidence comes heavily laden with self-interest and subject to serious doubt.

Therefore until OSI and defense counsel are (1) permitted free access to relevant archives, and (2) are permitted to subject the original documents to normal chemical and other standard analyses, this documentary evidence should not be admissible in American courts under rules applicable to self-authenticating evidence. We wish to point out that we are not attempting to exclude this evidence per se. We simply believe that, for the reasons stated herein, such evidence should not be admitted under the self-authenticating rules. We would also point out that these denaturalization cases are heard before a judge without a jury. It is therefore difficult to determine the extent to which the judge has granted such documents greater deference due to the very fact that they were admitted under the self-authenticating rules. At the very least, OSI should be required to make a presentation to the judge with respect to the circumstances surrounding the production of these documents. Such a presentation should include the fact that neither OSI nor defense counsel were permitted the opportunity to independently search the archives, and indicate whether or not the originals of the documents were ever provided for analysis.

Furthermore, because of the serious concerns surrounding this documentary evidence, it seems highly inappropriate for OSI to issue an affidavit of good cause under Section 340 of the Immigration and Nationality Act to denaturalize an American citizen based solely on Soviet documentary evidence. It is fairly obvious that the initiation of

this kind of action can be damning to the individual, regardless of its outcome. Therefore, we believe that OSI should exercise utmost discretion in its use of Soviet-source documentary evidence as the sole basis upon which it institutes a denaturalization action. We believe, at the least, that OSI should be required to corroborate such Soviet-source evidence with evidence obtained elsewhere. We believe that to permit OSI to do otherwise runs contrary to fundamental principles of fairness underlying our judicial system.

Soviet Testimonial Evidence

The discussion so far has focused on the Soviets' self-interests in cooperating with OSI, and on the unreliability of Soviet-source documentary evidence. We now turn to the practice of taking depositions within Soviet occupied territories of Lithuania, Latvia and Estonia.

The first issue of concern to LAC is the fact that these depositions take place within the territory of the respective Baltic republics under the control and supervision of officials of the Soviet Union. While OSI has consistently refused to acknowledge the consequence of such actions, OSI's participation in these depositions, in and of itself, lends official recognition to the Soviets' control over the Baltic republics. While OSI may not consider this to be a real concern, such official conduct, tantamount to recognition, is one of the motives behind the Soviet Union's cooperation with OSI. The conduct of this agency effectively negates our government's strongly worded expressions of respect for the Baltic republics and its people; the most recent such proclamation of President Reagan being on February 16 of this year, proclaiming Lithuanian Independence Day, 1985.

It is interesting to note that OSI has to resort to the use of depositions since the witnesses are not free to travel to the U.S. to appear in American courts. It is very clear why the Soviets require this procedure. They want to control the testimony of

these witnesses. This control may be exercised in ways that may be more or less apparent, and may or may not be susceptible to detection on videotape. OSI has accepted this condition and has videotaped these sessions in order to assist the court in appreciating the circumstances surrounding the taking of these depositions.

Soviet control of these depositions can be accomplished in various ways. Government promises of various consumer luxuries in short supply in the USSR is a common favor; typical among such promises would be the promise of a more spacious apartment. Control is also exercised by the implicit threat of banishment for failing to follow the government's line. In this regard, it should be noted that a variety of Soviet witnesses were themselves convicted of war crimes following World War II, but before the granting of amnesty, and may have served prison sentences on account of that activity. Of course such persons would naturally be concerned with further imprisonment and could therefore be subjected to fairly subtle forms of intimidation. Other witnesses had in the past given statements (protocols, as they are known in the USSR) concerning the subject matter of their deposition, but under conditions which provided no procedural safeguards of the voluntariness or truthfulness of their statements. In these cases, it is reasonable to suspect that the witnesses' subsequent testimony on deposition would parrot their previous statements. To do otherwise would embarrass the Soviet government and quite probably expose the witness to some form of retribution.

Another form of official intimidation that may not even have been suspected by OSI was the person of the Procurator himself. This is especially true in the case of the Chief Deputy Procurator for Lithuania, Jurgis Bakucionis. Bakucionis is known and feared by Lithuanians to such an extent that his mere presence at a deposition would constitute a form of intimidation. The intimidation occasioned by the presence of officials from the Soviet Procurator's Office is documented in the underground publication, Chronicle of the Catholic Church in Lithuania. It is interesting to note that President Reagan, in his recent proclamation of Lithuanian Independence Day 1985, refer-

ences the Chronicle, which has also documented the connection between the KGB and the Soviet Procurator's office. These latter allegations were further buttressed by the New York Times Magazine cover story of March 18, 1984 which charged that the Soviet justice system is run by KGB controlled procurators. In this regard heed should be given to the deposition testimony of Lesinskis, above, and also to the sworn testimony of Frederick Nezansky, a Soviet emigre, who worked as a Soviet Procurator for over twenty-five years. When asked under oath concerning Soviet trials held in absentia concerning suspected Nazi collaborators, Nezansky responded:

A. ". . . The cases of similar political character were investigated for a long time by the KGB, the Committee for State Security, by its investigative departments. In the last couple of years the KGB only prepares the cases and they are prosecuted by the procurator's office. . ."
Testimony of Frederick Nezansky in the matter of Boleslavs Maikovskis, before Immigration Judge Francis J. Lyons, sitting in New York City, September 22, 1981.

In the face of all this, OSI has consistently held on to the assertion that this testimonial evidence was not "rigged" by the KGB or Soviet Procurator Office. Of course OSI would have to hold this position, and hold it firmly. Otherwise, OSI would in effect be discrediting the credibility of its own witnesses, as supplied to it by the Soviets. The tenacity with which OSI has held this position is easily seen in Ryan's book, when he states concerning these Soviet depositions: ". . . and most importantly, the (US) judges who had seen these witnesses testify on videotape had been pursuaded, without exception, that their testimony, on the whole, was reliable." Quiet Neighbors, p. 91 (emphasis added). This absolute statement, made in a book published in 1984, runs directly contrary to a scathing statement of Federal District Court Judge Debevoise in the case of United States of America v. Kungys decided in September 1983. In that case Judge Debevoise makes the following observation concerning the conduct of Soviet depositions:

> ". . . (ii) The Soviet legal system on occasion distorts or fabricates evidence in cases such as this involving an important state interest; (iii) These depositions were conducted in a manner which made it impossible to determine if the testimony had been influenced improperly by Soviet authorities in that a Soviet procurator presided over the deposi-

> tions, a Soviet employee served as translator, evidencing actual bias in the manner of translation, and the procurator limited cross-examination into the witnesses' prior statements and dealings with Soviet authorities; (iv) The content of the deposition testimony suggests that the Soviet interrogators distorted the witnesses' testimony when they prepared the 1977 protocols; and (v) The United States government failed to obtain and the Soviet government refused or failed to turn over earlier transcripts and protocols of the witnesses which most likely would have disclosed whether the testimony in this case was the subject of improper conduct." US v. Kungys 571 F. Supp 1104 (US DC NJ 1983) at 1132 - 1133.

It is very clear from this statement of Judge Debevoise that he was not pursuaded, as Mr. Ryan claimed, that the testimony as a whole was reliable. Neither was Judge Fullam pursuaded of the reliability of Soviet deposition testimony. In the case of United States v. Kowalchuk, 571 F. Supp 72 (US DC ED PA 1983), Fullam issued the following indictment of such testimony:

> "The testimony of Soviet witnesses must be viewed with even greater skepticism. While I do not believe this testimony can be simply dismissed as fabrication instigated by a hostile government, and while there was nothing in the demeanor of the witnesses (so far as this can be assessed by videotape through an interpreter), or in the conduct of the depositions, to suggest that this evidence is unworthy of belief, the fact remains that these witnesses were all selected and made available by the Soviet government and were under its control; they could scarcely be expected to testify except in support of the charges originally aired by the Soviet government for its own reasons." Kowalchuk at 79-80.

We also dispute another piece of OSI dogma concerning this deposition testimony, that defense counsel is given the right, and adequate opportunity to cross-examine Soviet witnesses. In fact, Ryan claims that such opportunities were not only provided but safeguarded by OSI:

> ". . . Through cross-examination, through the power to call his own witnesses, through the power to examine and attack the government's evidence, whether documentary or spoken, the rights of the defendant were protected. Our obligation as prosecutors was to ensure that those rights were exercised with no interference, and they were." Quiet Neighbors, p. 91.

These words express the nobility of the American judicial system. However, we respectfully disagree with Mr. Ryan; we do not believe these rights were protected. The defendant does not have the right to call his own Soviet witnesses, cannot travel

freely within the relevant geographic areas, and cannot interview Soviet citizens concerning relevant facts. This was made clear by Judge Fullam in Kowalchuk:

> "Neither the government nor the defendant was permitted to interview other persons in Soviet-controlled territory having knowledge of the facts, or even to visit Lubomyl, where a great many persons still familiar with the events still reside. The notion that only selected witnesses favorable to the government have been permitted to testify (and with the opportunity for informed and meaningful cross-examination severely restricted) is not easily squared with accepted concepts of due process of law. There is also the problem of the delay in instituting the present proceedings . . ." Kowalchuk at 80.

The defendant's right to examine and attack the government's evidence was similary restricted. The parenthetical statement directly above indicates that cross-examination was severly restricted. The limitations imposed by the Soviet procurators were similarly recognized by Judge Debevoise in Kungys:

> Cross-examination of one of the government's two most important witnesses, Juozas Kriunas, was limited by the procurator. . . Here cross-examination on that subject was limited, if not foreclosed." Kungys at 1128-1129.

Based on these statements, not on statements of an "overzealous emigre group," but of two Federal District Court judges, it is difficult for us to understand the statements in Mr. Ryan's book, and impossible to agree with them. In our opinion, OSI has failed to provide the safeguards necessary to protect the defendant's due process rights at these Soviet-controlled depositions.

Other Considerations

Budgetary

The LAC wishes to point out that, in its dealings with OSI on a variety of issues, OSI has consistently been unresponsive to requests. Alternatively OSI has sought to appease us not with answers but with standardized letters. We believe that OSI has used this tactic as a way of depleting our financial capacity. In this regard, we believe that OSI has used its substantial budget to overcome our questions, not by any compelling reasoning, but according to who had the greater financial wherewithal.

An excerpt from the opinion of Federal District Court Judge Roettger concerning this issue is instructive:

> "The court observed at the trial and iterates it here: never in six years on the bench has the court seen the Government indulge in such expenses as daily copy of reporter's transcript of testimony or having four lawyers at the Government's counsel table. Such expenditures of the taxpayers' treasure and talent has not occurred in this court's previous cases such as the prosecution of an alleged Mafia don, a continuing criminal enterprise case, the only dangerous special offender indictment in this district for the reputed salaried slayer for a narcotics importation gang which was responsible for at least 26 murders in the South Florida area according to the testimony in the District Court in Miami, as well as many other serious prosecutions.
>
> Clearly the expenditures of the resources of the Executive Branch is within the discretion of that branch of the Government. However, the court must venture that in view of the similarity in the burden of proof between criminal cases and denaturalization cases, and in view of what is at stake for the naturalized American citizen, the defendant in the denaturalization case ought to have the same resources that are provided in a criminal case under the Criminal Justice Act; in short the naturalized citizen - provided the defendant's financial condition warrants it - should receive the benefit of court-appointed counsel and other experts at the Government's expense." U.S. v. Fedorenko 455 F. Supp 893 (USDCSD of FL) at 899 (1978)

We believe such tactics to be improper and highly objectionable.

Right To Counsel

This particular OSI strategy (e.g., to outspend the defense) is particularly troublesome when you consider that the defendant in a denaturalization case does not enjoy a constitutional right to counsel. This results from prior judicial decisions that denaturalization cases are civil proceedings and not criminal in nature. (However, it is interesting to note that OSI is part of the Criminal Division of the Department of Justice.) For many reasons, we believe that a citizen of this country who is faced with denaturalization should be afforded this fundamental protection. It is incongruous to provide counsel to a defendant facing punishment for a petty infraction, yet deny such protection where the defendant's most valuable right, United States citizenship, is at stake. This is especially true in these cases where, upon the filing of nothing more than an affidavit of good cause, a U.S. citizen is immediately and permanently branded as a

criminal, regardless of the outcome of the case. It is hard to conceive of more emotionally charged cases, where a fundamental constitutional right is at stake. Therefore, it is our belief that the right to counsel needs to be extended to these cases. We firmly believe this to be an emergency situation requiring immediate Congressional action. For a scholarly review of the legal issues regarding the issue of right to counsel in this context, we urge your reading of an article in the Maryland Law Review, "The Denaturalization of Nazi War Criminals: Is There Sufficient Justice For Those Who Would Not Dispense Justice." 40 Maryland Law Review 39 (1981).

Legal Theory of OSI Prosecutions

It is also interesting to note that the OSI denaturalization cases are not "war crimes trials." Although the sensational media coverage would lead the average American to view these cases as such, these matters are actually concerned with much less. The determinative question in these cases is not whether the defendant is a war criminal, but whether the defendant misrepresented or concealed a "material fact" when making his application for a visa to the United States and/or later when applying for citizenship. In fact, in various decided cases, the government failed to establish facts that the defendant had committed war crimes. See Fedorenko v. U.S. 449 US 490, 101 S. Ct. 737, 66L. Ed. 2d 686 (1981); and Kungys and Kowalchuk, supra. The only thing that the government proved in these cases was that the defendant had made a mis-statement on his application for a visa to this country. The fate of the defendant rested solely on the question as to whether or not such mis-statement was material. In Fedorenko, the high court determined that the defendant's mis-statements were material and would have made him ineligible for a visa under the Displaced Persons Act of 1948 ("DPA") under which Fedorenko's visa was issued.

It is interesting to note that this ineligibility was determined only by reference to the manner in which the Act was administered by Vice Consuls of the U.S. State Department who were stationed at European refugee camps. From court opinions refer-

encing the conduct of these officials, it is clear that these Vice Consuls would refuse a visa to any person who was associated in any way with the various local regimes of the Nazi government. The text of the court opinions indicate that it did not matter what the extent of such participation might be (see Kowalchuk where government established only that defendant was a clerk in a food distribution center); or whether such participation was voluntary or involuntary (See Fedorenko in which court acknowledged that Vice Consuls did not involve themselves as to whether participation was voluntary or not. Fedorenko was a German prisoner-of-war who, while a prisoner, worked as a concentration camp guard).

A fundamental question arises as to whether these Vice Consuls were administering the DPA in accordance with the generally accepted requirements of American law. A good example of this issue arose in Fedorenko. In that case, the Supreme Court never questioned whether the actions of these Vice Consuls were proper under our system of laws. The Court's only inquiry was into the accepted practices of these Vice Consuls. The Court did not analyze whether these actions were adopted for purposes of administrative ease, or whether in fact these officials were applying the DPA consistent with American justice. In Fedorenko, the Vice Consul testified that if a person served as a prison guard, that person was automatically ineligible for a visa to the United States, whether or not such service was involuntary. He provided some testimony that it was believed by the Vice Consuls that all prison guards served voluntarily. However, the reason or foundation for this belief was not disclosed in the court's opinion. It is highly conceivable, if not probable, that the Vice Consuls adopted certain guidelines among themselves to help them in processing large volumes of applications. However, the question arises as to whether these guidelines were legally appropriate when adopted. It is quite likely that some of these administrative "measuring sticks" were not appropriate under our laws. This is no idle exercise in history. Courts are today stripping American citizens of their citizenship, (i.e., their right to belong), not on evidence that they were

war criminals but on evidence that they misrepresented certain facts on an application which, if known, would have been cause for refusal of a visa. These misrepresentations may have been material, however, only under a misguided application of the DPA. Therefore, it still remains necessary to determine whether the administration of the DPA by these Vice Consuls was in conformity with American justice.

The next issue which arises is whether these mis-statements should be characterized as violations of the DPA or otherwise considered as material misrepresentations. In this regard, the activities of these refugee camps can be aptly described as "organized chaos." It is also important to bear in mind the problems resulting from difference in language. This language barrier can easily become significant, if not determinative. For example, in the Kowalchuk case, Judge Fullam noted testimony of the defendant in which the defendant indicated that he had told an official of the refugee camp his full story, but was guided by the official as to how to complete the personal history form. Judge Fullam also noted that Kowalchuk subsequently completed other similar forms in substantially similar ways, probably by copying from one form to another. Judge Fullam, however, decided that the conduct of such camp official could not excuse Kowalchuk's conduct in completing the necessary visa application and supporting documentation. It seems a terribly harsh result to denaturalize an American citizen because that person, as a refugee, followed the advice of a person in a position of authority.

The point to be made here is that there needs to be more analysis on the day-to-day operation of these refugee camps in order to evaluate more effectively the testimony presented at these trials. This analysis should focus on how these camps were operated, and how the officials of the DPA and State Department interacted with each other, and how each of these agencies interacted with the refugees. Did any of these officials know the true circumstances of these refugees and coach them in the manner of answering these questions. It is not unlikely that such activity took place. In fact, Ryan in his work Quiet Neighbors indicates that there was great pressure on various govern-

ment officials to process certain types of refugees. As Ryan relates, preferences were given to Volkdeutscher (Germans living in areas outside Germany, typically in Eastern Europe) and to farmers. Ryan notes with some amusement that many refugees were admitted as "farmers" but in fact had been city dwellers and settled in urban areas upon arrival in the United States. See Quiet Neighbors, Chapter 1. It is quite possible that the DPA and State Department were "smoothing over" the truth in these matters in order to process their quota of refugees for the month. From that we can further extrapolate that these same DPA and State Department officials might have been advising refugees as to how to complete their forms in such a way as to assure their eligibility. These officials could well have coached these refugees with regard to the specific content of their responses. At the current time, without further and more critical detailed analysis of the operation of these refugee camps, it is impossible to say whether a mis-statement on any of these forms was the product of an intentional act of deception, or was the act of a frightened refugee trusting in a person of authority. It would appear fair to deny a person his United States citizenship only if any inaccuracy or misrepresentation could be characterized as an intentional act of deception.

Forcible Repatriation

The LAC also has a strong interest in certain policy issues which arise in the post-denaturalization or deportation setting. Following denaturalization (or otherwise upon commencement of deportation proceedings against a resident alien) the defendant comes within the jurisdiction of the Immigration and Naturalization Service ("INS"), an agency of the U.S. Department of Justice. Because the defendant has lost his citizenship, he no longer has the right to remain in the United States. At this juncture, INS is empowered to hold hearings on the deportability of the defendant which are held before an administrative law judge. Following a determination of deportability, the only remaining issue concerns the identification of a country of destination to which the defendant will be deported. The defendant in deportation cases can choose a country of destination, but that country must be willing to accept him.

Because of the media sensationalism surrounding these matters, and because of the popular misconception of these defendants as war criminals, no country has been willing to accept these defendants for permanent residence, except the Soviet Union. The LAC has various strongly held concerns which must be addressed and resolved before any such deportations are permitted to occur. Failure to air these issues in a full and fair hearing may result in certain irreversable, although unintended, results. It is important to note that as of the date of this document, one OSI defendant (Feodor Fedoronko) has been deported to the USSR. Other defendants have been sentenced to deportation to the Soviet Union. Various pleas to the State Department, Justice Department and White House have been turned aside. The only thing remaining to be done is for INS to set a date for their deportation. Therefore, it is critical that these issues be aired at this time, so that our concerns will not be lost.

We believe that our concerns are supported by the very fact that the Soviet Union is the only country in the world willing to accept these persons. We believe the Soviets will use these persons to foster their current policies and interests, among which is the continuing and increasing domination of the Baltic republics. We believe this to be the Soviet's driving motivation since the Soviets have previously granted amnesty to so-called "Nazi war criminals."

Our first concern is that these deportations would have real world ramifications on the official U.S. policy of non-recognition of the forcible incorporation of the Baltic republics into the USSR. The official U.S. position with respect to this concern has been stated with reference to the deportation to the Soviet Union of Karl Linnas as follows:

> ". . . that (the) deportation of Mr. Linnas would take place under section 243(a)(7) of the Immigration and Nationality Act, 8 U.S.C. Sec. 1253(a)(7). That section directs deportation to 'any country which is willing to accept such alien into its territory.' Under that section, Mr. Linnas would be deported to the Soviet Union solely as a 'country willing to accept' him and <u>not</u> in any other capacity, i.e., not as his coun-

> try of nationality or citizenship. On the basis of this position, the Department of State has concluded (that the) deportation of Mr. Linnas under 8 U.S.C. Sec. 1253(a)(7) to the Soviet Union would not, as a matter of law, contravene the long-standing and firmly held U.S. policy of non-recognition of the forcible incorporation of Estonia into the Soviet Union. We strongly adhere to that policy and believe it is unaffected by (the) deportation as described above." Letter of Alan D. Romberg, Acting Assistant Secretary for Public Affairs and Acting Spokesman of the U.S. Department of State, dated January 18, 1985 to Mr. Jonas Urbonas, Chairman, Public Affairs Council, National Executive Committee, Lithuanian American Community of the U.S.A. (emphasis added)

This response, although acknowledging the non-recognition policy, amounts to little more than lip service. The LAC is concerned not only with the preservation of this policy, as a matter of law, but also with the practical application of such policy. We are extremely concerned with any deviation in policy which would tend to erode the policy either officially or in real world terms. While we cannot predict with specificity the manner in which the Soviets will portray any such deportation, we feel confident that they will use these events for their own purposes. Among these purposes will be, we believe, the Soviets' assertion that such deportation amounts to a de facto recognition of their control over persons of Baltic heritage, and therefore constitutes recognition of their control over the Baltic republics.

The fact that our actions do not "as a matter of law" amount to an abandonment of the non-recognition policy will not deter the Soviets from using such event to their best advantage. From the experiences of the members of this organization we sincerely believe that the above accurately predicts the Soviets' reaction to any forcible deportation, and should not be dismissed as frantic speculation. This position is substantiated by the discussion of Soviet self-interests in these matters and the testimony of the two Soviet defectors, Lesinskis and Nezansky. Our vigilance extends to issues other than those issues which are related strictly to legal concerns. We believe that the State Department's approach to these matters has been overly narrow and must be broadened to include genuine real world considerations.

Our second concern is the impact which these deportations will have both on Baltic American groups and on the people of the Baltic republics. Once the Soviets have a denaturalized American under their control, they will use his presence as a focus around which to construct powerful, although faulty, generalizations. An attempt will be made to convince domestic and foreign populations that Baltic ethnic groups are infested with Nazi collaborators who worked against the Soviet Union during the Second World War. This is important to the Soviets in order to discredit the works of these groups which supply continuing hope for the independence of their homelands. Because of our wealth of freedoms, it may be hard for most Americans to appreciate the importance of these ethnic organizations to their related native populations.

Our third and final concern focuses on purely humanitarian issues involved in the forcible deportations to the Soviet Union. Upon their arrival in the Soviet Union, these persons can expect inhumane treatment. Some have already been tried in absentia, so that they can expect to be sentenced to hard labor or execution*. Others will face the Soviet judicial system, where their chances of receiving a fair trial, according to our standards, will be minimal. The ability of these persons to withstand these pressues is reduced by their advanced age. Many of OSI's defendants have died while their cases were being prosecuted or during the appeals process.

The Justice and State Departments feel themselves to be constrained by certain requirements of the 1978 Amendments to the Immigration and Nationality Act. These amendments specified that the deportation of any person should not be delayed because such person will face persecution in the country to which he is deported, when

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*See Manitoba Law Journal, supra, in which the author relates an incident in which the guilty verdict in a war crimes trial, held in absentia as to two defendants, was published in the press at a time that would indicate that the defendants' guilt had been determined before the trial began. An illness of one of the defendants spoiled the timing of the article which was the source of some embarrassment to Soviet officials.

the deportation of such person was based on his persecution of others. We contest the interpretation given to this requirement by these two executive agencies. The most glaring criticism stems from the fact that OSI trials do not determine whether the defendant persecuted Jewish and other minorities during the Second World War.

In this regard see 8 U.S.C. §1253(h) which gives the Attorney General discretion to suspend deportation if such alien would be subject to persecution upon arrival in the country of destination. However that section takes away the Attorney General's discretion for aliens described in 8 U.S.C. §1251(a)(19), that is persons who ordered, initiated or assisted the government of Nazi Germany in the persecution of any person because of race, religion, national origin or political opinion. It is interesting to remember however that these OSI prosecutions have determined only that these persons misrepresented or concealed material facts on their visa applications. There is no determination that the defendants engaged in any conduct described in 8 U.S.C. §1251(a)(19). We question the interpretation given to these judicial findings in the disposition of related deportation proceedings. Therefore we question the withholding of the Attorney General's discretion to suspend deportation.

We also believe that at the time of its enactment these 1978 Amendments were directed against a very limited range of persons and therefore constitutes an illegal bill of attainder and cruel and unusual punishment, both of which violate our constitution. We do not believe that our government should be involved in the deportation of any person who will be the subject of persecution upon arrival in the appointed country of destination. This policy violates long-held principles against forcible repatriation. Considering the source and questionable credibility of the evidence used in these cases and considering their probable persecution upon arrival in the Soviet Union, we believe forcible repatriation in these matters to be excessive.

Summary and Recommendations

There is no question that the subject matter of the OSI prosecutions is among the most emotionally charged known to our judicial system. As we stated at the outset, we are not advocating the abandonment of these prosecutions; members of our organization have suffered or have relatives who have suffered or were executed by the Nazis. The thrust of this document has been to examine the manner in which OSI has pursued these prosecutions, and to question whether certain practices of that office are consistent with our system of justice and with stated policies of our government.

We identified various Soviet self-interests which explain the motivation for their eager cooperation with OSI. We have done so in much the same way that a lawyer impeaches the credibility of an opposing witness. We felt this a necessary exercise since OSI has consistently closed its eyes to these self-interests, and has clung to its firm belief in the complete truthfulness of the documentary and testimonal evidence supplied by the Soviet Union. This position, although understandable from OSI's perspective, appears to be unreasonable in light of evidence relating to the manner in which this type of political case is handled by Soviet officials. On this score, we have documented the criticism leveled against OSI by various Federal District Court judges. Also the testimonies of two Soviet defectors, Lesinskis and Nezansky, provide an intimate view of any evidence supplied by the Soviet Union in cases of a political nature. Additionally, neither OSI nor defense counsel is permitted access to relevant archives to verify the accuracy and completeness of documentary evidence, or to travel freely to uncover potentially favorable witnesses for deposition.

We have examined the difficulties of the defendants in the OSI prosecutions, among these being OSI's unlimited budgetary resources, and the absence of the Constitutional right to counsel. This document has also questioned why defendants are forcibly repatriated to a country where they will face persecution when the only basis for

their denaturalization has been that they misrepresented or concealed a material fact on their visa and/or naturalization documents.

Therefore, based on the numerous concerns expressed in this document, and because of the on-going OSI investigations, we feel a sense of great urgency to establish a public dialogue on these matters.

As stated above, OSI has responded to our heartfelt concerns with standardized form letters. We further believe that these same form letters have been used by OSI to respond to inquiries from Members of Congress. We, therefore, must seek a Congressional forum for these matters. We urgently request that Congressional hearings be scheduled to probe, among other things, the following issues:

- The circumstances of the Moscow Agreement;
- The understandings, whether oral or written, which comprise the Moscow Agreement, including any "secret" understandings;
- The manner in which Soviet documentary evidence is requested by OSI;
- The manner in which Soviet documentary evidence is produced and provided to OSI;
- The use of Rule 44(a) of the Federal Rules of Civil Procedure and Rule 903(3) and (4) of Rules of Federal Evidence in admitting Soviet-source documentary evidence into an American Court; whether OSI should be permitted to use Soviet-source documentary evidence as its sole basis for an affidavit to show good cause to denaturalize an American citizen;
- The manner in which depositions are taken in Soviet-occupied territories and OSI's acquiescence in holding such proceedings at these locations;
- The manner in which the Soviets handle "political trials" such as these;
- OSI's use of various tactics to increase the difficulty of defense counsel role;

- The inability of the defendant to adequately defend himself because of the tremendous financial burden associated with the defense of these matters;
- The lack of Constitutional right to counsel in these denaturalization proceedings;
- Whether the forcible repatriation of these defendants is necessary under current law; whether it constitutes cruel and unusual punishment; whether it constitutes a bill of attainder;
- Whether forcible repatriation to the Soviet Union constitutes a violation of the long-held policy of non-recognition of the forcible incorporation of the Baltic Republics into the Soviet Union, whether as a matter of law or in real world political terms;
- Whether the KGB has been working behind the scenes in these matters and whether such involvement constitutes a threat to the integrity of our judicial system or a threat to our national security interests;
- Whether the Justice Department exercises sufficient supervisory control over OSI;
- Whether the staff of OSI has become so involved with these matters that they have lost their professional objectivity.

Respectfully submitted,

THE LITHUANIAN-AMERICAN COMMUNITY OF THE USA, INC.

By: _____

Jonas Urbonas
Chairman, Public Affairs Council

THE WHITE HOUSE

WASHINGTON

June 13, 1985

Dear Stan:

Pat Buchanan has asked me to reply to your letter of April 19 concerning U.S. Government efforts to uncover and prosecute war criminals. Mr. Buchanan has asked me and other members of his staff to review the complaints and comments we have received from ethnic and civic groups. You may be assured that we will give every appropriate consideration to your views as we conduct this review.

As regards to the recommendation of the Lithuanian World Community, Inc. for Congressional oversight hearings, I have taken the liberty of forwarding copies of your memorandum to the appropriate White House offices for their consideration.

Please feel free to contact me at (202)456-2741 should you have any further questions on this matter.

Sincerely,

Linas Kojelis
Associate Director
Office of Public Liaison

Mr. Stanley A. Gecys
Vice-President and Chairman
of the Public Affairs Council
Lithuanian World Community, Inc.
5620 So. Claremont Ave.
Chicago, IL 60636

bcc: John Roberts, OGC

LITHUANIAN WORLD COMMUNITY, Inc.

5620 So. Claremont Ave., Chicago, Illinois 60636, U.S.A. Tel. (312) 778-2200

April 15, 1985

Dear Senator,

In response to recent charges made by the World Jewish Congress in the Washington Post (4-3-85 and 4-6-85) against Baltic organizations, we wish to state our views on the prosecution of war criminals in the United States.

The Lithuanian World Community fully supports the goal of the Justice Department's Office of Special Investigations, namely, to bring to justice any and all people, currently residing in the US, who are guilty of war crimes. There can be no statute of limitations on crimes against humanity; too many suffered and died at the hands of the Nazis during the German occupation of Lithuania, as they did under the Soviet occupation.

We, in fact, would like to see the mandate of the OSI expanded to cover all war crimes against Jews and non-Jews during World War II, by Nazis and by Communists. In addition to Nazi atrocities, a fourth of the population of Lithuania was systematically deported, tortured and killed by the Soviets.

We are concerned that individuals accused of heinous war crimes are being tried in US courts, as routine cases, under civil procedures. The gravity of the charges demands criminal trials.

Rather than meting out justice under US law to those guilty of war crimes, the present methods of the OSI are succeeding in inciting divisive tensions between responsible Jewish and ethnic Americans.

Organizations such as our own are appalled by the use of tainted Soviet evidence and testimony in these cases. In light of Soviet war crimes then and internal repression now, we find it difficult to accept the credence given by American investigators to evidence from the Soviet Union. Our genuine concern with Soviet evidence is not anti-Semitic, as charged by the World Jewish Congress, but merely critical of its authenticity and its application in a questionable judicial process.

We, therefore, urge you to ask the Senate Judiciary Committee to initiate congressional oversight hearings on the activities of the OSI and thus determine how to better administer justice for war criminals in US courts of law.

Sincerely,

Vytautas Kamantas

Vytautas Kamantas
President

LITHUANIAN WORLD COMMUNITY, Inc.

5620 So. Claremont Ave., Chicago, Illinois 60636, U.S.A. Tel. (312) 778-2200

For Immediate Release April 15, 1985

LITHUANIAN GROUP REBUTS WORLD JEWISH CONGRESS CHARGES

The Lithuanian World Community has refuted charges made by the World Jewish Congress of thwarting the Justice Department's investigation of Nazi collaborators.

In a statement issued today to all US Senators and Congressmen, Mr. Vytautas Kamantas, president of the group, said his organization "fully supports the goal of the Justice Department's Office of Special Investigations, namely, to bring to justice any and all people, currently residing in the US, who are guilty of war crimes. There can be no statute of limitations on crimes against humanity; too many suffered and died at the hands of the Nazis during the German occupation of Lithuania, as they did under the Soviet occupation."

According to the statement, the Lithuanian World Community would like to see the mandate of the OSI expanded "to cover all war crimes against Jews and non-Jews during World War II, by Nazis and by Communists. In addition to Nazi atrocities, a fourth of the population of Lithuania was systematically deported, tortured and killed by the Soviets."

Of concern to the group is that individuals accused of heinous war crimes are being tried in US courts, as routine cases, under civil procedures. "The gravity of the charges demands criminal trials", Mr. Kamantas said.

"Rather than meting out justice under US law to those guilty of war crimes, the present methods of the OSI are succeeding in inciting divisive tensions between responsible Jewish and ethnic Americans", he continued.

One major complaint raised by the Lithuanian World Community is the use of tainted Soviet evidence and testimony in these cases. Kamantas, whose group represents 2 million Lithuanians in the free world, said: "In light of Soviet war crimes then and internal repression now, we find it difficult to accept the credence given by American investigators to evidence from the Soviet Union. Our genuine concern with Soviet evidence is not anti-Semitic, as charged by the World Jewish Congress, but merely critical of its authenticity and its application in a questionable judicial process."

He concluded the letter with an appeal to members of Capitol Hill to initiate congressional oversight hearings on the activities of the OSI "and thus determine how to better administer justice for war criminals in US courts of law."

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