UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF FLORIDA

UNITED STATES OF AMERICA	)	
	)	
vs.	)	Case No.: 79-6640-Civ-JCP
	)	
BOHDAN KOZIY, a/k/a BOGDANUS KOZIJ, a/k/a BOHDAN KOZIJ	)	

West Palm Beach, Florida

September 18, 1981

9:30 o'clock A.M.

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The above-styled case came on for trial before the Honorable James C. Paine, Presiding Judge, at the U.S. Federal Courthouse, West Palm Beach, Palm Beach County, Florida, on the 18th day of September, 1981, commencing at 9:30 o'clock A.M.

VOLUME 4

APPEARANCES:

KATHLEEN N. COLEMAN, ESQ., UNITED STATES DEPARTMENT OF JUSTICE, OFFICE OF SPECIAL INVESTIGATIONS, appearing on behalf of the United States of America.

MICHAEL WOLF, ESQ., UNITED STATES DEPARTMENT OF JUSTICE, OFFICE OF SPECIAL INVESTIGATIONS, appearing on behalf of the United States of America.

JOVI TENEV, ESQ., UNITED STATES DEPARTMENT OF JUSTICE, OFFICE OF SPECIAL INVESTIGATIONS, appearing on behalf of the United States of America.

PHILIP CARLTON, JR., ESQ., appearing on behalf of Bohdan Koziy, a/k/a Bogdanus Kozij, a/k/a Bohdan Kozij.

STEVEN JUGO, ESQ., appearing on behalf of Bohdan Koziy, a/k/a Bogdanus Kozij, a/k/a Bohdan Kozij.

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Thereupon:

The following proceedings were had:

THE COURT: Good morning. Are we ready to proceed?

MR. WOLF: Yes, your Honor.

MR. CARLTON: Yes, your Honor.

THE COURT: Call the witness, please.

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Thereupon:

MARIA LUSIA FROHLICH

was called as a witness on behalf of the Government, and having been previously duly sworn, was examined and testified further on her oath as follows:

THE COURT: Mrs. Frohlich, you are, of course, testifying to the same oath you took yesterday.

Mr. Carlton, you may proceed.

MR. CARLTON: Thank you, your Honor.

CROSS EXAMINATION (Cont.)

Q (By Mr. Carlton) Good morning, Mrs. Frohlich.

A Good morning.

Q At the time that we recessed yesterday afternoon, we were at the point in your direct examination, ma'am, where you began to discuss two incidents of what you described as mass killings that occurred, the first of which

being October 12th, 1941. Do you recall that?

A Right.

Q You testified initially that you were in your home, and there came a knock on the door, and two persons entered. At first the door was not opened, and your father ultimately opened the door, and the persons that came in, ma'am, they were with this Ukrainian militia, is that correct?

A Ukrainian police, yes.

Q Ukrainian police.

A Police and militia is the same.

Q You told us yesterday, as a matter of fact, as far as you were concerned, they were the same?

A Yes, Ukrainian police.

Q Now, when you ultimately came downstairs together with your father, there were German police in the courtyard, were there not, or German officers of some sort in the courtyard of the building?

A They were police in the yard, the German police, Ukrainian police. There were police.

Q There were police downstairs?

A Right.

Q And yesterday we spent a little time discussing the uniforms of the various police, and you were not really able to tell us with any specificity as to what

these uniforms looked like. Let me just ask you briefly about that. When you got downstairs from your apartment into the courtyard, you say you saw a German police. How did you know they were German police?

A The uniforms.

Q All right. Would you describe what you saw?

A The uniforms of the Germans were a different color of the uniform of the Ukrainian police.

Q All right. What color --

A I don't know exactly, you know, how they are made, but I know the colors are different.

Q All right. What color were the uniforms of the German police?

A They were all -- The colors were the same. They were gray -- Green, dark; bluish green dark. They were the colors of the Germans, the German police that I saw in the ghetto.

Q You say that they were bluish green?

A Dark bluish green.

Q A dark blue?

A No.

Q Bluish green?

A Bluish green.

Q Did all the German police that you

saw during the period that you were living in Stanislaw following the German invasion wear the same color uniforms?

A I don't think so. I don't think they were all the same colors. I think the colors varied.

Q From what to what?

A From green to like blue green, but I don't think they were exactly, you know, one color of all the police that I saw - all the soldiers. German uniform people, let's put it this way.

Q The German uniform people, as you call them, had different color uniforms, did they not? Some were one color, and some were another?

A Yes. They were not all the same.

Q What about the Bahnschutzpolizei? What color uniform did they wear?

A You know, I was trying to remember. It was a bluish -- It was a bluish green.

Q As a matter of fact, ma'am, and let's see if we can, you know, kind of get your mind back into those days - unfortunately, that has to be, but for these few moments - isn't it a fact that the Bahnschutzpolizei wore navy blue uniforms?

A No.

Q Are you certain about that?

A I am almost positive about it. They

were not navy blue. They were on the blue side, but they were not navy blue. They were a dark blue green, but not navy blue. I am almost certain. I may be wrong, if you think so, but I am almost certain.

Q You are almost --

A There was a difference in the uniforms.

Q Yesterday I went into some detail, or as much as we could in the uniform of the Ukrainian police, and of course, the only thing that you could tell us was the color, and we won't go back over that again; and what you are telling us today, and please correct me if I am wrong, is that the Bahnschutzpolizei had also a blue uniform, but in your opinion, it was a different color blue than Ukrainian police?

A Yes.

Q I am sorry, ma'am?

A Yes.

Q Thank you. Now, when you got downstairs on that infamous day of October 12th, did you see different color uniforms of what you describe as police, or milizia?

A I really don't remember what I saw downstairs that much. I remember only that I see a lot of people gathered up, and I see a lot of uniform people

downstairs. After all, there was a terrible thing that just happened. We came down, we were frightened. I really don't - can't tell you what specific uniforms I saw. I know I saw a lot of uniforms, people.

Q You were how old at this time, ma'am?

A 18.

Q And understandably you just had a very upsetting experience seeing your father struck, and your mother had been hit, and I believe one of them were bleeding?

A My mother.

Q Your mother was bleeding?

A Right.

Q And you came downstairs, and understandably, of course, you saw there was something going to happen, maybe you didn't know what, but you were frightened, were you not?

A Yes.

Q And the last thing that you were really trying to do was look around so that you could, some 40 years later, identify uniforms, and what they look like; what color they were, and who was standing where. That wasn't in your mind at that time, was it?

A I don't think so.

Q So, being upset, and of course, naturally, frightened, you saw your father again on a truck,

and I believe you followed him onto a truck?

A Not when we went down. When we went down, we were marched into the town first. First they marched us into town.

Q I don't recall you saying that yesterday, but that maybe just didn't come out. You first went into town. How far was that?

A When we came down from our apartment, they brought us down into the courtyard of the building.

Q Right, I remember that.

A And they gathered all the Jewish people from the big apartment building.

Q And how many are we talking about, approximately?

A I don't know. Must have been there 100, over 100 people.

Q Men, women, children?

A Yes.

Q Okay. And then you went from the apartment building to the center of town?

A Yes, they walked us down to the center of the town.

Q Is that the Ringplatz?

A Ringplatz, yes.

Q You went to the center of town, and

that is where the trucks were?

A Right.

Q Were these open body trucks?

A Right. Open trucks.

Q The backs were all open?

A Right.

Q Now, getting to what I started to ask you, and you got on this truck, and your father got on the truck first?

A Yes.

Q And you wanted to be with your father, and got on the truck as well?

A Right.

Q By the way, you did tell us when you got down to the courtyard, your mother vanished?

A My mother was --

Q Disappeared, the word you used?

A Yes.

Q Do you know where your mother went?

A From what she told me, yes.

Q Without going into the hearsay of where she went, she, of course, obviously was not harmed because later on she appeared again, and you told us about trying to get her out of the ghetto?

A Yes. My mother is still alive, by

the way.

Q Oh, fine, okay. Now, when you got on the truck, you were on there for a short period of time. By the way, do you speak German?

A I spoke fluently German. I spoke fluently all those languages. I am forgetting it today. I understand enough to communicate.

Q Back in 1941, you spoke fluent German?

A No. I didn't speak fluent German in '41. I spoke German just to get by. I spoke German fluently after I went through the war, because I was working with the Germans. That is when I learned to speak fluent German.

Q When you got to the Ringplatz, the center of town, there were a lot of police around; a lot of uniforms, to use your expression on direct examination?

A Right.

Q And once again you were not particularly paying attention to the different uniforms? You were more concerned with what was going to happen next?

A Right.

Q When you got on the truck, a man with a cane, with a rounded head, told you to - something about getting down from the truck. Did you understand --

A No. That was not there.

Q Have I got the wrong incident?

A Yes.

Q I am going onto the other one, am I not?

A Yes.

Q Okay, fine. You are right. I'm sorry. Okay. Regardless, it wasn't a man with the cane with the rounded head, but there was a German that told you to get off the truck?

A Right.

Q Did he say this to you in German?

A Yes. He said, come down.

Q And did he tell you why you should come down?

A No.

Q He told you to come down, and of course, a similar incident occurred on the next occasion in August of '42 where a German told you something like, it is not your time, Jewess?

A That was not --

MR. WOLF: I object to that, your Honor. I think that is a mischaracterization of what the witness testified to on direct.

MR. CARLTON: I will withdraw that. I will get into that in the order of testimony.

THE COURT: All right.

Q But you wanted to go with your father?

A Right.

Q Okay. And when you came down off the truck, what did you do - just stand there, or did you kind of run away?

A When I came down off the truck, I was hit.

Q You were what?

A I was hit. A Ukrainian --

Q This is where - on your arm?

A Right.

Q Did you know the person that did this to you?

A No.

Q Had you ever seen him before?

A No.

Q Were there a lot of people around you when this happened?

A There were a lot of people around all the time there. It was not isolated case.

Q I am sorry?

A I wasn't there alone. There were thousands of people there.

Q And everybody was what - as close together as I am to this gentleman here that is making this sketch, or closer to him, or what?

A I think we were packed more closer. We were packed.

Q Closer than that?

A Yes.

Q And this man struck you on the arm?

A Yes.

Q Did you look particularly and see what color uniform this man was wearing? Did you examine him carefully?

A Yes, I noticed the person that hit me.

Q Pardon?

A I noticed the person that hit me. I didn't know him, but I certainly noticed the person that hit me.

Q You didn't know him personally, but you noticed the person who hit you?

A Right.

Q Was he wearing a blue uniform?

A Yes.

Q Did he speak to you?

A No.

Q Didn't speak to you at all?

A No.

Q So you couldn't identify the language that he spoke, could you?

A No.

Q Could you identify anything about this man at all - how tall he was --

A He was taller than I.

Q Can you -- Did you remember anything, whether he had a mustach; whether he had any scars, anything about the man at all?

A No. Nothing that I could remember.

Q As a matter of fact, ma'am, you weren't particularly looking at the man until suddenly you got struck, and that is when you turned around, is that so?

A I didn't turn around. I came down, and he saw me coming down, and he apparently did not realize that I was told to come down. I didn't come down because I wanted to escape, and he just struck me.

Q Did he tell you to get back up on the truck?

A No. He didn't tell me anything. He struck me, but when he --

Q He struck you how?

A He struck me. At the same time,

the German who was on the other side came up to him, and I don't know what he spoke, just let me alone, and I just walked into the crowd again.

Q And all of that took just a matter of a few seconds, did it not?

A Well, time, I can't pin it down.

Q All right. And then you went through the matter of going to the cemetary. When you got to the cemetary, you saw Germans with machine guns, did you not?

A Not when I just walked in. There were officers, Germans, with guns all around.

Q There were Germans with guns?

A Yes. There were also Ukrainian police with guns all around.

Q Ukrainians with guns. Okay. What kind of guns did the Ukrainian police have?

A I don't know what kind. I don't remember the guns.

Q I can understand, ma'am --

A On the cemetary, I don't remember the details.

Q I can understand that you are not a ballistics expert or expert on firearms, perhaps, but can you tell us -- Do you know the difference between a hand gun, like a pistol, or revolver that a person would carry on their

hip, and a rifle?

A Yes.

Q You know the long gun --

A Yes.

Q You know the difference between those. Which of the two did they have, if you remember?

A Both.

Q They had both?

A I saw people with this type of guns, with that type of guns, but I saw people with all kinds of guns, and later on with machine guns, I assume. In my opinion, it was machine guns.

Q I am only asking you now about the Ukrainian police having guns. What kind of guns did they have?

A I don't remember which guns. I don't remember.

Q Do you remember seeing any Ukrainian police officer shoot a gun?

A Shoot a gun? What do you mean shoot a gun?

Q Pull a trigger, and fire.

A At the air? Just shoot in the air?

Q Did you see a Ukrainian police officer fire a gun?

MR. WOLF: Excuse me. Could I object?

I would ask if he is talking about at the cemetary, or --

MR. CARLTON: I am at the cemetary. I am talking about in that occasion.

THE COURT: All right.

A Did I see anybody shoot a gun? I heard guns. I don't remember who shot what.

Q You heard guns?

A Continuously being shot.

Q All right. Now, in your testimony yesterday, you testified that it was obvious that people were being shot. Those were your exact words. It was obvious to you, ma'am, that people were being shot because you heard gun fire, but not because you particularly saw people being shot?

A Oh, yes, I saw people being shot.

Q When did you see people being shot?

A When I was getting to part of walking to the graves, I could see people being shot.

Q Was this before or after you took your coat off?

A That was twice. I was twice in line walking.

Q You actually saw people being shot?

A Right.

Q And if I remember correctly, you

saw Germans. There were people near three graves, right?

A Yes.

Q And you saw Germans with machine guns firing at these people, and they were falling?

A I assume they were Germans, yes.

Q Pardon?

A I assume that they were Germans, but I could not tell you those were actually the Germans, because I didn't pay attention to the uniform.

Q But you were assuming they were Germans?

A I assume they were Germans.

Q As a matter of fact, you never really at any time paid attention to the uniforms, did you?

A Of the people who were shooting at that time?

Q Yes.

A To the colors of the uniforms, no, I didn't. That wasn't what I had in mind to look.

Q As a matter of fact, while you were in Stanislaw, all that period of time, the color of uniforms was not the number one item in your mind, and that wasn't what you were paying the most attention to. Would that be a correct statement?

A No. I was watching for uniforms,

because I was trying to be as far away from any uniform that came across me, or near me, or whatever. I should not be in any path of anybody with a uniform.

Q So the converse of what I say is that you were paying attention to uniforms?

A I was paying attention to uniform people.

Q Uniform people?

A Yes; not to the colors.

Q And you paid attention to these uniform people all during the period from the Nazi invasion until the time in September, 1942, when you left the ghetto, is that right?

A Yes.

Q I think we discussed yesterday it was like 396 days, something like that?

A You figure the days.

Q Well, I am not saying it is exactly accurate. I am going by the months.

A Yes.

Q Having paid attention to these uniforms, because you were looking for uniform people, despite all of that, you cannot describe any of these uniforms to us?

A No.

Q Incidentally, just as a matter of

interest based on your testimony, the people that were walking to the graves, there were, I think you said, thousands of people, is that right?

A At the cemetary?

Q At the cemetary.

A Yes. Thousands.

Q Did anybody try to run away?

A You want me to tell you what I heard, or what I seen?

Q No. I only want what you --

A A lot of people were trying to run away.

Q Ma'am, only tell us what you personally saw. Did you see people -- We they just marching up to the grave to be shot, or did some of them try to run figuring if I am shot, I will be shot anyway?

A Once they were in line, nobody was running away. If they were running away, they probably would be shot anyway. I haven't seen anybody trying to run away from a line. There were people trying to run away from the cemetary.

Q Did the people realize when they were in this line that they were going to a hole in the ground and they were going to be shot?

A Yes.

Q And realizing they were going to be in a hole in the ground, you would walk up like you walk up to a movie theater, like you pay your ticket, and nobody tries to run away?

A I don't know that it is in the same spirit as if you are going to a movie.

Q Hardly. You know the point. Nobody said, well, I am going to try to get shot there, and try to make a break for it?

A It is impossible. You have to realize what is happening here. I don't know if my language is good enough to describe enough to tell what is happening there.

Q Your language is perfect. You are communicating beautifully.

A I have some difficulties in relating what was happening there.

Q When you were in line, when you got in line, did you realize you were going to be shot?

A Yes.

Q When you got in line, this is when the German officer came over that had the cane with the rounded head?

A Right.

Q Why did he particularly pick you out

to get out of line and say, you have time, Jewess?

MR. WOLF: I will object. She cannot testify why the German officer did what he did.

MR. CARLTON: I know. I am asking -- She didn't. That is why I am asking.

THE COURT: The question is why he acted as he did?

MR. CARLTON: Do you know why he picked you out to get out of line, and made the statement, you have time, Jewish -- Jewess. I'm sorry.

THE COURT: The objection to the question is overruled.

MR. CARLTON: Go ahead.

THE WITNESS: You want me to answer it?

THE COURT: Yes, ma'am.

Q If you can.

A I really don't know why he picked me. I was lucky. It was meant for me to still be around. I don't know.

Q You were lucky the first time.

A I was lucky through the whole war.

Q You were lucky the first time when they told you to get off the truck, and you were lucky now when he said, get out of line; you have time, Jewess.

A And I was lucky for the whole war.

I was just lucky. That is the only explanation I have. I believe my time wasn't up yet.

Q How many Germans were there that were shooting all these people?

A How could I know how many Germans? I couldn't even take a guess. It is impossible for me.

Q Hundreds?

A I can't specify. To me they looked like the whole German army looked to me. To me it looked that everywhere I turned around there were officers.

Q Everywhere you looked there were Germans, and they were shooting people, and it was a terrible scene?

A It was an awful scene.

Q After this German officer befriended you in some fashion, by asking you to get out of line --

A He didn't befriend me. He asked me to get out of the line.

Q You weren't killed?

A Yes.

Q You then went and got in another line?

A After a while. Not right away.

Q What did you get into another line -- After you got out of one line, why did you get into another

line?

A My father was killed --

Q You didn't know at that point if your father was killed?

A I didn't see it, but I assume. I didn't see him. I saw my friends being shot, walking and not coming out from the grave. Just walking, and not coming back. I just didn't feel I wanted to go on any more and see it.

Q This was almost like an act of suicide on your part?

A Not suicide. I just didn't want to witness any more. I got tired of witnessing all this brutality.

Q So you decided you were going to get on another line, and you would go?

A Right.

Q You got to the particular area where you were supposed to take your clothes off?

A Right.

Q You took your coat off, and the third miraculous happening occurred?

A Right.

Q That someone that you don't know --

A Oh, no.

Q This is your brother's friend?

A A friend of my brother.

A And his wife, grabbed your coat, and put it on you, and said almost the same thing as the German said - you still have time?

A Right.

Q And used your first name, and that is pronounced --

A Lusia.

Q Lusia?

A Right.

Q And said, Lusia, you have time - almost the same thing that the Germans said?

A Right.

Q Did that occur to you being strange that the same expression was used?

A Nothing was strange. Nothing.

Q The whole happening was rather strange, was it not?

A Yes. At that time, I just -- How -- I --

Q And following this, you went home?

A No. I went with them. They took me to their house.

Q Right. You told us that. By the way, how many times had you been to the town of Lisets?

A Oh, not many, Maybe two, three times.

Q Following the incident that we have just been going into some detail about, did you go to Lisets?

A After?

Q Yes.

A No.

Q From October 12th, 1941, to the date that you left the ghetto, in September, 1942, did you go to Lisets?

A No.

Q So you don't know what kind of police were in Lisets during that period of time because you hadn't been there, isn't that so?

A No.

Q What did you go to Lisets for before that?

A A group of us who takes excursions by bicycle, friends of mine, and myself.

Q What year are we talking about?

A When I went to Lisets?

Q Yes.

A You are asking me when I went to Lisets?

Q Yes.

A That was before the war.

Q Before the Nazi invasion?

A Before the Russian invasion. Before --

Q That was before 1939?

A Right.

Q Okay. Well, you were just really a youngster at that time, weren't you?

A Right.

Q All right. We won't worry about that. From the time that the Russians, or the Nazis came in, from that point on, you never traveled that different?

A No. I think I passed Lisets on the bus, but that is about all. I pass going to Rosolna. I am not positive, but we pass Lisets going to Rosolna.

Q Do you know anything about the town of Lisets? Have you ever walked around the town?

A Yes, we just got -- A friend of ours on the bicycle stopped in there, and had refreshments.

Q Are you clear as to where the buildings were, and what the buildings looked like?

A No. I just remain street. The main highway. The main street.

Q That is the street that went on right on through town onto Halicka?

A No. They went to Bohorodciany.

Q Okay. All right. Let's get back

to when you moved into the ghetto. When was that?

A It was about two weeks after October 12th.

Q Okay. And inside the ghetto was guarded by Jewish police, were they not? Poor phrasing. Jewish police guarded inside the ghetto?

A The ghetto was guarded by Germans and Ukrainians, not only the Jewish police.

Q The question I asked you, were there Jewish police guarding inside the ghetto?

A If you are asking me only, or were they also guarding?

Q We will get into also. Right now I am asking you were there in fact Jewish police inside the ghetto, guarding inside the ghetto?

A There were Jewish police inside the ghetto.

Q Yesterday you testified the ghetto was guarded by German, and Ukrainian police?

A Yes.

Q And the ghetto was guarded inside by Jewish police. Do you recall saying that yesterday?

A I don't recall what I said yesterday, but I know that inside, when you came in, into the ghetto, inside as you walk in, there were Jewish police.

Q Did they wear a uniform?

A No. I don't think they wore a uniform. They did not wear uniforms.

Q Did they have any distinguishing marking on their clothing to indicate that they were police?

A I think that they had arm bands with some yellow, or gold on.

Q What were they for? Not the arm bands. What were the police for - your Jewish police?

A Well, they were supposed to assist, if necessary sometimes, in helping of rounding up the Jews.

Q So the Jewish police helped to round up the Jews for what - for extermination?

A If I have -- If you are asking me, when I heard that they were exterminating, yes.

Q How many -- If you know, how many Jewish police were there inside the ghetto that were helping round up the Jewish people for extermination?

A I don't know numbers. I don't remember numbers. I don't know how many there were.

Q Did you see a number of Jewish police inside the ghetto?

A Yes.

Q As a matter of fact, the Germans, and the Ukrainians as you say they were, the milizia, or you

say the politzei and milizia are the same thing, were primarily outside the ghetto, isn't that so?

A No.

Q They were not outside, and occasionally came inside?

A They were --

MR. WOLF: The witness has to think a little bit to frame her answers in English.

Q I don't do that on purpose, ma'am. If you would just throw something at me, or wave your hand. I am sorry. Take your time.

A I forgot what the question is.

Q The question was, isn't it a fact, ma'am, that the Ukrainian and the German police remained outside, and only occasionally went inside the ghetto, and they were there, according to your testimony, for the purpose of guarding outside the ghetto, while the Jewish police were guarding inside the ghetto?

A No.

Q Well, did you see the Germans inside the ghetto every day, every night, all the time?

A Every night, no, because we were not allowed to go every night; but every day, yes.

Q What were the Germans doing inside there, except on those particular occasions when you described

them?

A They were through the ghetto. I don't know what they were doing all the time. They were in the ghetto. German police, and Ukrainian police were in the ghetto continuously, every day. What they did, I don't know. I tried to stay away as far as possible from them.

Q Did you ever attempt to take any valuables out of the ghetto?

A When?

Q During the time you were living in there.

A Yes.

Q Did you get caught?

A No.

Q Did you ever try and bring any food into the ghetto?

A Yes.

Q Did you get caught?

A Once.

Q And what happened to you?

A I was bringing in some potatoes --

Q You were bringing in potatoes, and a couple of eggs?

A And I was going through the gates --

Q Excuse me. I want to be sure this

is turned on. Go ahead.

A I was going through the gate, and on that particular time, I was searched. We were searched continuous.

Q By the Germans?

A No. We were searched by the people who were at the time at the entrance to the ghetto.

Q Who were these people?

A Well, they were mostly Ukrainians, and sometimes Germans, and on the outside were the Ordnungst-dienst. As you were going in the ghetto, or out of the ghetto, we were searched, but sometimes we were searched -- If you went in groups, there were searched not every individual, but just spot search.

Q I don't mean to interrupt you. You told us about that. I am asking you about the time you got caught bringing food in.

A That is what I am going to tell you about.

Q Go ahead.

A At that time, I was coming into ghetto, by myself; not in a group, and I had on the bottom of my bag potatoes and eggs, and I was stopped by the Ukrainian police, and asked what I have, and found -- He found I had some food that I was bringing in, and stopped me, and he said

that -- I am aware of the fact that I am not allowed to bring it in.

Q He said you are not allowed to bring it in?

A Yes.

Q All right.

A And he said, well, I just have to take you in, but on the other side of the ghetto, because it was one of the Ordnungstdienst, whom I knew. I mean, I don't know him very well. I met him a few times, and he was familiar. I don't remember who he was, and he went over to the Ukrainian police, talked with him. I don't know what was said. I don't know what he talked, told him, whichever it was. They just took it away from me, and they let me pass.

Q And they did what?

A Let me pass.

Q Let you pass through?

A Right.

Q Did you ever see anybody killed for bringing food into the ghetto?

A No.

Q Did you ever see anybody killed for taking valuables out of the ghetto?

A No. May I explain that?

Q You can explain any of your answers,

ma'am.

A If we were caught at any particular time, not always the people were killed on the spot. They were taken away to the Gestapo, what I heard. What I know is, that was told to me. I haven't been there. I haven't been caught enough to go and tell you what it was.

Q Taken away by the Gestapo?

A No, not taken by the Gestapo.

Q Taken to the Gestapo?

A And I don't assume, I know they were killed there. Other people who worked there, and came, said those people were shot, but I wasn't there.

Q Whether or not that happened, you don't know?

MR. WOLF: I object. I think the witness said she does know, although it was hearsay information.

Q Whether or not that happened, you personally do not know?

A I haven't witnessed it personally. I know that, but I haven't witnessed it.

Q Did the Jewish police make arrests inside the ghetto?

A Sometimes.

Q Arrested for what?

A They were just told to pick somebody

up and they had to bring that person. Pick him up, that is all.

Q Do you know what those persons were being arrested by the Jewish police for?

A No.

Q Did you tell us yesterday that people from Hungary were brought into the ghetto?

A Right.

Q How many people were in the ghetto, the total number of people as best you can tell us?

MR. WOLF: Excuse me. I object to that. If Mr. Carlton can be more precise --

THE COURT: As to time?

MR. WOLF: -- as to the time he is talking about.

MR. CARLTON: Thank you. I will rephrase it. At the time that you were living in the ghetto, and at a time when they had brought in the largest number of people that you were aware of, what was approximately the number of people living there?

A The number of people in ghetto changed. We started with a large number. By the time I finished, there was very few -- The number was smaller. The ghetto was smaller. By the time the ghetto was finished, from what I heard, there was nobody left. It is very difficult to

tell you the numbers.

Q Would you say the largest number of people were on about October 26th, 1941?

A I would say before that there was a large number.

Q Well, it didn't begin until October 26th, 1941 -- '42 --

MR. WOLF: I object to that.

THE WITNESS: I didn't hear it.

THE COURT: Just a second.

MR. WOLF: I object to that. The witness never gave a precise date. The ghetto was approximately two weeks or so after the October 12th action.

MR. CARLTON: On or about October 26th --

A October -- I didn't hear you. Would you repeat it?

Q Certainly. You said approximately two weeks after October 12th is when the ghetto began. Two weeks is about October 26th, 1941.

A If you say so, yes.

Q Well, 14 days -- All right. Now, on or about October 26th, 1941, can you tell us about how many people were inside the ghetto?

A No.

Q Can you tell us how many Hungarians

were brought to the ghetto?

A No.

Q Did you see Hungarians brought to the ghetto?

A Just a second. I didn't see them brought. I seen Hungarian Jews in ghetto.

Q Did you see Romanian Jews in ghetto, too?

A Yes.

Q Did you see people from Lisets in the ghetto?

A Only just one person.

Q Who was that person?

A The person was a schoolmate of my brother. My oldest brother. He was in the ghetto.

Q And this was in approximately August, 1942 that you saw that?

A No. It couldn't have been August '42. August '42 -- See, may I explain something? Dates are very vague in my mind. I sometimes relate to a date because of a specific incident that happened to me. I can remember the date. It is sometimes I can remember if I just try to remember how long I was in ghetto; how long approximately in one place, and how long I approximately work in other place, then I can pinpoint the date, but it can't be October '42, because in

September, I left already.

Q August '42.

A Couldn't have been. There was much before.

Q Much before that?

A Right.

Q Well, October 12th, 1941, is a date that stands out in your mind, and you remember that precise date because you told us yesterday something about a Jewish holiday?

A Just exactly, I didn't get your whole question. The dates are not clear in my mind.

Q Listen to my question.

A Yes.

Q Yesterday Mr. Wolf asked you about October 12th, 1941, and the incident that occurred that we have just gone through.

A Right.

Q And he said to you how you particularly remember that date as being October 12th, 1941, and you answered, because of Jewish holidays --

A No.

Q You didn't say that?

A Yes, it was also a Jewish holiday. The funny part of it was, yesterday, you were asking me, or

Mr. Wolf, I remember that it was even Sunday. I am now sometimes remembering things that I didn't remember three weeks ago, or four weeks ago. I don't sleep nights. I think all the time about the ghetto, so things come to me. I remember specifically now that it was even Sunday. This I remember just yesterday. I didn't remember until yesterday that it was Sunday.

Q I don't worry particularly about whether it was the 12th or 13th, whatever.

A It was 12th.

Q October 12th?

A October 12th.

Q Fine. Now, although you are sure about that date, are you sure about the August, 1942 date as being the date of the time you went to the field, or people were marched to the field?

A I am not sure about the date. I am sure it must have been around August. That I am sure, because I left ghetto in September. This I know, and I don't remember the date when I left the ghetto, but I know it was somewhere the end of September I left the ghetto.

Q Were you working for the Bahnschutzpolizei at that time?

A When I left ghetto?

Q No. August, '42.

A Yes.

Q How did you get that job?

A If I tell you, you tell me how am I so lucky all over. I was lucky getting it.

Q Share it with us, briefly.

A I worked for Baudienst --

Q Yes. This was the job you had before when you were picking up bricks?

A Yes.

Q Go on.

A And we were working, maybe 60, 70, 80, I don't remember numbers, but quite a few of us working, and a truck from the Bahnschutzpolizei, I didn't know what it was, but a truck with a few Jews on the truck, and also officer came to pick up some bricks. They were building a wall in the Bahnschutzpolizei, and we were in a chain --

Q You were what?

A In a chain, like, handing the bricks to the truck.

Q You mean in a line?

A From one to the other.

Q I see, handing it from one to the other?

A Right.

Q Go ahead.

A And while we were handing those bricks, I was maybe from the truck, maybe 5, 6, 7th person from the truck, and we loaded the truck with bricks. One of the Jewish persons who was on the truck came up and asked - told me that the major would like to speak to me, so I went over --

Q Is this Major Engelhart?

A At that time I didn't know he was major. He was Major Engelhart. At that time I didn't know. He just said major.

Q All right.

A So I went over, and he asked me, you know, how I like this job, and he was very, very kind, very nice, and asked me, would I like to work as a maid for his wife and himself, and they had a daughter, and I said I love to, because that was the best job that anybody could ever -- It was the job to have.

Q Once again, your luck came through, and they selected you out of all the people to have this fine job?

A Right. Right.

Q Okay. Is Major Engelhart a German?

A Yes.

Q Wear a uniform?

A Yes.

Q Then you went to work for him at his residence?

A Right.

Q When, approximately, did you stop working for this German, Major Engelhart?

A When I stopped or start? I didn't hear the question.

Q When did you start?

A Stop?

Q Yes, ma'am.

A Must have been about -- Well, right after he picked me, I think it was April, because it was warm. I don't remember what date, but it was very warm that day.

Q In relation to August, 1942, can you tell us when it was?

A As I said, it must have been in April that I started working.

Q You heard on a particular day which you believe to be in August, 1942, that there was some trouble going on in the ghetto, and this is while you were still on your job, isn't that so?

A I don't understand.

Q Well, to use your expression, as you were leaving your job, you heard there was "action in the ghetto."

A Right.

Q Okay. And, did you speak to the major, and say, I would like -- Maybe I better stay here at the house, or something of that sort?

A No.

Q You went to the ghetto?

A Yes.

Q And some of the Germans went with you, the Bahnschutzpolizei?

A They sent some of the Bahnschutz-polizei with us at that time, to the ghetto.

Q When you got to the ghetto, you were marched into a field among a lot of other people?

A We walked into the ghetto.

Q You entered the ghetto --

A And I saw all the bodies hanging.

Q All right. You told us about that. You went into a gate?

A Right.

Q Why did you go back into the ghetto where all this trouble was going on?

A I had my mother in ghetto.

Q You went in there for your mother?

A Yes.

Q When you went to the field, did you

go with your mother?

A No, but I did not know they were going to march us. We were told we come to the ghetto. They didn't tell us that we would be taking part in the whole execution, whatever was happening there, the massacre. They didn't tell us this. They told us we should go back to ghetto.

Q When you were working --

A And I thought, I get to my mother, and I will be with her.

Q When you were working every day for Major Engelhart, where was your mother?

A In ghetto.

Q Did she work?

A Yes.

Q What kind of job did she have?

A She worked in a knitting factory.

Q Inside the ghetto?

A It was inside the ghetto.

Q Did most of the people work inside the ghetto as opposed to outside the ghetto?

A I don't know numbers how many were outside; how many -- There were quite a few outside, and there were a lot of them work inside, so I really don't know in numbers.

Q All right. Let us get to the part

where you went to the field.

A Yes.

Q Now, this field was how far from where you lived?

A My house?

Q Right.

A Well, this was almost the entrance of the ghetto. The street that you enter the ghetto to get to my house, I would say you would have to walk another 10, 12 minutes.

Q 10 minutes?

A 10, 12 minutes.

Q To go to the field how far?

A From the entrance?

Q From your house?

A It was about the same distance. When they walked us into the ghetto, they walked us on the - on that street particularly, where the whole action was taking place.

Q Were there a lot of Germans that were walking you to that field?

A I don't remember who walked us actually to the field. I really don't remember.

Q When you got to the field, were there a lot of Germans at the field?

A There were Germans all around. There were all police --

Q Did they have guns?

A They always wore guns.

Q When you got to the field, did the Germans select who were going to be shot?

A I do not know who was selecting. I was not selected, so I can't tell you who were the ones that selected, but there were all -- There were the Germans; there were Ukrainian police. I saw all police there. I saw them continuously.

Q You say you saw all kinds of uniforms there?

A Right.

Q Whether they were Germans, Ukrainians, or Bahnschutzpolizei?

A I don't think the Bahnschutzpolizei was involved in anything - any of that action.

Q How do you know that?

A Because I work with them, and from talking to them, they tell you that they were never actually --

Q They tell you they were never actually involved?

MR. WOLF: Your Honor, again, Mr. Carlton is cutting off the answer before it is finished.

THE COURT: Let her have time.

Q Go ahead.

A From what I heard from the Bahnschutz-polizei, because I work with them, they were not involved in any of the actions. The only ones from my knowledge that were involved in any action were the SS; were the Schutzpolizei; and the Ukrainian police, as far as I know, and the Gestapo, also, but they were always involved.

Q But not the Bahnschutzpolizei --

A Not --

Q Let me finish.

A Yes.

Q Not the Bahnschutzpolizei. Those were the ones that you work for, and those are the ones that befriended you, Major Engelhart worked for, right?

A I didn't get the question.

Q You said the Bahnschutzpolizei were not involved in anything?

A I don't think so, no.

Q And these were the people that you were friendly with, such as Major Engelhart with the Bahn-schutzpolizei?

A Well --

MR. WOLF: I object to that. I don't think that the witness said she was friends.

THE COURT: Overruled.

Q Were you friendly with Major Engelhart?

A Would you define friendly?

Q He extended his hand of friendship to you by offering a job in his home, and he later went even further, and helped you get out of the ghetto? I call that being a friend.

A He didn't help me out of the ghetto.

Q He didn't provide you with papers?

A Not Major Engelhart. There were two Polish Bahnschutzpolizei. They were the ones that helped me get out of the ghetto.

Q Do you remember yesterday testifying that Mrs. Engelhart came to us, and the major came to us to get papers to let us move in and out freely? You remember testifying about that?

A That Mrs. Engelhart got me papers? I cannot recall that I testified to that, Mrs. Engelhart got me papers. I remember Mrs. Engelhart was happy to see me alive after the last action, and she told me that she was very happy that I survived, and she even told me that her husband went through all the cars - they were deporting people - to look if I am not one of the trains, and that is what I remember Mrs. Engelhart telling me, but I don't remember Mrs. Engelhart

telling me anything about papers.

Q Well, would you consider, ma'am, those were friendly gestures on the part of Mrs. Englehart?

A I would say they were very friendly to me.

Q And her husband was a major with the Bahnschutzpolizei?

A Right.

Q And these are the ones that you said wouldn't do anything, because they told me they wouldn't?

A I didn't say they didn't do anything. I know they have. They were very nice to me. I would not say they wouldn't do anything.

Q Did you actually see anyone shot in that field?

A Did I witness any shooting at that field?

Q Did you see anyone shot in that field in August, 1942?

A No. I didn't see them.

Q You have a mother who was working; you were working; your neighbors were working, were they not?

A I guess my neighbors, sure.

Q Did you see anyone shot because he or she wasn't working?

A No, but I have seen them being taken away.

Q Did you personally see anyone beaten up when they left their job?

A What do you mean beaten up when they left their job?

Q You testified yesterday that persons had to work or they would be shot, killed.

A No. I didn't say they would be shot, killed.

Q You didn't say that yesterday, ma'am?

A I said -- If I said it, what I mean is people who were not working were disposed of very easily. They were not necessary to the Germans as they said it before, so those people had been taken away, and those people had been eliminated.

Q This is something that you heard, but not something that you know from personal observation, is that so?

A I didn't see anything that was happening in ghetto. I was only one person.

Q My question to you, ma'am, was, did you see anyone beaten, or beaten up because they left their job?

A No.

Q So then when you testified yesterday that people were beaten up, if they left their job, this is something that you heard, but not something that you personally know?

MR. WOLF: Could I object, your Honor? My recollection of what she was testifying to I think was working at the Baudienst. People had to perform a certain amount of work, and if they could not perform the work, they would be beaten, which is different from what Mr. Carlton is saying. He is implying people walked off the job, and didn't work. I don't think that is what Mrs. Frohlich is testifying to. I think we could read the record back. I think he is misleading the witness.

THE COURT: Overruled. The question is permissible.

Q And incidentally, when I asked you about Major Engelhart, your friend, the major with the Bahnschutzpolizei, you asked me, what do you mean by him being your friend. You remember testifying yesterday that Major Engelhart and his family were nice, and tried to help?

A Yes.

Q In September, 1942, did you see the Germans round up the people in the ghetto, or was this -- Did this happen after you already left?

A No. The people were round up. That

was the last action that I had been in. I wasn't personally in it like the others, but that was the last action I lived through in ghetto.

Q Did you see the Germans rounding up these people?

A I didn't see them rounding up people, no.

Q But all you know is that action was going on, and you were going to leave, right?

A I was told to leave.

Q You were told to leave by whom?

A From Mr. Engelhart.

Q Major Engelhart?

A Yes, Major Engelhart.

Q And this is when you got your mother --

A And --

Q -- and you went through how you were walking down the street, and saw a couple Germans, and went back.

A My mother went back, yes.

Q All right. When you went on the side street where the soap factory was, were you with your mother?

A No.

Q You were all by yourself?

A No. I was with this friend that I met. The friend warned me not to go to the gate. It was much too late.

Q Where was your mother at that time?

A I don't know where she was. I know she was going back. I told her to go back home. Just told her to go back home.

Q And then once again, like some miracle, somebody grabbed you, and pulled you into the factory?

A Right.

Q Did you know who that person was?

A No.

Q Do you know if that person was Ukrainian?

A No. There were no Ukrainians. There were only Jews --

Q In the --

MR. WOLF: Excuse me. Would Mr. Carlton let the witness finish?

MR. CARLTON: I am sorry.

A There were no Ukrainians hiding. The Ukrainians had no reason to hide. Only Jews were hiding.

Q The Ukrainians were not tortured and abused by the Germans?

A I haven't see it.

Q You say you didn't see it in the ghetto, or are you saying that the Ukrainians were not in any way -- Excuse me. Ukrainians were not in any way affected by the Germans that invaded their land?

A I don't --

MR. WOLF: I object to the question if it is not limited to what this witness personally saw.

THE COURT: Well, we are dealing with her personal observations generally, anyway, except where there is an objection to hearsay. I assume that is what the question means. Answer if you can.

A Please, I would like to hear that question again.

Q My question to you was, are you saying -- I don't know if this is the exact wording of it. I will rephrase it. Are you saying that Ukrainians did not suffer at the hands of the Nazis?

A How would I know. I wouldn't know.

Q Are you saying that only the Jews suffered at the hands of the Nazis?

A From my observation, that is what I have seen, yes.

Q And just to complete the incident that led to your leaving the ghetto, when you were pulled

inside this soap factory, and you went up into the attic, and there were about 50 other people in the attic, according to what you told us?

A 40, 50, yes.

Q You could not see what was going on downstairs, could you?

A No.

Q And you couldn't see who was doing the hitting, or who was doing the beating, or who was doing what?

A No. No.

Q And whether these were German police, Ukrainian police, or what they were, you don't know?

A I know, but I -- I didn't see them, if that is what you mean; if that was what you are implying.

Q And after all of the action was over, and somebody went out to investigate, and be sure that things were okay for you to come down, you went back home, did you not, and then the following day you went back to work with Major Englehart, is that right?

A No, I didn't. We were not working anymore, but I just went back to work, and was told to get my papers - that I get the paper to go through from ghetto and back. We were not -- I was not working anymore for Major Engelhart.

Q Where did you go to work the following day?

A I went back to work, but I was told that we are not --

Q Oh, you went. I see. All right. And following that is when you left with your mother, and a friend who was Polish, right?

A No. I took my mother out first from ghetto, and took her to a friend of mine who was Polish, yes.

Q And you left the ghetto, and went to Warsaw, and ultimately to this country?

A Right.

Q Is that right?

A Yes, I went to Warsaw, and then --

Q And the people that really caused all your suffering, and the suffering of your family were the Nazis, isn't that so?

A Yes.

Q And you testified finally yesterday that you never saw Mr. Koziy before, and you picked him out because you just assumed that is who he was?

A Yes.

Q Did you see his picture in the newspaper?

A Yes.

Q And you saw his picture in the newspaper prior to yesterday, did you not?

A No. Mr. Wolf told me that I shouldn't read the papers; I shouldn't talk to anybody, so I just didn't do it.

Q You didn't see --

A I listened just to the news. I didn't see Mr. Koziy.

Q I am sorry I cut you off. I apologize.

A I saw the picture of Mr. Koziy yesterday's paper, I looked at it.

Q Yesterday morning's paper?

A No. There wasn't morning paper. I didn't see yesterday morning paper.

Q Did you see Mr. Koziy on television?

A Yes.

Q And if Mr. Koziy were fighting against those Nazis that were causing you your suffering, then Mr. Koziy was in fact fighting for you, was he not?

MR. WOLF: I object to that question.

THE COURT: Objection sustained. Question is argumentative.

MR. CARLTON: No further questions. Natives are getting restless.

THE COURT: There will be order in the courtroom. Is there redirect?

MR. WOLF: Very brief redirect.

THE COURT: Let's go ahead with it.

MR. WOLF: Prior to redirect, I would like to relate one of the rules of evidence admissions by the party may be placed into evidence, and I would like to read into the record Mr. Koziy's own testimony at his deposition. It is very brief. Section -- Page 419 of his deposition. Question --

MR. CARLTON: Excuse me. Your Honor, I would object to the procedure being employed while a witness is on the witness stand to be reading into the record from a deposition of another witness or party to the cause. I don't disagree, perhaps at some time he may do so, but not in the course of redirect examination.

THE COURT: Wouldn't that he a violation of Rule 615, sir?

MR. WOLF: I would not be asking this witness any questions about what I am reading into the record.

THE COURT: I am going to sustain the objection. Let's go ahead with the redirect.

MR. WOLF: May I read it perhaps after we are finished with this witness?

THE COURT: Perhaps so. Redirect.

REDIRECT EXAMINATION

Q (By Mr. Wolf) What language did the German police usually speak?

A German.

Q And what language did the Ukrainian police speak?

A Ukrainian; sometimes Polish.

Q And you understood those languages, correct?

A Right.

Q Now, August -- Approximately August, 1942, that was the incident out in the field that you testified to before, correct?

A Yes.

Q And I think you said you were there the entire night, correct?

A Right.

Q So it was dark out during that period?

A Yes.

Q Did you hear shooting that night?

A Continuously.

Q Do you know whether all the people who went out to the field when you went there returned the next morning? Of all the people that went, at the beginning,

did they all return?

A No.

Q Now, the Bahnschutzpolizei, do you know what their function was?

A Well, they were --

Q Specifically, did they have any functions with respect to Jews?

A Yes, they were responsible of catching Jews on the trains if they were escaping around. The Bahnschutzpolizei was responsible for catching those Jews.

Q You mentioned that Major Engelhart had looked through the cars of the train during that - around the time of that particular action, or the day after to see if you were there. Who was on those trains?

MR. CARLTON: Objection. Not covered on cross examination; never asked anything about Major Engelhart going to a train, or anything about her going on a train.

MR. WOLF: The witness testified that Major Engelhart had looked through the cars of the train.

MR. CARLTON: I never asked that on cross.

THE COURT: Was that not on direct?

MR. WOLF: No. I believe Mr. Carlton asked the question - several questions about Major Engelhart, and Mrs. Engelhart, being friends, and the witness explaining that they were good to her. As an example, she gave in

response to that question that the major had looked through the cars of the train for her the following day. Perhaps the Reporter can find it. It was an answer to Mr. Carlton's question.

MR. CARLTON: I don't recall that.

THE COURT: I will overrule the objection. Go ahead.

Q Am I correct that you said that before?

A Please, if you know -- I am lost.

Q Did Major Engelhart look through the cars of the train the day after that August, 1942 --

A Yes.

Q Who were on the trains?

A All the Jews rounded up on that particular action.

Q And where was that train going?

A That, I wasn't told where it was going.

Q Apart from the treatment you received from Major Engelhart, and Mrs. Engelhart, do you know how they treated other Jews?

A Badly.

Q Did you see that yourself?

A I know of an incident that --

MR. CARLTON: Your Honor, I object if it is predicated on hearsay.

THE COURT: The question is, ma'am, do you know about that from personal observation. I believe that was the question?

MR. WOLF: Yes.

THE COURT: Do you?

THE WITNESS: Yes.

MR. WOLF: Would you go ahead, relate what you know about the manner in which Mr. or Mrs. Engelhart treated other Jews.

A On that particular last action that I went through with, when I returned to work the following day, there was a number of us working, I don't know, 40, 50 people working for the Bahnschutzpolizei. When I returned the following day, there was only few of us left, five, six, and some of the Jews did not return to ghetto that night. Some of them tried to hide in the Bahnschutzpolizei, and Mrs. Engelhart, when they were rounding them up was the one who pointed out all those Jews to the police, the ones that were hiding.

MR. CARLTON: Excuse me, your Honor --

THE COURT: Yes?

MR. CARLTON: If this is based on hearsay, what Mrs.Engelhart may have said or done, I object to it.

THE COURT: All right. Well, the objection is overruled. She is saying that she knows this from personal observation. That is the spirit in which it is being received. Did you see that, ma'am?

THE WITNESS: No, but when I came to work, and all those people were missing, the ones that were still there working, not Jewish, friends of mind told me what happened, why are the others not at work, and why are they missing. The ones that are hiding there were rounded up by Mrs. Engelhart.

THE COURT: Did you see that?

MR. CARLTON: Objection.

THE WITNESS: No.

THE COURT: I sustain the objection.

MR. CARLTON: I move to strike the testimony with regard to that.

THE COURT: Motion to strike granted.

MR. WOLF: Could you explain what the Bahnschutzpolizei was? Could you give a definition?

A There was the police that patrolled the stations - the trains. That was their function, the Bahnschutzpolizei.

Q Did you ever see them arrest Jews?

A No.

Q You mentioned at the very end before

you left the ghetto that you were hiding in a soap factory. Mr. Carlton asked you questions about what you had seen; what was happening below, and you said no?

A No.

Q From where you were in the attic, could you hear what was happening below?

A Yes.

Q Could you hear people identifying themselves as police?

A I don't think they had to identify themselves. Once you were caught, you know you were caught by police, but --

MR. CARLTON: Objection. I object to the conclusion drawn by the witness, not based on personal observation.

THE COURT: Objection sustained. Let's just ask the witness what she heard.

Q What did you hear going on?

A We heard voices. We heard people speaking. We heard the people tell the Jews to get out, and that is what we heard. They didn't say, I am Gestapo, or I am something. They come out, and got him out, and you hear words, you heard people speaking downstairs.

Q At the very beginning of the cross examination, Mr. Carlton had asked you some questions about

your brothers. You had two brothers, I believe you testified. One was a doctor, and you mentioned another brother had gone with the Russain army, and Mr. Carlton asked you questions. The brother who had gone to the Russian army, did he go voluntarily?

A He was drafted.

Q Your brother, the doctor, did he go voluntarily?

A No.

Q Do either of them live in Russia today?

A No.

MR. WOLF: One moment, your Honor. Nothing else, your Honor.

THE COURT: All right. Mrs. Frohlich, what language were the persons below in the soap factory speaking, do you recall that?

THE WITNESS: I heard German. You mean the people underneath us?

THE COURT: Yes.

THE WITNESS: I heard German, and I heard Ukrainian.

THE COURT: All right. Thank you. You may step down. Thank you, ma'am.

(Thereupon, the witness was excused.)

THE COURT: Ladies and gentlemen, we will be in recess for 15 minutes. Please return to the court-room 10 minutes after 11. Court is in recess.

(Thereupon, a short recess was taken.)

THE COURT: Next witness.

MR. WOLF: Before our next witness, I mentioned before we wanted to read into the record the testimony of the Defendant in deposition. I know the local rules, as I understand, require a responsive reading, someone to play the witness, and someone to play the lawyer, but this is very short.

THE COURT: We can do it that way if it is short. Have you been over with opposing counsel what por-tions of the deposition you are about to read?

MR. JUGO: No, your Honor.

THE COURT: I do want you to do that. Take the portions of the deposition that you deem are necessary so we could avoid discussion on them.

MR. JUGO: It was our intention that the Government would provide us with a list of lines they intend to produce. Pursuant to the rule, assuming any of this is admissible, we would want an opportunity to review it, and determine whether we want to read any portions in as the rule provides. As that has not been done, it is our position that at this time, the Government should not be allowed to read any portion of the deposition into the record.

MR. WOLF: We did provide on Monday the testimony of the nonparty witnesses that we would read into the record. On August 17th, I mentioned to him as far as Mr. Koziy, since he is the Defendant, virtually everything is admission, and as we go along in trial, things might come up that we would want to read in as an admission. I am not sure there is any way around that. It would be very difficult for me before the trial starts to know anything from the five, six volumes of this testimony that might later appear to us be an admission worthy to be read into evidence.

I can provide him a list of transcript citations that are likely, but if I might explain without going into it, this goes to the color of the Ukrainian police uniforms. It was not my understanding there was going to be a great deal of questioning, or dispute over the color of the uniforms. That has been raised. I would like to relate what Mr. Koziy said about the color of the uniforms.

MR. JUGO: Additionally, we object after several of the witnesses taking part in the testimony, and introducing it at that time. If they plan on introducing any portions of the Defendant's depositions, we request it be done at the same time, or all at one time.

THE COURT: That objection is overruled. If we can keep it in context as it relates to the testimony of other witnesses, probably would be more helpful. This is

a short section of the testimony that you are about to read, is that right?

MR. WOLF: Eight lines.

THE COURT: How about making this available to counsel right now, and let them take a look at it.

MR. WOLF: I just showed it to him. Page 419, lines 15 through 23. We will solve part of that problem at the end of the day today. We will provide Mr. Carlton with a list of those portions that we have some expectation. Now we might wish to read, we hope there is an understanding, as the trial goes along, other portions of the transcript might arise.

THE COURT: I think that would be helpful. It is a practical problem that resulted in that rule, and I believe an order of the Court which we required of counsel to go over pretrial preparation, the use of depositions, and attempt to make these as suscinct as possible.

MR. WOLF: As I said, we did that for all other witnesses, on Monday.

THE COURT: All right.

MR. WOLF: Perhaps while counsel is considering that, I would like to point out that the Government has not received the proposed findings of fact, and conclusions of law from the Defendant.

THE COURT: All right.

MR. WOLF: We would like that before his defense is put on so we have some idea what he believes his case to be.

MR. JUGO: Your Honor, it was our understanding that your Honor was not requiring that prior to trial, but rather, at least it was my understanding, that the proposed statements of fact and conclusions of law would be submitted to the Court at the conclusion of the trial.

THE COURT: I don't believe we entered any order specifically prior to the trial. We did require you to enter into a bilateral pretrial stipulation, which I haven't seen. You did give us a substitution for that, your findings of fact and conclusions of law.

MR. WOLF: I did tell Mr. Carlton we would submit a proposed findings of fact and conclusions of law which would incorporate our unilateral stipulated facts. I apologize for not advising your Honor of that. Our findings of fact would be the stipulated facts.

THE COURT: I will not require him to do that. I would like them as soon as they could get them to us. I will not require it.

MR. CARLTON: Incidentally, prior to going to the deposition, I would like to advise the Government through the Court that Mr. Edward O'Connor is available for deposition at any time, and any place that the Government

wishes to depose him.

MR. WOLF: Mr. O'Connor, I believe, is a witness that we were advised of on the first day of trial, and we still object to his use as a witness in this case.

THE COURT: Yes, sir, and I have sustained that objection.

MR. CARLTON: I understand, your Honor. For the benefit of the record, and since we will raise this issue again at an appropriate time in the trial, I want the Government again to know as I did when I first mentioned Mr. O'Connor, having just learned of him about 11:00 the night before, that Mr. O'Connor is available for deposition at any time and any place.

THE COURT: Okay.

MR. CARLTON: Including, but not limited to, West Palm Beach, Florida.

THE COURT: All right, sir. Are you ready now with respect to this testimony?

MR. WOLF: Yes.

THE COURT: Counsel for the Defendant?

MR. CARLTON: We are ready, your Honor.

THE COURT: You may proceed.

MR. WOLF: This is on page 419, beginning line 15 of Mr. Koziy's deposition:

"Q Ukrainian police in Stanislaw,

did they wear uniforms?

"A Yes.

"Q Do you remember --

"A I mean all over the Stanislaw Halycz.

"Q Do you remember the color of those uniforms?

"A Bluish.

"Q Dark blue, or light blue?

"A Dark side --"

MR. JUGO: "Darker side,"so the record is clear.

MR. WOLF: Excuse me. "Darker side."

MR. JUGO: Your Honor, at this time, I would request that the following question and answer also be read into the record in fairness to the Defendant.

THE COURT: From the same deposition?

MR. JUGO: Yes, Judge.

THE COURT: Let me have the line and page.

MR. JUGO: 419, line 24, 25, and then on page 420, line 1 and 2.

THE COURT: All right, sir, you may proceed.

MR. JUGO: (Reading from said deposition:)

"Q Do you recall if their caps

or uniforms had that symbol on it?

"A To tell you the truth, I don't remember. I can't -- I don't remember."

THE COURT: Is that it?

MR. JUGO: Yes.

THE COURT: All right. Next witness.

MS. COLEMAN: Before we begin that, may I bring one area to the Court? At the calendar call we did provide Mr. Carlton with the numbers of lines of certain deposition witnesses that would be read into the record. I am going to make an amendment to the deposition of Mr. Karol Koluszko where we are going to be adding lines from 10 additional pages, and I would like to add to Mr. Carlton these additional lines.

THE COURT: All right, fine. What is that witness' name?

MS. COLEMAN: K-o-l-u-s-z-k-o, Karol.

THE COURT: All right. Who is your next witness, please, sir?

MR. WOLF: Next witness, your Honor, will be -- I will pronounce it in Polish, Josef-Waclaw Jablonski. J-o-s-e-f W-a-c-l-a-w J-a-b-l-o-n-s-k-i. That is a deposition taken in Poland, and it is translated as well.

THE COURT: How has this been handled?

MR. WOLF: The way it was on videotape,

I asked a question in English, and there was a Polish translator there, and the witness gave the answer in Polish, and the translator gave it back in English. The written transcript we have is taken by an American court reporter from Florida, who traveled with us, and what he transcribed was my question in English, and the answer in English given through the interpreter.

THE COURT: All right.

MR. WOLF: The written transcript is English. The tape has both languages.

THE COURT: Okay.

MR. WOLF: We suggested when counsel met on August 17th, Mr. Carlton would provide us with any changes he wanted in the translations. We met on the 17th, and he didn't provide any, and I wrote him a follow-up letter, and he said, I object to the translation, but didn't provide me with any. As of today I still have no objections to the translations, and I request the transcript as it is now be taken into evidence.

THE COURT: All right. Well, the transcript, I don't believe is properly receivable in evidence.

MR. WOLF: What I should be saying is the testimony as it is in English, that be accepted as accurate.

THE COURT: Any objection?

MR. JUGO: Your Honor, I am not sure what

the Government is going to do. Are they going to introduce the transcript, or do they plan on playing the videotape, and having that taken down by the Court Reporter, or what? I am not quite sure what Mr. Wolf said.

MR. WOLF: It can be worked one of two ways: Either the Court Reporter here could take down what is being shown on the video, or the Court could incorporate in the transcript of this trial the deposition transcript taken by Jack Besoner and Associates of Miami, Florida. We have no objection either way.

MR. JUGO: We request that it be taken down by the Official Court Reporter in the courtroom.

THE COURT: That is the way we will handle it.

MR. JUGO: We object to the videotape being played in that we renew all objections previously made prior to these depositions that were taken in Poland; and additionally, I think your Honor will see if the videotape is played, or if you look at the transcript, that there was a Judge, a Polish judge, I presume, who presided at the taking of these depositions, and who participated in the depositions, some of these depositions to a great extent, and we would object to the entire depositions; the videotape being played, on the grounds that, number one, this judge had no jurisdiction in American proceedings to interject any questions or comments

during the course of that deposition, and that this judge in effect influenced the testimony of the witnesses, and thus, I would request that these depositions and videotapes be excluded from evidence.

THE COURT: We are going to have to overrule the objection until we see the extent to which it might have occurred, and to the extent that it influenced the question. Let's take a look at it first.

MR. WOLF: We believe it did comply with Rule 28 of the Federal Rules of Civil Procedure. There is one other administrative matter of the tape, would your Honor like to see the tape from the beginning, including the introductory portions in which the witness is cautioned about telling the truth, or perhaps it will go more quickly if we read it. I leave that to your Honor.

MR. JUGO: I request that the entire videotape be played, and everything that is said taken down by the Official Court Reporter.

THE COURT: Unless that is done by agreement, we will see the whole thing.

MR. JUGO: Again we reserve our objection.

MR. WOLF: This is a duplicate of the original. The original is filed with the Clerk's office here. I ask if there is an objection to the duplicate?

MR. JUGO: I request the original be played.

THE COURT: Is there any reason why we can't use the original?

MR. WOLF: I don't believe so.

THE COURT: Let's use the original. If counsel for the Defendant is objecting, use the original.

MR. WOLF: Could I point out, after the duplicates were made, these were taped up. We are breaking the tapes now.

THE COURT: All right. That is fine. Are we ready to proceed?

MR. WOLF: Yes.

(Videotape played.)

JUDGE NOWAK: I open the sitting of the District Court in Warsaw, the third day of the sitting of the District Court in Warsaw. Today is January 1st of 1981. As previously, present is the court reporter --

(Videotape stopped.)

MR. CARLTON: Excuse me, your Honor. I would move to strike -- Somewhere along either strike the deposition, the transcript if they intend to in any way introduce this. There is some error in date here. I heard him say it was January 1st, '81. The transcript appears to be dated January 21st, '81.

THE COURT: All right, sir. Well, motion is denied. We are making the original record of this trial

from the videotape.

MR. CARLTON: All right.

THE COURT: I think maybe that will -- Why don't we start it over.

(Videotape restarted.)

JUDGE NOWAK: I open the sitting of the District Court in Warsaw, the third day of the sitting of the District Court in Warsaw. Today is January 1st of 1981. As previously, present is the court reporter, and just as previously, as in previous days, present are the same participants in the deposition. The deposition is in the case against Bohdan Koziy. Now it is 12 past 10 in the morning. Would you like to take personal data from the interpreter, and the oath?

MR. WOLF: Yes, please.

JUDGE NOWAK: The interpreter's name is Krystyna Lazarowicz. Your age?

INTERPRETER: I am 28 years old.

JUDGE NOWAK: What is your occupation?

INTERPRETER: I am a teacher and translator of the English language.

JUDGE NOWAK: My address?

INTERPRETER: I live in Warsaw, Wyspianskiego Street No. 5, Apartment 75.

JUDGE NOWAK: Are you related to the case?

INTERPRETER: I am not related.

JUDGE NOWAK: Have you ever been convicted for false statement?

INTERPRETER: No, I haven't.

JUDGE NOWAK: Your education?

INTERPRETER: I am a university graduate.

JUDGE NOWAK: Where did you work?

INTERPRETER: I started to work as a translator, and as an interpreter.

JUDGE NOWAK: Where did you work?

INTERPRETER: I was working for the Polish Press Agency.

JUDGE NOWAK: Have you got any questions concerning the interpreter's personal data?

MR. WORL: I have just a few. Previously in translating I believe you said that today's date is January 1st. Did the Judge say January 1st, or January 21st?

INTERPRETER: The Judge said January 21st, and I think I said January 21st, but I don't remember. It is the 21st.

MR. WOLF: Just so the record is correct, the date is January 21st, 1981. Do you understand that as an interpreter in this case you must faithfully interpret everything said by the witness; by the attorneys; and by the Judge?

INTERPRETER: Yes, I do.

MR. WOLF: Do you understand that you cannot add, delete, or modify anything said by any of the participants in this proceeding?

INTERPRETER: Yes, I do.

MR. WOLF: Thank you. I have nothing further.

JUDGE NOWAK: I administer an oath from the interpreter according to paragraph 180.1 of the Polish Criminal Proceedings Code.

(Thereupon, the interpreter was duly sworn in Polish, pursuant to the text as follows:)

INTERPRETER: And the text of the oath is: Being aware of the significance of my words, and the responsibility before the law, I swear solemnly to perform my duties as an interpreter accurately, impartially, and without bias.

JUDGE NOWAK: Is Mr. Marwell to give an oath, too?

MR. WOLF: Yes, perhaps at this time Mr. Besoner, who is a Notary Public, can administer an oath to Mr. Marwell.

JUDGE NOWAK: Could you stand in such a position so that you didn't stand back toward the Judge?

MR. BESONER: Do you solemnly swear that

you will record and videotape the testimony of this witness?

MR. MARWELL: I do.

(Videotape stopped.)

MR. WOLF: Your Honor, perhaps to understand, Mr. Marwell was the person who was operating the videotape equipment, and he is from our office.

THE COURT: Yes, that is clear, I believe.

(Videotape restarted.)

JUDGE NOWAK: Present is the witness, Josef-Waclaw Jablonski. I warn the witness about the obligation to speak the truth and only the truth, and that his testimony will serve as the evidence in the case, and I warn the witness about the obligation to speak the truth, and not to hide anything what he knows; and I warn the witness about the penalty of five years imprisonment for false statement, according to paragraph 247.1 of the Polish Criminal Proceeding Code. Your name?

THE WITNESS: Josef-Waclaw.

JUDGE NOWAK: Your parents' name?

THE WITNESS: Ludwik and Joanna.

INTERPRETER: The Judge asks whether it was Anna or Joanna.

THE WITNESS: Joanna.

JUDGE NOWAK: Your mother's maiden name?

THE WITNESS: Rysniuk

MR. WOLF: Excuse me. Could we just have a moment so the translator can translate into English what transpired?

JUDGE NOWAK: Your date of birth?

THE WITNESS: 25th of October, 1926.

JUDGE NOWAK: Your place of birth?

THE WITNESS: Lisets.

JUDGE NOWAK: What was the region when you were born?

THE WITNESS: There was the Bohorodciany Commune, but the region is Stanislawow.

JUDGE NOWAK: Where do you live now?

THE WITNESS: In Bydgoszcz, Kapus Street No. 1, Apartment 15.

JUDGE NOWAK: Your occupation?

THE WITNESS: White collar worker.

JUDGE NOWAK: Your education?

THE WITNESS: Secondary education.

JUDGE NOWAK: Have you ever been convicted?

THE WITNESS: No, I haven't.

JUDGE NOWAK: Are you related to Koziy, or to the case?

THE WITNESS: No, I am not.

(Videotape stopped.)

MR. CARLTON: Your Honor, at this time,

I move to strike all of that testimony or statement of the witness as not being under oath.

MR. WOLF: Your Honor, Rule 603 of the Rules of Evidence state before testifying, every witness shall be required that he declare that he testify truthfully by oath, or administer in a form calculated to weight his conscience, and impress his mind and his duty to do so. I believe the question asked of the judge of the witness, whether he would speak the truth, and cautioned him that he must speak the truth satisfies the oath requirement of 603.

MR. CARLTON: Your Honor, the mere fact that the judge present did in fact give such a warning, it does not satsify the requirements. It is required that he actually take an oath. Now, there will be an oath administered; however, it has not been administered up to this point.

THE COURT: Well, I will overrule the objection. We may proceed.

(Videotape restarted.)

JUDGE NOWAK: The Judge will administer the oath from the witness according to the paragraph 170.1 of the Criminal Code Proceedings.

(Thereupon, the witness was duly sworn in Polish, the text of which follows:)

INTERPRETER: The text of the oath is: Being aware of the significance of my words, and the

responsibility before the law, I solemnly swear that I will speak the truth and only the truth, and I will not hide anything that I know.

JUDGE NOWAK: Yes, you can ask questions, please.

MR. WOLF: For the benefit of the witness, and for the Court, I would like to state at this time the nature of this proceeding, and the procedures which are going to be followed today.

This is a deposition of Josef-Waclaw Jablonski in the case of United States versus Bohdan Koziy. That case is identified as Civil Action No. 79-6640, before the Honorable James Paine, United States District Court Judge in the Southern District of Florida.

This deposition is being conducted pursuant to a Notice of Deposition filed with the Court on December 4, 1980 --

(Videotape stopped.)

MR. CARLTON: Excuse me. I would at this time object, and move to strike all comments of Mr. Wolf of being of no probative value for benefit of the Court in determining the ultimate issues in the case.

THE COURT: All right, sir. Motion is denied. I don't know that it is necessary, but I don't think harm has been done. You may proceed.

(Videotape restarted.)

MR. WOLF: -- and a copy of that Notice of Deposition was mailed to the Defendant's counsel approximately one week prior to that date. This deposition will be conducted in accordance with the Federal Rules of Civil Procedure and the Federal Rules of Evidence.

In addition, since this deposition is taking place in Warsaw, Poland, it will proceed in accordance with Polish law which requires that the oath taken by the witness be given by a Judge of the Polish Judicial System. That procedure is consistent with Rule 28(b) of the Federal Rules of Civil Procedure.

All counsel at this deposition will have the opportunity to question the witnes. The only limitations on the scope of questioning will be limitations imposed by the Federal Rules of Civil Procedure, or the Federal Rules of Evidence. And I should explain for the witness that the Federal Rules that I am referring to are the United States Federal Rules.

Also, although this deposition was originally noticed to take place in the American Embassy, it is actually being conducted in the District Court Building for the City of Warsaw. The American Embassy did not have space available in which to conduct the deposition, and the Polish Government, therefore, kindly made this space available

to us; and as on previous days, we would very much like to thank the Judge and the Polish Government for their assistance.

The people participating in this deposition are District Judge Stanislaw Nowak; his reporter, Dorota Bugajna; the Deponent, Josef Jablonski; the interpreter, Krystyna Lazarowicz; the court reporter, Jack Besoner; videotape operator, David Marwell; and the counsel for the United States are Jovi Tenev to my left, and I am Michael Wolf.

As previously stated, notice of this deposition was sent to Philip Carlton, the attorney for Defendant Bohdan Koziy. On Friday, January 9th, 1981, Mr. Carlton advised me that he would refuse to attend this deposition.

Mr. Carlton also stated at that time that he was aware that Judge Paine had denied his motion to stay the taking of this deposition, but that in spite of that ruling he would, nevertheless, decline to attend.

As previously stated, he would have had a full opportunity under the Rules of Civil Procedure and the Rules of Evidence to question this witness. By his absence, he has waived this right.

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Thereupon:

JOSEF-WACLAW JABLONSKI

was called as a witness on behalf of the Plaintiff, and being first duly sworn, was examined and testified on his oath as follows through the Polish interpreter:)

DIRECT EXAMINATION

Q (By Mr. Wolf) Mr. Jablonski, the Judge, Judge Nowak previously advised you of your obligation under Polish law to tell the truth. American law similarly requires all witnesses to tell the truth, and only the truth. Do you understand that to the extent that this deposition is being conducted pursuant to American law that you must testify truthfully as to all matters?

A Yes, I do.

(Videotape stopped.)

MR. CARLTON: Your Honor, I am going to object to the interpreter adding words throughout the course of her interpretation that do not appear from the mouth of the witness. Now, it is a relatively minor point as regards what we just hear. The question was asked whether Mr. Jablonski understands that he must testify truthfully. The witness answered yes. Now, the interpreter answered yes, I do. Now, of course, it is almost frivolous as regards that particular question, but as you go through this, you will find the interpreter consistently adds words to explain. For

example, if the witness were asked whether or not he saw this --

MR. WOLF: I --

THE COURT: Let him finish.

MR. CARLTON: -- whether or not he saw this cup on the table, the witness will answer yes, and the interpreter will answer, yes, I saw the cup on the table.

Now, this being the case, and in fact you don't even have to speak the language to see what is happening, because there is one word for yes, or one word for no, and you can see that the interpreter is adding additional words. I object to that part of the interpretation added solely and voluntarily by the interpreter.

THE COURT: Yes, sir?

MR. WOLF: I made numerous requests of Mr. Carlton, including at the pretrial hearing to provide me with any examples he had of the incorrect translations, and I would go over it, and obviously agree to any changes he wanted that were accurate. I wrote a follow-up letter asking him to provide me with the answers. He hasn't done so. I assume what he wants to do now in the middle of the deposition when we have no Polish translator to verify what he wants to say, he wants the record to be changed. I have to oppose that. It is not the point we want an incorrect record. I would have no problem if there is a mistake. I made every

effort to get together with Mr. Carlton.

MR. CARLTON: Your Honor, I advised Mr. Wolf orally of this problem that I am now reciting to the Court, and I told him it is so voluminous it is impossible because every question, the same thing happens.

You will find in merely one - in three questions, or four -- Let me see how many. In four questions on page 11, for example, of the transcript, the answer to the fourth does not appear on that page, so you can say three questions, and three questions there are three corrections, and so you go. On page 12, the same thing. It is every question, the same thing happens. Page 13, once again, the same thing happens; and it is impossible to go through this deposition, every question, and have to retype the entire deposition.

MR. WOLF: Your Honor, it is not impossible. We made corrections to the deposition, and sent it to Mr. Besoner. Mr. Carlton has had the depositions for months and months. He had the opportunity to submit it to Mr. Besoner, and submit it to us. He didn't do it.

MR. CARLTON: Submitting it to Mr. Besoner does not help. Mr. Besoner does not know whether or not the interpreter is adding words. Mr. Besoner, the court reporter, is taking down what the interpreter is saying in English.

THE COURT: All right. Well, I will have

to overrule the objection on the basis of the showing. We will see how it goes. If it is obvious that the interpretation isn't correct, we can tell that, we will have to make such rulings as are required as the matter progresses. You may proceed.

(Videotape restarted.)

MR. WOLF: Just to clarify this matter, is your first name Josef, or is it Josef-Waclaw?

A I have two names, Josef-Waclaw, and my surname is Jablonski.

Q Who is your employer at the present time?

A It is Transbud Construction Company in Bydgoszcz.

Q And what is your position with that organization?

A I am a division manager.

Q Could you state again what the date of your birth was?

A I was born on the 25th of October, 1926.

Q And I believe you stated in response to a question from the Judge that you were born in Lisets, in the Stanislawow region, is that correct?

A Yes, that is correct.

Q And at the time of your birth, what country was that located in?

A It was Poland.

Q Until when did you reside in Lisets?

A Until April, 1946.

Q Did you reside in Lisets continuously from the time of your birth until that date?

A Yes, I did.

Q Did you reside in Lisets during the period of the Nazi occupation?

A Yes, I did.

Q Do you recall when the Nazis invaded the region in which you lived?

A Yes, I do.

Q Do you know when that was?

A Yes, it was in the summer, 1941.

Q Since you were born in 1926, I would be correct, then, that you were approximately 15 years old at the time of the invasion?

A Yes, that's correct.

Q What were you doing at that time, at the time of the invasion?

A I was staying at home. I was doing nothing.

Q Did you attend school during the

period of the occupation?

A No. I didn't.

Q Why was that? Why is it that you were not attending school?

A Because the schools were closed by the Germans, and we couldn't learn.

Q During 1941, do you recall approximately how many people lived in Lisets?

A I think there were about 2,000 people.

Q Did any Jews reside in Lisets prior to the Nazi invasion?

A Yes, there was -- There were.

Q Do you recall approximately how many Jews there were at that time?

A Yes, I do. I remember there were about 20 Jewish families.

Q During the period of the Nazi occupation of that area, that region, did Lisets have a Mayor?

A Yes.

Q Do you recall what his name was?

A Yes, I do.

Q And what was his name?

A Wasyl Ostapiak.

Q Do you recall whether he was the Mayor during the entire period of the occupation?

A Yes.

Q Did he become Mayor before the Nazi invasion, or after the invasion?

A After the invasion by the Germans.

Q Was he the Mayor only of Lisets, or did he have any other official responsibilities?

A He was the Mayor of Lisets and the surrounding villages

Q Do you know whether during the period of the occupation, Wasyl Ostapiak, in his capacity as Mayor, collaborated with the Nazis?

(Videotape stopped.)

MR. CARLTON: I would object, and move to strike predicated on what he thinks as predicated on hearsay, or predicated on matters not appearing in the record. It is just his conclusion that he was the Mayor, and collaborated with the Nazis is not procedure to begin with.

THE COURT: Well, he stated in an earlier question that he was the Mayor of the village of Lisets, and the surrounding villages, did he not?

MR. CARLTON: Correct.

THE COURT: What you are objecting to --

MR. CARLTON: Collaboration. "Do you know whether during the period of the occupation, Wasyl Ostapiak, in his capacity as Mayor, collaborated with the

Nazis?" Answer: " I think that he did."

MR. WOLF: Did --

MR. CARLTON: Excuse me one moment. If that was said by the witness on the witness stand, I believe it would be totally inadmissible.

MR. WOLF: Your Honor, the next question is, in what manner did he cooperate, and the witness enumerates there his functions in the mind of the witness - that in the mind of this witness constitutes collaboration.

If Mr. Carlton had been there, he could have cross examined the witness to try and show that it was something other than his personal knowledge, but I think it is a little late for him to be doing that here, but in any event, the witness was asked to enumerate examples of collaboration.

MR. CARLTON: He will go on. Since the question has been -- The issue has been raised, he will go on to state things that he does not state were from his own personal knowledge, as your Honor will hear in the next question and answer, and I would object to that. I don't waive that by virtue of the fact, for reasons that we need not go into, I was not able to go to Poland.

MR. WOLF: I think those would have been the very questions that Mr. Carlton would have asked at the time, and he does waive them, I believe if he is going to

question the veracity of the witness on these various points. I can understand him saying something is not relevant, and your Honor would properly rule on that today.

In effect Mr. Carlton is trying to cross examine this videotape, questioning what this witness knows, and it is a little too late for that.

MR. CARLTON: I am not attempting to cross examine a videotape. I am objecting to answers given which I have not waived - not predicated upon his personal knowledge.

THE COURT: All right. So you are essentially objecting because it is hearsay?

MR. CARLTON: I would be objecting because it is hearsay.

MR. WOLF: Your Honor, the record doesn't reflect that this is hearsay. The witness was testifying to what he knew.

MR. CARLTON: Well, obviously he is not testifying from what he knew when he was asked whether or not -- He was asked whether or not he collaborated, and doesn't say that he knew he collaborated. He says, "I think that he did." The next question as your Honor will hear goes into how he cooperated, referring to vassals, and what he considered to be collaboration, and the answer following that will not be from matters that would come from his own personal knowledge. We are talking about an individual that

was 15 years old allegedly at the time that he was in Lisets.

MR. WOLF: The following answer doesn't suggest in any way that it was hearsay. In fact it was personal knowledge.

THE COURT: All right. Well, I rather expect we are going to run into this objection more than once during the course of this, and other depositions. I think it might be appropriate at this time to take the noon recess, and I will rule on this when we return.

We will be in recess now until 1:15, at which time we will make a ruling on this particular objection before we proceed.

Ladies and gentlemen, just a minute, please. Let's not depart until the lawyers are finished speaking. We have a hard time hearing them when everyone is standing up, chatting, and moving out.

MR. WOLF: Could we make one objection? If your Honor can see what the next question and the answer was before making the ruling -- Mr. Carlton is implying there was hearsay involved in the following answer, and perhaps if your Honor can see the answer, and then decide on the propriety. It is about 30 seconds.

MR. CARLTON: It is not merely 30 seconds because there is more than that. As you go through this, the same things come up.

THE COURT: I am not inclined to do that. Let's see what we can do with this. We might have to do that later. We will be in recess until 1:15.

(Thereupon, the Court was in recess.)

AFTERNOON SESSION

Commencing at 1:15 o'clock P.M.

THE COURT: Now, gentlemen, the matter we were talking about just before we recessed for lunch I believe is dealt with in Rule of Procedure 32(b), which says that errors and irregularities occurring at the oral examination in the manner of taking the deposition in the form of questions or answers, in the oath or affirmation, or the conduct of parties and errors of any kind which might be obviated, removed, or cured if promptly presented, are waived unless seasonable objection is made at the taking of the deposition. Insofar as the question before the Court presently is concerned, the objection is overruled. I think we will have to listen to the totality of the answer which may come after several more questions, according to proffer made by counsel. If it appears that the answer is truely hearsay, and it couldn't have been cured by questions by the Defense who were not present, then I think the hearsay objection will have to be sustained. If it appears that it could have been cured so as to result in the answer not being hearsay by proper questions, then I think the objection will have been waived, and I am afraid we are going to have to

take these up piece-meal as the evidence comes in.

If there are a number of instances that Mr. Carlton has indicated there may be where the problem will be presented, there are several cases that deal with it. I don't really think it is necessary to go over those, but we have tried to read them, and give some consideration to this ruling; so, let's proceed.

MR. JUGO: Your Honor, prior to starting the videotape with this particular witness, if I may, with regards to Mrs. Frohlich, who was the last witness in this case, I would respectfully move at this time to strike her testimony regarding the Ukrainian and German policeman enforcement of wearing arm bands, and her testimony regarding that, and the death penalty being the penalty that would be provided if arm bands weren't worn; and my motion is predicated upon the fact that her testimony is based solely on hearsay, and nothing else.

MR. WOLF: Your Honor --

THE COURT: Yes, sir?

MR. WOLF: I believe her testimony in part was based on the fact that German regulations were posted announcing that there was a death penalty for people who did not wear the arm bands as well as regulations pertaining to their violations by Jews. I believe that is her testimony. She saw the German regulations.

MR. JUGO: Those German regulations are hearsay.

THE COURT: That objection is overruled.

MR. JUGO: I make the same objections with regards to her testimony involving the smuggling out of the ghetto of furs and jewels, and her testimony regarding the curfew, and walking on the sidewalk.

THE COURT: All right. The objection, or motion to strike, I should say more accurately, is denied for each of those things, sir.

MR. JUGO: Thank you, your Honor.

THE COURT: All right. Let's go ahead with the videotape deposition.

(Videotape restarted.)

MR. WOLF: In what manner did he cooperate? What kinds of things did he do that you considered to have been collaboration?

A He selected both Polish and Ukrainian young people to be sent to forced labor in Germany. He was also collecting food from the surrounding people. Besides, he was selling Jewish houses to other people. That is, people bought those houses, they dismantled them, and they built their own houses.

Q When you say that he was responsible for collecting food from people in the area, who was the food

going to? What was to be done with that food?

A It was going to the German army.

(Videotape stopped.)

MR. CARLTON: Your Honor, I would object to the last two answers as predicated upon hearsay. For exsmple, the last question, where was the food going to; it was going to the German army, just the answer alone, obviously, he doesn't know that from his own personal knowledge. That would have to be told to him, as opposed to him carrying the food to the German army, however they got it, if they got it at all.

MR. WOLF: Your Honor, those are questions that Mr. Carlton could have asked at the deposition, if he were concerned about the personal knowledge of the witness. The answer itself doesn't indicate it was based on hearsay.

THE COURT: The objection is overruled. It does not seem to me that the answer, that we can assume the answer is based on hearsay, from the terms of the questions, and answer in the deposition, so the objection is overruled.

(Videotape restarted.)

MR. WOLF: Were the Jews allowed to remain living in Lisets throughout the entire period of the Nazi occupation?

A No, they were not.

Q Do you know what was done with the

Jews who lived in Lisets?

A I do.

Q What was that?

A After the ghetto in Stanislawow had been established, all Jews were taken there.

Q Do you know what year this took place?

A I think it was in '42.

(Videotape stopped.)

MR. CARLTON: Objection to what he thinks.

THE COURT: Objection overruled.

(Videotape restarted.)

Q Do you remember what season of the year that it took place?

A I know it was summer.

Q Do you know whether Wasyl Ostapiak was involved in any way in the resettlement of the Jews from Lisets to the Stanislawow ghetto?

A I know that he only ordered people who had horse wagons to do it, because everything was done on horse wagons.

Q When you say everything was done on horse wagons, could you clarify that a little bit?

A So one got a letter, information, or announcement from the commune authorities that was signed

by Wasyl Ostapiak that he is supposed to be at a certain place on a certain day with a horse wagon.

(Videotape stopped.)

MR. CARLTON: Your Honor, objection, and move to strike as the information and content of that letter would constitute hearsay.

THE COURT: What about that?

MR. WOLF: Your Honor, I think that is in the nature of the old res gestae rule. The communication itself was the act that is of significance. It is the act of collaboration. It is not mere hearsay. Furthermore, he indicates why people then did what they did. That is how it is that people did come with horses, and carts, and bring the Jews over to Stanislaw.

THE COURT: All right. Objection over-ruled.

(Videotape restarted.)

Q And what were the people supposed to do with the horse and wagon?

A They were at the disposal of the Lisets authorities, and they did what they were supposed to do or they were told to do, so they took the Jewish people from Lisets to Stanislaw.

(Videotape stopped.)

MR. CARLTON: Same objection as to what

they were told to do.

THE COURT: Objection overruled. I think we are talking about what they did, and whether or not they were told to do this, perhaps is within - properly within the hearsay objection. We are more concerned, really, with what they did. Perhaps it is more proper to sustain the objection as to what they were told to do. That is obviously from hearsay. I will sustain that part of it.

MR. CARLTON: I move to strike it from the record.

THE COURT: All right. Motion granted, that portion of the answer in which he says what they were told to do.

MR. WOLF: Your Honor, might I suggest for the record somewhat in the nature of Nazi documents where the documents says the Jews shall be liquidated, that could be hearsay. It is out of court statement. It is in fact the act that is of significance. It is an act about the persecution and the killings. To that extent, I think those kinds of statements, or documents would be admissible.

MR. JUGO: Your Honor, documents, at least according to the Government are somewhat different. They come within a hearsay objection as being agent documents, or some other public record, or document, and that is different from what we are encountering here.

THE COURT: We are receiving the testimony as to what the act was, but we are striking the testimony as to the fact they were told to do it by anybody.

(Videotape restarted.)

MR. WOLF: Did the Jews leave Lisets voluntarily, or were they forcibly removed?

A They were forced.

Q Were there any other official groups or oganizations involved in carrying out the removal of the Jews from Lisets to Stanislawow?

(Videotape stopped.)

MR. JUGO: Your Honor, I object to that question as it calls for a conclusion as to what is an official group or organization.

THE COURT: Objection overruled.

(Videotape restarted.)

A Yes, yes, Ukrainian police that were stationed in Lisets.

Q And were any other people --

A Together with Germans.

Q Did you have any opportunity personally to see any Ukrainian policemen involved in this operation?

A I didn't see it personally, but I saw how it was done.

Q When you say you saw how it was done,

do you mean what you explained before about the horses, and carts and wagons?

A Yes, they were told to come with the horse and wagon --

(Videotape stopped.)

MR. CARLTON: Objection, your Honor, after he says, yes, they were told to, and then he goes on to say what they were told. That is clearly hearsay.

MR. WOLF: I think if the answer could be finished, it will be clear that isn't in fact what he said. I can understand that part of the answer may be subject to the hearsay objection, but the full answer should be heard first. The latter part is not subject to hearsay.

THE COURT: Run back to the question and answer, please.

MR. CARLTON: Your Honor, if I may before he begins that, it says, did you have any opportunity personally to see any Ukrainian police involved in the operation, and the answer is, I didn't see it personally; I saw how it was done.

THE COURT: Yes, I heard that.

MR. CARLTON: And then, yes, they were told to. Your Honor wishes to hear the answer at this point?

THE COURT: Yes, sir, I do. We can just start there, if you can find that.

(Videotape restarted.)

A Yes, they were told to come with the horse and wagon, and then a Ukrainian policeman entered a Jewish house, and he took the Jewish family out of the house; and then whan all horse wagons assembled together, they had, well, a convoy of Ukrainian and German policemen, and they were going to the Stanislawow ghetto.

Q Did you personally --

(Videotape stopped.)

MR. CARLTON: I object at this point. He says they were told to come with the horse and wagon. Clearly hearsay. Ukrainian policeman entered a Jewish house. He took the Jewish family out of the house. In the previous question and answer, he explained that he did not see it personally. The only thing he saw is how it was done, and he goes on to say when all horse wagons assembled together, with a convoy of German and Ukrainian policemen, they were going to the Stanislaw ghetto. The portion about the Stanislaw ghetto would be hearsay, since he was not a part of it, and cannot go to it. It can only be based on what was told to him.

MR. WOLF: Your Honor, the next question is whether the witness had personally seen the convoy, and he said he had.

MR. CARLTON: Correct. I am sorry.

MR. WOLF: I realize there is some confusion, early on, and I am well aware of what the witness said. I was unaware there was a problem of his having a problem with the question. I have no problem with the hearsay being excluded, but he is describing that event - the convoy.

THE COURT: The motion to strike is granted as to that part in which he indicates he didn't personally see it. I think the totality of the answer, however, is admissible under Rule 32, -3(b). We may proceed.

(Videotape restarted.)

MR. WOLF: -- have an opportunity to see any of these convoys?

A Yes, I did.

Q Do you know what ultimately happened to the ghetto in Stanislawow?

A Yes, I do.

Q What was that?

A All the ghetto residents were shot, and the ghetto stopped existing.

(Videotape stopped.)

MR. CARLTON: Objection. Move to strike since it is clear from the line of questions and answers that he was not in the ghetto; the fact that the ghetto residents were shot, and the ghetto stopped existing would have to be predicated upon what was told to him by someone else, or what

he read.

THE COURT: Not necessarily. Seems to me the question and answer do not indicate that he doesn't have personal knowledge. Overrule the objection.

(Videotape restarted.)

MR. WOLF: You previously mentioned Ukrainian police. Were there Ukrainian policemen stationed in the town of Lisets?

A Yes.

Q And did the police have a police building, or headquarters of some sort?

A Yes, they did.

Q Where did you live in relation to the police headquarters?

A One kilometer and a half, approximately. About one kilometer and a half.

Q In living there, did you have an opportunity to observe both the police station and the policemen during the period of the occupation?

A Yes, I did.

Q Were there any other organizations or, more specifically, German organizations stationed in Lisets?

A I don't know anything about it. I don't know such an organization. Besides the Ukrainian

policemen, I don't know of any other organization to have been stationed in Lisets.

Q Do you know where the Gestapo headquarters was for your region?

A In Stanislawow.

Q Were there any Gestapo permanently stationed in Lisets, to your knowledge?

A I don't know.

Q Approximately how many Ukrainian policemen, to your knowledge, were stationed in Lisets during the period of the occupation?

A To my knowledge, there were five of them.

Q Do you know the names of any of these police officers, and, if so, could you name them?

A Out of those five policemen, I know three names.

Q Could you give us the names?

A Witwicki; Yrodenko or Horodenko; and Bohdan Koziy; and I don't remember the other two names.

Q Were any of those three people the chief of police in Lisets, or is that one of the other two that you don't remember?

A I think he was one of those two whom I don't remember.

Q Did the Ukrainian policemen wear uniforms?

A Yes, they did.

Q What color were they?

(Videotape stopped.)

MR. CARLTON: Your Honor, I would move to strike the names of the individuals which this witness alleges to be police officers, as that would have to be predicated upon hearsay. In other words, if, for example, Witwicki, or Yrodenko would have to come from some other person, maybe Witwicki, or Yrodenko himself, if those were actual people there. The same with Bohdan Koziy, that would have to be hearsay as well.

THE COURT: All right. Motion denied.

(Videotape restarted.)

A Navy blue.

Q And did they wear any other kind of uniform-type clothing?

A No, they didn't.

Q Did they wear caps?

A Yes, they did.

Q Did they wear any kind of symbol or insignia?

A On their caps they had tryzub. It is a symbol just like Gestapo men wore death heads on their

caps.

(Videotape stopped.)

MR. WOLF: Excuse me, your Honor. I apologize. Mr. Carlton's objection, I didn't hear the witness' answer, as far as the description of the uniform.

THE COURT: Yes, navy blue.

(Videotape restarted.)

Q Do you recall now what that symbol looks like?

A Yes, I do.

Q Could you just draw on this piece of paper what the symbol looks like?

A As well as I remember, it looked somewhat like this.

MR. WOLF: May I have this marked as Government's -- United States' Exhibit 1?

Why don't you just sign your name on the piece of paper, please.

A (Witness complies.)

Q You signed your name, and then wrote something underneath it. What does that say?

A That is Warszawa, which is Warsaw, dnia, which is day, 21st of January, '81.

MR. WOLF: I would like to have that marked as Exhibit 1, and the United States will move that into

evidence in this deposition.

(Videotape stopped.)

MR. WOLF: Your Honor, we would repeat that request now that that be taken into evidence. It should be attached to the transcript copy that your Honor has.

MR. CARLTON: Your Honor, we would ask to see the exhibit that they intend to offer.

THE COURT: Well, it is attached to the original of the deposition if you would like to look at it. Let him see the original.

MR. WOLF: Your Honor, we have marked the entire deposition transcript and tapes as Exhibit 22A.

MR. JUGO: May I inquire through the Court whether or not the Government is intending on introducing the whole deposition at this time?

MR. WOLF: We were uncertain what procedure your Honor wished to follow, and whether the transcripts would be exhibits, or the tape. We thought the safest thing to do is identify the tapes and transcripts together as a single exhibit.

THE COURT: You are offering at this time only this Plaintiff's Exhibit number 1 to the deposition, is that correct?

MR. WOLF: We are offering the entire deposition into evidence, this witness, including the

attachments.

THE COURT: I don't intend to receive the entire deposition into evidence. Now, the attachments that are marked as an exhibit, I think could properly be received, if it has any relevancy. What is the relevancy? He made his signature here.

MR. WOLF: The description of the symbol that he gave will comport with the description the Defendant has given of the symbol called the tryzub.

MR. JUGO: First of all, I object to the Government testifying. Secondly, I object to that exhibit being introduced into evidence until they can link it up as showing there is some relevancy to this matter; and thirdly, I would object to that exhibit based on our previous objections to the deposition as a whole.

THE COURT: Well, let's mark it for I.D., and mark it with Exhibit number 22A. I will refuse the proffer of it at this time, until it is shown to be relevant.

For the record, I have removed that document marked Plaintiff's Exhibit 1 from the deposition of the witness Jablonski.

(Thereupon, said Exhibit 1 was marked as "Plaintiff's Exhibit 22A for Identification" by the Court.)

(Videotape restarted.)

MR. WOLF: Did the Ukrainian police carry

weapons?

A Yes, they did.

Q And what were they? What kind of weapons did they carry?

A They had short weapons, that is pistols, and rifles.

Q I would like you to focus on one of the three officers who you named, and that is Bohdan Koziy. Do you know what year it was when you first saw him as a policeman in Lisets?

A Yes, it was 1942.

Q And do you remember the season of the year when you first saw him?

A I know that it was warm.

Q Was Koziy originally from Lisets?

A No, he wasn't.

Q Do you know where he was born?

A No.

Q Could you estimate approximately how old he was when you first saw him in Lisets?

A I think he was 22 or 23.

Q And do you recall how tall he was?

A I think he was about one meter, 70 centimeters tall.

Q And what was his build like? Was he

slim, fat, medium?

A He was of middle -- Medium build.

Q And do you recall what color hair he had?

A Yes, I can remember. I think that his color was the same color of hair as of that man who is sitting here on the left.

Q Is the witness pointing to Mr. Tenev?

A Yes. Yes, I am.

MR. WOLF: Can the camera see Mr. Tenev?

MR. MARWELL: Yes.

MR. WOLF: In case the color does not come across very well on the camera, for the record, Mr. Tenev's hair, what there is left of it, is a sandy blond. It is a sandy-colored hair.

JUDGE NOWAK: Is it color film?

MR. WOLF: It is color film, but I am not sure how true the color is.

(Judge Nowak speaks in Polish.)

INTERPRETER: A bit darker than sand - the color of sand.

(Videotape stopped.)

MR. JUGO: I object to the Judge's interpretation of the color of the hair. He has no standing to participate in that deposition.

MR. CARLTON: I move his hair into evidence.

THE COURT: Objection overruled. Motion denied.

MR. TENEV: Thank you, your Honor.

(Videotape restarted.)

MR. WOLF: It seems a little bit blond around the top, and a little bit dark around the sides, but I think the general idea will come across.

Approximately how frequently did you see Bohdan Koziy during the period of the occupation?

A As I was not doing anything during the Nazi occupation, I was quite often wandering around our town, and I was quite often in the center of our town; and once a week I saw him.

Q Was the police station in the central area of the town?

A Almost in the center of the town.

Q And on the occasions when you saw Mr. Koziy, was he wearing a uniform?

A Yes.

Q Was it the same uniform you described just a few minutes ago?

A Yes.

Q Did that uniform have the symbol

that you just drew for us before?

A Yes, he always wore it, the cap and the tryzub on the cap.

(Videotape stopped.)

MR. JUGO: Your Honor, I object to the leading form of the questions, and move to strike the last three questions and answers.

THE COURT: Objection overruled, and motion denied.

(Videotape restarted.)

Q Do you know what kind of weapon he carried?

A Yes. I saw him both with the short and long weapon.

Q Can you calrify that? Do you mean -- Can you clarify that further? Are you talking about guns, knives, or some other form of weapon?

A A pistol, and a carbine, a rifle.

Q When you first saw Koziy in Lisets, what was his marital status, at least to your knowledge?

(Videotape stopped.)

MR. CARLTON: Objection, as it will call for hearsay.

THE COURT: Objection overruled.

(Videotape restarted.)

A He was a bachelor.

Q And did he ever become married while stationed in Lisets?

A Yes, Bohdan Kozly got married in Lisets.

Q Who did he marry?

A He married Miss Slavka Ostapiak, Wasyl's daughter.

Q Was Slavka a nickname, or her full first name?

A Her full first name was Jaroslava, but Slavka was the diminutive.

Q Do you remember when this wedding took place?

A I don't remember the exact date, but I know that it was somewhere in the summer.

Q Was this a big event in Lisets?

A Yes, it was.

Q Was there a wedding party or a reception?

A Yes, there was.

Q Were you invited?

A No, I wasn't.

Q Did you have occasion to observe

the wedding reception; the wedding party?

A Yes, because the wedding reception took place at her grandfather's house, Mr. Hudyma - her grandfather's name was Mr. Hudyma - and in the evening of that date, together with other boys of my age, we went there and we stood at the windows.

Q Was the reception inside?

A Yes, it was inside.

Q Were you able to see Bohdan Koziy at the party?

A Yes, I saw them dancing.

Q Do you recall whether any other policemen stationed in Lisets during the occupation were married during that time period?

A No.

Q When did you personally meet Slavka Ostapiak?

A I knew that they were living in Lisets, but I saw her - I met her for the first time at school, in 1940.

Q You said you met her at school. Were you both attending the same school?

A Yes, we were.

Q Did you ever personally meet Koziy as opposed to just seeing him around the town?

A Besides seeing him in the town, I didn't meet him.

Q Was he ever in your home?

(Videotape stopped.)

MR. CARLTON: Your Honor, I renew my objections to the previous objections made a matter of record here that were otherwise overruled by the Court that any information regarding Mr. Koziy conceivably could have come from Mr. Koziy himself, assuming we are talking about the same individual who is a Defendant in this cause, so that your Honor possibly overruled on that basis, but now it has become clear in the record that he never actually met Mr. Koziy, so any information he got about him would have had to have been hearsay.

MR. WOLF: I think the record doesn't reflect that, and the very next question will indicate what Mr. Carlton said is not accurate. He did personally see him, and he did meet him.

THE COURT: Well, he said -- His last answer was, besides seeing him in the towm, I did not meet him. Is there something different than that?

MR. WOLF: "Was he ever in your Home?" The answer, "Yes, he was." And I asked him if he could explain. I hesitate to interpret what happened with the witness. I think what he was saying, outside of Lisets, he

didn't see him.

MR. CARLTON: No. No. He said he never met him, and what is coming up, a uniform was allegedly made for him. It has nothing to do with the previous questions.

THE COURT: I will overrule the objection. I don't think it is necessary that he had to have met him in order to be able to identify him, and say the things that he said about him. I don't believe that it is clearly indicated that these things came from hearsay testimony, so I am overruling the objection on that basis.

You may proceed.

(Videotape restarted.)

A Yes, he was.

Q Could you explain the occasion?

A I also don't remember the exact date, but my brother, who was four years older than I was, he was a tailor, and he made a uniform for Koziy.

Q When you say a uniform, do you mean a Ukrainian police uniform?

A Yes, that is what I mean, uniform of a Ukrainian policeman.

(Videotape stopped.)

MR. JUGO: Your Honor, I object to the leading form of the question, and move to strike the question

and answer.

THE COURT: All right. Motion -- The objection is overruled, and the motion denied, sir.

(Videotape restarted.)

Q Do you know where Bohdan and Slavka Koziy lived after they were married?

A I think that at first they lived at Wasyl Ostapiak's house.

(Videotape stopped.)

MR. CARLTON: Objection as to what he thinks as opposed to what he knows as a matter of fact.

THE COURT: Objection overruled. I think Rule 32 permits that. It could have been perhaps cleared up to make it apparent whether his thought was derived from hearsay or not, but in the present state of the record, I believe it is admissible. The objection is overruled. You may proceed.

(Videotape restarted.)

Q You said at first. Did they move at a later time, that you know of?

A Yes, they moved to a Jewish house later on.

Q Would this move have taken place after the Jews from Lisets had already been resettled to Stanislawow?

A I think so.

(Videotape stopped.)

MR. CARLTON: Same objection.

THE COURT: Same ruling.

(Videotape restarted.)

Q How far did you live from the Ostapiak house?

A About more than a kilometer.

Q After the wedding took place between Bohdan Koziy, and Slavka Ostapiak, did you have occasion to see Koziy in the town of Lisets?

A Yes, I did.

Q Could you describe generally how the Ukrainian police treated Polish residents, and the Jewish residents in the town of Lisets?

A They were treating Jews very badly. Before the Jews were taken to the ghetto in Stanislawow, they took all best things - all best clothes and things from Jewish houses. Similarly, they treated Polish people. For example, as far as Koziy is concerned, if anybody somehow opposed him, he was beating him immediately.

(Videotape stopped.)

MR. CARLTON: Objection. Your Honor, I would object to this testimony and such testimony as may follow predicated upon the grounds that the Defendant in this cause

has not been identified as being the individual about whom he is allegedly speaking, and therefore my objection would be predicated upon relevancy.

THE COURT: All right.

MR. WOLF: Your Honor, the Immigration files already in evidence indicate that this Bohdan Koziy in court did marry someone named Slavka Ostapiak. I could read portions of the deposition where he admits that fact. I think we are talking about the same person.

MR. CARLTON: Were this in the course of a trial with live testimony, as opposed to what we have here, at this point, or at some point prior to this, Mr. Wolf would have had to say, well, maybe when he first mentioned Bohdan Koziy, look about the courtroom, and do you see the individual that you are referring to as Bohdan Koziy, and he would at that time look about the courtroom, and either identify somebody or not, as the case may be. If he did not, then the testimony would not be admissible unless it was somehow in some other way tied into the Defendant.

Now, the fact that he may attempt to show that the Defendant married a particular individual still does not in and of itself mean that this is the person about whom he is talking about. Whether it was one marriage, two marriages, or this individual, or that individual, it does not matter. That is not sufficient.

THE COURT: Motion is denied. I think the weight of the evidence may be in question here, but not the admissibility.

(Videotape restarted.)

MR. WOLF: Did you ever have an opportunity to see any Ukrainian policemen involved in the killing of civilians in Lisets during the occupation?

A Yes, I did.

Q Did you ever persoanlly see Bohdan Koziy kill anyone during this time period?

A Yes, I did.

Q Did you see this on one occasion, or more than one occasion?

A I saw two cases of that.

Q Are you saying you saw two separate incidents?

A These were two separate incidents, but they took place approximately at the same time.

Q Do you remember what year they took place?

A It was in the fall of 1943.

Q Could you explain for us the events surrounding the first of these two incidents?

A Yes, I can.

Q Would you please go ahead.

A So, it all took place in the fall of 1943. I learned from -- Well, from people at my age, or of my age --

(Videotape stopped.)

MR. JUGO: Objection, your Honor, what he learned from other people. It is hearsay.

THE COURT: Counsel for the Government, that sounds like hearsay coming up.

MR. WOLF: May we have one second, your Honor?

THE COURT: Yes, sir.

MR. WOLF: Your Honor, that -- We would not offer that into evidence to prove the truth of what was said. It indicates why this person went to the location that he went to. We will not try to prove that statement was correct. It is simply preliminary to his actions.

MR. JUGO: Your Honor, that explanation is a standard explanation when there is no exception to the hearsay rule, and that is an exception he had been bringing up all along. It is hearsay. They can say it is not being offered for the truth, but the fact is that it is, and that is what caused this person to commit another act.

MR. WOLF: We are not offering it for the truth of the matter, sir.

MS. COLEMAN: Your Honor, may we make

an offer of proof on this?

THE COURT: You mean a proffer?

MS. COLEMAN: Yes, your Honor. The witness was about to state that a statement was made to him, and that was that there was a fire at a certain property. As a result of that statement, he went to the property, and in fact there was no fire there when he arrived. The reason why we are offering the statement is not to prove there was a fire, but there was a statement made to him, and as a result, he took action. He left to see something.

MR. JUGO: Your Honor, what he did was admissible, but what was told him isn't.

THE COURT: The statement is admissible on the theory that it is not offered for the proof of what these people told him, but it is merely his action.

(Videotape restarted.)

THE WITNESS: -- that the Germans were setting on fire the Koluszko family's house, so I went to the Koluszko's house, and I saw that neither the house, nor the farm buildings were in fire; that there was some people standing around. There were some women, and other people, and they were telling -- They were talking that some Jews had been taken --

(Videotape stopped.)

MR. JUGO: Your Honor, I object to this

as being hearsay, and move to strike.

MR. WOLF: Your Honor --

THE COURT: Same category?

MR. WOLF: We would agree the truth of that statement is hearsay.

THE COURT: All right. We will --

MR. WOLF: The decision should not be predicated on that.

THE COURT: I will grant the motion to strike that portion of the testimony which appears in this transcript from line 5 down through line 8.

MR. JUGO: Your Honor, do you have the transcript in front of you?

THE COURT: Yes, page 29.

MR. JUGO: I also move to strike through line 8, the next sentence not being responsive to the question.

THE COURT: I did. I granted the motion to strike from line 5 through line 8.

MR. JUGO: Thank you.

MR. WOLF: Could we ask in the future if the entire answer could be given, and then counsel indicate what parts there is an objection to?

THE COURT: Well, I don't know that we need to stipulate to that. We can handle it, I believe, on a piecemeal basis. You may proceed.

(Videotape restarted.)

THE WITNESS: -- from the Koluszko's house. It was a very decent family in Lisets, and nobody would have expected that they had hidden Jewish people.

(Videotape stopped.)

MR. CARLTON: Objection -- All right. That is already stricken?

THE COURT: Already stricken, yes, sir.

(Videotape restarted.)

A -- and yes, I went to the courtyard. I saw a barn or a stable - I do not know how to call it - and entering that barn, on the left there was a big hollow in the floor. It might have been a cellar, or something like that. There was nothing in the hollow that I could see except some straw, or some clothes or some boards.

When I learned that Ukrainian policemen, and probably there was also a German, came there and took the Jews, and there were to be the family of Kandlers among those Jews, the family that owned a mill near the Koluszko's house. --

(Videotape stopped.)

MR. CARLTON: Your Honor, I would object. Your Honor does have the transcript?

THE COURT: I do.

MR. CARLTON: I would object what appears on page 29, line 16 through 20. The transcript is not a matter

of record in this case, and we would object to it being so. For the record, in the part where Mr. Jablonski said, when I learned that Ukrainian policemen, et cetera, on through where it says a family that owns a mill near the Kaluszko's house --

THE COURT: All right. Comment.

MR. CARLTON: The objection is predicated upon it being hearsay.

THE COURT: Counsel for the Government?

MR. WOLF: I can understand insofar as, when I learned that Ukrainian policemen -- I just don't recall. I don't know if that was hearsay or not. I think that is something that Mr. Carlton should be there to question. Even apart from that, the witness goes on and says he knew who the Kandlers were. I think the rest of the information, there isn't a proper basis for saying that is hearsay. I don't think that is indicated in the answer.

MR. CARLTON: I think Mr. Wolf was kind enough being at the deposition to clarify this point in the next question and answer, when he asked, how did you find out the Jews had been taken away from the cellar? Answer: "I heard it from those people who were standing around the house of Koluszko."

MR. WOLF: That is correct. That applies to whether there were Ukrainian police taking them. Insofar as Kandlers being involved, he said he knew the Kandlers

personally.

THE COURT: Well, I think probably the next several questions establish knowledge of the Kandlers. I will grant the motion to strike beginning line 16, down through line 24, which winds up, "house of Koluszko." I grant the motion to strike that material.

MR. WOLF: Could we state for the record that statements like that, the part that was just stricken are of some limited value on the record because they do indicate why it is that the witness then went where he went, and then, we are not offering it for the proof of what is asserted - what other people told him.

THE COURT: Yes, sir, you can have that statement, of course, in the record, and we will go ahead and play it. I have granted the motion to strike, and marked this copy accordingly. You will have it in the record by virtue of it being played, and taken down by the Court Reporter.

(Videotape restarted.)

MR. WOLF: Excuse me one moment. How did you find out that the Jews had been taken away from the cellar?

A I heard it from those people who were standing around the house of Koluszko.

Q Did you know who the Kandlers were?

A Yes, I did.

Q Go ahead.

A I knew who the Kandlers were, and I went to the Ukrainian police station in Lisets. Around the police station there were some people - I can't say -- I know that there were some civilian people, and they also said that the Kandlers had been led inside --

(Videotape stopped.)

MR. JUGO: Objection, your Honor, as to the hearsay statements.

THE COURT: Any comment?

MR. JUGO: I move to strike.

THE COURT: That phrase that reads, and they also said that the Kandlers had been led inside, I think is clearly hearsay. I grant the motion to strike.

MR. JUGO: Thank you.

(Videotape restarted.)

A For some time we were just going around that building, on one side of it, on the other side, along one road, and on the other road; and at one time I found myself on the road that was leading to the village Radcza. There was a gate that was leading to the Ukrainian police station from that back side.

It all took place in the afternoon, and I noticed that Koziy, and the German led out women from the station through the back door to the courtyard. I think there were seven, or maybe six -- I think there were seven women,

and among them I recognized Salka Kandler, as she was a girl of my age - my age, and we were schoolmates. She was a fat girl; and I recognized her sister, whose name was Lusia, or Niusia. She was called both; and I recognized also -- And I recognized also their oldest brother Bernard, but it was later. At first I recognized those two women; so the steps there was Koziy standing, and he was standing closer to me, and also a German was standing on the steps. He was a fat man; and they started shooting at those women. They were falling down, and one of those women, I remember, came up to Koziy, and she was pleading in the Ukrainian language, Koziy -- probably, I think she was pleading him to let her go.

(Videotape stopped.)

MR. JUGO: Your Honor, objection as to what he thought she was pleading.

THE COURT: Objection overruled. Proceed.

(Videotape restarted.)

A He pushed her away, and Koziy was shooting with the rifle, and the German was shooting with a pistol. When those women had been shot --

Q Were all of the women shot at that point?

A Yes, they were, all of them were shot at that point. Both of them, Koziy and the German, returned to the station building, and they brought out -- They

led out two men, two Jewish men, out of whom I recognized Bernard Kandler, who was the brother of Salka, and Lusia, who was the oldest brother of Salka and Lusia. He was shot. That man was shot near the women. While this was happening, one of them was trying to escape. He was running toward the gate.

Q When you say one of them, you mean one of the two men?

A Yes, one of those two Jews. Koziy was running after him, and he caught him. He took him with his collar at the back, and he led him back. He led him to that place near those people that had been shot. He took out his pistol, he put it to his head, and he shot him; and this is the end, and the whole thing took place somewhere in the afternoon.

I was going around there all the time. I didn't go home, and in the evening - I think it was getting dark already - a horse wagon was brought. The killed Jews were put on that wagon, and they were carried to the Jewish cemetary which was about a half kilometer from the station.

Q Did you see all of the bodies?

A Yes, I did.

(Videotape stopped.)

MR. CARLTON: Objection, your Honor. I would object to the following part as not being responsive, and prejudicial.

MR. WOLF: Perhaps we could get the answer first in English, your Honor.

MR. CARLTON: Pardon me?

THE COURT: Assuming the transcript is accurate, I can see the answer. I overrule the objection.

(Videotape restarted.)

A The sight was terrible because there was blood, and all that. I saw all the bodies. The sight was so terrible that the Ukrainian man who was taking the bodies to the cemetary, and then he was throwing those bodies out of the wagon, even he didn't look at them.

(Videotape stopped.)

MR. JUGO: Objection, your Honor. It is irrelevant, and not responsive to the question, and prejudicial to the Defendant. I move to strike it.

THE COURT: Motion denied.

(Videotape restarted.)

Q How far away were you standing when you saw these murders take place?

A From that gate, and from the fence, it might have been 60 or 50 meters.

Q You say there was a gate around the police station, correct?

A Yes.

Q What kind of a gate was it?

A It was made of wire, of a grill.

Q I guess I should correct myself. There was a fence around the police station, or a gate, or was the gate in the fence?

A The Ukrainian police station was surrounded with a fence that was made of grill. It was made of wire.

Q Could you see through the fence?

A Yes, you could see, because you can see through the fence made of wire, and also in that fence there was a gate on the side of the street, Radczaynska, that was leading to the Radcza village. They were bringing wood for the heating of the station through that gate.

Q Is that the gate where they took the bodies out from the courtyard?

A Yes, through that gate, because it was the only gate.

Q Were you standing close enough to this incident to clearly see the faces of all of the people involved?

A Yes. Yes, I did. I recognized those two women, especially Salka, who was somehow, well, distinguishing herself from the others because she was short, and fat; and Lusia was a very pretty girl. Her hair was curly, and she also was distant (distinct?) from the others, so I knew.

Q What was your reaction to this incident?

(Videotape stopped.)

MR. CARLTON: Excuse me, your Honor. It appears he was saying, "she also was distant from the others". I believe the Court Reporter heard "distant", also.

THE COURT: The transcript says "distinct". Let's play it back. I don't recall.

(Videotape restarted.)

A -- I recognized those two women, especially Salka, who was somehow, well, distinguishing herself from the others because she was short, and fat; and Lusia was a very pretty girl. Her hair was curly, and she also was distinct (distant?) from the others, so I knew.

(Videotape stopped.)

THE COURT: Do you agree the word sounds like "distant"?

MS. COLEMAN: At first, I recognized it "distant".

MR. CARLTON: It could be more than a minor point, your Honor.

MR. WOLF: I am not sure it makes that much of a difference, whether she was distinct, or standing a distance from the other people. To my ear, it was "distinct". I recollect, having been there, it was "distinct". I might

add, Mr. Besoner, the tape reporter, did make his own tapes of the deposition. If he kept them, he could listen to it, and see what he hears. I assume he did the transcript based in part on his own tapes as well as the videotape if he had a question.

THE COURT: Well, I will put a question mark, and write the other word in above it, and it may fit in with additional evidence. It may be important, or may not be terribly important.

MR. CARLTON: As far as the record is concerned, do we have "distinct" or "distant"? I am talking about the official record.

THE COURT: I think perhaps the best thing to do is put it both ways in the official record with a question mark beside it. I think it is somewhat indistinct on the translation. It may be quite clear in Polish, but we have nobody here who knows that language.

UNKNOWN VOICE: Yes, she was beautiful, she was distinct.

THE COURT: Ladies and gentlemen, thank you for your help at this point. We will leave it as I suggested. If it becomes important, we will have to make some distinction. I will direct the Court Reporter to put both words in with a question mark.

(Videotape restarted.)

MR. WOLF: What was your reaction to this incident?

INTERPRETER: Excuse me. What was your reaction --

MR. WOLF: What was your personal reaction to all of this?

INTERPRETER: I am sorry. I made a mistake.

A My reaction was terrible. Just like, you know, a boy who was 15, 16 years old. While it was a great shock to me, I just lived through it terribly.

(Videotape stopped.)

MR. CARLTON: Your Honor, I would object and move to strike what his personal reaction is with respect to all of this as being totally immaterial and irrelevant.

MR. WOLF: Your Honor, I think it is not entirely irrelevant. I am sure Mr. Carlton will make some argument about people remembering things 40 years ago, and I think that question elicits why the incident sticks in the mind of this person, when one of his classmates was murdered, it will make an impression.

MR. CARLTON: Mr. Wolf can interpret any way he wishes to. If he asked the witness, why do you remember this, the question itself is objectionable in that it was asked,

what was your personal reaction to all of this? If this had been in the courtroom, and the question was asked, I would have immediately stood up and objected; and without being presumptuous, I believe it may have been sustained.

THE COURT: Well, I think you are probably correct, Mr. Carlton, but I believe had you objected, and I sustained the objection, that counsel when would have been able to ask the question in the way you suggest. I will overrule your objection, because I think Rule 32 will make it admissible,and it seems to me that it does show how he might so vividly remember the occurrence, or the fact that he knew this girl; and it seems to me it is admissible for the purpose of dealing with whether or not his account is a credible one.

MS. COLEMAN: Your Honor, may I address the Court on this issue?

THE COURT: All right.

MS. COLEMAN: Mr. Carlton was given every opportunity to attend this deposition, and the other depositions, and he chose not to attend the depositions. I would ask the Court, in order to have an orderly presentation of these depositions, that Mr. Carlton will acknowledge, by his waiver of his presence at the depositions, he has waived any objection to the form of the questions.

THE COURT: Well, he waived them whether

he acknowledges it or not under Rule 32. I don't think it is necessary to get him to acknowledge that. The Rule is clear in that regard. This may be more than that, but I am overruling the objection for the reason stated.

MR. CARLTON: Your Honor, this is about the 15th time I have heard counsel for the Government announce about the fact that I was not present at the depositions. I will stipulate -- The only thing I will stipulate in this case, other than a few things in the beginning, is that I was not present at the deposition, so they can get that out of their system. That does not mean that I waive the objections that I am making now.

THE COURT: Okay. I think your position is correct, sir, and I understand that you weren't there, and you concede that you weren't there. All right. Let's go ahead.

(Videotape restarted.)

THE WITNESS: -- and as I wanted to make sure that it was really Salka, just because we were school-mates, and we were quite good friends, I was waiting until those bodies were taken by the horse wagon to the Jewish cem-etary.

Q Is that why you wanted to see the bodies?

A Yes, among others, that's why.

Q Now, you said you saw two separate incidents where Koziy was involved in killing someone. Do you know the identity of the person or persons who were killed by Koziy in the second incident?

A Yes, I know, because I also saw the incident. It was very shortly after the first incident that I have already related.

(Videotape stopped.)

MR. CARLTON: May it please the Court, at this time, the Defendant -- Excuse me one second.

At this time the Defendant moves to strike the testimony of Maria Frohlich upon the grounds that there has been a violation of the Rule.

THE COURT: Can you elaborate? I don't understand.

MR. CARLTON: I point out to the Court that the Court had invoked the Rule not allowing witnesses to remain in the courtroom, and that it appears that in the third row in the spectators' section of the courtroom appears the witness Maria Frohlich.

THE COURT: Well, she would be excluded from testimony hereafter. If she is through testifying, there is no violation of the Rule.

MR. CARLTON: That is not to say -- She has not been excluded from testimony - from further testimony.

She is still under subpoena, assuming she was subpoenaed, and I may wish to call her as a witness, or the Government, because if they intend to call her again, we certainly would object to it.

THE COURT: And she would be excluded if they did. Have you got her under subpoena?

MR. CARLTON: We don't. If there is a Court subpoena, she remains under subpoena until she is excused by the Court.

THE COURT: I don't think that is a violation of the Rule, and I deny your motion.

MR. CARLTON: I ask she be excluded from further attendance in the courtroom in the event the Defendant wishes to call her.

THE COURT: Well, if there is that bona-fide possibility, I will exclude her.

MR. WOLF: I might point out that the woman does not reside in this District, and before too long, she will not be here. I don't know what Mr. Carlton is talking about in terms of his subpoenaing her as a witness. We will not be calling her.

THE COURT: Well, if Mr. Carlton tells me as an officer of the court that he may call her as a witness in the case, I will exclude her from the courtroom under Rule 615.

MR. CARLTON: I will call to the Court's attention, although not required to, that prior, as a matter of fact during the recess, at lunch, we discussed the possibility of calling Mrs. Frohlich to the stand on one particular issue, so this is not just something I am bringing up in the hopes of having her not sit here, and listen to all of this.

THE COURT: Mrs. Frohlich, I will have to ask you to depart the courtroom, and remain outside the courtroom during testimony of other witnesses under a rule of the Court.

MR. WOLF: May I excuse myself for two minutes?

THE COURT: Sure. You have two other lawyers here.

(Videotape restarted.)

THE WITNESS: Somewhere about that time I learned one day that Koziy had arrested Mrs. Jadwiga Spilarewicz, together with a child. It was Dr. Singer's child.

MR. WOLF: Who told you this --

(Videotape stopped.)

MR. JUGO: Your Honor, objection as to hearsay, and the next question specifically shows that it was hearsay that he was told by Mrs. Salek, and I move to strike that, lines 10 through 12.

THE COURT: Down through 15?

MR. JUGO: Yes, your Honor.

THE COURT: Is there any reason why that testimony should not be excluded?

MS. COLEMAN: Yes, your Honor. Again, this witness states something was told to him, and as a result of what he was told, he took certain actions. If you turn to page 36, he says, "When I learned that Jadwiga Spilarewicz and Dr. Singer's daughter had been arrested, and that they had been kept at the Ukrainian police station, we wanted to see what happened to them further - whether they would be taken to the Gestapo in Stanislaw, or shot on the spot, so I was walking around the station because everyone knew they would not be led out the front door."

In other words, he was told what happened, and ran to the police station.

THE COURT: You were not offering it for the truth of what happened, but a predicate as to the action revealed by his later testimony?

MS. COLEMAN: Yes.

THE COURT: All right. I will overrule the objection on that ground.

(Videotape restarted.)

MR. WOLF: -- that the arrest had taken place?

A Mrs. Salek.

Q Did you know who Dr. Singer was?

A Yes, I did.

Q Who was he? Was he a medical doctor?

A He was known not only in Lisets, but also in several surrounding villages and places because he was the only medical doctor, the only physician.

Q Do you know what his ethnic background was?

A Yes, he was a Jew.

Q Was he married?

A Yes, he was.

Q Prior to this incident that you started to talk about, did you know that he had any children?

A Yes, I did.

Q How many did he have?

A He had one girl.

Q Had you ever seen that girl?

A Yes, I had.

Q Prior to the incident that you started to describe?

A Yes, I had seen the girl before the incident I was starting talking about.

Q And could you estimate approximately how old she was at the time that you first saw her?

A I think she was about four years old.

Q And after you were told that Jadwiga Spilarewicz and Dr. Singer's child had been arrested, what did you do?

A Can I relate the incident now?

Q Yes, go ahead, tell what happened.

A So, when I learned that Jadwiga Spilarewicz and Dr. Singer's daughter had been arrested, and that they had been kept, or were kept at the Ukrainian police station --

(Videotape stopped.)

MR. JUGO: I was suggesting that he let the whole thing go.

(Videotape restarted.)

A -- we wanted to see what would happen to them further - whether they would be taken to the Gestapo in Stanislawow, or whether they would be shot on the spot.

(Videotape stopped.)

MR. JUGO: Your Honor, I object again to the hearsay statement. Additionally, I would object to what we wanted to do; and additionally, I would object to the fact that they wanted to see where they were going to go, and what was going to happen. It is not being responsive to the question, and I don't think it is relevant. I think the only thing that is relevant is what in fact did happen, or what he

saw happen.

THE COURT: Objection overruled.

(Videotape restarted.)

A -- so I was walking around the station, because everybody knew that they would not be -- They would not be led out through the front door.

(Videotape stopped.)

MR. JUGO: Your Honor, as to what everybody knew --

THE COURT: Objection overruled.

(Videotape restarted.)

A When I found myself at the same place as before, I saw Koziy holding that girl with her hand, and the girl was crying and was pleading, was saying that she wanted to go to her mother. Then Koziy took out a pistol, and he shot the girl.

(Videotape stopped.)

MR. JUGO: Objection, your Honor, as to the hearsay statement.

THE COURT: Objection overruled.

(Videotape restarted.)

Q How far was he standing from the girl?

A He was holding her arm.

Q And where did he shoot her? What

part of the body?

A He shot her head. Head.

(Videotape stopped.)

THE COURT: Gentlemen, I -- Gentlemen, please stop the videotape. I announced yesterday to counsel, although I may have not made it clear to everyone in the courtroom, we have to recess today. We have another matter set at 3:00, and we are going to have to be in recess in this case until 9:30 Monday morning. Is there anything that needs to be handled prior to that time?

This is a break in the deposition here, and this is a good place to stop for us, because we must get started on this other matter within a few minutes.

MS. COLEMAN: Your Honor, might I address the Court with respect to one matter discussed earlier today, that is whether the Defense had submitted certain proposed findings, and statements of fact. After that was discussed, I checked the pretrial order in the case, and it says with respect to all nonjury cases, counsel, and I assume that includes Mr. Carlton, and his co-counsel, shall prepare and submit to the Court at the calendar call a careful set of proposed findings of fact, and conclusions of law, et cetera.

As you know, we did comply with this order, and the Government did submit our proposed findings and conclusions at the calendar call, and we are still awaiting those

from the Defense.

MR. CARLTON: Your Honor, I believe as Mr. Wolf knows, and I assume this applies to Miss Coleman, that we had an oral hearing on this, and while she is reading from a form that is sometimes applicable to other civil cases, that is not what was applicable in this case, and there was no pretrial order, because of the unusual nature of the case, number one; and number two, for the need to be extended to August 15th, which was August 17th.

THE COURT: Well, we tried to handle the thing rather informally. I think that document is applicable in the case. I believe a copy of it is in the Court file, but we have allowed those rules to be utilized as a practical matter in somewhat different way.

We do have a whole weekend. It seems to me you could put together your proposed findings of fact and conclusions of law with the understanding that they can be amended later if you care to. I don't see any reason for your not being able to do that, and I will ask you to do that.

Counsel, I guess wants to know what your proposals would be as it might influence the manner that you are going to present evidence. I assume that is the reason?

MS. COLEMAN: That is correct.

THE COURT: I don't think that is too much

to ask. I will ask you to have it with you Monday morning, proposed findings of fact, and conclusions of law.

Anything else?

MS. COLEMAN: No, your Honor.

THE COURT: We will be in recess on this case until 9:30 Monday.

(Thereupon, the Court was in recess.)

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UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF FLORIDA

UNITED STATES OF AMERICA	)	
	)	
	)	
	)	
vs.	)	Case No.: 79-6640-Civ-JCP
	)	
	)	
	)	
BOHDAN KOZIY, a/k/a	)	
BOGDANUS KOZIJ, a/k/a	)	
BOHDAN KOZIJ	)	
	)	

West Palm Beach, Florida

September 23, 1981

8:30 o'clock A.M.

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The above-styled case came on for trial before the Honorable James C. Paine, Presiding Judge, at the U.S. Federal Courthouse, West Palm Beach, Palm Beach County, Florida, on the 23rd day of September, 1981, commencing at 8:30 o'clock A.M.

VOLUME 7

APPEARANCES:

KATHLEEN N. COLEMAN, ESQ., UNITED STATES DEPARTMENT OF JUSTICE, OFFICE OF SPECIAL INVESTIGATIONS, appearing on behalf of the United States of America.

MICHAEL WOLF, ESQ., UNITED STATES DEPARTMENT OF JUSTICE, OFFICE OF SPECIAL INVESTIGATIONS, appearing on behalf of the United States of America.

JOVI TENEV, ESQ., UNITED STATES DEPARTMENT OF JUSTICE, OFFICE OF SPECIAL INVESTIGATIONS, appearing on behalf of the United States of America.

PHILIP CARLTON, JR., ESQ., appearing on behalf of Bohdan Koziy, a/k/a Bogdanus Kozij, a/k/a Bohdan Kozij.

STEVEN JUGO, ESQ., appearing on behalf of Bohdan Koziy, a/k/a Bogdanus Kozij, a/k/a Bohdan Kozij.

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EXHIBITS

PLAINTIFF'S	FOR IDENTIFICATION	IN EVIDENCE
Exhibit 22B	130	137
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Thereupon:

The following proceedings were had:

THE COURT: You may proceed.

MS. COLEMAN: We are ready for our next witness.

MR. CARLTON: Your Honor, prior to calling the next witness, I have sections of the cross examination of Arthur P. Rosenecker that I would like to read it into the record. I could do it at this time, or at such time as your Honor wishes me to. I have prepared a list for the Government of those pages.

THE COURT: Unless there is some drastic problems with the Government's witnesses, I would like to have it read in now so I will hear it in some conjunction with what has already been testified by that witness.

MS. COLEMAN: Since this is a long deposition, and we are getting the list of questions at this moment, if there are portions that I would like to read it, may we do that at a later time?

THE COURT: Yes.

MR. CARLTON: Not only are we doing this in this fashion, but the Government likewise have been providing these the same manner in the way they have -- Pieces of paper. Torn off pieces of paper.

MR. WOLF: The day of the calendar call,

I gave Mr. Carlton the list of the pages.

THE COURT: Well, I expect you to make a good faith effort to move the thing along in an orderly fashion.

MR. CARLTON: All right.

THE COURT: There are about 25 pages left, as I recall. You will not read all of them?

MR. CARLTON: No. I am picking out three, four sentences on various pages.

THE COURT: Fine.

MR. CARLTON: Page 74, line 9:

"Q Mr. Rosenecker, first of all, have you discussed your testimony with any Government counsel prior to being placed under oath, and answering as you have today?

"A Yes."

Page 75, line 3:

"Q Approximately how long did you spend with Mr. Norton in February, 1980?

"A I'd say about an hour and a half.

"Q And today?

"A Yesterday?

"Q Yesterday?

"A About three hours.

"Q And how about with Mr. Parker?

"A Mr. Parker, yesterday, about three hours."

Page 77, line 4:

"Q Now, it has been noted that at various times during the course of the inquiry, Mr. Norton has asked you about customs, practices, and procedures, and many of his questions have been couched in that phraseology. You recall that, do you not, sir?

"A Oh, yes.

"Q Did you answer those questions in the manner in which you did because you have absolutely no personal recollection of the petitioner whose name appears in these documents, and that you're merely calling upon whatever your experience may have been in the past?

"A That is true. I have no personal recollection of this individual petitioner."

Page 78, line 6:

"Q Are you under the care of a licensed medical doctor, physician?

"A Oh, yes. I usually have an appointment with the doctor once every three months and go in for a blood sample once a month."

Page 79, line 1:

"Q Do you consider yourself in reasonably good health as far as any of us know about our own health, at this time?

"A I think so. He always said very good when he takes my blood pressure and indicates that I don't have to change medication, which has been reduced to practically rock bottom.

"Q And have you had the need to be hospitalized in connection with any health problems in recent years?

"A Not since -- Not since 1972."

Date of this deposition, your Honor, was May 30th, 1980.

Page 80, line 18:

"Q Any reason why you couldn't go to Mexico today as far as your health

is concerned?

"A Oh, no, I don't think so."

MS. COLEMAN: Your Honor, at this point, may we have the line above that read? Specifically, line 17 that says that the witness had been in Mexico in 1954.

MR. CARLTON: I could go all through it, where he says he could go to Florida; he could go to any place, including this trial, I suppose.

MR. WOLF: Could we strike Mr. Carlton's comments.

THE COURT: That is part of the argument. I will put it that way.

MR. CARLTON: (Reading from the deposition of Arthur Rosenecker, page 83, line 12:)

"Q In the course of your duties as a naturalization examiner, had you ever come across any one of the 150,000 or 200,000 persons that you helped process, that was a member of the Organization of Ukrainian Nationalists?

"A Not that I recall.

"Q You said you never heard of that organization?

"A No.

"Q Have you come across anyone

in the course of those 150,000, 200,000 persons who were a member of the Ukrainian police?

"A Not that I recall."

Top of page 84, line 1:

"Q Would mention, had it been made, and had it been necessary to be made, upon any of these documents of the Organization of Ukrainian Nationalists, in and of itself cause you to immediately look with disfavor upon the applicant?

"A No."

Page 86, line 20:

"Q Would it also be correct -- Of your own personal knowledge, you do not know where the information even came from that appears on the application to file petition for naturalization?"

Top of page 87, line 1:

"A No. Presumably, it came from him.

"Q I understand what anyone might presume, but as far as knowing, you do not, sir?

"A No."

Page 92, line 21:

"Q Let me refer you, sir, to the exhibit captioned, you said, Displaced Persons Commission, which is, I think -- What is that? Government Exhibit 7, thank you. Do you know where that information came from that appears on the exhibit, other than the form portion of it?

"A The form itself indicates that it came from the U.S. Displaced Persons Commission.

"Q All right. However, do you know whether or not Bohdan Koziy or any persons whose names appear on the first page of that exhibit - excuse me - provided that information?

"A I would have no way of knowing that."

Page 94, line 8:

"Q Do you know whether or not Bogdanus Kozij ever appeared before, or had reason to be in the presence of any representative of the Displaced Persons Commission?

"A No.

"Q Do you know whether or not Bogdanus Kozij, the person named as Defendant in this lawsuit, ever failed to inform the Displaced Persons Commission of any material, element or portion of his life history?

"A No."

Page 98, line 8:

"Q And, as a matter of fact, even with your signature on that paper, you don't have an independent recollection of speaking with Mr. Kozij?

"A That is true."

Line 20:

"Q Would your inquiry of the witnesses be any greater than that that appears on the Government's exhibit listing these witnesses, and for the record, I'm referring to the petition for naturalization on the second page, the statement of witnesses. In other words, would you have any more information than appears there?

"A One additional question, do

you recommend him for citizenship? You usually hand out --

"Q Where is that?

"A That doesn't appear here.

"Q Oh, I see. You would ask that question?

"A Right.

"Q Would you do that invariably?

"A Invariably, yes.

"Q The way you say it indicates that maybe not?

"A There's the problem when you don't make a record of something. See? But it was a usual question of mine. See?

"Q You don't know as a matter of fact whether you did in this case?"

Should probably read, "did it in this case?"

"A In this case, no."

Page 100, line 1:

"Q Did you ask either of these witnesses if Mr. Kozij was a member of any subversive organization?

"A Very likely I did.

"Q Where would that appear on

the form?

"A That's another one that doesn't appear.

"Q Do you -- So you don't know if you asked the witnesses in this case, do you?

"A Not in this case."

Oage 102, line 14:

"Q Well, you don't recall the questions, do you, being asked of him?

"A Yes. They were --

"Q My question, sir, and you're very precise in your answer -- Listen to my question. You don't recall the questions being asked of him, do you?

"A Particularly, no.

"Q And therefore, may I conclude that you don't likewise respond - recall his answers?

"A No, not independently. Absolutely no."

Page 104, line 15:

"Q Would the fact of being a member of a Ukrainian military organization, in your experience, disqualify

him for citizenship?

"A No.

"Q As a matter of fact, that may be quite favorable to him, under certain conditions, wouldn't that be so?

"A Very true."

Page 105, line 8:

"Q Do you know whether or not he ever killed or murdered, maimed or beat unarmed men, women, or children?

"A No.

"Q Do you know whether or not Mr. Kozij ever committed any crimes of what we will, in nebulous terms, refer to as moral turpitude?

"A No."

Line 20:

"Q One other question regarding Government's Exhibit 8. That is the document --"

THE COURT: That was page what, line 20?

MR. CARLTON: That was line 20 on page 105.

THE COURT: Okay.

MR. CARLTON: I have to, before I read

this -- I am not certain -- Excuse me one moment, your Honor, please. Excuse me.

THE COURT: All right.

MR. CARLTON: Your Honor, the following question has to do with a - three sentences that were written, and both the Government, and myself thought that it was attached to the application, petition for naturalization, but I don't see it in 1-I, and there is no point in reading it if it is not attached.

THE COURT: Something that was attached to the petition?

MR. CARLTON: Yes, three sentences, "Have a nice day", and two other sentences. I can give it to you here. There were three sentences: "nice day"; "I go to night school"; and "We have car", and was attached, I believe, to the application for petition for naturalization.

MR. WOLF: Excuse me. Your Honor, Exhibit 1-J is statement of facts for preparation petition. Attached to that statement of facts is this document that is part -- It is part of the statement of facts.

MR. CARLTON: Is this 1-J?

MR. WOLF: This was provided to Mr. Carlton.

MR. CARLTON: Is this 1-J as a trial exhibit?

MR. WOLF: I believe so.

MR. CARLTON: Fine. I am prepared to read this. 105, line 20:

"Q One other question regarding Government Exhibit 8. That is the document with some handwriting, starting with the words, "This is a nice day", a stamp of July 25th, 1955. Do you know who wrote that, sir?"

Top of page 106, line 1:

"A If it was in his file, I presume it would have been Mr. Kozij - Bogdanus Kozij.

"Q However, how that got in his file, you don't know, do you?

"A Well, usually -- I will say I'm quite surprised to see it. After the test, I usually have them sign their name, so I know who to relate it to.

"Q I notice it is not there. That is why I am asking the question.

"A It is not there. That's right.

"Q Other than the fact that this document appeared in a file that was shown to you by Mr. Norton in February,

1980, and/or today, you don't know that that was written by Mr. Bohdan Kozij, do you, sir?

"A I couldn't say definitely, unless further testimony -- "

Going down to line 22:

"Q If this document was taken from the file of Joe Smith, and put in Bohdan Kozij's file, you wouldn't know whether it was written by Joe Smith or Bohdan Kozij, would you?

"A That's right, I wouldn't."

And that concludes the questions, and answers, your Honor.

THE COURT: All right. Thank you. Now, correct me if I am wrong with respect to the last few questions. That writing, whether or not it was written by Mr. Koziy, the presence of it in the file, do I correctly conclude that it carries the implication that it was there because he asked him to write something so as to determine whether or not he was able to write the English language?

MR. CARLTON: Yes. According to the deposition, at the time he was trying to ascertain whether he understood English, and he asked all the people to write a few things down, and that supposedly was what was found in

the file. I notice in our file provided by the Government, although I have a copy attached to the deposition of Mr. Rosenecker, we don't find that under 1-J, so I don't know if it is included or not in your Honor's file, or in the court file.

THE COURT: It is not behind 1-J in the copy I have, but I have seen that writing somewhere in these papers, I know. I don't know where it is. I have seen it.

MR. WOLF: Defendant has seen it also, I am certain.

MR. CARLTON: We are not questioning that.

THE COURT: Is it the Defendant's position he did not write that sentence?

MR. CARLTON: The Defendant's position is that he did not write those sentences, right, as far as I as his counsel is taking the position.

MR. WOLF: Could we inquire whether that is different from the Defendant's position?

MR. CARLTON: This is his attorney speaking.

MS. COLEMAN: Your Honor, we offered Mr. Rosenecker not because he could specifically remember Bogdanus Kozij. During his testimony, he mentioned he processed 150 to 200,000 applications. We asked him what his routine

practice was --

THE COURT: Yes.

MS. COLEMAN: -- because the materials read in the record, this portion -- Particularly that portion when the Defendant was asked about his ability to read and understand English, we will have to go through the record to find the other portion in which it was explained by Mr. Rosenecker. I don't have it with me at this moment.

THE COURT: I am sure it was dealt with in part in the direct presentation. You may find other questions you want to put in the record, and you will be permitted to do that.

MS. COLEMAN: Thank you.

THE COURT: Are you ready to call your witness?

MS. COLEMAN: Yes, your Honor, we are.

- - - - - - - - -

Thereupon:

NATHAN HUEBECK

was called as a witness on behalf of the Government, and being first duly sworn, was examined and testified on his oath as follows:

THE COURT: Take a seat. State your name, please, and spell your last name.

THE WITNESS: Nathan Huebeck, H-u-e-b-e-c-k.

MR. CARLTON: I couldn't hear you.

THE WITNESS: Nathan Huebeck, H-u-e-b-e-c-k.

DIRECT EXAMINATION

Q (By Miss Coleman) Mr. Huebeck, are you presently employed?

A Yes.

Q Where?

A At Four Seasons Travel, Pinehurst, North Carolina.

Q Prior to your present employment, Mr. Huebeck, did you have occasion to be employed by the Department of State?

A Yes.

Q What years did you serve with the Department of State?

A 1946, and retired at the end of 1971.

Q During your years with the Department of State, did you have occasion to be assigned to Germany?

A Yes.

Q When were you assigned to Germany?

A Assigned there in July, 1949. Arrived there in September, 1949.

Q For how long a period did you stay in Germany?

A Until the end of January, 1950.

MR. CARLTON: Excuse me. Your Honor, Mr. Huebeck, at the end of the sentence are falling off. I am having a problem --

THE COURT: Pull that microphone to you a bit. I don't hear you too well, either.

Q For how long did you work in Germany, Mr. Huebeck, with the Department of State?

A I was assigned in July, 1949. I arrived in September, 1949, and I left there in the end of January, 1950.

Q While you were working with the Department of State, and assigned to the country of Germany, did you ever hold a position of vice consul?

A Yes.

Q To which American consulate were you assigned?

A I was assigned in Hamburg, and the suboffice in Wentorf.

Q How long did you work at the sub-office at Wentorf?

A September 1949 until January, 1950.

Q What were your duties as vice consul when you worked at the American consulate in Wentorf?

A The duties there were process and issue visas to displaced persons.

Q And under which laws did you operate when you were issuing visas to displaced persons?

A We operated under the Immigration Nationality Act of 1924, and the Displaced Persons Act.

Q Did you process any other types of visas?

A No.

Q Can you estimate the number of visas that you did process under the Displaced Persons Act while you were assigned to Wentorf?

A Approximately 750 to 800.

Q Mr. Huebeck, could you generally describe the purpose, and the objective of the project to

which you were assigned?

A The purpose was to relocate the thousands of displaced persons who had been removed from their homeland, or their homes as a result of World War II.

Q Were there certain numbers of visas that were available to these displaced persons?

A Yes, there was a specified number for displaced person.

Q And the visa applicants whom you processed, had they been referred by the Displaced Persons Commission?

A That is correct.

Q What, if any, training had you received regarding the processing of visa applications under the Displaced Persons Act?

A When I first arrived in Hamburg, I was briefed, and indoctrinated into the Immigration Nationality Act in 1924; the Displaced Persons Act, with additional review of documentation, preparation, visa preparation, so forth; and then on-the-job training at Wentorf with the senior consulate officer, Mr. Rose.

Q Without going into specifics, did you receive any instruction on the procedures that were to be followed?

A Yes, we did.

Q Were they routine procedures which were to be followed?

A Yes, they were.

Q In the performance of the duties that you had, did you carry out your assignment in conformity with the training that you had received?

A Yes, I did.

Q How many, if any, other vice consuls were there at Wentorf who also processed the DP visa applications?

A To my knowledge, 6, 7.

Q Did you have an opportunity to observe them in their work?

A Yes, I did.

Q According to your observations, did they carry out their duties in compliance with the procedures you had learned?

A Yes.

Q Would you explain to his Honor the routine procedures involved in handling the displaced persons visa applications?

A The displaced persons visa dossier would arrive on our desk, and it contained the visa application; the medical report; and the health documents; and the background documents for the applicant and his family. We would

go through the folder to make sure that the documents were all in order; that the preference was correct; the person was going to employment of a suitable nature; and that the health record showed that the individual was physically fit to do that job.

Q Now, after you would go through the dossier, what would be the next thing that you would do?

A The next step would be to call the applicant in and/or his family, and have a personal interview with them, reviewing the information in the dossier.

Q By the way, when you say that there were documents that would come in with this dossier, would there also be documents from the Displaced Persons Commission?

A Included in the dossier, yes.

Q Before we get into the specifics of what you would do in the interview, I have a few preliminary questions. For example, in which language would you conduct the interview with the applicants?

A The language was in the language that the applicant would understand, knew, and understood. I spoke in English, and I had an interpreter who spoke in the language of the applicant.

Q What was the routine procedure that you would follow if you encountered difficulty with the translation during the interview?

A If it were sufficiently difficult language problem, we would ask for another interpreter that did speak the language.

Q Why would you ask for another interpreter?

A Just to make sure that the applicant knew and understood what the interview was about; questions being asked.

Q Now, once the applicant would appear for the interview, what was the procedure that you would follow then?

A The first step would be having the folder on the desk to compare the photograph in the visa application with the individuals that appear before you. After that was done, you would check, verify if appropriate residence, police records, the Displaced Persons Commission report, and the health documents.

Q When you say that you would check, you mean during the course of the interview you would check?

A Well, I would have checked this prior to the arrival of the individual, but I would have reconfirmed it with the individual.

Q And were there any facts that were critical to your evaluation of the applicants? Any facts of the applicant's background?

A Yes. It was important that during the war years that the applicant would satisfactorily explain his presence in various places. That was important; and the other was the medical report which formed a very important part of the folder.

MS. COLEMAN: Your Honor, may I approach the witness, please?

THE COURT: Yes.

Q Mr. Huebeck, I am going to show you what has been admitted into evidence as Exhibit 1-C. I would ask that you look at that, and indicate whether or not you can recognize that.

So the record is perfectly clear, what has just been handed to the witness is a document titled on the first side, Application for Immigration Visa and Alien Registration, and the name of an individual named Bogdanus (Bohdan) Kozij.

Could you recognize that, Mr. Huebeck?

A Yes. This is form 256a, Application for Immigration Visa and Alien Registration, at the American Consulate at Hamburg, Germany (Consular Office Wentorf), and the front side is the application itself for the visa, and the reverse is the actual visa.

Q Looking at the front side, does your signature appear anywhere?

A Yes, it does, at the lower righthand corner.

Q By the way, do you have any recollection of an individual named Bogdanus or Bohdan Kozij?

A Not specifically.

Q Of what significance is the fact that your signature appears on the first side of this exhibit - that is, application for Immigration visa?

A That he appeared before me, and that we reviewed his case, and that the application was acceptable for the issuance of a visa - Immigration visa.

Q When you say that you reviewed his case, Mr. Huebeck, what do you mean by that?

A Well, I would have first checked the photograph as I mentioned. Then I would have gone through the place of birth; any unusual things -- Well, in this case, there was an amputation of a finger; residence; where he was going in the United States; who his sponsor was; and what his occupation would be.

Q Now, when you say that you would speak to the applicant, to which documents, if any, would you refer when you spoke to him?

A Well, initially, the application form which I have here, and then any of the other documents that were included in the visa.

Q If you would look at the lefthand side of the application for the visa, there is a box, and it says, PL 774, Report of DP Commission att., and I assume that means "attached". Could you explain what that means?

A The Public Law 774 would be the Displaced Persons Act of the eligibility of the individual. The report of the Displaced Persons Commission is attached, and that would be a summary; a history of the displaced person who was applying for a visa, and his family.

Q Mr. Huebeck, I would like you to look at a two page document, which has already been admitted into evidence. That is Exhibit 1-A for this trial, and at the top of the document it reads, United States Displaced Persons Commission, and the principal applicant listed on that document is Bogdanus (Bohdan) Kozij. Do you recognize that document?

A Yes. This would have been one of the supporting documents for the application for the Immigration visa.

Q Now, you had mentioned that you would discuss certain health matters. I would like you to look at a document that has already been admitted into evidence, and is Exhibit 1-E, entitled Medical Examination of Visa Applicants for a individual named Bohdan Kozij.

Would you please examine that.

A (Witness complies.)

Q Do you recognize that, sir?

A Yes. That is the medical report form that also accompanied the application for the visa.

Q During the course of your routine practices regarding application interviews, Mr. Huebeck, what attention was paid to the applicant's medical certificate?

A We always reviewed it carefully. There were certain prohibitions for visas, people who had dangerous, contagious disease - tuberculosis, something like that. We reviewed this to make sure that the physical condition of the person was acceptable, and he could perform the work of the position to which he was going.

Q According to the routine practice, which you told the Judge about, is there anything which appears on that medical certificate which would be covered during your interview with the visa applicants?

A Well, in this amputation of finger, I would have inquired as to how the applicant would have lost his finger. Yes.

Q Again, referring to the visa application, on the lefthand side, there appear to be other documents which are set out. Can you explain what other documents may have accompanied the visa application?

A In this case, there would have been

the photostatic copy of the document in lieu of birth certificate, a medical certificate, and a certificate of character.

MS. COLEMAN: Your Honor, for the record, what has already been admitted into the record, Exhibit 1-B, is the certificate in lieu of birth certificate; and Exhibit 1-D, the character certificate.

A You want an explanation?

Q Yes.

A The document in lieu of the birth certificate was -- Could have been a baptismal certificate; a statement of relatives, or people who personally knew the applicant who could swear that he was born on a certain date in a certain place.

Q By the way, Mr. Huebeck, who would be the source of the information, or the source of the document regarding the applicant's date of birth?

A The applicant himself would furnish that.

Q I would like you to look at a certificate of character for an individual named Bohdan Kozij. Do you recognize that, sir? I believe it is 1-E.

THE COURT: 1-D.

A This is certificate of character issued by the D.P.A.C.S. concerning the applicant.

Q And of what significance would that

be, Mr. Huebeck?

A Well, this was essential because the Immigration law requires the Certificate of Character.

MR. CARLTON: I couldn't hear you.

A This was required, since the applicant was required to provide a Certificate of Character in the Immigration Act.

Q Mr. Huebeck, I would like you to look at a document which is accompanied by a translation, and rather than read the Latin, I will read the copy.

MR. CARLTON: The number of that?

MS. COLEMAN: I have already put that in the record. I believe that is 1-D.

MR. CARLTON: 1-D is Certificate of Character.

MS. COLEMAN: 1-B.

THE COURT: Let me interject a moment. You mentioned D.P.A.C.S. What does that stand for?

THE WITNESS: I don't know the exact translation. The British military government authority in the British zone where this camp was located.

THE COURT: It was somebody from that organization that executed this Certificate of Character?

THE WITNESS: They conducted the investigation, and issued the Certificate of Character, yes.

THE COURT: All right.

Q Mr. Huebeck, would you look at that certificate of baptism, and confirmation, and indicate whether or not you can recognize that.

A This would have been attached to the visa application as the document in lieu of birth certificate. Baptismal certificate was acceptable.

Q If you would return to the first document that was shown to you, the application for Immigration visa, and look at the second side of the document, there appears to be a photograph there, Mr. Huebeck. Who would be depicted in the photograph as a matter of routine procedures?

A The applicant for the visa.

Q As a matter of routine practice, when, if ever, was a photograph required to accompany a visa?

A Always.

Q If in the course of your interview with a visa applicant, if there had been information disclosed that was at variance with the documents that we have just examined, as a matter of routine practice, what options were available to you?

A If it was a question of health, minor question of health, or a question of minor fact on the application, it would have been returned to the Displaced Persons Commission for verification of further clarification.

If it was a fact that was serious enough to cause me to reject the visa, that is, there was an organization involved, or the man had tuberculosis, something like that, I would have rejected it.

Q You had mentioned that if there were some sort of minor fact that were at variance from what appears in the documentation, you would send it back. Why would you bother to send something back for a minor fact?

A Well, it was essential that all the facts in the application for a visa were correct.

Q Mr. Huebeck, if you were satisfied that during the course of the interview with the applicant his answers to your questions were consistent with the information that was contained in the documentation, as a matter of routine practice, what would you do?

A I would have issued the visa.

Q And how would you do that?

A After we had concluded at the end of the interview, I would ask the applicant if he had read and understood the information in the application, and if he had any question. If we got by that okay, then I would ask him to stand and raise his right hand, and swear that the information in the application is true and correct. After that, then I would -- He would sign the visa, and I would sign it.

Q At what point in time would you put your signature on the application?

A After the applicant had signed.

Q How would the visa itself be issued? I am talking about the reverse side of the exhibit.

A At that point I would have turned the application over, and signed the actual visa section.

Q And once you as a vice consul affixed your signature to the visa, what was the affect of your signature?

A At that point, then the applicant was cleared to go to the nearest point of entry of the United States, and present himself with the Immigration, Naturalization Service for admission into the United States.

Q Would you look at the reverse side of the application for Immigration visa, that is, on the visa itself, and see if your signature does appear.

A Yes, it does.

Q Mr. Huebeck, I would like you to look at all of the documents that are up there on the witness stand with you. That is Exhibit 1-A, which is the report of the Displaced Persons Commission; 1-B, which is the baptismal certificate; 1-C, the application for Immigration visa; 1-D, the certificate of character; and 1-E, the medical examination.

Can you indicate if there appear anywhere

within those documents facts which would have made the applicant ineligible for a visa?

A No. I find none.

Q When you would evaluate the visa applications which had been submitted by the Displaced Persons Commission, on behalf of a person who is petitioning as a displaced person, and the routine procedures were in force, could you state whether or not you were required to approve the visa application?

A No. The actual issuance of the visa was at the discretion of the Consular Office.

Q Based upon your training, and experience, as a vice consul who issued visas in the Displaced Persons Act, I would like to ask you several questions based upon a set of facts. What would your decision as a vice consul be with respect to the eligibility of an applicant who was a member of an indigenous police force in a country occupied by the Nazis?

A I would refuse the visa on the basis of the fact that the applicant had engaged in hostile acts towards the United States or its allies.

Q Did the position the applicant may have held with such indigenous police force, for example, that he was a messenger, or typist have any bearing on your decision?

A It would not. No.

Q Putting aside membership in a police department for a moment, Mr. Huebeck, suppose that the applicant had been involved with shooting and killing Jews - for example, shooting of a child who was Jewish, and perhaps five years of age, what would your decision have been as a vice consul regarding that applicant's eligibility for a visa to enter the United States?

A That applicant would have been ineligible.

Q For what reason?

A Persecuting for religious cause.

Q And to the killing itself, what bearing would that have?

MR. CARLTON: Persecution for religious cause?

THE WITNESS: Persecution of -- Yes. Beside that there would have been a question of moral turpitude of an act. An act of moral turpitude.

Q Suppose that a visa applicant indicated that he had been a tailor's apprentice during the war, when in fact he served as a policeman in an indigenous police force, what would your decision have been regarding his eligibility for a visa under the Displaced Persons Act?

A In a visa where that information

did not appear, the visa would be refused because of the misrepresentation of facts.

Q Suppose that you would ascertain from the applicant, or perhaps from some other source that the applicant had been involved in fighting against the Soviet army during World War II, would that applicant be eligible for admission into the United States under the Displaced Persons Act?

A No. In that situation, he would have been engaged towards hostile acts toward allies.

Q Suppose the applicants had trained other people to fight against the Soviet army. What would your decision have been regarding his eligibility?

A I would refuse the visa on the same grounds.

Q Suppose you ascertained that the applicant had been involved in military actions against Polish partisans, or Russian partisans during the second World War. Would he have been eligible for a visa under the Displaced Persons Act?

A No.

Q Why?

A For the same reason, he would have been engaged in hostile acts toward United States or its allies.

Q Mr. Huebeck, suppose you ascertained that an applicant had lost portions of his fingers - perhaps you would ascertain that information through a medical examination report - and the injury was reportedly the result of an accident. Suppose further that you learn from other sources that the applicant had in fact lost his fingers while involved in military training exercises directed against Soviet army, and Soviet partisans, what would the status have been in terms of his receiving a visa under the Displaced Persons Act?

A I would have refused a visa.

Q Can you give the reasons why?

A On the ground that he was involved in the hostile act toward Americans or their allies.

Q Of what significance would it be that it was reported that those fingers were lost by an accident when in fact they had been lost in training exercise?

A It would have also been a misrepresentation of fact in the application for visa.

Q And if there is a misrepresentation of fact, what is the status of the visa applicant?

A It is refused.

Q According to the routine practices which were in force for the Displaced Persons Act Visa Program, what, if any type consideration was given to persons who served in the underground, or any other force which bore

arms against the enemy of the United States during World War II?

A Persons who were in the underground bearing arms against enemies of the United States were given first priority.

Q You mean the person went to the head of the line if he had been in the underground?

A That is correct. He received special attention.

Q Suppose the investigation showed that the underground group in question had fought against Polish and Russian partisans during World War II. What would the status of such an underground member be in terms of his receipt of a visa?

A He would have been refused because if he were fighting against the Polish partisans, who were fighting against the Germans, then he would have been fighting against an ally of the United States.

Q Does the same apply if he were fighting against Russian partisans as well.

A That is correct.

MS. COLEMAN: Your Honor, may I have a moment?

THE COURT: Yes.

MS. COLEMAN: I have no further questions,

your Honor.

THE COURT: Cross examination, please.

CROSS EXAMINATION

Q (By Mr. Carlton) Mr. Huebeck, I was not able to hear where you are presently employed because you weren't speaking into the mike. Just so I complete my notes, where are you employed?

A I am employed by the Four Seasons Travel Service in Pinehurst, North Carolina.

Q Thank you. Now, you say you were with the Department of State from 1946, through 1971, is that right, sir?

A That is correct.

Q What is your educational background?

A Prior to the service? Prior to the Department of State?

Q Correct.

A I went to Catonsville High School in Catonsville, Maryland. I graduated in 1939, and I went to business college in Baltimore in '39.

Q Did you get a degree?

A No. I did not.

Q How long did you go to this college?

A Until I went into the Army, which was 1941 -- '42.

Q And what was your rank at time of discharge?

A In the Army?

Q Yes.

A 1st Lieutenant.

Q Okay. Did you receive any training while you were in the service that later applied to your duties with the Department of State?

A No. I did not.

Q Now, prior -- First of all, how did you come to go with the Department of State in 1946 --

MS. COLEMAN: Your Honor, at this point, I object on grounds of relevancy, and materiality.

THE COURT: Objection overruled.

Q Go ahead, sir.

A I joined the State Department as a diplomatic courier in Washington, D.C., in '46.

Q What does that mean?

A Diplomatic courier is a courier from the Department of State that carries classified documents all over the world.

Q Now, other countries have similar couriers, do they not, that carry classified documents?

A That is correct.

Q All right. And first of all, how

long were you a courier of these classified documents.

A From 1946 until I became a vice consul in 1949.

Q Okay. And what made you change from one duty and responsibility to that of vice consul?

A Nothing made me. I was invited to become a vice consul in the Displaced Persons Program.

Q And sounded interesting, and therefore, you took the position, is that correct, sir?

A That's right.

Q Now, prior to assuming your duties, and responsibilities, questions were asked of you regarding any training that you had. You said that you had training of processing, is that right?

A Indoctrinations into the Immigration Nationality Act, and the Displaced Persons Act, and the documentation processing, yes.

Q Well, now, to what extent did you get indoctrination into the DP Act, and the Immigration and Naturalization Act?

A We were given copies of the two Acts, and told to study them, and we were given sample cases which we related to the Act, and the documentation that accompanied the application itself. We were given the indoctrination into familiarization with those documents.

Q All right. Did you want to say something else?

A No.

Q So, in fact, then, you were handed these two documents which actually -- They are not lengthy, are they?

A They are quite lengthy.

Q They are?

A Yes.

Q You are not an attorney?

A No. I am not.

Q You read them as a lay person, and then you were given a sample of a case of some sort, is that right?

A In the initial stage, yes.

Q Now, when was this done prior to your assuming your position of vice consul?

A Well, I had been commissioned to vice consul, and then this followed that. I didn't go on the job immediately. I went to the American Consul General in Hamburg, where this indoctrination and familiarization took place.

Q Would you say that you had a long training period so that you would know exactly how to fulfill your duties, and responsibilities?

MS. COLEMAN: Objection to the form of the question, your Honor. I would ask that he be more specific, and not ask for conclusion from the witness.

MR. CARLTON: I will rephrase it.

THE COURT: He is rephrasing his question.

Q Did you have a course that was given to understand how to fulfill your duties, and responsibilities?

A Not a course, no. A program.

Q A program. How long did this program last?

A Two weeks.

Q By two weeks, you mean approximately 10 days, not including Saturdays and Sundays?

A 10 work days.

Q All right. And this was within the period of when you were assigned in July, '49, until you actually arrived in September '49, is that so?

A That is correct.

Q When in this two week period did you receive the Immigration and Naturalization Act, and the DP Act?

A At the beginning.

Q And when were you given the case that you were telling us about - the sample case?

A That, probably at the end of the first week.

Q Do you consider yourself proficient in the DP Act?

A For purposes of the program that I was involved in, I considered myself proficient, yes, and my superiors told me that I was proficient.

Q If you do say so yourself.

A Yes.

Q What portions of these Acts were you particularly concerned with?

A The Immigration Nationality Act on the portions pertaining to the qualification of the applications. The Displaced Persons Act, in connection -- Well, the whole Displaced Persons Act, but in particular the Act pertaining to inadmissibility of quotas, et cetera.

Q Are you familiar with the IRO Constitution?

A I am not familiar with it, no.

Q Was that given to you for study?

A We looked at it, yes, sir.

Q Well, I asked you about study, and you answered about looking at it. Are you differentiating between looking at it, and studying the document?

A The purpose of the IRO Constitution,

insofar as vice consul is concerned, was to give him the background for the Displaced Persons Act.

Q Are you familiar with the difference in the IRO Constitution between a refugee, and displaced person?

MS. COLEMAN: Objection, your Honor. We have never offered this gentleman as an expert of any legality.

THE COURT: Why does that make any difference, really? We spent time on that yesterday.

MR. CARLTON: That is right, and I intend to present argument on the point ultimately in the course of the case.

THE COURT: I will overrule the objection.

MR. CARLTON: I won't go into any great detail with it.

If you are familiar with it, say so; and if not, say that, and I will move on. Are you familiar with the difference between a displaced person, and a refugee under the IRO Constitution?

A Generally, yes.

Q You are familiar with it. What is the difference?

A A displaced person was a person who had been moved, or had fled from his country of nationality.

A refugee would be one, or was one who had fled as a result of war, or acts of war.

Q This is your definition of it?

A Yes. It has been a long time.

Q All right, sir. Was that IRO Constitution given to you at the same time you received the other documents you are telling me about?

A It was not given to us as part of our material, no.

Q All right. Let's move on, if we may, to when you arrived in Wentorf, I think you said, is that true?

A That is correct.

Q You were there for a period -- Did I understand from September '49 through January of '50?

A That is correct.

Q September '49, January '50. When in September did you arrive there, if you remember?

A It was early September.

Q In the first week, would you say?

A Yes.

Q Around the 5th, something like that?

A First 10 days.

Q All right. And when did you leave in January?

A In the latter part of January.

Q You were there roughly four months?

A That's right.

Q Why did you leave?

A I was offered a better job in Frankfurt.

Q Unconnected with your duties, and responsibilities in Wentorf?

A No, sir.

Q Connected with it?

A No, sir, not connected with it.

Q All right. In this four month period of time, you say you processed between 750 - excuse me - and 800 visas?

A That is correct.

Q You do this every day of the week?

A Five days a week.

Q Excluding the weekend, Saturday, and Sunday, I assume?

A That is correct.

Q How many did you do a day?

A It varied.

Q From what to what.

A I just can't say offhand. It was variable.

Q Would your day comprise an 8 hour

day, Mr. Huebeck?

A That is correct.

Q And if you spent an entire 8 hours with one applicant, and his family, if he had one, you would be aware of that, wouldn't you, sir, considering your time was so valuable?

A Right.

Q Did you ever spend an entire day with an applicant?

A No. I did not.

Q Would you have ever spent, say, a half day with an applicant?

A No. I would not.

Q Well, if we could turn your mind back in time the way we would turn this video back, if we had a tape, could you tell us approximately what the fewest number of applicants you processed in a single day?

A I couldn't give you that figure. I would have to estimate that.

Q All right. Why don't you do that.

A 10, I would say.

Q 10 would be the fewest?

A Yes.

Q And you start at what time in the morning?

A About 8:30.

Q And you end what time at night?

A About 5:00.

Q And you take how long for lunch?

A Whatever.

Q Whatever?

A Yes.

Q I don't know what whatever is.

A Well, we didn't punch a time clock. We all went out from Wentorf to Hamburg in a car together.

Q Would you say two hours, considering you had to travel from Wentorf to Hamburg?

A About an hour, 40 minutes.

Q An hour?

A 40 minutes to an hour.

Q We are talking about roughly 7, 7 and a half hours of work, right?

A Approximately, yes.

Q And you didn't spend every minute with an applicant, did you?

A No. As I mentioned earlier, I did review the case before the applicant came in.

Q How long would it take you to review a case file?

A About 10, 15 minutes.

Q 10 to 15 minutes. That is almost close to two hours of your seven and a half hours would be spent reviewing case files, isn't that true, sir? That would leave you five and a half hours to interview 10 applicants?

A That is right. Something like that.

Q According to my mathematics, that would mean somewhere between 30, and 35 minutes would be spent with each applicant, and his family discussing all of these things that you have told us about providing, of course, you didn't take care of some other personal acts, such as going to the restroom; having a cigarette, or whatever you may wish to do - take a coffee break. So would you say that you spent maybe -- Considering some of the little things we do during a day that don't apply to our duties, responsibilities, talking to your coworkers, and so forth, that maybe on the outside, you spend 20 minutes with an applicant, if that?

MS. COLEMAN: Your Honor, at this point I object. I stopped timing Mr. Carlton, but I believe that question was about 45 seconds long. I ask that it be rephrased.

THE COURT: Well, I will sustain the objection to that question. I think that is argumentative. You have the basis for that argument stated in the testimony of this witness now, and I believe the question as phrased really is argumentative in nature. You may proceed.

Q All right, sir. I am having a little problem here. In the case of Bohdan Kozij, do you know how much time you spent with him?

A No. I do not.

Q Do you know whether you spent 20 minutes, or 30 minutes, 40 minutes?

A No, sir. That was a long time ago, and I wouldn't hazard a guess.

MS. COLEMAN: Your Honor, I see that Mr. Carlton is holding an exhibit with 8 photographs attached. We will stipulate that Mr. Huebeck does not have an independent recollection.

THE COURT: Let him handle it, Miss Coleman.

MR. CARLTON: May I approach the witness, your Honor?

THE COURT: Yes, sir.

Q Mr. Huebeck, I show you what has been marked as Plaintiff's Exhibit G-2, and ask you if you would look at those 8 photographs, and tell us whether or not you can recognize the person who you interviewed known as Bohdan Kozij, and whose name -- Excuse me - and whose documents you signed?

A I wouldn't make a positive identification.

MR. CARLTON: I repeat your words.

A I cannot make a positive identification, but of the people in these photographs, but number 6 is the one that would appear to look like the man.

MR. CARLTON: For the record, let the record reflect that the witness has pointed to number 6, which is alleged to be by the Government, to be the photograph of Bohdan Koziy.

You never saw these 8 photographs before, did you, Mr. Huebeck?

A No. I have not.

Q And when you were in Wentorf, Germany, this was in 1949. That would have been some 20 -- What would that be? 32 years ago, is that right?

A That is correct.

Q 32 years ago, and you saw how many people that were applicants?

A Between 750 and 800.

Q And how many families connected with the various applicants would you say on the average? How many persons in the family?

A That figure I gave you was for every applicant. A family unit might consist of 6 to 8 applicants.

Q Have you seen Mr. Koziy on television since you have been here in West Palm Beach?

A Only once.

Q Only once. Did that help you to identify the individual?

MS. COLEMAN: Your Honor, I object at this time. We never introduced Mr. Huebeck as a person who was to identify the Defendant. He is here to testify about the routine procedures he followed as a vice consul officer. I also suggest to Mr. Carlton the exhibit that Mr. Huebeck explained, the visa application, also contains a photograph of the applicant, Bohdan Kozij. This is irrelevant, and the line of questioning is an attempt to embarrass the witness.

MR. CARLTON: If Miss Coleman wants to testify, I ask she be sworn, and I will ask her questions.

THE COURT: I will overrule the objection. You may proceed if you care to, sir.

MR. CARLTON: Are you telling us, Mr. Huebeck, that going back 32 years, and coming into this courtroom, this morning, at around 10 minutes of 9, whatever time you actually entered the courtroom, and looking at this folder for the first time, that it is based upon your recollection of having spoken with Mr. Kozij for maybe 20 minutes if you ever spoke to him, that you remember which one he looked -- Was him?

MS. COLEMAN: Objection. He is assuming facts not in evidence.

THE COURT: Just a minute.

THE WITNESS: You asked me if I could identify him, and I said no, because that person, in number 6 appeared to be -- Appeared to be. I didn't identify him. I said that number 6 photograph appeared to be.

MR. CARLTON: Appeared to be. Fine.

MR. WOLF: Excuse me, your Honor, so the record is clear, this is Exhibit 22G-2, and photograph number 6 was also the one picked out by the witness Il'kovs'ka as the one being Bohdan Koziy, so it is clear what Mr. Huebeck is talking about.

THE COURT: We are getting into the argument now. I believe you have the basic testimony which will support whatever argument you desire to make. Let's move on to another subject, unless there is something else important you need to ask him about that.

MR. CARLTON: By the way, Mr. Huebeck, you have spoken with the Government about your testimony, haven't you?

A Yes, sir.

Q Went over your testimony with them, had breakfast with them this morning, did you not?

A Yes.

Q Did the Government tell you what they were going to ask you?

A We discussed the background --

Q My question to you, sir, did the Government tell you what they were going to ask you?

A They told me the subjects they were going to cover.

Q And you told them what you were going to answer, didn't you?

A I merely answered what they asked me.

Q You put it any way you want, but you told them what you were going to respond to their questions?

A Yes. If you want to put it that way.

Q Do you, sir, have a specific recollection of looking at the documents that you have identified here in court today? By that I mean a recollection of looking at these documents on the date that you reviewed them in Wentorf, Germany?

A No. I don't.

Q And so that the record is implicitly clear, and I will not dwell on the point, you do not recognize the gentleman in the light blue suit sitting at that table, do you?

A No. I do not.

MR. CARLTON: For the record, indicating the Defendant, Bohdan Koziy.

You said that you compared the photo that was on the visa application, is that right?

A That is correct.

Q You did that in every instance?

A Every instance, yes.

Q Did you have them sign the photo?

A It was either signed before they came in, when they filed the application itself, and they signed the application in front of me.

Q Did you compare the signature with the signature on the application?

A I did.

Q All right. Now, let's consider for a moment application for Immigration visa. For the record, we are referring to Plaintiff's Exhibit 1-C.

First of all, in the case of a gentleman such as Bohdan Koziy, what kind of an interpreter would you have?

MS. COLEMAN: Objection.

MR. CARLTON: By what kind, I mean what nationality?

MS. COLEMAN: Objection, unless it is established that Mr. Huebeck personally knows what language

Mr. Koziy speaks. He said the interpretation was done in the language of the applicant.

THE COURT: I will overrule the objection. The witness may understand the question. He may or may not be able to understand that.

Q Go ahead.

A Would you repeat the question.

Q In the case of Bohdan Koziy, you would have an interpreter of what nationality?

A The interpreter that I used was a Lithuanian, or Latvian. I am not sure of the origin. He spoke many languages.

Q He spoke many languages?

A That is correct.

Q Was he an official interpreter for the State Department, or was he something that you secured?

A I did not secure him. The State Department provided him.

Q Do you recall, or do you know how fluent he was in Ukrainian, for example?

A I couldn't say, since I don't speak Ukrainian.

Q So that when you said something to the applicant, and assuming it was Bohdan Koziy, you don't know as a matter of fact what the interpreter said to the

applicant, and what the applicant responded except by virtue of the translation by the interpreter, is that right?

A That is right.

Q Let me -- If I may approach the witness, your Honor?

THE COURT: Yes, sir.

Q Let me show you, sir, what has been marked as Exhibit 1-C. You can take in your hand if you like to. It would be more convenient for you.

Let me point out to you a portion on that exhibit right below where it says Marks of Identification. You notice what it says there?

A Yes.

Q Could you read it into the record, please?

A "1st joint left ring finger missing."

Q All right. Now, when you would -- First of all, you had not completed that form? That form was completed by somebody else?

A That is true.

Q This is something you would have reviewed ahead of time?

A Yes.

Q Would you have asked the applicant what happened to his finger?

A Yes.

Q You don't know in this case if you did or not, because you don't recall the interview, is that so?

A I would have asked it as a matter of routine.

Q All right. And after being told, would you note that in any memorandum, report, or on the application itself?

A No. Because on the medical certificate, it says, as a result of an accident.

Q By the medical report, incidentally, you are referring to 1-E - Government's Exhibit 1-E. Let me show you -- Well, you have it there on your desk. Would you read what it says about an accident.

A It says -- And I am not sure I can pronounce this, but "sequelae of accident".

Q Did you read that -- I assume you would have read that on the medical examination of the visa applicant, is that so?

A That is correct.

Q And the word that you cannot pronounce, wouldn't you have inquired as to what that meant?

A Well, I would have asked the applicant how he lost his fingers, and if he said that he lost them

in an accident, that would have been a minor element for me. I wouldn't have pursued it further.

Q You wouldn't have asked him what kind of accident?

A I might have, and if he said a farm accident, fine.

Q If he said that he lost them, for example, holding a hand grenade that was in a training process against the Nazis, you wouldn't have noted that?

A I would have stopped the interview at that point.

Q Why?

A Because he brought a new element into his visa application.

Q A new element?

A Yes.

Q If he merely said it was an accident, you think you may have gone further with that, and asked him more questions about what the accident was, or you are not certain?

A I am not certain, but I may.

Q Incidentally, when was Exhibit 1-C, application for Immigration visa, prepared?

A The date it was prepared?

Q When was this typed up?

A It was typed up after the Displaced Persons Commission passed the dossier to the consular office.

Q Who typed it, do you know?

A I do not know that.

Q Would it have been someone with the State Department?

A I presume so.

Q You see where it says date and place of birth?

A Right.

Q February 23rd, 1923, at Pukasiwci, Poland.

A Right.

Q Do you know as a matter of fact the applicant, Mr. Kozij, would have said Pukasiwci, Poland as opposed to the Ukraine? If I am not pronouncing it right, you correct me.

A I do not.

MR. WOLF: Are you calling me as a witness?

Q Now, attached to that application would have been a baptismal certificate. You have a copy of that in front of you, do you not --

A That is correct.

Q -- which is Exhibit 1-B. Would you

have asked any questions regarding that baptismal certificate?

A Not in particular, no.

Q What was the date of the application for Immigration visa?

A 18th day of November, 1949.

Q 18th of November, 1949. You wouldn't have asked any questions regarding baptismal certificate, which was the record of his birth,when the baptismal certificate was only issued three months before he applied for a visa? You wouldn't have found that strange, sir?

A No, sir.

MS. COLEMAN: Objection, your Honor. That is assuming facts not in the report, as to when that particular document was issued.

THE COURT: Overruled.

Q Does the document referred to as baptismal testimonium and confirmation testimonium bear the date of August 24th, 1949? I am referring to 1-B.

A Right. It does.

Q And would you have asked the applicant any questions as to how come he only got a baptismal certificate three months before, and that the baptismal certificate was issued in Heidenau, Germany?

A As I see this baptismal certificate, it is a document issued at the request, or upon presentation

of information from the applicant to a church authority at the camp in Heidenau, and it was not unusual to have a document and birth certificate issued on the basis of affidavits of friends, or relatives.

Q So, actually, you were so careful in how you checked the background of these various applicants that anybody that went to someone in Heidenau, Germany, and got a baptismal certificate was saying they were born, for example, in Pukasiwci, that was good enough for you, even though it was only issued three months before?

A If it had gone through the International Refugee and Displaced Persons Commission, it was all right.

Q If the DP Commission approved it, and IRO approved it, that was okay with you?

A I had the discretion to refuse it, but I accepted that one.

Q And, with this same thoroughness, you examined all the rest of the documents that were submitted to you?

A That is correct.

Q Let me ask you as regards Exhibit 1-A, which is the document styled United States Displaced Persons Commission, do you have that in front of you, Mr. Huebeck?

A Yes.

Q Would you review that form and tell me, sir, since this was one of the documents you would have reviewed, previously, where on that form it calls for any organization of which you are a member or have been a member?

A Under "Character".

Q Would you give me the page -- Oh. Under "Character". Go ahead. Read to me the part that says what organizations have you been a member of.

A Well, it doesn't specify wording of that sort, but it says, " The Principal Applicant and family are not and have not been, members of, or participated in, any movement which is or has been hostile to the United States or the form of government of the United States."

Q Maybe we are not communicating. I thought I asked you where it asked the applicant what organizations he had been a member of.

A No. It doesn't. It just specifies that he has not been.

Q Would you review all these documents the morning that you were to see the applicant, or would it be a week before? When would you review them?

A Just prior to the applicant --

Q Just a few minutes before?

A Right.

Q All right. Let's refer our discussion for the moment to Plaintiff's Exhibit 1-D, which is styled Certificate of Character. Would that be one of the documents that you would review?

A Which document is that?

Q Certificate of Character, Mr. Huebeck.

A Displaced Persons Commission?

Q No. Let me see if I can help you. You have it in front of you, sir?

A Right.

Q Would that have been one of the documents you would have reviewed?

A Correct.

Q It says on the top right, PWDP Form, SC-5. What is that?

A I do not know.

Q Do you know who prepared this document?

A As I mentioned before, this was prepared, I believe, by the British Security, or the British Forces in that area. It was the British zone of occupation.

Q You say you believe it was prepared by them. You don't know?

A I know it is a 29 D.P.A.C.S. stamp in the bottom, and British Army B.A.O.R. below that. My

assumption is they prepared that.

Q Do you know whether or not anyone with British Security ever spoke to Bohdan Koziy?

A I do not.

Q Do you know, sir, whether or not the person whose name appears in the Certificate of Character is the same individual that appeared with an application for Immigration and Naturalization visa?

A I do not. No.

Q In the body of the document it says, no convictions under MIL GOV, which I assume is military government?

A That is correct.

Q Or German law. Do you know who put that in there?

A That is on the form. Printed on the form.

Q That is a part of the form?

A Precisely.

Q All right. Further on down it says, from records and information available, I know of no convictions. Do you know what records and information was provided to the person who signed this form, whoever it was?

A I do not.

Q It says, according to documents

held by this office - and incidentally, this is not a printed portion of the form, is it?

A No. It is typed.

Q According to documents held by this office -- Let me stop right there. Do you know what documents they are talking about?

A No. I do not. I presume police records.

Q "My personal knowledge of the A/N person --" What does A/N mean?

A Above named.

Q "-- he is of good character." Do you know what personal knowledge there may have been on the part of the individual that signed this form?

A I do not.

Q So, actually, what you did, sir, when you reviewed this particular document, you merely saw that there was a certificate of character there, and it didn't show any record of convictions, but whether he had a record or conviction or not, you don't know, do you?

A Not if it wasn't in the record.

Q You just assume because this is one of the forms that you require in order to either grant or reject a visa application?

A Also, in the application, the body

of the application itself, the applicant states that he has not been convicted.

Q I understand that, but he could lie?

A That is right.

Q I am talking about as far as any investigation is concerned.

A That is correct.

Q When I say "he could lie", I mean the 900,000, or 600,000 that we understand sought to come to the United States could lie in all kinds of respects?

A True.

Q And there was an investigation made of these individuals, wasn't there?

A I presume so. It was done by the Displaced Persons Commission.

Q FBI; CIA; CIC?

A That, I do not know.

Q Let me ask you this: If the visa application said that a person were a tailor -- First of all, if they were a tailor, that wouldn't necessarily be reason to reject them, would it?

A No, sir.

Q Would you take a look at Exhibit 1-C, sir, please? That is the application for Immigration visa. You see it?

A Yes, sir.

Q All right. Maybe I am missing it someplace. Where does it say on there he is a tailor?

A It is in the Displaced Persons Commission report.

Q The question was asked of you by Miss Coleman on direct examination that if the visa application said a person was a tailor, when they are really a police officer, what affect would this have upon your granting or rejecting the visa?

MS. COLEMAN: Objection, your Honor. That was not the question that was asked.

THE COURT: Objection overruled.

Q So, in fact there is nothing in the visa application at all that even lists occupation, isn't that true?

A I will just point out that all the attachments to the application become a part of the application --

Q I am re --

A -- and the Displaced Persons Commission statement is a part of the application, and in there it does state that he was a tailor's apprentice.

Q Does he sign those other documents in your presence, such as the character report that we have

been talking about? Does he sign that, or the medical examination? Does he sign that? Does he sign the report of the Displaced Persons Commission? Does he sign that in your presence?

A Who is "he"?

Q The applicant.

A No. There is no signature except on the application itself.

Q The only thing he signs is a two page application?

A And the photograph.

Q Do you give him all these other documents to review?

A I don't. No.

Q So that if someone wrote down tailor, and they were really a butcher, he wouldn't know what was printed down there, especially when it is in English, and he may speak Ukrainian?

MS. COLEMAN: Objection.

THE COURT: Why?

MS. COLEMAN: First of all, to the form of the question, and he is asking Mr. Huebeck to state what another person would know, or not know. That is a mental impossibility. He is asking him to make a conclusion.

THE COURT: Objection sustained.

Q Would you agree with me, Mr. Huebeck, that if, say, the applicant was in fact Mr. Koziy, that he would have, frankly, no way of knowing what was in the documents that were on your desk in front of you when you were talking to him?

MS. COLEMAN: Objection.

THE COURT: Objection overruled. You may answer, sir, if you can.

A No. He had gone through all these documents with the Displaced Persons Commission, and International Refugee Organization.

Q Take a look, if you will, sir, at the United States Displaced Persons Commission report for the record being Plaintiff's Exhibit 1-A. Are you saying that you can testify here under oath that Mr. Koziy, for example, would have reviewed what was contained in that report?

A I am not saying that he would have reviewed it. I am saying it would have been reviewed with him.

Q Or you assume it would have been reviewed with him, right?

A Precisely.

Q And that entire report is in English, is it not?

A That is correct.

Q And you don't know where that information came from that is on that form, do you?

A The origin of the information that is contained in the application comes from the applicant himself.

Q Do you know where the information came from that was in the report from the Displaced Persons Commission, of your own personal knowledge?

A No. It has been a long time, but I am saying that it probably came from the interview of the Displaced Persons Commission with the applicant.

Q And whether it is accurate or not, you don't know, do you?

A No, sir.

Q And the fact that it is in English, and the applicant, for example, let us say spoke Ukrainian, you don't know that he was able ever to read what was in that document, isn't that true?

MS. COLEMAN: Objection, your Honor. It is getting argumentative.

THE COURT: I believe it is getting redundant, too.

MR. CARLTON: All right, sir.

THE COURT: You may proceed.

MR. CARLTON: Thank you. Counsel for the

Government asked you various questions having to do with the acceptance or rejection of the visa application, and one of your responses were that if it was a minor question of health, then they might not be rejected.

So we are clear, what do you mean by a minor question of health?

A If the applicant had as a result of his x-ray a scar on his lung which could have been, or might have been a tubercular scar, he would have been deferred until the medical authorities determined that tuberculosis was no longer active.

Q That is a minor question of health?

A I would say on the deferred basis, not rejected. If tuberculosis were active, he would be rejected.

Q I would think ordinarily, if you consider a minor question of health, if the applicant happens to come in and had a scratch over the eye, that would be a minor question of health, since that will obviously clear up in a matter of a few days, or week?

A No. Tuberculosis was a contagious disease, and person who had tuberculosis was excludable.

Q That was a major question of health?

A If it was only a scar, it wasn't a major issue. It was an issue that called for deferral.

Q Now, then you said if the fact was serious enough to reject, and without being asked, you threw in the word "organization", or TB. What organizations are you talking about as being serious enough to reject?

A Any organization that was listed by the Government as being a proscribed organization where membership or support of would render the applicant inadmissible.

Q Do you know what organizations were so listed by the Government?

A No, sir.

Q Do you know what was included in that list?

A No, sir. It was a long list, and it has been a long time ago.

Q Do you know where that list came from?

A No, sir. Our list came from the State Department.

Q Pardon me?

A Our list came from the State Department.

Q Did it have a heading, or style as to what this list was at the top of the list?

A I don't remember.

Q Did this list change from month to

month?

A I don't remember.

Q Do you know whether between September 1949, and January 1950, whether the Organization of Ukrainian Nationals were on that list?

MS. COLEMAN: Objection. Mr. Huebeck already stated he doesn't recall what organizations were on the list.

THE COURT: Overruled. I will allow that question.

Q Go ahead.

A I don't remember that.

Q Mr. Huebeck, we are about to conclude, but before we do, sir, let me again direct your attention to Plaintiff's Exhibit 1-C, application for Immigration visa. Would you be kind enough to point out to me, and to the Court, and to this record where in that application the applicant is swearing that he didn't fight against the Russians?

MS. COLEMAN: Objection, your Honor.

MR. CARLTON: Or the Poles.

MS. COLEMAN: The document speaks for itself.

MR. CARLTON: Questions were asked on direct examination about it.

THE COURT: Objection overruled.

Q Go ahead, sir.

A I don't see anything that spells it out specifically.

Q Does it say anything in this Form B, that I haven't fought against the allies of the United States?

A The closest thing that I see here, they have not been affiliated with or active in (a member of, official of, a worker for) organizations devoted in whole or in part --

Q What number are you referring to?

A It doesn't have a paragraph number. The fourth one.

Q Let me see where you are looking. Go ahead. Your Honor, it is on the second page, second paragraph.

THE COURT: I see what he has been reading.

Q Are you saying that has not anything to do with it?

A Yes.

Q I am sorry. The Reporter has to get your answer.

A No.

Q Go ahead. Would you look again at

the form, and answer the question, please?

A I don't see anything on here that specifically spells out what you've asked.

Q Does it say anything on this form about subversive organizations.

A Item 17 in the second paragraph, if you want to look, 16, 17, "Persons who believe in or advocate the overthrow by force or violence of the Government of the United States, or the assassination of public officials, or the unlawful desctruction of property, or who have ever held or advocated such views."

Q It says, "Persons who believe in or advocate the overthrow by force or violence of the Government of the United States --" Does it say anything about the government of Russia in that form?

A No.

Q Or the Government of Poland?

A No.

Q Excuse me. You mentioned, Mr. Huebeck, about police force - various police forces. Do you know, or did you know at that time anything about the Ukrainian police force?

A No, sir. Not that I recall at this time.

Q Do you know anything about the

Gestapo?

A Yes.

Q If a person came up to you and either said, or it appeared in the application that they were a member of the Gestapo, that would have stood out like a red light, and you would have stopped the processing, and I am sure marked reject, or however you do it, across the application?

A That is correct.

Q If it said Ukrainian police force, you don't know what you would have done with it? Huh?

MS. COLEMAN: Objection.

THE COURT: Objection overruled.

A If he had said so in the application, and there was no explanation as to his duties, and activities, I would have deferred it to the Displaced Persons Commission.

Q My question is directly to what you knew as a person who had on-the-job training, who received two official documents, such as Displaced Persons Act, and the Immigration, Naturalization Act, whatever it was that you reviewed; person that had some sort of experience, and had interviewed 700 people, did you know anything about the Ukrainian police?

MS. COLEMAN: Your Honor, at this point I have to object. I wish Mr. Carlton would clarify his

questions. Are you talking about Ukrainian police in 1920, or during the Nazi occupation?

THE COURT: Objection sustained. I take it he means during the Nazi occupation. I believe he covered the subject. The objection is sustained.

MR. CARLTON: Obviously, Mr. Huebeck, I am talking about the Ukrainian police during the periods preceding the application, during the Nazi occupation --

THE COURT: I have sustained the objection to the question.

MR. CARLTON: I am sorry.

THE COURT: I think it has been covered.

MR. CARLTON: I didn't realize you sustained it. Fine. All right.

Finally, Mr. Huebeck, if you had known, for example, that Mr. Koziy fought against the Nazis, would that have given him a priority, or a preference for admission into the United States?

A If he qualified as a freedom fighter, fighting against the Nazis, he would have qualified for the first priority.

MR. CARLTON: No further questions.

THE COURT: Will there be redirect?

MS. COLEMAN: One question.

REDIRECT EXAMINATION

Q (By Miss Coleman) Mr. Huebeck, you mentioned that the birth certificate for this case was provided by a request made by the applicant in August, 1949. Would you look at that birth certificate, please, to see the date of birth that is recorded?

MR. CARLTON: Your Honor, may I ask counsel asks the witness, whether they are talking about recorded on the document, or recorded someplace else; she means listed on the document? The document is dated '49.

THE COURT: Can you clarify the question?

MS. COLEMAN: Yes. According to the statement that was provided, and I believe the document itself also indicates that, the date of birth that was provided by the applicant is evidenced in a document that was obtained by the applicant in August, 1949, and Mr. Huebeck testified that it was the applicant who requested that document. That is not an original document which would have been issued by a governmental agency, is it, sir?

A That is correct.

Q And the date that is presented there, which is February 23rd, 1923, that was a date that was reported by the applicant for his date of birth? Do you know that?

A That is true.

MR. CARLTON: I am still trying to find the 23rd. Could I have a moment? Where does it say that?

MS. COLEMAN: On the application, the document itself.

MR. CARLTON: Perhaps the witness could show us where that says that. Could we ask the witness to show that?

THE WITNESS: Year, month, date of birth; baptism, confirmation --

MR. CARLTON: I am looking at the baptismal certificate. Are you looking at the same thing?

THE WITNESS: Translation.

MR. CARLTON: Translation?

THE WITNESS: Here it is on the first column.

MR. CARLTON: Go ahead. I am with you. Thank you.

MS. COLEMAN: If the date of birth, at least in the records of the applicant's birthplace, February 23rd, 1923, would at that time, after the termination of hostilities, would that document have been available, do you know - the original, which had the date of birth?

A You mean from Ukrainian --

Q From the applicant's homeland.

A There were times when the United

States and the Russians were not very friendly, so I would state it would not have been available. Subsequently it is possible it would be available.

Q Because of the facts existing at that time, Mr. Huebeck, you had to rely on the applicant's statement when his date of birth was?

A Precisely.

MS. COLEMAN: Thank you.

THE COURT: You may step down. Thank you, Mr. Huebeck.

Now, before we recess for the midmorning recess, let me make this inquiry of counsel. Is there an issue between the parties as to whether or not Bohdan Koziy, the Defendant in this cause, was the same Bohdan Koziy who applied for Immigration visa in Germany in 1949? Do we have an issue of fact on that question?

MS. COLEMAN: No, your Honor. I believe with the document that was submitted to the Court on Monday by Defense counsel, it is even admitted that he did apply for admission to the U.S.

THE COURT: It is the Government's position it is one in the same?

MS. COLEMAN: Yes.

THE COURT: How about the Defendant? Is there an issue of fact, sir? I am thinking in terms of

limiting whatever other evidence may come in relative to that issue. If there is an issue of fact, certainly additional evidence would be permitted. If not, maybe we could save time.

MR. CARLTON: Your Honor, it is not an issue as to whether he applied for a visa.

THE COURT: That is what I am asking.

MR. CARLTON: If he applied for a visa to come to the United States, I don't believe that is an issue. I think in my opening statement, I think I admitted that.

THE COURT: All right.

MR. CARLTON: However, whether or not this was his application for a visa is an issue.

THE COURT: Whether or not the application which has been marked in evidence here as part of Government Exhibit number 1 is the application which he made is an issue, correct?

MR. CARLTON: That part is an issue. I am referring to 1-C, your Honor.

THE COURT: All right. One other question, along the same lines, is there an issue as to whether or not Bohdan Koziy, who is the Defendant is this case, is the same Bohdan Koziy who petitioned for naturalization in the United States in 1955?

MR. CARLTON: Excuse me one moment.

THE COURT: All right.

MR. CARLTON: Your Honor, I believe part of our stipulation which we filed was that Bohdan Koziy did in fact apply for and receive a certificate of naturalization; however, whether or not he did this in '55, or whether this was his application upon which the naturalization was granted, that we are not stipulating to.

THE COURT: Well, you stipulated at the very outset that he did apply for citizenship in the United States.

MR. CARLTON: Correct, your Honor.

THE COURT: You are preserving an issue whether or not the documents which have been introduced with respect to that petition for naturalization are documents signed or were submitted on the part of, or in behalf of the Defendant, is that right?

MR. CARLTON: Correct, your Honor.

THE COURT: Okay, I think I understand.

Gentlemen, we will be in recess for 15 minutes.

(Thereupon, a short recess was taken.)

THE COURT: Are you prepared to go ahead, Mr. Wolf?

MR. WOLF: Yes. The next witness would be on tape, but before going to that, your Honor, I brought up

a question before with Mr. Carlton whether he would stipulate the Defendant in this courtroom, and I am assuming this is the Defendant in the courtroom, is the same person who entered the United States pursuant to these visa documents. If I can point in the record where Mr. Carlton's client has already admitted these facts, even if Mr. Carlton won't stipulate to them --

THE COURT: That is part of the argument. If he doesn't want to stipulate --

MR. WOLF: I wanted to read into the record the deposition where he identifies the document.

THE COURT: All right. You may do that, if you desire. Let us have page, and line number.

MR. WOLF: 485 --

THE COURT: The page is 435?

MR. WOLF: 485.

THE COURT: Okay.

MR. WOLF: Line 16:

"Q Is that your signature on the bottom of 4-C?

"A I assume so.

"Q No. I am asking you if you recognize that as being your signature?

"A Yah.

"Q The answer is yes?

"A Yes."

Then on page 524 of the deposition, starting at the top, line 1, again referring to 4-C - at trial, Exhibit 1-C, the visa, and visa application, that single document:

"Q Let me go back, because I don't think we did this before. On Exhibit -- Plaintiff's Exhibit 4-C on the lower left is a photograph. Is that a photograph of you?

"A (No response.)

"Q I might remind you, you have already identified the signature there.

"A They look differently.

"Q I am asking whether that is a photograph of you.

"A Yah."

THE COURT: That page and line number was what?

MR. WOLF: 524, 1 through 11.

THE COURT: All right.

MR. CARLTON: Your Honor, so we are clear, Plaintiff's Exhibit 4-C for the deposition will be what in the trial exhibits?

MR. WOLF: 1-C. It is the visa

application. It was photograph, and signature on that document.

THE COURT: All right, sir. Anything else from this deposition?

MR. WOLF: No, sir.

THE COURT: Okay. Now, your next witness is whom?

MR. WOLF: The next witness is a deposition tape of Jadwiga Spilarewicz. Pursuant to the conversation yesterday between counsel, I believe there was a stipulation that the first 7 pages of the written transcript, plus the first five lines on page 8 of the same transcript will go into evidence, and then from that point on, what will be evidence will be what the Court Reporter here takes down from the tape.

MR. CARLTON: Your Honor, in reviewing the transcript -- Does your Honor have the transcript in front of you?

THE COURT: No, sir. I don't. Mr. Ostrow is looking for it now.

Yes, sir, now I have the transcript in front of me.

MR. CARLTON: Your Honor, we would, consistent to what we agreed to, we will stipulate the Court Reporter can make a matter of the record in this cause that

which is contained on pages 3, 4, 5, up to the end of the first paragraph on page 6. I believe that we should begin with the question, " Your name?" where the witness identifies herself, and gives some additional information as to where she was born, and when she was born, and things such as that.

THE COURT: All right. Is that agreeable, Mr. Wolf? That brings us down through line 6, page 6. Mr. Carlton wants to start at line 7, page 6.

MR. WOLF: Would you like to start the tape at that line? We can do that. It was my understanding from yesterday, and we have advanced the tape to page 8, it was my understanding we would proceed to the point where the Government began its questioning, and Mr. Carlton would preserve his objections to all proceeding materials, but what is written in the transcript would be part of the record.

MR. CARLTON: I am not changing. What I am saying, any of this about swearing in witnesses, and things such as that, need not actually be shown, but the difference in this particular deposition is that on page 6, the witness states her name. On page 8, she does not even identify herself; and on page 6 further goes on to where she was born, as I said before, and when. On page 7, goes into her occupation; education --

MR. WOLF: They will back up the tape.

THE COURT: Okay.

MR. CARLTON: While they are doing that, your Honor, we would likewise make the same objection as we did to the previous depositions initially.

THE COURT: All right, sir. Let the record show those objections are made, and the ruling is consistent with prior rulings, and all of those depositions are stated as to -- All of those objections are stated as to this deposition, as stated to earlier depositions similarly taken. Same rulings.

Okay. Are we ready to go, then?

(Thereupon, the following was taken from the transcript of the deposition of Jadwiga Spilarewicz:)

JUDGE NOWAK: I open the sitting of the District Court in Warsaw. As far as I can see, the same persons as yesterday are present today, so the deposition will be held with the participation of the same people, in the same personal composition. So the deposition will be held in the case against Bohdan Koziy. Mrs. Jadwiga Spilarewicz, the witness, will be deposed today.

Just as it was yesterday, the whole deposition will be recorded at the video tape by Mr. David Marwell. The interpreter, Krystyna Lazarowicz, is 28 years old. Your profession?

THE INTERPRETER: Teacher and translator of English.

JUDGE NOWAK: You live --

THE INTERPRETER: In Warsaw, Wyspianskiego No. 5, Apartment 75.

JUDGE NOWAK: Have you ever been convicted for false statement?

THE INTERPRETER: No, I haven't.

JUDGE NOWAK: Are you somehow related to the sides?

THE INTERPRETER: No, I am not related to the sides.

JUDGE NOWAK: Where have you graduated from?

THE INTERPRETER: I have graduated from the University of Warsaw.

JUDGE NOWAK: Where did you work after you had graduated from the University?

THE INTERPRETER: I was working in the State Drama School. Then I was working in the Polish Press Agency. Now I work in the English Language College.

JUDGE NOWAK: Has Mr. Attorney any questions concerning the professional experiences of the translator, of the interpreter?

MR. TENEV: Yes, I have. Miss Lazarowicz, you understand that you must faithfully interpret everything that is said here from Polish into English, and from English

into Polish, and that you cannot delete, add, or modify anything that is said?

THE INTERPRETER: Yes, I do.

MR. TENEV: I have no further questions from Miss Lazarowicz.

JUDGE NOWAK: The Judge administers the oath from the interpreter according to the Paragraph 180.1 of the Criminal Proceedings Code.

THE INTERPRETER: The text of the oath: Being aware of the significance of my work, and the responsibility before the law, I swear solemnly to perform my duties as interpreter accurately, impartially, and without bias.

JUDGE NOWAK: Do you want Mr. Besoner to administer the oath from Mr. Marwell? Now?

MR. TENEV: Yes. May Mr. Besoner please administer the oath to Mr. Marwell?

JUDGE NOWAK: Please come up here.

MR. BESONER: Do you solemnly swear that you will faithfully and accurately videotape the testimony of this witness?

MR. MARWELL: I do.

JUDGE NOWAK: Would you like, Mr. Attorney, to warn and explain to the witness what all those actions that are taking place here now mean - what significance or meaning they have to the Court of the United States?

MR. TENEV: Would your Honor wish to administer the oath to the witness?

JUDGE NOWAK: Yes. I warn the witness about the obligation to speak the truth, and only the truth. I warn the witness that her statement here will serve as the evidence in the trial in the United States, and I warn the witness that for the false statement she can be -- There is a penalty of five years imprisonment, according to Paragraph 247.1 of the Polish Criminal Code - Proceedings Code.

(Videotape started.)

JUDGE NOWAK: Your name?

THE WITNESS: Jadwiga Spilarewicz.

JUDGE NOWAK: Your maiden name?

THE WITNESS: Kotopka.

JUDGE NOWAK: Your parents' name?

THE WITNESS: Pawel and Stefania.

JUDGE NOWAK: Where were you born?

THE WITNESS: September 4, 1922.

JUDGE NOWAK: Where?

THE WITNESS: Olesiow.

JUDGE NOWAK: Where was Olesiow located at the time you were born?

THE WITNESS: It was located in the Stanislawow region.

JUDGE NOWAK: Where do you live?

THE WITNESS: In Scinawa.

JUDGE NOWAK: Street?

THE WITNESS: Lenin Street, No. 9, Legnica region.

JUDGE NOWAK: What is your occupation?

THE WITNESS: I am a housewife. I am taking care of my husband.

JUDGE NOWAK: Your education?

THE WITNESS: Seven forms, seven classes of the primary school.

JUDGE NOWAK: Have you ever been convicted for false statement?

THE WITNESS: No, I haven't.

JUDGE NOWAK: Are you somehow related to Bohdan Koziy?

THE WITNESS: No, I am not.

JUDGE NOWAK: The Judge administers an oath from the witness according to the Paragraph 170.1 of the Polish Criminal Proceedings Code. Please repeat after me.

(The witness takes the oath in Polish, as hereinafter interpreted:)

THE INTERPRETER: The text of the oath: Being aware of the significance of my words and the responsibility before the law, I swear solemnly that I will speak the truth, and only the truth, and I will not hide anything that

I know.

JUDGE NOWAK: Yes, please.

- - - - - - - - -

Thereupon:

JADWIGA SPILAREWICZ

was called as a witness by the Plaintiff, and having been duly sworn, was examined and testified on her oath as follows:

DIRECT EXAMINATION

Q (By Mr. Tenev) Mrs. Spilarewicz, Judge Nowak just advised you of your obligation under Polish law to tell the truth. That same requirement is present under American law. Do you understand that to the extent this proceeding conforms with American law, you must testify truthfully?

A Yes, I do.

Q Do you declare that you will do so?

A Yes, I do.

MR. TENEV: For the record, I would like to state that the nature of this proceeding --

(Videotape stopped.)

MR. CARLTON: I would like to state all the statements of Mr. Tenev, running through the bottom of page 8, including page 9, and going to line - ending with line 13, page 11, be excluded.

MR. WOLF: Why?

MR. CARLTON: It is certainly not relevant to anything of probative value in this case.

THE COURT: All right. The motion to strike is denied. I think it is preliminary material which probably has no probative value, but it simply orients us. I will overrule the motion to strike.

(Videotape restarted.)

MR. TENEV: -- is a deposition. This is a deposition of Jadwiga Spilarewicz being conducted in the case of United States vs. Bohdan Koziy -- In the case of United States v. Bohdan Koziy, Civil Action No. 79-6640, before the Honorable James Paine, United States District Court in the Southern District of Florida.

This deposition is being conducted pursuant to a Notice of Deposition filed with the Court on December 4th, 1980, and served on Defendant's counsel about one week before that date. This deposition will be conducted in accordance with the Federal Rules of Civil Procedure and the Federal Rules of Evidence.

In addition, since the deposition is taking place in Warsaw, Poland, it will proceed in conformity with Polish law, which requires that the oath taken by the witness be given by a Judge of the Polish Judicial System. That procedure is also consistent with the requirement of

Rule 28(b) of the Federal Rules of Civil Procedure.

After the oath is administered and preliminary questions are asked of the witness by the Judge, all counsel present will have the opportunity to question the witness. There are no limitations on the scope of questioning by counsel except to the extent of the Federal Rules of Civil Procedure, or Federal Rules of Evidence may so provide.

It should be pointed out that the deposition, although originally noticed for the American Embassy, is taking place in the District Court Building for the City of Warsaw. The American Embassy, because of ongoing construction work, has no rooms adequate for the present purpose. The Polish Government has kindly made this spacious room available to us, and we wish to express our gratitude for their cooperation.

Finally, I would like to identify for the record the people who are present in the room today: District Judge Nowak; Dorota Bugajna, reporter for the Judge; the deponent, Jadwiga Spilarewicz; the interpreter, Krystyna Lazarowicz; court reporter, Jack Besoner; videotape operator, David Marwell, an employee of the United States Department of Justice; and counsel for the United States, Michael Wolf, and myself, Jovi Tenev. Absent is counsel for the Defendant, Mr. Koziy, Mr. Philip Carlton.

Would you translate that, please?

THE INTERPRETER: I made a mistake. I said present. Of course what I should have translated was absent; so then I corrected myself.

MR. TENEV: Absent from this deposition is counsel for the Defendant, Mr. Koziy, whose name is Mr. Philip Carlton. Mr. Carlton, despite almost two months advance notice, has declined to attend this deposition. He notified Government counsel of this position on Friday, January 9th, 1981.

THE INTERPRETER: What is the counsel?

MR. TENEV: He notified Government counsel of this position. Mr. Carlton stated that he was aware that Judge Paine had denied his motion to stay the taking of the depositions in Poland, but, nevertheless, that he would refuse to attend despite Judge Paine's ruling.

For the record, today is January the 29th, 1981.

Please state your full name.

A Jadwiga Spilarewicz.

(Videotape stopped.)

MR. CARLTON: Your Honor, I would like the record to reflect although Mr. Tenev just announced today is January 29th, 1981, the deposition upon the face of it, according to the court reporter, reads January 20th, 1981.

THE COURT: All right.

MR. TENEV: Your Honor, what is being made a part of the record of this proceeding is the testimony of what is being taken down by the Court Reporter at this time?

THE COURT: Yes.

(Videotape restarted.)

Q What is your maiden name?

A Kotopka.

Q When were you born?

A September 4th, 1922.

Q And where were you born?

A Olesiow.

Q In what country was Olesiow at the time of your birth?

A It was in Poland.

Q What is your occupation?

A I have no occupation.

Q Are you employed?

A I am not employed anywhere. I am being supported by my husband. I am staying at home.

Q Have you attended school?

A Yes, I have.

Q How many years of schooling did you have?

A Seven classes of primary education.

Q You stated that you take care of your husband. When were you married?

A I got married in 1940.

Q Was that your first marriage?

A Yes, the first one and the last one, so far.

Q Where did you reside from the time of your birth until just before your marriage in 1940?

A I was residing in Olesiow.

Q Did you reside continuously in Olesiow from the time of your birth until your marriage?

A Yes, I did.

Q In what month were you married?

A It was June.

Q After your marriage, where did you reside with your husband - after your marriage to him in June, 1940?

A We were living at my aunt's in Lisets.

Q What was the name of that aunt in Lisets with whom you lived with your husband after your marriage?

A Her name was Agnieszka Salek.

Q Was she known by any other first name?

A Yes, she was known as Yagusia.

Q How far is Lisets from Olesiow?

A About three kilometers.

Q For how long after your marriage in June, 1940, did you and your husband reside together with your aunt, Agnieszka Salek, in Lisets?

A 40 days.

Q Did you separate at that time, at the end of 40 days?

A My husband was arrested, and ~~she~~ he was taken away to Russia, and I came back to my parents.

Q Where did you say your husband went to, please?

A To Russia.

Q After your separation from your husband, where did you reside?

A I was residing at my parents.

Q Do you recall who arrested your husband?

A Russians.

Q What occupation did you have in Olesiow when you returned and lived with your parents?

A I was working at my parents' farm.

Q Do you recall if any Jews lived in Lisets at this time that you worked on your parents' farm?

A Yes, there were a lot of Jews. I don't remember how many, but I know there were a lot of them.

Q I now wish to direct your attention

to the Nazi German invasion of the Stanislawow district during the summer of 1942. Did you reside in Olesiow at that time?

A Yes, I did.

Q Do you know if shortly after the Nazi German invasion of the Stanislawow district there was a police force in the town of Olesiow where you resided?

THE INTERPRETERL After?

MR. TENEV: Yes, after.

A Yes.

Q Do you know if shortly after the Nazi German invasion of the Stanislawow district there was a police force in the town of Lisets?

A Yes.

Q Was there a police force in Lisets?

A Yes, there was Ukrainian police -- There was Ukrainian police in Lisets.

Q Was there a police force in Olesiow during this time?

A No, there wasn't.

Q In what district was the town of Olesiow?

A There was Lisets commune and Stanislawow region.

Q Do you know the name of the police force in Lisets during the Nazi German occupation?

A No, I don't.

Q You stated that shortly after the Nazi German occupation of the Stanislawow district there was a Ukrainian police force in Lisets, correct?

A Yes, that is correct.

Q Do you know if during the Nazi German occupation residents of the Olesiow area were taken to Germany for labor?

A Yes.

Q Did they go voluntarily or were they forced to go?

A They were forced to go.

Q Did anyone ever try to take you for labor?

A Yes.

Q Who tried to take you for labor?

A There was a letter from the commune authorities, and then Ukrainian police came, and if the person was at home, then he or she was taken; and if the person was not at home, he or she was not taken.

(Videotape stopped.)

MR. CARLTON: Excuse me, your Honor, I would ask that that last answer, if it can be, be replayed, as I have reason to believe if we are correct, she did not say Ukrainian police, but said that the police came.

MR. TENEV: Your Honor, the Government has repeatedly asked Mr. Carlton for proposed corrections to the interpretations. He has not provided us with any, and it is our position that this is not the time to do so.

MR. CARLTON: I have not made any objections when the interpreter repeatedly adds words that are not answered by the witness, because she is merely repeating part of the question, but in this instance, if I am correct, or if I be given correct information, that the words "Ukrainian police" was not used, and that might be a rather important point for your Honor to be considering if you should consider it of any value at all; besides which, of course, it isn't responsive to the question anyway, and I would object to it. The question was, who tried to take you for labor, and she is giving a general outline how it usually happened.

THE COURT: I will grant the motion. It does seem to be a matter of some importance. Let's hear it again.

(Videotape restarted.)

Q Did anyone ever try to take you for labor?

A Yes.

Q Who tried to take you for labor?

A There was a letter from the commune authorities, and then Ukrainian police came, and if the person

was at home, then he or she was taken; and if the person was not at home, he or she was not taken.

(Videotape stopped.)

MR. CARLTON: Your Honor, I object, and move to strike the word "Ukrainian". The witness did not answer "Ukrainian".

THE COURT: I will have to overrule that objection. I don't know whether she said "Ukrainian" or not. You may have evidence as part of your case that that translation was inaccurate. I can't grant the motion to strike at this point. It is denied.

(Videotape restarted.)

Q Did you say that this was the police who came to get you? Could you tell me the nationality of the police who came?

A They were Ukrainians.

Q Did the Ukrainian police ever attempt to take you for forced labor?

A Yes, they did. They were trying to do it several times.

Q Please complete your answer.

A So they came to us several times, but I always managed to hide, but once I didn't manage to escape and they took me and my younger brother.

Q Where did the Ukrainian police take

you for forced labor?

A They took us to Stary Lisets to the commune authorities' office. They also took some other people there; and then they carried us to Lisets, to the Lisets town, the town of Lisets, and then later on they took us to Stanislawow to Arbeitsamt, from where people were sent to Germany.

Q After you arrived in Stanislaw, did you remain in the custody of the Ukrainian police?

A In Stanislawow there was Arbeitsamt.

MR. TENEV: Would you please repeat the last word you said for the benefit of the reporter?

THE INTERPRETER: "Arbeitsamt". That's what I can imitate from what the witness says.

MR. WOLF: Is that "Arbeitsamt"?

THE INTERPRETER: This is the way we called it among us, the Poles called it, but I don't know the proper pronunciation of the word.

Q Do you know if this is a Polish word, or a foreign word, a word other than Polish?

A I don't know, but this is the way we called it.

MR. TENEV: I believe that the witness is using the word Arbeitsamt, A-r-b-e-i-t-s-a-m-t.

Did you go to Germany for forced labor,

Mrs. Soilarewicz?

A No, I didn't.

Q Do you know why you did not go?

A I do.

Q Would you please tell us?

A Because before we go to Stanislawow, my mother was already in Arbeitzamt, and there she just paid a doctor some money, and she just bought me out of that, and the doctor said that I had been ill of typhus. He gave me a certificate, and I was released, and I ran away.

Q Where did you go after you were released from forced labor in Stanislawow?

A I went to my mother's family in Ksawerowka.

Q How did you get there?

A I was always taken there by my mother on a wagon, or in the winter I was taken there on the sleigh, usually somewhere deep inside the hay. I was covered with hay.

Q What time of year was it when you went to Ksawerowka?

A I think it was toward the fall.

Q Why did you go to Ksawerowka?

A Because I didn't want to go to Germany.

Q Why did you think that you would go to Germany?

A There were seven children in my family, and if I had come back to my family, to my parents, and as I was the oldest, I would have been taken again.

Q Who would have taken you again?

A In the commune, in the local commune authorities, if they had learned that I was back again, they would have taken me.

Q How long did you remain in Ksawerowka?

A I can't define it exactly, but I think I was staying there until March.

Q And where did you go after you left Ksawerowka?

A Again, my mother put me in the sleigh, and she covered me with the hay, and she took me. You must know that even in towns young people were caught by Germans, that is why one had to hide somewhere; and then I went to my aunt, who was living alone, and she had a farm, and I was helping her there and hiding at the same time.

Q Do you recall the season of the year when you went there?

A It might have been March, I think, because there was a bit of snow in the fields, but the snow was melting already.

Q After you left Ksawerowka, you said you went to your aunt's. In what place was this aunt to whom you went?

A Just let me think. I have forgotten the name of the village. I have just forgotten. The name has gone out of my mind. I have forgotten. I forgot now.

Q Was there a larger village nearby this place where your aunt lived?

A It was near Pacykow. Now I remember. I remember. The village's name was Carynka.

Q What was the name of your aunt, do you recall?

A Her name was Albina Salek.

Q Do you recall the year when you went to Albina Salek?

A No, I don't remember.

Q And what did you do at your aunt's, Albina Salek, in Carynka.

A I was simply helping her. I was working with the animals; I was working with the cows; with the pigs, and when my aunt went away somewhere, I just took care of the house. I was helping her.

Q You stated that when your mother took you from Ksawerowka to Carynka, she hid you in the hay so that you wouldn't be caught by the authorities. Were you also

in hiding in Carynka?

A Yes.

Q After you were in Carynka, where did you go?

A Once my mother came and she --

(Videotape stopped.)

MR. CARLTON: Your Honor, I object to what the mother said. If your Honor has the transcript in front of you, you will note that she goes into matters that certainly are not coming in - they can't say are coming in for their truth.

MR. TENEV: Your Honor, the witness is explaining what caused her to take certain cause of action which she proceeds to describe.

MR. CARLTON: Your Honor, I know that is a standard answer, however, that is not necessarily the exception; and as a matter of fact, on line 14, page 21 -- In the answer on line 16, it goes further into this --

MR. TENEV: Your Honor, I might point out again --

MR. CARLTON: Excuse me one second, Jovi, if I may - as well as line 22, with the answer on line 24, and 25.

MR. TENEV: Your Honor, I might point out again that by not attending the deposition, Mr. Carlton

waived any objections as to irregularities, or errors in the answers under Rule 32. Furthermore, your Honor, the case of United States v. Zamarripa, 544 Fed.2d 978, it has been ruled that it is not hearsay to show conversations for the purpose of explaining subsequent action.

MR. CARLTON: Your Honor, that is fairly fundamental law, not only that case, but that isn't -- The fact we are concerned with here, telling that this was a Jewish child, and, for example, saying what the name of the child's family was, where the child came from, this isn't as applies in that particular case.

MR. TENEV: Your Honor, there has been testimony here already that the Defendant in this case is in part charged with having shot a young Jewish child, and I think there is foundation for this testimony.

MR. CARLTON: That too, is not an answer, your Honor. There may be testimony from some other witness regarding a Jewish child. That doesn't mean that we should allow this witness' testimony to come in based upon hearsay. This is supposed to be in corroboration of something.

THE COURT: Well, I don't -- I ruled previously, and I adhere to the ruling that you haven't really waived your objections to testimony which is clearly derived from hearsay information, and I have, however, ruled, and I will rule in this case that this testimony seems to be

a predicate for further action on the part of the witness, so I will overrule the objection on that ground.

MR. CARLTON: All right. May I ask the Court, is that your ruling as regards the answer on line - so I don't have to get up again - line 16, page 21, and more particularly, line 22 on page 21, where it says, "Did your mother tell you the name of this child?" and her answer. That certainly was not a predicate for further action.

THE COURT: Well, I think so. It does cover all of that testimony all the way down to page 22, to line 8. Seems to me those questions on the top of that page do show that it is correct that the testimony is admissible as a predicate for further action of the witness, and not for the truth of the statement.

MR. CARLTON: If I might say this, your Honor, the Government seeks to introduce this testimony as being indicative that the child referred to by the witness was Dr. Singer's child.

Now, there is no way that this witness knows that it was Dr. Singer's child except by what was told to her by the mother.

THE COURT: Yes, I realize that. That is still -- With that realization, I am making the ruling that I am.

MR. CARLTON: All right, sir.

(Videotape restarted.)

A -- she said that I would get a child. She told me not to worry about anything because the child had the Polish birth certificate, and the child was registered in Lvov. She told me that I would go into the mountains, that I would go to Monastyrczany, a small village in the mountains, and that I would get, well, everything there. I would get food and money, and that I shouldn't worry about anything; I shouldn't bother about anything; that the only duty of mine would be to take care of the child.

Q Why did you wish to take care of this child?

A The reason is simple, but my mother told me, warned me, that it was a Jewish child, and the reason it was simple, you know, I was just fed up with hiding. I was a young person; I just wanted to go out of the hiding. I wanted to go out into the world.

Q Did your mother tell you the name of this child?

A Yes, she told me. She told me it was Dr. Singer's child.

Q When did you first see this child whom your mother told you was Dr. Singer's child?

(Videotape stopped.)

MR. CARLTON: Your Honor, I would object

to the question consistent with the argument I previously agve as it would be predicated on hearsay.

THE COURT: All right. Same ruling, sir.

(Videotape restarted.)

A When I went to Olesiow.

Q Did you leave Carynka to go to Olesiow to see the child?

A Yes, that is correct.

Q Is that why you went to Olesiow from Carynka?

A Yes, that's right.

Q Do you recall what season this was when you went to Olesiow to see the child?

A Yes, it was spring.

Q Do you recall the year?

A No, I don't. I don't.

Q And where did you first see this child in Olesiow?

A Just then, in that spring, when I came to Olesiow, I saw the child.

Q And did you see the child in the house or on the street?

A It was in the house.

Q Do you know in what house this was?

A It was at our neighbor's, whose name

was Stefania Owczarz.

Q And how long did you remain at the home of Stefania Owczarz with this child?

A For two days.

Q How old was this child when you first saw her in the home of Stefania Owczarz in Olesiow?

A I think it might have been about three or four years old, but I don't know exactly.

Q And you stated you remained in Stefania Owczarz' house in Olesiow for two days. Where did you go after that?

A Stefania Owczarz' brother, who was residing with us at Monastyrczany, was there together with his wife and children, and he had a horse, and he took us to Monastyrczany, to his own house there.

Q What was the name of this brother of Stefania Owczarz?

A His name was Franciszek Owczarz.

Q Did you take the little girl with you to the home of Franciszek Owczarz?

A Yes, I did.

Q What did you call the little girl?

A Emilia.

Q What did the little girl call you?

A Mommy.

Q Did you yourself take care of the little girl throughout your stay in Monastyrczany?

A Yes, I did.

Q Would you describe the little girl, please?

A She had a very nice figure. She had blue eyes, and she had black eyelashes and eyebrows, and she had black hair, and a very small nose, and white complexion. She was very, very pretty. A beautiful child.

Q You stated that the little girl called you mommy, correct?

A Yes, that's correct.

Q Were the two of you close - you and the little girl?

A Yes, we were. I got used to the child very much. I got attached to the child very much.

Q How long did you and the little girl remain in Monastyrczany?

A Until the fall.

Q You stated that you arrived in Monastyrczany in the spring, and that you remained there until the fall with the little girl. Why did you leave?

MR. CARLTON: Your Honor, I would object to the response appearing on page 24, line 23, as to why she left, as predicated upon hearsay.

MR. TENEV: Once again, your Honor, the witness' answer is explaining why she left, which was the question asked of her.

THE COURT: All right. I will overrule the objection.

(Videotape restarted.)

A Early in the morning my mother came there, and she told me, she told me that the Kozdemba family had been hiding Jewish people.

Q Where did the Kozdemba family live, do you recall?

A They lived in Olesiow near to us.

Q And what else did your mother say?

(Videotape stopped.)

MR. CARLTON: Objection, your Honor. I object. Hearsay.

MR. TENEV: Your Honor, the witness is continuing with her explanation why she left.

MR. CARLTON: I don't know how that could be an explanation why she left, about the Gestapo being there, and it just does not comport with the argument.

MR. TENEV: " My mother told me that I had to hide somewhere or escape somewhere so that I wouldn't be caught."

MR. CARLTON: What about the part,

"Gestapo had taken Kozdemba, and they had taken the Jews from there"?

THE COURT: I think that is consistent with the argument. I will overrule the objection.

MR. CARLTON: So I don't have to interrupt again, your Honor, I would object to the answer to the question, "During this time, do you know what happened to those, like the Kozdembas, who hid Jews?" I object to the answer, and also to the question.

"You stated that you realized that the little girl who lived with you was Jewish", and answer, "yes", and I would object to that as predicated upon hearsay, as is reflected in the previous testimony as to how she found this out.

THE COURT: All right. Objection overruled on both scores.

(Videotape restarted.)

A And she told me that the little girl's parents had been hiding there, and that the Gestapo had taken Kozdemba, and they had taken the Jews from there; and my mother told me that I had to hide somewhere or escape somewhere so that I wouldn't be caught.

Q During this time, do you know what happened to those, like the Kozdembas, who hid Jews?

A Anybody who was hiding Jewish people

at that time could be sentenced to death and his wealth could be taken away from him.

Q You stated that you realized that the little girl who lived with you was Jewish, is that right?

A Yes. Unfortunately I was aware of that. I realized that.

Q Did you realize what might happen to you if you were caught with the little girl?

A I realized that, of course, but I was not thinking about it, and, besides, I believed that it would not happen to me.

Q Where did you go after your mother told you that it had been discovered that the Kozdemba family had been hiding Jews, and that they had been arrested by the Gestapo?

A So we got on a bus in Solotwina. The bus was going to Stanislawow through Lisets, and we didn't know where to go - whether to Stanislawow, because I had an aunt in Stanislawow, but my aunt had children --

(Videotape stopped.)

MR. CARLTON: Your Honor, I would object to what her mother had told her.

THE COURT: You are on page 26, line 7?

MR. CARLTON: Correct, your Honor.

THE COURT: Objection overruled, for the

same reasons as previously stated in the last several objections.

(Videotape restarted.)

A -- and my mother told me in Lisets my aunt is alone; she doesn't have any children, so you would hide there, and I would go and try to get in touch with Stefania Owczarz, and we made the following plan: We decided if I got money, which I needed, I would go to Krakow, because we had a family there; and if not, we would give the child back to Owczarz.

Q What was the name of your aunt in Lisets who lived alone, who your mother suggested you might go to?

A Agnieszka Salek.

Q And did you go to Agnieszka Salek's home in Lisets?

A Yes, I did. We got off the bus.

Q And did you take the little girl with you at that time?

A Yes, I did.

Q How long did you remain in Agnieszka Salek's home?

A It might have been half an hour, maybe.

Q Under what circumstances did you

leave Agnieszka Salek's home in Lisets after you arrived there with the little girl?

A When my mother, little Emilia, and I entered the house, we thought that nobody had seen us, and I don't know why, but we forgot to close the door; and when my aunt saw me with the child, and as she didn't know anything about it, she got frightened.

Q Why was your aunt frightened?

A Yes, she got frightened, because she knew what was happening. She knew what had happened to the Kozdemba family --

(Videotape stopped.)

MR. CARLTON: I object to what she knew happened to the Kozdemba family as predicated on hearsay, and also what her mother told her.

MR. TENEV: Your Honor, I believe this is an exception to the hearsay rule under 803.20, reputation as to events of general history and report to community or state.

THE COURT: I doubt it falls under that rule, but I will overrule the objection. I think it is an explanation of what she was doing, and why she was doing it.

(Videotape restarted.)

A -- but my mother told her not to worry, because she said we are not going to stay there for

long; but unfortunately, I was standing with my back to the window, but then I turned around and I saw the policemen near the window.

Q Did the policemen enter the house?

A Yes, they did.

Q Did the policemen say anything to you?

A Yes, they entered, and they said immediately, said at once, "This is the Singer's child." I said, "It's not true," and I gave them the child's documents. They threw the papers away and they started searching the house; and as I had lived at my aunt's before, all my things, and the things of my husband's, and wedding presents were there. They had been wrapped up and they were just standing there. It was such a trunk, and they opened the trunk, and they started, you know, taking things out of that trunk, and they saw my summer green dress, and he was speaking the Ukrainian language, but I understood it, and he said, "Isn't it a Jewish dress?" and I said, "No, it is mine." And then he hit me several times in my face, so I stopped saying -- I didn't say anything, and then he wanted me, but I had some money there. I had the Polish silver coins. It was about 200 zlotys.

One of the policemen, the taller one, because there were two of them, one was taller and the other one was shorter, so that taller one took the money and put it

in his pocket; and we, that is, my mother, my aunt, Emilia, and I were taken to the police station. I took the child in my arms and they led us to the police station.

Q Were you frightened when the policemen were in the house?

A Yes, I was frightened.

Q Please continue. Where did you go after?

A So they led us to the station - the police station. My mother and my aunt were put through one door, and he took the child out of my arms. He did it, you know, brutally, because he caught the child by its arm, and the child started shouting and screaming, mommy, mommy. I was crying. He pushed me through the door, and he closed the door and they took the child, and I never saw the child anymore.

Q After they took Emilia from you in the police station, do you know what happened to her?

A I don't know. What I know now is what people told me about it, but I didn't see anything.

Q Did you ever see her again? Did you ever see her body?

A No, I didn't see her anymore. No, I didn't see her body.

Q Did you ever see any of her clothing,

or possessions after that time?

A Yes, I saw it once. When the Germans were leaving that region, and the Russians were coming back, there was a bombing, and I came back at that time. I had already come back to my parents in Lisets, and we were hiding, and just there and then I saw Emilia's coat on a Ukrainian child, and it was a terrible shock for me, because I recalled everything that had happened before.

Q When was the last time that you saw the coat before you saw it on the little Ukrainian child?

A She was wearing that coat.

Q When was Emilia wearing the coat?

A When we got to the police station, she was wearing that coat. She had the coat on, because it was fall already.

Q You stated that in Agnieszka Salek's home there were two policemen, one who was taller than the other. You also stated that one of the policemen struck you in Agnieszka Salek's home.

A Yes, that's right, the taller one.

Q Do you recall who took the child from you at the Lisets police station?

A That same tall policeman.

Q Would you describe the taller police-man?

No, I can't. No, I can't. I know only that one of them was tall and slim. The other one was shorter and fatter; but I saw them only once in my life. I never saw them again, so I don't know.

MR. TENEV: I would like to take a short recess, please.

(Short recess taken.)

MR. TENEV: May we go on the record, then?

JUDGE NOWAK: Yes, please.

MR. TENEV: Mrs. Spilarewicz, after the little girl Emilia was taken from you at the Lisets police station, how long did you remain in the police station?

A Until the evening.

Q Do you recall where you were kept in the police station?

A I was kept in a cell, in a room.

Q Where did you go after you left the Lisets police station?

A So in the evening a van came and two policemen, I don't remember who they were, led me out, and they put me into the van, and we went to Stanislawow.

Q When you were first taken to the Lisets police station, do you recall what time of day it was?

A It was not early morning, but I know it was before dinner.

Q You stated that you were taken to Stanislaw. What kind of officials took you to Stanislaw?

A I was led out from the police station by the policemen, but there were also people in uniforms and in civilian clothes.

Q Were there any other people in the van with you on the way to the Lisets police station -- Excuse me. On the way to Stanislaw?

A Yes, there were.

Q Who were these people, do you know?

A There was me; there were Jews; there were Ukrainian people. For sure there were Ukrainian policemen, because they were speaking Ukrainian; and there were civilian people who didn't say anything.

Q Did anything happen in the van on the way to Stanislawow?

A A very unpleasant scene took place there, because the policemen were beating the Jews. They were pushing them and they wanted them to pray and they wanted them to sing; and it was very unpleasant for me, and I was shivering all over, and I couldn't see it. I didn't want to look at it, and I was trying to hide behind a civilian person - a civilian man.

Q Why was this unpleasant to you?

A Well, you know, God, that was a man.

Let him be a Jew, but he is still a man, a human being.

Q Where were you taken to in Stanislawow?

A It was a prison. I was in the prison, but I don't remember the name of the street.

Q And how long did you remain in this prison in Stanislawow?

A For two and a half weeks.

Q Do you recall the name Ostapiak?

A Yes, I do.

Q Do you know where this person Ostapiak lived?

A Yes, he lived in Lisets.

Q Do you know if this person Ostapiak that lived in Lisets had any children?

A Yes, he had.

Q Do you know if during the Nazi German occupation, any of his children married?

A I know that Ostapiak's daughter got married with a Ukrainian policeman.

Q Do you recall the name of this girl who married the Ukrainian policeman, who was the daughter of Ostapiak who lived in Lisets?

A No, I don't.

Q Do you recall meeting with another American official about 15 minths ago?

A Yes, I do.

Q Was this in Warsaw?

A Yes.

Q Did he show you any photographs?

A Yes, he did.

Q Were they photographs of men, of women, or of both?

A Of both.

Q I now show you a group of 8 photographs of females, which will be marked as Exhibit 1-A through H.

(Videotape stopped.)

MR. TENEV: Your Honor, at this time, I ask those photograph be marked as Plaintiff's Exhibit 22B-1 in this proceeding.

THE COURT: This is a different spread of photographs?

MR. TENEV: Yes, your Honor. Same people, different photographs. Perhaps that is not clear. These are copies of the same photographs.

THE COURT: Has counsel for the Defendant seen these?

MR. CARLTON: No, your Honor, I haven't.

THE COURT: Would you please show them to him? What is the identification mark you want to put on

them - 22B-1, is that right?

MR. TENEV: 22B is fine, sir.

(Thereupon, said photographs were marked as "Plaintiff's Exhibit 22B for Identification" by the Court.)

MR. TENEV: Your Honor, we might point out that copies of these photographs were made a part of the record of the deposition of Jadwiga Spilarewicz.

THE COURT: All right.

MR. CARLTON: To the contrary, your Honor, none were included in our depositions.

THE COURT: The original does have some Xerox?

MR. CARLTON: Whether it was inadvertent or not, I don't know. Somehow they weren't included -- Wait a minute. I take that back. It has been pointed out to me that apparently I am incorrect, although some of them as will be noted are almost worthless, since you can't even see them, but I did receive them.

THE COURT: All right.

MR. TENEV: Both the front and the back of the photographs were Xeroxed and made part of the record.

THE COURT: Now, these that are being marked 22B are the same photographs referred to as Exhibits --

MR. TENEV: 1-A through H.

THE COURT: -- 1-A through H on the

deposition, right?

MR. CARLTON: Your Honor, I assume these photographs themselves are going to be a part of the record which would indicate, of course, the only one with blond hair is the one that the witness will identify. All the rest have dark hair. These photos will become a part of the record?

THE COURT: I assume they will on the basis of past experience.

MR. CARLTON: Okay.

MR. TENEV: May we proceed?

THE COURT: Yes, proceed.

(Videotape restarted.)

MR. TENEV: When I hand them to you, please look at the front and the back of each of these photographs very carefully. Please let me know when you are finished looking at them so that I may ask you some further questions.

For the record, I have just handed the witness a group of 8 photographs of females.

Please look at the back of those photographs, of each of those photographs. Do you see writing on the back of the photographs in blue ink?

A Yes, I do.

Q Do you recognize that writing?

A Yes, I do.

Q Please look at every single one on the back -- In the back.

A Yes. This is, I mean, all my handwriting. All my handwriting.

Q Would you look at those last two up there, on the back, please?

A Yes, this is my handwriting. My handwriting.

Q Would you look at the back again. Is there a date on each photo?

A At all of them?

Q Yes. Is there a date on each one?

A Yes, there is. Yes, there is.

Q What is the date, please?

A It is the 5th of October, 1979.

Q Is it the same date on each photograph?

A Yes.

Q Is that date in your handwriting?

A Yes.

Q Are these the photographs of females which were shown to you by the American attorney approximately 15 months ago?

A Yes.

Q When the American attorney showed

you these photographs, did he mention the name of any person?

A No. He didn't.

Q Are you sure?

A Yes, I am sure. I am sure.

Q What did he ask you to do when he showed you the photographs?

A When he showed me all the photos, and he told me to place such a mark, an X on the photographs in which I recognized somebody.

Q What kind of a mark did he ask you to place on the photograph which you recognized?

A An X.

Q Did you place an X on the back of any one of those photographs?

A Yes, I did, on one of them. This is the photo that I recognized.

(Videotape stopped.)

MR. CARLTON: For the record, your Honor, I would object, and move to strike any identification as being improper, and unfair photo line-up as appears in the photos themselves. Obviously, when you have 8 photos, 7 have black hair, and one blond hair, the one identified is blond hair.

MR. WOLF: First of all, I am not sure it is so clear that all of those people had black hair other than the one person. I also point out the attorneys who

showed the witness does not say which one is Jaroslava Koziy. He said, do you recognize anyone. What is the unfairness, even if it is true that only one had blond hair?

THE COURT: I will overrule the objection, and we will take the noon recess at this time.

Gentlemen, and ladies, we will be in recess until 1:45. We have another matter at 1:00, which I think we can finish at that time.

The Court is in recess until 1:45.

(Thereupon, the Court was in recess.)

AFTERNOON SESSION

Commencing at 1:45 o'clock P.M.

THE COURT: You may proceed.

(Videotape restarted.)

MR. TENEV: For the record, the witness has indicated photograph number C7 115 204-b, D.

Fifteen months ago, whom did you tell the American attorney this person was whom you recognized in this picture?

A Ostapiak's daughter; but when I saw her, she was young, and her face was more oblong. It was slimmer; thinner.

Q May I please have the photographs?

A Here you are. She looks like me.

MR. TENEV: Let the record indicate that

the witness laughed right after she said that.

THE WITNESS: Because I am the same way as the photograph that I just pointed to.

MR. TENEV: For the record, the photographs which I handed the witness, a group of 8 photographs of females, one female on each photograph, the photographs are numbered in black ink C7 115 204-b, and then in capital letters on each photograph, A, B, C, D, E, F, G, H.

These photographs will be marked by the court reporter. We will put copies into the record, and I now hand the photographs to the court reporter, Mr. Besoner. We ask the Xerox copies be put into the record and be attached to the copy of the transcript of this deposition.

(So marked.)

MR. TENEV: Mrs. Spilarewicz, you stated that the American attorney about 15 months ago also showed you photographs of males, is that correct?

A That is correct.

Q When he handed you these photographs, what did he tell you?

A He wanted to look at them carefully, and he asked me whether I recognized anybody.

Q And did you recognize anyone after you examined all those photographs?

A No, I didn't.

Q Did you write anything on any of those photographs of males?

A No, I didn't.

Q I now hand you a group of photographs numbered C7 115 205, capital A, B, C, D, E, F, G, and H. Would you please look at the front and back of them carefully, and when you are finished, tell me, so that I may ask you further questions.

A I have looked at them.

Q Do you recall whether these were the photographs of males that the American attorney showed you approximately 15 months ago in Warsaw?

A I think the same. I think these were the same faces, but I don't know them. I don't know them.

Q Please give them back to me.

A Here you are. I don't know them.

MR. TENEV: I now move into evidence Exhibit 1-A through H, which I previously handed to Mr. Besoner, a group of 8 photograph of females.

Mrs. Spilarewicz, do you know if in the vicinity of the areas where you lived --

(Videotape stopped.)

MR. TENEV: Your Honor, I now move into evidence at this trial photograph of males which are previously marked as Plaintiff's Exhibit 22B.

THE COURT: All right. Objection?

MR. TENEV: Excuse me, your Honor, photographs of males -- Rather, females, which were marked Plaintiff's Exhibit 22B are moved into evidence.

MR. CARLTON: Your Honor, I will object as previously indicated in the record.

THE COURT: All right, sir. Plaintiff's Exhibit 22B, which is identical to the deposition Exhibit 1-A through B, is received in evidence over objection of counsel for the Defendant.

MR. TENEV: I believe that is 1-A through H.

THE COURT: 1-A through H. All right, sir.

(Thereupon, said photographs were marked as "Plaintiff's Exhibit 22B" by the Court, and received in evidence.)

(Videotape restarted.)

MR. TENEV: -- during the Nazi German occupation there were any Ukrainian underground groups?

A There were just robbers. We called them Banderowcy.

Q You stated they were robbers. What did these Banderowcy do?

(Videotape stopped.)

MR. CARLTON: Your Honor, I would object to the response as she says that she didn't see them, or at first she didn't see them. She says, but she heard from her parents, and goes on to state what she heard from her parents.

MR. TENEV: Your Honor, may I ask Mr. Carlton to give us the legal basis for that objection?

MR. CARLTON: Hearsay.

MR. TENEV: Your Honor, I suggest it is an exception to the hearsay rule under 803.20, being indicative of general events of history of the importance to the community in which they occurred. The witness stated these activities, these group operated in the area where she lived, and she goes on to state the activities of those groups, and their reputation in the community.

MR. CARLTON: I fail to understand the applicability of that particular section of the rules to what he is saying as being grounds for his position. It is obviously a fact that these things were told to him; that they are coming in for their truth, and I don't see any exception to the hearsay rule.

MR. WOLF: Your Honor, could we make one last statement on 803.20, and we will leave it at that? We do think that when a small village like this one, maybe 2,000 people or so, when all of the Jews of the village, assuming

your Honor were to credit the facts as we present them, when all of the Jews of the village, 40 or so families, were taken to the ghetto, and a number of them killed right in the middle of the village, that is events of general history that is important to the community. It is the sort of event that people don't forget in the community, and it is sort of event that this rule was directed towards, so when people in the community talk about the event of the carting away of all the Jews, or murdering of the Jews in the town, that should be admitted. That is not something about which people are likely to have lied at the time.

MR. CARLTON: I don't know if Mr. Wolf is reading the same thing we are reading. There is nothing in the response that refers, number one, to the Jews at all, but what allegedly these "robbers" did, and if I may refer the Court to 803, subparagraph 20, reputation in the community arising before the controversy as to boundaries, or customs affecting lands in the community, and reputation as to events of general history important to the community, or state, or nation in which located.

This isn't general history as to what the Bandera or Banderowcy or however they refer to them are alleged to have done.

MR. WOLF: I think one thing, Dr. Hilberg has devoted his whole life to that. What happened to the Jews

in the locale was important to the people who lived there. What the Banderowcy may have done, how they may have been involved in that particular aspect of the history was important to the people who lived there, and comments made by the people who lived there, and comments at the time of these events taking place should be admissible under these rules. It is not 40 years later -- It is not hearsay 40 years later that we are talking about.

MR. CARLTON: I might go further and say this doesn't even meet the test for reputation. Reputation doesn't go on the basis of what her parents told her. Certainly even if this were applicable, which I definitely feel it is not, what her parents told her is not the general reputation in the community in which they live, just because her parents said this, and we are taking it for its truth, that they know what they are talking about.

THE COURT: I am going to sustain the objection, and not consider those answers beginning at line 15 on page 39. I think we will have to go to line 14 on page 40.

MR. CARLTON: I am sorry, your Honor?

THE COURT: Through line 14, page 40. Line 15, page 39 through line 15, page 40.

MR. CARLTON: Your Honor, may I refer the Court to what follows that with the question, "Do you

know who killed your friend, and her two children?" --

THE COURT: Well, I have looked those over, those several questions, running over to the top of page 41. There is no indication there one way or the other whether that is hearsay or not. I will let that in.

MR. TENEV: Thank you, your Honor.

MR. CARLTON: Well, if I could merely show the Court, or refer the Court, rather, page 41, line 15, he is talking about, "you stated that a friend of yours in -" however you say that "- and her children were killed by Banderowcy, is that correct?" "Yes, that is correct." "How do you know that?" "Because my parents told me about it." I think that is clearly hearsay, your Honor.

THE COURT: Well, I didn't read that far. It does look like you are right.

MR. WOLF: Your Honor, we agree that the ruling you made before should be the same as to this particular testimony. The reason, when we came back from the recess to ask that question is to make that clear on the record the source of the information, rather than to hide the source.

THE COURT: I understand. I will extend it, then, from line 15, on page 40, where I stopped, we will extend the ruling over to line 16, page 41.

MR. CARLTON: Thank you, your Honor.

THE COURT: If you can conveniently run

forward to that point, it will save us a little time.

(Videotape restarted.)

JUDGE NOWAK: -- did you learn what had happened with the child who had been taken --"

(Videotape stopped.)

THE COURT: Wait just a second now, before you turn that back on. Right after that, beginning line 21, page 41, we have several questions by Judge Nowak, and I have read over that out of the transcript, and it doesn't seem to me that really adds anything that is helpful as far as the issues in this case are concerned, I am going to anticipate, and sustain questions by the judge --

MR. CARLTON: I was waiting until they got there.

THE COURT: -- which goes all the way to 45, the end of the deposition.

MR. WOLF: Excuse me, your Honor. What page reference did you say?

THE COURT: I ruled out the testimony of this witness down to line 16, page 41. You will see just two lines beyond that, and the only thing said in those two lines, Mr. Tenev says he has no more questions, and thanks the Court, and Judge Nowak states he has a few questions of the witness, and from there to the end of the deposition, it appears to me those questions and answers are not helpful to

us in deciding the issues of this case here, and I will sustain an objection to those questions, anticipating that Mr. Carlton would make such objection.

MR. CARLTON: Yes, your Honor. I was waiting until they got to it. We just discussed it. I would as I have in the past.

THE COURT: That really puts us to the end of the deposition.

MR. WOLF: I think there is one portion that doesn't relate to hearsay, and is relevant to the case, the testimony of other witnesses, as well as Defendant's prior testimony in deposition, the bottom of 43, and over to 44, the witness describes her return to Stanislawow, and she testifies at the top of 44, "I think the Germans didn't come back again to us. I know that there were a few days of shooting, and I think that the Germans didn't come back for good. Then we were waiting for Russians, for the Russian Army to come." It is direct testimony, and not hearsay testimony.

MR. CARLTON: I think that is not the only objection.

THE COURT: Well, I am going to sustain the objection in any event. Let's move on to the next witness, if you please. I believe that completes the deposition of this witness. What do we have next?

MR. WOLF: May we have one second, your Honor?

THE COURT: All right.

MR. WOLF: We will move on to the next witness, your Honor.

THE COURT: All right, sir. Is this next witness by videotape as well?

MR. WOLF: Yes, your Honor.

MR. CARLTON: Do I understand, your Honor, the Government intends to introduce the photos of the males that were shown to the last witness?

THE COURT: Those were not offered.

MR. TENEV: Those were not offered.

MR. CARLTON: We will offer them.

THE COURT: You can do that on your case, if you want to.

MR. CARLTON: All right, sir.

MR. WOLF: May we have one moment to work out the same arrangement as far as the pages?

THE COURT: Let me make this suggestion: I kept track of the time to hear all of the statements which Mr. Tenev made, and Mr. Wolf, as well as in other videotape depositions. It took us 19 minutes to do that. It seems to me we could get along without that.

MR. WOLF: We agree we don't need to play

that part of the case. We offered it to Mr. Carlton, and he objected. That is why it was played.

MR. CARLTON: What?

MR. WOLF: The three of us to make the preliminary speeches.

MR. CARLTON: That is what I agreed to in the last deposition.

THE COURT: No, sir. You agreed to part of it, but you didn't agree to the part where counsel were stating where these depositions were taken pursuant to the Federal Rules of Evidence, and under the Polish law.

MR. CARLTON: That is what I was trying to make clear. Maybe I didn't make myself clear. I will make it clear at that point. I am not interested in that being played. I want it in the record.

THE COURT: And you preserve your objections?

MR. CARLTON: That is fine. I will not ask it to be played.

THE COURT: All right.

MR. CARLTON: When I objected this morning, and the judge started asking name and address, I didn't realize they were going to go through that, even though I reviewed it.

THE COURT: Maybe that was a

misunderstanding this morning. Let's not repeat it. We can save time that way, and we need to do that badly.

MS. COLEMAN: The next deposition is the deposition of Karol Koluszko. This is one of the depositions we prefer to read into the record.

THE COURT: You mean you are not going to play a videotape?

MR. WOLF: We would like to reserve our position there are a number of these we think would be better for all concerned if we read the relevant portions in. I gather Mr. Carlton has a standing objection.

THE COURT: You are speaking to the entire deposition?

MS. COLEMAN: We selected portions of the depositions which we would prefer to read. For that reason, we felt that it was unnecessary that the videotape be played. It is because of Mr. Carlton's inconsistencies that the videotape be played that we will cite here.

THE COURT: Now, let's see if we could work it out. You would read from the English translation into the record, as you would a deposition taken?

MR. WOLF: It would be the same as we did for Mr. Rosenecker.

THE COURT: Are we able to agree on that?

MR. CARLTON: I discussed it with my

client, and we cannot agree to that. We can agree, however, on -- We can agree that it is not necessary for it to be played through the top of page 10, line 5.

THE COURT: We can eliminate everything before page 10, line 5?

MR. CARLTON: Correct, your Honor; and following that, we would object to the questions asked by the court running through page 11, line 21.

MR. WOLF: Seems to me that Mr. Carlton can have his objection if we read the transcript in, instead of watching the tape.

MR. CARLTON: I will go further and say we agree, because we will object to the questions asked by the court, and we will agree to the transcript being placed in the record, or these portions on page 12, page 13, page 14, page 15, at the top of page 16, beginning at line 3.

THE COURT: We can eliminate the playing of all of the testimony prior to page 16, line 3, but as I understand your agreement, you want it to be made a part of the record, and you are preserving your objections to the Court, which run from page 11 to 16, roughly, is that right, sir?

MR. CARLTON: I don't think it runs 11 through 16, your Honor. I think it runs to page 10, line 6, running through page 11, line 21, and then from line 22 on

page 11. I am agreeable to all of that being copied into the record until page 16, line 3.

In other words, my only objection is to that one page, and a little on page 10.

THE COURT: All right, fine. I have a note for that, page 10, line 6, to page 11, line 21. That is the only part to which you object?

MR. CARLTON: Right.

THE COURT: Let's start page 16, line 3, and that will cut out 20, 30 minutes.

MR. WOLF: That is fine, your Honor. I apologize. I am not clear on what the procedure is we are following. The first 15 pages will be placed into evidence by this transcript? Is that what will happen?

THE COURT: All of it goes into evidence. Mr. Carlton is not objecting to anything except that material between page 10, line 6, and page 11, line 21; and we are beginning to listen page 16, line 3. That is the way I understand it.

MR. CARLTON: That is correct, your Honor.

MR. WOLF: I assume the Government's position is preserved with respect to that objection?

THE COURT: Yes, that is right.

MR. CARLTON: Prior to the beginning of the playing of it, I make the same objection to the deposition

in toto as we have previously without arguing it again.

THE COURT: All right, fine. The record is clear.

MR. WOLF: Should we mark the transcript as an exhibit number, or will the Court Reporter look at them, and retranscribe them?

THE COURT: The Court Reporter will look at them, and include them in the record - transcribe them from the deposition. We won't mark them as an exhibit.

MR. WOLF: All right.

MR. CARLTON: I agree to, what is on page 16, I would agree to page 16, and suggest we begin on page 17, line 2. I note on page 16, they are merely going into procedural matters.

THE COURT: All right. Is that all right with the Government?

MR. WOLF: Most of it is procedural, except asking the witness if he understands his obligation under American law. We have no problem.

THE COURT: That is all going to be a part of the record. We are not going to listen to it.

(Thereupon, the following was taken from the deposition of Karol Koluszko:)

JUDGE NOWAK: I open the sitting of the Warsaw District Court in Warsaw. The District Court in Warsaw,

the Judge of the District Court in Warsaw, the Judge, Stanislaw Nowak, in one person, on the day of the 19th of January of 1981, in Warsaw, with the participation of the reporter -- Your name is? Dorota Bugnajna. And with the presence of the attorneys of the United States Special Investigation Office, Mr. Michael Wolf, and Jovi Tenev, and with the presence of the interpreter, Krystyna Lazarowicz, and an American reporter, Jack --

THE INTERPRETER: Excuse me. I don't remember the name.

MR. WOLF: Besoner.

JUDGE NOWAK: A reporter of the State of Florida. At the motion of the Special Investigation Office concerning the complaint filed in the court in Miami for the depriving the citizen of the United States, Bohdan Koziy, of his citizenship, states that in the hall of the court, present is also, the citizen of the United States, David --

THE INTERPRETER: I forgot the name.

JUDGE NOWAK: Marwell, who is employed by the Department of Justice as a video operator, who will record the whole proceeding - the whole proceeding of the court in that case. I take personal data from the interpreter, Krystyna Lazarowicz. A person who is speaking to the Judge must stand up. How old are you?

THE INTERPRETER: I am 28.

JUDGE NOWAK: Your profession?

THE INTERPRETER: I am a translator and a teacher of English.

JUDGE NOWAK: Where do you live?

THE INTERPRETER: I live in Warsaw.

JUDGE NOWAK: The street?

THE INTERPRETER: Wyspianskiego Street Five, Apartment 75.

JUDGE NOWAK: Have you ever been convicted for false statements?

THE INTERPRETER: No, I haven't.

JUDGE NOWAK: Are you somehow related to the case, or to the sides?

THE INTERPRETER: No, I am not related.

JUDGE NOWAK: What university have you graduated from?

THE INTERPRETER: I am a Warsaw University graduate.

JUDGE NOWAK: Have the attorneys of the United States any questions concerning the person of the interpreter?

MR. WOLF: The only questions we would have are, have you previously worked as a translator in the Polish and English languages?

THE INTERPRETER: Yes, I have worked as an interpreter.

MR. WOLF: Could you just very briefly explain the work you have done as an interpreter and translator?

THE INTERPRETER: Well, about three years ago I started working as a translator in the press, the Polish Press Agency. I was working there for a year and a half. I mostly was translating press information at the Press Agency. Since then I have interpreted several times for various institutions.

MR. WOLF: Do you understand that in this particular proceeding you are required to translate all words spoken from Polish into English, and all words spoken in English into Polish, and that you are to make those translations accurately, word for word?

THE INTERPRETER: Yes, I understand that.

MR. WOLF: I have no further questions.

JUDGE NOWAK: The Judge administers the oath taken from the interpreter. All the persons are supposed to stand up. Being aware of the significance of my words, and the responsibility before the law --

THE INTERPRETER: If I may excuse, the Judge wants me first to say it in Polish, and you told me before to first translate the Judge's words from Polish into

English, and then to say it in Polish, and then translate it into English. I don't know what's the order.

MR. WOLF: You are repeating the words that he is speaking? Why don't you repeat what he is saying in Polish and then give us the words in English?

THE INTERPRETER: The English version: Being aware of the significance of my words, and the responsibility before the law, I swear solemnly to perform my duties as interpreter accurately, impartially, and without bias.

JUDGE NOWAK: The oath has been taken according to the contents of the - of Article 180, paragraph one, of the Polish Criminal Proceedings Code.

Mr. Jack Besoner, could you come up here for a moment? How old are you?

JACK BESONER: Fifty-three.

JUDGE NOWAK: Where do you live?

JACK BESONER: Miami, Florida.

JUDGE NOWAK: What is your profession?

JACK BESONER: Court reporter.

JUDGE NOWAK: Are you going to report everything that is going to happen here, and you are not the worker of our court, that is, the Judge will administer an oath from you according to the Article 130.3 of our - of the Polish Criminal Proceedings Code; but before this has been done, I would like to ask you two questions. Are you somehow

related to Koziy, Bohdan Koziy?

JACK BESONER: No, I am not.

JUDGE NOWAK: Have you ever been convicted for false statements?

JACK BESONER: No, I have not. I swear solemnly that my duties as a court reporter I will perform accurately.

JUDGE NOWAK: Thank you.

MR. WOLF: Can we just have a few moments to allow the court reporter to indicate on his record what has just transpired?

JUDGE NOWAK: Present also is the witness. Would you stand up while giving us personal data. Your name?

THE WITNESS: Karol Koluszko.

JUDGE NOWAK: Your parents' names?

THE WITNESS: Thomas and Helena.

JUDGE NOWAK: Your mother's maiden name?

THE WITNESS: Kozdemba.

JUDGE NOWAK: Date and place of your birth?

THE WITNESS: The 9th of November, 1923.

JUDGE NOWAK: Where?

THE WITNESS: In Lisets.

JUDGE NOWAK: The present place of your --

The present address?

THE WITNESS: Bydgoszca, Madame Curie Sklodowskiej Street, No. 38, Apartment 15.

JUDGE NOWAK: Your profession?

THE WITNESS: I am a doctor.

JUDGE NOWAK: Your education?

THE WITNESS: Higher education.

JUDGE NOWAK: Have you ever been convicted for false statements so far?

THE WITNESS: No, I haven't.

JUDGE NOWAK: Are you related to the case?

THE WITNESS: No, I am not.

JUDGE NOWAK: I warn you about the obligation to speak the truth and only the truth. I warn you that your statements will be used as the evidence, and I will warn you that for a false statement, there is a penalty of five years imprisonment according to the Article 247.1 of the Polish Criminal Proceedings Code.

The Judge will administer the oath from the witness according to the Paragraph 170.1 of the Polish Criminal Proceedings Code.

Could you repeat the words of the oath.

THE WITNESS: Being aware of the significance of my words and the responsibility before the law, I swear solemnly that I will speak the truth and only the truth,

and I will not hide anything that I know.

JUDGE NOWAK: I will allow you to give statement while sitting.

Mr. Koluszko, during the German occupation of the region of the territory where you were living, did you see personally, were you a witness, were you a personal witness of any murders committed there?

THE WITNESS: I didn't see anything like that in Lisets, but I saw in Lisets - in Stanislawow, I saw in Stanislawow, I saw dead bodies of Jewish people who were killed in the streets.

JUDGE NOWAK: Didn't you see any murder in Lisets?

THE WITNESS: No, I didn't.

JUDGE NOWAK: Did you know Bohdan Koziy?

THE WITNESS: Yes, I did.

JUDGE NOWAK: What can you say about Bohdan Koziy and his activities, his actions, his doings during the German occupation?

THE WITNESS: I met him in 1943. I think it was -- It might have been April or May. I was introduced to him by his fiance, whose name was Jaroslava Ostapiak. Both before the introduction to him, and after the introduction, I had seen him and saw him several times. The last I saw him, toward the end of October, 1943, between the 26th and

the 28th of October, 1943. It was then when he rode a bicycle. He was with another Ukrainian policeman. They came to arrest - to take and arrest my uncle and my grandfather.

JUDGE NOWAK: Were these the only occasions on which you saw Bohdan Koziy, or can you say something more about his activities; about his doings?

THE WITNESS: I didn't have any personal contact with Mr. Koziy. I was also present at the second part of his wedding reception. It took place in the fall of 1943.

JUDGE NOWAK: Mr. Attorneys, you can ask questions.

MR. WOLF: Thank you. For the record, I would like to reiterate the part, what the Judge has already said about the nature of this proceeding. This is a deposition of Dr. Karol Koluszko being conducted in the case of the United States vs. Bohdan Koziy. That is Case Civil Action No. 79-6640, before the Honorable James Paine, United States District Court Judge in the Southern District of Florida.

THE INTERPRETER: James Paine?

MR. WOLF: James Paine.

Do you want me to repeat the last part? United States District Court Judge in the Southern District of Florida. The deposition is being conducted pursuant to a Notice of Deposition filed with the Court on December 4,

1980, and served on Defendant's attorney about one week prior to that date.

THE INTERPRETER: I am sorry. Please, again?

MR. WOLF: The Notice of Deposition was served on Defendant's attorney approximately one week prior to that date.

THE INTERPRETER: I am sorry. I just don't know how to translate it into Polish, really.

MR. WOLF: Which part?

THE INTERPRETER: I mean, this prior, this week prior to. I don't know what happened a week --

MR. WOLF: Approximately one week prior to December 4th, 1980.

THE INTERPRETER: What happened then, this week prior?

MR. WOLF: There was a Notice of Deposition, a Notice that this deposition will take place was sent to the Defendant's attorney approximately one week prior to December 4, 1980. This deposition will be conducted in accordance with the Federal Rules of Civil Procedure and the Federal Rules of Evidence.

In addition, since this deposition is taking place in Warsaw, Poland, it will proceed in conformity with Polish law, which requires that the oath taken by the

witness be given by Judge Nowak. That procedure is also consistent with the requirements of Rule 28(b) of the Federal Rules of Civil Procedure.

All counsel in this case will have the opportunity to question the witness.

THE INTERPRETER: All counsel?

MR. WOLF: All attorneys in this case will have the opportunity to question the witness. There are no limitations on the scope of questioning by the attorneys, except to the extent that the Federal Rules of Civil Procedure or the Federal Rules of Evidence may so provide.

It should be pointed out that this deposition, although originally scheduled to take place in the American Embassy, is taking place in the Court Building for the City of Warsaw. The American Embassy, because of ongoing construction work, has no rooms adequate for the present purposes. The Polish Government has kindly made this spacious room available to us for the deposition, and we wish to thank them for their cooperation.

JUDGE NOWAK: It is our pleasant duty.

MR. WOLF: Finally, I would like to identify again, for the record, all people who are present in the room participating in this proceeding. Again, there is District Judge Stanislaw Nowak. To his left is Dorota Bugajna, an employee of the Court. Sitting over there is the Deponent,

Karol Koluszko. Next to him is the interpreter, Krystyna Lazarowicz. Counsel -- Attorneys for the Government are myself, Michael Wolf, and Jovi Tenev. The court reporter, Jack Besoner; and the videotape operator is David Marwell.

Absent from the deposition is the attorney for the Defendant Bohdan Koziy. His attorney, Philip Carlton, in spite of almost two months advance notice of this deposition, had declined to attend. Mr. Carlton notified the Government's attorneys of this position on Friday, January 9th, 1981. At that time Mr. Carlton stated that he was aware that Judge Paine denied his motion to stay the taking of depositions in Poland --

THE INTERPRETER: To stay the depositions?

MR. WOLF: To prevent the taking at this time of the depositions in Poland, but that in spite of this ruling by the Court, he has refused to attend.

May I proceed with my questioning of the witness?

JUDGE NOWAK: Yes, please.

MR. WOLF: Thank you.

- - - - - - - -

Thereupon:

DR. KAROL KOLUSZKO

was called as a witness by the Plaintiff, having been previously duly sworn, was examined and testified on his oath as follows:

DIRECT EXAMINATION

Q (By Mr. Wolf) Dr. Koluszko, Judge Nowak previously advised you of your obligation under Polish law to tell the truth.

A Yes, he did.

Q That same requirement is present under American law. Do you understand that to the extent that this proceeding conforms with American law, that you must testify truthfully?

A Yes, I do.

MR. WOLF: Before proceeding with the questions with Dr. Koluszko, just one last procedural item has to be taken care of. That is, it is necessary to swear that Mr. Marwell will accurately record all of these proceedings. That oath can be administered by Mr. Besoner under American law, if we may proceed.

JUDGE NOWAK: Yes, please.

MR. BESONER: Do you solemnly swear that you will faithly and accurately record and videotape the testimony of this witness?

MR. MARWELL: I do.

THE INTERPRETER: Now the Judge dictates to the reporter that Mr. Besoner has administered the oath from Mr. David Marwell that he will record everything accurately.

(Videotape started.)

MR. WOLF: Dr. Koluszko, what is your present occupation?

A I am a doctor.

Q And who are you employed by?

A I am an Army doctor. Well, I am chief of the Anti-Epidemic Division, in the Sanitary and Anti-Epidemic Station in one of the three army divisions -- Not divisions. In one of the three army regions in Poland.

Q What country was Lisets located in at the time of your birth?

A Since I was born, until September, 1939, Lisets belonged to the Polish Republic.

Q And how long did you live in Lisets?

A I was living in Lisets, since I was born, until October, 1943.

Q And you resided there continuously until October, 1943?

A Yes, I was residing there continuously.

Q I would like to direct your attention to the summer of 1941, and I would like to ask you some

specific questions about that time period. How large was the town of Lisets at that time in terms of the number of people who resided there?

A I think there were about 2,000 people, maybe less. About 2,000 people.

Q And what was the closest city to Lisets?

A Stanislawow.

Q How far away was Stanislawow from Listes?

A Nine kilometers.

Q Do you recall the Nazi invasion of the region of Poland in which you lived?

A Yes, I recall.

Q What were you doing at that time? Were you in school? Were you working? Were you in the military, or doing something else?

A I think it was June, 1941, and I was attending the 8th Form of the Soviet School, and it was holidays then. I was working at the construction site of the Soviet Airport, and then I was staying at home.

Q How long did you do this construction work? Do you know approximately how many months it was?

A I was working at the construction of the airport for about two weeks. It was before the invasion

of the Nazis.

Q And after the invasion of the Nazis, what did you do next? Did you return to school?

A No, because there were no schools for Poles. May I continue?

Q Yes.

A In 1942, at the order of the local authorities, I was working at the construction of the public road that was leading through Lisets.

Q Which authorities are you speaking of in 1942?

A These were local community authorities.

Q And how long did you work on this road construction?

A It might have been three or four months.

Q And did you continue to reside in Lisets during this time?

A Yes, I did.

Q What did you do next after this road building work?

A As a trade professional school was opened in Stanislawow, I went to that school and I was attending the school from September, 1942, until June, 1943.

Q And you said that was a trade school, is that correct?

A Yes. Yes, that was -- It was a -- That was a trade school --

THE INTERPRETER: And the German name of that school was given by the witness.

Q Handelfachschule?

A Handelfachschule.

Q It was a German trade school?

A No. It was only for Poles.

Q And after June of 1943, what did you do next?

A I was staying at my parents' in Lisets.

Q While you were attending school in Stanislawow, did you continue to reside in Lisets?

A Yes.

Q I believe you said you continued to live in Lisets until October, 1943, is that correct?

A Yes, that's correct.

Q What did you do after October, 1943? Where did you live?

A After October, 1943, I was hiding.

Q Hiding from whom?

A I was hiding from the Ukrainian police,

and from Germans, because if you hid Jewish people somewhere, the penalty was the death sentence.

Q I will get to that subject later. I have some preliminary questions first.

Prior to the Nazi invasion, did any Jews live in Lisets?

A Yes.

Q Do you know approximately how many?

A As I was counting on Saturday, and Sunday, I think there were more than 40 families, so I think it might have been about 160, to 200 people.

Q Were the Jewish residents of Lisets allowed to remain in Lisets throughout the period of events of the Nazi occupation?

A No. They were not allowed.

Q Did there come a time when the occupied forces took some action against the Jewish residents of Lisets?

A From time to time Germans came to Lisets, and they wanted -- They ordered some payments.

(Videotape stopped.)

MR. CARLTON: Your Honor, I object, and move to strike, calling for hearsay, certainly what the Germans may have said. In the terms that are being used, they ordered some payments; yes, this was called contributions, would have

to be, I assume, predicated by either what was said, or written by the Germans.

THE COURT: Motion denied.

(Videotape restarted.)

A Yes, this was called contribution.

Q Did there come a time when the Jewish residents in Lisets were removed from the town?

A Yes, there was such a time.

Q Do you recall what group carried out the removal of the Jews from Lisets?

A It was Ukrainian police.

Q Do you know what they did with the Jewish residents of Lisets - where they took them?

A They took them to ghetto in Stanislawow. To that ghetto, they brought Jews from the whole Stanislawow region; also from the Tarnopol region; but also Jews from Hungary.

MR. WOLF: Excuse me. May we have a break for a minute, please. Let me go off the record. Apparantly there is a technical problem with the tape.

JUDGE NOWAK: Yes, I will order a five minute break.

(Short recess taken.)

MR. WOLF: Just to explain the reason for going off the record, there was a slight problem with the

sound levels on the tape, which needed to be adjusted. The tape itself, however, is fully operative, and all the questioning and testimony which preceded the break were fully recorded.

You described just before the break the removal of the Jewish residents in Lisets to the Stanislawow ghetto. Do you recall when this action took place?

A I think it was late spring, 1942.

Q Do you know whether similar actions were taken against Jews living in surrounding villages, and towns that are surrounding Stanislawow?

A Yes, and in the surrounding villages, or places around Stanislawow, that type of actions had been taken even earlier.

Q Was it also the Ukrainian police that took this action in the other towns?

A Yes. The Ukrainian police brought the Jews to Stanislawow.

Q When you were attending school in Stanislawow, did you have an opportunity to personally see the Jewish ghetto, where it was located?

A I saw where it was located.

(Videotape stopped.)

MR. CARLTON: Your Honor, I would object to the balance of the answer as not being responsive to the

question. The question was merely as to whether he saw the ghetto; not whether he saw where people were killed, or saw where the cemetery was.

THE COURT: Objection overruled.

(Videotape restarted.)

A I also saw where the Jewish people were killed and shot; and I also saw the route along which the Jews were led to the Jewish cemetery.

Q What actions were taken at the Jewish cemetery?

A I was never present at the cemetery, but I can describe, I can explain how the Jews were led to the cemetery.

Q Go ahead.

A A group of Jewish people was led by a German officer who was with a dog, and -- A big dog --

THE INTERPRETER: I don't remember. I don't know the English name for the dog - a big dog.

MR. WOLF: German sheperd?

THE INTERPRETER: Yes.

A There was always one or there were two young, pretty Jewish girls accompanying him. The German was usually smiling, and he was telling jokes. Then he was followed by two German noncommissioned officers, and then they were followed by a column of Jews of various age. Even there

were crippled people; and the Jewish people were surrounded by Gestapo soldiers, who were accompanied by dogs, and the column was always closed with 6 or 7 soldiers. This I could see from the windows of my school.

(Videotape stopped.)

MR. CARLTON: Your Honor, I would object to the balance of the statement made by the witness as - on the grounds it is not responsive to the question, number one; and number two, he has stated earlier that he wasn't even present at this time, so we really don't have to guess whether or not he was present, but it is implicit in the testimony.

MR. WOLF: The witness was not guessing. The witness was stating that he saw the Jews being led away. He wasn't in the cemetery to see the ultimate event. I think it is responsive to the question. He is just highlighting the earlier statement that he recall such an incident.

MR. CARLTON: I am referring to the portion that he saw the shootings.

THE COURT: Beginning what line?

MR. CARLTON: 24, line 16, going on through page 25, line 13; and I might refer the Court to line 12 on page 25 where it says, "I got that information from my friend with whom I was going to school".

THE COURT: I will sustain the objection from line 20, on page 24, to line 13 on page 25.

(Videotape restarted.)

Q Where was the Stanislawow ghetto located in relation to the railroad station in that city?

A When you -- When you went out of the station, then the ghetto was on the right.

Q Could you see the ghetto from the railroad station?

A I didn't go. I was not at the station, but I was, because it was a big region, big part of the town, big area of the town, as there were 75,000 citizens in Stanislawow before the war, including 40,000 Jewish people; 20,000 Polish people; and 15,000 Ukrainian people, so this was an old area of Stanislawow which somehow constituted half of the town. The town was divided into two halves. It was the western part. It was an area of the town of Stanislawow.

Q You are saying that about half of the area of Stanislawow was the Jewish ghetto?

A No. The ghetto constituted a much smaller area of the town. There was a great density there.

(Videotape stopped.)

MR. CARLTON: Your Honor, I object to the following line as executions as explained on page 26, lines 11 through 13 that he did not observe any of these executions.

It would have had to be based on hearsay.

MR. WOLF: The Government would agree with that. We would like a standing objection through this deposition. Mr. Carlton has waived such objections.

THE COURT: Objection sustained, and you have your standing objection, sir.

MR. WOLF: Thank you.

THE COURT: You also think it is admissible under 803.20, too, don't you?

MR. WOLF: Yes. Throughout the rest of this trial, we have that position.

THE COURT: Okay, so the record is clear.

(Videotape restarted.)

A Every week or every two weeks there were executions.

Q Did you observe any of these executions personally?

A No, I didn't.

Q Do you know what ultimately happened to the residents of the ghetto in Stanislawow?

INTERPRETER: Ultimately?

MR. WOLF: Stanislawow ghetto.

(Videotape stopped.)

MR. CARLTON: Your Honor, I would object, page 26, line 19 --

THE COURT: All right. Same ruling as before. The objection is sustained.

MR. WOLF: I would like to point out, your Honor, I think it is clear that the witness was referring earlier to the mass executions that he did not see them. I am not sure it is true that he did not have personal knowledge of individual shootings as they occurred day to day as other witnesses described it. That it seems to me he could have seen occur.

MR. CARLTON: That is not true. If you read line 9, starting with line 9, and you see that this answer in connection with that, the majority of them were, and says what happens, and the rest taken to the place called, and at that point, he has not completed it.

THE COURT: All right. The objection has been sustained.

(Videotape restarted.)

THE INTERPRETER: Can I ask the name? The Judge asks whether it was not Belzec, and the witness says that is was Belz.

Q Do you know approximately when the ghetto in Stanislawow was liquidated?

A The ghetto was liquidated in the spring, about March of 1943. There were only 200 or 250 people left, and they stayed in the firm, the German firm that

was called Rohstoff.

MR. WOLF: Let the record reflect that the witness is writing down on a pad of paper the spelling of the word.

THE INTERPRETER: The spelling is R-o-h-s-t-o-f-f.

THE WITNESS: That's the name. The German name. The Polish translation is collecting and selling of old things, old paper. All sorts of old things; used things.

Q You said approximately 200 to 250 Jews remained doing that work, is that correct?

A Yes, that is correct, after the liquidation of the ghetto.

Q Prior to that time, Stanislawow had approximately how many Jews residing there?

INTERPRETER: Could you repeat once again, slowly?

MR. WOLF: Would you repeat that question, please?

(Question read back by court reporter.)

THE WITNESS: Do you mean when? Prior to what? Do you mean in the pre-war period?

Q Yes.

A I said already it was about 40,000 people.

Q You previously mentioned that the Jews of Lisets were removed to Stanislawow by the Ukrainian police, am I correct?

A Yes, that is correct.

Q Was there a permanent police force stationed in Lisets during the period of the Nazi occupation?

A Yes, there was.

Q Approximately how many police officers were stationed there?

A About 6 to 8.

Q And what was the nationality of these police officers?

A They were Ukrainian policemen, and they didn't come from Lisets. They came from other places - I mean those policemen who were stationed in Lisets.

Q Do you know where any of these police officers came from?

A I don't know where they came from, and also, I know that there were two local people from Lisets who were serving as policemen in other places.

Q Were those two people Ukrainians?

A Yes, they were Ukrainians.

Q Did any Polish people serve in the Lisets police force during the period of the occupation?

A No. The Poles were not policemen.

Q Did you know the names of any of the police officers stationed in Lisets?

A No. No, I don't remember. I knew them. Now I don't remember.

Q Did the Ukrainian policemen in Lisets wear uniforms?

A Yes, they did.

Q What color were the uniforms?

A They were navy blue; they were dark uniforms.

Q Did the officers wear boots, do you recall?

A There were no police officers in Lisets, but wearing boots was in fashion then, and it was a kind of an imitation of Germans.

Q I am not sure I understand the translation. The Ukrainian police stationed in Lisets, did they wear boots? Did any of them wear boots?

A Yes, they did.

Q Were the Ukrainian policemen in Lisets armed - use weapons?

A Yes, they were.

Q Do you know what kind of weapons they had?

A Some of them had short weapons, and

some of them had rifles.

Q In response to a question earlier by the Judge, you said that you knew someone from Lisets named Bohdan Koziy, is that correct?

(Videotape stopped.)

MR. CARLTON: Your Honor, I object to the question and answer as previously being stricken, and this would be merely repeating that which is already stricken from the record.

THE COURT: Well, objection overruled. I don't see that the reference to the Judge really makes it tainted in any way. If he wants to use that reference, I don't see any reason why he can't.

MR. WOLF: Perhaps I missed something, your Honor. Was the prior portion stricken?

THE COURT: I don't know whether it was or not.

MR. WOLF: It was not my understanding that it was. I thought it was being put in by the transcript.

THE COURT: We are talking about the preliminary --

MR. WOLF: In the preliminaries the Judge asked the witness?

THE COURT: You raised an objection to it. I have not really ruled on that objection. You objected

to part of two succeeded pages. I didn't look at that.

MR. CARLTON: Correct. It was 10 and 11, if I remember correctly.

THE COURT: I will look at it, and make a ruling for the record before we are through here. Let's go on.

(Videotape restarted.)

A Yes, that is correct.

Q Was he a policeman in Lisets?

A Yes, he was.

Q So you did know the name of one police officer in Lisets during the period of the occupation?

A Yes, I knew, because the name was known, because for at least one reason, because he got married with the daughter - with a daughter of the mayor of Lisets, the first person in the town.

Q By "the first person in the town", meaning the mayor?

THE INTERPRETER: The mayor.

Q Just previously you described the uniform worn by the policemen in Lisets. Did Bohdan Koziy wear the same type of uniform?

A Yes, he had the same uniform.

Q Did you ever see Bohdan Koziy carry a gun?

A Yes, I did. At least on that day when he came to arrest my uncle and my grandfather.

Q What were the general duties of the Ukrainian policemen stationed in Lisets?

A They were supposed to keep order - public order.

Q Did they have any special duties with respect to the Jewish residents in the town?

A Well, they didn't have any special duties assigned to them, but some of them showed terrible sadism in their relations toward the Jewish people.

Q Did you ever personally see such acts of sadism?

A Yes, I did.

Q What do you mean by an act of sadism?

A First, even before --

(Videotape stopped.)

MR. CARLTON: Your Honor, excuse me, I would object to the response beginning on page 31, line 24, running through page 32, line 2, on the grounds that this is prior to the time that the Government even alleges that Mr. Koziy was a Ukrainian police officer; therefore, it would not be relevant to this cause.

MR. WOLF: Your Honor, my question was -- I asked the witness to describe what he meant by sadism. He

went on to describe an incident which had occurred to him, and which he was claiming was an incident of sadism. I think after - when he goes on, he is talking about other people. I am not sure that is responsive, but he is talking about being beaten as a result of an act of sadism.

THE COURT: The objection is overruled, and also the objection to the questions of the Judge, beginning at page 10, line 6, running through line 21 of page 11, the objection is overruled as to that testimony as well, for the record.

MR. WOLF: Thank you.

(Videotape restarted.)

A -- the invasion of the Nazis in 1941, I was arrested by the police, and I was beaten, because I was accused of stealing something about which I even didn't know; so he was the first police chief in Lisets. His name was Nayti, and he came from Drohomirczany, but he stayed in Lisets for a short time; and then the next police chief was a man who was convicted for long-term imprisonment in 1938, and he was also a Ukrainian. He was convicted for that imprisonment for killing the director of the hospital.

Q Drawing your attention to the period after the Nazi occupation, did you personally observe any residents of Lisets being beaten by Ukrainian policemen? I mean during the occupation by the Germans.

A Yes. When that Nayti met a Jewish man, he gave him orders to -- Well, to lie down then; to stand up, and he was jumping at his breast or at his back, and he was beating him with a stick.

Q Without going into details of each incident, did you see other incidents during the occupation in which the Lisets police beat residents of the town?

A No, I didn't.

Q Where was the Gestapo headquarters for the region in which you lived? Where was it located?

A In Stanislawow.

Q Did any of the German forces, the SS, Gestapo, et cetera, have an office or a station in Lisets?

A No.

Q So that the only force keeping order in Lisets was the local Ukrainian police force, is that correct?

A Yes, that is correct.

Q Was Bohdan Koziy married when he first came to Lisets?

A No, he wasn't.

Q Did he later become married?

A Yes, he did.

Q Do you remember what year it was that he was married?

A Yes, I remember. It was 1943.

Q And was the weather warm or cold?

A It was warm. It was late August or early September.

Q Do you know the name of the person he married?

A Yes, I do.

Q What was her name?

A Her name was Jaroslava Ostapiak, and she was called Slavka.

Q Did you know Slavka Ostapiak personally during the period of time you lived in Lisets?

A Yes, I had known her since I was a boy; since I was a child - since I was four or five years old, because she was younger than I was, and I knew her, and her family, and well, her brothers or sisters.

(Videotape stopped.)

MR. WOLF: Just to explain that, I think it was Mr. Besoner's tape machine that he was using. His tape was running out. That was the noise on this tape.

THE COURT: All right.

(Videotape restarted.)

MR. WOLF: Let's go off the record for one minute.

JUDGE NOWAK: Let's have a five minute

break.

(Short recess taken.)

Q Do you know who Slavka Ostapiak's father was?

A He was the mayor of the, well, commune.

Q Do you mean the commune of Lisets, or was it a larger area?

A It was a larger area.

Q Do you recall his name?

A His name was Wasyl Ostapiak.

Q Did he become mayor before or during the Nazi occupation?

A After the Germans came. During the German occupation.

Q Do you know whether Wasyl Ostapiak worked in cooperation with the Nazi occupiers?

A When did he cooperate? Before the occupation?

Q No. I am talking about during the Nazi occupation, do you know whether he, as mayor, had any responsibilities which required him to cooperate with the Nazis?

A Yes, he did.

Q Do you recall specifically what any

of those functions were?

A He went to Stanislawow. He used to go to Stanislawow, and a German in a soldier's uniform came to him - used to come to him, and he used to stay at the office, and at his own place.

Q When you said the German came to Ostapiak, do you mean came to Lisets?

A Yes.

Q Now, when you said --

A Yes, he came to Lisets.

Q When you said he came to his office, do you mean Ostapiak had an office in Lisets, or Stanislawow?

A Ostapiak had his office in Lisets.

Q Apart from Slavka Ostapiak, did Wasyl have any other children, if you recall?

A Yes.

Q Do you recall how many?

A He had four or five children. I knew four of them.

Q Did he have a son, or more than one son?

A He had two sons, and he had two daughters.

(Videotape stopped.)

THE COURT: Let's stop for the afternoon

recess at this time, ladies and gentlemen. We will be in recess for 15 minutes, until about 3:30.

(Thereupon, a short recess was taken.)

(Videotape restarted.)

Q You said before that you knew Slavka Ostapiak at an early age, is that correct?

A Yes, that is correct.

Q Do you recall whether there was ever a time during the period of the occupation that Slavka Ostapiak introduced you to the man she was going to marry?

A Yes, I do recall.

Q Did this take place before the wedding, or after the wedding?

A Before the wedding.

Q Did she introduce him by name?

A Yes, she did.

Q And what did she tell you his name was?

A Bohdan Koziy.

Q Did you speak to him on that occasion?

A No, I didn't.

Q Do you recall the wedding itself?

A I was not present at the wedding ceremony in church, but I was at the reception after the ceremony.

Q Did you attend the reception?

A No, I didn't.

Q Did you see the reception?

A Yes, I did.

Q How did it happen you saw the reception?

A I saw it through the window.

Q The window of where? Where was the reception held?

A They were, all the houses, one story houses, low houses, and the windows were at the height of one meter - one meter from the ground - and at the reception, present also was a German clerk, together with a lady.

Q You said it was held at a house. Whose house was it?

A It was in the house of Slavka's grandmother.

Q You said a German was present at the reception. Was he an official of one of the occupying forces? Do you know who he was?

A He was an official from the administration -- Administrator's office, from Stanislawow. He was the German who used to come to Ostapiak, to Lisets.

Q So you had seen that German before?

A Yes, I had.

Q Did you see Bohdan Koziy himself at the reception? When you looked through the window, were you able to see him?

A Yes, I saw him together with his wife. They were sitting, one by one.

Q Then you have mentioned so far that you met -- That you saw Bohdan Koziy some period before the wedding when Slavka introduced him to you, correct?

A That is correct.

Q And you said you also saw him at the wedding reception, correct?

A That's correct.

Q And you also mentioned the later occasion when you saw him arresting your grandfather and uncle, I believe, is that correct?

A Yes, that is correct.

Q During the time that you lived in Lisets, did you have other occasions to see Bohdan Koziy?

A On Sunday, when all the Poles were going to their Roman Catholic church, Ukrainians were going to their Orthodox church, and the masses ended at the same time, so I could see him.

Q From the times that you observed him, can you recall approximately how old he was at the time that he was stationed in Lisets?

A He was about 25 years old at that time.

Q And how tall was he?

A He was about one meter, 70 centimeters tall.

Q Would that be considered short, medium, or tall?

A He was taller than I was - than I am.

Q Do you recall his physical build? Was he slim; was he fat?

A He was middle-sized, and he had fair hair.

Q How tall are you, by the way? When you said that Koziy was taller than you, how tall were you, approximately, at the time, do you recall?

A I was one meter, 65 centimeters tall at that time.

Q During the time you lived in Lisets, did you know a Dr. Singer?

A Yes, I did.

Q What was his religion, if you know?

A Well, he was -- His nationality was Jew, and he was of Jewish nationality, and his religion was Moses religion. Religion of Moses.

Q When the Jewish residents of Lisets were first removed to the Stanislawow ghetto, was Dr. Singer also removed at that time?

A No, he was not.

Q What happened to him at that time? Did he remain?

A Yes, he remained in Lisets as a doctor.

Q When you say "as a doctor", do you mean a physician - a medical doctor?

A Yes, he was a physician.

Q Do you know how long he remained in Lisets practicing medicine?

A After the Jews had been removed from Lisets, about two months, he stayed for about two months, and then when he was warned by somebody, he went to my grandfather's.

Q What did he do at your grandfather's?

A He was hiding at my grandfather's.

Q When you say he was warned, do you know what it was that he was warned of?

(Videotape stopped.)

MR. CARLTON: Your Honor, I object, page 41, line 3, and 4, as being hearsay, what was told to him by somebody. Somebody has not been identified, nor does it

indicate he knows who it was.

MR. WOLF: Your Honor, that is speculation on Mr. Carlton's part. The doctor was hiding at his grandfather's house. At least the warning indicates why the doctor was hiding at the time.

THE COURT: For all I could tell, he might have heard the warning, from the testimony here - perhaps it is unlikely - but I will overrule the objection on that ground.

(Videotape restarted.)

A He was warned that he would be taken to Stanislawow, to the Stanislawow ghetto by the Gestapo.

Q In terms of the period of time when this occurred, do you know whether Dr. Singer went into hiding before the liquidation of the Stanislawow ghetto; after the liquidation, or around the same time? Do you have any idea, approximately?

A After the liquidation of the ghetto.

Q Did you give us the name of your grandfather, and, if not, could you?

A Yes, I can give you the name. Andrzej Kozdemba.

THE INTERPRETER: Shall I spell it for you?

MR. WOLF: Let the record reflect that I

am handing to the court reporter the spelling of that name.

Did your grandfather live alone?

A He lived together with his son, Mieczyslaw; with his daughter-in-law, Eleonora, and his granddaughter, and there was nobody else there.

Q And where did the Kozdemba family live? Was it in Lisets?

A No.

Q Where did he live?

A In a settlement. There wwere a few houses, which was named Podgaje.

Q How far was that from Lisets?

A About four kilometers.

Q Do you know where Kozdemba hid Dr. Singer? Where, physically, he hid him?

A Yes, I know.

Q Where was that?

A In the barn.

Q Did any other people go into hiding at your grandfather's residence?

A Yes.

Q Do you know the names of those other people?

A One was Haller; Blumenstein; and there was a family composed of four people, a husband, wife,

son and daughter, but I don't remember the name. They came from another placed named Posiecz.

Q Do you know the ethnic background of those people?

A They were Jews.

Q And were they hiding at your grandfather's house at the same time that Dr. Singer was there?

A Haller and Blumenstein started hiding there somewhere in November or December, 1942. The family from Posiecz came there after the liquidation of the ghetto in Stanislaow. I carried them out from Rohstoff in Stanislawow myself.

Q When you say you carried them out, do you mean you brought them to your grandfather's house?

A Yes, I did.

Q Did Dr. Singer have a daughter?

A I don't remember, but I think he had; and in June or July I saw twice, the Singers' daughter -- Dr. Singer's wife, sorry. Dr. Singer's wife who came there.

Q "There", meaning your grandfather's house?

A Yes.

Q Did you ever see the child of Dr. Singer's at your grandfather's house?

A No.

Q Do you know until when Dr. Singer and the others remained in hiding at your grandfather's house? By that I mean, the month and the year, if you recall?

A There was different period. So the family from Posiecz went back to Posiecz during the summer, but in the fall they came back again to my grandfather's.

Q Did there come a time when the Jews hiding at your grandfather's house left there permanently?

A No. There was also Mrs. Singer's brother there.

Q Did Dr. Singer remain at your grandfather's house throughout the war until the liberation?

A He didn't live until the liberation, until the end of the war, because on the night of the 24th or 25th, there came Ukrainian band --

MR. WOLF: Could we have the translation, please?

THE INTERPRETER: The Judge asked, you said the 24th or 25th, but you didn't give the name of the month.

THE WITNESS: Yes, I said the 25th, because the Ukrainians came to my grandfather's on the 24th, and the Jews from my place, from my house were taken later on. Actually they were taken two days after the Jews had been taken away from my grandfather's.

Q Let's not jump ahead of the question. Focusing just on the Jews who were hiding at your grandfather's house, did there come a time when they were removed from your grandfather's house?

A I don't remember. I didn't know such facts.

Q You said before that a Ukrainian band came to your grandfather's house, correct?

A Yes, that's correct.

Q Did that band do anything to the Jews who were hiding at your grandfather's house?

A They took them.

Q So those people did take the Jews out of your grandfather's house, then, correct?

A Yes, that is correct.

Q Do you know what year this was?

A In 1943.

Q And do you know the month?

A It was October. It was October the 24th or 25th.

Q Before getting to the circumstances surrounding the departure of the Jews from your grandfather's, I would like to ask you some other related questions.

Excuse me. I have been advised there is only four minutes left on the tape. We would need a break

for a new tape to be put into the camera. May we take a short break so that the tape can be changed?

JUDGE NOWAK: Yes, please.

MR. WOLF: Go off the record, please.

(Short recess taken.)

MR. WOLF: Dr. Koluszko, you spoke to us before about the fact that your grandfather had hid some Jews during the war. I would like to know, did your family become involved in hiding any Jews or other people during the war?

A Yes, that's correct, because my family was involved in hiding Jews during the German occupation, and the fact that those Jews were hiding at my grandfather's was also thanks to my mother and my father, who went to my grandfather and asked him to do so.

Q Do you recall the names of the people who stayed at your house in Lisets?

A Yes, I do.

Q Who were they?

A Kandler, Bernard, with wife.

Q The first name was Bernard, and the second name was Kandler?

A Yes, the first name is Bernard, and the second name, surname is Kandler; and then there was Salka Kandler.

Q Who is she?

A She was Bernard's sister. There was Niusia Kandler. She was also Bernard's sister; and there was a family of Bernard's wife. It was composed of four people, but I don't remember their names.

Q What was the relationship of the four people?

A It was either a brother or sister of Bernard Kandler's wife.

Q You said there were four people in the family. What was the relationship of the other people in that family? Were there any children?

A There were two children, a boy, and a girl.

Q Did Bernard Kandler have any children?

A Yes, he had one.

Q Were those all the people who were in hiding at your residence in Lisets?

A Yes.

Q Let me make sure I have this correct. There was Bernard Kandler?

A Yes.

Q Bernard Kandler's wife?

A Yes.

Q Bernard Kandler's two sisters, Salka,

and Niusia?

A Yes.

Q Bernard Kandler's child?

A Yes.

Q Bernard Kandler's brother-in-law, or the wife's brother?

A Yes.

Q And that brother-in-law's family of wife and two children?

A Yes, that's right.

Q Who was Bernard Kandler? How did you know him?

A That was the family of Kandlers and they were living as our neighbors next to us. He owned a water mill, and they bought milk from us, and I used to carry milk to them - deliver milk to them.

Q How old was Bernard Kandler?

A He was about 28, 30.

Q How did it happen that these people came to your house to go into hiding?

A After the liquidation of the ghetto, one night somewhere toward the end of March, I remember there was still snow on the fields, I heard somebody knocking at the window that night. I saw several people, and I woke my father up. My father looked at them, and then he asked, "Who

is that? Who was that?" And he heard the answer, "Mr. Koluszko, please open the door. We are not strangers." When my father asked, "But who is that?" And he heard, "It is me, Bernard."

So my father let them in, and they started talking, and they were asking my father to hide them somewhere. My father said that he didn't have conditions for hiding anybody, and he didn't want to agree, but as he was asked, he agreed for them to stay for about two or three days before they could find anybody who could hide them; but as they didn't find anybody, my father dug out a hollow in the barn. He covered it with boards. Then he brought some hay to put on the boards. The entrance to that hollow, the entrance was leading to the stable, the place where horses eat their fodder. Yes, to the stable where there were cows. Meals, and any contact with them was through that opening; through that entrance in the stable, and so this was at the beginning, and then later on, since summer, there was an opening in the barn. As we were living not far from the river, on the river, and when there were nice warm nights, the Jews were leaving their hiding in two or three-man groups, they went to the river and they were bathing in the river.

Q Did the entire family come to your house at the same time?

A No. I also carried Niusia Kandler

out of Rohstoff later on.

Q When you say "later on", you mean after the time Bernard Kandler first came?

A Yes, that is what I mean.

Q Do you know whether the Kandler family survived the war?

A Nobody from the family which was hiding at my place survived the war, but I know Bernard's brother, who was somewhere in the woods near the place named Stryj, survived the war; and after the liberation of the regions in 1944, well, I was in contact at all times with him. I got in contact at all times with him. I was invited to him, and I told him that story of the murdered family.

Q Those members of the Kandler family that were hiding in your house, how long did they remain there in hiding?

A Since somewhere in March, April, 1943, until the 25th, 6th, or 8th of October, 1943.

Q That would have been approximately at the same time that the Jews from your grandfather's house were also removed, is that correct?

A I suppose at night, from the 24th to 25th of October, 1943, the Jews were taken by the Ukrainian band from my grandfather's place. On the 25th the Ukrainian police came --

Q Excuse me. Came where?

A First they went to my grandfather's place, and then they came to our house in Lisets.

Q Were you at your grandfather's house when the police arrived?

A Yes, I was there.

Q Could you explain the circumstances surrounding that night?

A When the Jews had been taken from my grandfather's place, my uncle Mieczyslaw and his wife and his child came to Lisets to my uncle's wife's father. At about 10:00 in the morning of the next day, while my uncle was coming back home to my grandfather's, he came to our house, dropped into our house, and he told us the story of the whole tragedy. So together with my uncle, I went together with my uncle to the place Podgaje, and there I saw my grandfather in the barn, and the cows were going around the house, and they were eating grass. My uncle showed me the house, that had been demolished. We went out of the house. My grandfather went out of the barn, and he was telling the story of the tragedy that had happened to him, and about the beating; and at that time two Ukrainian policemen rode on bicycles into the courtyard. One of them was Bohdan Koziy.

Q Do you recall the name of the other policeman?

A No, I don't.

Q Are you certain that one of the two policemen was Bohdan Koziy?

A Absolutely certain.

Q And what happened then?

A Because he knew me, so he told everybody to enter the house. He asked me whether I was living there, and I said that I was not; so he told me to go home. So I went. I was going very slowly, but as I was going farther and farther, I started to speed up, and then I was running. I was running straight to my house, because I wanted to warn my family, and I wanted to warn the Jews.

When I got home, my mother stopped cooking dinner. She took the youngest brother of mine, who was a year and a half at that time, and she went somewhere, but where, I don't know. I didn't know then. Another brother of mine who was 11 years old at that time, 11 or 12 years old, I sent to the road - to the road that was leading to Stanislawow, and I told him to warn my father who was just coming back at that time from Stanislawow.

My brother met my father in the distance of about two kilometers from Lisets. He told my father not to come back, but despite that, my father -- Despite the fact that he knew what had happened, my father decided to come back home, because he was carrying, or he was fetching corn.

He was fetching corn into the community. It was selected corn. To the commune warehouse. In the very place of Lisets --

(Videotape stopped.)

MR. CARLTON: Your Honor, I object, on 53 -- Excuse me. Page 53, line 18, through line 5 on page 54 -- As a matter of fact, through line 11 on 54. As it is apparent from reading it, this is something that was told to him by somebody else. In fact if you look, your Honor, page 53, line 25, you see the whole conversation was heard by my father's friend; acquaintance.

THE COURT: The motion is denied. You may proceed.

(Videotape restarted.)

A -- two Ukrainian policemen asked my father what his name was. As my father knew what the situation was, he gave them a different name, Havsko. So the policemen wanted him to show them his identity card. My father told them that he didn't have it.

At this time when my father was talking to that policeman, the whole conversation was heard by my father's friend; acquaintance, and then the Ukrainian policeman asked what that man's name was. As my father was speaking loudly, and this acquaintance of his heard what name my father had given the policeman, he said that my father's name was

Havsko. My father drove away several meters from that place. He lent the horse and wagon to my brother, and he went to another village, to the fields, and to the, well, house concessions and orchards, and he was hiding there for two or three days. I don't know at whose place.

Q During this time, do you know what happened to the Jews who were hiding at your home - the Kandlers?

A At that time they were still at my house. So after the grain had been removed from the wagon, my brother came home on the wagon. He led the horse to the barn, and he went to the neighbor's; and then using a flash-light, he lighted the house. He was afraid to enter the house alone. He went to the barn where he spent the night together with the Jews.

Q Do you know what happened thereafter to the Jews, and to your brother?

A On the next day my brother went to the neighbor's again, and at that time when he was staying at my neighbor's, two cars came. They surrounded all the houses, all the buildings on my farm. They killed the dog, and they were, you know, throwing apart the straw in the barn because they were looking for Jews.

After an hour and a half or two hours maybe, they led the Jews out, and as I know from other people's

reports --

(Videotape stopped.)

MR. CARLTON: Your Honor, I would object, and move to strike, page 55, line 8, beginning, "and as I know from other people's reports, they took them to the Ukrainian police station in Lisets", and constituting hearsay.

THE COURT: Motion granted as to that.

MR. WOLF: Might I state for the record that we believed, since the witness was told this right at that time, that it would fall under 803.20, as evidence of the people who observed that event. Other witnesses indicate that the Kandlers were brought to the police station.

THE COURT: All right, sir. You made your record. Motion granted.

MR. WOLF: Thank you.

(Videotape restarted.)

A -- reports, they took them to the Ukrainian police station in Lisets.

Q Do you know, by the way, what happened to your grandfather and uncle after you left their farm?

A At the time when I was leaving his farm, and when I turned around, I saw my grandfather and my uncle bring cows to the barn, and the Ukrainian policemen took them.

Q When you say "Ukrainian policemen", are you referring to Koziy, and the other policeman?

A Yes, that is correct. There were more of them, but I didn't see them.

Q Do you know what happened to your grandfather and uncle after that?

A After a week or two, I think my grandfather was -- I know my grandfather was dead, but I think he was murdered.

(Videotape stopped.)

MR. CARLTON: I object, and I move to strike "but I think he was murdered"; and I refer the Court to page 56, line 4: "Do you know how he died?" "I don't know."

MR. WOLF: I believe --

THE COURT: All right. Motion granted.

(Videotape restarted.)

A His dead body was given, and he was buried in the place Drohomirczany, because at that place one of his daughters and son were living.

Q Do you know how he died?

A I don't know; and the uncle, after three or four months, he was released under bail, and he lives now in Nowawies Leborska, in Slupsk region.

Q You had mentioned before that when

you went to your grandfather's farm the day after the Ukrainian band had arrived, and you learned about the tragedy that occurred, what exactly were you told? What was that tragedy?

(Videotape stopped.)

MR. CARLTON: Your Honor, I would object, page 56, line 14 --

MR. WOLF: Your Honor --

MR. CARLTON: One second. Through line 17, as being predicated upon hearsay. He states right there it was told to him by his uncle.

MR. WOLF: Your Honor, under 803(2), a statement relating to a startling event or condition while declarant is under stress or excitement caused by condition, is a statement allowed into evidence. With a description very, very shortly after the event, about a band of people coming by, demolishing their house; taking away a bunch of Jews hiding there, describing those kind of events, we would argue is the kind of statement 803(2) is directed to, and should be admitted.

MR. CARLTON: Your Honor, there is no showing as required by 803, subparagraph 2 that this was an excited utterance. It is merely informing him of what had taken place.

THE COURT: Motion to strike granted,

lines 14 to 17, page 56.

(Videotape restarted.)

A My uncle told me that when he was coming back home, he just came to our house and he told me that the Jews had been taken, and that the house had been demolished.

Q When you say a Ukrainian band came to your grandfather's house, was there a name for this group; for this band?

A I don't know the name of that band.

Q To your knowledge, during the time that you lived in Lisets, did Bohdan Koziy ever fight with the partisans against the Germans?

A I don't remember. No Ukrainian fought Germans.

Q Did you ever hear of the Banderowcy?

A Yes, I did.

Q What were they?

A Well, Bandera --

(Videotape stopped.)

MR. CARLTON: Page 57, line 5, I would object as being hearsay as to what he believes that Bandera did, and continuing on down through line 19 on the same page.

THE COURT: Motion denied.

(Videotape restarted.)

A -- was the murderer of the Minister Pierowcki during the inter-war period in Poland, and he came from Lvov, and he organized the band there.

Q Did the Banderowcy exist during the period of the Nazi occupation as well?

A They were organized, but they didn't fight German authorities. At first they only robbed Polish people. They didn't kill them.

Q You said "at first". What did they do later?

A Later they started murdering them.

Q To your knowledge, did the Banderowcy ever fight against the Nazi forces?

A No, never.

MR. WOLF: Can we take a short break at this time? I need to mark some exhibits and check over my notes.

JUDGE NOWAK: Yes, we can.

(Short recess taken.)

JUDGE NOWAK: In the relation to what the witnes has already stated, I would like to clarify one issue, one point. Because the witness said that no Ukrainian person fought the Germans, but does the witness know whether there were no Ukrainian units within the Soviet army that was

liberating that region?

(Videotape stopped.)

MS. COLEMAN: Your Honor, I would like to inquire of Mr. Carlton, if he is waiving all of his objections in the past regarding questioning by the Polish Judge?

MR. CARLTON: I am not waiving that, no.

THE COURT: He answered your inquiry. I don't think that the record is tainted just because the Judge asks these questions. I have sustained objections, most of them before, because I didn't think the questions were really pertinent or helpful; however, it appears to me that some of this information may be of some value in determining the issues in the case. I am not making a prior ruling on each question that this Judge presents in the next several pages here, but I have glanced through it, and it does appear to me that probably these are going to be all right.

I don't hear any objection, and he answered your inquiry. Let's proceed.

(Videotape restarted.)

THE WITNESS: Yes, I know that in the Soviet army, there were both Poles and Ukrainians fighting, who were taken to the army in 1940, and '41.

JUDGE NOWAK: And what about 1944, did they fight in that year, too, or not?

THE WITNESS: Yes, they were fighting.

They were fighting only those people who were taken to serve -- Well, army service, that is, people who were between 18 and 45 years of age. At the same time there were Ukrainian bands fighting. There were Ukrainian bands, and there were special units --

THE INTERPRETER: And the witness gave the German name, SS Ukrainian something, which I didn't quite quite well catch.

THE WITNESS: -- and those units and those bands were fighting Germans. They were killing Poles and they were also killing convalescents.

MR. WOLF: Could you perhaps ask the witness again the name of that SS unit?

THE WITNESS: That was the Ukrainian Division SS Galicia.

JUDGE NOWAK: So it means that your statement that no Ukrainian fought the Germans is not a correct statement?

THE WITNESS: When I said that, I meant those Ukrainians who were under the German occupation.

JUDGE NOWAK: But can the witness exclude such a possibility that some or any Ukrainian from that region joined the Soviet partisans?

THE WITNESS: I can't exclude that, because I know that one of the Ukrainian policemen was not

arrested after the Soviet army had entered that region. I, myself, was taken to the army in August, 1944, by the Soviet army.

(Videotape stopped.)

THE COURT: Just a minute, please. Are we line 18, page 59 as yet?

MR. CARLTON: That is correct.

THE COURT: Seems to me that point on, for the next page or so, over to page 61, line 4, there is nothing among these questions which is of use as I see it in this case, and I will exclude the testimony from line 18, page 59, through line 3, page 61. That is, unless somebody can give me an awfully good reason to listen to it. He is asking about a lot of names that are not at all familiar to me.

MR. WOLF: The witness mentions one name, Litwicki -- I take that back. Your Honor is correct.

THE COURT: Try to pick it up line 4, page 61, where Mr. Wolf starts talking, after the Judge is through.

MR. CARLTON: Your Honor, I believe the portion of page 60, line 22, having to do with a Ukrainian policeman who was murdered, or killed at the police station will have a bearing on this case, and there will be testimony regarding him. This is a police officer known as Yurodenko.

MR. WOLF: Excuse me. Maybe if we could go back to the beginning of page 60, the Judge asks, Yurodenko Yuriy, and the witness says, "He might have been a policeman, but I don't know whether he was Yurodenko, or Rodenko."

"Where could he have been stationed, in what place, that Yurodenko or Rodenko?" And the witness says, probably that he was stationed in Lisets.

Obviously the weight of that testimony is open to question, but seems to me it does address a relevant issue.

THE COURT: Well, all right. It doesn't mean anything to me in the light of the testimony now, but if you think it might, perhaps we should start at the top of page 60.

MR. CARLTON: That is correct, your Honor.

THE COURT: Where the witness said, no, I don't know the name, and the Judge mentions this name Yurodenko Yuriy, can you find that spot for us, sir?

MR. WOLF: Your Honor, might it be quicker if we read in those few lines?

THE COURT: That is okay with me. I don't really need to watch the witness say all those things. Start at the top of page 60. Just read that in.

MR. WOLF: The previous line is about a German name which he does not recognize, and Judge Nowak,

Yurodenko, Y-u-r-o-d-e-n-k-o, and then the second name, Y-u-r-i-y. The witness: "He might have been a policeman, but I don't know whether he was Yurodenko, or Rodenko."

Judge Nowak: "Where could he have been stationed, in what place, that Yurodenko, or Rodenko?"

The witness: "It is quite probable that he was stationed in Lisets."

Judge Nowak: "Among the Ukrainian policemen, at the Ukrainian police station?"

The witness: "Yes."

MR. CARLTON: I don't think we are quite through that. The Judge did ask a question regarding another name that he didn't know.

THE COURT: What you are interested in is line 22?

MR. CARLTON: Actually line 17. He said, "Excuse me if I ask you a question, whether it was a policeman who was murdered in Lisets?"

THE COURT: Read the rest of that page.

MR. WOLF: (Reading from the deposition:)

"A Yes, I remember that when I was hiding, there was a policeman, a Ukrainian policeman, but he had a Polish name, who was killed almost at that station - at the Ukrainian police station."

Excuse me. As to that -- I am looking

at 61, line 7:

"Q As to that policeman who you recall may have been killed at the police station, do you know who killed him?

"A I don't know. At that time I was in Stanislaw. I only heard there had been a policeman who might have been murdered, who had been killed, and he might have been related to the sister of the Roman Catholic priest whom he quite often visited, but this is the information that I heard from somebody else."

MR. CARLTON: We move that be stricken, as obviously hearsay.

MR. WOLF: Give me one of your rules.

MR. CARLTON: The witness himself said he only heard about this event occurring. He wasn't living in the locality, even. He was hiding in Stanislaw.

THE COURT: All right. Motion granted, the question and answer, beginning line 7, page 61, through line 16.

MR. CARLTON: Page 60, line 20, Judge Nowak begins asking about a Ukrainian policeman, and continues the rest of that page over to line 16, page 61.

THE COURT: All right. I believe that is a relation of the same incident. From line 17, on page 60, through line 16 on page 61, the motion to strike is granted.

Now, if you can pick up after that, we will be rolling again.

MR. CARLTON: Excuse me, your Honor. I object, and move to strike page 61, line 20, running through page 62, line 5 as having no relevancy to this case. This was a matter that came up previously involving a son of Wasyl Ostapiak, was the Galician SS Division.

MR. WOLF: Your Honor, I believe it is relevant for any number of reasons. First of all, Defendant in his deposition claims that the Galician SS were Ukrainian patriots. I think that reflects a little bit on Defendant's credibility. Second of all --

MR. CARLTON: That is not --

THE COURT: Let him finish.

MR. WOLF: We will read that in, since you now raise it as an issue. Second of all, we have been advised that Wasyl is to be a witness. The fact that he works for the SS goes to the bias of Ostapiak as a witness. Obviously, he would have to wait until he testifies. For now, this testimony would be relevant with respect to Wasyl Ostapiak as a potential witness, and we also would read in at a later time the testimony of the Defendant about the SS Division, and the Ukrainian patriots.

MR. CARLTON: Your Honor, it would not be anything in rebuttal, unless, and until Wasyl Ostapiak were to deny that his son was with the SS, or the Galician

SS.

MR. WOLF: In that case, it indicates the credibility of this witness, and his recollections. The fact that he does recollect that a son of the mayor went into the SS, which the mayor will admit, is of some corroborative value.

MR. CARLTON: I am not saying whether he will admit it or not. That will only go if there is any relevancy to this case.

THE COURT: Motion to strike denied. Let's go ahead with it.

(Videotape restarted.)

MR. WOLF: You mentioned before the Galician SS. Do you recall whether any residents of Lisets were members of the Galician SS Division?

A Yes. I remember that on one Sunday, there was a farewell party of those people who were to join that division, that unit, and the Poles were very careful at that time not to -- So that no murdering or killing of Polish people, Polish residents in Lisets occurred before the departure of that unit. The main organizer of that farewell party was Ostapiak's son, Zenon Ostapiak.

Q When you say "Ostapiak's son", do you mean Wasyl Ostapiak?

A Yes, Wasyl Ostapiak's son.

Q The questions about whether Ukrainian people fought against the Nazis, or with the Nazis, specifically as to the group known as the Banderowcy, did those people, to your knowledge, ever fight against the Nazis, or did they cooperate with the Nazis?

(Videotape stopped.)

MR. CARLTON: Your Honor, I would again object to this question as it would be predicated upon hearsay, and there is no foundation laid for this witness having any knowledge as to which side they fought.

THE COURT: Objection overruled.

(Videotape restarted.)

A They were cooperating with the Nazis.

Q One last question about your activities during the war. After you ran away from your house, and after the Kandler family was discovered, did you continue to live in Lisets?

A No, I didn't.

Q What did you do thereafter?

A For two weeks I was hiding in Drohomirczany. For a period of one week I was hiding in Lisets, from where Franciszek Uciurkiewicz took me to Stanislaw Yackow, whose present name is Yackowski.

Q And what did you do until the

liberation?

A For the period of about two months I was hiding in Stanislaw Yackow's sister's place. She knew that Staszek Yackow hid some Jewish people, about which I didn't know at that time. At one time two Schutz policemen came. They came to see an apartment which they wanted to rent, and one of them was from Lisets. He recognized me, but he gestured with his finger like that (indicating) to calm me down, and somehow to show me that there was no need to be afraid of anything; and then when they went out, he came back to the apartment and he told me not to be worried about anything; not to worry about anything; not to be afraid; that he was glad to know where I was, and that he would make easier for me to continue hiding.

Q Did you continue hiding?

A Yes. After that meeting Stanislaw Yackow took me, transferred me to the place where he had been hiding the Jews.

Q And how long did you remain at the home of Stanislaw Yackow?

A From somewhere at the end of November, 1943, until the liberation, that is, until the 20th of July, 1944.

Q How many people were hidden by Stanislaw Yackow at his house? Just approximately.

A About 40 people.

Q I am going to go back to one other point. You had mentioned at one point earlier that you knew the name of Bohdan Koziy, correct? You had mentioned at one point earlier in your testimony that you knew the name of Bohdan Koziy, is that correct?

A First there was a question whether I knew anybody from the Ukrainian police, and I said, no; and then during the further questioning I said that I was introduced to Bohdan Koziy by Jaroslava Ostapiak.

Q How is it you recall today the name Bohdan Koziy? What incidents took place that led you to recall that name?

A Once, because of that wedding. Then because he arrested my grandfather; and later on when I met some people living in Lisets; and then four or five years ago when I was questioned by the District Commission for the investigation of Hitlerite crimes.

(Videotape stopped.)

THE COURT: Now, right here, gentlemen, it appears to me that the remainder of this deposition has to do with identification of photograph spread. I wonder if it is possible for counsel to agree what identifications were made by this witness. I really can't tell because the backs of the copies of the exhibits I have here are not marked with

X's as the testimony says they would be, and the originals probably are. I wonder if we could agree to have the Court Reporter include the remainder of the deposition in the record, and not read all the questions and answers. Most of it is procedural, and if it could be agreed which of the photographs of the two spreads he identified, is that possible?

MR. WOLF: We would agree to place in the rest of the transcript as it exists now into evidence, or our reading the rest of it. It would take longer, but be much shorter than that, either way, and we would be willing to indicate, however the Court wishes, and which photographs were put out. Mr. Carlton may prefer that we read it.

THE COURT: I have read the testimony. All I need to know is what photographs were pointed out from the witness. I can't tell from the transcript that I have. What is your pleasure, Mr. Carlton?

MR. CARLTON: May I look at those photographs?

THE COURT: Please show him the photographs, if you will. Let's see, he did mark -- There are the numbers here. They are not really marked on the back, but the numbers of the photographs he marked are in the transcript.

MR. WOLF: Yes, I believe I read that in.

THE COURT: C7 205-E, and 205-G. Those are the ones that he marked?

MR. WOLF: That is correct, your Honor.

THE COURT: And I guess the same thing with the female spread?

MR. WOLF: I believe on the females there may be some writing as well. It should be reflected in the record.

THE COURT: The record is all right without any stipulation, if you agree to have it included without it being watched.

MR. WOLF: In the female spread it would be D, as the one picture pointed out. We will stipulate to all of that.

MR. CARLTON: Including page 72, line 2, where it says, "It reminds me more of Slavka's sister." Is that what it says on the back?

MR. WOLF: That is the way it was translated. The record is the record. I am not changing anything.

THE COURT: Really, the only agreement we need is to eliminate the watching of the videotape. Everything else appears to be clear in the record.

MR. WOLF: May I mark these as 22C-1, and 22C-2?

THE COURT: Yes, and move for their admission.

MR. CARLTON: After conferring with Mr.

Koziy, we will agree the transcript be incorporated into the record as it appears from page 62 -- From the bottom of 64, line 24, through --

THE COURT: Actually, where we stopped, the last thing read is line 15, page 64.

MR. CARLTON: Right, through page 72, line 25.

THE COURT: Right.

MR. CARLTON: Preserving all objections as previously noted with other similar photo spreads as being an unfair compilation of photographs, and unfair photo line-up, the same as your Honor will recall from the previous witness.

THE COURT: Yes. You are objecting to the admission of these two spreads in evidence?

MR. CARLTON: Correct.

THE COURT: All right. Thank you for that stipulation. That saves us watching that testimony. 22C-1, and C-2 marked for I.D. are received in evidence over objection of counsel for the Defendant.

(Thereupon, said photographs were marked as "Plaintiff's Exhibits 22C-1 and 22C-2" by the Court, and received in evidence.)

MS. COLEMAN: Your Honor, regarding page 72, until what line is there a corporation in the record?

THE COURT: Line 25, the Court Reporter

tells me.

MS. COLEMAN: All right.

(Thereupon, the following was taken from the deposition transcript of Dr. Karol Koluszko, beginning page 64, line 16:)

MR. WOLF: Do you recall meeting with another American attorney approximately 15 months ago?

A Yes, I remember it was on the 2nd of October, 1979.

Q Where did that meeting take place?

A It took place in the building, in the rooms of the main commission for the investigation of Hitlerite crimes in Aleja Ujazdowskie in Warsaw.

Q Did that other attorney show you any photographs?

A Yes, he did.

Q Were they photographs of men, of women, or of both?

A There were two sets of photographs. One contained 8 photographs of men, and the other one contained 8 photographs of women.

Q I am going to show you now a stack of photographs. I will just hand you the full stack, which will be marked Exhibit 1-A through H. I would like for you to look at the front and the back of these photographs very

carefully, and just let me know when you are finished looking at them so that I can ask you some further questions about them. Please look at both sides of the photographs. Have you finished looking at them?

A Yes, I have.

Q Do you see on the backs of those photographs some letters and numbers written in black ink on the top?

A Yes, I do.

Q And do you see some writing in blue ink below those numbers?

A Yes, I can see signatures and I can see dates written in blue ink.

Q Do you recognize those signatures?

A Yes, I do. These are my signatures.

Q And can you tell whether the dates that are written on there are in your handwriting?

A Yes, it is my handwriting.

Q Does the back of each photograph contain the same date?

A Yes, it does.

Q And can you read for us the date that is written there?

A The 2nd of October, 1979.

Q Can you tell whether you wrote those dates that appear on the backs of the photographs?

A Yes, I wrote them myself.

Q Do you recognize those photographs as being the ones shown to you by the American attorney?

A Yes, these are the same photographs.

Q Do you recall what instructions he gave you with respect to those photographs?

A Yes, I do.

Q And what were those instructions? What did he ask you to do?

A He asked me whether I recognized anybody from these photos - in these photos, and what they, well, showed to me; what they told me.

Q Did he tell you what to do if you recognized any of those photographs?

A Yes. He told me to place an X at those photographs which remind me of some people who I might have known.

Q Did you place an X on the back of one or more of those photographs?

A Yes, I did. I placed X's on two photographs, at the back of two photographs.

Q Could you pick out from that group the two photographs on which you placed an X?

A These are those two photographs. Here you are.

MR. WOLF: Let the record reflect that the witness has handed over two photographs which are marked on the back. Let me read the entire number: C7 115 205-E; and C7 115 205-G. All of these photographs will be marked as Exhibits 1-A through H.

THE INTERPRETER: Am I to read those numbers?

MR. WOLF: Yes.

When you placed the X on these photographs, who did you tell the American attorney these photographs reminded you of?

A I told the attorney that those two photos reminded me of the former Ukrainian policeman, Bohdan Koziy.

Q And the other photographs sitting in front of you, do any of the others contain an X?

A No.

MR. WOLF: If I can just have those photographs back, please.

For the record, these original photographs will be marked with exhibit stickers, as I said, Exhibit 1-A through H, but we will place into the record, attach to the transcript Xerox copies of these photographs, Xeroxes of both

the front and the back, and we will hold on to the originals of the photographs at the present time, although they will be marked to insure conformity between the Xerox and the original.

Right now I am handing these photographs to Mr. Besoner, the court reporter, so that he can hold on to them and mark them. Let me do one last thing on these photographs. The remaining photographs, which the witness indicated do not contain an X on the back, are all numbered and lettered C7 115 205, and then contain the suffix letters, A, B, C, D, E, and H. And again I am returning the photographs to Mr. Besoner so that they can be marked.

(So marked.)

MR. WOLF: Dr. Koluszko, I will now show you a second set of photographs,and I give you the same instructions. Please look very carefully at the front of each photograph, and the back of each photograph.

Have you finished looking at them?

A Yes, I have.

Q Again, do you notice that there are some identifying letters and numbers in black ink on the tops of, and the back of each photograph?

A Yes, I can see some numbers, and then I can see some letters and writing.

Q Do you also see the writing in blue

ink below those letters and numbers?

A Yes, I can see there are dates and there are signatures on all the photographs.

Q Do you recognize the signature in blue ink on each photograph?

A Yes, I do.

Q Whose signature is it?

A It is my signature.

Q And do you see a date written in blue ink on each photograph?

A Yes, I can see the date.

Q Is the same date written on each photograph?

A Yes, it is the same date.

Q What date is that?

A It is the second of October, 1979.

Q Do you recall whether these photographs -- Perhaps if you turn them over. First, am I correct that all of these are photographs of women?

A Yes, they are all photographs of women.

Q Do you recall whether this was the group of photographs of females which were shown to you by the American attorney?

A Yes, these are the same photos.

Q And what instructions did he give you with regard to these photographs? What did he ask you to do?

A Similar instructions. I was given the set of photographs -- I was given 8 photographs and I was asked to see whether any of those photos reminded me of somebody.

Q If any photograph did remind you of someone, what did the attorney ask you to do?

A He asked me to place an X.

Q Did you place an X on the back or on the front?

A At the back of the photograph.

Q Could you look at the backs of all those photographs, and pick out any photographs which contain an X?

MR. WOLF: Let the record reflect that the witness has handed over a photograph marked C7 115 204-2 D, as in David.

Let me correct one thing, it is 204-a, not a 2. Then below that identifying number is a capital D.

Is this the only photograph out of this group which contained an X, on which you wrote an X?

A Yes, it is the only photograph that I placed an X out of those 8.

Q On the back of this photograph, in addition to your signature, the date and the X, there is some additional writing in blue ink. Could you first tell me if that is your handwriting?

A Yes, it is my handwriting.

Q Could you please read what that says?

A It reminds me more of Slavka's sister.

Q When you say Slavka, are you referring to Slavka Ostapiak?

A Yes, I mean Slavka Ostapiak.

Q So when you chose that picture and put an X on it, what exactly did you tell the other American attorney about who that picture reminded you of?

A I told the attorney that the photo reminded me more of Slavka's sister.

MR. WOLF: For the record, the other photographs in this group which do not contain an X are all marked in black ink C7 115 204-a, and then in addition they are marked in capital letters, A, B, C, E, F, G, and H; and the Government will hand all of these photographs to the court reporter to be marked as Exhibit 2-A through H; and as before, we will insert in the record itself, in the transcript itself, Xerox copies of both the front and back of these photographs, and we will retain the originals for now, although the originals will contain the stamp placed on

them by the court reporter, and the Government at this time moves these two exhibits, 1 and 2, into evidence in this deposition.

(Thereupon, as per stipulation of counsel, deposition transcript concluded at page 72, line 25.)

MR. CARLTON: Did your Honor intend to recess at this time? I have two very brief matters I would like to bring to the Court's attention.

THE COURT: Fine. Let's hear them.

MR. CARLTON: Your Honor, at this time I would like to present to the Court a memorandum of law together with accompanying exhibits, a copy of which is being provided to the Government, in regard to the contemplated and proposed testimony of Renee C. Martin, and Edward O'Connor, and would merely ask if your Honor could review this memorandum at your convenience.

THE COURT: Be glad to look at it; sure will.

MR. CARLTON: And the second matter that I would like to inquire of the Court, during the Defense case, there will be a need for an interpreter that speaks Ukrainian. We can provide persons who are fluent in both Ukrainian, and English, but I would like to ask the Court whther or not the Court will require an official interpreter, as opposed to someone who can qualify as being proficient in both languages.

MR. WOLF: We would only ask for a certified translator, otherwise, we have no quality control over what is being said.

MS. COLEMAN: We would like to be certain there is no one who has any sort of interest. I am not suggesting bias, but interest in the case, not act as an interpreter.

MR. CARLTON: I can understand that. I have no quarrel with someone who has no interest in the case, but it is not the easiest thing here in South Florida to find an official interpreter that speaks Ukrainian.

THE COURT: I am sure we wouldn't find one.

MR. CARLTON: We have a few that speak Spanish, but not Ukrainian.

MR. WOLF: We understand there is a fair size Ukrainian down here. I don't see how we could agree to a record who is being translated by someone who is not certified.

THE COURT: Over what length of time?

MR. CARLTON: Excuse me one moment, your Honor. Some of the witnesses partially speak English. I would say at least four should have an interpreter, so they fully understand both questions on direct, and cross examination.

MR. WOLF: Obviously this comes as no surprise to you that you would need an interpreter.

THE COURT: Have you looked into whether or not there is a certified Ukrainian interpreter in the District? We did have the Fedorenko case down here.

My Court Reporter just informed me that there was a Ukrainian --

MR. CARLTON: We are trying to track that down, also, from the same source, but I just wanted to be certain in the event we cannot locate this individual, that perhaps we can agree on some other person; but we will certainly endeavor to have that particular person do it.

THE COURT: Well, I will have to ask you to try to find a certified interpreter. If you can't, try to reach some agreement. We will have to take it from there. I don't know what we would do with it, but we have to work it out one way or the other.

MR. CARLTON: We are working on it.

MR. WOLF: Your Honor, we haven't read this memorandum. Obviously, we wish to respond to it. I think --

THE COURT: Take it to bed with you tonight, Mr. Wolf. That is probably what I will do, and you can respond. I won't rule on it until you have had a chance to respond at least orally, and in writing.

MR. WOLF: We will make an effort to respond in writing.

THE COURT: Okay. I don't even know what it is about. Depends on when the issue comes up in the trial. We will try to be reasonable about it in any event.

MR. CARLTON: Does the Government have an idea when they are going to be resting?

THE COURT: That is the next question.

MS. COLEMAN: If we did not play the tapes, we would be able to rest by tomorrow.

THE COURT: You are through with the tapes now?

MS. COLEMAN: No. We have two others. They were tapes that we intended not to play, but read the text into the record.

MR. WOLF: And there would be one, possibly two live witnesses.

THE COURT: Two tapes, and two live witnesses?

MR. WOLF: Possibly only one live witness.

THE COURT: You ought to be able to finish up tomorrow?

MS. COLEMAN: Mr. Fusi informs me that the tapes are two and a half hours.

THE COURT: That sounds like you would finish before the end of tomorrow. Let me ask you to have a witness available, Mr. Carlton, if you will, toward the beginning or mid afternoon tomorrow, and we will start again 8:30.

MR. CARLTON: I don't think we could get them by tomorrow. We believe we can get them by Friday - at least two of them.

THE COURT: That may be. You have -- At least you have the Defendant here. If push comes to shove, you can put him on, and take up some time with him, if need be. I just don't want to wind up here 3:00 tomorrow afternoon without any witnesses.

MR. CARLTON: I will have to cross examine a little longer.

THE COURT: At least you are being candid about it.

MR. CARLTON: Nothing like honesty.

THE COURT: I am asking for good faith effort to try to get this case handled. We will start 8:30 tomorrow morning, and be in recess until then.

(Thereupon, the Court was in recess.)

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UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF FLORIDA

UNITED STATES OF AMERICA	
vs.	Case No.: 79-6640-Civ-JCP
BOHDAN KOZIY, a/k/a BOGDANUS KOZIJ, a/k/a BOHDAN KOZIJ	

West Palm Beach, Florida

September 24, 1981

8:30 o'clock A.M.

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The above-styled case came on for trial before the Honorable James C. Paine, Presiding Judge, at the U.S. Federal Courthouse, West Palm Beach, Palm Beach County, Florida, on the 24th day of September, 1981, commencing at 8:30 o'clock A.M.

VOLUME 8

APPEARANCES:

KATHLEEN N. COLEMAN, ESQ., UNITED STATES DEPARTMENT OF JUSTICE, OFFICE OF SPECIAL INVESTIGATIONS, appearing on behalf of the United States of America.

MICHAEL WOLF, ESQ., UNITED STATES DEPARTMENT OF JUSTICE, OFFICE OF SPECIAL INVESTIGATIONS, appearing on behalf of the United States of America.

JOVI TENEV, ESQ., UNITED STATES DEPARTMENT OF JUSTICE, OFFICE OF SPECIAL INVESTIGATIONS, appearing on behalf of the United States of America.

PHILIP CARLTON, JR., ESQ., appearing on behalf of Bohdan Koziy, a/k/a Bogdanus Kozij, a/k/a Bohdan Kozij.

STEVEN JUGO, ESQ., appearing on behalf of Bohdan Koziy, a/k/a Bogdanus Kozij, a/k/a Bohdan Kozij.

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Thereupon:

The following proceedings were had:

THE COURT: Are we ready to proceed?

MS. COLEMAN: Yes.

THE COURT: Call your next witness.

MS. COLEMAN: Mr. Max Kandler.

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Thereupon:

MAX KANDLER

was called as a witness on behalf of the Plaintiff, and being first duly sworn, was examined and testified on his oath as follows:

THE COURT: State your name, and spell your last name.

THE WITNESS: My name is Max Kandler.

THE COURT: Your last name is spelled --

THE WITNESS: K-a-n-d-l-e-r.

DIRECT EXAMINATION

Q (By Ms. Coleman) Mr. Kandler, are you nervous this morning?

A A little.

Q A little. If I ask you a question, and you don't understand my question, just ask me to stop, and I will rephrase it.

A I will.

Q You say your name is Max. What, if any other first name have you been known by?

A They call me Munio.

Q When was that?

A That was before the war.

Q Where were you living when they called you Munio?

A I was living in Lisets.

Q Is that M-u-n-i-o?

A Yes.

Q When were you born, Mr. Kandler?

A December 16th, 1918.

Q Are you Jewish?

A Yes.

Q Where were you born?

A I was born in Czechoslovakia.

Q How long did you live in Czechoslovakia?

A Only for about a year or two.

Q And then where did you live?

A In Stanislawow.

Q Mr. Kandler, what schooling have you had, and where did you go to school?

A I had four regular plain classes, and six high school classes.

Q Where did you go to school?

A Stanislaw.

Q After you stopped going to school, Mr. Kandler, where did you live?

A I lived in Lisets.

Q And why did you move to Lisets?

A I moved because my father built a flour mill in Lisets.

Q And where was this flour mill in Lisets?

A It was not far from the river, Lisets river.

Q Now, when you say your family had a flour mill, what kind of mill was it?

A It was a water mill that we had a pipe, the water came in, and we drove the mill by special device.

Q Did you work at your family's flour mill?

A Yes, I did.

Q Do you remember what year it was that your family moved from Stanislaw to Lisets?

A It was in 1934 to '35.

Q Did you live with your family in Lisets?

A Yes, I did.

Q Where was your family home located?

A The home was located across the street from the flour mill.

Q Who were the family members that you lived with, Mr. Kandler?

A My father.

Q What was his name?

A Abraham. My mother, Rosa; my brother Bernard; and my sister Niusia; Salka.

MS. COLEMAN: Your Honor, may we take a short recess?

THE COURT: All right. You think we need a recess?

MS. COLEMAN: Just a five minute break.

THE COURT: We will be at ease for five minutes.

(Thereupon, a short recess was taken.)

MS. COLEMAN: Are you okay?

THE COURT: Let's proceed if Mr. Kandler is all right. We will take a recess, if need be.

MS. COLEMAN: When was your sister Salka born?

A She was born in 1926, if I remember correctly.

Q And where did Salka go to school?

A In Lisets.

Q Mr. Kandler, when your family was living in the area of your flour mill, do you recall if your family had neighbors?

A Yes, we had neighbors. We had neighbors. Of course we had neighbors.

Q Do you remember who your neighbors were?

A Yes, I do.

Q Can you tell us who they were?

A On the left side was a gentleman by the name of Ruditzski, and in the back was a name Levendofski; and a little bit further was a name Oschorshczek, and then in the back of the flour mill was the name Koluszko.

Q Do you know who the head of the Koluszko family was?

A We called him Tom.

Q Did Thomas have any children?

A Yes, he did.

Q Who were they?

A He had, I remember, a little bit, not too much, two boys, if I remember correctly.

Q Do you remember the Koluszko boys' first names?

A One was Karol.

Q Do you remember the other's first name?

A No.

Q Mr. Kandler, how far away from Stanislaw was Lisets?

A It was about 8 kilometers.

Q And when people would travel between Lisets, and Stanislaw, how would they do that?

A It was a straight, beautiful highway.

Q Did that highway have a name?

A The highway -- It went from one little city to the other.

Q When it goes to Stanislaw, did it have a street name?

A Yes.

Q What was that?

A That was Kasimierzowska.

Q Besides the members of your family, how many other Jewish persons lived in Lisets?

A Between 30 and 50 families.

Q Where did the Jews of Lisets worship?

A They worship in a synagogue.

Q And where was the synagogue?

A The synagogue was about in the middle

of the town.

Q Where did the Jews of Lisets bury their dead?

A They had a cemetery.

Q Mr. Kandler, when you first moved to Lisets, it was under Poland's power, is that correct?

A Yes.

Q And in September of 1939, the Soviets came to power in the area?

A Yes.

Q When the Soviets came to power, how, if at all, did that affect the operation of your family's flour mill?

A When the Soviets came to power, they took away the flour mill from my power, and they nationalized the flour mill.

Q When the Soviets did that, where did you work?

A I still worked in the flour mill.

Q Where did your brother Bernard work?

A Also there.

Q And your father?

A Same. Same place.

Q For how long were the Soviets in power in Lisets?

A The Soviets were in power for about two years.

Q And then who replaced them?

A For a little while, the Hungarians came, for a week or two.

Q And after the Hungarians?

A The Germans came.

Q Now, once the Germans came in, Mr. Kandler, if you know, what was the local administration in Lisets?

A There was a police and mayor.

Q Who was the mayor?

A As I recall, the mayor was Mr. Ostapiak.

Q Now, once the Germans came to the area, who ran your family's flour mill?

A Once the Germans came, they appointed a German first; then the German appointed another gentleman.

Q And when that happened --

A One moment. I think I remember his name, too. Stenofski. His name was Stenofski.

Q The man whom the Germans appointed?

A Yes.

Q Did you continue to work at the mill?

A Yes, for a while I was working there.

Q What about your brother Bernard?

A He also was working, Bernard.

Q And your father?

A Same thing.

Q Now, you had mentioned that there were police when the Germans came. What did the people call those police?

A When the Germans came, there was a police already in Lisets. They call them militzia, too, police, and militia.

Q Did they ever call them Ukrainian police?

A Yes, they call them Ukrainian police.

MR. CARLTON: Excuse me, Mr. Kandler. I object to leading questions.

THE COURT: The question is leading. The objection is sustained.

MS. COLEMAN: Thank you, your Honor.

Mr. Kandler, what did, or how did you refer to these police? What name did you call them?

A We called them militia.

Q Do you remember --

A Militz.

Q Do you remember how they dressed?

A Yes. They wore a navy blue uniform,

not too dark --

Q Did this uniform have any types of markings on it?

A The uniform had yellow markings.

Q Do you remember what those markings, the yellow markings looked like?

A I just remember on the cap the markings.

Q And what did you see?

A It was like a W, whatever, something like that.

Q You mean the letter W?

A A letter W.

Q Would you be able to draw a picture for the Judge on what that marking looked like?

A Yes, I would be able to.

MS. COLEMAN: Your Honor, may I approach the witness?

THE COURT: Yes.

THE WITNESS: Something of that nature. I don't remember correctly if that is it, but something like that.

MS. COLEMAN: Thank you.

MR. CARLTON: May I see it?

MS. COLEMAN: Sure. Mr. Kandler, you say

you are a little nervous?

A Yes.

Q Are these lines supposed to be separate?

A Yes, they are.

MS. COLEMAN: Your Honor, I would ask that this be marked as Exhibit number 29.

THE COURT: Is there any objection?

MR. CARLTON: No, your Honor. Was that 29?

MS. COLEMAN: I believe that is.

(Thereupon, said drawing was marked as "Plaintiff's Exhibit 29" by the Court, and received in evidence.)

Q Now, these policemen you talked about, did they have any weapons?

A They had rifles, and some of them had guns, too.

Q You mean hand guns?

A Hand guns. Not all of them.

Q Now, when you talk about markings, can you describe any particular markings which you may have worn once the Germans occupied the area?

A I had to wear an arm band with a Jewish star.

Q Were you the only one?

A No. Everybody. All the Jews had to wear an arm band.

Q Did that include the children?

A Children, also.

Q When did you start to wear that arm band, Mr. Kandler?

A I would say two weeks, maybe later when the Germans arrived.

Q Now, once the occupation by the Germans started, what, if any, changes did you observe in the everyday lives of the Jews of the area?

A We couldn't go anymore to the synagogue. We couldn't assemble anywheres. We had to walk on the streets.

Q What do you mean you had to walk on the streets?

A Not on the sidewalk.

Q Anything else? Did you have any jewelry at the time?

A Yes. I did have jewelry.

Q And once the Germans arrived, what did you do with your jewelry?

A Once the Germans arrived, a few weeks later we had to give it away, to -- It was an elderly from the Jewish people who collected it, and in turn he had

to give it away to the authorities.

Q Did you have any furs?

A Yes, I did.

Q And what did you do with your furs?

A Whatever we could, we distributed between our neighbors, and I happen to give my jacket to a friend of mine.

Q Who was your friend?

Q My friend was a Ukrainian boy who was working in our flour mill.

Q Do you remember his name?

A Yes.

Q What was that?

A Ganni Sarafkozski.

Q Now, you say that you distributed your furs to your friends. What were you supposed to do with your furs?

A Supposed to give it for the German occupation forces.

Q When you were living in Lisets, Mr. Kandler, were you married, or were you single?

A I was married.

Q When were you married?

A May 25th, '41.

Q And once you were married, Mr.

Kandler, and you were living in Lisets, where did your wife live?

A She lived in Stanislawow.

Q Did you ever have occasion to visit her in Stanislaw while you were still living in Lisets?

A On many occasions.

Q If you recall, Mr. Kandler, did you have occasion to visit your wife on October 12th, 1941?

A Yes, I do.

Q And why --

MR. CARLTON: Your Honor, I again ask counsel not to lead the witness.

THE COURT: Objection overruled. I don't believe that question is any more than introductory.

Q Why is it that you recall the date of October 12th, 1941?

A Because at that day -- At that date, and at that day, that was the first action against the Jews in Stanislawow.

Q What's the first thing that you remember about that day? The first thing that took place?

A The first thing we heard in the very early morning, commotion on the street, and we looked out from the window, and we see a lot of German police, and a lot of Ukrainian police, and we did see that something is going

to happen. All of a sudden, the Ukrainian police came into our apartment, and start knocking, and they said, whatever you can, grab with you, you can carry, and you should be out in five minutes, the most.

Q What language did these policemen speak?

A They spoke Ukrainian, and sometimes even Polish words.

Q Now, after they said that you should be out of the apartment in five minutes, what did you do?

A Got dressed, and naturally, I ran out, and instead of going to the left, to the street, I went to the right.

Q Where did you go to?

A I was trying to hide; run away. I didn't want to go to the street; and one woman in the backyard pulled me in, and she hided me in closet.

Q This woman, do you know who she was?

A I remember the name, but I forgot now.

Q Was she Jewish?

A No. She was a Ukrainian woman.

Q How long did you stay in her place?

A I stayed about 45 minutes to an hour.

Q Did you hear anything when you were

hiding in her home?

A I did hear.

Q What did you hear?

A They opened up -- The police came to her, knocking the door, if she knew any Jews around here; if she did see some Jews hiding, and she said no. Do you have any Jews nearby? And she said no; but I was there, and I heard.

Q You say that you were in this Ukrainian woman's home for about 45 minutes?

A Exactly.

Q After those 45 minutes passed by --

A She came in, and she --

Q Let me finish the question, please, Mr. Kandler.

A Yes.

Q Where did you go?

A She came in and said to me, Munio, you are free to go.

Q And where did you go?

A At that time, I went back to Lisets.

Q On your way to Lisets, did you hear anything?

A Yes, I did hear shootings from far away, from the direction of the cemetery from Stanislawow.

Q What kind of cemetery?

A The Jewish cemetery.

Q Was there a ghetto in Stanislaw?

A Yes, it was.

Q Do you know when it was started?

A After that action of the 12th of October, came and moved to the ghetto, and the Jews formed a ghetto.

Q When you were living --

MR. CARLTON: I don't believe that was responsive to the question. The question was when.

MS. COLEMAN: How much after the action?

A About two, three weeks, after they gave an order to form a ghetto.

Q Now, when you were living in Lisets, did you ever visit inside the ghetto?

A Yes, I did.

Q And why would you go to the ghetto when you were living in Lisets?

A Because people were starving there, and I had to provide food for them.

Q Was your wife living in the ghetto.

A Yes, she was living in the ghetto, too.

Q Anyone else that you knew?

A Her family, and my family, and my uncles, and cousins, from Stanislaw.

Q Now, when you would take food to these starving people, Mr. Kandler, how would you do that?

A In Lisets, we had enough food because, we had no that bad in Lisets. Then I smuggled food through the river, through the ghetto at nighttime, into Stanislawow.

Q Why did you go into the ghetto with food at night, and through the river?

A Because I shall not be approached by any police, or by any Germans, or whatever; try nobody should see me.

Q Why didn't you want them to see you?

A If they would catch me with food, they would shoot me on the spot.

Q Mr. Kandler, I want you to look at the map that is near the witness stand. Can you turn around and see it?

A Yes.

MS. COLEMAN: For the record, that map is Exhibit 13, which has been admitted into evidence.

THE COURT: That is an enlarged version of the document in evidence, is that right?

MS. COLEMAN: I believe it is the same, your Honor.

THE COURT: It is a different one. The one in evidence is in about three pieces.

MS. COLEMAN: Yes, your Honor, This has a hard backing on it so it can be used in the courtroom.

THE COURT: All right, fine.

Q Mr. Kandler, do you recognize what is shown in that map?

A Yes, I do.

Q And it is Stanislawow?

A It is.

Q And you have seen that map before coming to court today?

A Yes, I did.

Q Is that an accurate map of Stanislaw for the time that you had lived there?

A Yes, it is.

Q Could you use this pencil, and by drawing straight lines --

A Actually to draw the lines?

Q Yes. Could you outline the streets where the ghetto was located?

MR. CARLTON: Your Honor, may I come around?

THE COURT: Yes, of course.

THE WITNESS: Shall I draw it?

Q Yes, and Mr. Kandler, when you indicate where the ghetto was located, if you touch upon any streets, would you please state the names of the streets so the Court Reporter can put them down.

A In the beginning, the ghetto started right here (indicating). Draw, right? Make a line?

Q Right; and what have you just marked?

A When the ghetto started in the beginning.

Q What is the name of the streets?

A Kasimierzowska.

Q Now, is that the street that you said led to Lisets?

A Right down to Lisets, right.

Q Now, would you please continue and indicate where the ghetto was?

A (Witness complies.)

Q Now what are you marking?

A This was the Siemiradzkiego ended right here, and made a right turn, and the name of the street was Sedel Majerowska.

Q Would you continue.

A Yes, up to here (indicating), and then down --

Q And what is the name of the street?

A Halicka.

Q Now, this Halicka Street, is that the road that led to Halycz?

A Halicka Street, that is the road that went to Halycz, right; and then we have here (indicating), and then started right here (indicating).

Q And what is the name of the street you are showing now?

A This is the Batorego, and went to here (indicating).

Q And what is the name of that street?

A The name of that street was Siemiradzkiego. That was the whole ghetto.

Q Thank you, Mr. Kandler.

Mr. Kandler, the area that you've marked in that blue pencil to show the size of the ghetto, did the ghetto always remain the size that you have shown in that map?

A No.

Q How --

A This was from the beginning.

Q How did the size of the ghetto change?

A When the Germans came in to make actions against the Jews, they made it all the time smaller,

and smaller, and smaller.

Q Mr. Kandler, can you estimate - let's pick a year, 1942 - how many people lived in the ghetto?

A I would estimate about 50,000 people.

Q And where did those people come from?

A I guess, I would say 35 or 40,000 people lived in the city alone, but the rest of the people came from the surrounding towns.

Q Did they come from any other countries?

A Yes. I recall they brought to us some Hungarian Jews, too.

Q Now, when the Jews were living in the ghetto, how did they walk into, and walk out of the ghetto?

A In the beginning, we had three entrances - one main one, and two small ones. Smaller ones.

Q And could you walk in, and walk out whenever you felt like it?

A No. You could not.

Q Why not?

A Because it was restricted that only Jews had to live inside the ghetto, and whoever had permission to get out of the ghetto, you have to show the permission.

Q And to whom would you show your

permission?

A We have to show the permission to the Ukrainian police.

Q Now, did there come a time when you yourself moved from Lisets, and moved to Stanislawow?

A Yes, there was a time.

Q And do you recall when that was?

A It was about in -- I guess in September, the beginning of September, I moved permanently away from Lisets.

Q Do you remember what year?

A 1942.

Q Now, when you moved into the ghetto, Mr. Kandler --

A Yes.

Q -- what employment, if any, did you have?

MR. CARLTON: Could I hear the question again?

Q When you moved into the ghetto --

A I had employment. I was working in a German agency by the name Rohstaff Verfassung.

Q This Rohstaff Verfassung, was it ever called Rohstoff.

A It had two names.

Q Was Rohstoff one?

A Yes.

Q Were you paid for your work?

A No.

Q What did you do for Rohstaff Verfassung?

A They gave me a badge; they gave me papers, and I was working there collecting metals; clothing; bottles, lids, things like that.

Q Mr. Kandler, once you moved to the ghetto, if you know, -- Strike that.

Once you moved to the ghetto, where was your family? I am talking about your parents, and your sisters, and brother living?

A They still lived in Lisets.

Q At that time, I am talking around the time that you moved to the ghetto, was your brother Bernard married by then?

A He was.

Q Did he have any children?

A Yes, he had.

Q How many?

A One.

Q Do you know how long your family lived in Lisets after you had gone to the Stanislaw ghetto?

A They lived another -- Probably -

I don't know exactly - about two months longer.

Q And then where did they live?

A In the fall, they brought them to Stanislawow.

Q Where in Stanislawow?

A Excuse me? Where?

Q Yes.

A They brought them to the ghetto.

Q Now, besides the members of your family, were there any other Jews from Lisets whom you saw appear at the Stanislaw ghetto?

A Yes, I did.

Q And once your family began to live in the ghetto, Mr. Kandler, what employment, if any, did Bernard have?

A Bernard had the same employment as I did. As a matter of fact he had it before me.

Q What about your sisters?

A My sister Salka had the same employment.

Q And your father?

A Also the same employment, in the same agency.

Q And that is Rohstaff Verfassung?

A Right.

Q How would you go about collecting the clothing, and scraps that you talked about? How would you do your job?

A Each was sent out a push cart, and we had to push the cart all around to collect those things.

Q When you would go all around, where would you go to, Mr. Kandler?

A I went around to the whole city, and to the Gentile sections.

Q Did you go out of the ghetto by yourself?

A Yes.

Q Did you have any special documents that permitted you --

A Yes, I did.

Q Mr. Kandler, would you wait?

A Yes.

Q I know you are nervous, but please listen to the questions.

A Yes.

Q Did you have any special documents that permitted you to go outside of the ghetto by yourself?

A Yes, I did.

Q Now, Mr. Kandler, when you would be outside of the ghetto, pushing your push cart for

Rohstaff Verfassung, did you have occasion to see work parties of Jews outside the ghetto?

A Yes, I did.

THE COURT: May we have order in the court, please. All right. You may proceed.

Q And these work parties of Jews, would they be just Jews that you would see?

A Yes.

Q Would they be alone, or would they be with guards?

A They were with guards.

Q What guards did you see with the work parties?

A I did see Ukrainian police.

Q Now, when you would collect clothing, Mr. Kandler, from where would you collect clothing?

MR. CARLTON: Your Honor, I object. I believe this is repetitious.

THE COURT: Seems to me he has said he went to the Gentile sections of the town. I sustain the objection.

Q Are there any sections within the ghetto where you would go to collect clothing?

A Yes.

Q And where was that?

A I went collect clothing to the cemetery.

Q The Jewish cemetery?

A Yes.

Q And when you would go to this Jewish cemetery to collect clothing, can you describe the quantity, that is, the numbers of pieces of clothing that you would pick up?

A I didn't go only by myself. There were a lot of us, and they filled up the wagons, and we drove them to the Rohstaff Verfassing.

Q Any other place beside the Jewish cemetery inside the ghetto that you would collect clothing?

A Yes, there was -- They called it Rudolph's Mill.

Q Rudolph's Mill.

A Yes.

Q And what would be the quantity of clothing that you would pick up there?

MR. CARLTON: Your Honor, I object. It is immaterial and irrelevant.

THE COURT: Objection overruled.

A They send us out, if I remember, 10, 12, 15 of us, and we came in there, and we picked them up, piled them up in the wagon, and drove them to that agency

where we had the barrels there.

Q Now, when you would take the quantities of clothing that you picked up at Rudolph's Mill, or the Jewish cemetery, to the Jewish agency Rohstaff Verfassung--

A Right.

Q -- what would you do with the clothing then?

A There were people working and sorting those clothes, and they packed them into bales, and when the bales were finished, we had to take them to the railroad.

Q The railroad?

A Railroad station, yes.

Q Did you yourself ever take clothing to the railroad station?

A Many times.

Q Do you recall any time at that railroad station when you saw other Jewish persons there.

A I saw them at one particular time that they brought a lot of Jews there to the railroad station, and they pushed them into box cars, and they closed up the doors.

Q You say they took Jewish people, and put them in the box cars. To whom are you referring?

A I am referring to the Germans, and Ukrainian police together.

Q Mr. Kandler, with whom did you live when you were living in the ghetto?

A I lived with my wife, and with my wife's parents.

Q Besides the place where you lived, did you have any other place where you would sometimes go to stay?

A Yes, I build myself a bunker - a hiding place.

Q Why did you have a hiding place, Mr. Kandler?

A Because at all the times, the Germans or the Ukrainians came in, and they surrounded people, and they took them to the cemetery to be killed.

Q Where was your hiding place?

A My hiding place was on top of a theater. The theater had a dome ceiling --

Your Honor, one second.

MS. COLEMAN: Would you like to take a recess?

THE COURT: Mr. Kandler, you want to stop for a few minutes?

THE WITNESS: No to stop. In a few seconds.

THE COURT: All right.

A I was hiding in the theater, and

from that theater was a dome ceiling. A very short theater, built from bricks.

Q Now, Mr. Kandler, do you remember any time when you were in your hiding place, when you saw an incident that involved your wife?

A Yes. From the hiding place, I saw how they caught at that time my wife.

Q Who caught your wife?

A They dragged her out, and the Ukrainian police -- The Germans were standing outside on the streets, and the Ukrainian police went in to drag out the people, and in some incidents, it was I saw about two blocks, three blocks, you could see there, because I was on the roof, and I had a lookout from there.

Q Now, you say that your wife was dragged out from the street?

A Yes, and her father, and her sister, and her sister-in-law. They dragged them. Not only them, but everybody else.

Q And who dragged them out on the street?

A Ukrainian police.

Q Were they taken away then?

A They were taken away.

Q Now, after you saw that happen, how

long did you remain in your hiding place?

A About a half hour later, when I saw from there that it is already clear, they went away, then it was free to walk around again.

Q What, if anything, did you do to find out the fate of your wife?

A They took those people to a slaughter house where they killed cattle, and they kept them there, accumulated a lot of people there, and --

MR. CARLTON: Excuse me. Your Honor, I object, if this is predicated on hearsay. This witness has not indicated thus far that he was present.

THE COURT: Objection sustained.

Q Mr. Kandler, what did you yourself do to see if your wife was still alive?

A The next day I went to the cemetery to assort the clothes, to pick up the clothes from those people that they have been shot --

Q Were you looking --

A I tried to look for my wife to see if she got killed or not. Luckily she wasn't. I couldn't find her clothes. I could not find --

Q So you believed that she was alive?

A I believed that she was alive; and sure enough, the next day, she arrived. The next day.

Into the ghetto, alive.

Q Mr. Kandler, when was the last time you saw your brother Bernard?

A Last time I saw Bernard was when the ghetto had been liquidated.

Q Do you remember when that was?

A That was in -- The end of February, beginning of March, something of that time.

Q Of what year?

A 1943.

THE COURT: 1943, or '42?

THE WITNESS: 1943, sir.

THE COURT: All right.

Q And when you saw your brother Bernard, did you speak to him?

A Yes, I did.

Q And what did you speak about?

A He said that he is going to take my --

MR. CARLTON: Objection to what he said, hearsay.

MS. COLEMAN: I am prepared to make argument on this issue.

THE COURT: All right. Well, is there any reason not to make the argument in the presence of the

witness?

MS. COLEMAN: It just involves a rule of evidence, and Supreme Court cases, your Honor.

THE COURT: Tell me what it is, please.

MS. COLEMAN: The rule of evidence is 803(3), which says that there is a hearsay exception when a declarant makes a statement of his then existing state of mind, such as intent, plan, mode of design; and the Supreme Court case upon which we rely is the rule of Mutual Life versus Hillman, which is even cited by the Advisory Committee in its discussion of 803(3). That is Mutual Life versus Hillman, allowed evidence of intention as tending to improve the doing of the act intended, and I would like to make a proffer, and that is that Bernard Kandler stated to his brother that he and the rest of the family --

MR. CARLTON: Excuse me. I ask any proffer be out of the presence of the witness.

THE COURT: I think that is a fair way to do it all right. Mr. Kandler, let us ask you to step outside the courtroom for just a moment, please.

(Witness complies.)

THE COURT: I wish to remind everyone in the courtroom that these witnesses are under Federal Rule of Evidence 615, and they are not permitted to talk to anybody about their testimony during the course of their testimony.

Did he step out that way?

MS. COLEMAN: Yes.

THE COURT: Go ahead.

MS. COLEMAN: Bernard told the brother that he and the rest of the family were to go into hiding with the Koluszka family, and Mutual Life versus Hillman, I am sure you remember it, it is a case that is studied in law school in the evidence course, and that involves a gentleman who had written a letter, and in the letter he stated that he intended to go to Denver; and the Supreme Court, I believe the case is from the 1800's, perhaps early 1900's, Supreme Court allowed that statement of his intention as tending to prove in fact he did go to Denver.

If you look at the Advisory Committee notes, to 803(3), it states the rule of Mutual Life versus Hillman, intending of doing the act intended is left undisturbed by 803(3).

THE COURT: All right. You have something to say about this, Mr. Carlton?

MR. CARLTON: Your Honor, I would ask if the Government would be kind enough to repeat what the proffer was. I was doing something else, reading that rule, and I didn't hear what you said Bernard was going to say.

MS. COLEMAN: Bernard stated to his brother, the witness, that is he, Bernard, and the rest of the family

were going to go into hiding with the Koluszka family.

MR. CARLTON: Your Honor, I don't believe if you are - reading of 803, and I am not familiar with the case that counsel is referring to, but I don't think the reading of 803 would bring that within the purview of an exception to the hearsay rule, as to existing state of mind. I think the intent behind that rule was entirely different.

What she is talking about is strictly hearsay as to what he was going to do, and as a matter of fact, if we were to accept that argument, almost anything he would say could be construed coming within that rule; within that case.

MS. COLEMAN: Your Honor, this goes to his plan, his intent, his motive, his design.

THE COURT: Well, the Hillman case is discussed in interpretation of this rule as follows in this book by Pouchette & Elkin, Federal Courtroom Evidence. I don't know whether this comes from the Committee or not, but it says the rule of Mutual Life Insurance Company against Hillman, giving citation, allowing evidence of intention as intending to prove the doing of an act - of the act intended is left undisturbed. The carving out of declarations relating to the execution, revocation, identification of terms of declarants' will represents an an hoc judgment, which finds

ample reinforcement, and decision resting on practical grounds of expediency.

The rule intends to limit the doctrine of Mutual Life so as to render statements of intent by declarant admissible only to prove his future conduct; not the future conduct of another person.

MS. COLEMAN: The remaining questions will be focused upon, did you ever see Bernard again.

MR. CARLTON: Based on what your Honor just read, that is stretching it quite a bit as to say what he may have seen, or what may have happened. I think it is strictly going into the immediate intent within the mind of the receiver of this information; not what he may have done later as a result.

MS. COLEMAN: Your Honor, I would like to point out for the Court that further discussion 803(3), about the terms of the declarant's will has no bearing on that, because that focuses on the exception about a statement of memory, or belief to prove the fact to be read or believed. It just doesn't have anything to do with this.

This is a statement that Bernard Kandler made saying today, at this present moment, my intention is to leave with the rest of the family, and my intention is to go to the Koluszka home, and ask if they would hide us.

THE COURT: All right. I think that

probably comes within the rule. I will overrule the objection.

(Thereupon, the witness returned to the courtroom.)

DIRECT EXAMINATION (Cont.)

Q (By Ms. Coleman) Now, Mr. Kandler, you say the last time you saw your brother Bernard, you and he had a conversation?

A Yes.

Q What did Bernard state to you?

A He asked me if I wanted to go with him into a hiding place.

Q Did he tell you --

A And he also told me he has a hiding place in our village, and he gave me the name where he is going to be, and I said I don't want to go.

Q Did he tell you where he was going to go to hide?

A Yes, he did.

Q Where?

A To Mr. Koluszka.

Q Did he tell you who was going to go into hiding?

A Yes, he told me he is going to take his whole family. Everybody.

Q Including your parents?

A Including my parents.

Q And your sisters?

A My sisters --

MR. CARLTON: I object to leading questions.

THE COURT: You are leading the witness, and the objection is sustained.

MS. COLEMAN: When you say he was going to take his whole family, Mr. Kandler, are you talking about his married family - his wife, and child?

MR. CARLTON: Objection. Leading. I have no objection asking who was he going to take, except based on my previous objection.

THE COURT: The objection is sustained. Do not lead the witness.

MS. COLEMAN: I am sorry, your Honor. I apologize. Did he tell you who the persons were who were to go into hiding?

A No. No. He said to me that he is going to take the family. That means, I assume --

MR. CARLTON: I object to what he assumes.

THE COURT: Objection overruled.

A That he is going to take my father, mother, two sisters, and his wife, and his child.

Q After you had that conversation with Bernard, did you ever see him again?

A I never saw him again since then.

Q Did you ever see the other members of your family after you had that conversation?

A No.

Q Now, in this job that you had with Rohstaff Verfassung,when you would go outside the ghetto, did you ever have occasion to go to Lisets?

A Yes, I had occasion to go to Lisets.

Q When, if ever, Mr. Kandler, on these occasions when you would go to Lisets, were you called upon to produce any of your identifying documents?

A Yes. At one time, when I was working in Lisets, the street -- It was near the post office. Two policemen were walking, and they approached me. I shall produce my documents; and at the same time one of the policemen asked me if I have matches, and one of the policemen wanted to smoke a cigarette, and I lit up a match, and I tried to give him, he should be able to smoke a cigarette. The wind blew out the fire, he smacked my face, and then --

Q All right.

A Yes.

Q Rest a minute, Mr. Kandler.

Do you remember when that was?

A This must have been about in September, or October.

Q Of what year?

A 1942.

Q Now, when you say that these two people were policemen in Lisets, what kind of policemen were they?

A They were Ukrainian policemen.

Q The policeman who slapped you, what did he look like?

A One was skinny, and taller than I was, and light complexion; and the other one was --

Q Let's talk about the one who was skinny and taller than you, with the light complexion.

A Yes.

Q How old was he?

A That policeman, how old he was?

Q Yes.

A Must have been younger than I am.

Q Is he the one, or was it the other one that slapped you in the face?

A He was the one who slapped my face.

Q Was there anything about him that you could remember about his appearance?

A Yes.

Q What's that?

A His physique was special, and his head was different than anybody else's.

Q What do you mean?

A Because he had his ears were away from the head, and they used to call it --

Q What is the word they used to call it?

A Oshlousha. Donkey ears.

Q Donkey ears?

A Donkey ears.

Q You mean somebody's ears look like a donkey's?

MR. CARLTON: Objection.

THE COURT: Objection sustained.

A Away from his head. That is what I noticed at that time.

Q What did the other policeman look like?

A The other policeman was black com-plex -- I mean black hair; shorter, and a little chubby.

Q How old was he, do you remember?

A About the same age. I would say 20, 21, 22, something like that.

Q Mr. Kandler, after you had that

conversation with Bernard, did you ever have occasion to go to Lisets for your job with Rohstaff Verfassung?

A Would you please repeat it? I was thinking something else.

Q After you had that last conversation with your brother Bernard --

A Yes.

Q -- did you ever have occasion to go to Lisets for your job with Rohstaff Verfassung?

A Yes, I did have another occasion to go to Lisets. This was already when the ghetto was not in existence.

Q Why did you go to Lisets -- Strike that. How often would you go to Lisets for Rohstaff Verfassung?

A I went several time to Lisets, because I wanted to provide food for the family, while the ghetto was in existence. I went several times, but I did try to avoid the police.

Q All right.

MR. CARLTON: Your Honor, I would object, and move to strike as not responsive. I believe the question was whether or not he went to Lisets for and in behalf of whatever the name of the place he worked; not for and behalf of himself, or his family.

THE COURT: All right. Motion denied.

Q Now, how often, Mr. Kandler, would you go to Lisets for Rostaff Verfassung, when you were working for that agency?

A That depends. In the later months, I didn't go too often because I did not have the purpose to go. Prior to that, while my parents still lived to Lisets, I went many times.

Q And why would you go many times when your parents were still in Lisets?

A To be able to have -- To smuggle in some food into the ghetto.

Q Now, after you had that last conversation with Bernard, and you never saw Bernard after that conversation, did you ever go to Lisets?

A Yes, I did.

Q And why did you go to Lisets?

A I went to Lisets later on to find out if it is everything quiet in that little town. That means if nobody would tell me anything, it means it was all right; but I knew that my parents and family is hiding there.

Q Did you ever go to the Koluszko home?

A Never.

Q Why not?

A I didn't want to lead anybody in there, but I did have friends, who told me.

Q Now, when you would go to Lisets, you already told us about one time when you had an encounter with some Ukrainian policeman.

A Right.

Q Were there any other times that you had encounters?

A Yes.

Q Would you tell his Honor about those?

A This was about the end of March, when the snow melted, I could have gone there to Lisets pushing my cart.

Q Now, March of what year, Mr. Kandler?

A 1943.

Q And when you went to Lisets, at that time, what encounter, if any, did you have with the Ukrainian police?

A Yes. I tried to avoid the Ukrainian police, but it so happened, while it was almost on the corner, not far from the police, two policemen walked out on the Radcha Road, that road leaded to a little village, and just I had a confrontation, but they didn't do to me anything. They just verified my papers. They told me to wait outside near the police, and they came out in 10 minutes, and they let me go, and they told me not ever to come anymore here.

Q Do you remember what those police looked like?

A Yes, it was the same gentleman who smacked me at the time, but the other policeman, I did not see.

Q Are you talking about the man with the donkey ears?

A That is right.

Q Now, you had mentioned a conversation you had with Bernard was somewhere around the time of the liquidation of the ghetto?

A Yes.

Q What do you mean by the liquidation of the ghetto?

A By the liquidation of the ghetto means that all the Jews from the ghetto got killed off, or taken away, or whatever, and there was no more Jews in the city, and they posted signs in the Stanislaw that there is -- There is no more Jews Judenrat. There are no more Jews in the city of Stanislawow.

Q What did they do with the buildings of the ghetto?

A Some of the buildings were on fire, and some were dismantled.

Q Now, after the liquidation of the ghetto, Mr. Kandler, besides yourself, how many, if any, other

Jews were in the city?

A There were still about 200 to 230, or maybe 50 Jews living in the barracks from the agency that I was working for.

Q And that is the barracks?

A The Rohstaff Verfassung quarters.

Q When did you leave Stanislaw, Mr. Kandler?

A I left -- A week before the liquidation, I went to the barracks of the Rohstaff Verfassung.

Q Did there come a time when you yourself left the city of Stanislawow?

A Yes.

Q Do you remember when that was?

A Yes.

Q When was that?

A This was in about the beginning of June.

Q Of what year?

A 1943.

Q How did you manage to leave the city?

A I just took off my arm band, and I received -- By the way, I forgot to tell you something.

Q No. Answer my question.

A Yes, yes.

Q How did you manage to leave the city of Stanislaw?

A I took off my arm band, and bought tickets to a different city at night.

Q Did you have any documents with you?

A Yes, I did.

Q What kind of documents did you have?

A I had Gentile documents.

Q Where did you get them?

A I got them from my good friend, and I still have them here.

Q Who is your friend?

A Ganni Sarafkozski.

Q Is that the same man you had given your fur coat to?

A Yes.

Q You say that you have documents that Sarafkozski gave you?

A Yes.

Q Did you bring them to court with you today?

A I have them here.

MS. COLEMAN: Your Honor, I would ask a Xerox of this document be marked as Exhibit 30. I made a

mistake, your Honor. The last exhibit that I had asked be marked, I asked be numbered 28.

THE COURT: You said 29.

MS. COLEMAN: Okay. Good.

THE COURT: You want this marked for I.D.?

MS. COLEMAN: Yes, number 30, I would ask a Xerox be marked of this.

THE COURT: Show it to Mr. Carlton, if you please.

MR. CARLTON: Your Honor, I would object to this document predicated on the fact that it has not been supplied to us previously.

MS. COLEMAN: Your Honor, in that case, I would withdraw it.

THE COURT: All right. You do not wish to have it marked for I.D.?

MS. COLEMAN: That is correct.

THE COURT: The document is withdrawn. We don't have any Exhibit number 30.

Q When you left Stanislawow, Mr. Kandler, where did you go?

A I went to the neighboring city Stryj.

Q After the war ended, what, if any,

effort did you make to locate members of your family?

A I came to Lisets to find out about my whole family.

Q Did you ask people about your family?

A I did.

Q And after you spoke to those people, did you continue to search for your family?

A No more.

Q When you returned to Lisets, did you see any Jews left?

A Nobody was left. Only me.

Q Did you ever return to your hiding place?

A Yes, I did.

MS. COLEMAN: Your Honor, I am about to show the witness three photographs which have already been provided to the Defense. They are listed as 26 on the trial exhibit list. I would ask that a Xerox of each of these photographs be placed into evidence. The first is 26A, which is a photograph of a male. 26B, the photograph of a young female; and the last I ask be marked 26C, a photograph of a group of people.

MR. CARLTON: Your Honor, I noticed during the course of the trial the Government has been substituting photostats for all of these various items. I would ask that

the originals be marked in evidence as opposed to a photostat unless there is some compelling reason why the original cannot be so marked.

MS. COLEMAN: Would you like for me to state for the record the compelling reason?

THE COURT: Well, if you feel that it is advisable in terms of argument, you may do so, sure.

MS. COLEMAN: If the Court is troubled by I request Xerox's of these originals, which have been seen by Mr. Carlton before the trial are insufficient, then I will address the Court.

THE COURT: Don't we have a rule somewhere that permits --

MS. COLEMAN: 1003.

THE COURT: A duplicate is admissible to the same extent as an original unless a genuine question is raised as to the authenticity of the original, or in certain facets, it would be impossible to admit a duplicate in lieu of the original; and 1002, on the requirement of the original, says to prove the content of a writing, recording, or photograph, the original writing or photograph is required except otherwise provided.

Well, the original has been provided, and counsel is asking a copy be substituted, and I see no reason to substitute the copy. There may be instances where

a copy is not a good copy, but with the advances in technology we have today, I think those instances are rare.

I will receive a copy, unless counsel shows me it is not an adequate one.

MS. COLEMAN: Mr. Kandler, you say that after you went back to the area of Lisets, you went back to your hiding place?

A Yes, I did.

Q Why?

A Because when I left the ghetto, I took -- I had albums, three or four made from previous years, pictures.

Q And what have you done with those albums when you left the ghetto?

A When I left it, I put them into that hiding place where I was hiding on the roof in the attic of that theater; and sure enough, after the war, I came, and I went after that place, and I took it out - my albums.

Q Mr. Kandler, would you explain if you recognize those three photographs that have just been placed on the witness stand?

THE COURT: These are Exhibits 26A, B, C for I.D.?

MS. COLEMAN: Yes.

THE COURT: All right.

A This was my brother Bernard. This is my sister Niusia, and here is the whole family with me together.

Q And after the war, you took those photographs from your hiding place?

A Yes.

MS. COLEMAN: I have no further questions, your Honor. I would move for admission into evidence of Exhibits 26A, B, C.

MR. CARLTON: Your Honor, I would object, first of all on the grounds that there is no probative value, merely to have shown photographs of the individuals, unless for some emotional value, whatever; and secondly, I would object to any writings that are on the rear portion of the photos. We have here photos which the witness has, of course, identified. The fact that he has identified photos doesn't prove or disprove the allegations, or affect the testimony in any way.

THE COURT: You think they are really helpful?

MS. COLEMAN: Yes, your Honor. Throughout this trial, there have been assertions made against the Government this entire trial is a fabrication - in fact from the very beginning of this trial. The reason why Dr. Hilberg's testimony was so terribly tedious was because there would not

even be a stipulation that the Nazi German government participated in a program against the Jews.

Mr. Kandler is here, and he establishes, based on what the Court has heard over the past two weeks, he had a brother Bernard, Niusia, and other members of his family, and these photographs are relevant.

THE COURT: I will receive them in evidence over objection of counsel for the Defendant. I believe they are at least technically admissible.

MR. CARLTON: Your Honor, will we be blocking out the rear portion of these?

THE COURT: Do you have any objection to that?

MS. COLEMAN: I am sorry?

THE COURT: He doesn't like the fact there is any writing on the back of them.

MS. COLEMAN: I have no problem with the Court not viewing the back of the pictures.

THE COURT: You are going to put in copies?

MS. COLEMAN: That is right.

THE COURT: Just copy the front portion, then. Let us have a copy of the face of each picture, rather than the back.

(Thereupon, said photographs were marked as "Plaintiff's Exhibits 26A-C" by the Court, and received in evidence.)

THE COURT: We are going to take the morning recess. We will be in recess this morning for 30 minutes. There is a matter that we have to handle, not within the courtroom here. It is going to take longer. We will be in recess until about 10:25.

(Thereupon, a short recess was taken.)

THE COURT: Cross examination, Mr. Carlton.

MR. CARLTON: Thank you, your Honor.

CROSS EXAMINATION

Q (By Mr. Carlton) Mr. Kandler, prior to coming into this courtroom to testify today, you, needless to say, of course, have gone over your testimony with the Government, with Miss Coleman, isn't that so?

A Yes.

Q Okay. When is the first time that you spoke with anyone about this case?

A Must have been a few years ago.

Q All right. Could you, as near as possible, tell us when that was, sir?

A Maybe 1979.

Q And do you recall whether you spoke

to someone here in the United States, or did you speak to somebody out of the country?

A Here in the United States.

Q And who did you speak to, sir?

A The first time came to me Mr. Fusi.

Q The last name?

A Fusi.

Q And who is he with?

A I don't know who he is. This is the gentleman who sits right there (indicating).

Q The gentleman -- In the back here. Okay. And did he contact you in New York?

A Yes.

Q In Queens, I believe?

A No.

MS. COLEMAN: Objection, your Honor. May we approach the bench?

(Thereupon, the following proceedings were had out of the hearing of the witness, and spectators:)

MS. COLEMAN: Your Honor, this is a simple thing. Mr. Kandler is very, very frightened about testifying here, and whenever I spoke to him, he said,they are not going to ask my address, or where I live --

MR. CARLTON: I will not go into that.

MS. COLEMAN: He even said to me today,

do they search people before they come into the room?

MR. CARLTON: I happen to know he has a business in Manhattan, and he lives in Queens. I don't intend to go into his address. It is of no value.

THE COURT: I think he is entitled to ask him, and talk to him about it.

MR. CARLTON: I will ask where he spoke to him. If he brings out his address --

MS. COLEMAN: He won't, I guarantee you.

(Thereupon, the following proceedings were had in the hearing of the witness, and spectators:)

MR. CARLTON: May I ask the Reporter read back the last question.

(Thereupon, the question referred to was read back as above recorded by the Court Reporter.)

MR. CARLTON: Would it have been in Manhattan?

A Yes.

Q In -- What did you talk about?

A Mr. Fusi asked me questions.

Q And what did you tell him?

A He asked me about some questions, and I answered him.

Q What did he ask you, sir?

A I guess he wrote them down.

Q I understand. What, as you recall, did he ask you?

A From where I come; where I was during the war, and I don't -- He asked me questions, sir, whatever was supposed to be asked. If you want to ask me, I will answer you.

Q You say whatever was supposed to be asked. Supposed to be asked for what, Mr. Kandler?

A Mr. Fusi asked me questions why I survive; how I survive; where I was living, the same, all those questions that Miss Coleman asked me.

Q The question I just asked you, however, you said that he asked you questions that he was supposed to ask.

A Yes.

Q And the question I ask you, sir, was supposed to ask for what?

MS. COLEMAN: Objection, your Honor. The witness has already answered.

THE COURT: Objection overruled. Let him answer if he can add anything. I don't think he really answered that question. Perhaps he cannot, I don't know.

A Mr. Fusi asked me questions relating to this case.

Q I see. Did he tell you what case

he was asking you questions about?

A He asked me only if I remember this, or that - if I remember some incidents, and things like that. Nothing else.

Q What incidents did he ask you if you remember, sir?

A From ghetto.

Q Things that happened in the ghetto?

A In the ghetto, and from -- These questions that I was supposed to answer, I just don't recall those questions.

Q When you say questions that you were supposed to answer, you mean that you were required to answer for some reason, is that what you are saying?

A Yes.

MS. COLEMAN: Objection, calls for a conclusion.

THE COURT: Objection overruled.

Q And for what reason, sir, were you required to answer these questions?

MS. COLEMAN: Objection. Calls for a conclusion.

THE COURT: Objection overruled.

A For what reason I was supposed to answer question?

Q For what reason were you required to answer the question?

A Voluntary reasons.

Q Voluntary reasons?

A Yes, at the time.

Q Okay. Did he identify himself as who he was, and who he was with?

A Yes.

Q What did he tell you he was with?

A From the Government.

Q Did he tell you he was with the Office of Special Investigations?

A He must have said that to me.

Q Did he tell you whether he was there to see you in regard to a particular case?

A He might have asked me that question.

Q He might have asked you whether he was there in regard to a particular case?

A To a particular case, yes.

Q And what did you say to him?

A If I would know about that case, I would answer him.

Q What case did he tell you he was there to see you about?

A What case? I guess it was about

the case of the police from our little town there.

Q This is what he told you? That it was about a case about the police from your little town?

A I am not saying what he told me. He asked me questions, and I apparently answered them, and it must be written down whatever I said.

Q Mr. Kandler --

A Yes?

Q -- the incident that you are telling us about as to when you met this gentleman who is seated here in court occurred about less than two years ago, or approximately two years ago?

A Something, yes.

Q And the incidents that Miss Coleman asked you about occurred about 40 years ago?

A Yes.

Q And of course, you went into many details, many fine points in the course of your testimony? I am asking you about things that only occurred two years ago.

A Yes.

Q So, if you will, sir, relax, and try to answer my question as best you can.

A Yes.

Q Don't guess. If you don't know, say so. I am asking you, sir, when this gentleman who is

seated here in court came to you, he identified himself, and he said he is going to ask you some questions, or began to ask you questions, one or the other, did it appear strange to you that after 40 years somebody was suddenly coming to you at your place of business, and suddenly asking you questions that touched upon matters so long before?

A It was not strange.

Q Did you expect them to be coming there asking the questions?

A I did expect him.

Q Pardon me?

A I did expect him.

Q Why did you expect him?

A Because at the time I received a newspaper clipping from the Herald Tribune from Miami.

Q You mean the Miami Herald?

A Miami Herald, and it was a whole write-up that my family was involved --

Q Who sent you this clipping?

A A friend of mine that knows me.

Q Somebody living in Miami?

A No. He happened to be in Miami on vacation, and he saw it.

Q So he saw a clipping in the newspaper. Did this clipping have any photographs?

A Yes, it did.

Q And did it have a photograph of the Defendant in this case?

A Yes, it did.

Q And for the record, you were just looking at the Defendant?

A Yes.

Q As a matter of fact, during the course of your direct examination, from time to time you looked over at him, did you not, sir?

A Yes, I did.

Q You saw me ask him a question, and you looked over at him, and stared at him, did you not, sir?

A Yes, I did.

Q All right, sir. Now, they sent you this clipping, and in this newspaper article, did it tell you what the case was about?

A Yes. That clipping from the newspaper was written that supposingly a policeman with the name of Koziy killed my parents.

Q Whether that -- Whether a policeman by the name of Koziy killed your parents, you don't know?

A I don't know.

Q How long was it before you received this visit at your place of employment that you received this

newspaper clipping?

A Please repeat the question.

Q How long after you received the newspaper clipping did you receive a visit from someone at your place of business?

MS. COLEMAN: Objection. Assuming facts not in evidence.

THE COURT: Objection overruled.

Q Did he come to your place of business?

A Yes.

Q Now, let me ask you again, how long after you received the newspaper clipping did this gentleman come to your place of business?

A I would say six months later. Maybe four months. I don't recollect exactly.

Q When the gentleman walked in, did you tell him you got a newspaper clipping, and you expected to see him at some time or another?

A No. The truth is that I wrote to Mrs. Holtzmann about the newspaper clippings, and she in turn probably sent Mr. Fusi.

Q I see. This was after the newspaper clipping, or before?

A After I got a newspaper clipping.

Q For the record, when you refer to Mrs. Holtzmann, who are you talking about?

A She had that department.

Q She what?

A She had that department that I was supposed to send the clippings.

Q Are you talking about Elizabeth Holtzmann?

A Yes.

Q Do you belong to any organizations with whom persons within that organization you discussed who you should contact about this?

A I don't belong to any organization, but I happen to knew that she is taking care of those things, and I wrote her a letter.

Q What did you write to her?

A I wrote her she should see, to continue to investigate this matter that I see in the papers.

Q You mean about Mr. Koziy?

A Yes, sir.

Q Do you believe from what you read in the newspaper that Mr. Koziy did the things that it said?

A No.

Q As a matter of fact, even to this day, you don't know that?

A I don't know that.

Q But you wanted Mrs. Holtzmann to continue with this investigation?

A Yes.

Q And did you say at that time that you would be happy to be a witness in this case?

A If need be.

Q Okay. All right. When you had the visit in 1979, from the gentleman you have identified, did he show you any photographs?

A He did.

Q And did he ask you questions about the Ukrainian police?

A Yes.

Q You told him, did you not, sir, that the name of Bohdan Koziy meant nothing to you? Didn't you tell him that?

A Yes.

Q Did he tell you how old Mr. Koziy was, or when he was born?

A I was reading all that in the papers.

Q In the newspaper?

A Yes.

Q After you received this visit from the gentleman, did you receive any other visits from people

in regard to this case?

A Yes.

Q From whom, sir?

A Different people came.

Q Like who?

A I think this gentleman sitting here in the corner came to me.

Q You don't know his name?

A His name is Mr. Wolf.

Q Okay. Mr. Wolf came to see you?

A Yes, sir.

Q Where -- First of all, when did he come to see you?

A A few months ago.

Q Did he take a statement from you?

MS. COLEMAN: Objection. I would like counsel to define what he means by statement. It is a term of art.

MR. CARLTON: Let me rephrase the question. Did he write down what you said?

MS. COLEMAN: Objection. If the witness knows.

MR. CARLTON: Of course.

THE COURT: Objection overruled.

Q Did you see him write down what you

were telling him?

A Whatever I said, he wrote down.

Q Did you sign anything?

A No.

Q And did you tell him anything any different than what you told the other gentleman that you saw in 1979?

A I guess I said the same thing, but as long as you talk about it, you keep remembering more.

Q Did Mr. Wolf give you any details as to what this case was about?

A Mr. Wolf just asked me questions, and I answered them. I didn't ask what it is about. I figured myself out that this is going to be probably a trial.

Q And then after speaking with Mr. Wolf, who did you speak to?

A Miss Coleman.

Q At the same time?

A At the same time. Yes.

Q And then after that, who did you speak to?

A After that, I don't recall anybody else.

Q You made a drawing that looked like a W. This was Plaintiff's Exhibit 29. I will get to that in

a little more detail, but did they ask you about what the uniform of the Ukrainian policeman looked like when they came to see you?

A Yes, they did ask.

Q Did they ask you if it was navy blue?

A No. They asked me what color it was.

Q And what did you tell them?

A That is was navy blue.

Q Well, the uniform of the Ukrainian police wasn't exactly navy blue, was it?

A A little bit lighter than the navy blue. Light.

Q As you look around this courtroom, Mr. Kandler, and see if you see a color, either that you are wearing, or someone else may be wearing that is close to the color of that uniform.

A Yes, that lady has, I think. A little lighter. Something like that.

Q You are talking about the stripes here?

A A little shade less, or lighter, or darker, wouldn't make any difference.

Q Well, it may to me.

A It is about, sir, this color.

Q About that color?

A Yes, sir.

Q You wouldn't say it was as dark as what Mr. Wolf is wearing here?

A No.

Q Or Mr. Kozy is wearing sitting at that table?

A I answered you, that is the closest color that I remember.

Q All right. Why don't you describe this uniform to us as best you can?

A It was a uniform like any other uniform.

Q Yes. You agree with me, would you not, sir, that the West Point cadets wear one type uniform, United States Marine Corp wear a different uniform, and the Boy Scouts wear something entirely different.

Would you, sir, describe the uniform that you claim the Ukrainian police wore?

A In detail, 100 percent, I don't recall what kind, but I can draw a picture.

Q We will get perhaps to your drawing in a moment. When was the first time, sir, that you ever saw anyone wearing a uniform that you believed to be that of the Ukrainian police?

A After the Germans came in, to a week

or two weeks later, I did see uniform police.

Q When was that, sir, do you remember?

A It was in 1941.

Q And do you remember the month?

A I guess in September.

Q About September, '41?

A '41.

Q All right. So you say in September, '41, is when you first saw, or at least two weeks after the Germans came in, you first saw a uniform of the Ukrainian police officer?

MS. COLEMAN: Objection to the form of the question. The witness said about '41. This is mischaracterizing the testimony.

MR. CARLTON: I thought I was being fair by saying two weeks after the Germans came in.

THE COURT: Objection overruled.

Q Now, when was the last time that you saw a uniform that you believed to be the Ukrainian police uniform?

A The last time, you ask me, sir?

Q Yes, sir.

A Saw them all the time.

Q I understand, but there came a time when you didn't see that uniform anymore, isn't that so?

A Yes, sir.

Q When was that?

A When I ran away to Stryj, and then I went to the woods.

Q You ran away to where?

A To a neighboring city.

Q You can say the city again.

A Stryj.

Q And then into the woods?

A And into the woods.

Q My question was, when was that? What was the approximate date?

A When I ran into the woods?

Q When you left, and the last time you saw that uniform.

A It was about in the end of August, 1943.

Q And you started to say that during this period of say approximately September '41, through August '43, or approximately two years, you would see this uniform constantly, would you not?

A From 1941, you say, to when?

Q To August of '43.

A Yes, I did see it.

Q How often would you see it? Every

day?

A Almost every day, because I walked around the streets, in the Gentile section, and I did see police. I tried to avoid, but I did see them.

Q You related an incident that occurred at a railroad station, and you related an incident that occurred sometime after when a person was asked to see documents, you remember that?

A Yes.

Q During this two year period, did you personally have any other incidents with individuals that you believed to be Ukrainian police?

A They did stop me in the city, too, several times.

Q Ask for identification?

A Asked for identification.

Q And it was required, was it not, that you have identification?

A Yes.

Q The same here in the United States, it is required if you drive an automobile, to have a driver's license?

A True.

Q Or if you go out of the country, you have to have a passport?

A True.

Q All right, sir. Now, would you be kind enough to tell me, you saw these police officers many times during the day, or just once or twice?

A I did see them often, because I was working on the outside, I am talking about.

Q In approximately 730 days that you saw them, they would be in uniform, would they not?

MS. COLEMAN: Objection to the form of the question.

THE COURT: Objection overruled.

Q They would be in uniform, would they not?

A They were.

Q As a matter of fact, you told us that you tried to avoid them?

A True.

Q Okay. Now, having seen them so many times, and various times during each day of those two years, would you describe the uniform other than the fact that it was navy blue, or a little lighter, approximately the color of the young lady's stripes on her blouse, or shirt, would you describe it for us.

A Didn't I say that it is similar to that lady that she wears that blouse. That was the color -

similar. A little lighter; a little darker. It didn't fall into my mind to remember.

Q We covered that. I appreciate your telling me. Can you tell me something else about the uniform?

A Yes.

Q Go ahead.

A The hat --

Q Okay.

A -- had a yellow band around.

Q In your direct examination, you told us that the uniform had yellow markings.

A Markings.

Q It had a yellow band around it?

A Yes.

Q Are you talking about a solid yellow band?

A Around the hat.

Q About how wide was this band, sir?

A I would say about an inch and a half.

Q Could you raise your hand up?

A About an inch and a half.

Q For the record, you are indicating about two inches, and I don't want to tie you down to something you don't remember.

MS. COLEMAN: Objection.

MR. CARLTON: You are saying somewhere around an inch and a half?

THE COURT: Objection overruled. Go ahead.

Q Can you describe the cap to us?

A The cap was a round cap.

Q Okay. Just a round cap?

A Yes.

Q Any other distinguishing feature about it?

A Yes, on the cap, they had that W that I marked down.

Q Do you know what that W stood for?

A I have no idea.

Q Are you Ukrainian?

A I am Jewish, but I lived with the Ukrianians together.

Q When you say you are Jewish, you are not Polish; you are not Czechoslovakian; you are not Ukrainian, you are Jewish?

A Yes, I am.

Q I understood being Jewish was referring to a religion, as opposed to a nationality, am I correct?

A You are correct.

Q Okay. Do you speak Ukrainian?

A I used to speak perfect Ukrainian.

Q Getting back to the W, you said you don't know what that stood for. As long as we are getting into that a little bit, Plaintiff's Exhibit 29, this is the diagram that you made, and of course, the lines, it has already been indicated are straight, and that is fine, don't worry about that; but I notice that on the top of each line you have drawn what appears to be an arrow. That was not because you were nervous, was it?

A That is how I remember it.

Q With a little arrow on the top of each of the points?

A To tell you the truth, I did not pay attention how it looked altogether, but I think it was something like that.

Q You say you didn't pay attention. You mean you didn't pay attention to what they had on their cap?

A I remember that that was something, an ornament on the cap, sir.

Q Did the Gestapo wear a uniform?

A Yes.

Q Did they have anything on their cap?

A Yes.

Q What did they have?

A They had a cap, too --

Q I understand.

A -- and oblet around with a skull - death skull.

Q And there is no forgetting that?

A No.

Q And would you say, sir, since you didn't pay a whole lot of attention to the marking on the cap of the Ukrianian police that you are not exactly sure what the markings were?

A What it mean, I don't know, but there was a marking.

Q I already asked you what it means, and you already told us. I am asking you whether you are certain as to what the markings were on the cap.

MS. COLEMAN: Objection. The witness has already answered. We have been over this three times.

THE COURT: I think it is clear. I will allow the question.

Q Go ahead, sir.

A Sir, there was a marking, but I don't know what it mean at the time.

Q All right. I am not on that any-more. I am asking you, do you know for sure what the marking was on the cap?

A No.

Q All right. What else did you notice about the uniform, if anything, other than what you have already told us?

A It was a uniform like a policeman is wearing.

Q When you say like a policeman is wearing, policeman, well, you have already told us that you have business in New York. Like a New York policeman?

A You mean -- They wore a belt.

Q Anything distinguishing about the belt?

A It was a belt on the side. They used to have, some of them, a gun.

Q We will get to the gun.

A And a rifle, they carry.

Q Was there anything distinguishing about the belt - anything unusual about the belt?

A Unusual about the belt?

Q I am not suggesting there is. I don't know.

A If you want me, I should guess something -- I didn't pay attention to the belt.

Q All right. You didn't pay attention to the belt. Did you pay attention to the shirt, pants, or

shoes? Did you pay attention to any of those things? What is your answer, sir?

A Sir, I can only say that these were policemen. I did not pay attention if they wore sandals, or boots, or shoes, or whatever. They were policemen with a rifle, and if you saw a policeman with a rifle, you get scared right away.

Q Is what you are saying, sir, that You saw various people wearing similar clothing carrying a rifle, or maybe a hand gun, and it made you believe that they were policemen?

A No. I am not saying that.

MS. COLEMAN: Objection.

THE COURT: Objection overruled.

A I am not saying that.

Q What are you saying?

A I am saying that the policemen wore rifles.

Q Carried rifles?

A Carried rifles.

Q All right.

A And they had fairly strong boots -- Shoes.

Q They had shoes?

A Shoes. Good shoes.

Q I thought you just told me you didn't pay attention to whether they were wearing --

A They couldn't go barefoot.

Q Let me ask you the question: I thought I understood you just said you didn't pay attention to whether they were searing sandals, shoes, boots, or what they were wearing. Didn't you say that?

A I did say.

Q All right. And that is a correct statement, isn't it?

A No. It is not.

Q What is a correct statement?

A The correct statement is they wore a uniform; they wore a belt; they had a rifle. Some of the police, they had guns, and they wore not boots, but shoes, and they had a cap.

Q And a cap?

A Yes. What else should they wear?

Q What else did you mean, sir, when you told us approximately five minutes ago you didn't know if they wore sandals, shoes, or boots, you didn't pay attention? What did you mean by that?

MS. COLEMAN: Objection, your Honor. This is argumentative. We have been over this.

THE COURT: Objection overruled.

Q Go ahead, sir.

A Sir, they had to wear some shoes, don't they? I am asking you. They didn't go barefoot.

Q So, because you assume they didn't go barefoot, therefore, you assume they had some foot covering, but you really don't know what kind of foot covering they had, is that right?

A No. I can testify that they had shoes --

Q All right.

A These are half shoes.

Q You had figured if I was going to see if you were barefoot. All right. These are half shoes. Mine are half shoes, too, I guess.

A Right.

Q I know who does have half shoes. I remember yours. Okay. I am glad you wore them. I want to put them in evidence.

Mr. Kandler -- Mike, let me make you an exhibit.

A Sir, I will explain to you, they had shoes up to here (indicating).

Q Okay. For the record, you are indicating now. The Court has to see what you are doing, and can't see.

A Full shoes.

Q Why don't you step out here, if I can trouble you, and do the same thing for the benefit of the Court.

A They had shoes up to here (indicating.)

Q For the record, you are referring to shoes above the ankle bone?

A Right.

Q And then tied up in front?

A Yes.

Q Thank you, sir. All right. One final question about the uniform, and I will certainly move on. Is there anything else you can remember about it.

A If you would lead me to it, I will answer you yes or no.

Q If I would lead you to it?

A Yes.

Q Only the Government leads you to it.

Now, you mentioned in the course of your testimony you had two names for the police. Do you remember that? One you called them police, and one you called them militia.

A Right.

Q How do you say that in Ukrainian?

A Militzia.

Q Now, were there any difference between the militzia, and the police?

A No difference.

Q Both the same?

A Yes, sir.

Q Did you ever see any group or organization known as the Ukrainian militia, or militzia?

A At the time I wasn't playing any politics.

Q So, therefore, you think that seeing the Ukrainian militzia is a matter of politics?

A No. I don't say it is a matter of politics. There was a police and militzia, the same thing.

Q I assume you are now active in politics in some way, aren't you?

MS. COLEMAN: Objection.

THE COURT: Objection sustained.

Q Now, Mr. Kandler, did you ever hear of the Bahnschutzpolizei?

A There was.

Q They wore a uniform?

A Yes.

Q What color?

A If I correctly remember, it was a

bluish-greenish color.

Q On the bluer side? Not light blue?

A A little dark blue.

Q A little dark.

A Bluish-greenish, yes.

Q Did they have any caps?

A Yes, they had caps, but not round ones, like --

Q Like overseas caps?

A Yes, like that.

MS. COLEMAN: Objection, your Honor. I believe that Mr. Carlton, because he placed overseas caps in the record, better put in the record what he means by an overseas cap, or at least explain it to me.

THE COURT: If he doesn't choose to do so, you can do that on redirect.

MR. CARLTON: Why don't I let the witness do that. Would you describe it, please?

THE COURT: The term "overseas cap".

Q What do you mean by -- I mentioned the word first. What do you describe the hat as being?

A They did not wear a regular round cap. They used to have two ends, and the middle, like a --

Q Is it a cap that you can put over your belt?

A Yes.

MR. CARLTON: Do you know what he is talking about?

By the way, Mr. Kandler, have you ever been in Russia?

A I was occupied by Russia for two years.

Q This is prior to the Germans coming in?

A Yes.

Q Other than that, have you ever been in Russia?

A Never.

Q You made mention earlier about a document that was given to you by some friend of yours?

A Right, sir.

Q You referred to him as a Gentile friend?

A Yes, sir.

Q May I see that document again, please?

MS. COLEMAN: It was withdrawn because Mr. Carlton objected to the document.

MR. CARLTON: It doesn't mean I can't ask to see it again. I may want to introduce it.

MS. COLEMAN: You can't. It wasn't on the exhibit list, Mr. Carlton. That is why it was withdrawn.

THE COURT: Let him see it if he wants to. Show it to Mr. Carlton, if you please.

MR. CARLTON: Thank you. I won't tear it any more than it is already torn.

Did you go anywhere with that document, sir?

A Yes.

Q Where?

A With that document, I received a job.

Q Where?

A In Stryj.

Q The place you went to?

A Yes, sir.

Q Is this document in the same form as it was when you received it?

A Yes, sir.

Q Both front and back?

A Front and back.

Q Can you tell us what language the back of this is written in?

A It is Ukrainian.

Q Anything written in Russian on this

document?

A If it is Russian, I didn't read it.

Q How long did you have this document in your possession?

A Since 1943.

Q So having this in your possession since 1943, until September, you never looked at the back of it?

A No.

Q When you got this document from your friend, you were concerned, were you not, that this document was going to be of value to you so that you weren't stopped, isn't that so?

A No. The reason that it was, it is written something here in Ukrain --

Q We will get to that. I didn't ask you about that.

A To make it stronger.

MS. COLEMAN: Would the witness please be allowed to complete his answer?

THE COURT: Yes, let him finish his answer.

Q Go ahead.

A The reason some newspaper is pasted onto the back to make it stronger.

Q I understand. I assume that. Who pasted the newspaper on the back?

A My friend gave it to me as you see it.

Q And you say you never looked at the back until I just now called it to your attention?

A No. I didn't have the need to look in the back.

Q My question was, until I called it to your attention, in approximately 40 years or 38 years, you never looked at the back?

A No.

Q What language is the back of that written in?

A Looks like it is Ukrainian.

Q It is Russian, isn't it?

A No. It is not.

Q Are you sure?

A Russian and Ukrainian is very similar.

MR. CARLTON: Excuse me a moment, your Honor.

Now, Mr. Kandler, I notice while I have been conferring with Mr. Koziy, you have been looking at the back of that document?

A Right now, yes.

Q Right. You testified earlier that you spoke Ukrainian fluently.

A At the time, very fluently.

Q When this gentleman, your friend, handed you this document, you could read what it said on the document, couldn't you?

A It is written here in Polish, where I was supposed to know what it is.

Q And on the back, you could read that if it was written in Ukrainian, couldn't you?

A At the time I could. I still can read now.

Q What does it say?

A Must be something from a newspaper.

Q Yes, I know, you told us that. What does it say, sir?

[illegible] You read Russian?

A Yes, I do.

Q What --

A It is Russian, not Ukrainian.

Q I thought you told us a few minutes ago it was Ukrainian.

A I did not read it. I just started to read this minute the whole document here.

Q It is Russian?

A Yes.

Q And your friend gave you this attached, and it was attached to a Russian newspaper, right?

A Yes, sir.

Q What was the --

A Like this.

Q What was the purpose of that document when you received it?

A That is the purpose that I was born a Gentile.

Q In case the Germans stopped you, it would prove you were born a Gentile, and not Jewish?

A Also Ukrainians, if they stop you, I should show them I am a Ukrainian.

Q And you are not Jewish?

A That's right.

Q Mr. Kandler, were the Germans fighting the Russians during the second World War?

A The Germans were fighting the Russians during the second World War. Yes.

Q Weren't you concerned, sir, if you showed the Germans a document to show that you were a Gentile, that you were not Jewish, that they might be suspicious of you having a Russian newspaper pasted to the back of that document? Didn't you think that would get you into a lot

of trouble?

A I must tell you that I see that newspaper just now. I didn't see previously.

Q This document was your passport to your life, to living, isn't that so, sir?

A Absolutely true.

Q And you are telling us that taking this document, which was so valuable to you, you never bothered to look at the reverse side of it?

A No. I didn't bother to look. This is important to have it, in the front; not the back.

Q What do you think, sir, would have happened to you if you had shown that document to a German police officer, or to the Gestapo, and they found a Russian newspaper pasted to the back? What do you think would happen to you then?

A Nothing --

MS. COLEMAN: Objection. Calls for speculation on the part of the witness.

THE COURT: Overruled.

Q Did you answer "nothing"?

A Nothing would happen, because the Germans wouldn't know if it was Russian; Ukrainian.

THE MARSHAL: Come to order, please.

Q The German Gestapo would not know

whether or not this was Russian on the back of that document?

A If they would interrogate you, they would know that this document is pasted on with some kind of a newspaper.

Q And they wouldn't know that was Russian?

A Not immediately. Not immediately. They would see this here, as a matter of fact I received job.

Q I didn't hear that.

A When I went to Stryj as a Gentile, I had to show this, and they gave me a job.

Q Did you show it to the Germans?

A I showed it to the owner of that factory.

Q Was he German?

A He was a Volksdeutsche. That means half German; half Czech.

Q Did you ever have to show it to the Gestapo?

A Never.

Q Did you ever have to show it to anybody other than from the person from whom -- Strike that. Who you sought employment from?

A I didn't have to show to anybody. Only where I sought employment from.

MR. CARLTON: May I approach the witness?

A It was a very, very important document for me at the time.

Q It was, was it not?

A Exactly.

Q Despite the fact how important it was, and you still considered it important, you carry it around in a plastic bag. You never read the back, and saw that you were carrying around a Russian newspaper?

A I had no need to read the back.

MS. COLEMAN: May the record reflect that the Defendant is examining the document, and pointing to certain portions of it with a pen.

MR. CARLTON: The record will reflect that he is allowed to do that, too, I think.

THE COURT: Yes, yes, move along, if you can.

Q Mr. Kandler -- Keep it open now.

A Okay.

Q Mr. Kandler, let me refer you, sir, to the red stamp across the face of that document. Do you see that?

MS. COLEMAN: Your Honor, at this point I have to object. This document was withdrawn from the Court because Mr. Carlton objected to its admissibility. He objected

to having it marked, and for that reason, Mr. Carlton is precluded from examining the document any further in his questioning.

THE COURT: Objection overruled.

Q Mr. Kandler, do you see the red stamp?

A I do see the red stamp.

Q What language is it written?

A It says passport. The other, I can't make out because I don't see the full reading.

Q Isn't it a fact, sir, on the front of that document, stamped in red at an angle across the document, approximately two inches, it is written in Russian?

A The whole document is written, to me, in Polish.

Q I am asking about the red stamp, sir. Isn't it a fact that stamp is in Russian?

A It says passport. Passport means in Ukrainian, and Russian, the same thing.

Q You are saying that the word "passport" in Russian is identical to the passport in Ukrainian?

A Yes.

Q And it is written identically the same?

A It is written about the same, yes.

Yes, the same.

Q About the same?

A No. No. The same.

Q Identical? Is the Cyrillic alphabet in Russian the same as Ukrainian?

A Sir, I would like to tell you something. The passport is the same as in Ukrainian, and in Russian, the same way.

Q My question to you, sir, was: Is the Cyrillic alphabet identical in Russian, and Ukrainian?

A It is written the same way.

Q How do you know if you are reading Russian, or Ukrainian, if it is written the same?

A That is what I say. You don't know if it is in Ukrainian, or in Russian.

Q Mr. Kandler, you took this document, and that red stamp is written in Russian, and you showed this document to the Gestapo, do you still say you wouldn't be in a lot of trouble?

A No, I wouldn't.

MS. COLEMAN: Objection.

MR. CARLTON: Why not?

THE COURT: Objection overruled.

Q Why wouldn't you be in a lot of trouble?

A Because I show them where I was born, and that I was born, and I had a name, and that is why they would not be in trouble, unless they would investigate me. Truely at that time, they would find out that I am not a Gentile, but a Jew.

Q You mean that the only thing the Gestapo was interested in was whether you were a Gentile, or a Jew, and they weren't concerned of whether you were a Russian or not?

A The Gestapo?

Q Of course the Gestapo.

A First of all, I did not have that experience to go to the Gestapo, but even if they would take me, I would say I am a Ukrainian. Plain talk.

Q When you produce this document that I refer to as your passport to freedom, and to live --

A Right.

Q -- and it is stamped across it in Russian, you didn't think you were going to get in a lot of trouble?

A I don't think so. That document was issued a long time, 1921, as you see, or 1938, '36, whatever. That piece of paper saved my life, that I am alive, sitting here telling you the whole story.

Q How did it save your life?

A Because I received the job. If I didn't have a job in that city, who knows what it would be with me.

Q But it didn't save your life because you had to show it to anybody, other than your potential employer?

A I did not show it to anybody.

MR. CARLTON: Your Honor, we ask this be marked for I.D.

THE COURT: Let's mark it for I.D. Call it Defendant's Exhibit number -- Have you got your exhibits prenumbered?

MR. CARLTON: I think we do.

THE COURT: According to the list you have given me, you have 7 exhibits. We could call this number 8.

MS. COLEMAN: Your Honor, the original, of course, will not be marked?

MR. CARLTON: We ask the original be marked --

MS. COLEMAN: Absolutely --

MR. CARLTON: Excuse me. The portion I have been spending time cross examining on has been in red, and you will not be able to note this, or appellate court couldn't note this if we had a photostat.

THE COURT: How about Xeroxing it, and

then enter a stipulation.

MR. CARLTON: Why don't we Xerox it, and -- I don't want to take it from the gentleman, but let's try and Xerox it.

THE COURT: Let's put a paperclip on it.

MR. CARLTON: Would you put that back in the envelope. Be sure not to tear it.

THE WITNESS: It is almost gone.

MR. CARLTON: I realize it, that is why you should be careful with it.

(Thereupon, said document was marked as "Defendant's Exhibit 8 for Identification" by the Court.)

MR. CARLTON: Mr. Kandler, you went into some detail earlier this morning relative to Soviets coming in to Stanislaw. Now, prior to the Soviets coming there, Stanislaw was under the control of what government?

A Poland.

Q That is when you came there? It was under the control of Poland?

A No, I came as I was a little child, 1918 there was a war, and I happen to be born in Czechoslovakia because the war went down in that region.

Q When did you move to Stanislaw?

A We moved right away. My father evacuated and came back. It was so happen I was born in

Czechoslovakia.

Q Your family moved to Czechoslovakia in '34 or '35?

MS. COLEMAN: Objection.

THE WITNESS: No.

THE COURT: You said Czechoslovakia?

MR. CARLTON: Did I?

THE COURT: Yes.

MR. CARLTON: I meant Stanislaw. 1934, or '35, your family moved actually from Stanislaw to Lisets?

A Right.

Q When did they move to Stanislaw?

A What year?

Q Right.

A From where?

Q No. What year?

A From where?

Q You tell me from where.

A To Stanislawow where they move?

Q Right.

A What I wanted to tell you, sir, I was born in Czechoslovakia.

Q I understand.

A My parents evacuated the region only because there was a war at that time, and it so happened that

I was born there, and right away, a year or two after the war, my parents came back to Stanislawow.

Q That is what I want to know.

A That is right.

Q And then they continued living in Stanislaw until they moved to Lisets in 1934 or '35, is that so?

A Not so. Prior to that we lived someplace else. That means we lived in Stanislaw all the time, but my family had a flour mill someplace else.

Q Then they opened a flour mill in Lisets?

A Right.

Q When was that?

A 1934, we build it.

Q The correct term is a flour mill; not a water mill, is that right?

A That is exactly right.

Q And then along came the Russians in 1939, and they took away all that your family had worked so hard for?

A Exactly.

Q They allowed you to work there as an employee, so to speak, but they nationalized the business, and no longer could you call it yours?

A True.

Q Do you feel that you were being oppressed by the Russians?

A Yes.

Q And you weren't the only one that was being oppressed by the Russians, were you?

A No.

Q What else was nationalized other than your family's flour mill?

A You mean in Lisets?

Q If you know, in Lisets.

A The Russians nationalized a lot of industries in Stanislaw, but in Lisets, our flour mill was the biggest.

Q What about the farms?

A Yes, if somebody -- If there were very rich Ukrainians with a lot of fields, they also took it away from them, and they gave them a number.

Q Well, were people persecuted by the Russians?

A I wouldn't say they were persecuted, but you could not live in the big city.

Q It come times when some of the people living in Lisets or Stanislaw were called in for questioning by the Russians?

A Yes.

Q Were you or any members of your family called in?

A My father.

Q What happened to him?

A They gave him a number 11.

Q What does that mean?

A A passport. A passport that he cannot live in the city of Stanislaw. Only in a region city.

Q Did he suffer any physical harm?

A Besides they took away from him the business, he didn't suffer any.

Q So, actually, your family to one degree or another were suffering under both the Russians at one time, and then you were suffering under the Nazis, or the Germans, isn't that so?

A Under the Nazis, we suffered much more.

Q You had gone into some of the details to that, but you were suffering under both governments, were you not?

A I wasn't suffering under the Russians, but my father could not live in a big city.

Q When you moved into Lisets, how old were you, sir?

A I was at that time 16 years old.

Q And did Lisets have a government --

MS. COLEMAN: Objection. What time?

MR. CARLTON: Did Lisets have a government when you moved into Lisets at the age of 16?

A Yes, they had a government.

Q Did they have a mayor?

A I guess it must have been a mayor.

Q Did they have other delegates in the government, other than the mayor?

A There was -- Police were there.

Q All right. What kind of police?

A There were Polish police.

Q Okay. And were the police for the purpose of maintaining law and order?

MS. COLEMAN: Objection, unless the witness knows. Call for a conclusion.

THE COURT: Objection overruled.

Q Go ahead, sir.

A Yes, sir. Police maintained law and order.

Q Okay. And in 1936, right through '37, '38, so forth, did Lisets continue to have a mayor?

A Lisets had a mayor.

Q Lisets had a mayor just like every

city - West Palm Beach? I understand even New York has a mayor?

A Right.

Q And that Lisets continued to have a mayor at all times, isn't that so?

A It is so.

Q Who was the mayor in 1935?

A I did not pay attention to those things.

Q Who was the mayor in 1936?

A Sir, in those things, I was still a young boy. I did not pay attention who is the mayor, and who is governing anything in there. I was a student.

Q When did you cease being a student, sir?

A 1934.

Q When you were 16?

A Yes.

Q After you were 16, did you pay attention to those things, sir?

A No, sir.

Q Did you pay attention to those things at any time?

A Who was the mayor by name?

Q Right.

A No, I didn't.

Q Okay. Anybody ever tell you who the mayor was?

A I didn't ask anybody.

Q Just weren't interested who the mayor was?

A Wasn't interested, exactly.

Q So even to this day -- Excuse me. Let me lower my voice.

Even to this day, sir, you don't know who was the mayor of Lisets, do you?

MS. COLEMAN: Objection, as to what point in time.

THE COURT: What point in time?

MR. CARLTON: At any time.

THE COURT: At any time, all right.

A Yes, while the occupation of the Germans, when the Germans came, they make probably -- Not probably, but surely they made up -- It was a police, and probably at that time, was a mayor, but I recall, I did not meet the gentleman. I did not know the gentleman, but I heard that his name was Ostapiak.

MR. CARLTON: I would move at this time to strike his testimony, regarding the mayor.

THE COURT: Motion to strike denied.

Let's move along.

Q You heard that the mayor was Ostapiak. Did this gentleman seated back here tell you that the man was Ostapiak, referring to the gentleman who saw you in 1979?

A No, sir.

Q Did you ever hear the name Ostapiak -- When was the first time you ever heard the name Ostapiak?

A The first time that I took interest what is going on in our city.

Q When was that?

A That was in 1941, '42.

Q You started taking an interest then. Well, do you know how the person became mayor?

A No. I don't.

Q Do you know how long the individual that was mayor in 1941, and '42 had been mayor?

A I can't answer that question, because I didn't pay attention.

Q But you paid attention to the fact that his name was Ostapiak?

A Yes, sir.

Q And other than that, you don't know anything about the man?

A No, sir.

Q And for 40 years, you remembered --

A It was --

Q Let me finish the question, please.

For 40 years you have remembered every day, to this very day, that the mayor who you didn't pay any attention to was called Ostapiak, is that what you are saying?

A I am saying that I heard that the mayor's name was Ostapiak, and it was a very known family in Lisets.

Q Known for what?

A A known family.

Q What did Mr. Ostapiak do for a living?

A He was the mayor.

Q He received a salary as mayor, and this is how he supported his family, is that what you are saying?

MS. COLEMAN: Objection.

THE COURT: Well, he can ask him if he knows. Objection overruled.

A Sir, I want to tell you that I did not pay attention to anyone --

Q Isn't it a fact that Miss Coleman, and Mr. Wolf discussed with you a person by the name of Ostapiak?

A They never did.

Q You are telling me that you met with Miss Coleman, you met with Mr. Wolf for how long? What period of time? How many hours?

A How many hours?

Q Right.

A An hour at the most.

Q An hour at the most. You met with this gentleman back here in 1979. How long did you spend with him?

A Also about an hour, hour and a half.

Q All right. We are now talking about approximately two and a half hours discussing this case, and at no time in the two and a half hours did anybody mention the name of Ostapiak to you?

A Maybe they mention, sir, to me, but I did not recall to remember Mr. Ostapiak.

Q I thought you just said they didn't mention that name to you?

MS. COLEMAN: Objection. He is argumentative.

THE COURT: Objection sustained. Let's get the answer, and go on.

Q What did Mr. Ostapiak look like?

A I don't know. I never met the

gentleman.

Q Where was the mayor's office in Lisets, if you know?

A I think I remember it was a little house on the righthand side coming up from the river, to the Rhine.

Q And this was the official office of the mayor?

A I think, yes.

Q You mentioned something about there being a police department, or police force.

A Yes.

Q Okay. Was there a police force in '39, '40, '41, '42, right on through the German occupation?

A Yes.

Q And I don't want to get into this uniform thing, but they wore the same uniforms, is that what you are saying, all during that period of time?

MS. COLEMAN: Objection, your Honor.

THE COURT: Objection sustained. Now, we talked about uniforms enough, I think.

Q Now, did they have a police station?

A Yes, they have.

Q Where was that?

A The middle of the town.

Q And have you ever been --

A Off the middle of the town, 100 to 150 yards.

Q Off the middle of the town. Have you ever been inside the police station?

A Never.

Q Ever been outside the police station?

A Yes.

Q What did it look like?

A It is a nice strong building.

Q Okay. Anyhting else?

A Maybe 10, 15 rooms, tops.

Q How do you know it had 10, 15 rooms?

A Because I am judging from the size of the building.

Q Did you notice anything else about the building you can tell us?

A Besides how it was built?

Q Well, you told us it was a strong building.

A Yes.

Q Other than the way it was built.

A The way it was built, I really don't know how it was built, from bricks, or from cement, or whatever. It is a big building. It is a fairly size building

for the town of Lisets.

Q Sir, is there anything else about the police station at all that you could remember other than the fact that it had a building, and you described it as you have? Anything else about that building you remember?

A What can I tell you, sir, about the building? I am not a builder myself, and I don't know. It was a building. I know exactly where it was located, and I remember the size of it, but what went on inside, I never had the opportunity to see, thank God.

Q When did you leave Lisets?

A When I left Lisets, in 1942. In the middle of the summer.

Q Did you ever hear of anybody by the name of Singer?

A Yes, I remember. There was a doctor of our town.

Q Did you ever discuss with Miss Coleman, or Mr. Wolf, Dr. Singer?

A They asked me if I remember his name, and I said yes.

Q Is that all you could remember about him?

A I remember his wife, too.

Q Anything else?

A Ask me, and I will answer you. I don't know what you mean by that.

Q All you remember about Dr. Singer, you remember him, and you remember his wife, is that correct?

A Yes.

MS. COLEMAN: Objection. That is not what the witness said. He asked Mr. Carlton to ask him specific questions about Dr. Singer.

THE COURT: Objection sustained. The question, do you remember anything else, is really -- Well, it isn't very helpful. It is not an improper question, I suppose.

Q You described to us the police station, as best you could, and where it was located. Where was that in relation to the Jewish cemetery?

A In relation from the Jewish cemetery, you want to know if it is north, west, or east?

Q How far away?

MS. COLEMAN: Your Honor, at this point, I hate to interrupt, we have spoken of at least two Jewish cemeteries. May the question focus on which Jewish cemetery?

THE COURT: You are talking about Lisets?

MR. CARLTON: Lisets, right.

THE COURT: Well, if he understands that,

the question is all right.

Q Is there a Jewish cemetery in Lisets?

A Yes, sir.

Q Where is that located?

A Where it is located?

Q Or where was it in 1941, and '42?

A In the northern part of Lisets. From the police station, to the north.

Q To the north?

A Right.

Q How far away?

A When you came to the water, it was the end. Must have been, I would say, 5, 600 yards, something like that.

Q Was there a Jewish cemetery in Stanislaw?

A Yes, it was.

Q Where was that located?

A Stanislawow, we had two Jewish cemeteries. One was located -- Shall I tell you the street?

Q If you can.

A Yes, I remember. On Sapiezynska, Ulica. This was -- I can show you on the map, sir.

Q Why don't you go ahead and do it.

A And also a new cemetery.

Q Why don't you show me on the map where the Jewish cemetery was.

A (Witness complies.)

Q What were you about to say, sir?

A This was the old cemetery.

Q And where was the new one?

A The new one was over here (indicating).

Q All right. Wait a minute. Come down. I would like you to mark it, please. Would you make an X for the old cemetery, and put an X-1 to indicate the old cemetery. Just put a 1 next to it.

A (Witness complies.)

Q That is fine. Would you put an X where the new cemetery was, and put a little 2 next to it.

A (Witness complies.) Yes, sir.

Q By the way, so we can just complete about this map that we got up there, you have made a line in blue indicating what I believe you meant to be the outside, or outer edge of the ghetto, is that right?

A Right.

Q What about on the far side - the side nearest to where it says Stanislaw? Is there an end of the ghetto on that side, too?

A Right. That was the river.

Q Okay. I guess we will have to use it in red. Oh, beautiful, thank you, sir.

Mr. Kandler, would you step down here and draw the other side to where the ghetto is. I will hold this for you.

A Draw the line?

Q First of all, show the Court, and I would like you to step around. Would you show the Court where the river is that you are referring to?

A That is the river flowing from Lisets up here. That is the river (indicating).

Q Along here where I am pointing?

A Yes, sir.

Q Would you draw a blue line along the edge to show where the ghetto ended?

MS. COLEMAN: Objection, unless that is where the ghetto ended.

THE COURT: He said it ended at the river, and he is pointing and putting a line at the river?

A That is right.

A This was the river.

Q No. The ghetto.

A The ghetto ended -- One moment. The ghetto ended right here (indicating). That was the ghetto.

Q All right. Thank you, Mr. Kandler. Have a seat. So that the record is clear, all of this enclosed by what is now your blue lines constituted the ghetto?

A That is within 90 percent region.

Q Okay.

A If it is less or more, it is irrelevant.

MR. CARLTON: Your Honor, I am going into a new area.

THE COURT: How much more have you got to go on cross?

MR. CARLTON: About four more pages of testimony. I will in the lunch break -- I am going to try to break it down.

THE COURT: Okay. Well, it is about time for the lunch break. We will be in recess until 1:30. If counsel will put their papers on one corner of their desks, we have a matter to handle 1:00. We will be through with it by 1:30. We are in recess until 1:30. You are not to speak to counsel about your testimony during the recess, sir.

THE WITNESS: No. Going for lunch.

THE COURT: All right.

(Thereupon, the Court was in recess.)

AFTERNOON SESSION

Commencing at 1:30 o'clock P.M.

CROSS EXAMINATION (Cont.)

Q (By Mr. Carlton) Mr. Kandler, let me direct your attention, sir, to your testimony this morning when you were referring on direct examination to a time when you hid in a closet at the home of a Ukrainian lady. Do you recall that?

A Yes.

Q When did that incident take place, sir?

A That incident took place on October the 12th, 1941.

Q And you are certain, of course, as to the date?

A 100 percent.

Q All right. I don't know that it has been covered, but could you tell us why it is that you are so certain of that particular date?

A Because that day, I heard that 12,000 people got killed, and also, it was a Jewish holiday at the time.

Q And the fact --

A And nobody expected that it should be something like that.

Q All right. Are you associating the Jewish holiday with the number of deaths, or these two separate reasons why you remember the date?

A No. That date, because at that date, 12,000 people perish, that is why it remained in my memory, and nobody expected that they are going to be killed.

Q How long was this, sir, after the time that the Germans invaded Stanislawow?

A I would say two months, something like that, in that area.

Q You don't recall, I gather, the exact date the Germans invaded?

A The Germans invaded, I think in September.

Q Well, if the Germans invaded in September, and the incident I just referred you to occurred in October, October 12th to be exact, that would be somewhere around a month later. Am I saying that accurately, sir?

A You are saying accurately, but I did not -- I did not write a diary at that time, sir. I just remember approximately at the time what it was.

Q Did there ever come a time, to your knowledge, and recollection, when there was what has been termed a Ukrainian independence, or a Ukrainian Independence Day?

A Not that I know of about it.

Q You were living in Lisets, you say from 1934, or '35, on through September of '42, and would you agree with me that many of the persons living in Lisets were Ukrainian?

A Yes.

Q And you were operating a flour mill, or at least a portion of that time?

A Yes.

Q And although you weren't involved in politics, according to what you told us, you were aware, were you not, of your surroundings, and what was happening around the town or village?

A I guess.

Q When you say you guess, were you or were you not?

A Yes, I was. I was aware of things that happened. It was a Ukrainian holiday, or a Polish holiday, or Jewish holiday. I took part in it.

Q Do you know where Lviv is?

A Lviv?

Q Lviv -- Lvov.

A Yes.

Q I am sorry. Lvov. Do you know where that is?

A Yes.

Q Okay. And being aware, Mr. Kandler, of what was going on around you, and you were aware that the Germans invaded, are you saying you had no recollection whatsoever of a Ukrainian Independence Day, or the Declaration of a Free Ukraine?

MS. COLEMAN: Objection. Asked and answered, your Honor.

THE COURT: I believe that question has been answered. I sustain the objection.

Q On the day that I have been asking you about, that is October 12th, 1941, when you looked out the window and you saw uniformed individuals who subsequently came to your place of residence, did you have an opportunity to carefully see the people that came there?

A Yes, I did.

Q Okay. You mentioned that there were Germans that came?

A On the streets.

Q There were Germans, you say, on the street. Do you know what police department, or what agency with the German government these people were with?

A They must have been SS.

Q And why do you think they were SS, sir?

A Because they usually took part in the killings of the Jews.

Q The SS did?

A Yes.

Q SS --

A With the Ukrainian police.

Q Well, did you ever actually see any of the Ukrainian police shooting people?

A When I was hiding --

Q We are talking about October 12th.

A No. I did not see.

MS. COLEMAN: Objection, your Honor. May Mr. Kandler finish his answer?

MR. CARLTON: I am not stopping Mr. Kandler. I want to pinpoint time.

THE COURT: Okay.

MR. CARLTON: When are you talking about?

THE WITNESS: October 12th I did not see anything.

MS. COLEMAN: The question was, did you ever see Ukrainian police shoot anyone.

MR. CARLTON: You started to answer before I was so rude to interrupt you, and you started to say, when I was hiding. Now, before you continue your answer, when are you talking about by way of time? When is the date, as

near as you can remember?

A When I was hiding in my hiding place on the top of the theater.

Q What you refer to as the bunker?

A Bunker.

Q Did you see Ukrainian police on that day shoot anybody?

A I did see, not only Ukrainian police, Germans.

Q Germans?

A German, Ukrainian police together working hand in hand.

Q We are going to get to that particular incident in a few minutes.

A Yes.

Q Let me go back to the incident you say was October 12th, '41. The persons that came -- First of all, how many persons came inside your residence on October 12th, '41 and said, take whatever you can carry, and be out in five minutes?

A Two.

Q These you have described, have you not, as Ukrainian police?

A Yes, sir.

Q Okay. First of all, is this an

apartment, or a home?

A It was an apartment.

Q All right. The persons who came to that apartment, were these individuals dressed in the manner which we went into in some length this morning?

A Yes, sir.

Q So whether they were the Ukrainian militzia, or the police, or what, they are one in the same, these are the individuals you are talking about?

A Yes, sir.

Q Okay. Then you went to this lady's house, at least the lady invited you in, you were hiding in the closet for 45 minutes to an hour, and you heard voices, or a voice, anyway, saying to the effect any Jews -- Are there any Jews hiding here, and the lady answered no?

A Right.

Q You -- Just between us, you couldn't tell who asked that question, could you?

A No.

Q Whether that was a German --

A They were talking Ukrainian.

Q They were speaking in Ukrainian?

A Yes.

Q Therefore, you assume that they --

A Exactly.

Q -- were what - Ukrainian?

A Ukrainian.

Q Or militia?

A The same.

Q You refer to as being the same?

A Same.

Q All right. I understand that.

All right. When you got to the ghetto, in Stanislaw, we are talking about a time two, three weeks later. You were not actually staying in the ghetto, were you, at that time?

A Not at that time.

Q How much later was it that you actually stayed there?

A That I actually stayed in the ghetto, you mean?

Q Right.

A It was about August of 19 --

Q When was it that you say you were visiting the ghetto?

A Visiting the ghetto?

Q Right.

A All the time.

Q Two, three weeks later from October 12th would have been somewhere around the 7th of November --

A I try to visit --

Q -- or the first week in November, wouldn't you agree with me?

A That what?

Q Wouldn't you agree with me when you were visiting the ghetto, this was during like the first week in November of 1941?

MS. COLEMAN: Objection, your Honor. This mischaracterizes Mr. Kandler's testimony.

THE COURT: Objection overruled.

MR. CARLTON: I don't think so. Mr. Kandler said it was October 12th, '41. Two, three weeks later he was visiting the ghetto in Stanislaw.

THE COURT: The objection has been overruled.

MR. CARLTON: I am sorry, sir. Thank you. Go ahead. Would you agree that it was about the first week in November of 1941, when you were visiting the ghetto?

A Of 19 -- No. I visited almost every week, sir.

Q You told us this morning about that people required food; how you smuggled food into the ghetto.

A Right.

Q When did you start doing that?

A When the ghetto formed.

Q And that was --

A That was after October 12th action. It formed a few weeks later in the ghetto, because they took all the Jews out from the other part of the city, and they told them to move into that particular part.

Q So, if the ghetto formed a few weeks later, or as this morning you referred to as two, three weeks later, after October 12th, 1941, that would be about the first week in November, would it not?

A Whatever it is, but it happened at that time.

Q All right. And you were not taken to the ghetto, or told to go to the ghetto at that time, were you?

A No. Because I was living in Lisets, and I was living with my in-laws in the ghetto.

Q This morning in various parts of your direct examination - by that I mean when Miss Coleman was asking you questions --

A Yes.

Q -- you referred to the Ukrainian police. For example, I think at one time you said what you refer to as the Ukrainian police accompanied the Jews to the ghetto. Didn't you say something like that?

A I did not say that they accompanied the Jews into the ghetto. It was an order from the Gestapo, from the Germans that all the Jews have to move into that area.

Q All right. You said this morning that you saw work parties of Jews, right?

A Right.

Q Who were with guards?

A Right.

Q And you then said, I did see Ukrainian police?

A Yes.

Q All right. And then you were talking about a time when some Jews were pushed into box cars, and you said there were Germans, and Ukrainian police?

A Right. It was at the railroad station.

Q Right. And then you told about an incident, about Ukrainian police taking your wife away at one point when you were up in the theater at the bunker?

A Exactly. That was in January.

Q At all times, without going through each separate incident, one by one, at all times when you are referring to Ukrainian police, you are referring to those same individuals that you tried to describe the uniform this morning,

and that you described may be in the militzia, or the police, and you think that may be one in the same, is that so?

A That is it.

Q There came a time, Mr. Kandler, when you moved from Lisets to Stanislaw never to return. Didn't you tell us that?

A Yes.

Q To use your words, you left there permanently?

A Yes.

Q Now, it is important, if you would, sir, that you tell me when that was.

A That was August or September, 19 -- 1942.

Q And you are certain about that date? Somewhere between August, and September, '42?

A Yes.

Q All right. Where was this theater that you have told us about where the bunker was in relation to your apartment?

A That theater was located at Dluga Street, corner of Rejtana Street.

Q Now, obviously I am not familiar with where those streets are. How far away is that from where your apartment was located?

A My apartment was located adjacent, attached to the theater.

Q Could you -- Well, was this theater enclosed, where the bunker was? Did it have windows?

A It was only a big room, like a theater, with a dome ceiling.

Q Okay. The theaters I have been in have not had windows.

A It did not have. I wouldn't say they had windows. There maybe was windows - a few windows for light only.

Q For light only?

A Yes.

Q All right. And when the persons arrived, and did the acts that you described this morning by taking away your father --

A In-law.

Q Excuse me. Your father-in-law, your wife, her sister, is that right, and your sister --

A Not my sister.

Q All right. I have wife, father, sister, and sister-in-law.

A Sister-in-law.

Q When that act took place, you were inside this bunker, were you not?

A Right. Exactly, sir.

Q How did you happen to be in the bunker at that particular time?

A Because I build it, and I never believe -- I never believed that nothing is going to happen, and sure enough, some Jews believe that this happened on Christmas of the Ukrainian people. Nobody believed that on Christmas is going to be an action. I believed it, that it could happen, and I went in there to sleep.

Q And how long prior to the time that your wife, and the other members of the family were taken away did you go into this bunker?

A I was sleeping there almost -- Almost every night, because certain times I wasn't in the ghetto altogether.

Q So you stayed in this bunker for safety sake?

A For safety.

Q Why didn't you take your wife into this bunker for her safety?

A I did take her many times, but she didn't believe that on holiday is going to be a --

Q So therefore you went there by yourself?

MS. COLEMAN: Objection. May Mr. Kandler

be permitted to finish his sentence?

THE COURT: Are you finished?

MR. CARLTON: Did I cut you off?

A No. That is all right. I remember distinctively how it was --

Q Okay.

A -- so I tried to persuade my wife to come with me. She did not. She wanted to stay with her father, and sister, but her mother went with me at that time.

Q All right. What time of day or night was it when these persons came and took your wife and the rest of the family away?

A It was in the morning.

Q About what time?

A About 8:00 in the morning.

Q And when was this, sir?

A When it was, in January, 1943. This was Christmas time for the Ukrainian people.

Q Okay. If you, sir, were inside this bunker, and you were in this theater as you have described to us without windows, except some windows for light, how do you know who came inside the apartment to drag your wife out?

A I did not see anybody in the apartment, but I saw from the roof that I was hiding, I had all from that hole, I looked out, and I did see.

Q You couldn't see inside the apartment, could you?

A No, I didn't.

Q When you testified this morning that Ukrainian police went inside the apartment, and dragged your wife, this is something that you didn't personally witness?

A No. I didn't; but I did see from the outside, as I say, from the roof, through a hole, who dragged them out.

Q You saw Germans downstairs, did you not?

A Yes, I did. I did see Germans.

Q All right. Now, let's go to an incident that took place when you were working at Lisets near the police - near the post office.

A Yes.

Q Near the post office?

A Yes.

Q When did that incident take place?

A This was taking place in August, about.

Q When?

A About in August of 1941.

Q August of '41?

A Yes, sir.

Q Now, this is the time when two policemen came up to you and you went through the unfortunate incident about the match, and all of that?

A Exactly.

Q Okay. You are certain about the date of August of '41, are you not, sir?

A It must have been in August, because a few weeks later -- Must have been September, maybe, instead of August --

Q All right.

A -- because a few weeks later, the Jews were driven out from Lisets.

Q Okay. So that would have been about September, '41?

A September, '41.

Q All right. So when you testified this morning that this occurred in September, or October, of 1942, you were mistaken? You meant to say September of 1941, is that true?

A No. No. '42 it was. I just -- Don't pinpoint me to these numbers, because this was in 1942. Exactly.

Q Now, maybe I didn't hear you, but I just thought I heard you say August or September '41.

A No. You probably wanted to say --

'41, wasn't that bad. In 1942, this happened.

Q You didn't just say '41?

A No, I couldn't say '41, because it didn't happen at that time. It happened in 1942, a few weeks before they threw out the people from Lisets.

Q What were you doing in Lisets at this time?

A To tell you the truth, I went there to find some food.

Q I thought you said this morning you went there because you were working there?

A Yes, I am working, too, at the same time, to prepare some food to smuggle into the ghetto.

Q You had to go to Lisets to find the food?

A Yes, because --

Q You were staying in Stanislaw at this time, were you not?

A Yes. The reason I went to Lisets is because all my friends who knew me, and all the good people who knew me, gave me food.

Q Well, where in Lisets did this incident take place about the cigarette?

A It took place not far from the post office.

Q Can you tell us the street so that we can place it in our minds?

A The post office was located on the same side as the police. From the post office was about 3, 400 yards.

Q There is only one post office?

A Only one.

Q All right. How long did this entire incident last where you saw these two men, they asked you to produce some documents incident with the cigarette, and so forth? Without going into all the gruesome details, how long did that last?

A Lasted 10 minutes.

Q They ask you -- Both of them came up to you. Which one of them asked you for your documents?

A Either one could have asked me for the documents.

Q Had you ever seen either of these individuals before?

A Never.

Q So, it would likewise be true all the time you were living in Lisets, you had never seen either one of those individuals before, isn't that true?

A A personal contact with two police-men I had only twice.

Q My question to you, sir, was: All the time that you were living in Lisets, you never saw either of those two individuals before?

A No. I didn't.

Q Isn't that so?

A It is so.

Q And on this particular -- This particular occasion, these two men came up to you, were you upset when they came up to you and asked you for your documents?

A Yes, I was upset.

Q You thought that maybe they were going to arrest you?

A Possibly.

Q And if you were nervous - I don't blame you for being nervous - would that be a correct way to describe how you were feeling? You were in fact nervous? You were frightened, were you not?

A I was frightened, yes.

Q All right. No shame in that. You were frightened. So they asked you for documents. Did you produce these documents?

A Yes.

Q Where did you have them - in your pocket?

A Yes.

Q What kind of documents did you produce?

A There was a working paper that I work for the agency that I carry a badge --

Q All right. Did they look at these documents - the policemen?

A They looked at it.

Q All right. Were you watching the papers as they were looking at the documents? Were you looking at what they were looking at?

A No. I was looking at the policemen.

Q You were looking at them, so you could identify them, perhaps?

A No. I just looked at them without any intentions.

Q Right. They weren't any different than any of the other policemen that you had seen?

A True.

Q Okay. And then one of them suddenly asked you if you had a match?

A Exactly.

Q And there was nothing unusual about him asking you for a match, was it?

A No. No.

Q What time of day or night was this?

A This was in the morning.

Q All right. One of them asked you for a match. You took the match, and up to this point was paying little or no attention to them, and -- excuse me if I do this, your Honor -- and you lit the match, the match went out, and with that, that one struck you?

A Exactly.

Q And all of that took just about as long as it took me, maybe two, three seconds at the most?

A No. I tried to light up the match to the cigarette. To light up the match to the cigarette, and the policeman getting angry at me at that time, because the wind blew out the fire, and he struck me in the face.

Q And he struck you in the face, first of all. Did he knock you down?

A No. I was young at the time.

Q When he struck you in the face, it shocked your system, didn't it, both the humiliation of it, and maybe the fact that you were struck, it upset you, did it not?

A I guess so.

Q Well, did it, or didn't it?

A It might have been so like you are saying.

Q Pardon me?

A It might have been so like you are saying.

Q Okay. I think that is a natural reaction.

A True.

Q So, at this particular time you in fact did not know but what maybe this particular policeman, or whatever he was might cause you further physical harm, so this gave you reason to be even more afraid of him?

A Certainly. Sir, at this particular time, when the policeman struck me, I took a good look at him.

Q Oh. Was this right after he struck you?

A Yes, sir.

Q And you took a good look at him because you wanted to report him to his superior officer?

A No. No.

Q You took a good look at him so you could remember him 40 years later?

A It is still in my mind, and I remember that.

Q My question was: You took a good look at him so you could remember him 40 years later?

MS. COLEMAN: Objection.

THE COURT: Objection sustained. He

answered it.

Q So you took a good look at him?

A A good look at him? Not a good look at him. I looked at him to remember what he did to me.

Q Why did you want to particularly remember everything about him?

A Because he struck me in my face, sir. I like to ask you something. If somebody would struck you in the face, would you take a look at him or not?

Q Depends on the condition. I may not, especially if I am --

A But I did, and I remember.

Q You did. All right. What did the officer look like that dragged your wife out of the apartment?

A I saw it from far.

Q How far away were you?

A I would say 200 meters.

Q That is 600 -- Approximately 600 feet?

A No. About -- When they walked out from the apartment, I did look on the street, and I did see policemen, but I would not be able to recognize anyone.

Q All right. But in this particular instance, you saw two policemen, and one you said had a light, or lighter -- A light complexion?

A Yes.

Q Let me quote you exactly. What do you mean by a "light complexion"?

A He had about sandy hair; he was tall.

Q When you are talking about complexion, you are talking about his hair?

A About his hair, yes.

Q I see.

I want you to look at the two gentlemen in the front row where the spectators are.

A Yes, sir.

Q Let me ask you the question first. Do you see any difference in their complexion?

A Yes, one has darker hair, and one has lighter hair.

Q So when you are talking about complexion now, you are talking about the color of their hair?

A Right, sir.

Q All right. Would you tell me how you were able to tell the color of their hair if they were wearing a hat?

A Oh, you could. You could tell.

Q You could?

A Yes.

Q You could tell what was up here?

A Not -- How about the sides?

Q Oh, on the sides. So you looked on the sides so you could tell what color the hair was?

A I did not look specifically to remember the hair, but I did see the hair was blond - blondish like.

Q And you have seen hundreds and thousands of people with light hair, have you not?

A Yes, I did.

Q And then you said something about the ears. Remember that?

A Yes, I do.

Q And would you demonstrate again as you did this morning how this individual's ears looked?

A Like this (indicating).

Q Now, let me --

A Outstanding.

Q Outstanding. The ears turned out, like sometimes -- I don't know if you are familiar with this expression, refer to as cauliflower ears, like a person has ears turned out, from being hit?

MS. COLEMAN: Objection.

THE COURT: Objection overruled.

Q Are you familiar with the expression, cauliflower ears?

A No. I am not familiar with cauliflower.

Q All right. But the ears did turn out, and for the record, we are referring to the entire ear turning out.

A Specific. This is a specific look.

Q Okay.

A Different look than anybody else.

Q Then ordinarily any other person you might meet has ears, such as yours, which are somewhat flushed to the sides of your head, right?

A As I say, those ears were specific to me. I looked at them differently.

Q So if anybody in your opinion looked at that individual, the first thing -- I am talking about the individual that struck you, the first thing they would note would be that the ears were turned out like I am doing right now? Right?

MS. COLEMAN: Objection to the form of the question.

THE COURT: Objection overruled.

Q The way I am doing right now, correct?

A Correct.

Q How tall was this person?

A Taller than I was.

Q And how tall are you? I didn't notice.

A About 5'8.

Q How tall -- Well, I am about that same height, so we are not too big guys, are we?

A No. We are not.

Q How tall would you say this individual was?

A Two, three inches taller than I.

Q You weren't particularly looking at them so that you could measure him like you would be measuring for a suit?

A No. I wasn't.

Q You don't particularly remember how much he weighed, so there is no point in me asking you that, is there?

A No. How much he weighed, no, I wouldn't say that.

Q What about the other individual that was with him?

A The other individual was heavier - much heavier than the other one was.

Q Did you notice anything unusual about the other individual?

A He had black hair.

Q And that you could see from underneath the cap, I assume, on the side --

A Yes.

Q -- is that true?

A Yes, and it was shorter. Shorter than I was.

Q How tall was he?

A Shorter than I was.

Q Shorter than you?

A Yes.

Q How much shorter?

A A little heavier.

Q About 5'4, would you say?

A 5'5.

Q Is there anything else that you can tell us about the description of the individual that you saw with his ears turned out other than that that you have already told us?

A He was skinny; tall.

Q You told us about that.

A Blond hair, and special physique with the ears.

Q Did he have a mustach?

A No.

Q Did he have a beard?

A No.

Q Any scars that you noticed?

A I did not notice any scars.

Q Anything -- I mean, did he look like he had an arm or a hand, or some parts of him missing?

A Looked normal. I did not look. You wanted me I shall look at everything? I couldn't look at everything. I was glad that they let me go.

Q As a matter of fact you couldn't really get as good a look at him as you can me since we are talking back and forth, and have been for a couple hours now?

MS. COLEMAN: Objection. This is argumentative.

THE COURT: Objection sustained. I believe you made your point, sir.

Q Mr. Kandler, you went through a lot of testimony this morning regarding members of your family being at the Koluszko home, and without burdening you mentally going back through all of that again, obviously from your testimony, you were not present at that Koluszko home. In fact, didn't go there because you didn't want to lead anybody there?

A That is true.

Q And what took place in the Koluszko

home is not of any personal knowledge of yours?

A No, sir.

Q It is not?

A It is not.

Q All right. Excuse me one second, your Honor. At the end of March, 1943, where were you?

A I was in the barracks of that agency that I was working for.

Q You were living at the barracks?

A Yes, sir.

Q All right. And did this enable you to go wherever you wished to?

A Yes, sir.

Q You could move about freely from town to town; village to village?

A Yes, sir.

Q Even, you mentioned, pushing a push cart some 8 kilometers?

A Yes, sir.

Q Did you have documents to identify yourself?

A Yes, sir.

Q And there came a time in 1943 when you met two policemen who confronted you with papers? You remember telling us about that?

A Exactly.

Q How many times from the time of the Nazi occupation, when it began, until September '42, when you left, that you were asked for papers?

A Several times in the city, too.

Q Are you able to identify any of the persons who asked you for papers?

A I am talking about the city, in Stanislaw.

Q Are you able to identify any of the persons that asked you for papers?

A Normal policemen.

Q What do you mean by normal policemen?

A They verified my papers, and let me go.

Q The same way as though you came through Customs, and they looked at your passport, and let you pass through? The same way in this country, if you went through Customs, they look at your passport, if it is in order, you move on?

A No. You go through the Customs, and they look what you have in there.

Q Well, this happens a little later. We won't argue about that.

Where were you when you were walking along

this road, and the men asked you to look at your papers --

MS. COLEMAN: Objection. To which time is Mr. Carlton now referring?

Q Where two men allegedly in March, 1943, came upon you.

A Yes, I did try to avoid the police. I looked far when I was walking. If I see anybody coming. I did not see anyone, but right on the corner where the police was was a way to a different village, and it so happen my -- We met at the corner, and they verified my papers, and took me to the police. I was waiting outside. They came out, and they gave me my papers back, and they let me go.

Q Did you have any conversation with them?

A No. They kept me for about 10, 12 minutes.

Q You say the individual - that one of the individuals was the same person who had the ears turned out?

A Exactly.

Q Like perpendicular to his head?

A Yes.

Q Straight out?

A Yes.

Q Did he say anything about, oh, I've

seen you before?

A He did not say anything. He did let me go.

Q He didn't abuse you in any way, did he?

A No. He did not abuse me.

Q I want to ask you one other question about the ghetto, if I may. Were there Jewish police inside the ghetto?

A There were Jewish police.

Q What did they do?

A They kept order in the ghetto.

Q Did they arrest anybody?

A I guess they arrested somebody who did not behave right.

Q By that you mean --

A They had a jail.

Q Like steal something from somebody else?

A Yes, they arrested it.

Q Now, when you -- When did you leave Stanislaw and go to that next city?

A I left about -- I don't remember the exact date, but it happened in June, because I knew that the comes to an end, and the barracks also, so I manage, I

took off my arm band.

Q Wait a minute. You took off your arm band?

A Arm band, and I went to the -- I played already, yes, no. No.

Q I am not following you. You knew what was coming to an end?

A That they are going to liquidate that barracks, also.

Q When was this?

A I wasn't present at the time when they liquidated the barracks.

Q No. When was it that you left Stanislaw, and went to the next city?

A This was in June.

Q June of --

A End of May, beginning of June.

Q May or June of what year?

A 1943.

Q And how long did you remain in this other city?

A In this other city, the document that my friend gave to me --

Q That is the one we are talking about?

A Exactly.

Q For the record, indicating Defendant's Exhibit 8.

A Whatever it is, I went to the factory, and I applied for a job, and there was a woman, and I applied for a job to be a miller.

Q What?

A A miller. I went for the job to a flour mill.

Q How long did you remain in that city?

A You meant me to tell you the story?

Q That is all right. If you want to tell us, go ahead.

A So I went to that woman. She was the director of a nice flour mill. I came to her and I told her that I am a miller, and she liked me very much, and she said, you are a miller? She was surpirsed that I said, yes, I am.

Q Mr. Kandler, I don't mean to interrupt you, and I know you are going to think me rude, but time is important, and I am interested in when you left that next city.

THE COURT: He said June, 1943.

MR. CARLTON: That is when he left Stanislaw. I am talking about the next city where the incident took place about you getting a job in the mill.

A Yes.

Q When did you leave there?

A It is a story how it came to.

Q All I want to know is when did you leave there?

A I left in October.

Q You left in October of 1943?

A '43.

Q And where did you go?

A I went to the woods.

Q And then when did you leave the woods?

A When the Russian army came in 1944, at that time, I was free again.

Q Russian army came when in '44, do you remember?

A They came to that area about -- It was when the cherries are growing on the trees, and they are full grown already, because at that time, I was clipping cherries at night. Plain talk, stealing cherries.

Q Clipping? I thought you were cutting them?

A Clipping.

Q Cherry clipper?

A No. No. I wasn't a cherry clipper.

I was hungry, and I clip the cherries at night from the tree.

Q When was this, sir?

A This was about in May, or June, '44.

Q '44, fine. Thank you, sir.

Did you ever hear of anyone of the last name of Frohlich?

A Mrs. Frohlich that testified here?

Q How did you know she testified?

A I read in the papers.

Q Oh. When did you read this in the paper?

A I read every day the papers.

Q So you read about Mrs. Frohlich?

A Yes, I did.

Q You didn't know Mrs. Frohlich, did you?

A Yes, I did. I remember her from Stanislaw.

Q Did you go say hello to her? Did you read about Mr. Jablonski, too?

A I read about Mr. Jablonski, also, in the papers.

Q And you read about everybody?

A Why wasn't I supposed to read it? I would appreciate you should let me know.

Q And you read about all these people?

A Yes, I did.

Q And you were really, really interested in all the persons that were going to testify in this case, isn't that true?

A I guess they said something else, and I went through, and I said my -- What I went through, I didn't say anything that I fabricated or something.

Q Pardon me?

A Didn't fabricate anything.

Q You wouldn't do that, sir?

A No. I wouldn't.

Q Do you know this man (indicating)?

A No, I don't, but it was similar to the gentleman I remember 40 years ago.

Q He is similar to the gentleman 40 years ago because you know Bohdan Koziy is the Defendant in this case? You have seen him on television, haven't you?

A Television --

MS. COLEMAN: Objection.

THE WITNESS: Television I did not see.

MR. CARLTON: Did you see him in the newspapers?

THE WITNESS: Yes, I did.

THE COURT: Overruled.

Q And when you saw him, you have been watching for two hours, or three hours, however long you have been in the courtroom, and you have seen him there then, and you are going to do everything you can to help the Government win this case?

A God forbid. This is not true.

MS. COLEMAN: Objection. Objection.

THE COURT: Objection sustained. Do you have any more questions of this witness?

MR. CARLTON: No, sir.

MS. COLEMAN: No redirect, sir.

THE COURT: Step down. Thank you.

THE WITNESS: Thank you, your Honor.

(Thereupon, the witness was excused.)

THE COURT: You have the videotape now?

MS. COLEMAN: Yes.

THE COURT: All right. Let's go along.

MS. COLEMAN: Your Honor, according to the procedure we have developed, we would be starting the testimony on page 10, Yosif Il'kovs'kii's deposition transcript, and according to the procedure, it is my understanding we will have placed in the record 1 through 9.

MR. CARLTON: Before we do that, your Honor, may I address very briefly another issue for a housekeeping purpose?

THE COURT: All right, sir. Is that all right for the stipulation, as to how we are going to use this?

MR. CARLTON: Let me look at it.

Your Honor, I would have no objection to starting at the top of page 10; however, I would object and move to strike from the record page 6, from line 19 through page 7 on line 15.

THE COURT: All right. I think that preliminary data might be of some help. I will overrule that objection, and deny that motion to strike, sir. We will put it in the written portion of the record, but we won't listen to it on the video. Otherwise the stipulation is all right to omit the other pages?

MR. CARLTON: That is all right.

THE COURT: What was the other matter?

MR. CARLTON: The other matter I wanted to ask you about, yesterday I brought up to the Court the matter of interpreter, and whether this had to be a certified interpreter. We have since checked as to the interpreter in the Fedorenko case, and we are advised this individual was not a certified interpreter, and thus far in fact have been unable to locate him. We have his name, and we have no exact address, but across the street from such and such a building.

At any rate, we cannot locate him, and

I would like to ask the Court's position regarding this because we are having a lot of problem in trying to get someone that is certified.

THE COURT: You do think you have someone who is qualified?

MR. CARLTON: We have someone who we absolutely believe to be qualified, yes, but not certified.

THE COURT: Is it the Government's position you insist on a certified --

MS. COLEMAN: That is correct. We ourselves are making efforts to see if we could find a certified interpreter.

THE COURT: If either of you can find one, we are going to use a certified interpreter. If you can't find one, we will have to take whatever research you can give us, and do our own to see if an interpreter could be certified, and ask qualifying questions. I don't know if the statute will permit us to do it, or requires us to do it. That is where we are. Try to find somebody certified. That will solve the problem.

Let's go ahead with the deposition of Yosif Frankovich Il'kovs'kii.

(Thereupon, the following was taken from the deposition transcript of Yosif Frankovich Il'kovs'kii:)

(The interpreter being used is Nikolai

Aleksandrovich Matveyev.)

MR. FALBAUM: The time is 1637 hours.

MR. GONZAR: I am a procurator of the Investigation office of Lvov Region Gonzar in giving the legal assistance to the Department of Justice in the United States of America, and with the assistance of Mr. Sedov, with the help of interpreters Matveyev and Pietuchov, in the presence of representatives of the Department of the Office of the Special Investigations of the Department of Justice of the U.S.A., Coleman and Feldman, and investigator of the same office, Bertram Falbaum, according to the article 185, 167, and 170 of the Criminal Code of the Ukrainian Republic, in the house of the Procurator's Office of the Lvov Region, take the deposition of --

(Whereupon, the witness Il'kovs'kii recites his name in Ukrainian which was then not translated by the interpreter.)

MR. GONZAR: The witness presented a document, a passport for Il'kovs'kii, Yosif Frankovich.

Please tell the date and the place of birth.

THE WITNESS: I was born in 1928 in the village of Lisets, Ivano-Frankovsk region, former Stanislawow region.

MR. GONZAR: Please examine the passport.

(Whereupon, passport referred to is handed to Ms. Coleman, and Ms. Feldman.)

MR. GONZAR: According to Article 167, Section 4 of the Criminal Code of the Ukrainian Republic, a witness is informed of the duties of a witness as provided by Section 70 of the Criminal Code of the Ukrainian Republic, and he is warned of the responsibilities as provided by Article 179 of the Criminal Code of the Ukrainian Republic which deals with the question of avoiding or refusing to witness; and the Article 178, Section 2 of said Code which deals with the issue of false witnessing.

Do you understand your rights and responsibilities?

THE WITNESS: Yes, I understand.

MR. GONZAR: Do you promise to give truthful information on this case?

THE WITNESS: Yes, I do.

MR. GONZAR: So, interpreter Matveyev is informed about the duties and responsibilities according to Article 178 of the Criminal Code of the Ukrainian Republic.

So the witness is informed that according to the Article 135 of the Criminal Code of the Ukrainian Republic, the deposition will take place using a videotape recorder, type Panasonic, UM-120, and using videotape with the speed 33.35 centimeters per second - millimeters per second,

pardon.

So the videotaping will be made by Mr. Bertram Falbaum, a representative of the Department, Office of Special Investigations, Department of Justice, U.S.A., with the help of Procurator Sedov.

Mr. Falbaum.

(Whereupon, Mr. Falbaum comes forward.)

MR. GONZAR: Mr. Falbaum, do you promise to make videotaping accurately and completely?

MR. FALBAUM: I do.

MR. GONZAR: Mr. Il'kovs'kii, please tell us, where did you live during the temporary occupation of western Ukrainian lands by the Nazis?

THE WITNESS: So I was born in this village, the village of Lisets, and lived in this village up until this time, until now.

MR. GONZAR: Please tell us, is the name Koziy familiar to you?

THE WITNESS: Yes. This name is very familiar to me.

MR. GONZAR: Please tell us what language will you prefer to take the deposition?

THE WITNESS: So I know three languages, but the best for me is Ukrainian.

MR. GONZAR: On what language will you

answer?

THE WITNESS: In Ukrainian.

MR. GONZAR: Where did you get acquainted with the name of Koziy?

THE WITNESS: So I knew Koziy only as a policeman. He appeared in our village when the village was occupied by Germans.

MR. GONZAR: Mr. Il'kovs'kii, I have told you that here representatives of the Department of Justice of the United States are presented, and now I ask you to answer their questions accurately, and don't be in a hurry. Take your time.

MS. COLEMAN: Before I begin to question the witness, I would like to read certain things into the record. This is the deposition of Mr. Yosif Il'kovs'kii, which is being conducted in the case of United States versus Bohdan Koziy. The case is Civil Action number 79-6640, which is now pending in the United States District Court for the Southern District of Florida before the Honorable James C. Paine.

This deposition is conducted pursuant to Notice, which was sent on February 3rd, 1981, to the Defendant attorneys. Those attorneys for Bohdan Koziy are Mr. Philip Carlton, and Mr. William Y. Sayad.

This deposition will be recorded and

transcribed by Mr. Harry Rapaport. Mr. Rapaport is an official court reporter in the United States District Court for the Eastern District of New York.

In addition, pursuant to a Court Order issued by Judge Paine, the Plaintiff, the United States of America, has been authorized to videotape this deposition. The operator of the videotape equipment is Mr. Bertram Falbaum, an employee of the United States Department of Justice.

This deposition will be conducted pursuant to the Federal Rules of Civil Procedure, and the Federal Rules of Evidence.

Since the deposition is taking place in the Union of Soviet Socialist Republics, it will, as is consistent with Rule 28(b) of the Federal Rules of Civil Procedure, proceed in conformity with Soviet law.

Despite the fact that Notice was provided in early February, 1981, and that an offer was made to assist each attorney in obtaining visas for travel to the USSR, neither Mr. Carlton nor Mr. Sayad is present today.

As Plaintiff has already indicated to those gentlemen --

THE INTERPRETER: Once more.

MS. COLEMAN: As Plaintiff has indicated to those attorneys --

THE INTERPRETER: As what?

MS. COLEMAN: As the Department of Justice has already indicated to those attorneys, all depositions will go forward with or without their participation.

Since the Defense lawyers have waived their presence at this deposition, the matter will proceed in their absence.

(Videotape started.)

DIRECT EXAMINATION

Q (By Ms. Coleman) Mr. Il'kovs'kii, my name is Kathleen Coleman, and I am an attorney with the United States Department of Justice in Washington, D.C.

I would ask that when you are being questioned, you answer only the questions that are put to you. If you do not understand a question, please indicate so to me.

A Okay.

Q Mr. Il'kovs'kii, have you already promised under Soviet law to tell the truth?

A Yes.

Q Do you understand that under United States law there is the same requirement, that witnesses tell the truth?

A Yes. I realize it.

Q Do you promise to tell the truth today?

A Yes.

Q Would you please tell us your full name?

A Il'kovs'kii, Yosif Frankovich.

Q What is the exact date of your birth?

A 19th of September, 1928.

Q Where were you born?

A In the village of Lisets, Ivano-Frankovsk region.

Q At the time of your birth, what was the Ivano-Frankovsk region called?

A WHen I was born, the name of that region was Stanislawow region.

Q How far is your home village from the city of Stanislawow?

A 12 kilometers.

Q Where were you living in June of 1941?

A In the village of Lisets.

Q When did the Nazi forces arrive in your home area?

A In 1941.

Q Do you recall what month?

A No. I can't tell this.

Q Once the Nazis arrived, how was law and order maintained in Lisets?

A So they had their own laws, German

laws.

Q Can you tell us whether or not there was a police force in Lisets during the Nazi occupation?

A Yes. During the occupation there was a police force.

Q When was that police force established, if you know?

A Right away Nazi arrived, Nazi came to our village. They organize the police. I can't say you exactly the date, but approximately right after they came to the village.

Q What was the police force called?

A There was a Ukrainian police.

Q Can you tell us the names of any members of that police department?

A The chief policeman was named Belanchuk. His assistant, it seems to me, was Koziy. Then Vitvicki and Irodenko. There were some more, but I don't remember.

Q This Koziy, what was his first name, do you know?

A Bohdan.

Q Do you remember, when was the first time that you saw Koziy?

A I can't tell.

Q Can you describe Koziy, please?

A I can't. I can't. Middle height or even more than middle. White hair, and long face.

Q When you would see this Bohdan Koziy, how would he be dressed?

A He was always dressed in police uniform.

Q Can you tell us whether or not he had any weapons?

A Yes, he wore weapons.

Q What kind of weapons did he have?

A I can't say you the type of the weapon, but I can say the only thing I can say, he wore a rifle and pistol.

Q How often during the period of the Nazi occupation did you see this policeman Koziy?

A He walked in the village very often.

Q Can you estimate how many times a week you would see him?

A You can see him -- One can see him at night, or in the daytime.

Q Did you see him often, or infrequently?

A Often.

Q Do you know what Koziy's marital

status was?

THE INTERPRETER: Pardon?

Q Was Koziy married or was he a bachelor?

A He was married.

Q Do you know who he was married to?

A His wife was leader's daughter.

Q The leader of what?

A The leader of the community.

MS. COLEMAN: Is that what the witness stated?

THE INTERPRETER: Yes.

Q Who was the leader of the community?

A Wasyl Ostapiak was the leader of the community.

Q And the daughter of Ostapiak, what was her name, the daughter who married Koziy?

A The sister's name was -- I was in school. I forget even her sister's name, so I can't say.

Q This daughter who married Koziy, can you describe her, please?

A She was blond, long-haired, skinny, and middle height.

Q Did you know any persons in the Ostapiak family?

A He had a son Zenon, but I don't know

where he is now.

Q During the period of the Nazi occupation, do you know what Zenon Ostapiak did for a living?

A I can't tell that.

Q Mr. Il'kovs'kii, prior -- Before the Nazi occupation, how many Jews lived in Lisets, do you know?

A How much? Approximately up to 30 families.

Q What happened to the Jews once the Nazis occupied Lisets?

A When the Nazis occupied the village, all the Jews were brought together, and some people were shot to death in the village.

Q Did you, yourself, ever see any of the Jews being taken to the ghetto?

A Yes, I've seen.

Q How were they taken to the ghetto?

A So they were taken out of their homes, and they were - and they walked 12 kilometers to the city.

Q Who would take them out of their homes?

A So it was a job of the police, but I want to say there was a kind of Jewish council in the village, and these people from the Jewish council also took

part in this, but then after that, even all the members of the Jewish council were brought to the ghetto.

Q Now, once the Jews were taken from their homes, how would they get to the ghetto?

A So, to say in simple words, it was not like men. They were treated like cattle.

Q And who would treat them like cattle?

A Police.

Q Can you tell us, if you know, or if you knew a family named Rosiner?

A No. No, never heard.

MS. COLEMAN: Did I mispronounce it?

THE INTERPRETER: Rosiner.

(Whereupon, the interpreter confers with the witness in Ukrainian.)

THE WITNESS: There was a family Rosiner, not Rosner.

Q By the way, Mr. Il'kovs'kii, if I mispronounce a word, please let me know.

Would you please tell him that.

(The interpreter complies.)

A Yes.

Q Now, this family named Rosiner, what was their ethnic background?

A They were Jews.

Q Did you know them before the Nazi occupation?

A I knew them, but I had nothing in common with them.

Q How many members of that family did you know?

A I can't say.

Q Can you tell us whether or not there were any children in the family?

A Yes, there were kids. How many, I can't say.

Q Directing your attention to the period of the Nazi occupation, did you have occasion to see an incident involving a daughter of the Rosiner family?

A No. I can't say.

Q Mr. Il'kovs'kii, do you recall --

MR. GONZAR: Wait a minute. Please make your question more clear for him. It seems to the Procurator that he didn't understand the question about Rosiner's daughter.

Q In 1976, did you provide a statement to the Procurators about Bohdan Koziy?

A Yes.

Q And in that statement did you relate incidents regarding Bohdan Koziy's service as a policeman?

A Yes.

Q Do you recall in that statement relating an incident about the daughter of a person named Rosiner?

A Yes. I did this statement as far as I saw.

Q Can you tell us what you had stated in 1976 regarding Rosiner's daughter?

(Videotape stopped.)

MR. CARLTON: At this time, we would move for a copy of the statement taken from Yosif Il'kovs'kii in 1976.

THE COURT: What is the Government's position?

MS. COLEMAN: He is not entitled to it, your Honor. He never asked for it up until now.

MR. CARLTON: That is not true. We have asked for it.

MR. WOLF: Mr. Carlton made some general requests in telephone conversations. I have a letter here August 8th that I sent to him asking him to please provide us with a request of production of documents consistent with the Federal Rules of Civil Procedure. He was asking for a class of materials, items covered by trial preparation. We asked him to file a discovery request. We said it verbally, and put it in a letter to him, and he never filed anything.

THE COURT: All right. Motion denied.

(Videotape restarted.)

A I can say.

Q Would you do that now, please.

A Yes, I can say. So, it was in the summertime. I get out from school and there were people standing nearby, and a few boys from school approached them. When we came, there was a shot, and you know a young man, when they hear a shot, they are very interested in that, and they come closer.

Q Did you in fact go closer in the direction of the shot?

A Yes.

Q What did you see?

A We saw Koziy, who goes out of the barn with a rifle in his hand, and then he walked towards the police station; and we went into the barn and saw that dead body of a girl approximately 12 years old.

Q And who was that dead girl?

A Now I can't recall the name.

Q But of what family did she belong?

A Now I can't remember.

MR. GONZAR: Why did you recall this incident concerning the Rosiner family?

(Videotape stopped.)

MR. CARLTON: Excuse me, your Honor. I would object to this - what shall I call him, representative of the Russian government. I think they refer to him as a procurator - asking questions in the course of this, and participating as it becomes evident from observing this video he has done at least two occasions during the course of what we have seen thus far.

THE COURT: All right. Objection overruled.

(Videotape restarted.)

MR. GONZAR: Why did you start to tell about this incident?

THE WITNESS: I started to -- I don't remember her.

MR. GONZAR: You forgot her name, but what about the surname?

(Videotape stopped.)

MR. CARLTON: Excuse me, your Honor. I don't know what is going on here, but apparently, I don't -- I hear something in the background, but I don't know if this is supposed to be a translation of what the Soviet procurator is saying. I just object to the procedure as we are seeing it, and I don't know we are accurately getting down what we are saying.

THE COURT: Well, there is no indication we are not. There are several people talking simultaneously there. If this translator is getting everything, we are getting it in English. I will overrule the objection.

(Videotape restarted.)

A I can't remember.

Q Had you ever seen that girl before?

A Yes.

Q And do you know what her ethnic background had been?

A Jewish nationality.

Q How much time passed from when Kozly walked away from the barn with his rifle, until you went inside to see the body?

A Approximately 10 minutes, 15.

Q Mr. Il'kovs'kii, can you tell us if you knew a family whose last name was Bredgolts?

A Bredgolts, yes, it's familiar to me.

Q Where had that family lived?

A They lived in Lisets.

REPORTER: Where?

THE WITNESS: Lisets.

Q What was the occupation of the head of that family?

A Seems to me he was a baker.

Q What was the ethnic background of that family?

A Jewish origin.

Q When was the last time you saw the Bredgolts family?

A The last time I saw this family was when the family was driven to the place where they were shot.

Q And do you recall when that was?

A It was in the summer of '42 or '43.

Q You have said that they were driven to someplace. Where did you first see this incident?

THE INTERPRETER: Where?

Q Where were they when you first saw this happen?

A They were on the road.

Q And what did you see happen to them?

A I saw Koziy and two other policemen and the family.

Q How was Koxiy dressed at that time?

A In the police coat, not buttoned. It was unbuttoned.

Q What, if any, weapons did Koziy have with him at that time?

A A rifle in his hand.

Q What did you see Koziy do?

A I saw Koziy leading the family, four or three people, it seems to me - two girls, a wife, and the head of the family.

Q You say you saw Koziy leading that family. To where was he leading them?

A He led them to the police station along Radianska Street.

Q And when you saw that happen, what did you do?

A We were just watching.

Q What did you see happen?

A Pardon? Repeat the question, please.

Q You say you were watching. What did you see occur?

A So we saw Koziy leading them to the police station, and we walked behind. We were interested in what happened.

Q Did that family go inside the police station?

A I don't remember. It seems to me that they went close to the police station. Whether they go inside or not, I don't remember.

Q What did you do after the family was led toward the police station?

A So we didn't go --

(Videotape stopped.)

MR. CARLTON: Please the Court, we object to what people said was going to happen to this family, as constituting hearsay.

THE COURT: All right. I will sustain the objection line 17 to 19 on page 21.

MS. COLEMAN: Your Honor, may I be heard?

THE COURT: You can state into the record what your position is.

MS. COLEMAN: Our position is, because what people said was going to happen to that family, this young boy and others were very interested, and they followed Mr. Koziy as he led the Jews to the place where they would be shot, and because of what those persons had stated, this witness acted upon that statement.

THE COURT: Well, maybe that is a pretty good reason why we ought to let it in.

MR. CARLTON: If your Honor will look at what happened next.

THE COURT: Well, I have looked at what happened next. It does show what they did, however, and this was apparently a motivating factor for their acts. I think I was wrong in that ruling.

MR. CARLTON: Your Honor, let me say this, if I may: According to the objected portion of the

testimony, it says they didn't go close to the station. The people said the family would be shot. We were interested in that. Then says, "Did you remain in the area of the police station?" "No."

If anything, if it is to show motivation or what they did as a result of this, they would have stayed around since they said they were interested in that. It is quite the converse.

THE COURT: Seems to me it is certainly a reasonable interpretation that they were interested, but they didn't want to get close enough to remain in the area where the policeman views -- It says, line 24, "Just we walked to another direction not to be in the policemen's eyes." I think it is tied up closely enough. I will recede from that ruling I made, and allow this question and answer.

(Videotape restarted.)

A -- close to the police station. People said that now this family will be shot, and we were interested in that.

Q Did you remain in the area of the police station?

A No.

Q Where did you go to?

A Just we walked to another direction not to be in the policemen's eyes.

Q Where did you walk to?

A We went to the place where now we have a bus station.

Q What was at that place during the period of the occupation?

A It was a garden during the occupation.

Q Did you see the Bredgolts family after you had walked away from the police station?

A So we saw them, how they were led along Tankistow Road in the direction of the cemetery.

Q Who led that family along the road --

(Videotape stopped.)

MR. CARLTON: I object. It is obvious from listening to what is going on on this video that someone is prompting this witness, or so it appears to me. It isn't the first time I've heard it, and I wasn't sure what I was hearing. I hear somebody in the background that said Tankistow when he couldn't remember what the road was.

MS. COLEMAN: That was Harry Rapaport, the court reporter from the Eastern District of New York.

THE COURT: I will overrule the objection. I don't get that indication.

(Videotape restarted.)

Q -- toward the Jewish cemetery?

A Three policemen.

Q Who were they?

A Koziy, Irodenko, and Vitvicki.

Q What did you see happen after that family had been led toward the Jewish cemetery?

A So they were shouting, "Nieder auf", lie and stand up, in German, and these people were pushed with the rifles.

Q Who was shouting?

A Koziy.

Q What did you see happen to the Bredgolts family?

A Near the gates of the cemetery they were forced to stand on their knees.

Q Once they stood on their knees, what happened then?

A Then they started to shoot.

Q Who forced that family to stand on their knees?

A The boss.

Q Who was the boss?

A Koziy.

Q Who shot the family?

A The three of them.

Q Who are the three who did the shooting?

A You see, they shot at some more.

Now I understand that some of them can have, how to say it, false bullet. How do you call it.

Q But who did you see doing the shooting?

A Koziy.

Q Any others?

A Irodenko, and Vitvicki, the three of them.

Q And after the shooting, what was the condition of the members of that family?

A They were lying -- I was approximately 80 meters from that place.

Q Was the family killed?

A Yes. I can add that Bredgolts himself was a very -- Was a heavy man. He was very heavy, and very tall man, and after Koziy shot him for the first time, he managed to stand up, and it seems to me that Koziy shot at second time.

Q You say that you were 80 meters away. What, if anything, obstructed your view of this incident?

A Nothing obstructed.

Q What were the lighting conditions like at the time you saw this incident? Was it daytime or nighttime?

A It was in the daytime. It seems to me it was before lunch or after lunch, something like that.

Q Just to be absolutely certain, what time of the day is lunch taken?

A 2:00.

Q Mr. Il'kovs'kii, when was the last time that you saw Bohdan Koziy?

A Before 1944. Pardon me. When the frontier began to approach our village, he disappeared.

Q When was that that he disappeared?

A Then it was June or July.

Q And is that when your area was liberated by the Soviet army that he disappeared?

A Yes.

Q Do you feel that you could identify Bohdan Koziy?

A So I remember him when he was 24. Now I can't just recognize him. Pardon me. In case now, in case he has now 24 years, I will recognize him, but now seems to me he is about 66 or 65, but I will try.

MS. COLEMAN: For the record, I am holding in my hand a folder which is labeled OSI, with the number 110, followed by, in parenthesis, the letter K. Beneath that on the same folder are the initials AM.

(Videotape stopped.)

MS. COLEMAN: Your Honor, we have that folder marked as trial exhibit 22F.

THE COURT: All right. Is there any chance to enter into a stipulation to enter that spread so we don't have to listen to the witness in that regard?

MR. CARLTON: In the case of this particular witness, which runs about four more pages, I would like it to be played to watch the identifying process.

THE COURT: All right, sir. If we can't stipulate, we will go right ahead.

(Videotape restarted.)

Q Mr. Il'kovs'kii, this folder contains 8 photographs. I want you to examine each photograph carefully and indicate to me if any of the persons contained therein look familiar to you. If any one of them is familiar to you, I want you to indicate to me which one that is.

A Okay.

Q If you recognize none of them, I would like you to so indicate.

A Okay.

Q This folder may or it may not contain the photograph of any person we have discussed here today.

A All right.

Q Please take as long as you would

like --

A I got it.

Q Please take as long as you would like to examine these photographs.

A Okay.

Q Do you understand these instructions?

A Yes.

REPORTER: The question was, do you understand the instructions?

THE INTERPRETER: Yes.

(Folder referred to is handed to the witness.)

(Whereupon, a pair of eyeglasses are handed to the witness.)

MR. GONZAR: Plus one and plus two.

(Videotape stopped.)

MR. CARLTON: Your Honor, I would like the record to reflect that the witness is making comments which apparently are not being translated.

MS. COLEMAN: I would like to play that back. Mr. Il'kovs'kii asked for a pair of glasses.

MR. CARLTON: He made some comments after he got the glasses.

MS. COLEMAN: He said, plus one, plus two.

THE COURT: Excuse me. Seems to me he

was talking about the eyeglasses.

(Videotape restarted.)

REPORTER: The question was, do you understand the instructions?

THE INTERPRETER: Yes.

MR. GONZAR: Plus one, plus two.

(Videotape stopped.)

MR. CARLTON: That is what I am talking about right now, your Honor.

THE COURT: Well, that is unintelligible in any language. They were just murmuring in the background.

MR. CARLTON: Seems like I heard "Koziy". I see nothing in any transcript.

THE COURT: You heard the witness, not "Koziy".

MR. CARLTON: I can't say I heard the witness. I heard somebody saying that.

THE COURT: Well, I really can't agree. I don't believe we missed anything that is of any importance. Let's move along.

MS. COLEMAN: It is on the videotape, would you put it on the record at all?

(Videotape restarted.)

MS. COLEMAN: All right. The witness is pointing to photograph number 6, and what did he state?

THE INTERPRETER: This one.

MS. COLEMAN: He stated, "This one"?

THE INTERPRETER: It is the question, this one? This one or not?

MS. COLEMAN: I would like to have this shown to the videotape operator. I am pointing to photograph number 6, which is the photograph that the witness just pointed to.

(Whereupon, the folder was videotaped.)

Q Mr. Il'kovs'kii, why did you point to that photograph?

A I can recognize him.

Q Who do you recognize that photograph to be?

A This is Koziy.

Q I would like you to take a pen and write at the bottom of that photograph your entire signature, and today's date, please.

A On this photograph?

MR. GONZAR: Yes.

(Whereupon, the witness complies.)

Q Now, on the other photographs -- Is this your entire signature, by the way?

A I understand you.

(Whereupon, the witness again puts on

the pair of eyeglasses handed to him.)

A Yes.

Q On the other photograph, would you please put just your initials and today's date.

A And what is the connection of this photograph to this, all this?

Now I understand. Only the initials. They explain it. Only initials, EEF.

Q And today's date.

Mr. Rapaport, I would ask that you mark this as Exhibit 1 of this deposition, and at this time I would move this exhibit into evidence in this deposition.

(Videotape stopped.)

MS. COLEMAN: Your Honor, I would move for admission into evidence trial exhibit 22F.

THE COURT: All right. Objection?

MR. CARLTON: Yes, your Honor, I do object. I object not only -- Well, first of all, let me look at the exhibit.

Your Honor, not only I object to the procedure used as indicated previously on exhibits of this type, but I likewise object to this exhibit based on what has been observed on the video.

THE COURT: All right, sir. Your objection is overruled, and received in evidence over objection of

counsel.

(Thereupon, said photographs were marked as "Plaintiff's Exhibit 22F" by the Court, and received in evidence.)

THE COURT: Now, do we need to look at the rest of this? Can we just put it in the record without visualizing the videotape?

MS. COLEMAN: I have no objection if the remainder is placed in the record.

MR. CARLTON: I object to the remainder as being the questions asked by the procurator. The procurator has no part in this deposition whatsoever, or even to ask questions, and he seems to be in the worst way trying to get this witness to say what the name of the girl was which he is not successful, and then asking him whether or not his memory was better in 1976, and the witness agrees with that; and then goes on to distances, so forth.

I think this is an adversary proceeding between the Government, and the Defendant, and the Russain procurator has nothing to do with this, at least as far as we are concerned.

THE COURT: Well, sir, I don't find that is really in violation of the rules we have for taking foreign depositions. I will receive this colloquy in evidence - you know, consider it as part of the deposition so that your record

is clear about it, but my question is now, do you feel it necessary that we view the videotape of it? If you do, we will do so. If not, we won't.

MR. CARLTON: Your Honor, we would like the balance of it played.

THE COURT: All right. You may proceed.

(Videotape restarted.)

MS. COLEMAN: I have no further questions.

MR. GONZAR: Do you have any questions?

MS. FELDMAN: No questions.

MR. GONZAR: I have some questions.

Please tell us -- You told us that you were questioned in 1966 -- '76?

THE WITNESS: Yes.

MR. GONZAR: Did you give truthful testimony at that time?

THE WITNESS: Yes.

MR. GONZAR: In 1976, you told us that the girl's name --

(Videotape stopped.)

MR. CARLTON: Your Honor, now, at this point, the Soviet procurator is telling the witness as to what he told them in '76, and is asking him, or telling him, in effect, what he said at that time was true, or correct, and of course, the witness answers yes, but actually puts the

words into his mouth. I am referring your Honor page 28, line 17, "In 1976, you told us that the girl's name was Rosiner. Is it right?" "Yes."

THE COURT: Well, he says on page 29, "Was it Rosiner's daughter?" "No." I think he misunderstood the question, line 17, page 28.

MR. CARLTON: We would again ask the Government produce the statement of 1976.

THE COURT: Well, that motion has been denied, and I persist in that ruling; and I will overrule the objection if you are making one for the utilization of this testimony, which I really don't consider very useful, anyway.

I think it is stretching the imagination. Let's put it in the record, if you want to.

(Videotape restarted.)

MR. GONZAR: -- was Rosiner. Is that right?

THE WITNESS: Yes.

MR. GONZAR: Today answering the question of the American colleague, you didn't answer. Now, I ask you to tell us once more, what was the name of that daughter, of that girl who was shot to death in the barn?

THE WITNESS: You mean the girl who was in the barn?

MR. GONZAR: Was it Rosiner's daughter?

THE WITNESS: No. It seems to me it wasn't Rosiner's daughter.

MR. GONZAR: Was it Rosiner's daughter or not, or don't you remember?

THE WITNESS: I don't remember.

MR. GONZAR: Did you remember better in 1976 than now?

THE WITNESS: Yes, yes, sure. Years pass. I apologize. In case I have every day, this is in mind, I will remember.

MR. GONZAR: One more question. Please tell me, did you witness two times an execution, or were there other cases?

THE WITNESS: I witnessed only two cases.

REPORTER: I witnessed only two cases?

THE INTERPRETER: Yes.

THE WITNESS: Yes, only two.

REPORTER: Only two.

THE WITNESS: One episode at the cemetery, and the second one a girl in the barn, Lusia something. Lusia, something like that. Seems to me Singer, or something like that. I don't remember exactly.

MR. GONZAR: One more question. Please tell us once more what distance was between you and the Bredgolts family.

THE WITNESS: Approximately 80 meters, more, up to 100 meters.

MR. GONZAR: In 1976, during the deposition, you told us that you were at a distance of 30, 40 meters.

THE WITNESS: I apologize. I didn't measure that. I didn't measure. It is approximately.

MR. GONZAR: No questions from my side. Do you have questions?

MS. FLEDMAN: No questions.

MS. COLEMAN: No questions.

MR. GONZAR: Now we will have an interruption of 10 or 15 minutes.

(Short recess taken.)

MR. GONZAR: Now you will have an opportunity to see the videotape of deposition.

(Videotape viewed by the witness.)

MR. FALBAUM: The time is 1971 hours.

MR. GONZAR: You have just watched the videotape of deposition. Do you approve that everything was truthful and made in a good way?

THE WITNESS: Yes.

MR. GONZAR: Do you have something to add to this?

THE WITNESS: I want to add, I don't

have any.

MR. GONZAR: This deposition is over at 1920. So my name is Gonzar. I am a procurator of Lvov Procurator's Office. Thank you.

THE WITNESS: Thank you.

(Videotape concluded.)

THE COURT: All right. That concludes that. Ladies and gentlemen, we will be in recess for 15 minutes.

(Thereupon, a short recess was taken.)

THE COURT: Is this the deposition of Anton Vatseb?

MR. CARLTON: Your Honor, I hate to bring up a housekeeping matter. I think it important that I bring it to the Court's attention. May I proceed?

THE COURT: Yes, sir.

MR. CARLTON: I don't know when the Government is going to rest. According to what I heard during this recess, they figure there may be a little left over for tomorrow morning.

Now, we have a witness that is arriving tomorrow around 12:29, something, tomorrow afternoon, who is one of the individuals that is the subject matter of the memorandum of law. That is Renee Martin. She, I might say, it is quite costly to bring her here, and of course, A, if

she were going to be disallowed, if we weren't going to let her testify, I wouldn't want to bring her here at all.

Number two, if she is going to be allowed to testify, and it is not going to be tomorrow, because either they are going to submit their memorandum of law, and argue it tomorrow, whatever the reason may be, I won't want her to come here then, or not until another day; so I bring this to your attention now, your Honor, so that we can make some phone calls while hopefully she can still be contacted to hold off coming.

Now, in addition, I brought to the attention of Mr. Wolf that since our case is going to begin, we are going to need the Anmeldung, and the Abmeldung which I objected to have him take it away. Mr. Wolf says that takes time to get that through the State Department. I am not sure what he means by time. It shouldn't take long for this gentleman from the Soviet Embassy to get here with it. Apparently he thinks it takes a matter of days. I would like to know what we should do in order to move this along in an orderly fashion.

THE COURT: Are you going to use these Abmeldungs, and Anmeldung regardless if she testifies?

MR. CARLTON: No. I am sure we will be using it anyway.

MR. WOLF: Your Honor, may I speak to that?

THE COURT: Yes.

MR. WOLF: You may have noticed I have been absent from the courtroom today. I apologize. I have been working on the memorandum in opposition to what Defendant filed. We should have it ready by the end of the day today, perhaps 6:00, and we could give it to your Honor, and Mr. Carlton. It does contain facts and arguments which we hadn't raised previously, when we spoke about this matter. We would wish that the Court have it in writing, and consider it before announcing whether it is appropriate for Miss Martin to testify. We think it is not - that it would severely prejudice the Government, for the reasons we explained in the memo.

As to the official of the Soviet Embassy, I explained to Mr. Carlton, we don't know if this woman is going to be able to testify. He led me to believe that he wanted the documents simply because she was going to testify. I told him to ask us 4:00 today to have an official here tomorrow morning. When we have to go through the State tomorrow as we explained before, is unreasonable. We thought on fairly short notice, and I think we said before, on fairly short notice we could arrange to have someone here with the documents. We need reasonable notice. I am not sure how long that is. It is not a matter of 8 hours. Certainly not over the evening, when we can't contact the State Department.

THE COURT: Let me have your memorandum,

and we will be prepared to rule in the morning on whether or not that witness can testify. If you get us that memorandum about 6:00, we can do that; and then if the ruling is that she is going to be permitted to testify, I know you need those things for her, at a minimum. We are going to have to recess this case Monday morning for three other matters that are set then that we can't postpone, but we do intend to set the trial 1:30 on Monday.

How about tentatively arranging to have these things here at that time, in the event we rule adversely to the Government, and whether or not we do it, you are going to need them for other purposes?

MR. CARLTON: Correct, your Honor. We are going to run into another problem. That is why I wanted to get her on tomorrow if your Honor was going to permit her to testify, because apparently due to - for religious reasons, she cannot be here certain days next week.

THE COURT: Because of the Jewish holidays beginning Monday evening?

MR. CARLTON: I gather that is correct.

THE COURT: That complicates matters further, I guess. Let's see how the ruling goes tomorrow morning, and we will have to work out a way to get her down here, and out of here in time for that Jewish holiday, which I always try to work around.

MR. CARLTON: I understand that. The way it looks right now, it would be best to not have her on that plane early tomorrow morning?

THE COURT: I would think not. Yes. The things she needs to work with are not going to be here, and we need to get them here today.

MR. CARLTON: Could we find out how long it takes to get those documents back?

THE COURT: You don't know?

MR. WOLF: We will make inquiry as quickly as possible. If there is some way to find out this evening, we will. We explained the last time the State Department has to become involved, and the Soviet Embassy; and we indicated before, we would do everything possible to expedite it, and ask for reasonable notice as to when the documents would have to be here.

Apart from Miss Martin, assuming she would not have to testify, could I ask what date the documents are here, so she wouldn't have to sit around?

MR. CARLTON: We want the documents here during the presentation of our case. We didn't want them to go. We wanted them to be available. The Government, without going into reason, had reason they wanted it to go. Now we want them back.

MR. WOLF: If we could have a proffer

of some reasonable basis for needing the original, when under the Rules, a copy is normally admissible.

THE COURT: Well, reasons given before had to do with the texture of the paper, and colorings of the paper?

MR. CARLTON: Right.

MR. WOLF: We were led to believe that related to Miss Martin, not other witnesses.

THE COURT: That was the impression I had, too.

MR. CARLTON: That is the primary reason, but there will be testimony regarding these documents, which I would like to refer to the original documents, important -- In fact, I think in one instance, or in the instance - I don't want to indicate there is more than one - but in the instance, I think it is actually important that we have the document to be able to ask regarding certain things that appear on the document that are not, cannot use a photostat for.

THE COURT: Well, why don't you make arrangements to have the document here by 1:30 on Monday, anyway, and we can't perhaps give a discrete time as to how long the documents will be needed. We have to ask counsel to get the witnesses on and off that have to do with interpretation of those documents, as quickly as we can.

MR. WOLF: If that is the case, we ask

the Defendant to be reasonable to that extent, that they not keep the documents here any longer than is essential to that part of the case.

THE COURT: I hope we can count on him to do that. I am sure we can.

All right. Let me have that memo, so we can try to get the first step of this thing resolved, first thing tomorrow morning.

Let's go ahead and get this deposition done if we can.

MS. COLEMAN: Your Honor, we will be relieved to hear this is the last deposition.

THE COURT: I don't see anymore names on your list.

MS. COLEMAN: We will begin page 10, line 12, the first question by the Department of Justice, and the previous pages to be placed in the record.

THE COURT: Is that agreeable, Mr. Carlton?

MR. CARLTON: I am sorry, your Honor. I just want to look at it briefly.

THE COURT: Did you get the page and line number?

MS. COLEMAN: The text of the deposition up to that page would be placed in the record without our having

to do it.

MR. CARLTON: Your Honor, we would have no objection to the actual video beginning page 10, line 12; however, I would make the same objections as I have to this entire testimony, and the video without further argument, and I would further object to any questions that are asked by the chief assistant to the procurator, specifically as appear on page 5, lines 2 through 10 or 11, whatever that is; and beginning again page 6, line 20 -- No. I take that back about page 6. I think that is more procedure. Page 7, line 10, I think that is - starting with the words, "Can you tell us the position of Koziy?" and the questions that follow that running through line 18. Other than that, your Honor, I have no objection to starting on page 10.

THE COURT: All right, sir. Those objections are overruled. We will begin page 10, line 12.

(Thereupon, the following was taken from the deposition transcript of Anton Micheylovich Vatseb:)

(Time notes is 11:25 A.M., Friday, March 20, 1981.)

MR. DOROSH: My being Chief Assistant to the Procurator of the Lvov Region, being authorized to give assistance to American lawyers concerning war crimes of Koziy, with the participation of Procurator-Criminalist Mr. Sedov, interpreters Pietuchov and Matveyev, and the presence of the

attorneys of the Special Investigation Office, Department of Justice, USA, Feldman, Coleman, and an employee of the Special Office of Investigation, Falbaum, according to the Article, Articles 85, 167, 170, the Criminal Code of the Ukrainian Soviet Socialist Republic, in the house of the Procurator's Office of Lvov Region.

As a witness will be interrogated now --

THE WITNESS: Vatseb, Anton Micheylovich.

MR. DOROSH: Do you have any identification card?

THE WITNESS: This is my official Soviet passport.

MR. DOROSH: The first name is Micheylovich Anton. When were you born?

THE WITNESS: 1926, on the 10th of October.

MR. DOROSH: Where were you born?

THE WITNESS: The village of Lisets, Ivano-Frankovsk region, Ivano-Frankovst District.

MR. DOROSH: Where do you work?

THE WITNESS: I am retired.

MR. DOROSH: Your nationality?

THE WITNESS: Ukrainian.

MR. DOROSH: According to Article 167,

Part 4, Criminal Code of the Ukrainian Republic, Vatseb as a witness is being explained, explain what he is supposed to do according to these Articles, and you are warned that you are responsible for your testimony or your unwillingness to testify and according to Articles 178, 179, Criminal Code of Ukrainian Republic.

Do you understand your duties and rights?

THE WITNESS: I understand everything, and will tell you everything the way it was.

MR. DOROSH: The Interpreters Pietuchov and Matveyev have been told the contents of Article 128, Criminal Code, and you are warned that your unwillingness to translate, or a wrong translation on purpose is penalized according to the following Articles, and you are to provide the complete, accurate translation of the witness' testimony.

Do you promise it?

INTERPRETER PIETUCHOV: Yes, I promise.

MR. DOROSH: Witness Vatseb, during the interrogation a videotape recorder will be used, type Panasonic, using 120 type of film, speed 33.35 centimeters per second. Videotape is carried out by a representative of the Office of Special Investigation, Department of Justice, USA, Mr. Falbaum, and also a Procurator-Criminalist, the Procurator's Office of Lvov, prosecuting counsel, Mr. Sedov.

Mr. Falbaum, you are supposed, and do

you promise to make an accurate and complete recording of the testimony of witness Vatseb?

MR. FALBAUM: I do so promise.

MR. DOROSH: Witness Vatseb, what language are you going to use?

THE WITNESS: I am going to speak only Ukrainian because I always use this language.

MR. DOROSH: Once again I warn you that you are supposed to tell the truth, the whole truth, and nothing but the truth, and tell us about the circumstances you witnessed or you heard from other people concerning the case of Koziy.

THE WITNESS: I fully understand everything.

MR. DOROSH: Witness Vatseb, have you ever testified concerning this case?

THE WITNESS: Yes.

MR. DOROSH: Can you tell us the position of Koziy?

THE WITNESS: Koziy was a policeman in the village of Lisets.

MR. DOROSH: Tell us, where did you live during the occupation?

THE WITNESS: I lived in the village of Lisets during the occupation, the former Stanislawow Region

during all the occupation years.

MR. DOROSH: Witness Vatseb, now questions will be asked to you from the representatives of the American attorneys concerning Koziy, and according to law, you are to give only truthful testimony to these people, no lying at all.

Ms. Coleman, your questions, please, concerning the case of Koziy.

MS. COLEMAN: Before I begin the questioning, I would like to put certain matters into the record.

This is the deposition of Mr. Anton Vatseb. It is being conducted for the case of United States versus Bohdan Koziy, Civil Action number 79-6640.

THE INTERPRETER: The number again?

MS. COLEMAN: 79-6640, which is now pending in the United States District Court for the Southern District of Florida before the Honorable James C. Paine.

This deposition is conducted pursuant to Notice, which was sent on February 3, 1981, to the attorneys for Bohdan Koziy.

THE INTERPRETER: Could you say it again, please?

MS. COLEMAN: This deposition is conducted pursuant to Notice.

THE INTERPRETER: I don't understand the language.

MS. COLEMAN: I will put it into simpler English. The two attorneys for Bohdan Koziy, whose names are Philip Carlton, Jr., and William Sayad, were notified, were informed that these depositions were to take place in the Soviet Union. That information was sent to the attorneys on February 3, 1981.

This deposition will be recorded and transcribed by Mr. Harry Rapaport, who is an Official Court Reporter in the United States District Court for the Eastern District of New York.

In addition, pursuant to a Court Order issued by Judge Paine, the Plaintiff, the United States of America, has been authorized to videotape this deposition. The operator of the videotape equipment is an employee of the United States Department of Justice, Mr. Bertram Falbaum.

This deposition will be conducted in accordance with the Federal Rules of Civil Procedure, and the Federal Rules of Evidence.

Since the deposition is taking place in the Union of Soviet Socialist Republics, it will, as is consistent with Rule 28(b) of the Federal Rules of Civil Procedure, will proceed in conformity with Soviet law.

Despite the fact that Notice was provided in early February, 1981, and an offer was made to assist each attorney in obtaining a visa for travel to the USSR, neither

Mr. Carlton nor Mr. Sayad is present today. As the United States has already indicated to those two attorneys, the deposition will go forward with or without their participation. Since those attorneys have waived their presence at this deposition the matter will proceed in their absence.

(Videotape started.)

DIRECT EXAMINATION

Q (By Ms. Coleman) I would like to address the witness now, if I may.

A Yes.

Q Mr. Vatseb, my name is Kathleen Coleman. I am an attorney for the United States Department of Justice in Washington, D.C. I will be asking you questions which will be translated into your language.

A All right.

Q I want you to listen closely to the questions, and answer only what you have been asked. If you do not understand a question, please tell me so, and I will rephrase the question for you.

A I understand.

Q In addition, Mr. Vatseb, it will become very obvious to you that I am not familiar with your language, and I mis -- I may mispronounce some words. Please let me know if you have any questions of me regarding what you may have been asked.

A No, right now, no questions.

Q Mr. Vatseb, where were you born?

A The village of Lisets in Ivano-Frankovsk District, Ivano-Frankovsk region.

Q When were you born?

A 1926, on the 10th of October.

Q The Ivano-Frankovsk District, when you were born, what was it called then?

A It was the Stanislawow region.

Q Where were you living?

A The village of Lisets.

Q And when the Soviet Union was occupied by the Nazis, where were you living?

A The same place, Lisets.

Q Do you recall what your address was?

A The village of Lisets.

Q Did you have a house number, or did you live on a street?

A It was the -- The former name was Tsvintarska.

THE INTERPRETER: T-s-v-e-r-n-a-y-a.

A That means cemetery street. There was a cemetery nearby.

Q What cemetery was nearby your home?

A It was our Ukrainian-Polish cemetery,

the regular one.

Q Before the occupation of Lisets by the Nazis, what was the population of Lisets?

A We had Poles, Ukrainians, and Jews in the village.

Q Approximately how many people lived in the town?

A I cannot remember now.

Q Can you estimate the number of Jews who lived in Lisets?

A Well, around 20 or 25 families - Jewish families.

Q And where did they live?

A They lived right in the center of the village.

Q Can you tell us, Mr. Vatseb, whether or not a police force was established in Lisets during the Nazi occupation?

A Yes.

Q When was it established?

A After the Soviet army retreated and the Nazis occupied my area, then a so-called Ukrainian police was set up.

Q How soon after the occupation did that take place?

A The third day after their occupation.

Q How many Ukrainian policemen worked in Lisets?

A 12 persons.

Q Did you know any of them?

A I knew some of them, but could not know all of them.

Q Can you tell us which of those policemen you knew?

A There was Vitvicki, Karpinetc --

(Ukrainian stenographer confers with interpreter Pietuchov.)

MS. COLEMAN: Now, please translate what has been said.

THE INTERPRETER: They just said they were speaking too fast. They want me to pronounce in English. Wait.

(Witness speaks to the Ukrainian stenographer.)

(Videotape stopped.)

MS. COLEMAN: Your Honor, for the record, I would like to identify the woman you see. She is the court clerk who works in the Soviet courts. She takes down by shorthand, not by machine, what is being said, and it was she who was asking the questions. She asked him to slow down.

THE COURT: Thank you.

(Videotape restarted.)

A Bielogubka, Vitvicki, Grabelni, Karpinetc; and then there were some more, but I don't know the rest of them.

Q Where did these policemen come from? What were their home towns?

A I don't know this. I know that Bielogubka was from the village of Stary Lisets.

Q Besides the policemen you have already mentioned, can you tell us whether or not you knew anyone named Koziy?

A We are just coming to this point because he turned up in the police later.

Q Do you recall when he began to work for the police?

A It was in 1942. I do not recall exactly, but as far as I can remember; so this policeman Koziy appeared in the village.

Q What was his first name, do you know?

A Bohdan.

Q What did Bohdan Koziy look like?

A He was a tall, thin man, and a long face.

Q What color was his hair?

A Well, kind of reddish. Reddish and combed at the back.

Q How old was he?

A Well -- (Inaudible.)

Q Do you recall when the first time was that you saw this Bohdan Koziy?

(Videotape stopped.)

MR. CARLTON: Your Honor, starting with line 24, on page 14, I could not hear the response. I heard "How old was he?" but I could not hear the answer.

THE COURT: Let's run it back. There was some interference there. I don't think I caught it, either.

MS. COLEMAN: Perhaps we could read that portion into the record. That was discovered later on, and when the Soviet witness reviewed his testimony, we had Mr. Rapaport, the court reporter, read into before the witness, what he stated, and he did read back what appears on these pages now.

MR. CARLTON: Your Honor, I would like to be able to hear it myself.

THE COURT: Run it back. We probably won't hear much. It might help.

(Videotape restarted at page 14, line 16.)

Q What was his first name, do you know?

A Bohdan.

Q What did Bohdan Koziy look like?

A He was a tall, thin man, and a long face.

Q What color was his hair?

A Well, kind of reddish. Reddish, and combed at the back.

Q How old was he?

A Well -- (Inaudible.)

Q Do you recall when the first time was that you saw this Bohdan Koziy?

A I cannot tell you exactly, but I remember just -- Just -- Sorry.

(Interpreter Pietuchov confers with the witness.)

A Once I was outside, I was told by the people nearby that this is policeman Koziy.

THE INTERPRETER: And he didn't understand where it was he -- (Unintelligible.)

Q Well, Mr. Vatseb, when was the first time that you remember seeing Koziy?

(Videotape stopped.)

MR. CARLTON: I object to the response on page 14, line 24, as to how old the individual was, where he says "21, 22, 23" and for the record, I am reading from a

transcript. I couldn't hear that. In all fairness, I could hear by listening carefully the answer given page 15, line 3, and I could hear the answer given on page 15, line 6; however, I would object to the answer given on page 15, line 6, at the point after he said, "Once I was outside --"

In other words, what he was told; and where he says, " I was told by the people nearby that this was policeman Koziy", as constituting hearsay.

THE COURT: How about that, ma'am?

MS. COLEMAN: Your Honor, as I indicated, when we filed the motion for videotaping, we asked a videotape in addition to taking the deposition by conventional, stenographic means, and we have a certified record here, in which Mr. Rapaport certifies that he was present and he did take down a verbatim record.

In fact, if you turn to page 40 of this transcript, I put into the record, "We are back on the record now, and we just reviewed the tape with Mr. Vatseb. During the period of review, it was discovered for a period of time there was a deficiency in the sound portion of the videotape, that appeared at the time period 1151, and 50 seconds. Mr. Rapaport has examined his records to see what in fact was the testimony for that period of time. I would ask that Mr. Rapaport now read onto the videotape what appears from his official notes, and Mr. Pietuchov translate that portion of

the testimony for Mr. Vatseb's review."

Because of this deficiency, I ask that I be permitted to read those lines which don't appear on the audio portion of the videotape that we are listening to in court today.

MR. CARLTON: Your Honor, my position is, since they petitioned the Court for a videotape, and the fact they had some sort of a deficiency in the operation of the videotape, it is their problem, and they just can't say, all right, we are going to have one or the other.

THE COURT: Well, I think the official record of the deposition can be regarded to be the transcript, particularly where it is certified to be correct by the court reporter. I will overrule your objection.

MS. COLEMAN: Your Honor, may I read into the record at this point what appears from the certified transcript?

THE COURT: All right. Yes, I guess that is probably necessary. Go ahead. You are talking about lines 23 through -- Page 14, down to what point?

MS. COLEMAN: Probably down to about line 22. I don't know for certain.

THE COURT: Line 22, page 15?

MS. COLEMAN: Yes. I am guessing at that.

THE COURT: Let's just have the Court

Reporter copy that into the record. That is not necessary for you to read it off.

I will rule the Court Reporter can make that an official part of the record.

MR. CARLTON: That is going through where, now?

THE COURT: From line 24 on page 14, down through line 22 on page 15. NOw, I think we may find that much of that is adequately covered in the videotape. That answer on line 24, of 14, is not.

MR. CARLTON: I had an objection, further objection on page 15, line 6, which I don't believe the Court has ruled upon.

THE COURT: Yes, this question or answer contained on line 6 and 7, what is the Government's position there?

MS. COLEMAN: A person who is known in the community by a name certainly can be identified by that name through hearsay. For example, I am aware that your name is Judge Paine, and I am sure everyone else in the court is aware that your name is Judge Paine, and we learned your name because we were told by someone what your name was. I think this is such a practical, every day consideration, and there is such indicia of trustworthiness in the community, that this would not come within the scope of the hearsay rule. It is

much like -- And I have done research in past years, whether or not a person's nickname in the community can be introduced as an exception to hearsay, just not being hearsay itself, and I know there are a number of cases on that, your Honor. Unfortunately, I cannot cite them to your Honor, because it is such a basic proposition.

MR. CARLTON: Your Honor, I haven't heard any rules, and it is so basic that we haven't cited any cases.

MS. COLEMAN: I didn't anticipate such objection.

MR. CARLTON: If the issue was regarding your name, that may not be a problem, but if it were a question as to whether Judge Paine was seated here, or some other judge, then it certainly would be an issue; and I don't think to say that other people said it was Judge Paine would be admissible as being hearsay.

In this case, there is definitely, and obviously a question as to whether the person that they are talking about is Mr. Koziy.

MS. COLEMAN: I do see 803.19, reputation concerning blood, adoption,marriage, or other similar fact about your personal, or family history that is admissible, and I would suggest that this situation would come within that rule.

MR. CARLTON: I think we ought to look

at 19. It says, reputation among members of his family by blood, adoption, or marriage, among his associates, or in the community concerning birth, adoption, marriage, relationship by blood, adoption or marriage, and vestry, or other similar fact of a personal or family history.

That isn't even applicable to what we are arguing in this instance.

THE COURT: I will grant the motion, and exclude that particular answer.

(Thereupon, the following was taken from the deposition transcript as per the ruling of the Court, beginning page 14,line 24, to page 15, line 22:)

A 21, 22, 23.

Q Do you recall when the first time was that you saw this Bohdan Koziy?

A I cannot tell you exactly, but I remember.

(Whereupon, interpreter Pietuchov confers with the witness.)

A (Continued) Once I was outside and I was told by the people nearby that this was Policeman Koziy.

THE INTERPRETER: And the shorthand writers didn't understand where he was when he saw him.

Q Well, Mr. Vatseb, when was the first

time you remember seeing Koziy?

A I cannot tell you exactly the date.

Q Can you give us some idea?

A 1942.

Q How did this Koziy dress?

A It was in the summertime, it can be the springtime. I cannot tell you this exactly.

Q How did Koziy dress?

A It was police, police uniform, with a gun, and a rifle, and a police cap.

Q How often would you see Bohdan Koziy?

A One could see him very often everywhere.

(Videotape restarted.)

Q How far was your home from the police station?

A Does it make any difference where the police was from my house?

Q How far was your home in distance from the police station?

A It can be around a kilometer.

Q Mr. Vatseb, can you tell us what happened to the Jews of Lisets once the area was under German occupation?

A Well, I can tell you only one thing,

what I said, that Koziy shot - shot the Jewish people to death, and was just -- He was shooting to death the Jewish people of the village.

(Videotape stopped.)

MR. CARLTON: Your Honor, I would object, and move to strike the answer as, number one, not being responsive to the question; and number two, that it is predicated upon hearsay. Certainly even the Government is not alleging that the Defendant shot and annihilated, eliminated, the Jews of Lisets.

THE COURT: Well, I think the question and answer doesn't really carry that implication, and I will overrule the objection.

(Videotape restarted.)

Q When the Germans first occupied the area, what happened to the Jews?

A They continued living there.

Q For how long a period of time?

A From 1941 up to 1943.

Q And what happened to the Jews in 1943?

A They were sent to a ghetto, Ivano-Frankovsk. The name of the street was Belwederska, but now it is called Frunze Street.

Q Now, this Ivano-Frankovsk where the

Jews were sent, what was the name of the place during the occupation?

A They were sent to a ghetto.

Q Yes, but what was the name of the city where the ghetto was located?

A Stanislawow.

Q How far away is Stanislawow from Lisets?

A Nine.

Q Nine what?

THE INTERPRETER: Kilometers.

Q Now, you have mentioned a ghetto in Stanislaow.

A Yes.

Q How do you know there was a ghetto there?

A Well, we know that they were sent --

(Videotape stopped.)

MR. CARLTON: Your Honor, I would object and move -- I would object to the response as not being responsive to the question. The question was: "Now, you have mentioned a ghetto in Stanislawow. How do you know there was a ghetto there?" "Well, we know they were sent there to that ghetto because there were two Jewish cemeteries there, and they were shot there," and that would be predicated upon

hearsay, as well as not being responsive.

THE COURT: The Government.

MS. COLEMAN: There was one time for Mr. Carlton to make that objection, and that was at the deposition. He didn't attend. He waived his objection, and Rule 32 is quite clear on that: Any objection as to the irregularities in his answer -- Irregularities as to answers is waived unless made at the time of the depositions.

MR. CARLTON: Certain things may be waived, but that is not waived as far as it being offered into evidence at this time during the trial.

THE COURT: I will grant the motion --

MR. CARLTON: They go into it in the next question again.

THE COURT: Let's see what the next question says here.

I will grant the motion to strike lines 10, 11, and 12. Appears to me the next question and answer is permissible.

(Videotape restarted.)

A -- there to that ghetto because there were two Jewish cemeteries there, and they were shot there.

Q Did you see any Jews being sent to the ghetto?

A In Stanislawow there was a separated

area where there was a separated area by boards, a kind of a frontier, a restricted area. There were no -- There were no people there, only Jews, so this area was made especially for Jews.

Q Did you see this in Stanislawow? Did you see this yourself?

A Do you mean the ghetto?

Q Yes.

(Videotape stopped.)

MR. CARLTON: Your Honor, I object to the answer given on page 17, line 23, as being totally unresponsive. "Do you mean the ghetto?" Or, "Did you see this yourself?" "Do you mean the ghetto?" And the answer is, "There were very many Ukrainians shot there."

And of course, it is obvious from the questioning, because Miss Coleman comes back and says, "Mr. Vatseb, please listen to the questions. Did you, yourself, see the ghetto in Stanislawow?" And he said "I couldn't go there myself, or I would have been shot to death."

THE COURT: I will overrule the objection. The form of the answer seems to be nonresponsive all right. That may be controlled by Rule 32. It isn't very probative in the fashion in which it is offered. I will overrule the objection.

MR. CARLTON: I would add additional

grounds being hearsay, since he says on the top of page 18, line 2, that he couldn't go there, or he would have been shot to death. By just testimony alone, that would indicate that he had heard this from someone else.

THE COURT: Objection overruled.

MR. CARLTON: Could I say one other thing, your Honor, I am looking down here, if you look on page 18, lines 9 through 12, she again says, did you see the area where the Jews were kept in Stanislawow? " You better listen to me. You are asking me concerning -- Ask me concerning the case, and not the ghetto. I was only 17 years old and could not get to the ghetto."

THE COURT: Well, that goes only to the weight of the evidence, and it does weaken it considerably, but I don't think it bears on the admissibility. I will overrule the objection.

(Videotape restarted)

A There were very many Ukrainins shot to death there.

Q Mr. Vatseb, please listen to my questions. Did you, yourself, see the ghetto in Stanislawow?

A I couldn't go there myself or I would have been shot to death.

Q Did you ever go to Stanislawow during that period of occupation?

A I walked there.

Q And did you see the area where the Jews were kept in Stanislawow?

A You better listen to me. You are asking me concerning -- Ask me concerning the case, and not the ghetto. I was only 17 years old and could not get to the ghetto.

Q The Jews from Lisets, how were they sent to the ghetto?

A You mean the Jewish people?

Q Yes, from Lisets.

A So they were -- So they were collected and driven by police, like cattle.

Q All right. Now, the police who drove them to the ghetto, what police are you talking about?

A This was Ukrainian police. There were no Germans in it.

Q Can you tell us what was the penalty for persons who hid Jews in their homes?

A There was the same penalty as for Jews. These people were shot to death.

Q Can you tell us whether or not there were any medical doctors who served Lisets?

A There was a physician, Dr. Singer.

Q What was Dr. Singer's ethnic

background?

A Jewish.

Q Was he married, or a bachelor?

A He was married, and had a kid.

Q What kind of child did he have?

A Three, four years old.

Q Was it a boy or girl?

A I could not know exactly -- A girl.

Q Had you, yourself, ever seen Dr. Singer's little girl?

A I saw her when she was being shot by Koziy.

Q Tell us what you saw Koziy do to Dr. Singer's little girl.

A When Dr. Singer and his wife were taken to the ghetto in Stanislawow, they left their daughter at the family of a Pole - a Polish woman.

Q Now, what did you see Koziy do to Dr. Singer's little girl?

A So now I want you to listen attentively to me. Now we have come to the point when they were taken to the ghetto. So they hid this kid at the Polish woman's house. That was an old woman called Jagusya. The kid could speak only Polish. I think she didn't know any other language. Somebody said that the kid --

(Videotape stopped.)

MR. CARLTON: Your Honor, I object to what somebody told the witness.

THE COURT: Overruled.

(Videotape restarted.)

A -- was being hidden by that old woman Jagusya. That kid was taken to the police.

Q Now, I want you to state what you saw with your own eyes happen to Dr. Singer's daughter.

A All right. I will do it. So that kid was at the police. That kid -- We were standing right on the street, and from the police station that kid -- The kid was taken by Koziy. I don't know how he kept her, by her hair or by her coat. Koziy took her around the police station, and there was a concrete kind of a -- There was a well, and a concrete platform. He put the kid right on the concrete.

Q And what did he do to that child?

A Then he stepped back, let's say -- Well, it was around 10 steps from her, and then he shot the kid. As far as I remember, he shot twice.

Q Where did he shoot this little girl? What portion of her body?

A That's the way she was standing, and he was smirking. Right breast, chest.

Q What was the child doing at the time?

A The child was speaking something, but could not speak very much. She was too young, around four years old.

Q Now, Mr. Vatseb, you said you and others were watching this?

A Yes.

Q Who was watching this with you?

A Jablonski. He is in Poland now.

Q What is Jablonski's first name?

A Josef Ludvikovich.

Q Have you --

A I am not sure if he was there. I cannot recall now, but I remember there were many people around.

Q Have you discussed this with Josef Jablonski?

A There was nothing to talk about. A child was shot.

Q Mr. Vatseb, do you know, or did you know a person named Bernard Kandler?

THE INTERPRETER: Bernard?

MS. COLEMAN: Kandler.

A Yes, I knew him.

Q What was his ethnic background?

A Jewish.

Q Is he still alive, or is he now dead?

A He is living, but somewhere up in the air. He was killed by Koziy. Koziy shot him to death.

Q Did you see Koziy shoot Bernard Kandler?

A Yes, I did.

Q How far away were you from that?

A Let's say around 10, 15 meters, give or take a couple of meters.

Q What was Bernard Kandler doing when Koziy shot him?

A They were loaded on a truck.

Q What was Bernard Kandler doing?

A So his relatives, his mother, father, and sister were already on the truck when he started to run away.

Q He was running away? Are you talking about Bernard Kandler was running away?

A Yes.

Q When Bernard Kandler was running, what did Koziy do?

A He just ran after him and shot him.

Q Was there anything -- Strike that. What, if anything, obstructed -- What, if anything, blocked your view of the killing of Bernard Kandler?

A He was -- There was no obstruction. It was close by -- It was very clearly seen when he shot him twice.

Q Getting back to the death of Dr. Singer's daughter, how far away were you from that incident?

A To tell you shortly and truthfully, he was here, and we were the same distance as those people who are with the equipment.

Q Can you estimate that distance?

A Around 10 meters.

Q Was there anything that blocked your view of that killing?

A It was in daylight. It was almost the same as you are in this room. There was some kind of fence, but very low, so it is the same as here.

You see, I am very sorry. I am so all filled with emotion when we are talking about that kid. It is just breaking my heart.

Q Mr. Vatseb, I realize that this is uncomfortable for you to discuss the killing of that child, but it is necessary that we ask you these questions.

A Okay. Go on asking.

Q What kind of fence was there around the police station?

A Well, there were boards, and --

Height -- Not more than a meter high. It was an old one.

Q And you say that nothing obstructed your view of that shooting?

A Nothing obstructed.

Q Mr. Vatseb, did you know a family whose name was Rosiner? I will spell it for you in English. R-o-s-i-n-e-r.

A Yes, I knew Shlomo.

Q Shlomo is the first name of the Rosiner man?

A He was called Shlomo or something like this, but I knew him pretty well.

Q What was his ethnic background?

A Jewish.

Q What did Mr. Rosiner do for a living, if you know?

A So he was in a kind of private business. He bought cows, and had a little shop where he sold meat.

Q Did you know any members of Mr. Rosiner's family?

A It was Rosiner himself, his wife and daughter in his family.

Q How old was his daughter?

A It is hard to say exactly. It could

be 10, 12, 14, 16. It is hard to say now.

Q Do you recall what her name was?

A I don't remember the girl's name.

Q Is she alive today?

A It's impossible. She can only live in the heart of Koziy.

Q How did she die?

A As soon as the parents were sent to the ghetto, so she managed to run away when they were driven across a road.

Q And what happened to her?

A There was -- When she ran away, there was a barn close to the police station.

Q And what did you see happen?

A There were many people at that time. This policeman Koziy went there and he was told that Rosiner's daughter was --

(Videotape stopped.)

MR. CARLTON: Your Honor, I object to this portion as constituting hearsay. As he says, as this unfolds, that he left the scene, and could not see it. He says, because people left the scene.

THE COURT: What lines do you object to?

MR. CARLTON: Your Honor, I am objecting to page 25, middle of the line 19, where it begins, "he was

told that Rosiner's daughter was in that barn", and the fact that people heard shots, going on through page - line 22, through page 26, line 3, and that is it.

MS. COLEMAN: Your Honor, Vatseb explained that he didn't go into the barn. That is what the answer indicates. He saw Mr. Koziy go into the barn, and he heard the shots, and he saw Koziy walk out of the barn.

MR. CARLTON: That is why I am not objecting to page 26, line 8, Koziy went out of the police station, and walked out of the barn.

MS. COLEMAN: I would like to know the grounds for the objection you are making.

MR. CARLTON: I am objecting to the hearsay, first of all, of what allegedly the person he refers to as Mr. Koziy was told that Rosiner's daughter was in the barn, and to what other people heard, namely shots.

MS. COLEMAN: Mr. Vatseb explains he himself heard the shots, and as far as Mr. Koziy going into barn after he had been told the child was in there, the record does not show that this is clearly hearsay. Mr. Vatseb could well have been there when Mr. Koziy was told the girl was in the barn.

THE COURT: Well, he was told Rosiner's daughter was in the barn. I will exclude that part, lines 19 and 20, pursuant to the motion. The rest of it you can read

or read it all, but that is excluded from the record.

(Videotape restarted.)

A -- in that barn; and he went right in the barn and then people heard shots, one or two.

Q Did you see this happen?

A You mean when she was killed?

Q Shot, yes.

A You know, I could not see because people, you know, left the scene. When somebody sends bullets and shots, you know, the bullet doesn't care whom to get.

Q But were you in the area when this incident first started?

A Yes, I was there.

Q What did you see Koziy doing?

A That Koziy walked out of the police station, went right to that barn.

Q And what did you hear?

A Two shots; and some time passed by, and Koziy walked out of the barn, and there was a smirk on his face, and he said, "Now I will enjoy a pleasant dinner."

Q Did you ever see the body of Rosiner's daughter?

A I did not. It was impossible to see it because Koziy was the kind of man who just did not give a damn about people, and he could shoot anybody.

Q After that shooting of Rosiner's daughter, did anyone go into the barn after Koziy had left?

A Yes. There were some people who went in there in order to take the corpse out and bury it someplace, not to let it -- Not to leave it in the barn.

Q Were there any other policemen besides Koziy who headed towards that barn?

THE INTERPRETER: I'm sorry. Who headed?

Q Who went toward the barn?

A There was only one - Koziy. He had a great passion, a passion for killing people.

Q When this Koziy lived in Lisets, Mr. Vatseb, was he married or was he a bachelor?

A He was married.

Q Do you know who his wife was?

A Ostapiak, Jaroslava Vasilyevna.

Q How do you know this woman who was married to Koziy?

A Because her father was the governor of our region.

Q What was her father's name?

A Can you repeat the question, please?

Q This Mrs. Koziy, this Jaroslava Ostapiak, what was her father's name?

A Wasyl.

Q Did you know any members of the Ostapiak family?

A There was a son, Zenon, and Oksana - it is a she - and the youngest one, Olga.

Q For how long a period of time did you know the Ostapiak family?

Q I had known him for a long time. He had lived there when this area was under Poland.

Q When did you first meet Jaroslava Ostapiak?

A Me?

Q Yes.

A We were -- We went to the same school, only she was older than me.

Q When did her father become the leader of the area?

A During the Nazi occupation period.

Q Do you know what his duties were during the Nazi occupation?

A I don't know his duties, but this does not concern the case.

Q When was the last time that you saw Bohdan Koziy?

A When the Germans were running away, fleeing.

Q And do you remember when that was?

A I cannot remember exactly, because if he had remained there, the people would have stifled him by hands, because he had so much human blood on himself that it was almost running out of his ears.

Q Mr. Vatseb, besides the incidents that you have already spoken of, can you tell us of any others which involved Bohdan Koziy's work as a policeman?

A There were a very many incidents. I have a question to you --

(Videotape stopped.)

MR. CARLTON: Your Honor, I would move to strike all of these comments made by this witness which appear to be his opinion regarding the individual, and not covered by a question, and not of probative value in this court in determining the issues in this case, such as what would have happened if the individual he is talking about had remained there; and now him asking the Government a question regarding the person he believes to be the Defendant in this cause.

THE COURT: Any opposition to that motion?

MS. COLEMAN: Yes, procedurally I have an opposition, based on Rule 32.

THE COURT: I will grant the motion on page 23 -- Page 28, line 23, beginning with "Because", and

29, line 1, ending with the word "ears"; and I am granting a motion to strike line 7 through line 10 on page 29.

MR. CARLTON: Thank you, your Honor.

MS. COLEMAN: I just made a facetious comment to Mr. Carlton, but I think perhaps it might be telling, and since it has been stricken from the record at his request, he will not refer to this portion of the transcript when he makes his closing argument.

THE COURT: That is a tactical decision for him. I am sure he realizes that.

(Videotape restarted.)

A -- I have only one question, why this -- If I can put it like this, this bloodsucker like this found asylum in the United States, is at large now, and still lives in the States.

Q Mr. Vatseb, the things that you have stated today are very serious allegations against Bohdan Koziy. Are you absolutely certain about the things that you have testified to today?

A Yes. Another point. Why is Bohdan Koziy still at large?

Q Mr. Vatseb, let me explain something to you. This is a proceeding in which you are here to answer questions. Do you understand that?

MR. DOROSH: The questions you have, you

have put this, it concerns the work of the American people. You have to understand this. So now you are to answer questions, and what you are interested in, this comes later.

Q Now, this Jaroslava Koziy who you have mentioned, whose maiden name is Ostapiak --

A Yes.

Q -- can you describe her, please?

A She was a tall woman, white, and looked like you, only stouter.

Q What color was her hair?

A The same as you.

MR. DOROSH: The color, would you tell us the color. Tell us in words.

THE WITNESS: The same color. Not white, not red.

MS. COLEMAN: For the record, my hair is strawberry blond.

Do you feel that you can identify Jaroslava Ostapiak?

A Me? Even right now.

(Videotape stopped.)

THE COURT: Just a minute, please. Is it possible to have a stipulation here with respect to the two spreads that are showed to this witness from the last 10 pages of the deposition, and let them be included in the

record as they are reflected by the transcript without listening to the videotape? Is that possible?

MS. COLEMAN: We have no objection.

THE COURT: Any objection, Mr. Carlton? I think that is all there is in this deposition now, the exposition of those two spreads.

MS. COLEMAN: We do have the two spreads in court today. I ask the first be marked as Exhibit 22E-1, that is the spread containing photographs of females; and the second, 22E-2, the spread containing photographs of males.

MR. CARLTON: Your Honor, I have conferred with the Defendant, and due to what we believe may be an irregularity, specifically appearing on page 35, around line 16 or 17, we would ask that this be played.

THE COURT: All right. Just that part of it, or you want the whole thing played? You are referring to the line where he first says, "I cannot recognize anybody here," and Miss Coleman says, Now, the witness has pointed to photograph number 2."

MR. CARLTON: Correct, your Honor. Starting before that. I guess we ought to start off where he shows the 8 photographs there, and given instructions, and he says, "I understand, but why do I have to look at these photos? Perhaps I won't recognize anybody." And the Assistant Procurator says, "No one forces you to." And he said, "I

cannot recognize anybody here", and all of a sudden, he recognizes number 2.

THE COURT: All right. That is having to do with the male spread, and we have the stipulation with respect to the female spread?

MR. CARLTON: On the female spread, we could have a stipulation that the transcript will suffice.

THE COURT: All right. Let's run over, then, in view of that stipulation.

MR. CARLTON: Would it be permissible, your Honor, for me to request that the video be stopped right at that point for the Court to view precisely what is taking place following where he says, "I cannot recognize anybody"? I believe the time on the video is 1237, and 16 seconds, to 1237 and 18 seconds, somewhere in that area.

MS. COLEMAN: We have no objection to that procedure, your Honor.

THE COURT: All right, fine.

MS. COLEMAN: If we are going to get down to specifics who picked them out, do you want to focus on how long it took him to pick out the female photograph?

MR. CARLTON: No.

THE COURT: No, I don't care to do that.

MR. CARLTON: We are not commenting on that time.

THE COURT: Say 22E-1 is received in evidence over objections from the Defendant, as previously stated?

MR. CARLTON: That is correct. I would like to see those original photographs, however, if I may.

THE COURT: See if you can find the beginning of the material in connection with the female spread.

(Thereupon, the following was taken from the deposition transcript of Anton Vatseb, beginning page 30, line 18 to page 34, line 18:)

MS. COLEMAN: I want to show a folder to you which contains eight photographs. I want you to examine each photograph carefully, and indicate to me if any of the persons contained in the folder looks familiar to you. If anyone does look familiar to you, I want you to indicate which one it is. If you recognize none of the persons, I want you to tell me that as well.

The folder that I will show to you may or may not contain a photograph of any person you have discussed here today. Do you understand these instructions?

A I understand you, but I cannot see properly without any glasses. Do you have eyeglasses? I don't have any. I cannot see like this now.

MR. DOROSH: What kind of eyeglasses do you need? Shortsighted, nearsighted?

MS. KOSEKNIKOVA: Try my glasses. This is plus two.

THE WITNESS: I didn't have my eyeglasses.

THE UKRAINIAN STENOGRAPHER: Try these.

(Handed to the witness.)

THE WITNESS: Let me try. This more or less looks like the right glasses.

MS. COLEMAN: For the record, I am going to show the witness, Mr. Vatseb, a folder which contains 8 photographs. This folder, which will be given to the court reporter to be included in the record, contains the initials OSI, followed by the number 110-5 -- At least it looks like a 5, perhaps it is an S; and in parenthesis, there is a W.

Mr. Vatseb, take as much time as you like looking at these photographs.

(Folder of photographs as indicated handed to the witness.)

MS. COLEMAN: The witness is pointing to photograph number 2. What is he saying?

THE WITNESS: This is similar to the Ostapiak family. It could be a son or daughter. This is from their family.

MR. DOROSH: What number?

THE WITNESS: Number 2.

MS. COLEMAN: I would like to hold this

up for the videotape operator. Can you get that?

MR. FALBAUM: Yes. Can you tilt it down, please? Tilt it to me. That gets rid of the glare. Can you indicate which one was photograph number 2.

(Indicating.)

MR. FALBAUM: All right.

THE WITNESS: This is from the family. It could be a son or daughter.

Q Mr. Vatseb, I want you to take a pen and I want you to write at the bottom of this photograph which you have selected, your signature, and today's date.

MR. DOROSH: Your signature here, and the date today, '81.

Q Now, on the other photographs --

A I cannot recognize other people on the photos.

Q On the other photographs, I would like you to put your initials and today's date.

THE INTERPRETER: What do you mean by initials?

MS. COLEMAN: The first letters of his names, and today's date.

THE INTERPRETER: The two letters?

MS. COLEMAN: Yes, and today's date.

MR. DOROSH: On all of them, just the

first letters.

(The witness complies.)

MR. DOROSH: Take your time, and so on.

THE WITNESS: You're welcome.

MS. COLEMAN: Mr. Rapaport, would you please put a sticker on this as Deposition Exhibit number 1.

THE COURT REPORTER: Unfortunately, I don't have stickers, but I will mark it with my initials and today's date in the top righthand corner.

MS. COLEMAN: I would move Exhibit number 1 into evidence at this deposition.

Mr. Vatseb, I want you to look at another folder which contains 8 photographs.

For the purposes of the record, that folder contains the label OSI 110(M), and below that are the initials AM.

Do you recall the instructions I just gave you, Mr. Vatseb, regarding how you are to examine these folders?

A Well --

Q Would you like me to give them to you again?

MR. DOROSH: I want to explain to you, take your time. You were shown photos, and you were asked to analyze them closely, and do you need this explanation again?

THE WITNESS: I can have a look at them and I can recognize them or not.

(Videotape restarted.)

Q All right. I will give you the instructions one more time. In this folder which I am going to show to you there are 8 photographs. I want you to look at each photograph carefully and indicate to me if any photograph of persons contained in this folder show people who are familiar to you.

A Well, if I --

Q If any of them are familiar to you, I want you to show me, or to indicate to me which one is. If you recognize none of the persons, I want you to indicate that to me. This folder may or it may not contain the likeness of any person you have discussed here today.

Do you understand these instructions?

A I understand, but why do I have to look at these photos? Perhaps I won't recognize anybody.

MR. DOROSH: No one forces you to.

(Whereupon, the folder referred to is handed to the witness.)

A I cannot recognize anybody here.

MS. COLEMAN: Now the witness has pointed to photograph number 2. What did he just say?

THE WITNESS: It looks like Koziac.

MR. DOROSH: Koziac?

THE INTERPRETER: He means Koziy.

MS. COLEMAN: Why do you say photograph number 2 looks like Koziy?

THE WITNESS: It looks like him.

MS. COLEMAN: I would like to hold this up for the videotape operator, and photograph number 2, which is being pointed out now, is the one that the witness himself had pointed to.

Again, Mr. Vatseb, I would like you to put your name and today's date at the bottom of the photograph.

A But I can tell you -- I cannot tell you exactly now. Quite a number of years have gone by.

MS. COLEMAN:What did the witness just say?

MR. DOROSH: Say it again.

MS. COLEMAN: Please translate what he just said.

THE INTERPRETER: He said it really looks like Koziy, but I wish I could see him alive now.

MR. DOROSH: Put your surname here, and the date.

(Videotape stopped.)

THE COURT: Could we stipulate for the lack of necessity for viewing the balance of the transcript? Is there any more in here that you want us to see, counsel

for either party? I have read over the transcript itself.

MS. COLEMAN: We would not object if it would terminate right here, your Honor.

MR. CARLTON: Your Honor, again, looking at something else, it was stopped right after the photograph I.D.

THE COURT: Well, he is signing now. We stopped ahead of that, where he begins to put his name on the pictures. Just a few lines above that.

MR. CARLTON: Your Honor, Mr. Koziy's concern is that you be aware, of course, of what is stated here, and specifically the part that says, page 37, line 13, "Did you know that she was Dr. Singer's daughter?" "It was not only me. There were many people, and everybody knew that Koziy went in the barn to kill the Doctor's daughter."

THE COURT: Yes, sir, I have read that, and also the several sentences following it.

MR. CARLTON: As well as the sentences, page 36, and line 24.

THE COURT: Yes, sir, I am quite aware of that.

MR. CARLTON: With that, having conferred with Mr. Koziy, it will not be necessary to play it on video.

THE COURT: All right, sir.

MS. COLEMAN: Your Honor, if that is it, I move for admission into evidence 22E-2.

THE COURT: You are objecting, are you not, to 22E-2?

MR. CARLTON: Yes, I am, same grounds previously stated, as well as any deficiencies in the matter in which he was shown these photographs.

THE COURT: Objection noted, and overruled, and 22E-2 is received in evidence over objection of counsel for the Defendant.

No. Female spread is 22E-1, I believe. Yes, 22E-1 is female spread, and 22E-2 is the male spread.

MR. CARLTON: Thank you, your Honor.

THE COURT: We received them both, although I think I have been talking about them in just the opposite way earlier, so I would like the record to show that has been corrected.

(Thereupon, said photographs were marked as "Plaintiff's Exhibits 22E-1 and 22E-2" by the Court, and received in evidence.)

THE COURT: All right. I believe that then completes the reading of that deposition. Now, we will be in recess in this trial until tomorrow morning, 8:30, and if you let me have that memorandum -- Is it ready now?

MR. WOLF: It is being Xeroxed right now,

and we will provide it to your Honor, and Mr. Carlton. Could we also advise your Honor that we have contacted our office to commence contacting the Soviet office, and the State Department to see what can be done to have them here Monday.

THE COURT: All right. Court is in recess.

(Thereupon, the Court was in recess.)

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