

UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE



File: A-6421949 - New York (0300-17060)

(No Appeal)

In re: NICOLAE MALAXA

0036514

PROCEEDINGS UNDER SECTION 4, DISPLACED PERSONS ACT OF 1948, AS AMENDED.

In behalf of applicant: Ugo Carusi, Esq., 3720 Fordham Road, N.W.,
Washington, D. C.
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Washington, D. C.
(HEARD: August 15, 1951)

Application: Adjustment of immigration status.

Docketed
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FILE
A

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NAZI WAR CRIMES DISCLOSURE ACT
DATE 2004 2006

INTRODUCTION

The record in this case is voluminous. A brief was filed by counsel and their oral argument was heard in the Central Office of the Immigration and Naturalization Service. The applicant is an individual whose industries, capital and power were great at various times during his life. The applicant's activities abroad and in the United States were, in many instances, motivated and influenced by world history in general and Rumanian history in particular. Because of his position it is evident that he was acquainted, in varying degrees, with many of his contemporaries who played an important part in creating and dealing with the events which will, of necessity, be discussed in this opinion. It is apparent that any applicant so situated cannot number only friends among his associates; many persons have a dislike for such an individual. Both categories of such persons offered testimony and written evidence in these proceedings.

Where persons testified at the hearing and submitted written statements to the same effect as their oral testimony we will not refer to the written statements in this opinion. Similarly we will not refer to several written statements and affidavits which are cumulative or corroborative of matters not in question among the issues in this case.

In this opinion we shall endeavor, to the extent possible, to pierce all veils; to evaluate all the evidence as presented; to arrive at a decision commensurate with the law and the facts. To do this in an orderly fashion we must understand some of the recent history of Rumania. We must know who the witnesses are. For these reasons we have determined to treat each pertinent issue separately and, so far as is practicable, dispose of each such issue in its proper place. We shall then recapitulate and state our final conclusion in the premises.

PERTINENT EVENTS IN THE HISTORY OF ROMANIA

In our consideration of the elements of displacement and fear to return as contemplated by Section 4 of the Displaced Persons Act of 1948, as amended, we shall refer in greater detail to the rise and control of the communist influence in Rumania. At this point we will be more extensive in our recitation of pre-communist Rumanian history which must be understood as a background to this case.

On June 9, 1930 Carol became King of Rumania. This was a setback to the National Liberal Party which had ruled the country for many years in the past. After several intervening changes in the cabinet, Ion Duca, the leader of the National Liberals, assumed the premiership in November 1933. Meanwhile the fascist party founded in 1927 by Codreanu had grown and there were demands for orientation toward other fascist parties and nations outside Rumania. Followers of that party were known as the "Iron Guard" which gained four seats in parliament in 1932. After the assassination of Duca in December 1933, Foreign Minister Titulescu steered the foreign policy successfully and established closer ties with certain other nations after Titulescu had, in July 1933, concluded a nonaggression treaty with the Soviet Union.

The new premier, George Tatarescu, proscribed the Iron Guard in January 1934, but that organization resumed its activities under another name. It succeeded in forcing Foreign Minister Titulescu's dismissal in August 1936, thereby breaking off promising negotiations with the Soviet Union. Thereafter Rumania's foreign policy vacillated between friendship for the democratic countries and a growing reliance upon the fascist dictatorships of Italy and Germany. In the parliamentary elections in December 1937 the Iron Guard received the third largest number of votes, surpassed only by the conservative National Liberals and the democratic National Peasant Party. The new cabinet, headed by Goga, was different from the Iron Guard but akin to it in some respects not material to this discussion. In February 1938, after Goga dissolved parliament, King Carol dismissed the cabinet, suspended elections and established a personal dictatorship, nominating Cristea, the Rumanian patriarch, as head of the government and Tatarescu as vice premier. A new constitution was "accepted" on February 24, 1938, all existing parties were dissolved and constitutional freedoms were suspended. In April 1938 the King had Codreanu sentenced to prison for ten

years. This resulted in resurgence of a form of terrorism by the Iron Guard. Rumania thereafter found itself in a difficult situation, faced by claims for territory by Hungary, Bulgaria and the Soviet Union also coveted by Germany. On March 2, 1939 Cristea died and was succeeded by Armand Călinescu. On March 24, 1939 a five year economic treaty with Germany was concluded, which threatened to put the whole economic life of Rumania at Germany's disposal. To offset its effects, a trade treaty was concluded with Great Britain on May 12, 1939. Great Britain and France guaranteed Rumania's territorial integrity and independence in case it should fight against Germany in a recession.

On September 30, 1939 Călinescu was assassinated by Iron Guard terrorists and the Government struck ruthlessly against them. After a short interim administration of General Brătianu, who established some order, Constantin Brătianu became premier on September 23, 1939. Two months later he was superseded by George Călinescu with the title of Defense and Foreign Minister.

European strife during the year following the outbreak of war in 1939 found Rumania in a difficult position because of the alignment of its neighbors and the breakdown of France. Rumania was powerless to resist simultaneous pressure by the Soviet Union and Germany. Carol announced that Rumania would defend its frontiers. However, German pressure resulted in the release of many imprisoned Iron Guardists who were paroled and accepted into the ranks of National Assistance formed by Carol in December 1939 as an all Rumanian party to support his government. Călinescu resigned on June 1, 1940 and was replaced by pro-German Ion I. C. Brătianu. On June 11, 1940 the country was reorganized along strictly Fascist lines and the Iron Guard was to become the nucleus of a new totalitarian party. Its leader, Corneliu Zelea Codreanu, was received by the King.

On June 27, 1940 the Soviet Union occupied Bessarabia and northern Bukovina. Rumania accepted. The British guarantee previously mentioned was renounced and German troops infiltrated for the protection of Rumanian oil fields. The King adopted the German line completely but Rumania had to make even further concessions. On August 23, 1940 Germany and Italy forced it to cede northern Transylvania to Hungary. Even the pro-German Iron Guardists protested this. Discontent spread and Carol abdicated apparently under pressure of Ion Antonescu early in September 1940. Michael was made King but shorn of influence. The real power was vested in General Ion Antonescu.

Also early in September 1940 the Iron Guard terror was unleashed

...nationalities
...the
...able to prevail
...the
...the Iron
...the government
...of January 1941 their leaders
...The whole economic life of
...so that the govern-
...in conformity with Germany's
...all Iron Guardists.
...General Antonescu became premier and foreign secretary, while General
...The country was
...under German occupation. Great Britain severed its
...on February 10, 1941. Rumanian Minister to London,
...found a "Free Rumanian committee"
...to fight fascism. General Antonescu arranged for a plebiscite
(regarding his regime) where all but Jews were obliged to vote. All
foreign trade was put into axis hands.

On June 22, 1941 Ion Antonescu declared a "holy war" against the Soviet Union and by July 26, 1941 had recovered Bessarabia and Bukovina. Rumanian troops then pushed further on into the Soviet Union. On December 12, 1941 Rumania declared war against the United States and Great Britain. Another Iron Guard revolt, presumably instigated by Germany to prod Antonescu into furnishing more troops, oil and food, was quelled in January 1943. After Axis reverses in 1943 Rumania shortened its lines. Semiofficial peace negotiations failed in the spring of 1944. Soviet troops were entering Rumania early in April 1944 and Molotov announced the Soviet Union would accept Antonescu's surrender and guarantee certain of Rumania's territorial integrity. Antonescu procrastinated. On August 23, 1944 the king, through a coup, arrested the entire Antonescu cabinet and announced Rumania's surrender. General Sanatescu was made premier and the troops were ordered to help the Soviets against Germany. The Allied armistice signed September 12, 1944 provided for, *inter alia*, reparations to the Soviet Union of \$300,000,000. On December 6, 1944 General Nicolai Radescu formed a new government. He resigned on February 28, 1945 under Soviet pressure and was succeeded on March 6, 1945 by Petra Groza, leader of the Peasants' Front, with a leftist coalition cabinet and conservative Tatarescu as vice premier. Large food and oil shipments were sent to the Soviet Union. On August 6, 1945 that government recognized the Rumanian government. On August 22, 1945 after Groza refused to resign at King Michael's request, Michael invoked the Yalta agreement and asked the three major allies to assist in the formation of a new

Representative of the Soviet Union. To collect the...
recognize, the Soviet...
economic aid.

At the end of 1945...
front, a coalition of...
The two...
Party under Julius...
were not...
Manin and the...
demands to replace the...
held by communists...
of interior. A...
and Peasant) became...
of Soviet companies, the Soviet Union controlled all...
economic and transportation enterprises and...
granted tremendous special advantages. In addition to the \$300,000,000
in reparations (period of payment extended by two years so that eight
years in all were afforded), the Soviets were entitled to war booty
and restoration of looted property. The... by the Soviet Union
caused great inflation which made life difficult for the middle class
people. The November 1946 elections were denounced by the United
States State Department as unfair and undemocratic and indicated
that our Government did not believe that... its represented the will
of the Rumanian people.

The data hereinbefore set out was taken from (1) Encyclopedia
Britannica, 1945 Ed., Vol. 19, pp. 648-650 insofar as events to the
spring of 1941 are recited, (2) 1946 Supplement to Columbia Encyclopedia,
p. 49 insofar as events from June 1941 to the end of 1945 are recited,
and (3) Britannica Book of the Year, 1947, pp. 672-673 so far as the
events are recited from the end of 1945. Much of the material has
been recited verbatim and acknowledgment is made of the assistance
rendered by these publications.

The foregoing summary gives us a panoramic view of the setting in
which much of the relevant events played their part. It is not our
function in this case to criticize or politically scrutinize these
events of history. They speak eloquently for themselves.

SOME IDENTIFICATION OF WITNESSES WHO TESTIFIED AT THE HEARING

As previously pointed out, it is necessary to know who the witnesses are; that is, what positions, if any, they held in the government of Rumania or elsewhere. This will lead to a better understanding of their testimony and permit sounder evaluation of the testimony given by them. A high ranking official of a government would ordinarily know more about events in which he personally participated than another witness who learned of them through hearsay or in some other fashion after the event took place. By this, we do not mean to say or imply that only those who participated in events may be competent witnesses; others may have learned of the events exactly as they took place.

Some of the identification of witnesses was taken from the statement of the recent history of Rumania set forth above. Other data was taken from statements made by them about themselves or about other witnesses during the course of the hearing.

AUSNIT, Max--Former large steel industrialist in Rumania; vice-chairman of American-Rumanian Telephone Company which was built up by the International Telephone and Telegraph Company of New York. Also had trading and timber interests in Rumania. Once vice-chairman of Federation of Rumanian Industries, and for about two years commencing in 1930 he was a representative in two of the Rumanian legislatures. He left Rumania in June 1946 and has resided in the United States since October 1946.

BERLE, Adolph A., Jr. --United States delegate to various international conferences. At various times from 1938 to end of 1944 was Acting Undersecretary of State and Acting Secretary of State of the United States. From 1944 to the middle of 1946, United States Ambassador to Brazil.

CRETZIANU, Alexander--Former member of the diplomatic service of Rumania... having also held appointments in the Rumanian Foreign Office. Also was Secretary-General of the Foreign Office from December 1938 to about May 1940, then Undersecretary of State, then Secretary-General again to September 1941 when he resigned. In September 1943 he was appointed to Ankara under Antonescu. He left Rumania in January 1944. Alleged opponent of General Antonescu.

GAFENCU, Grigore--An alleged non-Nazi, non-communist Rumanian Foreign Minister under Tatarescu in November 1939. Apparently, also Foreign Minister previously from December 1938 to November 1939. Resigned June 1, 1940. Was previously in parliament and Undersecretary of State for Foreign Affairs. Minister of Rumania to Russia from about September 1940 to June 1941. Left Rumania and absent therefrom since the Fall of 1941. Came to the United States about October 1947.

GHILEZAN, Emil--Was Undersecretary of State of the Department of Finance in the Radescu government and a member of the Economic Delegation of that government. Was treasurer and director of the National Peasant Party. Now working with the National Committee for Free Europe, of which General Eisenhower is president. Engaged in import-export work in New York. Left Rumania in December 1947 and came to the United States in 1948.

GUNTHER, Louisa--widow of Franklin Mott Gunther who was Minister of the United States to Rumania from 1937 until his death in December 1941. She came to the United States in February 1942, returned to Rumania November 1945 and remained there until January 1947.

KERTICH, Emil--Commercial Attache, United States Mission, Bucharest, Rumania from early Fall of 1945 to late Fall of 1946.

MAIAXA, Nicolae--This is the subject of the present case. Biographical data concerning him will be discussed at another part of this opinion.

NICULESCU, Barbu--Presently secretary of the Association of the Free Rumanians in the United States and personal secretary to Nicolae Radescu. Left Rumania in June 1946.

NOVOTNY, Marian--Lawyer and later employed by Czechoslovak Arms Works from 1937 to 1944 when he resigned.

RADESCU, Nicolae--Alleged non-Nazi, non-communist. President of Rumania from December 6, 1941 until he resigned on February 28, 1945 under Soviet pressure. Once Chief of Staff of the Rumanian Army. Came to the United States in 1948.

SEKLEY, John T.--Investigator, Emigration and Naturalization Service.

...member
...American
...Foreign
...Marob G,
...left Rumania
...October 1945.

ZAHARA, Rumanian citizen—Employee of one of the applicant's
companies commencing in 1937. Left Rumania April 3,
1946. (Not shown whether he remained in the applicant's
employ during the whole period from 1937 to 1944)
Alleged that he was contributor to the resistance
group to make the peace treaty lighter for Rumania
and to oppose the communists.

The applicant is a citizen of Rumania and was granted citizenship by a decree dated September 1, 1946 of the Grand National Assembly of Rumania in recognition of his services on that date.

As a young man the applicant graduated from the University of Jassy in Rumania and was graduated from the Polytechnic School in Bucharest with *summa laude*. He asserted that he created in Rumania, among other things, a great and complex metallurgical industry, a factory for engines and railway equipment, a factory for special tubes for aircraft engines, etc. He added that he had great forestry interests in Rumania, was one of the pioneers of the steel-works known as "Realta" and that he was president of the Ford Company of Rumania.

The applicant alleged that his only entry into the United States occurred on September 29, 1946 when he was admitted at the port of New York as a temporary visitor for a period of five months pursuant to the provisions of Section 3(2) of the Immigration Act of 1924, and that his last extension of stay expired August 16, 1948. This entry into the United States has been verified. The applicant testified that he entered as a member of the Economic Delegation of Rumania and of the Chamber of Commerce, Rumanian-American, having embarked at Paris, France by air after coming to Paris on June 17, 1946 and being admitted to France in transit. Between June 17, 1946 and September 29, 1946 he visited Switzerland three times and asserted that his stay in Paris and in Switzerland during this period was for the purpose of arranging certain personal affairs. The allegation regarding his entry as a member of the trade delegation is supported by a letter in evidence dated June 7, 1946 from Emil Kekich, Commercial Attache, United States Mission, Bucharest, to Walworth Barbour, Chief, Southeastern European Division, Department of State, Washington, D. C., and by a letter in similar vein dated June 8, 1946 from Burton Y. Berry, Representative of the United States in Rumania.

The applicant added that his purpose in coming to the United States was twofold: (1) to get credits for Rumania, and (2) to "realize an industrial collaboration" between America and Rumania. He asserted that at the time of entry into the United States he intended to finish his work and return to Rumania. From all of the evidence of record the conclusion is warranted that at the time of entry the applicant was a bona fide nonimmigrant and was lawfully admitted as such. 1/

1/ In determining that the applicant was lawfully admitted we have given consideration to his admissibility not only under the Immigration Act of 1924 but all other applicable laws and regulations and our conclusion at this point is supported by what has already been said as well as that upon which we will dwell at greater length in other parts of this opinion.

DISPLACEMENT AND FEAR TO RETURN

The applicant testified that prior to his coming to the United States he never established residence in any country other than Rumania; that he left Rumania June 17, 1946, was admitted to France in transit and arrived in the United States on September 29, 1946 under circumstances previously set forth. His claim to admission to France and Switzerland in a temporary status was verified by endorsements in his passport which was introduced into evidence. It is apparent that the place of his nativity and last residence is Rumania and that the place of his nationality, per se, is immaterial because he is now stateless.

The applicant bases his claim of displacement solely on his political opinions, stating that he is a capitalist and as such he is part of a group doomed to be exterminated; that his association with General Radescu, one of the leaders of the resistance movement, has made him guilty according to the present law of Rumania and that should he return to that country he would be subject to a penalty of death or life imprisonment. He added in support of his claim to displacement that the denationalization decree previously mentioned, provided for the confiscation of his property in Rumania, which has been verified from a copy of the decree itself, and submitted into evidence a number of press clippings to show that he was libeled and villified by the Communist press. His wife and son had to flee Rumania clandestinely during April 1948. Several witnesses presented by the applicant and some of the witnesses presented by the Government testified that he would be subject to persecution should he return to Rumania.

The applicant has never been forcibly ejected from the boundaries of his country and transferred to another country. He left his native country, and the country of which he was then a citizen, of his own accord in an official capacity. He alleges that he is a displaced person from Rumania because he is not in sympathy with the present communistic regime in that country. In Matter of S., A-6887200, Interior Decision No. 94 (September 26, 1949) it was held that displacement may occur where, subsequent to the alien's departure from the country from which he claimed to have been displaced, conditions of oppression and persecution are found to have arisen by virtue of acts of an official or quasi-official nature, and such conditions are of such a nature as would have justified the alien's flight because of such oppression or

persecution had the alien traveller been a resident of the country from which he claims to be displaced when these conditions arose. In cases of this nature the elements of displacement and fear to return, or necessity, merge. On the basis of the evidence in the record it is concluded that the applicant has a justifiable basis for fearing to return to Rumania.

Applying this reasonable fear to the proposition set forth in Matter of S., supra, it is believed that displacement, within the meaning of Section 4 of the Displaced Persons Act of 1948, as amended, has occurred based on the premise that if the applicant were at this time residing in his native country the events described above would have resulted in persecution by the Rumanian Government. These events reasonably bar him from returning to Rumania and have contributed to displacement in almost the same manner as if he had been forcibly deported or had fled to avoid reprisals. That Rumania is a communist dominated country is recognized by the United States Government (House Report No. 1920, 80th Congress, Second Session) (Committee on Un-American Activities). The nature of communist dominated countries has been recognized by this Service in Matter of W., A-6881778 (October 19, 1949) and in Matter of S., supra. Comparing the applicant's situation as outlined above in the resume of his testimony with the nature of the regime in control of his country leads to the conclusion that persecution may be reasonably expected and that this expectation of persecution has brought about his displacement from Rumania.

sub
Title 8, Code of Federal Regulations, 171.1(a) Section 4, requires that an applicant for adjustment of status as a displaced person be "a person displaced from the country of his birth or nationality, or of his last residence, as a result of hostile military action, or persecution or fear of persecution on account of race, religion or political opinions occurring subsequent to the outbreak, on September 1, 1939, of World War II." The evidence submitted by the applicant and the requirement of the regulations makes it necessary to turn to the recent history of Rumania to determine whether or not the events which are alleged to have caused the applicant's displacement arose subsequent to the outbreak of World War II. This was done by this Service in Matter of R., A-6817383, decided December 7, 1949 and published as Interim Decision No. 116. The following is quoted from that decision:

During the Yalta Agreement of February 1945 the three heads of the Governments of the Union of Soviet Socialist Republics, the United States, and the United Kingdom, declared their mutual agreement to concert during the temporary period of instability in liberated Europe the policies of their three governments in assisting the peoples liberated from the domination of Nazi Germany and the peoples of the former Axis satellite political and economic problems. At Potsdam upon cessation of hostilities it was agreed that the Allied Control Commission procedure should be revised to provide for effective United States and United Kingdom participation in the work of those bodies (Potsdam protocol VI; revised Allied Control Commission procedure in Roumania, Bulgaria, and Hungary). The essence of the two agreements was

The Union of Soviet Socialist Republics acting through the Romanian Communist Party and through its own agencies unilaterally subverted the Democratic will of the Roumanian people in negation of their fundamental freedoms. The Soviet occupation authorities assisted by Vishinsky effected the overthrow of the interim government and the installation of a Communist-controlled regime. Russian support of Premier Gроза's retention in office in defiance of the United States request for tripartite consultation. Direct unilateral interference by the Soviet occupation authorities in the election of 1946. The use of Soviet troops to break up meetings of the opposition and the Soviet arbitrary exercise of censorship. Roumanian economy was exploited from 1944 onward through agreements whose terms were not disclosed to the other two Yalta signatories. Rejection by the Soviet representative of a proposal for the setting of a joint commission to study the economic situation in Roumania. Soviet intervention in Roumanian commercial negotiations with countries outside of the Soviet orbit. The Soviet representatives in defiance of the Potsdam and Yalta Agreements unilaterally directed Roumanian authorities and Soviet obstructions in the way of permitting United States personnel and aircraft to freely enter Roumania. Soviet censorship of United States press dispatches.

The Committee on Un-American Activities, House of Representatives, 80th Congress, in Union Calendar No. 993, House Report No. 1920 at pages 117-119 describes the methods used by the Communists and the Soviet forces in Roumania in imposing a Communistic Controlled Government upon the people of Roumania.

From the matter referred to above it is clear that there exists an unbroken nexus between World War II and the present regime in Roumania. The reported matter reveals that the will of a minority was imposed upon the majority; and that this imposition was accomplished through the unconscionable intervention in the domestic affairs of Roumania by a foreign government in the U.S.S.R. The effectiveness of its intervention was brought about by the presence in Roumania of troops

of the Red Army and the chairmanship of the Allied Control Commission in the hands of the Soviet representative. These two factors were directly brought about by World War II. Taking advantage of the presence of this force in Roumania the Communist Party there was able to wrest control of the government from those rightfully in power, compel a king to abdicate, and bring into being a totalitarian state in place of the democracy which the people of Roumania had heretofore enjoyed.

From the events which transpired in Rumania it is concluded that 8 C.F.R. 171.1(a)(4) is satisfied and that the causes of the applicant's displacement from Rumania arose after the outbreak of World War II.

Many affidavits were submitted to the committee and much of the evidence presented at the hearing on this subject is contained in the affidavits. It is referred to with an abundance of detail and it is clear that substantial evidence on the issues presented are specific references to evidence and to sources in order to comprehend and evaluate the evidence concerning the applicant's moral character as well as the evidence concerning his past association with the nazis and the communists we must understand who the witnesses are and whether they may be determined to have been biased or prejudiced or who, because of certain inner feelings, may have given testimony expressed in a manner which is other than clear and unequivocal.

The testimony of witnesses clearly indicates that there are at present in the United States at least two separate distinct groups of Rumanians exerting their efforts allegedly for the liberation of Rumania from its present communist domination and a return of its government to the people in order that democratic processes may again be enjoyed in that country. One of these groups is known as the Rumanian National Committee of which many of the Rumanians who testified at the hearing were at one time members, some of them still being members thereof. The other group is that known as the Association of Free Rumanians in the United States. Cretzianu testified that he and Visoianu are members of the Rumanian National Committee and that Malaxa and Radescu left that group. He added that the Committee had formally asked Radescu to separate himself from Malaxa because the Committee did not wish to have Malaxa's influence and alleged reputation associated with the group. Radescu testified that the two factions are in dispute because of a desire for leadership of the exiled Rumanians in the United States and because of a desire to control certain monies taken out of Rumania as well as monies contributed by Malaxa. He added that, in other words, it is a fight involving the future governmental control of Rumania. Radescu is head of the Association of Free Rumanians in the United States. It is, therefore, clear from the foregoing that there are the two groups of Rumanian exiles in the United States who are at loggerheads and in referring to their testimony sight cannot be overlooked of this fact.

Max Ausnit, who testified as a witness against Malaxa, has admitted that he is prejudiced against the applicant because of past differences which have not yet been adjusted. The record contains documentary evidence of their differences and it has been shown that Ausnit is maintaining a large civil suit against Malaxa at the present time. This admitted prejudice cannot be overlooked in evaluation of Ausnit's testimony at this point as well as in the consideration of the elements of association with the nazis and the communists which will be treated in another point in this opinion.

What has been said above concerning the rival Rumanian groups and Max Ausnit will not be repeated.

There were introduced into evidence police certificates from Rumania, New York City, New York and Washington, D. C. to show that the applicant has no record of arrests. 2/

A report from the Identification Division of the Federal Bureau of Investigation discloses no criminal record.

An affidavit dated May 10, 1951 by Leon Alexandroff, member of the New York law firm of Phillips, Nizer, Benjamin, and Krim, is to the effect that he has known Malaxa for five years with almost daily contact and that Malaxa is of good moral character. There is also contained in evidence a letter dated May 3, 1951 from General Wallace H. Graham, Personal Physician to the President, certifying that based on his personal knowledge of Malaxa for over one year and of Malaxa's background, he has concluded that Malaxa is of good moral character and of high purpose. This letter refers also to the large sum of money which Malaxa has contributed for medical research, beneficial to mankind. Louise Gunther testified that she and her husband (the former United States Minister to Rumania) met Malaxa in 1937 and kept in close touch with him until the end of 1941. In February 1942 she returned to the United States after the death of her husband but again went to Rumania in November 1945 and renewed her friendship with Malaxa, said friendship being maintained until he left Rumania. She testified that she and her husband were of the opinion that Malaxa was a man of character who would be an asset to the United States and added that the King told her personally that he had sent Malaxa to the United States to ask the President of the United States for aid for Rumania. As previously stated many witnesses testified and many affidavits were introduced to establish that the applicant was of good moral character.

2/ It appears that the applicant has resided in New York and Washington, D. C., since his arrival in the United States. While there was an arrest in 1941 in Rumania, it does not appear on the Rumanian police certificate and will be discussed in particular at other points in this opinion.

Max Ausnit who, notwithstanding his admitted prejudice, declined to answer questions as to applicant's character. Stanescu, a witness who testified against the applicant, stated that Malaxa had the reputation in Rumania as a corrupter of Rumanian political life under King Carol. Novotny stated to Investigator Seeley that Malaxa is unscrupulous and will make a deal with anyone where profit is involved. Willie Raymond Young made a statement during the investigation that he was in Rumania for twelve years prior to June 1940 and that he was a member of the British Military Mission to Rumania beginning November 14, 1944 and was well aware of Malaxa's reputation in Rumania as pro-Nazi and pro-communist but could add nothing in the way of personal knowledge which had not already been testified to by other witnesses. These two statements are part of the investigation made by the Immigration and Naturalization Service pursuant to requirements of 8 C.F.R. 171.4.

In evaluating this testimony regarding the applicant's moral character, sight is not overlooked of the fact that allegations have been made that Malaxa, while in the United States, purchased jewelry and a motor vehicle for delivery to communist members of the Rumanian Government. This factor of the case will be discussed at another point in this opinion and it is sufficient at this time to state that it has been taken into consideration in connection with the requirement that the applicant establish good moral character for the preceding five years. When we have examined the evidence both for and against the applicant we find prominent Americans with various degrees of knowledge of the applicant and prominent Rumanians who have testified in his behalf. We also have narrative police certificates covering not only the years during which the applicant has been in the United States but also during his life in Rumania, where he was born, and in Germany and France. He has been described as a man who is not particularly concerned with the welfare of others and that the welfare of himself is his primary concern and that he is not particularly concerned with the welfare of others. We note for the record that the applicant has been described as a man who is not particularly concerned with the welfare of others and that the welfare of himself is his primary concern and that he is not particularly concerned with the welfare of others. We note for the record that the applicant has been described as a man who is not particularly concerned with the welfare of others and that the welfare of himself is his primary concern and that he is not particularly concerned with the welfare of others.

Malaxa's activities in the United States are of a nature which require close supervision in the United States. It is not believed that Malaxa should be given consideration in connection with his moral character.

The applicant was examined by medical officers of the United States Public Health Service on June 19, 1951 and certified to be free of mental and physical disability of any nature which might render the applicant inadmissible to the United States.

Malaxa's application for adjustment of status under Section 4 of the Displaced Persons Act of 1948, as amended, shows that he has assets in the United States of over \$100,000 cash, over \$500,000 in war bonds and other assets valued at over \$50,000. He testified that he had a little money in Swiss and French banks. In his testimony he indicated that he is presently trying to organize a seamless tube industry in this country and that during his stay in the United States he carried out his economic and industrial mission to the extent possible; that he dealt with an American bank for a \$50,000,000 loan for Rumania (which bank had received Department of State approval in the premises) and that he tried to establish a metallurgical industry in this country.

As to industrial machinery sought to be purchased in the United States to be shipped to Rumania, Malaxa testified that there was Department of State approval for a \$50,000,000 loan to Rumania and that about \$12,000,000 thereof was said by the State Department to be used for grain to feed Rumanian people who were then starving as a result of the severe drought in that country. After the grain was purchased there was a surplus for such purchases as equipment for the Rumanian petroleum industry. Malaxa stated that he does not know how the balance of the loan was spent after the grain was purchased because he believed that Rumania was supposed to transmit gold as a guarantee but did not do so.

In connection with the allegation that he was authorized by the Rumanian Government to purchase industrial equipment in the United States, there was introduced in evidence an official document dated June 7, 1946, 3/ which authorized Malaxa to export certain products from Rumania and from the proceeds thereof to reimburse himself in foreign currency to carry out the agreement of the Rumanian Government to pay him \$2,460,000 for a tube mill. (More will be said about this transaction later.) Malaxa testified that this authority to export certain products from Rumania

3/ Journal No. 722 of the Council of Ministers.

worked out only to the extent of \$190,000. It was originally felt that it was necessary to pay Malaxa in hard currency in order that funds would be available to purchase industrial equipment outside of Rumania in order that such equipment may be transported to and assembled in Rumania to rebuild industries devastated by the war and particularly the tube mill, so essential to Rumanian oil production and the carrying out of the armistice agreement with Russia.

His further activity in the United States centered about attempts to interest large American corporations in participating in Rumanian production. Malaxa testified that he felt that such participation would be a brake on the spread of communism in Rumania and a practical influence in that respect. There was presented in evidence a copy of a signed agreement between Malaxa and the International Harvester Company under the terms of which Malaxa was to make harvest machinery in Rumania. This agreement was subsequently canceled because it was conditioned upon Malaxa obtaining a guarantee by the Rumanian Government that there would be no nationalization of industry for ten years and the Rumanian government would not agree thereto.

The Board also reviewed a letter dated November 12, 1946 from the law firm of Fehle and Lesser, Washington, D. C. to Malaxa that Malaxa's engagement in industrial operations and other enterprises in the American Republics was discussed with officers of the Department of State which explored his letters and that that Department had no objection thereto.

From the foregoing we believe that Malaxa's physical and mental condition, habits in the United States, and business ventures in this country are such that he is not likely to become a public charge, and we so find. Accordingly, insofar as his moral character and physical and mental and financial condition are concerned, he is eligible for adjustment of his status under Section 4 of the Displaced Persons Act of 1948, as amended.

LOYALTY AND ADMISSIBILITY TO THE UNITED STATES
UNDER THE PROVISIONS OF THE ACT OF OCTOBER 16, 1918, AS AMENDED,
AND 8 CFR 175.53

The statute and the regulations

Section 4(a) of the Displaced Persons Act of 1948, as amended, requires as one of the conditions precedent to the favorable exercise of discretion in the granting of an application for adjustment of immigration status under Section 4, that the applicant be admissible to the United States.

The Act of October 16, 1918, as amended by the Internal Security Act of 1950, provides for the exclusion generally (and so far as is pertinent here) of aliens who (a) seek to enter the United States to engage in activities which would be prejudicial to the public interest or would endanger the welfare or safety of this country, (b) at any time were members of or affiliated with the Communist Party or other totalitarian party of any foreign state, or (3) Alien with respect to whom there is reason to believe that he would, after entry, be likely to engage in acts prohibited by the laws of the United States relating to espionage, sabotage, public disorder, or in any activity subversive to the national security; or engage in any activity a purpose of which is the opposition to, or the control or overthrow of, the Government of the United States by force, violence, or other unconstitutional means.

Section 2(17) of the Internal Security Act of 1950, provides that "The giving, loaning, or promising, of support or of money or any other thing of value for any purpose to any organization shall be conclusively presumed to constitute affiliation therewith; but nothing in this paragraph shall be construed as an exclusive definition of affiliation."

Title 8, Code of Federal Regulations, Section 175.53 provides that the entry of an alien shall be deemed to be prejudicial to the interests of the United States if he is within one of the classes specified in that section. The classes in that section, insofar as they are pertinent to the consideration of this case, are: (1) alien who belongs to one of the classes mentioned in the act of October 16, 1918, as amended, (2) alien is member or affiliate of, or may be active in the United States in connection with a political organization associated with or carrying out the policies of any foreign government opposed to the measures adopted by the United States in the public interest or in the interest of national defense; (3) alien whose admission would endanger the public safety, or (4) alien not within the foregoing classes, but in whose case circumstances of a similar character may be found to exist, which render the alien's admission prejudicial to the interests of the United States, which it was the purpose of the Act of June 21, 1941 to safeguard.

(The Session) directs
that the Senate members
of October 16, 1918, as
of acquisition which is or was
of acquisition which is or
(2) by operation of law,
government, food rations, or other essentials
The Attorney General
in applicable regulations. [6 CFR 174.1(4)]

Relations With The Nazis

Under the statute and the regulations set forth above it is apparent that an alien who was a voluntary member or who was voluntarily affiliated with the nazi or communist party of any state, is inadmissible to the United States and is ineligible for adjustment of his immigration status under Section 4 of the Displaced Persons Act of 1948, as amended. The two principal issues in this case are whether Malaxa was voluntarily affiliated with the nazi or communist party of Germany or Rumania at any time in the past, as the term "affiliation" is used in the Act of October 16, 1918, as amended, and Public Law 14 of the 82nd Congress. There is no evidence that Malaxa was ever a member of such nazi party and, consequently, "member" need not be considered. Another part of this opinion will be concerned with relations with the communists; this part being concerned only with his association with the nazis.

The applicant testified that he was never affiliated with the nazi party or in sympathy therewith or that he ever gave assistance thereto. He specifically denied that he was a member of or adhered to or was a supporter or helper of the Iron Guard. He added that he was never politically active; that is, that he held no position in any government or political parties. He had given money to Maniu, a leader of the National Peasant Party (now jailed by the communists), which he said was the democratic party of Rumania. He also contributed to that party itself and lesser amounts to the National Liberal Party, which was the party of the Rumanian economic interests. Much of the evidence regarding Malaxa's relations with the nazis centers around his industrial empire. In order to understand the evidence in the record concerning his relations with the nazis, it is necessary to understand, in part, his industrial setup.

In about 1920 Malaxa started a locomotive repair shop in Rumania. In 1927 he obtained a 20-year contract to manufacture locomotives for the Rumanian Government. This contract enabled him to branch out in the manufacturing of diesel powered propelled trains, diesel engines, and other railroad equipment, as well as equipment for the oil and chemical industries. In 1936 he built and began to operate a factory for the production of steel tubes and, in the same year, he commenced, with the approval of the Rumanian Government, a large factory for the manufacturing of munitions. Malaxa's industries, when referred to as such in this opinion, refer to his railroad, tubes, and armament plants. In 1932 the applicant joined Max Ausnit in acquiring approximately 20 per cent of the outstanding shares of a corporation which we shall refer to as "Resita" which is said to be the largest iron and steel

manufacturing plant in Rumania. The applicant and himself stated that the Representative shares should be held together and treated as a unit. The applicant testified that in 1936 these shares were transferred to a Monaco company known as Cantrind and deposited in London. He added that under Rumanian law of November 8, 1939 such an arrangement became illegal and that he applied for and received duplicate stock certificates for his shares which had been registered under the name of Cantrind. At about this time the Caschoalovak company known as Zbrojovka owned a large part of Besita stock. It is with this background, plus the history of Rumania current during that period and which has been previously recited in this opinion, that we approach the first of the two crucial elements in the case.

Malaxa testified that he was a member of the league formed by King Carol to unite all parties to resist against Hitlerism from without and the Iron Guard from within. (Apparently the applicant is referring to the group formed by King Carol in December 1938 as an all Rumanian party to support his government). Briefly, at this point, Malaxa testified that Germany took over Rumania in September 1940 and on January 23, 1942 he was jailed and the Germans took control of his industries; that the German Government and the Rumanian Government formed an association and seized all of his industries and after the seizure turned them over to the said association. These plants were returned to possession and control of the applicant on April 12, 1945 by the Radescu coalition government headed by the non-communist non-Nazi General Radescu.^{4/}

The company which was formed to take over Malaxa's industries was technically owned by the Rumanian Government and the Hermann Goering Werke. This corporation was known as "Rogifer". Five days after the agreement to take over the Malaxa factories was made there^{5/} was published a Rumanian decree dated February 18, 1941 expropriating Malaxa's properties because of alleged excess profits on government contracts.^{6/} After some German reverses in battle, the Rumanian Government on February 13, 1943 repurchased the Rogifer

^{4/} There was introduced into evidence, decree of April 12, 1945 by King Michael, published in Official Gazette No. 56 of April 13, 1945, Part I, Page 3030.

^{5/} Excerpt from Law Decree No. 370, taken from Official Gazette No. 42 of February 19, 1941, Part I, Page 818 was introduced into evidence.

^{6/} Documentary evidence indicates that an investigation in 1942 absolved Malaxa from this allegation.

shares held by the Hermann Goering Werke and thus became the sole stockholder. ^{7/} On October 9, 1943 the Rumanian Government decreed the return of Malaxa's stock in the company (previously transferred to Rogifer) to him. ^{8/} Excerpts from the agreement to repurchase and the decree to return the stock to Malaxa were introduced into evidence. ^{9/} Malaxa testified that the actual return and control of the property itself did not take place at the time of the decree but rather was delayed until April 12, 1945 because Antonescu's government did not wish to return it. In substantiation of this testimony, there was introduced into evidence a decree authorizing the liquidator of Rogifer to continue operations of the industries. ^{10/}

Adverting again to his imprisonment on January 25, 1941, we note that he testified that he was released from jail on April 3, 1941 and then placed under house arrest. ^{11/} The applicant testified that he was kept under house arrest until October 9, 1941 when the Board of Directors of Rogifer completed all of the steps necessary for the transfer of Malaxa's industries to Rogifer and that Malaxa was released from house arrest on the same day. These

^{7/} We have noticed from the history of Rumania that Axis reverses commenced in 1943.

^{8/} Malaxa stated that after the heavy German reverses in 1943 the enthusiasm of the Antonescu government for cooperation with or incorporation into the Nazi orbit was considerably dampened and that supporters of his efforts to secure the return of the industries to him became more outspoken and effective.

^{9/} The decree is Law Decree No. 2691 of 1943 published in Official Gazette No. 237, October 9, 1943, Part I, Page 9123, which Law Decree is an excerpt from Law No. 669. The decree also specifically canceled Law Decree No. 370, previously mentioned.

^{10/} Decree of December 3, 1943 published in Official Gazette of December 4, 1943, No. 284, Part I, Page 11265.

^{11/} Evidenced by document taken from Official Gazette No. 82 of April 5, 1941.

...witness consisting of the Director of the Bureau of Directors of Industry during the period from October 9, 1941 and an order to police ...

It was ... as noted above ... of his industries on January 22, 1941 and, although it was decreed that they be returned to him on October 9, 1941, the ... did not take place until April 12, 1941. ... testified that during this period when he was out of actual control of the industries, he did not play an owner's or manager's part in the operations thereof. It is with this background that we approach the scenes in which Malaxa lived in Rumania during the period and about which there has been voluminous testimony and exhibits made part of the record.

Marian Novotny was called as a witness by the government. He testified that he met the applicant in Rumania in 1937 and has known him ever since. He knew the applicant through business arrangements because the applicant was then interested in the Czechoslovak Arms Works which was then (prior to the war) trying to build up sections of the Rumanian industries because Rumania was a member of the Little Entente. Novotny was connected with the Czechoslovak Arms Works in Bucharest from 1937 until July 1941. To Novotny's knowledge, most of Malaxa's production from 1937 until Novotny left Rumania in July 1941 was for the Rumanian Government. He testified that "he didn't know whether Mr. Malaxa personally had sympathies with either side (Axis or Allies), but from what he did in my presence I believe he was endeavoring to ingratiate himself very much with the nazis." The witness said that he was lead to this conclusion because on an occasion in the Spring or early Summer of 1940 when Novotny introduced Malaxa to Albert Goering ^{12/} (brother of Hermann Goering); who had recently come to Rumania and who was then "supreme boss over most of the Czechoslovak industry," Malaxa accused Novotny in front of Albert Goering to have been working with the Czechoslovak Government in exile and Malaxa "expressed his joy" that since Goering was now in Bucharest, "he" (not clear whether the pronoun refers to Goering or Malaxa) could develop "real activity with Germany". Novotny added that on January 21, 1941 Malaxa insisted that the witness visit him at his home. On arrival at Malaxa's home, the shooting, which was part of the Iron Guard Revolution which broke out on that day, had begun and Malaxa himself admitted the witness into the house. The witness testified that when he saw nothing of importance was to be discussed, he left. Outside of the house he saw many

^{12/} The introduction was at Albert Goering's request to Novotny that he be introduced to the leading Rumanian industrialist.

Iron Guardists "just waiting". He went on his way unmolested. He further testified that he later heard from the Rumanian Secret Police, who were anti-Nazi, that the Iron Guardists entered Malaxa's home and were invited to help themselves to some arms that were reported stored and prepared for such occasion, and that meanwhile Malaxa left the house and telephoned General Antonescu and told him that the house had been taken forcibly; that he narrowly escaped with his life, and asked for protection. 13/ Novotny was then asked whether he had any other way of knowing whether Malaxa was cooperating or collaborating with Albert Goering. He replied that he did not know what Goering had asked from Malaxa, except money, but doubted that Goering would have requested any favors because Goering did not "put his soul into his talk or his mission." In his statement to Investigator Sealey, Novotny said that the relationship which existed between Albert Goering and Malaxa was not cordial.

Novotny was then asked about the Resita corporation. He stated that there were three groups of important stockholders, Malaxa, the Anquit brothers, and the Czechoslovak Arms Works. He added that he did not know anything about production of this company after 1941 but that before that time it was not, to his knowledge, engaged in production "directly for the Nazis." He did state, however, that while he was in Rumania (until July 1941) Malaxa was spoken of by the Germans as their good friend but that he, Novotny, did not know whether Malaxa "actively did directly solicit any of their favors." He expressed his opinion that Malaxa collaborated with the Germans while Novotny was in Rumania. That was based on his view that the Nazis would not publicly endorse an individual as their true friend unless they were very sure that he was their man; also the fact that Malaxa received "quite a build-up" in leading German periodicals. He added that he had never discussed political favors with Malaxa but that it could have been possible for Malaxa not to cooperate because his power could have enabled

13/ It is difficult to understand why Malaxa would have reported to Antonescu that the Iron Guard had forcibly entered his home and why he would have asked for protection if he was, in fact, a large supporter of the Iron Guard as has been alleged and if he had invited the Iron Guard into his home and turned over arms to them which had been prepared for such occasion.

The Commission was established by the Government of the United States of America, and its mandate was to investigate the activities of the German Government in connection with the evacuation of the Jewish population from Poland and other countries in Eastern Europe. The Commission was organized in 1945, and its work was completed in 1946. The Commission's report, published in 1946, provides a detailed account of the German Government's actions during this period.

The Commission's findings indicate that the German Government's policy of persecution and deportation of Jews was a central part of its strategy for the conquest and domination of Eastern Europe. The Commission's report also details the role of the German Government in the liquidation of the Jewish ghettos in Poland and other countries.

The Commission's report is a significant document in the history of the Holocaust, and it provides a clear and detailed account of the German Government's actions during this period. The Commission's findings are based on a thorough investigation of the German Government's activities, and they provide a clear and detailed account of the German Government's actions during this period.

14/ It is not known just what period is referred to as "that time" but we note from the history of Rumania that on March 24, 1939, a five-year economic treaty with Germany, which rendered the whole economic life of Rumania at German disposal was signed, that following the outbreak of war in 1939, Rumania was in a difficult position because of the alignment of her neighbors and the breakdown of France, and that Rumania was powerless to resist simultaneous pressure by the Soviet Union and Germany; that on June 21, 1940 the country was reorganized along strictly fascist lines and the Iron Guard was to become the nucleus of a new totalitarian party; that on August 30, 1940 Germany and Italy "forced" Rumania to cede territory to Hungary, and that King Carol abdicated, apparently under pressure from General Antonescu early in September 1940 with Antonescu having the real power after Michael became King.

November 1938, Ansnit was arrested and indicted by the courts on a Resita complaint signed by the President, Urdariann. Malaxa was called a witness by Ansnit but did not appear and Ansnit was condemned by the courts on the testimony of Resita functionaries ^{15/}. For this reason, Ansnit conceded that he has a grudge against Malaxa. Ansnit further testified that Urdariann had to leave Rumania in 1941.

The same witness, Ansnit, then testified about the Iron Guard in Rumania and characterizes it as the Nazi party of that country, "the party which had the nearest approach to Nazi ideas, so it stood for a national movement with the same tendencies as the Nazis." He added that Malaxa was very close to many of the leaders "particularly with the spiritual leaders of the movement and that is about as far." Ansnit knew General Antonescu for many years and stated that in Antonescu's first government, formed in 1940, he had Iron Guard support and about half of the members of the government were members of the Iron Guard. In January 1941 the Iron Guard tried to overthrow Antonescu.

As previously stated, Ansnit testified that he opposed the 1939 trade agreement between Rumania and Germany but that he did not know whether Malaxa favored it. He added that he had no information as to whether Malaxa was a member of the Nazi party in Rumania and that he had no personal knowledge as to whether Malaxa "actively cooperated with the Nazis in Rumania."

While the foregoing statements were made by Ansnit during the course of the hearing, Ansnit also made a statement to Investigator Sealey who reported that Ansnit said Malaxa had established close personal contact with Hermann Goering prior to 1938 and that he, Ansnit, had no proof of this other than that Malaxa mentioned to Ansnit his influence with Goering. In that statement to Investigator Sealey he also stated that he tried to organize a corporation to do business between Rumania and Great Britain and that Malaxa tried to convince Ansnit that he was supporting the enterprise, but Malaxa sabotaged the plans at the last moment. Ansnit expressed the opinion that Malaxa's opposition prevented British-Rumanian agreements and that Malaxa's influence could have prevented Rumanian-German agreements. ^{16/}

Ansnit, in his statement to Investigator Sealey, said that Malaxa engineered his "resignation" from Resita so as to pave the way for open collaboration with the Germans. There was produced an article from the German "Volkischer Beobachter" dated August 21, (year not shown), which stated that the Jewish financier (Ansnit) was removed from control of Resita when Malaxa became powerful therein and added that Malaxa is a big industrialist. Neither this article nor

^{15/} Ansnit apparently was later absconded with.

^{16/} We will speak further of Malaxa's activities in connection with the March 24, 1939 economic treaty between Germany and Rumania. It is significant at this point to know that history records a trade treaty between Germany and Rumania in May 12, 1939 to offset the effects of the March 24, 1939 treaty with Germany.

Ausnit's statement is sufficient to establish that Malaxa engineered Ausnit's removal to pave the way for Germany collaboration, especially in the light of all the evidence of record.

In the same statement to Investigator Seeley, Ausnit stated that Antonescu and Iron Guard plotting forced King Carol to abdicate in September 1940 and that Malaxa then swung openly to the Iron Guard, the Nazis and one Perietzeanu (an alleged Iron Guardist) of the Malaxa clique in Resita who became General Manager upon Malaxa's nomination. Ausnit added that Malaxa was the financial backer of the Iron Guard revolt against Antonescu in January 1941 and that when the revolt failed because the German Army (as distinguished from the German Nazi party) did not like the Iron Guardists, Antonescu jailed Malaxa and confiscated his properties. This statement by Ausnit of an ultimate fact is likewise not supported by facts upon which the statement is based. It is therefore only Ausnit's conclusion.

At the hearing Ausnit produced a copy of a letter which he said was addressed to Malaxa by representatives of the shareholders group (of Resita), which group came into being after the Germans took over Sbrogovca ^{17/}. Malaxa testified that he believed he received the original of this letter and added that he had a copy of it in his possession. That letter was dated June 21, 1940 and was signed by Albert Goering. It reads as follows:

"Pursuant to my visit with you yesterday in company of Dr. Novotny, the representative of the Brno Armaments Works, and as per our agreement, I am herewith confirming in short the contents of our conference.

In the first instance we have conferred on settling the matter of stock certificate duplicates. In this connection I have emphasized that due to a number of reasons the Brno Armaments Works was greatly interested in obtaining ownership as soon as possible of the regular stock certificate duplicates of the Resita as well as the Copşa Mica Cogir. The present situation owing to the fact that the old certificates are invalid and new ones have not, as yet, been issued, seems impossible. Since in this respect your interests dear Mr. Malaxa are exactly the same as ours, ^{18/} I am of the opinion that it will be an easy task for you to cause the issuance and delivery of the new shares as soon as possible. Just as our participation in the general meeting—as well as yours—seems to be secure by virtue of the credentials granted under decrees, yet this situation can only be maintained on a completely temporary basis and we have agreed that this problem should be settled as soon as possible if for nothing else but for the sake of orderly procedure.

17/. Sbrogovca is also known in German as Brunner Waffenwerke, sometimes referred to as Brno (according to Malaxa's testimony).

18/. This obviously refers to each party trying to get duplicates of his own certificates.

On this occasion I express my thanks for your assistance in not placing any value on the classical mistake made in the original copy of the decree. At that point there was a stipulation concerning the dividend coupons. However, we are expecting that the above stock certificates designated by us will be delivered to us, coupons for 1937 inclusive.

Thereafter we were talking about the appointments to be made in the administrative advisor positions in both corporations. Pursuant to the agreement the Armaments Works is entitled to two positions in the Resita and in the Copșa Mica Cogir not less than seven positions. In addition the position of the Delegated Administrator was reserved for the Brno Armaments Works. In view of the fact that in the meantime both Dr. Ontrata and Manager Svec who at that time were appointed in the Executive Committee of the Resita, have completely separated from the Brno Armaments Works, so that the Brno Armaments Works is not any more represented in the Resita. Since both the above named gentlemen represented the Brno Armaments Works simultaneously at the Copșa Mica Cogir together with Chief Manager Staller and Mr. Av. Caracostea, now only 2 of the 4 positions are filled. We have not availed ourselves at all of our right to fill the position of the Delegated Administrator.

Now we are agreed that this situation is untenable and we submitted the following proposition:

We request the availability of a third position in the Resita and in exchange therefor we yield two places in the C.M.C. where we would be satisfied with five positions instead of the seven to which we are entitled and simultaneously we waive our right to filling the position of the Delegated Administrator. I was glad to note that you have taken a sympathetic attitude towards our plans and that after preliminary studies by your legal experts you will grant your support to the same. I am sure that no worthwhile difficulties will arise at all in their accomplishment. Your valid objection that due to optical reasons not too many aliens should be in the Executive Committee I would like to overcome in the sense that this problem could easily be solved in that one of the 5 gentlemen whom the Armaments Works wants to appoint in the Executive Committee, whose name is Mr. Av. Caracostea is a Rumanian. It appears that in this manner your wish concerning the division of the 8 Executive Committee positions available for private capital in the proportion of 4 to 4 can be fulfilled.

The Brno Armaments Works intends to appoint the following gentlemen in the Executive Committee of the Resita as well as the C.M.C.:

1. Albert Goering, engineer.
2. Dr. Guido Schmidt,
3. Dr. Martin Novotny.

On the other hand the mandates of Dr. Outrata and Director Svec concerning their participations in the general meetings of the corporations shall be revoked.

You have informed us to the effect that the mandates of Dr. Outrata and Director Svec at the C.M.C. will expire anyway on August 23 of the current year. In this case I believe that a formal revocation by the general meeting is not necessary, since it is the question of two more months only. On the other hand according to your information at the forthcoming general meetings of the Resita only Director Svec's mandate will terminate and not that of Dr. Outrata. In that case I believe that an express revocation by the general meeting is irremissibly necessary. I am of the opinion that even in a purely formal manner there can be no obstacle in carrying this out and am convinced that your legal advisors with whom you desired to talk over the revocation of Dr. Outrata by a resolution of the general meeting, will come to the same point of view as ours.

In order to touch on all questions which we have brought up, I would also like to express my astonishment in writing over the fact that a date was set for the general meeting of the C.M.C. without paying even the slightest attention to the interests of the Brno Armaments Works. However, I acknowledge the assurance given today by General Director Christescu to Dr. Novotny, that the general meeting to be held June 27, 1940 will not transact business or make decisions at all, but it will be postponed until July 5, 1940 in the following manner: the representatives of the Rumanian state will not be present at the general meeting on June 27, 1940 so that the general meeting will not be in the position to make resolutions and therefore it will have to be postponed.

We have agreed that you dear Mr. Malaxa would inform the competent representatives of the Rumanian state of the newly planned appointments in the executive committees and obtain their consent. You would greatly oblige me by advising me in this respect at the first opportunity.

I regret but I have to decline your amiable suggestion that I personally take over the position of the Delegated Administrator, because, alas, my other duties as well as my frequent absences due to travel will not permit me to carry out the duties of this office with necessary intensity.

Upon the wish of His Majesty personally conveyed to me on June 14, 1940, I placed myself at your disposal and informed you that I was ready all the time—as far as my abilities permitted—to help you

(This reference to German business enterprises known by that name is in connection with the fact that there was a blocked stock certificate situation in connection therewith. The same is concerned Resita.) It will be noted that this letter indicates that by virtue of German ownership of the Czechoslovak Arms Works, the Germans were entitled to two advisors to Resita and were also entitled to seven advisors to C.M.C. and that Albert Goering was willing to yield two places of the seven on C.M.C. and also to waive the right to fill the position of Delegated Administrator in return for a third seat in Resita. Goering's letter refers to a sympathetic attitude regarding this situation by Malaxa. Malaxa, however, explained this as well as certain other features of the letter and his explanation will be discussed hereunder.

The letter also refers to Goering declining the position of Delegated Administrator (of C.M.C.) which he stated Malaxa offered him. The reference in the letter to removing temporary difficulties arising in connection with the deliveries with the Rheinmetall firm appears to have been concerned with deliveries of certain tools from German companies necessary to Rumanian manufacture.

Malaxa stated that this letter is some evidence of the fact that he had tried to delay Nazi control of Resita. We do not view it in this light. That, however, does not mean that the letter establishes voluntary affiliation with the Nazis. Malaxa explained that the offer to Goering to become Delegated Administrator in C.M.C. was for the purpose of having him withdraw his demand for a third seat in Resita, the Germans being entitled unquestionably to two seats in Resita by virtue of certain stock ownership, and Malaxa explained that Resita was by far the more important industry of the two and that it was to the advantage of the Rumanians to keep out German participation to the extent possible. He added that this is what he intended when he referred to the fact that it would be advisable to have as few foreigners on the Board as possible. We are not in a position at this time to determine whether what Malaxa has now stated in connection with what might otherwise look like damaging evidence is a true statement of the situation. However, we have no evidence to the contrary and Malaxa's credibility has not been impeached.

19/. It was explained by Malaxa that the purchase of machinery and tools from Rheinmetall was necessary in Rumanian production and that he was no more than a "purchaser" in the transaction.

We are, therefore, unable to reject Malaxa's explanation and, after it has been taken into consideration, it leaves the letter of June 21, 1940 from Albert Goering to Malaxa explained in such a way that it cannot, in and of itself, be held to be adverse to Malaxa. ^{20/} As to removing the difficulties concerning deliveries by the Rheinestahl firm it is noted that Goering was acting upon the wish of the King.

There was then introduced into evidence a letter dated November 19, 1943 (produced by Ausnit) from Malaxa, Chairman of the Board of N. Malaxa Companies to the Minister of Military Supply and War Production. Malaxa identified the signature thereon as his and stated that it is quite possible that he wrote the letter. It reads as follows:

"We have the honor to make the following reply to your letter of 146 of November 13, 1943, addressed to 'The N. Malaxa Titan Rumanian Corporation, N. Malaxa Tube and Steel Works Rumanian Corporation, and N. Malaxa Armament Works of Tohanul Vechi Rumanian Corporation, through Mr. N. Malaxa, engineer', which we have transmitted to these companies.

Our answer to the questions raised in your letter 146/943 is contained in our letter 3119, registered on November 13, 1943. In view of the urgency created by the seriousness of the situation and because the work in the factories is of such importance, we take the liberty of reiterating that the first step which must be taken is the immediate establishment of the operating company.

As we wrote you "the Marshal and Leader of the State has ordered that the factories must begin to operate at the earliest possible moment and that it is therefore imperative that the operating company be formed without any delay whatsoever."

This order of the Marshal was given expression in your presence.

From the first lines of your letter 145/943 you have stressed the fact yourself that one of the main purposes of Law 669/943 was

"the establishment of a joint operating and administering company by the State and the Malaxa companies, for the purpose of jointly operating these industries."

20/. It should be noted that on June 21, 1940 when the letter was written, the war in Europe had started and history shows that it was on the same day that the country was reorganized along strictly fascist lines. At that time the Germans were already along the Rumanian borders. This might lend weight to the explanation given by Malaxa that the meeting with Goering held the day before, was not one in which every business detail was discussed freely and without fear.

In our letter 111/443, we stated that the work in the plants is being carried out from the interest of the State, and that the title of the work is "Military Production". Emerges as being of national importance, the work in the factories is essential for the

Again in your letter 145/443:

"the plans calling for equipping the army include large-scale orders for munitions with very short terms of delivery. A good share of these must go therefore to the Tula and Toban plants."

You further pointed out that because of this situation, and in anticipation of these orders, the operating company must be promptly established. I quote:

"This situation has existed ever since October 9, and will go on like this until the operating company is established. This is most damaging to the interests of national defense."

In the face of this imminent risk admitted by you, when the interests of national defense demand the prompt establishment of the operating company, and in view of the fact that as soon as the operating company is formed work in the plants can begin independently of the conclusion of a contract, we wonder why the operating company is not formed immediately.

In business interviews I had with you in the last few days, I have constantly urged the forming of that company at the earliest possible moment, so that the plants can begin to work at full capacity, which is all the more necessary as in the last few years their output has shrunk a great deal, instead of increasing.

This formality has special urgency, in the first place because it would fulfill the wishes and the order of the Marshal and Leader of the State that the factories begin to work immediately, to implement the program of equipping the army.

In the course of these business interviews I have at countless times indicated to you that the formalities of setting up the operating company must necessarily precede any others, such as the contract, the leases, the stocktaking, etc.

We have permitted ourselves to point out to you that the Malara companies have with the utmost speed completed the legal formalities necessary for taking in hand the formation of the operating company

demanded by the law. When these formalities were completed we requested you to appoint a representative authorized by the State for the formalities of the setting up of that company. On October 25 we submitted to you the articles of incorporation and the by-laws, which you have discussed with us on November 15, 1943.

We have also pointed out that by the time the other formalities of incorporation, such as authorization from the judicial authorities, transcriptions, posting, publications, etc. are completed, there was sufficient time to discuss, to prepare and to sign all other papers such as the contract, the leases, the inventory, etc.

Yet today the formalities for the formation of the company have been suspended in accordance with your wish that they be carried out simultaneously with the signing of the other papers.

Hence, if there was an about-face in the application of the law, it is not us to whom it can be imputed. Indeed, if there is anything like that it can be eliminated within 24 hours by an order from you that the company be formed immediately, by sending the articles of incorporation and the by-laws to the Court.

Problems of a legal nature, or explanations of juridical situations, financial settlements, stock taking, etc. cannot have precedence over war production.

We deem it our duty to point out the dangers, and to state that the present serious situation in the plants cannot continue without doing irreparable harm to the future production as well.

We beg you to accept, Mr. Minister, the assurance of our highest consideration.

It is to be noted that this letter was written one month and 10 days after the Rumanian Government decreed the return of Malaxa's stock in his industries to him but that actual possession and control of the industries were not transferred until 1945, Rogifer than being owned entirely by the Rumanian Government. It is obvious that it refers to the necessity of having the Malaxa industries swing into production without delay and it was necessary for an operating company to be formed to carry it out. Malaxa stated that the letter shows that the leader of the State ordered that the factories must begin to

Ministry of Military Supplies, Moscow, U.S.S.R. 1943

in the letter of the Ministry of Military Supplies, Moscow, U.S.S.R. 1943, which you sent to the Ministry of Military Supplies, Moscow, U.S.S.R. 1943, these requests are being considered.

(1) With regard to the issue of interest and the responsibility to which you are referring, we are satisfied that you disregard all our previous communications and protests. We refer to all of these (our letters 5119 of November 13, 1943, 12339 of November 19, 1943, 14235 of December 21, 1943, 206661 of December 3, 1943). We have therein persistently repeated our request that the Metallurgy Operating Company provided by the Law be set up without delay, so that work in the factories could be started at once, as ordered by the Marshal and Leader of the State and as demanded by the interests of the country.

But the Ministry of Military Supplies has continually opposed this point of view and placed matters of secondary importance in the foreground. Some of these were the questions of accounting and of liquidation and also of litigation and of claims, which belong to the past and have nothing to do with the productive operation of the plants, the interest of which lies only in the present and in the arming of the country.

We therefore are of the opinion that "the satisfactory working of the industry which is needed to carry on the war" does not depend

21/. It is believed that the implication of this statement by Malaxa is that since the companies were still under the control of Rogifer and since the State had ordered a speed-up in production, he was merely preserving his investments by carrying out that which would have been done in any event.

22/ Concerning this letter counsel argued in their brief that since Malaxa was then soliciting the physical return of his plants, he stressed the most convincing argument, to wit, the war needs. It is asserted that he could not readily participate in war production at that time because he was not in possession or operating control of his plants during this period. The serious situation referred to in the letter obviously relates to the large Nazi reverses in battle which had already begun. The effect of this letter and the other one already quoted and others to be quoted, will be weighed in connection with all of the evidence concerning Malaxa's relations with the Nazis.

on the completion of accounting, liquidations, litigation, and claim procedures. It rather depends on the start of the production, which the nation is in no position to postpone.

The responsibilities of which you are speaking will fall upon those who failed to submit the priority of war production and of the arming of the country, ahead of questions of a secondary nature, such as finances and accounting, discussions concerning litigation, etc.

We shall never be able to believe that the interests of the country are served better by giving priority to the solution of contested matters or financial questions, than by giving priority to the production in armament plants. We shall not be able to believe that it is more to the interest of the nation that attention be given to financial or juridical differences, with a single armament manufacturer at that, rather than that he should turn out tanks, at a time when the war is principally carried on with tanks.

(2) With regard to the items that are to figure in the contract I wish to remind you that I sent you a draft of the contract a long time ago. This was the result of long and laborious discussions held at the time. You have sent us a counter-proposal entirely at variance with what has been discussed and negotiated with you. On January 17, 1944, a conference took place at the office of the Prime Minister with the Deputy Prime Minister in the chair. After some of the points needing clarification had been discussed and settled, I was left to attempt the clarification of other points without you. Then I was to wait until called by you, so that we could agree on the final draft.

In the execution of this program I called on you on January 30 and February 1. Then you were to be furnished with the contract concluded with the German pipe manufacturers, deposited in the files of the Rogifer Company, which is under the administration of the Ministry itself.

[Marginal note: "Extraordinary!"]

With regard to the financial clauses (and regarding the question of the balances, which, by your own admission, were only to be settled after the conclusion of the contract) I paid a further call on February 2 on Mr. A. Neagu, Minister of Finance. Because of his illness, however, no progress could be made. [Marginal note: "Extraordinary!"]

With respect to the question of litigation, the position that
[illegible] of the Council said it was that the claims should be
considered as a matter demanded and not as a matter of right.
For these claims are grounded on the fact that the State as
a party to contracts which were signed by the Government with the
Malaxa Companies, as that the suits must be brought in the case, on the
basis of these contracts. [Marginal question mark.]

It would not have been necessary to deal with the litigation in the
contract at all, if all State claims had been examined according to
common law and under common law procedures, and if to those connected with
the contracts between the parties the same procedure had been applied,
as well as the law as it stood at the time the contracts and under-
takings were made and executed. [Marginal question mark.]

With regard to the determination of the litigation it is a matter
of claims formulated or to be formulated by the State, by public agencies
or institutions of public utility, or where the State is a participant.
Such litigations and claims can be specified only by the State and
these institutions, as the ones who have formulated them or are thinking
of formulating them.

Because of the reasons given to you in our previous letters as
well as this one, we take the liberty of awaiting a prompt reply from
you in which we are advised as to when and where we are to sign the
articles of incorporation and the by-laws of the company, the text of
which has been definitively adopted by the parties several months ago.
[Illegible marginal note.]

With respect to the contract, we have requested an interview with
Minister Neagu after his recovery, about the financial questions, and
we are waiting to hear from him.

Please accept, Mr. Minister, the assurance of my highest consideration.

The same general explanation was given concerning this letter as that con-
cerning the previous letter of November 19, 1943, namely, that Malaxa was
stressing the most convincing argument, to wit, the war needs in order that
he might regain physical possession and control of his industries. That
paragraph which refers to an allegation that there was lack of interest,
apparently by Malaxa, is seized upon as a basis for arguing that it shows that
Malaxa was trying to delay the armament situation in Rumania. We are unable
to take the entire letter and ascribe to it that which we have been asked to
do, merely by virtue of that sentence at the beginning of the letter which

refers to an alleged lack of interest. Nevertheless, we feel that urging completion of the necessary arrangements so that the factories can go forward to the armament program soon, in of itself and in the light of all the other evidence in the record, is not sufficient to establish that there was voluntary affiliation with the nazis in Rumania or the nazis of Germany, notwithstanding the fact that history shows that at the time (February 22, 1944) the nazis were in control of Rumania. ^{23/}

Max Ausnit, who was still testifying stated, as we have previously pointed out, (as to whether Malaxa was a member of the nazi party in Rumania) that he had no personal knowledge as to whether Malaxa "actively collaborated with the Nazis in Rumania". There was then introduced a letter from Albert Coering dated February 15, 1950 sworn to at the American Consulate at Salzburg, Austria on the same day reading as follows:

On basis of the written request addressed to me by the American Consulate, I give--after having taken due notice of the contents of my questioning-- the following declaration under oath and am ready at any time to repeat the following statement under oath before any court.

When I arrived at Bucarest end of 1939 or beginning of 1940 as general representative of the Skoda Works, & Prague and Brno Armaments Works, I had among other duties also the task of looking after the interests of the Skoda Works and Brno Armaments Works with those firms in which my commissioning firms were financially interested. These were first of all the RESITA, COPSA NICA CUGIR, NEPTON and FAROMA corporations. Mr. N. Malaxa was a captain of industry and among the others he was not only the head of the Malaxa Engine Plant but also the delegated administrator of the above named great corporation. According to the business arrangement the Brno Armaments Works had a few administrative advisor's positions available which however, due to the resignation of my predecessor, Manager Bruno Salatsky, 17 Reinsner St. Vienna 3, were unfilled for the time being. In order to gain clearing and order in these matters, it was necessary to hold meetings between myself viz. our groups and the Rumanian group. It came to a number of conferences and meetings between Engineer N. Malaxa, the delegated administrator and representative of the Rumanian group and myself, the general representative of the Brno Armaments Works and Skoda Works, Prague. These meetings, without exception, were held in the most friendly atmosphere and led to the most friendly agreements concerning all issues at all sessions. This friendly agreement went even to the extent of having been tendered by Mr. N. Malaxa personally his position of delegated administrator. But I requested him to retain his position under all circumstances and that followed as a consequence.

^{23/} Semiofficial peace negotiations failed in the Spring of 1944. Soviet troops were entering Rumania early in April 1944. As previously noted, the Axis commenced to suffer heavy reverses in 1943.

presently in the presence of about to represent this matter in the light of the investigation by the German Government to take certain measures. As you may note from the copies of the letters particularly from my letter to Mr. Max Ammit, I reserved the right to institute proceedings for slander against Mr. N. Malara.

This is the real truth. Concerning conditions in Rumania before my time (that is before 1939), my predecessor, Mr. Bruno Seletsky, 17 Reiner St., Vienna 3 can give you exact information.

There was also introduced a letter dated December 23, 1949 apparently from Robert Goering addressed to Mr. Ammit which reads as follows:

I am referring to your correspondence with Manager Seletsky of Vienna and in conjunction therewith I let you know of the following:

The conference with Mr. Malara in the offices of the Regita at Bucarest on June 20, 1940 in the presence of Dr. Novotny was transacted in a thoroughly friendly tone. As may be distinctly noted from the photostat of my letter to Mr. Malara dated June 21, 1940, a number of important issues had to be clarified and the filling of positions of administrative advisors in the various corporations had to be settled. This settlement ensued not only in the interest, say of the shareholders of the Brno Armaments Works, but also in that of the Rumanian Group of which the most important representative at that time was Engineer Malara.

As further appears from my letter of collaboration to Mr. Malara, a satisfactory solution of all issues for both parties was arrived at.

Should Mr. Malara presently make the allegation that I achieved this conference by force and that due to my position with the Skoda Works and Brno Armaments Works and by putting to good advantage the political situation which prevailed at that time I have exerted pressure on him, then such allegation would be absolutely not true and, of course, I am ready and am in the position to prove my statement and confirm it through witnesses in Rumania.

I authorize you to make any use of the contents of this letter and I even request you to give me exact information concerning the alleged incorrect statements by Mr. Malaxa in New York in order to eventually enable me taking legal steps for slander against Mr. Malaxa.

We will consider both of these documents together. At the outset we wish to point out that both cover substantially the same subject. The general tenor relates to the question of filling certain open positions in companies in which Malaxa and the Germans had interests. The letters refer to the cordial relationship which Goering asserts existed between him and Malaxa. Malaxa does not allege that there was physical force or duress used by Goering upon him but asserts that the international situation prevalent at the time made it impracticable and also futile to resist the requests made by Albert Goering in the premises. Goering refers also to the fact that he was offered a position as delegated administrator by Malaxa. As previously pointed out, Malaxa has stated that he did suggest such a thing to Goering in one of the lesser important companies in order that Goering would not insist on an increase of from two to three representatives among the ranking officials of Resita. In any event, we believe that it would be improper on our part to fail to mention that these two documents were prepared by a man who was the brother of one of the world's top ranking nazis and who was one of the principal lieutenants of his brother. As such, we must scrutinize the contents of these letters not only in the light of the history of Rumania, Germany, and Czechoslovakia, then current, but also in the light of the position held by the person who subscribed to these documents. When we do that and also note the fact that in both of these documents Goering refers to a possible legal action for slander against Malaxa (thus implying some possible present bias), we find it difficult to conclude that these two letters are sufficient, either separately, together, or with the other letters previously quoted, to establish voluntary affiliation of Malaxa with the nazis in the light of the evidence presented by and on behalf of Malaxa.

Alexander Gretsiamm was called as a witness by the Government. He testified that he is working in the United States at the present time to inform the American public about Rumania under the Communist Regime, and since May, 1949, I am a member of the Rumanian National Committee in exile." He met Malaxa only once at a dinner in Rumania in about 1938 but stated that he knew things about Malaxa. He testified that in January 1939, King Carol sent Malaxa to Germany. The following questions and answers appear in the record on this point:

- Q. All right, just tell us that, what you know about him over there.
A. There were, first, direct information I had about an activities of Mr. Malaxa, was during the rebellion --no, before that, in 1939, in

January 1938, King Carol II of Rumania, who was at the time a monarchist, was in contact with the German Nazis. He was certainly a very close ally of the German Nazis and so King Carol sent Mr. Malaxa, one of his closest personalities, to arrange matters. When Mr. Malaxa came back, sometime in January, 1938, Mr. Gafencu, the Rumanian Foreign Minister, left a note in the archives of the Rumanian Foreign Office, saying that King Carol had informed him that Mr. Malaxa had come back from Germany and had been successful in his mission, and said that the anger of the German Nazis had been pacified, but that no such mistakes should be done again.

- Q. Do you know whether or not Mr. Malaxa had any dealings, or relations of any kind, with Albert Goering, in that connection?
- A. I heard that he knew personally, Marshal Goering's brother, I believe that he was the person he contacted, but I can't give precise details about that particular episode.
- Q. Do you know anything about the results of this mission of Mr. Malaxa?
- A. He, in any case, the things apparently went better, because the German Minister to Rumania, who had left Rumania as a sort of another unfriendly gesture, came back that same January. I believe that the idea was that Mr. Malaxa gave assurances that Rumania would make an important trade and economic agreement with Germany.
- Q. On what do you base that belief?
- A. Because Mr. Malaxa had important business dealings with Germany and because, very soon after his return, Mr. Wohltat, who was one of the chief German economic negotiators, came to Rumania and a very far-reaching economic agreement was signed.
- Q. Do you know any of the provisions of this economic agreement?
- A. I can't remember the provisions, but it provided for an intensification of the exchanges of goods between Rumania and Germany and it went so far, as to provide for the possibility of creating free zones in Rumanian ports.

24/ In cross-examination, the "he" was explained as an error. Should be "I".

An examination of this testimony discloses that the witness' statement concerning Malaxa's alleged trip to Germany in 1939 was based on a note allegedly left by Mr. Gafencu in the archives of the Rumanian Foreign Office. 25/ In connection with knowledge of Marshal Goering's brother, he testified that he believed said brother was the person Malaxa contacted. While we note that this is based solely on his belief, the evidence is clear that it was not until at least a year later that Malaxa met Goering's brother. In any event, the note of Mr. Gafencu was introduced as evidence in the record and that note, plus the testimony of Mr. Gafencu concerning the matter are deemed better evidence than the testimony of Cretzianu concerning it. We will refer to that note shortly.

As to the allegation by Cretzianu that because of Malaxa's important business dealings with Germany and because the economic treaty was signed with Germany shortly after Malaxa's return, the witness believed that Malaxa gave assurances that Rumania would make an important trade and economic agreement with Germany, it becomes quite apparent that such statement is based merely upon the belief of the witness.

The note in question was an endorsement at the end of a memorandum of conversation on January 29, 1939 between Minister Gafencu and one Mr. Gerstenberg, German Air Attache for Poland and Rumania. Part of the note preceding the postscript at the end thereof, contains a conclusion of Mr. Gafencu that from the statements Gerstenberg made to him in a tone of complete sincerity, among the rulers of Germany the "current is not hostile to us; they have even assumed different roles. The economists will work under a pressure which may be increased by the ire of the politicians." The postscript reads in material part as follows:

I informed His Majesty the King of this interview on January 30, when I was received in audience. I pointed out that the "Gerstenberg mission" largely complemented the results of Mr. Malaxa's mission to Berlin. Mr. Malaxa returned from Berlin after interview with leaders of the Government and the Party and a long conference with Mr. Wohltat in particular, with the clear conviction that the Germans want to negotiate and to arrive at an agreement with us in the economic sphere. Mr. Malaxa believes, however, that we are entering

25/ In cross-examination, Cretzianu stated that he was never present when Malaxa performed any action in connection with any such mission to Germany and that although he neither saw Malaxa leave or return from Germany, he believed Mr. Gafencu. A copy of the note which was introduced into evidence, was produced by the witness who stated that it was one of the carbon copies made at the Foreign Office and that it is unsigned. He added that the note was sent to him for safekeeping at Ankara from Bucharest and that that note is his most direct knowledge of Malaxa's alleged influence with the Nazi party.

and given the fact that Malaxa was a member of the King's Council of Ministers and Chairman of the Council of Ministers, it is clear that Malaxa was in a position to establish friendly relations with Germany on the basis of the secret talks and of the preparatory work that has been undertaken.

While ordinarily we would discuss Malaxa's affidavits with regard to the implications contained in the postscript at the point where we are discussing evidence introduced by and on behalf of Malaxa, we feel that the effectiveness thereof would be diminished if it were delayed until then. We shall, therefore, discuss it at this point. Malaxa testified that the King never assigned him to any political mission in Germany or elsewhere, but that in 1936 the Rumanian Government assigned him on a mission to obtain machinery for arming the country. He added that he was never sent on a mission to iron out difficulties between German and Rumanian Governmental leaders, which allegedly arose because of the execution of certain Iron Guardists. Gafencu, who testified on behalf of Malaxa, and who is the same man referred to in that note, stated that he knew that Malaxa opposed the German-Rumanian treaty of March 23, 1939; that Malaxa advised England through his friends there of the situation after the treaty was signed. 25/

There was introduced into evidence a copy of a letter dated July 1, 1948 to Malaxa, then in Paris, by V. V. Tilea 27/, which letter refers to the fact that Tilea kept Malaxa's name secret in discussing with the British the information which Malaxa gave a few days after Hitler took Prague in March 1939 concerning the German demands on the Rumanian Government. The letter asks for Malaxa's consent to use his name in that matter. It adds that as a result of the information passed on by Malaxa, Lord Halifax tried immediately to create with Russia a peace block against Germany. 28/

26/ Malaxa also asserted that he opposed the treaty.

27/ It appears that Tilea was the Rumanian Minister at London at and about the time the German-Rumanian treaty of March 23, 1939 was signed.

28/ The history of Rumania discloses that on May 12, 1939 a trade treaty was concluded by Rumania with Great Britain to off-set the effect of the March 24, 1939 economic treaty between Rumania and Germany.

Adverting again to the testimony of Gafencu, he added that Rumania had been advised by its friends that Germany prepared a coup d'etat against Rumania and to avoid this conclusion was reached that the best way to meet the situation, so as to save Rumanian political and military independence—having seen what had just happened to Czechoslovakia—was to come to an understanding with Germany on an economic basis and, that the treaty was concluded about one week after the invasion of Czechoslovakia which, in the witness' opinion, saved the political independence of Rumania for one year ^{29/}.

Gafencu then read from a letter dated March 23, 1939, from the British Ambassador to Bucharest, in which the Ambassador feels "justified in recording my opinion that they (Rumania) are handling affairs with wise circumspection." The letter ends with a personal tribute of the Ambassador to Mr. Gafencu. This testimony and letter were mentioned to show that the Rumanians were not happy about the treaty and that they handled the situation as well as possible; that Gafencu believed that it resulted in Rumania's political independence for at least an extra year and, because it is corroborative of Malaxa's assertion that he opposed the treaty. This latter point, of course, is in conflict to some extent with what appears to be the ordinary meaning of the postscript on the note previously mentioned. Gafencu testified not only that Malaxa did not go on the mission which appears to have been referred to in the postscript and by the testimony of the witness, Cretziamu, but added that he would have known if there had been such a mission because he was then Minister of Foreign Affairs and Cretziamu was then his aid, being Secretary-General of Foreign Ministers, and that King Carol would not have taken such a political step without consulting him (Gafencu). In cross-examination he stated that he heard about a mission to Germany by Malaxa but that he knows, of his own knowledge, that when he was Minister of Foreign Affairs from the end of 1938 to May 30, 1940, Malaxa had no political mission. He asserted that he was aware of all political actions (including foreign relations) taken by King Carol during that period. The note referred to by Cretziamu had not been translated and made available when Gafencu testified, but he was given an opportunity by the examining officer to be shown this note and to prepare an affidavit with regard to the witness' version of the exhibit. Such affidavit appears among the exhibits in this case and it is particularly important because the witness Cretziamu stated that he relied upon the truthfulness of Gafencu. This affidavit dated July 17, 1951 by Gafencu contains a statement that he recalls having dictated such a note; that he cannot

29/ A document introduced as an exhibit in evidence shows that Gafencu signed the treaty as Minister of Foreign Affairs of Rumania.

guarantee the contents of the note as to complete authenticity; that he does not remember if several days after the note was dictated, he did or did not add the postscript thereon. He added that in any event the note does not confirm Cretsiann's testimony regarding the role alleged by him to have been assumed by Malaxa. He asserts that merely the word "mission" was used without stating the nature of the mission or who entrusted the mission to Malaxa. Again Gafencu asserted that Malaxa was not sent on a political mission and it may have been that Malaxa was discussing industrial and economic matters and, since he apparently reported directly to the King it "seems to me to prove that it was a matter pertaining to the armament program". Malaxa testified that he was not in Germany at all during the period in question and Gafencu's explanation makes it look like there might be reference to Malaxa's industrial trip to Germany in 1936. We are unable to agree with the explanation by Gafencu in his affidavit. It is extremely weak. However, the postscript does not indicate clearly that Malaxa was sent on a political mission to Germany by the King. Nevertheless, we must concede that this postscript to the note by Gafencu is a piece of evidence not entirely explained in the record. We cannot, however, in the light of Malaxa's and Gafencu's testimony interpret the postscript to the note in such a way as to indicate that Malaxa, while on a mission to Germany, placated the German ire which was aroused as a result of certain Rumanian action against the Iron Guard.

We have interrupted the recitation of Cretsiann's testimony in order to dispose of the issue of the note and the postscript thereon. We now return to his testimony in connection with another matter.

Cretsiann stated, in response to a question as to whether Malaxa had anything to do, by backing, by financial means, or otherwise, the Iron Guard:

All I can tell you was what happened during the January 1941 rebellion. The Iron Guard had made an arrangement with General Antonescu, and some members of the Iron Guard were members of the government. The Iron Guard had made that arrangement with General Antonescu, but all the time, they wanted to have the power for themselves, and they were all the time treating and telling the Germans, that Antonescu was not sincere, that he always had been pro-Allie, which was true up to a certain point, and that he was playing the waiting game to betray the Germans and that developed a situation in which the German nazis were backing the Iron Guard, while the German high-ranking officers were for General Antonescu, because they considered that he had more chance of having a good government in Rumania. At one moment, the Iron Guards started the rebellion against General Antonescu, to conquer power for themselves. On that day of the 21st of January, 1941, I was in my office in the Rumanian Foreign Office. Rumanian Foreign Office at that

... was obtained... where General Antonescu... branches of the... afternoon, there were... Prime Minister's office... the Iron Guard started rebellion against the government... of street fights, during which I saw... General Antonescu, as I was Secretary General of the... I had to see him constantly, to know what the situation was, so as to be able to give information to foreign diplomats and to brief our legations abroad. General Antonescu, at one moment, had in front of him, a sheet of paper, which was a secret service report, and he told me that he had positive information, both from the secret service and from German officers, that Mr. Malaxa was backing the Iron Guards, both by financing them in Rumania and by backing them in high-German circles. At the end of the rebellion, Mr. Malaxa was arrested by General Antonescu.

On cross examination, Cretzianu testified that he, himself, did not read the report which Antonescu had in his hand but that he took Antonescu's word for it. He added that "in matters like that" he had faith and confidence in General Antonescu's word. It is significant that he admitted that he did not know about the three committees which were later appointed by the Government to investigate this matter, and conceded that all he knew about this Iron Guard situation is what Antonescu said he had in that report which he was holding in his hand. It is quite apparent that Cretzianu was relating something he did not know of his own knowledge, but which was related to him in turn by General Antonescu, who allegedly stated what he did because of a secret service report which he was holding in his hand, and from what Germans told him. We note, however, that Antonescu himself was a Nazi and that he caused Malaxa's arrest; that Malaxa, after extensive investigation (more about which will be said later), was released from imprisonment since it was found that he was innocent of the allegations made against him. It is obvious, therefore that the recitation by the witness Cretzianu concerning Malaxa's backing of the Iron Guard cannot be considered in connection with a determination of this case. It is hearsay upon hearsay evidence.

We have recited in great detail all of the matters of record which were in opposition to Malaxa, insofar as the issue of his association with the Nazis is concerned. Fairness demands that we turn to the other evidence given in his favor on this issue, notwithstanding that we have already referred to some of his own testimony in the premises as well as to the testimony of Gafencu, who was a witness presented by Malaxa.

the witness, Malaxa was very discouraged. She further stated that they discussed politics in the old days of Czechoslovakia before September 1939 about the hopelessness of getting aid from the West to resist the Germans and she added that Malaxa was very discouraged.

Adolph A. Berle, Jr. was called as a witness by Malaxa. He testified that he met Malaxa three or four years ago and saw him on a later occasion in connection with his displaced persons application. Mr. Berle testified that after the German dismemberment of Czechoslovakia, the German power doubled in Europe. In 1939 Germany sent one Voltadt to Rumania to negotiate an economic treaty and simultaneously mobilized an overpowering force on the Rumanian border. He added that at that point the German wish was tantamount to an ultimatum. The agreement sought was in a standard nazi form. It called substantially for the placing of the entire economic life of Rumania at the disposition of nazi officials. Exports from Rumania indicated great dissatisfaction, but it had no power to resist. "Rumania, therefore, was helpless in the face of an overpowering force". Mr. Berle testified that Malaxa opposed the economic treaty with Germany but was unsuccessful. In an affidavit by Mr. Berle, admitted in evidence, he stated that Malaxa sent information to the Rumanian Minister in London indicating the sweeping dangers of the German demands; that this information was published and had some effect on the British Government.

We cannot overlook the testimony of Mrs. Gunther and Mr. Berle, nor can we ascribe to it only minor significance. The identifying data concerning witnesses who testified, sets out who these individuals are. Both are people who are in a position to know whereof they spoke and people whose credibility has not been impeached.

Nicolae Radescu testified that Malaxa was well-known to him for many years and that Malaxa was neither a nazi, or a nazi sympathizer, or a member or sympathizer of the Iron Guard.

Barbu Niculescu was called by Malaxa as a witness. He testified that he was told by a friend, Captain and Magistrate Camile Barbulescu, stationed at Malmaison Military Prison in Bucharest, that on January 23, 1941 Malaxa was arrested and brought to Malmaison jail, and then, following orders direct from Antonescu, Malaxa was investigated by a military commission which concluded that Malaxa had no connection with the Iron Guard revolt; that Antonescu not being satisfied, ordered another investigation by a professional magistrate, Ionel Stanescu, whose report was also negative;

that Antonescu still remained in power, and that he was
General Aldea. That fact was negative. The witness has no mem-
ory in that respect. The witness stated that he was entrusted
entrusted to keep Malaxa under surveillance and that Barbolescu
Barbolescu was present at all meetings between Malaxa and Mihai
Vice President of the Government. Barbolescu allegedly told the witness
that Mihai Antonescu tried to force Malaxa to consent to transferring his
plants to the Germans, but Malaxa opposed it. The witness stated that at
the last meeting of the Council of Ministers, Malaxa was in one room, Mihai
Antonescu in the middle room and the German delegation in the third room,
and that Mihai Antonescu went from one room to another exerting pressure
on Malaxa to consent to the transfer of his industries to the Germans, but
that Malaxa remained steadfast in his refusal. Then Mihai Antonescu signed
the transfer papers on behalf of the Rumanian Government. This testimony
supports the testimony of Malaxa in that respect and relates to the time
when the Malaxa industries were transferred without Malaxa's signature,
to the Rogifer corporation, previously mentioned.

Malaxa testified in rebuttal. Much of what he said at that time has
already been related in this opinion. It is desirable to point out at this
time the fact that Malaxa asserted that Iron Guardists who invaded his home
in January 1941 were later condemned by a military court in Bucharest for
this offense. This was supported by a written extract from the records in
the case.

The record contains an affidavit by one Satvet Lufti Tozan. He states,
among other things, that he knew Malaxa personally; that the opinions
and political thoughts of both men were identical; and that Malaxa gave
him shelter for many months in Bucharest and at Malaxa's villa at Otopeni
when Tozan was wanted by the Germans; Tozan added that after the bombing
of Rumania had started, a certain number of American and British airmen
who had jumped by parachute were in prison and, following the requests of
Americans and British in Istanbul, Malaxa and Tozan began to look for means
of rescuing them; that they met place approximately in June 1941 and that
Malaxa was then offering Tozan automobiles and unlimited funds to carry out
the plan, but that the plan could not be realized as Tozan had to go to Istanbul.

The record contains official certification from the Ministry of Home
Affairs and from the Military Court of Justice Cassation, to
the effect that the investigations disclosed no political
motives in the Iron Guard revolt.

The record also contains a report introduced into evidence, which
relates that a group of persons forced themselves into Malaxa's house
on January 1, 1941 and that they were killed and were to be returned
to the Iron Guard.

in July with the Rumanian Government's proposals for a separate peace. Tozan stated that he cabled the British not to bomb the Malaxa works in Bucharest due to the fact that no more armament was being made there and that 60,000 people made their living in the plants. He added that the works suffered little from bombings. Attached to the affidavit was a citation signed by Queen Mary at the command of King George VI, bestowing an honor of the British Empire on Tozan for his efforts on behalf of the British commencing with the Autumn of 1941. Apparently this was introduced to establish the veracity and character of Tozan.

We note, but pass over without comment, the statement made by Malaxa that he was the only gentile industrialist in Rumania whose industries were confiscated by the nazis.

In addition to the foregoing, several affidavits and letters were introduced into evidence to support the allegation that Malaxa was anti-nazi. We shall refer to only a few of them. One was an affidavit by Paul E. Lohstein, a partner of Lehman Brothers, who had known Malaxa for many years. There was also a letter from Dr. W. Fieldman to Rabbi Stephen Wise, speaking on behalf of Malaxa, in which he states that Malaxa was hated by the Germans because he contributed to Palestine funds and funds to aid poor and deported Jews, "showing himself in all circumstances as an adversary of Hitlerism." A letter from the American Jewish Congress dated March 21, 1941 to the applicant's counsel describes Dr. Fieldman as a distinguished leader of the Rumanian Jewish community.

We have just completed a detailed summary of the evidence on the question of Malaxa's relations with the nazis. In order to determine whether these relations amount to "voluntary affiliation" as that term is contemplated by the Act of October 16, 1948, as amended, and the Act of March 20, 1951, the applicable provisions of which have previously been set forth, it is necessary to evaluate the evidence at this point, notwithstanding the fact that we have commented at various places on specific items of evidence. The issue centers about several situations, to wit: (1) the Albert Goering meeting, the correspondence with Goering and the letters to the Minister of Military Supply and War Production; (2) the financing of the Iron Guard and the invitation to the Iron Guardists to enter his home; (3) the political mission to Germany after which the nazis were placated; (4) Malaxa being well spoken of in the nazi press; and (5) Malaxa's statement to Aushit that he had influence with Hermann Goering. We will consider each of these issues seriatim:

- (1) Malaxa admitted meeting Albert Goering as testified to by Novotny. That witness merely believed that Malaxa was endeavoring to ingratiate himself with the nazis merely because Malaxa allegedly accused Novotny in front of Albert Goering to have been working with the Czechoslovakian Government in exile, and allegedly stated that since Goering was in Bucharest, 'he' could develop 'real activity' with Germany. There

is no corroboration of Novotny's allegations that Malaxa made these statements. Since it appears that at the present time Albert Goering does not feel too kindly toward Malaxa as is evidenced by his letter to Ausnit and an affidavit before the American Consul, it is indeed strange that Goering did not refer in any way to the alleged incident related by Novotny. In addition, in his statement to Investigator Seeley, Novotny said that the relationship which existed between Albert Goering and Malaxa was not cordial. We believe, therefore, that we cannot now find that it has been established that Malaxa made the statements attributed to him by Novotny on the day in question. We believe that if he had made such statements, there would have been some action taken then by the nazis and that affidavits or other evidence thereof might have been produced by those witnesses who appeared in these proceedings for or against the applicant.

On the question of the Albert Goering correspondence, we have already referred to Goering's letter to Ausnit and the affidavit before the American Consul, and in our consideration thereof, we stated that we did not believe that in and of themselves, they showed voluntary affiliation with the nazis. The only so-called damaging part of the letter from Goering to Malaxa is the one which indicates that Malaxa offered Goering a high post in one of the less important industries. However, we believe that Malaxa's statement was credible, namely, that he did so in order to try to get Goering to withdraw his insistence that there be increased representation of the Czechoslovak Arms Works in the management of Resita, one of the most important Rumanian industries. In considering this issue, sight cannot be lost of the fact that the instances in question took place in the Spring or early Summer of 1940, at which time history of Rumania discloses that that country was in a difficult position because of the alignment of its neighbors and the break-down of France, and that it was powerless to resist simultaneous pressure by the Soviet Union and Germany. In addition, it was approximately one year after the crippling economic treaty with Germany was concluded on March 24, 1939, and was at a time when the armed forces of the nazis were at the borders of Rumania. It is for this reason, plus the further fact that Malaxa's credibility has not been impeached in this respect, that we have accepted his explanation on this point. No witness has stated the basis in fact, for such beliefs as he may have had that Malaxa's association with Albert Goering was other than that which has been summarized.

Malaxa was not a member of the Iron Guard and did not contribute to its activities. In order to establish this fact, the following evidence was presented: Malaxa's affidavit of 1941, in which he stated that he had no affiliation with the Iron Guard; the testimony of the United States Government, which stated that Malaxa was not a member of the Iron Guard; and the testimony of the United States Government, which stated that Malaxa was not a member of the Iron Guard. The evidence presented is sufficient to establish that Malaxa was not a member of the Iron Guard and did not contribute to its activities. The conclusions that Malaxa supported those people are based on belief and opinion of individuals. It is clear that Malaxa did not invite the Iron Guardists into his home because the record contains documentary evidence that two such individuals were convicted of breaking into his home. It is significant that the conviction took place on June 14, 1941, while Antonescu was still mighty and before the Nazis suffered any reverses. Little significance might be attached to such conviction if it took place after the Nazi loss of power in Rumania. In addition, it is difficult to understand why it was necessary for the Rumanian Government to execute the transfer of Malaxa's industries to Rogifer if Malaxa had been a supporter of the Nazis. If he had been such a supporter, he could have readily turned over his industries to the Rumanian Government and operated them for the best interests of the Nazis. It is clear, however, from testimony and documentary evidence that Malaxa resisted the efforts of the Antonescu government to take over his industries. As a matter of fact, documentary

(2) We have had little difficulty in connection with the alleged situation concerning affiliation with the Iron Guard. No one has testified that Malaxa was a member of that organization and no one has testified that he has seen or actually knows that Malaxa made any contributions of any thing of value to the Iron Guard. The conclusions that Malaxa supported those people are based on belief and opinion of individuals. It is clear that Malaxa did not invite the Iron Guardists into his home because the record contains documentary evidence that two such individuals were convicted of breaking into his home. It is significant that the conviction took place on June 14, 1941, while Antonescu was still mighty and before the Nazis suffered any reverses. Little significance might be attached to such conviction if it took place after the Nazi loss of power in Rumania. In addition, it is difficult to understand why it was necessary for the Rumanian Government to execute the transfer of Malaxa's industries to Rogifer if Malaxa had been a supporter of the Nazis. If he had been such a supporter, he could have readily turned over his industries to the Rumanian Government and operated them for the best interests of the Nazis. It is clear, however, from testimony and documentary evidence that Malaxa resisted the efforts of the Antonescu government to take over his industries. As a matter of fact, documentary

evidence discloses that he was released from house arrest on the very day that the transfer of his industry to Rogifer was completed.

As opposed to any unfavorable inference that may be drawn from the evidence introduced on the question of Iron Guard affiliation, we have the testimony of Malaxa and the opinions of several persons who knew him. If we disregard all opinion evidence on this matter and consider only first-hand information, we have nothing left but several pieces of documentary evidence and Malaxa's testimony on the subject. We wish to point out in passing, but make no comment thereon, that if Malaxa was financing and working with the Iron Guard, it would have been unnecessary for him to call Antonescu (who was then not in harmony with the Iron Guard), and ask for protection as the witness, Novotny, testified Malaxa did.

Concerning the note which Cretsiann stated Antonescu was holding in his hand as a result of which Antonescu allegedly told Cretsiann that he, Antonescu, concluded that Malaxa was backing the Iron Guard, we need only say that this is hearsay upon hearsay evidence, that it is unsupported, and that it must be viewed in the light of the other instances relating to the Iron Guard which have been set out and adequately covered in our discussion immediately preceding.

(3) We will now discuss the alleged trip of Malaxa to Germany. Malaxa denies that he made such journey. Gafencu, who was then foreign Minister, testified that Malaxa made no such trip and that if such a trip had been made he, of necessity, would have known of it. Cretsiann did not know of this trip of his personal knowledge but concluded that Malaxa had made it because of the postscript on Gafencu's note which has heretofore been discussed. In fairness to all concerned, it is desirable at this point to make note of the fact that Gafencu is a supporter of the same organization of Russians in this country which is supported Malaxa. In the light thereof we have carefully scrutinized his testimony. It is pointed out when we discussed the postscript to Gafencu's note that we are not entirely satisfied with the explanation given by Gafencu and reflecting. We cannot, however, in the light of the explanation of Gafencu's explanation do more than read that explanation as standing by itself. We might be required to believe that Malaxa made the trip and was successful in placating Antonescu. In the light of Cretsiann's and Gafencu's testimony, however, it is our belief that the subject leaves us only

with Malaxa's denial that he made the trip and the fact that the postscript to the note is not so worded as to be clear and convincing that Malaxa made a trip to Germany and placated the nazis in 1939. The finding by us that it has not been shown that Malaxa made such a trip is supported by the fact that the trip was allegedly made in 1939, the year of the crippling economic treaty with Germany and we feel convinced from the evidence presented that Malaxa opposed this treaty with Germany. It would, therefore, appear inconsistent in light of the opposition to the treaty with Germany and the absence of support of the Iron Guard to find, on the evidence presented, that the trip was taken and the results accomplished as alleged.

(4) The fact that it has been alleged that Malaxa was well spoken of in the nazi press is not proof of voluntary affiliation with the nazis. Some of the articles introduced point out that Malaxa is a great engineer and industrialist, a fine Rumanian patriot, and that he was responsible for ousting Ausnit, the Jew. Being written up in such a way by the nazi press or even being written up in very favorable language, does not establish the subject's voluntary affiliation with the nazis. We take administrative notice of the fact that many well-known anti-nazi Americans in the United States were given favorable press notices in the nazi press at various times prior to the war between the United States and Germany. Certainly it cannot be argued that such press notices establish voluntary affiliation with the nazis.

(5) We are left only with Ausnit's statement to Investigator Seeley that Malaxa allegedly stated to Ausnit that Malaxa had influence with Hermann Goering. This statement was not repeated by Ausnit when he testified at the hearing and it does not appear that any question regarding such statement was put to him. The statement, standing by itself, in the light of Ausnit's admitted bias and animosity toward Malaxa cannot be held to indicate that Malaxa was voluntarily affiliated with the nazis. This is especially true when it is considered that it might relate to purchase of necessary machinery or other material from Goering's industries, which, in and of itself, would not indicate affiliation. We cannot draw a conclusion from Malaxa's statement that he had influence with Hermann Goering if, indeed, he made such statement, in any event, Malaxa denied any affiliation with the nazis and insisted that at all times he was trying to preserve his industries.

... Code of Federal Regulations, Title 8, Code of Federal Regulations, Section 175.23.

... was appointed to ... the United States ...

The general ... with the Nazis ...

... is support ... of many ... of unquest- ...

... any ... the expression that he ...

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... short of voluntary ... as contemplated by the applicable ...

... statutes. In addition, we find that it has not been shown that he ...

... is within any of the classes of aliens inadmissible to the United ...

... States under the provisions of Title 8, Code of Federal Regulations, ...

Section 175.23.

26 Sept 1951
Cont

Malaxa testified that he has always been opposed to Communism, that he is fighting communism by contributing to Committees for Free Europe, some of whose members are John Foster Dulles, General Eisenhower and Adolph Berle. He added that when the communists became strong in Rumania, he was "forced" as an industrialist to keep his factories working to supply material to the Rumanian government as part of the war indemnity to be paid to Russia. We have noted that in 1941 his industries were taken over by the Nazis and that although it was decreed in 1943 that they be returned to him, the actual return of possession and control did not take place until April 12, 1945, when the Radescu coalition government carried out the return of the industries. With the background of the case previously mentioned and discussed in detail, we turn to the testimony given at the hearing on the issue now under consideration.

Constantin Florin Zaharia was called as a witness by the government. He testified that before he left Rumania on April 3, 1944, Malaxa asked him to try to unblock some of Malaxa's deposits in Switzerland and that at the same time, asked him if he could intercede so that Malaxa could get a visa for himself and family to enter Switzerland. He added that he saw him in Berne, Switzerland in 1946 and asked for financial aid for the Gafencu resistance group, but that Malaxa, although showing willingness, explained that he had to refrain from doing it openly because he was spied upon by Rumanian communist government agents, and he was concerned about the security of his family. The witness testified that in the United States Malaxa has been giving him \$300 per month for his personal support.

Zaharia added that Malaxa once gave him \$500 to send to a Swiss bank. Following which, the witness stated, he received a letter from a friend in Paris saying, "I can't understand why you are sending money to Mr. Dragomirescu, who brags around here that he gets money from your parties." The witness explained that while he and Malaxa were in Switzerland, the witness asked Malaxa who Dragomirescu was (he having been pointed out to the witness) and that Malaxa said "I was obliged to take this Dragomirescu with me and I suppose that he is charged from the communist government to watch me and that is why I must be very careful." In discussing one Hirsca Solacolu, the witness said that Malaxa once stated that Solacolu was very dangerous because he was an agent for the communist government. The witness said that Dragomirescu had no official position (but was "assigned" as General Manager of Malaxa Works and assigned to accompany Malaxa to Switzerland), but that Solacolu was a Commissioner for Foreign Trade. He added that later, Malaxa explained that he sent the \$500 to Dragomirescu because that man was once General Manager of his plants, and was dying of hunger; that the money was sent through the witness because Malaxa did not want Dragomirescu to know that the money came directly from Malaxa in order that the recipient would not ask for more money. The witness testified that he never saw Malaxa and one Maximo together but inasmuch as the witness was told by an agent of the Swiss police for the foreigners that Maximo was a communist agent, the witness stated that he cautioned Malaxa that in case he had any intention of contacting Maximo it would be better to do it without his (witness) presence.

Ion Stanescu was the next witness called by the Government. He was not acquainted with Malaxa in Rumania but met him in the United States in January or February 1947 through one Mihail Balea, a friend of long standing, who held Rumanian official positions and who was former ambassador from Rumania during a four-party government in that country. 32/ The witness testified that he was told by Balea to see Malaxa about a Rumanian first loan of \$7,000,000 from the Chase National Bank solely for the purpose of buying grain for Rumania because of the famine in that country. He added that

32/ The witness stated that these four parties were the Liberal, National, Peasant-Socialists, and Communist Parties. He added that he did not know whether Balea was a friend of the Communists. 33/ The witness stated that Balea was an old friend of his. He testified that the communists were in power in Rumania while Balea was ambassador to the United States from November 1946 until the fall of 1947, while the government (said by the witness to be communist) government was in power. The witness stated in cross examination that he saw the first representatives of the Greek government and carried on negotiations with the government of Rumania without having been able to obtain his appointment.

the loan for grain purposes was approved by the State Department. Stanescu further testified that in April /1947/ Malaxa suggested to him that since war was in question and since it was a little late to send more grain seed in time /for planting/, that grain be no longer purchased but that the money be used to buy oil drilling equipment. The witness added that another reason for suggesting the drilling equipment was that Russia was desirous of increasing Rumanian oil production, which had fallen off. This statement was not clear in the testimony in that it does not show whether the Russian desire was the witness' view or whether it was given by Malaxa as one of Malaxa's reasons for purchasing the oil equipment. He added, however, that although he did not know definitely, Malaxa may have had Rumanian government authority to buy equipment in the United States then because Ralea told him that Malaxa had an economic mission here.

Stanescu related from the witness stand that Malaxa sent boxes of jewelry to Rumania as gifts to government officials. He added he was shown one box of them by Ralea, who told him that Ralea was to take them to Rumania on the request of Malaxa. This allegedly happened in 1947 or 1948. The witness characterizes the jewelry as "not too expensive, not too bad", but containing some "bracelets, some diamonds." They were bought at Cartier's. He further testified that Malaxa sent a Cadillac automobile to Gheorghiu-Dej, a "boss of the Communists in Rumania", and a prominent member of the Rumanian government and of the communist party. He added that Ralea told him to buy the car which he did with cash furnished by Malaxa, and with instructions by Malaxa that the car was to be sent to Gheorghiu-Dej.

The witness stated that "I can't tell he is not a communist, but he loves too much power and make a lot of other troubles." He explained the "troubles" by saying that Malaxa tries every means to remain in power and, in turn, begged that on Malaxa's connection with political life.

We note that in characterizing the jewelry, he stated that some of it was in the form of diamonds and at the same time added that they were "not too expensive, not too bad." On cross examination, when pressed as to whether there were diamonds among the jewelry, he added "I am not an experienced man." He asserted that Ralea told him that the jewelry was for Anna Pauker and other members of the government. Although the witness testified that he knew that Malaxa's wife and son were still in Bucharest, he did not know that the automobile and the jewelry might have been a scheme to get Malaxa's family out of Rumania. He added the gratuity that he did not "believe communists can be bought with cheap things." He asserted that he was unaware of the fact that Malaxa had gone so far as to have offered his entire industries to the Rumanian communist government in exchange for his family. He did not consider Malaxa's sending of gifts improper but said "I believe it was lost money."

As a matter of historical interest and in connection with the testimony given by Malaxa, it is interesting to note that the Communist Party in Rumania in this country 1944 until King Michael's abdication in 1947 were not really the subjects of a Communist government. The Communist Party of hope evidenced by King Michael's abdication in 1947.

Max Ausnit, while testifying, stated that he had no information as to whether Malaxa was a member of the communist party in Rumania. He identified a note as one written and signed by Dragomirescu bearing date July 7, 1949 (Ausnit believes it was 1949) handed to Ausnit by the writer thereof. Ausnit testified that Dragomirescu complained that he rendered great service to Malaxa and that Malaxa's associates denounced him to American authorities as a communist. The note reads in part as follows:

I, undersigned, Dan Dragomirescu, in my capacity as Chief Administrative Executive at Malaxa Plants, Bucharest, from June 1945 to April 2, 1948 confirm that:

- 1) Mr. Nicolae Malaxa maintained close relations with Jean Maurer, official representative of the Rumanian Economic Division. In 1946, in Paris, Malaxa told Maurer to be careful not to let me in on their secrets as I was apt to commit indiscretions. I learned this from Maurer himself.
- 2) Malaxa and his associate, Alfred Fulga, had as business agent in Paris a Mr. Maximo, presently expelled from France and Switzerland. Notwithstanding my position I was taking no part in their dealings.

The Maurer referred to in the letter appears to be a man who, according to the testimony of witnesses, was a communist. It is not shown when Maurer told Dragomirescu about the alleged statement by Malaxa in Paris in 1946 concerning Dragomirescu. However, it is not unlikely that Malaxa may have made the statement attributed to him because there is evidence in the record which will be discussed in a moment indicating that Dragomirescu was deemed by many persons as being completely unreliable. There is no showing in this note of the facts upon which Dragomirescu states that Malaxa had Maximo as a business agent in Paris. In any event, we do not believe that this note by Dragomirescu establishes voluntary affiliation of Malaxa with the communists.

There was also introduced into evidence an affidavit by Dan Dragomirescu sworn to on January 22, 1951 before the American Vice Consul at Paris, France, reading as follows:

I know Mr. Nicolae Malaxa. From the month of May 1945 to the month of June 1945, I was solicitor of his corporations and from June 1945 until April 2, 1948 Administrative General Manager of Mr. Malaxa's plant at Titan, near Bucharest. Mr. Malaxa is one of the foremost capitalists in Rumania. He was sole owner of the Titan Works in

Mr. Malaxa was appointed by the Communist Government of Rumania as a public representative. He was formerly a public representative of Rumania. He established contacts with the Communist Government of Rumania in 1945. An article was published in the JOURNAL OFFICIEL of Rumania, whereby Mr. Malaxa resumed possession of his plants; was given a salary of two million lei; and obtained at the same time an amount of \$2,000,000 in payment for the rolling mill which had been seized by the Russians. This amount of \$2,000,000 was to be deducted from the sum of \$200,000,000 representing the Rumanian War Indemnity to Russia under the Armistice Convention.

I have no knowledge of the obligations which Mr. Malaxa may have contracted, but all these transactions, handled by Mr. Bernacki, resulted in the establishment of excellent relations between Mr. Malaxa on one side, and Messrs. Georgeiu-Dej and Maurer on the other side, the former being Secretary for Communications and the other Assistant Secretary (Under-secretary) of State in the same cabinet.

During the entire period from June 1945 until he departed for the United States on June 17, 1946, Mr. Malaxa maintained close relations with the Communist Government of Rumania.

One day, I was invited by Mr. Alfred Fulga (who is at present in New York with Mr. Malaxa) to feel out the heads of the Ministry for Communications with a view to ascertain whether Mr. Malaxa could be designated as Rumanian Ambassador to the United States. He sought my good offices because he was afraid to make a direct offer, but as the Communist leaders did not appear favorable, he was offered an appointment as a delegate to proceed to the United States to negotiate the resumption of commercial relations between Rumania and the United States of America. Mr. Malaxa had many interviews at the Ministry for Communications in order to determine the composition of the delegation which was to proceed to the United States. He was to be accompanied by Mr. Alfred Fulga and by myself, and the travel was to take place under the auspices of the Rumanian-American Chamber of Commerce, the President of which was Mr. Max Auschnitt. Mr. Auschnitt was to be Chairman of the delegation and to be accompanied by the Secretary General of the Rumanian-American Chamber of Commerce, Mr. Jean Weis. The Rumanian government added three members to the delegation: first of all, Mr.

Stoicescu. (Mr. Stoicescu had been University Professor at the Polytechnic Institute of Timisoara. He is General Manager of the Rasitza since 1948). Mr. Stoicescu was instructed to spy upon Mr. Aschnitt; then Mr. Petreanu (whose real name is Gerard) who was to spy on Mr. Malaxa; and last Jacques Bechory, who had no political assignment but who was to take care of the automotive line.

After he reached Paris, on June 17, 1946, Mr. Malaxa established contacts with a certain Maximo, who was to become his constant collaborator and who was to make several trips to Bucharest. I have learned in Paris that Maximo has been deported from France, Switzerland, and Italy. He is reported to be at present in Israel.

Mr. Malaxa had close ties with the former Rumanian Ambassador in Washington, Mr. Michal Balea, who acted as liaison between the Government in Bucharest and Mr. Malaxa, and thanks to who, during the period from December 1946 until April 2, 1948, the Malaxa Works were under the constant protection of the Communist government. I must stress the fact that since August 15, 1947, the date of monetary stabilization in Rumania, the companies owned by Mr. Malaxa enjoyed special protection whereas most of the others were driven to disaster. It was only after April 1, 1948, when the government learned of the flight of Mrs. Malaxa and her child, that Mr. Malaxa's companies were placed under government control, a control which resulted in their nationalization.

I am not aware of the activities of Mr. Malaxa in the United States. Since November 1946, when I left him in New York, I have had only the occasion to meet Mr. Balea when he came to Bucharest. As early as November 1946, in Paris, the latter had informed me that Mr. Malaxa was not pleased with me because I did not follow their political line.

I cannot consider Mr. Malaxa as a Communist, or as a man having Communist opinions, because he has no opinion at all, being interested only in the fulfillment of his own ambitions.

This affidavit bears close analysis. It recites, among other things, the position Dragomirescu had with Malaxa. In this respect it is to be noted that affidavits introduced on behalf of Malaxa indicates that he hired Dragomirescu because of the influence Dragomirescu is supposed to have had, through his wife, with certain communists in Rumania in order to quiet a small group of communist workers who were threatening in the Malaxa plants and causing production slow down. The allegation that Malaxa was given \$2,800,000 on or about April 22, 1945, was shown by other testimony, which will be referred to hereafter, as untrue. The affiant further states that he has no knowledge of any obligations that Malaxa may have contracted but that the transactions handled by Bernacki resulted in the establishment of excellent relations

between Malaxa on the one hand and Gheorghiu-Dej and Maurer on the other. This statement is obviously a conclusion by the witness and is not supported by the facts upon which he reached such conclusion. It is pertinent to point out that at this time the communists were not in full control of Rumania and that a coalition government was then in being. It was shown by documentary evidence that Gheorghiu-Dej did not always go along with government proposals which favored Malaxa and registered his dissent to certain payments which were made to Malaxa by the government. It is likewise pertinent to note that Dragomirescu's statement that from June 1945 until June 1946 Malaxa maintained close relations with the communist government of Rumania is unsupported by the facts upon which he reached such conclusion and, furthermore, the government was then a coalition government. In addition, this statement by Dragomirescu is inconsistent with his later statement that the communist leaders did not appear favorable to Malaxa's alleged request that he be designated as Rumanian Ambassador to the United States. If Malaxa had excellent relations with Gheorghiu-Dej and Maurer, and was maintaining close relations with the "communist government", it is strange that the communist leaders did not appear favorable to Malaxa as Rumanian Ambassador. In addition, some of the evidence indicates that Malaxa was not trusted by the communists because Dragomirescu states that one of the members of the economic delegation to the United States was to spy on Malaxa. That part of the affidavit which states that the Malaxa Works were under the protection of the "communist government" may have some basis in fact, since Malaxa has testified that one of the reasons he came to the United States was that it had been made clear to the Rumanian government that machinery had to be sent to Rumania from abroad to build a new tube mill and other plants so that Rumanian oil could be drilled in order to comply with the requirements of the Armistice Convention and the Reparations Agreement between Rumania and Russia. (Rumania, being without the services of the Malaxa tube mill was in straightened circumstances.)

It is significant to note that at the end of the affidavit, Dragomirescu states that he cannot consider Malaxa as a communist or as a man having communist opinions.

For the reasons herein before stated, and based on other evidence which will be discussed, we cannot find that Dragomirescu's affidavit establishes voluntary affiliation of Malaxa with the communists of Rumania. In addition, even if it were not for the other evidence in the case, the credibility of Dragomirescu has been subjected to a great deal of question. An affidavit by Romulus Runcan who was managing director of the Malaxa locomotive plant in Rumania until April 1, 1948, vigorously attacked Dragomirescu and added that Dragomirescu hates Malaxa. He stated that Malaxa caused Dragomirescu's removal from the latter's industries in Rumania because of Dragomirescu's conduct with the economic mission in the United States. There is a similar affidavit by one Stephen Epure, who attacked Dragomirescu's character and double-dealings.

Malaxa was a very important industrialist in Rumania. He was a member of the Chamber of Deputies and a member of the Council of Ministers. He was a member of the National Assembly and a member of the Executive Council. He was a member of the Government and a member of the Ministry of Industry and Commerce. He was a member of the Ministry of Finance and a member of the Ministry of Education. He was a member of the Ministry of Health and a member of the Ministry of Social Affairs. He was a member of the Ministry of Justice and a member of the Ministry of Foreign Affairs. He was a member of the Ministry of War and a member of the Ministry of Navy. He was a member of the Ministry of Air Force and a member of the Ministry of Railways. He was a member of the Ministry of Posts and Telegraphs and a member of the Ministry of Public Works. He was a member of the Ministry of Agriculture and a member of the Ministry of Forestry. He was a member of the Ministry of Mining and a member of the Ministry of Energy. He was a member of the Ministry of Transport and a member of the Ministry of Communications. He was a member of the Ministry of Information and a member of the Ministry of Culture. He was a member of the Ministry of Religion and a member of the Ministry of Sports. He was a member of the Ministry of Tourism and a member of the Ministry of International Trade. He was a member of the Ministry of Foreign Trade and a member of the Ministry of International Relations. He was a member of the Ministry of Diplomacy and a member of the Ministry of International Law. He was a member of the Ministry of International Organizations and a member of the Ministry of International Cooperation. He was a member of the Ministry of International Development and a member of the Ministry of International Education. He was a member of the Ministry of International Health and a member of the Ministry of International Culture. He was a member of the Ministry of International Science and a member of the Ministry of International Technology. He was a member of the Ministry of International Art and a member of the Ministry of International Music. He was a member of the Ministry of International Literature and a member of the Ministry of International Film. He was a member of the Ministry of International Theater and a member of the Ministry of International Opera. He was a member of the Ministry of International Ballet and a member of the Ministry of International Circus. He was a member of the Ministry of International Circus and a member of the Ministry of International Circus. He was a member of the Ministry of International Circus and a member of the Ministry of International Circus.

Alexander Cristescu testified that he had contact with the communists because in 1948 Malaxa was in Rumania and he represented the communist government. In the testimony he heard that Malaxa and Balca were having meetings and that the basis for making the statement that Malaxa was working for the communists was the fact that he was working for a Rumanian mission which would start trade between Rumania and the United States, "and that would help the communists a lot."

In connection with this it is well to point out that Balca was the Rumanian minister to the United States and obviously Malaxa must have had dealings and meetings with him because Malaxa was here on an economic mission for the Rumanian coalition government at that time. The conclusion that Malaxa was working for the communists because he then wanted to start trade between Rumania and the United States is hardly worthy of comment because it appears clear that the communists were not in complete control of Rumania at that time. Many persons then felt that Rumania might avoid the communist yoke.

Constantin Visoianu was called as a government witness. He met Malaxa in about 1938 when a friend asked him to see Malaxa concerning Ausnit's trial. He stated that Malaxa tried to convince him that Malaxa had no active role in the matter, notwithstanding the general feeling in Rumania to the contrary.

Visoianu testified that he was directly connected with affairs relating to the Russians taking over one of Malaxa's plants because he was then Minister of Foreign Affairs in Rumania, in charge of applying the Armistice Convention. Both the witness and the Rumanian President of the Commission of Armistice, felt that the Soviet demand was not in accord with the Convention but, even after the witness protested the Russians took the plant and transferred it to Russia. 24/

The witness added that Malaxa received "very important compensation" therefor from the Rumanian government and, "I must add, that Mr. Malaxa was the only Rumanian in the country who received any compensation by the Russian government." He said that the sum fixed was 2,400,000 American dollars and the "communist government element, the Groza government," fixed the amount. He added that another thing seemed strange to him because the communist doctrine

24/ This relates to the Malaxa tube mill.

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the... of... of... of... of...
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Malaxa, to... the... of... of...
On... of... of... of... of...
concerning... of... of... of... of...

He stated that Russia took some war booty as well as property pursuant to the reparation provisions of the Armistice Convention and that of the plants taken, Malaxa was the only one who received compensation. When asked, as to whether the tube mill was taken by the Rumanians and given to Russia under the treaty or otherwise sent to Russia, he said he did not know because there was a dispute in treaty interpretation on that point. Later he stated that he thought the Rumanian government placed the tube mill on the reparation list. As to payment in favor of Malaxa, he explained that it was the Rumanian communists not the Russian communists who favored him by the payment. He expressed his opinion that such payment was a special favor to Malaxa.

Upon further questioning he stated that he thought the Rumanian government had paid some owners for some oil given to Russia as reparation. Upon further probing he admitted that he did not know whether the Rumanian Government paid for certain ships taken from S.R.D. and given to Russia. He conceded that it could have happened that such property owners were paid without his knowledge. Later he explained that an organization, Sovrom, was paid for these ships but that that organization was Russian controlled. When it was pointed out that under the Convention, half of the amount due S.R.D. was to be paid for in American dollars and the other half was to represent S.R.D. participation in Sovrom, he conceded it was so. The events regarding payment testified to by the witness took place allegedly under the Groza government after he left Rumanian official life. He explained that the Groza government was a coalition, but that Groza himself was a communist.

The witness conceded that he did not know whether the prior Radescu government started the negotiations to pay Malaxa, but he was of the opinion that that was not so because he, being in that government, would have known of it. He conceded that valuation proceedings (as distinguished from agreements to pay) were commenced. However, he is shown to have signed the Reparations Agreement (concluded January 16, 1945), and that Annex II thereof refers to the tube mill and the

25/. It will be recalled that control and possession of the plants were returned by decrees of April 12, 1945.

value thereof as \$2,400,000 and that the witness was given
line treatment. At that time, the witness was told that the value was
but not the exact amount.

We note, however, that it appears from the witness's testimony in
a letter dated January 2, 1945 to the United States Government that
Economy, that the Americans had been told that the witness was to
take the Malaxa tube mill and that the witness was told that the
Reparations Agreement because its transfer to Russia was completed and
dismantling operations had already started.

As to the alleged split compensation between the witness and the communists,
the witness admitted that he had only a communist's say so and that the
communists may have said that to cover their own tracks and that they
have been. He stated that because the Economic Delegation favored return
of the properties, he made no mention to any such communist in the
government about the allegation of this split made to him by a communist.

Since much of the evidence given by Visolani, which has already been
recited, and much of the evidence to which we refer to certain official documents in the process
we think it pertinent to refer to certain official documents in the process
Rumania entered into an Armistice Convention with the United States,
U.S.S.R., and the United Kingdom on September 12, 1944. Article 11 of this
Armistice Convention provided for reparations payments by Rumania to the
Soviet Union "to the amount of 300,000,000 United States dollars, payable
in six years in commodities (oil products, grain, timber products, seagoing
and rivercraft, sundry machinery, etcetera)." Thereafter, Rumania and the
Soviet Union entered into a Convention on January 16, 1945 concerning the
execution of Article 11 of the Armistice Convention of September 12, 1944.
It is pertinent to note at this point that the Armistice Convention
provided for reparations to be paid in the form of commodities which included
certain seagoing craft, but did not include (unless the word "etcetera"
has been interpreted to cover it), a complete running industry such as the
Malaxa tube mill. Between the date of the Armistice Convention and the
date of the Reparations Agreement,

36/ The explanation is a weak one because we note that the Annex was
part of the Reparations Agreement and was incorporated therein by reference.

documentary evidence shows that the Russians had expressed their irrevocable intention to take the Malaxa tube mill, and had started the dismantling thereof. This tube mill was very essential to Rumania and the Rumanians objected to the Russian action, but it was futile, notwithstanding the fact that Rumania needed the tube mills in order to obtain the oil with which to comply with other parts of the Reparation Agreement concerning the payment of reparations in oil. Documentary evidence also shows that there was a temporary deferral by the Russians on their insistence that they obtain the smaller tube mill and for the time being they insisted upon taking, and did take, the larger (the 14 inch) tube mill. It appears that since the tube mill was taken, the Rumanians made the best of the situation by including it in the Reparations Agreement of January 16, 1945 in order that the value of the plant might be credited against the \$300,000,000 in reparations which Rumania was obligated to pay to the Soviet Union.

Much has been said that the tube mill, as a complete industry, was not intended to be covered by Article 11 of the Armistice Convention. We believe that this is a true statement because even in the Reparations Agreement, we note that it is specified in Article I that the Rumanian Government agrees to deliver to the Soviet Union, "oil products, grain, cattle, lumber barges and ships, various equipment, locomotives, railroad cars, tank cars, and railroad railing stock, covering the total amount of USA \$300,000,000." It appears from the Annex made part of the Reparations Agreement that the Malaxa tube mill was the only plant taken as such. It is shown in the appropriate Annex that the value of this tube mill was fixed at 2,460,000 United States dollars.

Malaxa testified on this point that when the Soviets entered Rumania in August 1944, they asked him to sell them his metallurgical plants, but he resisted. As to the tube mill specifically, he testified that he resisted transfer to the Soviets, and sought assistance from the King, from Radescu, and from Colonel Grady McClasson of the American Military Mission in Rumania, all to no avail. Thereafter he refused to participate in evaluation proceedings but the figure of \$2,460,000 had been set (which he says was less than half the value of the mill ^{21/}), and it was proposed that he be paid in American dollars so that he could purchase, outside of Rumania, everything that was necessary to establish a new tube mill

21/ There was introduced into evidence a copy of a page from the Petroleum Times, issue of October 26, 1946, which contains a speech by British Secretary for Foreign Affairs Bevin, in which he stated as to the reparations account between Rumania and the Soviet Union, "there is little question that the prices which the Rumanian government are paying to [oil] producers, are below the cost of production."

in Rumania ^{38/}. He added that two years went by after it was determined that he was to be paid in American dollars and that ultimately he was paid (but not in full) in Rumanian lei like everybody else ^{39/}. He denied that he ever had any discussions or agreements to turn over to the communist party half of the compensation due him if the plants were returned to him.

Max Ausnit stated to Investigator Seeley that when Malaxa saw that the nazis were finished, he began to shift to the communists; that he put Dragomirescu in as plant manager because Dragomirescu had contacts with Maurer, who was Under-Secretary of Industry and Commerce, Maurer being the one who dominated the Minister of Economics, Gheorghiu-Dej. We have given Malaxa's explanation for hiring Dragomirescu consideration and wish to point out, in addition, that he said his contacts with Gheorghiu-Dej and Maurer were as limited as could be, and that he communicated with them only when it was necessary for the operation of his plants.

Ausnit also stated that Malaxa was the only one to obtain dollars in exchange for the property given to Russia as reparations. Ausnit further stated that one Remus Lulu was dismissed from his job as Commercial Attache of the Rumanian Legation in Washington, when he protested Malaxa's negotiations in the United States.

^{38/} There was introduced into evidence a photostatic copy of document which purports to be Journal No. 722 relating to the June 7, 1946 meeting of the Council of Ministers. It is shown that it was decided on that date that Malaxa was to accept \$2,460,000 in American money to be paid in two years or less, that foreign exchange needed for the payment shall be secured by exports and that exports shall be made by Malaxa or other companies. It also discusses certain steps looking toward cooperation with American industries and in that connection, provides that Rumania shall take steps with the National Bank of Rumania for the latter to issue a letter whereby it obligated itself to Malaxa at the end of two years for the unpaid balance on his claim. It is interesting to note that Gheorghiu-Dej endorsed thereon the statement that he was not in agreement with the decision of the Council of Ministers.

We think that this evidence, as well as other documentary evidence in the record, makes it abundantly clear that the Rumanian government agreed to pay Malaxa in American dollars in order that he might obtain equipment outside of Rumania in order to build up Rumanian tube mills in particular and other Rumanian industries in general.

^{39/} We are satisfied from the evidence of record that Malaxa was not the only one to have received payments for property taken by Rumania for reparations purposes. This should not be confused with war booty seized by the Russians. As to this, it is not contended by anyone that anybody was reimbursed.

Malaxa was interviewed by Investigator [redacted] and Malaxa testified that he had been paid for the tube mill through the Rumanian Legation in Washington.

As we stated, Iuly did not testify at the hearing and was not subjected to cross-examination. He assumed that Malaxa had strong connections with the Rumanian government because it was his belief that that government helped him unfreeze his assets in the United States and because he had been paid the money for the tube mill by the Rumanian Legation in Washington.

As opposed to these allegations, we think that the evidence clearly shows not only that the Rumanian government was at that time a coalition government but that it had little, if anything, to do with the unfreezing of Malaxa's assets in the United States as a favor to Malaxa, since a series of documents and letters introduced into the record indicate that Malaxa was given export licenses by Rumania, was to buy merchandise in the United States, and was found by the appropriate American officials dealing with blocked assets in this country to be entitled to the unfreezing of certain funds which he had here.

In addition, we are satisfied that the evidence shows that Malaxa was not paid the \$2,460,000 in full in any kind of currency; that it shows that he was paid a little less than \$2,460,000 and, that this money was not paid to him in Washington but was made available to him in installments abroad and, furthermore, that it was not made available to him in American dollars but rather in Rumanian lei ^{40/}. This is supported not only by Malaxa's testimony in the premises, but by documentary evidence showing that Malaxa's representatives abroad made satisfactory arrangements with a representative of the Joint Distribution Committee and the Rumanian government to turn over the lei to the Joint Distribution Committee for use in Rumania and that the Joint Distribution Committee would make available American dollars and Swiss francs.

We will evaluate all of the evidence in favor of and against Malaxa with regard to his relations with the communists after we have recited additional evidence which has been presented in his behalf. Up to this point, we believe that the evidence may be termed to be unfavorable except in places where we have recited Malaxa's statements or documentary evidence introduced by him.

Many of the persons who stated Malaxa was anti-nazi have also stated that he was anti-communist. There was several affidavits, one from Paul E. Manheim,

40/ Malaxa testified that the payments were stopped when a communist became Finance minister, replacing a friendly noncommunist finance minister in the Groza government.

who stated that he is convinced that Malaxa is a Communist, either from his brother, Frank W. Malaxa, or from his association with the Rumanian-American Economic Corporation. Malaxa was Vice-President; a third man, also named Malaxa, was Executive Vice-President of International Harvester Company. It is discussed the negotiations for harvester production in Rumania in 1945. The fact that a contract entered into between Malaxa and the International Harvester Company was rejected by the Rumanian Government because Malaxa tried therein to prevent manufacturing operations in Rumania from becoming nationalized or seized by any governmental authority. Since Malaxa could not obtain this guarantee from the Rumanian government the International Harvester Company obviously could not agree to the proposed arrangements and the contract between the parties was cancelled.

Louisa Gunther, who knew Malaxa in Rumania for many years and saw him there from November 1945 until he left that country in 1946, testified that he was anti-communist and never collaborated with the communists in Rumania or elsewhere. It is sufficient to note that she has testified that while she was still in Rumania in 1946, Malaxa helped anti-communists to leave that country.

Emil Keldich testified that he saw and spoke with Malaxa in Rumania a dozen times or more from the Fall of 1945 into 1946; that Malaxa felt that Rumania was unstable; that he felt that Malaxa had become lost in the international situation because communism was threatening to take over Rumania. He testified further that Malaxa was anti-communist and was always in favor of the Western allies, particularly the United States.

Emil Chilezan was called as a witness by Malaxa. He testified that as Under-Secretary of Treasury, in charge of expenses and revenue of the Rumanian government, he had to deal with the Malaxa Works situation. He said that they were taken over by the Rumanian government in 1941 and handed to a German holding company, and that the Germans ran the factories. When the war with Germany was over, the plants were in bad condition because there was no head man, no work was being done, the Germans pulled out and the plants were dismantled because of fear of allied bombing. At the same time, the plants were supposed to do a production job because of the Rumanian obligation to Russia under the Armistice Convention and Reparations Agreement. He added that the Russians were constantly pressing to arrange the Malaxa Works situation. To clear up the matter, the witness proposed that the plants be returned to Malaxa. He testified that no member of the government opposed the restitution. He added that Groza had told

11/ It is well to recall to mind that it was not until April 12, 1945 that, physical control and possession of Malaxa's industries were returned to him, and that this was done by the Radescu government; that the Armistice Convention and Reparations Agreement were already executed and the transfer of the Malaxa tube mill had already been completely arranged without Malaxa's approval. Therefore, when the industries were returned to Malaxa, he did not get back his 14 inch tube mill.

him that the reasons the Russians did not oppose the restitution is because Stalin had told him that the Russians had too much trouble with the hurried nationalization of industry in Russia and the same mistakes were not to be made again; that Stalin also told Groza to "build up your things and we'll see later what will happen." The witness added "at that time the Communist Party policy in Rumania was not for nationalization."

Chilezan supported Malaxa's testimony that Russia did not pay for war booty taken by its armies in Rumania. He added that the property which the Rumanian government turned over to Russia as reparations was almost all paid for by the Rumanians although the owners complained about low value placed on the goods. He also stated that these payments helped to destroy the Rumanian currency.

Chilezan stated that Malaxa helped the anti-communist National Peasant Party in many ways; by giving Chilezan 3,000,000 lei for Malaxa workers beaten by communists; and by contributing, even after he left Rumania, to the 1946 elections. When asked whether Malaxa aided and assisted the communists, the witness replied that when Malaxa saw things in Rumania getting worse, he asked to be sent to the United States to seek financial help for the Rumanian government.

Chilezan confirmed Malaxa's statement that Malaxa refused to participate in evaluation of his tube mill in connection with its being turned over by the Rumanian government to Russia.

Adolph A. Berle, Jr., testified that the policy envisaged at the Yalta Conference was that there would be coalition governments, including the Russians, so that all parties could work together to maintain national governments looking eventually to free elections. To accomplish this, the United States Government then encouraged men to collaborate in communist governments to carry out the Yalta objective. He added that men should not now be stigmatized as being sympathetic with communists because they "were endeavoring to follow the then policy of the Government which was transmitted through regular diplomatic channels as well as through regular information channels. It was hoped that a method of cooperation could be found." He added that after the Germans withdrew from Rumania, Malaxa was known to align himself with anti-communists to reconstruct an independent Rumania.

Nicolae Radescu was a witness who testified at the behest of Malaxa. He stated that Malaxa was neither a communist nor communist sympathizer, and that after Radescu left office as Prime Minister, Malaxa, who was still in Rumania, made it known to Radescu through a friend that Malaxa would place large sums of money at Radescu's disposal to fight against communism. In addition, he stated that after Vishinsky forced his removal from office he obtained refuge in the British Embassy and, while there, was contacted by Malaxa who offered to assist Radescu in his flight from Rumania. He added that Malaxa put sums of money at the disposal of one General Aldea to resist communism.

Radescu testified that the question of restitution of the Malaxa plants seized by the Rumanian government in 1941 came up while Radescu was Prime Minister; that the plants were returned because Malaxa was entitled to them under the new constitution and because the management of the plants was so bad that they were not turning out the goods needed to comply with the terms of the Armistice.

The witness added that Rumania tried to resist giving the Malaxa tube mill to the Russians because it was essential to the Rumanian economy, but that Russia insisted so Rumania had to comply. He, too, testified that all (reparations) property given to Russia after having been taken from owners by Rumania were paid for by the Rumanian government. He testified that his government was overthrown before actual compensation was paid to Malaxa but after the agreement to pay was reached. He was not sure the payment was made but that such payment would not have been a special favor by the communists because (1) the succeeding Groza government had in it many communist members who were also members of the Radescu government and would be carrying out a decision previously made, and (2) that it was "particularly significant for the new communist government to have Mr. Malaxa reinstated in the ownership of his plants and properly compensated because they were very eager to increase the production so as to satisfy the needs of their Soviet friends, and also to comply with the terms of the Armistice as wholly as possible." He, too, added that no payment was made for war booty.

Radescu testified that to his knowledge Malaxa was personally attacked by Cretzianu and Visoianu and their group because it was a way of attacking Radescu, their political opponent, whom they could not attack directly.

Barbu Niculescu testified that Malaxa assisted greatly in the flight of Radescu and Niculescu from Rumania by plane and that Malaxa is helping Radescu fight the communists.

We believe that only two further points require comment. First is in connection with Malaxa's statement that he wished to give an interest in a business enterprise to be formed in Rumania to the Russians. Malaxa brought this up in one of his affidavits which was introduced into evidence. In that affidavit he discusses a business venture in which he tried to interest the Kaiser-Frazer Company to construct tractors, automobiles and trucks in Rumania. He stated that sometime after 1945 he started negotiations along these lines and agreed that as a basis for discussion, there should be a mixed corporation which would lease all or part of Malaxa's factories and in which American interests would have 22½ per cent ownership, Malaxa interests 55 per cent ownership and the Russians 22½ ownership. His explanation for the Russian inclusion in the proposed deal (which did not materialize), was that they were needed to overcome a possible veto upon the deal which they had power to

...the following

...the amount of grain was

...to be

...in Washington, Inasmuch

...requesting a loan to

...He added that under then

...the request. He

...not been reimbursed.

- (2) KCOO was advised in order to send the contract between Malaxa and International Registrar Company to Rumania by special courier because Malaxa wished to obtain Rumanian approval as soon as possible.
- (3) Malaxa purchased an automobile for the Communications Ministry in Rumania because there was a shortage of automobiles in that country and that Ministry asked Malaxa for a car. He stated that because he was endeavoring to get his wife and son out of Rumania, it would be impossible to turn down the request. He insists that the automobile was not a gift but a loan "so to speak." He added that evidence of the fact that the automobile was not a personal gift can be demonstrated by the failure on the part of the Ministry to use the car. He stated that he later learned that that automobile and the one mentioned in the next paragraph were used only for the reception of Rumanian guests. He added that he has not been reimbursed for this first automobile and he will be forced to file suit.
- (4) He purchased an automobile for Balea's use.

The situation concerning the jewelry and the automobile to Rumania came about after the grain matter was settled in the United States with success. Balea was going to Rumania "to reap the benefits of his successes." Malaxa went to him and pointed out that because of the great part which he played in the grain

all of the industries were so organized as to be able to handle the necessary requirements of the Government and to provide the necessary labor force. The Government insisted not only on the transfer of Malaxa's property disclosure in the form of a statement to be signed by Malaxa, but also on Malaxa's agreement to agree to this. As previously mentioned, Malaxa fled from Rumania surreptitiously early in April, 1945.

In support of the allegations that the State Department was kept advised of this situation and that his motives were as he stated, there was introduced on his behalf a copy of a letter dated April 14, 1945 from Thomas K. Finletter, then in private law practice, to the Assistant Secretary of State, Willard L. Thorp, stating in part, that as a result of the recent reorganization of the Rumanian Government by the Communists, Malaxa realized that the lives of his wife and son were in danger; that he sought permission from the Rumanian Government to bring them out of Rumania and that the Rumanian Government informed Malaxa through an intermediary that it would be agreeable if Malaxa transferred his assets in Rumania to the Rumanian Government; that the negotiations dragged on without success since the Rumanian Government increased its demands on each interchange of negotiations; that after the wife and son escaped, Malaxa wanted to turn over his Rumanian assets to the Government in exchange for permission for his workers and their families to leave Rumania but that Malaxa was unwilling to do this in the event the Department of State saw any objection to it. The letter to the Assistant Secretary of State closes with a request for information as to whether the Department of State perceives of any objection.

In connection with the gifts of jewelry there was presented in evidence a list of the things which were purchased by Malaxa from Cartier's in New York. It is significant that the detailed list does not disclose the purchase of any item of jewelry after Malaxa's wife and son escaped from Rumania. ^{42/} In that limited respect it supports his allegation in the premises. Likewise an examination of the list fails to disclose any item specified as

^{42/} We do not know whether Malaxa made subsequent purchases at Cartier's, or purchases elsewhere in this country at any time.

containing diamonds although some items which contained amber and topaz were so specified. Malaxa does not attempt to hide the fact that he sent the Cadillac automobile for the same reasons he sent the jewelry. We find that the "gifts" were for the purpose of facilitating, in accordance with Balea's suggestion, favorable action on the request for permission for those persons close to him to escape from Rumania. We conclude that under these circumstances the "gifts" do not spell out voluntary affiliation with the communists.

Before evaluating the evidence regarding Malaxa's relations with the communists, we believe it desirable to repeat that no one has alleged that Malaxa was a member of any communist party anywhere. The allegations concerning his relations with the communists must, of necessity, be related only to the question of his possible affiliation, as distinguished from membership. The issue of affiliation centers about several situations, to wit: (1) the \$500 sent to Dragomirescu and the hiring of Dragomirescu as an employee in the Malaxa plants; (2) Dragomirescu's note handed to August and Dragomirescu's affidavit before the American Vice Consul at Paris, France on January 22, 1951; (3) Malaxa working with Balea, the Rumanian Minister to the United States while Groza was head of the government in Rumania; (4) the allegation that Malaxa was the only Rumanian to be paid for property taken by the Rumanian government and given to Russia as reparations; (5) the allegation that Malaxa was favored by being paid in American money and that the money was paid to him at the Rumanian Legation in the United States; (6) the allegation that Malaxa was favored by the communists otherwise they would not have returned his plants to him and, in connection with this, the allegation that Malaxa agreed to divide the compensation to be received for the tube mill with the communists, and (7) the purchases of automobiles and jewelry for communists. We will consider each of these issues seriatim:

(1) Malaxa admitted having sent \$500 to Dragomirescu through an intermediary. It is alleged that Dragomirescu had communist leanings even if he was not, in fact, a communist. Malaxa, however, asserts that he did not send this money to Dragomirescu for any ulterior purpose but rather because he heard Dragomirescu was starving and in need of funds. He added that he used an intermediary because he did not wish the recipient to know the source of the gift in order that further requests for money would not be forthcoming. We think that the evidence concerning the gift to Dragomirescu is not sufficient to establish affiliation with the communists.

The testimony of witnesses concerning the employment of Dragomirescu by Malaxa might appear to some people to imply that Malaxa was associated with communists or the communist party. It appears, however, that Dragomirescu's wife was friendly with Malaxa and he was friendly with Gheorghiu-Dej.

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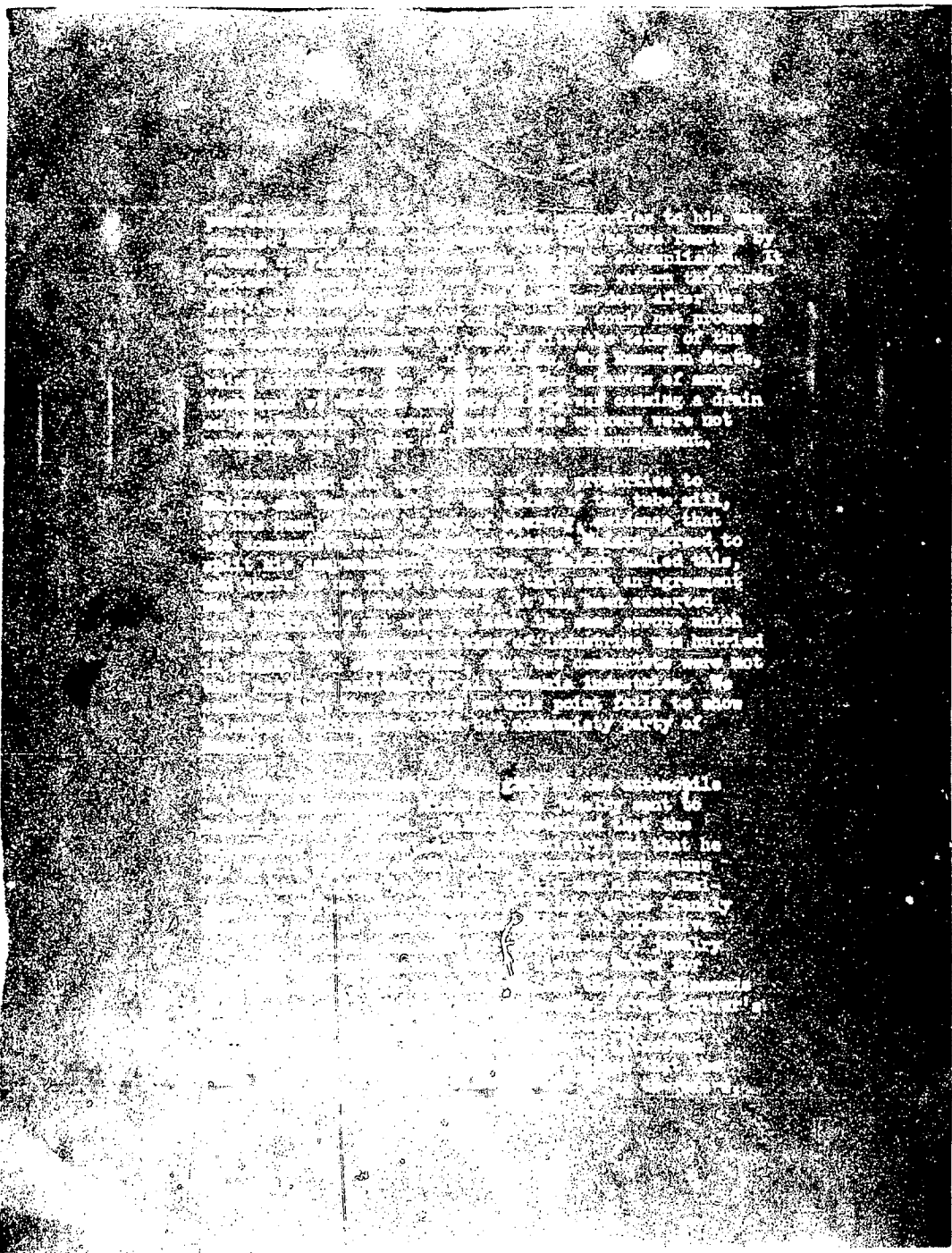
...in the ordinary channels of ...

Malaxa is reported to have placed an automobile at the disposal of the Legation therefor was the only person whose assistance in obtaining permission for his family to leave Rumania.

It has been asserted that the Rumanian Legation in the United States assisted Malaxa in obtaining the unblocking of his funds in this country and that, therefore, he must have been pretty closely associated and, consequently, affiliated, with the communist government or Rumania. As to this we wish to repeat that the Rumanian government was a coalition government at that time. In addition, we have no evidence to establish that the Rumanian Legation was solely or in material part responsible in any way for the unblocking of Malaxa's assets in this country.

(4) Allegations have been made that Malaxa was in the good graces of the Rumanian communists and, therefore, affiliated with them, because he was the only Rumanian to be paid for property taken by Rumania to be turned over to Russia as reparations. We believe it is sufficient to state at this point that there is evidence that many others were paid and that, therefore, the payment to Malaxa in and of itself, does not show that he was affiliated with the communist party of Rumania or Russia.

(6) The mention had to be as to whether the fact that the amount concerned his bank 20 was in itself, was proof that he was actually interested in the amount and that he had been relinquished by himself with them. It is to be noted that the order of the plimbe was made in October 1945 and that physical possession and control was not transferred until March 1945. The bank of the amount, however, and his application for the same in power until January 28, 1945. Bankers suggested that the amount of 20 francs



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Malaxa is, without doubt, a brilliant and successful business man. We have no doubt that the evidence presented by or on behalf of Malaxa is true and that they are other than what they purport to be. It has been established that the decrees and orders were lawfully obtained. Whether friendship for Malaxa was a leading motive of the Rumanian government was not established. In view of these decrees we do not know. It is more than likely, however, that such was the case. This would not, of itself, detract from the legality of the decrees and orders. It has not been proved that any action by Malaxa in connection with having any of the decrees and orders issued was such as might establish lack of good moral character. By virtue of his position as a rich and prominent industrialist, he probably was in a position to obtain expeditious action in situations where others less fortunately situated might never succeed. That, however, is no reason why Malaxa's application for adjustment of his status under Section 4 of the Displaced Persons Act of 1948, as amended, should be denied. We believe that all of the evidence in the case and the conclusions which we have reached, justify an order granting the application and such an order will be entered in the premises.

ORDER: IT IS ORDERED that the alien's application for adjustment of immigration status under the provisions of Section 4 of the Displaced Persons Act of 1948, as amended, be granted.



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