

**The Office of Special Investigations:
Striving for Accountability in the Aftermath of the Holocaust**

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Chapter One: The Creation of OSI

Introduction

The chaos attendant upon the end of World War II is hard to overstate. Millions were homeless and unwilling to return to their countries of origin. Some were victims, others persecutors, and some who began as persecutors now saw themselves as victims.

Among the persecuted were of course Jews and other Nazi “undesirables” who feared returning to countries where they had been subjected to unmitigated degradation. Among the persecutors were many non-Germans who, at the behest of the Nazis, had helped carry out policies designed to destroy the unwanted. These accomplices included Latvians, Estonians, Lithuanians, Ukrainians, Hungarians, Romanians, Slovaks and Croats. After the war ended, some of them — along with tens of thousands of innocent political refugees — sought entrance into the United States on the ground that they were anti-Communists whose homelands were under Soviet control.

The means of admission for most of these people was the Displaced Persons Act (DPA) or the Refugee Relief Act (RRA), two of the most far-reaching immigration laws ever enacted by Congress. Both statutes were intended to admit the oppressed, including Nazi victims and political refugees from Communism. Under their provisions over 600,000 emigrés from a score of countries entered the United States between 1948 and 1953.

The pressure of processing such a volume of desperate and disparate refugees was enormous. Not surprisingly, some who had assisted the Nazis had no compunction about lying and deceiving overworked consular officials who reviewed their applications for admission. More than three decades passed before OSI was created to correct these errors.

The Beginning

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4 It was not until the 1970s that the “Nazi war criminal issue” percolated into the public’s
5 consciousness. The timing is due to a confluence of factors, including (1) the denaturalization
6 and extradition of Hermine Braunsteiner Ryan, a German-born New York City housewife who
7 had served as a guard supervisor at a Nazi death camp;¹ (2) public denunciation of the INS by the
8 investigator and prosecutor in the Braunsteiner Ryan trial, each of whom left the agency after
9 accusing it of foot-dragging and coverup in other Nazi investigations;² (3) publicity attendant the
10 simultaneous filing of three deportation actions against alleged war criminals in 1976;³
11 (4) Congressional oversight hearings in 1974, 1977 and 1978 which highlighted deficiencies in
12 the INS procedures for investigating Nazi cases; (5) a GAO study which concluded that the INS
13 investigations of Nazis were “deficient or perfunctory”⁴ (6) publicity surrounding the
14 prosecution of a denaturalization case against the Romanian Orthodox Bishop of America for his
15 alleged involvement in atrocities during World War II;⁵ (7) the 1977 bestseller *Wanted! The*
16 *Search for Nazis in America*;⁶ and (8) NBC’s 1978 broadcast of a powerful four-part miniseries
17 entitled “Holocaust.”

18 Until 1973, Nazi cases were handled as any other immigration matter – district by district
19 with no central coordination. In order to increase efficiency, the INS that year designated New
20 York as the Project Control Office to review and coordinate all Nazi cases. A year later, the
21 House Subcommittee on Immigration, Citizenship, and International Law was holding routine
22 oversight hearings on the INS. Newly-elected New York City Congresswoman Elizabeth
23 Holtzman was on the subcommittee. Having been alerted that there were Nazi war criminals in

1 the country, and that the INS was doing nothing about it,⁷ she threw out a skeptical question to
2 INS Commissioner L.F. Chapman, Jr. Once he acknowledged that such Nazis were in the United
3 States, she was riveted by the issue. In the words of her then legislative assistant, she “sunk her
4 teeth in it and would not let it go.”⁸

5 A month after the hearing, Holtzman held a news conference in which she berated the
6 agency for inadequate investigations and proposed creating a War Crimes Strike Force within the
7 INS.⁹ Shortly thereafter, she asked the INS for the name of every person under investigation.
8 The INS gave her 73 names and DOJ made public a list of 37 who were under investigation.¹⁰

9 Holtzman did not merely hector; she got down in the trenches. She met at her office with
10 INS investigators to review the leading investigations;¹¹ she visited INS’ New York office and
11 spent hours reviewing the files; and she sent the INS detailed critiques and analyses of the
12 agency’s work.¹³

13 The INS was not the sole focus of Congresswoman Holtzman’s concern. She wrote to
14 the Secretary of State complaining about his Department’s “continuing failure to cooperate” with
15 the INS in its efforts to investigate alleged Nazi war criminals residing in the United States.
16 Dissatisfied with the response she received, she released the exchange of letters and charged the
17 State Department with “inaction and indifference.”¹⁴ Eventually, the State Department
18 acknowledged to Holtzman that it had 68 names from INS about whom it had not yet asked the
19 U.S.S.R. for any pertinent information. The State Department went on to promise that
20 henceforth names would be submitted “as soon as they are received.”¹⁵ Holtzman also traveled
21 to Germany to exhort the authorities there to file charges against a resident in her district who, as
22 chief of a police precinct in Latvia, had assisted in the persecution of civilians during the War.¹⁶

1 In early 1977, Holtzman and a colleague called on Congressman Joshua Eilberg, Chair of
2 the House Subcommittee, to hold new hearings on Nazi war criminals. The INS used the hearing
3 to announce preemptively that it was overhauling its procedures for investigating Nazis.
4 Henceforth, a Washington task force of four trial attorneys and one lead attorney, under the
5 purview of the INS General Counsel, would review all INS files and material connected with
6 alleged Nazi war criminals. Denaturalization and deportation proceedings would be filed if the
7 evidence so warranted.¹⁷

8 INS General Counsel David Crosland chose Martin Mendelsohn, an attorney working on
9 the Hill, to head the new unit. Coming from a Civil Rights background, [

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12 The office was not fully staffed until late summer of
13 1978. Mendelsohn hired four attorneys, two INS agents, four graduate students fluent in
14 German, and one archivist. The task force was called the Special Litigation Unit (SLU).

15 Crosland ordered all closed cases involving alleged Nazi war criminals still alive and in
16 the United States reopened for investigation.¹⁹ In addition, the SLU had to deal immediately
17 with cases already filed by INS and U.S. Attorneys throughout the country.²⁰ Mendelsohn
18 decided, on a case by case basis, what role the SLU would play. [

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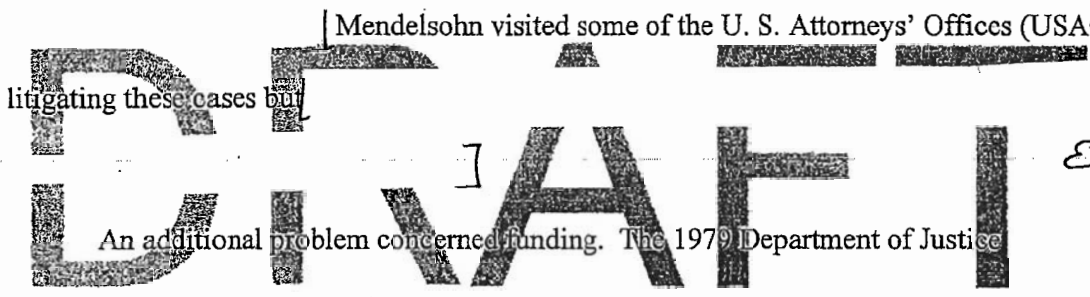
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20 Mendelsohn also tried to establish working relationships with other nations whose
21 cooperation he deemed essential to the SLU. To that end, he traveled to Israel and the Soviet
22 Union, both of which were home to potential witnesses. The U.S.S.R. also was the repository for

1 many relevant Nazi war records which had been taken by the Russians as they conquered Nazi-
2 held territories. Mendelsohn spoke with the appropriate authorities about access to witnesses and
3 records. Both he and Crosland also endeavored to keep the Jewish community apprised of office
4 plans and accomplishments.²²

5 Once he was chosen to lead the SLU, Mendelsohn was a frequent visitor to
6 Congresswoman Holtzman's office]

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9 [Mendelsohn visited some of the U. S. Attorneys' Offices (USAOs)
10 litigating these cases but



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12 An additional problem concerned funding. The 1979 Department of Justice
13 Authorization bill earmarked \$2,052,000 for the SLU. However, the Appropriation bill made no
14 mention of earmarked funds, and there was some question as to which bill had precedence. Less
15 than half the designated amount was spent on the unit by INS during Fiscal Year 1979.

16 In January 1979, the Department of Justice's Office of Legal Counsel advised that the full
17 \$2,052,000 should be set aside. Whether the SLU needed all this funding was debatable.

18 Crosland and Associate Attorney General (AAG) Michael Egan []
19 [Mendelsohn (backed by Jewish groups and Holtzman)] The

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20 solution to both the stature and funding problems, as Holtzman and Mendelsohn saw it, []
21 [] This would instantly

22 provide increased visibility and access to the Department's greater support resources; the full

1 allocation could easily be spent in such an environment.²⁵

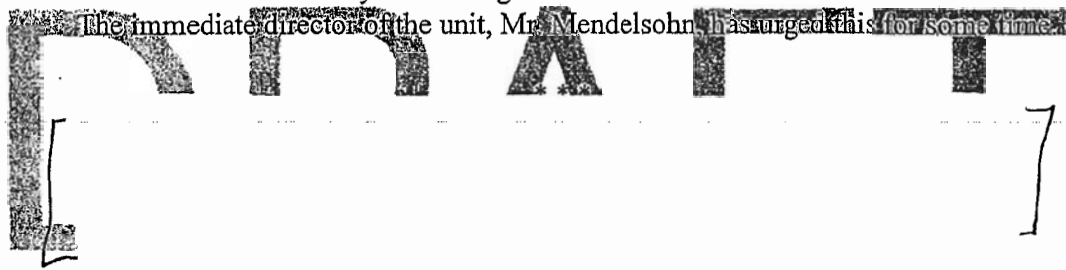
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6] Testifying before Holtzman's

7 Subcommittee, AAG Egan, whose supervisory aegis included INS, was candid about the reasons
8 for the move and his reaction to it.

9 I have reluctantly come to agree that the unit must be moved from INS.

10 The immediate director of the unit, Mr. Mendelsohn, has urged this for some time.



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20 addition, she felt

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22 The transfer officially took place on September 4, 1979, the date on which Attorney
23 General Benjamin Civiletti signed an order giving the Criminal Division:

24 primary responsibility for detecting, investigating, and, where appropriate, taking
25 legal action to deport, denaturalize, or prosecute any individual who was admitted
26 as an alien into or became a naturalized citizen of the United States and who had
27 assisted the Nazis by persecuting any person because of race, religion, national
28 origin, or political opinion.³¹

1 The new section was the Office of Special Investigations (OSI) and it reported to the AAG for
2 the Criminal Division, then Philip Heymann, through his deputy Mark M Richard (DAAG
3 Richard).³² The Justice Department sent a memorandum to all U.S. Attorneys advising them of
4 OSI's primacy in the prosecution of Nazi cases.³³

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6] He asked [] a former Nuremberg prosecutor and then a partner in a D.C.
7 law firm, to help in the search.³⁵ []

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12 [] Moreover, at Nuremberg he had
13 investigated and prosecuted bankers []

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14] And finally, he thought the cases []

15] But eventually, []

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19] In addition, []

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The SLU attorneys were invited to transfer *en masse* and all but one made the move. The students and archivist, who had been hired on a temporary part-time basis, were given pink slips and had to reapply for a permanent position. All those who did were chosen. Mendelsohn was named Deputy Director of the unit [

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Rockler, as Mendelsohn before him, also traveled to the U.S.S.R. and Israel to speak with his counterparts.

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4 Thus, when she learned that OSI was having trouble getting documents it needed from
5 Romania in order to prosecute Archbishop Trifa, she testified about the problem before a House
6 subcommittee considering whether to extend Most Favored Nation status to Romania. Romania
7 turned over documents shortly thereafter.⁴¹ And she, along with Representative Hamilton Fish
8 (the ranking Republican on her Immigration subcommittee) was able to gather 120 co-sponsors
9 on a 1979 resolution urging the West German government to extend or abolish its statute of
10 limitations governing the prosecution of Nazi war crimes. (It was abolished.)⁴²

11 Like virtually everyone involved with OSI at the beginning, Rockler thought the office
12 would complete its work in five or six years. He hoped to file a couple of cases before he left
13 and expected Mendelsohn to succeed him. [

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] In January

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18 1980, DAAG Richard, acting on directions from AAG Heymann, assigned Mendelsohn to
19 another section. The move infuriated Holtzman and various Jewish groups; emotions ran high
20 on all sides.⁴³

21 Rockler's successor was to be Allan Ryan.⁴⁴ Just as [

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Ryan welcomed the public relations aspects of the position much more than had Rockler. One of the first tasks he set for himself was the creation of an OSI agenda, to be approved by AAG Heymann and DAAG Richard; among the items listed was the need to keep the public informed of OSI's work.⁴⁶

To that end, he sought to establish ties with both the Jewish and ethnic communities. He got help on both fronts from DOJ. AAG Heymann wrote to, and met with, Jewish leaders to assure them about Ryan and to reiterate the Department's commitment to the success of OSI. AAG Heymann also set a goal for resolving, within one year, all matters inherited from INS; by then suit should be filed or the case closed on the 250 pending INS investigations.⁴⁷ The Jewish community responded positively and issued a press release in support of the fledgling section.⁴⁸

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DOJ was not as successful in reassuring the Baltic community. They had two major concerns: (1) they viewed themselves as a group target; and (2) they distrusted evidence which came from any Iron Curtain country, as much of the evidence relied on by OSI did.

Ryan and various Department officials met with ethnic group leaders and asked their help in sorting out the "heroes from the collaborators."⁴⁹ Ryan also met with local groups and wrote to ethnic newspapers and activists in an effort to allay their concerns.⁵⁰ It was to no avail.⁵¹

In addition to soliciting support from Jewish and ethnic groups, Ryan also sought [

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4 Although Holtzman made peace with Ryan's ascension to the directorship, she remained
5 vigilant about OSI matters, issuing press releases to announce OSI filings and victories,
6 exhorting the State Department to work with OSI to update its Watchlist⁵³ (they did), demanding
7 that State modify its visa application form to take into account new legislation precluding the
8 entry of Nazi persecutors (also done),⁵⁴ and notifying OSI when she learned of a potential
9 subject. The priority she gave OSI matters was evident when she left Congress in December
10 1980; one of her last speeches on the Floor stressed the issue of Nazi war criminal prosecutions.⁵⁵

11 Ryan remained at OSI until 1985. Leadership then passed to his Deputy, Neal Sher.

12 It is hard to overstate the obstacles the office initially had to overcome. As noted earlier,
13 many records had been destroyed. Those which remained (including German military and
14 administrative records, newspapers and magazines published or supported by the German
15 occupation authorities, post-war trials and transcripts) were scattered throughout the world, the
16 bulk of them in Germany and the U.S.S.R. Within each country they were dispersed among many
17 archives. The rules of access varied and research aids were generally limited or non-existent.

18 In that Cold War era, arguably the most difficult hurdle was getting information from the
19 Soviet Union. Holtzman and Eilberg, Mendelsohn, and later Rockler, DAAG Richard and Ryan,
20 all made trips to the U.S.S.R. to discuss the issue. Attorney General Civiletti raised the matter in
21 a meeting at the Justice Department with the Chief Justice of the Soviet Supreme Court.⁵⁶ All
22 were promised that the United States would be allowed to take videotaped depositions of Soviet
23 witnesses and to have increased archival access. Although the Soviets generally made good on

1 their deposition promise, archival access was much more difficult. The Soviets had inadequate
2 archival indices and were not willing to grant access directly to Western scholars.⁵⁷ OSI
3 therefore had to rely on the Soviets to do the research, although the Soviets often gave the task to
4 prosecutors and police investigators, rather than to historians. All this, coupled with the fact that
5 Soviet evidentiary requirements were so different, often left OSI in need of more information.⁵⁸

6 There were also practical impediments. The Soviet Union and Eastern European
7 countries lacked the resources – both personnel and material – to accommodate many requests.
8 It was not uncommon for a year to pass before there was a response; followups therefore often
9 seemed impractical.⁵⁹ Problems were often mundane but serious, including inadequate copying
10 facilities, lack of toner or paper, and deteriorating records due to insufficient preservation. (At
11 times OSI would provide toner and paper or bring a portable copying machine.)

12 Even within the United States there were enormous hurdles. Although the National
13 Archives, Library of Congress and many private institutions have valuable resource material, too
14 often pertinent information was destroyed in due course or so poorly kept that its value was
15 limited.⁶⁰ Material in private collections sometimes had restricted access. [

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2 These problems got resolved, to some degree at least, in a variety of ways. The biggest
3 and most dramatic change resulted from the collapse of Communism. Once the Berlin Wall
4 came down, OSI was allowed access to most archives in the former Eastern bloc countries. Also,
5 with time, many countries improved archival facilities and OSI developed and nurtured
6 relationships with archivists around the world.⁶² And to the extent that OSI learned that
7 documents were about to be destroyed in the United States, they intervened to stop the process.⁶³
8 DAAG Richard helped smooth the way for greater access from the intelligence agencies.⁶⁴

9 While the ability to gather evidence has greatly improved over the years, these are not
10 easy cases to establish. Given the advanced age of survivors and questionable value of
11 eyewitness testimony, a case is generally only as good as the archival evidence. What is extant
12 and what is accessible varies. It generally falls on the historians – the backbone of the section –
13 to secure the essential documentation. Their integration into the office makes OSI unique among
14 litigating sections within the Department of Justice.

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1. The INS first learned of the defendant after *The New York Times* ran a story about her past. "Former Nazi Camp Guard is Now a Housewife in Queens," by Joseph Lelyveld, *The New York Times*, July 14, 1964; "U.S. Studies Entry of Ex-Nazi Guard," *The New York Times*, July 15, 1964. (According to Lelyveld, he received a tip about Ryan from Nazi hunter Simon Wiesenthal. "Breaking Away, by Joseph Lelyveld, *The New York Times* (Magazine Section), Mar. 6, 2005.)

Ryan's extradition was front page news. "Mrs. Ryan Ordered Extradited for Trial as Nazi War Criminal," by Morris Kaplan, *The New York Times*, May 2, 1973.

Before emigrating to the U.S., Braunsteiner Ryan had been convicted of manslaughter in Austria. She served 3 years in prison before being granted amnesty. The failure to report her conviction on her citizenship application was the basis for the INS denaturalization suit. Mid-trial, Braunsteiner Ryan voluntarily relinquished her citizenship. In response to Germany's request, she was extradited in 1973. After a prolonged trial, she was convicted in 1981 of "complicity in the deaths of more than 1,000 prisoners." She was sentenced to life imprisonment. In 1996 she was released because of ill health; she died in 1999.

There were a significant number of female camp guards and women served in other capacities as well. It is very difficult to determine whether a notable number of women persecutors emigrated, however, since INS could only identify emigrés by the name on their travel documents; if a woman married before emigrating, INS would have no record of her maiden name. OSI believes that few women guards came to the U.S. because guards were generally selected from Austria or Germany. The post-war immigration laws did not favor emigrants from those countries. See pp. 36-38.

INS never filed suit against another woman for her World War II activities. In 2006, OSI filed its first – and to date only – case against a woman. See discussion of Elfriede Rinkel in the Appendix.

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3. See e.g., "Some Suspected of Nazi War Crimes Are Known As Model Citizens," by Ralph Blumenthal, *The New York Times*, Oct. 18, 1976; "The Mixed Reasons for New U.S. Nazi Hunt," by Ralph Blumenthal, *The New York Times*, Nov. 28, 1976; "Immigrants: Nazis Next Door?" *Newsweek*, Oct. 25, 1976. The three defendants were Boleslavs Maikovskis (discussed at pp. 427, 430-431), Branius Kaminskis and Karlis Detlavs. Only the Maikovskis prosecution was ultimately successful.

4. *Widespread Conspiracy to Obstruct Probes of Alleged Nazi War Criminals Not Supported by Available Evidence – Controversy May Continue* (May 1978).

5. See pp. 203-228.

6. Howard Blum (Times Books).

7. Interviewed in 2002, Ms. Holtzman no longer recalled who had alerted her to the issue. It is possible that it was INS investigator De Vito and INS prosecutor Schiano. When interviewed on the PBS television program "Nazis in America," *The MacNeil/Lehrer News Hour*, Feb. 2, 1977, Schiano said that they had "perhaps" spoken to then-Congresswoman Holtzman about the need for an organized task force to investigate alleged Nazi war criminals.

8. Apr. 11, 2001 recorded interview with [redacted] (hereafter [redacted] interview). In 1979, when Holtzman became chair of the subcommittee, [redacted] was made committee counsel. EX
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9. "Holtzman Calls U.S. Lax on Nazi Inquiries," by Ralph Blumental, *The New York Times*, May 20, 1974; May 20, 1974 Holtzman press release.

10. June 5, 1974 letter to Holtzman from INS Commissioner Chapman with attached "Detailed Report in Investigation of Alleged Nazi War Criminals Prepared from the Files of New York District Office, INS;" "37 Under Inquiry in Crimes by Nazis," *The New York Times*, June 6, 1974.

11. Aug. 20, 1974 memo to Files from Investigator O.H. Cohen re "Alleged War Criminals; Meeting with Representative Elizabeth Holtzman."

12. Feb. 14, 1975 memo to INS Regional Commissioner Northeast from District Director, New York, New York.

13. [redacted] May 20, 1974 letter to INS Commissioner Leonard Chapman (8 pages single-spaced with a 10 page single-spaced addendum).

14. Aug. 25, 1975 Holtzman press release.

15. Sept. 21, 1977 letter to Holtzman from John DeWitt, Deputy Assistant Secretary for Consular Affairs; Sept. 30 Holtzman press release re "State Department Accedes to Holtzman Demand for Stepped up Action on Nazi War Criminals."

16. Sept. 24, 1975 letter from District Attorney in Landau/Pfalz to Central Office of State Judicial Administrations in Ludwigsburg. The resident was Boleslav Maikovskis. Germany refused Holtzman's request. OSI ultimately filed charges against him and he was ordered deported in 1984. The circumstances of his departure from the United States are discussed at p. 430.

17. "Alleged Nazi War Criminals," Hearings bef. the House Subctee on Imm., Cit., and Internat'l Law, 95th Cong., 1st Sess. (Aug. 3, 1977), testimony of INS Commissioner Leonel J. Castillo, p. 24.

18. Apr. 10, 2001 recorded interview with [redacted] (hereafter [redacted] interview). EX
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19. June 12, 1978 memorandum to Soobzokov file from Mendelsohn.
20. Among the cases already filed were *Maikovskis, Detlavs, Hazners, Kaminskas* (deportations); *Demjanjuk, Trifa, Walus, Kowalczyk, Pasakevicus* and *Fedorenko* (denaturalizations).
21. Recorded interview with Martin Mendelsohn, May 23, 2001 (hereafter Mendelsohn interview).
22. *E.g.*, Feb. 27, 1979 letter from Crosland to Richard Krieger, Executive Director of the Jewish Federation of North Jersey.
23. Mendelsohn interview, *supra*, n. 21. Although INS was then part of the Department of Justice, it was a separate component.
24. "Agency Studying Nazis is Upgraded," by A.O. Sulzberger, Jr., *The New York Times*, Mar. 28, 1979; Crosland interview, *supra*, n. 18.
25. "Dispute Over Releasing Funds Mires Federal Investigation of 175 Alleged Nazi War Criminals in U.S.," by A.O. Sulzberger, Jr., *The New York Times*, Mar. 25, 1979. *Accord*, Mendelsohn interview, *supra*, n. 21.

28. Mar. 28, 1979 testimony before the Subcommittee.
29. [] interview, *supra*, n. 8. Ex. B6
30. [] interview, *supra*, n. 27. Ex. B6
31. Order No. 851-79. While Sept. 1979 is the official creation of OSI, in fact it was in existence before then. By memorandum of Apr. 4, 1979, the DAAG for Administration announced that the SLU would be transferred on Apr. 22, 1979; an Apr. 30 directive from Philip Heymann, AAG for the Criminal Division, announced that the new unit would be established on

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32. The office was originally to report to DAAG Robert Keuch but due to an illness in his family, the responsibility was transferred to DAAG Richard.

33. Oct. 26, 1979 memo from AAG Heymann to all U.S. Attorneys re "Office of Special Investigations."

34. June 7, 2000 recorded interview with Heymann (hereafter Heymann interview). All references in this chapter to AAG Heymann's actions come from this interview unless otherwise noted.

35. May 10, 2000 recorded interview with Walter Rockler (hereafter Rockler interview). All references to his words and actions come from this interview unless otherwise noted.

36. Rockler recalled his reaction to the waiver: [

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37. Rockler originally estimated his time would be [

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38. While this memory of the Jewish groups comports with [description, both

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40. Schweitzer interview, *supra*, n. 8.

41. See pp. 210-211.

42. H. Res. 196 (96th Cong., 1st Sess.) gave as one of its supporting reasons that the United States was "moving aggressively" against persons suspected of war crimes and had established a special unit within the Department of Justice to handle these cases. The resolution passed 401 to 0 (with 2 votes of "present.")

The U.S. was not the only country to pressure Germany on this issue. According to an officer of the Czechoslovak political intelligence service who defected to the west, the Soviets too wanted to prevent lapse of the statute of limitations. To that end, they worked with the

Czechs to devise an elaborate ruse. "Operation Neptune" involved taking authentic German military records from Czech and Soviet archives and submerging them at the bottom of Black Lake, some 120 miles from Prague. They were then "inadvertently discovered" by a team of divers working in association with a Czech television crew. The "newly-discovered" documents were then publicized as proof that Czechoslovakia had a great number of original and important Nazi documents at its disposal, and that it would be irresponsible for West Germany to allow the prosecution of previously unidentified Nazi war criminals to become time-barred before the documents could be evaluated. *The Deception Game: Czechoslovak Intelligence in Soviet Political Warfare*, by Ladislav Bittman (Syracuse University Press, 1972).

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"Justice Dept. to Oust Nazi Hunter," by Robert Pear, *The New York Times*, Jan. 6, 1980, p. A1; "Jewish Leaders Say Justice Department Moving Against Nazis," by James Rubin, *AP*, Jan. 18, 1980.

At the time, Mendelsohn declined to comment in the press. Years later,

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Mendelsohn interview, *supra*, n. 21. Earmarked funding continued for several years, often at levels higher than the Department requested. See e.g., H. Rep. 98-759, Department of Justice Appropriation Authorization Act, Fiscal Year 1985 (98th Cong., 2nd Sess.), pp. 5-6.

44. Ryan came from the Justice Department's Solicitor General's office and had written the appellate brief and argued the seminal OSI case of *United States v. Fedorenko* before the Fifth Circuit. For an account of how Ryan came to be chosen, see pp. 53-55.

45. Heymann interview, *supra*, n. 34; DAAG Richard interview of Apr. 25, 2000.

46. Sept. 19, 2005 e-mail from Ryan to Judy Feigin re "Query PS."

47. "Year's Deadline Set in Search for Nazis," by A.O. Sulzberger, Jr., *The New York Times*, Jan. 16, 1980, p. A17. The goal was not met.

48. Jan. 16, 1980 joint press release issued by the Anti-Defamation League, the American Jewish Committee and the American Jewish Congress.

49. See p. 547, n. 8.

50. See e.g., Feb. 23, 1981 letters from Ryan to Petro Mirchuk, President Ukrainian Society of Political Prisoners, Inc., and to the Editor of *Vaba Eesti Sona* (an Estonian-American newspaper).

51. See e.g., Jan. 1985 *Latvian News Digest*, "If You Fought Communism You must be Deported Says 1979 US Law;" Sept. 1983 *Darbininkas* (Brooklyn, NY) "How to Defend Oneself from Attacks by OSI." Many Eastern Europeans were concerned since they had falsified their place of birth on their visa applications in order to avoid the possibility of repatriation to a country under Communist domination. Ryan sought in vain to explain that this was not the type of misrepresentation OSI was interested in pursuing. This distrust of OSI had two serious consequences: it cut off evidentiary sources for the government and put innocent people in unwarranted fear. Recorded interview with Allan Ryan, Oct. 6, 2000 (hereafter Ryan interview).

52. Ryan interview, *supra*, n. 51.

53. For a discussion of the Watchlist, see pp. 297-309.

54. Oct. 8, 1980 letter from Holtzman to Secretary of State Muskie; Oct. 24 response from Muskie to Holtzman.

55. Cong. Rec., vol. 126, 96th Cong., 2nd Sess., Dec. 3, 1980, H11805.

56. Oct. 26, 1979 letter from Attorney General Civiletti to Lev Nikolaevich Smirnov, Chairman of the Supreme Court of the Union of Soviet Socialist Republics. See also, "Soviet Agrees to Aid U.S. on Deportations of Nazis," *UPI, The New York Times*, Nov. 8, 1979.

57. The Soviets used a name-linked index that indicated whenever a name was mentioned, but did not cross-reference supporting documentation. Poland was the only Eastern European country that allowed OSI historians direct archival access during the Cold War.

58. Soviet cases only required proof that the defendant was a member of a certain unit, whereas OSI also needed historical context about the unit.

59. July 6, 1984 memo from OSI historian David Marwell to Director Sher re "Soviet Archives." See also, Oct. 13, 1980 memo from Marwell to Director Ryan on the same topic.

60. For example, in 1976 all Displaced Person Commission records (other than reject files) were destroyed in due course. May 12, 1978 letter to then-SLU (and later OSI) attorney Robert Boylan from J. Adler, Chief, Reference Service Branch Federal Archives & Records Center. Preliminary worksheets completed by those seeking admission under the RRA were destroyed in 1958. Oct. 7, 1981 memo to OSI historian David Marwell from Alice Harris, Department of State re "Disposal Schedule on Foreign Service Visa Records in 1956 [sic]."

61. See e.g.,

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62. Still, problems exist. Due to deteriorating diplomatic relations with Ukraine during the first years of the 21st century, American researchers have been denied access to some valuable

archival material concerning Hungarian persecution of the Jews. Mar. 5, 2004 letter to Ukraine Prime Minister Viktor Yanukovich from Congressman Tom Lantos.

Another problem exists in Russia where a treasure trove of documents is housed in the FSB (formerly KGB) Archives in Moscow. While OSI researchers can view documents there (and documents in outlying archives are sometimes sent there for OSI viewing), they cannot make reproductions or even request them on-site. A request in writing is made after the OSI historian returns to the United States. The Archive itself will not respond to requests; everything is done through intermediaries. Thus, the American Citizens Service Section at the American Embassy contacts the Russian procurator (prosecutor) who in turn deals with the FSB Archive. Not surprisingly, given this labyrinthian system, the response time is painfully slow; two-year delays are not uncommon. Compounding these problems, the FSB Archives has made little effort to preserve documents, some of which are merely onion skin carbons. Reproductions, when they finally come, are sometimes unsatisfactory.

While deterioration of documents is a problem in many former Eastern bloc archives, an even more serious problem occurred in Yugoslavia. The ravages of war in the 1990s destroyed entirely many archived documents.

63. Thus, in 1982, when the Archives division in Bayonne ~~was about to destroy DPC~~ rejection records, OSI got custody of the documents. In the ensuing years, the State Department, the CIA and the Army Counter Intelligence Corps (CIC) granted permission to declassify most of the material in their files.

64. DAAG Richard's contribution to the section extended far beyond liaison with the intelligence community. From its founding (and until 1999), OSI reported to him. He reviewed all cases and was the conduit between OSI and the politically changing top management within the Department.

65. See discussion of the *Walus* and *Demjanjuk* cases at pp. 71-100, 150-174.

The Historians

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3 In the 1976 movie “Marathon Man,” a Nazi dentist who worked in a concentration camp
4 is seen walking in Manhattan’s diamond district. A Holocaust victim recognizes him and starts
5 screaming. As the dentist flees from the scene, others join the chase. It is great cinema but it
6 bears little relation to reality.

7 In only one instance was an OSI case based on a Holocaust survivor recognizing his
8 persecutor in the civic square.¹ In a handful of other cases, the government was alerted to a
9 potential defendant by “Nazi hunters.”² However, most Nazi persecutors found in the United
10 States are discovered through the unglamorous and dogged review of Nazi-era documents. The
11 work is done by multi-lingual OSIs in archives around the world.

12 That the government needed individuals with combined language skills and historical
13 expertise was not immediately self-evident. Government cases are generally developed by an
14 investigative agent and a prosecuting attorney. When the SLU was established in 1977, the
15 traditional paradigm was modified slightly in recognition of the need for linguists to review
16 Third Reich records at the National Archives. As noted earlier, the SLU was staffed by four
17 attorneys, two INS agents, four graduate students fluent in German, and one German-speaking
18 archivist. Though the students and archivist were called “historians,” in fact only one was
19 formally trained as such.³

20 As it turned out, no new cases were filed by the SLU; the unit assisted with, or oversaw,
21 cases previously filed by INS or U.S. Attorney’s Offices. Since OSI was established as a result
22 of tremendous publicity and pressure about the need to get “Nazi war criminal” cases moving,
23 there was an urgency to have the office fully staffed as quickly as possible. This was

1 accomplished, in part, by borrowing investigators from a variety of agencies, including INS, Fish
2 and Wildlife, IRS, Secret Service and the State Department. None had any particular knowledge
3 about the Nazi era and only one or two had any proficiency in German. Two historians were
4 hired during the nine-month tenure of Director Rockler. When they were added to the graduate
5 student pool, the ratio of investigators to historians was approximately 2:1.

6 Rockler began with two Deputy Directors, Martin Mendelsohn to oversee litigation, and
7 Art Sinai to supervise investigations. Though trained as a lawyer, Sinai was, by all accounts
8 (including his own), an investigator at heart. His role in the office was essentially that of Chief
9 Investigator and he had a traditional investigator's approach: investigators gather the evidence,
10 attorneys present the case in court. The historians at the time felt as if they were second class
11 citizens. The fact that Sinai reported directly to Rockler, but the Chief Historian reported to
12 Sinai, reinforced those feelings.⁴

13 By virtue of their differing skills, the investigators and historians approached cases
14 differently. Investigators spent the bulk of their time trying to find the defendant, locate
15 witnesses, and handle liaison with foreign governments and domestic agencies. Case
16 development was defendant-specific. Were there documents detailing what he had done?
17 Eyewitnesses who could testify to his malfeasance? In most instances, the answer was no, since
18 the bulk of OSI investigations involved camp guards or members of auxiliary police units about
19 whom there is rarely information involving personal wrongdoing.⁵

20 Peter Black was the first formally trained historian hired by OSI. He came to the office in
21 1980. Following the approach Germans took in their war crimes prosecutions, he began to
22 concentrate on the unit in which a subject served. What were the duties and responsibilities of

1 that unit? Who else was in it? What could be learned about daily life in the organization? Was
2 this a unit – as many were – whose major purpose was persecution of Jews and other civilian
3 “undesirables?”

4 He, and other historians as they were hired, spent most of their time in archives. They
5 searched for rosters, identity cards issued to members of auxiliary police forces and camp guards,
6 requests for services or benefits (e.g., pensions) in which the applicant listed his wartime
7 assignments and activities, and pertinent references and statements from the hundreds of post-
8 war trials conducted in Europe. Given their expertise in the matters under investigation,
9 historians could recognize the significance of a document which might otherwise go unnoticed.⁶

10 [REDACTED] Ex. B5
11 [REDACTED]
12 While their academic training led historians to seek archival evidence, there were
13 practical considerations as well. The *Walus* prosecution⁸ had made abundantly clear the
14 problems of witness identification. Moreover, even if memories were accurate at the outset – a
15 dubious proposition considering the fact that victims rarely knew their captors’ names and had
16 little occasion for direct eye contact – these memories were much less reliable as witnesses and
17 subjects aged.

18 Despite the differing approaches of investigators and historians, the lines between them
19 were not always demarked. In some instances, historians interviewed witnesses, especially if the
20 historian had greater foreign language skills than the assigned investigator. Where both were
21 qualified, the assignment was generally based on attorney preference.

22 Inevitably, [

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When Allan Ryan became Director in March 1980, he began to reassess the office paradigm. As he saw it, the

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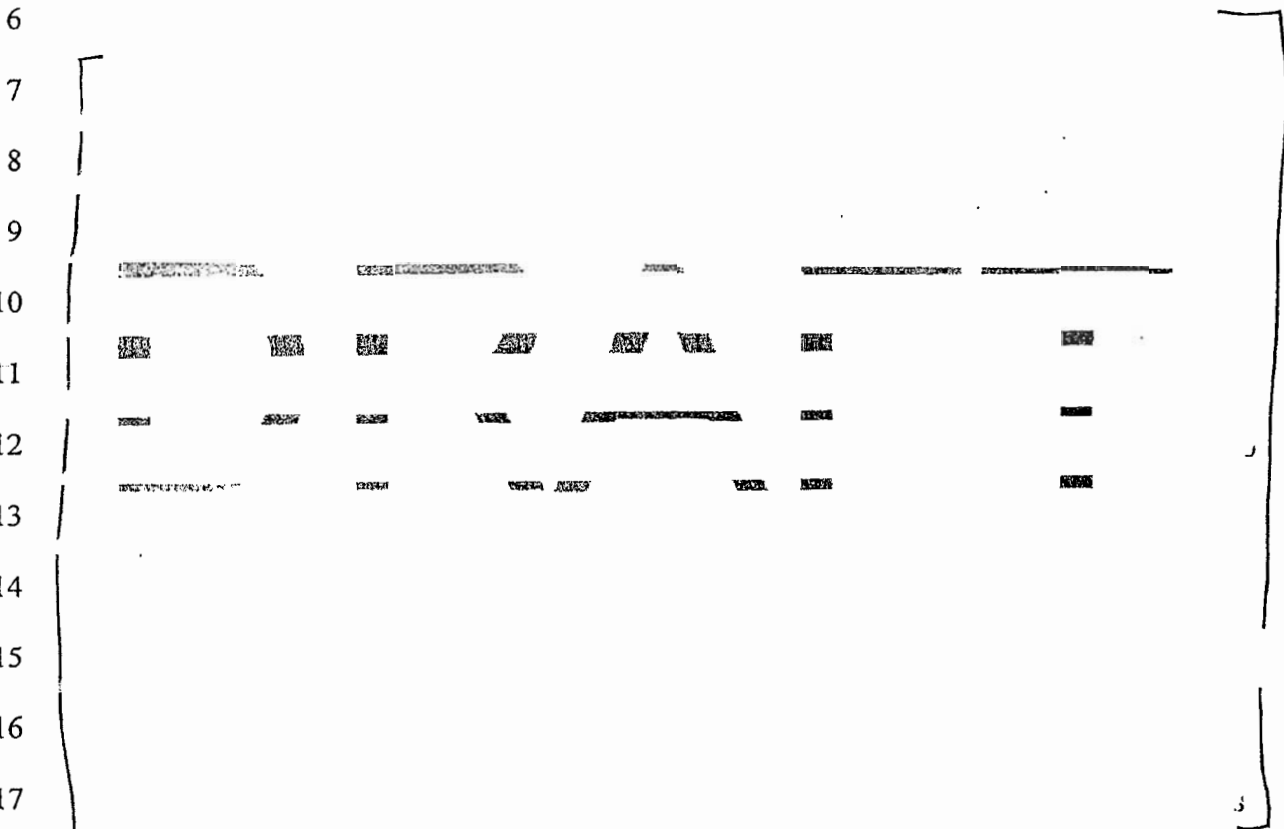
One immediate problem in hiring historians was salary. Lawyers entered government service at the GS-11 level and moved quickly to GS-13; historians with PhDs started as GS-9s.¹¹ Ryan turned to DAAG Richard who arranged for historians to be promoted quickly to GS-11s.

Two early efforts proved particularly fruitful in the search for outside experts. First, OSI reached out for Raul Hilberg, author of *The Destruction of European Jewry*, then, as now, arguably the preeminent text on the issue. Hilberg testified in a series of early cases for OSI, including *U.S. v. Kowalchuk*, the first trial handled by the office. Second, in April 1980, OSI sent two historians (and a third attended at his own expense) to a symposium on Hitler and the

1 National Socialist Era held at the Citadel in South Carolina. One of the main purposes in
2 attending was to make contact with historians in the field in order to educate them about OSI.

3 They met Charles Sydnor and Christopher Browning, two leading Holocaust historians. Hilberg

4 and Sydnor were the two experts most used by OSI over the years; Browning also testified for the
5 office.



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18] Over the next few years, the key suggestions were all adopted. In addition,
19 when Art Sinai left in the summer of 1981, the Chief Historian began reporting directly to the
20 Director.

21 [Before meeting with the "outside" historians in preparation for trial, the attorneys needed
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1 reports concerning the relevant historical background. These reports, often over a hundred pages
2 long, were prepared by OSI historians.¹⁴ [

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4 Other factors too affected the increasing role for historians. Some of the traditional work
5 performed by investigators -- finding defendants and witnesses -- became routine and simple with
6 the advent of computers and, much later, the internet. For example, it is no longer necessary to
7 do world-wide searches for survivor witnesses. Internet sites and genealogy links give instant
8 information. On-line access to government records also makes searching for a subject simple.
9 Within a matter of minutes, OSI can ascertain whether someone in the United States is alive and,
10 if so, where he is living. This effort used to take months of investigators' time.

11 There was thus less for the investigators to do while the work for historians was
12 increasing. Since most of the investigators were on loan from other agencies, they were simply
13 replaced by newly-hired historians once their loan period (generally one or two years) expired.

14 By the late 80s, the position of the historians seemed secure. They had largely supplanted
15 investigators and by now they were being paid as GS-14s, a salary much higher than most would
16 have earned in academia, their most likely alternative employment. Moreover, in 1986, Peter
17 Black assumed many of the responsibilities of the Chief Historian.¹⁶ Unlike his predecessor, he
18 was formally trained in the field and was seen by his colleagues as willing to fight for their
19 rightful place in the office.

20 Two things, however, served to shake the historians' security. The first was OMB
21 Circular A-76, first issued in 1955, and designed to privatize various government functions when
22 the government can save at least 10% by doing so. Different administrations have attached more

1 or less significance to the Circular. In the late 80s, during the administration of George H.W.
2 Bush, it received renewed emphasis. Within the Department of Justice, one of the few groups
3 targeted for privatization was the OSI historians.

4 Under the A-76 plan, a private company would interview applicants and then submit a
5 report and resumés to OSI. OSI could choose from among the names submitted, but would have
6 no opportunity to itself interview the applicants. The contract employees would be lower paid
7 than OSI historians and would receive no benefits. [

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10 **DRAFT**
11 The second employment scare came in 1993, when OSI itself began hiring on a contract
12 basis. Newly-hired historians and attorneys were engaged for two year terms, though at the same
13 salary (and with the same benefits) as if they were permanent hires. The contracts were
14 renewable for one more two year period, and then, for a final one year period. The rationale for
15 this change of protocol was that the office was not expected to continue significantly longer and
16 therefore there was no need for long-term hires.¹⁷ However, the office did not disband and in
17 August 2004, all the contract historian positions were converted into full-time government
18 positions.¹⁸

19 That the office was still in existence in 2004 is due largely to the development of a
20 research and development program which was a natural outgrowth of the archival approach
21 adopted by the historians. INS and the SLU had been reactive – responding to information
22 presented to them by outside sources (often the media). Once historians uncovered rosters and

1 other archival material, the office became proactive. It submitted lists of names to INS to
2 determine whether any of the men had entered the United States. Without such an R & D
3 program, the office might well have closed within the five years everyone assumed at the outset
4 to be its life expectancy.

5 In addition to transforming the way OSI learns about subjects and investigates cases, the
6 historians have increased enormously the body of Holocaust knowledge. They have done so in
7 various ways. As part of OSI's research and case development, the historians have amassed the
8 largest concentration of documents in the world concerning Trawniki – a German-run training
9 camp in Poland for concentration camp guards.¹⁹ Analysis of this data – often as part of the
10 historical reports prepared for OSI litigation – has helped explain how the Nazis trained men,
11 many of whom were prisoners of war, to brutally persecute civilians. The Trawniki story has
12 been accepted by courts and made public in a series of OSI decisions.²⁰ OSI historians have also
13 unearthed and sorted out the role indigenous police forces played in assisting the Nazis in Estonia
14 and Lithuania.²¹ Until the Cold War ended, and OSI historians gained access to archives
15 previously behind the Iron Curtain, there was widespread belief that the mass murder of Jews in
16 those two countries was done by the Germans.²² The much more complex story of indigenous
17 participation is now part of the record in many OSI cases.²³ Moreover, with some assistance
18 from the attorneys, OSI historians have written exhaustive reports on controversial Holocaust
19 subjects including Mengele, Barbie, Waldheim, Verbelen and some Watchlist candidates. They
20 also contributed significantly to a State Department report on Nazi gold.²⁴

21 As of this writing, OSI has seven historians and one investigator. **Update number**
22 Historians are very much involved in decision-making, both on the macro and micro level. The

1 Chief Historian is a Deputy Director of the section and consults with the Director and Principal
2 Deputy on almost all major decisions. Staff historians work and strategize with attorneys on
3 individual cases.

4 Despite the near parity, however, there is a difference in perspective.]

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1. Jacob Tannenbaum, discussed at pp. 106-116.
2. *E.g.*, Canadian “Nazi hunter” Steven Rambam alerted OSI that Johann Leprich, a former OSI defendant, had returned to the U.S., although Rambam could not pinpoint his location. *See* p. 441. Simon Wiesenthal notified *The New York Times* about Hermine Braunsteiner Ryan. *See* p. 14, n. 1. The Simon Wiesenthal Center brought Harry Männil to OSI’s attention. Männil is discussed at pp. 300-301, 456-457. In some instances, however, Nazi hunters have publicly identified people as persecutors who turned out not to be so.
3. Some SLU documents reference four historians rather than five. However one of the students was working out of New York and therefore may have inadvertently been omitted.
The students had an advantage to INS beyond their language skills. They were much cheaper to hire than INS agents who, because they were authorized to carry weapons, were entitled to mandatory overtime payments. INS “historians” were thus seen, in part, as a way to get investigators more cheaply. Apr. 11, 2001 telephone call with former INS General Counsel David Crosland.
4. Oct. 11, 2000 recorded interview with former OSI historian (and later Chief Historian) Peter Black (hereafter Black interview); Apr. 2, 2001 recorded interview with former OSI historian David Marwell (hereafter Marwell interview); Apr. 25, 2002 discussion with OSI historian Steven B. Rogers. The Chief Historian had been hired by Rockler. He had been a translator at Nuremberg and had thereafter worked at the Center of Military History.
5. One major exception concerns guards at the Mauthausen concentration camp in Austria who were responsible for the deaths of persons in the camp. An OSI historian, doing research at the National Archives, found a book entitled “Unnatural Death Book,” in which the Nazis recorded all instances of Mauthausen guards killing internees. Incident reports and diagrams were kept. (Natural deaths included death from starvation, overwork, and disease. Shooting of an alleged potential escapee was considered “unnatural.”)
6. A dramatic example of this involved preparation of the Waldheim Report (discussed at pp. 310-329). OSI historians recognized that “O3” was Waldheim’s rank in the military, and that documents hand initialed “W” from the O3 officer in his unit on certain dates had to have been from him. Oct. 20, 1986 memo to Sher from OSI historian Patrick Treanor re “Propaganda documents initialed by Waldheim.”
7. Recorded interview with Black, May 3, 2002; unrecorded discussion with Black, Nov. 5, 2002.
8. *See* pp. 71-100.
9. Black interview, *supra*, n. 4.
10. Oct. 6, 2000 recorded interview with Allan Ryan. All Ryan references are to this interview unless otherwise noted. All the historians of that era who were interviewed agreed that it was

Ryan who focused on, and changed, the role of historians in the office.

11. "GS" stands for Government Service. Salaries within most of the federal government are based on one's GS level; the higher the level, the greater the salary.

12. Information about the Charleston Manifesto comes from the Black and Marwell interviews, *supra*, n. 4, as well as informal discussions with OSI historian [] Ex. B6

13. Black and Marwell interviews, *supra*, n. 4.

14. [] In 1993, a modification of the Federal Rules of Evidence required the testifying expert to provide a written report to the defense before trial. As a practical matter, this did not

[] In a field where publications matter for academic appointments (which some OSI historians still see as a future employment option), this can diminish their ability to enhance their *curriculum vitae*.

15. In a 1982 television appearance, Allan Ryan, then OSI Director, described OSI historians as "people who know the city of Riga in 1941 better than they know the city of Baltimore in 1981." "After Hours" Jan. 7, 1982. This depth of knowledge was essential. "If a defendant were to say he had turned a corner and seen X, OSI needed to know if X was there or not." Remarks by Ryan at Oct. 24, 2004 luncheon commemorating OSI's 25th anniversary.

16. He was formally named to that post in 1989 when the Section's first Chief Historian left.

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19. In addition to serving as a training camp, Trawniki also was the site of a forced labor camp. On November 3, 1943 more than 6,000 men, women and children incarcerated there were shot to death. It was one of the largest single massacres of the Holocaust.

Trawniki men assisted in Aktion Reinhard ("Operation Reinhard"), the Nazi project whose ultimate goal was the annihilation of Polish Jewry. Under the aegis of Operation Reinhard, an estimated 1,700,000 Polish Jews were murdered, the labor of able-bodied survivors was exploited in slave labor camps under armed guard, and the personal belongings of the murdered Jews were stolen and distributed to benefit the German economy.

In 1990, shortly after Czechoslovakia's "Velvet Revolution," OSI historians were granted access to Czech and Slovak archives. They found a collection of rosters from the SS Battalion Streibel, a unit formed in the summer of 1944 during the evacuation of Trawniki. The rosters list hundreds of Trawniki men by name, rank and identity number. The information from this material eventually led OSI's historians to the Central Archive in Moscow where they found a treasure trove of Trawniki material, including personnel files, deployment orders, and additional rosters.

As of this writing, the Trawniki documents have been used in at least 15 OSI cases.

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20. See e.g., *U.S. v. Hajda, supra*, 936 F. Supp. 1452; *U.S. v. Kairys*, 600 F. Supp. 1254 (N.D. Ill. 1984), *aff'd*, 782 F.2d 1374 (7th Cir. 1986); *U.S. v. Schiffer*, 831 F. Supp. 1166, 1177 (E.D. Pa. 1993), *aff'd*, 31 F.3d 1175 (3rd Cir. 1994); *U.S. v. Wasyluk*, 162 F. Supp. 86 (N.D.N.Y. 2001).

21. Their role in Latvia first began to emerge as a result of German criminal investigations in the 1960s.

22. For example, there was apparently nothing mentioned during the Nuremberg investigations and trials about the Saugumas' (Lithuanian security police) role in annihilation of Lithuania's Jews.

23. For Lithuania, see e.g., *U.S. v. Lileikis*, 929 F. Supp. 31 (D. Mass. 1996); *U.S. v. Balsys*, 918 F. Supp. 588 (E.D.N.Y. 1996), *vacated & remanded*, 119 F.3d 122 (2nd Cir. 1997), *rev'd and remanded*, 524 U.S. 666 (1998); *U.S. v. Dailide*, 227 F.3d 385 (6th Cir. 2000). For Estonia, see *U.S. v. Linnas*, 527 F. Supp. 426, 430 (E.D.N.Y. 1981), *aff'd*, 585 F.2d 427 (2nd Cir.).

24. See pp. 300-302, 310-329, 371-423.

Chapter Two: The Limits of the Law

Introduction

Those who OSI investigates have allegedly been involved in persecution of civilians based on their race, religion, national origin or political beliefs. No matter how egregious the persecutory activity, the United States cannot file criminal charges because the alleged crimes -- committed on foreign soil against non-U.S. citizens -- violated no U.S. law of the time.¹ Any legislation to criminalize such activity retroactively would be constitutionally barred by the Ex Post Facto Clause.

Unable to prosecute and incarcerate Nazi persecutors for their crimes, the government's goal is to remove them from the country. Their spouse and children, whether or not born in the United States, are not part of the litigation.

The most oft-used method of removal is deportation. However, the government cannot deport U.S. citizens. Therefore, if the subject became a naturalized U.S. citizen after emigrating, the government must first file suit to have his citizenship revoked. If that is accomplished, a deportation case can be filed.

Both denaturalization and deportation are civil matters. There is no statute of limitations controlling the filing of either of these proceedings. Given that OSI was not founded until 34 years after World War II ended, and continued investigating Nazi persecutors for over a quarter

¹ By contrast, in the modern era, the United States is a party to various conventions which call for prosecution or extradition of persons found in the U.S. who committed crimes on foreign soil. Implementing legislation grants the U.S. jurisdiction to prosecute. *E.g.* The Hague Convention concerning seizure of aircraft and 49 U.S.C. § 46502; The Terrorist Financing Convention and 18 U.S.C. § 2339C; The Terrorist Bombing Convention and 18 U.S.C. § 2332f; The Violence at Airports Protocol and 18 U.S. C. § 37; The Nuclear Materials Convention and 18 U.S.C. § 831; and The Hostage Taking Convention and 18 U.S.C. § 1203.

1 of a century thereafter, the defendants are invariably elderly. Since each phase of the two-step
2 litigative process – denaturalization and deportation – takes years to complete, a significant
3 number of OSI defendants die before litigation is finalized.

4 An understanding of the statutory bases for OSI’s filings – including the limitations of the
5 statutes under which it operates – is essential to assessing what OSI has been able to accomplish.

DRAFT

1 **Statutes and Procedures**

2 The basis for OSI's cases, and sometimes even the decision to bring a case at all, depends
3 in part on when the person entered the United States. Changing immigration laws established
4 differing criteria for admission.

5 The exclusion of aliens deemed dangerous to the United States dates back to the Alien
6 Act of 1798. However, it was not until passage of the Quota Act in 1921 that the U.S. imposed
7 restrictive limitations based on nationality. The number of aliens to be admitted in any given
8 year was capped at 3% of the number of persons of that nationality then in the U.S. Given the
9 emigration patterns at the time, these restrictions favored western Europeans. The 1924
10 Immigration Act perpetuated this disparity.

11 Following World War II millions of displaced persons sought to emigrate to the United
12 States. Many were Jews hoping to start a new life after the decimation of the Holocaust. An
13 even greater number, however, were non-Jews fleeing Communist rule in the Soviet Union,
14 Eastern Europe and the Baltics. The situation was chaotic. Refugees were living in camps, often
15 in countries other than their own, and without sufficient documentation to establish their identity
16 or their history. In 1947, the U.N. created an International Refugee Organization (IRO) to help
17 with issues of repatriation and resettlement. The IRO's mandate did not include anyone who
18 had "assisted the enemy in persecuting civil populations," or who "voluntarily assisted the enemy
19 forces."¹

20 In 1948, the United States enacted the Displaced Persons Act which provided for the
21 issuance of 205,000 visas over a two year period without regard to statutory quota limitations.²

22 The Act defined displaced persons in the same manner as had the IRO but added the additional

1 requirement that applicants have been in a displaced persons camp by December 22, 1945.

2 Congress' overriding concern at the time was in helping refugees escape Communist rule.
3 Forty percent of the admittees had to be from the Baltic nations (newly incorporated into the
4 Soviet Union) and 30 percent had to be farmers (as were many from the U.S.S.R.). A Baltic
5 emigré who was a farmer thus had a double preference. Very few Jews were farmers or Balts.
6 Moreover, many otherwise-qualified Jews did not meet the camp cutoff date.³

7 While the Act focused mostly on those seeking to escape Communist oppression, it
8 recognized the possibility that some unwelcome former enemies might seek to settle in the U.S.
9 It therefore precluded issuing visas to anyone who had assisted the enemy in persecuting civilian
10 populations or had been "a member of, or participated in, any movement . . . hostile to the United
11 States."⁴ Applicants who "wilfully misrepresented" or concealed "material facts" were also
12 ineligible for admission under the DPA.

13 Congress created a Displaced Persons Commission (DPC) to carry out the Act's
14 mandates and to determine the eligibility of applicants. Eligibility depended on a variety of
15 factors, including personal interviews, medical examinations, sponsorship by a U.S. citizen or
16 organization and investigative reports prepared by the Army's Counter Intelligence Corps (CIC).
17 This multi-tiered process was designed to provide reliable and detailed scrutiny of all applicants.
18 In practice, however, the process was difficult to implement. Many relevant records had been
19 destroyed during the war. Of those that survived, a significant percentage were in the Soviet
20 Union, which had swept up huge caches of German material as the Nazis retreated westward.
21 The Soviets did not give the U.S. access to the material. Even when records were available in the
22 west, they often could not be accessed easily. They were dispersed in various countries and had

1 not yet been organized.

2 Despite these problems, there was enormous pressure to process the applicants quickly.
3 This pressure came from a variety of groups, including non-governmental organizations in the
4 U.S. which were sponsoring applicants for admission as well as Congressmen intervening on
5 behalf of constituents. U.S. ships bringing the refugees to the United States could not wait
6 endlessly. As a result, even when records were available in the West, they often could not be
7 accessed in time. Many applicants were allowed to board ships with the proviso that they might
8 be sent back if negative information were later found.⁵

9 In 1949, the State Department issued a regulation precluding issuance of a visa to any
10 person:

11 who has advocated or acquiesced in activities or conduct contrary to civilization
12 and human decency on behalf of the Axis countries during . . . [World War II].⁶

13
14 Anyone entering after 1949 (no matter under what law) also had to meet the standards set forth
15 in this regulation.

16 In 1950, the DPA was extended two more years (and the immigration quota raised). In
17 addition to the restrictions in the 1948 Act, Congress added a provision denying admission to
18 anyone who had “advocated or assisted in the persecution of any person because of race, religion,
19 or national origin.” It also extended the camp eligibility date to 1947, thereby allowing more
20 Jews to qualify.

21 Congress passed the Immigration and Nationality Act (INA) in 1952. It established
22 criteria for issuing entry visas and set quotas for emigration based on country of origin.

23 Although there were no restrictions directly based on World War II activity, the Act denied visas

1 to anyone who either misrepresented or concealed pertinent information on his visa application.

2 Approximately 400,000 refugees entered the U.S. under the DPA. Of these, about 68,000
3 were Jews.⁷ More than 70% of the 400,000 were from countries occupied or dominated by the
4 U.S.S.R.⁸ Hundreds of thousands more Eastern bloc refugees fled to western Europe. The
5 pressure of this influx on countries trying to rebuild after the war was enormous. In order to
6 alleviate some of the burden, Congress passed the Refugee Relief Act in 1953. It authorized the
7 admission of additional non-quota refugees, *i.e.*, refugees in addition to those admissible under
8 the INA.⁹

9 The RRA was similar to the DPA but differed in three respects pertinent to this report.
10 First, it eliminated the "movement hostile" provision. Second, without any explanatory
11 legislative history, it modified slightly the provision barring admission to those who "assisted in
12 the persecution of any person because of race, religion, or national origin." Under the RRA,
13 admission was barred to those who *personally* assisted in such acts. Finally, the statute
14 mandated that every country sending someone to the United States issue each emigrant a
15 certificate of readmission guaranteeing reentry if the U.S. later determined that the emigrant had
16 procured a U.S. visa by fraud. Refugees could not enter under the RRA if their country of
17 embarkation did not accept this condition.

18 Screening under the RRA was not significantly better than it had been under the DPA
19 since most of the same pressures remained. Approximately 200,000 people were admitted under
20 the RRA before it expired at the end of 1956. Almost all were refugees and escapees from
21 Communist persecution, natural calamity and military operations, or close relatives of citizens or
22 permanent resident aliens of the U.S.¹⁰

1 In order to revoke the citizenship of someone who became a naturalized U.S. citizen, the
2 government files a case in federal district court. There is no applicable statute of limitations nor
3 is there a right to a trial by jury; the matter is heard by a judge alone. The government must
4 prove its case by “clear, unequivocal and convincing” evidence, a standard which the Supreme
5 Court has equated to proof beyond a reasonable doubt.¹¹ The suit can be predicated on the
6 ground that the naturalization process itself was flawed or that the applicant’s admission into the
7 country – without which naturalization would not have been possible – was faulty. Most
8 commonly in OSI cases, the government alleges that the applicant’s assistance in persecution
9 made him ineligible to enter under the DPA or RRA and/or that he misrepresented or concealed
10 material information in the process of applying for a visa or acquiring citizenship. The
11 government may also assert that the applicant lacked the “good moral character” necessary for
12 citizenship. Assisting in persecution, or misrepresenting and concealing the fact that one has
13 done so, are bases for establishing lack of good moral character.¹²

14 If the court revokes citizenship, the defendant can appeal to a federal court of appeals
15 and, thereafter, seek review from the Supreme Court. The entire process takes years. Only after
16 it is completed (and assuming that the revocation of citizenship is upheld), can the government
17 begin deportation proceedings. For emigrés who never became naturalized U.S. citizens,
18 however, deportation is the first court proceeding.

19 In deportation cases, the government must prove its case by “clear and convincing
20 evidence.”¹³ The matter is handled by an immigration judge. Again, there is no statute of
21 limitations and no jury. However, unlike denaturalizations, hearsay is admissible. The court’s
22 ruling may be appealed to the Board of Immigration Appeals (BIA), from there to a federal

1 appellate court, and then to the Supreme Court. This, too, can take years.

2 Misrepresentation or concealment of material facts can provide the basis for deportation
3 as well as denaturalization. However, anyone ordered deported on these grounds – even if the
4 misrepresentation or concealment relates to persecution or war crimes – can ask the Attorney
5 General to exercise his or her discretion in order to prevent deportation. One basis for such
6 discretionary relief is that deportation would subject the defendant to persecution abroad.
7 Another is that deportation would cause personal or family hardship.

8 Most OSI defendants could ask for a waiver on one or both of these grounds. Many had
9 joined with the Nazis in opposing Communism. During the Cold War years, they feared
10 retaliation if they were deported to an Eastern bloc country. Moreover, because of their advanced
11 age, many have medical problems or spouses with medical needs. Their children are generally
12 U.S. citizens. All these factors present potential equitable bases for the Attorney General to grant
13 discretionary relief from an order of deportation. If the Attorney General does exercise such
14 discretion, the government's court victory – generally achieved after years of investigation and
15 litigation – is pyrrhic.

16 To eliminate this problem, Congress in 1978 passed the eponymously named Holtzman
17 Amendment, sponsored by Representative Elizabeth Holtzman. It makes participation in Nazi
18 persecution on the basis of race, religion, national origin or political opinion an independent basis
19 for deportation. The law applies retroactively and covers anyone in the United States, regardless
20 of which law provided their admittance into the country. Most importantly, if an immigration
21 judge orders deportation based on participation in persecution on behalf of the Nazis (even if
22 other grounds for deportation are cited as well), the Attorney General is statutorily precluded

1 from providing discretionary relief.

2 The Holtzman Amendment was passed shortly before the creation of OSI in 1979. It has
3 been key to OSI's efforts to deport those who persecuted on behalf of the Nazis.

4 Once a court determines that a defendant should be deported, the question of where he
5 should be sent looms large. That issue is discussed in various parts of this report.¹⁴ There is a
6 statutory scheme to determine the appropriate destination.¹⁵ However, in the end, it depends
7 upon the designated country being willing to accept the deportee.

8 The fate of a defendant in the receiving country varies. Most deported OSI defendants
9 spend the remainder of their lives in freedom and peace. In some cases, however, the recipient
10 country has jurisdiction to try him criminally for his World War II activities. It may or may not
11 choose to do so.

12 Countries that are anxious to prosecute OSI defendants can expedite their removal from
13 the U.S. by asking the U.S. to extradite them. Extradition is the process whereby a foreign
14 government asks the United States to send someone to the requesting country to stand trial on
15 criminal charges. The United States and the requesting country must have a treaty providing for
16 extradition and specifying which crimes may constitute the basis for an extradition request. Once
17 extradition papers are filed, the defendant is arrested and is generally not eligible for release on
18 bond.

19 Evidence from the requesting country is usually presented in court by the U.S.
20 government. The court must determine whether criminal charges are pending in the requesting
21 state, whether the defendant is the person named in those charges, whether probable cause exists
22 to believe that he committed the crimes alleged, and if so, whether, under the treaty between the

1 two countries, these crimes are extraditable offenses. If the answer to all these questions is yes,
2 the defendant is extraditable. Whether he in fact should be extradited is then determined by the
3 Secretary of State; (s)he alone has the power to issue a warrant of extraditability.

4 In making their determinations, neither the judge nor the Secretary of State decides
5 ultimate innocence or guilt. If the defendant is extradited, his culpability is decided at trial in the
6 requesting country.

7 While extradition is a much speedier process than denaturalization and deportation, with
8 their multiple levels of appeal, it is rarely used in OSI cases.¹⁶ Its use depends on an unlikely
9 confluence of factors – an extradition treaty between the U.S. and a country with jurisdiction to
10 prosecute criminally, sufficient admissible evidence in the foreign jurisdiction to satisfy the
11 burden of proof in a criminal trial, and the political will and commitment by the foreign country
12 to prosecute these cases decades after the crimes occurred.

13 Since these factors rarely converge, denaturalization and/or deportation are the traditional
14 means for expelling from the United States someone who was involved in persecution on behalf
15 of the Nazis during World War II. These are the cases which OSI was created to handle.

16

1. Annex I of the Constitution of the International Refugee Organ, 62 Sat. 3037, 3051 (1946).
See also, IRO Manual for Eligibility Officers, p. 33.
2. Immigrants admitted under the DPA were to be counted against the nationality quota in future years.
3. Many displaced Jews fled Poland in 1946 following a brutal post-war pogrom. "Polish Jews' Exit is Put at 20,000 Since Pogrom," *AP, The New York Times*, Aug. 15, 1946; "100,000 More Jews Seen Fleeing Poland," *The New York Times*, Aug. 4, 1946.
- President Truman, who had urged Congress to pass liberalizing immigration legislation, signed the DPA bill with much hesitation. He felt that some of its categorizations were "wholly inconsistent with the American sense of justice." "New DP Measure Called Unworthy," *The New York Times*, June 28, 1948.
4. Whether a movement qualified as "hostile" was determined by reference to a list of "inimical organizations" prepared by the Displaced Persons Commission. The list was periodically revised although some organizations were permanently listed. Among them were indigenous police groups who worked with Nazi mobile killing units and the SS Totenkopf battalion whose members served as camp guards.
5. "Alleged Nazi War Criminals," Hearings bef. the Subctee on Imm., Cit., and Internat'l Law, 95th Cong., 2nd Sess. p. 151 (July 19-21, 1978).
6. 10 Fed. Reg. 8995, 8997, 9000 (1945); 8 C.F.R. §§ 175.52(a), 175.53(j) (1947S); 22 C.F.R. § 58 (1947S).
7. *America and the Survivors of the Holocaust* by Leonard Dinnerstein (Columbia Univ. Press). An additional 40,000 Jews had entered between 1945 and June 30, 1948 (when the DPA was enacted). The 40,000 were admitted under a Dec. 1945 directive by President Truman which gave priority to displaced persons within existing American quota laws. Review by Leonard Dinnerstein of "Post-Holocaust Politics: Britain, the United States, and Jewish Refugees, 1945 - 1948," by Arie Kochavi. The review is posted at www.politicalreviewnet.com/polrev/reviews/diph/R_1045_2096_046.asp (last visited Nov. 2005).
8. The DP Story, The Final Report of the United States Displaced Person Commission, 1952, p. 243.
9. Final Report of the Administrator of the Refugee Relief Act of 1953, Nov. 15, 1957, p. 8 (hereafter RRA Report). Persons entering between expiration of the DPA and enactment of the RRA came in solely under the standard INA quotas. Unlike the DPA, the RRA did not require that entrants be charged to future nationality quotas.
10. "Alleged Nazi War Criminals," Hearings bef. the House Subctee on Imm., Cit., and Internat'l Law, 95th Cong., 1st Sess. (Aug. 3, 1977), p. 46; RRA Report, *supra*, n. 9 at p. xiii.

11. *Klapprott v. U.S.*, 335 U.S. 601, 612 (1949).

12. As of 2004, lack of good moral character can be proven more directly. Section 5504 of The Intelligence Reform and Terrorism Prevention Act of 2004 amended the INA to specifically make assistance in Nazi persecution a bar to good moral character for aliens. See 8 U.S.C.A. § 1101(f)(9).

13. The Supreme Court had originally set the standard as "clear, unequivocal and convincing." *Woodby v INS*, 385 U.S. 276, 285-86 (1966). In 1996, Congress legislated the lesser standard of "clear and convincing." INA § 240(c)(3)©, 8 U.S.C. 1229a(c)(3). See also, 8 C.F.R. 1240.8.

14. See e.g., pp. 271-295, 426-453.

15. Immigration law provides a three-step process for determining a country of deportation. First, the defendant himself may designate a country. If that country is unwilling to accept him, or the U.S. contends his deportation there would be prejudicial to the United States, he can be deported to any country of which he is a subject, national or citizen, so long as that country is willing to accept him. Barring that, there are a series of options which take into account the shifting boundaries and sovereignties following World War II:

- (1) the country from which he last entered the United States;
- (2) the country which contains the foreign port from which he embarked for the United States;
- (3) the country in which he was born,
- (4) the country in which the place of his birth is situated at the time he is ordered deported;
- (5) any country in which he resided prior to entering the country from which he embarked for the United States;
- (6) any country that had sovereignty over his birthplace at the time of his birth.

There is no order of priority among these choices. If none of them is feasible, the alien may be sent to any country willing to accept him.

16. Only three OSI defendants have been extradited: Bruno Blach, John Demjanjuk and Andrij Artukovic. The *Demjanjuk* and *Artukovic* cases are discussed at pp. 150-174 and 239-258, respectively.

1 Chapter Three: Case Studies of Various Persecutors and How the Law Handled Them

2
3 Introduction

4
5 The Holocaust did not occur in a vacuum or through the operation of some social
6 imperative set in motion by the actions of a few fanatical individuals. Its horrific scope – in
7 terms of duration, geographical range and organizational efficiency – required the participation
8 and acquiescence of untold numbers of people.

9 Those who “only” acquiesced – by standing on the sidelines while their countrymen
10 committed atrocities in their name – are not within OSI’s purview. The focus of OSI’s
11 endeavors is the participants – those who in some way assisted the Axis powers in their
12 persecution of civilians. These participants came from all walks of life, social strata and ethnic
13 backgrounds. OSI’s roster of defendants reflects that diversity.

14 High-ranking Nazi officials were generally German or Austrian. The DPA and RRA
15 greatly favored those fleeing Eastern Europe and the Soviet Union. Thus, even if they could
16 have hidden their wartime past, relatively few Nazi leaders were eligible to enter the United
17 States under these expansive statutes. They could have sought admission under the country
18 quotas set forth in the INA, but the number admissible from Germany and Austria at that time
19 was quite limited.

20 In such circumstances, it is not surprising that very few OSI defendants were leaders in
21 the Nazi cause. Most were camp guards. A few held “white collar” positions. The cases
22 detailed in this chapter give a sampling of the OSI prosecutorial spectrum; the Appendix
23 provides a synopsis of all cases.

24 The statutes on which OSI prosecutions are based do not distinguish among levels of

1 culpability. Whether one “assisted in persecution” is the core issue. Whether one lied about that
2 assistance is also often a factor. Yet the meaning of “assistance in persecution” is not self-
3 evident. Does it – should it – encompass unwilling assistance? What about assistance willingly
4 rendered, but only because the alternative might be death? And what should be actionable in
5 misrepresenting information on a visa or citizenship application? Does every false statement, no
6 matter how tangential, carry legal consequences? And if not, where should the line be drawn?
7 The cases filed by OSI helped clarify the law in all these areas.

8 While the courts gave legal answers, detailed in the cases reported herein, the issues
9 remain haunting when considered in the context of actual OSI cases. Is a police official who was
10 “merely” following orders when he rounded up Jews and confiscated their property different in
11 any meaningful way from a camp guard? Are there distinctions to be drawn among the camp
12 guards themselves? Were those who chose such duty (and received pay) more responsible than
13 those who were drawn from the ranks of German POWs? In making that determination, should
14 one consider the barbaric conditions of POW camps and the fact that POWs faced a Hobson’s
15 choice? They knew they would likely perish if they remained in German captivity for an
16 extended period of time. Does a POW who “volunteers” in such circumstances differ from a
17 Jewish kapo who, also fearing imminent death, wants only to better his chances for survival?

18 And what about propagandists? Although the Nuremberg trials made clear that
19 propagandists were culpable because they made genocide palatable to the public, how does the
20 prosecution of propagandists comport with our concept of free speech and freedom of the press?¹
21 Although the First Amendment does not apply to writings by foreign nationals overseas, should
22 we consider the spirit of the Amendment before filing a case against a propagandist?

1 How too should society view the scientists, industrialists, politicians and mid-level
2 bureaucrats who contributed to the horrors of the Holocaust through direct and indirect efforts to
3 keep the killing machines going? Are they more or less guilty than the camp guards, police
4 officers and others who came in direct contact with their victims?

5 Should age be considered in these matters? Does the fact that one was 17 or 18 during
6 the war make him less responsible than those who were older? And what about age now?
7 Should the government prosecute people who have spent decades as law abiding citizens in the
8 United States and are now nearing the end of their lives? Whether or not age is relevant, can a
9 persecutor expurgate his guilt by postwar activities that benefitted the United States and possibly
10 others as well? These are among the many issues which come to mind when examining the role
11 of OSI subjects in the Nazi genocidal program.

1. In 1966, the world community view on propagandists was codified in the International Covenant on Civil and Political Rights, 999 U.N.T.S. 171, 6 I.L.M. 368. Article 20 provides that:

1. Any propaganda for war shall be prohibited by law.
2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

The covenant was signed by President Carter in 1978 and ratified by the Senate in 1992, subject to a reservation proposed by the George H.W. Bush administration: that it "does not authorize or require legislation or other action by the United States that would restrict the right of free speech and association protected by the Constitution and laws of the United States." The United States also attached a declaration stating that the provision was not self-executing.

1 **Hands On Persecutors**

2
3 **Feodor Fedorenko – “Assistance in Persecution” Under the DPA**

4
5 *Fedorenko v. United States* is OSI’s seminal case. It gave the Supreme Court’s
6 imprimatur to OSI’s mission and made possible numerous prosecutions that would otherwise
7 have been foreclosed.

8 Feodor Fedorenko, a Ukrainian draftee in the Soviet Army, was captured by the Germans
9 in 1941. POW camp conditions were brutal, with many dying of overwork, disease and/or
10 starvation.¹ After being held prisoner in various German camps, he, along with several hundred
11 other POWs, was sent to Trawniki, Poland, a training area for men who were to assist the Nazis
12 in implementing Operation Reinhard – a program to dispossess, exploit and murder the Polish
13 Jews.² Once his training was complete, Fedorenko served as a guard in various locations,
14 including a Jewish ghetto and the Treblinka death camp, where approximately 800,000 Jews
15 were murdered.

16 Believing his wife and children had died during the war, he emigrated to the United
17 States in 1949. His visa application falsely stated that he had been born in Poland and spent the
18 war years there, first as a farmer and later as a factory worker.

19 Fedorenko remarried in the United States and became a naturalized citizen in 1970. He
20 later learned that his first family had survived and was still in the Soviet Union. He returned to
21 visit them in 1972, 1973 and again in 1975-76. During the second trip he was interrogated by
22 Soviet authorities about his role during World War II. The Soviets concluded that he was “not
23 criminally liable” for his activities, and they informed him as much.³

24 The INS opened an investigation in November 1975 after an article in *The Ukrainian*

1 News reported that Fedorenko had participated in atrocities during World War II. At INS'
2 behest, the Israelis interviewed various Treblinka survivors. Most picked him from a
3 photospread and recalled beatings and brutalities he had administered. When interviewed by the
4 INS, Fedorenko admitted having been a guard at Treblinka, though he contended he had gone
5 under duress and had not personally been involved in any persecution. Although some POWs
6 volunteered for camp guard duty in order to improve their lot, the government had no evidence
7 that Fedorenko had done so.

8 The U.S. Attorney's Office for the Southern District of Florida filed a seven-count
9 denaturalization complaint in August 1977. Four of the counts turned on Fedorenko's having
10 committed war crimes. The remainder involved his failure to disclose pertinent information (his
11 birthplace and war service) and his lack of the good moral character necessary for citizenship.
12 Coincidentally, the very month the complaint was filed, the SLU was established. An SLU trial
13 attorney was sent to assist in the *Fedorenko* prosecution. His main contribution was to find and
14 prepare a witness to testify about State Department procedures.

15 Trial lasted two weeks. As described by an evidently angry district court:

16 If ever a case supported the Judicial Conference ruling barring cameras from the
17 courtroom, this case does. From the beginning it was like a Hollywood
18 spectacular and polarized the residents of South Florida.

19
20 As an example of some of the emotional intensity surrounding the trial, the
21 Jewish Defense League ran ads in newspapers offering chartered buses from
22 Miami Beach to Fort Lauderdale on opening day. A demonstration outside the
23 courtroom ensued with a chant: "Who do we want? Fedorenko. How do we want
24 him? Dead." After the court was interrupted twice and the first three warnings
25 were ignored by the demonstrators, a leader who was using an amplified bullhorn
26 was arrested.⁴

27
28 Six Treblinka survivors testified that Fedorenko had beaten or shot Jewish prisoners at

1 the camp. In addition, a Vice Consul (the OSI-prepared witness) who had reviewed displaced
2 persons applications after the war, told the court that an armed guard would have been ineligible
3 for a visa – even in the unlikely circumstance that he had been importuned to serve. The denial
4 of a visa would have been based on the ground that he had assisted in persecuting civilians.

5 Fedorenko testified in his own behalf. He explained that as a POW he had been surviving
6 on grass and roots; he would have died had he not been sent to Trawniki. Even so, he had not
7 volunteered. He admitted knowing that Jews were murdered at the camp but insisted that,
8 having served as a perimeter guard, he had no hand in their death. Although he admitted
9 shooting in the direction of the prisoners during the 1943 Treblinka uprising, he said he had not
10 aimed to kill. He explained that he had falsely listed Poland as his place of birth in order to
11 avoid repatriation to the Soviet Union.

12 The trial judge found Fedorenko a very sympathetic character.

13 Defendant has retired on a social security pension and a pension from his
14 20 years labor He doesn't own a car; he doesn't own a house; he owns no
15 real estate except a cemetery lot, and he has a burial insurance policy. He has
16 accumulated a life savings of \$5,000 but owes his attorney an unknown fee
17 He has never been arrested in 29 years not even for a traffic offense. His one
18 failure as a resident and citizen in 29 years: he received one parking ticket.
19 Feodor Fedorenko has been a hard-working and responsible American citizen.

20
21 The court's benign view of Fedorenko contrasted sharply with its sense of the
22 prosecution. The court questioned whether the action should have been brought at all, suggesting
23 that doing so violated DOJ protocol. The court relied on a 1909 DOJ Circular Letter which
24 stated that denaturalization actions should be brought only rarely, and then only as a means of
25 promoting "betterment of the citizenry." The court was at a loss to understand how the country
26 would be bettered by the prosecution of someone who had been an upstanding citizen.

1 Moreover, the court excoriated the government for squandering taxpayer funds on daily
2 transcripts and two Russian interpreters.

3 The court was not any kinder to the government on the merits of the case. It concluded
4 that the Israeli photospread was impermissibly suggestive and that it tainted the subsequent in-
5 court identification of each of the survivors asked to identify Fedorenko in the courtroom. The
6 court also feared that the witnesses had been discussing the trial among themselves, or, even
7 worse, may have been coached on the identification.⁵ The court rejected the in-court
8 identifications "in toto."

9 The court then turned to a statutory analysis. Only "displaced persons" were eligible for a
10 visa under the DPA. The Act specifically *excluded* persons who could be shown:

11 (a) to have assisted the enemy in persecuting civil populations of
12 countries . . . or

13 (b) to have voluntarily assisted the enemy forces . . . in their operations
14 against the United States.

15
16 Although the word "voluntarily" was not used in subsection (a), the court concluded that
17 it should be read into that section. Failure to do so would lead to the "absurd" result that anyone
18 who assisted the enemy – even those who did so under duress, such as kapos and working
19 prisoners – would be excludable. The crux of the case therefore was whether Fedorenko's
20 service was voluntary. The court concluded that it was not. In so ruling, he credited Fedorenko's
21 testimony that he had been assigned to Trawniki rather than the Vice Consul's testimony that
22 guard duty was a voluntary assignment. Though Fedorenko might have escaped (testimony was
23 that some had done so) the judge refused to impose retroactively an obligation that a prisoner of
24 war risk his life in such an attempt.

1 Under this reasoning, Fedorenko was not automatically barred from applying for a visa.
2 The court then considered whether anything about his visa application itself warranted revocation
3 of citizenship. There was no dispute that Fedorenko had lied about his place of birth and
4 wartime assignment. But under Supreme Court precedent, such misrepresentations had to be
5 "material" if they were to be the basis for revoking citizenship. The Supreme Court had set up
6 two tests to determine materiality: (1) were facts suppressed which, if known, would have
7 warranted denial of citizenship; or (2) might disclosure of the facts have been useful in an
8 investigation possibly leading to the discovery of other facts warranting denial of citizenship.⁶

9 The government did not contend that guard service at Treblinka would, in and of itself,
10 have warranted denial of citizenship (though ultimately the case came to stand for that very
11 proposition.) The government argued only that if it had known of his work at Treblinka, it would
12 have investigated, and that investigation would have shown he committed atrocities that would
13 have precluded his becoming a U.S. citizen. The court disagreed on the ground that there was no
14 evidence that Fedorenko had participated in atrocities. Even his shooting at prisoners during the
15 uprising did not qualify because the court doubted he did anything other than "shoot over their
16 heads."

17 The court was no more bothered by Fedorenko's failure to report that he had served with
18 the German army. The court held that Fedorenko reasonably viewed himself a prisoner of war
19 rather than a soldier. As for good moral character, the court focused on his 29 exemplary years
20 in the United States; his conduct in the war was too fraught with "conflict and uncertainty" to be
21 determinative. In sum, the court found no statutory basis for revoking citizenship and the
22 government lost the case on the merits. The district court then went one step further and ruled

1 that even if the law did not warrant denial of the government's claim, it would have ruled for the
2 defense on equitable grounds. To reach this conclusion, the court focused on Fedorenko's
3 exemplary behavior in the United States rather than his conduct during the war.

4 The Solicitor General of the United States determines whether to appeal a government
5 loss. He does so after reviewing recommendations from various DOJ components and the
6 relevant agency or agencies involved, plus an overview from one of the lawyers in his office. In
7 this case, the U.S. Attorney from the Southern District of Florida, the Criminal Division and INS
8 all recommended appeal. [] head of the SLU, wrote that: "There were no B6

9 neutrals at a death camp; the choice was killer or victim;"⁷ he put Fedorenko squarely in the first
10 category. The Israelis, not normally participants in this decision-making process, weighed in
11 with Congress. They feared that the wholesale rejection of eyewitness testimony would make
12 survivors reluctant to testify in future cases. They were also horrified that the district court
13 would even suggest that kapos had aided persecution.⁸

D R A F T

- B 6 -

14 []

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16 []

17 [] As for the misrepresentations B5

18 (concerning his birthplace, wartime whereabouts and German army service) [] B6

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The war crimes and voluntariness issues could be decided without reaching the murkier

question of what constituted a "material" misrepresentation. Yet if the court wanted to reach that

issue, [He had originally believed that B6

[On further reflection,] B5

[If the latter standard was applied, the Vice

Consul's testimony would make the case, since he testified that if it had been known that

Fedorenko were a guard, he would have been denied admission. The Solicitor General

1 authorized appeal.

2 Attorneys in the Solicitor General's office argue cases before the Supreme Court. It is
3 extremely rare for them to handle cases in the lower courts. However, the INS asked if Ryan
4 could do so. By this point, he was well immersed in the issues and happy to take on the case.
5 With the Solicitor General's approval, he wrote the brief and argued the case before the Fifth
6 Circuit.

7 The government made three arguments: (1) that Fedorenko's deception about his
8 wartime service when he applied for a visa was material and justified revocation of his
9 citizenship; (2) that the district court used the wrong standards in judging the credibility of the
10 survivor witnesses; and (3) that the court erred in holding that equitable considerations
11 (Fedorenko's conduct in the U.S.) may serve as an alternative ground for its judgment. The
12 government did not challenge the district court's reading of a voluntariness requirement into the
13 statute. On the contrary, the government expressly endorsed that position.

14 The government won the appeal, with the Circuit adopting the government's position on
15 the misrepresentation and equitable relief issues; it did not rule on the question of eyewitness
16 testimony.¹⁴ The decision came down in June 1979, when OSI was in its infancy.

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19 []
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22 []

1 Attorneys General usually argue at least once before the Supreme Court during their term

2 in office. The case is of their choosing. [Handwritten mark]

3 [Redacted]

4 [Redacted]

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16 [Redacted]

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18 [Redacted]

19 [Redacted]

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22 [Redacted]

B5,
B6

14 There were two issues before the Court: the meaning of “materiality” and whether the
15 district court could rule on equitable grounds. Both sides were peppered with questions on
16 materiality.¹⁶ Yet in the end, the Court’s ruling did not turn on this at all.¹⁷ Instead, it
17 reexamined the language of the DPA and the testimony of the Vice Consul to reach conclusions
18 entirely different from those of the district court judge. Whereas the district court read the word
19 “voluntary” into Section (a) of the statute, the Supreme Court declined to do so. Given that the
20 word was in one section but not the next, the Court assumed the omission was intentional. Thus,
21 those who had assisted in persecution were ineligible for a visa – whether or not they acted
22 voluntarily.¹⁸

1 The question then became whether Fedorenko had assisted in persecution. In answering
2 affirmatively, the Court relied on the testimony of the Vice Consul who said that camp guards
3 were routinely denied admission on the ground that they had assisted in persecution. Given that,
4 Fedorenko had been unlawfully admitted. Everything flowing therefrom was tainted, including
5 his citizenship. It had been "illegally procured" and must be revoked.¹⁹

6 Unlike the district court, the Supreme Court was not concerned that such an analysis
7 could apply to kapos.

8 The solution . . . lies, not in "interpreting" the Act to include a voluntariness
9 requirement that the statute itself does not impose, but in focusing on whether
10 particular conduct can be considered assisting in the *persecution* of civilians.

11 Thus, an individual who did no more than cut the hair of female inmates before
12 they were executed cannot be found to have assisted in the persecution of
13 civilians. On the other hand, there can be no question that a guard who was issued
14 a uniform and armed with a rifle and a pistol, who was paid a stipend and was
15 regularly allowed to leave the concentration camp to visit a nearby village, and
16 who admitted to shooting at escaping inmates on orders from the commandant of
17 the camp, fits within the statutory language about persons who assisted in the
18 persecution of civilians.²⁰

19
20 (emphasis in original).

21 The Court also ruled that the trial judge had no discretion to deny denaturalization on equitable
22 grounds once the statutory requirements for denaturalization had been satisfied. Fedorenko's
23 citizenship was therefore revoked.

24 Justices White and Stevens dissented. Stevens' dissent was passionate. He believed that
25 voluntariness should be the key. Without it, the Court's effort to distinguish kapos from guards
26 did not hold up.

27 [T]he kapos were commanded by the SS to administer beatings to the prisoners,
28 and they did so with just enough force to make the beating appear realistic yet
29 avoid injury to the prisoner. . . . I believe their conduct would have to be

1 characterized as assisting in the persecution of other prisoners. In my view, the
2 reason that such conduct should not make the kapos ineligible for citizenship is
3 that it surely was not voluntary.
4

5 Stevens accused his colleagues of reacting to the horrors of Treblinka rather than following the
6 logic of the law: "The gruesome facts recited in this record create what Justice Holmes described
7 as a sort of 'hydraulic pressure' that tends to distort our judgment."

8 With the denaturalization complete, OSI filed a deportation action. Fedorenko was
9 ordered deported in 1983 and he chose the U.S.S.R. as his destination.²¹ It probably appeared a
10 wise choice at the time, given that the Soviet Union had earlier assured him he faced no criminal
11 liability.

12 While Fedorenko was in the midst of appealing the deportation order, the U.S. Embassy
13 in Moscow informed OSI of a recent trial and execution in the Soviet Union of a naturalized
14 Belgian citizen accused of war crimes. His war history was similar to Fedorenko's. He had been
15 a prisoner of war "convinced to join" the German ranks; he emigrated to Belgium after the war
16 but had been arrested by the Soviets during a 1968 visit to his homeland. He was detained in the
17 Soviet Union until his trial in 1983.

18 The Embassy recommended that Fedorenko be told of the case and the possible risks he
19 faced if deported to the U.S.S.R. The Criminal Division argued otherwise. It pointed out that
20 Fedorenko had been back to the U.S.S.R. in years after the Belgian had been detained, yet he had
21 not been arrested; it was thus not clear he would be arrested if deported now. Moreover, since
22 the Belgian case had been well covered by the U.S. media, Fedorenko and his attorney could
23 learn about it and make an independent assessment of his circumstances.²²

24 Fedorenko was deported to the Soviet Union in December 1984. Shortly before his

1 departure, a Soviet Embassy official opined that Fedorenko would be treated leniently in light of
2 his age.²³ And indeed, the following June the American Embassy in Moscow passed on a tip that
3 Fedorenko was living in the Crimea and seeking private pension benefits.²⁴ The telegram
4 concluded: "This . . . would seem to indicate that Fedorenko is alive and well and that he expects
5 to be in a position to enjoy his pension for the foreseeable future."

6 It was not to be. Just one year later, the Soviets tried him for desertion, taking punitive
7 actions against civilians, and participation in mass executions.²⁵ According to reports in the
8 Soviet press, several witnesses testified that Fedorenko had beaten Jews as they walked naked
9 toward a gas chamber.²⁶ He was found guilty and sentenced to death. The execution was carried
10 out in 1987.

11 The case has reverberated for OSI. The vast bulk of OSI prosecutions have been of camp
12 guards. [

13]
14 Under the Supreme Court ruling, if a visa was improperly procured, denaturalization
15 is mandatory. Just as importantly, the Court eliminated the possibility of asserting equitable
16 defenses in these cases. Had the holding been otherwise, a variety of equitable arguments (*e.g.*,
17 the difficulty of defending against claims arising from activity so long in the past, the
18 government's opportunity to have learned of the events sooner, the defendant's upstanding U.S.
19 citizenship) might have resulted in the dismissal of OSI cases. Without *Fedorenko*, OSI would
20 have had a very short docket.

21 Its significance extends beyond that however. In the words of DAAG Richard:

22 It served to refute the notion that the mere passage of time and the leading of a
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quiet life in the U.S. somehow made amends for the past. It established the correctness of OSI's effort and gave it a legitimacy that . . . others could never give It said that the issue wasn't merely one for the Jews, but what kind of a nation we want to be – a refuge for the repressed or a safe haven for the oppressor.

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1. Conditions in some POW camps were so dire that there were instances of cannibalism. See, e.g., Doc. 63: Transit Camp 140 to the 285th Security Division, Jan. 20, 1942, in NARA microfilm collection T-501 (Records of German Field Commands), reel 8, frame 1114. Of the roughly 3.5 million Soviet POWs who fell into German hands in 1941 – the year of Fedorenko’s capture – over two million were dead by Feb. 1, 1942. Christian Streit, *Keine Kameraden: Die Wehrmacht und die sowjetischen Kriegsgefangenen 1941 - 1945*, 4th ed. (Bonn: J.H.W. Dietz Nachf., 1997), p. 136.

2. See p. 31, n. 19.

3. Fedorenko testified about this during his deportation hearing. The U.S. government learned of the Soviet decision after it filed its denaturalization case. Aug. 11, 1978 cable from the Ministry of Foreign Affairs of the U.S.S.R. to the American Embassy in Moscow.

4. *United States v. Fedorenko*, 455 F. Supp. 893, 899 (S.D. Fl. 1978), *rev'd*, 597 F.2d 946 (5th Cir. 1979), *aff'd*, 449 U.S. 490 (1981).

5. According to the OSI attorney (interviewed on Jan. 16, 2002) and the Israeli liaison on the case (who spoke with SIU attorney [redacted] after trial), there was no basis for this conclusion. The witnesses, who had never before been in a U.S. courtroom, were not individually prepped nor even told how the courtroom was organized. Having testified at war crimes trials in Germany, some thought that the defendant must be seated in the audience. B6

6. *Chaunt v. United States*, 364 U.S. 350-355 (1960)

7. Sept. 15, 1978 memo from [redacted] to the Solicitor General. B6

8. Aug. 24, 1978 letter to [redacted] from [redacted] B6

9. Sept. 12, 1978 memorandum from [redacted] to the Solicitor General. All references hereafter to [redacted] first memo are to this document. B6

[redacted]

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12. Patty Hearst was an heiress kidnaped by a radical group in the 1970s. She was convicted for participating in a bank robbery with her captors. (Years later, and long after Ryan’s memo, she was granted a pardon by President Clinton.)

13. Sept. 27, 1978 memorandum from Ryan to the Solicitor General. All references hereafter to Ryan's second memo are to this document.

14. *United States v. Fedorenko*, 597 F.2d 946, 953 (5th Cir. 1979).

16. Supreme Court arguments are recorded and the tapes are kept on file in the Motion Picture Sound and Reference Room at the National Archives. The *Fedorenko* argument is 267.326, No. 79-5602.

17. *Fedorenko v. United States*, 449 U.S. 490 (1981). How to determine materiality in these cases was resolved years later in *United States v. Kungys*, 485 U.S. 759 (1988), discussed at pp. 127-133.

18. In fact, however, it was not Congress which crafted the language in sections 2(a) and (b); the language was adopted from the IRO. Nothing in the legislative history of the Act indicates that Congress focused on these subtleties in the IRO. Therefore, it arguably presumes too much to say that Congress made a conscious distinction; it was simply taking definitional terms from another document.

19. The Court's opinion did not clearly distinguish between citizenship that is "illegally procured" or citizenship procured through "misrepresentation" or "concealment of a material fact." The Supreme Court seemed to be saying that Fedorenko had both procured his citizenship illegally and through misrepresentation.

20. The factors enumerated by the Court were those which applied to Fedorenko. An argument could be made however that two of the factors – the stipend and leave – have nothing to do with persecution.

21. *Matter of Fedorenko*, A07 333 468 (Imm. Ct., Hartford, Conn. 1983), *aff'd*, 19 I. & N. Dec. 57 (BIA 1984).

22. Nov. 8, 1984 memo to [] from [] re "Deportation of Feodor Fedorenko to the U.S.S.R." B6

23. Nov. 26, 1984 memo to [] from [] re "Deportation of Feodor Fedorenko." B6

24. Telegram No. 071833Z, June 7, 1985 from AmEmb., Moscow to the Secretary of State. According to subsequent news accounts, he had indeed been living in the Crimea with his wife. "Soviet Reports it Executed Nazi Guard U.S. Extradited," by Felicity Barringer, *The New York Times*, July 2, 1987.

25. It is unknown why the Soviets changed their view on his wartime culpability.

26. "War Criminal Sentenced to Death," by Alison Smale, *AP*, June 19, 1986.

DRAFT

1 **Georg Lindert and Adam Friedrich – “Assistance in Persecution” Under the RRA**

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3 The stone quarry at the Mauthausen concentration camp was infamous for its brutality.

4 The prisoners were forced to extract large quantities of granite from the quarry
5 without significant safety measures and without regard to the health of the
6 prisoners. The quarry included a set of one hundred and eighty-six stone stairs
7 from the floor to the top of the quarry. Some guards forced prisoners to march up
8 and down the stairs carrying heavy stone as a form of punishment.¹

9
10 Georg Lindert served as a guard at the quarry.²

11 Lindert first applied to enter the United States in 1951, under the DPA. Rather than
12 listing his guard duty on the visa application, Lindert claimed to have served in a combat division
13 of the Waffen SS. At the time he applied for entry, administrative regulations made membership
14 in the Waffen SS an automatic disqualifying factor. Accordingly, his visa request was denied.

15 Three years later, the DPA had been supplanted by the RRA. In addition, the
16 administrative rules had been modified so that the Waffen SS was no longer a *per se* visa
17 disqualifier. Lindert reapplied for a visa, again making no mention of his guard service. In
18 response to a question asking for a list of his residences, Lindert wrote “1942-1945 with the
19 German Army.” The visa was issued, and he came to the United States in 1954.

20 Several years later, when applying for U.S. citizenship, Lindert completed a form which
21 asked for a listing of all organizations of which he had been a member. He did not list the
22 military.

23 The RRA’s use of the word “personally” when describing assistance in persecution was a
24 cause of concern to OSI. The addition of this word – absent from the DPA under which most
25 OSI cases are brought – could arguably require the government to establish *individual*
26 culpability. In DPA cases, it is sufficient to show that the defendant was one of a group all

1 responsible for activities which amounted to assistance in persecution. [

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4] Therefore, when it filed suit against Lindert
5 in 1992, the government did not base its claim on his having assisted in persecution. He was
6 charged only with illegal procurement of citizenship.

7 The complaint set forth three bases for its claim: (1) service as a camp guard showed that
8 Lindert lacked the good moral character required for naturalization; (2) he misrepresented and
9 concealed a material fact on his citizenship application when he failed to list the military as an
10 organization to which he belonged; and (3) he lacked good moral character because he had been
11 untruthful both in failing to list Mauthausen as a place of residence and in not referencing the
12 military as an organization to which he had belonged.

13 *Lindert* was the first case in which OSI charged "lack of good moral character" based on
14 guard service for someone who had entered under the RRA. Following a three week trial with
15 over 300 government exhibits, the district court rejected all the government's theories. The
16 court acknowledged that Lindert had served as a guard in a brutal camp. However, absent
17 "evidence that Lindert ever fired his gun or took any other action hostile to any prisoner," the
18 court was unwilling to conclude that his moral character "was irreparably soiled by his actions or
19 inactions while he was a guard."

20 The court excused Lindert's misstatements on the ground that the forms he completed
21 were ambiguous. No question had specifically asked about military service. Not everyone asked
22 to list organizations of which they were a member would think that called for a reference to the

1 military. Nor, in the court's view, was it self evident that a listing of residences would mandate a
2 specific reference to a concentration camp, when in fact the defendant had responded that he was
3 in the military during the relevant period. Because of the ambiguity, the court found no evidence
4 that Lindert had intended to mislead. Without such intent, there was neither a "wilful"
5 misrepresentation nor evidence of bad moral character. He was allowed to retain his citizenship.

6 In ruling against the government on the question of whether service as a camp guard *per*
7 *se* established lack of good moral character, the court relied in large part on its assessment of
8 witness credibility. The court believed the defendant's testimony that he had served "only" as a
9 perimeter guard, and that, as such, he had no role in persecution. It discounted the testimony of
10 OSI's expert, an historian who testified that guards rotated responsibilities.⁴ It also rejected
11 OSI's argument that perimeter duty alone would establish lack of good moral character in any
12 event, because perimeter guards kept persecuted civilians from escaping.

13 The *Lindert* ruling came in spite of the fact that the Supreme Court had held in *Fedorenko*
14 that service as a perimeter guard amounted to "assistance in persecution" under the DPA.

15 Although *Fedorenko* did not have a "good moral character" count, the *Lindert* court
16 found *Fedorenko* instructive. Since *Fedorenko*, unlike Lindert, had admitted shooting at
17 escaping inmates, the *Lindert* court concluded that it took that type of direct abusive action to
18 establish lack of good moral character.⁵

19 The *Lindert* court was not the first to rule against the government on issues concerning
20 misrepresentation about place of residence or organizations joined.⁶ However, none of the other
21 cases involved a defendant who had entered under the RRA. Moreover, the other courts had
22 accepted alternative theories offered by the government for revoking citizenship. The *Lindert*

1 court did not and the case was therefore an outright loss.

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Although *Lindert* was only a district court opinion, its impact on OSI was significant.

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Although there were several RRA cases under investigation at the time of the *Lindert* loss, they were put aside.

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Years later, an attorney who joined the office after *Lindert* was decided urged OSI to reexamine the matter. Based on new research, the office proposed filing a test case to litigate the “personally advocated or assisted in persecution” issue directly, as it had not been done in *Lindert*. The Criminal Division authorized the filing, and in 2002, seven years after *Lindert*, a case was filed against Adam Friedrich.

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Friedrich had entered the country under the RRA after serving as a guard at two camps.

19

His duties twice included guarding prisoners on forced marches during camp evacuations.

20

Neither his visa application nor his 1962 citizenship papers mentioned his guard service. The

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government filed a denaturalization case and argued that the word “personally” was inserted into

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the RRA only to ensure that individuals were excluded based upon conduct, rather than mere

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1 membership in an organization.¹⁰ Since the defendant had been a camp guard, the government
2 contended that this alone established impermissible conduct.

3 The district court, citing *Fedorenko* and its DPA progeny, agreed. It never even cited
4 *Lindert*. The Circuit court, also ignoring *Lindert*, affirmed and issued an even broader ruling. It
5 held that the word “personally” modifies “advocated” or “assisted;” it does not concern whether
6 one “engaged in direct persecution.” “[B]y impeding prisoners’ escape,” Friedrich was “actively
7 and personally involved in persecution” even if he “never saw a prisoner escape, never harmed a
8 prisoner, never discharged his weapon while guarding prisoners, and never saw any prisoners die
9 during the forced evacuation marches.”¹¹

10 The *Friedrich* prosecution ended the pall cast by *Lindert* and opened the way for a series
11 of cases that OSI had been holding in abeyance for years.¹²

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1. *United States v. Lindert*, 907 F. Supp. 1114 (N.D. Ohio. 1995).

2. He also stood guard at a Mauthausen subcamp where inmates were forced to build a tunnel through a mountain pass.

3. May 20, 1996 memorandum from [redacted] to [redacted] re "Defendant's Allegation of 'Bad Faith' in Seeking Attorney's Fees in *United States v. Lindert*, Case No. 4:92CV1365 (N.D. Ohio)." B6

4. The historian [redacted] has worked on approximately two dozen cases for OSI. [redacted] B6

[redacted] The primary documentary evidence in support of this view is the German Wrong/Right picture book and its narrative companion, "Instruction on Tasks and Duties of the Guard," as well as the 1933 service regulations for the Dachau concentration camp.

5. Interestingly, the *Lindert* court made no mention of *U.S. v. Schiffer*, 831 F. Supp. 1166 (E.D. Pa. 1993), *aff'd*, 31 F.3d 1175 (3rd Cir. 1994), decided just a year earlier. In that (non-RRA) case the court concluded that lack "good moral character" depended on a showing that the person voluntarily engaged in "some morally reprehensible conduct."

For instance, a person who was forced into service under a constant threat of death might not lack good moral character simply because of his service. Similarly, it is not entirely impossible that a member of the SS had responsibilities, such as minuscule clerical duties, so insignificant and unrelated to the Nazi program that his contribution is negligible.

831 F. Supp. at 1198.

(The court concluded that Schiffer, whose service was voluntary and significant, did lack good moral character.)

6. *U.S. v. Kairys*, 600 F. Supp. 1254 (ND Ill. 1984), *aff'd*, 782 F.2d 1374 (7th Cir.) (wartime service need not be listed in response to the question about membership in organizations); *U.S. v. Osidach*, 513 F. Supp. 51, 104 (E.D. Pa. 1981) (defendant not required to list his police service in response to that question). Both *Kairys* and *U.S. v. Schellong*, 717 F.2d 329 (7th Cir. 1983), held that the residence question did not call for a listing of concentration camp postings.

7. *Demjanjuk v. Petrovsky*, 10 F.3d 338 (6th Cir. 1993), *cert. denied sub nom. Rison v. Demjanjuk*, 513 U.S. 914 (1995) and *U.S. v. Petkiewytch*, 945 F.2d 871 (6th Cir. 1991). These cases are discussed at pp. 134-140 and 150-174.

8. Sept. 22, 1995 memorandum from [redacted] to [redacted] re "Loss in *United States v. Lindert*." B6

9. Nov. 8, 1995 memorandum from [redacted] to the Solicitor General re "United States v. George Lindert." B6

10. Unlike the DPA, the RRA did not preclude issuance of visas to persons who were members of a “movement hostile” to the U.S. The government contended that the word “personally” reinforced the new statutory emphasis – focusing on persecution committed by an individual rather than by a group. As such, it had nothing to do with one’s subjective intent to persecute others.

11. *U.S. v. Friedrich*, 305 F. Supp. 2d 1101 (E.D. Mo. 2004), *aff’d*, 402 F.3d 842 (8th Cir. 2005).

12. As of this writing, three RRA cases are in litigation. The defendants are John Hansl, Josias Kumpf and Anton Geiser. Both Hansl and Kumpf had their citizenship revoked, and in each case the court relied heavily on *Friedrich*. *U.S. v. Hansl*, 364 F. Supp.2d 966 (S.D. Iowa 2005), *aff’d*, 439 F.2d 850 (8th Cir. 2006); *U.S. v. Kumpf*, 2005 WL 1198893 (E.D. Wis. 2005), *aff’d*, 438 F.3d 785 (7th Cir. 2006). *Geiser* is still pending. Update if necessary

DRAFT

1 **Frank Walus – Lessons Learned by OSI**

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3 **I. The Prosecution**

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5 Early critics of OSI often cited the *Walus* case as an example of the office overreaching.¹
6 Their criticism was misdirected. In fact, the prosecution and appeal were handled by the Chicago
7 U.S. Attorney's Office before OSI's founding. The Circuit ruling – excoriating the prosecution
8 and remanding the case for retrial – was issued shortly after OSI was established, making *Walus*
9 one of the first cases with which the office had to contend. OSI's role was palliative.

10 Frank Walus was born to Polish parents residing in Germany. His father died when he
11 was a youngster and the family returned to Poland. Where he spent the war years became a
12 matter of intense dispute, as discussed below. After the war, he lived in Poland, spending seven
13 years in the town of Kielce. He entered the United States in 1959 under the INA. Several
14 months later, he returned to Poland, but then came back to the United States in 1968. He settled
15 in Chicago, where he was naturalized in 1970.

16 A letter from Simon Wiesenthal brought Walus to the attention of the INS in 1974.
17 Wiesenthal reported that Walus had delivered Jews to the Gestapo in the Polish towns of
18 Czestochowa and Kielce.²

19 INS contacted representatives of various Jewish survivor organizations to determine if
20 they had any information about Walus. None did.³ The agency also spoke with eleven of his
21 neighbors, eight former boarders in his home, and Walus himself. Nothing supporting the
22 allegations came from these interviews.⁴ Walus told INS that he had spent World War II in
23 Germany as a forced laborer.⁵

24 In response to an INS request, Israel placed advertisements in Israeli newspapers asking

1 anyone with information to come forward. The ads mentioned Walus by name and explained
2 that they were seeking witnesses for an investigation of war criminals in the Polish towns of
3 Czestochowa and Kielce. Those who came forward were shown one of two photospreads. In
4 each, the picture of Walus showed him at age 36 although he had been a teenager during the war.

5 Israel gathered six survivor affidavits, with five of the affiants claiming to be
6 eyewitnesses to atrocities committed by Walus. The sixth stated that he delivered mail to
7 Gestapo headquarters in Kielce, and some of the letters were addressed to a Frank Walus.

8 The eyewitness accounts were dramatic.⁶ Several recalled seeing Walus in uniform or at
9 Gestapo headquarters, although they were divided as to whether he had been in Kielce or
10 Czestochowa. (The towns are 60 miles apart.) One claimed Walus had shot a woman in the
11 neck after forcing her and two young girls to disrobe. Although the witness turned away after
12 the first shot was fired, he heard two additional shots. When he looked back, the three bodies
13 lay motionless. On a different occasion, he saw Walus shoot a Pole who had been trying to
14 escape.

15 Another witness claimed that Walus dragged a neighbor from his apartment to a waiting
16 automobile. He saw Walus strike the neighbor and later learned that the neighbor had died. A
17 third saw Walus beat an elderly Jew to death with an iron bar. The fourth reported seeing Walus
18 separate children from adults. She later heard that the children had been killed. The fifth had
19 witnessed Walus beating Poles and Jews. All but one witness picked Walus from the
20 photospread.

21 INS attorneys went to Israel to interview the witnesses themselves. The information they
22 developed was generally corroborative, though in some cases more detailed than had previously

1 been known. For example, the witness who originally reported the delivery of mail to a Frank
2 Walus at Gestapo headquarters now recalled personally handing some of those letters to Walus.
3 Moreover, he recalled seeing Walus shoot an elderly and sick woman as well as several crippled
4 and undernourished ghetto residents. He told one INS lawyer that he did not give the Israelis
5 full information because he believed the Israeli interviewer was inexperienced and not seeking an
6 in-depth account of events. He told another that he had been reticent with the Israelis because he
7 knew that Walus was living in the U.S. and therefore assumed the Israelis would be unable to do
8 anything about him. And while he earlier had been unable to pick out Walus' photograph, he
9 could now do so, explaining that he had not been wearing his glasses during the prior interview.

10 The witness who recalled Walus beating a Jew now said that he witnessed Walus beat five other
11 Jews as well.

12 The INS attorneys compared the statements they had taken with those given to the
13 Israelis. They generally found reasons to accept the later and more detailed accounts given to
14 them, in part because they believed the INS questioning was "more specific and detailed" than
15 had been the Israelis'. They expressed concern over only one witness because she "was very
16 emotional and it was very difficult to obtain direct answers." They suggested she not be called to
17 testify.⁷

18 Additional investigation by INS turned up several witnesses in the United States. One
19 said he was within 50 feet of Walus in the Czestochowa ghetto in 1941. He heard shots ring out
20 and then saw Walus with a pistol in hand standing over the dead bodies of a mother and daughter
21 who had been walking down the street. Another recalled Walus breaking into her room and
22 pointing a pistol at her husband. She pled with Walus to spare her husband's life. He did so but

1 then ran into another apartment and shot the inhabitant therein.

2 Despite the discovery of these eyewitnesses to persecution, there was no ready basis for
3 deportation since the Holtzman amendment had not yet been enacted. However, Walus could
4 still be denaturalized, although the ready ground for denaturalization – assistance in persecution
5 – was unavailable since Walus had not emigrated under the DPA or RRA. In January 1977,
6 Walus was charged with procuring his citizenship illegally, both because he concealed material
7 facts (wartime atrocities and his membership in the "Gestapo, SS or other similar organization")
8 and because he lacked the good moral character required (as evidenced by his having committed
9 war crimes and having concealed his membership in the Gestapo).

10 Before the case went to trial, the SLU was established

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13 Trial began in March 1978 before Senior Judge Julius Hoffman. Hoffman had received
14 much notoriety and negative publicity nine years earlier when he presided over the trial of "The
15 Chicago Seven," a group of protestors at the 1968 Democratic convention. The judge's outbursts
16 and inability to control the courtroom were the basis for overturning those convictions on
17 appeal.⁹

18 At the time of the *Walus* trial, Judge Hoffman was 82 years old. By unfortunate
19 happenstance, the role of the Nazis during World War II was then a headline story in Chicago as
20 well as the rest of the nation because of a planned march of Nazi sympathizers through Skokie,
21 Illinois.

22 Skokie, a Chicago suburb which was home to many Holocaust survivors, had enacted

1 three ordinances designed to restrict demonstrations.¹⁰ A month before the *Walus* trial, a court
2 ruled the ordinances unconstitutional.¹¹ The appeal of that ruling was argued during the *Walus*
3 trial.

4 Courthouse security during the trial was unusually tight for the times; it included a metal
5 detector at the courtroom door and an armed guard at the elevator. The government presented
6 twelve eyewitnesses, eight from Israel and four from the United States. Each testified to having
7 seen Walus in Poland (either in Czestochowa or Kielce) between 1941 and 1943.

8 By and large, the survivors testified consistently with their pre-trial interviews and
9 depositions, though in some instances testimony was expanded on the witness stand. The
10 witness who told the INS he had turned away after seeing Walus murder a woman, only to hear
11 two more shots ring out, now claimed to have actually witnessed the murder of all three victims.
12 Another told of Walus killing an old woman and shooting two of his best friends, though he had
13 not mentioned the murder of his friends when he first spoke with Israeli interrogators. The
14 witness who one INS attorney had deemed too emotional to testify was, nonetheless, called by
15 the government. Her testimony did not hold up well on cross examination.

16 Beyond these individual problems, there were overarching issues which affected the
17 credibility of the eyewitness identifications. Not only had the perpetrator gone from a youth to a
18 middle-aged man in the 35 intervening years, but the very circumstances of ghetto life made it
19 questionable whether the survivors could rely on their visual memories. Testimony included the
20 following:

21 I wouldn't look at him. I tried not to see him. I tried to avoid him as much as one
22 avoids a dog.
23

1 I never looked in his eyes. I was afraid to look in his eyes. I thanked God every
2 time I left the Gestapo.

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4 At that time there wasn't even 5 percent of hope in me that I will survive this
5 time. Therefore, I didn't really make any special mental remarks.

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7 Nor did the mental image survivors recalled match well with the defendant in the
8 courtroom. Despite Walus' diminutive stature (he stood approximately 5'4"), the witnesses
9 generally described the assailant as average height or taller.

10 The government also presented several witnesses who first met Walus in the United
11 States. They testified about statements of his which were inconsistent with his claim of having
12 been a farm laborer in Germany during the war. Two said that Walus spoke of being in a labor
13 camp and inadvertently gassing prisoners. He told them that the Germans had tricked him into
14 turning on the shower without telling him that the system was designed for executions.

15 A key witness presented by the government was [REDACTED]

16 [REDACTED] B6
17 [REDACTED] In his pre-trial deposition, [REDACTED] B6
18 day [REDACTED] B6 had admitted to [REDACTED] B6 that even she did not know what to believe.¹³ [REDACTED] B6

19 however, showed no such doubts during his trial testimony. He described Walus boasting about
20 helping the Gestapo liquidate ghettos and arresting Poles who assisted Jews. According to
21 [REDACTED] Walus told of having thrown Jewish babies against a wall. [REDACTED] had similar B6
22 stories, involving tales of killing Jewish children and pregnant women and rounding up Poles
23 who hid Jews.

24 The defense suggested that both [REDACTED] B6 were biased because of the strong animus
25 between them and Walus: Walus had accused [REDACTED] B6 of cheating both him and another tenant out

1 of money, maligned [] to a social service agency, reported him to the INS, told [] new B6
2 neighbors that [] was a murderer, and written derogatorily about [] to the president of a B6
3 Polish organization in Vienna wher [] went to Austria. B6

4 Judge Hoffman thought pursuit of the bias angle "inappropriate." He cut off fruitful areas
5 of cross-examination with other witnesses too, including probes about the height and voice
6 timbre of the person whom the survivors were recalling. At times the court was so antagonistic
7 to defense counsel that the government joined with the defense in an effort to salvage the
8 record.¹⁴

9 The defense began with Walus' testimony. He recounted being taken from Poland to
10 Germany and being forced to work on various farms. He named the farmers, recalled local
11 friends, and described the area and surrounding terrain with great particularity. He even
12 introduced pictures of himself on some of the farms during the war years. The pictures had
13 stamped on their back the date and place of development. German farmers, their relatives and
14 neighbors verified that Walus had indeed been at these locations. A Polish priest testified that
15 Walus had attended church fairly regularly until 1940 and then was not seen again until 1947.
16 The priest also confirmed that the pictures of Walus submitted by the defense accurately depicted
17 the way Walus looked at the time.

18 Walus also presented abundant documentary corroboration, most of which his attorneys
19 had turned over to the government before trial. There were records from the German Health
20 Insurance Office (an organization analogous to Blue Cross) showing that payments were made
21 for a farmhand named Walus who worked during the relevant periods on the farms about which
22 Walus testified. And Red Cross records, created in 1949, listed Walus as a foreigner in the

1 appropriate farm towns of Germany during the war.

2 The absence of certain records was also telling. The Germans had no record of Walus
3 having served in the military and the Polish war crimes commissions in Kielce and Czestochowa
4 had no record of him either.

5 The trial lasted 17 days. During the six weeks that the case was under submission, the
6 Holocaust was much in the news. The governor of Illinois proclaimed Holocaust Remembrance
7 Week, NBC aired a powerful four-part miniseries on the Holocaust and the Seventh Circuit ruled
8 the Skokie ordinances unconstitutional.¹⁵ In addition, Simon Wiesenthal gave an interview to

9 *The Chicago Sun-Times* in which he acknowledged informing the INS about Walus and boasted
10 that he never had a case of mistaken identity.¹⁶

11 Judge Hoffman revoked Walus' citizenship.¹⁷ He found the survivor witnesses
12 "powerful and convincing," noting "a high degree" of consistency among them. The court was
13 also persuaded by the defendant's statements of wartime escapades -- especially his statements to
14 the Alpers. Although the court acknowledged "strong illwill" between Walus and the Alpers, the
15 Alpers' testimonial demeanor persuaded Judge Hoffman that they were credible.

16 By contrast, he found the defense witnesses unconvincing. The very fact that Walus'
17 former employers were supportive bespoke their disingenuousness as far as the judge was
18 concerned. He found it "curious" that a forced laborer would have formed friendships and kept
19 contact with those for whom he worked. And the fact that some of the witnesses (or their
20 relatives) had been members of the Nazi party tarnished their credibility in Judge Hoffman's
21 eyes.

22 The documentary evidence did nothing to bolster the defense case in the court's view. He

1 found the date and place stamps on the photographs irrelevant because they established only
2 where the film had been developed, not where the photographs were taken. The medical
3 insurance records were disregarded because they were incomplete (some having been destroyed
4 during or after the war).

5 Walus filed a series of motions to vacate the judgment based on newly discovered
6 documents and witnesses. The documents included residence permits recently found in a
7 German archive. The permits, which included a photograph of the defendant, had been issued in
8 1940 and placed Walus on two of the farms about which he testified.

9 New eyewitness testimony came from a French prisoner of war shipped to Germany as a
10 forced laborer. He had come in contact with Walus during that time and was coming forward
11 "in order to rectify a miscarriage of justice" after reading about the trial.

12 Two other witnesses, who had been known to the defense but had refused to come to the
13 United States to testify, were now willing to do so in light of the verdict against Walus. One was
14 a Pole who had been forced to work in Germany. His affidavit was accompanied by four
15 photographs of Walus with other Polish farm workers in Germany between 1941 and 1945. The
16 second was a German priest who had been too ill to travel to the trial. His affidavit stated that
17 Walus had attended services in his parish during the war years. Walus also offered a statement
18 from the University of Munich stating that he could not have been in the SS or the Gestapo both
19 because he was Polish and because he was too short to meet the entrance criteria.¹⁸

20 Judge Hoffman was not persuaded. Since some of the witnesses had been known to the
21 defense before trial, their statements did not qualify as "newly discovered." Other evidence was
22 rejected on the ground that it was merely cumulative of material presented during the trial.¹⁹ As

1 for the nationality and height restrictions, Hoffman noted that they were not absolute.²⁰

2 Several months later, Walus sought assistance from the court in securing the testimony of
3 yet more newly discovered overseas witnesses. Walus' Polish father-in-law had been contacted
4 after the verdict by several Poles who had been forced laborers with Walus. The defense lacked
5 resources to travel to Poland and interview these new witnesses and had twice asked the Polish
6 War Crimes Commission to conduct the interviews. The Commission had not responded and
7 Walus wanted the court to issue an order stating that they should do so.

8 Judge Hoffman denied the request without opinion. Two days later, defense counsel
9 received a letter from the Polish War Crimes Commission stating that it would provide
10 information if so ordered by a court. The defense urged the court to reconsider its ruling in light
11 of the Polish offer. Judge Hoffman refused.

12 Walus appealed the original district ruling both on its merits and for alleged bias by the
13 judge. He appealed also the denials of his post-trial motions. The cases were consolidated and
14 argued one week before OSI was established. The Seventh Circuit issued its opinion ten months
15 later.²¹ Although the Court noted "instances of attitude we find somewhat disturbing on the part
16 of this experienced trial judge," it declined to reverse on the ground of bias. The Circuit was
17 more equivocal about the merits of the case itself, characterizing as "persuasively presented" the
18 argument that there was insufficient evidence to support the verdict. In the end, however, the
19 court opted for a remand. It did so on the ground that the government's case "was sufficiently
20 weak, particularly as to impeachment of the defendant's documentary evidence, that the newly-
21 discovered evidence would almost certainly compel a different result in the event of a new trial."

22 The Circuit was particularly concerned about the reliability of the government's

1 witnesses, upon whom the district court so heavily relied. Especially disturbing was the way the
2 witnesses had first learned of the investigation and the procedures used during the photograph
3 displays. Not only were the photospread pictures taken almost 20 years after the events in
4 question,²² but the picture shown to eight of the twelve eyewitnesses was of particularly poor
5 quality. The court was dismayed also by Judge Hoffman's heavy reliance on the [] despite B6
6 the fact that the "evidence of hatred" between them and the defendant was "extremely strong."

7 Although the government had argued that the defense documents were forged or altered
8 in order to create an alibi, the Circuit would have none of it. In light of the newly-discovered
9 evidence, the court found the government's theory "impossible to believe" and concluded that
10 affirming Judge Hoffman's decision would be "an intolerable injustice." The case was remanded
11 for trial before a different judge.

12 Since OSI had not been in existence at the time of the Circuit argument, review of the
13 opinion was its first input on the case. [] then Deputy Director, urged against seeking B6
14 rehearing or Supreme Court review. His concerns were both [] B5

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it was Walus who petitioned for rehearing, arguing that a retrial would pose a devastating financial burden. He also asked the court to consider an outright reversal without remand. The Circuit rejected both arguments, though it noted that reversal was "an exceedingly close question." The panel made even more clear than it had originally its disdain for the case as tried.

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[W]e are hesitant to believe that the Department of Justice will decide to re-litigate this case without first determining that it has a stronger case than it did in the first trial. In that respect, it is of interest that with the resources at its command, the Government has apparently been unable to demonstrate more persuasively than it has heretofore that Walus was indeed in Poland during the crucial years. . . . It is somewhat incredible that if Walus spent his boyhood in the area in Poland where he allegedly committed his Nazi activities in his late teens that not one witness has been brought forward who remembered the boy growing into manhood and who, on that basis of personal knowledge, identified him as the perpetrator of the atrocities attributed to him.²⁴

The ball was now squarely in OSI's lap.²⁵ [] sent two investigators to Europe to B6

examine the case "down to its floor nails."²⁶ They interviewed current and former residents from the area of Germany where Walus claimed to have spent the war years. Some of the witnesses had testified at trial; others were newly found. All supported the defense theory of the case. So too did employees at the German Health Insurance office. To the extent that OSI was allowed to

1 examine their records,²⁷ that too was corroborative of Walus' claims.

2 Over the course of this trip and another, OSI compiled a list of 25 Germans who would
3 have been in a position to know Walus if he had worked for the German police in Czestochowa
4 or Kielce. Of the 25, they located six. Two refused to answer any questions; the other four were
5 shown a photospread. They could not identify Walus by picture or name.

6 The canvassing and research was exhaustive and took approximately seven months to
7 complete. It included the following: asking the Polish War Crimes Commission to interview
8 Walus' first wife and his European employers as well as to review all investigations of Nazi
9 operations in the areas of Poland where Walus had allegedly been stationed during the war;
10 having the Israelis review all defense documents for authenticity;²⁸ reviewing records at the
11 National Archives and the YIVO Institute in New York City for documents relating to the
12 vicinity in Poland where Walus had allegedly been posted; reading reports from survivors of the
13 Kielce and Czestochowa ghettos to see if there was any mention of Walus; contacting the Polish
14 Archives, the Berlin Document Center (repository of membership records of the Nazi party and
15 the SS), the German equivalents of the CIA²⁹ and FBI,³⁰ the Hoover Institute,³¹ the Bavarian State
16 Archives, and various agencies in the area in which Walus claimed to have been a farm worker;³²
17 subjecting the records Walus had submitted to forensic examination; having the Polish
18 government interview the Poles who filed post-trial affidavits on Walus' behalf; and interviewing
19 Jews from Czestochowa and Kielce now living in the United States.

20 Aside from one survivor in the United States who claimed to recognize Walus, everything

21 [B5] There was even new reason to doubt the [] B6
22 testimony: Walus had filed a lawsuit against [] in October 1974.³³ B6

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] He stressed the bitterness between the [] and Walus and

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drew a profile of Walus based on the more than 150 people and institutions the authorities had contacted over the years. These included twenty-two witnesses who had lived or worked with Walus. They had differing memories of Walus' wartime accounts, which included claims that he had escaped from a German concentration camp and served with the Polish underground. His neighbors described him as acrimonious.

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] His former

farm employers, fellow forced laborers, and two priests all swore to facts in Walus' favor. In addition, there was documentary evidence which OSI's own experts had authenticated. And beyond this direct proof, there was compelling circumstantial evidence, including the "complete absence of any [contrary] documentary evidence" despite thorough searches. Moreover, Walus

1 had returned to Poland after the war. [] knew that, as a general proposition [B6

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3 [] compared the government's case to that presented by the defense. B6

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11 On November 26, 1980, the U.S. Attorney, with the approval of the Criminal Division,
12 moved to dismiss the case. He read a statement prepared by himself and [] It included a B6
13 review of the exhaustive investigation conducted by OSI in the wake of the Circuit opinion and
14 noted that the government had "no doubt that the witnesses who testified on behalf of the
15 government – the survivors of the Nazi persecutions of Czestochowa and Kielce – testified
16 sincerely and honestly." The government noted too that the defendant had told various
17 acquaintances and coworkers that he had been a Nazi agent and that he had committed acts of
18 violence on innocent and defenseless Jews. "Although he later denied such admissions, the law
19 has traditionally and properly accorded such admissions significant weight and, indeed, the
20 District Court found these statements critical to its decision." Nonetheless, the "striking absence"
21 of corroborating evidence, and the plethora of evidence supporting Walus' claims, "compels the
22 conclusion that we could not responsibly go forward with a retrial." The government, mindful of
23 its obligation "to take special care that the processes of the law not be brought to bear against
24 those who are not guilty" expressed its "regret" to Walus.

1 The court granted the motion to dismiss and acknowledged the enormous emotional toll
2 on all the participants.

3 This case demonstrates the human fallibility of the trial process, and the
4 continuing need for a careful and vigilant system of review of trial court decisions.
5 But for the painstaking review given this case by the Court of Appeals, the
6 defendant would have been stripped of his United States citizenship.
7

8 In addition, the case is a manifestation of a worthy and courageous
9 government and its servants who are able and willing to investigate evidence
10 favorable to an accused, and to reexamine and withdraw charges made against an
11 accused which are unsupported by the evidence.
12

13 In granting the Government's motion, we do not forget the abominable
14 atrocities inflicted at the hands of the Nazis on those and the families of those who
15 testified against the defendant. But those outrages cannot be undone and certainly
16 not by an unjust conviction of the defendant. Indeed, we are confident that those
17 who survived the atrocities and seek vindication in memory of those who did not
18 would not want their honor stained by a conviction which could not withstand
19 careful, dispassionate scrutiny.³⁷

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20 Reaction came from all quarters of
21 expressing some concern about the government's statement to the court.

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[B6] explained the "story behind" the statement.

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Articles appeared in the press castigating the government for the original prosecution.⁴⁰

10 The Israelis, on the other hand, castigated the government for not reprosecuting Walus. Israel's

11 Chief Superintendent for the Investigation of Nazi War Crimes wrote [redacted] about the impact of

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12 the dismissal on the Israelis who testified. After having "revealed to the world their wounds,

13 which will never be healed" they felt as if they had "been deceived in that the trial in Chicago

14 was no more than a well-directed show, with their participation." He described the witnesses as

15 "spiritually broken" by [redacted] decision, "tears in their eyes as though blood was still running

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16 from their wounds, not believing their own ears that a decision had been taken not to renew the

17 Walus case." An Israeli Justice Ministry official expressed similar concerns to U.S. Attorney

18 Sullivan. The Israelis shared these concerns with the media.⁴¹

19 After the case was dismissed, Walus sued Simon Wiesenthal for having made false

20 allegations. Walus accused Wiesenthal of forging documents and Wiesenthal countersued for

21 libel. Wiesenthal was represented in the litigation by [redacted] when

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22 the *Walus* case was tried. The Walus/Wiesenthal suit was settled for an undisclosed amount,

23 with damages awarded to Wiesenthal and not to Walus.⁴²

24 Walus had one final interaction with OSI. In 1984, he went to Poland with counsel for

25 Ivan Demjanjuk. Demjanjuk had lost his citizenship after a district judge concluded that, as

26 alleged by OSI, he was Ivan the Terrible, a particularly brutal guard at the Treblinka death camp.

1 As detailed elsewhere in this report,⁴³ the Demjanjuk prosecution, like Walus', involved a case of
2 mistaken identity, to the extent that Demjanjuk was charged with having been Ivan the Terrible.
3 (He was later denaturalized on the basis of having been a guard at the Flossenbürg and Majdanek
4 concentration camps as well as at the Sobibor death camp.) Walus went to Poland seeking
5 witnesses to clear Demjanjuk's name and testified on Demjanjuk's behalf at his 1983 deportation
6 proceedings. Walus died in 1994.

7 II. The Fallout

8 The *Walus* trial showcased a variety of issues relevant to OSI litigation, including the
9 appropriate way to contact survivors, the proper use of photospreads, and the potential
10 unreliability of eyewitness testimony.

11 A. Eyewitness Testimony

12 Conventional wisdom in the late 1970s was that eyewitness testimony was the key to
13 identifying "Nazi war criminals."⁴⁴ The prosecution went forward in *Walus* believing that
14 everything depended on their eyewitnesses and confident that these witnesses would be sufficient
15 to overcome whatever documentary evidence Walus might submit.⁴⁵ That confidence was based
16 not only on their assessment of the witnesses, but also on a belief that the more horrific the
17 memory, the more likely it would be etched indelibly.⁴⁶ This view was shared by Jewish groups⁴⁷
18 and even had some support in the scientific community.⁴⁸

19 In the context of the times -- the Cold War at its height and therefore limited access to
20 documents behind the Iron Curtain -- the exaggerated reliance on eyewitness testimony is perhaps
21 understandable. But even then, not everyone shared this view. The West Germans, conducting
22 a series of war crime trials, were beginning to doubt the reliability of survivor memories. In

1 March 1979 – after the Walus trial but before the appellate ruling – German prosecutors moved
2 to dismiss, mid-trial, a case against four former Nazi SS guards accused of participating in the
3 murder of 250,000 Jews. The prosecutor said the age of the witnesses and their emotional
4 reaction to the trial rendered many of them ineffective.⁴⁹ The motion to dismiss was granted,
5 with the Chief Judge commenting that faded memories, misidentification and the general effects
6 of the passage of 30 years precluded the conclusive proof needed.⁵⁰

7 C] in his memo to [] about the *Walus* case, attached B6
8 excerpts from a German war crimes tribunal which heard testimony on the vagaries of memory.

9 As summarized by [REDACTED] B6
10 [REDACTED]
11 [REDACTED]
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13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
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17 [REDACTED] B5

18 Other psychological factors may also come into play, subconsciously but nevertheless
19 profoundly. As one court noted in another OSI case:

20 A witness who is aware that the commandant or deputy commandant . . .
21 worked hand-in-glove with the Nazis in persecuting Jews, and who learns years
22 later that the defendant has been charged with having served as the commandant
23 or deputy commandant, might readily achieve a firm present recollection that
24 indeed it was the defendant who participated in particular incidents.⁵²

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26 The infusion of historians into OSI advanced reliance on documentary evidence over
27 eyewitness testimony. Moreover, the case law developed in such a way that it is not necessary to
28 identify a defendant as having personally committed atrocities or acts of persecution. It is
29 enough to show that he served in a unit whose main purpose was persecutory (*e.g.*, camp guards)

1 or that he was in a particular unit at a time when it is known to have committed persecutory
2 acts.⁵³

3 That is not to say that OSI in the historian era *never* filed a case based primarily on
4 eyewitnesses. There were at least three such filings.⁵⁴ However, as a general proposition,
5 survivors now testify for strategic purposes rather than historical ones. [B6

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7] It serves another purpose as well. To
8 the extent that OSI cases receive media coverage, it is often the survivor testimony that is carried
9 on the local news. Publicity about the cases sends a message, to the nation as well as to other
10 subjects, that the U.S. will not knowingly allow persecutors to remain in the country.

11 B. The Search for Witnesses

12 One of the criticisms leveled by the Seventh Circuit against the Walus investigators was
13 their manner of contacting and interviewing potential witnesses. As the court noted, witnesses
14 were alerted at the outset that a specifically named person was being sought in connection with
15 war crimes allegations in a specified town.

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22 The more neutral tone adopted by the office is set forth in an early memorandum from
23 OSI to the Department of State asking that newspapers in Stockholm run an advertisement with
24 the following text:

1 The United States Department of Justice seeks information regarding the
2 imprisonment or execution during World War II of Estonian citizens in Tartu,
3 Estonia by the German occupying forces or persons cooperating with them.
4 Persons having information on this subject are requested to contact the United
5 States Embassy (address and telephone) or the Office of Special Investigations,
6 Department of Justice (address).⁵⁷

7 This type of notification remains the OSI standard.

8 C. Photospreads

9 Hand in hand with the more neutral search for witnesses was a revised presentation of
10 photospreads. The Seventh Circuit had been concerned both by the poor quality of one of the
11 Walus photos and by the fact that the pictures shown were taken some 20 years after the events
12 the witnesses were asked to recall. Moreover, the fact that some of the witnesses were told that
13 they had identified the proper person, and one witness had been directed to the proper photograph
14 after he was unable to recognize Walus, all tainted the in-court identifications. As an OSI
15 attorney noted in a memorandum to [REDACTED] "although some of the Israeli witnesses claim
16 to have remembered Walus' name from their alleged contact with him in Poland during the war,
17 it is probably impossible at this point to determine whether any of them remembered it prior to
18 hearing it from the investigators or seeing it in the paper."⁵⁸

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That form became the standard protocol until 2001 when [] reacting

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to a magazine article, made some changes. The article reported that sequential lineups – where a witness views one person at a time and is asked to decide if (s)he is the culprit before the next person is brought in – are significantly more reliable than the traditional simultaneous viewing.⁶²

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He asked that all photospreads thereafter involve such a sequential showing of pictures.⁶³ In fact, however, OSI has so decreased reliance on eyewitness testimony that use of photospreads is virtually obsolete.

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D. OSI's Image

Most unquantifiable of the *Watus* ramifications is its impact on OSI -- both internally and externally. The courage it took to dismiss the case should not be underestimated. Only four months before, the office had dismissed the prosecution of Tscherim Soobzokov, discussed elsewhere in this report.⁶⁴ And now a case which had been won below was being abandoned, with regrets (sounding very close to an apology) being given. OSI did not yet have a cushion of victories from which to draw comfort.

The Jewish community was not pleased with the dismissal⁶⁵ and [] in whose name the decision was being made, was still a newcomer to them. He had barely had time to establish his *bona fides*. He proceeded in the belief that his track record over time would leave no doubt about his commitment to prosecuting those against whom the government had sufficient

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1. See e.g., Patrick Buchanan on the MacNeil/Lehrer News Hour, Apr. 21, 1987; "The Persecution of Frank Walus: To Catch a Nazi," *The Reader* (Chicago), Jan. 23, 1981; "The Persecution of Frank Walus," [a separate piece despite the similar title], *Student Lawyer*, May 1981.

2. Dec. 12, 1974 letter from Simon Wiesenthal to INS in Wien, Germany.

3. May 12, 1975 Report of Investigation (ROI) by [redacted]] B6

4. Walus ran a boarding house for recent emigrés. Reports of the early INS interviews are no longer in the OSI file. Information about them comes from OSI attorney [redacted] Nov. 6, 1980 draft memorandum to [redacted] re *U.S. v. Walus* (hereafter [redacted] memo). According to [redacted] only one of the neighbors had any war information about Walus. (She claimed he had been in the Polish underground.) The others recounted disputes and clashes with Walus, suggesting that he was difficult to get along with. One of the boarders recalled Walus saying he had spent the war years with the Communist underground. Another said he had seen a picture of Walus with Goering or Goebbels. B6

5. Feb. 10, 1976 memo to Eastern Regional Commissioner from NY District Director re "Frank Walus."

6. The statements of five of the witnesses are set forth in a July 6, 1976 memorandum to District Director (Chicago) from Regional Commissioner, Eastern Region. The sixth is in an Oct. 28, 1976 Summary Report of Investigation by [redacted]] B6

7. Undated memorandum entitled "Summary Evaluation and Recommendation in the Case of Possible Revocation Proceedings being Instituted against Frank Walus A11 738 778," prepared by [redacted]] B6

8. Recorded interview with [redacted] May 23, 2001 (hereafter [redacted]] B6 interview).

9. See *United States v. Dellinger*, 472 F.2d 340, 386-88 (7th Cir. 1972).

10. The first established a permit system for parades and public assemblies and required applicants to post public liability and property damage insurance. The second prohibited the dissemination of material that incited racial or religious hatred with intent so to incite, and the third prohibited public demonstrations by members of political parties in military style uniforms.

11. *Collin v. Smith*, 447 F. Supp. 676 (N.D. Ill. 1978).

12. Poland would not allow Wiesenthal's other source to travel to the United States to testify. According to the Poles, he could add little to what was already known because he had been only fourteen when the war ended and had no personal knowledge of Walus' wartime activities. Cable 1008227, Jan. 10, 1978 from Amer. Emb. Warsaw to Secretary of State re "Judicial

Assistance: United States versus Frank Walus.”

13. [] deposition, Sept. 25, 1977, pp. 43, 44. B6

14. Recorded interview with Walus prosecutor [] Nov. 28, 2000 (hereafter [] B6 interview).

15. *Collin v. Smith*, 578 F.2d 1197 (7th Cir. 1978). Ultimately, the neo-Nazis abandoned their effort to assemble in Skokie and gathered instead in Chicago's Marquette Park.

16. “Nazi Hunter' Can't Stop,” *The Chicago Sun-Times*, Apr. 19, 1978, p. 63.

17. *United States v. Walus*, 453 F. Supp. 699 (N.D. Ill. 1978).

18. Letter of Sept. 21, 1978 from [] to defense counsel [] attached to B6 Supplement to Motion to Remand to Trial Court to Consider Motion Re: Newly Discovered Evidence.

19. Jan. 23, 1979 Memorandum and Order.

20. Judge Hoffman was at least partially correct about this. In a Feb. 27, 1980 memorandum to reported that height requirements existed only for the SS, not for the Gestapo. Although the SS standards were stringent until 1939, they relaxed as the war progressed. B6

21. *United States v. Walus*, 616 F.2d 283 (7th Cir. 1980).

22. The district court had considered the time span but found it unimportant. Judge Hoffman reviewed pictures of himself from twenty years earlier and found it "remarkable how much I look today as I did then, even though the curl is now out of my hair."

23. March 12, 1980 memorandum from [] to [] B6

24. Apr. 1, 1980 order in *U.S. v. Walus*, Nos. 78-1732, 79-1140, 79-1587, 79-1629 (unpub'd).

25. Unless otherwise noted, information on OSI's investigative efforts comes from a Sept. 23, 1980 memo by OSI attorney [] as well as a June 12, 1980 Report of Investigation (ROI) by [] B6

26. Recorded interview with [] Oct. 6, 2000. Unless otherwise noted, all statements about Ryan's actions and motivations come from this interview. B6

27. German privacy laws placed some limits on access.

28. Israel was anxious to have the case proceed and had offered to assist in any way it could.

29. Bundesnachrichtendienst.

30. Bundesamt fuer Verfassungsschutz, equivalent to the counterintelligence branch of the FBI; and Bundeskriminalamt, analogous to the Criminal Division of the FBI.

31. The Hoover Institute at Stanford University is one of the largest private archives in the country and contains a large Eastern European collection.

32. Most of Neu Ulm was destroyed during the War. Some surviving records were later destroyed as a matter of course. (The Neu Ulm police destroy records after 25 years.)

33. Oct. 6, 1980 [

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35. [] memo, *supra*, n. 4.

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36. [] was also on the call and made handwritten notes of the conversation.] B6

37. [] The statement was included in the court's unreported memorandum order of Nov. 26, 1980. The court later granted Walus \$31,000 in court costs. "Franc Walus - Nazi Exterminator or Victim of Mistake?" *Chicago Daily Law Bulletin*, Mar. 18, 1981, p.1. He had sought \$83,466.81, which included \$35,209.31 in out-of-pocket expenses, and \$48,257.50 in attorneys fees. Motion for Assessment of Costs by Defendant. Since the law barred recovery of attorney's fees, he was, in fact, reimbursed almost to the full extent possible.

38. Dec. 12, 1980 letter from []

[] See e.g., *The Reader*, n. 1, *supra*, which deemed the government's statement "ignoble" because it "left the impression, duly conveyed by reporters, that Walus may yet be guilty."] B6

39. Dec. 15, 1980 letter from []

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40. See n. 1, *supra*.

41. "Israeli Assails Justice Dept. Decision on Accused Nazi," *The New York Times*, Jan. 26, 1981; "Data Against Walus Ignored - 2 Israelis," *The Chicago Sun-Times*, Jan. 25, 1981.

42. Mendelsohn interview, *supra*, n. 8.

43. See pp. 150-174.

44. See e.g., the opening remarks of Chairman Joshua Eilberg, "Alleged Nazi War Criminals," Hearing before the Subcomm. on Imm., Cit., and Internat'l Law of the House Judiciary

Committee, 95th Cong., 1st Sess., Aug. 3, 1977, p. 1; D. Nesselson & S. Lubet, *Eyewitness Identification in War Crimes Trials*, 2 Cardozo L. Rev. 71, 74, n. 16 (1980).

45. [redacted] interview, *supra*, n. 14; Aug. 8, 1977 memorandum from [redacted] to the Department of Justice. B6

46. Oct. 28, 1976 memo on Walus investigation by [redacted] recollections of Walus prosecutor [redacted] *supra*, n. 14. Accord, B6

47. "Analysis of the Seventh Circuit Opinion in *U.S. v. Frank Walus*," by the Anti-Defamation League and the American Jewish Congress, forwarded to OSI by the U.S. Attorney's Office for the Northern District of Illinois, on Mar. 6, 1980.

48. *See e.g.*, Letter to the Editor, *The New York Times*, Mar. 25, 1979 from Dr. William G. Niederland, clinical professor emeritus of psychiatry, discussing "hypermnnesia" – "the overly sharp, acute and distinct memory of a victim of brutality."

49. "Bonn Said to Plan Release of Accused War Criminals," by John Vinocur, *The New York Times*, Mar. 15, 1979

50. "Acquittal of Four Ex-Nazis Spurs Angry Protest in Court" *The New York Times*, Apr. 20, 1979.

51. [redacted] memo, *supra*, n. 4. There is no indication of which German trial is referenced. As [redacted] B6

52. *U.S. v. Kowalchuk*, 571 F. Supp. 72, 78 (E.D. Pa., 1983), *aff'd en banc*, 773 F.2d 488 (3rd Cir. 1985).

53. *See e.g.*, *Fedorenko v. U.S.*, 449 U.S. 490 (1981); *U.S. v. Friedrich*, 305 F. Supp.2d 1101 (E.D. Mo. 2004), *aff'd*, 402 F.3d 842 (8th Cir. 2005). *Fedorenko* is discussed at pp. 48-63 of this report; *Friedrich* is discussed at pp. 67-68.

54. In *U.S. v. Kowalchuk*, *supra*, n. 52, the court was struck by the fact that there was "not one scrap of documentary evidence relating to the pertinent facts." 571 F. Supp. at 75. However, relying primarily on the testimony from the *defendant* and *his* witnesses, the court concluded that Kowalchuk's activities during the war warranted revocation of citizenship. In the case of Jacob Tannenbaum, there was no doubt he had been a kapo; he admitted it. The only question was what he had done in that capacity. [redacted] B5

[redacted] (Finally, in 2002, the office filed a denaturalization action against John Bernes. The government intended to rely on eyewitnesses and Bernes' own admissions to establish the personal role Bernes had played in sending approximately 1,300 Jews and other civilians in

Lithuania to their death. However, Bernes left the United States several days before the complaint was filed. A default judgment was later entered stripping him of his citizenship.

55. Not all judges, however, want their heartstrings pulled. *E.g.*, in *United States v. Szebinskyj*, the judge ruled that all evidence was to be submitted through affidavits; only cross examination would be in court. Since the defense indicated pre-trial that they would not cross examine the survivors, the affidavits alone told their story. They were powerful nonetheless. The court quoted dramatically and extensively from them in its opinion stripping Szebinskyj of citizenship. *United States v. Szebinskyj*, 104 F. Supp.2d 480, 486 (E.D. Pa. 2000), *aff'd*, 277 F.3d 331 (3rd Cir. 2002).

In *United States v. Bucmys*, the judge issued a pre-trial order precluding the introduction of survivor testimony in the government's case-in-chief. The court ruled that the testimony might be admissible in rebuttal, depending on the defense presented. The case settled before trial.

56. [redacted] *supra*, n. 26. B6

57. July 31, 1980 memorandum from OSI [redacted] to [redacted] Department of State. B6

58. Oct. 3, 1980 memorandum from [redacted] re "Frank Walus," p. 21. The Israelis were also chastised for sloppy photospread procedures in *United States v. Fedorenko*, 455 F. Supp. 893, 906 (S.D. Fl. 1978) and *U.S. v. Kowalski*, 571 F. Supp. 72, 78 (E.D. Pa. 1983), *aff'd en banc*, 773 F.2d 488 (3rd Cir. 1985). Although the district court ruling in *Fedorenko* was ultimately reversed, it was on grounds independent of the photospread issue. 597 F.2d 946 (5th Cir. 1979), *aff'd*, 449 U.S. 490 (1981). *Fedorenko* is discussed at pp. 48-63.

59. See discussion of photo identification in the *Demjanjuk* case at pp. 154 and 156.

60. In 1987, a questionable photospread procedure was used by the Soviet authorities on behalf of OSI. It contained 8 pictures, two of which were of the subject. It is unknown whether the photospread was prepared by OSI or by the Soviets. In any event, the court did not find the procedure disqualifying. *In re Kalejs*, A11 655 361 (BIA 1992), p. 31.

61. May 23, 1980 memorandum from [redacted] to [redacted] re "Pre-Trial Photographic Identification Procedures." [redacted] had tried to institute similar, though not quite as rigorous procedures. In an Apr. 2, 1979 letter to Israel's Chief Superintendent for the Investigation of War Crimes, he forwarded several sets of photospreads, asked that the witness sign the picture chosen, and that once a photo was signed it not be shown to any other witness. B6

62. "Under Suspicion," by Atul Gawande, *The New Yorker*, Jan. 8, 2000, p. 50.

63. Jan. 8, 2001 e-mail from [redacted] to all OSI re "Photospread Procedures: Important Update." B6

64. See pp. 342-355.

65. On the contrary, many urged the government to press forward with a retrial. The Chair of the Public Affairs Committee of the Jewish United Fund of Metropolitan Chicago wrote to the United States Attorney arguing that anything less "would be a signal to defendants, witnesses and prosecutors that the Government is willing to 'forgive and forget' wartime atrocities." Mar. 4, 1980 letter from American Jewish Congress and the Anti-Defamation League believed the evidence supported Judge Hoffman's verdict. forwarded by the United States Attorney's Office to OSI by letter of Mar. 6, 1980.

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DRAFT

1 **Elmars Sprogis – When Are Law Enforcement Officers Persecutors?**

2 Elmars Sprogis was an assistant police chief in Latvia during the early war years. He
3 listed this on his visa application and signed a form stating that he had never advocated or
4 assisted in persecution based on race, religion or national origin. He entered the United States in
5 1950 under the DPA and became a citizen twelve years later.

6 Based on statements from several former police colleagues and two internees, OSI
7 believed Sprogis had participated in three incidents of persecution. The first involved the arrest,
8 transportation and confiscation of property from nine Jews; the second concerned transporting
9 100 - 150 Jews to the site of their execution and guarding them until they were murdered; the last
10 involved appropriating furniture from the homes of arrested Jews.

11 In 1982, the government charged Sprogis with illegal procurement of citizenship, both
12 because he had assisted in persecution (as set forth in the above three incidents) and because he
13 had falsely denied such assistance.¹ It claimed also that his assistance in persecution showed a
14 lack of the good moral character necessary for citizenship.

15 By the time of trial, only two witnesses were available concerning the last two allegations
16 of persecution. One had been a prisoner and the other a colleague. Their testimony was
17 videotaped in Latvia, then a Soviet Republic. Based on the witnesses' demeanor, the court
18 feared that the environment had been coercive. Moreover, the court found the statements
19 inconsistent (either with earlier statements the witnesses had made or with statements from
20 Sprogis), conflicting with one another, and uncorroborated by external evidence. Accordingly, it
21 gave them no credence.

22 The one remaining allegation of persecution pertained to Sprogis' role in the fate of the

1 nine Jews. To establish that, the government relied on Sprogis' admissions as well as
2 contemporaneous documentary evidence. Sprogis conceded knowing that the Jews had been
3 arrested simply because they were Jewish; he also knew that they would likely be killed after
4 they were taken from the police station. As the highest ranking official on duty during the hours
5 of their detention, he had signed a document naming the Jews and listing the amount of money
6 confiscated from each. Another document signed by him showed that he gave some of that
7 money to the men who had brought the Jews to the police station; he turned the rest over to the
8 city administration. He gave property confiscated from the Jews to the town's mayor.

9 The district court characterized all these activities as "ministerial" and, as such,
10 concluded they did not amount to assistance in persecution. The government appealed this
11 holding.³ The Second Circuit acknowledged that it was "a difficult and troubling issue" but
12 concluded that the district court assessment was correct. As the Circuit saw it:

13 Rather than personally carrying out Nazi-ordered oppression . . . Sprogis seems
14 only to have passively accommodated the Nazis, while performing occasional
15 ministerial tasks which his office demanded, but which by themselves cannot be
16 considered oppressive. There is no clear evidence that he made any decision to
17 single out any person for arrest and persecution or that he committed any hostile
18 act against any persecuted civilian. Sprogis' passive accommodation of the Nazis,
19 like that of so many other civil servants similarly faced with the Nazis' conquest
20 of their homelands and the horrors of World War II, does not, in our view,
21 exclude him from citizenship under the DPA. To hold otherwise would require
22 the condemnation as persecutors of all those who, with virtually no alternative,
23 performed routine law enforcement functions during Nazi occupation.⁴

24
25 The case seemed to set a high bar for finding "assistance in persecution" since Sprogis'
26 activities had clearly aided the Nazis' persecutory scheme by helping them dispose of the Jews
27 and their property. Indeed, on facts arguably similar to those in the *Sprogis* case, two other
28 courts previously had found sufficient evidence of assistance in persecution.⁵

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Spangis in fact has had very little precedential value. Other Circuits were dismissive of the decision;⁷ ultimately even the Second Circuit seemed to reject its reasoning.⁸ Jurisprudentially, the case is a footnote in OSI history.

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1. Since Sprogis had truthfully listed his service as a Latvian policeman, there was no allegation of misrepresentation. In this respect, the case differed from most brought by OSI in its early years.

2. *U.S. v. Sprogis*, No. CV-82-1804 (E.D.N.Y. 1984) (unpub'd).

It is, of course, impossible to determine what ultimately persuaded the judge. However, in the case, posited a theory. According to [redacted] in an off-the-record discussion with the attorneys, the trial judge asked whether the government intended to deport Sprogis to the Soviet Union. [redacted] told the judge that no decision had yet been made. Nonetheless, he sensed that the judge was troubled by the possibility that the Soviet Union would be the ultimate destination since this increased substantially the likelihood that Sprogis might be executed for his World War II activities. (At the time of the *Sprogis* trial (Oct. 1983), no OSI defendant had yet been sent to the Soviet Union, but the concern was not frivolous. The U.S.S.R. had years earlier sentenced two other OSI defendants – Boleslavs Maikovskis and Karl Linnas – to death *in absentia* for their wartime activities.) See pp. 271 and 430. B6

3. The government did not appeal the judge's determination as to the other two alleged instances of persecution. The judge's ruling concerning those incidents turned on his assessment of witness credibility, a matter in which the judge had enormous discretion. The government felt that an appeal of that discretionary determination would not be successful.

4. *U.S. v. Sprogis*, 763 F.2d 115, 122 (2nd Cir. 1985). Although all three appellate justices agreed that the district court opinion should be affirmed, one judge wrote separately to express some concern.

I do not share the majority's view that Sprogis' conduct amounted to mere "passive accommodation of the Nazis."

This is not the case of a minor employee performing some insignificant or subordinate ministerial tasks without knowledge of Nazi oppression. It is the story of a person who *volunteered* to become a policeman and Assistant Precinct Chief . . . after his country had been overrun by the Nazis. We can almost take judicial notice that at that time Nazi pogroms and persecution of the Jews was generally known, particularly to persons engaged in law enforcement and possessed of Sprogis' education and background. Under these circumstances a volunteer must have reasonably anticipated that as a police official he would probably be relied upon by the Nazis for assistance in the performance of their unsavory tasks. . . . [H]e performed so satisfactorily that within two months he became Assistant Chief of Police in a larger city. . .

Id. at 124. (emphasis in original)

5. In *U.S. v. Kowalchuk*, 571 F. Supp. 72 (E.D. Pa. 1983), *aff'd en banc*, 773 F.2d 488 (3rd Cir. 1985), the defendant, a Ukrainian policeman during the war, typed the daily reports of police

activity. While the police were involved in various acts of persecution against the Jews, including beatings and confiscation of valuables, there was no evidence that Kowalchuk himself participated in any of these activities or that he knew that Jews were to be liquidated. *See also, U.S. v. Osidach*, 513 F. Supp. 51 (E.D. Pa. 1981), where the defendant served as an armed, uniformed street policeman and interpreter for the Ukrainian and German police.

6. July 1, 1985 memorandum to the Acting Solicitor General from (C] 06

7. *See e.g., U.S. v. Koreh*, 59 F.3d 431, 441-42 (3rd Cir. 1995); *Schellong v. INS*, 805 F.2d 655, 661 (7th Cir. 1986); *Hammer v. INS*, 195 F.3d 836, 843 (6th Cir. 1999).

8. In *Ofosu v. McElroy*, 98 F.3d 694 (1996), an asylum case, the court was interpreting a statute which denied asylum to anyone who “ordered, incited, assisted, or otherwise participated in the persecution of any person on account of . . . political opinion.” The defendant had worked as a senior officer in a quasi-police force in Ghana. Without citing *Sprogis*, the court held that “personal involvement in killing or torture is not necessary to impose responsibility for assisting or participating in persecution.”

DRAFT

1 **Jacob Tannenbaum – The Kapo Dilemma**

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3 It is not an easy thing to pass judgment and determine a sentence for those
4 poor souls whom the Nazis dehumanized and whose human feelings were
5 destroyed. It is difficult for us, the judges of Israel, to free ourselves of the feeling
6 that, when we punish such a human worm, we are reducing, even by the least bit,
7 the abysmal guilt of the Nazis themselves.¹

8
9 Kapos were inmates (some Jewish and others not) who collaborated with their Nazi
10 persecutors by serving as overseers at the camps. In return, they received limited privileges –
11 generally better food, clothing and/or bunk space – within the camp hierarchy. Jewish reaction
12 to kapos varied, ranging from "street justice" to "courts" in survivor camps and other areas where
13 displaced Jews were concentrated.²

14 In the 1950s, the INS filed deportation cases against three Jewish kapos – Heinrich
15 Friedman, Jakob Tencer and Jonas Lewy. None of the prosecutions was ultimately successful.
16 In both *Friedman* and *Tencer*, the courts concluded that the dilemma faced by the kapo mitigated
17 his actions.³ The *Lewy* court held otherwise. Lewey was ordered deported for having
18 participated in activities contrary to civilization and human decency on behalf of the Axis.
19 However, after the decision was affirmed, it was learned that the government had not turned over
20 certain witness statements. A new trial was ordered, but by then two of the government's key
21 witnesses were unavailable. The government chose not to re prosecute and Lewy remained in the
22 United States until his death in 1980.

23 When OSI was established in 1979, the office inherited several kapo investigations from
24 INS. One involved Jacob Tannenbaum, an observant Polish Jew who, before the war, had been
25 active in Zionist activities. His wife, six-month old daughter, parents and five siblings perished
26 during the Holocaust. Tannenbaum served as a forced laborer from 1941 to 1944 at a series of

1 concentration camps. In Goerlitz,⁴ the last camp at which he was incarcerated, Tannenbaum was
2 made head kapo.

3 He entered the United States under the DPA in 1950. He told the investigating
4 authorities that he had been a forced laborer in Goerlitz from September 1944 until May of 1945,
5 never mentioning his time as a kapo. He became a United States citizen in 1955, settling in
6 Brooklyn, New York, where he became an active member in an Orthodox synagogue. His
7 yearly charitable contributions included donations to the Simon Wiesenthal Center, a Nazi-
8 hunting organization.⁵

9 In 1976, a Holocaust survivor recognized Tannenbaum and reported him to the INS. INS
10 opened an investigation and interviewed dozens of Goerlitz survivors. Almost all described
11 Tannenbaum as particularly sadistic. Twelve had themselves been beaten by Tannenbaum and
12 all but one had witnessed his beating others. Six reported inmate deaths as a result of
13 Tannenbaum's actions. Survivors recalled, among other things, that Tannenbaum had brutally
14 beaten inmates even when no Germans were present, that the Germans shot two inmates after
15 Tannenbaum reported their rifling through a pigsty in search of food, and that the SS executed
16 inmates who Tannenbaum reported for trying to avoid an evacuation march. Many said
17 Tannenbaum was more brutal than the camp's SS leader.⁶

18 When interviewed, Tannenbaum acknowledged that he had been a head kapo, opining
19 that he was chosen because he was "tall and presentable and spoke a little German."⁷ Admitting
20 that he had beaten prisoners as part of his duties, he claimed to have done so only when German
21 authorities were present -- and then only to "protect" the prisoners from being shot by the
22 Germans for whatever infraction had allegedly occurred.

1 By the time INS transferred its caseload to OSI, 38 witnesses had been interviewed. OSI

2 reviewed all the witness statements and spoke with ten of the survivors. The OSI attorney on the

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18 That Tannenbaum was Jewish was irrelevant. (C) had earlier closed an investigation of a B6

20 Catholic kapo incarcerated for her work with the underground.

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1 The interrogation (interview) was in October 1984. Tannenbaum readily conceded, as he
2 had to the INS, that he had been the chief Jewish kapo, and acknowledged that benefits had been
3 bestowed on him as a result of his position. These included having his own room, wearing a
4 civilian jacket, and leaving the camp unguarded to get supplies in town.¹⁰ He offered
5 explanations or denials for the brutality which inmates had reported.

6 OSI continued to reinterview survivors. [] recalled comments along the line of: "He's B6
7 still alive? Give me his address and you won't have to worry about him." People claimed to
8 have current nightmares about him. C] B6

9 OSI consulted with rabbis and various segments of the Jewish community during the
10 course of the investigation for their reaction to the prosecution of a kapo.

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11 Every available survivor who knew Tannenbaum favored prosecution. Simon Wiesenthal
12 and the Israelis had no objection in principle. Indeed, the Israelis themselves had prosecuted
13 several kapos. The message OSI took from the Israelis was that it would be immoral *not* to
14 proceed with the case.¹¹ Ultimately [] recommended prosecution. B6

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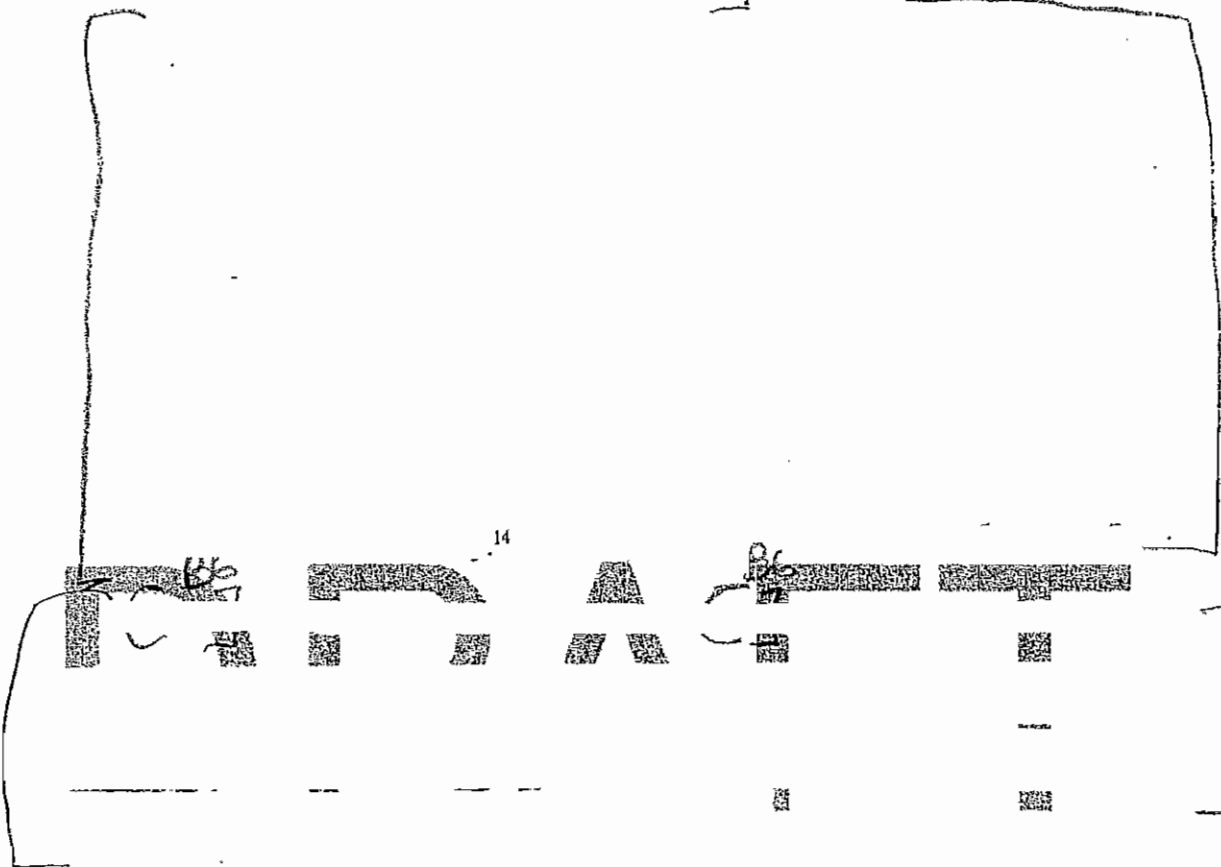
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Other papers picked up the story.¹³

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[redacted] was not the only one reacting to the pre-filing publicity. Someone smashed the windows in Tannenbaum's home and his second wife, from whom he had been separated since the late 1960s, was abruptly fired from her job.¹⁵

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The complaint was filed on May 12, 1987. The government charged that Tannenbaum was ineligible to enter under the DPA because he had assisted in persecuting civilians and, as a kapo, had been a member or participant in a movement hostile to the United States. The complaint also alleged that his entry was barred by the State Department regulation excluding persons who advocated, acquiesced or engaged in activities or conduct contrary to civilization and human decency on behalf of the Axis, and that he lacked the good moral character required

1 for U.S. citizenship.

2 By and large the Jewish community did not criticize the filing. The director of the World
3 Jewish Congress (WJC) told the press that "No one should be able to cloak themselves in some
4 collective ethnic garb to escape justice."¹⁶ The president of the American Gathering of Jewish
5 Holocaust Survivors stated that despite the dire conditions of camp life, "our human background
6 says you must remain a human being even under the worst of circumstances."¹⁷

7 Tannenbaum denied all the charges, admitting only that he had been a kapo, a position
8 which had been forced on him. He raised four defenses: (1) that the United States had a "duty
9 and obligation to conduct a complete and thorough investigation" before issuing a visa; (2) his
10 actions were done "to prevent his being killed;" (3) the government delayed bringing suit so long
11 that he could no longer participate in his own defense; and (4) his actions helped preserve the
12 lives of fellow inmates.

13 He was deposed by [] over three days in August 1987. It was a tense B6
14 confrontation. Less than an hour into the third day, Tannenbaum fell ill. He was taken by
15 ambulance to the hospital where he remained for almost three weeks with heart problems.

16 Citing health reasons, his attorneys proposed settling the case.¹⁸ A doctor chosen by the
17 government conducted an independent examination. He concluded that Tannenbaum suffered
18 from diabetes, as well as an organic mental syndrome which left him somewhat confused, and
19 possible underlying coronary disease. A stressful situation could aggravate his condition and
20 place him at "high risk;" it might even be life threatening.

21 [] Among other things, []
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1 importantly:

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6 The settlement called for Tannenbaum to agree to denaturalization based on his having
7 participated in persecution "by brutalizing and physically abusing prisoners outside the presence
8 of German SS personnel."²⁰ The government agreed not to institute deportation proceedings
9 unless Tannenbaum's health -- which the government was to monitor -- improved.

10 The parties appeared before Judge I. Leo Glasser on February 4, 1988. It was apparent
11 that the judge himself was torn.

12 THE COURT: I dreaded the day when this case was to come to trial. . . . I
13 was one of the very early soldiers into Dachau in World War II, but I have often
14 wondered how much moral and physical courage we have a right to demand or
15 expect of somebody in the position of Mr. Tannenbaum. . . . I sometimes wonder
16 whether I might have passed that test.²¹
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18 Tannenbaum was not the first to have what amounted to a medical deferment, although
19 OSI used the procedure sparingly. As DAAG Richard saw it, the government "should not use
20 [its] prosecutorial discretion to undercut the Congressional decision to deny [Nazi persecutors]
21 waivers on deportability."²²

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23 Public response to Tannenbaum's plea was mixed. Many Goerlitz survivors were
24 disappointed. "Tannenbaum deserves not less than any regular Nazi deserves." "I would have
25 hanged him with my own hands. I am only partially satisfied." "Is this all he is getting, for all he
26 did?" "Why did they not call me for the trial? . . . Had he wanted to, he could have saved the
27 entire camp."²³ *The Baltimore Jewish Times* opined that "the government skirted its legal and
28 moral duties" by issuing a medical deferment to Tannenbaum when it had not done so for Karl

1 Linnas.²⁴

2 Some Jewish organizations interpreted the plea as a humane compromise based on the
3 moral dimensions of the case, rather than a result brought about by health concerns. The WJC
4 opined that "the Justice Department handled a very sensitive matter in a most fair and equitable
5 way, insuring that justice was applied in a firm but proper manner"²⁵ while the Simon Wiesenthal
6 Center (SWC) called the plea "an appropriate action from both a moral and legal point of
7 view."²⁶

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14 Tannenbaum died of a heart attack in June 1989. Although OSI investigated several
15 other kapos, they felt the evidence was sufficient in only one other case. Because the subject was
16 bedridden and terminally ill, however, the government forewent prosecution. Tannenbaum
17 therefore remains the only kapo prosecution brought by OSI.

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1. *Beisky v. Israel* (Crim. Appeal No. 149/59, 1959) (Beisky was sentenced to three years).
 2. Trunk, Isaiah *Judenrat, The Jewish Councils in Eastern Europe Under Nazi Occupation* (Stein and Day, 1972, pp. 548-554.) See also, "Giving Hitler Hell," by Matthew Brzezinski, *The Washington Post Magazine*, July 24, 2005. The article profiles a former U.S. military officer who admitted sending lower level Nazi persecutors to the DP camps for street justice. According to the officer, who served with the Army CIC, "We had seen what the DPs did to the kapos, and we realized they could do us a favor."
 3. In *Tencer*, the immigration judge dismissed the case. In *Friedman*, the court ordered his deportation but it was reversed on appeal. The Friedman case was more nuanced than Tencer's. More survivors testified on Friedman's behalf than for the government. While government witnesses recalled Friedman beating Jews and stealing their footwear, defense witnesses recounted his protecting the sick and injured, destroying a list of inmates scheduled to be shot, and allowing prayers to be said despite SS orders forbidding Jewish worship.
 4. Goerlitz was a subcamp of the Gross Rosen concentration camp in Poland. The camp held approximately 1,000 male prisoners separated by a wire fence from a smaller women's section. Inmates were forced to work for a German firm manufacturing mobile field kitchens, tanks and rockets.
 5. "Haunting Issues Surround Jewish Nazi Camp Overseer," by Samuel Freedman *The New York Times*, May 26, 1987.
 6. Not all these allegations were sustainable once OSI began its investigation.
 7. May 12, 1977 Tannenbaum interview, p. 4.

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10. Tannenbaum interview, Oct. 1, 1984, pp. 26, 27, 31, 69.

11. Recorded [] interview, Oct. 2, 2001. All references in this chapter to [] views [] B6
come from this interview unless otherwise specified.

12. "U.S. Plans Move Against Jew Said to Aid Nazis Guard Camp," by Alan Kohn, *The New York Law Journal*, Apr. 29, 1987, p. 1. It is unclear how the *Law Journal* learned of the pending filing. An unnamed source speculated that the leak had been designed to sow dissension between OSI and the Jewish community. "OSI Said Ready to Prosecute U.S. Jew as Nazi Collaborator," by Walter Ruby, *Washington Jewish Week*, May 7, 1987. It is equally plausible that the source was someone opposed to having the case filed.

13. See e.g., "Brooklyn Man Probed As Nazi Collaborator," by Kevin Flynn, *Newsday*, Apr. 30, 1987; "Brooklyn Man in Inquiry on War Crimes," *The New York Times*, May 1, 1987; "OSI Said Ready to Prosecute U.S. Jew as Nazi Collaborator," by Walter Ruby, *Washington Jewish Week*, May 7, 1987.

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15. Tannenbaum deposition, Aug. 26, 1987, p. 10. Attacks on OSI defendants or their property were not uncommon in the 1980s. See pp. 349-350, 527-528.

16. *Long Island Newsday*, "Nazi Hater or Holocaust Henchman?" by Kevin Flynn, May 22, 1987. Eli Rosenbaum was General Counsel for the WJC at the time.

17. *Id.*

18. Nov. 30, 1987 letter from defense counsel

to OSI attorney

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19. Jan. 19, 1988 memorandum from

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21. Plea transcript, pp. 14-15.

22. [] interview, Oct. 26, 2000.

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23. The survivors were contacted by OSI. Their responses are contained in a Feb. 9, 1988 letter to OSI attorney [] from [] an OSI staffer.

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24. "Awaiting Justice for Nazi Crimes," *Baltimore Jewish Times*, Feb. 12, 1988. For a discussion of the *Linnas* case, see pp. 271-295.

25. "U.S. Denaturalizes Jewish Kapo; Won't Deport Him," *Washington Jewish Week*, Feb. 11, 1988.

26. *Id.*

DRAFT

1 **Edgars Laipenieks – When There are No Good Choices**

2
3 Edgars Laipenieks was a track and field star who competed in the 1936 Olympics on
4 behalf of his native Latvia. His prosecution by OSI is notable for several reasons: (1) it led to the
5 CIA's public acknowledgment that Laipenieks had worked with the agency; (2) it is a case
6 involving political more than religious persecution; and (3) it highlights some of the nuanced and
7 difficult choices faced by persons in the Baltic states during World War II.

8 Latvian history is tortuous. Long under Russian domination, Latvia gained independence
9 after World War I. Its independence was short lived, however. Germany invaded in 1938 and
10 then, in accordance with provisions in the Molotov-Ribbentrop pact, the Soviets annexed the
11 country in 1940, declaring it a Soviet Socialist Republic. Thousands of Latvians were deported
12 to Siberia; many were murdered. The following year, Germany invaded and drove the Russians
13 out. Germany remained an occupying force until the end of World War II, after which the Soviet
14 Union again annexed the country.

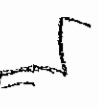
15 Laipenieks worked as an investigator and interrogator for the Latvian Political Police
16 (LPP), a group which coordinated with, and reported to, the Germans. The LPP pursued a
17 German agenda, hunting Jews and Communists as enemies of the German state. The search for
18 Jews was largely complete by autumn of 1941. At that point, those Jews not yet killed were
19 confined to ghettos; most were murdered by early December. After rounding up the Jews, the
20 LPP focused its attention on Latvians suspected of having denounced fellow citizens during the
21 Soviet occupation.¹

22 Laipenieks was a member of the LPP from July 1941 until some time in 1943. He
23 admitted occasionally roughing up prisoners as part of the interrogation process. As he

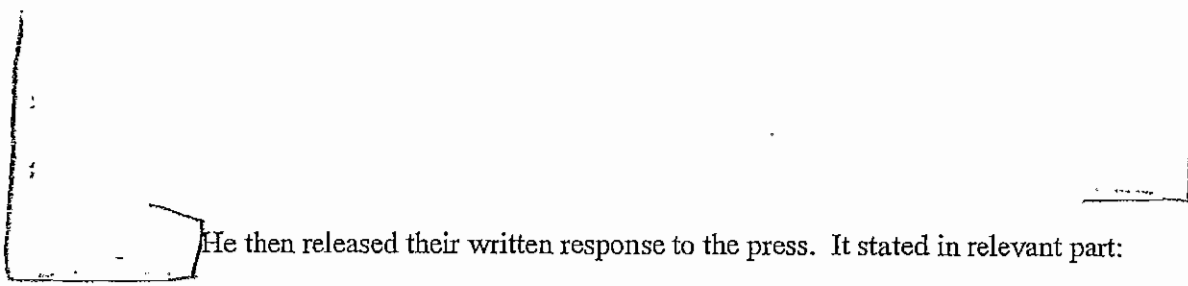
1 described his wartime activity, he captured about 200 Communist spies who were later shot by
2 persons other than himself.²

3 After the war, Laipenieks was convicted by a tribunal of the French Military Government
4 of Austria on charges of possessing arms. He emigrated to Chile in 1947 where he became a
5 citizen and coached Chilean athletes for the 1952 and 1956 Olympics. In 1960, the University of
6 Denver sought his services as head track coach. His U.S. visa application made no mention of
7 his service with the LPP or his Austrian conviction. Laipenieks entered the United States under
8 the INA; he never applied for U.S. citizenship.

9 Laipenieks moved to Mexico in 1964 to train their Olympic hopefuls, but returned to the
10 United States five years later. In 1974, he was one of the 37 people who the Department of
11 Justice acknowledged were being investigated by the INS for their wartime activities.³ Simon
12 Wiesenthal claimed that Laipenieks had personally murdered Jews, and the Israelis identified
13 him as a "war criminal."⁴ Although nothing in OSI's investigation substantiated such a claim,
14 Laipenieks' local newspaper linked him to the deaths of 60,000 Latvian Jews.⁵

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20 He then released their written response to the press. It stated in relevant part:

21 [W]e have been corresponding with the Immigration and Naturalization
22 Service about your status. We have now been told that you are "not amenable to
23 deportation under existing laws". It is our understanding that INS has advised

1 their San Diego office to cease any action against you.

2
3 If such does not prove the case, please let us know immediately. Thank
4 you once again for your patience in this instance, and your past assistance to the
5 Agency.⁷

6
7 In addition to this written confirmation of his assistance, then CIA Director George H.W.
8 Bush, in response to a reporter's questioning, publicly acknowledged Laipenicks' work with the
9 agency, although he characterized Laipenicks' service as "minor."⁸ William Colby, a former CIA
10 Director, made reference to Laipenicks' assistance during a television show about Nazis in
11 America.⁹

12 Laipenicks opined on the reason for the INS investigation. As he saw it, "[a]ll the top
13 Communists in Latvia were Jews, one of whom might have escaped and started rumors about
14 him. He thought that Americans were prone to believe such stories because both the Secretary of
15 State (Henry Kissinger) and the Attorney General (Edward Levi) were Jewish. According to
16 Laipenicks, "[t]hey are smooth together."¹⁰

17 Despite all the publicity, the INS never filed charges, apparently frustrated in part by the
18 fact that there was no statutory basis for deporting those who entered under the INA because of
19 their World War II acts of persecution.¹¹ By the time OSI was established, however, the newly-
20 enacted Holtzman Amendment had closed this loophole. In 1981, after discussing the issue with
21 the CIA, OSI filed suit.

22 The complaint alleged that Laipenicks' visa had been obtained by fraud and wilful
23 misrepresentation of material facts, in that it omitted any reference to his work with the LPP and
24 his later conviction in Austria. The government also contended that service with the LPP
25 constituted persecution of civilians based on race, religion, national origin or political opinion.

1 The immigration court gave short shrift to the misrepresentation counts. In part the court
2 was moved by the fact that the visa application was printed in English, a language which
3 Laipenieks neither spoke nor read at the time. (Laipenieks had given his responses orally in
4 Spanish, and they had been translated into English by consular officials.) Moreover, evidence at
5 trial showed that Laipenieks had told the CIA in 1962 about his service with the LPP. The court
6 therefore thought it unlikely that he had “wilfully” concealed the same information from the
7 American Consul when he applied for his visa; the court surmised that the concealment was due
8 either to imprecision in the questioning or to the language barrier. The court did acknowledge
9 that Laipenieks might have acted wilfully in concealing his conviction. However, it deemed this
10 immaterial on the ground that full disclosure would not have barred his admission under then-
11 existing law.

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12 Most of the opinion was devoted to the persecution charges. Testimony on these counts
13 had been presented largely through videotaped depositions from witnesses in Latvia, then a
14 Soviet Socialist Republic. The deponents claimed to have been victims personally beaten by
15 Laipenieks, to have seen others who were beaten or to have been told of such events by people at
16 the scene. The immigration court largely rejected the deposition testimony, finding that the
17 atmosphere in which it was given was “intimidating,” in part because the presiding Soviet
18 official referenced the “Nazi war criminal Laipenieks” and restricted cross-examination. The
19 court also doubted the credibility of the witnesses. Many could not identify a photograph of the
20 defendant; others remembered details which seemed implausible; and many relied on hearsay to
21 establish the defendant’s role. Although hearsay is admissible in deportation hearings, the court
22 viewed it with particular skepticism since it involved conversations and memories from 40 years

1 earlier.

2 The court was no more impressed with the few eyewitnesses who, having settled in the
3 United States and Israel, testified in court. In each case, their courtroom testimony was
4 contradicted in some respects by statements they had made earlier. The court worried too that
5 witnesses might be confusing the defendant with his brother; both worked at the same location as
6 interrogators for the LPP.

7 Most importantly, however, even if the witnesses were to be believed, the immigration
8 judge was not persuaded that Laipenieks' actions were based on persecution due to race, religion,
9 national origin or political opinion. He thought it more likely reprisal for betraying Latvia during
10 the period of Soviet occupation, since each of the victims had been a pro-Soviet Latvian activist.
11 There was only one Jewish victim and he was the father of persons who allegedly persecuted the
12 Latvians during the Russian era; the court therefore saw his religion as an incidental fact
13 unrelated to Laipenieks' actions. In such circumstances, the court declined to order Laipenieks'
14 deportation.

15 The government appealed, and the ruling was reversed. The BIA noted that many of the
16 Latvian victims had been punished for their involvement in killings and deportations of Latvians
17 following Soviet occupation of the country. While punishment for such crimes did not violate
18 the Holtzman Amendment prohibition against persecution based on political opinion, Laipenieks
19 had admitted in court that he gathered information against "all kinds of communists." This
20 included persons who had done nothing more than show sympathy to the Communist cause. As
21 such, the Board concluded that he had engaged in political persecution of the type covered by the
22 Holtzman Amendment. He was ordered deported to Chile, the country he had designated should

1 the court rule against him.

2 The BIA decision was a total vindication for OSI. However, Laipeniekš appealed to the
3 Ninth Circuit, and once again the decision was reversed.¹² Rather than focusing on whether the
4 LPP (of which Laipeniekš was indisputably a member) persecuted individuals because of their
5 political beliefs, the court focused on Laipeniekš himself. Had *he* persecuted people because of
6 their political opinion or committed acts which led to the persecution of individuals because of
7 their political beliefs?

8 In concluding that the answer was no, the Circuit shared the immigration judge's
9 skepticism of government witnesses who claimed that their incarceration had been for political
10 belief rather than criminal activity. Even if the witnesses were to be believed, however, the
11 Circuit was left wondering what it meant to be a Communist sympathizer. The court tried to
12 place the defendant's activities in context.

13 During Laipeniekš' service with the LPP, Latvia was a war-torn nation. Only
14 months before, the country had suffered terrible atrocities at the hands of Soviet
15 rule. Latvia was at war with Russia and had reason to fear spies, saboteurs and
16 pro-Soviet conspirators working to undermine the government in power. Thus,
17 Laipeniekš and the LPP certainly had reason to concern itself with the behavior of
18 Soviet "activists" and "sympathizers."

19
20 * * *

21
22 When individuals are singled out and victimized on the basis of religion, race or
23 national origin there is no legitimate reason for doing so. For instance, there was
24 no rational basis for the persecution perpetrated against the Jews during the
25 Holocaust. There can be only one explanation for the persecutorial acts; the Jews
26 were persecuted because they were Jews. In contrast, the present case is much
27 more troublesome. Laipeniekš and the LPP had a legitimate basis for
28 investigating Communists. The Communists remaining in Latvia were
29 sympathetic to a hostile nation who was presently at war with the Latvians and
30 who only a few months earlier had exterminated thousands of Latvian citizens.
31

1 where one should turn. The difficulty the courts had in deciding *Laipeniks* (with the ultimate
2 decision in the Court of Appeals decided by a 2 to 1 vote) may simply be testimony to that fact.
3 . Laipeniks died in the United States in March 1998.

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1. *In re Edgars Laipenieks*, 18 I & N Dec. 433 (BIA 1983), pp. 8-9, 1983 WL 183255.
2. "Area Man Accused by Top Nazi-Hunter," by Martin Gerchen, *The San Diego Evening Tribune*, Oct. 15, 1976.
3. "37 Under Inquiry in Crimes by Nazis," *The New York Times*, June 6, 1974.
4. "Area Man Accused by Top Nazi Hunter," *supra*, n. 2.
5. "Former Track Coach in La Jolla Accused of Being War Criminal," by Bob Dorn and Martin Gerchen, *The San Diego Evening Tribune*, Oct. 14, 1976.
6. Laipenieks Prosecution Memo to [] from OSI Director [] Apr. 24, 1981, p. 8. B6
7. The July 20, 1976 letter was printed in various news organs, including *The New York Times*, "Nazi War Crimes Suspect Asserts C.I.A. Used Him as Anti-Soviet Spy," by Ralph Blumenthal, Oct. 15, 1976; *The San Diego Evening Tribune*, "Former Track Coach in La Jolla Accused of Being War Criminal," *supra*, n. 5; and the Oct. 1980 issue of *Keeping Posted*, the Union of American Hebrew Congregations magazine.
8. "CIA Denies Giving Aid to War Crimes Suspect," by Bob Dorn, *The San Diego Evening Tribune*, Nov. 30, 1976.
9. ABC News Closeup "Escape from Justice, Nazi War Criminals in America," Jan. 13, 1980.
10. "Former Track Coach in La Jolla Accused of Being War Criminal," *supra*, n. 5.
11. "U.S. Unlikely to Oust War-Crime Suspect," by Bob Dorn, *The San Diego Evening Tribune*, Oct. 16, 1976.
12. *Laipenieks v. INS*, 750 F.2d 1427 (9th Cir. 1985).
13. At one point, the court indicated that the government had to prove that an individual was persecuted *solely* because of his political views. Elsewhere in the opinion, indeed twice on the very same page, the court omitted the word "solely." 750 F.2d at 1437.
14. *Hammer v. INS*, 195 F.3d 836, 843 (6th Cir. 1999); *Schellong v. INS*, 805 F.2d 655, 661 (7th Cir. 1986). Indeed, another panel of the Ninth Circuit seemed to reject the reasoning in *Laipenieks*, when it refused to grant asylum to an Egyptian police officer who had rounded up fundamentalist Moslems and turned them over to others who he knew would torture and abuse them. *Riad v. INS*, 161 F.3d 14 (9th Cir. 1998) (unpub'd). The asylum statute is almost identical to the language in the Holtzman amendment, yet the *Riad* panel held that one can assist in persecution even if he "has not physically taken part in the offense." The *Riad* decision is unpublished, however, and therefore of no precedential value within the Ninth Circuit. It establishes only that some members of the court disagree with the *Laipenieks* reasoning; it does

not overrule *Laipnieks*.

15. See p. 103.

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1 **Juozas Kungys – When is Misrepresentation Actionable?**

2
3 On the macro level, *Kungys* was a significant win for OSI; on the micro level, it was a
4 loss.

5 Juozas Kungys emigrated to the United States in 1948. He entered under the INA and
6 became a citizen in 1954. In 1975, the *Morning Freiheit*, a New York daily Yiddish newspaper,
7 reported that Kungys was implicated in the murder of approximately 2,000 Lithuanian Jews
8 during World War II. INS opened an investigation which ultimately passed on to OSI. Based on
9 statements supplied by the Soviets from witnesses in Lithuania, OSI concluded that Kungys had
10 rounded up and transported thousands of Jews to an execution site, distributed firearms and
11 ammunition to an execution squad, forced the victims into a mass grave, shot some of them, and
12 exhorted the execution squad to do the same.

13 In 1981, OSI filed suit to revoke Kungys' citizenship. The government charged that his
14 admission to the country should have been barred by the State Department regulation excluding
15 anyone who had been guilty of, or who had advocated or acquiesced in, activities or conduct
16 "contrary to civilization and human decency" on behalf of Axis countries during World War II.¹
17 In addition, the complaint asserted that false statements on Kungys' visa and naturalization forms
18 (concerning date and place of birth, as well as residence and occupation during the war) rendered
19 his admission and subsequent naturalization unlawful. Finally, the government charged that
20 Kungys' conduct during the war, as well as his false statements, showed that he lacked the good
21 moral character required of persons seeking to become naturalized citizens.

22 The crux of the complaint was Kungys' role during World War II. To establish that at
23 trial, the government introduced videotaped depositions taken in Lithuania in which the

1 witnesses detailed Kungys' involvement in the massacre of Jews. Lithuania was then a Soviet
2 republic, and the depositions were presided over by a Soviet official with questioning by OSI
3 attorneys and defense counsel. After viewing the videotape, the district court discounted entirely
4 the witnesses' statements.²

5 The court's reasoning was multi-faceted. It concluded that: (1) because the Soviets
6 treated war crimes as "political cases," there was often pressure to tailor evidence; (2) the Soviet
7 Union had an interest in the United States finding that Kungys participated in the killings because
8 this would diminish the influence of Lithuanian emigrés (such as Kungys), and thereby help
9 suppress Lithuanian nationalism; (3) the manner in which the depositions were conducted was
10 suspect; (4) the content of the depositions suggested that inculpatory statements were fabricated
11 as a result of undue pressure by the Soviet authorities; and (5) the Soviets' failure to release
12 statements the same witnesses had given in the 1940s cast doubt on the accuracy of the more
13 recent testimony.

14 The court's criticism was leveled not only at the Soviets but at OSI itself, for showing
15 "extreme deference" to the overbearing and intimidating Soviet procurator, posing "blatantly"
16 leading questions, and interposing "silly" objections to the defense cross-examinations. The sum
17 of all this led the court to accuse OSI of "collaborating" with a totalitarian state and to conclude
18 that the use of the deposition testimony against Kungys "would violate fundamental
19 considerations of fairness."

20 Without evidence of Kungys' role in persecution, the only remaining issue was whether
21 his misrepresentations and concealments warranted revocation of citizenship. The court
22 concluded that they did not, because neither singly nor in the aggregate were they material

1 (relevant) to his having been allowed to enter the United States or to become a naturalized
2 citizen. The same reasoning motivated the court's conclusion that the false information did not
3 establish lack of good moral character: the falsehoods were not deemed material.

4 The government appealed on a variety of grounds – arguing that *any* false statement was
5 evidence of bad moral character, regardless of whether it was material; that the defendant's false
6 statements had in fact been material; and that the court should have considered the deposition
7 testimony taken in the Soviet Union. The latter issue was of particular importance to OSI. Not
8 only was the testimony crucial to a determination about Kungys' wartime activity, but the

9 Criminal Division feared that the court's ruling:

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

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17 Although that may have been the most important issue to OSI, the appeals court did not
18 issue a ruling on the point. Instead, the court focused on whether Kungys' misrepresentations
19 had been material. Concluding that they had, the court found sufficient basis to revoke his
20 citizenship on that ground alone; the court did not need to determine whether he in fact had
21 played a role in the murder of 2,000 Jews.⁴

22 Kungys appealed to the Supreme Court which agreed to hear the case. The Court was
23 interested in two issues, neither of which involved the deposition testimony crucial to a
24 determination of Kungys' role in World War II. Rather, the Court was concerned with how to
25 determine whether facts concealed in a citizenship application are material, and whether false
statements alone establish lack of good moral character for citizenship or whether those false

1 statements too have to be material.

2 On the first issue, both the government and Kungys agreed that the standard for
3 materiality should be determined from a prior Supreme Court ruling;⁵ the two sides disagreed
4 only on what that ruling established. As to good moral character, the government took a middle
5 ground:

6 We're not saying that any lie, regardless of its significance, is enough to
7 show that you lack good moral character. What we're saying is that here in the
8 context of lies that could have proven the basis for perjury. . . where somebody
9 has repeatedly committed perjury, that he has demonstrated lack of good moral
10 character.⁶

11
12 After the argument, in an unusual move, the Supreme Court notified the parties that it
13 wanted the case reargued. It also asked the parties to submit another set of briefs, focusing on a
14 series of questions including whether the materiality standard in the prior Supreme Court ruling
15 ought simply to be abandoned, and if so, what should take its place.

16 The opinion ultimately issued showed a very divided Court.⁷ A majority did agree,
17 however, to abandon the earlier test of materiality and to establish a less stringent one than even
18 the government had originally urged. Under the new test, a misrepresentation or concealment is
19 material to a citizenship application if it would have a "natural tendency to produce the
20 conclusion that the applicant was qualified."⁸ The Court also held that *any* false statement made
21 under oath in order to obtain an immigration benefit can establish lack of good moral character;
22 there is no requirement that the statement be material.

23 This was a major victory for the government. Henceforth, it would be much simpler to
24 establish both materiality in denaturalization proceedings and lack of good moral character in
25 cases in which the defendant was charged with misrepresentation. From that perspective – and

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In November 1988, the district court entered an order along the terms proposed. As of this writing, Kungys remains in the United States.

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1. This was the first case in which OSI based a denaturalization count on the State Department regulation. He could not be charged with assistance in persecution since he had not entered under the DPA or the RRA.
2. *United States v. Kungys*, 571 F. Supp. 1104 (D.N.J. 1983).
3. Dec. 5, 1988 memorandum from [] to the Solicitor General. B6
4. *U.S. v. Kungys*, 793 F.2d 516 (3rd Cir. 1986). On a separate issue, the Circuit agreed with the lower court that a misrepresentation must be material to show a lack of good moral character.
5. *Chaunt v. U.S.*, 365 U.S. 350 (1960).
6. *Kungys* Supreme Court argument, Case 86-228, Apr. 1987, Tape 267.606, National Archives of the United States.
7. *Kungys v. United States*, 485 U.S. 759 (1988). There were five opinions issued in the case.
8. If the government proves that the misrepresentation had this tendency, a presumption of ineligibility is raised. The naturalized citizen can then rebut the presumption. The government had originally contended, both in its brief and first oral argument, that materiality is established when the government can prove that if the truth had been revealed, there *would* have been an investigation that *might* have uncovered disqualifying facts leading to loss of citizenship.
9. Aug. 11, 1988 memo to [] from [] B6
10. Sept. 6, 1988 memorandum from [] to [] recommending that the case be settled; Sept. 8, 1988 cover memo from [] to [] B6, B5

1 **Leonid Petkiewytsch – An Aberrational Loss**

2
3 Leonid Petkiewytsch was born in Poland where his father served as mayor of their town
4 during the German occupation. In 1944, the family fled to Austria to avoid the advancing
5 Russian Army. The Austrians routed the family to Germany where the 21-year-old Petkiewytsch
6 was assigned to serve as a civilian guard in a labor education camp. These camps, run by the
7 Gestapo, were originally intended to accustom indolent or unproductive foreign workers to
8 “proper work” during eight weeks of incarceration and indoctrination.¹ The camp to which
9 Petkiewytsch was sent also housed political prisoners and Jews who were segregated from the
10 rest of the population. Their incarceration was longer and they were subjected to especially harsh
11 forced labor, beatings and torture. Some were executed.

12 Although Petkiewytsch was a civilian employee, he was issued a German military
13 uniform and carried a loaded rifle. During his seven months at the camp, he guarded the inmates
14 and escorted them to factories and farms where they served as forced laborers. At war’s end,
15 Petkiewytsch was arrested by the British. He remained in custody for three years, though no
16 charges were ever filed.

17 Shortly after his release, Petkiewytsch applied for a visa under the DPA. His application
18 was rejected because of his guard service. In 1955, after both the DPA and RRA had expired,
19 Petkiewytsch was admitted under the INA. He answered “no” to a question on his visa
20 application asking whether he had ever been arrested.

21 Petkiewytsch did not apply for U.S. citizenship until 1982. In response to questioning at
22 that time, he stated that he had served as a guard in a labor camp and had been arrested by the
23 British. INS contacted OSI which, unaware of Petkiewytsch until then, opened an investigation.²

1 INS meanwhile placed his citizenship application on hold.

2 While investigating Petkiewytch's wartime activities, OSI learned that the British failure
3 to file charges did not necessarily mean that they believed a person was not guilty. Often they
4 were unable to locate key witnesses or realized that the subject had already spent more time in
5 custody than he would receive if tried and convicted.³

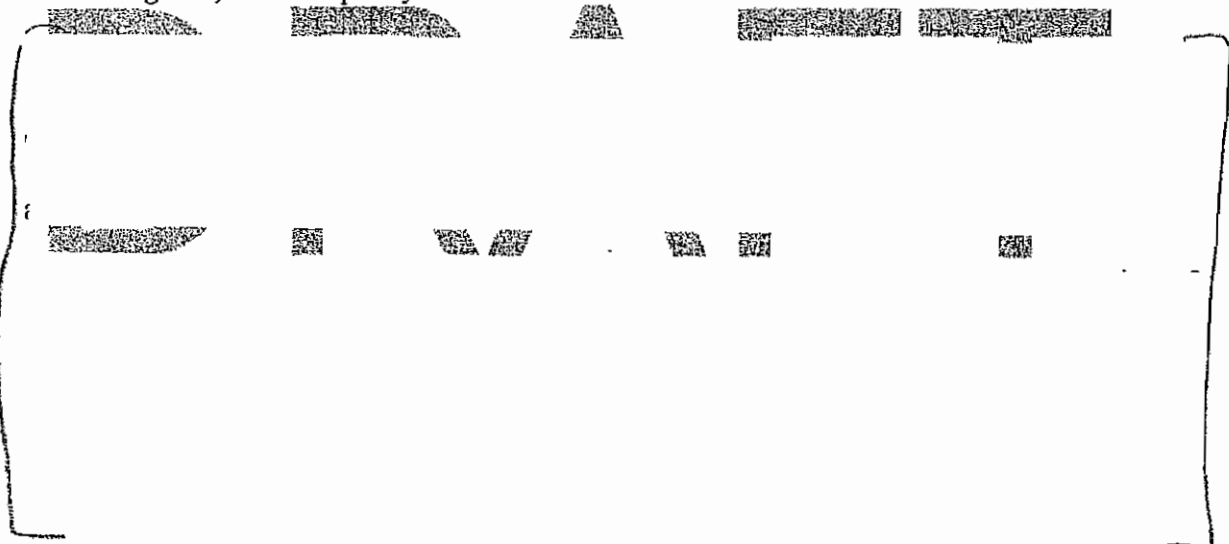
6 OSI filed deportation charges in 1985. The filing alleged that Petkiewytch was
7 deportable because he had assisted in persecution and concealed material information (that he
8 had been arrested by the British) in his visa application.

9 In an unusually brief opinion (3 pages), the immigration judge rejected the government's
10 claims outright. He concluded that Petkiewytch was "a victim of the times he lived in" and that
11 his wrongful conduct was at most . . . his acceptance under duress of his duties as a civilian labor
12 education camp guard. The court determined that Petkiewytch's service had been involuntary
13 and that he had never abused any inmates. Based on these findings, it ruled that he had not
14 assisted in persecution.⁵

15 The ruling was reversed on appeal.⁶ The BIA accepted the premises upon which the
16 immigration judge had relied, *i.e.*, that Petkiewytch had been "a rather reluctant guard who
17 performed his duties as ordered in order to escape imprisonment or death," and that he never
18 physically harmed the prisoners or fired a shot. However, it found these emotionally powerful
19 arguments irrelevant to legal disposition of the case. Relying on the Supreme Court ruling in
20 *Fedorenko*, the Board focused solely on the "objective effect" of Petkiewytch's conduct. From
21 that perspective, his work had assisted the Nazis in their persecution of Jews. The Board was
22 unfazed by Britain's failure to file charges after the war since the British did not focus on

1 whether Petkiewytsch violated U.S. statutes. The decision was a complete victory for OSI.

2 The victory was short-lived. Petkiewytsch appealed to the Sixth Circuit which reversed
3 the decision yet again.⁷ The Circuit acknowledged that the labor camp was "a place of
4 persecution" and that the Holtzman Amendment, the statute under which OSI had filed suit, was
5 aimed at those who "assisted in persecution." However, after examining the legislative history of
6 the amendment, the court concluded that it was intended to prevent true "war criminals" from
7 entering the country. Petkiewytsch, who had "never struck a prisoner and never personally
8 inflicted any form of abuse upon prisoners beyond impeding their escape through his presence as
9 a civilian guard," did not qualify.



17 Moreover, the Supreme Court, in *Fedorenko*, had held that a prisoner of war who involuntarily
18 served as a camp guard could be stripped of his citizenship. In an effort to distinguish
19 Petkiewytsch's situation from *Fedorenko's*, the Sixth Circuit relied heavily on the fact that
20 *Fedorenko* had admitted shooting his gun at escaping inmates; Petkiewytsch, by contrast, had
21 never fired a shot.¹⁰

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The Solicitor General authorized the government to seek rehearing. The Circuit, however, declined to reconsider the case. On the theory that bad facts – at least as the Sixth Circuit had articulated the facts – make bad law, OSI and the Criminal Division did not ask the Solicitor General to file a petition for certiorari.¹² The Sixth Circuit ruling was therefore the final word.

In 1992, with litigation complete, INS asked OSI to return Petkiewytch's immigration file. The agency was set to remove its hold on his naturalization application and to grant him citizenship. OSI advised INS that if it did so, the government would bring a denaturalization action. The INS retained the hold and Petkiewytch remained a resident alien in the United States until his death in January 2000.

The holding in *Petkiewytch* had tangible as well as intangible consequences for OSI. Intangibly, it made the office for years more reticent to file a case which could ultimately be appealed to the Sixth Circuit. Tangibly, another case was lost when the court followed the *Petkiewytch* weapon analysis.¹³ OSI feared that a "shoot the gun" test was developing: if a

1 guard had not used a weapon offensively, the court would conclude he had not assisted in
2 persecution.

3 In fact, however, no other appellate courts were willing to follow suit; indeed, they were
4 openly dismissive of the ruling.¹⁴ One went so far as to describe it as not merely wrong, but
5 “doubly wrong.”¹⁵ Only eight years after the Sixth Circuit decided *Petkiewytsch*, another panel
6 of the same court interpreted it to apply only to those required to serve involuntarily as civilian
7 guards in labor education camps.¹⁶ The chance that these three factors will coalesce in another
8 case is remote, as the court inevitably realized. By giving *Petkiewytsch* such a narrow
9 interpretation, the Circuit essentially neutered it as precedent.¹⁷

10 D R A F T
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1. Decree of Himmler, "Establishment of Labor Education Camps," May 28, 1941.

2. Aug. 16, 1982 memo to [redacted] from [redacted] It is unusual for OSI to learn of a subject in this manner. For one similar occurrence, see pp. 303-304. B6

3. Mar. 13, 1986 memorandum from [redacted] to File re interview with [redacted] B6

4. *Matter of Petkiewytsch*, A08 857 812 (Imm. Ct., Cincinnati, Ohio 1987).

5. The court bolstered this conclusion by noting that Petkiewytsch had been released by the British. As for not acknowledging his time in custody, the court concluded that this misrepresentation was immaterial to the issuance of the visa.

6. *In re Leonid Petkiewytsch*, A8 857 812 (BIA 1990).

7. *Petkiewytsch v. I.N.S.*, 945 F.2d 871 (6th Cir. 1991).

8. It can happen, however. See p. 30, n. 5 re Nazi records of killings at Mauthausen.

9. See e.g., *Kulla v. INS*, 825 F.2d 188, 1192 (7th Cir. 1987); *Schellong v. INS*, 805 F.2d 655, 660-61 (7th Cir. 1986); *Maikovskis v. INS*, 773 F.2d 435, 445-46 (2nd Cir. 1985).

10. The Sixth Circuit did not decide whether involuntariness was a factor to be considered in deportation proceedings. (In *Fedorenko*, the Supreme Court said that someone who entered the United States under the DPA could be *denaturalized* if he served as a camp guard, even if that service was involuntary.) The Holtzman amendment, under which the *Petkiewytsch* deportation action was filed, has wording very similar to the DPA.

[redacted] U.S. 759 (1988), discussed at pp. 127-133. BS

in *U.S. v. Kungys*, 485

12. Oct. 27, 2002 discussion with [redacted] and lead B6
counsel in the Petkiewytsch prosecution.

13. *U.S. v. Lindert*, 907 F. Supp. 1114 (N.D. Ohio 1995), discussed at pp. 64-70.

14. *Tittjung v. Reno*, 199 F.3d 383, 398 (7th Cir. 1999); *Kairys v. INS*, 981 F.2d 937 (7th Cir. 1992); *Szehinskyj v. Attorney General*, 432 F.3d 253 (3rd Cir. 2005).

15. *Szehinskyj v. Attorney General*, *supra*, n. 14, 432 F.3d at 260, n. 8.

16. *Hammer v. INS*, 195 F.3d 836 (6th Cir. 1999). The *Hammer* panel could not overrule *Petkiewytsch* since that can only be done by a full complement of the Sixth Circuit judges or by the Supreme Court. In fact, *Hammer's* narrow reading of *Petkiewytsch* is questionable since it wrongly suggests that involuntariness was key to the *Petkiewytsch* ruling.

17. See, *Negele v. Ashcroft*, 368 F.2d 981, 984 (8th Cir.), *cert. denied*, 125 S.Ct. 815 (2004), in which the court notes that “the mitigating factors in *Petkiewytsch* are not present in this case.”

DRAFT

1 **Aloyzas Balsys and Vytautas Gecas – Self-Incrimination in OSI Cases**

2
3 The decision in *United States v. Balsys* was arguably the most far-reaching of the three
4 OSI cases to reach the Supreme Court. It will likely impact terrorism and international drug
5 prosecutions even more than it does OSI matters.

6 The ruling concerns the scope of the Fifth Amendment privilege against self-
7 incrimination. That privilege guarantees that “[n]o person. . . shall be compelled in any criminal
8 case to be a witness against himself.” The Supreme Court had long held that the privilege
9 precludes the government from requiring a person to answer questions if the answers could be
10 used against him in a state or federal criminal prosecution. This was so even if the answer would
11 provide only “a link in the chain of evidence” needed to prosecute him in the United States. The
12 Court had not resolved, however, whether someone could be required to answer if he feared
13 prosecution *abroad* rather than in the United States.

14 In the course of pursuing its denaturalization and deportation cases, OSI seeks to question
15 and depose defendants and witnesses.¹ They cannot invoke the Fifth Amendment on the ground
16 that they fear their statements will be used against them in OSI proceedings because OSI cases
17 are *civil* matters. However, some have declined to answer on the ground that their answers
18 might subject them to criminal prosecution overseas. Courts have handled this in a variety of
19 ways. Some ruled that the Fifth Amendment can never be invoked based on fear of prosecution
20 abroad;² others suggested it applies in limited circumstances;³ and some skirted the issue based
21 on the facts in the particular case.⁴

22 The issue was resolved in *U.S. v. Balsys*.⁵ Aloyzas Balsys, a Lithuanian who emigrated to
23 the United States in 1961, never applied for U.S. citizenship. OSI opened a deportation

1 investigation based on wartime documents found in Lithuania. Those documents showed that
2 someone with the name Aloyzas Balsys had served in a Lithuanian secret police organization that
3 had liquidated a Jewish ghetto. However, OSI was not certain that the subject of their
4 investigation was the same person who had served in the police unit.

5 In September 1993, an OSI attorney and an OSI investigator went to Balsys' home to
6 question him. Balsys denied that he had served in any military or police organizations during the
7 German occupation of Lithuania. When pressed further, he terminated the interview. Ten days
8 later, OSI served him with a subpoena, ordering him to answer questions and bring various
9 documents concerning his wartime activities and his emigration to the United States. He
10 appeared at the appointed time and place, accompanied by a lawyer. He refused to answer any
11 questions, other than his name and address, on the ground that the answers might incriminate him
12 abroad (in Lithuania, Germany or Israel). He also declined to turn over any documents covered
13 by the subpoena other than his alien registration card.

14 OSI filed suit in district court to enforce the subpoena. After reviewing the criminal
15 statutes in all the countries where Balsys feared criminal liability, the court concluded that he did
16 indeed face a "real and substantial" danger of prosecution. However, the court ruled that the
17 Fifth Amendment did not extend to fear of prosecution overseas. It reasoned that the amendment
18 was designed to protect individuals from "governmental overreaching," a consequence not
19 possible if the feared prosecution was by a foreign power.⁶

20 The ruling was reversed on appeal.⁷ The Second Circuit court concluded that "individual
21 dignity and privacy values"— which it saw as some of the core purposes of the Amendment —
22 were best protected if an individual could avoid the "cruel trilemma of self-accusation, perjury,

1 or contempt.” The Circuit acknowledged that “governmental overreaching” was also a core
2 value inherent in the Amendment. Unlike the district court, however, it posited that such
3 overreaching was possible with an overseas prosecution because we now live in an era of
4 “cooperative internationalism.” To illustrate its point, the court noted that the Justice
5 Department was interested in having OSI defendants prosecuted abroad and was willing to share
6 its evidence with foreign governments.

7 The ruling was of substantial import to the United States for reasons well beyond OSI
8 cases. When the government seeks testimony from an individual who has a “substantial and
9 legitimate” fear of prosecution by federal or local authorities, the government can grant the
10 witness immunity from all domestic prosecution. He can then be compelled to testify because
11 nothing he says can be used against him in any criminal proceeding, the Fifth Amendment
12 interest against self-incrimination is thus preserved. However, the United States has no ability to
13 grant immunity from *foreign* prosecution. Therefore, any statements made in the United States
14 might be used in a criminal proceeding abroad if the United States makes the statements
15 available. Many witnesses in cases involving international organized crime, drug trafficking,
16 terrorism, antitrust conspiracies and securities frauds might legitimately have such a fear. If they
17 can invoke the Fifth Amendment, investigation of these crimes would be severely hampered.

18 Because of these concerns, as well as the fact that the Circuit’s decision conflicted with
19 rulings in other Circuits, the government asked the Supreme Court to review the case. In its brief
20 to the Court, the government stressed the impact on domestic prosecutions of crimes with
21 international reach, but noted too the direct impact of the lower court ruling on OSI’s
22 investigations. The government acknowledged that there were “many” cases where OSI did not

1 have sufficient evidence without the requested testimony. Were the Circuit ruling to stand, the
2 United States might have “to tolerate . . . within its borders . . . participants in persecution or
3 genocide.”⁸

4 After reviewing the history and purpose of the Fifth Amendment, the Supreme Court
5 concluded that the privilege was intended to apply only to domestic prosecutions. The Court
6 acknowledged that the United States had an interest in having foreign governments prosecute
7 OSI matters.⁹ However, there was no evidence that such foreign prosecutions were being
8 brought on *behalf* of the United States. If they were, the Fifth Amendment would apply. But the
9 “mere support of one nation for the prosecutorial efforts of another does not transform the
10 prosecution of the one into the prosecution of the other.”

11 The Court’s ruling meant that Balsys would now have to answer questions posed by OSI
12 on face incarceration for contempt of court. Shortly after the ruling, Balsys’ attorney advised OSI
13 that his client would rather abandon his permanent resident status and leave the country than
14 answer questions about his wartime activities. His voluntary departure allowed OSI to achieve
15 its potential ultimate goal – removing Balsys – without further investigation or litigation. Balsys
16 left the country in May 1999.

17 The Supreme Court ruling had repercussions on other OSI subjects as well. Most
18 immediately, it affected Vytautas Gecas, an OSI subject who had, almost simultaneously with
19 Balsys, litigated his right to assert the Fifth Amendment based on fear of foreign prosecution.

20 OSI historians had found several documents referencing a Vytautas Gecas who served in
21 Lithuania’s Second Battalion, a unit so notorious for persecution that courts have ruled service in
22 the Battalion is sufficient in and of itself to constitute assistance in persecution.¹⁰ However,

1 none of the government's Gecas documents had identifying information, such as date or place of
2 birth. Just as with Balsys, the government could not be certain that it had the right person.

3 In 1991, Gecas answered some questions from OSI investigators. He claimed to have
4 spent the war years in a vocational school in Kaunas, Lithuania. The government later issued a
5 subpoena to compel Gecas to answer more questions and bring pertinent documents. Gecas,
6 newly represented by counsel, refused to comply. OSI filed suit to enforce the subpoena and,
7 after much litigation, won a ruling that the Fifth Amendment could not be invoked based on fear
8 of prosecution overseas.¹¹ On the day after the Supreme Court issued its ruling in *Balsys*, it
9 declined to review Gecas' case.

10 Despite the definitive court rulings against his position, Gecas maintained his silence. At
11 the government's request, the district court held him in contempt for refusing to comply with a
12 court ruling. The court ordered him imprisoned for eighteen months -- the maximum period
13 allowed by law -- or until he agreed to answer questions. He remained consistent in his refusal
14 to respond and therefore spent the full eighteen months behind bars.

15 He was released in November 2000, having spent more time in U.S. custody than any
16 other OSI defendant up to that point.¹² Still, the government was no closer to being able to file
17 its case. In an effort to obtain more information, an OSI attorney and an investigator interviewed
18 inmates and employees at the two institutions where Gecas had served his sentence. OSI thought
19 he might have discussed his situation with one of them, and, perhaps inadvertently, made
20 statements that would be helpful to the government's investigation. He had not.

21 Inmates in federal custody are advised that their phone conversations (other than those
22 with defense counsel) may be recorded. OSI retrieved audiotapes of 78 telephone conversations

1 Gecas had had with family members. Nothing in any of those conversations was useful to the
2 government.

3 In November 2002, an OSI historian searched all vocational school records in Kaunas,
4 Lithuania to determine if Gecas' alibi was credible. There had been seven vocational high
5 schools in Kaunas during the war. The records of only three survived, and those only partially.
6 Miraculously for OSI, the historian found pertinent material. In addition to Gecas' graduation
7 certificate (June 1941) there was a letter from his father in a folder containing material about
8 Gecas' brother. The father had written to request a stipend for his younger son because elder
9 brother Vytautas was not providing any family support. He "voluntarily joined the Second
10 Battalion and has gone away. . ."

11 This was the last piece of evidence the government needed. OSI filed a deportation
12 action against Gecas shortly after finding the new material. Rather than face trial, Gecas agreed
13 to admit that he had served in the Second Battalion, to relinquish his green card, and to leave the
14 United States permanently. He flew to Lithuania in August 2003.

15 There is no way to estimate the number of domestic criminal prosecutions impacted by
16 *Balsys*. That would involve answering a counterfactual question: how many people would have
17 asserted a Fifth Amendment privilege based on fear of foreign prosecution had the Supreme
18 Court not ruled as it did. However, it is safe to assume that the impact of the case is substantial.
19 The privilege had been asserted with some frequency in OSI investigations¹³ and there are many
20 more wide-reaching criminal investigations than OSI matters. Indeed, at the time the Supreme
21 Court briefs were filed in *Balsys*, more than twenty grand juries in the United States were
22 investigating international cartel activities that involved businesses and individuals located in

1 twenty countries on four continents.¹⁴ The number of investigations has undoubtedly increased
2 in the post 9/11 era, given the proliferation of international terrorist activity.

3 There is a new twist to *Balsys* on the horizon. At this writing, the Justice Department is
4 entering an era of international task forces. The line between U.S. and foreign prosecutions will
5 inevitably be blurred. Whether the Fifth Amendment will apply to prosecutions abroad
6 emanating from such task forces is an open question. The only certainty is that resolution of the
7 matter must begin with an analysis of *Balsys*.

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1. Before a case is filed, a citizen is under no obligation to respond to questioning. Non-citizens, however – and many OSI defendants never became citizens – must do so if the government issues an administrative subpoena pursuant to 8 U.S.C. 1225 (d)(4).

Over the years, the format and purpose of the interview has evolved. It was originally intended as an opportunity for the defendant to persuade the government it was mistaken before a case was filed (recorded interview with [redacted] Apr. 25, 2001). The early interviews were scheduled in advance, the subject had the option of appearing with an attorney, he was placed under oath and a court reporter was present. B6



2. *U.S. v. Gecas*, 120 F.3d 1419 (11th Cir. 1997) (*en banc*); *U.S. v. Ragauskas*, No. 94 C 2325, 1995 WL 86640 (N.D. Ill. 1995); *U.S. v. Karsteins*, No. 87-CV-964 (N.D.N.Y. 1987) (unpub'd). See also, *U.S. v. [Under Seal]*, 794 F.2d 920 (4th Cir. 1986) (a non-OSI case).

3. *U.S. v. Inde*, No. 3:88-50 (D. Minn., Aug. 22, 1989) as amended Dec. 6, 1989; *U.S. v. Trucis*, 89 F.R.D. 671 (E.D. Pa. 1981); and *U.S. v. Palciauskas*, 559 F. Supp. 1294 (M.D. Fl. 1983) (the defendant could decline to answer some questions but not others); *Juodis v. Mikutaitis*, 800 F.2d 159 (7th Cir. 1986) and *U.S. v. Bartesch*, 643 F. Supp. 427 (N.D. Ill. 1986) (an order sealing testimony was sufficient protection against the likelihood of prosecution overseas; therefore all questions must be answered); *U.S. v. Lileikis*, 899 F. Supp. 802 (D. Mass. 1995) (if there is a “real and substantial” likelihood of prosecution abroad, the United States must establish that a “governmental interest” is involved in securing the testimony and that there is a “legitimate need” for the testimony in order to “further[] that interest.”)

4. *U.S. v. Linnas*, No. 79 C 2966 (E.D.N.Y. 1980) (where the defendant had been convicted *in absentia* by the U.S.S.R., the earlier conviction meant that there was no longer reason to fear prosecution); *U.S. v. Stelmokas*, No. 92-CV-3440, 1995 WL 464264 (E.D. Pa. 1995), *aff'd on other grnds*, 100 F.3d 302 (3rd Cir. 1996) and *U.S. v. Klimavicius*, 671 F. Supp. 814 (D. Me. 1985) (after analyzing facts, it appeared there was no “real and substantial” likelihood of prosecution abroad).

5. 524 U.S. 666 (1998). It was a significant enough matter to have come before the Court twice prior to *Balsys*. However, in neither case did the Court reach the merits. *Zicarelli v. New Jersey Comm'n of Investigation*, 406 U.S. 472 (1972) (no “real and substantial” risk of foreign prosecution); *Parker v. U.S.*, 397 U.S. 96 (1970) (*per curiam*) (remanded for dismissal because of

mootness).

6. *U.S. v. Balsys*, 918 F. Supp. 588 (E.D.N.Y. 1996).

7. *U.S. v. Balsys*, 119 F.3d 122 (2d Cir. 1997).

8. Reply Brief for the United States in *Balsys*, p. 13, n. 4.

9. The Court cited both OSI's mandate – which includes maintaining liaison with foreign prosecution, investigation and intelligence offices – and treaty agreements such as one which requires the United States to cooperate with Lithuania in developing evidence for the prosecution of war criminals. 524 U.S. at 699.

10. *U.S. v. Ciurinskas*, 148 F.3d 729, 734 (7th Cir. 1998). *See also, Naujilis v. INS*, 240 F.3d 642, 647 (7th Cir. 2001).

11. *U.S. v. Gecas*, 830 F. Supp. 1403 (N.D. Fl. 1993), *aff'd in part, rev'd in part*, 50 F.3d 1549 (11th Cir. 1995), *vacated and dis. ct. opinion aff'd*, 120 F.3d 1419 (*en banc* 1997), *cert. denied*, 524 U.S. 951 (1998).

12. Several defendants were prosecuted abroad and incarcerated as a result of those prosecutions.

Within the United States, John Demjanjuk, Andrija Arukovic and Bruno Blach were imprisoned pending their extradition. (Demjanjuk also spent 10 days in custody after failing to appear at a deportation hearing.) Konrads Kalejs was in custody briefly after he was caught fleeing the jurisdiction in the midst of his deportation proceeding. Karl Linnas spent a year in custody while he fought his deportation order. Several other defendants were detained for short periods prior to their deportation hearings.

Johann Leprich was arrested in July 2003 when he was found in the U.S. after having told the court he would leave the country once his citizenship was revoked. He remained in custody until Oct. 2006. The court ordered his release when it became clear that no country was willing to accept him. Leprich now holds the record for the longest incarceration in the United States of an OSI defendant.

Unbeknownst to OSI, in Sept. 2004 DHS (successor to INS), arrested OSI defendant Mykola Wasyluk. DHS cited 8 U.S.C. 1231(a), which allows for the detention of an alien who has been ordered deported if he fails to pursue in good faith all means necessary to assure his departure. He was released in Aug. 2005 because the law does not justify unlimited detention.

13. *See* notes 2-4, *supra*.

14. Supreme Court Brief for the United States in *Balsys*, p. 34.

1 Demjanjuk and identified him as Ivan the Terrible. So too did eyewitnesses in Germany and the
2 United States.

3 Based on these eyewitness identifications, the USAO in Cleveland, Ohio filed a
4 denaturalization action in 1977. The complaint charged Demjanjuk with having unlawfully
5 gained admittance and citizenship by concealing his Treblinka service. It did not reference the
6 sobriquet "Ivan the Terrible," but accused Demjanjuk of "cruel, inhumane and bestial treatment
7 of Jewish prisoners and laborers" at Treblinka. And while there was no allegation that he had
8 served at Trawniki, Sobibor or Flossenbürg, the complaint charged him with falsely listing
9 Sobibor on his visa application as a place of residence during the war.

10 Coincidentally, at almost the same time that the case was filed, the Justice Department
11 established the SLU. The SLU and the USAO agreed to prosecute the case jointly.

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18 The Justice Department designated the SLU lead counsel.

19 During the course of the *Fedorenko* litigation, which came to trial before *Demjanjuk*, the
20 government learned that the Soviets had interviewed several Treblinka witnesses. The SLU
21 sought to get reports of the interviews from the Soviets.⁴ The reports, called "protocols," arrived
22 after the *Fedorenko* trial was completed. They came to be known as "the Fedorenko protocols."

23 By the time anyone read them, the SLU had been replaced by OSI. Since the protocols
24 involved Treblinka, they were reviewed by the attorneys assigned to handle the Demjanjuk

1 investigation. The protocols included a statement made by Fedorenko while visiting the Soviet
2 Union. He recalled two gas chamber operators, Nikolai and Ivan. Another guard remembered
3 the two as Nikolai and Marchenko; a third recalled only one name, Nikolai Marchenko. No one
4 mentioned the name Demjanjuk.

5 OSI asked the Soviet Union for additional material, including new statements from
6 Danilchenko, the guard quoted in the Soviet magazine, as well as from the two Treblinka guards
7 still in the Soviet Union. (Fedorenko was by then in the United States.)

8 The Soviets reinterviewed Danilchenko and one of the guards, the other having been
9 executed for war crimes. Danilchenko reiterated that he knew Demjanjuk from guard service at
10 Sobibor. He identified three photographs of Demjanjuk and claimed that he and Demjanjuk were
11 transferred from Sobibor to Mlossenbürg. The Treblinka guard could not identify Demjanjuk's
12 picture. However, he said an Ivan Demedyuk or Demjanjuk had worked as a *cook* at Treblinka.
13 After leaving Treblinka, the guard was told that Demedyuk (or Demjanjuk) had become the gas
14 chamber operator.⁵ From his own time there, however, the guard remembered the gas chamber
15 operator as Nikolai Marchenko. These new Soviet interviews came to be known as the
16 "Danilchenko Protocols."

17 OSI also sought information from Poland. The Poles had nothing on Demjanjuk, but sent
18 an article which included a partial list of guards who had served at Treblinka. Among them was
19 an Ivan Marchenko; there was no listing for anyone named Demjanjuk.

20 OSI personnel conducted many interviews. A [] BB
21 and eighteen Treblinka survivors identified Demjanjuk as Ivan the Terrible.

22 Based on the fact that Demjanjuk had given his mother's maiden name as Marchenko on

1 his visa application, one of the two original OSI attorneys assigned to the case hypothesized that
2 Marchenko and Demjanjuk were one and the same. The other attorney [] B6
3 [] The evidence had him at Sobibor and
4 Treblinka during overlapping periods, even as various witnesses said Ivan rarely left Treblinka.

5 [] B6
6 []
7 In February 1980 [] wrote a memorandum to the OSI director and his deputy.⁶ The B6
8 memo []

9 [] BS

10 **DRAFT**
11 The government did not drop the case but did strive for more precision in the charges.
12 The complaint was amended to add Sobibor and Trawniki to the Treblinka allegations.⁷
13 The case went to trial in 1981. Neither the Fedorenko protocols, contemporaneous

14 reports of the [] interview, the list of names from Poland, nor the Danilchenko protocols B6
15 were given to the defense. The OSI trial attorneys explained that []
16 [] BS
17 [] They claimed never to have seen contemporaneous reports of the Horn
18 interview.

19 The government obtained Demjanjuk's Trawniki card from the Soviets and introduced it
20 into evidence. This was the first Trawniki card ever seen by scholars and it differed from many
21 other known German identity documents in that it did not have a date and place of issuance.
22 Moreover, Demjanjuk's picture, glued to the card, was not properly aligned.

The government's case rested on the testimony from Horn and the survivor witnesses,

1 which placed Demjanjuk at Treblinka, as well as on the Trawniki card, which established that
2 Demjanjuk was a guard at Sobibor; the card did not mention Treblinka. Horn testified that he
3 had been shown two stacks of pictures, each containing one photograph of Demjanjuk; he had
4 recognized Demjanjuk's picture in each set. A handwriting expert testified that the German
5 signatures on the Trawniki card matched signatures on other documents signed by the same
6 personnel.⁸ The alignment of markings on the card and photograph showed that the picture had
7 originally been attached properly.

8 Demjanjuk's defense was that he had been a prisoner of war when he was compelled to
9 join a German-sponsored anti-Soviet army;⁹ the Trawniki card was a forgery; and the witness
10 testimony was based on mistaken identity. He admitted lying on his immigration documents
11 about where he had spent the war years; he said he feared that if he acknowledged the truth, he
12 would be repatriated to the U.S.S.R. and executed for having fought against the Russian army.

13 The court ruled for the government and revoked Demjanjuk's citizenship, concluding that
14 he had trained at Trawniki and then, as Ivan the Terrible, operated the gas chamber at
15 Treblinka.¹⁰ The court made no determination as to whether he had also served at Sobibor.

16 At some point after the denaturalization trial was completed,

17 [] B6
18 [] Some Israelis feared that any extradition would dilute the impact
19 of the Adolf Eichmann trial, which, two decades earlier, had galvanized world attention. Others
20 believed another significant war crimes trial was needed to educate the current generation about
21 the horrors of the Holocaust. The latter view prevailed, and the Israelis chose to make "Ivan the
22 Terrible" their first war crimes extraditee from the United States.

1 The Department of Justice filed its deportation case before the Israelis formally requested
2 extradition. The thrust of the deportation suit was that Demjanjuk's wartime activity, as proven
3 in the denaturalization trial, showed that he had persecuted civilians on behalf of the Nazis. As
4 such, he was deportable under the Holtzman Amendment.

5 After the deportation hearing was completed, but before the court ruled, the extradition
6 process was begun. The two cases thereafter were on parallel tracks. The extradition papers
7 alleged that Demjanjuk, as Ivan the Terrible, murdered thousands of Jews and non-Jews while
8 operating the gas chambers at Treblinka. The extradition was before the same district court
9 judge who had issued the denaturalization ruling.

10 The deportation decision came down first. Demjanjuk was found deportable and the
11 U.S.S.R. was designated as the country of deportation.¹¹ While that ruling was on appeal, the
12 district court ordered him extradited to Israel to face murder charges.¹² Demjanjuk spent nine
13 months in custody while he appealed the extradition order. His appeal was unsuccessful and he
14 was flown to Israel in February 1986. There he was charged with crimes against the Jewish
15 people, crimes against humanity, war crimes and crimes against persecuted people. The thrust of
16 the charges concerned Demjanjuk's role as Ivan the Terrible, operator of the gas chambers in the
17 Treblinka death camp. There was mention as well of his having trained at Trawniki and having
18 served briefly at the Sobibor death camp.

19 The Israeli trial lasted 14 months. Testifying, Demjanjuk denied that he had ever been at
20 Treblinka or Sobibor, despite the fact that he had listed Sobibor on his visa application as a place
21 of residence during the war. He now maintained that after being captured by the Nazis in 1942,
22 he spent 18 months in a prisoner of war camp in Poland. Following that, he had been sent to

1 Austria to serve in Shandruk's Army, a unit of Ukrainians organized by the Nazis to fight the
2 Soviets; the Nazis then sent him to Germany to join Vlasov's Army, a unit composed primarily
3 of Russians organized for the same purpose. The Israelis countered this with evidence that
4 Shandruk's Army had not yet been organized at the time Demjanjuk claimed he was first a
5 member.

6 Much of the Israeli evidence of criminality was the same as that presented by the
7 Department of Justice at the naturalization, deportation and extradition hearings.¹³ The Israelis
8 also had newly prepared affidavits from two former OSI employees, one an historian and one an
9 investigator, who had interviewed [redacted]. Each affiant claimed that [redacted] pointed directly to
10 the picture of Demjanjuk and confidently said, "That is him."

11 Unbeknownst to OSI or the Israeli prosecutors, the defense also had new material --
12 documents taken from OSI trashbins. The material had been gathered by emigrés opposed to
13 OSI and distributed by them to the Demjanjuk defense team.¹⁴ It included contemporaneous

14 notes taken by the historian and the investigator. Nothing in those notes suggested that [redacted] said
15 "That is him." On the contrary, he had trouble identifying the defendant. He did so only after he
16 was shown a second stack of photos which also had a picture of Demjanjuk (though there was no
17 repeat of anyone else from the first set.) According to one of the accounts, Demjanjuk's picture,
18 and his alone from the first set, was kept face up in [redacted] sight while he viewed the second set.
19 Only after comparing both pictures did [redacted] choose Demjanjuk's.¹⁵

20 Based on this new material, the defense accused OSI of both concealing and falsifying
21 evidence in the U.S. litigation.¹⁶ In 1988, the Israeli court found Demjanjuk, as Ivan the
22 Terrible, guilty of war crimes, crimes against humanity and crimes against the Jewish people.¹⁷

1 He was sentenced to death and spent the next five years in isolation on death row while his
2 conviction was on appeal.¹⁸

3 By the time the appeal was heard, however, the Soviet Union had collapsed. This opened
4 a treasure trove of new archival material. None of it supported the charge that Demjanjuk was
5 Ivan the Terrible. On the contrary, there was much to indicate that he was not. Most significant
6 was a statement from one [redacted] who said that he and Ivan Marchenko were the two B6
7 gas chamber operators at Treblinka. Other Treblinka guards reported the same, and they, along
8 with several female inmates, picked Marchenko's picture from a photospread.¹⁹

9 Although none of the new evidence linked Demjanjuk to Treblinka, it did tie him to
10 **D R A F T** Trawniki, Sobibor, and Flossenbürg, as well as to Majdanek, another Polish camp. The Israelis
11 uncovered in the former Soviet archives German orders posting Demjanjuk to both Sobibor and
12 Flossenbürg; they also found three pertinent Flossenbürg records in West Germany. An OSI
13 historian found in Lithuania a disciplinary report for Demjanjuk from Majdanek. OSI gave the
14 document to the Israelis. Demjanjuk walked a fine line with the new evidence – relying on it to
15 establish that he had *not* been at Treblinka, but questioning its reliability to the extent that it
16 showed service elsewhere in the Nazi camp system.

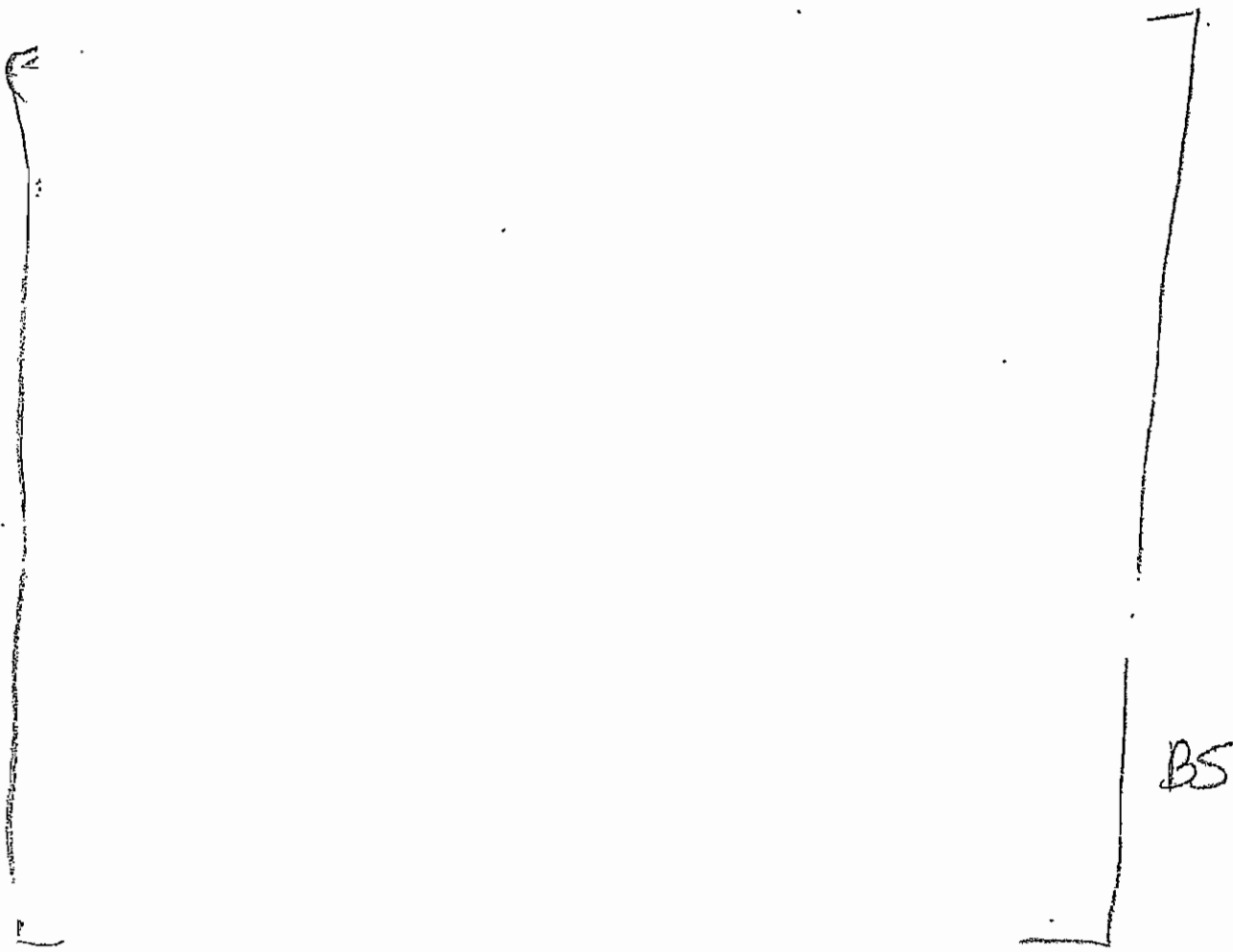
17 Even before the Israeli Supreme Court ruled, the defense moved to overturn the U.S.
18 denaturalization and extradition. The defense cited the new evidence as well as alleged
19 improprieties in OSI's handling of the earlier proceedings. Publicity about the new evidence and
20 OSI's alleged misconduct was extensive,²⁰ and the Justice Department announced that it was
21 reviewing the case.²¹ The Sixth Circuit (which had earlier affirmed both Demjanjuk's
22 denaturalization and extradition orders) twice wrote to Assistant Attorney General Robert

1 Mueller, seeking the results of the inquiry. Receiving no response to either letter, the Circuit
2 reopened the case, appointing a district court judge to serve as a Special Master.²²

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] One month later, the Israeli Supreme Court BS

acquitted Demjanjuk of the charge that he was Ivan the Terrible.²⁴ The Israelis had no doubt that Demjanjuk had been at Trawniki, Flossenbürg and Sobibor. He had been extradited principally to stand trial for murder as Ivan the Terrible, however, and of this the court was not convinced.

[D]oubt began to gnaw away at our judicial conscience. . . . By virtue of this gnawing -- whose nature we knew, but not the meaning -- we restrained ourselves from convicting the appellant of the horrors of Treblinka.

. . . . This was the proper course for judges who cannot examine the heart and the mind, but have only what their eyes see and read. The matter is closed -- but not complete. The complete truth is not the prerogative of the human judge.

1 The law of extradition is circumscribed. One can only be tried for the charges which
2 formed the basis for the extradition. In Demjanjuk's case, Trawniki, Flossenbürg and Sobibor
3 were part of the extradition case – but only in passing. The thrust of the case had clearly been the
4 charge that he was Treblinka's Ivan the Terrible. While he could be convicted for his activity at
5 other camps, the Israeli court declined to pursue this option. To change the thrust of the
6 extradition at such a late date would necessitate giving Demjanjuk another opportunity to defend
7 himself. Since he had already spent seven years in Israeli custody, the court felt that prolonging
8 the proceedings any further would be unreasonable.

9 The Israelis were prepared to release Demjanjuk, but it was uncertain where he would go.
10 Having lost his U.S. citizenship, Demjanjuk was stateless and did not have authorization to
11 return to the United States. Indeed, the Department of Justice maintained that he was barred
12 from reentry by the Holtzman Amendment, since he had – at Trawniki, Sobibor, Flossenbürg
13 and Majdanek – assisted in persecution of civilians on behalf of the Nazis.

14 Ukraine was willing to have him return to his country of birth, but he wanted to be in the
15 U.S. with his family.²⁵ He asked the Sixth Circuit to order the Attorney General not to bar his
16 reentry. The court obliged, giving several reasons, including (1) Demjanjuk's need to assist his
17 new counsel with the pending prosecutorial misconduct litigation; and (2) "basic humanitarian
18 considerations embodied in our Constitution" which required the court responsible for sending
19 him to Israel to ensure that he "is not injured or rendered permanently homeless."²⁶ He returned
20 to the United States amidst much fanfare, accompanied by Congressman James Traficant.²⁷

21 Shortly after he arrived, a three-judge panel from the Sixth Circuit ruled on the
22 prosecutorial misconduct issue. It skeptically accepted the Special Master's finding that no OSI

1 attorney deliberately withheld from Demjanjuk or the court information he believed he had a
2 duty to disclose, but nevertheless found the government's conduct unacceptable.

3 The attitude of the OSI attorneys toward disclosing information to Demjanjuk's
4 counsel was not consistent with the government's obligation to work for justice
5 rather than for a result that favors its attorneys' preconceived ideas of what the
6 outcome of legal proceedings should be.²⁸

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8 The Court held that the government should have given the defense the Fedorenko
9 Protocols, the list of Treblinka guards from the Polish government and the information about the
10 Horn photospread. Because the government had "recklessly disregarded" its duty to do so, the
11 court concluded that OSI had perpetrated a fraud on the court, without which Demjanjuk would
12 not have been denaturalized, deported or extradited.

13 Given the government's conduct, the Circuit rescinded the extradition order. The court
14 made no determination about any of the other charges against Demjanjuk, including whether he
15 had served at Trawniki, Sobibor or any other camp.

16 The Circuit also vastly broadened the government's obligation to share exculpatory
17 information with the defense. Although the government had long been required to provide the
18 defense with all potentially exculpatory material in *criminal* cases, that rule had never been
19 extended to civil lawsuits. In *Demjanjuk*, the Sixth Circuit applied the rule to denaturalization
20 and extradition proceedings if those proceedings are predicated on the defendant's involvement
21 in criminal activity. Demjanjuk, having been charged as a mass murderer, fit within that
22 category.²⁹ The Supreme Court denied the government's request that it review the case.³⁰

23 Following the Circuit's ruling, the Justice Department asked the district court to reopen
24 the denaturalization case. Given the "extraordinary public scrutiny" attached to the case, the

1 government believed that giving Demjanjuk “a final opportunity in an American court to refute
2 the evidence of his Nazi involvement will bolster confidence in the denaturalization
3 proceedings.”³¹ The judge who had ruled in the denaturalization (and extradition) matters had
4 died, and the case was assigned to a new judge.

5 Rather than reopening the matter, the district court vacated the earlier denaturalization
6 order, based on a new determination that OSI had acted with “reckless disregard” for its duty.
7 The court cited OSI’s failure to disclose the memorandum of an interview with a Trawniki clerk
8 who said he had “no useful information” about Demjanjuk. (This memorandum was independent
9 of those discussed earlier.) According to the court, the clerk might have had information useful
10 to the defense about the authenticity of the Trawniki card. The court restored Demjanjuk’s U.S.
11 citizenship, but left open the possibility that a new denaturalization case could be filed.

12 By this time, the matter had been in litigation for over two decades. The parties spent
13 several months in settlement negotiations, ultimately to no avail. In April 1999, the United
14 States filed a new complaint seeking denaturalization based on Demjanjuk’s having assisted in
15 persecution by having served as a Trawniki-trained guard at Sobibor, Majdauek and Flossenbürg,
16 his having been a member of, or participant in, a movement hostile to the United States, and his
17 having wilfully misrepresented material facts about his wartime activities.³²

18 The second denaturalization trial differed markedly from the first. The earlier case had
19 relied almost entirely on eyewitness testimony; the only document offered into evidence by the
20 government was Demjanjuk’s Trawniki pass. This time, the government presented no
21 eyewitness testimony but relied extensively on wartime documents which had become available
22 since the first trial. This included over 40 Trawniki cards which, like Demjanjuk’s, had no date

1 or place of issuance. Their similarity to Demjanjuk's card was used to establish the authenticity
2 of the Demanjuk document.

3 Rather than claiming that the documents relating to him were forgeries, Demjanjuk
4 argued that they either referenced a cousin of his, who, coincidentally, had the same name, or else
5 that they must have been used by someone in a case of identity theft. The court rejected these
6 defenses and, once again, stripped Demjanjuk of his U.S. citizenship.³³ The ruling was affirmed
7 on appeal and the Supreme Court denied review.³⁴ OSI filed a deportation action in December
8 2004. Six months later, the court found him deportable under the Holtzman Amendment because
9 his wartime service – at Trawniki, Majdanek, Flossenbürg and Sobibor – involved assistance in
10 persecution based on race, religion or national origin.

11 The government requested that Demjanjuk be sent to Ukraine or, if that country refused
12 to accept him, to Poland or Germany. Demjanjuk sought to preempt a decision to remove him to
13 Ukraine by filing an application with the immigration judge for relief under the Convention
14 Against Torture (CAT). He contended that if sent to Ukraine, he would be likely be prosecuted
15 as Ivan the Terrible and tortured. To support his claim, he submitted reports issued by the State
16 department and Amnesty International asserting that torture is common in Ukrainian prisons.
17 The immigration court rejected Demjanjuk's argument and ordered him deported to Germany,
18 Poland or Ukraine in December 2005.³⁵ That ruling was affirmed by the Bureau of Immigration
19 Appeals in December 2006 and by the Sixth Circuit in January 2008.³⁶ In June 2008, Equipo
20 Kizkor, a Brussels-based human rights group asked a Spanish court to indict Demjanjuk and seek
21 his extradition to Spain for crimes against humanity in the persecution of Spanish nationals at
22 Flossenbürg.³⁷

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(a) Procedural

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(1) At the time Demjanjuk was tried,

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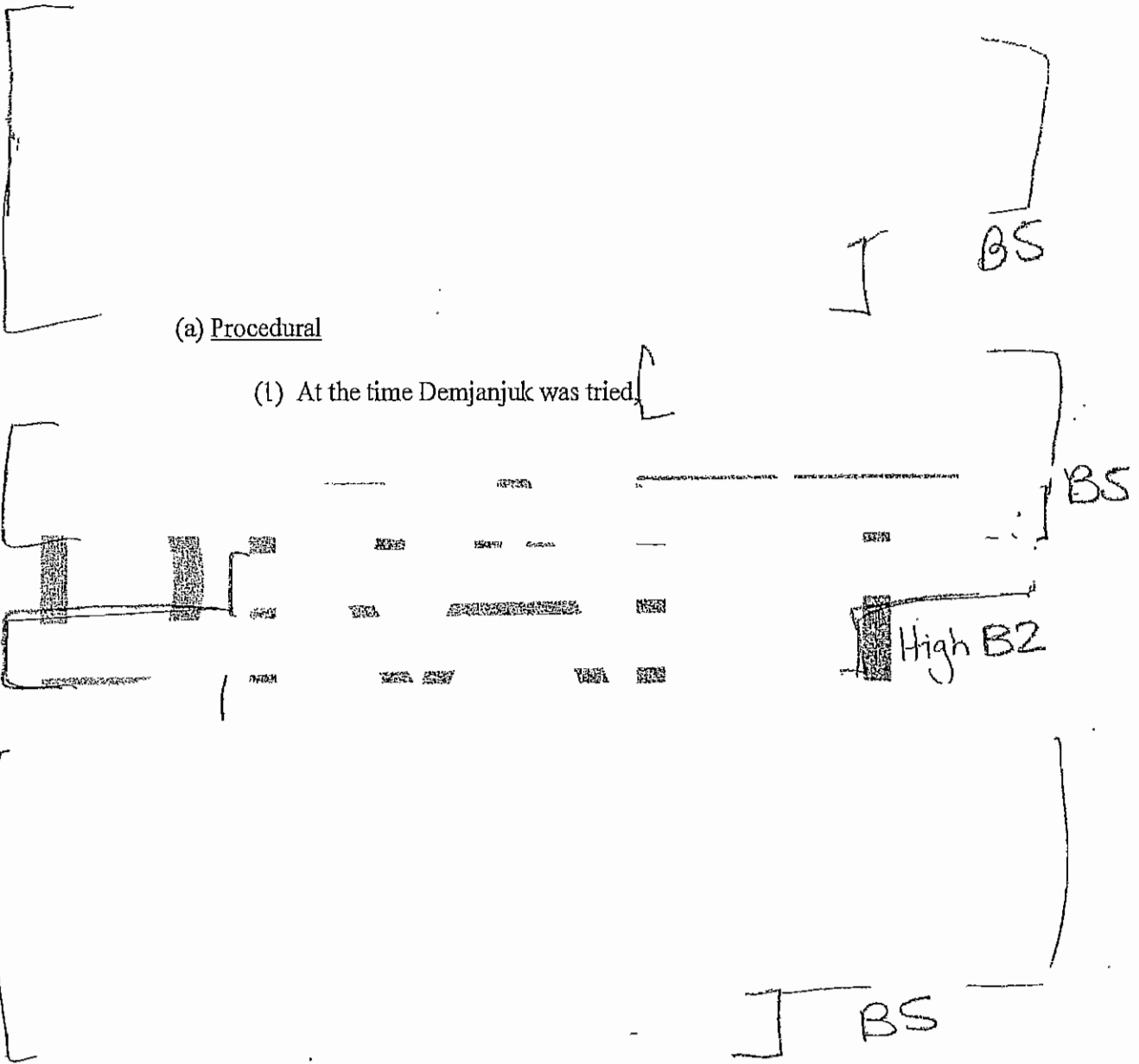
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The amount of material is staggering. In the typical case involving a Trawniki-trained defendant, OSI produces 11 CD roms with generic historical material, plus hard copies of documents relevant to the particular case. This gives the defense between 100,000 and 150,000 pages of documents.

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The defense, understandably, needs a significant amount of time to go through the material. (In the second Demjanjuk trial, the court at first granted a year. Due to issues that arose over the material, this was extended some months beyond.) Given the age of OSI defendants, this is a matter of much moment.

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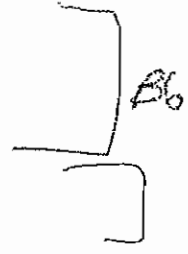
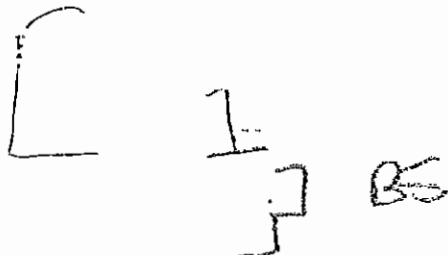
(5) There has never been another extradition of an OSI defendant from the United States.⁴³ Whether there would have been, even without *Demjanjuk*, is unclear. Israel had suggested to [] that Demjanjuk would be the first and others might follow. However, there has not been another OSI defendant since with the degree of culpability that Ivan the Terrible possessed. The typical OSI defendant is a camp guard or member of an auxiliary police unit. Israel has never been interested in extradition of persons at that level of responsibility.

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(b) Ethical Investigations

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(4) [Redacted] of the Sixth Circuit asked the government
to investigate former [Redacted] This request was based on information which came to
light after the Sixth Circuit ruling.

While the Supreme Court was considering the government's request that it review the

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At the request of defense counsel, the government also notified the Supreme Court of the new information.⁴⁴

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(c) Intangible

It was the second loss for OSI in the Sixth Circuit.⁴⁶ This increased the Department's hesitancy to seek review from that Circuit in cases where the district court ruled against OSI.⁴⁷ Much more importantly, however, it cast a pall on the office. It was a loss with international repercussions. Based partly on evidence unavailable to OSI, the Israelis had concluded he was not Ivan the Terrible. That ruling received worldwide publicity. That the Israelis also concluded he had served at Trawniki, Sobibor and Flossenburg did not get as much attention. The impression therefore remained that OSI had erred badly. The subsequent Sixth Circuit ruling, finding that the office had committed a fraud on the court, reinforced that message. And although Demjanjuk was again denaturalized and ordered deported, this did not receive the same media attention as had the earlier rulings. As a result, many members of the public still know of OSI only as the mistaken prosecutor of Ivan the Terrible.⁴⁸

DRAFT

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1. Several months later, the editor published the allegations. "At Different Poles," by Michael Hanusiak, *News from Ukraine*, Mar. 26, 1976.
2. "Punishment Will Come," by O. Matviychuk, *News from Ukraine*, Sept. 1977.
3. Oct. 25, 1978 memorandum from [] bb
4. *Demjanjuk v. Petrovsky*, Report of the Special Master, June 29, 1993. Unless otherwise indicated, the chronology of events in this chapter comes from the Special Master's unpublished report.
5. The Soviets provided a translation of the statement which said that Demjanjuk had become the driver of a gas chamber van. However, when OSI reviewed the original document, they realized that the translation was inaccurate.
6. The memo is reprinted in *Demjanjuk v. Petrovsky*, 10 F.3d 338, 369-71 (6th Cir. 1993).
7. Whether the amendment was the result of the memorandum is unclear. Neither the Director nor his Deputy recalled seeing the memorandum and no copy was found in OSI's files. Shortly after the memorandum was written, however, there had been a meeting to discuss the case.
8. The expert could not establish with certainty that the signature on the card was that of the defendant, although he testified that there were strong indications that this was the case. He noted that the spacing, height ratios and baseline habits matched with a current exemplar from the defendant. However, since approximately 35 years had passed since a poorly educated person had signed his name using a different alphabet than he was now accustomed to using, a positive identification was difficult to establish.
9. The government acknowledged that Demjanjuk had been a German prisoner. However, the government's evidence established that many Soviet POWs captured on the Eastern front were sent to Trawniki to be trained for guard service in Nazi extermination and concentration camps.
10. *U.S. v. Demjanjuk*, 518 F. Supp. 1362 (N.D. Ohio 1981), *aff'd per curiam*, 680 F.2d 32 (6th Cir.), *cert. denied*, 459 U.S. 1036 (1982).
11. *Matter of Demjanjuk*, A08 237 417 (Imm. Ct., Cleveland, Ohio 1984), *aff'd*, *In re Demjanjuk*, (BIA 1985), *aff'd per curiam*, 767 F.2d 922 (6th Cir.) (unpub'd), *cert. denied*, 474 U.S. 1034 (1985).
12. *In the Matter of the Extradition of John Demjanjuk*, 612 F. Supp. 544 (N.D. Ohio 1985).
13. The issue of obtaining evidence from the Soviet Union presented problems for Israel since the two countries did not have diplomatic relations. OSI had already returned the Trawniki card,

so essential to the case, to the U.S.S.R.

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The problem was solved by using Armand Hammer, a Jewish businessman and philanthropist in the U.S., as an intermediary. Hammer had worked with the Soviets since the Russian revolution and he arranged for them to loan the Trawniki card to Israel.

14. See discussion at pp.

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15. *Demjanjuk v. State of Israel* (Crim. App. 347/88, 1993), pp. 298-302.

The investigator and historian affidavits were not the only ones prepared for the Israeli trial about which the defense raised doubts based on contradictory information found in the garbage.

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There were problems with the defense case as well. The court suggested that someone (apparently, though not provably, with the defense team) had tricked Otto Horn into signing a new affidavit contradicting some of his earlier statements. *Id.* at 298, 305-06. The court also questioned whether the defense had tried to influence the testimony of a Treblinka survivor. *Id.* at 306, 433.

16. “Lawyer Claims New Evidence Found in Demjanjuk Case,” by Allyn Fisher, *AP*, Sept. 5, 1989.

17. *State of Israel v. Demjanjuk*, Crim. Case 373/86 (D. Ct. Jerusalem 1988).

18. Demjanjuk had also spent the two years preceding trial in Israeli custody. His appeal was postponed several times. The first postponement dramatized how emotionally charged the case was for all concerned. A week before the appellate argument, one of Demjanjuk’s counsel committed suicide. At his funeral, a 70-year old Holocaust survivor threw acid in the face of another Demjanjuk attorney. The acid thrower was sentenced to three years’ custody.

19. The defense had other evidence as well. This included statements from a Polish farmer and his wife who claimed that the Treblinka gas chamber operator caroused in their town; they knew him as Ivan Marchenko. Their story was featured on the CBS Newsmagazine *60 Minutes*, Feb. 25, 1990.

20. See e.g., “How Terrible is Ivan?” by F. Dannen, *Vanity Fair*, June 1992; “U.S.-Israel Plot Charged in ‘Ivan’ Holocaust Case,” by Daniel Williams, *The Los Angeles Times*, Dec. 24, 1991; “Demjanjuk’s Lawyer Cites U.S., Israel,” by Jackson Diehl, *The Washington Post*, Dec. 24, 1991; “Israel to Review Demjanjuk Verdict,” by Ethan Bronner, *The Boston Globe*, Dec. 20,

1991; "War Crimes Trial Awaits New Data," by Clyde Haberman, *The New York Times*, Dec. 18, 1991; "Ivan the Terrible: A Case of Mistaken Identity," A&E television, Apr. 7, 1991.

21. "War Crimes Trial Awaits New Data," *supra*, n. 20.

22. The letters were dated Jan. 7, 1992 and May 4, 1992 and were released to the press by the court. "Justice Dept. Probing U.S. Nazi Hunters," by Ronald Ostrow, *The Los Angeles Times*,

[REDACTED] B5 B6

23. In addition to the denaturalization, deportation and extradition litigation, there had been two post-denaturalization actions alleging fraud on the court based on the withholding of evidence. The district court had found neither of the claims convincing. 518 F. Supp. at 1384 *et seq.*

There was also a series of Freedom of Information Act (FOIA) requests from Demjanjuk's family and defense team, and at least two FOIA requests from [REDACTED] The family succeeded in getting the Danilchenko protocols; [REDACTED] request yielded, among other things, the Fedorenko protocols. B6

24. *Demjanjuk v. State of Israel*, Crim. App. 347/88 (Sup. Ct. 1993).

25. Ukraine issued a visa and reportedly indicated he would be granted asylum. "U.S. or Ukraine? Demjanjuk Family Knocks on 2 Doors," by Michele Lesie, *The Cleveland Plain Dealer*, July 31, 1993.

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27. [REDACTED] was not Demjanjuk's elected representative. Nevertheless, he took a special interest in the case. For additional discussion of [REDACTED] and OSI, see pp. 336, 340, n. 19, 543. B6

28. *Demjanjuk v. Petrovsky*, 10 F.3d 338 (6th Cir. 1993). The Circuit particularly chastised former [REDACTED]

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The court

[Redacted text block with handwritten annotations: B6, BS, B6, B6, BS, B7E]

OSI Director Rosenbaum lends credence to that view. He describes the early OSI eras one in which the office "tended to construe requests very narrowly." *Nazi Hunter Battles Time to Ferret Out Hitler's Foot Soldiers*, by Stephen Koff, *Newhouse News*, Nov. 13, 2002.

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May 20, 1994

Memorandum to the Attorney General from the Solicitor General re *Demjanjuk v. Petrovsky*, 10 F.3d 338 (6th Cir. 1993)."

- 31. Government's Brief in Support of Motion to Reopen Judgment.
- 32. Demjanjuk filed a \$5 million counterclaim, alleging that he had been a victim of torture for which the U.S. was responsible. In support of this claim he contended, among other things, that the government had falsely claimed he was a mass murderer, mocked his refusal to confess, and caused him to be tried abroad in a "circus atmosphere" where he had been placed in solitary confinement and sentenced to death. The district court dismissed the counterclaim on jurisdictional grounds.
- 33. *U.S. v. Demjanjuk*, 2002 WL 544622 (N.D. Ohio 2002) and *U.S. v. Demjanjuk*, 2002 WL 544623 (N.D. Ohio 2002) (supplemental opinion).
- 34. *U.S. v. Demjanjuk*, 367 F.3d 623 (6th Cir.), *cert. denied*, 125 S.Ct. 429 (2004).
- 35. *Matter of Demjanjuk*, A08 237 417 (Imm. Ct., Cleveland, Ohio 2005).
- 36. GET CITES

37. "Alleged Nazis Face Charges in Spanish Court," by Daniel Woolls, *AP*, June 24, 2008.

38. See pp. 22-23.

39. See n. 29 *supra* re [] testimony to the contrary. B6

40. Aug. 3, 1992 memorandum from [] to OSI attorneys. B6

41. See pp. 89-91.

42. In *Maikovskis*, the Israeli witnesses had the defendant in various places at the same time. The district court was so hostile to this portion of the case that the government dropped several counts and focused only on those for which it had documentary proof. In *Trifa*, victims held the defendant accountable for numerous beatings and killings in Romania. OSI ultimately pursued it as a propaganda case which was not based on this testimony.

43. Latvia had just begun the process of seeking extradition of Konrad Kalejs in 2001 when Kalejs died. Although Kalejs had been an OSI defendant, the extradition would have been from Australia, the country to which OSI had him deported. See pp. 466-475.

44. *Rison v. Demjanjuk* No. 93-1875, Supplemental Brief for the Petitioners, Oct. Term, 1994. See also, "Demjanjuk Case has a New Twist," by Joan Biskupic, *The Washington Post*, Sept. 27, 1994.

45. Oct. 20, 1994 letter to Attorney General Reno re []

46. The other was *U.S. v. Petkiewytch*, 945 F.2d 871 (6th Cir. 1981), discussed at pp. 134-140.

47. See discussion of *U.S. v. Lindert*, 907 F. Supp. 1114 (N.D. Ohio 1995) at pp. 64-70.

48. As noted on pp. 543-544, Patrick Buchanan was arguably the most influential of OSI's critics. He wrote more pieces about the Demjanjuk prosecution than any other OSI case. See e.g., "Nazi hunting - with guidance from the KGB," *The Washington Times*, Dec. 1, 1983; "Response to an OSI Nazi Hunter," *The Washington Times*, Feb. 22, 1984; "Nazi Butcher or Mistaken Identity?" *The Washington Post*, Sept. 28, 1986; "Acquit Demjanjuk: The Case is Weak," *The New York Times*, Mar. 31, 1987; "Deadly, Dubious I.D. Card," *Washington Times*, Mar. 19, 1990.

1 **Johann Breyer – An American Persecutor**

2 Several factors distinguish the prosecution of Johann Breyer from other OSI cases: (1) it
3 raised unusual equal protection and gender discrimination issues; (2) it involved expatriation
4 (renunciation of citizenship) as well as denaturalization; and (3) the defendant sued the media
5 over its coverage of the case. The convergence of these factors made for arguably the most
6 arcane and convoluted litigation in OSI's history.

7 Breyer's mother was born in the United States, emigrated to Czechoslovakia as a
8 teenager, and married a Czech national. She never returned to the U.S. Both her children were
9 born in Czechoslovakia.

10 Under the law at the time of Breyer's birth, foreign-born offspring of U.S. citizen fathers
11 were U.S. citizens at birth; foreign-born offspring of U.S. citizen mothers were not. The law
12 was amended in 1934 to be gender neutral: any child born abroad to a U.S. citizen father *or*
13 mother obtained U.S. citizenship at birth.² The amendment was not retroactive, however. It
14 therefore did not confer citizenship on Breyer, who had been born in 1925.

15 In 1939, the area in which Breyer lived became the separate state of Slovakia. The
16 country allied with Nazi Germany during the war. At age 17, Breyer joined the SS and was
17 assigned to the Totenkopf (Death's Head) battalion, an organization whose members served as
18 guards at Nazi concentration and death camps. Breyer served at Buchenwald and then
19 Auschwitz.³ Although he knew that prisoners at these camps were killed, tortured and used for
20 gruesome experiments, he denied any personal role in the brutality. He acknowledged only that
21 he had served as an armed guard and escorted prisoners to and from their work sites.⁴

22 Breyer emigrated to the United States in 1952, entering under the DPA. His application

1 form stated that he had been with the German military, but made no mention of his membership
2 in the SS or his service as a camp guard. In 1957, Breyer became a naturalized U.S. citizen.

3 OSI learned of Breyer through routine case research and development; he was listed on a
4 document as an Auschwitz guard and a cross-check with INS showed that he had emigrated to
5 the United States. In 1992, the government filed a denaturalization action. The complaint
6 alleged that Breyer had been ineligible to enter under the DPA because he had assisted in
7 persecution and, as a member of the Death's Head battalion, been part of a movement hostile to
8 the U.S.⁵

9 Breyer did not contest these points. Instead, he challenged the government's right to
10 denaturalize him, asserting that in retrospect he should be deemed to have entered the country
11 lawfully as a U.S. citizen since his mother had been born in the United States. He argued that the
12 statute granting derivative citizenship only patrilineally was unconstitutional because it denied to
13 women a right granted to men (*i.e.*, the right to pass U.S. citizenship to one's child). If the statute
14 had been applied in a gender-neutral manner, Breyer would have been a U.S. citizen at birth and
15 free to enter the country at any time. His eligibility to enter under the DPA was therefore
16 irrelevant. So too was the validity of his 1957 naturalization since he was already a U.S. citizen.

17 There is an administrative procedure for establishing derivative citizenship. One must
18 file an application with INS for a certificate of citizenship and, if it is denied, file suit in district
19 court. Before the court ruled in his denaturalization case, Breyer began this administrative quest
20 for citizenship. As a result, the case for years preceded on parallel tracks: OSI's lawsuits
21 (denaturalization and deportation) on one track, and Breyer's effort to get a declaration of
22 citizenship on the other.

1 In the denaturalization lawsuit, the district court found merit in both OSI's arguments and
2 Breyer's defense. The court agreed that Breyer had been ineligible to enter under the DPA and
3 therefore that the citizenship he obtained in 1957 was invalid. However, it also ruled that the
4 statute denying Breyer citizenship at birth was unconstitutional. The court concluded that if his
5 mother had indeed been born in the United States – a contention which OSI disputed – then
6 Breyer's citizenship should have been conferred at birth. The court ordered a hearing to resolve
7 the issue of Katrina Breyer's birthplace.⁶

8 There was no contemporaneous record of the birth. After reviewing conflicting
9 secondary evidence, the court concluded that Breyer's mother had been born in Pennsylvania.
10 That did not resolve the question of Breyer's citizenship, however. His mother's citizenship
11 could only pass to Breyer if his mother was a U.S. citizen when Breyer was born. Had she,
12 perhaps, done anything to renounce her citizenship? And even if not, had Breyer done anything
13 to expatriate himself before he came to the United States? (U.S. law lists a series of acts which,
14 if done voluntarily with the specific intent of relinquishing citizenship, will have the desired
15 effect.)

16 Rather than resolving these questions, the court opted to defer to the INS, which still had
17 before it Breyer's request for a certificate of citizenship. The district court therefore abstained
18 from deciding the ultimate issue – whether Breyer was a U.S. citizen by birth – until the
19 administrative process was complete.⁷

20 Breyer appealed the district court rulings. The Third Circuit affirmed the denaturalization
21 but also held that the district court should not have considered the derivative citizenship claim at
22 all. As the Circuit saw it, derivative citizenship had nothing to do with the denaturalization

1 litigation. The denaturalization concerned only the validity of the citizenship granted to Breyer
2 in 1957. The sole way for Breyer to establish derivative citizenship, according to the appellate
3 court, was through the INS (where his application for a certificate of citizenship was still
4 pending). If the INS granted his application, his 1957 certificate of naturalization would be
5 extraneous and the court's revocation of it would have no effect on his standing as a U.S. citizen.
6 If the INS denied his request for a certificate, Breyer could ask the district court to consider the
7 matter of derivative citizenship.⁸

8 Three weeks before this ruling (but not referred to in it), Congress again amended the
9 derivative citizenship law by making its earlier gender-neutral provision retroactive.⁹ Under the
10 amendment, anyone born overseas to a U.S. citizen mother acquired U.S. citizenship at birth,
11 even if the child was born before 1934. At the behest of the Department of Justice, however,
12 Congress placed a singular exception into the statute.¹⁰ The exception denied retroactive
13 application of the law to anyone who would not have been eligible to enter the United States
14 under the DPA or the RRA.¹¹ The amendment was designed, in part, to avoid jeopardizing
15 pending Nazi expatriation cases.¹² Since the district court had already determined that Breyer
16 should not have been admitted under the DPA (because he had assisted in persecution and been a
17 member of a "movement hostile") he came squarely within the exemption. As such, he still did
18 not qualify for derivative citizenship.

19 The INS cited the new statute in finally denying Breyer's request for a certificate of
20 citizenship.¹³ Shortly thereafter, OSI filed its deportation case. Before the deportation was
21 resolved, Breyer appealed the INS ruling. As procedurally required, he did so by filing a lawsuit
22 in district court seeking a determination that he was entitled to citizenship.

1 This new case was handled by the Justice Department's Office of Immigration Litigation
2 (OIL) rather than by OSI since it was not directly part of OSI's denaturalization or deportation
3 cases. However, OIL consulted OSI throughout.

4 Breyer's suit challenged the retroactivity amendment on several grounds. His key
5 contention was that it preserved some gender discrimination and therefore violated the equal
6 protection clause of the Constitution.¹⁴ Gender discrimination remained because a group of
7 people (those inadmissible under the DPA or RRA) were denied derivative citizenship only if the
8 citizenship came from their mothers; the same was not true if the citizenship passed through their
9 fathers. Breyer also argued that the new law was a bill of attainder – legislation written to
10 punish him alone – and that it was unconstitutional on that ground as well. Moreover, he
11 maintained that it had been improper for DOJ to lobby for passage of the legislation. And
12 finally, Breyer accused the Attorney General, the Department of Justice, and various unnamed
13 officials within the Department of conspiring to have INS delay acting on his administrative
14 request for a certificate of citizenship until the new statute – with its exemption targeting him –
15 had passed.¹⁵

16 The court rejected all his arguments. While it acknowledged that the statute retained
17 some disparate treatment, it concluded that remedial legislation need not “strike at all evils at the
18 same time or in the same way.”¹⁶ And since the prohibition on bills of attainder applies only to
19 laws that target individuals for “punishment,” the court found no constitutional impediment.
20 Case law has traditionally held that neither the loss of naturalized citizenship nor deportation
21 constitutes punishment.¹⁷ The court also found nothing improper with the Department's role in
22 lobbying for the legislation.

1 I find no provision of law that prevents DOJ or its employees from advancing the
2 agenda of the executive branch by seeking a change in proposed legislation, even
3 if they intend such a change to adversely affect people already engaged in
4 litigation or the administrative process. Even if such conduct would be
5 egregiously abusive if it were directed toward a citizen – and I do not so conclude
6 – nevertheless, governmental conduct that may be considered “shocking” when it
7 serves to deprive the life, liberty or property of a citizen may not be
8 unconstitutional when directed at an alien.¹⁸
9

10 Without determining whether INS had delayed acting on Breyer’s claim, the court noted
11 that the only remedy available for undue delay would be to vacate INS’ earlier decision and to
12 have the agency reconsider the matter. Given that the law had changed to Breyer’s detriment in
13 the interim, he would be unable to advance his cause in any event. Accordingly, the court denied
14 Breyer’s claim of derivative citizenship.¹⁹

15 In addition to losing his derivative citizenship claim, Breyer also lost the deportation case.
16 An immigration court found Breyer deportable and ordered him sent to Slovakia or, if that
17 country were unwilling to accept him, to Germany.²⁰

18 He appealed both losses. The Third Circuit adopted at least part of Breyer’s argument
19 concerning derivative citizenship. It agreed that the retroactivity amendment did not fully
20 eradicate the discriminatory effects of the prior immigration law and that the disparity was
21 “arbitrary and irrational.”

22 The foreign-born children of American fathers will acquire citizenship at birth and
23 lose it only by intentionally committed expatriating acts. The foreign-born
24 children of American citizen mothers will be prevented from obtaining American
25 citizenship if they, with or without intent, have committed similar expatriating
26 acts. The subjection of American women to this additional burden for the
27 transmission of citizenship to their foreign-born offspring is in fundamental
28 tension with the principle of equal protection.²¹
29

30 To remedy the problem, the court held that Breyer *was* entitled to American citizenship

1 relating back to the time of his birth. Once again, however, outstanding issues remained. The
2 Circuit noted that Breyer's wartime acts might have amounted to a *voluntary* renunciation of that
3 citizenship. This was so notwithstanding the fact that Breyer was not a citizen during World War
4 II and could not have believed he was such because the law then denied him that right. The
5 Circuit reasoned that a voluntary oath of allegiance to a nation at war with the U.S., and to the
6 Death's Head battalion, was fundamentally incompatible with the principles of American
7 democracy; indeed, it would amount to an "unequivocal renunciation of American citizenship
8 whether or not the putative citizen is then aware that he has a right to American citizenship."

9 The court sent the case back to the district court, yet again, for a determination of the
10 circumstances surrounding Breyer's membership in the Death's Head battalion.²²

11 The Justice Department considered seeking further review. Technically, the government
12 had lost. The Third Circuit ruling meant that Breyer was not statutorily barred from remaining in
13 the United States. His fate would depend on whether his death camp duties had been
14 involuntary, a factual determination as to which the outcome was as yet uncertain. Moreover,
15 the government believed that the Circuit had applied the wrong standard of review when
16 considering the constitutionality of the statute.

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OSI handled the expatriation matter in district court.

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What happened after he turned 18 was another matter. Breyer's military service ended at the age of nineteen. Had he done anything *after* his eighteenth birthday which would amount to a voluntary act of expatriation? The burden lay with Breyer to prove that his actions after age 18 were involuntary.²⁵

Before a hearing was held on that issue, the government notified Breyer that it intended to argue that his mother had expatriated herself before Breyer was born.²⁶ If the government prevailed in this argument, Breyer's citizenship arguments would be precluded. As a non-citizen, Breyer's mother would not have been able to convey citizenship to her child. However, the court refused to allow the government to raise the issue at this late date in the litigation.²⁷

The stage was finally set for a determination of what was now the ultimate issue: had

1 Breyer done anything after his eighteenth birthday to renounce the U.S. citizenship that had been
2 retroactively granted to him? The court had already concluded that as a factual matter Breyer's
3 joining the SS had been voluntary. While the law precluded a finding that his actions as a minor
4 were expatriating, OSI argued that his motivations should be presumed constant absent evidence
5 to the contrary. Unless Breyer could establish that service past his 18th birthday was performed
6 under *duress*, OSI contended that he had remained in the SS voluntarily and thereby expatriated
7 himself.

8 Breyer testified that he had done everything possible to be excused from service and to
9 convey his opposition to the policies of the Death's Head battalion. Among other things, he had
10 asked the town mayor to help him avoid service; he had refused to renounce his religion even
11 though there were economic incentives for SS men who did so; he had also refused to be tattooed
12 in a manner that would mark him as a member of the SS. Although he carried a weapon, he did
13 not always load it and told his superiors that he would not shoot an inmate; and he had ultimately
14 deserted in August 1944, returning months later only because he feared that he might be killed if
15 he failed to do so.²⁸

16 There were only three documents available concerning the circumstances of Breyer's
17 service after his 18th birthday. All involved requests – by him or on his behalf – to be excused
18 from continued service. As such they supported his assertion that he was not serving
19 voluntarily.²⁹

20 Given the paucity of documentary evidence, Breyer's testimony was largely irrefutable.
21 OSI's expert historian did testify, however, that some of Breyer's claims *e.g.*, that he was given
22 less onerous responsibilities because he was opposed to shooting inmates, were not historically

1 plausible. The government also pointed out that Breyer's service at Auschwitz began after his
2 18th birthday and that he had taken an oath of loyalty to Hitler at that time. Moreover, there was
3 no evidence that Breyer had ever tried to transfer from the Death Head's battalion to a fighting
4 unit. OSI relied on the Third Circuit's characterization of membership in the SS as tantamount to
5 a moral commitment to Nazi ideology. With that as a starting point, OSI contended that transfer
6 to a traditional fighting unit would have shown that Breyer was less at odds with American
7 principles. Not seeking a transfer was, the government argued, evidence that Breyer's service
8 after age 18 was an expatriating act.

9 The district court found that such a transfer would have been "technically possible" but
10 "exceedingly difficult" to obtain. Moreover, it found that Breyer had "no conceivable chance" of
11 leaving the SS entirely and that the loyalty oath was an involuntary action necessitated by his
12 circumstances.³⁰ Based on these findings, the court concluded that Breyer's service after his 18th
13 birthday was involuntary and therefore not expatriating. Accordingly, Breyer retained the U. S.
14 citizenship that should have been his from birth.

15 The decision was affirmed on appeal. The Third Circuit concluded that "deserting his
16 unit under what he believed to be penalty of execution suggests that Breyer's service was not
17 voluntary."³¹ The Court rejected the notion that Breyer had to establish duress. Rather, the panel
18 placed the burden on the government to show voluntariness and then concluded that that burden
19 had not been met.

20 The government did not seek further review. The court's ruling was largely driven by its
21 factual findings.

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2 The precedential value of the ruling for OSI is minimal. It is highly unlikely that a
3 similar factual pattern will recur – an individual born abroad to a U.S. citizen mother and non-
4 U.S. citizen father and who assisted the Nazis in acts of persecution.

5 The ruling could, however, have ramifications in non-OSI cases. The Circuit's
6 determination that membership in the SS was so antithetical to American values that it warranted
7 expatriation even if that was not the defendant's intent might be cited in support of an
8 expatriation argument involving someone who joined another group whose core values are
9 inimical to U.S. interests. It could also apply to someone who committed intentionally
10 destructive acts to the U.S. body politic.³²

11 Breyer, however, need not worry; he may remain in the United States for the duration of
12 his life. While he can take satisfaction in his victory, he did make one serious miscalculation in a
13 related proceeding.

14 In 1994, Breyer sued two networks over their coverage of his denaturalization case.³³ He
15 was particularly distressed over their equating him with Ivan the Terrible.³⁴ Two weeks before
16 trial, CBS offered to settle the case for \$20,000. When Breyer did not respond in a timely
17 manner, CBS withdrew the offer. Breyer failed to show up for trial, but on the morning it was
18 due to start, he notified CBS that he wanted to accept their offer. By that time, the network was
19 no longer willing to settle and the judge dismissed the lawsuit because Breyer was not present.
20 He therefore lost both the payment and the opportunity to litigate his claim.³⁵

21 The *Breyer* litigation is so convoluted that it is difficult to categorize. In retrospect, it
22 appears that the original anomaly in the law – granting citizenship to the children of U.S. citizen

1 fathers but not U.S. mothers – was fatal to the government’s case.³⁶ There was simply no way to
2 level the playing field despite heroic efforts by both Congress and the courts to do so.

3 The gender-neutral amendment in 1934 left uncovered the children born to U.S. citizen
4 mothers before 1934. Had the 1994 amendment simply established retroactivity, it would have
5 overcompensated for this inequity by giving *more* protection to the children of U.S. citizen
6 mothers than to the children of U.S. citizen fathers. Since anything such children did before
7 knowing they were citizens could not have been done with the intent to relinquish that
8 citizenship, military service on behalf of the Axis would not be expatriating. Yet the very same
9 service could be expatriating if performed by someone whose citizenship was derived
10 patrilineally.

11 One possible solution was to include a statutory exemption for persons inadmissible
12 under the DPA or RRA. But this created yet another inequity. Some children born abroad to
13 U.S. citizen mothers (*i.e.*, those ineligible for entry under the DPA or RRA) were now
14 categorically denied the possibility of derivative citizenship. They had no opportunity to show
15 that their service was *not* intended to be expatriating. Children of U.S. citizen fathers might be
16 expatriated, but they would at least have an opportunity to litigate the issue. Children of U.S.
17 citizen mothers who served the Axis could not.

18 In an effort to resolve *this* problem, the Third Circuit fashioned a remedy allowing for the
19 possibility that someone could voluntarily expatriate himself absent knowledge that he was a
20 U.S. citizen. This tortured traditional notions of expatriation and created an intellectual
21 impossibility. How could someone commit a sentient act of expatriation if he had no idea that he
22 was a citizen? By ruling that Breyer’s continued service in the SS was *involuntary*, the district

1 court avoided the problem.³⁷

2 In sum, the legislature and courts faced an insoluble dilemma. There was simply no way
3 to remove all inequities in the law. Breyer benefitted from a statutory anomaly.

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1. Rev. Stat. of 1874, § 1993. The law was a bit more complicated in that citizenship could pass only if the father had at some point resided in the U.S. However, this factor is irrelevant to the handling and outcome of the Breyer litigation.

2. 48 Stat. 797 (1934).

3. Whether he had served at the Auschwitz death camp (Auschwitz II) or the Auschwitz labor camp (Auschwitz I) was itself an issue during part of the case. The court ultimately concluded that he had served at Auschwitz I. However, resolution of that issue is not essential to the legal issues or outcome of this case.

4. Breyer made these admissions in depositions given during the OSI litigation as well in a deposition in the case of *Breyer v. Capital Cities/ABC, Inc., and CBS, Inc.*, Civ. No. 94-5872 (E.D. Pa.), discussed on p. 185. See also, *Breyer v. Meissner*, 2002 WL 31086985, Finding of Fact 101 (2002).

5. The government also charged misrepresentation and concealment of material facts, but these counts were not ultimately relevant to disposition of the case.

6. *U.S. v. Breyer*, 829 F. Supp 773 (E.D. Pa. 1993).

7. *U.S. v. Breyer*, 841 F. Supp 679 (E.D. Pa. 1994).

8. *U.S. v. Breyer*, 41 F.3d 884 (3rd Cir. 1994).

9. The impetus for this amendment was a Ninth Circuit ruling, in a non-OSI case, which held that the statute was unconstitutional to the extent that it did not retroactively confer citizenship on offspring of U.S. citizen mothers. *Wauchope v. Dep't of State*, 985 F.2d 1407 (9th Cir. 1993).

10. Comments by Sen. Kennedy, Cong. Record, S16863, Nov. 20, 1993.

11. The Immigration and Nationality Technical Corrections Act of 1994 (INCTA), Pub. L. No. 103-416, § 101 (a) and (c)(2).

12. 132 Cong. Rec. H9280 (daily ed. Sept. 20, 1994) (statement of Rep. Schumer). In fact, the only pending case affected by the bill was Breyer's.

13. *In re Breyer*, A08-305-096 (Office of Administrative Appeals 1996).

14. The government questioned whether Breyer could even raise the issue. Theoretically, the discrimination was against his mother rather than against him (in that she could not pass on her citizenship whereas a U.S. citizen father could have). However, since Breyer's mother had long since died, there was no way to resolve the potential inequity unless Breyer could himself raise the issue. The court ruled that he could.

15. INS was at the time part of the Justice Department.

16. *Breyer v. Meissner*, 23 F. Supp.2d 521, 535 (E.D. Pa. 1998).
17. This principle has been important in many OSI cases. See e.g., *Linnas v. INS*, 790 F.2d 1024, 1030 (2nd Cir. 1986); *Artukovic v. INS*, 693 F.2d 894, 897 (9th Cir. 1982).
18. *Breyer v. Meissner*, 23 F. Supp. at 545 (internal citations omitted).
19. *Breyer v. Meissner*, 23 F. Supp.2d 521 (E.D. Pa. 1998) and *Breyer v. Meissner*, 23 F. Supp.2d 540 (E.D. Pa. 1998).
20. *In the Matter of Johann Breyer*, A 08 305 906 (Imm. Ct., Phila., Pa. 1997).
21. *Breyer v. Meissner*, 214 F.3d 416, 427 (3rd Cir. 2000).
22. This ruling is at odds with the traditional expatriation law. See e.g., *Rogers v. Patokowki*, 271 F.2d 858, 861 (9th Cir. 1961). *Rogers* was cited in *dicta* in another OSI case which was reviewed (in an unpublished and therefore not precedent binding decision) by the same appellate court which handled *Breyer*. In *U.S. v. Schiffer*, 831 F. Supp. 1166, 1189 (E.D. Pa. 1993), *aff'd*, 31 F.3d 1175 (3rd Cir. 1994) (Table), the district court stated that "[a] United States citizen could not form the intent to relinquish his citizenship if, at the time he committed the expatriating act, he did not know he was a citizen." (Schiffer had been born in the U.S. but later moved to Romania and served as a camp guard during World War II. Unlike the *Breyer* case however, the court found that Schiffer knew during the relevant period that he was a U.S. citizen and his camp guard service therefore constituted an intent to expatriate.)

24. August, 2000 memo to the Solicitor General from [redacted] re *Breyer v. Meissner*.]

25. *Breyer v. Meissner*, 2001 WL 1450625 (E.D. Pa. 2001).

26. Breyer's mother was living in Czechoslovakia when it became a state in 1918. Under the law of the new republic, she automatically became a Czech citizen, unless she indicated that she wanted to retain her U.S. citizenship. OSI wanted to argue that her failure to take affirmative action to retain the citizenship amounted to a renunciation of it.

27. *Breyer v. Meissner*, 2002 WL 922160 (E.D. Pa. 2002). The issue had been lurking for years. As noted at p. 177, the 1994 district court ruling mentioned this possibility. The court at that time noted that “the parties did not present evidence or argument” on the point. *U.S. v. Breyer*, 841 F. Supp. at 685. Two years later the INS, denying Breyer’s claim to derivative citizenship, made the same point, stating that it was “aware of no evidence that she expatriated before the applicant’s birth in 1925.” *In re Breyer*, A08-305-096 (Office of Administrative Appeals, Oct. 15, 1996), p.3.

28. When deposed by OSI, Breyer claimed he had deserted (by failing to return from leave) in January 1945. The court, however, believed his court testimony that he had left in August 1944. The variance is significant. By January 1945, it was clear that the Germans were fighting a losing cause. Moreover, the advancing Russians would likely have cut off Breyer’s means of access to his unit. Failure to return to his unit in January 1945 was therefore less likely due to “desertion” than if he failed to return in August 1944.

29. The government found some useful information even in these documents. According to one, “the inductee” appeared before the German Party in January 1945 to plead his case. OSI argued that the inductee was an obvious reference to Breyer himself and that if he had been a deserter since the prior August, he would hardly appear before the authorities to seek their assistance. However, because of several factual inaccuracies in the document referring to the January event, the court concluded that it was not authentic and discounted it entirely. *Breyer v. Meissner*, 2002 WL 31086985, n. 13 (2002). This significantly weakened the government’s case.

(OSI believed that most of the inaccuracies had plausible explanations. This could not have been a case of “Soviet fabrication” – an argument which even Breyer did not make – since the documents were helpful to him.)

30. *Breyer v. Meissner*, 2002 WL 31086985 (E.D. Pa. 2002), Findings of Fact 103 and 118, Conclusion of Law 3.

31. *Breyer v. Ashcroft*, 350 F.3d 327, 335 (3rd Cir. 2003). The Circuit agreed with the lower court that Breyer’s return to his unit was borne of necessity, rather than choice. “There is no evidence of any other place Breyer safely could have gone. . . . [Therefore] his return was not voluntary in the sense that it might represent an intentional relinquishment of United States citizenship.” *Id.* at 338.

32. Indeed, Breyer’s attorney argued that the Circuit’s language was so broad that it would encompass terrorist acts such as the 1995 bombing of the federal building in Oklahoma City. Yet despite the horrific nature of that act, intended by its perpetrators as an act of defiance against the federal government, no one argued that the defendants should be expatriated. The perpetrators were tried and convicted. One was executed; the other was sentenced to life in prison.

33. *Breyer v. Capital Cities/ABC, Inc., and CBS, Inc.*, Civ. No. 94-5872 (E.D. Pa.).

34. *See* p. 150. On Sept. 7, 1993, a television announcement of upcoming news asked: "Could Philadelphia have its own Ivan the Terrible?"

35. *Breyer v. Capital Cities/ABC, Inc., and CBS, Inc.*, 1995 WL 733384 (E.D. Pa. 1995).

36. If the government had been able to establish -- in a timely manner -- that Breyer's mother had in fact expatriated herself before Breyer was born, the outcome of the case would have been different.

37. Whether the court would have ruled in the same way in the absence of this intellectual impossibility is unclear, although the opinion does suggest that the district court judge felt constricted in some measure by the Circuit's ruling. *See Breyer v. Meissner*, 2002 WL 31086985, n. 26 (2002).

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Propagandists

The International Military Tribunal at Nuremberg sentenced Julius Streicher, publisher and editor of a German anti-Semitic weekly newspaper, to death.

In his speeches and articles, week after week, month after month, he infected the German mind with the virus of anti-Semitism and incited the German people to active persecution.

Streicher's incitement to murder and extermination at the time when Jews in the East were being killed under the most horrible conditions clearly constitutes persecution on political and racial grounds in connection with War Crimes. . . and constitutes a Crime against Humanity.¹

The DPA excluded propagandists because they were seen as members of a "movement hostile" to the United States as well as abettors in persecution.²

Vladimir Sokolov – A Persecutor Who Found a Home in Academia

Vladimir Sokolov was a Ukrainian-born writer and editor of *Rech*, a Russian-language newspaper published by the Germans after they invaded the U.S.S.R. Before being hired at *Rech*, Sokolov underwent a background check by German military intelligence to assure, among other things, that he was opposed to "Jewish Bolshevism."³

His work included writing articles and giving propaganda speeches and lectures to the civilian population. The position provided him with a salary and privileges, including better food and living quarters than would otherwise have been available.⁴ Sokolov, who wrote under the penname Samarin, received two medals from the Germans for his work. His writing often harped on the theme that Jewry and Communism were synonymous.

The same mug with the hooked nose peers from behind the hundreds of millions of bodies that were tortured, executed and shot in the back of the neck over the Katyn graves, in distant Siberia and in the far North.⁵

1 The current war was prepared and provoked by Jewry, which already had brought
2 so much suffering to mankind through the centuries. . . .

3
4 In this war, the peoples of Europe and Asia are fighting against kike-
5 plutocracy and Kike-bolshevism, against two outwardly different but inwardly
6 common systems . . .⁶

7
8 Sokolov claimed that "kikes" ran the government, and listed Jews in his hometown who
9 occupied executive posts in various organizations and institutions. Although the list was "far
10 from complete," he exhorted his readers to "Thrash them!"⁷

11 Sokolov emigrated to the United States in July 1951. He advised the authorities that he
12 had been working at *Rech* as a "corrector."⁸ His visa application included an oath stating that he
13 had not been part of any "movement hostile" to the United States, nor had he advocated or
14 assisted in the persecution of any person because of race, religion or national origin.

15 In 1954, the FBI received information that Sokolov had been associated with *Rech*, and
16 that he had collaborated with the Gestapo. INS learned of these accusations when processing his
17 application for citizenship in 1956 and called him in for an interview. He told them that he had
18 served as the literary editor and later Deputy Editor of *Rech* but denied having any involvement
19 with the editorial policies of the newspaper. According to Sokolov, *Rech* was neither pro-
20 Fascist nor anti-Semitic. He contended that, to the extent that such views appeared in the
21 newspaper, it was at the behest of the German occupation forces.

22 [W]e were forced to assume certain political lines. We Russians fought this the
23 best way we could, but under the ever-present danger of being shot to death on the
24 spot, we had to put in remarks Fascist and anti-Semitic to please the Germans, but
25 we fought against the Fascist line. . . . Personally, I confined myself to Anti-
26 Communist articles. I have not written one single Fascist or Pro-Fascist line, and
27 as to Anti-Semitic remarks, there may have been some to which I was forced.⁹

28
29 He went on to deny collaborating with the Gestapo. The INS found "[n]o evidence on which to

1 base Service proceedings.” Approximately one month after his INS interview, Sokolov became
2 a U.S. citizen.

3 In 1959, Sokolov was hired as a language instructor at Yale University. His application
4 listed his work as an assistant editor of *Rech*. However, University officials did not do a
5 thorough background verification for this non-tenured position.¹⁰ As they later explained: “If
6 he’d gotten into the United States, the assumption was that he had been closely checked by the
7 government.”¹¹

8 At Yale, Sokolov became active in pro-Zionist affairs and wrote several articles for a
9 Zionist Russian-language newspaper.¹² One of his colleagues described him as the “best
10 language teacher” in the department.¹³

11 In March 1974, *Voice of the Homeland*, a Russian-language newspaper published
12 overseas, listed several former Nazi war criminals living in the United States. “Samarin” was
13 among them. Two years later, *Komsomol’skaya Pravda*, the official journal of Soviet
14 Communist youth, carried a brief article asserting that a current Yale University teacher had
15 worked for the Nazis during occupation of the U.S.S.R.

16 Neither article attracted much attention. Then in April 1976, *Sovetish Heimland*, a
17 Yiddish language monthly in Moscow, quoted from several articles written by Sokolov. A Yale
18 librarian who did translations for *Morning Freiheit* discovered the piece.¹⁴ On May 23, 1976,
19 *Morning Freiheit* carried a story under the headline “Moscow Yiddish Magazine Charges:
20 Russian Fascist Has Teaching Position at Yale University.”

21 Yale first learned about the writings a couple of weeks earlier when then Slavic
22 Department Chair Robert Jackson received the text of one of the Soviet articles.¹⁵ He arranged a

1 meeting with Sokolov. According to two attendees, Sokolov acknowledged writing the *Rech*
2 articles. He contended, however, that stylistic changes had been made, including substitution of
3 the word “kike” for “Jew.”

4 Sokolov’s past activity was not ground for academic dismissal and the University
5 recommended his reappointment for another two-year term.¹⁶ Support for Sokolov within his
6 own department, however, was thin. Four of the six professors wrote him on June 29, 1976.

7 Some recent publications which carry photocopies of your articles in *Rech*,
8 as well as extensive reproductions of the same newspaper which have come into
9 our possession recently, reveal to us beyond any reasonable doubt that you were
10 engaged not only in anti-Communist but also in pro-Nazi and anti-Semitic
11 activities under the German occupation. As individual members of the
12 department, and as people engaged in a humanistic endeavor, we feel obliged to
13 express to you our profound feeling of disgust and outrage at these documented
14 revelations of your past activities. We should like to make it clear that under no
15 circumstances can you count on the undersigned for any support whatsoever.

16
17 The next day Chairman Jackson advised Sokolov that while he had the right to remain on the
18 faculty, the department “in no way condoned” his activity.¹⁷

19 The following month, Sokolov resigned.¹⁸ He attributed this decision to the “character of
20 the campaign in [his] own department” and claimed he “did not want to create difficulties for the
21 University administration.” He also cited medical problems.¹⁹ Under the terms of his
22 resignation, he continued to receive his salary for a full year and remained eligible to collect a
23 pension from a national teachers organization.

24 The story did not resonate nationally until students returned to the Yale campus and the
25 *Yale Daily News* published its first piece on the affair.²⁰ Professor Alexander Schenker,
26 Sokolov’s strongest ally in the Department (and himself a refugee from Nazi Germany), tried to
27 put Sokolov’s activities in historical context. “The German occupation, paradoxical as it may

1 seem, was the only real chance to escape. A guy sitting in his apartment in New York can't
2 understand what it was like growing up in a Gulag Archipelago world."²¹

3
4 The *Yale Daily News* also defended Sokolov.

5 The hasty action of the four members of the Slavic Languages and Literature
6 Department had the predictable effect of coercing Mr. Samarin into resignation.
7 Acting upon insufficient information, they displayed a contempt not only for Nazism,
8 but for due process as well. Those four instructors did, however, spare the Yale
9 Corporation from a hard decision: should Mr. Samarin have remained at Yale? We
10 are sure the answer to that question ought to have been yes.

11
12 Mr. Samarin was and is a dedicated foe of the Soviet government. We find
13 his unspeakable attack on the Jewish people unjustifiable, whatever its ultimate
14 purpose. Not all opponents of Bolshevism found it necessary to lace their essays
15 with anti-Semitism. If there is any argument against Mr. Samarin's dismissal from
16 Yale, it does not lie in his chilling rationalization of Nazi collaboration.

17
18 Since his arrival here 17 years ago, Mr. Samarin has become an effective and
19 sympathetic teacher. Had his story not filtered out of Soviet Russia this summer, he
20 would have been remembered as a gentle friend to many Yale undergraduates. In
21 fact, his opposition to the Soviet regime has led him to espouse Zionist interests.
22 Although we are somewhat alarmed by the vast ideological distance one man can
23 travel in 30 years, we must believe Mr. Samarin when he says that he is no longer
24 anti-Semitic and that he "loves his students."

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26 * * *

27 . . . His conduct here is in part a testament to the wisdom of running a university free
28 from the political forces and ideological tyranny that he was too weak to transcend
29 in the 1940's. The lesson is simple: all men grow when the[y] leave the house of
30 intellectual bondage.²²

31
32 *The New York Times* and several other newspapers around the country picked up the
33 story.²³ The following month INS ordered a review of the file in order to determine whether a
34 "full scale and comprehensive investigation" should take place. They concluded that, given the
35 "full investigation" conducted in 1957, there was no basis for a reinvestigation.

36 The newly-formed OSI, reviewing all INS Nazi files, took the matter up in 1979.

1 However, they had no access to the offending articles. Although Yale had copies in Sokolov's
2 personnel file, the university would not release the material absent a subpoena or Sokolov's
3 consent. During an interview with OSI attorneys, Sokolov agreed to authorize release of the
4 articles.²⁴

5 OSI filed suit in 1982, alleging that Sokolov's citizenship was illegally procured. As set
6 forth in the complaint, Sokolov had been ineligible for citizenship because he had assisted in
7 persecution, been a member of a movement hostile to the United States, voluntarily assisted
8 enemy forces, and made misrepresentations in his visa and citizenship applications (by denying
9 membership in a movement hostile to the United States). The complaint also cited his lack of
10 good moral character (as evidenced by his misrepresentations).

11 The case generated much publicity and various people to no avail, urged the government
12 to reconsider its position. Among them were author and commentator William F. Buckley, Jr.
13 and Mstislav Rostropovich, Russian emigré and renowned cellist and conductor of the

14 Washington National Symphony. Buckley wrote a note to President Reagan, thanking him for
15 the time they had recently spent together and relaying his "outrage[]" at the filing.²⁵ Maestro

16 Rostropovich came to OSI to speak with [B6] directly. [B6]

17 [B6] Nonetheless, he
18 begged [B6] not to "throw him to the Russians."²⁶

19 Trial opened in November 1985 before Senior Judge Tom Murphy, himself an historic
20 figure. Murphy was a former New York City police commissioner and the lead prosecutor in the
21 Alger Hiss trials. The government's expert historian explained how the Nazis used propaganda
22 to condition the Russians to accept, and assist the Nazis in executing, the policy of Jewish

1 extermination. He also explained the hidden role played by the Germans in controlling the
2 content of *Rech*. OSI submitted 17 *Rech* articles published under Samarin's byline as well as an
3 oath of fealty signed by Sokolov to obtain membership in an anti-Bolshevik group.

4 In joining the ranks of associates of the Union for Struggle Against
5 Bolshevism, I give my solemn pledge of loyalty to Adolph HITLER, the Liberator
6 of the Peoples of Russia, and the Unifier of New Europe.

7 I declare myself an irreconcilable and undaunted enemy of Judeo-
8 Bolshevism in all its manifestations.

9 I oblige myself to place the interests of the people and of the common
10 struggle against Jew-Bolshevism and its allies above my own. . . .

11
12 The thrust of Sokolov's defense was that he had viewed the Germans as liberators from
13 Communism and that his articles had been heavily edited – so much so that he hardly recognized
14 his own work. He claimed he had remained at the newspaper because he feared that if he left he
15 would have been sent to a camp or killed.

16 In February 1986, while the case was under submission, it was featured on *CBS Sunday*
17 *Morning*. Director Sher explained to the viewing television audience the rationale for pursuing
18 propagandists.

19 It was not just a few crazed men in Berlin who had the notion of destroying Jews
20 and others. It took hundreds of thousands of people, if not more. People to
21 operate at every aspect of German society -- in Germany proper and in the
22 occupied territories to implement them. Propagandists, they were one cog in that
23 wheel as were the people who pulled the triggers.

24
25 Later that year, the district court issued its ruling withdrawing Sokolov's citizenship.²⁷
26 He appealed to the Second Circuit. Although there were very few appellate decisions in OSI
27 cases at that time, the government had recently lost a case in that circuit which it believed it
28 should have won.²⁸ This naturally caused OSI concern about the current case.

29 The concern was unnecessary. The Circuit accepted all the government's arguments and

1 affirmed the ruling below.²⁹ It concluded that Sokolov's articles "assisted the enemy," that they
2 advocated or assisted in persecution, and amounted to participation in a "movement hostile" to
3 the United States -- all of which made him ineligible for a visa under the DPA. Significantly, in
4 finding that Sokolov had advocated or assisted in persecution, the Court held that no evidence of
5 *actual* persecution resulting from the articles need be shown. The mere fact that Sokolov's
6 articles worked to "condition[] the Russian people into accepting and carrying out the National
7 Socialist Policy in regards to the Jews" was sufficient.

8 Once the Supreme Court denied review, OSI commenced deportation proceedings.

9 Before the first scheduled hearing, OSI learned from media accounts that Sokolov had left the
10 country. After subpoenaing the family telephone records, OSI surmised that Sokolov was in
11 Montreal, Canada.

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21 Sokolov had found refuge in a Russian Orthodox church in Montreal. This information,
22 conveyed to OSI by the Royal Canadian Mounted Police War Crimes Investigations Section, was

1 confirmed by an OSI historian. Conversant in Ukrainian, he called the monastery and identified
2 himself as an anti-OSI crusader. Sokolov spoke with him and asked for a number where he
3 could return the call. The historian happened to have open on his desk a Ukrainian newspaper;
4 he passed along the phone number of a tombstone company advertised therein.

5 Although Sokolov had already left the country and was on the government's Watchlist to
6 preclude his reentry, OSI proceeded with the deportation hearing *in absentia*. [

7 [

8]

9] If Sokolov reentered the United States, the
10 government wanted to be able to put him on a plane to the U.S.S.R. without an additional

11 hearing.³²

12 Sokolov did not appear at the deportation hearing nor was he represented by counsel.

13 The government presented the record from the denaturalization hearing and the court ordered
14 Sokolov deported to the U.S.S.R. The order was never carried out because (to the best of OSI's
15 knowledge) Sokolov never returned to the United States. He died in Canada in 1992.³³

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1. *The Nuremberg Trial*, 6 F.R.D. 69, 162-163 (I.M.T. 1946).
2. There is no First Amendment issue in these cases as the protections from that Amendment do not apply to actions by foreign nationals overseas.
3. Jan. 24, 1984 deposition of [redacted] pp. 11-12. [redacted] was with Panzer Propaganda Co. 693 and issued assignments to the Russians working for *Rech*. The assignments were based on directions from the German Propaganda Ministry. b6
4. Sokolov deposition, July 10, 1984, pp. 24, 165.
5. *Rech*, July 11, 1943, No. 79 (262), p. 1 "Criminals."
6. *Rech*, May 14, 1943, No. 54 (237), p. 1 "Liberation Struggle."
7. *Rech*, May 30, 1943, No. 61 (244), p. 2, "The Former Masters of Orel."
8. A corrector took care that type setting corresponded to the copy.
9. April 19, 1957 sworn statement taken by INS Investigator Herbert Fichlander, p. 4.
10. "Samarin Cited 'Rech' Ties in Original 1959 Resume," by John Harris and Jonathan Kaufman, *Yale Daily News*, Sept. 22, 1976.
11. Statement by Yale's Director of Public Information, speaking on behalf of University President Kingman Brewster, Jr. *Id.*
12. As Sokolov explained it, he adopted a new approach after the war when the U.S.S.R. began its anti-Jewish campaign. "From now on the Jews have become my allies in the struggle against our common enemy – Communism. The enemy of my enemy is my friend." Letter to the Editor, *Yale Daily News*, Oct. 8, 1976.
13. Statement by Prof. Alexander M. Schenker, Chair of Yale's Department of Slavic Languages and Literature at the time of the Sokolov denaturalization trial, quoted in "Ex-Yale Teacher Tried As a Nazi Collaborator," *The New York Times*, Nov. 8, 1985.
14. *JTA* [Jewish Telegraphic Agency] *Daily News Bulletin*, Jan. 20, 1989.
15. "Samarin Cited 'Rech' Ties in Original 1959 Resume," *supra*, n. 10.
16. *Id.*
17. *Id.*
18. According to the *Yale Daily News*, the Soviets cited the resignation as an example of "progressive public opinion" which is powerful even at traditionally "imperialist and reactionary"

universities like Yale. "Soviets Condemn 'Fascist' Samarin" by John Harris, *Yale Daily News*, Feb. 21, 1977, quoting "Kicked Out", a Jan. 30, 1977 article in *Komsomolskaya Pravda*.

19. Letter to the Editor, *Yale Daily News*, *supra*, n. 12.

20. "Nazi Ties Revealed; Samarin Quits Faculty," by John Harris, *Yale Daily News*, Sept. 20, 1976.

21. *Id.*

22. *Yale Daily News*, "Samarin," Sept. 29, 1976.

23. "Yale Teacher Quits Over Pro-Nazi Role," *The New York Times*, Sept. 21, 1976.

24. Thereafter OSI, aided by the State Department, obtained certified copies of the articles from the U.S.S.R. for submission to court.

25. Letter from William F. Buckley to Ronald Reagan, April 19, 1982. By happenstance, the letter became a matter of public notice in 2005 when the National Archives released documents relating to then Supreme Court nominee John Roberts' tenure at the Justice Department. The Buckley letter had apparently crossed Roberts' desk. The notation in Roberts' handwriting said "keep RR [President Reagan], AG [Attorney General William French Smith] out." "The Case of the Nazi Propagandist," by Josh Gerstein, *The New York Sun*, Aug. 4, 2005.

26. [redacted] recorded interview, Apr. 27, 2001. (All references to [redacted] actions hereafter in this chapter stem from this interview unless otherwise noted.)

27. *United States v. Sokolov*, No. N-82-56-TFM (D. Conn. 1986).

28. *United States v. Sprogis*, 763 F.2d 115 (2nd Cir. 1985). *Sprogis* is discussed at pp. 101-105.

29. *United States v. Sokolov*, 814 F.2d 864 (2nd Cir. 1987).

30. Feb. 28, 1985 letter to [redacted] from [redacted] re Karl Linnas. The Linnas case is discussed at pp. 271-295.

31. Routing and transmittal slip of July 7, 1988 from [redacted] to [redacted]

32. Once stripped of his citizenship, Sokolov reverted to the status of a legal permanent resident. As such, he would have been able to return to the United States at any time within 180 days of his departure.

33. The Canadians, who had opened their own investigation, never filed charges nor did they act on the request for asylum Sokolov filed shortly after entering their country.

Valerian Trifa – A Persecutor Who Found Refuge in His Church

The prosecution of Valerian Trifa was particularly convoluted since he could say – in truth – that he had spent much of the war in Nazi concentration camps and had fought against a government allied with Nazi Germany. The challenge for OSI was to show that those were only half truths.

In 1940, the Romanian government was sympathetic to Nazi Germany.¹ The Iron Guard, a fascist organization within Romania, was part of a governmental coalition whose most dominant group was the Army. The Iron Guard was the most extreme member of the coalition, both in its anti-Semitism and its fascism.

In the fall of 1940, theology student Viorel Trifa² became leader of the Iron Guard's student movement and editor of *Libertatea*, an anti-Semitic weekly newspaper linked to the Iron Guard cause. As a student leader, he addressed various rallies. A mid-December speech discussed anti-Semitism.

The Romanian student has been anti-Semitic not because he read in some book that he must oppose the Yids, but because he felt that he could no longer make a living in his own country. If our students have been anti-Semitic from 1922 on, this is due to this Romanian tragedy, that after leaving the villages where they were being plundered by the Yids, they found themselves in cities once again plundered by the Yids. And then they had to rise up and say: This can no longer go on!!³

Trifa's newspaper writings in *Libertatea* expressed similar sentiments.⁴

Throughout the fall and into January, Iron Guardists terrorized the local citizenry, extorting money, expropriating property, looting and killing wantonly.⁵ Most victims were Jewish, though some were non-Jewish political adversaries. In mid-January, General Ion Antonescu, head of the coalition government, reacted. He dismissed hundreds of Iron Guardists

1 from government posts, forbade the wearing of the Iron Guard uniform other than at ceremonial
2 events, and fired the pro-Guard Minister of the Interior.⁶

3 On January 20, a widely-publicized Iron Guard manifesto, issued in Trifa's name, called
4 for the "replacement of all Masonic and Judaized persons in the government."⁷ The "Trifa
5 Manifesto" was read over Bucharest radio, and that evening Trifa gave the keynote speech at a
6 student demonstration. He extolled the virtues of:

7 a housepainter with his healthy soul [who] rose to confront the interest of Judaism
8 and of London Free Masonry. . . . The struggle thus initiated led to the un-
9 masking and the removal of the Jewish-Masonic domination in Central Europe, an
10 achievement that is to the credit of Chancellor Hitler.⁸

11
12 On January 21, the Trifa Manifesto was distributed in the provinces. Local Iron Guardists
13 were urged to demonstrate on the basis of its text for the reinstatement of the fired Interior
14 Minister and establishment of an Iron Guard government. For three days, January 21 - 23, bands
15 of Iron Guardists drove through Jewish neighborhoods, plundering, burning and murdering. The
16 riots extended into the countryside, but were most intense in Bucharest, where dozens were
17 killed, many at an animal slaughterhouse. The American legation chief reported that there were
18 "60 Jewish corpses on the hooks used for carcasses . . . all skinned. The quantity of blood about
19 [seemed to indicate] . . . that they had been skinned alive."⁹ Dozens, and perhaps many more,
20 were killed before the rioting was quelled.¹⁰

21 Germany was ambivalent about the uprising. While sympathetic to the ideological purity
22 of the Iron Guardists, Hitler was concerned that the rioting would destabilize the country and
23 endanger vital supply lines. Although Germany did not assist the insurrection, it granted nine of
24 the top Iron Guard leaders, Trifa among them, sanctuary in the German embassy once the

1 rebellion was crushed. From there, three months later, the leaders (along with several hundred
2 Iron Guard loyalists) escaped to Germany. The Romanian president was sufficiently outraged by
3 this that

4 [Romania tried Trifa *in absentia* and sentenced him to life at hard labor.¹²]

5 With the Iron Guard leaders in Germany, the Nazis faced a dilemma. Hitler had given
6 sanctuary to Antonescu's adversaries, but still needed the Antonescu regime to remain a stalwart
7 ally. Hitler's solution was to appear to punish the Iron Guardists without actually doing so. They
8 were kept in minimal detention, similar to house arrest, although Trifa was spared even this. Due
9 to medical problems, he was allowed to travel throughout the country, visiting spas.

10 In December 1942, shortly after one of the Iron Guard leaders tried to flee Germany, new
11 restrictions were imposed on the detainees. All, Trifa included, were sent to concentration
12 camps. However, they were segregated from the other prisoners and given special privileges –
13 better living quarters, decent food, and no work assignments. At Dachau, for example, the men
14 had individual cells and a common room with a radio.

15 Trifa remained in Germany throughout the war. His four years there included three
16 months at Buchenwald and 17 months at Dachau. After the war, he emigrated to Italy and from
17 there, in 1950, to the United States. At that time, those who had been members of the Iron Guard
18 were ineligible to receive a visa.¹³ Trifa's visa application made no mention of his Iron Guard
19 membership; it stated that he had been a forced laborer at Buchenwald and Dachau from 1941 to
20 1945. He settled in Michigan, and shortly thereafter was ordained as a bishop in the Romanian
21 Orthodox church.

22 At that time, the church's traditional headquarters in Romania was part of the Soviet bloc.

1 Some Romanian Orthodox in America, therefore, vehemently opposed control from abroad.
2 Trifa was in this group. In 1952, when his faction selected him to serve as Archbishop, the pro-
3 Soviet faction obtained a court order blocking the ordination. The ceremony took place
4 nonetheless and Trifa was then cited for contempt of court for violating the order.¹⁴ The order
5 was later vacated and Trifa retained his new position.

6 Even before Trifa had emigrated, the CIC knew that he had been a member of the Iron
7 Guard.¹⁵ For reasons not clear from the files, he was nonetheless granted a visa. Shortly after
8 his arrival, however, the State Department realized that he "may have misrepresented the facts of
9 his career in obtaining his visa."¹⁶ Around the same time, the FBI, alerted about Trifa's
10 background by a confidential informant, notified INS.¹⁷ In a May 1951 INS interview, Trifa
11 denied having been a member of the Iron Guard. When asked if he had given any anti-Semitic
12 speeches, he replied "I don't believe so."

13 In September 1951, Walter Winchell, then one of the most influential broadcasters in
14 America, denounced Trifa in a radio broadcast as a Nazi "murderer." Trifa was reinterviewed
15 by the INS shortly thereafter. This time, he admitted organizing and leading a demonstration on
16 January 20, 1941 as the president of a Romanian student group. He insisted, however, that after
17 his speech he had told the demonstrators to disperse. He denied participating in any of the post-
18 demonstration atrocities or killings.¹⁹ INS closed its investigation in 1953, concluding
19 (incorrectly) that membership in the Iron Guard would not have barred Trifa from entering the
20 country under the DPA.²⁰

21 As head of the Romanian Episcopate in the United States, Trifa was a powerful and
22 influential religious figure. In May 1955, he presented the opening invocation in the United

1 States Senate. This sparked renewed controversy as Drew Pearson, another nationally syndicated
2 journalist, questioned the propriety of a "Nazi terrorist" leading the Senate in prayer.²¹

3 In December 1955, the FBI spent three days interviewing Trifa. He again acknowledged
4 speaking to assembled students in January 1941, though he claimed not to remember the content
5 of his statements. To the extent that there was any anti-Semitism, he insisted that the speech, as
6 the manifesto, was written by others; he had simply read the prepared script. He denied any
7 involvement in, or responsibility for, the rioting that followed his speech.

8 Both the INS and FBI were skeptical of the charges against Trifa, the INS because they
9 believed the source of the allegations to be a rival church faction,²² and the FBI because they
10 suspected the source to be the Communist government in Romania.²³

11 In 1956, Trifa applied to become a U.S. citizen. The naturalization examiner had a very
12 clear recollection of the matter as "it was an unusual and different type of case."

13 I asked him specifically if he had ever been a member of the Romanian Iron
14 Guard, the Nazi Party, the Fascist Party or the Communist party. He categorically
15 denied membership in any of these organizations. . . I asked him if the student
16 organization he had belonged to in Romania was a branch of the Iron Guard and
17 he stated that it was not.

18
19 Trifa claimed that he had been arrested by the Germans because of his opposition to the
20 Romanian government. He said he had been taken to Germany against his will.

21 I asked Mr. Trifa if he had ever been an anti-Semite and he stated that he had not.
22 I asked him if he had ever taken any part in the killing of Jews, or whether he had
23 ever directed any persecutions of Jews and he stated that he had not. . . . He told
24 me that he had not signed the manifesto, but that his name had been placed
25 thereon . . . and that he had been ordered to and did appear at [the January 20,
26 1941] demonstration. He denied having taken part in the later killing of Jews and
27 other atrocities that allegedly occurred.²⁴

28 He became a U.S. citizen in 1957.

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As the years passed without any legal action against him, Trifa – an increasingly public figure, both as a church dignitary and as an anti-Communist activist – seemed emboldened. In 1972, he admitted to a reporter that he had been the top leader of a Fascist Youth movement sympathetic to Hitler’s Germany. He went on to acknowledge that there had been anti-Semitism at the time, but he attributed it to the perception that Jews “monopolized the economy,” rather than to any Nazi ideology. He opined that “[p]eople should not be over-sensitive over some incidents.”²⁷

Following Trifa’s admission of leadership, [] met with an INS investigator and presented dozens of exhibits, including letters, books and newspaper articles. He had assembled the material with the help of various Jewish groups, including the Anti-Defamation League (ADL), the Simon Wiesenthal Center (SWC), and *The United Israel Bulletin*. While much of the information had already been sent to INS by Congressional members at []’s behest,²⁸

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1 there was some new material, including statements from eyewitnesses who had been present
2 when Trifa delivered his January 1941 speech. INS forwarded the material to the local U.S.
3 Attorney, who concluded that Trifa's entry and naturalization should now "be investigated
4 fully."²⁹

5 In 1973, *The New York Times* reported the renewed investigation on the front page. The
6 reporter spoke with Trifa, who acknowledged that he had worn an Iron Guard uniform and made
7 anti-Semitic speeches. Trifa also admitted that his claim of having been arrested by the
8 Germans was not accurate. Rather, he had received protection from the Germans. Trifa was "not
9 ashamed" of his past "at all."

10 For those circumstances in that time I think that I didn't have any other alternative
11 but to do what I thought to be right for the interests of the Rumanian people.³⁰

12 A few months later, the INS Commissioner testified at a routine oversight hearing before
13 the House Immigration Subcommittee.

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19 The Detroit U.S. Attorney's Office filed a complaint in May 1975. It alleged that Trifa
20 had misrepresented and concealed material facts both in his visa application and in his quest for
21 citizenship. Among the facts allegedly concealed were his membership in the Iron Guard, and
22 his advocacy of, and participation in, the slaughter of Jews.

23 As noted earlier, the SLU was established in July 1977, shortly after *Wanted, the Search*

1 for Nazis in America became a *New York Times* bestseller. [] provided much of the book's B6
2 material on Trifa. As recounted in the book, Trifa had led an execution squad into a cell filled
3 with Jews. The case was thus notorious by the time the SLU took over primary responsibility for
4 its prosecution. [] assigned the prosecution to attorney [] B6

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[] began by searching through
Romanian newspapers at the Library of Congress. A reference to Trifa's work on a newspaper
led to the discovery that he had edited *Libertatae*, a fact that had not been known when the case
was first filed in 1975. DOJ requested copies of the newspaper from Romania.

Getting material from Romania proved exceedingly difficult, however. In four years,
Romania had provided only one pertinent document.³⁸ The Romanians told [] that he could B6
neither interview witnesses nor get archival material because the country had no judicial
assistance treaty with the United States.³⁹ At [] suggestion, [] spoke about the B6
problem to a *New York Times* reporter who then wrote an article about Romania's
intransigence.⁴⁰

Under the law at the time, eastern bloc countries enjoyed preferential trade status with the
United States only if their governments allowed free emigration. This most favored nation

1 status (MFN) needed to be renewed by the president each year and approved by both houses of
2 Congress. Politicians sympathetic to OSI's mission realized that the renewal process might give
3 them leverage with the Romanians. Two days after *The Times* article appeared, the Chair of the
4 House subcommittee in charge of MFN hearings asked the Romanian Ambassador to meet with
5 Representative Holtzman. Days after that meeting, the Romanians delivered a packet of material
6 to the American Embassy in Bucharest. A week later, Representative Holtzman testified before
7 the subcommittee in the hope of pressuring Romania into allowing OSI personnel to interview
8 witnesses and examine archival material. She did not urge Congress to deny MFN status, but
9 suggested that the subcommittee postpone its decision "until the Romanian government has fully
10 cooperated in the prosecution of the Trifa case." A senator interested in the matter sent a
11 similar message through an aide, advising that "anything Romania does to please Congress
12 would be to its advantage."⁴²

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The Congressional pressure had immediate effect.

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19 Shortly thereafter, Thiorlf and an historian were granted access to material and personnel. In
20 acknowledgment of this, Representative Holtzman supported extension of MFN status.⁴⁴

21 OSI, as is routine, also checked with U.S. intelligence agencies for information about

22 Trifa.
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To allay concerns, the government sought multiple levels of corroboration. In addition to examining Romanian documents, including newspapers, trial transcripts and government reports, the government wanted evidence of non-Romanian origin. They searched foreign ministry documents from Germany, England and the United States which detailed the situation in Romania at the time Trifa was active. German SS records yielded a contemporaneous report of the January 1941 rally from a German exchange student studying in Romania. Enclosed with his account was a copy of the Trifa manifesto. OSI also traced Trifa's life in Germany to establish that he had been given special status because of his Iron Guard activities. Finally, they turned to

1 Trifa's own statements in the U.S. press. OSI planned to present testimony from *The New York*
2 *Times* reporter who had interviewed Trifa in 1973.⁴⁹

3 While the case was pending, but before a trial date had been set, Trifa was invited to
4 participate in a broadcast prepared by Radio Free Europe (RFE) for transmission to Romania.⁵⁰
5 The occasion for the broadcast was the fiftieth anniversary of the establishment of the Romanian
6 Orthodox Epsicopate in North America. The use of an alleged Nazi war criminal in a
7 government-sponsored broadcast created a furor.⁵¹ [

8] protested to RFE.⁵² [B6.] too took up

9 the cause.⁵³ Shortly after the uproar died down, Trifa received another torrent of negative
10 publicity. He was featured on a nationally broadcast television show entitled "Escape from
11 Justice - Nazi War Criminals in America."

12 Trifa's trial was set for October 1980. Government attorneys traveled to Romania and
13 Israel during the summer interviewing witnesses. Suddenly, seven weeks before trial, and
14 without any forewarning, Trifa's attorney told the U.S. Attorney in Michigan that he had a
15 "bombshell." Trifa would turn in his certificate of naturalization; there was no need for a trial.
16 According to his attorney, Trifa "wasn't up to" a trial because of his health.⁵⁵

17 Trifa issued a public statement in which he ceded no ground to the government.

18 The relinquishment of my citizenship is in no way to be considered an
19 admission of the government allegations. . .

20
21 The litigation against me has actually been enlarged into something far
22 more comprehensive - a trial of the ideological and political milieu of Romanian
23 history in the pre-war years, nearly 50 years ago. To that obvious purpose and
24 direction, I have been made a hostage of my own naturalization, forced to act as a
25 vehicle in the condemnation of my country of origin; and particularly of the
26 Legionary Movement [Iron Guard] of those years, and of the many fine men and

1 women who gave so much in their dedication to what was then felt as the best
2 solution to Romania's many and complex difficulties. This I cannot and I will not
3 permit to continue.
4

5 However much I believe in the American judicial process -- and I do -- it is
6 with an equally firm conviction I feel I have been denied due process in this
7 protracted litigation. Even if I were accorded a fair trial as such in a procedural
8 sense, it would appear to be irrelevant when such would still render impossible
9 any attempt to bring across the truth of the matters taking place in Romania during
10 the critical years between the great wars.
11

12 The tremendous cost, the enormous amount of time, the heavy burdens of
13 many years of litigation and harassment have rendered me unable to effectively
14 defend myself and give full measure to the parishioners of my far-flung
15 Episcopate.
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17 * * *

18 **D R A F T**
19 Thus, in order to preserve the integrity of my own convictions, and in the
20 best interests of my Church and its faithful, the struggle must end!

21 The struggle did not end, however. Two months later, the government filed a deportation
22 action. The denaturalization complaint, which had been filed by the USAO, alleged that Trifa
23 had personally participated in acts of murder. By contrast, the OSI-filed deportation action
24 focused on Trifa as a propagandist.
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29 The government alleged that Trifa had concealed all information about his Iron Guard
30 activities, and that he had advocated violence and the persecution of Jews. According to the
31 government, "hundreds of innocent civilians were killed" as a result of the Trifa Manifesto.⁵⁷
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1 urging that the trial be expedited.

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13]recused himself from the case.

14 Although ordinarily I would discount ex parte remarks and accusations, I
15 am of the belief that due to the sensitive nature of this case it would be impossible
16 to maintain the appearance of judicial fairness in that the contents of this letter
17 constitute an outright intentional attempt to influence the decision of this court.⁵⁹

INTENTIONAL ATTEMPT

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23]The court declined to reconsider its decision and a new

24 judge was assigned.

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The government anticipated that it would take two months to try the case. They expected to introduce hundreds of exhibits. The case was complex, both because Romanian politics were complicated (Romania began as an Axis partner but joined the Allies in 1944), and because the anticipated defense was sophisticated. Trifa could argue that he had been a victim himself, since he had spent time in German concentration camps; the government needed to establish that he

1 had been more a guest than a political prisoner. And if he argued that the government which
2 crushed the Iron Guard also persecuted Jews, the government needed to show that this did not
3 mean that the Iron Guard wasn't itself anti-Semitic. OSI was prepared to present a long and
4 detailed explanation of Romanian politics. Preparing for the case, an OSI historian wrote a 500
5 page report outlining the relevant political and cultural issues.⁶¹

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11 Although Trifa's handwriting was on the correspondence and the government had a
12 handwriting expert to testify — Trifa claimed they were a Communist forgery. Using then
13 brand-new laser technology, the FBI identified Trifa's latent fingerprint on one of the documents.
14 The identification of a 40-year-old print was extraordinary; it was, and remains to this day, the
15 oldest latent print ever matched by the Bureau. Indeed, a blowup of the print is on display at FBI
16 headquarters for tourists to view.⁶²

17 Last minute pre-trial settlement negotiations came to naught⁶³ and trial began in October
18 1982. The government opened its case with two days of testimony by an historian who discussed
19 Trifa's role in the Iron Guard. Through him, the government introduced numerous articles
20 written and edited by Trifa. On the morning of the third day, defense counsel offered to settle.
21 Trifa conceded that he had been a member of the Iron Guard and that he had concealed that
22 background when he entered the United States. He agreed to depart the United States within 60

1 days of receiving permission to enter another country. He designated Switzerland as the country
2 to which he would like to be deported. He wanted, at all costs, to avoid returning to Romania
3 which had convicted him *in absentia* and sentenced him to life imprisonment in 1941.

4 As part of the settlement

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9 The potential two-year hiatus was acceptable to
10 the government since it was shorter than the likely duration of an appeal had the trial proceeded
11 to verdict.⁶⁵

12 Trifa's attorneys claimed that his abrupt abandonment of the case was due to the fact that
13 he was "old and ill."⁶⁶ Trifa himself claimed that he wanted "an end to this. I feel victimized by
14 the fact that things are picked up and enlarged in such a way as to mean completely different
15 things."⁶⁷ The court entered an order of deportation in October 1982. It was the first judicial
16 order of deportation litigated by OSI.

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[redacted] [redacted] 1 [redacted] BS
[redacted] The following week [redacted] planned to meet with the BS

Israeli Attorney General to continue the discussions. However, at the direction of the State
Department, [redacted] cancelled the meeting when he learned that it was to be held in East BS
Jerusalem; U.S. policy did not recognize Israel's annexation of that sector of the city. The
cancellation received national coverage,⁷⁰ and sparked debate about the wisdom and propriety of
sending Trifa to Israel. Some, including [redacted] BS

In the end, the question was moot. After a rescheduled meeting held in another sector of
Jerusalem, Israel declined to accept Trifa.

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While he awaited resolution of the matter, Trifa became ever more expansive with the press. He expressed skepticism as to whether any Jews had been killed during the war since he “didn’t see any bodies.”⁷⁷ Reflecting on his activities, he concluded: “With what I even know today, I wouldn’t do differently than what I did” and warned that “all this talk by the Jews about the Holocaust is going to backfire. . . [b]e it legislative or whatever, against the Jews.” He was sanguine about deportation.

D R A F T
You know, I’m not looking for any place too hot. Or too cold. I will not stay in a grass hut in the middle of Africa, either. I will be 70 in June. I’m looking for a place with a high standard of living with culture.⁷⁸

He found it. In August 1984, Portugal issued him a visa. Though Portugal later claimed that it had been unaware of Trifa’s background when it issued the papers,⁷⁹ he was allowed to remain there until his death in 1987.

Trifa’s followers brought his body back to the United States. He was buried on the grounds of the Romanian Episcopate in Michigan, where he had lived for so many years. There was no longer any basis upon which the U.S. could exclude him.⁸⁰

Litigation concerning his wartime activities did not end even with his death. Pursuant to statute, the United States had terminated Trifa’s social security payments as soon as he was deported.⁸¹ Trifa challenged the termination on several grounds, one of which was his claim that he had an “informal” agreement with OSI that would allow him to retain his benefits after he left the country. He also argued that there was new evidence establishing that he should not have

1 been deported.

2 He died while these issues were still in litigation, and his executor persevered on behalf
3 of the estate. A court ruled that the claims were merely an “an inappropriate attempt to go
4 behind the order of deportation.” As such, the claims were denied.⁸²

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1. Unless otherwise noted, the Romanian history is taken from a 500 page, fully sourced report on "Viorel Trifa and the Iron Guard," prepared by [redacted] Feb. 1982 B6
(hereafter The Black Report).
2. Trifa changed his name from Viorel to Valerian after he came to the United States.
3. As reported in the Dec. 12, 1940 edition of the Romanian newspaper *Buna Vestire* in an article entitled "December 10 Under the Sign of Justice."
4. *E.g.*, a November 24, 1940 piece complained that the "kikes" had no interest in a pro-Axis policy because they wanted Romania "to be at the orders of Paris and London where the kikes were strong."
5. A front-page story in a Swiss newspaper referred to "extremists of the Iron Guard, whose uninhibited rule of terror the Romanian people is no longer willing to bear." "Die innere Lage Rumäniens," (The Internal Situation in Romania), *National-Zeitung* (Basel), Jan. 3, 1941. Franklin Mott Gunther, the U.S. Minister to Romania, described the Iron Guard's "entire history [as] shot through with assassinations and terrorism." Feb. 5, 1941 report to the Secretary of State re: "The Iron Guard Revolution of January 21 to 23: A Summary of Its Causes, Course and Results," p. 3 (hereafter Gunther Report).
6. [redacted] Report, *supra*, n. 5 at pp. 3-5. B6
7. Trifa maintained that he did not write the manifesto although he conceded that he did not oppose its issuance. Trifa Deposition, Jan. 25, 1977, p. 42; Trifa FBI interview, Dec. 1955. OSI never developed any independent evidence as to whether he was the actual author.
8. "The Rallies of the Legionary [Iron Guard] Movement on Sunday: The Movement's Leaders Delivered Addresses on the Subject of 'The Struggle of Germany and Italy for the establishment of a New European Order,'" *Universul* (Romanian newspaper), Jan. 21, 1941.
9. [redacted] to State Department, No. 89, Jan. 30, 1941. B6
10. The [redacted] Report, *supra*, n. 5, gave official figures of 236 killed, of whom 118 were Jews. [redacted] thought this figure too low, but found "no good support for figures running beyond 300 to 400." Jewish groups gave much higher numbers. The JTA reported on Jan. 30, 1941 that 1,000 Jews were killed in Bucharest alone and another 1,000 in the countryside. "2,000 Jews Slain in Rumanian Terror; Eyewitness Tells Brutalities." *The Canadian Jewish Weekly* claimed that as many as 6,000 Jews were killed. "Nazi Murderer of 6,000 Jews Bishop in Cleveland Church," July 23, 1953. B6
11. Von Bolschwing was prosecuted by OSI in 1981. *See* pp. 259-270.
12. In 1946, he was again tried *in absentia* (by a new Romanian government) and sentenced to death for crimes amounting to genocide under the Romanian penal code. U.S. Emb. Bucharest to

Sec'y of State, No. 2280, Apr. 12, 1979.

13. The IRO Manual for Eligibility Officers stated that Iron Guard members were "prima facie outside the mandate" of the IRO. As such, they were ineligible to emigrate under the DPA.

14. "Court Holds 5 in Contempt in Bishop Row," *The Philadelphia Enquirer*, Apr. 30, 1952.

15. CIC Report, Jan. 16, 1950, Ref. No. 8-50-17.

16. Aug. 6, 1951 report to DOS Division of Security.

17. Redacted Mar. 3, 1953 INS memorandum re "Trifa, Viorel."

18. Feb. 7, 1975 memorandum to Regional Commissioner, Northwest from District Director, Detroit, re "Valerian D. Trifa aka Viorel Trifa."

19. Nov. 16, 1973 memo to Trifa file from [redacted] Feb. 7, 1975 memo from INS District Director (Detroit) to INS Regional Commissioner (Northwest). B6

20. Mar. 3, 1953 INS memorandum re "Trifa"

21. Broadcast May 29, 1955, 12 column; June 4, 1955. Pearson attacked Trifa again in 1963. "3 War Criminals Remain in U.S." *The Washington Post*, May 22, 1963. (The other two criminals were Andrija Artukovic (discussed at pp. 249-258) and Nicolae Malaxa, who died in 1972 before OSI's founding.)

22. The INS had so advised [redacted] and [redacted] in letters dated June 28, 1951. B6

23. Nov. 29, 1978 memo to [redacted] from trial attorney [redacted] B6

24. June 22, 1962 memorandum from [redacted] to the Assistant Commissioner of Naturalization, Washington, D.C. B6

25. Apr. 9, 1974 letter from [redacted] to [redacted] B6

26. Recorded interview with [redacted] June 10, 2003. B6

27. "Bishop Admits Past Pro-Fascist Ties," by Hiley H. Ward, *The Detroit Free Press*, Aug. 27, 1972.

28. Dec. 14, 1972 memorandum from [redacted] Associate Commissioner of Operations, Central Office.

1 New York to the [redacted] B6
from [redacted] JCB

29. Oct. 1, 1973 letter to [redacted] U.S. Attorney, E.D.N.Y.

30. "Bishop Under Inquiry on Atrocity Link," by Ralph Blumenthal, *The New York Times*, Dec. 26, 1973. Trifa made similar admissions to *The Detroit News*. "12 Witnesses May Tie Bishop to War Crimes," by Michael Wendland, June 2, 1974.

31. "Bishop is Facing Expanded Inquiry," by Ralph Blumenthal, *The New York Times*, Apr. 5, 1974.

32. "Rep. Holtzman Calls U.S. Lax on Nazi Inquiries," by Ralph Blumenthal, *The New York Times*, May 21, 1974; letter of same date from Holtzman to INS Commissioner Chapman. In February, 1975.

33. Sept. 30, 1974 letter from INS Acting Deputy Commissioner [redacted] (referencing an Apr. 1974 meeting between [redacted] and the INS General Counsel [redacted] 12) [redacted] 12 B6
Witnesses May Tie Bishop to War Crimes," *supra* n. 30.

34. Feb. 7, 1975 memo; Feb. 20, 1975 memo to Assistant Attorney General for the Criminal Division from [redacted] B6

35. Recorded interview with [redacted] May 23, 2001. B6

36. [redacted] provided the SLU with 186 documents he believed relevant to the prosecution. Dec. 20, 1978 memo from [redacted] to File, [redacted] in the case of Viorel Trifa." Overall, [redacted] evidence B6, B5

Recorded interview with former [redacted] June 24, 2003. B6

37. Recorded interview with [redacted] June 13, 2003. B6

38. Apr. 3, 1980 memo from [redacted] to [redacted] June 22, 1979 testimony of [redacted] B6
before the House Ways and Means Subcommittee on Trade.

Communist bloc countries were usually willing to help the United States pursue an alleged Nazi war criminal, though they were often slow to respond. Some speculated that the unusual recalcitrance in this case was due to fear that Trifa and his supporters might retaliate by revealing that some Iron Guard members were currently serving in the postwar Communist government. "U.S. Aide Says Rumania Fails to Help in Fascist's Trial," by David Binder, *The New York Times*, June 11, 1979.

39. May 8, 1980 memorandum from [redacted] re "Our History of Contacts with the Government of Romania" (hereafter [redacted] memo). B6

40. "U.S. Aide Says Rumania Fails to Help in Fascist's Trial," by David Binder, *The New York Times*, June 11, 1979.

41. Statement before the House Subcommittee on Trade, House Ways and Means Committee, June 22, 1979.] B6

42. "Romania Will Aid U.S. in Trifa Trial," by Susan Morse, *The Detroit Free Press*, July 6, 1979.

43. [redacted]] B6

44. [redacted] memo, *supra*, n. 39. A year later, when Romania's MFN status was again up for renewal,] B6

[redacted] Submitted statement before the subcommittee, June 10, 1980 (emphasis in original).] B6

45. [redacted]] B6

46. [redacted]

47. [redacted] Report, *supra*, n. 1, at ch. IX, p. 55, n. 133. B6

48. Recorded interview with [redacted] Feb. 22, 2002.] B6, BS

[redacted] Long after the Trifa litigation was complete, an official in the Romanian intelligence service, who had since defected, claimed that the Romanian premier had ordered evidence be manufactured against Trifa. *Red Horizons, Chronicles of a Communist Spy Chief*, by Ion Pacepa (Regnery Publishing).

49. [redacted]] B6, BS, B6

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50. Radio Free Europe was founded in the 1950s and broadcast into Eastern Europe. It was originally run by the CIA as a propaganda organ for the United States. In 1971, control was turned over to The Board for International Broadcasting, an independent federal agency funded and overseen by Congress.

51. See e.g., "A Government Blunder," *The St. Petersburg Times*, Dec. 16, 1979; "Trifa Case: Fire White House Aide," *The Miami Herald*, Dec. 14, 1979; Commentary on WEAM Radio, Dec. 19, 1979; Commentary by Jack Anderson on *Good Morning America*, ABC-TV, Dec. 6, 1979; "RFE's Bishop is Probed," Jack Anderson, Feb. 20, 1980; "Outrageous Program is At Issue," Jack Anderson, Feb. 20, 1980; "Broadcast by Clergyman Accused of Killing Jews Is Drawing Criticism," *The Washington Star*, Dec. 12, 1979.

52. June 11, 1979 letter to [redacted] from [redacted] responding to a phone call from [redacted] Nov. 14, 1979 letter to [redacted]

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53. "Legislator Assails Radio Free Europe," by David Binder, *The New York Times*, May 17, 1979.

21 1979, "Solon: Two RFE Workers Fired for Whistleblowing," *The Birmingham News*, Dec. 1979,

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"Note by Rep. Holtzmann [sic] Bids Carter Oust an Aide," *The New York Times*, Dec. 7, 1979. Rep. Holtzman also raised the issue on the House floor. Cong. Rec. Jan. 30, 1980, H. 425.

54. The show was broadcast on ABC's *News Closeup*, Jan. 13, 1980. At the time, ABC was one of only three nationally broadcast stations.

55. Sept. 8, 1980 memo from [redacted] to files re "U.S. v. Trifa;" and June 13, 2003 telephone conversation with [redacted] who was Trifa's attorney during the denaturalization phase.

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56. Recorded interviews with [redacted] (June 24, 2003) and [redacted] (June 13, 2003).

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58. Dec. 24, 1981 letter to []

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59. Jan. 4, 1982 order *In the Matter of Valerian Trifa.*

60. Jan. 12, 1982 letter to []

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61. [] Report, *supra*, n. 1.

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62. Elements of the Trifa case were the topic of an episode in the documentary television series *Forensic Files*. The episode was broadcast on Court TV in Sept. 2001.

63. Sept. 27, 1982 memo to [] from [] re "Viorel Trifa" B6

64. Nov. 9, 1982 memo to The File from [] re Trifa Prosecution - Deportation to Romania." B6

65. Aug. 14, 1984 news conference with []] B6

66. "U.S. to Deport Archbishop Accused as a Nazi Ally," *The New York Times*, Oct. 7, 1982. Trifa was 68 years old at the time.

67. "U.S. Seeks to Deport 10 Other Nazis," by Francis X. Clines, *The New York Times*, Oct. 9, 1982.

68. Mar. 14, 1983 letter to the Assistant Legal Advisor, Consular Affairs, State Department from []

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69. "U.S. Asks Israel to Try Ex-Nazis Being Deported," by Edward Walsh, *The Washington Post*, Apr. 29, 1983. Dr. Kremer, identifying himself as the president of the Committee to Bring Nazi War Criminals to Justice in U.S.A., Inc., had already implored the Israelis to accept Trifa. He received a non-committal handwritten response on stationery from the "Residence of the President of Israel." Jan. 11, 1983 letter from [] to Israeli President Yitzchak [sic] Navon and Jan. 28, 1983 response thereto. B6

70. E.g., "U.S. Aide, in Israel on Nazi Cases, Rejects Meeting in East Jerusalem," by David Shipler, *The New York Times*, June 3, 1983; "Office Site Snags U.S.-Israeli Talks on Nazi

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Cases," by Edward Walsh, *The Washington Post*, June 3, 1983.

71. "Steps to Deport Nazi Backers Cause Legal Concern," by Stuart Taylor, Jr., *The New York Times*, May 9, 1983.

73. Following World War II, Berlin was divided into four sectors by the victorious powers. The U.S., the U.S.S.R., England and France each occupied one sector.

74. Apr. 6, 1983 memo to [redacted] from Acting [redacted] re "Trifa Deportation" to [redacted] B6 B5

75. Oct. 26, 2000 discussion with [redacted] B6

76. Aug. 23, 1983 bufile slip from [redacted] to Associate Attorney General [redacted] re B6

77. "Trifa Speaks Out: 'I Was Not a War Criminal,'" by Stephen Franklin, *The Detroit Free Press*, July 17, 1983. Most of the Romanian Jews who died during the Holocaust did in fact die outside of Romania; they died in ghettos and concentration camps to which they had been deported. However, there were still many Jews who died within the country. In addition to those murdered during the January 1941 uprising, approximately 10,000 others were killed in the summer of 1941 during a pogrom in Jassy, Romania.

78. "Stateless Rumanian Archbishop Looks for a Country," by Howard Blum, *The New York Times*, Feb. 2, 1984.

79. "Deported Bishop Flies to Portugal," by Stuart Taylor, Jr., *The New York Times*, Aug. 15, 1984.

80. Before the body was returned to the United States, [redacted] He was told that the only bases of exclusion were (1) if the body were not properly embalmed; or (2) the person died of a communicable disease. B6

81. 42 U.S.C. § 402(n).

DRAFT

1 **Ferenc Koreh – A Lifetime of Propaganda**

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3 There is a measure of irony in the prosecution of Ferenc Koreh for his propagandist
4 activities on behalf of the Nazis in that once he emigrated, Koreh devoted himself to propaganda
5 on behalf of the United States. In the United States, Koreh inveighed against Communism; as a
6 Nazi propagandist, he incited the populace to revile innocent civilians and exhorted the
7 government to promote policies of discrimination and subjugation.

8 Koreh was born in Transylvania, a region which was part of Hungary at the time of his
9 birth, but which was incorporated into Romania after World War II. During the war Hungary (as
10 well as Romania) was allied with the Axis powers. Between 1941 and 1944, Koreh served as the
11 “Responsible Editor” of a privately owned Hungarian daily. His duties included writing,
12 reading and editing articles, meeting with government officials to discuss the paper’s content,
13 publishing news stories received from the government, and assuring that the government’s
14 political policy was reflected in the paper.² During his tenure, the newspaper published dozens
15 of pieces advocating the persecution of Jews as well as defeat of the Allies. Articles alleged that
16 Jews had promoted and funded the war,³ raped innocent Hungarian girls,⁴ tarnished the
17 professions,⁵ and wantonly slaughtered military officers.⁶ Scurrilous pieces which appeared
18 under Koreh’s byline covered the threat to commerce from Jewish immigrants because of their
19 “unfair” practices;⁷ Jewish sabotage and prayer “for the failure of the aspiration of every
20 Hungarian;”⁸ and the failure of the Hungarian press to cover adequately the theories of race
21 philosophers.⁹

22 From 1944 to the end of the war, Koreh was Press Information Officer and Deputy Chief
23 of the Information Section at the Hungarian Ministry of Propaganda. His responsibilities

1 included preparing radio broadcasts, reviewing speeches, and monitoring Hungarian press
2 coverage of various issues, including “the Jewish question.” For a portion of his time at the
3 Ministry of Propaganda, he also served as Responsible Editor of a government-owned weekly.
4 That newspaper, like the privately owned one with which he was associated, was pro-Axis in its
5 coverage. In 1946, the People’s Court of Budapest found Koreh guilty of war crimes. The
6 conviction was based on Koreh’s work for the government publication. He was sentenced to a
7 year in prison, to be followed by five years’ suspension of his political rights.¹⁰

8 Koreh came to the United States in 1950. His visa application stated that he had written
9 “cultural and literary” material for a private newspaper. Nothing indicated that he had been the
10 paper’s Responsible Editor nor that he had worked at the Ministry of Propaganda or been editor-
11 in-chief of a government publication. Although he acknowledged being sentenced to a year in
12 prison, he described this as political incarceration based on his anti-Communist stance. He
13 denied having been a member of, or having participated in, any movement hostile to the United
14 States.

15 In 1956, Koreh became a United States citizen. He was an outspoken critic of the
16 Communist regimes in Hungary and Romania. From 1951 until 1974, he was a broadcast
17 journalist with Radio Free Europe. He remained with RFE on a freelance basis until 1989.
18 Beginning in 1965, he also hosted a two-hour weekly radio program, a portion of which was
19 devoted to the issue of Hungarians within Romania. He also helped organize demonstrations
20 against the Romanian government and served for a period of time as president of an anti-
21 Communist emigré organization.

22 In early 1977, *Dreptatea*, a Romanian language newspaper published in New York, ran

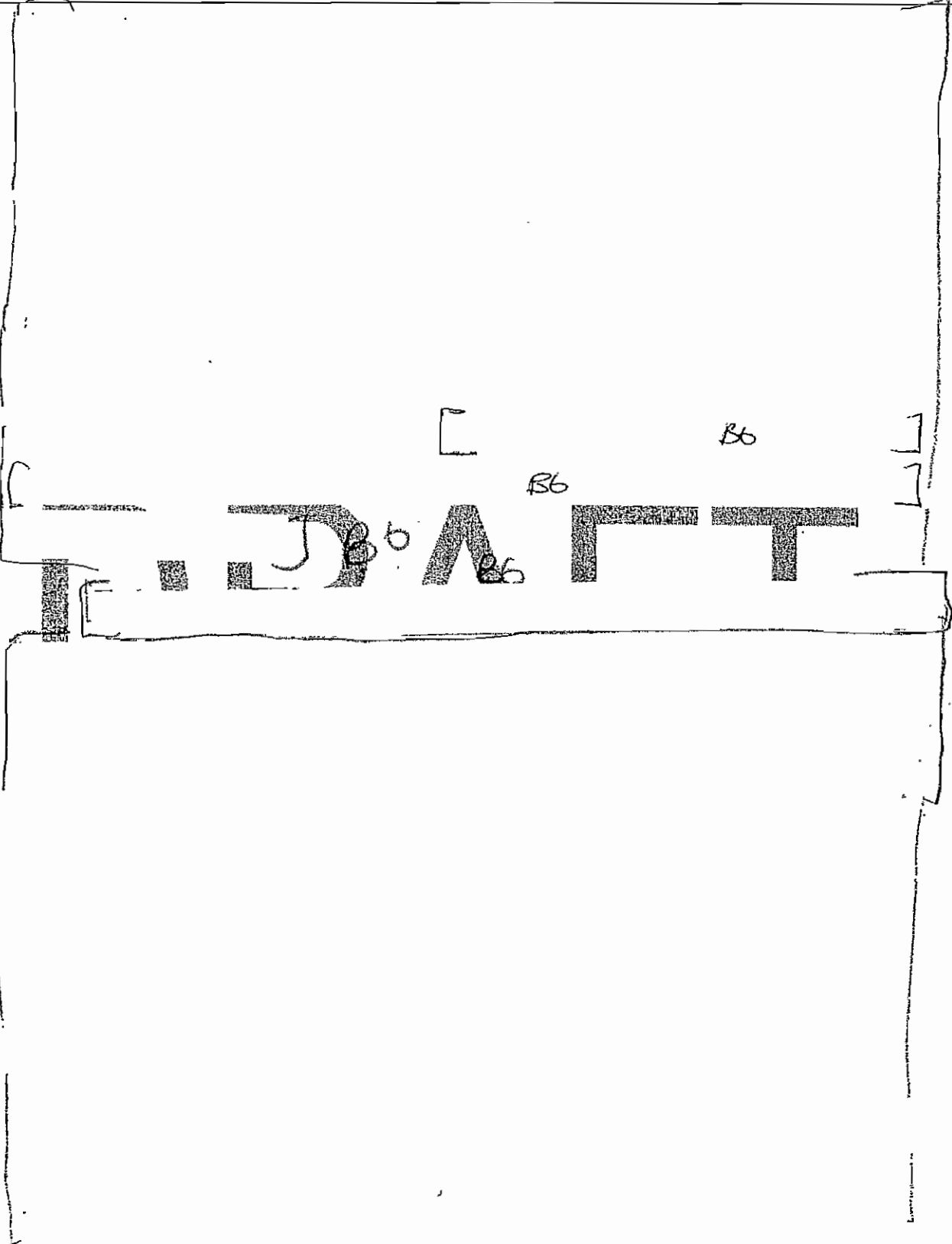
1 an article identifying Koreh as "Chief of the Nazi [Iron Cross] party and of all the political
2 publications appearing in Northern Transylvania from 1940 to 1944." In addition, the piece held
3 Koreh responsible for mass murders and reported that he had hunted his victims from horseback
4 and had been condemned to death *in absentia* by a Hungarian court. A few months later, a
5 similar article was published in *The United Israel Bulletin*, another New York paper. Koreh sued
6 both publications and their editors for libel. The case settled in 1979 when the newspapers
7 retracted all statements other than the ones holding Koreh responsible for mass murder.¹¹

8 The SLU first learned about Koreh from an article in *The United Israel Bulletin*.¹² OSI
9 inherited the investigation and filed a denaturalization complaint in 1989, charging that Koreh's
10 visa should not have been issued because he had: (1) assisted in the persecution of Jews through
11 his position as Responsible Editor of the privately owned newspaper; (2) been a member of, or
12 participated in, a movement hostile to the United States through his employment as a press
13 officer in the Hungarian Ministry of Propaganda; (3) given "voluntary assistance" to enemy
14 forces by his employment in the Ministry; and (4) failed to list his conviction as a war criminal.¹³

15 The case received publicity, in part because (unbeknownst to OSI before the filing), one of
16 Koreh's daughters was an FBI agent. Three days after the filing, an unidentified person threw an
17 object through a window in Koreh's home with a note stating "Dog - You Will Die."¹⁴

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20 Relying in part on material which had been prepared by Koreh for his
21 earlier libel suit,
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In preparation for trial, the defense wanted all government documents which would assist in their claim that Koreh had been set up by the Romanian government; this included the

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The court agreed, approving a stipulation which gave the defense the essence of the classified material without revealing state secrets.²⁰

[[REDACTED]

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Sparring over the report – its preparation and defense access to it – took three years.²¹

The court finally reached the merits of the denaturalization case in June 1994. It acknowledged being torn by the defendant's situation.

[T]he court has had to resolve certain difficulties in its own mind and thus has dragged its judicial feet in hopes that the case would be disposed of in ways other than this. On the one hand, the court is faced with a defendant who will be 85 years of age in September, 1994 and who has been in this country for 44 of those years working until his retirement and apparently with some distinction for Radio Free Europe; producing and broadcasting a Hungarian language radio program; and writing for and/or editing a Hungarian newspaper, a Hungarian magazine, and a Hungarian news quarterly. Importantly, there is no suggestion that defendant personally committed or supervised the commission of any of the atrocities that one typically sees in cases in which the United States seeks denaturalization; indeed, had the conduct in which he concededly engaged and the anti-Semitic and

1 anti-Allied articles he is alleged to have written and admittedly published occurred
2 in this country, that conduct and those articles would most likely be protected by
3 the First Amendment. On the other hand, defendant's admitted and undisputed
4 activities during the discrete periods of time to which the United States points . .
5 . warrant denaturalization as a matter of law.²²
6

7 The court relied only on facts which were stipulated or otherwise not in dispute. Thus,
8 any articles written at a time when the defendant claimed he was away from the newspaper were
9 excluded. So too were all articles printed under his name because the defendant ("most
10 belatedly" according to the court) claimed these were Romanian forgeries. Even with all these
11 exclusions, there were 55 articles to be considered. The court described them thus:

12 The "alien-character" of the Jews was emphasized and Jews were described as
13 constituting a separate and distinct race. Jews were portrayed as "traitorous,
14 unscrupulous, cheating" . . . and a consistently dangerous element in Hungarian
15 society responsible for the socioeconomic problems afflicting Hungary and the
16 world; a portion of an article from the National Socialist German Workers Party
17 publication was reprinted . . . concluding that . . . "everyone in Hungary is aware
18 of the fact that a final solution may be achieved only by deporting Jewish
19 elements" . . . In the impoverished and poorly educated region which *Szekely*
20 *Nep* reached, more than forty articles published while defendant was present
21 blamed the Jews for the economic and social problems and the misery of the
22 people in that region . . . and called for harsher restrictions and punishments,
23 including the suggestion that the homes of Jews be taken away.²³
24

25 The court concluded that as Responsible Editor of a privately owned newspaper, Koreh
26 gave "assistance in the persecution" of Hungary's Jews; his work amounted to "advocacy" of
27 such persecution, fostering a climate of anti-Semitism which conditioned the Hungarian public to
28 acquiesce, encourage and carry out anti-Semitic policies. Moreover, his work on the paper
29 constituted membership and participation in a movement hostile to the United States.
30 For all these reasons, he should have been denied a visa to enter the United States. His
31 citizenship was therefore revoked; the Third Circuit affirmed.²⁴

1 The government filed a deportation action but settled the case before trial because of
2 Koreh's failing health. Koreh admitted responsibility for publishing anti-Semitic articles,
3 conceded his deportability and designated Hungary as the country to which he should be sent. In
4 January 1997, the court entered an order of deportation. The government agreed not to effect the
5 order unless Koreh's health improved. It did not. He died three months later, at age 87.²⁵

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1. There were some short gaps in this period of service, but they are irrelevant to the issues presented.
2. *U.S. v. Koreh*, 856 F. Supp. 891, 896 (D.N.J. 1994).
3. "Blood and Gold: The Role of Jewish Capital in the Present World War;" Jan. 31, 1942; "How the World's Jews Forced the American People to Go to War;" Feb. 15, 1942.
4. "Is It Possible for Szekely Maids to Continue to Serve in Jewish Homes?" (reporting that "it frequently occurs that some ugly Jewish man pursues and propositions the defenseless girls who find themselves in a situation of dependency"), Mar. 21, 1942.
5. "The Need to de-Jewify the Legal Profession," July 18, 1942.
6. "Jews Were the Murderers of the Polish Officers Killed in the Soviet Union," Apr. 16, 1943.
7. "We Are Demanding an Investigation," Aug. 5, 1941.
8. "Thuckstors," Sept. 20, 1941.
9. "Subversives," Oct. 11, 1942.
10. He served seven months in jail.
11. Sept. 21, 1979 transcript of proceedings before the Hon. Thomas Griesa, Case No. 77 Civ. 2613 (S.D.N.Y.).

12. Chronology of events in Koreh Investigation/Litigation prepared by OSI. The chronology references an Apr. 24, 1978 memo by the SLU about an article in *The United Israel Bulletin* concerning Koreh and Trifa. Simon Wiesenthal notified the SLU about Koreh in a July 21, 1978 letter to

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14. "Threats, Vandalism at Koreh Home," by David Voreacos, *New Jersey Record*, June 27, 1989; "Nazi Apologist in Engelwood? Daughter Denies U.S. Claim," by Ron Hollander, *New Jersey Record*, June 22, 1989. (The newspaper incorrectly reported the note as saying "You dog, you will die." A June 30, 1990 FBI teletype from Newark to FBI headquarters, re "Vandalism at 83 Grove Street, Englewood, NJ" makes clear what the note actually said.)

15. May 2, 1991 memorandum to File from []

] BG, BS

16. Apr. 26, 1991 memorandum to File from [] re "discussion with [] was chief of the Justice Department's Office of Intelligence Policy and Review (OIPR). []

] BS

17. Sept. 12, 1989 teletype from NYO to HQ.

18. Sept. 29, 1989 teletype from HQ to NYO. Regulations precluded – absent a written waiver by a supervisor – participation in a criminal investigation by anyone with a personal relationship with a person he knows has a "specific or substantial interest that would be directly affected by the outcome of the investigation or prosecution." 28 C.F.R. 45.735.

] 36

] BS

20. Both the magistrate and district court rulings are published at *United States v. Koreh*, 144 F.R.D. 218 (D.N.J. 1992).

21. [] secrets was in Sept. 1992.

] The final court ruling on state

] BS

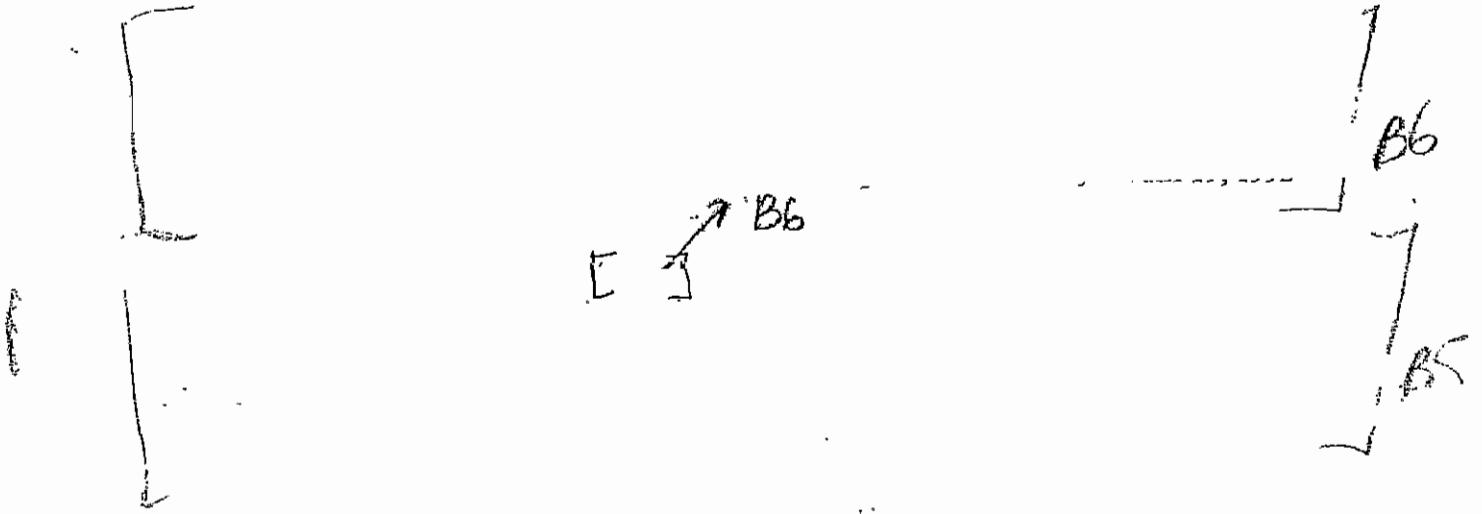
22. *U.S. v. Koreh*, 856 F. Supp. at 893.

23. *Id.* at 898.

24. *United States v. Koreh*, 856 F. Supp. 891 (D.N.J. 1994), *aff'd*, *United States v. Koreh*, 59 F.3d 431 (3d Cir. 1995).

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DRAFT

1 **Senior Officials**

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3 **Andrija Artukovic – Justice Interminably Delayed**

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5 No case spawned as much litigation or extended over as long a period of time as that of
6 Andrija Artukovic, the highest ranking Nazi collaborator ever found in the United States.
7 Extradition proceedings were begun in 1951 – long before the creation of OSI; Artukovic was
8 extradited in 1986. Collateral matters related to the case are still pending.

9 He was born in 1899 in Croatia, then a region within the Austro-Hungarian empire.
10 Yugoslavia, created after World War I, was an amalgam of nations, including perennial enemies
11 Serbia and Croatia. In April 1941, Germany invaded Yugoslavia and dismembered the young
12 republic. One of the newly-created states was the “Independent State of Croatia,” a Nazi puppet
13 regime run by the fascist Ustasha party. The new government declared war on the United States
14 in December 1941.

15 Artukovic served the Ustasha government in various capacities, including Minister of the
16 Interior and Minister of Justice and Religion. In these positions, he promoted policies that
17 victimized Serbs, Jews, Gypsies, Orthodox Christians and Communists. Among other things, he
18 issued a series of decrees mandating internment of these undesirables, empowering summary
19 courts to impose death sentences, calling for execution of Communist hostages, confiscating
20 Jewish businesses, and limiting state and academic employment to Aryans. In a speech to the
21 Croatian State Assembly, he described Jews as having:

22 prepared the world revolution, so that through it the Jews could have complete
23 mastery over all the goods of the world and all the power in the world, the Jews
24 whom the other people had to serve as a means of their filthy profits and of its
25 greedy, materialistic and rapacious control of the world.¹

26

1 Approximately 25,000 Jews, 250,000 Serbs, and numerous Gypsies, Orthodox Christians
2 and Communists perished in the Independent State of Croatia between April 1941 and May 1945.
3 After the war, Communists who had fought the Ustasha regime assumed power. They reunited
4 Croatia with the rest of Yugoslavia and placed Artukovic's name on the United Nations War
5 Crimes Commission list of war criminals. He was referenced in the Communist press as "The
6 Butcher of the Balkans."

7 Artukovic entered the United States in 1948 on a 90-day visitors visa issued to him under
8 an assumed name. He settled in California and began working for a construction company
9 owned by his wealthy brother. His visa was twice extended, the second extension expiring in
10 April 1949. In an effort to ensure his continued presence in the United States, his Congressman
11 introduced a private bill to retroactively bestow lawful admission on Artukovic and his family.²
12 Although no action was taken on the measure – which identified him by his proper name – it
13 triggered the government's investigation.

14 Artukovic's problems began when the bill was routinely sent to INS for review. INS'
15 inquiries led to the realization that Artukovic had been unlawfully admitted under a false name
16 and that he was wanted in Yugoslavia for war crimes. There were two options available for
17 removing him from the United States – deportation and extradition. Both were pursued.

18 The two proceedings were filed in 1951. The deportation case began first. Artukovic did
19 not challenge his deportability; he had, incontrovertibly, entered the United States under a false
20 name and his visitors visa had long since expired. However, he sought refuge under a statutory
21 provision that suspended deportation proceedings in cases where the defendant could show he
22 was of "good moral character" and that deportation would impose "serious economic

1 detriment."³ T

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4 Rather than litigating the economic issue, INS contended that Artukovic was ineligible
5 for the exemption because he lacked good moral character. The government presented evidence
6 to show that, as a cabinet minister, Artukovic had been a major Nazi collaborator, responsible for
7 the deaths of innocent Serbs and Jews. The immigration judge agreed and the ruling was upheld
8 on appeal.

9 There appears to be little doubt (1) that the new Croatian state, at least on paper,
10 pursued a genocidal policy in Croatia with regard to Jews and Serbs, (2) that
11 Artukovic helped execute this policy in that, as Minister of Interior, he had
12 authority and control over the entire system of Public Security and Internal
13 Administration, and (3) that during this time there were massacres of Serbs and,
14 perhaps to a lesser extent, of other minority groups within Croatia.

15
16 [I]t is difficult for us to think of any one man, other than [the Croatian president]
17 who could have been more responsible for the events occurring in Croatia during
18 this period than was [Artukovic].⁴

19
20 Having failed to get the proceedings suspended, Artukovic next sought a stay of
21 deportation by claiming that he himself would be the victim of persecution if he were returned to
22 the communist country of Yugoslavia. In making this argument, he acknowledged that as a
23 Cabinet minister he had authorized the persecution of communists. The judge postponed ruling
24 on the stay application pending resolution of the extradition request.

25 The extradition was predicated on a Yugoslav indictment charging Artukovic with having
26 murdered, or caused to be murdered, 22 persons, including the Archbishop of Sarajevo. As is
27 customary in extradition proceedings, Artukovic was arrested pending the outcome of the

1 hearing. Although defendants are rarely released on bail in such circumstances, the court made
2 an exception for Artukovic. The court felt he presented no flight risk and the judge was skeptical
3 about the merits of the case.

4 I am impressed by the date of the alleged offenses, 1941; and the fact that
5 Yugoslavia was invaded by Germany on April 6, 1941, and thereafter occupied by
6 Germany until 1945 and that the whole world and especially that portion of the
7 world, was in a terrible turmoil. . . . I cannot help but think that it might be
8 possible, if extradition treaties with various countries were carried out to the letter
9 in connection with charges that might be made, they might demand the extradition
10 of every person who was a member of any armed forces against them and charge
11 them with having committed murder, because surely people who are members of
12 armed forces do kill other people, and they kill them just as dead as they would if
13 they privately did it and certainly with as much intention.⁵

14
15 Artukovic argued that the U.S. courts should not address the extradition request because
16 (1) the treaty of extradition – entered into in 1902 between the Kingdom of Serbia and the U.S. –
17 was no longer valid; and (2) the charges against him were political and therefore could not form
18 the basis for extradition in any event.

19 The district court agreed with the first argument.. The court did not reach the issue of
20 whether the crimes would be extraditable if there were a treaty.⁶

21 Up until this point, Yugoslavia had outside counsel representing its interests in court.
22 The U.S., however, was concerned about the ruling as it was against the U.S. interest to have a
23 judicial ruling that a change in government abrogates treaties. Accordingly, the U.S. joined
24 Yugoslavia in successfully appealing the order. The Ninth Circuit reversed and sent the case
25 back for a determination as to whether Yugoslavia's charges against Artukovic were political.⁷

26 The district court concluded that they were. It pointed to the “animus which has existed
27 between the Croatians and the Serbs for many hundreds of years, as well as the deep religious

1 cleavage known to exist among the peoples in the Balkans.” This ruling, affirmed by the Ninth
2 Circuit, was vacated by the Supreme Court.⁸ The matter then returned, yet again, to the district
3 court, this time for a determination as to whether there was probable cause to believe Artukovic
4 had committed extraditable offenses under the 1902 treaty.

5 The many appeals, reversals and remands had dragged on for eight years by the time the
6 district court found no probable cause to believe that Artukovic had committed an extraditable
7 offense.⁹ It based this ruling on the fact that there was:

8 no evidence . . . presented that the defendant himself committed murder.
9 [Yugoslavia] relies entirely upon their evidence that members of the ‘ustasha’
10 committed murders upon orders from the defendant.

11 **DRAFT**
12 Although there was evidence that Artukovic had ordered internment, deportation, and in some
13 cases killing, of civilians, the court analogized this to U.S. policy.

14 **DRAFT**
15 It was common practice during World War II to intern anyone who was even
16 suspected to be an enemy or possible enemy of the government in power. Our
17 own government saw fit to intern all Japanese on the west coast, men, women and
18 children of all ages, immediately following Pearl Harbor.
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21 In the end, the court rejected the Nuremberg concept that leaders are accountable for
22 decrees signed by them but carried out by others.

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24 To so hold would probably result in failure to find any candidate who would
25 accept the responsibilities of such a position if he was going to be held to answer
26 for crimes committed by his underlings without more definite proof that they were
27 acting under his orders.
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30 The request for extradition was denied. By law, the order could not be appealed.

31 Artukovic received more welcome news four months later. His long-pending application
32 for a stay of deportation was granted. INS agreed with him that deportation to Yugoslavia
33 would subject him to persecution because he had opposed the Communists when he was a

1 Cabinet minister. However, INS warned him that the stay was "subject to revocation at any time
2 upon written notice to you." As it developed, it was 18 years before the government sought to
3 lift the stay.

4 During that interval, Artukovic was not completely out of the public eye. In 1961, his
5 name surfaced during Israel's prosecution of Adolf Eichmann. Witnesses in that case testified
6 about the deportation and slaughter of Yugoslavian Jews at Artukovic's behest; one described
7 futile pleas to Artukovic to spare the lives of children about to be deported to death camps.¹⁰

8 INS reviewed the matter periodically. As late as 1974, it solicited the State Department's
9 views as to whether it was still likely that Artukovic would suffer persecution if he were sent
10 back to Yugoslavia. The State Department concluded that the threat of persecution remained.¹¹

11 The case resurfaced in 1977 when a delegation from the House Judiciary Committee went
12 on an East European fact finding trip. They reported that Yugoslavia was "disappointed and
13 revolted" by the fact that Artukovic had neither been deported nor extradited. The Yugoslavs
14 wanted to try Artukovic for war crimes; they assured the lawmakers that the trial would be open
15 to the public and would comport with U.S. standards of due process.¹²

16 Shortly thereafter, an INS Regional commissioner notified Artukovic that his stay would
17 not be further extended unless he could provide new justification for an extension within 30 days.
18 Rather than doing so, Artukovic sued the government to enjoin it from acting. He won at least a
19 temporary reprieve when the court ruled that the government could not summarily lift the stay;
20 the matter would have to be decided by the immigration courts.¹³

21 Before the matter returned to court, a change in the law substantially enhanced the
22 government's position. The 1978 Holtzman Amendment eliminated the possibility of a stay of

1 deportation for aliens who had "assisted or otherwise participated in the persecution of persons
2 because of race, religion, national origin, or political opinion on behalf of the Nazis and their
3 allies."

4 After its founding in 1979, OSI's first court filing was a motion to lift Artukovic's stay on
5 the ground that it was precluded by the Holtzman Amendment. In June 1981, the BIA granted
6 OSI's request, concluding that the Holtzman Amendment applied to Artukovic because he had
7 assisted in persecution. In reaching this result, the Board referenced its 1953 findings that
8 Artukovic had been instrumental in persecution and therefore lacked good moral character. The
9 BIA ordered Artukovic deported to Yugoslavia.¹⁴

10 Artukovic appealed and got yet another reprieve. The Ninth Circuit held that it was
11 improper to rely on the 1953 finding to justify deportation in 1981. The Circuit reasoned that the
12 underlying issue considered in the 1950s – whether Artukovic could establish that there would be
13 economic hardship to his daughter if he were deported – was different from whether the
14 government could show that he fit within the parameters of the newly-enacted Holtzman
15 Amendment. Although in fact the evidence presented in the 1950s concerned Artukovic's
16 involvement in persecution, it would not suffice. The government would have to ask an
17 immigration judge to hold a new hearing on the question of Artukovic's involvement in
18 persecution.¹⁵ The government did so in February 1984 and the new hearing was set for January
19 1985.

20 Meanwhile, the Yugoslav government had been signaling its interest in filing a new
21 extradition request. (There is no bar to filing an extradition request after an earlier one has been
22 denied.)

1 In 1981, shortly after the BIA revoked the stay of deportation, and again in 1982 when the
2 Ninth Circuit ordered a new hearing, Yugoslav officials met with their counterparts from the
3 State Department and the Department of Justice to discuss the mechanics of extradition.¹⁶ The
4 following year,

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7 In July 1983,

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10 At the same time that the Department of Justice was working with Yugoslavia on a
11 possible extradition request, OSI was preparing for the new deportation hearing. In November
12 1983, an OSI historian went to Yugoslavia to do research. He found documents pertinent to the
13 deportation case in the Yugoslav archives and asked that they be sent to OSI.

14 Yugoslavia submitted a formal request for extradition in August 1984, this time asserting
15 that Artukovic was responsible for thousands of murders. Artukovic was arrested in November
16 1984 and his request for bail was denied. The deportation case was taken off calendar pending
17 the outcome of the extradition hearing. Unlike the 1950s extradition hearing, this time the U.S.
18 represented Yugoslavia in court. Lead counsel for the government was from the Los Angeles
19 U.S. Attorney's office. He was assisted by OIA and OSI.

20 Artukovic at first attempted to block the hearing by asking another judge to hold the
21 government in contempt. Artukovic claimed that extradition was an end run around deportation,
22 designed to deprive him of the greater procedural safeguards and defenses available in a

1 deportation proceeding. His claim was summarily dismissed.

2 The first issue facing the extradition court was whether Artukovic was mentally
3 competent to understand the proceedings and to assist his counsel. He was by this time 84 years
4 old and suffering from a variety of ailments. Faced with conflicting testimony on the subject,
5 the court appointed its own doctor to make an evaluation. Although this neutral expert found
6 Artukovic incompetent and suggested delaying the proceedings while Artukovic underwent drug
7 therapy, the court refused to do so. Based on his observation of Artukovic in court, the judge
8 concluded that the defendant had good days and bad days. Accordingly, he fashioned a
9 procedure to deal with the problem: a doctor was to prepare a daily report on Artukovic's
10 condition. Court was convened on alternate half days, Artukovic's health permitting.¹⁸

D R A F T

11 After losing the competency issue, the defense next contended that federal officials had
12 impermissibly encouraged Yugoslavia to request extradition. Although such encouragement is
13 not itself improper, Artukovic argued that the extraordinary time lag – it had been 25 years since
14 the first extradition request had been denied – worked to his disadvantage and thereby deprived
15 him of due process. The magistrate ordered ~~to~~ court, warning that “If it develops B6
16 that some politician was trying to run for higher office by railroading Mr. Artukovic back to
17 Yugoslavia, that would be impermissible.”¹⁹ After hearing from ~~the~~ magistrate concluded B6
18 that there had been no wrongful conduct by the Justice Department, and that the extradition had
19 been at the behest of the Yugoslavs.²⁰

20 Finally, on the merits of the extradition itself – Yugoslavia's claim that Artukovic was
21 responsible for thousands of murders – the government submitted statements from 52 affiants.
22 The court relied on the only two that presented eyewitness accounts of Artukovic's involvement

1 in the murder of civilians.

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The magistrate ordered Artukovic extradited for the crimes set forth in the [redacted] and [redacted]

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[redacted] affidavits.²¹ That order was adopted in full by the district court.²² Five days later, the

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Court of Appeals denied Artukovic's request for an emergency stay.²³ At 1:00 AM, February 12,

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1986, just minutes after then Associate Justice William Rehnquist refused a request to delay the

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extradition order, Artukovic was flown to Yugoslavia.²⁴ He had been in custody since November

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14, 1984.²⁵

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The deportation caused enormous consternation within the Croatian community, which

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had always seen the case as a Cold War issue. They feared that the Communists would not

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provide a fair forum for trial.²⁶ In Canada, a Croatian national set himself on fire in front of the

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1 U.S. consulate as more than 2,000 people demonstrated to protest the deportation.²⁷

2 Yugoslavia tried Artukovic two months after his arrival. The timing was dramatic
3 because the history of wartime Yugoslavia was just then receiving worldwide attention from
4 revelations that former U.N. Secretary General Kurt Waldheim had served as an intelligence
5 officer in the Balkans. His unit had been involved in reprisal killings of partisans and Waldheim
6 had been awarded a medal by the Ustasha regime.²⁸

7 Artukovic's trial was broadcast on Yugoslav state television. Due to the tension between
8 the Serb and Croat communities, Artukovic was kept behind bulletproof glass in the courtroom.
9 Streets around the courthouse were blocked to traffic and policemen patrolled with machine guns
10 and muzzled dogs.²⁹

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11 both testified had difficulty recalling any pertinent events; b6
12 provided new details not mentioned in his earlier affidavit.³⁰ After four weeks of trial,
13 Artukovic was convicted on all counts. Under international extradition practice, his conviction
14 was limited to those crimes for which he had been extradited. Nonetheless, the Yugoslav court
15 made clear that it believed him responsible for running two dozen concentration camps where
16 between 700,000 and 900,000 Serbs, Jews, gypsies and other prisoners were tortured and killed.³¹
17 He was sentenced to death by firing squad. Due to his failing health, the death penalty was later
18 commuted;³² he died in a prison hospital in January 1988.

19 As complicated and drawn out as the above proceedings were over 35 years, they were
20 not the only litigation involving Artukovic. His case spawned several tangential lawsuits. In
21 1984, a class action was filed against him by Yugoslav Jews who themselves had served time in
22 Croatian concentration camps or had close relatives murdered during the Ustashi regime. The

1 plaintiffs sought compensatory and punitive damages, claiming Artukovic had violated the
2 Hague and Geneva conventions, international law and the Yugoslavian criminal code. The suit
3 was dismissed, the court ruling that it lacked jurisdiction as to some matters, while others were
4 barred by the statute of limitations.³³ In addition, Artukovic himself filed suit to enjoin his
5 extradition and to recover \$10 million in damages on the ground that the Justice Department had
6 conspired with the government of Yugoslavia to deprive him of his civil and constitutional
7 rights. That case too was dismissed, both because there was no legal basis to support the
8 monetary claim, and because the extradition made the request for an injunction moot.³⁴ And
9 finally, as trial began in Yugoslavia, the family of the parliamentarian whose murder Trujar had
10 discussed, sought, unsuccessfully, to freeze Artukovic's U.S. assets.³⁵

11 The issues surrounding Artukovic did not end with his death. In 1988, Artukovic's son
12 sent a 135-page treatise to OSI, alleging that his father's extradition had been based on fraudulent
13 documents.³⁶ He also filed a complaint with the Justice Department. His most serious

14 allegation involved the affidavits.³⁷

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1 The son learned of this additional material from a variety of sources. Some documents
2 came to light when a historian hired by the Artukovic family visited the Croatian Archives. He

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9 The son pointed also to a 1988 book published by a former legal adviser in the Yugoslav
10 Foreign Ministry. The author claimed that the events recounted by Avdic "never took place."³⁸
11 Although the book was published after the extradition was completed, and thus DOJ could not
12 be held accountable for not knowing its contents – the son argued that OSI should itself have
13 determined the veracity of Avdic's allegations. He pointed to OSI's oft-repeated claim that it
14 gave close scrutiny to Communist-sourced material,³⁹ and questioned why no such scrutiny had
15 been given in this case. An outside historian who had worked with OSI on the case gave some
16 credence to the son's claims, publicly questioning the veracity of the 1984 Avdic affidavit.⁴⁰

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While there were some inconsistencies between the material submitted to court and the additional material cited by the Artukovic family

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7 The Artukovic case stands out in many respects. It was OSI's first filing. Artukovic was
8 the only Cabinet official and the only Croat ever prosecuted by the office.⁴⁴ And he was the first
9 OSI defendant to be extradited,⁴⁵ though he was followed just two weeks thereafter by John
10 Demjanjuk. Artukovic matters have spanned decades. If one begins with the original INS
11 deportation filing in 1951, the case and its progeny have been around for over half a century. By
12 any measure, that is a testament to the arcane and labyrinthian procedures that apply in these
13 proceedings.

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1. "The Sins of the Father," by Carla Hall, *The Washington Post*, Aug. 24, 1992.
2. It was the first of eight such bills introduced between 1949 and 1961. H.R. 3504 (81st Cong.), H.R. 8186 (82nd Cong.), H.R. 6700 (83rd Cong.), H.R. 2789 and HR. 2790 (84th Cong.), H.R. 2844 and H.R. 4760 (86th Cong.), and H.R. 2185 (87th Cong.).
3. The 1978 Holtzman Amendment ended such exemptions for OSI defendants. *See* p. 40.
4. *Matter of Artukovic*, (BIA 1953).
5. Transcript of the Sept. 1951 bond hearing, as set forth in *Artukovic v. Boyle*, 107 F. Supp. 11, 34, n. 4 (S.D.CA, 1952).
6. *Artukovic v. Boyle*, *supra*, n. 5, 107 F. Supp. 11.
7. *Ivancevic v. Artukovic*, 211 F.2d 565 (9th Cir. 1954). *See* p. 575, n. 4 of the court decision for a discussion of the U.S. interest.

Reviewing what had happened in the Artukovic matter

8. *Artukovic v. Boyle*, 140 F. Supp. 245 (S.D.CA, 1956), *aff'd*, *Karadzole v. Artukovic*, 247 F.2d 198 (9th Cir. 1957), *vacated*, *Karadzole v. Artukovic*, 355 U.S. 393 (1958). Decades later, the Ninth Circuit noted that its application of the "political offense" doctrine to Artukovic became "one of the most roundly criticized cases in the history of American extradition jurisprudence." With hindsight, the Circuit conceded that the doctrine should not have applied to Artukovic. *Quinn v. Robinson*, 783 F.2d 776, 798, 799-800 (9th Cir. 1986).

9. *U.S. v. Artukovic*, 170 F. Supp. 383 (S.D. Ca. 1959).
10. "Eichmann Trial Witness Shows How He Escaped Nazis' Wrath," by Homer Bigart, *The New York Times*, May 20, 1961.
11. July 23, 1974 letter to [redacted] from [redacted]
12. "Human Rights and U.S. Consular Activities in Eastern Europe," Report of the House C'tee of the Judiciary, 95th Cong, 1st Sess., Based on a Factfinding Mission to Four Eastern European Nations, pp. 47-48.
13. Although Artukovic had been told in 1959 that the stay could be lifted "at any time upon written notice," INS regulations had since modified the procedures for lifting a stay.

14. *In re Artukovic*, A7 095 961 (BIA 1981).

15. *Artukovic v. INS*, 693 F.2d 894, 899 (9th Cir. 1982).

16. Sher testimony at extradition hearing, Feb. 13, 1985.

17. Mar. 10, 1983 buck slip to [] from [] B6

18. "Nazi Suspect's Case Delayed," UPI, *The New York Times*, Feb. 26, 1985; "Court Orders Artukovic Sent to Yugoslavia," by William Overend, *The Los Angeles Times*, Mar. 5, 1985. Operating on this schedule, a five-day hearing extended over several weeks.

19. "U.S. Is Ordered to Respond in Yugoslav Extradition Case," *The Washington Post*, Feb. 12, 1985.

20. After the initial ruling, Artukovic asked the magistrate to reconsider the issue. Relying on a recently published book by a Yugoslav parliamentary official, he accused Sher of perjury. The book, *Ustashi - Minister of Death*, by Gojko Prodanic, stated that Justice Department officials had prodded the Yugoslavs to file a new extradition request. Official May Have Led, by Bill Fair, *The Los Angeles Times*, May 29, 1985. The motion to reconsider was denied.

21. The magistrate at first ordered the extradition only for the one murder described in the affidavit. Although he found probable cause to believe that the massacres described by had occurred at Artukovic's behest, they did not match any charges in the pending Yugoslavian indictment. They could therefore not form the basis of an extradition order. The magistrate gave Yugoslavia 60 days to amend its indictment to conform to information in the affidavit. It did so, and Artukovic was then ordered extradited for trial involving thousands of deaths. B6

22. *Artukovic v. Rison*, 628 F. Supp. 1370, 1378 (C.D. Ca. 1986). The district court opinion contains the full text of the magistrate's order.

23. *Artukovic v. Rison*, 784 F.2d 1354 (9th Cir. 1986).

24. "Nazi War Crimes Suspect Extradited," by Mary Thornton, *The Washington Post*, Feb. 13, 1986; "Artukovic Flown to Yugoslavia," by James Carroll and Larry Keller, *The Press-Telegram* (Long Beach, CA), Feb. 13, 1986; "Croatian War Criminal Sentenced to Firing Squad," by Michael Kaufman, *The New York Times*, May 15, 1986.

25. At one point, it looked as if he might be released on bail. Several months after his Nov. 1984 arrest, a different magistrate was assigned to consider whether Artukovic should be released on bail pending the outcome of the extradition hearing. The magistrate was favorably inclined, opining that it was "cruel and unusual punishment" to incarcerate someone with Artukovic's medical problems. "Man Accused of War Crimes is Scheduled to Have Bail Set," AP, *The New York Times*, June 29, 1985. Shortly after that statement was made, the case was sent back to the original magistrate and bail was denied. "Magistrate Sympathetic to Artukovic's Bail

Removed," by William Overend, *The Los Angeles Times*, July 10, 1985.

26. See e.g., "Extradition Request by Belgrade Scored," *The New York Times*, Sept. 4, 1951; "Move 'Made Farce' of U.S. Justice, Backers Claim," by Susan Pack, *The Press-Telegram* (Long Beach, CA), Feb. 13, 1986.

The Cold War aspects of the case took some unexpected turns. In the 1980s, Yugoslavia granted passage to a terrorist wanted for planning the hijacking of a U.S. ship (the Achille Lauro) and the murder of one of its U.S. citizen passengers. In part, Yugoslavia justified its action by pointing to the U.S. delay in extraditing Artukovic, whom they deemed a terrorist. "Yugoslavs of Two Minds on Battling Terrorism," by David Binder, *The New York Times*, Dec. 19, 1985. Artukovic's attorneys maintained that the U.S. should retaliate by releasing Artukovic. Oct. 16, 1985 telegram from Artukovic attorney Gary Fleischman to Secretary of State George Shultz.

27. "Man Sets Himself on Fire at Protest of Artukovic Deportation," *AP*, Feb. 24, 1986.

28. See pp. 310-329.

29. "Yugoslav Court Refuses Delay of Artukovic Trial," by Carroll Lachnit, *The Orange County Register*, Apr. 15, 1986. "At Collaborator's Trial, Yugoslavs Face Their Past," by Michael Kaufman, *The New York Times*, Apr. 16, 1986. "Croat Becomes Confused at War Crimes Trial," *The New York Times*, Apr. 19, 1986.

There had been palpable tension in the U.S. proceedings as well. In 1959, the court made note of this in its ruling, *U.S. v. Artukovic*, 170 F. Supp. at 834. And in 1984, a Justice Department attorney from OIA was sufficiently concerned for her personal safety that she withdrew her name from a court filing. Nov. 7, 1984 memo to files re "Artukovic," from Murray Stein, Associate Director OIA.

30. "Artukovic Witness Confused," by Carroll Lachnit, *The Orange County Register*, Apr. 23, 1986. "For the First Time, a Witness Says Artukovic Killed Several Prisoners," by Carroll Lachnit, *The Orange County Register*, Apr. 30, 1986.

31. "Croatian War Criminal Sentenced to Firing Squad," by Michael Kaufman, *The New York Times*, May 15, 1986. "Artukovic, Extradited As Nazi War Criminal," by Ted Rohrlich, *The New York Times*, Jan. 18, 1988.

32. "Ailing Former Nazi Artukovic May Not Be Executed After All," by Carroll Lachnit, *The Orange County Register*, Apr. 25, 1987.

33. *Handel v. Artukovic*, 601 F. Supp. 1421 (C.D. Ca. 1985).

34. Artukovic had tried to fashion a right to be free from extradition in order to avail himself of the procedural safeguards which apply to deportation proceedings. *Artukovic v. U.S. Dep't of Justice, et al.*, No. 85-2135 (D.D.C. 1986). Once Artukovic was extradited, the parties agreed to dismiss the pending appeal.

35. "Yugoslavs Try to Freeze Collaborator's Assets," *The New York Times*, Apr. 17, 1986.

36. "Artukovic's Son Challenges U.S. Officials to Admit Error," *AP, The Los Angeles Times*, Feb. 13, 1988.

38. "U.S. Nazi Hunters Target of Inquiry," by Jay Mathews, *The Washington Post*, May 8, 1990.

39. See pp. 538-539.

40. "U.S. Nazi Hunters Railroaded 'War Criminal,' Experts Say," by Michael Hedges, *The Washington Times*, Sept. 24, 1990.

41. See e.g., "U.S. Nazi Hunters Target of Inquiry," by Jay Mathews, *The Washington Post*, May 8, 1990; "U.S. Nazi Hunters Railroaded 'War Criminal' Experts Say," *supra*, n. 40; "Justice Department is Reviewing a 1986 War Crimes Case," by Jacques Steinberg, *The New York Times*, June 13, 1992.

42. See e.g., "The Sins of the Fathers," by Carla Hall, *The Washington Post*, Aug. 24, 1992; "Ray of Hope in Son's Crusade," by Davan Maharaj, *The Los Angeles Times*, June 14, 1992; "U.S. Nazi Hunters Railroaded 'War Criminal,' Experts Say," *supra*, n. 40.

43. As discussed on p. 161; the Sixth Circuit did hold that there is such an obligation. *Demjanjuk v. Petrovsky*, 10 F.3d 338 (6th Cir. 1993). However, that ruling is not controlling in other Circuits. The *Artukovic* proceedings were in the Ninth Circuit. Moreover, *Demjanjuk* was decided years after *Artukovic* had been extradited; OSI could not be expected to have foreseen its holding.

44. Others identified as Croatians and prosecuted by the office were in fact ethnic Germans (born in Croatia to German parents and self-identifying as German) e.g., Anton Tittjung, Ferdinand Hammer, Michael Gruber and John Hansl. Moreover, changing borders made nationality ambiguous. In the case of Hammer, for example, the area in which he was born was part of Croatia only from 1941 to 1944, when it was annexed by the Independent State of Croatia. Croatia refused to recognize him as a Croatian or to accept him as a deportee. He ultimately was deported to Austria.

OSI did assist Croatia in bringing its own war crimes prosecution. In 1998, Croatia extradited from Argentina Dinko Sakic, the commandant of Jasenovac, Croatia's most notorious World War II concentration camp. OSI located a document in the National Archives that was used by the Croatian government at trial to establish the number of deaths at the camp. OSI also

provided the Croatian prosecutors with background material from the Artukovic file and the names of survivor witnesses who could testify about conditions at Jasenovac. In addition, a delegation from the Croatian judiciary met with the State Department's Special Ambassador on War Crimes and then with members of OSI's legal and historical staff to discuss the presentation of war crimes cases.

Croatia charged Sakic with crimes against humanity in the deaths of more than 2,000 Jews, Romani (gypsies), Serbs and Croats. He was convicted of torture, abuse and murder, and sentenced to twenty years in custody. "Croat Convicted of Crimes at World War II Camp," *The New York Times*, Oct. 5, 1999; "Supreme Court Upholds 20-Year Sentence for War Criminal," *BBC*, Oct. 10, 2000.

45. The only previous extradition of a Nazi war crimes suspect was Hermine Braunsteiner Ryan in 1973, before OSI's founding. As noted on p. 2, that case was handled by INS.

Because of Cold War tensions and due process concerns about Soviet judicial procedures, the U.S. had no extradition treaty with the U.S.S.R. The U.S. therefore routinely rejected Soviet extradition requests. According to the State Department, there were 8 such requests between 1945 and 1977. Sept. 19, 1977 letter to Rep. Joshua Eilberg, Chairman, House Subctee on Imm., Civ. and Internat'l Law, from Douglas Bennet, Jr., Ass't Secy for Congressional Relations, State Dept, reprinted in Vol. 1, "Alleged Nazi War Criminals," Hearing before the Subctee, Aug. 3, 1977, p. 55. As of this writing, there is still no treaty of extradition with Russia. However, a Mutual Legal Assistance Treaty (MLAT), providing for close law enforcement coordination between the two countries, was approved by the Senate in Dec. 2001.

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1 **Otto von Bolschwing – An Eichmann Associate Who Became a CIA Source**

2
3 Otto von Bolschwing worked with Adolf Eichmann and helped devise programs to
4 persecute and terrorize Germany's Jewish population. As the chief SS intelligence officer, first
5 in Romania and then in Greece, he was the highest ranking German prosecuted by OSI.

6 Von Bolschwing was an aristocrat who spoke several languages and had studied at the
7 London School of Economics. He joined the Nazi party in 1932 and was a member of the
8 Allgemeine SS, the racial elite of the National Socialist Movement. The Allgemeine SS formed
9 the recruiting pool for the Gestapo and the SD, the intelligence-gathering arm for the Nazis. Von
10 Bolschwing's career path was with the SD. From 1935 until 1937 he worked as its liaison in
11 Palestine; from 1937 to 1939 he worked in its Jewish Affairs Office. That office collected
12 statistical, economic and cultural information on Jews for use by the Nazi government. "The
13 Jewish Problem," a report submitted by von Bolschwing in January 1937, proposed ridding
14 Germany of Jews by forcing them to emigrate.¹

15 The Jews in the entire world represent a nation which is not bound by a country or
16 by a people but by money. . . .

17
18 The leading thought . . . is to purge Germany of the Jews. This can only be
19 carried out when the basis of livelihood, i.e., the possibility of economic activity,
20 is taken away from the Jews in Germany.

21
22 The report recommended extensive use of propaganda to make the populace recognize the
23 pernicious impact of the Jews. Once people were informed, their anger could be harnessed to:

24 take away the sense of security from the Jews. Even though this is an illegal
25 method, it has had a long-lasting effect. . . . [T]he Jew has learned a lot through
26 the pogroms of the past centuries and fears nothing as much as a hostile
27 atmosphere which can go spontaneously against him at any time.

28
29 Von Bolschwing recommended making passports in such a manner that the authorities

1 could "determine immediately whether the passport holder is a Jew." He recognized that this
2 procedure was risky, however.

3 It is expressly emphasized that such an identification can only be effected
4 internally in order to avoid that foreign consulates refuse the issuance of a visa to
5 the holder of such a passport.
6

7 He also urged denying passports to Jews for any purpose other than emigration and limiting the
8 amount of money that emigrating Jews could take out of the country.

9 His later memos elaborated on these plans. His suggestions included having Jewish
10 organizations assisting with emigration deal only with the SD and having foreign currency
11 remittances from Jewish organizations abroad go directly to the SD rather than to Jewish
12 organizations. In a letter to Eichmann (salutation "Dear Adolf"), von Bolschwing reported on
13 snippets of an overheard conversation between two Jews and discussed ways to block their
14 access to Germans who might assist them. The letter closed with "Heil Hitler."²

15 In 1939, the work of the Jewish Affairs Office was transferred to the newly formed Reich
16 Security Main Office (RSHA). Von Bolschwing began working for this new organization which
17 unified under one jurisdiction the SD, the Gestapo and the Criminal Police.

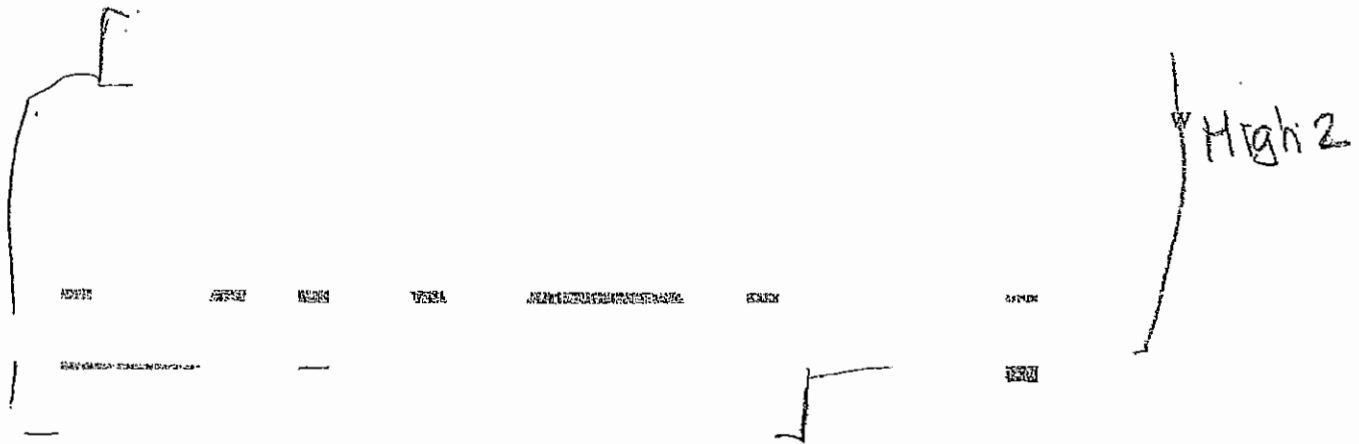
18 For a little over a year, beginning in January 1940, he served as chief of the SD agents in
19 Romania. Von Bolschwing provided sanctuary to several Romanian Iron Guard leaders
20 (including Trifa) after their January 1941 rebellion and helped arrange their escape to Germany.³

21 Near the war's end, he moved to Austria and allied himself with the underground and the
22 Allies. He won accolades from the U.S. military. One U.S. officer credited him with:

23 materially assist[ing] the armed forces of the United States during our advance
24 through Fem Pass and Western Austria prior to the surrender of the German
25 Army.

1 During our occupation, he personally captured over twenty high ranking
2 Nazi officials and SS officers and led patrols that resulted in the capture of many
3 more.⁴
4

5 In 1946, von Bolschwing was hired by the Gehlen organization, a group of former Nazi
6 intelligence operatives who came under the aegis of the U.S. Army after the war. The group had
7 provided Germany with data and sources useful in the war on the Eastern front; the U.S. wanted
8 to develop and expand this material for use during the Cold War. Gehlen needed von
9 Bolschwing to provide contacts among ethnic Germans and former Iron Guardsmen in Romania.⁵



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16 Although he never developed into a "first-class agent," the CIA was sufficiently grateful
17 to help him emigrate to the United States in 1954.¹⁰ The CIA advised INS about his past as they
18 understood it. INS agreed to admit him nonetheless.¹¹ He entered under the INA as part of the
19 German quota. Once here, he worked as a high-ranking executive for various multi-national
20 corporations; he did no further work for U.S. intelligence agencies.¹²

21 Even before von Bolschwing emigrated, however, the CIA was concerned that he might
22 have difficulty obtaining citizenship.



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The response urged that von Bolschwing tell the truth.

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He himself told them that he had been a member of the Nazi party and the Waffen SS (the military wing of the SS). In fact he had not been with the Waffen SS, but with the Allgemeine

SS.

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Von Bolschwing applied for citizenship in 1959 without revealing his membership in the Allgemeine SS, the Nazi party, the SD or the RSHA, even though such information would have been responsive to questions on his naturalization application. However, he did send a letter to the INS which suggested that he had intentionally withheld certain information which might be relevant to his application for citizenship.

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With regard to incomplete information on my application form . . . I spoke over the telephone to the information officer at your office . . . and was advised by him that my records at your office, would contain such information which I am unable to give, and that I should submit my application as is pending subsequent explanation to be given by me verbally to your examiner.

I am ready to give any additional information which you may require.¹⁵

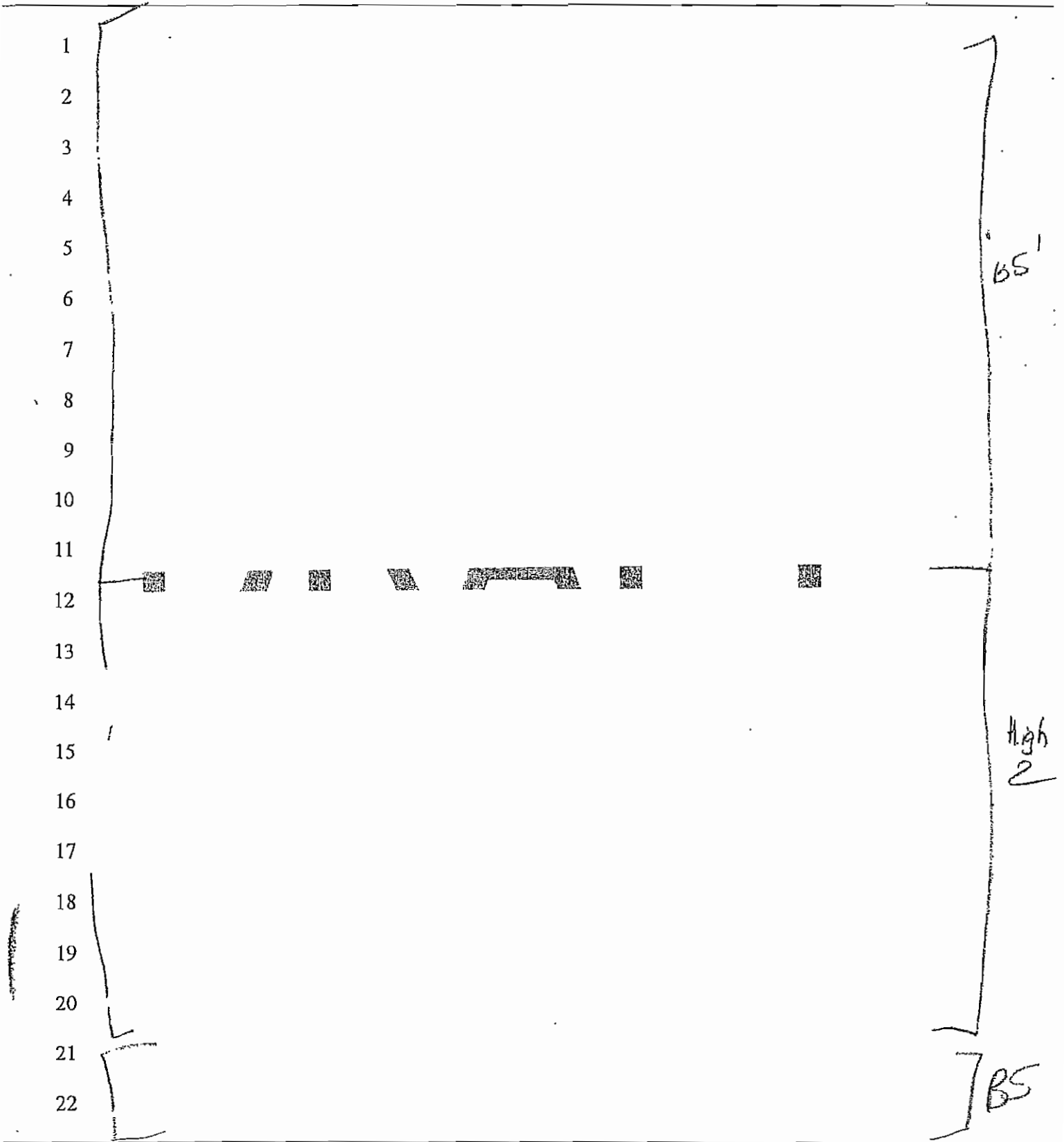
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In June 1979, just as OSI was getting established, attorney [redacted] interviewed von Bolschwing.¹⁷ He denied membership in the SS. Although he acknowledged helping arrange for the escape of Iron Guard leaders, he described this simply as an effort to "create a peaceful settlement between the two warring parties."

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[redacted] wrote to the [redacted]

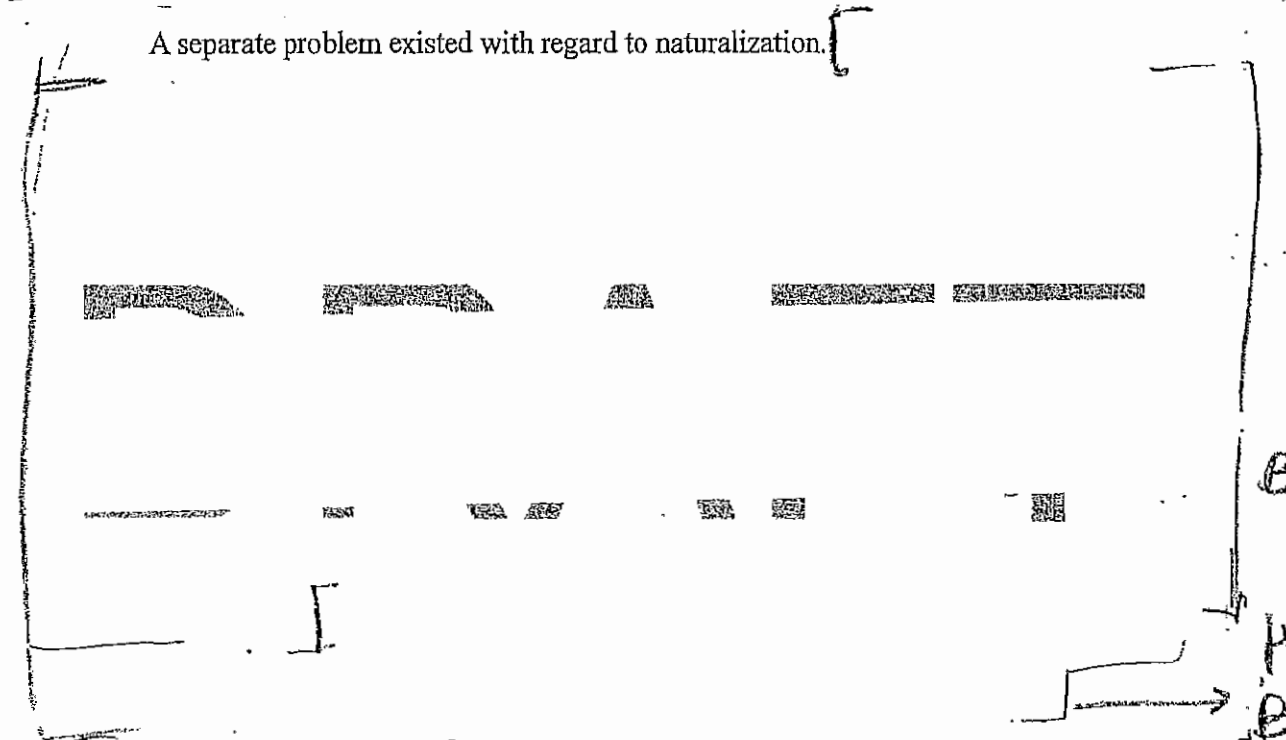
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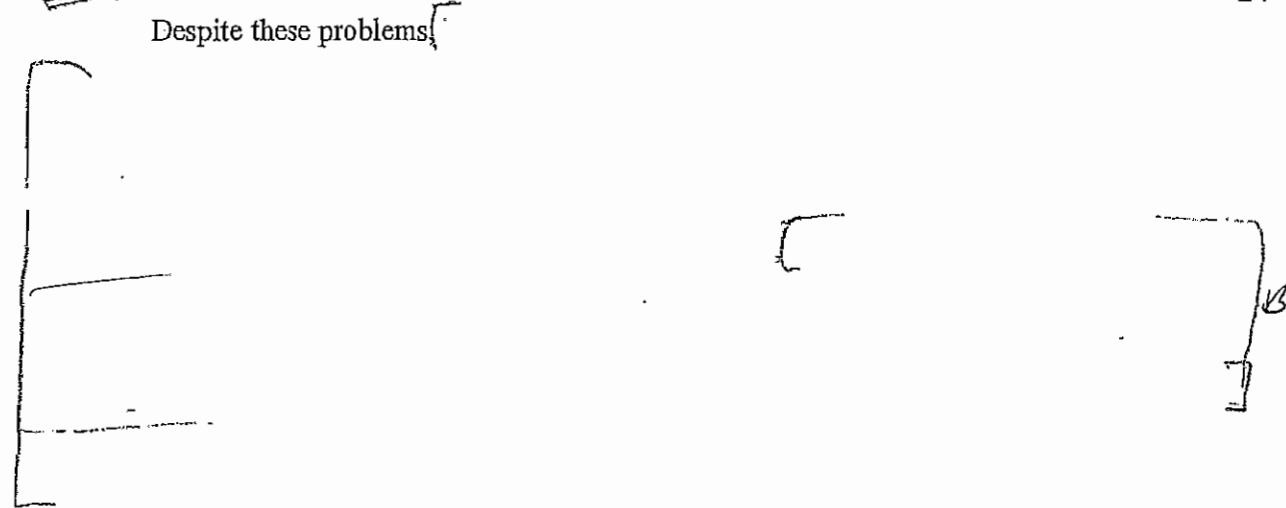
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A separate problem existed with regard to naturalization.



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OSI filed a three-count complaint in May 1981 alleging (1) that von Bolschwing had procured his naturalization by concealment or misrepresentation since he failed to reveal his wartime activities and associations as part of his naturalization application; (2) that these memberships and activities were evidence of lack of good moral character requisite for citizenship; and (3) that his swearing to the truth of his naturalization application, when in fact the application was not truthful, was further evidence of lack of good moral character. The filing received much publicity. Von Bolschwing denied the charges, telling the press that he had been working for the SS (predecessor agency to the CIA) during the war.

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By the time the case was filed, von Bolschwing was in a nursing home suffering from a progressive neurological disorder which impaired his memory and intellectual functioning.

There were questions as to his capacity to understand and assist in the proceedings. Even before the filing his attorneys had sought to settle the case in light of this problem.²⁶ [] was

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The district court approved the settlement. Von Bolschwing made no admissions about his work in the Jewish Affairs Office, but did acknowledge concealing his membership in the Nazi Party, the SS and the SD at the time he applied for citizenship. He agreed not to contest

1 the denaturalization and the United States agreed not to proceed with deportation proceedings
2 unless his medical condition improved. He was to be reexamined annually. A consent
3 judgment was entered on December 22, 1981.²⁹ Von Bolschwing died 10 weeks later. He was
4 72 years old.

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1. The report in OSI's files is not signed by von Bolschwing, though a cover letter contains a signature space with his name. Moreover, two SD memoranda referencing the report attribute it to him. Jan. 12, 1937 "Opinion on the write-up 'The Jewish Problem,'" by SS Senior Platoon Leader Kröder; unsigned Apr. 26, 1937 memo re "Party Leader von Bolschwing (informer II 112)."

2. Nov. 20, 1937 letter from von Bolschwing to Eichmann.

3. See pp. 204-205.

4. June 7, 1945 memo "To Whom It May Concern" from Lt. Col. Ray F. Goggin, U.S. Army, 71st Inf. See also, Aug. 18, 1945 memo "To Whom It May Concern" from Capt. Edward Denges, U.S. Army, Inf., S-2, also released by the CIA in 2001 under the Nazi War Crimes Disclosure Act.

5. "The CIA and Eichmann's Associates," by Timothy Naftali, ch. 13 in *U.S. Intelligence and the Nazis*, by Richard Breitman, Norman Goda, Timothy Naftali and Robert Wolfe (published by the National Archives Trust Fund, May 2004), p. 346 (hereafter Naftali).

6. Naftali, *supra*, n. 5 at p. 349.

7. Von Bolschwing's Sept. 14, 1949 Statement of Life History submitted to the CIA.

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[Redacted area with handwritten notations: [b6] [b7C] BS, BS]

10. Naftali, *supra*, n. 5 at p. 352. See also, Nov. 25, 1953 memorandum from American Consulate General, Munich, Germany to Department of State; undated memo to Director of Security from Chief, EE, re [Redacted] BS

11. As set forth in a CIA memorandum declassified in 2001 under the Nazi War Crimes Disclosure Act:

The true story, as CIA then knew it, was made known to them and they agreed after consultation with our Alien Affairs Staff, to make the administrative decision to admit [von Bolschwing] as an immigrant. CIA did not provide a

sponsor but we are on record with I and NS [sic] as vouching for [von Bolschwing] and providing all assurance that he was not a security hazard. His entry was in effect accomplished by the CIA statement that his services on our behalf were of such a nature as to override his otherwise undesirable background as defined by the McCarran Act.

Undated and untitled memorandum found in vol. 2 of CIA "Name File on Otto von Bolschwing."

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15. Jan. 24, 1959 letter from von Bolschwing to INS, New York.

16. Feb. 28, 1979 memo from [redacted] to [redacted]

17.

18. Nov. 30, 1979 letter from [redacted] to the CIA.

19.

20. Prosecution memo, pp. 18-19.

21. *Id.*, p. 23.

22. Apr. 28, 1981 buck slip from [redacted] to [redacted]

23. Apr. 22, 1981 memo to [redacted] from [redacted] re "Otto A. von Bolschwing."

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24. May 14, 1981 buck slip from [] to [] approving the []

25. See e.g., "California Man Accused of Nazi Crimes," by Robert L. Jackson, *Los Angeles Times*, May 28, 1981; "Probers Reject Nazi Suspect's Story," by Wayne Wilson, *The Sacramento Bee*, June 1, 1981.

26. Mar. 9, 1981 memo to file from [] [] B6

27. Apr. 6, 1981 memo from [] to [] for the Criminal Division. [] B6

28. Apr. 10, 1981 cover memo from [] memo of Apr. 6 [] B6 [] B6 forwarding the [] B6

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29. While the United States felt the settlement was justified because of the defendant's deteriorating health, the Soviet government called the settlement "a blatant outrage to the memory of millions of victims of the Fascists." "They Conceal Criminals," *Tass News Agency*, Dec. 26, 1981.

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1 **Karl Linnas – Cold War Politics and OSI Litigation**

2
3 Karl Linnas, chief of a Nazi concentration camp in Estonia, was one of the highest
4 ranking Nazi collaborators ever found in the United States. As the head Estonian in the camp, he
5 ordered guards to fire on prisoners kneeling along the edge of an anti-tank ditch; the dead fell
6 directly into their graves. His persecution of civilians was the crux of both the denaturalization
7 and deportation cases filed against him.

8 The legal proceedings, begun in November 1979, were one of the first OSI filings.
9 Linnas never seriously contested the facts. He refused to participate in the deposition of Soviet
10 witnesses on the ground that their testimony – taken in the presence of Soviet authorities – would
11 be inherently unreliable. He also defied the court's order to answer certain questions at his own
12 deposition and presented no evidence countervailing any offered by the government.²

13 Linnas was denaturalized in 1982 and ordered deported two years later.³ His case
14 illustrates, arguably better than any other OSI matter, the impact of the Cold War on OSI
15 prosecutions.

16 Linnas was born in Estonia, a nation forcibly annexed by the Soviet Union in 1940. The
17 United States did not recognize the legitimacy of the Soviet annexation and yet, as a practical
18 matter, until 1992 Estonia no longer existed as an independent country. Therefore, in the 1980s,
19 whether and how someone could be deported to Estonia presented a political conundrum. The
20 issue was complicated by the fact that the Soviets had charged Linnas with having taken an
21 active part in the killing of 12,000 persons during the war.⁴ He had been convicted and
22 sentenced to death *in absentia* by the Soviet Union in 1962. Deportation to Estonia (on Soviet
23 soil as a result of the annexation) therefore could have life or death consequences as well as

1 significant repercussions on foreign affairs.⁵

2 When the U.S. immigration court ordered Linnas to designate a deportation designation,
3 he chose "the free and independent Republic of Estonia," explaining that this should not be
4 confused with "the puppet government formed by the Soviet occupiers of Estonia." For Linnas,
5 the free and independent Republic referred to the government "still recognized by the United
6 States." That was a government-in-exile, led by Estonian emigrés and operating out of offices in
7 New York City.⁶

8 The immigration court did not address the issue of "the Free Republic of Estonia." It
9 simply ordered Linnas deported to Estonia or, if that country were unwilling to accept him, then
10 to the U.S.S.R. The U.S.S.R. was chosen by the immigration court because it was the country in
11 which Linnas' place of birth – Estonia – was situated.⁷

12 Linnas and his supporters challenged the ruling both in the court of public opinion and
13 judicially. In both arenas they stressed Cold War concerns. Thus, his daughters argued in a letter
14 to the Estonian community that:

15 . . . U.S. government offices have been infiltrated by Soviet supporting activists.

16
17 The creation of the Office of Special Investigations (OSI) in the Justice
18 Department is one typical example. The persecution of so called "war criminals,"
19 40 years after it supposedly happened, is just an attempt to silence anticommunist
20 groups by leading Soviet style court cases in the U.S. and to promote communism
21 in the free world.

22
23 The denaturalization of our father . . . by [a judge] who accepted Soviet
24 supplied "witnesses and documents" in U.S. courts is only the continuation of the
25 1962 Soviet "show trial" As a final measure, the immigration judge . . . also
26 accepted the Soviet "information"⁸

27
28 While Linnas' judicial appeal raised a variety of issues, only one resonated with the BIA.

1 That was that designation of the U.S.S.R. was unreasonable in light of the United States' refusal
2 to recognize the legitimacy of the Soviet annexation of Estonia. The BIA ordered a new
3 deportation hearing. The immigration judge was told to "consider the implications of the United
4 States' refusal to recognize the Soviet annexation of Estonia, [to] designate a country of
5 deportation pursuant to the appropriate [statutory] provisions . . . and [to] articulate the statutory
6 basis for selection, whichever country is designated."

7 OSI contacted West Germany (FRG) to determine whether it would accept Linnas. The
8 basis for the request was that Linnas had resided in the FRG from 1945 to 1951 and had embarked
9 for the United States from Munich. However, the FRG remained steadfast in the position it had
10 adopted in the *Wifa* case: it would admit only German citizens.⁹ Linnas did not qualify.

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It stated that since no country,

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other than the U.S.S.R., was willing to accept Linnas,

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1 Linnas urged the court to consider the consequences of sending him to the Soviet Union.

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3 He pointed out – correctly – that his death sentence had been reported in the Soviet press even

4 before his 1962 trial *in absentia* had taken place.¹³ He argued that this demonstrated the

5 impossibility of getting a fair trial in the Soviet Union. He also contended that his deportation

6 “would lead the Soviets, as well as others, to believe that the United States can be indifferent to

7 the process by which the Gulag acquires its inhabitants; that our concern for the religious, political

8 and ethnic dissidents in Soviet camps, jails, insane asylums and internal exile is but a passing

9 fancy to be ignored.” Linnas accused OSI of having an “urge to kill” him and questioned whether

10 the State Department (which he saw as a “rubber stamp” for OSI) had made sincere efforts to find

11 an alternative deportation destination.¹⁴

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12 Although the U.S. argued that a deportee’s treatment in the receiving state is “legally

13 irrelevant” to determining the appropriate country of deportation,¹⁵ [

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16 August 1984, officials from the Soviet embassy had assured [

17 that a new trial was “most likely.”¹⁶

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18 Before the new deportation proceeding began, Linnas galvanized political support. United

19 States Senator Alfonse D’Amato (R-NY) and Congressman Don Ritter (R-Pa.) both argued that

20 deportation to the Soviet Union would violate U.S. policy against recognizing Soviet

21 incorporation of Estonia. They suggested he be sent to Israel for prosecution.¹⁷ This, however,

22 was not a viable option. Years earlier the Israelis had told [

] that B6

1 they would not accept Linnas because the critical incriminating evidence against him came from
2 the Soviet Union. Since Israel did not have diplomatic relations with the U.S.S.R., it lacked
3 access to the evidence.¹⁸

4 At Linnas' new deportation hearing, several people from the Baltic emigré community
5 testified on the importance of the non-recognition doctrine. The immigration court was not
6 persuaded. The court held that deportation to "the free Republic of Estonia" would be fruitless,
7 since that entity, housed in the United States, lacked the authority to accept him. The court
8 rejected the argument that the U.S.S.R. was not a proper designation because Linnas' conviction
9 there did not comport with U.S. notions of due process. The court concluded that the U.S.S.R.
10 was the proper destination both because it was the country within which his place of birth was
11 now situated and because it was the only country willing to accept him.

12 Although this was a victory for OSI

13 [redacted] The
14 declaration had sanctioned deportation to the Soviet Union only because it was the sole country

15 willing to accept Linnas. By citing an alternative basis for deportation, the court had arguably
16 given credence to the Soviet position that Estonia was now part of the U.S.S.R. [redacted] BS

17 [redacted] BS] Since Linnas was appealing the ruling, OSI had an
18 opportunity for judicial reconsideration of the basis for deportation. [redacted] BS]

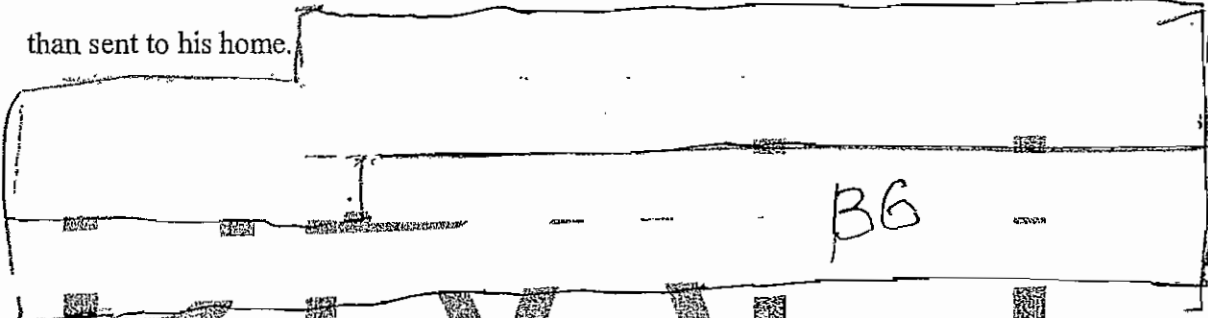
19 [redacted] BS]
20 [redacted]]

21 The BIA accepted the argument. Although the panel acknowledged that Linnas had been
22 sentenced to death "in what appears to have been a sham trial," it was not persuaded by his

1 argument that deportation to the Soviet Union would deprive him of life without due process of
2 law.

3 [T]he Constitution does not extend beyond our borders to guarantee the respondent
4 fairness in judicial proceedings in the Soviet Union. Moreover, under our
5 immigration laws there is no requirement that a foreign conviction must conform
6 to our constitutional guarantees.

7
8 Linnas appealed to the Second Circuit. Rudolph Giuliani, then the U.S. Attorney for the
9 Southern District of New York, argued the case.²⁰ Shortly after the argument, OSI learned that
10 Linnas had begun having his Social Security payments deposited directly into his account rather
11 than sent to his home.



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15 Before the Second Circuit issued its ruling, the U.S. Attorney's Office asked Linnas'
16 attorney to bring his client to a meeting to discuss custody. Linnas and his attorney appeared at
17 the requested time, whereupon Linnas was arrested. His attorney was outraged and accused OSI
18 of having masterminded this perceived perfidy.²¹

19 While Linnas was in custody, the Second Circuit affirmed the deportation order. The
20 court scoffed at Linnas' designation of "an office building in New York" as a deportation
21 destination, saying it amounted to "wasting the opportunity to choose a proper place of
22 deportation." The court acknowledged that there might be circumstances where the fate awaiting
23 a deportee was so inimical to the court's sense of decency as to warrant judicial intervention.
24 This, however, was not such a case.

1 The foundation of Linnas' due process argument is an appeal to the court's
2 sense of decency and compassion. Noble words such as "decency" and
3 "compassion" ring hollow when spoken by a man who ordered the extermination
4 of innocent men, women and children kneeling at the edge of a mass grave. Karl
5 Linnas' appeal to humanity, a humanity which he has grossly, callously and
6 monstrously offended, truly offends this court's sense of decency.
7

8 The planned deportation was attacked from a variety of quarters. Amnesty International
9 was opposed because Linnas faced the death penalty in the U.S.S.R.²² White House advisor
10 Patrick Buchanan, emphasizing that he was speaking personally rather than institutionally, stated
11 that it was "Orwellian and Kafkaesque to deport an American citizen to the Soviet Union to stand
12 trial for collaboration with Adolf Hitler when the principal collaborator with Hitler in starting
13 World War II was that self-same Soviet government."²³ Others urged the passage of legislation
14 allowing alleged World War II war criminals to be charged criminally in the United States.²⁴

15 Linnas' daughters also renewed their pleas for help in a letter addressed to Concerned
16 Americans.

17 Civil trials do not permit juries, cross-examination of the witnesses, nor equal
18 access to the records. This particular kind of civil matter well illustrates how our
19 father has been denied the basic Constitutional right to due process: cross-
20 examination, jury trial, and access to court appointed counsel. This kind of
21 proceeding has brought forth a criminal death sentence to our father who has been
22 denied a criminal trial!

23
24 It is difficult to politically criticize the OSI without the risk of being
25 branded anti-Semitic or nazi sympathizer. However, in a free society, we are able
26 to question and challenge any government institution. *It is urgent that we now put*
27 *aside our fears and inhibitions and bombard the Congress, the Senate, and the*
28 *Executive branch of government with telephone calls and letters expressing our*
29 *disapproval of OSI methods.*
30 (italics in original)

31
32 In addition to these appeals to the court of public opinion, Linnas asked the Supreme Court
33 to review his case. He also replaced his counsel with Ramsey Clark, who had been Attorney

1 General of the United States during the Lyndon Johnson administration.²⁶ The key argument
2 presented in the Supreme Court petition was that the pending death sentence in the Soviet Union
3 made it an improper destination for deportation.

4 The government did not see this as an impediment. Officials at the Soviet Embassy had
5 again assured the office of the "strong" likelihood that Linnas would be retried. Moreover, they
6 indicated that the proceeding would be open to the public.²⁷ The Soviets "made it very clear that
7 out of all of OSI's defendants, Linnas was the person who they most thought was deserving of
8 criminal punishment and who they were most interested in having back on their territory." They
9 felt his deportation would be the "crowning achievement" in their relationship with OSI.²⁸ The
10 U.S. was confident its own evidence — "solid [and] irrefutable" — would be used by the Soviets,
11 thereby precluding a sham conviction.²⁹

12 In anticipation of a denial of certiorari, OSI began to plan the details of deportation. At
13 the time there were no direct flights to the Soviet Union.

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1 reticent." They advised that Linnas would need a visa, and the visa application needed to be

2 signed by him. [

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4] There was a long hesitation after which the official in charge

5 said "No." 30

6 With deportation looming, Patrick Buchanan sent a memo to Attorney General Meese on

7 White House letterhead. It did not address the *Linnas* case directly but rather the general issue of

8 "deportations of denaturalized citizens to Communist countries."

9 Buchanan told the Attorney General that he had received nearly 15,000 cards, letters and

10 phone calls concerning the denaturalization, deportation and prosecution of suspected war

11 criminals. While those writings supported finding, prosecuting and punishing war criminals, they

12 had serious concerns with the current procedure. As summarized by Buchanan:

13 1. The United States should not grant the Soviet Union or other

14 communist governments the moral authority to try people for atrocities committed

15 during World War II. The Soviet Government is itself guilty of massive war

16 crimes, and it was the Soviet/Nazi Pact that allowed Hitler to pursue his own

17 atrocities.

18

19 2. Suspected war criminals should be tried in the United States, Western

20 Europe or Israel. U.S. accession to the Genocide Treaty should grant it the

21 authority to try these persons even though the crimes were not committed on U.S.

22 soil.

23

24 3. Currently, persons accused of war crimes are tried in U.S. courts under

25 civil procedure which denies to them the right of trial by jury and court appointed

26 counsel.

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28 4. Deportation of Baltic nationals to the Soviet Union violates U.S. policy

29 of non-recognition of Soviet authority over the Baltic States. Though the

30 Department of State has determined that such deportations are consistent with the

31 current statute, logic and common sense argue that the statute does not comply

1 with U.S. policy.³¹

2
3 Buchanan urged the Attorney General to "meet in the very near future with representatives
4 of responsible East European American organizations to discuss this matter" and offered to assist
5 in making the arrangements. The Attorney General responded to the suggestion and a meeting
6 was held on March 5, 1987. The Attorney General, his Chief of Staff, the Associate Attorney
7 General, and the Assistant Attorney General for the Criminal Division met with six Baltic leaders.
8 No OSI representative was present. Reconstructing the meeting from handwritten notes taken by
9 one of the DOJ participants, as well as from a newspaper account written by one of the Baltic
10 participants,³² it appears that the discussion was free-ranging and extensive.

11 The emigré participants argued that the U.S.S.R. had no legal or moral right to try anyone
12 for crimes against humanity. In their view, sending Linas to the Soviet Union would seal his fate
13 since he would be facing a political trial. They also discussed having criminal, rather than civil,
14 prosecutions in the United States for alleged war criminals, even if this meant enacting new
15 legislation. The emigrés wanted the safeguards of the criminal process, including trial by jury, for
16 those facing charges stemming from their wartime activities; they believed the Attorney General
17 was receptive to the idea.³³

18 The meeting received favorable coverage in the Baltic press. One of the participants
19 compared its positive tone to a meeting he had attended at the Justice Department a year and a
20 half earlier.

21 In contrast to the boorish behavior of OSI officials at our 1985 meeting, the climate
22 on March 5 was positive and constructive. Mr. Meese was attentive. He took
23 notes. He appeared interested in what we had to say.

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25 The emigrés took away from the meeting a commitment by the Attorney General to look into

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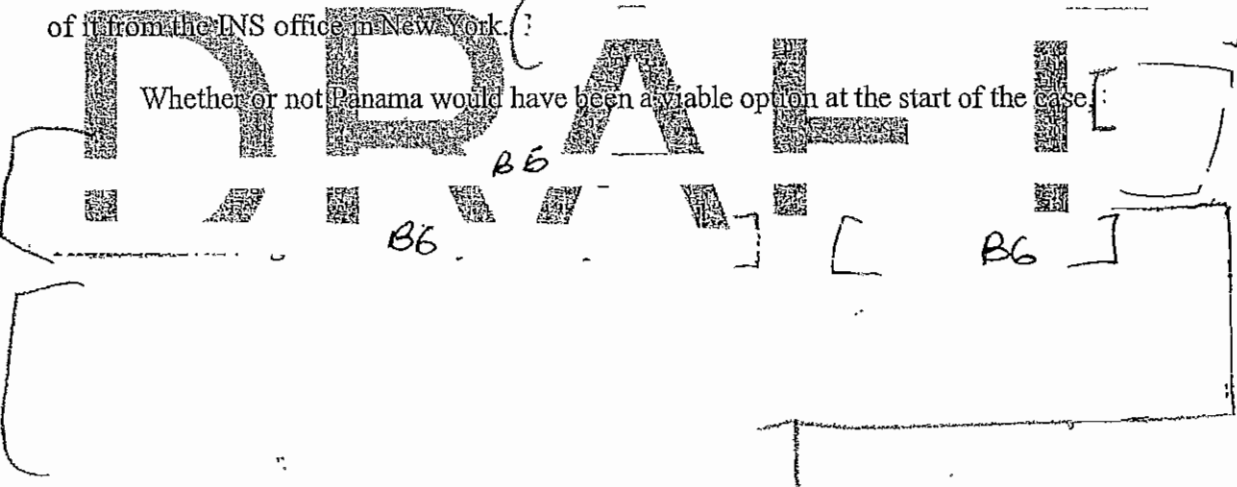
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Then, suddenly, in April 1987, Panama offered Linnas asylum. According to the Minister

of the Panamanian Embassy, the decision was based "on humanitarian grounds." learned

of it from the INS office in New York.

Whether or not Panama would have been a viable option at the start of the case.



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OSI leaked the Panamanian offer to the press in an effort to embarrass the Panamanian government, which had a working relationship with Israel.⁴⁷ The Panamanian Jewish community was also galvanized to bring pressure to bear. The president of Panama, a figurehead in a country actually run by military strongman Manuel Noriega, was himself Jewish. A message was gotten to him that he must act.⁴⁸ It is likely that a message was sent also to Noriega. To the best

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The Jewish community mobilized. [B6] told the press that sending Linnas to Panama would be "a subversion of justice in monumental proportions." He rued that Linnas

1 would have a "comfortable retirement under the Panamanian palm trees."⁵⁰

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3] Despite the holiday [

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6] Later in the day, Panama withdrew its offer of asylum.

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7 Although the press reported that the United States had wanted Panama to accept Linnas,⁵²

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8 the evidence suggests otherwise. [

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9 The Panamanian
10 statement withdrawing asylum referred to the request it had received on behalf of the Linnas
11 family. In court papers, Linnas referenced efforts to have Austria, Sweden, Norway, Panama, and
12 Paraguay accept him as a deportee. Moreover, [

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16 The Panamanian turnaround was a major national story. While OSI was pleased that

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17 Linnas would not find safe haven in Panama, they were disturbed over one aspect of the coverage.

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18 *The Washington Post* reported that Attorney General Meese "had been inclined to agree to the

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19 Panamanian refuge because of doubts about the Soviet supplied evidence used to convict Linnas

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20 of obtaining his U.S. citizenship fraudulently."⁵⁷

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Others were similarly distraught. The WJC accused the Attorney General of showing "greater sensitivity for the rights of Nazis than for their victims."⁵⁹ A cartoon to similar effect appeared in *The Miami News* and was reprinted in *The New York Times*.⁶⁰

The day after the Panamanian turnaround, a spokesman for the Attorney General said the Justice Department would continue to consider offers from any country that would accept Linnas.⁶¹ When no other countries came forward, the Attorney General acceded to the Soviet designation.⁶²

Linnas was taken to the airport from the Metropolitan Correctional Center in New York City, where he had spent the year since his arrest in the U.S. Attorney's Office.

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Minutes after Chief Justice Rehnquist denied a final request to prevent Linnas' deportation, the plane was airborne.

The media and Jewish groups, alerted by OSI, were there to see him go. *The New York Post* ran a banner page one headline: "Nazi Butcher Kicked Out Screaming." At a stopover in Prague, Czech officials found and confiscated a razor blade in Linnas' tobacco pouch. Whether this was a potential suicide weapon is unknown; Linnas claimed he needed the blade to clean the bowl of his pipe.⁶⁴ From Prague, Linnas was flown non-stop to Tallin, Estonia.

1 Opinion was divided over whether he should have been sent either to Panama or to the
2 Soviet Union. *The Boston Globe* labeled the Attorney General's actions to find a "haven" for
3 Linnas "shameful."⁶⁵ Former Congresswoman Holtzman had a similar view. She accused the
4 Attorney General of attempting to "pervert justice" by trying to "sneak Linnas into Panama."⁶⁶
5 *The Washington Post* thought the greater problem lay in sending Linnas to the U.S.S.R.

6 Justice must be done to Nazi war criminals, but a true and disturbing question
7 remains whether justice by accepted American standards was done in this case,
8 where a human life – never mind what kind of a human he may have been – is on
9 the line.⁶⁷

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11 *The New York Times* saw it differently. It supported the deportation and hailed the

12 Attorney General for bringing it about.

13 Mr. Meese overrode strong right-wing sentiment in the case of Karl Linnas,
14 deporting the former concentration camp commander to the Soviet Union where he
15 is under a death sentence for killing innocent Jews.

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17 * * *

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19 What made Mr. Meese's straightforward action[] remarkable was [its]
20 political setting. This is the Administration that countenanced President Reagan's
21 tribute at the Bitburg cemetery honoring SS troopers who ran German death camps.
22 Mr. Reagan's former communications director, Patrick Buchanan, resisted the
23 Linnas deportation long and loud, with intemperate charges of caving in to Soviet
24 injustice.⁶⁸

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26 It was not only the media that was divided over how to assess the deportation. Within OSI

27 itself there were divergent views.]

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Meanwhile, Linnas remained incarcerated in Tallin until June 1987 when he was

transferred to Leningrad (St. Petersburg) where he underwent two emergency operations. He died

on July 2.⁷¹ With him at the time of death were his eldest daughter and his attorney Ramsey

Clark. He was buried in Long Island, New York.⁷²

Looking back on the case,

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1 1. The district court, sensitive to the possibility of witness intimidation, used the deposition testimony only to corroborate other unrefuted government evidence, including documents signed by Linnas as chief of the camp. *U.S. v. Linnas*, 527 F. Supp. 426, 434 n.16 (E.D.N.Y. 1981).

2. *Id.* at 429, 434.

3. *United States v. Linnas*, 527 F. Supp. 426 (E.D.N.Y., 1981), *aff'd*, 685 F.2d 427 (2nd Cir.) *Matter of Linnas*, A08 085 626 (Imm. Ct. N.Y., N.Y. 1983), *aff'd in part and remanded* (BIA 1984), *decision on remand*, (Imm. Ct., N.Y., N.Y. 1985), *aff'd*, 19 I & N Dec. 302 (BIA 1985), *aff'd*, 790 F.2d 1024 (2nd Cir.), *cert. denied*, 479 US. 995 (1986).

4. "Soviet Condemns Three," *The New York Times*, Jan. 21, 1962. Asked at the time about the Soviet trial, a State Department spokesman said the United States knows of "no evidence that Linnas was ever a war criminal." "Reds to Try Ller [Long Islander] Today 'In Absentia,'" *New York Newsday*, Jan. 16, 1962.

5. Boleslas Maikovskis was the only other OSI defendant sentenced to death *in absentia* by the U.S.S.R. However he fled to Germany before the court ruled on OSI's request that he be ordered deported to the Soviet Union. *See* p. 430. Feodor Fedorenko was tried and sentenced to death in the Soviet Union *after* he had been deported.

6. Ironically, the Office of International Affairs (OIA) within the Department of Justice had made a very similar argument as early as 1974 when discussing the possibility of an extradition (rather than deportation) of an OSI subject to Latvia, another of the Baltic countries annexed by the Soviet Union.

[T]he United States government still recognizes in exile the former governments of Latvia, Lithuania and Estonia with whom this government has viable extradition treaties. Thus, technically, if the Department of State were to receive an extradition request from the Latvian Soviet Socialist Republic in Riga, Latvia, State would be obliged by protocol to formally present same to the representatives of the former government of Latvia, to wit the Consul General of Latvia last known to be located in Philadelphia, Pa.

Apr. 26, 1974 memorandum to INS Regional Commissioner, Northeast Region from Deputy Commissioner, re "Lists of reported Nazi War Criminals Residing in the United States; Your WF 50/10.1 memorandum dated January 23, 1974, w/ attachments re Boleslav Maikovskis, A8 194 566 and Karl Linnas, A8 085 626, and prior correspondence."

7. The U.S.S.R. had wanted to extradite Linnas, but was precluded from doing so by the lack of an extradition treaty between the U.S. and the Soviet Union. Oct. 26, 1984 memo from Director Sher to File re "Karl Linnas (OSI 132)." B6

8. June 14, 1983 letter from [] to "Estonians and friends of Estonians."

9. Jan. 28, 1983 memorandum from [redacted] recounting meeting he and then [redacted] had with a legal officer at the FRG Embassy re whether they would accept Valerian Trifa as a deportee. For a fuller discussion of Germany's position on admitting OSI defendants, see pp. 426-442. B6

10. Oct. 16, 1984 letter from [redacted] State Department Acting Legal Adviser to [redacted] B6

11. See [redacted] of Nov. 14, 1984 and [redacted] of Dec. 14, 1984. B5

12. Mar. 12, 1986 memo to the Attorney General from [redacted] re "Deportation of a Nazi War Criminal to the U.S.S. R.: Karl Linnas." B6

13. The trial was originally scheduled for Jan. 2, 1962 but was continued until Jan. 16. In mid-January, before the trial began, the Soviet magazine *Sotsialisticheskaya Zakonnost* published an interview with the prosecutor, who gave details of the testimony and sentence. The Soviets later withdrew the magazine from the newsstands and issued a new edition after the trial was completed.

14. Respondent's Memorandum of Law Opposing Deportation to the U.S.S.R., filed Feb. 28, 1985.

15. Government's Reply to Respondent's Memorandum of Law Opposing Deportation to the U.S.S.R., p. 2, filed March 8, 1985.

16. Dec. 4, 1984 memo to [redacted] from [redacted] re "Upcoming Deportation of Karl Linnas and Feodor Fedorenko to the U.S.S.R." Not all groups were concerned about Linnas' fate in the Soviet Union. B6

[redacted] "Nazi Hunt Methods Protested; Ethnic Coalition Objects to Soviet Evidence, Lack of Juries," by Jay Mathews, *The Washington Post*, Mar. 23, 1985. B6

17. Dec. 14, 1984 letter from Senator D'Amato to [redacted] Ritter Op-Ed piece written for the Allentown, Pennsylvania *Sunday Call Chronicle*, Feb. 3, 1985. D'Amato later retracted his statements, saying he had known only that Linnas was from Estonia but not that he was a "potential war criminal." He charged that the Joint Baltic American National Committee had deceived his staff on this matter. "D'Amato: I was Duped [sic] for Alleged Nazi," by Judith Bender and Alan Eyesen, *Long Island Newsday*, Jan. 15, 1985. B6

18. Nov. 18, 1986 memo [redacted] from [redacted] re "Linnas -- Summary and Evidence of Wartime Activities." See also, Oct. 20, 1986 memo to [redacted] from [redacted] re "Karl Linnas - Deportation Proposal." The Israelis reiterated their position when Linnas' deportation was more imminent. Dec. 24, 1986 memo to [redacted] re "Linnas." B6

The Israelis found a way around the diplomatic relations problem when they extradited and prosecuted Demjanjuk. See p. 170-171, n. 13.

19. June 7, 1985 letter to [redacted] from [redacted].
However, in at least one other Cold War era case OSI designated the U.S.S.R. pursuant to the theory that it was now the country in which the defendant's place of birth (Lithuania) was situated. *Matter of Palciauskas*, 939 F.2d 963, 967 (11th Cir. 1991). B6

20. Giuliani later served as mayor of New York City from 1994 to 2002. Having a U.S. Attorney argue a case is unusual. It generally indicates the significance (and or political importance) of a case. B6

21. May 1, 1986 letter to [redacted] from [redacted]. B6

22. Later, after reviewing material supplied by [redacted] they changed their position, opposing only the death penalty but not the deportation. Oct 31, 1986 letter from [redacted]. B6

23. Both the Amnesty International and Buchanan positions were reported in "U.S. Nazi Hunters Brace for Criticism; Doubts about Soviet Evidence Surround Move to Deport Linas," by Jay Mathews, *The Washington Post*, July 13, 1986.

24. E.g., "An American Trial for Karl Linas; Let a Jury Decide his Case before He's Shipped Off to the Soviet Union," by Jay Mathews, *The Washington Post*, Aug. 29, 1986.

25. Aug. 1, 1986 letter from [redacted]. B6

26. Years later, [redacted] also represented OSI defendant Jack Reimer. B6

27. July 17, 1986 memo from [redacted] to File re "Meeting with Vadim Kuznetsov;" July 25, 1986 untitled memo to File from [redacted]. B6

28. July 25, 1986 memo from [redacted] *supra*, n. 27. B6

29. Sept. 16, 1986 memorandum from [redacted] to [redacted] re "Karl Linas." B6

30. [redacted] B6

31. Patrick Buchanan urged U.S. trials as well in a debate about Linnas with
B6 They appeared on the television program *Crossfire*, Apr. 15, 1987.] B6

32. "Faces and Places," by Myron Kuropas, *The Ukrainian Weekly*, March 22, 1987.

33. "Balts, Ukrainians Meet with Meese to Discuss Concerns about OSI," by Marianna Liss, *Ukrainian Weekly*, Mar, 15, 1987.

34. "Faces and Places," by Myton Kuropas, *The Ukrainian Weekly*, Mar. 22, 1987.

35. "In U.S.S.R., the Verdict Comes before Trial," by William F. Buckley, Jr., *The New York Daily News*, Dec. 12, 1986.

36. "Deport Karl Linnas to the Soviet Union," Op-Ed, March 31, 1987 by Menachem Rosenshaft of the International Network of Children of Jewish Holocaust Survivors.

37. Letter to the Editor, *The New York Times*, April 7, 1987 by Patrick Buchanan.

38. Jan. 28, 1987 telegram to the Attorney General from
letter to the Attorney General from B6

39. Mar. 26, 1987 letter from

the same effect on Feb. 26, 1987.

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41. Mar. 13, 1987 letter to B6 from B6

42. "U.S. Asks Panama to Take Nazi but Is Rejected," by Kenneth Nobel, *The New York Times*, April 16, 1987.

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44. Aug. 10, 1984 from [B6] to [B6] re "Linnas - BIA Decision." See also Jan. 13, 1986 memorandum to U. S. Attorney [B6] from [B6] re "Linnas" [B6] 's views were set forth in a draft memo to the Attorney General which was leaked to the press. "U.S. Nazi Hunters Brace for Criticism," by Jay Mathews, *The Washington Post*, July 13, 1986.

45. Sept. 17, 1986 memo to the Deputy Attorney General from [B6] re "Deportation of Karl Linnas to the Soviet Union." [B6]

from [B6] re "Karl Linnas." [B6] Sept. 16, 1986 memorandum

46. Handwritten notation by [B6] memo. [B6]

re [B5] [B6] Oct. 20, 1986 memo to [B6] from [B6]

47. Interview *supra*, n. 30

48. The president was [B6] As best [B6] could recall, the message to him was sent through the American Jewish community [B6]

49. Holtzman was then the District Attorney in Brooklyn, N.Y. [B6] and her book, *Who Said it Would be Easy? One Woman's Life in the Political Arena* (Arcade Publishing), p. 94. [B6]

50. "Meese Decides to Deport Linnas to Panama; Panamanian Government Suspends Plan," by Pete Yost, *AP*, Apr. 15, 1987.

51. *Id. Accord*, recorded interview with [B6] June 12, 2002. [B6]

52. See e.g., "U.S. Asks Panama to Take Nazi but Is Rejected," *The New York Times*, Apr. 16, 1987. *The Times* reported that the Attorney General's decision to allow Linnas to go to Panama was made over the objections of several Justice Department officials, including [B6]

53. Department of [B6]

54. Feb. 9, 1987 memorandum to [B6] from OSI attorneys [B6] re [B6] See also, Mar. 13, 1987 memo to [B6]

55. Motion and Application for a Temporary Restraining Order, p. 8, filed Apr. 20, 1987 in the U.S. District Court for the District of Columbia.

56. The Justice Department gave conflicting messages on the issue. One unnamed Justice Department official was quoted as saying that the Attorney General had tried to arrange asylum for Linnas in Panama. "The World," *The New York Times*, Week in Review, Apr. 19, 1987. Yet another (or perhaps the same) unnamed spokesman said the deal disintegrated before Justice Department officials could investigate, at the Attorney General's request, its existence and legal basis. "Agreement to Send Linnas to Panama Is Canceled," by Jay Mathews, *The Washington Post*, Apr. 16, 1987. An on-the-record statement by a Department spokesman insisted that the Attorney General did nothing to seek out Panama as an alternative destination. "Reagan's Won His Last Election . . . But He Wants to Exit Campaigning," by Dick Kirschten, May 2, 1987, *National Journal*, at p. 1079.

New York Times columnist Anthony Lewis, who had chastised the Attorney General for trying to send Linnas to Panama, apologized. He came to believe that the Attorney General did not initiate the idea, but only explored it after Panama made an offer "because he had doubts about the Soviet legal system." Lewis went on to credit the Attorney General with reviewing the record and sending Linnas to the Soviet Union only after he determined that the findings against Linnas were correct. See "A Strange Solicitude," by Anthony Lewis, *The New York Times*, Apr. 21, 1987 and "Poisoning Ourselves," by Anthony Lewis, *The New York Times*, Apr. 24, 1987.

57. "Agreement to Send Linnas to Panama Is Canceled," *supra*, n. 56.

58. Apr. 17, 1987 memorandum from [redacted] re Linnas: Washington Post Article of April 16, 1987." b6

59. "Agreement to Send Linnas to Panama is Canceled," by Jay Mathews, *supra*, n. 56.

60. Drawing by Don Wright, *The Miami News*, reprinted in *The New York Times*, Apr. 26, 1987. It depicted the two hemispheres of Meese's brain. "Things That Matter" were in the right half. The only issue found there was "accused Nazi war criminal."

61. "U.S. Looking for Takers for Nazi Case Suspect" AP. *The Chicago Tribune*, Apr. 16, 1987.

62.

63. [redacted] interview, *supra*, n. 30. B6

64. Apr. 23, 1987 memorandum from [redacted] to [redacted] re "Deportation of Karl Linnas."

65. "Coddling a War Criminal," *The Boston Globe*, editorial, April 21, 1987.

66. *The New York Times*, "U.S. Deports Man Condemned to Die in Soviet Union," by Kenneth Noble, April 21, 1987.

67. "The Linnas Case," *The Washington Post*, editorial, Apr. 23, 1987.

68. "Mr. Meese vs. the Nazis," *The New York Times*, editorial, Apr. 29, 1987.

69. Telephone interview with [redacted] Mar. 5, 2002. B6

70. June 25, 1987 memorandum to [redacted] from [redacted] B6
The delaying tactics included:

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71. The Soviets reported that he suffered from heart and liver disease. "Nazi War Criminal Karl Linnas Dies," *Tass*, July 2, 1987.

72. See p. 227, n. 80, re the circumstances under which a deported person can return to the United States for burial.

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Chapter Four: Protecting Our Borders

Introduction

OSI's litigation generally targets persecutors who have settled in the United States.

There are, however, many instances of persecutors applying to enter on a less permanent basis -- for tourism, business, family visits, or simply to transfer airplanes *en route* elsewhere. It is much simpler and quicker to keep someone from entering than it is to denaturalize and/or deport him after he has gained admission. Not only is the process more streamlined at this early stage, but the burden of proof is different. It rests with the alien to establish his eligibility to enter, rather than on the government to prove his ineligibility to remain. Moreover, one who is excluded cannot avail himself of the many levels of legal appeal open to defendants in denaturalization and deportation proceedings. OSI has been able to prevent many more persecutors from entering the country than it has ejected through litigation.¹

1. Between 1989, when OSI began keeping detailed records of the matter, and this writing, the government has kept almost 200 people of concern to OSI from entering the United States. By contrast, since OSI's founding in 1979, 62 people left the country as a result of litigation or threatened litigation. (This figure is not a full measure of OSI's efforts, however, since many died before a case was filed or litigation was complete.)

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The Watchlist

OSI's ability to preclude entry depends largely on "the Watchlist." Although the term is singular, the Department of Homeland Security (DHS) and the State Department each has its own list of excludable persons.¹ The DHS list is in part a composite of lists originally prepared by Customs and INS, which both now are part of DHS. DHS uses its list to screen entrants at ports of arrival; the State Department list is intended to keep consular officials abroad from issuing a visa to persons ineligible to enter. The lists contain millions of names, among them terrorists, suspected drug dealers and criminals.

They include SS officers, concentration camp guards, members of mobile killing units (Einsatzgruppen), persons denied entry to the United States under the DPA, individuals wanted or convicted by other nations of war crimes, and persons successfully prosecuted by OSI.

The only criterion for placement on the Watchlist is that there be a "reasonable basis to suspect" that the individual is excludable.

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1 [a determination of eligibility is made by the State Department
2 Consular Officer. If the applicant is admissible, his name is removed from the Watchlist and the
3 visa is issued.

4 Not all aliens go through the visa process however. In July 1989, the United States
5 instituted a program to permit most nationals of selected countries to enter the United States for
6 up to 90 days without a visa.²]

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15 [INS, however, did make an accommodation at OSI's request after the visa waiver
16 program was instituted. In 1995, they modified the questionnaire which must be completed by
17 persons entering the United States from visa waiver countries before they can disembark from an
18 overseas flight. INS form I-94 now includes the question: "[B]etween 1933 and 1945 were you
19 involved, in any way, in persecution associated with Nazi Germany or its allies?" If the person
20 answers yes (no one ever has), he will not be admitted.

21 When a visa waiver traveler whose name is on the Watchlist arrives in the United States,
22 Immigrations and Customs Enforcement (ICE) -- successor to INS -- notifies OSI,⁴ OSI then faxes
23 questions to be asked of the traveler. Unless it is quickly clear that the person should not be on
24 the Watchlist, or does not match the name listed, he is sent back to his originating port.⁵ He can

1 then apply for a visa;]

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3] BS
4 In some instances, a person entering *with* a visa is stopped at the port of entry because his
5 name is on the Watchlist. (Most likely he was issued a visa because he was not examined fully at
6 the time he applied or was not truthful in the answers he gave during the application process.)
7 Again; OSI is notified and faxes questions to be posed to the applicant under oath. For those on
8 SS lists, OSI also may ask that the traveler remove his shirt to determine whether he has a tattoo
9 under his left armpit. (Many, though not all, SS members were given a tattoo denoting their
10 blood type.)

11 **DRAFT**
12 The inspector is instructed to call OSI as soon as the interview is complete. If the
13 answers indicate that the visitor's Nazi-era past was fully examined by the State Department
14 before the visa was granted (and the State Department confirms this was so), the applicant is
15 admitted and his name removed from the Watchlist. However, if the visa was granted before he
16 was placed on the Watchlist, if the traveler was not questioned about his wartime activity when
17 he applied for the visa, or if it appears in some respect that the visa was improperly granted, then
18 OSI asks that the visa be cancelled. If the person is clearly inadmissible (*e.g.*, a camp guard), he
19 is given the options of remaining in custody pending a hearing before an immigration judge or
20 departing on the next available flight. (Most persons take the second option.) If the traveler is in
21 the grey area of admissibility (*e.g.*, an SS officer who claims his unit had no involvement in
22 persecution), he may be allowed in for the duration of his visit or scheduled for another interview
("a deferred inspection") several days hence. The traveler's passport, itinerary and return ticket

1 are taken by the inspector to insure that he will return for the next interview. By then OSI will
2 presumably have gathered more information. If it turns out that there is no basis for exclusion,
3 the deferred inspection may be cancelled. Alternatively, if there is added reason to doubt his
4 eligibility to enter, there will be additional questioning and he may be told to leave.⁶

5 Of the tens of thousands of names OSI has placed on the Watchlist, most come from
6 massive lists of potentially excludable people (e.g., SS officers). OSI first began placing names
7 on the list in 1980 and has added to it as more World War II era documents become available.
8 (In August 2000, an OSI attorney determined that if all persons over 90 were eliminated from
9 OSI's entries – based on the presumption that they are either dead or unlikely to travel – there
10 would be 24,000 names still on the list.)

11 The presumptive validity of the listing for a particular individual can be tested once the
12 person applies for a visa or makes an effort to enter the country.⁷ In a few instances, however,
13 OSI has undertaken a comprehensive investigation to determine whether a particular person
14 should be preemptively listed or removed from the list. The most famous of these individual
15 watchlist studies is that of Kurt Waldheim, former Austrian President and United Nations
16 Secretary General. His listing is discussed elsewhere in this report.⁸

17 OSI prepared two other exhaustive and independent Watchlist reports. One concerned
18 Harry Männil, an Estonian who OSI learned had been a wartime member of two organizations
19 which persecuted Jews.⁹ When denied entry in 1994, Männil hired ^{to} B6
20 persuade the government to delete his name from the Watchlist. At the time _L
21 represented the SWC in the United States. Ironically, the Wiesenthal Center's Israeli office first
22 brought Männil to OSI's attention.

1 [forwarded affidavits in support of Männil to OSI.¹⁰ One was from former **B6**
2 President Gerald Ford who had known Männil since 1974. President Ford swore that he found
3 Männil "to be an upstanding [] fair, honorable, humane citizen" who had:

4 never exhibited tendencies or character that would lead me to believe that he
5 engaged in anti-Semitic activity or that he was someone who engaged in the
6 killing or arrest of individuals while in the service of Estonian Self Government
7 under the occupation of Nazi Germany.

8
9 OSI reviewed archival material, transcripts from relevant war crimes trials, as well as
10 statements made by Männil and people who knew him during the war. It concluded that there
11 was credible evidence not only that Männil had served in persecutory organizations, but that he
12 personally arrested and interrogated Jews and suspected Communists. His name therefore

13 remained on the Watchlist.
14 Things went differently for André Bettencourt, a French Senator, former Cabinet official,
15 and industrialist whose name was referred to OSI by [] a prominent French Nazi **B6**

16 hunter. [] reported a series of allegations stemming from Bettencourt's having written **B6**
17 anti-Semitic articles in the French press during World War II. Because France had no
18 mechanism for dealing with Nazi propagandists, [] urged the United States to place **B6**
19 Bettencourt on the Watchlist. New York's Governor George Pataki and Senator Alfonse
20 D'Amato joined in the request.¹¹

21 Bettencourt conceded that he had written some anti-Semitic articles and expressed regret
22 for having done so. []

23 [] Whereas they **B5**
24 had described Jews "as posing such an immediate and serious danger to society as to make the

1 drastic measures adopted against them appear to be justified," Bettencourt had focused more on
2 historic misdeeds by Jews.¹³ His name was therefore not referred to the Watchlist.

3 It is hard to prove that a person did *not* come to the United States because he knew he was
4 listed on the Watchlist. Nevertheless, in at least one instance it seems possible that a highly
5 prominent Nazi who would otherwise have come refrained from doing so. Georg Liebbrandt was
6 the third ranking official in the Reich Ministry for the Occupied Eastern Territories. He was one
7 of only 15 persons attending the Wannsee Conference in January 1942 where plans for
8 implementing the "Final Solution" were discussed. Among his many contributions to the Third
9 Reich, Liebbrandt had helped draft a decree which defined the term Jew more broadly than it had
10 been defined under the notorious Nuremberg laws. This expanded definition subjected more
11 people to annihilation.

12 In 1979, the newly formed OSI learned that Liebbrandt had been issued a visitors visa
13 five years earlier. (INS records show that he spent five weeks in the United States in 1974.) At
14 OSI's request, Liebbrandt was placed on the Watchlist and his visa was revoked in December
15 1979. Although people are not generally told that they are listed, they do get notified if their visa
16 is revoked. Liebbrandt never applied for another visa; he died in 1982.¹⁴

17 Less prominent than Liebbrandt, but still significant in the Nazi power structure, was
18 Hermann Josef Abs, honorary president and former director of West Germany's Deutsche Bank.
19 His wartime responsibilities at the bank included supervising and financing the Nazi
20 Aryanization program which compelled the sale of Jewish companies to German enterprises at
21 vastly undervalued prices. Abs also had served on the Board of Directors of several companies
22 that exploited slave labor to reap large profits during the war, including I.G. Farben, Siemens,

1 BMW, Daimler-Benz and Mannesmann Iron Works. After the war, he was convicted, *in*
2 *absentia*, of war crimes by a Yugoslav court.

3 As a prominent international banker, Abs had traveled to the United States many times.¹⁵
4 In 1982, he was appointed by the Vatican to serve on an advisory board to the Vatican bank,
5 which was then under investigation. OSI believed this appointment would lead to additional
6 U.S. travel. In January 1983, OSI asked that he be placed on the Watchlist.¹⁶ Although INS
7 agreed to do so,¹⁷ OSI learned years later that the agency did not follow through.¹⁸ This error
8 was apparently without consequence, however, since there is no record of Abs' having returned
9 to the United States after 1981.

10 **DRAFT**
11 Although the Watchlist is generally a mechanism for keeping people from entering the
12 country in the first instance, it has on at least two occasions served to alert OSI that someone may
13 have erroneously been allowed to enter the U.S. years earlier. Alexander Schweidler, an ethnic
14 German from Slovakia, emigrated to the U.S. from England in 1965. He had served as a guard at
15 the Mauthausen concentration camp in Austria. His name was one of many which OSI, as part of
16 its routine research, asked INS to check in the 1980s. It came back negative, causing OSI to
17 conclude that he was not in the United States. By chance, Schweidler traveled outside the United
18 States for the first time in 1992. When he tried to reenter, there was a Watchlist hit. As a
19 documented alien (he had never sought citizenship), he was allowed to reenter, but OSI began an
20 investigation and ultimately filed a deportation action. Schweidler was deported to England in
21 1994.¹⁹

21 The events of 9/11 indirectly led to the second instance of after-the-fact Watchlist
22 identification. As a result of increased security following the attacks of 9/11, DHS began to run

One such check in

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May 2005 provided a hit for a former SS officer who had been in the United States since 1960.

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As of this writing, he is under investigation by OSI.

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It is, of course, impossible to know the number of times the system has failed completely

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and a person on the Watchlist has been admitted to the U.S. If the person is traveling under an

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assumed name there would be no Watchlist hit. But at least twice persons traveling under their

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proper names and birthdates have been admitted despite the fact that their names were listed.

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21 While the typical use of the Watchlist in OSI-related matters is to prevent Nazi
22 persecutors from entering the country, there have been a few unusual uses of the Watchlist. One

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1 involved Japanese persecutors who wanted to enter the United states in order to apologize and
2 explain their role in World War II. Their story is set forth elsewhere in this report.²⁴

3 Another involved a *criminal* prosecution of Germans placed on the Watchlist by OSI.
4 The matter was handled by the United States Attorney's Office in Hawaii. Two German
5 nationals stopped at the Honolulu airport in 1990 were charged with making a false statement
6 (denying their wartime activity when applying for a visa) and using a visa procured by means of
7 fraud. One of the men pled guilty, was fined \$55,000 and returned to Germany; the other was
8 convicted after trial and deported.²⁵

9 Finally, OSI once was in the anomalous position of filing a lawsuit simply to ensure that
10 it could ultimately place someone on the Watchlist. In 1990, OSI learned that a naturalized U.S.
11 citizen, who had served as a camp guard, was living abroad. He had moved overseas in 1975 and
12 there was no indication that he intended to return to the United States. However, there was no
13 way to preclude his doing so – for either a visit or permanent relocation – since U.S. citizens
14 cannot be prevented from returning to the country. Rather than the usual situation of filing a case
15 in the hope of ultimately *evicting* a Nazi persecutor from the U.S., OSI filed a denaturalization
16 action to preclude his ever *returning*. The case settled, citizenship was revoked, and his name
17 was then placed on the Watchlist.²⁶

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1. []

2. Those coming in under the program waive the right: (1) to review or appeal the determination of admissibility at the port of entry; or (2) to contest, other than on the basis of application for asylum, any action for deportation.

3. Feb. 2, 1989 letter to [B6] from [J.]
B6 JF

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4. Unfortunately, in a fair number of cases, the call mistakenly goes to the State Department rather than OSI. If no one at State is reached or they do not pass the information over to OSI, the traveler is admitted. If and when OSI learns of the entrance, it is sometimes too late to track down the traveler. OSI's efforts to have the office number posted at all ports of entry have had limited success.

INS was dissolved in 2003. Most of its former responsibilities relating to OSI matters were transferred to ICE, the largest investigative arm of DHS.

5. In two cases, investigations were begun and denaturalization cases filed in Canada after OSI informed the Canadians of the travelers' background. See p. 487.

6. Airlines with landing rights in the United States have entered agreements providing that they are responsible for return airfare if a visa-waiver traveler is turned back at the port of entry. If a traveler is allowed to enter the United States while the government gathers information, it is not clear who is responsible for paying the cost of return passage. In some instances, the United States purchases the ticket.

7. Because the names were incorporated *en masse*, there are many errors possible in the listings. Among them is the fact that some of those on the list became U.S. citizens before their names were listed; citizens cannot be kept from entering the country. OSI's only recourse then is to file a denaturalization case.

8. See pp. 310-329.

9. The Estonian Political Police in Tallinn and the Estonian Home Guard Omakaitse. Männil is discussed further at pp. 515-518.

10. For a listing of the affiants, see p. 521, n. 34.

11. "U.S. Urged to Bar Frenchman for War Deeds," by Doreen Carvaja, *The New York Times*, Feb. 22, 1995.

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12. May 7, 1996 memorandum to [redacted] from [redacted] Investigative Research. All references to OSI's research on Bettencourt come from this memo.

13. In one of the articles however, Bettencourt writes of the "Jews' cry of 'May his blood fall again on us and our children:' You know, moreover, in what way it [Christ's blood] has fallen and still falls. It is necessary that the prescriptions of the eternal book be carried out."

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14. [redacted] prepared a report outlining Liebbrandt's activities on behalf of the Third Reich. Although his memo was forwarded to Germany, the Germans never charged Liebbrandt with a crime.

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15. INS records establish that he visited the United States 14 times between 1972 and 1981.

16. Jan. 27, 1983 letter to [redacted] from [redacted]

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17. Mar. 11, 1983 memo from [redacted]

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18. May 15, 1990 letter to [redacted] from [redacted]

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19. For a discussion of his fate in England, see p. 492.

20. Sept. 15, 1993 memo to [redacted] from [redacted] statements hereafter about the [redacted] affair come from this memo unless otherwise noted.

All B6

21. [redacted] [redacted]

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22. May 10, 1995 memo to Oberlander file from [redacted] Enforced Departure of Helmut Oberlander." See also, "US Sends War Crimes Suspect Back to Canada," by Stephen Bindman, *The Toronto Star*, May 10, 1995.

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In Feb. 2000, a Canadian court concluded that Oberlander's citizenship had been obtained by fraud. His citizenship was revoked in July 2001. The ruling was reversed in May 2004 on the ground that the Canadian Cabinet - which ultimately determines whether citizenship should be revoked - did not consider Oberlander's personal circumstances, including "50 years of irreproachable life in Canada," nor did it explain how his case complied with government policy on denaturalization. As of this writing, the Canadian government is seeking to reinstitute denaturalization proceedings. "CTV News Says Government to Move to Strip Citizenship of five Suspected Nazis," *The Canadian Press*, June 10, 2005; "Canada Struggles for Six Decades

to Bring War Criminals to Justice," by John Ward, *The Canadian Press*, Oct. 15, 2005.

23. The letter explained, in part, that he would have to complete an I-94 Form (*see* p. 300) and that if he falsely denied assisting in persecution he would be subject to criminal prosecution. *See* discussion of *U.S. v. Paal* at p. 305, where one such case was prosecuted.

24. *See* pp. 503-505.

25. Both defendants had gotten visas shortly before the visa waiver program went into effect. Although the men could simply have been sent home —

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The Hawaii conviction was upheld on appeal. *U.S. v. Paal*, (unpub'd), 937 F.2d 614, 1991 WL 126642 (9th Cir. 1991).

26. The reference is to [] who came to the United States in 1950, became a U.S. citizen in 1959, and moved to Austria in 1975.

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DRAFT

1 **Kurt Waldheim – A Prominent International Figure**

2
3 Austrian President Kurt Waldheim is the only head of state ever placed on the Watchlist.

4 The decision to place him there was made by the Attorney General of the United States;

5 The listing put BS

6 OSI at odds, in varying degrees, with Waldheim, the Austrian government and Simon

7 Wiesenthal.

8 Waldheim's wartime activity was first brought to the government's attention by the WJC.

9 In January 1986

10 The WJC had received a tip that Waldheim had BS
11 served as a senior intelligence officer with the German army in the Balkans from 1942 to 1945.

12 began to investigate BS

13 At the time, Waldheim was a candidate in the upcoming Austrian presidential election.

14 He had already served two terms (1972 - 1982) as Secretary General of the U.N. His recently
15 published autobiography, like all official statements about him, stated that he had been wounded
16 on the Russian front in 1941 and had spent the remaining war years as a law student in Vienna.¹

17 began to learn otherwise. He found documents showing that Waldheim had BS
18 served in a unit that had taken civilian hostages, burned homes, and shot male prisoners. The
19 WJC gave its preliminary findings to *The New York Times*.² After doing some of its own
20 investigation, the newspaper reported that Waldheim had served with a German Army command
21 that fought "brutal campaigns against Yugoslav partisans and engaged in mass deportations of
22 Greek Jews." His commanding officer had been executed for war crimes.³

23 Faced with documentation establishing his wartime posting, Waldheim conceded that he

1 had served in the Balkans rather than attended school from 1942 to 1945. However, he denied
2 knowing about, or being involved in, any atrocities or persecution. He insisted that he had been a
3 mere functionary and accused his opponents of releasing derogatory information in order to
4 damage him in the upcoming presidential election.⁴

5 Shortly after the allegations became public, both the WJC and

6 [REDACTED] B6 [REDACTED] B6 [REDACTED] B6 [REDACTED] B5
7 [REDACTED] B6 [REDACTED] B5
8 [REDACTED] B6 [REDACTED] B5
9 [REDACTED] B6 [REDACTED] B5
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15 [REDACTED] B6 [REDACTED] B5
16 [REDACTED] B6 [REDACTED] B5
17 [REDACTED] B6 [REDACTED] B5

18 [REDACTED] concluded that:

19 [REDACTED] B6 [REDACTED] B5
20 [REDACTED] B6 [REDACTED] B5
21 [REDACTED] B6 [REDACTED] B5
22 [REDACTED] B6 [REDACTED] B5
23 [REDACTED] B6 [REDACTED] B5
24 [REDACTED] B6 [REDACTED] B5
25 [REDACTED] B6 [REDACTED] B5
26 [REDACTED] B6 [REDACTED] B5

27 Waldheim's son sought a meeting with officials at the Justice Department to present his
28 father's response to the allegations. After meeting with him and reviewing some of the material,

29 [REDACTED] B6 [REDACTED] B5 [REDACTED] B5

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[REDACTED]

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15 The U.N. files, obtained shortly thereafter, revealed that Waldheim's name was on a U.N. War

16 Crimes Commission list of persons who "should be delivered up for trial." [REDACTED]

[REDACTED]

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21 The Austrian government also reacted to the leak. In a letter to the Attorney General, the
22 Austrian Ambassador warned that placement on the Watchlist at this time "could be considered
23 in Austria first and foremost as an interference in the current presidential campaign."¹³ The
24 Attorney General assured the Ambassador that the Justice Department would act "with due
25 regard for the sensitivities of the Presidential campaign to avoid as much as possible any
26 appearance of interference."¹⁴

27 On May 4, 1986, Waldheim received 49.64% of the votes – just short of the majority
28 needed. He won a runoff election the following month. Many, including Waldheim, his chief

1 opponent, the president of Vienna's Jewish community and Simon Wiesenthal, credited the Nazi
2 allegations with strengthening Waldheim's support. In their view, the Austrians were reacting, in
3 part, to perceived outside interference in their internal affairs.¹⁵

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9 reviewed hundreds of pages of material presented by Waldheim's son and attorneys.¹⁸ The
10 material came in waves as Waldheim responded to a series of new revelations.

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14 Waldheim's responses also contained prophecies of dire consequences to the world
15 political order if the U.S. were to place him on the Watchlist. According to Waldheim's
16 attorneys:

17 The action of the Department in the matter of Kurt Waldheim will have
18 significance far greater than that contemplated by the narrowly focused issues
19 addressed by the Immigration and Nationalities Act, and greater even than any
20 injury to personal reputation or status that might result from Dr. Waldheim's
21 name being placed on the "watch list". Adverse action against Dr. Waldheim by
22 the U.S. Government would seriously undermine larger U.S. interests in which
23 Austria is a factor. Such an action could hamper the effectiveness of Dr.
24 Waldheim's leadership, and thereby reduce Austria's pivotal role in Europe,
25 where it enjoys a unique status as a bridge between the eastern and western
26 blocs.²¹
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1 In April 1987, OSI completed a 204-page report containing a comprehensive account of
2 Waldheim's wartime service from 1942 and 1945 and a detailed refutation of Waldheim's
3 defense.

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13 By happenstance, before the Attorney General reviewed the report, a reporter was
14 preparing an article on the possible deportation of Karl Linnas to the Soviet Union. The reporter
15 went to OSI's offices to meet with its deputy director. The resulting article was as much about
16 Waldheim as Linnas. Indeed, the opening line read: "A photo of Austrian President Kurt
17 Waldheim . . . hangs on the wall of the unmarked offices. . ." The article ended with another
18 reference to Waldheim.

19 There have been calls for the office to take up the Waldheim case following
20 allegations that the former U.N. secretary-general was aware of German atrocities
21 in the Balkans. [OSI's deputy director] denied that any formal investigation is
22 under way.

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24 Asked why Waldheim's picture was hanging on his wall, he replied with a smile:
25 "No comment."²³

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The article [] triggered a B6
protest from the Austrian ambassador. []

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On April 27, 1987, the Department of Justice and the Department of State announced that

Kurt Waldheim "as an individual" was being placed on the Watchlist. While he remained
president, he could enter the U.S. for matters of state. Admission would be denied only if the
State Department concluded that the visit would be "prejudicial to the public interest."²⁶

However, he would not be allowed to enter for non-official reasons during his presidency nor for
any reason after his presidency ended.

DRAFT

The Justice Department's press release explained that:

[t]he standards applied in placing persons on the Watchlist do not require a
finding of having engaged in "war crimes" or "crimes against humanity." The
statutory standard is met if a person assisted or participated in any material
manner in any form of proscribed persecution. Such cases are frequently based
upon a person's membership in an organization listed as "inimical" because of its
particularly heinous activities, or upon a person's playing a role in an organization
or operation that provides a reliable basis for inferring the proscribed assistance or
participation. Efforts by a person to hide or otherwise distort potentially improper
activities have routinely been regarded as significant in determining whether a
prima facie case exists.

The release also sought to stanch any diplomatic fallout.

Relations between the people and Government of the United States and the
people and Government of Austria have traditionally been close and friendly. We
share a fundamental commitment to democracy, human rights and the rule of law.
We highly value our relationship with Austria and we will work to strengthen our
friendship.

] - B6

1 Shortly after the Watchlist decision was announced,
2 at the request of the State Department -- went to Vienna to explain the findings which led the
3 Attorney General to his decision. Despite U.S. efforts to preserve the diplomatic status quo,
4 there were repercussions from the Watchlist decision. Austria briefly recalled its ambassador to
5 the United States²⁷ and opened a global public relations campaign to regain international
6 acceptance of President Waldheim.²⁸ Concomitantly, the State Department ordered the U.S.
7 Ambassador to limit his contacts with the new Austrian president.²⁹

8 Years later, Austrian sensitivities were still raw. In 1990, [] held a WJC meeting in B6
9 Berlin that he was proud to report that Waldheim would remain "persona non grata" in the
10 United States. Austria summoned Washington's chargé d'affaires to express concern over the
11 remark and to make clear that Sher was unwelcome in Austria. [] had planned to travel to B6
12 Vienna with them to participate in an OSI deposition. B6
13 The Austrians advised that it would not comport with consular conventions for "a functionary of
14 a foreign administration" to conduct official business in Austria. [] could come only as a B6
15 "private citizen." [B6] went to Vienna alone.³⁰

D R A F T

16 Although the Justice Department released the broad outlines of its Waldheim report,³¹ the
17 document itself was not made public. When an international commission of historians
18 appointed by the Austrian government to examine Waldheim's past asked for the report, their
19 request was denied. However, [] sent a letter assuring the commission that the B6
20 Justice Department's findings were sufficient "to implicate Mr. Waldheim personally."³²

21 The contents of [] letter were reported in the media.³³ Once again, the matter B6
22 escalated diplomatically. The Austrian Embassy sent a diplomatic note to the State Department

1 saying that it was "astonish[ed]" by OSI's lack of cooperation and "dismayed" by the fact that
2 Sher's letter had been quoted in the newspapers.³⁴

3 The international commission was not the only outside group seeking a copy of OSI's
4 report. Two lawsuits were filed under the Freedom of Information Act (FOIA) to obtain the
5 report and supporting documentation. In one case, the plaintiff was a curious prisoner; in the
6 other, the plaintiffs were a retired intelligence officer and a journalist.

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10 In both lawsuits, the court upheld the
11 government's right to withhold the material.³⁵

12 Shortly after the decision involving the journalist and intelligence officer was issued, Eli
13 Rosenbaum's book *Betrayal, the Untold Story of the Kurt Waldheim Investigation and Cover-*
14 *Up*, was published. Rosenbaum began writing the book while serving as General Counsel to the
15 WJC; he completed the book on his own time after he returned to OSI. The book recounted the
16 WJC's efforts to document Waldheim's World War II past.³⁷

17 In an effort to bolster his FOIA case, counsel for the journalist and intelligence officer
18 referenced the book in a letter to the Deputy Assistant Attorney General. The letter complained
19 that Rosenbaum, as a non-governmental employee working for the WJC, had been given access
20 to documents denied the FOIA plaintiffs.

21 [I]ndeed, Rosenbaum boasts in his book that he was twice given special access to
22 secret Justice Department documents on Waldheim, and that he frequently had
23 conversations relating to the Waldheim investigation with

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3 The attorney added that he had discussed the book with the Austrian ambassador who was:

4 extremely troubled that a high-ranking Justice department official can publish a
5 devastating attack on Waldheim (which, for all I know, is entirely accurate) while
6 the Austrians are being denied any access to the materials on which the Justice
7 Department's decision was based.³⁸
8

9 The Attorney General had already assured the Austrians that the Department would
10 review its position on the Waldheim materials.³⁹ In March 1994, the Department released the
11 report under recently-loosened FOIA guidelines.⁴⁰

12 In addition to the FOIA cases, the Waldheim matter spawned litigation abroad. In 1988,

13 the Austrian government filed a criminal defamation action against [redacted] president of B6
14 the WJC. The litigation was triggered by [redacted] statement that Waldheim "was part and B6
15 parcel of the Nazi killing machine." The Austrians requested assistance from the Justice
16 Department because [redacted] was an American citizen.⁴¹ The Department turned down the B6
17 request, concluding that it would create "an untenable conflict" to play a role "no matter how
18 minor, in facilitating a criminal defamation prosecution by Austria where we have already
19 confirmed the truthfulness of the statements which form the basis of this prosecution."⁴² The
20 Austrians ultimately dropped the case, citing the Justice Department's refusal to cooperate as one
21 reason for doing so.⁴³

22 In February 1988, the Austrian-appointed international commission of historians issued
23 its report. Although they found no evidence that Waldheim was personally involved in war
24 crimes, they strongly criticized him for not trying to halt atrocities of which he was aware and for
25 concealing his wartime record.⁴⁴ Waldheim touted the report as proof of his "personal

1 innocence."⁴⁵ As he saw it, condemnation of him would necessitate condemnation of other
2 soldiers who served in areas of fierce fighting, including those in Viet Nam, because they knew
3 that "terrible things happened."⁴⁶ OSI did not share this perspective. In a comment which
4 reportedly angered many Austrians. [

5 [B6]
6 A year later, the British issued their own Waldheim report, narrowly focused on whether
7 Waldheim had interrogated British prisoners of war in the Balkans or was responsible for the
8 harsh treatment or execution of British commandos. They found no evidence of his personal
9 involvement, although they concluded that he must have been aware of the activities. [

10 [BS]
11 [DRAFT]
12 The Waldheim matter also brought OSI into conflict with Simon Wiesenthal, the 1980
13 recipient of a special Congressional gold medal for having helped track down over 1,100 Nazis
14 worldwide.⁴⁹ Wiesenthal, who lived in Austria, repeatedly voiced doubt that Waldheim had been
15 personally involved in any acts of persecution. He saw Waldheim as an "opportunist" rather than
16 a war criminal, but did challenge Waldheim's claim of ignorance concerning the persecutory
17 activities committed by others in his unit.⁵⁰ [

18 [B6]
19 []
20 Tensions escalated even further after
21 the publication of *Betrayal*, as the book discussed, in very harsh terms, Wiesenthal's efforts to
22 "protect" Waldheim.

In 1996, Rosenbaum was invited to discuss his book on a German television program.

1 He agreed, after cautioning the producers that he would not be speaking as a government official
2 but rather in his private capacity as an author. He asked that a statement to that effect be made to
3 the viewers.⁵³ Unfortunately, it was not. On the contrary, he was identified during the show as
4 “Chief, Nazi Prosecutions, U.S. Department of Justice.”

5 During the broadcast, Rosenbaum was asked about Wiesenthal. While acknowledging
6 that Wiesenthal had achieved some “positive things,” he was very critical of the Nazi hunter.

7 He claims to have found 1,100 or now 1,200 Nazis. I think he’s mostly a Nazi-
8 hunter and not a Nazi finder. The number is surely very, very low; it might be
9 under ten.

10 * * *

11 I don’t believe that without Wiesenthal’s support Waldheim could have been
12 elected president.

13
14 The words I would use for Mr. Wiesenthal? Incompetent, egomaniac, spreader of
15 false information, tragic figure. . . . He betrayed the hopes, even the dreams, of
16 survivors who thought that there would be some serious, credible effort led by this
17 man to bring to justice the killers of their families, and he betrayed the hopes of all
18 of us who are not survivors who shared that dream.⁵⁴

19 The comments drew enormous media attention in Germany and galvanized Wiesenthal
20 supporters in the United States. Wiesenthal himself threatened to go before Congress and
21 renounce the gold medal he had received sixteen years earlier.⁵⁵

22
23
24 The Department of Justice assured Senator Dodd that it was “working diligently with
25 representatives of the Wiesenthal Center in Los Angeles and Mr. Wiesenthal’s attorney” to
26 resolve the contretemps. As part of the effort, Attorney General Reno agreed to speak at the
27 Wiesenthal Center.⁵⁷ Her remarks, delivered on June 13, 1996, described Wiesenthal as “an

1 individual who has devoted his life to insuring that Holocaust victims receive a justice in death
2 that they were denied in life.” The Department also arranged for Wiesenthal to receive a letter of
3 praise from President Clinton. Using the occasion of the 50th anniversary of the Nuremberg War
4 Crimes Tribunal, the president praised Wiesenthal for “forcing an often reluctant world to
5 confront [a] painful subject.” He added that “[o]ur government appropriately recognized your
6 visionary leadership in the arena of international human rights when Congress authorized the
7 President to confer a gold medal on you in 1980.”⁵⁸

8 Over the years, there have been various efforts made to persuade the United States to
9 remove Waldheim from the Watchlist. In 1989, the Austrian government sent a diplomatic note
10 to that effect to the State Department and Waldheim himself sent a handwritten letter to President
11 George H.W. Bush.⁵⁹ In 1994, the Austrian Foreign Minister urged U.N. Secretary General
12 Boutros Boutros Ghali to intervene in order to enable Waldheim (whose presidential term had
13 ended) to attend celebrations marking the 50th anniversary of the United Nations.⁶⁰ That same
14 year, shortly after public release of the OSI report, the Austrian Ambassador appealed to the
15 Department of Justice to rescind the Watchlist decision.⁶¹ In 1998, the Austrian ambassador to
16 the United States asked the State Department to issue a visa allowing Waldheim to attend a U.N.
17 celebration of its fiftieth anniversary of peacekeeping operations.⁶² And in 2001, the Austrian
18 government again urged reconsideration of the Watchlist decision based on the fact that recently
19 declassified CIA material contained no reference to Waldheim’s wartime activities.⁶³ All these
20 requests were denied.

21 OSI’s working relationship with the Austrians had been strained even before the
22 Waldheim matter arose⁶⁴ and the countries had been trying to negotiate a mutual cooperation

1 agreement on OSI/Nazi matters. That initiative was derailed in light of the Watchlist decision.⁶⁵

2 In addition, the Austrians suddenly refused to honor a 1954 commitment to readmit persons who
3 emigrated from Austria to the United States under the RRA if the United States could show that
4 the emigrant had obtained a U.S. visa "by fraudulent means or on the basis of false statements."

5 The issue came to a head in 1988 after OSI defendant Josef Eckert, who had entered the
6 United States under the RRA, was ordered deported to Austria. Austria indicated that it was not
7 willing to accept him. Officials from the Departments of State and Justice (including j B6

8 Bl met with the Austrians to discuss the matter, first
9 in Washington and then again in Vienna. At the conclusion of those negotiations, the two
10 governments agreed to a procedure that would assure readmission in most RRA cases.⁶⁶

11 While the December 1988 agreement resolved the question of readmission (Austria
12 accepted Eckert in 1989), the issue of investigative cooperation remained unsettled. During an
13 informal meeting with an attorney-advisor at the State Department in 1994, the Austrian
14 Ambassador indicated that a legal assistance agreement would not be signed unless the
15 Department agreed to reexamine the Waldheim decision. Nonetheless, the U.S. did not alter its
16 position. It was another four years before a Memorandum of Understanding was finally adopted
17 providing for judicial assistance from Austria in OSI cases.⁶⁷

18 The impact of the Waldheim exposé and his placement on the Watchlist was enormous.
19 In 1991, the Austrian government officially acknowledged the country's role in the Holocaust,
20 thus ending its long-held position that the country was Nazi Germany's first victim. An Austrian
21 historian involved in bringing about this acknowledgment credited the Waldheim affair with
22 creating a climate in which such a reckoning was finally possible.⁶⁸ Although the WJC had been

1 the first to publicize Waldheim's direct involvement in acts of persecution, OSI's additional
2 research made the case stronger. The U.S. government's decision to place a sitting president on
3 the Watchlist – despite the inevitable diplomatic awkwardness of such a move – gave enormous
4 credibility and legitimacy to the matter. The world was forced to confront the fact that a
5 renowned diplomat had worked with the Nazis to persecute civilians and then had concealed the
6 matter for decades. Although Waldheim won the Austrian election, he was largely isolated
7 during his presidency. Very few foreign countries or dignitaries would deal with him directly.

8 While he stands out as the only head of state ever placed on the Watchlist, his listing was
9 unusual in another regard as well. Prior to the Waldheim revelations, the U.S. had not put any
10 members of the regular German Army (Wehrmacht) on the Watchlist. SS men were presumed
11 to have been involved in persecution; military men were not. After Waldheim – and others who
12 served with him – were listed, the historical record was made that persecutory activity was not as
13 “confined” as previously thought.

14 In 1992, Waldheim chose not to seek reelection. He received a U.N. pension and
15 remained on the Watchlist until his 2007 death in Austria.⁶⁹

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1. Kurt Waldheim, *In the Eye of the Storm: A Memoir* (Adler and Adler).

2. June 2, 1986 memorandum to WJC president [redacted] from [redacted] B6

3. "Files Show Kurt Waldheim Served Under War Criminal," by John Tagliabue, *The New York Times*, Mar. 4, 1986. A day earlier *Profil*, an Austrian news magazine, had published some of the same allegations.

4. "Waldheim Says his Past was Misrepresented," by John McQuiston, *The New York Times*, Mar. 6, 1986.

5. Mar. 25, 1986 letter from [redacted] to Attorney General [redacted] Apr. 2, 1986 letter from [redacted] to the Attorney General. B6

6. Apr. 7, 1986 memo to: [redacted] B6 from [redacted] B6 re "Kurt Waldheim: Allegations Concerning Wartime Activities and Excludability from the United States," p. 6.

7. Apr. 7, 1986 memo from [redacted] re "Kurt Waldheim." The United Nations War Crimes Commission (UNWCC) was established in 1945 to collect, record and investigate evidence of war crimes and to advise governments on the legal procedures to be adopted in bringing suspects to trial. It circulated lists of war crimes suspects and brief details of their alleged crimes alleged to Allied governments. The organization remained active until 1948. As early as April 1980, the newly-formed OSI had requested access to the files. See Apr. 28, 1980 letter to Secretary General Waldheim from: [redacted] referencing an April 3, 1980 request by OSI personnel. Access to the files for research purposes was denied. On June 8, 1984, [redacted] renewed the request in a letter to [redacted] of the U.N. Secretariat. Once again, access for general research purposes was denied. However, the U.N. offered access for particular charge files provided that the name and identifying data of the subject were provided to the U.N. See Sept. 23, 1986 letter to [redacted] U.N. Archives from [redacted] B6

8. Apr. 10, 1986 memo from [redacted] to [redacted] and Sher re "Waldheim Investigation." B6

9. Apr. 21, 1986 memo from [redacted] to [redacted] re "Kurt Waldheim." B6

10. "Justice Department Official Urges Waldheim be Barred from U.S.," by Philip Shenon, *The New York Times*, Apr. 25, 1986. See also, "Aide urges U.S. to bar Waldheim," by Aaron Epstein, *The Philadelphia Inquirer*, Apr. 25, 1986; "Justice Dept. Official Recommends Barring Waldheim from U.S.," by John Goshko, *The Washington Post*, Apr. 25, 1986.

11. Apr. 25, 1986 memo from [redacted] to [redacted] re "Leak of Waldheim Report." B6

12 [redacted] B6 [redacted] [redacted] b6, b5,

13. Apr. 28, 1986 letter to

B6

from

B6

14. May 6, 1986 letter to

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from

B6

Not all public figures

Shortly before the election, N.Y. Sen. Daniel

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Moynihan warned that "the people of Austria really ought to know that to elect Waldheim would give a kind of symbolic amnesty to the events at Salonika." "Moynihan: Waldheim Is a Liar," by David Holmberg, *New York Newsday*, Apr. 22, 1986. (Waldheim served with a German unit stationed in Salonika, Greece when Jews from that town were rounded up and deported to concentration camps.)

15. See e.g., "Waldheim is Given Plurality in Vote but Faces Runoff," by James Markham, *The New York Times*, May 5, 1986; "Waldheim Tops Vote for Austrian President," by Tyler Marshall, *The Los Angeles Times*, May 5, 1986; "Austria's Dubious New President," *The Chicago Tribune* (editorial), June 11, 1986; "Nazi Hunter Assails Jewish Group on Waldheim Campaign," *The Chicago Tribune*, May 18, 1986; "Waldheim Survives Slurs to See Popularity Rise," by Misha Glenn, *The Guardian* (London), Mar. 17, 1986; "Nazi Hunter Assails Jewish Group on Waldheim Campaign," *New York Times News Service*, *The Chicago Tribune*, May 18, 1986.

16. May 9, 1986 memo from

to

re "Waldheim."

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Inquiry Studied

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Data Waldheim Gave in Rebuttal," by Leslie Maitland Werner, *The New York Times*, Apr. 29, 1987.

18. In his 1993 book *Betrayal, The Untold Story of the Kurt Waldheim Investigation and Cover-Up* (St. Martin's Press), p. 314, Rosenbaum describes having the material delivered to him by an intermediary from "a mutual friend at Justice." (The book was co-authored by William Hoffer.)

19. Waldheim Report (fully cited *infra*, n. 22), at pp. 3, 74, 105, 108, 117, n. 318, 180, 184; see also, Oct. 31, 1986 memo to the Attorney General from [redacted] re "Waldheim;" "Inquiry Studied Data Waldheim Gave in Rebuttal," *supra*, n. 17.

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20. May 28, 1986 memo to

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from

re "Waldheim."

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21. Aug. 11, 1986 letter to

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from

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22. The report, "In the Matter of Kurt Waldheim: A Report to the Assistant Attorney General, Criminal Division, U.S. Department of Justice (1987)" can be found at www.usdoj.gov/criminal/osi/press/osi-reports/ (last visited Nov. 2008).

23. "Crucial Tests Confront Nazi-Hunting Bureau," by Michael Dobbs, *The Washington Post*, Mar. 24, 1987.

25. Mar. 24, 1987 letter to

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from

26. 8 U.S.C. § 1102.

27. A new ambassador returned in November 1987.

28. "Ex-Official Pleads Case in U.S.," by Don Shannon *The Los Angeles Times*, June 13, 1987.

29. "New Envoy: Native Son for Vienna," by Henry Kamm *The New York Times*, Jan. 21, 1988.

30. "Austrian Complaint Prompts U.S. Investigator to Cancel Visit," by Michael Wise, *The Washington Post*, May 12, 1990; "Remark Irks Austria," *Newsday* (New York), May 10, 1990.

31. See e.g., "Waldheim Barred from Entering U.S. Over Role in War," by Leslie Maitland Werner, *The New York Times*, Apr. 28, 1987.

32. Dec. 2, 1987 letter to

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from

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33. See e.g., "U.S. Links Waldheim to Persecution," by Ralph Blumenthal, *The New York Times*, Dec. 5, 1987; "Waldheim's Commission Expected to Damage Him," *The Washington Post*, Dec. 6, 1987.

34. Dec. 7, 1987 diplomatic note from the Embassy of Austria to the State Department.

35. Supplemental Declaration of

filed in *Nevas v. Dep't of Justice*, No. 89-00042

(D.D.C.).

36. *St. Hilaire v. Dep't of Justice*, 1992 WL 73545 (D.D.C. 1992); *Mapother and Nevas v. Dep't of Justice*, 3 F.3d 1533 (C.A.D.C. 1993). (In the latter case the court remanded to the lower court the question of whether the Department should have released just that portion of the report that contained an inventory of Waldheim's military postings.)

38. Dec. 1, 1993 letter to: [] DAAG, Criminal Division from Public Citizen Litigation Group re *Mapother v. Department of Justice; Nevis v. Department of Justice*. B6

39. The assurance was apparently given orally at a forum sponsored by the American League for Exports and Security Assistance. *Id.*

40. The guidelines, issued in 1993, provided that documents were to be withheld only if "disclosure would be harmful" to the government. In Oct. 2001, these guidelines were superseded by others calling for the withholding of documents as long as there was a "sound legal basis" for doing so. In Dec. 2007, the original standards were restored legislatively. CITE

41. The Austrians asked the U.S. to execute letters rogatory, which involve a formal request from a court in one country to "the appropriate judicial authorities" in another country for compulsion of testimony, documentary or other evidence, or service of process.

42. July 8, 1988 letter to: [] B6

43. Two other reasons given were their view that an international commission had determined Waldheim's personal innocence, and "an endeavor to contribute to calming down and reconciliation." "Waldheim Cancels Suit Against Bronfman" AP, *The New York Times*, July 3, 1988. The international commission report is discussed on p. 318.

44. "Panel Criticizes Waldheim but Sees No War Crimes Role," by Robert McCartney, *The Washington Post*, Feb. 9, 1988.

45. "Waldheim Cancels Suit Against Bronfman," AP, *The New York Times*, July 3, 1988.

46. Waldheim interview on British television show, "David Frost on Sunday," Mar. 12, 1989.

47. "Waldheim's Cloak of Rationalization," by Adrian Peracchio, *Newsday*, Feb. 12, 1988.

48. "London Discounts Role by Waldheim," *The New York Times*, Oct. 18, 1989.

49. "Badge of Courage," by Megan Rosenfeld, *The Washington Post*, Aug. 5, 1980.

50. *See e.g.*, "Former UN Head Kurt Waldheim 'in the eye of the storm,'" by Elizabeth Pond, *The Christian Science Monitor*, Apr. 9, 1986; "Will to Forget, Anti-Semitism May Elect Waldheim," by Ray Moseley, *The Chicago Tribune*, May 4, 1986; "Nazi Hunter Assails Jewish Group on Waldheim Campaign," *The Chicago Tribune*, May 18, 1986.

51. [] Sher made a similar statement on the German newsmagazine program "Panorama," Feb. 8, 1996. BS

52. June 12, 1990 letter from [redacted] June 14, 1990 letter from [redacted]] B6

53. Jan. 18, 1996 e-mail from [redacted] to reporter [redacted]; "interview request." b6

54. "Panorama," Feb. 8, 1996. Rosenbaum is not the only public figure to have questioned Wiesenthal's role in finding Nazi persecutors. See e.g., *And the Sea is Never Full*, by Elie Wiesel (Alfred Knopf), pp. 127-131.

55. March 1, 2000 recollection of [redacted] hard. B6

56. Feb. 15, 1996 letter to Attorney General Reno from [redacted]] B6

57. May 22, 1996 letter to [redacted] from [redacted]] B6

58. Sept. 24, 1996 letter to Wiesenthal from President Clinton. Four years later, in August 2000, President Clinton presented Wiesenthal with the Presidential Medal of Freedom, the nation's highest civilian honor.

59. U.S. Requests Austrian Request to Lift Waldheim Ban, Reuters, June 16, 1989, CBS Evening News with Dan Rather, July 21, 1989 and Supplemental Declaration of Neal Sher in *Neyas v. Department of Justice*, No. 89-0042 (D.D.C.).

60. Cable 08653 from AmEmbassy, Vienna to the Secretary of State, Sept. 29, 1994.

61. June 15, 1994 letter to [redacted] from [redacted]] B6

62. Oct. 2, 1998 memo to Attorney General Janet Reno and Deputy Attorney General Eric Holder from James Robinson, AAG of the Criminal Division re "Potential effort by Kurt Waldheim to enter the United States on Tuesday, Oct. 6, 1998." B6

63. "Official Wants Waldheim Off 'Watch list,'" by David Sands, *The Washington Times*, May 22, 2001.

64. See e.g., May 2, 1986 letter from [redacted] B6] B5

65. Jan. 8, 1991 memo to [redacted] from [redacted] re "Austrian Assistance." B6

66. Austria would be given the evidence in all RRA cases and would have 30 days to seek consultation with the United States. Absent a request for consultation, the Austrians would grant readmission. If a consultation were sought and the parties could not thereafter agree, the

U.S. could still seek readmission and all efforts would be made to resolve the issue "through diplomatic negotiations."

The agreement was signed on December 21, 1988. That day [] flew from Vienna B6 to London. He made a last minute change of plans and boarded Pan Am flight 103 from London to New York. A bomb exploded mid-air, killing all 259 people on board (plus 11 on the ground). In August 2003, Libya accepted responsibility for this terrorist act.

68. "Austria Admits Role in Holocaust," by Michael Wise, *The Washington Post*, July 9, 1991.

69. The Omnibus Diplomatic Security and Antiterrorism Act of 1986 contained a "sense of the Congress" provision calling on the president to "instruct the Permanent Representative of the United States to the United Nations to act to amend the 1986-1987 Regular Program Budget to eliminate funding of Kurt Waldheim's retirement allowance and to act to deny Kurt Waldheim a retirement allowance in all future budgets. Pub. L. 99-399, Title XIII § 1303 (Aug. 27, 1986).

DRAFT

1 **Chapter Five: Alleged U.S. Support for Entry of Former Nazis into the Country**

2
3 Introduction
4

5 Whether the United States helped persecutors enter the country has implications for our
6 nation in terms of the values it may reflect. Did we knowingly permit major or even minor Nazi
7 persecutors to enter, and if so, what justification was given? At what level within the
8 government was there legal and moral authority to advance such a policy? And were efforts
9 made to conceal such activities from the public in order to advance some perceived higher
10 national good?

11 OSI did not originally conceive its mission as including the need to answer these
12 questions. But it was inexorably drawn to the issues when subjects argued that they were in the
13 country at the behest, or with the knowledge, of the United States — allegedly in return for
14 information or services supplied to the government during or after the war.

15 OSI learned that some persecutors were indeed knowingly granted entry. America, which
16 prided itself on being a safe haven for the persecuted, became — in some small measure — a safe
17 haven for persecutors as well. Some may view the government's collaboration with persecutors
18 as a Faustian bargain. Others will see it as a reasonable moral compromise borne of necessity.

1 **Arthur Rudolph – An Honored Rocket Scientist**

2
3 As early as July 1945, the U.S. War Department brought selected German and Austrian
4 scientists to the United States under military custody for “short-term exploitation.” The
5 immediate goal was to have them pursue military research in an effort to shorten the war with
6 Japan. The longer term goal was to keep the Soviet Union and other countries from gaining
7 access to the information and skills of many elite members of the scientific community.

8 With the direct approval of the president of the United States, the program was extended
9 after the close of hostilities:

10 in order to permit the Armed Services of the United States to take advantage of
11 German scientific and technical progress in such fields as guided missiles and
12 aerodynamics, pending formulation of governmental policy to permit legal entry
13 of these and other specialists . . . to pursue research and development projects for
14 both military and civilian agencies
15
16 Ultimately codenamed “Operation Paperclip,” the program was designed to exclude anyone who
17 was more than a “nominal participant” in Nazi party activities or had been an “active supporter of
18 Nazism or militarism.” Those scientists who wished to settle permanently in the United States
19 could, “at a later date . . . be granted regular status under the immigration laws.”¹

20 Eventually, hundreds of scientists came to the United States under the program. Those
21 seeking permanent residence had to apply for a visa. Once it was issued, they had to leave the
22 country and then “formally” reenter. They generally did so through a Mexican border city.

23 During the war, Arthur Rudolph had served as Operations Director at the massive
24 Mittelwerk underground V-2 rocket manufacturing facility. The factory was part of the Dora-
25 Nordhausen concentration camp complex and used prisoners of war and slave laborers. The
26 latter group included thousands of Czech, Polish, Russian, and French political prisoners, as well

1 as Jewish and Jehovah's Witness inmates.² The laborers, wearing striped concentration camp
2 uniforms, came from Nazi camps including Auschwitz and Buchenwald. They were guarded by
3 armed SS men as well as kapos, and worked 12-hour shifts in cold, damp, and dusty tunnels.
4 Thousands perished, generally from malnutrition, exhaustion and overwork; some were
5 murdered. Until Dora got its own crematorium, the dead were burned at Buchenwald.

6 Rudolph was one of the first Germans to come to the United States under Operation
7 Paperclip; he arrived in December 1945. Although INS knew that he had been a member of the
8 Nazi party and that he had worked at Mittelwerk, there is no indication that they had any
9 information about his use of slave labor.³ On the contrary, there was much to recommend
10 Rudolph. The number two official at the Department of Justice urged INS (an agency then under
11 the jurisdiction of the Justice Department) to admit him. Based on information from the Joint
12 Chiefs of Staff and the Department of the Army, the official opined that failure to do so "would
13 be to the detriment of the national interest."⁴

14 In 1949, Rudolph went to Ciudad Juarez, Mexico, where he received a visa and then
15 formally reentered the United States under the INA. Although the "assistance in persecution"
16 provisions of the DPA and RRA were inapplicable, State Department visa regulations prohibited
17 the entry of an alien "who has been guilty of, or has advocated or acquiesced in, activities or
18 conduct contrary to civilization and human decency on behalf of the Axis countries."

19 Rudolph became a naturalized U.S. citizen in 1954 and worked in the U.S. rocket
20 program until his retirement from NASA in 1969. He was considered the father of the Saturn V
21 rocket which enabled the United States to make its first manned moon landing. At his
22 retirement, NASA awarded him the Distinguished Service Award, its highest honor.

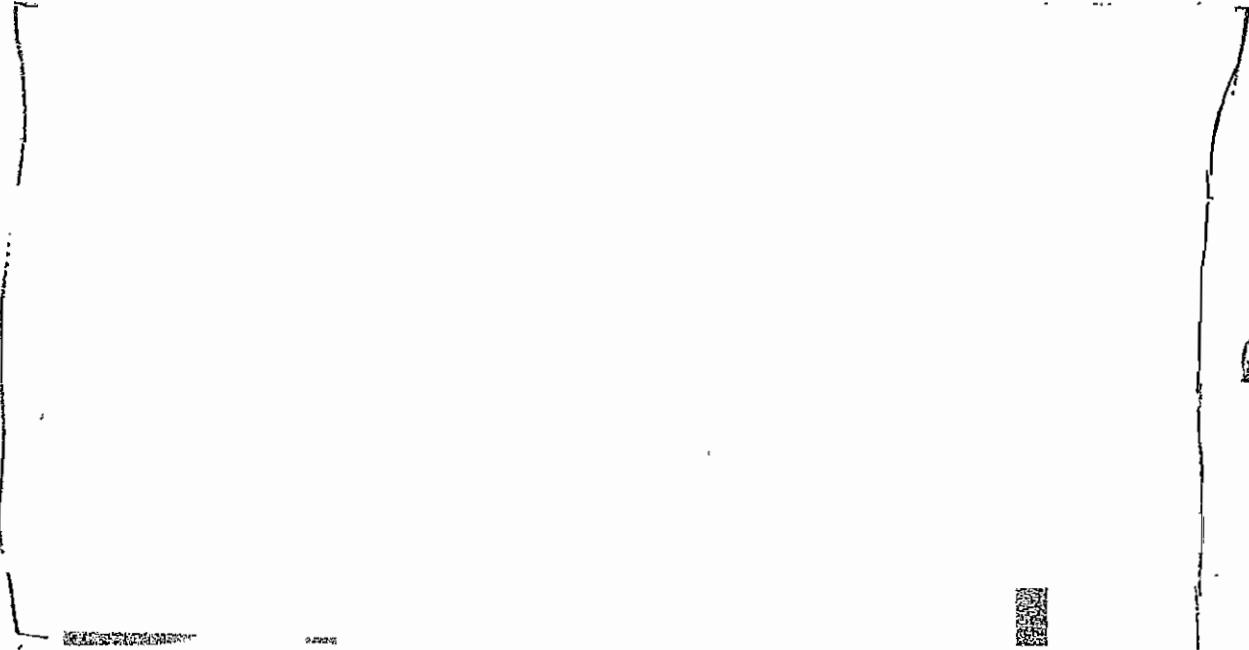
1 OSI learned about Rudolph by chance. Two recently published books attracted Eli
2 Rosenbaum's attention in 1979, shortly after he completed a summer internship at OSI. One was
3 about the Dora camp itself; the other discussed German scientists in the United States rocket
4 program.⁵ The latter had a reminiscence from Rudolph about his dismay at being called from a
5 New Year's Eve party in 1943/1944 to have rocket parts moved. An accompanying picture
6 showed prisoners of war moving the parts.⁶ Rosenbaum knew that the Geneva convention
7 forbids having prisoners of war work on munitions,⁷ and he was particularly offended by
8 Rudolph's taking umbrage at missing a gala party while slave laborers toiled. When he began
9 work at OSI a year later, he persuaded the office to open an investigation of Rudolph.

10 Nineteen people from the Dora-Nordhausen complex had been tried in 1947 before a U.S.
11 military court in Dachau, Germany.⁸ The transcript of that trial, as well as much of the pre-trial
12 investigative material, was on microfilm at the National Archives. The investigative material
13 included a 1947 interview of Arthur Rudolph, who was a potential witness in the case. He
14 discussed attending a hanging of 6 to 12 Dora inmates accused of sabotage, and ordering the
15 laborers under his supervision to bear witness.⁹ The file also contained a diagram, prepared by
16 the 1947 prosecution team, of the underground rocket factory. A dotted line labeled "Path of
17 Overhead Crane Trolley [sic] On Which Men Were Hung" came very close to Rudolph's office.
18 Testimony at the German trial indicated that Rudolph received daily prisoner strength reports
19 which showed the number of prisoners available for work, the number of "new arrivals," and the
20 number of people lost through sickness or death.

21 Armed with this information, OSI twice interviewed Rudolph. He acknowledged
22 knowing that prisoners were dying of disease, overwork, mistreatment and malnutrition. Faced

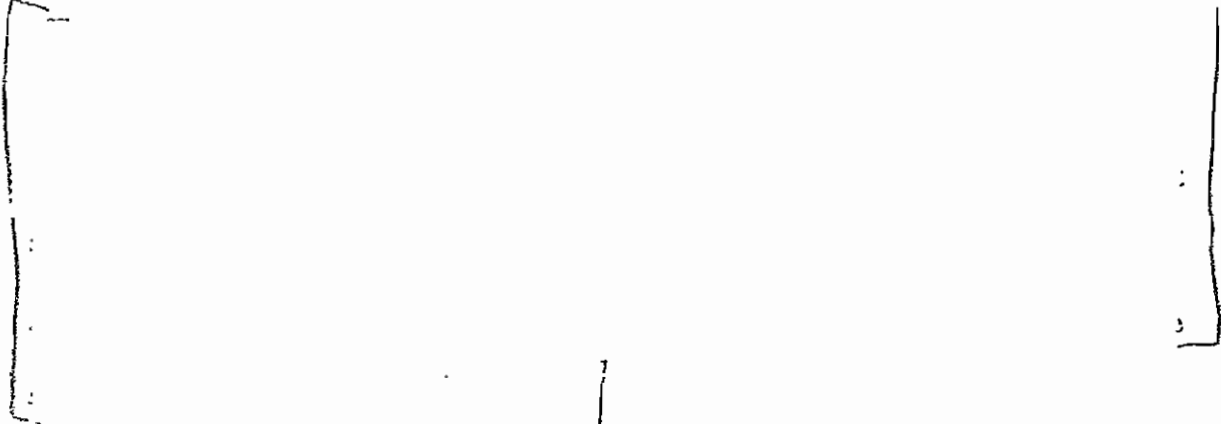
1 with a diminishing work force, he had requested labor replenishments from the SS, and knew
2 that these replacements came "probably from Buchenwald or somewhere else." He also allocated
3 the laborers within Mittelwerk.

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Although the U.S. knew when he entered the country that Rudolph had been at

Mittelwerk, OSI contended that its own research -- including its two interviews of Rudolph --
gave a much clearer picture of his true accountability than had been previously known.



The Department of Justice authorized filing the case and OSI notified Rudolph. Faced

1 with the prospect of an imminent prosecution, he entered into a written agreement with the
2 government: he would leave the United States and renounce his citizenship. The United States
3 agreed to withhold any announcement of the matter until Rudolph had departed. Rudolph in turn
4 agreed not to contest allegations that, while at Mittelwerk, he participated in the persecution of
5 unarmed civilians because of their race, religion, national origin or political opinion.



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23 Rudolph went to Germany in October 1984 and forfeited his U.S. citizenship. When
24 questioned by the press, however, he denied any wrongdoing. He maintained that he "tried to
25 help the poor forced laborers to have their conditions improved" and that he renounced his
26 citizenship only to avoid the sensationalism and cost of litigation in light of his health and age.¹⁴
27 [] convinced of the accuracy of OSI's conclusions, asked
28 NASA to rescind the medal earlier awarded Rudolph. The agency refused to do so.¹⁵

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29 As recounted elsewhere in this report,¹⁶ the West Germans did not initially welcome
30 Rudolph's return; they were angered that they had not been forewarned by OSI. Nonetheless,

1 they began an investigation of their own (aided by material provided by OSI) to determine
2 whether Rudolph was subject to criminal prosecution for murder, the only relevant crime not
3 barred by their statute of limitations. In the end, no charges were filed, and Germany restored the
4 citizenship Rudolph had renounced when he became a naturalized United States citizen.¹⁷

5 In 1989, Rudolph went to the U.S. Consulate in Hamburg, Germany and applied for a
6 visa to reenter the United States. His request was denied. The following year, the Department of
7 Justice learned that Rudolph was planning to fly to Canada.¹⁸ OSI alerted the Canadians, who
8 briefly detained Rudolph when he arrived, then released him on bond pending deportation
9 proceedings. The case received extensive publicity in the United States, as Rudolph's cause was
10 championed by

11 Rudolph testified at the Canadian hearing, claiming he had been shocked to learn that
12 concentration camp inmates would be used as a source of labor at Mittelwerk. One day after this
13 testimony, a historian at the Smithsonian Institution's National Air and Space Museum notified
14 OSI of two documents he had found in Germany. They showed that Rudolph was not simply
15 aware of the use of slave laborers at Dora; he had in fact worked to institute that program.

16 The first document was an April 1943 report, signed by Rudolph, stating that he had
17 recently visited a factory which utilized concentration camp inmates as forced laborers under SS
18 guard; Rudolph recommended that the same system be used in the rocket program. The second
19 was minutes of a June 1943 meeting attended by Rudolph in which he was told to work with the
20 camp commandant to implement such a program.²⁰ OSI obtained copies of both documents and
21 forwarded them to the Canadian authorities. The Canadian court concluded that Rudolph "called
22 for, made use of and directed" slave laborers who suffered "indescribably brutal" conditions.²¹

1 Rudolph was sent back to Germany in 1992.

2 Shortly thereafter, he filed suit against the Department of Justice, the Attorney General,
3 the Secretary of State and four OSI attorneys who had been involved in his case.²² He sought to
4 have his settlement agreement rescinded and to be granted readmission into the United States.
5 He claimed that the government had misled him into believing that it had sufficient evidence to
6 file a denaturalization suit when in fact a key witness had actually exculpated him in a
7 declaration under oath. His suit was dismissed on the ground that it was barred by the doctrine of
8 sovereign immunity.²³ He filed another suit, this time claiming that he was wrongly denied a
9 visa to enter the United States in 1989 and the right to enter Canada in 1990. He asserted also
10 that his civil rights had been violated during his OSI interviews because some of the questions
11 had been "incriminatory, impermissibly suggestive and argumentative" and he had not been
12 advised of his right to, or need for, an attorney prior to the second interview. These claims too
13 were rejected by the court, some because there was no basis for them under the law and others
14 because they were barred by sovereign immunity.²⁴

15 Rudolph died in Germany in 1996. He was the only Paperclip scientist prosecuted by
16 OSI.²⁵ His case raises the question of whether persons involved in persecution on behalf of the
17 Nazis can ever expiate their past. Patrick Buchanan, often an OSI critic,²⁶ believed that the
18 contributions Rudolph made to the United States space program earned him the right to remain in
19 the country.²⁷

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However one views Rudolph's life work, there is no doubt that camp inmates were victimized by a brutal system of which he was a part. In 1990, the Air and Space Museum of the Smithsonian Institution opened a permanent exhibit on V-2 rockets. One of the exhibit panels reads:

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Concentration camp prisoners built V-2s under unbearably harsh working conditions. Thousands perished in the process.

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1. Aug. 30, 1946 Memorandum for the President from Acting Secretary of State Dean Acheson, re "Interim Exploitation of German and American Specialists in the United States," along with Enclosure, App. A, Annex to App. A and App. B. Operation Paperclip was approved by President Truman on Sept. 3, 1946.

2. The percentage of Jews at Mittelwerk was relatively low.

3. His "Statement of Personal History" (date unknown) explained why he had joined the Nazi party. As he saw it, the vast unemployment in Germany caused a proliferation of socialist and communist parties which could take control of the government. He joined the Nazi party "to help, I believed, in the preservation of the western culture."

4. Feb. 28, 1949 memorandum from [redacted] re "German Scientists Program Immigration of Arthur Louis Hugo Rudolph." (The position of Deputy Attorney General, the current number two position, was not officially established until 1950. Prior to then, The Assistant to the Attorney General was second in command.) B6

5. Jean Michel, *Dora: The Nazi Concentration Camp Where Modern Space Technology Was Born and 30,000 Prisoners Died* (Holt, Rinehart & Winston); Frederick I. Ordway, *The Rocket Team from the V-2 to the Saturn Moon Rocket - The Inside Story of How a Small Group of Engineers Changed World History* (Thomas Y. Crowell).

6. The picture was listed as coming from the personal collection of Werner von Braun who came to the United States as part of Operation Paperclip in 1945. Von Braun went on to become the first Director of the Marshall Space Flight Center, serving from 1960 to 1970. He died in 1977, before OSI's founding.

7. Geneva Convention, ch. 3, Art. 31.

8. One of the defendants, [redacted] had come to the U.S. under Operation Paperclip. He was arrested in Ohio and sent back to Germany to face trial. Fifteen of the defendants were convicted of various crimes B6 [redacted] was one of the four acquitted. B6

9. June 2, 1947 interview of Rudolph by [redacted] of the U.S. Army Air Force, p. 22. B6

10. Apr. 21, 1983 Prosecution Memorandum to [redacted] B6

11. [redacted] B6

12. See p. 533. B5

13. Dec. 2, 1983 memo to [redacted] from [redacted] re "Agreement in Rudolph Case." B6

14. "Ex-Nazi Denies Role in Deaths of Slave Laborers," by James Markham, *The New York Times*, Oct. 21, 1984. See also, "Coerced to Leave U.S., Moon Rocket Designer Says," by Uli Schmetzer, *The Chicago Tribune*, Oct. 22, 1984. Director Sher responded to the *Chicago Tribune* article in a letter to the editor, printed on Nov. 15, 1984.

15. "NASA Refuses to Rescind Award," *The Washington Post*, Feb. 12, 1985.

16. See pp. 432-433.

17. In order to prove murder, Germany would have to establish "base motive" - a mental state (such as racial hatred) at the time of the offense. Germany lacked proof that Rudolph had knowledge of the executions beforehand. July 30, 1990 memorandum to [redacted] from [redacted] B6 OSI re "West German Investigation of Arthur L.H. Rudolph." B6

18. The Department's Office of Public Affairs received an inquiry from a reporter about a plan by Rudolph to travel to Canada to meet with [redacted] B6 June 29, 1990 memo from [redacted] B6 re "Possible Attempt by Arthur Rudolph to Enter USA."

OSI believed the motivation for Rudolph's trip was to gain entry into the United States. June 1990 letter from [redacted] B6 to [redacted] B6 and [redacted] B6 RCMP War Crimes Investigation Section. Others saw it as Rudolph seeking a platform to make his case before the Canadians, with the hope of affecting American politicians and public opinion. "War-Crime Charges Haunt Scientist," by John F. Burns, *The New York Times*, Aug. 6, 1990.

19. See e.g., "War-Crime Charges Haunt Scientist," *supra*, n. 18; "Congressman Takes Up Case of Scientist Accused of Nazi Brutality," *The Associated Press*, May 2, 1990; "Representative James Traficant," a profile on the CBS news magazine *60 Minutes*, Nov. 11, 1990; "Ohio Congressman Says U.S. Pressured German Scientist to Leave Country," *AP*, May 1, 1990; "Congressman Defends Bid by Scientist for Citizenship," by Paul Moloney, *The Toronto Star*, July 5, 1990; "Scientist Accused of War Crimes Deserves Hearing," by John Bonfatti, *AP*, July 5, 1990; "Traficant Implores Rudolph to Return," *The Huntsville News*, May 14, 1990.

At a dinner honoring Rudolph, [redacted] opined that "a powerful Jewish lobby" had pressured the Justice Department to deport Rudolph. "Polyester Cowboy' Defends Old Nazi," *American Political Network, Inc.*, May 16, 1990. B6

"Traficant Supports Rudolph," by Mike Paludan, *The Huntsville Times*, May 13, 1990. B6 opposition to OSI is discussed further on pp. 160, 543, 553, notes 56-58.

20. Aug. 3, 1990 memorandum from [redacted] to the Rudolph file re "Documents on Rudolph Found at Freiburg by [redacted] B6 The documents, as catalogued in Freiburg, are RH8/v.1210, pp. 105-06, 136-37. B6

21. *Rudolph v. Minister of Employment and Immigration*, Federal Court of Appeal, Ottawa, Canada, No. A-403-91 (May 1, 1992), p. 2.

22. The attorneys were BS BS BS did the second.

23. *Rudolph v. U.S. Dep't of Justice, et al.*, No. C 92-20116 JW (N.D. CA. Feb. 10, 1993).

24. *Rudolph v. U.S. Dep't of Justice, et al.*, No. C 94-20411 JW (N.D. CA., Apr. 12, 1995).

In 1993, the WJC brought public pressure to bear on Ohio State University and Brooks Air Force Base in San Antonio, each of which had honored Hubertus Strughold, a Paperclip scientist who had been a leader in the field of aerospace medicine. (Strughold died in 1987.) As a result of the WJC pressure, Ohio State removed reference to Strughold from a stained glass mural commemorating leaders in the history of medicine. "Alleged Nazi's Name on Library Stirs Protest," by Mark Smith, *The Houston Chronicle*, Oct 29, 1993. In 1995, after Air Force personnel reviewed material at OSI, the Strughold Aeromedical Library at Brooks Air Force Base was renamed. "Name of Scientist Nixed from Library Due to Nazi Past," by Alissa Kaplan, *JTA*, Oct 6, 1995. Eleven years later, pressure from the ADL led the New Mexico Museum of Space History to remove Strughold's name from its Hall of Fame. "Former Nazi Removed from Space Hall of Fame," *The San Jose Mercury News*, May 18, 2006.

In 2003, the Space Medicine Branch of the Aerospace Medical Association contacted OSI about Strughold. The association awarded a prize in his name and had recently been asked to rename the award. In order to evaluate the request, they wanted accurate information about Strughold's past.

name. BS BS As of this writing, the prize is still awarded in Strughold's

26. See e.g., pp. 95, n.1, 174, n. 46, 277, 279-281, 378, 552, notes 47 and 53.

27. "Of Nazis and NASA: The Case of Arthur Rudolph," *CrossFire*, July 11, 1990.

28. ABC News *Nightline*, Oct. 18, 1984.

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1 **Tscherim Soobzokov – The Victim of Vigilantes**

2 The story of Tscherim Soobzokov was suffused with intrigue from the start. There were
3 allegations that he was a Nazi murderer, a CIA operative and a white collar criminal. Although
4 none of the charges was ever tested in court, Soobzokov was killed, apparently by someone who
5 believed the Nazi allegations to be true.

6 Soobzokov was the only OSI defendant from Circassia, then an Islamic region of the
7 Soviet Union between the Black and Caspian Seas.¹ He worked with the CIA during the 1950s.
8 In 1955 he was admitted to the U.S. under the INA from Amman, Jordan. According to the
9 Agency, it had no involvement in his obtaining a visa.²

10 Six years after he emigrated, Soobzokov became a U.S. citizen. He settled in Paterson,
11 New Jersey where he became active in Democratic party politics and was a controversial leader
12 in the local Circassian community. In the 1960s, several members of that community urged INS
13 to review his activities both before and after he entered the country. INS found no basis for
14 action.³

15 In 1972, one of Soobzokov's political rivals reported him to the Social Security
16 Administration. He claimed that Soobzokov was presenting fraudulent birth certificates to the
17 Social Security Administration and bribing someone in the bureaucracy to accept the documents
18 in order to obtain government subsidies for members of the Circassian community. While
19 looking into the charges, the Social Security investigator heard rumors that Soobzokov had been
20 in the SS and was involved in the killing of three Soviet officials during World War II. The
21 investigator requested information from the Berlin Document Center (BDC), a repository of
22 personnel and membership records of the Nazi party and its affiliated organizations. He received

1 a roster showing that first lieutenant Soobzokov had transferred from a foreign army into the
2 Waffen SS in January 1945.⁴ A cover letter from the Director of the BDC said that while there
3 were no other records about Soobzokov, she "assumed," "based on similar cases," that
4 Soobzokov transferred from a group that had worked either with SS partisan-hunting units or SS
5 mobile killing units.⁵ The investigator passed this information along to INS. (

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9 INS ordered "a full-scale and comprehensive
10 investigation." Soobzokov gave a sworn statement, outlining his wartime activities. He claimed
11 that after the Germans had overrun his home town, he performed clerical duties for the local
12 chief of police (who was under German supervision) and then joined a German military unit in
13 order to fight the Russians. He denied knowledge of any Nazi execution squads and claimed he
14 had deserted after a few months. His asserted goal was to assist a group of Circassian refugees
15 trying to escape from both the Germans and the Russians. He explained that a Circassian general
16 fighting in an SS unit against the Soviets provided him with an SS uniform and listed him as a
17 member of the unit. Soobzokov said that this enabled him to travel more readily in Nazi-
18 occupied territory. He denied taking part in any duties or assignments for the SS. While
19 acknowledging that he had not revealed his full background on his visa application (he had not
20 mentioned any SS affiliation), he said that "[t]he correct information was given to another
21 government agency and I do not understand why they have not come forward."

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In March 1976, INS announced that it was dropping the investigation.¹⁰ It was officially closed in January 1977.¹¹ Ironically, that same month, the bestseller *Wanted! The Search for Nazis in America* was published. While alleging that there were dozens of war criminals in the country, the book focused on four, one of whom was Soobzokov. According to author Howard Blum, Soobzokov served as a first lieutenant in a mobile killing unit that had participated in the murder of 1,400,000 Jews on the Eastern front. The book also accused Soobzokov of criminal activity in the United States, specifically the Social Security scam outlined above. Blum suggested that Soobzokov's political connections were protecting him from prosecution. After the book was published, the Jewish Defense League (JDL), a militant organization whose motto was "Never Again," twice picketed Soobzokov's home, chanting "Death to Soobzokov" and "No trial for Nazi murderers."¹² They also picketed the home of his attorney.¹³

Soobzokov aggressively fought the allegations in the media.¹⁴ He also filed several lawsuits against persons both inside the government and out. These included libel as well as invasion-of-privacy claims. The privacy suit was dismissed; a libel action against Blum and the book publishers was settled, with the terms sealed.¹⁵

The book and the attendant publicity led to renewed law enforcement interest in

1 Soobzokov.

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To counter these claims, Soobzokov submitted his own set of affidavits from persons who had known him during the war, including some of the refugees he allegedly had helped.¹⁸

The SLU was established a month after the U.S. Attorney's office opened its criminal investigation. In 1979, the U.S. Attorney's Office closed its investigation and INS' civil investigation passed from the SLU to the newly-formed OSI. At just about this time, a pipe bomb was left in a cigar box outside Soobzokov's home. A note attached to the device read "Buddy. You didn't kill enough of them. Have a smoke on me. Fedorenko."¹⁹ A caller to the Associated Press warned that this was the first of many to be sent "to Nazi war criminals across the United States."²⁰

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Although the statements by Soviet witnesses tied Soobzokov to possible persecutory

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Rather than charging him with

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involvement in persecution, the government focused on his failure to disclose his full military

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and criminal history to the State Department at the time of his visa application, and to the INS

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when he sought citizenship. OSI filed charges in December 1979, alleging illegal procurement of

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citizenship (in that he had never been "lawfully admitted" because he had concealed pertinent

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information which would likely have barred his entry) and misrepresentations in his citizenship

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application. The complaint also charged that Soobzokov lacked the good moral character

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necessary for citizenship; the lack of good moral character was based on his misrepresentations.

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The media, in reporting on the case, stated that Soobokov had "worked as a U.S. intelligence

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agent in Jordan in the 1950s, and may have been granted asylum secretly.²⁷

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Whatever happened during the file review, the documents were now part of the case, and OSI had to determine their authenticity and impact. The office contacted persons who had been in Amman at the time the newly discovered documents were apparently prepared. Though none could remember the specific case, they did attest that the documents were of the type in use at the time.³⁰

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The only charges left were those involving the unreported criminal record. Although the Soviets claimed Soobzokov had spent five years in custody, the statutes violated involved hooliganism and arbitrariness, both crimes used by the Soviets to pursue those who opposed the Communist state.³¹ The Soviet Union was unwilling to give details about the alleged criminal activity.

Accordingly, in July 1980, the government moved to dismiss the complaint. The motion detailed the efforts OSI had made to verify its facts both before and after the case was filed.

also issued an extensive statement of explanation to the press. In addition to reviewing the sequence of events, he sought to answer questions that he knew would be raised by the case.

Some may find it ironic that we must terminate this litigation because the defendant admitted his affiliation with organizations loyal to the Third Reich. But that, in my opinion, is the law, ironic or not, as it applies to this case. . . .

The question might well arise whether Soobzokov had any independent connection to the Central Intelligence Agency apart from the fact that the State Department apparently forwarded to that agency the information I have described. . . . I am aware that a claim of such a connection has been made in the public media. My answer to such a question is simply that I am not at liberty to reveal any such connection, if it exists, in this case or in any other case. I will state what is more to the point: My decision to seek dismissal of the complaint in this case, or in any other case – and indeed my decision whether or not to institute a proceeding in any case – is entirely independent of whether or not an individual

1 has any connection with the Central Intelligence Agency or any other government
2 agency. I will also state that the CIA has not directly or indirectly sought to
3 influence the decision to institute this case or to withdraw it. On the contrary, the
4 CIA has been responsive to the requests we have made in our investigations. I
5 take this occasion to restate what has been my determination since I came to the
6 Office of Special Investigations in January: a decision to file legal proceedings,
7 and necessarily any decision to withdraw proceedings once filed, will be made on
8 the evidence and the law.³³
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10 Ryan went on to say that the investigation remained open; if the government developed sufficient
11 evidence to prove Soobzokov had taken part in persecution, a new action would be filed.

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19 There were varying reactions to the aborted case. Some were openly skeptical about
20 whether the late-discovered documents were genuine, especially since the State Department,
21 apparently the originating agency of the documents, had no record of them.³⁵ Others found the
22 CIA explanation plausible.³⁶
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24 Dismissal of the case was, tragically, a pyrrhic victory for Soobzokov. The Jewish
25 Defense Organization (JDO), a splinter of the JDL, repeatedly called for violence against him.³⁷

26 On August 14, 1985, a week after their last such exhortation, Soobzokov reported to the police
27 that two people in a car had tried to run him down.³⁸ Hours later, a fire broke out in the

1 Soobzokov car, parked in front of his home. A neighbor went to alert the family and a bomb
2 exploded as Soobzokov opened the door.³⁹ Soobzokov was fatally injured and died three weeks
3 later. His wife, daughter and four-year old grandchild suffered injuries in the blast.

4 The JDO and JDL both denied responsibility. Nonetheless, the JDL “applaud[ed] the
5 action”⁴⁰ and the JDO described it as “a righteous act.”⁴¹ The FBI suspected the perpetrators
6 were also responsible for two other bombings.⁴² One injured OSI defendant Elmars Sprogis,⁴³
7 the second resulted in the death of Alexander Odeh, a west coast regional director of the
8 American-Arab Anti-Discrimination Committee. As of this writing, none of these cases has been
9 solved.⁴⁴

10 **DRAFT**
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1. It is today part of the Karachay-Cherkessia Republic of the Russian Federation.

3. June 30, 1972 memorandum from [redacted] B6] INS District Director, Newark, New Jersey to INS Assistant Commission, Investigations, Central Office, re "Your CO 703.1066 of April 19, 1972; letter to [redacted] B6] Aug. 26, 1974, Report of Investigation re "Soobzokov" from [redacted] B6

4. Undated draft Prosecution Memorandum prepared by [redacted]

5. Apr. 11, 1973 letter to [redacted]

7. May 31, 1974 memorandum from Acting District Director, New York, New York to District Director, Newark, New Jersey.

8. Aug. 16, 1974 Report of Investigation by [redacted]

9. May 28, 1975 memo "Undeveloped Leads," by [redacted] B6

10. "Immigration Service Drops Probe of County Inspector," by Dean Bender, *The Morning News* (Paterson, NJ), Mar. 26, 1976.

11. Jan. 27, 1977 memorandum from INS Regional Director, Eastern Division to District Director, New York.

12. "Ex-SS Officer Cleared of War Activity Charges," *The (New Jersey) Star-Ledger*, May 28, 1979.

13. June 12, 1978 memorandum to Soobzokov file from Martin Mendelsohn, SLU Chief.

14. See e.g., The MacNeil/Lehrer News Hour, "Nazis in America," Feb. 2, 1977; "The Trouble with Howard Blum's Wanted!" by Richard Steinger, *The Soho Weekly News*, May 26, 1977.

15. There were several libel suits. Defendants in two libel actions included Blum, his publisher and distributors, as well as several sources named in the book. A member of the Circassian community, depicted in the book as an accomplice of Soobzokov's in the alleged Social Security scam, also sued. "Second Suit to Be Filed Over Book," by Mark Gabriel, *The Evening News* (Paterson, NJ), Feb. 7, 1977.

In a separate libel case, Soobzokov sued CBS, a reporter and the producer, writer and executive producer of "Shadows Behind the Golden Door - Eye on Nazis," a show which aired on television in Jan. 1975, long before the book was published. "Soobzokov Files \$5 Million Libel Suit," *The Paterson (New Jersey) News*, Dec. 13, 1975; "County Aide Sues TV for 'Nazi' Libel," *The Herald-News (North New Jersey)*, Dec. 19, 1975.

The privacy suit was against Blum, the INS and Social Security investigators who looked into the allegations against Soobzokov, and HEW, then the parent agency of the Social Security Administration. The thrust of the privacy lawsuit was that the government's investigators had violated the law by giving information collected during their investigations to the author. *Soobzokov v. Blum, et. al*, No. 77 Civ. 1750-CLB (S.D.N.Y. 1978).

16. Affidavit of [redacted] filed in *Soobzokov v. Blum, et al.*, No. 1927/77 (Sup. Ct. County of Nassau). See also, "U.S. Jury Probing Atrocity Charges," by Nadine Joseph, *The Bergen (NJ) Record*, Mar. 6, 1978; "Jerseyan Downplays Nazi Probe," by Herb Jaffe, *The Sunday Star-Ledger (Newark, NJ)*, Mar. 12, 1978; "Time Running Out for Jury in Probe of Nazi Suspect," by Herb Jaffe, *The Star-Ledger*, Sept. 11, 1978. B6

17. Mar. 29, 1978 letter from Soobzokov attorney [redacted] B6

18. In another example of the perpetrator's sick humor, the return addressee on the envelope was Karl Linnas, against whom OSI filed charges several months later. Linnas was never a suspect in the pipe bombing. June 14, 1979 FBI teletype from Washington Field Office to FBI Director. B5

19. "Ex-Nazi Gets Parcel Bomb in Paterson," *The Sunday Star-Ledger*, June 3, 1979; "Bomb Likely Planted by Professional," *The Record (Northern New Jersey)*, Aug. 16, 1985. Soobzokov called the police when he saw the note. They removed the device and detonated it at a firing range. B6

20. Because of statutory restrictions, the USAO could not share any grand jury material. B6

21. July 27, 1979 letter to DOS Visa Office from [redacted] B6

22. [redacted] B6

23. [redacted] *supra*, n. 23. B6

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26. The other three featured subjects were John Demjanjuk (against whom charges were filed in 1977); Valerian Trifa (1975) and Andrija Artukovic (1951).

27. "Alleged Nazi Charged," *The Washington Post*, Dec. 6, 1979; see also, "Odyssey of a Nazi Collaborator," by Charles R. Allen, Jr., *Jewish Currents*, Dec. 1977, published a year before the case was filed.

28. June 26, 1980 letter to [] from []

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29. Apr. 9, 1980 memo from [] to [] re "Review of CIA Files." B6

30. OSI also found the secretary who had worked at the Embassy in Amman. However, she was no longer mentally competent.

31. The Soviet Criminal Code defined hooliganism as mischievous acts accompanied by manifest disrespect for society; arbitrariness was wilful exercising outside of established authority by any person of his actual or assumed right called into question by another person.

32. In one respect the motion misstated the facts. The moving papers asserted that pre-filing checks with the FBI and CIA revealed no information about Soobzokov having served with the Waffen SS, the local police or the Northern Caucasian Legion. In fact, as set forth in the draft prosecution memorandum, OSI knew that Soobzokov had advised the CIA of his SS connection after he arrived in the United States. The complaint, however, was based on his failure to notify the State Department or INS.

33. [] statement, issued July 9, 1980. B6

34. [] ^{B6} *supra*, n. 17; Dec. 3, 1980 memo to [] ^{B6} from [] ^{B6} re Soobzokov Investigation; and Dec. 30, 1980 memo from Ryan to DAAG Richard re Tschirim Soobzokov.

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35. (C) [B6] "CIA 1952 Files Save Ex-Nazi in
Deportation Case; Blushing Prosecutors Withdraw Suit," by Thomas O'Toole, *The Washington
Post*, July 10, 1980. So did [B6]
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37. "JDL Assassins of Tscherim Soobzokov Are Still at Large in NJ," *New Jersey Prosecutor*,
June 16, 1986.

38. "Ex-Nazi Loses Foot as Bomb Rips Home," *New York Post*, Aug. 16, 1985.

39. "Man Accused on Nazi Past Injured by Bomb in Jersey," by Ralph Blumenthal, *The New York Times*, Aug. 16, 1985.

40. "Former Nazi Critically Injured by Bomb at Paterson Home," by Edna Bailey, *The Newark Star Ledger*, Aug. 16, 1985.

41. "Man Accused on Nazi Past, Injured by Bomb in Jersey," *supra*, n. 39.

42. "Official Says F.B.I. Has Suspects in Blasts Laid to Extremist Jews," by Stephen Engelberg, *The New York Times*, July 17, 1986.

43. *See* p. 527.

44. A macabre footnote to the Soobzokov story surfaced two years after his death when the *New York Post* ran a nine-page display of wartime photographs allegedly found in a Paterson garbage heap three blocks from the Soobzokov home. The newspaper admitted paying \$5,000 for the pictures, which showed hanged partisans and POWs, as well as images of Hitler, Mussolini and Goering on the Eastern front. The pictures were found in the back of a stamp album and one of Soobzokov's neighbors told the newspaper that Soobzokov had been an avid stamp collector. Based on this, as well as the fact that some of the pictures appeared to have been taken in Soobzokov's native Caucasus region, the newspaper concluded that "a mass of circumstantial evidence" indicated the photos belonged to Soobzokov. They drew this conclusion despite the fact that the Soobzokov family had moved from the area shortly after the bombing. "Album of Evil" *New York Post*, Aug. 24, 1987. Although experts believed the photos were genuine, there was no evidence about who placed them in the garbage or how that person obtained them. Nonetheless, the leader of the JDO said "It looks like history's proven us right." "War Photos Found in Trash," by Leslie Berger, *The Bergen Record*, Aug. 25, 1987.

1 **The Belarus Conspiracy -- Sensationalism vs. Reality**

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3 Over the years [] has made sweeping allegations of a B6

4 government conspiracy to intentionally, but covertly, admit legions of Nazi war criminals into the
5 United States. [] claims, rejected by historians as well as by the GAO, have focused on B6
6 emigrés from Belarus.

7 Belarus (formerly Byelorussia or White Russia) has a tortured history of twentieth century
8 subjugation. The country was partitioned by Poland and the U.S.S.R. after the Russo-Polish War
9 (1919-1921). The portion taken by the Soviets became the Byelorussian Soviet Socialist
10 Republic (B.S.S.R.).

11 The Molotov-Ribbentrop Pact of August 1939 provided for the division of Poland
12 between Germany and the U.S.S.R. in the event of war. The following month both Germany and
13 the Soviet Union invaded Poland. The Soviets formally annexed portions of the former Polish
14 territory into the B.S.S.R. and Ukraine. Two years later, Germany invaded the U.S.S.R. and
15 occupied Byelorussia, installing Nazi sympathizers in government posts. In 1944, the Soviets
16 "liberated" the area and reinstalled it as a Soviet republic. With the collapse of the Soviet Union,
17 the independent state of Belarus was established in 1991.

18 The fate of Byelorussian Nazi collaborators became a matter of abiding interest to [] B6

19 B6 3.1 In February 1980, []

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[B6] told them [] that the U.S. intelligence community had B6

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knowingly defied immigration laws to make this wholesale emigration possible. The motive,

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according to [] , was to have the Byelorussians assist the intelligence community in anti- B6

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communist activities. [] even suggested that Ronald Reagan (who had been an actor during B6

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the relevant years) had been involved in the conspiracy.³

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The memorandum detailed [] thesis, *to wit*, that the Office of Policy Coordination B6

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(OPC), a component of the CIA which worked with the Departments of State and Defense, had

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assisted Byelorussian Nazis in entering the United States under the guise of displaced persons.

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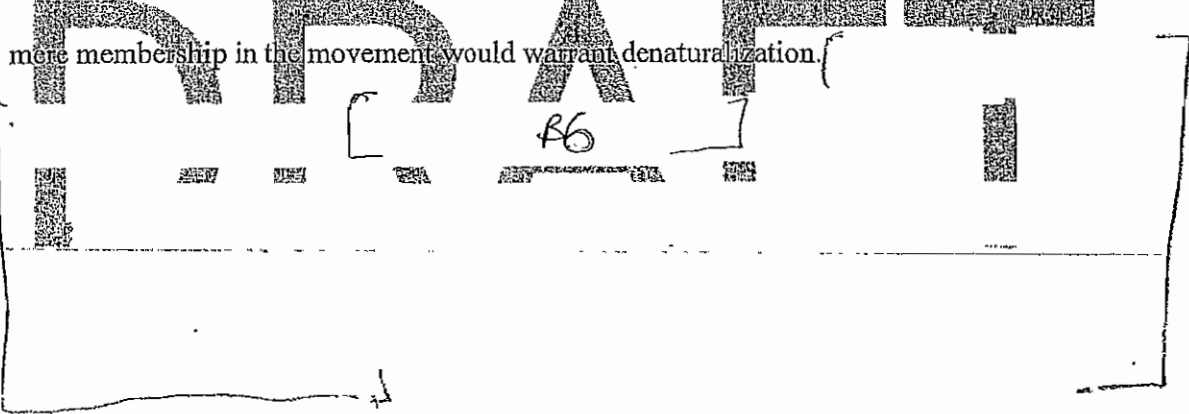
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1 1977 hearings that had helped lead to the creation of OSI.⁹ [redacted] also told the Congressman ^{B6}
2 about the two Byelorussian men whose files he had allegedly uncovered. One was an SS general
3 employed by the CIA/OPC, and the other was a cabinet-level official who worked as an
4 informant for a number of U.S. agencies. Both had emigrated to the United States but had since
5 died. [redacted] passed this information on to the ^{B6}
6 chairman of the House Judiciary Committee.¹⁰

7 In addition to promoting his ideas to Congress, [redacted] ^{B6} wrote to [redacted] ^{B6} with a
8 strategy for pursuing Byelorussian cases. He suggested proving that the "Byelorussian
9 Collaborationist Movement" was linked to systematic persecution of Jews and therefore that
10 mere membership in the movement would warrant denaturalization. [redacted]



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19 Nothing [redacted] found in subsequent research altered his opinion. ^{B6}
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21 Meanwhile, Loftus began a public campaign to promote his ideas. On May 16, 1982 he
22 appeared on *60 Minutes*, then the most popular television show in the country. He reiterated and
23 expanded upon the allegations he had made to Congressman Frank: he now asserted that files
24 had been withheld not only from Congress, but also from the courts, from the CIA, and from
25 local agents of the Immigration Service. Loftus described finding the missing files in the
26 Army's vaults. Moreover, he estimated that with the knowledge of the FBI, CIC, the Army and

1 the State Department, "more than 300" Byelorussian Nazis were in the United States, some
2 working for "quasi-governmental" agencies like Radio Free Europe and Radio Liberty.

3 [] expounded also on his thesis that the Army had withheld relevant information B6
4 from Congress; he believed it called into question the GAO's 1978 finding of no conspiracy to
5 obstruct investigations. For [] the conspiracy was ongoing. He claimed to have access to B6
6 classified information which showed that the U.S. had recently admitted someone who had
7 cooperated with the OPC "way back then." [] there was "substantial B6
8 evidence" that the recent admittee had persecuted hundreds of thousands of civilians.

9 Loftus' television appearance received front page coverage in major newspapers.¹²
10 Dozens of Congressmen wrote to the Attorney General, asking him to investigate whether there
11 had been any violation of federal law.¹³ Both the chairman and the ranking minority member of
12 the Judiciary Committee asked the GAO to reopen its investigation.¹⁴ (GAO ultimately limited
13 the focus of the new investigation to whether the U.S. government had assisted Nazi war
14 criminals in entering the country.) DOJ issued a press release stating that the Public Integrity
15 Section of the Criminal Division was investigating whether DOD had withheld documents.¹⁵

16 In order to further stanch the impact of Loftus' allegations [] B6
17 [B6] wrote to *60 Minutes*. An excerpt of the letter was aired two weeks later (in a
18 portion of the show then reserved for viewer comments). The letter asserted that the
19 Byelorussian investigations were continuing and that cases would be brought if the evidence
20 warranted.

21 [] deemed the *60 Minutes* broadcast of sufficient import to warrant B6
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60 Minutes rebroadcast the Loftus segment in September 1982. B6 wrote a letter to be used in the rebroadcast, in which he challenged Loftus' assertion that over 300 Byelorussian Nazis were in the United States.

DRAFT

This irresponsible statement has understandably been taken by many people to mean that there are 300 Byelorussian war criminals living in the United States: "people who kill babies," in Mr. Loftus' words.

That is not true. Mr. Loftus persistently made such claims while he was employed by this Office, but he was unable to document them satisfactorily and eventually he left the Office. The investigation has continued quite thoroughly without him.¹⁷

The rerun included a statement by B6 that "[t]he person [Loftus] described as persecuting hundreds of thousands of civilians was not a Nazi but a Middle Eastern national who had nothing to do with World War II."

Two months after the rebroadcast, publication of a book by Loftus brought the issue again before the public.¹⁸ The book expanded his charges beyond Byelorussia, alleging that between 1948 and 1950 "the State Department systematically imported the leaders of nearly all the puppet regimes established by the Third Reich from the Baltic to the Black Sea."¹⁹ It opened with a

1 dramatic account of Loftus surreptitiously making a midnight visit to a cemetery in New Jersey
2 that held the remains of dozens of Byelorussian "war criminals." Describing Byelorussia, Loftus
3 wrote: "In no other nation under German occupation did the inhabitants so willingly and
4 enthusiastically visit such a degree of inhumanity upon their neighbors."²⁰

5 OSI had not been contacted for any fact checking by the publisher before the book went
6 to press. Reviewing the book for the office [B6]

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13 Thus, his claim that the Byelorussian Nazis ran everything for the
14 Germans" ²² referenced (with an improper number) a microfilm which in fact established that the
15 Germans bemoaned Byelorussian inertia.

16 Pogroms against the Jews have been till now next to impossible to stage because
17 of the passivity and political indifference of the White Russians.

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20 A pronounced Anti-Semitism is missing. . . . The population has general feelings
21 of hate and rage against the Jews and approves of the German measures
22 (establishment of ghettos, creation of work columns, security police management,
23 etc.) However, it is not in the position to seize the initiative in handling the Jews.
24 It can be said very generally that the population lacks activism; the reason for this
25 is to be found probably to a certain extent in its treatment by the soviets.²³
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~~27 The book also made some grandiose generalizations. Thus, it suggested that all members~~
28 of the Waffen SS were "war criminals" and hence ineligible to enter the United States. In fact,
29 mere membership in the Waffen SS – which was all that could be established for many in the

1 cemetery visited by Loftus – was not disqualifying for those who entered after April 1951.²⁴

2 Despite these factual concerns, the book had wide appeal. Indeed, CBS used it as the

3 plotline for an attempted revival of "Kojak," an immensely popular television series.²⁵

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In 1985, the GAO issued a new report. It found no evidence of a concerted effort by the intelligence agencies to bring Byelorussian Nazis and Axis collaborators to the United States. Most of the collaborators who had assisted the U.S. remained in Europe. The government had chosen whom to help on a case-by-case basis; they were not part of an overall aid program. The report referenced five individuals who had emigrated with U.S. assistance.²⁸ All were investigated by OSI.

In the end, OSI prosecuted two Byelorussians, Basil Arteshenko and John Avdzej (Some who might have been prosecuted had died in the interim.) Avdzej had in fact been identified by [redacted] as a potential defendant. Indeed, he was one of the five men listed as priorities in the memorandum sent to the Attorney General in October 1980. The case ultimately filed, however,

bore little relationship to the one set forth in [redacted] writings.

[redacted] had partly confused Jan Avdzej with his brother, who in fact was denied a visa because of his wartime activities.²⁹ [redacted]

[redacted] For example, [redacted] reported that Avdzej was "wanted for his war crimes by several nations" when in fact no nation had ever sought his apprehension.

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[] wide-ranging accusations have had both short and long-term impact. Little more [] B6

than a year after Loftus' book and television revelations [] began [] B6

work on the Verbelen Report.³² She needed Army and CIA cooperation to access documents in their files. Both organizations were distrustful, citing Loftus' public dissemination of material he had earlier gathered at the behest of OSI. []

DRAFT

Although scholars have dismissed [] claims as hyperbolic, his allegations – dramatic [] B6 and conspiratorial – have clearly resonated with a segment of the public. Even today – more than 25 years after [] first made his claims – OSI speakers are often are asked about the [] B6 Belarus allegations.

The Belarus Secret launched Loftus' career as a "whistle blower." He describes himself as someone who "may know more intelligence secrets than anyone alive"³⁴ and he has gone on to other exposés. Some of them involve Jewish and/or World War II issues, e.g., the "Bush-Nazi scandal" and "the truth about Jonathan Pollard."³⁵ He also co-authored two books, *The Secret War Against the Jews: How Western Espionage Betrayed the Jewish People*³⁶ and *Unholy Trinity: The Vatican, The Nazis, and Soviet Intelligence*³⁷ and served for several years as president of the Florida Holocaust Museum. Loftus continues to be a featured speaker before

many Jewish organizations. As of this writing, a radio show titled "The Loftus Report" airs three nights a week on the Talkline Communications Network³⁸

1. Loftus traces his involvement in Jewish causes back to 1973 when he claims to have "helped train Israelis on a covert operation that turned the tide of battle in the 1973 Yom Kippur War." www.John-Loftus.com (last visited, Dec. 2008). Loftus expanded on this in a newspaper interview--According to Loftus, the U.S. knew of Arab plans to attack Israel in 1973 but Secretary of State Kissinger chose to withhold supplies from Israel for political reasons. Loftus says he worked behind the scenes with then Chief of Staff Alexander Haig to help the Israelis. On Haig's orders, Loftus gave 40 Israeli officers a crash course in how to use a newly introduced missile system. Days later, the Israelis used that very system to prevent an Egyptian tank advance. "Ex-prosecutor Crusades to Unveil 'Evil,'" by Graham Brink, *The St. Petersburg Times* (Fl.), Mar. 22, 2002.

2. Feb. 8, 1980 memo from [redacted]

[redacted] te [redacted]

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[redacted] Jan. 4, 2005 [redacted]

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4. See p. 2.

5. *Widespread Conspiracy to Obstruct Probes of Alleged Nazi War Criminals Not Supported by Available Evidence - Controversy May Continue* (GAO/GGD-78-73, May 15, 1978).

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8. See e.g., June 17, 1982 memo from [redacted]

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accord; B6 interview, *supra*, n. 3.

9. Loftus justified turning over classified documents on the ground that he simply "provided Congress records they were supposed to get." "Possible Cover-Up on Nazis is Focus of New U.S. Inquiry," by Ralph Blumenthal, *The New York Times*, May 23, 1982.

10. Feb. 23, 1982 letter to [redacted]

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11. June 8, 1982 memo from [redacted]

] "Belarus." B6

12. See e.g., "American Officials Accused of Aiding Nazi Collaborators," by Dale Russakoff, *The Washington Post*, May 17, 1982; "Nazis Brought to U.S. to Work Against Soviets in Cold War," by Thomas O'Toole, *The Washington Post*, May 20, 1982; "The Secret Under the Little Cemetery," by Thomas O'Toole, *The Washington Post*, May 23, 1982; "Possible Cover-Up on

Nazis is Focus of New U.S. Inquiry," by Ralph Blumenthal, *The New York Times*.

14. May 17, 1982 letter from
May 18, 1982 letter from

15. DOJ Press Release, May 17, 1982.

16. May 25, 1982 memo from [redacted] to the Attorney General re "60 Minutes' Segment on Byelorussian Nazi War Criminals."

17. Sept. 1, 1982 letter from [redacted] to Mike Wallace, CBS News.

18. See e.g., "Cold War Cited in Letter to INS; Nazi Collaborators were Recruited as 'Assets,'" by Thomas O'Toole, *The Washington Post*, Nov. 8, 1982; "Books of The Times," by Ralph Blumenthal, *The New York Times*, Dec. 28, 1982; "Nazi War Criminals in the US," by Spencer Punnett, *The Christian Science Monitor*, Feb. 2, 1983.

19. *The Belarus Secret*, by John Loftus (Alfred A. Knopf), p. 84.

20. *The Belarus Secret*, *supra*, n. 19, p. 29.

21. [redacted] Another scathing criticism of the historical content of the book can be found in "How Not to Pursue War Criminals in USA, What's Wrong with *The Belarus Secret*," by Charles Allen, *Jewish Currents*, Apr. 1984.

22. *The Belarus Secret*, *supra*, n. 19, p. 24.

23. Ereignismeldungen No. 43, National Archives Microfilm Section T175, Roll 233, frames 2721786 and 2721780.

24. Instruction Memo No. 206, Apr. 15, 1951 from [redacted] to European Coordinator, DPC. Although service in the Waffen SS was originally *per se* disqualifying, by November 1951, the United States was making measured distinctions. Those below the rank of major in "military" units were admissible, barring relevant information warranting a contrary determination. See e.g., Instruction Memo No. 242, Nov. 12, 1951 to All Senior Officers from [redacted] amp guard duty, for example, was relevant

material warranting exclusion.)

25. In the show, broadcast on Feb. 16, 1985, the police try to solve the murders of three elderly Russians who may have been Nazi war criminals--The answer to the mystery lies in "the Belarus file," a top-secret document in the possession of the State Department. The show credits acknowledged that the plot was based on *The Belarus Secret*.

27. Mar. 28, 1983 memorandum re "Allegations that the 1977-78 GAO Investigation of Nazi War Criminals was Obstructed," p.15.

28. *Nazis and Axis Collaborators Were Used to Further U.S. Anti-Communist Objectives in Europe - Some Immigrated to the United States* (GAO/GGD-85-66, June 28, 1985)

29. Oct. 24, 1983 memo to [redacted] from [redacted] re "Proposed OSI Denaturalization Prosecution - John Awdzej: District of New Jersey" B6

30. Jan. 12, 1984 memo from [redacted] to [redacted] Belarus Team re "Annotated Version of [redacted] Account of John Awdzej's Wartime Activities & Postwar Immigration." B6

31. See p. 362.

32. See pp. 385-389.

34. www.John-Loftus.com

35. Both pieces can be accessed from a link on Loftus' website.

In the Bush piece, Loftus argues that the Bush family made its fortune from the Holocaust. He asserts that family members served on corporate boards of Nazi front groups even after it became apparent that doing so helped the Third Reich.

The Pollard piece was originally published in *Moment* magazine, June 2003. Loftus argues that Pollard was "framed" and that the U.S. was "conned" into convicting him of compromising U.S. methods and sources. According to Loftus, the information Pollard was convicted of passing on actually came from Aldrich Ames and Robert Hanson, both later determined to be spies within the U.S. intelligence community. The only crime committed by

Pollard, according to Loftus, was giving Israel the names of Saudi and Arab intelligence sources in order to "help protect[] Israelis and Americans from terrorists."

36. St. Martin's Press (1994). The book, written with Mark Aarons, accuses western diplomats and governments of extraordinary perfidies against the Jewish people and Jewish state. Among the allegations in the book: that an anti-Semitic and anti-Zionist Allen Dulles (later head of the CIA) helped set up dummy corporations to absorb Jewish assets confiscated by the Nazis and that, while ostensibly supporting Israel in the Six Day War, both the U.S. and U.K. shared Israeli defense plans with Arab oil producers.

37. St. Martin's Press (1991). The book, also written with Mark Aarons, claims that the Pope entered into a post-war espionage alliance with British and American intelligence agents. According to the authors, the three powers ferreted Nazi criminals out of Europe to use in the fight against Communism. The book also argues that U.S. and Britain bugged Swiss banks during the war and then buried secrets of Nazi gold transfers in order to protect improprieties by Allen Dulles.

38. www.TalklineCommunications.com. For several years prior, Loftus had a nightly five-minute open-source intelligence piece on ABC National Radio (The John Batchelor Show).

DRAFT

1 **Chapter Six: Expanding Jurisdiction**

2 Introduction

3 When allegations arose of U.S. assistance to some notorious persecutors who had never
4 even entered the United States, the public demanded that the claims be investigated. Successive
5 administrations turned to OSI to determine what role, if any, the government had played. OSI's
6 reports on these matters are seen by some as its greatest contribution to social justice. Others,
7 concerned that the additional assignments were not accompanied by expanded resources, view
8 the reports as a diversion from OSI's main mission, *i.e.*, the removal of Nazi persecutors from the
9 United States. Whatever one's perspective, it cannot be gainsaid that the reports address matters
10 of national and international concern. They also provide a comprehensive review of some of the
11 moral issues that arise in the world of realpolitik.

12 Although written solely to answer pressing questions about specific matters, the reports
13 had the unanticipated effect of increasing OSI's visibility on the world stage. The reports
14 ultimately uncovered questionable conduct by various countries and triggered reflection on the
15 role of governments around the world. The significance of the issues raised in the reports, and
16 the quality of the scholarship evident in their preparation, drew the attention of the international
17 media. As a result, OSI's profile was enormously elevated.

18 OSI began exerting a presence overseas in other ways as well. Its role gradually
19 expanded to include helping, encouraging, and sometimes pressuring, other countries to
20 acknowledge more openly their role in World War II and to prosecute Nazi persecutors in their
21 midst.

1 **Reports**

2 **Klaus Barbie – The Butcher of Lyons**

3 That OSI personnel would help prepare a report on Klaus Barbie – or anyone else – was
4 not readily foreseeable when OSI was founded. OSI’s mission was framed in terms of its
5 litigative purpose: to secure the denaturalization and deportation of persons in the United States
6 who assisted the Nazis in persecuting civilians between 1933 and 1945.¹ Such a mandate did
7 not necessarily include writing reports about U.S. post-war activity. Moreover, since Barbie was
8 not in the United States, there was no obvious reason for OSI to focus on him.

9 Klaus Barbie, a German by birth, joined the SS and served the Nazi cause in Vichy
10 France. Between 1942 and 1944, he served in the intelligence branch of the German security
11 apparatus and headed the Gestapo in Lyons. His rank at war’s end was captain. During his
12 tenure in Lyons, thousands of Jews and resistance fighters were tortured by the Gestapo and sent
13 to concentration camps. Most died. Because of his alleged role in many of these atrocities,
14 Barbie became known as “the butcher of Lyons.”

15 At the war’s end, France submitted a statement of charges against Barbie to the United
16 Nations War Crimes Commission.² Among the alleged crimes were “murder and massacres,
17 systematic terrorism, and execution of hostages.” He was sentenced to death *in absentia* by a
18 French postwar military tribunal.³

19 In 1963, the French government learned that Barbie was living in Bolivia under the name
20 Klaus Altmann.⁴ It did not seek his removal until nine years later, when Beate Klarsfeld, a Nazi
21 hunter living in France, uncovered the information and made it public. In 1972, and again in
22 1975, Bolivia’s military government – with which Barbie had close ties – refused France’s

1 request for extradition on the ground that there was no extradition treaty between the two
2 countries.⁵ After civilians regained control of the Bolivian government in 1982, France filed a
3 new indictment against Barbie, charging him with "crimes against humanity," and again
4 requested his return. Although there was still no extradition treaty, the new administration
5 devised an alternative method to oust him. He was charged with making a fraudulent loan to the
6 Bolivian government and expelled to French Guyana. When his plane landed, the French, who
7 had been forewarned, arrested him and flew him to France. He arrived in Lyons on February 6,
8 1983.

9 News of his expulsion unleashed a flood of information. A former American intelligence
10 officer asserted that the U.S. had protected Barbie and paid him \$1,700 a month for intelligence
11 information after the war.⁶ Newspapers reported that while the Americans were harboring Barbie
12 in Germany, they turned down French requests to locate him.⁷ A Canadian, claiming to know
13 Barbie from Bolivia, recalled Barbie's telling him that he had come to the United States several
14 times during the 1960s and 1970s.⁸ Many in the media called for a governmental investigation
15 to determine what relationship, if any, the U.S. had with Barbie. The Justice Department, the
16 State Department, the CIA, and Defense Department were all suggested as appropriate agencies
17 to pursue the allegations.⁹ In a well-publicized letter, the Chairman of the House Judiciary
18 Committee wrote to Attorney General William French Smith, suggesting that OSI:

19 could play a unique and valuable role in any investigation conducted by the
20 Executive Branch. Given the expertise of OSI's staff, and the fact that attorneys
21 and investigators there have the necessary security clearances, it would seem that
22 the office would be ideally suited to coordinate such an inquiry. More
23 importantly, OSI, with no direct ties to the intelligence community and no vested
24 interest in any predetermined outcome, is sufficiently detached to assure that its
25 findings would be viewed as complete and honest.

1 . . . While the primary function of OSI must remain the prosecution of
2 denaturalization and deportation actions involving suspected Nazi war criminals
3 in this country, the case of Klaus Barbie is potentially too important a part of the
4 historical record to be left unattended.¹⁰

5 [redacted]
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11 [redacted] William Clark, the national security advisor, urged the Attorney General to
12 reconsider.¹³ Outside groups also pressed to have the matter investigated,¹⁴ and nine members of
13 Congress appealed to President Reagan to authorize an investigation.¹⁵

14 As this pressure was mounting, OSI Director [redacted] received a call from an ABC B6
15 News reporter who had gone to Bolivia to pursue the story. He told [redacted] he had documents B6
16 showing that Barbie had worked for U.S. intelligence and that the United States had helped him
17 escape to Bolivia. The story would air on that evening's news. [redacted] B6

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20 [redacted] B6
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22 [redacted] He was named [redacted] B6

23 [redacted] Special Assistant for the duration of the project [redacted] selected two investigators, one B6
24 historian, and one attorney, all from OSI, to work with him full time.¹⁷ The report was

1 completed five months later.

2 It revealed not only that the Army used Barbie as an informant after the war,¹⁸ but that it
3 had ignored several requests by the French for extradition, had misled the State Department
4 (which then passed on this misinformation to the French) as to Barbie's whereabouts, and had
5 used the services of a shady intermediary to help Barbie escape to Bolivia in 1951 under the
6 name Klaus Altmann.¹⁹ Once he was there, the U.S. no longer protected or used him. He
7 obtained Bolivian citizenship and twice made business trips to the United States under his new
8 name;²⁰ the visits were not connected to any agency or activity of the U.S. government.

9 The 218-page report (with over 600 pages of attachments) was detailed and pointed.²¹ It
10 recounted the enormous pressure on the Army to develop "sources" during the early Cold War
11 period, and concluded that from 1947 – when Barbie first began working with the United States –
12 until 1949, the U.S. did not know that he was accused of involvement in wartime atrocities. (The
13 report suggests that this information was available, but not readily so.) By 1949, however, the
14 allegations were inescapable, as Nazi victims and former Resistance fighters were publicly
15 claiming that Barbie had used torture as an interrogation technique.

16 Ryan concluded that

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The report was non-judgmental about the initial decision to work with Barbie.

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... I cannot conclude that those who made the decision to employ and rely on Klaus Barbie ought now to be vilified for the decision. Any one of us, had we been there, might have made the opposite decision. But one must recognize that those who did in fact have to make a decision made a defensible one, even if it was not the only defensible one. No one to whom I spoke in this investigation was insensitive to the horrors perpetrated by Nazi Germany, nor entirely comfortable with the irony of using a Gestapo officer in the service of the United States. They were, on the whole, conscientious and patriotic men faced with a difficult assignment. Under the circumstances, I believe that their choice to enlist Barbie's assistance was neither cynical nor corrupt.

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Once the United States had reason to believe that Barbie was involved in war crimes,

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Prosecution was not an option, since the five year statute of limitations on obstruction of justice had run. The obstruction had occurred in 1950 when Army officers -- knowing that the State Department was considering an extradition request from France -- falsely told the State Department that Barbie's whereabouts were unknown.

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The report ended on an upbeat note, hopeful that persons faced with similar issues in the future would not assume that anything was permissible, including obstruction of justice, simply because it falls under the cloak of intelligence.

These findings and conclusions – that the United States had worked with a Nazi Gestapo leader and that Army officers had obstructed justice on his behalf – would alone have been sufficiently shocking to make headlines, as had the allegations leading to the report. However,

[Redacted] went further. In a letter accompanying the report, and addressed to the Attorney General, [Redacted] urged that the United States publicly apologize to France.

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This recommendation had originally been in the report itself. However, after receiving an advance copy of the document, the

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On August 12, 1983, the State Department presented the full report to the French chargé d'affaires in Washington, along with a note expressing the United States' "deep regrets over the actions taken in Germany . . . to conceal Barbie." Five days later, the cover letter, report and apology were made public. The story received enormous attention. It was page one in *The New York Times*, which printed Ryan's cover letter in its entirety, large excerpts from the report, and a statement by Ryan as its "quotation of the day." The Justice Department held a news conference and the presidential press secretary announced delivery of the note to the French.²⁷ Ryan was a

1 guest on two of the three major network morning news shows as well as on public television's
2 *MacNeil/Lehrer News Hour*.

3 Although there was much praise for his scholarship, there was some debate over his
4 conclusions. Conservative newspaper columnist Patrick Buchanan, who had no sympathy for
5 Barbie, thought an apology unwarranted.

6 Ironic, is it not? The U.S., which gave thousands of its sons freeing France from
7 the grip of Adolf Hitler, finds itself apologizing to the French nation, many of
8 whose citizens actively collaborated with Hitler.²⁸

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Some Jewish leaders shared her skepticism.³⁰ Other public figures
did as well. Flora Lewis, foreign affairs columnist for *The New York Times*, found the report
"unconvincing" in its conclusion that the obstruction of justice was limited to only about a dozen
officers; she suspected others higher up in the administration were involved.³¹ Her suspicions got
some support from Eugene Kolb, an Army colonel who had supervised the Barbie matter in the
early years. He opined that Ryan's inability to establish culpability higher up the chain might be
due to the fact that decisions at the higher levels were often made during phonecalls, leaving no
paper trail.³²

B6

For the most part, however, reaction to the report and the apology was positive. *The*
Washington Post found the "candor and balance" of the report "a credit to the Justice Department
and particularly to its principal author, Allan A. Ryan, Jr."³³ *Time* magazine called the report
"remarkable."³⁴ *The New York Times* noted "[h]ow rare it is for a proud and powerful nation to

1 admit shabby behavior.” It described the report as one which “serves history and invites us to
2 learn from it.”³⁵ Newspapers in both France and Germany praised the work, with one German
3 paper extolling the United States’ “powerful and impressive capacity for democratic self-
4 purging.”³⁶ And the GAO, which later investigated the Barbie matter for Congress, fully
5 endorsed [redacted] report.³⁷ B6

6 [redacted] [B6] [B6] High 2, B5

13 When the next Nazi-era investigation needed to be conducted, there was no issue about
14 whether the Department of Justice should be involved or which office should prepare the
15 document. OSI was the natural and noncontroversial choice to do the investigations and to write
16 reports on Robert Verbelen, Kurt Waldheim, and Josef Mengele, each discussed elsewhere in this
17 report.³⁸ The quality of the Barbie and subsequent reports helped establish OSI as an essential
18 resource for persons dealing with World War II issues.

19 As one result of that development, the Attorney General designated the OSI Director to
20 represent the Justice Department on the Interagency Working Group (IWG), created to
21 implement the Nazi War Crimes Disclosure Act of 1998 and the Japanese Imperial Government
22 Disclosure Act of 2000. The IWG is charged with locating, identifying, inventorying,

1 recommending for declassification and making available all classified Nazi war criminal records,
2 subject to certain specified restrictions. The restrictions include records related to or supporting
3 any active or inactive investigation, inquiry, or prosecution by OSI and any records solely in the
4 possession, custody or control of the office.³⁹

5 The Barbie report has thus had the unforeseeable effect of subtly expanding OSI's
6 recognized mandate. After the report was issued, it became a given that the mandate went
7 beyond prosecutions and covered matters beyond U.S. borders.

8 As for Barbie, in 1987, after an eight-week trial in France, he was convicted of crimes
9 against humanity and sentenced to life in prison.⁴⁰ He died four years later.

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1. Department of Justice Order No. 851-79, Sept. 4, 1979.
2. See p. 324, n. 7 re the role of the UNWCC.
3. Under French law the conviction lapsed after twenty years. "Exorcising Old Ghosts," *Time*, Feb. 21, 1983.
4. "France Had Data on Barbie in '63, Document Shows," by Paul Webster, *The Washington Post*, Feb. 16, 1983.
5. *Latin American Newsletters, Ltd.*, Mar. 9, 1973; *Latin American Newsletters, Ltd.*, Jan. 3, 1975.

In 1976, the Bolivian Ambassador to France was murdered. His alleged role in attempting to stop the French government from seeking Barbie's extradition was given by the terrorists as one reason for the assassination. "Envoy of Bolivia is Slain in Paris," by Andreas Freund, *The New York Times*, May 12, 1976.

Apart from the French request, Peru sought to extradite Barbie on charges of currency fraud and smuggling. He was in Bolivian custody for almost 8 months before the Peruvian request was denied. "War Crimes Suspect Released by Bolivia," *The New York Times*, Oct. 30, 1973.

6. "Ex-Gestapo Official in Lyons is Linked to U.S. Intelligence," by Ralph Blumenthal, *The New York Times*, Feb. 8, 1983. "Canadian Says Barbie Boasted of Visiting U.S.," by Ralph Blumenthal, *The New York Times*, Feb. 28, 1983.

The Department of Justice report ultimately issued on Barbie casts serious doubt on the \$1700 figure. It concludes it much more likely that Barbie was paid about \$100 per month in food, cigarettes, ration cards and German currency.

7. "Klaus Barbie's American Connection" (editorial), *The Washington Post*, Mar. 1, 1983.
8. "Canadian Says Barbie Boasted of Visiting U.S.," *supra*, n. 6.
9. "Obligation to History," *The New York Times* (editorial), Mar. 3, 1983.

10. Feb. 24, 1983 letter to [redacted] from [redacted] B6
 [redacted] B6 For reports of the letter, see e.g., "U.S. is Reported to Have Evidence That Barbie Visited in '69 and '70," by Ralph Blumenthal, *The New York Times*, Mar. 8, 1983; "Rodino Asks Probe of U.S. Aid to Seized Nazi," by Robert Cohen, *The Newark Star-Ledger*, Mar. 9, 1983.] B6

11. Jan. 12, 2002 recollection of [redacted]] B6

12. Mar. 3, 1983 letter to [redacted] from [redacted] See also, "U.S. is Reported to Have Evidence that Barbie Visited in '69 and '70," *supra*, n.10. B6

[redacted]

] B6

[] "Nazi Hunting for Nothing," by Martin Mendelsohn, *The San Jose Mercury News*, June 12, 1983. At the time he wrote the article, Mendelsohn served as legal counsel to the Simon Wiesenthal Center in Los Angeles; it is unclear whether he was speaking for the organization.] B6

13. "U.S. Plans an Inquiry on Barbie," by Ralph Blumenthal, *The New York Times*, Mar. 15, 1983. The file containing Clark's request (#182-1359) was destroyed by the National Archives in due course (Jan. 1999) before this report was written.

14. "Justice to Probe Whether U.S. Protected Nazi," by Mary Thornton, *The Washington Post*, Mar. 15, 1983.

15. "U.S. is Reported to have Evidence that Barbie Visited in '69 and '70," *supra*, n. 10.

16.] B6

17. [] was named Acting Director of OSI while [] worked on the project. B6

B6 18. During the period covered by the Barbie episode, intelligence work in Europe was handled by the CIC. Although the National Security Act of 1947 created the CIA, it was several years before the agency was fully operational.

19. The Army used an underground railroad of sorts, which had been established by others to evacuate defectors or informants who had come to Austria from the Soviet zone or Soviet bloc countries. The escape route, known as the "rat line," ran from Austria to Italy. There, for an exorbitant fee, a Croatian priest helped Nazis obtain passports from the International Red Cross and visas from various South American countries. One Army document described the priest as "a Fascist, war criminal, etc." [] same across no other instance in which the United States used the rat line. B6

20. Barbie traveled to the U.S. in 1969 and 1970, before OSI was formed. It was of course also before OSI entered tens of thousands of names to the Watchlist. *See* p. 297. In any event, a Watchlist posting of the name "Barbie" would have been useless since he traveled under the name Altmann.

21. The report, "Klaus Barbie and the United States Government: A Report to the Assistant Attorney General, Criminal Division, U.S. Department of Justice (1983)" along with supporting exhibits, can be found at www.usdoj.gov/criminal/osi/press/osi-reports/ (last visited Nov. 2008).

The great majority of documents reviewed for the report had been classified when executed and remained classified during the intervening years. The agencies involved, particularly the U.S. Army, declassified extensive amounts of material so that it could be included in the report's appendix. The declassifications were done in full consultation with

[] In the report's introduction [] expressed confidence that the material still classified did B6

not in any way detract from the completeness of the report.

22. Statement of Eugene Kolb, who supervised and directed the Americans working with Barbie, on *The MacNeil/Lehrer News Hour*, Aug. 16, 1983.

23. The 1976 Final Report of the Select Committee to Study Governmental Operations with Respect to Intelligence Activities of the United States Senate, 94th Congress, 2nd Session (generally referred to as "the Church Report"), had detailed abuses in counterintelligence by the FBI and CIA. This increased public awareness of the issues and led to new guidelines for domestic intelligence agencies.

24.

25. Aug. 7, 1983 memo to [redacted] from [redacted] re [redacted]

26. Dec. 13, 2002 recorded telephone interview with [redacted]

27. "U.S. Says Army Shielded Barbie; Offers its 'Regrets' to the French," by Stuart Taylor, Jr., Aug. 17, 1983. Press Secretary Larry Speakes said "there was no interagency conspiracy to conceal Barbie from the French."

28. "Successors of Klaus Barbie," by Patrick Buchanan, *The New York Post*, Aug. 18, 1983.

29. "What Job Specifications Call for a War Criminal?" by Stuart Taylor, Jr., *The New York Times*, Aug. 21, 1983.

30. See statements of Julius Berman, Chairman of the Conference of Presidents of Major American Jewish Organizations, *The MacNeil/Lehrer News Hour*, Aug. 16, 1983.

31. "Barbie's American Connection," by Flora Lewis, *The New York Times*, Aug. 25, 1983.

32. *The MacNeil/Lehrer News Hour*, Aug. 16, 1983.

33. "The Barbie Case" (editorial), *The Washington Post*, Aug. 18, 1983.

34. "Delaying Justice for 33 Years: How 'the Butcher of Lyons' Got Secret U.S. Help and Protection," by Maureen Dowd, *Time* magazine, Aug. 29, 1983.

35. "Shame, Pride and Klaus Barbie" (editorial), *The New York Times*, Aug. 18, 1983.

36. The *Stuttgarter Zeitung*, as quoted in "Uneasy Europeans Praise U.S. 'Mea Culpa' in Klaus Barbie Case," by William Drozdiak, *The Washington Post*, Aug. 19, 1983.

37. *Nazis and Axis Collaborators Were Used to Further U.S. Anti-Communist Objectives in Europe - Some Emigrated to the United States*, (GAO/GGD - 85 - 66, June 28, 1985), pp. 21-22.

38. See pp. 310-329, 385-405.

39. [

] BS

40. France had abolished the death penalty in 1981.

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1 **Robert Verbelen – Another Barbie?**

2 The Verbelen assignment came on the heels of the Barbie report and in many ways was a
3 natural outgrowth of the earlier document. The Barbie report shocked the public with news that
4 U.S. intelligence services had worked with a known Nazi collaborator after the war. Verbelen
5 raised the question of whether the Barbie case was unique.

6 During World War II, Robert Jan Verbelen commanded an SS security corps which
7 terrorized the Belgian populace in retaliation for activities conducted by the Belgian
8 underground. Acts of reprisal included the arbitrary arrest, beating, torture, imprisonment,
9 deportation, and murder of innocent civilians. In 1947, a Belgian military court convicted
10 Verbelen *in absentia* and sentenced him to death. At the time of this conviction, he was living in
11 Austria and working under a pseudonym for the CIC.

12 In 1983, the ADL filed a Freedom of Information Act (FOIA) request for documents
13 about Verbelen. The responsive material established that Verbelen had worked for the CIC from
14 1947 to 1956, although the redacted documents suggested that CIC had been unaware of his true
15 identity.

16 The ADL likened the matter to the Barbie revelations and petitioned the Attorney General
17 to institute a “comprehensive examination” of working relationships between Nazi collaborators
18 and U.S. intelligence services.¹ [] asked OSI to conduct a preliminary inquiry into the Bt
19 allegations “as expeditiously as possible.”² This initial inquiry quickly confirmed the broad
20 outlines of Verbelen’s work for the United States – he ran a network providing intelligence and
21 counterintelligence information – but it also raised a host of additional questions. Among them
22 were when the Army had first learned Verbelen’s true identity, whether there were other known

1 Nazi collaborators working for CIC, and whether the Army had protected him. After meeting
2 with [redacted] and the historian working on the report, [redacted] authorized OSI to expand B6
3 its inquiry in order to resolve these issues.³

4 In June 1985, before OSI completed its investigation, the GAO issued a report dealing
5 with some of the same matters. The GAO report had been commissioned by the House Judiciary
6 Committee. Its purpose was to determine, in part, whether federal agencies helped Nazi war
7 criminals and collaborators emigrate to the United States and/or conceal their backgrounds once
8 they were admitted. The GAO concluded that U.S. intelligence agencies knowingly employed
9 alleged Nazis and Axis collaborators who could provide information about Communist agents in
10 western Europe.⁴ The report stated that 12 such cooperators had emigrated to the United States,
11 four with U.S. assistance. The report did not name the twelve, although the GAO provided the
12 names to OSI.

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18 CIC severed ties to Verbelen for reasons independent of his past;⁷ there was no evidence that the
19 United States attempted to prevent his being brought to justice.

20 On the broader question of whether the U.S. systematically used known Nazi
21 collaborators as intelligence sources, the answer was an emphatic yes.

22 For the CIC, its mission of protecting American security apparently

1 justified the use of persons who were morally repugnant. A . . . CIC directive
2 explained that, while it was preferable to use informants whose ideals were
3 similar to those of the United States, this did not preclude “use of an informant of
4 the ‘stab-your-neighbor’ type if it seems that there is definite value to be obtained
5 thereby. It is realized that all types of characters must be used in order to obtain
6 adequate coverage.” Nearly all the former CIC agents interviewed in the course of
7 this investigation acknowledged that membership in the SS or participation in
8 questionable war-time activities did not disqualify a person from use as a CIC
9 informant. Indeed, Verbelen’s first CIC control agent maintained that it was
10 advantageous to use such persons, not only because of their knowledge and
11 experience, but also because their dependence upon the United States for
12 protection ensured their reliability.⁸
13

14 OSI cited 13 unnamed individuals with Nazi backgrounds who had been used by the CIC in
15 Austria, noting that in some instances the CIC protected the men from arrest.⁹ The list was
16 intended to be illustrative but not exhaustive.¹⁰

17 The report did not have the impact of other OSI special projects. Perhaps this is because
18 its most astonishing conclusion – that there had been a pattern of reliance upon Nazi
19 collaborators – had been foretold by the GAO two years earlier. The matter had received wide
20 media coverage at that time.¹¹ Moreover, Verbelen – unlike Mengele, Barbie and Waldheim –
21 was not a household name. Therefore, news of his connection to U.S. intelligence services did
22 not generate front page coverage or public outrage.

23 At the time the report was issued, Verbelen was living in Austria, writing espionage
24 novels and working as a speaker and publicist for neo-Nazi organizations. He died in 1991;
25 according to newspaper accounts, his funeral was attended by a muster of approximately 100
26 former SS troops and neo-Nazis.¹²

1

1. Dec. 16, 1983 letter to [redacted] from [redacted], ADL National Civil Rights Division. B6

2. Dec. 27, 1983 memo from [redacted] to [redacted] and [redacted] Dec. 27, 1983 memo from A [redacted] B6

3. Sept. 8, 2003 interview with [redacted] who worked on the Verbelen report; Mar. 30, 1984 memo to file from Sherife [redacted] "Authorization to Conduct Full Investigation." B6

4. *Nazis and Axis Collaborators Were Used to Further U.S. Anti-Communist Objectives in Europe - Some Immigrated to the United States* (GAO/GGD - 85-66, June 28, 1985).

5. June 5, 1985

[B6]

[B6]

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6. They were concerned that at least one foreign intelligence agency knew about his work with CIC and they felt that his intelligence gathering capabilities were no longer of value.

7. "Robert Jan Verbelen and the United States Government: A Report to the Assistant Attorney General, Criminal Division, U.S. Department of Justice (1988)" can be found at www.usdoj.gov/criminal/osi/press/osi-reports/ (last visited Nov. 2008).

8. The Justice Department took the additional precaution of not revealing the names of the countries associated with these individuals when doing so might help a reader ascertain the informant's identity.

9. May 26, 1988 memo from [redacted] for the Criminal Division to [redacted] B6 regarding OSI's Verbelen Report." re "Response to Memorandum of May 11, 1988 B6

10. See e.g., "2 War Criminals had Official Help in Getting to U.S., Study Finds," by Ralph Blumenthal, *The New York Times*, June 29, 1985; "U.S. Aid in Emigration of Nazis Reported," by Don Shannon, *The Los Angeles Times*, June 29, 1985; "U.S., Nazis Traded Escape, Facts: GAO Study," AP, *The Chicago Tribune*, June 29, 1985; "U.S. Used Ex-Nazis Against Soviets,

Hill Told," by George Lardner, Jr., *The Washington Post*, June 29, 1985.

12. "Robert Jan Verbelen Dies at 79," by Ralph Blumenthal, *The New York Times*, Jan. 8, 1991.

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1 by OSI.⁶

2 The Justice Department welcomed the opportunity.⁷ The Attorney General called on OSI
3 to compile all credible evidence on Mengele's current whereabouts as well as information
4 concerning his travel in occupied Germany, his suspected flight to South America and the
5 reliability of reports that he had visited the United States.⁸

6 The proposed inquiry differed from the Barbie and Verbelen reports in one significant
7 respect: there needed to be a worldwide hunt for Mengele. In light of this, the Department of
8 Justice assigned the U.S. Marshals Service to work with OSI. As originally conceived, OSI
9 would focus on the historical issues: had Mengele ever been in the U.S.? had he worked with
10 U.S. agents? The Marshals Service would take the lead in finding him.⁹ Simon Wiesenthal, the
11 West Germans and the Israelis were also committed to finding Mengele; all parties agreed to
12 work cooperatively.

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13 The matter galvanized the public. Spurred on, perhaps, by millions of dollars in privately
14 sponsored reward money,¹⁰ citizens reported Mengele sightings as diverse as the Club Med in
15 Bora Bora, a Chinese restaurant in Salt Lake City, and a nursing home in Massachusetts. After
16 undergoing hypnosis, one citizen reported being tortured by a neo-Nazi group that included
17 Mengele. A psychic offered to use her powers to help the government in its search.

18 Just as OSI was to begin its investigation, a Senate panel convened to hold hearings on
19 the matter.¹¹ [] was one of many speakers at a hearing filled with dramatic testimony. B6
20 New York senator Alphonse D'Amato, citing CIA reports, testified that Mengele might have
21 financed his life and travels as a fugitive in South America by trafficking in cocaine. The dean of
22 the SWC passed on reports that Mengele was in Paraguay where he had taken up the hobby of

1 bee collecting. And a three-star general, Assistant Chief of Staff for Army intelligence, was
2 strongly rebuked for not being fully informed on Mengele's post-war activity. The chair of the
3 subcommittee opined that "[i]t is time the Army gave some priority to Josef Mengele."¹²

4 The Army took heed. That very day, a task force was established to assist the
5 Department of Justice in its Mengele quest.¹³ The Army agreed to supply "approximately 20
6 personnel" to conduct a "frame by frame" search of relevant microfilm reels.¹⁴

7 All parties presumed that Mengele was alive. Director Sher was optimistic that Mengele
8 would be brought to justice.¹⁵ The working assumption was that Mengele would be returned to
9 Germany or Israel, each of which had an outstanding warrant for his arrest.¹⁶

10 Unfortunately, there were no good leads as to Mengele's whereabouts. The break came
11 when German law enforcement officials, acting on a tip, raided the home of a longtime
12 employee of the Mengele family business in Germany.¹⁷ They found a series of letters
13 apparently mailed by Mengele from Brazil between 1972 and 1978, as well as letters from a
14 Brazilian couple who had sheltered Mengele on the outskirts of Sao Paolo. A 1979 letter from
15 the couple reported that Mengele was dead.¹⁸

16 Sao Paulo police raided the couple's home and found writings and diaries that the couple
17 said were Mengele's. There were also pictures of an elderly man and of Rolf Mengele – Josef's
18 grown son now living in Germany. The couple said Mengele had drowned in 1979 and they led
19 the authorities to his putative grave. The Brazilians exhumed the body amid much publicity; they
20 agreed to work with foreign experts to determine whether the remains were Mengele's.¹⁹

21 These developments created two independent strands to the investigation – determining
22 whether (1) the writings, photos and possessions found in Brazil belonged to Mengele; and (2)

1 whether the exhumed body was his. OSI commissioned a handwriting analyst and a paper and
2 ink document examiner to study the Brazilian writings. Both experts had worked on OSI cases
3 before, analyzing whether World War II documents found in the Soviet Union were genuine. For
4 the handwriting expert, the Mengele comparison was easier to make than most because the well-
5 educated Mengele had ingrained writing habits by the time he joined the SS. The documents in
6 the SS file and the Brazilian writings were so similar that they looked as if they were penned
7 within weeks of each other.²⁰ The paper and ink analysis confirmed that the materials used had
8 been available in Brazil during the 1970s when the diaries were purportedly written.²¹

9 A team of six American forensic experts traveled to Sao Paolo to study the remains.
10 Three of the experts were chosen by the Marshals Service; the other three were selected by the
11 SWC.

12 At the time of the exhumation, the two most reliable methods for rendering a positive
13 identification were x-ray and fingerprint comparisons. Neither seemed possible in this case.

14 There were no known x-rays of Mengele from Germany or Brazil to compare with the corpse.
15 Although there were fingerprints in Mengele's SS file, the corpse's skin had so decomposed that
16 no print could be taken.²² Nonetheless, in less than two weeks, the scientists made a preliminary
17 assessment that the body was Mengele's. They expressed confidence "within a reasonable
18 scientific certainty."²³

19 Their confidence was based on a variety of factors, the most persuasive of which was an
20 innovative West German photographic comparison in which pictures of the exhumed skull were
21 matched on a video terminal to known photographs of Mengele in his SS file. The skull pictures
22 were also compared to the photographs found in Brazil. Given 24 points of comparison, there

1 was overwhelming identity among the pictures. In addition, the corpse's gender, height and age
2 at death were consistent with Mengele's. The bones in the upper jaw of the skeleton showed a
3 gap between the front teeth which matched a known gap in Mengele's jaw; it also matched a
4 denture found with the Brazilian belongings. German dental records showed that Mengele had
5 fillings in his molars; so too did the teeth from the skeleton. Moreover, the fillings in the skeletal
6 teeth were European rather than Brazilian.

7 The Brazilian and German governments, as well as the SWC, quickly embraced the
8 scientists' conclusion. The U.S. Attorney General was also convinced. He announced that OSI
9 would now focus on the historical portion of the case, determining whether Mengele had ever
10 been in U.S. custody or had any relationship with U.S. officials.²⁴ Director Sher and the
11 associate director of the U.S. Marshals service told Congress that the Department "accept[ed] the
12 conclusion" that the exhumed body was Mengele's.²⁵ The Marshals' role in the investigation
13 was ended.²⁶

14 In fact, not everyone was fully convinced that the body was Mengele's. There were
15 several loose ends that Israel, the U.S. Army, and some within OSI and the Department of Justice
16 wanted resolved. Most importantly, there was no evidence of osteomyelitis in the skeletal bones
17 despite the fact that Mengele's SS records indicated that he had suffered from the disease. In
18 addition, there was concern that a careless exhumation might have compromised the integrity of
19 the bone samples. Moreover, the Brazilian diaries mentioned dental x-rays, yet no one had
20 located these films to compare with the teeth in the coffin. The diaries also documented root
21 canal work performed by someone named Gama in the town of Sama. However, there was no
22 such town and the only dentist named Gama who could be found had no records paralleling the

1 entries in the diary.²⁷

2 These unresolved issues raised two disturbing possibilities: (1) assuming Mengele had
3 been living in Brazil, this was an elaborate hoax to connect him to an unrelated dead body in
4 order to end the worldwide manhunt;²⁸ or (2) the scientists were right, but for insufficient
5 reasons, and the case "would plague everyone forever."²⁹ Although the Attorney General's
6 pronouncement had nominally ended inquiry into the identity of the corpse, the government kept
7 the matter under review as part of its ongoing historical investigation. Thus, four months after
8 the identity issue was supposedly resolved, [] attended a meeting B6

9 in Jerusalem with Israeli and German officials to discuss the need for more medical evidence.

10 [] attended a followup meeting the next month as well.³⁰ B6

11 The most important breakthrough in the historical research occurred when [] B6

12 [] B6 reviewed a manuscript which Mengele had sent to his son.³¹ Mengele described
13 it as an "autobiographical novel." In it, the protagonist explained that he had been detained

14 briefly by the Americans after the war. He also described how his discharge papers (issued under
15 an alias) had later been altered to another pseudonym. [] assumed that Mengele was the B6

16 protagonist and that none of the people mentioned in the "novel" were identified by their real
17 names. He then extrapolated from the code used to alter the protagonist's discharge papers, in
18 order to ascertain the true name of a Munich doctor mentioned as having been with the
19 protagonist in an American POW camp. The extrapolation was not precise, however; several
20 names were possible fits.

21 This was the pre-computer era. [] checked old Munich telephone directories at the B6
22 Library of Congress. One of the possible names was listed in the 1950 phonebook. [] B6

1 then went to the National Archives and searched through a microfilm card index of medical
2 officers who served in the German military. He found a match, and the Consulate in Germany
3 located the doctor in a small German village. Reluctantly, he spoke with [redacted]; He provided [redacted]
4 a plethora of previously unknown information about Mengele's post-war aliases and travels.³²
5 The military task force then located personnel files of those who could have come in contact with
6 Mengele at the various places mentioned. The Army obtained current addresses for the men
7 from the Veterans Administration.

8 OSI interviewed scores of these witnesses and learned that Mengele had been in custody
9 in two separate POW camps immediately following the war. He had used an alias, at least
10 initially, and U.S. forces never realized that he was a war crimes suspect. He was released in
11 routine fashion in the chaotic conditions that existed at the time. He did not work with the U.S.
12 authorities nor did he ever travel to Canada or the United States.³³

13 With the historical inquiry largely complete, a dramatic breakthrough was made in
14 identifying the corpse. By happenstance, the U.S. Consul General in Sao Paulo was an erstwhile
15 oral pathologist. The dental questions therefore particularly intrigued him. In a eureka moment,
16 he realized that the reference to Sama, where Mengele's diary said he had his root canal work
17 done, could be an abbreviation; the Consul General guessed it was shorthand for Santo Amaro:

18 There was one last hopeless place we had not looked -- the yellow pages of
19 the phone book. And there it was, Dr. Hercy Gonzago Gama Angelo in Santo
20 Amaro. My secretary called and asked for an appointment and she was told, "yes,
21 but Dr. Gama does only root canals."
22

23 Dr. Gama's records established that he had seen a patient using a known Mengele alias on
24 the dates listed in Mengele's diary. Mengele's precise recording of payments also dovetailed

1 with the doctor's records, and the patient's address was the home of the couple who had sheltered
2 Mengele. Although Dr. Gama had no x-rays, he mentioned that the patient had been referred by
3 a dentist named Kasumasa Tutiya. As the Consul General recalled:

4 By then I was hyperventilating. . . . Mengele had told [the couple who
5 sheltered him] that he went to a Japanese dentist because, he said, all Japanese
6 looked alike and so Japanese could not tell one white from another. But he never
7 told [them] the name of the dentist.

8 When visited, Dr. Tutiya promptly found the dental charts . . . and,
9 disproving Dr. Mengele's thesis, he also recognized photographs of the patient.

10 . . . I then asked him sort of casually, "You wouldn't have any x-rays,
11 would you?" And he said "Wait a minute" and came back 30 seconds later with
12 eight dental films. . . . When the x-rays dropped on the table, I thought I had won
13 the lottery.³⁴

14
15 ~~Although there were no German x-rays with which to compare, the finding was key. The~~
16 ~~recent x-rays were consistent with dental information contained in Mengele's SS file and with~~
17 ~~the seven teeth found in the coffin. The dentist also confirmed that the bridges and crowns in the~~
18 ~~skull were his own work.³⁵ All but one of the dozens of dental appointments listed in Mengele's~~
19 ~~diary matched the dentist's records.~~

20 OSI pressured the Brazilians to obtain medical information from other doctors mentioned
21 in Mengele's writings.³⁶ When they failed to do so, [] went to Brazil himself. B6

22 Accompanied by members of the German, Brazilian and Israeli investigative teams, he found and
23 interviewed various doctors. Everything he learned corroborated the diaries. One interview was
24 especially pivotal as it connected the diarist with the pre-war Mengele. The diary discussed a
25 1972 surgical procedure. The Brazilian doctor recollected the case as one performed in his out-
26 patient clinic; he was certain that he would not have kept the records. Nonetheless, he acceded to

27 [] request for permission to search the files.³⁷ Within 15 minutes the team found records B6

1 under the name of a known Mengele alias. The patient's medical history stated that he had had a
2 hernia operation 48 years earlier. That would have been 1924. Mengele's SS file listed such an
3 operation that very year. [] returned from Brazil convinced that "we have removed the ^{B6}
4 basis for any reasonable doubt that Josef Mengele died in Brazil in 1979."³⁸

5 There were, by now, plausible explanations for the osteomyelitis conundrum. Reading a
6 German medical article from the 1920s, Marwell discovered that the term osteomyelitis in
7 prewar Germany was broadly inclusive of various conditions, some of which would not be
8 detectable on x-rays. In addition, a paleopathologist (expert in detecting disease in skeletal
9 bones) examined Mengele's bones at OSI's behest. He noticed a previously undetected small
10 circular depression on one of the bones which could have been caused by osteomyelitis as the
11 Germans then defined it.³⁹

12 The Israelis, however, wanted more definitive proof.⁴⁰ For them there were "emotional
13 and political reasons" which made it difficult to close the case.⁴¹ [] B5

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16 At OSI's request, the Consul General in Brazil obtained a judicial order authorizing
17 release of part of the skeletal remains for examination in the U.S. [] B6

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19 Although the FBI was unable to extract a sufficient quantity to create a DNA profile,⁴³
20 the British, using new techniques, could do so. However, there was no DNA from Josef Mengele
21 with which it could be compared. The German, Israeli and American authorities proposed
22 getting DNA from Mengele's former wife and his son Rolf, both of whom lived in Germany.

1 The comparison would establish whether the son was the biological offspring of the man buried
2 in Brazil. If so, the body was Mengele's.

3 Unfortunately, the son and former wife refused to provide blood samples. The Israelis
4 suggested retrieving DNA from saliva left on glasses in a restaurant, but were advised that this
5 would violate German privacy laws. The German prosecutor proposed an alternative plan:
6 Mengele came from a prominent family which operated the largest factory in the small town of
7 Gűnzburg. The prosecutor directed two German policemen to go to Gűnzburg, find the local
8 gravedigger, and ask him to point out where Mengele's father was buried. They were to warn
9 the gravedigger to tell no one that they had been there.

10 The policemen followed these directions and then waited several days. Nothing
11 happened. The prosecutor had them return and repeat the drill with the town's retired
12 gravedigger. They did so. Three days later a call came from Mengele's son: he and his mother
13 would submit to DNA testing.

14 This was, as ^{BC} saw it, "a wonderful story about a guy [the German prosecutor]
15 who understood psychology and politics and what a company town was all about." He knew that
16 word would get to Mengele's family and that they would fear that the authorities were about to
17 exhume their ancestors in order to do a DNA analysis. Giving blood would avoid the desecration
18 of ancestral remains.⁴⁴

19 Once the DNA comparison was made, there was no doubt that the body was Mengele's.
20 Israel no longer objected to issuing the report and it was released in October 1992, almost eight
21 years after it had been commissioned.

22 The OSI historian and attorney who had been given primary responsibility for preparing

1 the report had varying perspectives on the outcome. For the historian, there was satisfaction.
2 This discrete project had overcome many hurdles and had resolved, definitively, a matter of
3 important historical concern. The attorney was somewhat less sanguine. While he shared
4 satisfaction in knowing that the historical issues were resolved, he had hoped that the report
5 would lead to an expanded mandate for OSI. Had Mengele been found alive and brought to
6 justice, the enormity of that accomplishment might have created pressure for OSI to assume an
7 active role in searching for other prominent Nazis worldwide.⁴⁵ As it was, the focus remained
8 on those who had come to the United States. For the most part, these were underlings.

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1. Among the most popularized depictions of him were as a mad scientist in both "Boys from Brazil" (1976 book, 1978 movie) and "The Marathon Man" (1976 movie).

2. H. Cong. Res. 235, introduced in the House of Representatives in Dec. 1981, called upon Paraguay "to apprehend and extradite Josef Mengele to stand trial in the Federal Republic of Germany." (The resolution was never reported out of subcommittee.) See also, "Nazi Germany's 'Angel of Death' Is Still at Large," by Jack Anderson, *The Washington Post*, July 18, 1984. In November 1984,

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met with various government officials in Paraguay to urge a nationwide manhunt for Mengele. "Paraguay Pledges to Hunt Auschwitz 'Angel of Death,'" *New York Post*, Nov. 23, 1984. Simon Wiesenthal also thought Mengele was in Paraguay. "Investigators Get New Lead on Location of Mengele," by John McCaslin, *The Washington Times*, May 22, 1985.

3. Sporadic assertions that Mengele was in the United States had brought him to the government's attention, but these rumors had been quickly discounted after minimal inquiry. Thus, in 1979, the Justice Department was alerted that Mengele might be on a flight from Paraguay to Miami. He was not. Three years later, a member of the Miami Jewish community reported that someone named Mengele had checked into a hotel with an elderly man. An OSI historian, fluent in German, flew down to speak with the travelers. The young man was Mengele's nephew; the elderly gentleman was unrelated.

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4. "Papers Indicate Mengele May Have Been Held and Freed After War," by Ralph Blumenthal, *The New York Times*, Jan. 23, 1985.

5. See e.g., "Was Mengele Ever in L.A.?" by Rabbi Yale Butler, *B'nai Brith Messenger*, Feb. 1, 1985. Similar stories had been published even earlier. E.g., "Angel of Death in Westchester," by Elli Wohlgernter, *New York Post*, May 26, 1981.

6. "U.S. May Investigate Mengele Case," by Ralph Blumenthal, *The New York Times*, Jan. 24, 1985.

7. Jan. 28, 1985 memo to the Attorney General from [redacted] re "Nazi War Criminal Josef Mengele."

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8. Feb. 6, 1985 Department of Justice press release.

9. Statement of [redacted] before the Senate Judiciary Juvenile Justice Subctee, Mar. 19, 1985.

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10. Over \$3,000,000 was offered from various sources: Israel (\$1,000,000), Friends of the Simon Wiesenthal Center (\$1,000,000), *The Washington Times* (\$1,000,000), the West German government (\$300,000), Simon Wiesenthal (\$50,000) and Beate Klarsfeld (\$25,000). "Israel Offers \$1 Million Reward for Mengele's Capture," *The New York Times*, May 8, 1985. When the SWC offered the first million in Feb. 1985, it was the highest bounty ever offered for a criminal. "Mengele: \$1M bounty," by Gregory Katz, *USA Today*, Feb. 26, 1985.

11. Senator Arlen Specter, chair of the Juvenile Justice Subcommittee of the Judiciary Committee, felt that the matter was within his committee's purview since many of Mengele's victims had been children. "Senate Panel Will Conduct Hearing on Mengele," by John Kendall, *The Los Angeles Times*, Feb. 13, 1985.

12. "Senator Cites Possible Mengele Drug Link; Nazi May Have Financed Self by Selling Cocaine, D'Amato Testifies," by Robert Jackson, *The Los Angeles Times*, Feb. 20, 1985; "Army Task Force to Help Hunt Mengele," *Reuters*, *The New York Times*, Feb. 21, 1985; "Mengele Link to Drug Trafficking is Reported in C.I.A. Documents," by Ralph Blumenthal, *The New York Times*, Feb. 26, 1985.

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14. Memorandum of Understanding Between the Central Security Facility and OSI, Mar. 15, 1985. During the first seven months of its existence, the Army's Task Force reviewed hundreds of reels and indexed 272,319 entries. In that pre-computer era, the work took 21,766 hours (10.4 man years). Nov. 22, 1985 letter and enclosure from [REDACTED] B6

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from [REDACTED] B6 re "Meeting at Ft. Meade." See also, Jun. 13, 1986 letter at Ft. Meade.

15. "U.S. is 'Optimistic' on Nazi's Capture," by Philip Shenon, *The New York Times*, Apr. 22, 1985.

16. "Mengele Can be Seized, Justice Dept. Says," *AP*, *The New York Times*, Mar. 20, 1985; Statement of AAG Trott, *supra*, n. 9.

17. The authorities were acting, in part, on information from a university professor who had overheard the employee boasting that he had helped funnel money to Mengele.

18. The letter suggested several reasons for not announcing his death, one of which was to cause Nazi hunters to waste time and money on a fruitless search. "Mengele Trail: Clues of

28. Oct. 30, 1985 Draft memo, *supra*, n. 27.

29. Recorded interview with former [redacted] July 17, 2003. B6

[redacted] [redacted] [redacted] B6 [redacted] BS

31. The son had sold it to a German publishing company, which allowed [redacted] to read the manuscript at their offices in Germany. B6

32. Oct. 21, 1985 memo from [redacted] to [redacted] B6, BS

33. It is not the purpose of this chapter to detail, or even summarize, all the information ultimately included in OSI's report. Rather, this section is intended to give context to the preparation of the report. The report, "Josef Mengele: A Report to the Attorney General of the United States (1992)" can be found, with exhibits, at www.usdoj.gov/criminal/osi/press/osi-reports/ (last visited Nov. 2008).

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34. "Sleuths Uncover Dental Records, Clinching Mengele Identification," by Alan Riding, *The New York Times*, Mar. 28, 1986.

35. "Dogged U.S. Dentist-Envoy Finds X-Ray of Mengele," by Richard House, *The Washington Post*, Mar. 28, 1986.

36. Dec. 27, 1985 memo from [redacted] to [redacted] re "Update on Mengele Investigation." B6

37. [redacted] B6

38. May 6, 1986 memo from [redacted] to file re "Trip to Brazil," Apr. 16 - 23, 1986. B6

39. Dec. 18, 1985 memo to file from [redacted] B6 BS

40. July 13, 1987 memo to file from [redacted] re [redacted] BS BS

41. June 8, 1989 memo to the Attorney General from [redacted] re "Mengele Report." B6

42. July 1, 1988 memo to [redacted] from [redacted] re "Mengele;" Dec. 12, 1988 memo from [redacted] to [redacted] re "Update on Mengele." B6

43. May 18, 1989 memo to [redacted] from [redacted] re [redacted] B6 BS

44. Information about the abortive effort to get a saliva sample comes from [redacted] B6

[redacted] His source was [redacted] B6

[redacted] Details about the ruse at the cemetery come from a recorded conversation with [redacted] B6
B6 July 17, 2003. His source was the two policemen sent to Günzburg. (As [redacted] B6
recalled the incident, the British were able to make a determination based solely on a comparison
with the son. In fact, however, both the son and ex-wife were tested. DNA Analysis Report, p.
423 of Mengele Appendix.)

The DNA analysis was done with a blood sample rather than saliva. Although saliva is
simpler to obtain, blood is preferable. Saliva, composed largely of water, must be analyzed
quickly. Moreover, unlike blood, it cannot be permanently preserved.

45. Interview with [redacted] July 15, 2003. B6

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1 **Looted Assets**

2 Looting by the Third Reich was both prodigious and notorious; the regime plundered
3 vanquished nations as well as individuals. Booty included gold bullion, coins, metals, paper
4 currency, securities, jewelry, precious and semi-precious stones, books, artwork, religious
5 objects, even dental fillings and crowns. Between 16 and 30% of all gold accumulated by the
6 Third Reich was likely taken from individuals.¹

7 The Nazis segregated gold from other assets. Most gold was smelted into bars and
8 deposited in the Reichsbank, Germany's central bank at the time. Germany sold the majority of
9 these gold reserves to neutral nations in order to acquire foreign currency for financing the war
10 effort. The largest purchaser of gold from the Reichsbank was the Swiss National Bank.

11 At the end of the war, the Allies sought to recover, from Germany as well as from the
12 neutral nations, assets appropriated by the Nazis. Representatives of 18 Allied nations agreed at
13 the Paris Reparations Conference to distribute assets both to the nations whose treasuries had
14 been plundered and to war victims.²

15 They struggled, at the Conference and thereafter, to categorize the gold and set rules for
16 its distribution.³ In broad terms, "monetary gold" was defined as gold bars and coins; "non-
17 monetary" gold was all else, including jewelry and dental work from camp inmates. They agreed
18 that monetary gold should be returned to claimant countries in proportion to their losses. Non-
19 monetary gold was to be liquidated and given to an international relief agency for humanitarian
20 aid to the "non-repatriables" – Jewish and other homeless victims of the war.

21 Although the terms "monetary" and "non-monetary" were thus based on the form rather
22 than the origin of the gold, shorthand descriptions often referred to the two categories as

1 “currency” and “victim gold.” This fostered the false impression that the former was inevitably
2 pure and the latter inevitably “tainted.”

3 France, Britain and the United States established a Tripartite Gold Commission (TGC) to
4 oversee the distribution of monetary gold. The procedure for identifying and collecting the gold
5 was varied. While the Allies seized the reserves in defeated Germany, they could not do the
6 same with neutral nations; they had to negotiate with these countries to determine the amount of
7 gold involved.

8 Negotiations with the Swiss were especially contentious. They ultimately agreed to
9 contribute \$58 million to the TGC. This was approximately two-thirds of the \$88 million that
10 Switzerland acknowledged purchasing from the Reichsbank.

11 The Swiss contribution, combined with gold relinquished by other neutral nations, gold
12 purchased with the proceeds from liquidation of assets of German diplomatic missions, and gold
13 bars found by allied forces in defeated Germany, gave the TGC approximately \$260 million. It
14 was all deemed monetary gold.

15 By 1996 (when the value of gold had increased almost tenfold), the TGC was ready to
16 distribute the final \$68 million in its coffers. That money, referred to as “residual gold,” had
17 been held back, in part to cover administrative expenses and contingencies. Before the final
18 distributions were made, however, the matter of Nazi gold broke into the headlines.

19 It arose in relation to dormant Jewish bank accounts. In 1995, following the collapse of
20 East Germany, the West gained access for the first time to records from the Stasi (East German
21 secret police). Those records revealed the hitherto unknown fact that 13,000 Hungarian Jews had
22 opened Swiss bank accounts in the hope of ransoming their lives from the Nazis.⁴ This added

1 urgency to ongoing requests by the World Jewish Restitution Organization for access to dormant
2 accounts.⁵

3 In response to calls by Jewish organizations, both the House and Senate banking
4 committees held hearings. The Senate committee, aided by the WJC, serendipitously uncovered
5 some significant and headline producing documents concerning Nazi gold. One set of
6 documents suggested that the Truman administration had downplayed the amount of gold
7 Switzerland purchased from the Reichsbank.⁶ Although the State Department estimated that
8 Switzerland had purchased almost \$300 million worth of Nazi gold, the Secretary of State
9 discounted the estimate when questioned by a skeptical member of Congress.⁷ A second set of
10 documents called into question the presumed purity of monetary gold. The documents suggested
11 that the Reichsbank's wartime ingots contained gold smelted from the teeth of slaughtered Jews
12 as well as from personal jewelry and other Jewish properties.

13 Inclusion of victim gold into the Reichsbank reserve did not prove that "tainted" ingots
14 had been sold to Switzerland or other neutral countries. However, it did raise the possibility that
15 this was so. It also raised the possibility that gold transferred by the Allies from the Reichsbank
16 reserves to the TGC was tainted. Given that some of that gold remained on deposit, Jewish
17 organizations asked that this residual account be distributed to survivors, rather than to central
18 banks.⁹

19 In part to determine whether the U.S. should support this request, President Clinton
20 ordered a formal inter-agency effort to investigate the U.S. role in the seizure, retrieval and
21 disposition of Nazi assets.¹⁰ The group's mandate included an investigation into "allied and
22 neutral nation actions during and after the war to handle Nazi assets and dormant accounts."¹¹

1. The president asked [handwritten mark] to oversee the project, B6
2 including a report to be written by the State Department Historian.¹²

3 The Justice Department was one of 11 government components asked to assist in the
4 effort.¹³ OSI served as the lead DOJ representative. It reviewed material already gathered by the
5 WJC and the Senate Banking Committee and assumed some independent investigative efforts as
6 well. Much as in its own case investigations, OSI studied wartime documents, post-war
7 interrogations of SS officials, and trial transcripts from Nuremberg.¹⁴

8 The material established that from August 1942 until the war's end, the SS delivered
9 valuables taken from victims in the concentration camps and extermination centers to the
10 Reichsbank. This plunder included victim gold. The SS deposits were listed in an account under
11 the name of Colonel Melmer, the SS officer who delivered the assets to the bank. The
12 Reichsbank purchased the gold bullion and coins in the SS shipments at full value and credited
13 the SS account at the Reich Ministry of Finance with the equivalent amount in Reichsmarks.
14 The bank sent dental gold and other small items, such as wedding rings, to the Prussian mint for
15 resmelting into ingots; they were then incorporated into Germany's gold reserves at the bank.
16 Larger items were sent to the Berlin Pawn Shop which arranged for the more valuable items to be
17 sold abroad for foreign currency; the remainder were sent to Degussa, a private refinery in
18 Frankfurt, to be smelted and then added to the Reichsbank gold stocks. Some of these stocks
19 were so impure that, after being seized by the Allies at war's end, they were refined and
20 resmelted before going to the TGC.

21 Given these facts, OSI concluded that
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Reichsbank gold was not the only victim loot purchased by the Swiss. OSI discovered documents showing that jewelry taken from Jews was routinely transferred (without resmelting or other alteration) by the Reich in diplomatic pouches to Switzerland. It was then retrieved by a German agent and traded for industrial diamonds vital to the war effort.¹⁶

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Although these were serious charges, the draft stated that there was *no* evidence that looted gold had made its way to Switzerland or to the TGC. It also made no mention of the fact that the Truman Administration apparently misled Congress about the amount of German gold bought by the Swiss National Bank – a fact which had already been reported in the press.¹⁷ /

] about these two points to alert B6

[REDACTED] on February 6, 1997 of the disagreements between OSI and the State Department historian. [B6]

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The report was scheduled to be released on March 25. In late February, OSI found a

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By the time OSI found this material, the report was undergoing final revisions. On March 9, some conclusions from the soon-to-be-released document were leaked to the press. As described by unnamed sources, "the records do not establish definitively that so-called nonmonetary gold from personal effects was accepted by Switzerland."²¹

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~~DRAFT~~ convened a meeting to discuss the issues. At that meeting it was agreed that the report should be revised to make clear that victim gold had been sold to Switzerland and that it had been included in some of the ingots transferred by the Allies to the TGC.²³

While OSI welcomed those changes [] B5
[] Not only had Secretary Dean Acheson lent credence to the Swiss \$88 million figure, so too had the president. In a letter to Senator Harley Kilgore, the president referred to that figure as the only amount which was "fairly provable."²⁴

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The report held the Swiss accountable for buying tainted gold and then lying to the Allies about the amount purchased.²⁸ (There was no evidence, however, that Switzerland knew at the time that victim gold was a component of the Reichsbank shipments.)²⁹ The report also revealed U.S. shortcomings -- its knowing transmittal of some "tainted gold" to the TGC and the Truman Administration's understatement to Congress of the amount of Nazi gold the government believed had been purchased by the Swiss.³⁰ Proof that tainted gold had been transferred to the TGC ended the myth that all looted assets collected at war's end had been distributed to victim assistance organizations. It further corrected the historical record by disentangling the terms "monetary" and "non-monetary" from the issue of victim loot.

Ambassador Eizenstat credited OSI with "the discovery and thorough documentation" of the Nazi practice of converting victim gold into Reichsbank reserves. In addition to the historical importance of this information, he noted it as "a critical factor in . . . negotiations aimed at providing restitution and reparations to remaining victims of Nazi persecution."³¹

The report was titled a "Preliminary Study."³² It focused largely, although not exclusively, on Switzerland. The State Department planned to prepare a separate study on the conduct of other neutral countries which had purchased Nazi gold as well as on allegations that

1 the Axis government of Croatia had transferred gold to the Vatican.³³ It hoped to publish this
2 second report before a scheduled December 1997 conference in London on Nazi gold.

3 OSI was not involved in research for, or drafting of, the supplemental report, but it did
4 receive a copy for comment. It recommended several changes which were ultimately
5 incorporated into the report.

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16 The conference, with participants from 41 nations, dealt with the question of residual
17 gold. In response to the revelation in the Preliminary Study that some of that gold was tainted,
18 several countries agreed to contribute money due them to a fund for Holocaust survivors. While
19 not all the residual gold was so distributed, a portion of it did go to needy survivors.³⁷

20 Coincidentally, just as the conference opened, a privately-held cache of microfilmed
21 Reichsbank records became accessible.³⁸ The records belonged to an Austrian concentration

1 camp survivor who, after the war, did extensive research on the gold trade of the Reichsbank.
2 His private collection included a report about the Melmer account by Albert Thoms, the wartime
3 Reichsbank Director. At [] request, OSI reviewed this newly-available
4 material. Based on Thoms' figures

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7 OSI also examined the records of the private smelting firm used by the Reichsbank to
8 transform large gold articles in the SS shipments into bullion. Although the firm had
9 intentionally destroyed most pertinent documents, enough was extant to show that the firm was
10 aware that the gold came from Jews.⁴⁰ Both the revised Melmer figures and the smelting
11 company's complicity were included in the final report. Ambassador Eizenstat described the
12 recalculation of the Melmer account as "the most dramatic" finding of the study.⁴¹

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20 The Supplemental Study was released in June 1998.⁴³ It did not, however, end OSI's
21 involvement on matters relating to Nazi assets. While working on the gold studies, OSI became

1 involved in additional asset issues.

2 According to a post-war agreement among the Allies, looted cultural items were to be
3 returned to their country of origin, and, if possible, to their rightful owners. At an early
4 (December 1996) meeting of the interagency working group on the Preliminary Study, one of the
5 participants mentioned a 1940s memo from an Army archivist suggesting that the Library of
6 Congress may have inappropriately acquired books looted by the Nazis. [] B6
7 asked an OSI historian to look into the matter.

8 [] On the contrary, B5
9 the Library had adopted and followed detailed regulations to ensure that it did not obtain or retain
10 any books whose provenance could be ascertained. If the provenance was undeterminable and
11 the material had national, cultural, or religious significance, the regulations called for distribution
12 to an appropriate institution. Of the more than 3,000,000 looted books gathered by the U.S.
13 government, two and a half million were distributed according to these guidelines. Since it was
14 not possible to identify the owners or country of origin for the remaining half million, they were
15 given to the Commission on European Jewish Cultural Reconstruction (JCR), an organization
16 comprised of American Jewish religious leaders, scholars and educators. The JCR distributed
17 them to centers of Judaism and Jewish learning throughout the U.S. and Israel. At the JCR's
18 direction, several thousand volumes went to the Library of Congress.⁴⁵

19 The second asset forfeiture issue that spun off from OSI's work on Nazi gold involved
20 looted artwork. In February 1997, a source informed the office of previously classified
21 documents from the Office of Strategic Services (predecessor to the CIA) listing artworks the

1 OSS suspected had been stolen by the Nazis. The list, compiled shortly after the war, drew upon
2 the memories and records of theft victims as well as art dealers who sold works on behalf of the
3 Nazis. It also referenced captured German correspondence, receipts, museum accession reports,
4 and inventories.

5 Despite these extensive sources, there were limitations to the OSS listings. Titles were
6 often imprecise, either because the work was untitled or because the true title of the work was
7 unknown to the person providing the information to the OSS. Thus, there were a number of
8 "Still Life," "Portrait" and "Landscape" entries. In addition, artists often created multiple works
9 with the same title and the OSS list rarely contained distinguishing information, such as canvas
10 dimensions. OSI pared down the list and then reviewed books, websites, and archival material
11 (including post-war claims filed by private citizens) in an attempt to match works on its list with
12 holdings in the U.S. and abroad. The office was particularly interested in determining whether
13 any looted artwork was held at the National Gallery of Art. Ultimately, OSI identified four
14 possibly looted pieces at the museum.⁴⁶ The National Gallery did additional research and
15 determined that one of the four had indeed been taken from a Jewish family. The museum
16 returned the painting to the owner's heirs amid much public fanfare. In announcing this decision,
17 the museum took sole credit for determining the provenance.⁴⁷ The Department of Justice issued
18 its own statement crediting OSI with raising the issue.⁴⁸

19 Since the gold studies, OSI has periodically been called upon to share its expertise on
20 asset issues.⁴⁹ OSI's work in this area is yet another example of how the government has
21 broadened OSI's mandate and how the office has helped the public understand the history of
22 Holocaust. To the extent that OSI's scholarship has helped bring about restitution, it has also

1 shaped that history.

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1. This was the estimate of historians at a Dec. 1997 conference on Nazi gold in London. "Victim Fund Gets Pledges from U.S. and Britain," by Alan Cowell, *The New York Times*, Dec. 3, 1997.
2. The conference convened in 1946. The 18 nations were Albania, Australia, Belgium, Canada, Czechoslovakia, Denmark, Egypt, France, Greece, India, Luxembourg, the Netherlands, New Zealand, Norway, South Africa, the United Kingdom, the United States, and Yugoslavia. The U.S.S.R. had earlier waived any claim to the assets.
3. The evolving definitions are discussed in the State Department's Preliminary Study, fully cited *infra*, n. 32, at pp. 171-177, 179-81.
4. "Jews Look to Swiss to Reclaim Nazi Plunder," by Jay Bushinsky, *The Chicago Sun-Times*, Sept. 15, 1995. See also, "Swiss Banks Undervalue Unclaimed Holocaust Accounts," by Batsheva Tsur and Marilyn Henry, *The Jerusalem Post*, Feb. 9, 1996; "Quest for Nazis' Loot; Dispute Focuses on Role of Swiss Banks," by David Ottaway, *The Washington Post*, Dec. 8, 1996.
5. The World Jewish Restitution Organization was founded in 1993. It works for the return to the Jewish people of heirless and unclaimed properties of communities, associations, organizations and individuals; the payment of compensation where restitution is impossible; and the restitution of private property and compensation to Holocaust survivors.
6. "Quest for Nazis' Loot, Dispute Focuses on Swiss Banks," *supra*, n. 4.
7. July 31, 1946 letter from Acting [redacted] July 3, 1946. Portions of the letter are quoted in the State Department's Preliminary Study, *infra*, n. 32, at pp. 86-87. B6
8. "Bank's Gold Inspires Tales of Plunder," by Clyde Haberman, *The New York Times*, Sept. 27, 1996; "Heat on Geneva to Return US \$5b in Nazi Gold Loot," by Neil Behrmann, *Business Times* (Singapore), Sept. 12, 1996. The documents led New York's Senator Alphonse D'Amato, chair of the Senate banking committee, to suggest that the amount of Swiss payments should now be renegotiated. "Time to Settle the Score," by Marilyn Henry, *The Jerusalem Post*, Nov. 1, 1996.
9. "U.S. to Launch 2nd Inquiry into Fate of Gold Stolen from Jews," by Marilyn Henry, *The Jerusalem Post*, Oct. 13, 1996.
10. "U.S. to Launch 2nd Inquiry into Fate of Gold Stolen from Jews," *supra*, n. 9.
11. Oct. 30, 1996 letter from President Clinton to WJC president Edgar Bronfman.
12. At the time [redacted] was serving as [redacted] B6

25. State Department's Preliminary Study, *infra*, n. 32, at p. 66.

26. Mar. 17, 1997 letter from

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27. Eizenstat's public statements at the time attributed the delay to the need to review recently declassified documents. "U.S. Report to Sting Swiss: New Documents to Shed Light on Neutral Countries' Links to Nazi Loot," by Eric Greenberg, *The Forward*, Mar. 28, 1997. However, he acknowledged in his memoir that OSI was the precipitating cause. *Imperfect Justice, Looted Assets, Slave Labor, and the Unfinished Business of World War II*, by Stuart Eizenstat (Public Affairs), p. 101. See also, Mar. 20, 1997 e-mail from

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28. The report focused primarily on the Swiss purchase of gold bars; it did note, however, (pp. 170, n. 43 and 180), OSI's discovery that victim gold had been transferred by diplomatic pouch to Switzerland.

29. The Swiss insisted that they had no such knowledge. See e.g., "Swiss: No Victims Gold but Admit Profiting from Nazis," *Newsday* (New York), Dec. 14, 1996; "Three Nations Agree on Freezing Gold Looted by Nazis," by David Sanger, *The New York Times*, Feb. 4, 1997.

The report presumed, however, that the Swiss did know that some portion of the gold was looted from occupied countries. (Such knowledge would have come from public knowledge about the low level of the Reichsbank's gold reserves and repeated warnings from the Allies.)

30. The report shied away from holding Secretary of State Acheson accountable for his statement that "there was no reasonable evidence that Switzerland had purchased \$300,000,000 worth of gold looted by Germany." The report stated that Acheson's letter had been drafted by an underling and "presumably was not seen by Acheson." There was no basis given for this presumption. "Preliminary Study," *infra*, n. 32, at p. 87.

31. Sept. 28, 1997 letter from Amb. Eizenstat to Attorney General Reno.

32. "Preliminary Study on U.S. and Allied Efforts To Recover and Restore Gold and Other Assets Stolen or Hidden by Germany During World War II." The report can be accessed at www.state.gov/www/regions/eur/holocausthp.html#rpt (last visited Sept. 2008).

33. Technically, only Switzerland and Sweden were "neutral" countries during the War. Spain, Portugal, Turkey and Argentina were "non-belligerent" but not neutral. However, for the sake of simplicity, the report referred to them all as "neutrals" when mention of them was made collectively.

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35. Sept. 30, 1997 letter to;

] from [B6]

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OSI was especially well poised to discuss these issues since its then-Chief of Investigative Research had authored a book which covered this subject. *German Influence in the Argentine Army, 1900 to 1945* by Elizabeth White (Garland Pub.).

37. Two and a half years after the conference, only \$21 million had been dispersed. The effort was hampered in part by infighting over who had the moral authority to distribute the funds. "Half of Nazi Victims Aid Funds Not Yet Distributed," by Marilyn Henry, *The Jerusalem Post*, June 4, 2000. The TGC itself was disbanded in 1998. "International Panel Closes Books on Gold Seized by Nazis in War," by Craig Whitney, *The New York Times*, Sept. 10, 1998.

38. "Microfilms Trace the Path of Nazi Gold Movements," by Eric Frey, *The Financial Times*, Dec. 2, 1997.

Reichsbank records from the Precious Metals Department had been located earlier at the National Archives. They did not include information about the Melmer account, and therefore were not especially helpful in preparing the report on Nazi gold. Nonetheless, their discovery was wonderfully serendipitous.

The records had been microfilmed by the Allies; the Reichsbank no longer had the originals. An OSI historian found a receipt at the Archives showing that a microfilm duplicate set of these records (comprising 65 reels) had been transferred in 1948 from the U.S. Army to the Treasury Department. However, the Treasury Department informed OSI that it no longer possessed the microfilm.

While reviewing Dutch bank records at the Archives (to determine the extent of Nazi looting from Dutch reserves), an OSI historian and a NARA archivist came upon an unmarked box. It contained 65 rolls of microfilm – unmarked, not on spools, and wrapped with rubberbands.

39. Dec. 27, 2001 letter to [B6] from [] re B6
"Additional Department of Justice Research on Nazi Gold." (Only weeks earlier, a Swiss commission studying the issue estimated that \$2.5 million and "possibly" as much as \$4 million flowed through the Melmer account. "Swiss Say Nazis Stole More Victim Gold than Believed," by Alan Cowell, *The New York Times*, Dec. 2, 1997.)

After the supplemental report was issued, another historian pointed out that OSI had

misinterpreted some of the information in the Thoms' study. While that miscalculation caused the \$4.6 million figure to be higher than it should have been, the error is likely inconsequential. The Thoms' report did not reference millions of dollars worth of gold taken from Jews before they were sent to the camps. The records for this gold are incomplete and it therefore cannot be ascertained whether these additional millions were deposited in the Melmer account. However, it is likely that they were since there is sufficient documentation to establish that they were shipped to the SS for that purpose. "The Disposition of SS-Looted Victim Gold During and After World War II," by Elizabeth White, *Amer. U. Int'l L. Rev.*, vol. 14, No. 1 (1998), p. 218, n. 12.

It should be noted that the \$4.6 million figure came from Thoms' study, rather than the Reichsbank records. They, like the records found at the Archives, did not have material on the Melmer account. However, Thoms had apparently referenced the now-missing Melmer records when he prepared his report.

40. Dec. 21, 2001 letter from [redacted] B6

41. "A Lingering Ledger of Grief," by Marilyn Henry, *The Jerusalem Post*, June 8, 1998.

42. Preface to the Supplemental Study, *infra*, n. 43, at p. xxviii. The Argentine gold records were given to the SWC by the Argentine government in 1996.

43. "U.S. and Allied Wartime and Postwar Relations and Negotiations with Argentina, Portugal, Spain, Sweden, and Turkey on Looted Gold and German External Assets and U.S. Concerns About the Fate of the Wartime Ustasha Treasury" (Supplement to Preliminary Study on U.S. and Allied Efforts to Recover and Restore Gold and Other Assets Stolen or Hidden by Germany During World War II.) The Supplemental Study can be found at www.state.gov/www/regions/eur/holocuasthp.html#rpt (last visited Sept. 2008).

44. The historian studied records from the Library of Congress and the U.S. military government in Germany.

45. The precise number the Library obtained is uncertain because some were sent by the Library to other institutions. In no event was the number retained by the LoC greater than 21,000.

Although the matter of looted books was not included in either governmental report, an article on the topic written by an OSI historian assures that it is now part of the public record. "Returning Jewish Cultural Property: The Handling of Books Looted by the Nazis in the American Zone of Occupation, 1945 to 1952," by Robert G. Waite, *Libraries and Culture*, Vol. 37, No. 3, Summer 2002. (OSI had proposed including the information in the Preliminary Study. Mar. 11, 1997 letter from [redacted] B6

46. Sept. 29, 1998 letter to [redacted] from [redacted] to Judy Feigin re "Re Query." B6 } Dec. 2, 2003 e-mail B6

47. "National Gallery of Art to Return Painting to Heirs as a Result of Gallery Research and Web Posting," National Gallery of Art News Release, Nov. 20, 2000; "National Gallery to Return a

Family's Painting Looted by the Nazis," by Celestine Bohlen, *The New York Times*, Nov. 21, 2000; "Museum to Return Plundered Painting," by Michael Dobbs, *The Washington Post*, Nov. 21, 2000.

48. "U.S. Told Museum in 1998 Canvas Could be Nazi Loot," by Joan Uralla, Reuters, Nov. 22, 2000; "Agency Says Museum Took Too Long to ID Nazi Loot," CNN.com-arts& style, Nov. 23, 2000, posted at 11:17 a.m. EST. See also, "Who Found Looted Still Life?," by Paula Amann, *Washington Jewish Week*, Nov. 30, 2000.

49. Several examples:

1. Hungarian Jews and their descendants whose personal property and valuables were loaded onto a "Hungarian Gold Train" by the pro-Nazi Hungarian government during World War II sued the U.S. government because the U.S. Army had captured the train in May 1945 and shipped its contents to Salzburg. The plaintiffs alleged that the Army and individual members thereof improperly expropriated much of the cargo. *Rosner et al., v. U.S.*, Civ. No. 01-1859 (S.D. Fl.). The lawsuit was defended by another section within the Department of Justice. OSI's assistance included participation in court-ordered mediation of the case and the preparation of a methodology to calculate payments if the case settled. [REDACTED] B6

[REDACTED] B6 B5 B6
[REDACTED] B5] The court approved a \$25 million settlement in Sept. 2005.

2. OSI helped prepare the Department's response to a draft ABA resolution urging the U.S. to ratify the 1954 Hague Convention Concerning the Protection of Cultural Property in the Event of Armed Conflict. Jan. 10, 2001 memo to [REDACTED] B6] from [REDACTED] B6] B6 re "ABA House of Delegates Resolution Concerning the Protection of Cultural Property."

3. OSI was asked to comment on drafts of a report prepared by the Presidential Advisory Commission on Holocaust Assets in the United States. The final report was issued in Dec. 2000. It can be found at <http://www.pcha.gov> (last visited Dec. 2008). The report specifically acknowledged the contribution of [REDACTED] B6] for his research on looted books B6 and [REDACTED] B6] for his investigation into looted art. B6

4. OSI's input was sought by the Department of Justice's Office of Legislative Affairs on the appropriate U.S. response to Germany's handling of Holocaust-era insurance claims. Nov. 7, 2001 e-mail from [REDACTED] B6] [REDACTED] B5]

OSI Goes International

Germany

Germany's relationship to OSI has two crucial aspects: its assistance in investigating cases and its willingness to accept into its territory persons prosecuted by OSI. In considering each of these issues, it should be remembered that for the first ten years of OSI's existence, Germany was a divided country. The German Democratic Republic (East Germany (GDR)) and the Federal Republic of Germany (West Germany (FRG)) dealt with the U.S. separately. East and West Germany reunited in 1990.

Investigative Assistance

Before they reunited, East and West Germany had separate archives. OSI's access to material from the East German archives was limited. The Office of the General Prosecutor of the GDR forwarded OSI's requests to the Stasi-controlled National Socialist Archive. That organization first made a political determination as to whether to provide assistance. If they chose to do so, the material was retrieved and then reviewed by the Stasi before it was sent to the Department of Justice.¹ OSI lacked direct access to the archives and could not gather background information unrelated to a specific subject.

Most of the World War II records were, however, in West Germany. The two facilities there most essential to OSI were the Berlin Document Center (BDC) and the Ludwigsburg Zentrale Stelle. The BDC material includes Nazi party (NSDAP) membership cards, NSDAP membership applications, disciplinary actions against NSDAP members, SS officer files, SS racial purity records (containing information on SS men who were married and those seeking permission to marry), SS enlisted men records, SA (storm trooper) files, immigration and

1 reimmigration files (on individuals of ethnic German origin who immigrated or re-immigrated to
2 Germany), applications for membership in German cultural organizations, court records, and
3 registries of physicians and teachers. Some of these files include photographs, handwriting, and
4 fingerprints as well as wartime activities and place of operation.

5 Until 1994, OSI's access to the BDC was assured, since it was under U.S. control.²
6 Control was then ceded to the German government. In negotiating the transfer, the State
7 Department consulted with OSI to ensure that the Justice Department's investigative and
8 prosecutorial interests were protected.³ Germany agreed to microfilm all BDC documents for
9 the U.S. National Archives and guaranteed the U.S. access, in perpetuity, to the original
10 documents for forensic and judicial purposes.

11 By contrast, the Ludwigsburg Zentrale Stelle is an entirely German operation.
12 Established in 1958, it is the repository for records from war crimes trials held throughout
13 Germany.

14 It was not initially clear that the Ludwigsburg material would be as readily available to
15 OSI as was the BDC information. Mutual legal assistance agreements between the U.S. and
16 Germany provide the U.S. access to German material for use in *criminal* prosecutions. OSI cases
17 are *civil* matters. Nonetheless, West Germany from the outset opted to treat OSI's cases as if
18 they were criminal, reasoning that the substance of the cases (often murder or accessory thereto)
19 would be treated criminally in Germany.⁵ This flexibility has allowed OSI the full range of
20 assistance available in criminal proceedings, including access to criminal trial records (a source
21 of witnesses and corroborating testimony) and compelled testimony from reluctant German
22 witnesses. As one German Justice Ministry official acknowledged, this piece of legal

1 legerdemain had a weak foundation; its maintenance required both the political good will of the
2 FRG and OSI respect for FRG criminal procedures.⁶

3 German good will was evident in other ways as well. In several key areas, they allowed
4 the Department of Justice to avoid the often cumbersome and time-consuming diplomatic
5 process for handling matters of judicial assistance. Thus, as early as 1982, the West Germans
6 allowed U.S. Embassy personnel to contact potential witnesses directly;⁷ they also sanctioned
7 direct contact between OSI and personnel at Ludwigsburg. After a 1991 meeting with
8 representatives from Australia, Great Britain, Canada and the United States, Germany authorized
9 the free exchange of German-sourced documents among those countries.⁸

10 This is not to suggest that there are not still areas of frustration. Most prominent is that
11 requests that do go through the standard bureaucratic process (e.g., pension inquiries) get caught
12 in an administrative quagmire. Response times of over one year are not uncommon.⁹

13 Nonetheless, the overall working relationship between the Department of Justice and Germany in
14 Nazi prosecution cases is productive and positive.

15 It is also mutually beneficial. Before reunification, both East and West Germany
16 conducted World War II investigations and trials.¹⁰ The unified Germany continues to do so as
17 of this writing.¹¹ OSI has assisted by interviewing and/or identifying witnesses of interest to the
18 Germans,¹² sharing OSI research and records,¹³ and serving subpoenas on U.S. residents needed
19 to testify in German prosecutions.¹⁴

20 Admitting OSI Defendants into Germany

21 Fulfilling the mission of OSI depends, ultimately, on being able to remove from the
22 United States those who assisted the Nazis in persecuting civilians during World War II.

1 However, the United States cannot unilaterally send a defendant to a designated country; that
2 country must be a willing recipient. Very few countries are anxious to have “Nazi war criminals”
3 in their midst. Even Germany, which has expressed contrition and claimed responsibility for its
4 role in the war,¹⁵ has been ambivalent about accepting OSI defendants.

5 The issue first surfaced in the pre-OSI era. Boleslav Maikovskis was a Latvian chief of
6 police who, during World War II, had participated in the arrest of civilians and the burning of
7 their dwellings. INS contacted West Germany in 1973 about seeking Maikovskis’ extradition.
8 The West Germans acknowledged that the branch of the auxiliary police to which Maikovskis
9 belonged had been under the supervision of the German civil police; the higher police chiefs
10 were appointed with the consent of the Germans, and these chiefs reported to, and were
11 supervised by, the Germans. Nonetheless, they thought the significance of all this was
12 outweighed by the fact that Maikovskis himself was immediately commanded by Latvians and
13 paid with funds from the Latvian Police budget.¹⁶ Moreover, they claimed constraint because
14 Maikovskis was not a “German national,” either at the time the crimes were committed or
15 currently and because his acts were not directed against German nationals.¹⁷ Although they
16 could prosecute Maikovskis if he had been acting on behalf of the Reich, they concluded that he
17 had not been. As the West Germans saw it, Latvian opposition to German occupation during the
18 war was evidence that Latvia should be considered separate and apart from Germany.¹⁸

19 Despite this intransigence about Maikovskis, West Germany was not opposed to
20 extradition in all cases. Around the same time that they rejected the Maikovskis request, they
21 sought extradition of New York City housewife Hermine Braunsteiner Ryan. They distinguished
22 her from Maikovskis because she had been a supervisor in a German concentration camp. As

1 such, her activities were undertaken "in the exercise of German sovereignty."¹⁹ Once she was
2 extradited, she was tried, convicted, and sentenced to life in prison.

3 When OSI was established in 1979, the Department of Justice anticipated that
4 extradition would be an oft-used procedure which would expedite removal.²⁰ Germany seemed
5 to OSI the most likely venue for extradition for two reasons. First, Germany bore moral
6 responsibility for the war. Second, many alternative destinations were not viable options. Most
7 of OSI's subjects performed their wartime service in the U.S.S.R. (which, until 1989, included
8 Estonia, Latvia and Lithuania), and the United States had no extradition treaty with the Soviet
9 Union.

10 In October 1980, shortly after OSI's founding, [redacted] went to Germany to discuss *BL*
11 the mechanics of extradition. He was quickly disabused of the idea that extradition to Germany
12 would be the default procedure for OSI. The Germans made clear that extradition would be a
13 rare occurrence, possible only if the defendant could be tried for murder, the only relevant crime
14 not foreclosed by the statute of limitations. Even then, if the defendant were a non-German who
15 had acted outside Germany's borders, it would be problematic.²¹ Since most OSI subjects were
16 Latvians, Ukrainians and Lithuanians, they would not fit within the parameters established by
17 Germany.²²

18 Simon Wiesenthal put forth a proposal which would have resolved the impasse. He
19 suggested that subjects be divided into two categories, those who worked on behalf of sovereign
20 countries (e.g., Hungary or Romania) and those who worked for the Nazis in occupied areas.
21 The latter group would include those from the Baltic states as well as Ukraine. Although the
22 Germans agreed to consider the matter, and OSI was also interested, the proposal was never

1 adopted.²³

2 The Attorney General wrote to his counterpart in West Germany urging resolution of the
3 problem. His plea was based on ethical rather than legal grounds.

4 As the highest legal officers of our respective governments, we share a
5 solemn responsibility to see that justice is done in cases involving Nazi crimes.
6 We recognize the extensive efforts that the Federal Republic has made to that end,
7 and I am grateful for the cooperation that your government and your Ministry have
8 extended to us in our recent efforts to gather evidence after so many years.
9 Although many years have passed since the fall of the Nazi regimes, our common
10 obligation to enforce our respective laws against those who were responsible for
11 the crimes of that era continues.²⁴

12
13 In response, the West German Minister of Justice acknowledged that war crimes should not be

14 “left unatoned.” Nonetheless, he reiterated that there was no jurisdiction to try foreign nationals
15 for acts committed in “occupied territory” absent “exceptional circumstances.”²⁵

16 Although this was not encouraging, it did not preclude *deportation* or a voluntary
17 departure to Germany. In either of these situations, unlike extradition, the person would not have
18 to stand trial once he arrived in Germany.

19 OSI had its first opportunity to pursue one of these alternatives in October 1982, when
20 Archbishop Trifa agreed to depart the United States under the terms of his settlement agreement.
21 Although Trifa was not German, he had a strong nexus to the country, which gave him refuge
22 during most of the war. Nonetheless, West Germany informed OSI that as a non-citizen, Trifa
23 was inadmissible.²⁶

24 Trifa was not the only well-publicized OSI defendant to whom West Germany denied
25 admittance. It also refused to accept Bohdan Koziy and Karl Linnas, both of whom are discussed
26 elsewhere in this report.²⁷ Even after acknowledging that it had “no doubt” about OSI’s evidence

1 against Koziy (evidence which, among other things, showed him responsible for the cold-
2 blooded murder of a four year old Jewish girl), West Germany still refused him entry. They did
3 so on the grounds that (1) he never possessed German citizenship; (2) his crimes were committed
4 on foreign (Ukrainian) soil; and (3) the government would be unable to establish "base motive,"
5 a prerequisite to a murder conviction under German law.²⁸

6 Two years later, the issue of Maikovskis' departure resurfaced. After West Germany
7 refused to seek his extradition in 1973, INS had filed a deportation action. That case was
8 ultimately taken over by OSI, and Maikovskis was ordered deported in 1984. He designated
9 Switzerland as his chosen country of deportation. After the Swiss notified the Justice
10 Department that they would not accept him, the State Department asked Germany if Maikovskis
11 could enter as a deportee. They refused permission to do so.²⁹

12 There was a country which did want him, however – the U.S.S.R., which years ago had
13 sentenced him to death *in absentia* for his World War II activity.³⁰ In 1987, OSI requested that
14 the court modify its order to designate the U.S.S.R. as the country for deportation. Before the
15 court ruled, Maikovskis fled to West Germany – having been given a visa to enter despite West
16 Germany's earlier refusal to seek extradition or to accept him as a deportee. According to
17 Maikovskis' attorney, the Germans issued the visa for "humanitarian reasons" when they learned
18 that he might be sent to the Soviet Union.³¹

19 A year later – after the Soviets publicly called upon the West Germans to arrest
20 Maikovskis, and only days before the West German Chancellor was scheduled to visit Moscow –
21 the West Germans arrested the 84-year-old Maikovskis and placed him in custody. Although
22 Germany had earlier refused to seek his extradition on the ground that he could not be criminally

1 charged, he was now brought to trial. One of the witnesses was the OSI attorney who had
2 handled the deportation case. He testified about Maikovskis' admissions during the deportation
3 proceedings, specifically that he had been chief of police and that he had carried out orders to
4 arrest and imprison all villagers and to burn the village. The prosecution was suspended midway
5 due to Maikovskis' ill health. It never resumed, and he died in Germany in 1996.

6 Additional tensions surfaced over emigrés who had entered the United States under the
7 RRA. As noted earlier,³² one of the conditions for admittance under the RRA was that the
8 country from which one departed had to guarantee that one would be taken back if in fact the visa
9 had been procured through fraud or misrepresentation of material facts. Germany had made a
10 written commitment to that effect in 1954; it covered all persons embarking from their shore.
11 Although the number of native-born Germans coming to the U.S. in the early post-war years was
12 limited,³³ many Eastern Europeans and Ukrainians came to the U.S. from displaced persons
13 camps in Germany.

14 In 1983, during discussions about Trifa, Germany advised OSI that it doubted the validity
15 and enforceability of its 1954 agreement.³⁴ And indeed, the German government later contended
16 that it could not locate an original copy of such an agreement and therefore did not feel bound by
17 its terms. At OSI's request, the State Department twice formally requested that Germany search
18 its files.³⁵ In November 2005, the German government advised that it had finally located the
19 document.³⁶

20 That it took over two decades to resolve this issue was frustrating for OSI. In fact,
21 however, it did not affect large numbers of OSI defendants. OSI filed 21 cases against men who
22 entered under the RRA. **Update number?** Of these, between 10 and 12 had departed from

1 Germany. (Information on the country of departure was not readily available in two of the
2 cases.) Six of the men ultimately wound up in Germany, though they were not admitted pursuant
3 to the agreement.³⁷ Two others went to Lithuania before deportation proceedings, and therefore
4 before the U.S. could have demanded action under the agreement.³⁸ Of the four possibly
5 remaining,³⁹ one died while his case was in litigation; the U.S. agreed not to seek deportation of
6 the other three because of their ill health.

7 Indeed, Germany accepted many more OSI defendants than it declined. As of this
8 writing, 23 OSI defendants have gone to Germany. **Update number?** One was extradited;⁴⁰
9 some fled in the midst of OSI proceedings;⁴¹ others left the United States as a result of pre- or
10 post-filing settlements with OSI;⁴² some were admitted after deportation orders were entered.⁴³
11 Six of the twenty-three were German citizens, and thus had to be admitted under German
12 law.⁴⁴ Most of the others entered unannounced with their U.S. passports. The Germans did not
13 know at the time of entry that they were either OSI subjects or defendants.⁴⁵ In most cases where
14 Germany later learned of the connection, they let the matter lie. Their reaction was quite
15 different, however, in the two cases where OSI was involved in the defendant's plan to go to
16 Germany.

17 John Avdzej and Arthur Rudolph went to Germany as part of an agreement with OSI to
18 avoid prosecution in the United States. Each renounced his U.S. citizenship shortly after arrival.
19 Although OSI knew about the defendants' plans, Germany had not been forewarned nor had the
20 State Department.⁴⁶ When they entered Germany, neither man acknowledged that he was doing
21 so in order to avoid prosecution in the United States.

22 The Germans sent a strongly worded Diplomatic Note in protest.⁴⁷ They made clear that

1 the Germans announced that they would no longer accept any non-German OSI defendants as
2 deportees. It is unclear what caused this change. Some at the State Department thought that
3 pending litigation concerning Holocaust victim assets might explain Germany's intransigence.⁵³

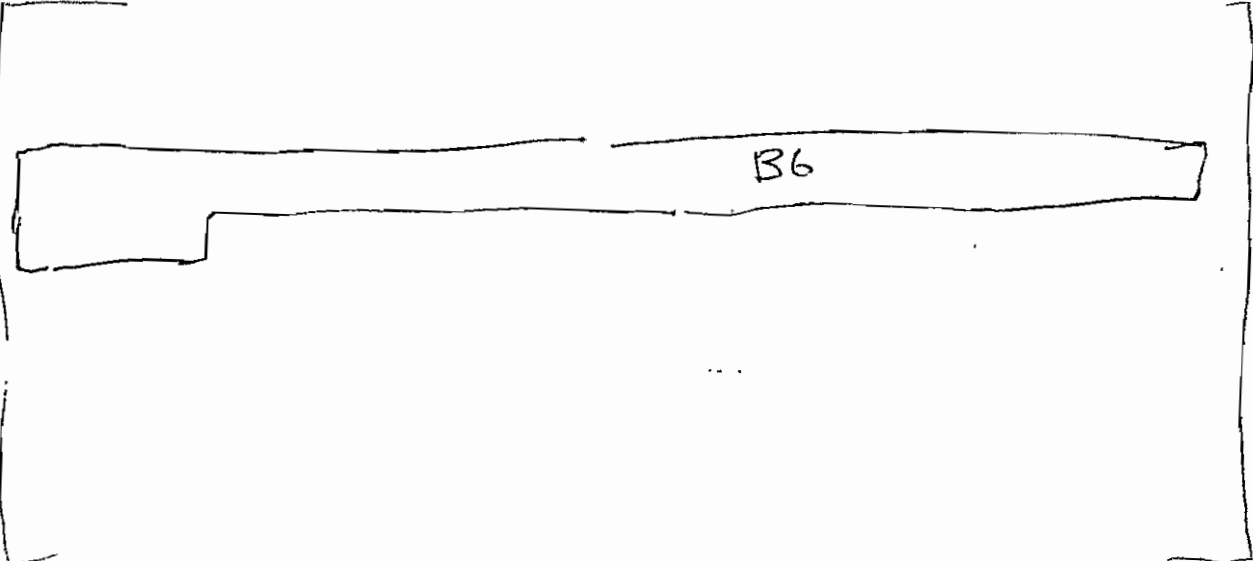
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7 The problems caused by Germany's hardening position came to a head in the cases of
8 Bronislaw Hajda, Anton Tittjung and Nikolaus Schiffer. Hajda, a Pole who served as an SS
9 guard at various Polish camps, including the Treblinka labor camp, was denaturalized and
10 ordered deported to Poland (his country of birth) or Germany (the country from which he
11 embarked to the United States) in 1998. Poland refused to accept him on the ground that he had
12 expatriated himself by his collaboration with the Nazis.

13 Tittjung, born in Yugoslavia (now Croatia), was a German national. As a member of the
14 Waffen SS, he served as a guard at Mauthausen in German-annexed Austria. He lived in Austria
15 for seven years after the war and received his entry visa there. He was denaturalized and ordered
16 deported to Croatia in 1994. The Croatian government refused to accept him because he was
17 neither born in that country nor a citizen thereof. The United States asked Austria to admit him,
18 but the request was denied; Austria noted that he had never been a citizen of that country.⁵⁵

19 Schiffer, a German national from Romania, served in the Waffen SS as a concentration
20 camp guard in both Poland and Germany, and was ordered deported to Romania in 1997. That
21 country refused to accept him on the ground that he had surrendered his Romanian citizenship
22 when he left Romania and voluntarily joined the German armed forces.⁵⁶

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Romania, particularly, was importuned on several fronts. In July 2000, the U.S. Solicitor General raised the matter in a meeting in Romania with the Romanian Deputy Prime Minister and Minister of Justice. He followed up with a letter to the Minister of Justice in which he observed that "there are, in any system, unique cases that assume a significance transcending the importance of the particular facts involved. In the eyes of the United States, this is such a case."

That same month, the U.S. Ambassador to Romania raised the issue with the Chief of Staff of the Romanian President. Shortly thereafter, U.S. Embassy officials met in Bucharest with officials from the Romanian Ministry of Justice and Ministry of the Interior. And in February 2001, the Attorney General of the United States raised the issue with the Romanian Minister of Foreign Affairs. These efforts bore fruit in January 2002, when Romania advised the State Department that it was willing to accept Schiffer. He went that May, at age 83.

He may be the last OSI defendant that country will accept. Shortly after his arrival, Romania adopted new legislation barring the entry of persons as to whom "there are serious reasons to consider that they have committed criminal offences or took part in committing

1 criminal offences against peace and humanity, war crimes or crimes against humanity.”⁶⁰

2 The United States continued to pressure Germany about the other two defendants.

3 [B6] met with the German Consul General and offered the Germans political cover in

4 case they were concerned about world reaction if they failed to prosecute the men: [B6]

5 would explain publicly that the United States understood the difficulties of filing a case at this

6 late date and was confident that the Germans would do an appropriate investigation.⁶¹ Shortly

7 thereafter, the State Department sent a Diplomatic Note to Germany stating that “the United

8 States believes that Germany has a compelling moral obligation to act as the receiving country of

9 last resort.”⁶² A second diplomatic message was sent in March 2002⁶³ and a demarche the
10 following summer.

11 Germany withstood the pressure. They maintained that although they could accept non-

12 Germans for reasons of international law, political interest or humanitarian concern, practice

13 dictated that there be current links to Germany; typically such links were either to family or

14 property, neither of which applied to Tittjung or Hajda.⁶⁴ Ultimately, Germany turned down the

15 U.S. request, emphasizing that the men were not German citizens and there was no “public

16 interest” in Germany to accept the men since there were no criminal charges or investigations

17 pending against them. Germany did not respond to the moral imperative argument.⁶⁵

18 In January 2003, the State Department proposed importuning Croatia and Poland again

19 before applying renewed pressure on Germany. Meeting with the State Department’s Director of

20 Austria, Germany and Swiss Affairs, [B6]

21 [B5] The State

22 Department insisted however, and a demarche was sent to Poland and Croatia. Both countries

1 rejected the U.S. proposal.

2 At this point, diplomatic relations between the U.S. and Germany were strained, for
3 reasons unrelated to OSI.⁶⁷ The media was reporting that Germany was anxious to improve the
4 situation and [B6 I B5] In May 2003, he
5 contacted the State Department's Special Ambassador on War Crimes issues.]

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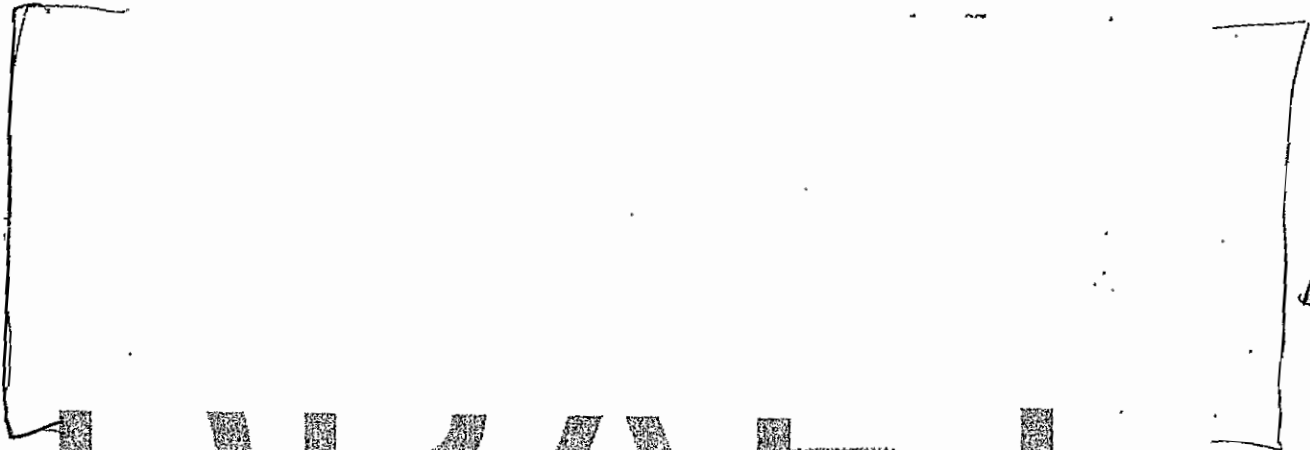
8 The Ambassador was supportive of the need to press the issue further with Germany.

9 Very soon thereafter, and one day before the U.S. Secretary of State was scheduled to meet with
10 the German Chancellor, the State Department delivered a Diplomatic Note to the Germans. This
11 May 2003 document reviewed the history of the United States' efforts to deport Hadja and
12 Tittjung and renewed the U.S. request that "Germany act as the receiving country of last resort
13 for these individuals on the basis of Germany's compelling moral obligation to accept them."
14 The U.S. added that neither Croatia nor Poland possessed "an equivalent moral obligation."⁶⁹

15 Rather than offering to accept Tittjung and Hajda, Germany asked the United States to
16 take back [B6] Having
17 renounced his U.S. citizenship when he reached Germany, [] born in Poland, was B6
18 stateless; the Germans were neither interested in prosecuting him nor in granting him German
19 citizenship.

20 The United States rejected the German request. The State Department advised that the
21 December 1987 agreement to readmit stateless persons did not control since there was an
22 exception if readmittance was not best for U.S. interests. [] had guarded Jews who were B6

1 forced to exhume and burn corpses. From the U.S. perspective, that made him the precise type
2 of person for whom the exception was created. Moreover, OSI had timely alerted the German
3 Consulate that [] might flee to Germany. They therefore should not have been taken B6
4 unawares when he entered the country.⁷⁰



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11 In the summer of 2003, however, OSI learned that German courts had long ago upheld
12 findings of base motive in cases of mass shootings or group death in gas chambers. According to
13 one 1971 ruling by the German Federal Court of Justice:

14 Waiting for one's own sure death, experiencing the preparations, and being herded
15 into the gas chambers constituted additional mental torture for the victims of mass
16 extermination.⁷²

17
18 This raised the possibility, for [] that Germany might be persuaded to seek the B6
19 extradition of Jacob Reimer, an OSI defendant who had been denaturalized in December 2002.⁷³

20 Reimer, trained as a camp guard, had been involved in ghetto clearings and a pit execution.

21 Before broaching the topic of extradition, however, [] wanted to pursue the B6
22 issue of OSI deportees. In October 2003, [] met with the Political Minister of the B6
23 German Embassy. [] presented a proposal, approved by the State Department, which B6
24 would obligate the United States to seek other countries for deportation, but commit Germany to

1 accept those with German citizenship and those who are not granted admittance elsewhere.⁷⁴

2 [] also alerted the Minister that two members of Congress had recently written to the B6
3 Attorney General asking about OSI's deportation problems.⁷⁵ Unless the matter were settled
4 before a response was due, [] B6

6 In December 2003, Germany issued a Note Verbale rejecting again both Hajda and
7 Tittjung. The Note spoke of the lack of legal authority for their admission; again, Germany did
8 not address the moral argument.

9 The issue took an unexpected turn in January 2004. An OSI defendant who had been
10 ordered deported to Lithuania flew to Germany after all his appeals were exhausted. OSI had
11 been working with Immigration and Customs Enforcement ((ICE) - successor to the INS) to
12 locate the defendant and put him on a plane to Lithuania. He eluded the authorities and, with his
13 still-valid Lithuanian citizenship, flew to Germany where he was admitted without a visa because
14 Germany and Lithuania are both members of the European Union (EU).

15 As soon as OSI learned of this, it notified the State Department which passed the
16 information on to Germany. A member of the German Embassy, grateful for the "heads up,"
17 acknowledged to [] that his country had OSI's 1993 information concerning B6
18 this defendant. However, the information had not been shared with airport security and so the
19 entry was accomplished without incident.⁷⁷

20 Germany's inadvertent admission of an OSI defendant did not reduce the U.S.
21 government's determination to convince Germany to knowingly accept OSI deportees. In
22 January 2004, [] with State Department approval, met with staff of the two B6

1 Congressmen who had written to the Attorney General about the deportation issue. The State
2 Department had a separate meeting with the staff shortly thereafter. The State Department
3 reiterated OSI's message that Germany "has steadfastly refused to address the moral argument."
4 However, State was less critical than OSI had been of Germany's overall actions on the deportee
5 issue over the years.⁷⁸

6 In February 2004, the two Representatives wrote to the German chancellor asking him to
7 recognize Germany's "moral responsibility" to accept Tittjung and Hajda.⁷⁹ The German
8 response, issued by the foreign minister, acknowledged the country's "special historical
9 responsibility." The Minister maintained, however, that the responsibility was met in large part
10 by the payment of "comprehensive compensation" to Holocaust victims over the years. He
11 reiterated Germany's position on deportees: It would only consider accepting people who were
12 not – and never had been – German citizens, if there was a possibility of criminal prosecution in
13 Germany. As he saw no such possibility for Tittjung and Hajda, they would not be admitted.

14 Moreover:

15 Admission outside of a legal assistance procedure would send the wrong
16 signal. Since the persons in question cannot be convicted due to a lack of
17 evidence against them, and due to the fact that on the contrary they would even
18 have to be granted state aid, this would give the impression that Germany is
19 providing protection and shelter to persons with a Nazi past. This would not be
20 justifiable for both domestic and foreign policy reasons. The Federal Government
21 sees the responsibility for admission of the persons in question as resting with the
22 states whose citizenship they hold.⁸⁰

23
24 In March 2004, [redacted] advised the Germans that Johann Leprich, another **B6**
25 OSI defendant, had been ordered deported to Germany.⁸¹ Leprich, an ethnic German born in
26 Romania, had been a camp guard. He was denaturalized in 1987. Shortly before the ruling, he

1 fled the country. His attorney advised the court and OSI that he had gone to Canada.

2 Years later, a self-styled Canadian "Nazi hunter" began a public search for Leprich,
3 maintaining that he had returned to the United States. Leprich was featured on a May 1997
4 segment of a popular U.S. television show, "America's Most Wanted." In 2003, he was found
5 hiding in a secret compartment under the basement stairway of his wife's home in Michigan. He
6 claimed that he had recently entered from Canada where he had no legal status. His illegal entry
7 from Canada formed the basis for deportation.⁸² He requested Germany as his destination
8 country.



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17 Germany rejected that analysis outright. It maintained that service in the SS did not
18 automatically confer citizenship. Even if it had, Leprich would have lost citizenship based on
19 lack of residence and/or acquisition of U.S. citizenship. That the U.S. retroactively stripped him
20 of citizenship did not alter their view. Germany added another reason as well, one which applies
21 to all OSI defendants who cannot be prosecuted criminally in Germany: Germany does not want
22 to create the impression that it is "offering protection and shelter to persons with Nazi pasts."⁸⁴

1 To eliminate that possibility, the State Department offered to issue a statement explaining that
2 Germany had taken Leprich only to accommodate the United States. Germany did not take up
3 the State Department offer.⁸⁵

4 Both Hajda and Reimer died in the United States in 2005. That same year, a German
5 television news magazine devoted a segment to Germany's refusal to readmit elderly Nazis
6 ordered deported by U.S. courts.⁸⁶ A former OSI Deputy Director appeared on the program to
7 argue for revision of the policy. In a letter sent to the program, but not read in its entirety on air,
8 the Federal Ministry of the Interior defended the policy.

9 There are no obligations under international law, nor can the Federal Republic of
10 Germany have any interest in accepting people into our country who, although
11 they are suspected of committing Nazi crimes, cannot be proven to have
12 committed them. If we did so, we would be encouraging, and be responsible for,
13 a state of affairs in which these people have been accepted by the very country
14 where the Nazi crimes originated, the people would then be supported here by
15 German social services and could possibly even become active in the extreme
16 right and anti-Semitic social scene. In addition, because we are doing everything
17 possible to encourage the growth of an active Jewish life in Germany again, we
18 cannot hospitably accept people from the Brown circle into our country at the
19 same time. Although we completely understand that the United States would
20 want to send these people out of its country after revoking their citizenship, they
21 should be deported to the countries of their former citizenship, as prescribed by
22 international law.⁸⁷

23
24 As of this writing, [B6] is still in Germany while Tittjung and Leprich remain in the
25 United States.⁸⁸ [B5]

26
27 And in June 2008, a Brussels-based human rights group asked a Spanish court to
28 indict Tittjung and Leprich and to seek their extradition to Spain for crimes against humanity in
29 the persecution of Spanish nationals imprisoned at Mauthausen.⁹⁰

1

1. Nov. 14, 1991 memo from [redacted] to OSI attorneys, historians and investigators re: "Former Stasi Archives in the Freienwälderstrasse, Berlin-East." One instance in which the East Germans provided assistance involved the Mengele investigation. East Germany provided a needed photograph of Mengele which they had from an old drivers license. Recorded interview with former [redacted] July 17, 2003. B6

2. From July 1945 until Oct. 1953, captured Nazi party records were consolidated at the BDC under the authority of the U.S. Army for use in war crimes and denazification trials. Between Oct. 1953 and July 1994, it was under the jurisdiction of the State Department. In 1988 [redacted] B6

3. Oct. 22, 1992 letter from then [redacted] Central European Affairs, U.S. State Department. B6

4. Oct. 18, 1993 Agreement between the Government of the United States of America and the Government of the Federal Republic of Germany Concerning the Transfer of the Berlin Document Center to the Federal Republic of Germany, Arts. 4 and 5. [redacted] testified in favor of the agreement before the House Subctee on International Security and Human Rights, Committee on Foreign Affairs, Apr. 28, 1994. B6

[Large redacted block with handwritten B5 and B6 markings]

6. Oct. 26, 1987 memorandum from [redacted] BS [redacted] r Sher [redacted] B6 B5

7. Jan. 29, 1982 telegram 023845 from Secretary of State to American Embassy in Bonn.

8. June 1, 1992 letter from the German Federal Ministry of Justice to Director Sher re: Mutual Assistance in Criminal Matters here concerning: U.S. Investigations of Nazi War Criminals. Before the Germans authorized this document sharing, the countries had alerted one another to information each had received from Germany which might be useful to another country. The second country then had to request the material from Bonn. June 12, 1987 memo to OSI staff B6 from [redacted] re: [redacted] BS B5

9. Another area of frustration is the German government's unwillingness, possibly due to privacy concerns, to allow OSI unrestricted access to German pension information for R&D purposes. See July 17, 2000 memo to [redacted] re: [redacted] B6

"Examination of German Pension List in 1997; Note Verbale No. 68/97 from the German Embassy," Aug. 26, 1997.

The Germans will, however, generally respond to a request for pension information about a specific individual. Indeed, their response to a request for information on Kazys Ciurinskas led to the key document in the case, establishing in Ciurinskas' own words (on his pension application to the German government) where he had served and where the unit had been when he was wounded. It also negated his claim that he was unaware that his unit was working for the Germans. *U.S. v. Ciurinskas*, 976 F. Supp. 1167 (N.D. Ind. 1997), *aff'd*, 148 F.2d 729 (7th Cir. 1998). In 2005, however, the Germans unexpectedly refused to allow OSI access to pension records for an OSI subject. The Germans suddenly claimed that access was permissible only in criminal investigations. Apr. 28, 2005 e-mail from [

B6 [] B5 Jc [] B6 [] B5

10. American occupation forces prosecuted 1,941 alleged Nazi criminals. 1,517 were convicted, 367 were acquitted, and charges were withdrawn in 57 cases. Adalbert Rueckerl, *The Investigation of Nazi Crimes 1945-1978* (Heidelberg: C.F. Mueller, 1979), pp. 28-29. The Germans themselves have prosecuted thousands of others. 2003 SWC Annual Report: Worldwide Prosecution and Investigation of Nazi War Criminals, p. 27.

11. In Jan. 2004, Germany arrested a man accused of ordering his unit to round up and shoot 146 civilians (including 51 children) in Czechoslovakia. The condemned group allegedly was composed of partisans and those who supported them. The defendant was also charged with ordering the execution of 18 Jews, some of them children, who had been hiding. He went on trial in Sept. 2004. "Germany Arrests Alleged Nazi, 86," by Andrea Dudikova, *The Chicago Tribune*, Jan. 20, 2004. He was acquitted in Dec. 2005. "Nazi Officer Acquitted of Wartime Mass Murder," by Roger Boyes, *The Australian*, Dec. 21, 2005.

In Feb. 2004, an 88 year old female doctor was charged with murder of one mentally handicapped patient and complicity in the murder of 158 others as part of a Nazi euthanasia program. "East German Doctor Faces Trial Over Nazi Murders," by Tony Paterson, *The Sunday Telegraph* (London), Feb. 1, 2004. A former SS member, charged with killing a Dutch prisoner during the war, went on trial in Sept. 2003. The prosecution was aborted mid-trial, however, because the defendant was adjudged mentally unfit. "Court Says Ex-Nazi Unfit to Stand Trial," *AP*, Feb. 2, 2004.

Germany's investigations and prosecutions have been recognized each year by the SWC in its annual report on world-wide investigations and prosecution of Nazi war criminals. Germany is generally in the second or third tier of the six categories created by the SWC. The United States is consistently sole occupant of the top tier, reserved for countries which have taken all reasonable measures to identify the potential suspected Nazi war criminals in the country in order to maximize investigation and prosecution and have achieved notable results during the period under review. See the SWC reports for 2002 - 2006.

12. E.g., Mar. 12, 2003 letter from [] B6 [] B6 forwarding a list of collaborators whose names came up in [] B6

recent research and who might still be in Germany; Aug. 9, 1989 letter to [redacted] notifying him [redacted]

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13. *E.g.*, Aug. 12, 2000

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14. Aug. 9, 1989 letter to [redacted]

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15. *E.g.*, Marking the 50th anniversary of Hitler's ascension to power, West German Chancellor Helmut Kohl said that his country "cannot and will not shirk [its] responsibility for the past." "A Hitler Anniversary Recalled at Reichstag," *The New York Times*, Jan. 31, 1983.

16. Oct. 26, 1973 report from German prosecutor in Landau in der Pfalz to Department of Justice, pp. 20-21 (hereafter 1973 Report).

17. A German national (volkszugehöriger) is a person "who has declared himself to be of Germany nationality, as long as this declaration is confirmed by certain characteristics such as ancestry, language, education and culture." Sec. 6 of the Federal Refugee Act of 1993 (BGB I, S. 829 ff.) A similar definition existed in 1973.

18. 1973 Report, *supra*, n. 16. *See also*, June 19, 1974 letter from German Consulate General to [redacted] Oct. 15, 1974 report from German prosecutor to Department of Justice (hereafter 1974 Report); Sept. 24, 1975 report of District Attorney Landau to Central Office of State Judicial Administrations, Ludwigsburg.

19. 1974 Report, *supra*, n. 18 at p. 7.

20. Jan. 4, 1982 letter from [redacted] Oct. 6, 2000 recorded interview with former [redacted] Since there are fewer levels of appeal, and the burden of proof is less, extraditions are generally speedier for the United States than denaturalization trials followed by deportation hearings. *See* pp. 41-42 for a fuller

B6

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36. Note Verbale, Ref. No. 508-516.50 (USA), Nov. 22, 2005.

37. The six were [redacted] Stefan Leili, Hans Lipschis, [redacted] B6
and [redacted] B6 The circumstances of their entry are set forth in notes 41 and 43,
infra.

38. The two were [redacted] B6 and Aleksandras Lileikis.

39. [redacted] Talivaldis Karklins, Mikelis Kirsteins and Alexander Lehmann. B6

40. Bruno Blach, an ethnic German from the Sudetenland (now the Czech Republic.) He was tried and acquitted in 1993 of four wartime murders.

41. Anton Bless, [redacted] Juris Kauls, Stephan Leili, [redacted] Stephan Reger, B6
[redacted] Josef Wieland, and [redacted] The

Germans had notified OSI that they would not accept Rydlinskis as a deportee because they did not have the "original" exchange of notes. Jan. 5, 1995 letter from [redacted] B6

[redacted] However, he entered with a U.S. passport shortly after his denaturalization case was filed. B6

42. John Avdzej; Arthur Rudolph; Michael Schmidt.

43. [redacted] B6 Algimantas Dailide, [redacted] Johann Hahner, Liudas Kairys, B6
Reinhold Kulle, Hans Lipschis, Boleslavs Maikovskis, and Conrad Schellong.

In the case of Kairys, a Treblinka labor camp guard, enormous pressure was brought to bear on Germany by the U.S. government. He was ordered deported to Germany in 1987. After giving formal assurances (through a Note Verbale in 1990; see Dep't of State telegram 311711Z, Oct. 31, 1990) that they would issue him a residence permit, Germany later advised that they were reluctant to do so. One cause for their concern was that Kairys might become a ward of the state. OSI assured them that he was the recipient of a sufficient pension from the Crackerjack company, his long-time U.S. employer. Mar. 2, 1993 letter from [redacted] B6

[redacted] B6 Germany apparently had other reasons for reconsidering their earlier commitment to accept Kairys. In Feb. 1993, a German Foreign Ministry official told officials at the U.S. Embassy in Bonn that the German government was reconsidering its decision because conditions in Eastern Europe had changed and Kairys could now be deported elsewhere. (This was an apparent reference to the collapse of the U.S.S.R. and the end of Communist rule in eastern and central Europe. Had Kairys been deported to a Communist country before the end of the Cold War, he would have faced a judicial system viewed by many as lacking in fundamentals of due process.) May 28, 1993 draft letter from [redacted] to German Justice B6
Ministry official [redacted] hereafter [redacted] (draft). The letter was a followup to a May 11, B6
1993 telephone conversation between [redacted] B6 in which they discussed recent problems between Germany and the United States concerning OSI defendants.

Ultimately, the State Department prevailed upon Germany to honor its earlier

commitment concerning Kairys. Apr. 7, 1993 letter to:

] from B6

B6 Kairys was admitted in Apr. 1993.

44.

[B6]

B6

] Johann Hahner, Reinhold Kulle, Hans Lipschis, and

[B6]

45. By agreement between the United States and the FRG, U.S. citizens in possession of a valid passport did not need a visa to enter Germany.

46.

[.....]

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47. May 21, 1985 Note from the Embassy of the FRG to the State Department.

48. This is the very argument OSI makes when it seeks to remove persons from the United States, i.e., had all the facts been known they would have been denied entry.

49. Diplomatic Note, May 21, 1985. Rudolph and Avdzej were not the only admittees about whom Germany complained. In 1993, they were angry because they believed the DOJ press release announcing Kairys' deportation portrayed Kairys as a major war criminal. They felt this put intense pressure on Germany to bring a prosecution which, under their law, they had scant hope of winning. See: B6 draft, supra, n. 43.

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In fact, however, the U.S. was not privy to his plans beforehand. And in any event, the German consulate in Chicago had been notified by Schmidt's attorney of Schmidt's intentions. The consulate had apparently failed to pass the information along. *Id.*

50. Interview with [Apr. 25, 2001. B6]

[51]

] B5

52. OSI defendants who went to Germany in the 1990s include Michael Schmidt (1990); Liudas Kairys and Johann Hahner (1993); [1994); and B6] Kairys is discussed supra, n. 43. B6

53. Comment of [at State B6] Department Meeting Apr. 19, 2001 re Removal of Hajda, Schiffer and Tittjung. Hajda, Schiffer and Tittjung are discussed at pp. 434-437, 440.

54. May 5, 2000 letter from [redacted]

[redacted] It is the case that those sent to the Soviet Union did face serious consequences. Fedorenko who had been deported in 1984 to the Soviet Union had been tried and executed; Linnas, deported in 1987, was awaiting trial when he died of natural causes. And, as noted at p. 430, there is reason to believe the Germans took in Maikovskis to spare him from the Soviet judicial system. However, since Germany continued to accept, albeit sometimes reluctantly, people without German citizenship years after the Soviet collapse, that explanation does not seem sufficient.

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55. Aug. 24, Nov. 2, and Dec. 13, 2000 letters to [redacted]

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56. The legal predicate for this position is murky. In May 1943, the Romanian Government and the German Reich entered into an agreement providing that Romanian citizens of German ethnic origin who joined the Germany Army would preserve their Romanian citizenship. (OSI relied on this when trying to persuade the Romanians to accept Schiffer.) However, in Sept. 1944, when Romania switched sides and joined the Allies, King Michael declared that all those who had served in the German Armed Forces must forego citizenship.

57. See e.g., May 5, 2000 letter from [redacted]

[redacted] *supra*, n. 54; Aug. 27, 2001 letter from [redacted]

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58. [redacted]

The class actions were dismissed in May 2001 and payouts from the fund began shortly thereafter. "Payments Begin for Laborers Forced to Work for the Nazis," by Stephanie Flanders, *The New York Times*, June 29, 2001; "Judge Clears Obstacles to Pay Slaves of the Nazis," by Jane Fritsch, *The New York Times*, May 11, 2001; "Germans Sign Agreement to Pay Forced Laborers of Nazi Era," by Edmund Andrews, *The New York Times*, July 18, 2000.

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[redacted] B6 [redacted]

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59. Apr. 19, 2001 meeting, *supra*, n. 53.

60. Government Ordinance No. 194, "Emergency Ordinance on the regime of aliens in Romania," Dec. 2002. In January 2004, the Attorney General of the United States met with the Romanian Minister of Justice and expressed concern about the new statute. The Justice Minister

indicated that decisions would be made on a "case by case" basis. Jan. 28, 2004 e-mail from Rosenbaum re "AG's Luncheon Meeting Today with Romanian Justice Minister: Postscript." (The Justice Minister, before assuming that post, had, coincidentally, been an expert witness on Romanian law for OSI in its 1993 denaturalization suit against Nikolaus Schiffer.)

As of this writing, two OSI defendants, Johann Leprich and Michael Negele, were born in Romania. (Two others, Adam Friedrich and Joseph Wittje, died in the U.S. while their cases were pending.) Negele has an outstanding order of deportation to Romania (or, alternatively, Germany). Citing the new statute, the Romanian ambassador informed OSI that Negele would not be admitted. The ambassador described the legislation as an effort "to meet the standards and embrace the values of the Western democracies." June 28, 2004 letter from Romanian Ambassador Sorin Ducaru to Rosenbaum.

In Nov. 2004, an international commission chaired by Elie Wiesel and established by Romanian President Iliescu, called on the government to "accept responsibility for alleged Romanian war criminals." Report of the International Commission on the Holocaust in Romania. (An earlier draft had called on Romania to "accept war criminals expelled from other countries." This language was omitted from the final report.)

In separate meetings with Romanian President Basescu and Foreign Minister Ungureanu, Assistant Sec'y of State [B6]

[B6]
[B6]
[B6]

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With the strong support of the State Department, scholars from the USHMM raised the issue again in meetings with Romanian political leaders in Oct. 2005. Oct. 28, 2005 e-mail to [B6] from [B6] at the USHMM, B6 re "OSI/Romania."

As of this writing, the Romanian position has not changed.

61. Dec. 10, 2001 e-mail from [B6] re [B6]] BS

62. Jan 31, 2002 telegram (18835) from Secretary of State.

63. U.S. Dip. Note No. 565-C, Mar. 13, 2002.

64. Mar. 17, 2002 telegram 000913 from American Embassy in Berlin to the Secretary of State; Dec. 31, 2002 e-mail from [B6] re "Germany and Readmission of Nazis Tittjung & Hajda," to [B6] and responsive e-mail of Jan. 2, 2003 from [B6]] B6 B6

65. June 24, 2002 Note Verbale from the German Foreign Office, Case No. 200-533.00 USA.

66. [Bb]

[Bb]

] s B5

67. See e.g., "Germany and U.S. Tentatively Ease Chill in Relationship," by Steven Weisman, *The New York Times*, Oct. 31, 2002. The main points of contention involved Germany's opposition to U.S. policy toward Iraq and the perceived anti-American tone of Chancellor Schroeder's fall 2002 reelection campaign.

68. May 12, 2003 e-mail from [Bb] re "Germany-Nazis." [Bb] reiterated that message to [Bb] May 12, 2003 e-mail re "Fwd: Re: Germany-Nazis." [Bb]

69. U.S. Dip. Note No. 1078/03, May 14, 2003.

70. Cable 1981, May 23 from Emb. Berlin to U.S. State Dept: 5/31/03 e-mail from [Bb] to [Bb]

71. See p. 340, n. 17.

72. Nov. 1, 2003 e-mail from [Bb] [Bb] in which he quotes from a German decision reported at 1 StR 110/70 (May 18, 1971). The case was cited to him by [Bb]

73. *U.S. v. Reimer*, 2002 WL 32110197 (S.D.N.Y.), *aff'd*, 356 F.3d 456 (2nd Cir. 2004).

74.

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75. Oct. 27, 2003 letter to [redacted]

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Rosenbaum had testified before Rep. Jackson's subcommittee on July 11, 2003. The hearing concerned immigration relief under the Convention Against Torture for Serious Criminals and Human Rights Violators. The subcommittee was investigating whether, as an unintended consequence of the Convention, human rights abusers were remaining in the U.S. rather than facing deportation to their own countries. At one point Rosenbaum commented:

I would not want the Subcommittee to be left with the impression that it is only undemocratic countries, lawless countries even, that refuse to accept these individuals, or countries with which we perhaps don't have diplomatic relations. In our cases - in the Nazi cases - some of the most prominent democracies in the world have refused to accept the return of these individuals as well.

The letter from Reps. Lantos and Lee was a followup to that comment.

76. Oct. 28, 2003 memo to File from [redacted]

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77. Jan. 13, 2003 e-mail from [redacted]

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78. Feb. 9, 2004 e-mail from [redacted]

e "Meeting with Congressional Staffers."

79. Feb. 25, 2004 letter from [redacted]

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80. Apr. 1, 2004 letter from Federal Foreign Minister Joschka Fischer. Germany's position altered somewhat in 2005 when it advised OSI that it would not admit someone "merely because they once possessed German citizenship." Admission would be predicated solely on whether there was admissible evidence to support a criminal prosecution. Aug. 20, 2005 letter to [redacted] from [redacted]. The letter was in response to notification from OSI about developments in the Reimer case.

B6

81. Mar. 3, 2004 letter from [redacted] to [redacted]

re Johann Leprich.

82. The deportation, unlike all others OSI has handled, had nothing to do with his World War II activities. Although that could have been the basis for deportation as well, OSI determined it would be much simpler to rely on Leprich's own admissions about his illegal entry from Canada.

Also unusual in the Leprich case, he was placed in custody upon his arrest in July 2003.

The basis for the detention was that he was a flight risk, as established by his leaving during the denaturalization case. He spent 40 months in custody and was released only after Romania, Hungary and Germany all declined to admit him. "US Frees Ex-Nazi Camp Guard in Michigan," *AP*, Oct. 18, 2006.

83. Mar. 19, 2004 letter to []

] B6

84. May 13, 2004 letter from []

] B6

85. The suggestion was made by []

from [] re [] Oct. 28, 2004 as set forth in Oct. 28, 2004 memo to Leprich file

] B6

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86. WDR-TV news magazine *Monitor*, June 9, 2005, segment "Nazi Crimes: How the Federal Government of Germany Hinders Investigations," reported by John Goetz and Monika Wagener.

87. June 9, 2005 letter to *Monitor* Editorial Staff from Rainer Lingenthal, Federal Ministry of the Interior.

88. The problem of having no receptive country for a deportee is not limited to OSI defendants. There are many reasons for such problems, e.g., persons from war zones where there are no authorities to issue appropriate documents. See, "Refugees in Limbo: Ordered Out of U.S., but With Nowhere to Go," by Jodi Wilgoren, *The New York Times*, June 4, 2005; "82 Inmates Cleared but Still Held at Guantanamo," by Craig Whitlock, *The Washington Post*, Apr. 29, 2007. According to a report by the Inspector General of DHS, as of June 2004, removal orders against more than 133,000 aliens could not be carried out because their countries of origin have blocked their return. *The Detention and Removal of Illegal Aliens*, p. 18. The full report can be found at http://www.dhs.gov/xoig/assets/mgmt/rpts/OIG_06-33_Apr06.pdf (last visited Nov. 2008).

89. Nov. 9, 2005 e-mail from []

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] re []

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90. "Alleged Nazis Face Charges in Spanish Court," by Daniel Wools, *AP*, June 24, 2008.

1 **The Baltics**

2
3 Over one third of OSI defendants come from Estonia, Latvia and Lithuania. These
4 former “captive nations” have a complex political history which affects their perspective on
5 World War II, and consequently their working relationship with OSI.

6 All three nations were under Russian domination until the end of World War I. They then
7 attained independence, but in 1940, partly as a result of the Soviet/German Molotov-Ribbentrop
8 Pact, the Soviets annexed the three countries. When Germany invaded the U.S.S.R. in June
9 1941, it overran and occupied the Baltic nations. The invading forces included small mobile
10 killing units (Einsatzkommandos) charged with annihilating Jews and others deemed inimical to
11 the Reich. Indigenous groups within each country assisted the Germans in carrying out their
12 mission.¹ At war's end, the Baltic nations were once again forcibly incorporated into the Soviet
13 Union.

14 The three countries saw themselves as victims of both the Nazis and the Communists.
15 Many who assisted the Nazis claimed they were seeking to rout their former Communist
16 oppressors, not Jews; to the extent that there was any overlap, they saw it as incidental. This
17 defense was raised in several OSI cases, once successfully.²

18 While the Baltic nations were part of the Soviet Union, OSI had access to documents in
19 their archives to the same extent that it had access to documents in other Soviet archives: the
20 Soviets would receive requests from OSI and produce documents they deemed responsive.³
21 Once the Baltic countries gained independence, they, like the other parts of the former Soviet
22 Union, were generous in allowing OSI access to their archives. However, they have been
23 reluctant to prosecute criminally those who assisted the Nazis.⁴

1 1. Estonia

2 About 75% of Estonia's Jewish community fled to the Soviet Union before the German
3 invasion. Of the remaining 950 to 1,000, virtually all were killed by the Nazis. The Nazis also
4 murdered hundreds of Estonian Roma (gypsies).

5 As a Soviet Socialist Republic, Estonia was prepared to prosecute Karl Linna.⁵ Since it
6 gained independence, Estonia has maintained that it is anxious to find and prosecute those who
7 assisted the Nazis in persecution. In fact, however, independent Estonia has never prosecuted
8 anyone for aiding the Axis powers. Several Estonian collaborators have come to OSI's attention.

9 a. Evald Mikson

10 In 1993, Iceland sought OSI's assistance in investigating former Estonian national and
11 nationalized Icelandic citizen Evald Mikson. Mikson had been head of the Estonian Political
12 Police. That organization, at the behest of the Germans, arrested, interrogated and imprisoned
13 persons whose racial, religious, political, ethnic and social identity was deemed dangerous or
14 undesirable. Iceland shared with OSI a 1993 report about Mikson that it had received from the
15 Estonian Prime Minister's office. While positing that Estonians had "no power to run the
16 country and its society" during the Nazi era, the report nonetheless referenced 28 arrest orders
17 that Mikson had signed. It noted also that he had interviewed an unspecified number of the
18 arrestees. Thirteen of the 28 arrest orders listed no crime; 11 of these 13 arrestees were Jews.
19 The report made no mention of the ultimate fate of any of those arrested and concluded that there
20 was no basis for accusing Mikson of war crimes. Mikson died in late 1993, at which time the
21 Icelandic investigation was closed.⁶

22 In 1998, the president of Estonia appointed an international commission to investigate

1 crimes against humanity during World War II. The Commission presented its findings in 2001.⁷
2 It concluded that although Estonian police were formally subordinate to the Germans, they
3 nonetheless “exercised significant independence of action in arresting and interrogating suspects,
4 and determining and carrying out sentences.” While reluctant to assign personal responsibility to
5 most members of the Estonian police, the Commission made an exception for the Political
6 Police, *all* of whose members it held accountable. Within this culpable group, the Commission
7 named those *most* responsible, including Mikson, who had “signed numerous death warrants.”

8 b. Harry Männil

9 Although Mikson was dead by the time the Commission issued its report, Harry Männil,
10 one of his chief deputies, was alive and well in Venezuela.⁸ In March 2001, the SWC appealed
11 to the Estonian Prime Minister to investigate Männil,⁹ and shortly thereafter the Estonian
12 Security Police asked the United States for any documents relating to Männil’s World War II
13 activities.¹⁰ OSI responded with a report, along with supporting documents, most of which came
14 from the Estonian State Archives. The documents established that Männil had interrogated
15 individuals in Political Police custody, including Jews and suspected Jews, and that the Germans
16 had murdered at least one of the Jews interrogated.¹¹ After receiving the documents, the Estonian
17 Security Police announced that there was no basis for accusing Männil of Nazi crimes and that
18 Männil’s interrogations were “a legal, procedural act” that could not be considered a crime
19 against humanity.¹²

20 In June 2002, [redacted] went to Estonia to [redacted] *BB*
21 discuss, among other things, whether Estonia might seek Männil’s extradition from Venezuela.
22 This trip came in the wake of a controversial Op-Ed piece about the Holocaust written by the

1 U.S. Ambassador to Estonia and published in one of that country's prominent newspapers. The
2 article suggested that membership in NATO (which the Estonians were then seeking) depended
3 in part upon eliminating resurgent anti-Semitism. It urged the Estonians to pursue those involved
4 with the Holocaust "with the same vigor with which the state still pursues those suspected of
5 Soviet crimes," and recommended national commemorations and education about the atrocities
6 committed during that era.¹³ The piece created a furor in Estonia, where some viewed it as
7 interfering with the internal affairs of a foreign country.¹⁴

8 OSI's discussions with the Estonian prosecutors were tense. Although the Estonians
9 reluctantly acknowledged that Männil might be culpable under Estonian law,¹⁵ they changed their
10 position shortly after the meetings concluded. In July 2002, the government announced that it
11 could not prosecute Männil without evidence that he had actually issued (or carried out) the
12 execution orders.¹⁶ The Estonians never confronted Männil with the documents sent by OSI nor
13 interviewed potential witnesses in the United States. The investigation was officially closed in
14 December 2005, with the Estonians announcing that the 85-year-old Männil was not guilty of
15 crimes against humanity.¹⁷

16 A philanthropist and avid art collector, Männil was invited to Estonia in February 2006 to
17 attend the opening of the country's new art museum. The U.S. ambassador boycotted the event
18 because of Männil's presence.¹⁸ As of this writing, Männil still resides in Venezuela.

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d. Michael Gorshkow

OSI filed a denaturalization lawsuit against Michael Gorshkow in May 2002. The complaint alleged that Estonian-born Gorshkow had been a Gestapo interpreter/interrogator at the headquarters of the German security police in Minsk, Poland (now Belarus). The complaint detailed Gorshkow's participation in a Nazi killing action at the Jewish ghetto in nearby Slutsk in February 1943. Some 3,000 Jewish men, women and children were shot to death at pits or burned alive when Nazi-led forces set fire to the ghetto and blocked Jews from leaving. The Nazi's advance order for the action identified Gorshkow by name as one of the men deployed to carry out the massacre; a fellow interpreter, questioned by the West German authorities in 1960, recalled Gorshkow's participation in the executions.

A month after the complaint was filed, OSI's Principal Deputy and its Chief Historian shared with the Estonians OSI's information on Gorshkow. Gorshkow fled to Estonia shortly thereafter and in July 2002, the district court entered a default judgment revoking Gorshkow's U.S. citizenship. A year later, [redacted] asked the Estonian government for an [redacted] update on their investigation of Gorshkow.²⁰ The Estonian reply professed commitment to the

1 investigation but noted that material from OSI was "great and labor consuming, which makes it
2 difficult for us at the moment to complete the case rapidly."²¹

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4
5 n December 2003, Estonia formally opened an investigation into

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6 Gorshkow. The Prime Minister assured Representative Lantos that he would "personally follow"
7 the investigation.²³ Several months later, the Estonians concluded that there was insufficient
8 basis for an indictment.²⁴

9 2. Lithuania

10 Over the years, Lithuania has sent mixed messages about its commitment to prosecuting
11 alleged war criminals. After gaining independence, Lithuania seemed committed to prosecuting
12 those who had persecuted civilians on behalf of the Nazis. In 1991, the government established
13 an office to investigate "crimes against humanity" committed during the Nazi and/or Soviet eras;
14 its mandate included determining whether the country had wrongly "rehabilitated" any Nazi
15 collaborators.²⁵ Lithuania also signed an agreement to assist Australia in its efforts to prosecute
16 former Lithuanian war criminals now resident in Australia, and offered to enter into a similar
17 pact with both Israel and the United States.²⁶ The following year, Lithuania adopted a statute
18 punishing Nazis and Nazi collaborators for crimes committed against the Lithuanian people
19 during World War II. There is no statute of limitations and punishments range from five years
20 imprisonment to death.²⁷ Lithuania also negotiated a Memorandum of Understanding (MOU)
21 with the United States, whereby each country agrees to assist the other in the investigation of
22 alleged war criminals.

1 Despite these intentions, by September 1994, when OSI filed a denaturalization suit
2 against Lithuanian-born Aleksandras Lileikas, Lithuania had not yet prosecuted any Nazi
3 collaborators.²⁸



7 Lileikis had been chief of the Lithuanian Security Police (Saugumas) in Vilnius. On
8 behalf of the Nazis, the Saugumas arrested Jews, suspected Jews, and those who aided, hid or did
9 business with Jews. Tens of thousands of those incarcerated in Vilnius were marched or trucked
10 to an excavation site at Paneriai, six miles away.

11 Not all those incarcerated in Vilnius were arrested there, nor were all those arrested in
12 Vilnius rounded up by the Saugumas. Nonetheless, even with very incomplete records available,
13 it is certain that at least several hundred of those sent to Paneriai were arrested by the Saugumas
14 during Lileikis' tenure. Once at Paneriai, the victims were stripped of their clothing and any
15 remaining possessions, and then shot in groups of ten at the rim of pits by a Lithuanian volunteer
16 unit. Vilnius had been home to 60,000 Jews before the war; at war's end, only 5,000 were
17 alive.³⁰

18 As chief of the Saugumas in Vilnius, Lileikis was the highest ranking Lithuanian
19 prosecuted by OSI. The case, based on documents found by an OSI historian in the Lithuanian
20 archives, included dozens of orders signed by Lileikis. There were arrest warrants as well as
21 orders transferring many arrestees to the German Security Police, where they were "treated
22 according to orders," *i.e.*, murdered. The documents also showed that, during Lileikis' tenure,

1 the Saugumas conducted a series of sting operations, in the course of which 38 Jews, including a
2 ten year old boy, were lured out of the ghetto with a false promise of escape. The Saugumas then
3 arrested the victims.³¹

4 Lileikis did not contest that he had been chief of the Saugumas and that as such he had
5 ordered his men to arrest thousands of Jews and turn them over to the Nazis. Rather, he
6 maintained that this was a “ministerial and custodial” position and did not amount to the
7 “personal advocacy or assistance of persecution” necessary to revoke his admission to the United
8 States under the RRA.³²

9 Almost immediately after the case was filed, the Lithuanian ambassador to the United
10 States made clear that it would be very difficult to prosecute Lileikis in Lithuania, no matter
11 what the documentary evidence. He suggested that Lileikis would have a viable defense if he
12 simply claimed he did not know that those he had arrested and turned over would be killed.³³ Yet
13 barely two weeks later, the Lithuanian premier, in Israel to sign a cultural and scientific
14 cooperation agreement, apologized for his country’s persecution of Jews during the Nazi era and
15 indicated that Lithuania would seek Lileikis’ extradition.³⁴ The Department of Justice forwarded
16 copies of pertinent documents to Lithuania. U.S. officials made clear that they hoped Lithuania
17 would request extradition even before the district court ruled on denaturalization, as an
18 extradition request would expedite Lileikis’ departure.³⁵

19 In February 1995, shortly before the Lithuanian president was due to visit Israel, his
20 government claimed that there was insufficient evidence to warrant an investigation of Lileikis.
21 The World Jewish Congress expressed outrage and warned that the upcoming trip might be “a
22 diplomatic disaster.”³⁶ On the eve of the visit, Lithuania opened an investigation.³⁷

1 A few months later, Lithuania again warned of pending problems. It suggested that since
2 its 1924 extradition treaty with the United States did not cover genocide, it did not apply to
3 Lileikis' alleged crimes.³⁸ Moreover, the Lithuanians indicated that the documentary evidence
4 was insufficient; they wanted eyewitnesses.³⁹

5 Forty-nine U.S. Congressmen urged Lithuania to reconsider its extradition analysis and to
6 file charges against Lileikis.⁴⁰ Jewish groups argued the same.⁴¹ Ninety-two members of the
7 Israeli Knesset wrote to the Lithuanian president, prodding him to take action against Lileikis as
8 well as against Kazys Gimzauskas, Lileikis' second in command, who had fled to Lithuania after
9 OSI filed a denaturalization action against him in 1995.⁴²

10 In May 1996, a U.S. court stripped Lileikis of his citizenship and adopted OSI's analysis
11 of the case.

12 [A]s the government nicely put it at oral argument, Lileikis is attempting to stand
13 the classic Nuremberg defense on its head by arguing that "I was only *issuing*
14 orders."⁴³

15
16 Within days of the denaturalization, Poland (which shares a border with Lithuania and
17 lost tens of thousands of Polish Jews at Paneriai), announced that it had opened its own criminal
18 investigation and might seek extradition.⁴⁴ The SWC asked Israel to do the same.⁴⁵

19 Lithuania made clear that Lileikis was welcome to return home and suggested that he
20 would not be prosecuted since there were no eyewitnesses.⁴⁶ Lileikis returned voluntarily within
21 three weeks of this news. He was 89 years old and the first OSI defendant to return to one of the
22 new republics formed after the dissolution of the Soviet Union.

23 The SWC demanded that Lithuania follow through on its promise to prosecute war
24 criminals.⁴⁷ The United States too weighed in. At the time, all the Baltic states were seeking

1 admission to NATO. The United States asserted that prosecution of Lileikis and other war
2 criminals would be strong evidence of adherence to "western values," a prerequisite to joining
3 the alliance. Vice President Al Gore made this point when meeting with the president of
4 Lithuania's parliament in April 1997,⁴⁸ and thirty members of Congress reiterated the message in
5 a November 1997 letter to the Lithuanian president.⁴⁹

6 Finally, in 1998, Lithuania charged Lileikis with genocide.⁵⁰ It was the first Nazi war
7 crimes prosecution in post-Soviet Eastern Europe. Trial was suspended after a day, however, due
8 to Lileikis' health. The State Department expressed "deep disappointment" and called on
9 Lithuania to take "whatever steps are necessary" to ensure that Lileikis and others involved in
10 war crimes during the Nazi era were brought to justice.⁵¹ Three months later, trial not having
11 resumed, [redacted] met with the Lithuanian Ambassador. They proposed having Lileikis examined by an
12 international panel of doctors, including one U.S. physician, with the United States covering all
13 costs. Lithuanian prosecutors presented the proposal to the court, but it was rejected by the
14 judge.
15

16 Lithuania's admittance into NATO was on the agenda for an April 1999 NATO summit
17 meeting. In a meeting with the U.S. Attorney General just one month before the scheduled
18 summit, Lithuania's Prime Minister asked for assistance in drafting a law allowing for the
19 prosecution of war criminals *in absentia*. The Department of Justice forwarded material
20 prepared by both OSI (concerning the standards for *in absentia* hearings) and OIA (concerning
21 videoconferencing).

22 In January 2000, the State Department reiterated its call for Lithuania to prosecute Nazi

1 war criminals.⁵² Two months later, Lithuania amended its criminal code to provide that those
2 charged with war crimes, genocide, and crimes against humanity can participate in court
3 proceedings via closed circuit television if they are mentally competent but physically unable to
4 appear in court. While no punishment may be imposed unless the defendant is subsequently
5 deemed healthy enough to withstand a jail sentence, a verdict is rendered for purposes of
6 “historical judgment.”

7 Lileikis’ trial resumed in June 2000 and was the first case to proceed under the new
8 statute. Thirty minutes into the hearing, Lileikis complained of difficulty in breathing and was
9 taken to the hospital. Trial was suspended indefinitely; he died two months later, at age 93.

10 Although the case had not proceeded to verdict, the Lithuanian Procurator General issued
11 a press release stating that his office had enough evidence to substantiate Lileikis’ role in the
12 commission of genocide. He promised to seek “historic justice” in other cases of war crimes and
13 genocide.⁵³

14 He did so in the case of Lileikis’ wartime deputy, Kazys Gimzauskas. Relying largely on
15 documents pointed out by OSI, Lithuania had originally charged Gimzauskas with genocide in
16 1998, shortly after Lileikis’ trial was first suspended. Gimzauskas’ case was repeatedly delayed
17 and ultimately suspended due to his deteriorating mental condition. Despite the court’s finding
18 that Gimzauskas was incapacitated from Alzheimer’s disease, the trial resumed via closed circuit
19 television after Lileikis’ death.⁵⁴ Gimzauskas was convicted in 2001, at age 93, with the court
20 finding that he had handed over at least three Jews to Lithuanian killing squads. The State
21 Department and [redacted] lavished praise on Lithuania.⁵⁵ B6

22 Gimzauskas’ conviction was the first Holocaust-related conviction in any of the successor

1 states to the former Soviet Union.

2 In June 2000, Lithuania's Procurator General met with the Deputy Attorney General and
3] The Procurator General asked for DOJ's assistance in investigating Nazi- BE
4 era war crimes. In response to that request, an OSI historian and an OSI attorney went to
5 Lithuania in early 2001 to discuss several cases. The significance of the meetings was
6 underscored by the fact that they were attended also by the U.S. Ambassador.

7 Lithuania has since asked for information about some subjects under investigation,
8 although it has also declined to file charges against a Lithuanian ordered deported to Lithuania in
9 May 2002.⁵⁶ Lithuania also initiated an extradition request to Scotland, although the subject died
10 before court proceedings were completed.⁵⁷

11 In July 2004, Lithuania filed criminal charges against Algimantas Dailide, an OSI
12 defendant who left for Germany during appeal of a court ruling ordering him deported to
13 Lithuania. Lithuania did not seek his extradition, but expressed the hope that he would return
14 voluntarily. He did, and was found guilty in March 2006 of collaborating with the Nazis and
15 persecuting Jews. However, due to his advanced age, no sentence was imposed. The U.S.
16 government praised Lithuania for the prosecution but expressed disappointment that Dailide was
17 "not . . . punished for his crimes."⁵⁸ As of this writing, the case is on appeal.

18 Lithuania has also cancelled the rehabilitation of several dozen Nazi collaborators.⁵⁹ In
19 2002, Lithuania's parliament ratified a new extradition treaty with the United States. It covers
20 genocide directly.

21 3. Latvia

22 As with Lithuania, Latvia has sent mixed signals about its perspective on its role in the

1 Second World War. The Supreme Council of the newly-independent Republic of Latvia issued a
2 Proclamation Against Genocide and Anti-Semitism in September 1990. "In the name of the
3 people of Latvia," the document:

4 unequivocally condemns the occurrence of genocide against the Hebrew Nation,
5 during the years of Hitler's occupation, which resulted in the killing of more than
6 80,000 Latvian Hebrews. . .

7
8 With deep regret we acknowledge that among those who helped carry out the
9 terror of the occupiers, there were also Latvian citizens. There is not now, nor can
10 there ever be justification, nor a statute of limitations, for the bloody genocide
11 against the Hebrew Nation – a crime against humanity.

12 In 1992, the Latvian Procurator's Office signed a MOU with the Department of Justice.

13 The parties agreed to provide legal assistance on a reciprocal basis in the investigation of
14 individuals who are suspected of having engaged in Nazi-sponsored acts of persecution or of
15 having assisted in the commission of such acts. And in February 1998, the Latvian president
16 went to Israel and apologized for the role his country had played in the murder of Jews.⁶⁰

17 Yet barely one month later, the Latvian Army commander, the head of the Navy, and five
18 members of parliament joined a parade of more than 500 former members of a Latvian SS unit to
19 mark the unit's 55th anniversary. (The Army commander was fired for his participation.)⁶¹

20 OSI's dealings with Latvia were most intense in the case of Konrads Kalejs. Kalejs was a
21 company commander in the Latvian Auxiliary Security Police (eponymously known as Arajs
22 Kommando (AK) for its leader Viktors Arajs).⁶² The AK was an execution squad composed of
23 Latvian volunteers who worked with German forces to murder "racially undesirable" persons
24 and/or political enemies of Nazi Germany. After the war, Kalejs settled in Australia and became
25 a naturalized citizen. He emigrated to the United States in 1959 but never sought U.S.

1 citizenship.

2 OSI serendipitously learned of his presence. When searching for another member of the
3 AK, they learned that he was dead but that his widow was in the country. She was living with
4 Kalejs, a name OSI recognized from the AK roster.

5 In October 1984, OSI filed suit to deport Kalejs on the ground that he had assisted in the
6 persecution of civilians based on race, religion, national origin or political opinion and had
7 concealed these material facts when he applied for a visa. The complaint pointed to the AK's
8 role in liquidating Jews, shooting gypsies, and guarding prisoners at various camps. OSI
9 presented testimony from an historian, three camp survivors, and Latvians who knew or served
10 with Kalejs during World War II. (The latter group testified through depositions taken in the
11 Soviet Union). There was also documentary evidence, including the text of an interview with
12 Arajs himself. Kalejs' main defense was that the evidence was unreliable because it largely came
13 from the Soviet Union. The court agreed that the deposition testimony was of limited value but
14 relied heavily on the archival records in ordering Kalejs' deportation. The ruling was affirmed
15 and he was deported to Australia in April 1994.⁶³

16 Kalejs' long-time companion lived in Winnetka, Illinois, and OSI suspected Kalejs might
17 go to Canada to be near her. OSI alerted Canadian officials to be on the watch.

18 OSI's forebodings proved correct. Kalejs was arrested when he entered Canada in
19 December 1994. In June 1995, a month before his Canadian deportation proceeding was to
20 commence, he voluntarily returned to Australia. Three months later, he was caught again
21 attempting to enter Canada. This time he did not depart before the hearing, which was held
22 intermittently between February 1996 and March 1997. Most of the Canadian evidence was

1 material from OSI which had been used in the U.S. proceedings. The Canadians also introduced
2 a report written by an OSI historian on the background of the AK.⁶⁴

3 Kalejs' defense, once again, was that he was framed by doctored Soviet evidence. The
4 magistrate disagreed, concluding that as a guard commandant Kalejs was "a party to the offences
5 of murder and kidnaping and failed to provide for the necessities of life." Such acts and
6 omissions constituted war crimes or crimes against humanity. The Canadian magistrate stressed
7 that there was no evidence to suggest that Kalejs "hated Jews or that he was a cruel, perverse
8 sadistic monster with a blackened soul." That, as the magistrate saw it, was part of the ultimate
9 tragedy.

10 **DRAFT**
11 Given the glorification of war and the manipulation of emotions and thoughts by
12 regimes and society, creating a climate of hate and arrogance and intolerance, it
13 may be that society asks too much of the individual, but often the individual does
14 not ask enough of himself.

15 Kalejs was deported to Australia.

16 Jewish groups were outraged that he was returning to a life of ease.⁶⁵ Effraim Zuroff,
17 Director of the SWC in Israel, urged the Australians either to prosecute Kalejs under the
18 Australian War Crimes Act or to deport him.⁶⁶ Zuroff also met with the Latvian Ambassador to
19 Israel to urge that he cooperate with the Australians in an endeavor to extradite Kalejs to Latvia.⁶⁷

20 OSI had, in due course after Kalejs' deportation, had him placed on the Watchlist. On
21 December 6, 1997, INS got a "hit" and stopped Kalejs at Los Angeles International Airport. He
22 had flown from Melbourne and was *en route* to Mexico. He was sent back to Australia that day.

23 In June 1999, Zuroff advised OSI that an investigator was working on a segment about
24 Nazis in Australia for the ABC newsmagazine 20/20. The investigator discovered that Kalejs

1 had left Australia a year earlier. No one knew where he was now though Zuroff opined to ABC
2 that he had likely snuck into the United States to be with his companion. [redacted]

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3 [redacted]
4 (OSI is not responsible for border security.)

5 OSI asked INS to contact the local mail carrier to determine if an elderly man was at the
6 Detroit residence and/or whether mail had been addressed to him. The answer to both was no.

7 An examination of his companion's phone records showed one, and sometimes two or three calls
8 a day to Rugby, England. When ABC contacted [redacted] about its upcoming piece, he

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9 suggested the reporters might find Kalejs in Rugby. They did. He was living under an assumed
10 name in a Latvian old age home.

11 OSI worked to keep the spotlight on Kalejs, [redacted] spoke with various members of
12 the British media and encouraged [redacted]

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13 [redacted] to do the same.⁶⁸ On December 29, British Home Secretary Jack Straw called for an
14 investigation into how Kalejs had been allowed into the country. The following month, he
15 ordered Kalejs deported because his presence was detrimental to "the public good." Rather than
16 face a hearing, Kalejs returned to Australia.⁶⁹

17 On January 26, 2000 the Latvian Minister of Justice came to the United States and met
18 with [redacted] The discussion was very frank. Once the opening formalities were
19 aside, [redacted] and the Minister conceded, that the Latvians had requested the
20 meeting in the wake of negative publicity about Kalejs. [redacted]

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21 [redacted] that the Latvians had not prosecuted anyone involved in persecution on behalf of
22 the Nazis. He reminded the Minister that although Arajs himself had been prosecuted by the

1 Germans, none of Arajs' three lieutenants still alive, Konrads Kalejs and Karlis Ozols (both in
2 Australia) and Harijs Svikeris (in Great Britain) had been prosecuted by the Latvians. Yet in the
3 ten years since they obtained independence from the Soviet Union, the Latvians had prosecuted
4 several Soviets involved in *anti*-Nazi activities during World War II.⁷¹ Given those
5 prosecutions, the Nazi cases could not be "too old" to pursue. [also contrasted the B6
6 Latvians' inertia with that of the Croats, who in 1999 convicted the commandant of a Nazi
7 concentration camp of "systemic" mass killings, torture and maltreatment of inmates.⁷²

8 [] pointed out that this had been "politically difficult" and "courageous," since it B6
9 necessitated Croatia's working with Serbia.

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

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15 The Minister blamed Latvian intransigence on years of operating under the Soviet
16 paradigm. He offered to host an international meeting to discuss the Kalejs case and [B6
17 agreed to send an OSI representative. [urged, however, that the meeting cover other B6
18 Latvian persecutors as well as Kalejs. [also offered a carrot to the Latvians: if they B6
19 knew of anyone in the United States who they believed was involved in crimes of persecution
20 during the early Soviet occupation of Latvia (1940-41), OSI would assist in the investigation.⁷³

21 Four days after this meeting, Latvia issued formal invitations to prosecutors from
22 Australia, Canada, Germany, the UK, Israel and the United States to meet in Riga on February

1 16-17, 2000. [REDACTED]

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2 [REDACTED] represented the office. At the

3 Minister's suggestion, they arrived two days before the international session began. They met

4 first with the Latvian Deputy Chief Prosecutor.

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5 [REDACTED] The Latvians

6 claimed there was not sufficient evidence against Kalejs.

7 [REDACTED] Moreover, the Latvians had not

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8 [REDACTED] done any independent research within their own archives in preparation for this international
9 convocation.

10 [REDACTED] The next day, [REDACTED] accompanied by [REDACTED]
11 met with the Latvian Prosecutor General to express their [REDACTED]

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12 [REDACTED] OSI complained about Latvia's public stance that

13 there was "no evidence" against Kalejs and reiterated its offer to assist the Latvian government.

14 They told the Prosecutor General that [REDACTED]

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15 [B6]

16 The international conference fared much better from OSI's perspective than had the
17 preliminaries.⁷⁵ There was discussion of where additional archival material might be found and
18 OSI offered "the hands-on assistance of OSI's historical staff." The discussion even spilled over
19 into potential prosecutions other than Kalejs.
20

21 By the end of the conference there was some structure to the proposed investigation. The
22 participants had ranked the Kalejs evidence in terms of most likely avenues of success under

1 Latvian law;⁷⁶ the Prosecutor General's office committed to hiring a historian to work on the
2 case; Latvian prosecutors planned to go to Britain to review material collected in a related
3 investigation,

4 [redacted]; the Latvian Prosecutor General
5 agreed to contact his Russian counterpart and arrange for review of KGB files and other pertinent
6 material in Russian possession; the Israelis promised assistance in finding eyewitnesses; and all
7 parties agreed to reconvene in a few months to review progress.

8 Expectations were still guarded however, As the American Embassy in Riga reported:

9 [redacted]
10 [redacted]
11 [redacted]
12 [redacted]
13 [redacted]
14 [redacted]
15 [redacted]
16 [redacted]
17 [redacted]

[redacted]

18 The international conference was scheduled to reconvene at the end of June. In May,

19 Latvia's Acting Prosecutor General announced that a trial was unlikely because no strong
20 evidence had been found.

21 [redacted] in Latvia, was a strong supporter
22 of OSI's quest to make Latvia more responsive to the Nazi war crimes issue.⁷⁸ Among other
23 things, he suggested some groundwork be done before the international meeting reconvened.

24 Specifically, he recommended having

25 [redacted] B6) return to Latvia to discuss the legal issues with Latvian prosecutors. [redacted] B6

26 [redacted] B6 agreed, proposing that he be accompanied by [redacted] B6

[redacted] B6 who was B6

1 familiar with details of the Kalejs case.⁷⁹

2 Before [redacted] arrived, the State Department kept pressure on the Latvians. B6
3 Secretary of State Madeleine Albright spoke with the Latvian president and "again reiterated that
4 it is imperative for Latvia to bring Nazi war criminals to justice; the Ambassador [Holmes] said
5 the same thing in his initial call on the new Latvian Prime Minister." [redacted] assured OSI that: B6

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16 In early June, [redacted] spent ten intense days in Latvia meeting with the new
17 Prosecutor General and his Deputy as well as with the chief of the unit responsible for dealing
18 with crimes involving totalitarian regimes. They discussed the Kalejs evidence, international war
19 crimes laws and conventions, and the use of historians as experts in war crimes prosecutions.

20 At the close of the meetings, a joint statement issued by the United States and Latvia
21 stressed the cooperation and coordination between the two governments. Latvia reaffirmed its
22 commitment to investigate "actively and thoroughly" all Nazi-sponsored war crimes. Shortly
23 after the Americans left, the Procurator General announced that Latvia would request Kalejs'
24 extradition to stand trial for war crimes and genocide. The Latvians credited the Americans with
25 having played a crucial role in the decision to prosecute.⁸¹

26 The following month, Latvia sent a list of questions to Australia which they wanted the
27 authorities to pose to Kalejs. In addition, a Latvian prosecutor went to Moscow to examine

1 Kalejs-related documents.

2 [redacted] who had offered at the international conference to assist the Latvians, made B6
3 good on his promise. From August 20 to September 3, he worked with the Latvians in Riga on
4 Kalejs and related matters. [redacted] B6

5 [redacted] B6 and he so informed [redacted] B6 In response, [redacted] B6 met with the
6 President, Foreign Minister and Procurator General to encourage them to go forward.

7 Fortuitously for OSI, at the same time that pressure to proceed was emanating from the
8 United States, Russia too was bearing down on the Latvians. Russia protested Latvia's
9 prosecution of partisans who aided Russia during World War II while Nazis like Kalejs were left
10 alone.⁸² Russia went so far as to threaten economic sanctions against its former Republic.⁸³

11 The Latvians of course were only one part of the equation. The Australians had to
12 extradite and there was some concern in this regard. In August 2000, Australia's Justice Ministry
13 notified the Latvian Procurator General that it was difficult to extradite for war crimes under
14 Australian law.⁸⁴ When the United States learned about this, [redacted] urged the B6
15 Australians to send an extradition expert to the upcoming multilateral conference (part II) now
16 scheduled for mid-September. They agreed to do so.

17 Outside events here too were working in OSI's favor. Australia was scheduled to host the
18 International Olympics in Sydney from Sept. 15 - Oct. 1, 2000. They were therefore particularly
19 sensitive to negative press coverage. On the eve of the event, then-U.S. Senate candidate and
20 First Lady Hillary Clinton urged the Australian government to help bring Kalejs to justice. Her
21 letter drew banner headlines.⁸⁵

22 On September 28 (shortly after the second – and largely collegial – international

1 conference concluded), the Latvians indicted Kalejs. Still OSI did not rest, fearing that Kalejs
2 would flee unless an extradition request were on file. OSI prodded the State Department to urge
3 the Australians to send Latvia a formal request for a warrant. A few days later, Latvia announced
4 it would seek both an arrest warrant and extradition. The arrest warrant was issued in November
5 and a formal extradition request soon followed. Kalejs was arrested in Melbourne, Australia on
6 December 13, 2000.

7 He attended his deportation hearings in a wheelchair but did not actively participate. His
8 attorneys advised the court that he was suffering from dementia and prostate cancer.

9 On May 29, 2001 an Australian magistrate ordered his deportation. The ruling was on appeal
10 when he died on November 8, 2001.

11 **DRAFT**

1. For a discussion of how indigenous groups within each country assisted Germany, see *U.S. v. Linnas*, 527 F. Supp. 426, 430-31 (E.D.N.Y. 1981) *aff'd*, 685 F.2d 427 (2nd Cir. 1982) (Estonia); *U.S. v. Lileikis*, 929 F. Supp. 31, 33 (D. Mass. 1996) (Lithuania); *Maikovskis v. INS*, 773 F.2d 435, 437 (2nd Cir. 1985) and *Kalejs v. INS*, 10 F.3d 441, 442 (7th Cir. 1993) (Latvia).

2. *Laipenieks v. INS*, 750 F.2d 1427 (9th Cir. 1985), discussed at pp. 117-126.

3. See pp. 12, 537.

4. Frustrated by the dearth of prosecutions, in 2002 a wealthy U.S. businessman underwrote Operation Last Chance, a project launched by the SWC and the Targum Shlishi Foundation of Miami. The project offered \$10,000 to anyone with tips leading to prosecution of Nazi war criminals in the Baltic states; it was later expanded to include Poland, Romania, Austria, Croatia, Hungary and Germany. As of this writing, several investigations have been opened as a result of the project and one extradition has been ordered (

See p. 491. No prosecutions originating from Operation Last Chance have yet been filed. SWC 2005 Annual Report, "Worldwide Investigation and Prosecution of Nazi War Criminals," p.15; "Nazi Hunter Solicits Germans for Leads," by Elinor Brecher *The Miami Herald*, Jan. 18, 2005; "Florida Man Funds War Crimes Project," by Elinor Brecher *The Miami Herald*, July 8, 2002.

5. Indeed, the Soviets had sought his extradition. See p. 288 n. 7.

6. June 19, 2001 letter to

7. See www.historycommission.ee/temp/conclusions (last visited Nov. 2005).

8. Männil's inclusion on the Watchlist is discussed at pp. 300-301.

9. "Estonia Seeks Help in Nazi Case," *The Jerusalem Post*, July 25, 2001.

10. Request for legal assistance from

The request was sent to the Department of Justice from the Estonian Ministry of Justice. Ironically, in 1995, [redacted] had written a letter stating that "Harry Männil has not been involved in any war crimes in Estonia during World War II, not has [sic] been involved in any criminal activity in Estonia at all. Allegations made to this effect are completely groundless." Männil submitted that letter to the State and Justice Departments when he sought to have his name removed from the Watchlist.

11. July 25, 2002 memorandum to

[redacted] re "Meetings with Estonian Government and U.S. Embassy Officials in Tallinn, June 11-13, 2002" (hereafter [redacted] memo).

12. *Eesti Päevaleht*, Aug. 23, 2001. See also, *BNS*, Aug. 22, 2001 in which the Security Police said there was "no proof of [Männil's] participation in the persecution of Jews during World War

II.”

13. “Past, Present and Future,” by Amb. Joseph De Thomas, *Eesti Päevaleht*, May 28, 2002. The Estonians have prosecuted several people for crimes against humanity based on their helping the Soviets deport Estonians shortly after World War II ended. At least one defendant has been sentenced to confinement in a mental hospital and two others received eight year suspended sentences. “Mass Deportation Case Pending,” *The Baltic Times*, Mar. 14, 2002.

14. “Estonia Downplays U.S. Complaint about Holocaust,” *ETA News Agency*, Tallinn, May 29, 2002; “U.S. Ambassador’s Holocaust Statement Seen as Warning About NATO to Estonia,” *BNS*, May, 29, 2002.

When meeting with the OSI representatives, the Ambassador described himself as “the most hated man in Estonia.” Siegal/White memo, *supra*, n. 11, at p. 2. Whatever the Estonian immediate reaction, however, in Aug. 2002 the government instituted Holocaust Day. “Estonia for the First Time Marks Holocaust Day,” *BNS*, Jan. 27, 2003.

15. [] B6

16. “Cursory Nazi Probe Rejected” by Sara Toth, *The Baltic Times*, July 25, 2002.

17. “Harry Männil’s Criminal Case Closed,” *BNS*, Jan. 2, 2006; “Estonia Drops Case Against Ex-Pat Suspected of Nazi War Crimes,” *Agence France Presse*, Dec. 30, 2005.

18. “U.S. Ambassador Boycotts Estonia’s Mannil,” *BNS*, Feb. 27, 2006.

19. June 19, 2001 letter from [] B6

The original German text reads as follows:

Von 13.08.41 - 21.09.41 als Stafsoff. in dem Estn. Selbstschutz und nach dem als Freiwillige in dem Estn. Selbstschutz. 20.10.41 - 17.07.43 diente ich als Kriminalist in der Deutsche Sicherheitspolizei u. S.D. In die Estnische SS-Legion bin ich am 17.7.43 eingerückt.

The OSI-commissioned translation: From Aug. 13, 1941 to Sept. 21, 1941 I served as staff officer in the Estonian Selbstschutz [Omakaitse] and afterwards as a volunteer in the Estonian Selbstschutz. From Oct. 20, 1941 to July 17, 1943, I served as a criminal police official in the German Security Police and SD. I joined the Estonian SS Legion on July 17, 1943.

Translation bearing the seal of the Estonian Consulate in Toronto and signed by the Consul General under the typed words: "This is to certify that the above text is a correct and factual translation from the German language into the English language from the original document produced."

I was registered in the Estonian Omakaitse papers as a Stabsofficer [staff officer] from Aug. 13, 1941 to Sept. 21, 1941. From Oct. 20, 1941 to July 17, 1943, I served in Estonian Criminal Police which was later incorporated into the German Police. I was drafted to the Estonian SS-Legion on July 17, 1943.

20. Aug. 1, 2003 letter from [redacted]] B6

21. Oct. 22, 2003 e-mail from [redacted]] B6
to Rep. Lantos."] B6

22. *Id.*

23. Feb. 18, 2004 letter to [redacted]] B6

24. Notes from SWC representative in Israel [redacted] of his May 5, 2004 meeting with [redacted]] B6

25. Oct. 25, 1991 Press Release from the Lithuanian Information Center, New York, New York; "Lithuania to Prove 'Rehabilitations,'" *The Chicago Tribune*, Oct. 26, 1991. In 1990, the Lithuanian government had announced an official rehabilitation for 50,000 Lithuanians whom the Soviets had charged with Nazi collaboration. "Nazi-Hunter Dismayed Over Secrecy of Derehabilitation of Nazi Suspects in Lithuania," *BNS*, Nov. 17, 2000.

26. Oct. 25, 1991 Lithuanian press release, *supra*, n. 25.

27. Law Concerning Responsibility for Genocide of the People of Lithuania, Num. 1-2477 (1992).

28. Of course, OSI itself often took years, and sometimes decades, to develop a case. That was in part due to the fact that OSI had limited access to archival material during the Soviet era. While access was easier for the Lithuanians, they (and other Eastern bloc countries) had serious resource issues. Recorded interview with former OSI Chief Historian Peter Black, Dec. 26, 2000. *See also* p. 12.

29. "OSI Vows to Pursue Deportation Despite Setback from Lithuania," by Jennifer Batog, *JTA*, Feb. 15, 1995.

30. This was roughly in proportion to the percentage of Jews throughout Lithuania who died during the war. Over 90% of the 220,000 Jews in the country did not survive.

31. Lukiškis Prison records, LCVA Collection R 730, apy. 1, nos. 827, 1002, 1753, 2248, 2437; execution file cards of the Vilnius Sonderkommando, LCVA collection R 1673, opis 1, nos. 1425, 1426, 1606, 2494, 2676, 3330, 3715. Lukiškis Prison records, LCVA, R 681, apy. 2, folder 1, pp. 17-59.

In 1983, when OSI conducted an interview with Lileikis, they showed him an order requiring 52 Jews in Saugumas custody to be turned over to the Germans. Lileikis' name, but not signature, was on the order. He noted that it could have been issued without his knowledge and challenged his interviewers to find a document with his signature. It was not until the Cold War ended, and OSI's own historian could rummage through the Archives in Vilnius, that the "smoking gun" documents were found.

32. Lileikis had originally been denied a visa under the DPA. A 1947 CIC report references persecution of Poles by the men under his command. It goes on to state that "It has not been ascertained whether Lileikis was connected with the shooting of thousands of Jews in Vilna."

33. "Few Predict Swift Punishment for Alleged Collaborator," by Jon Auerbach, *The Boston Globe*, Sept. 23, 1994.

34. "Among Lithuanians, Confusion on Alleged Nazi Collaborator," by Ethan Bronner, *The Boston Globe*, Oct. 5, 1994; RFE/RL Daily Report, Oct. 4, 1994; Oct. 2, 1994 AP release by Heather Smith.

35. "Lithuania Gets Evidence for War Crimes Decision," by Ed Stoddard, *Reuters*, Apr. 12, 1995; "OSI Vows to Pursue Deportation Despite Setback from Lithuania," by Jennifer Batog *JTA*, Feb. 15, 1995; "Lithuania Decides Against Charging U.S. Citizen with Nazi Crimes," by Michael Sniffen, *AP*, Feb. 9, 1995. For an explanation of why extradition is speedier, see pp. 41-42.

36. "Accused Norwood Nazi Won't be Prosecuted: Lithuania Drops Charges Against Lileikis but U.S. Still Pushes Deportation," by Jennifer Batog and Michael Sinert, *The Jewish Advocate*, Feb. 23, 1995.

37. "Man Faces War Crime Inquiry," by Judy Rakowsky, *The Boston Globe*, Feb. 28, 1995.

38. "Extradition Canceled," by C.F. Scott, *Washington Jewish Week*, Oct. 12, 1995; "Lithuania Wants New War Treaty," *Reuters*, Oct. 4, 1995; "Lithuania Says It Will Not Extradite Norwood Man," by Judy Rakowsky, *The Boston Globe*, Oct. 3, 1995. The U.S. maintained that since murder was covered, there was no need for a separate genocide listing in order to extradite Lileikis.

39. "Nazi Hunter Says Lithuania Stalls on Extraditions," by Ed Stoddard, *Reuters*, May 22, 1996.

40. "Nazi Hunter Says Lithuania Stalls on Extraditions," *supra*, n. 39.

41. *E.g.*, The WJC accused Lithuania of "betray[ing] the memories of tens of thousands of innocent people." *JTA Daily News Bulletin*, Feb. 15, 1995; the International Association of Jewish Lawyers and Jurists (IAJLJ), American Section, along with the SWC, met with the Lithuanian ambassador, and a followup meeting was held between the IAJLJ and officials at the Lithuanian Embassy. The group urged Lithuania to extradite and prosecute Lileikis. Feb. 27, 1995 IAJLJ press release.
42. "Israeli Knesset Letter to Lithuanian President," *ELTA* [Lithuanian News Agency], Feb. 28, 1996.
43. *U.S. v. Lileikis*, 929 F. Supp. 31, 39 (D. Mass. 1996).
44. "Poland Probes Nazi Collaborator," by David Talbot, *The Boston Herald*, May 30, 1996; "Alleged Lithuanian War Criminal Returns Home," by Ed Stoddard, *The Baltic Times*, July 3, 1996.
45. "Alleged Lithuanian War Criminal Returns Home," *supra*, n. 44.
46. "Lithuania Welcomes Lileikis to Return," by Ann Donlan, *The Boston Herald*, May 28, 1996.
47. "Accused World War III Criminal Flees to Lithuania," by Judy Rakowsky, *The Boston Globe*, June 20, 1996. [The issue was complicated by the fact that the Lithuanians wanted to prosecute two former NKVD officers of Jewish origin, accused of torturing and murdering Lithuanians during the Soviet era. One was in Israel and the other in West Germany. Neither country was willing to extradite. "Ghosts from the Gulag, Lithuania Tries to Remember Stalin and Forget Hitler," by Christian Caryl, *U.S. News and World Report*, Oct. 20, 1997; "Germany Refuses to Hand Over Former KGB Agent, Accused of Genocide," *Draugas*, Apr. 23, 1997. (*Draugas* is a Lithuanian language daily published in Chicago.)
48. "Reno: Lithuania to Prosecute Nazi," by Michael Sniffen, *AP*, Feb. 9, 1998; "US Vice-President Meets Chairman of Lithuanian Parliament," *Draugas*, Apr. 10, 1997.
49. "Vilnius Turns Blind Eye to Its Nazi Past," by Richard Paddock, *The Los Angeles Times*, Jan. 4, 1998.
50. In Feb. 1998, Lithuania inaugurated a new president. Valdas Adamkus had fled the country as a teenager and spent 50 years in the U.S., most of it as an engineer employed by the U.S. government. The impact of this, if any, on the Lileikis filing is unknown.
51. Sept. 15, 1998 statement posted at www.secretary.state.gov/www/briefings/statements/1998 (last visited July 2005).
Director Rosenbaum publicly voiced skepticism that Lileikis was ill. "Lithuania War Crimes Suspect Said Ill," *AP*, Feb. 2, 1999.

52. Jan. 8, 2000 statement posted at www.secretary.state.gov/www/briefings/statements/2000 (last visited Nov. 2005).

53. Sept. 27, 2000 Press Release of the Procurator General's Office of the Republic of Lithuania.

54. "Nazi War Crimes Trial to Resume in September Without the Suspect," *AP*, July 4, 2000. It is unclear how, under the statute, the hearing could proceed given the court's determination that Gimzauskas was mentally incompetent.

55. "U.S. State Department Hails Conviction of War-Crimes Suspect in Lithuania," *BNS*, Feb. 21, 2001. Rosenbaum gave an interview which was printed on the front page of Lithuania's largest circulation daily newspaper. He termed the conviction "historic" and credited the Lithuanian ambassador to the U.S. with helping improve relations between the two countries. Rosenbaum went on to discuss the difficulty countries face in acknowledging past misdeeds.

I have told Lithuanian and other European officials more than once that this is not a situation where the United States comes as highest moral authority. Every country has its own problems with facing their past. The U.S. is no exception from the rule, because it was the USA who turned an entire race into slaves. More than 140 years after the abolition of slavery, we are still struggling with certain aspects of the inheritance of slavery.

"Nazi Hunter Praises Lithuania," by Gintautas Alksinis, *Lietuvos Rytas*, Feb. 19, 2001.

56. "Nazi Hunter Urges Lithuania to Address US for Extradition of War Criminal," *BNS*, June 13, 2002.

57. See p. 493.

58. "U.S. Disappointed Over Non-Sentence Conviction of Lithuanian Nazi Collaborator," *BNS*, Mar. 28, 2006.

59. "Nazi-Hunter Dismayed Over Secrecy of Derehabilitation of Nazi Suspects in Lithuania," *supra*, n. 25; "Prosecutors Strip 76 Persons of Rehabilitation Status," *ELTA*, Sept. 25, 2001.

60. "Ulmanis Apologizes in Israel for Latvian War Crimes," *Deutsche Presse-Agentur*, Feb. 24, 1998.

61. "Old Ethnic Rifts Run Deep in Latvia," by Richard Paddock, *The Los Angeles Times*, Apr. 6, 1998.

62. Viktors Arajs was convicted by a West German court in 1978 for his role in causing over 13,000 murders. He was sentenced to life imprisonment and died in custody in 1988.

63. *Matter of Kalejs*, A11 655 361 (Imm. Ct., Chicago, Ill. 1988), *aff'd*, (BIA 1992), *aff'd*, *Kalejs v. INS*, 10 F.3d 441 (7th Cir. 1993).

64. The report, "'Reliable Local Residents': Collaboration in Latvia, 1941 - 1945" by Robert Waite was cited by the Canadian magistrate. *In the Matter of the Immigration Act and Konrad Kalejs*, p. 6, n. 23. All references hereafter to the Canadian ruling are to this citation.

65. "Outcry as Alleged Nazi War Criminal Returns," by Rachel Bridge, *South China Morning Post*, Aug. 21, 1997.

66. "Zuroff Asks Australia to Act against Ex-Nazi," by Aryeh Dean Cohen, *The Jerusalem Post*, Aug. 20, 1997. Although Kalejs could theoretically have been charged under the War Crimes Amendment Act of 1988, the Australian Special Investigations Unit, responsible for prosecutions under that Act, had disbanded in June 1992. *See* p. 490.

67. "Wiesenthal Center Demands Actions Against Nazi Suspects in Australia," *Agence France-Press*, Oct. 20, 1997.

68. In addition to speaking with the press
B6 met with Home Secretary Jack Straw and the Governor General of Australia. B6

69. OSI learned that Kalejs had first bought an airline ticket for Mexico. They advised Zuroff who alerted the Mexicans. discussion, Dec. 12, 2001. The Mexicans made it clear that Kalejs was not welcome. "I Still Call Australia Home," by Martin Daly and Simon Mann, *Sydney Morning Herald*, Jan. 8, 2000. B6

70. [redacted] and my own notes of the meetings at which I was an observer. B6 BS B5

71. At least 10 cases related to war crimes were filed against Soviets, many of whom had been Red Army partisans. As of this writing, there have been at least three convictions: B6

72. "Croat Convicted of Crimes at WWII Camp," *Reuters, The New York Times*, Oct. 5, 1999.

73. The Holtzman Amendment covers persecution by the Nazis and their allies from March 3, 1933 to May 8, 1945. The Hitler-Stalin pact was in effect from Aug. 23, 1939 to June 22, 1941, making the Soviet Union a Nazi ally during that period. Thus, it would be within OSI's mandate to prosecute a Soviet citizen who collaborated with the Nazis during this period; OSI has never

done so, however.

74. Undated memorandum to [redacted] B6

[redacted] All references to the pre-conference meetings come from this memo unless otherwise noted. BS

75. Undated memorandum to [redacted] re " [redacted] BS

[redacted] All BS
references to the international meeting come from this memo unless otherwise noted.

76. The first was his role as guard commandant, followed by his possible role in a gypsy massacre, and lastly, any part he played in the massacre of Jews in the Riga ghetto.

77. [redacted] BS

78. [redacted] BS

79. [redacted] BS

80. May 12, 2000 e-mail from [redacted] re "Idea & call from Alvis Ronis." B6

81. Joint Statement issued in Riga, June 14, 2000.

82. See e.g., Diplomatic Panoramas for April 20 and May 19, 2000, *World News Connection*; "Russians Feel the Brunt of Harsh Regime," by Graham Oglivy, *Scotland on Sunday*, Mar. 19, 2000; "Latvia Convicts War Criminal on Murder of Nine," by J. Michael Lynne, *The Baltic Times*, Jan. 27, 2000.

83. "Kononov to Appear before Latvia's High Court as Russian Citizen," by Philippa D'Arcy, *Agence France-Presse*, Apr. 13, 2000.

84. Letters of Aug. 24 and 31, 2000 as quoted in Sept. 8, 2000 memorandum from [] to [] ref [] Discussion of the events leading up to the multinational conference comes from this memo unless otherwise noted.

85. "Hillary Joins Shaming of Oz," by Michael Cameron, *The Mercury* (Australia), Sept. 14, 2000. *See also*, "Hillary's Crash Pad - Sometimes Stays at Spielberg Condo," by R. Hardt Jr. and G. Birnbaum, *The New York Post*, Sept. 19, 2000 reporting that "The First Lady has raised eyebrows Down Under by writing to Australian officials last week demanding they take action against several suspected ex-Nazis living in the country." According to *The Post*, the lead paragraph in the Australian *Herald Sun* read "Hillary Clinton has become involved in a campaign to embarrass Australia during the Olympics."

DRAFT

1 **The Commonwealth Nations**

2 While OSI has offered assistance to every foreign country willing to prosecute Nazi war
3 criminals, it has coordinated most closely with prosecutors in Canada, Great Britain and
4 Australia. In 1989, OSI hosted a meeting with representatives of each of these countries and a
5 delegation from the Soviet Union. The outcome of that meeting was that the Soviet Union
6 agreed to allow each of the participating countries to share with the others copies of material
7 received from the Soviet archives as a result of Nazi war crimes inquiries. Original documents
8 cannot be shared, however, and each western country still needs to obtain its own certified copies
9 of the documents for use in court proceedings.¹ Nonetheless, the agreement – which still
10 operates in the post-Soviet era – reduced significantly in many cases the amount of time needed
11 to obtain pertinent material.

12 Canada
13 DRAFT

14 Shortly after OSI's founding, Canadian officials met with [] to discuss B6
15 establishing an office similar to OSI.² In 1982, before any action was taken on the proposal, the
16 Canadians arrested and extradited a naturalized Canadian citizen to West Germany to face
17 charges of having murdered thousands of Lithuanian Jews.³ OSI was working on its own
18 investigations of Lithuanian massacres at the time, and OSI and the Canadians shared
19 information.

20 It was not until 1985, however, that the proposal for a separate prosecutorial office for
21 Nazi war crime cases gained momentum. The impetus for this was an SWC report that Dr.
22 Mengele might be in Canada. The publicity surrounding this announcement led the Canadians to
23 appoint a commission to determine whether there were Nazi war criminals in the country who

1 could be prosecuted, extradited or deported.⁴ Although the commission found no evidence that
2 Mengele had emigrated to Canada, it believed other war criminals might have. It therefore
3 recommended laws providing for criminal prosecution as well as denaturalization and/or
4 deportation of persons involved in the wartime persecution of civilians.⁵ Canada enacted such
5 statutes in 1987.⁶

6 Over the next five years, the government filed four criminal cases. Three were aborted
7 before verdict;⁷ the fourth defendant was acquitted after an eight month trial. Upholding the
8 acquittal on appeal, the Canadian high court ruled that a defendant could refute the allegations by
9 establishing that he was merely "following orders" (unless the order was "manifestly illegal.") In
10 addition, he could not be convicted unless it was proven that he knew his activities constituted a
11 war crime and that they would have been a crime in Canada.⁸ Because this ruling substantially
12 increased the difficulty of establishing the government's case, the Canadians abandoned criminal
13 prosecution in favor of denaturalization and deportation cases, similar to those prosecuted by
14 OSI.⁹ Unlike the U.S. procedure, however, a final determination on denaturalization is not made
15 by the court. Rather, the Cabinet considers the matter after a court rules that there is a legal basis
16 for action.

17 In 1997, the Canadian government hired former(

18 [] } B6
19 [] } 10
20 The Canadians have filed twenty-three denaturalization/deportation cases to date.

21 However, only one defendant has been deported. In 1992, he was sent to the Netherlands where
22 he was imprisoned pursuant to a life sentence imposed *in absentia* in 1948. He was released

1 after twenty-eight months due to his advanced age.¹¹

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10 **DRAFT**
11 The fifth case concerned a defendant who fled to the United States after the Canadians
12 filed a denaturalization action. As described elsewhere in this report, he was returned to Canada
13 by OSI and his citizenship was revoked in 2001.¹⁵ Deportation proceedings were halted in 2004
14 for investigation of the defendant's claim that his denaturalization had been tainted by a conflict
15 of interest.¹⁶ The Canadian Federal Court restored his citizenship shortly thereafter. The court
16 did so both because of the defendant's "50 years of irreproachable life in Canada" and because
17 there was no evidence that he had personally participated in war crimes. (He served as an
18 interpreter assigned to a mobile killing unit in Ukraine.)¹⁷

19 OSI has worked well over the years with the Canadian Justice Department. They have
20 shared information and assisted one another on interviews and other matters. OSI has had less
21 success with the Royal Canadian Mounted Police (RCMP), which has often been reluctant to
22 share information.¹⁸

In early 2005, the Canadian government returned in kind the assistance OSI had provided

High
2

1 to the Canadians 25 years earlier. With OSI's mandate just expanded to cover "modern war
2 criminals,"¹⁹ the office was struggling to determine how to develop and handle a new and
3 potentially enormous investigative caseload. Five years earlier, the Canadians had also expanded
4 their mandate.²⁰

5 } spent several days in January 2005 meeting with officials of the Canadian Border Services
6 Agency, the Canadian Department of Justice and the RCMP. The Canadians shared their
7 experiences and provided OSI with a database of information.

8 Australia

9 Australia's attitude toward Nazi persecutors has been ambivalent. In 1961, Australia's
10 Attorney General and Acting Minister for External Affairs addressed the Parliament on his
11 government's denial of an extradition request from the Soviet Union for an alleged Nazi war
12 criminal. He described conflicting considerations.

13 On the one hand, there is the utter abhorrence felt by Australians for those
14 offenses against humanity to which we give the generic name of war crimes. On
15 the other hand, there is the right of this nation, by receiving people into its
16 country, to enable men to turn their backs on past bitternesses and to make a new
17 life for themselves and for their families in a happier community.

18 Believing the second factor to be weightier, he announced that "the time has come to close the
19 chapter."²¹

20 It remained closed until 1986. That year Australian television ran a series (based on
21 research by two Australians and a former OSI attorney) called "Nazis in Australia." This series,
22 as well as another program aired that year, suggested that there were numerous Nazi war
23 criminals in the country, and that they had been able to enter because American and British
24 intelligence agencies had either deceived Australian officials or intentionally withheld relevant

1 information about the men.²²

2 In response to these allegations, the government called for a comprehensive review of the
3 matter. The resulting report, concluding that there were likely a significant number of war
4 criminals in Australia, led to establishment of a Special Investigations Unit (SIU) in 1987. Its
5 staff was composed of lawyers, investigators and police – but no historians. The country’s War
6 Crimes Act was amended the following year to allow criminal prosecution for war crimes
7 committed during World War II. A conviction subjects the defendant to possible incarceration
8 but not deportation.

9 Over the years, OSI forwarded to the SIU the names of six persons OSI believed to be in
10 Australia and worthy of investigation. Five were never located; the Australians had insufficient
11 evidence to prosecute the sixth.²³ The SIU did, however, file three other cases, though only one
12 was tried to conclusion. The jury acquitted in less than an hour, after the judge opined that the
13 charges might have been better defended had they been more timely filed.²⁴ The other two
14 filings were dismissed, one because several key witnesses had died, and the other because the
15 defendant had suffered a heart attack from which he was not expected to recover. He died seven
16 years later.

17 To help the Australians determine whether suspected persecutors were already in the
18 country and to preclude the entry of persecutors seeking admission, OSI in 1989 sent the
19 Australian government a list of approximately 30,000 names. These were culled from the OSI
20 research and development database as well as its list of persons rejected for entry into the United
21 States under the DPA. Contrary to OSI’s hope, the Australians did not use the material as the
22 starting point for their own research and development system.²⁵

1 The SIU was disbanded in 1992, apparently due to budgetary constraints.²⁶ At the time,
2 there were 27 investigations still under way, at least one of which was “extremely promising,”
3 according to the former head of the unit.²⁷ After the unit closed, the Australians shared with OSI
4 some material from their archived files. A roster so obtained led to one OSI prosecution.²⁸

5 In 1999, [redacted] created a furor in Australia when he stated during a BG
6 television interview that “Any Nazi criminal who lives in Australia, and there must be hundreds
7 there, knows he is home free, so to speak.”²⁹ Australia’s Justice Minister found the accusation
8 offensive. “Nobody in Australia wants war criminals to sleep here comfortably, but equally no
9 one wants the Australian government to engage in show trials.”³⁰ Just weeks after the broadcast,
10 Konrad Kalejs, a naturalized Australian citizen, returned to his adopted country to avoid facing a
11 deportation hearing in England.³¹ Under the terms of Australia’s citizenship laws, his naturalized
12 citizenship could not be revoked.³² He could, however, be extradited. As discussed elsewhere in
13 this report, Australia ultimately did order his extradition in the face of intense international
14 pressure to do so.³³ Kalejs died in Australia while the order was on appeal.³⁴

15 In 2001, the Australians accepted [redacted] offer of an updated listing of BG
16 names on the U.S. Watchlist.³⁵ To date, they have not used those names to establish a Watchlist
17 of their own nor have any prosecutions been filed since the SIU was disbanded. Moreover, they
18 have denied OSI the right to interview witnesses in Australia, on the ground that the mutual
19 assistance treaty between the U.S. and Australia covers assistance only in criminal cases.³⁶ In
20 2003 and 2004, the SWC, reviewing the efforts of countries worldwide to investigate and
21 prosecute Nazi war criminals, placed Australia among a group of nations which “made at least a
22 minimal effort to investigate Nazi war criminals but which failed to achieve any practical results

1 or . . . in which the issue had no practical dimension during the period under review.”³⁷ The
2 SWC attributed this to “a lack of the requisite political will.”³⁸ The 2005 report is more positive.
3 It places Australia among those nations which failed to obtain any convictions or file an
4 indictment, but have nevertheless “either advanced ongoing cases currently in litigation or have
5 opened new investigations which have serious potential for prosecution.” That assessment is
6 apparently due to Australia’s approval of a Hungarian request for extradition of Charles Zendai, a
7 naturalized Australian citizen involved in the murder of a Jewish teenager in Budapest in 1944.³⁹
8 At the request of the SWC, OSI provided the Australian government with documents located at
9 the National Archives concerning Hungary’s postwar request to U.S. occupation authorities for
10 Zendai’s extradition.

DRAFT

11 Great Britain
12 In 1988, the British government appointed a committee to examine well-publicized
13 allegations, from the SWC and a Scottish television show, that there were Nazis responsible for
14 wartime atrocities living in the United Kingdom.⁴⁰ The committee concluded that there was a
15 basis for the allegations and recommended legislation authorizing criminal prosecution. The
16 resulting 1991 War Crimes Act allowed for trial of British citizens and U.K. residents on charges
17 of murder and homicide committed between 1933 and 1945 in Germany and German-occupied
18 territory. However, the government must prove the defendant’s personal responsibility and
19 present eyewitness testimony. Scotland Yard established a War Crimes Unit which, at its peak,
20 employed 11 police officers, two historians and support staff.

21 In 1988, OSI historians, doing research in West German archives, came across several
22 documents incriminating a former Latvian Arajš-Kommando officer who, according to an OSI

1 source, had settled in England. The British opened an investigation after receiving the
2 documents and information from OSI.⁴¹ However, the subject died before the investigation was
3 completed.⁴²

4 The British did file two cases, the first of which was brought to their attention by OSI. It
5 was dismissed, however, after a jury found the defendant mentally unfit to stand trial.⁴³ The
6 second was prosecuted, and in 1999 the defendant was sentenced to two life terms for gunning
7 down 18 Jews in Belarus.⁴⁴ Shortly after he was convicted, the British investigative unit was
8 scaled down and then disbanded for lack of additional viable cases. The law, however, remains
9 on the books and there have been several related inquiries, all of which have involved OSI to
10 some extent.

11 As detailed elsewhere, in 1999 a television reporter, acting on a tip from
12 [redacted] located Konrad Kalejs in Rugby, England. The story received worldwide publicity
13 and the British government came under considerable criticism for allowing Kalejs to leave the
14 country without prosecution.⁴⁶ Some of that criticism came from OSI.⁴⁷

15 In the wake of the Kalejs affair, a British newspaper reminded its readers that Alexander
16 Schweidler, earlier prosecuted by OSI and deported to England, was still in the country.⁴⁸
17 Schweidler, by his own admission, had murdered two Russian prisoners of war at the
18 Mauthausen concentration camp. Four days after the story surfaced, Schweidler died of a heart
19 attack.

20 Just as the Kalejs affair awakened British interest in Schweidler, Schweidler's death
21 renewed Scottish interest in a Nazi persecutor in their midst.⁴⁹ Antanas Gecas first came to the
22 attention of the Scots when [redacted] interviewed him in 1982 in connection with an

1 OSI investigation of someone in Gecas' unit. In 1987, he gained local notoriety when a Scottish
2 television show charged that he had commanded a platoon which had massacred Jews and Soviet
3 citizens in Lithuania and Belarus. Gecas sued the station for libel. In ruling against him, a
4 Scottish judge said he was "clearly satisfied" that Gecas had taken part in atrocities, including the
5 slaughter of more than 1,000 civilians over two days.⁵⁰ Despite this finding, the government
6 concluded that there was not sufficient evidence to sustain a criminal prosecution.⁵¹

7 Lithuania, however, was willing to consider the matter. The Department of Justice,
8 responding to a request for assistance from Lithuania's Prosecutor General, sent an OSI attorney
9 and an historian to Lithuania to help them assess this case and others on their docket. OSI's team
10 made various suggestions to modify a proposed Gecas indictment.⁵² Lithuania requested his
11 extradition but Gecas died in Scotland before the proceedings were complete.⁵³

12 Lastly, in 2003, a British television producer, checking names from rosters which OSI
13 had used in court proceedings and forwarded to him at his request, made a "hit." He discovered
14 in England a concentration camp guard who allegedly had participated in the liquidation of both
15 the Warsaw and Bialystok ghettos. In response to the publicity generated by this story, the
16 British government agreed to investigate the case.⁵⁴ OSI forwarded copies of several pertinent
17 German documents as well as an historian's report used in a related case. In April 2003, two
18 detectives from the Anti-Terrorist Branch of Scotland Yard came to OSI to discuss the case.
19 They met with several historians in the office as well as with OSI's director and former chief
20 historian, now working at the U.S. Holocaust Memorial Museum. Whether charges would have
21 been filed will never be known; the subject died in a car accident before a prosecutorial
22 determination had been made.⁵⁵

1 In 2003, Scotland Yard began a search for survivors of one SS unit, many of whose
2 members had settled in England. Approximately 7,100 Ukrainians serving in the unit had gone
3 to Britain in 1947 after spending two years as prisoners of war; 1,200 of the men were still alive
4 when the British began their search.⁵⁶ OSI was not optimistic that the investigations would be
5 productive because OSI had never found any “credible/usable evidence . . . persuasively linking
6 the . . . Division to the perpetration of nazi crimes.”⁵⁷ As of this writing, no cases have been
7 filed.

8 However, a new avenue of case development may be in the offing. After years of
9 rejecting OSI’s offer to share its Watchlist names, in June 2005 UK officials told
10 ^{B6} they would be interested in obtaining the information for use in the research and
11 development of cases.⁵⁸

DRAFT ^{B6}

1

1. Feb. 10, 1989 memorandum to file from
Meetings Held at OSI on Feb. 8, 1989."

re "Minutes of

B6

2. Apr. 21, 1980 memo from
"Witnesses and Possible War Criminals in Canada."

re

B6

3. Helmut Rauca was arrested by the Royal Canadian Mounted Police in June 1982 and extradited to West Germany in May 1983. On Sept. 28, 1983, the Germans charged him with murdering more than 11,500 Lithuanian Jews. Rauca died one month later.

4. "Canada Plans Panel on Nazis," *The New York Times*, Feb. 8, 1985.

5. "War Criminals: The Deschênes Commission,"

www.parl.gc.ca/information/library/PRBpubs/873-e.htm (last visited Dec. 2008)

6. Under the Canadian statutes, war crimes and crimes against humanity committed outside of Canada which would have constituted an offense under Canadian law are deemed to have been committed in Canada as long as: the perpetrator or any victim was, at the time, a Canadian citizen, employed by Canada in a military or civilian capacity, or later became a Canadian citizen. The same result holds if the person who committed the crime is, after the fact, present in Canada.

The Canadian constitution's Charter of Rights and Freedoms (adopted in 1982) has an Ex Post Facto Clause. However, the Clause excludes any act or failure to act that, at the time of its perpetration, constituted an offense under Canadian or international law, or was criminal under the general principles of law recognized by the community of nations. Thus, the Clause does not apply to Nazi war criminal activity.

7. The government dropped charges against two defendants, in one instance because the court would not allow the taking of testimony on videotape in the Soviet Union, in the other because important witnesses either died or refused to testify; the third case was dismissed because of the defendant's ill health.

8. "Supreme Court Upholds War-Crimes Law; but Lawyers Say Ruling Will Make it Harder to Prosecute Suspected Nazis," by Stephen Bindman, *The Gazette* (Montreal), Mar. 25, 1994.

9. "Canada Shifts Legal Tactics on War Crimes," *The New York Times*, Feb. 1, 1995. Although the Canadians left open the possibility of additional criminal prosecutions, in fact there have been none since then.

10. "The Making of a Nazi Hunter," by Monique Beaudin, *The Gazette* (Montreal), Aug. 24, 1998.

11. "War Criminal Can't Come Back," *The Ottawa Citizen*, Mar. 30, 1995.

12. See pp. 336-337, 467-468.

13. *Minister of Citizenship and Immigration and Eduards Podins*, No. T-1093-97.
14. *Minister of Citizenship and Immigration and Michael Baumgartner*, No. T-2701-97.
15. The ruling was reversed but the case may be retried. *See* pp. 305, 308, n. 22.
16. "Deportation of Accused Nazi Halted," by Adrian Humphreys, *The National Post* (Canada), Jan. 10, 2004.
17. "Ruling Elates Oberlander," by Brian Cladwell, *The Record* (Kitchener-Waterloo, Ontario), June 2, 2004.
18. Indeed, in one instance OSI interviewed an Estonian-born naturalized Canadian citizen who was visiting Miami. He told OSI that he had been interviewed more than once by the RCMP. OSI had been unaware of this fact, but, more importantly, so too was the Canadian Justice Department, with whom OSI had coordinated prior to the interview. The Canadian Justice Department is responsible for handling the country's war criminal cases.

The one notable exception in terms of cooperation by the RCMP occurred during the time of the Rauca extradition, discussed *supra*, n. 3. There was an lively exchange of information between OSI and the RCMP at that point. Some of this is covered in a book written by a Canadian journalist: Sol Littman, *War Criminal on Trial: The Rauca Case* (Toronto: Lester & Orpen Dennys, 1983).
19. *See* pp. 562-563.
20. Under the Crimes Against Humanity and War Crimes Act, the Canadians have several options for dealing with war criminals, including: denial of visas abroad, exclusion from refugee protection, criminal prosecution, denaturalization, deportation, extradition and/or surrender to an international tribunal.

The Canadians began their first prosecution under the Act in Oct. 2005, charging a Hutu with genocide, crimes against humanity and war crimes for his role in the 1994 genocide in Rwanda; he had been denied refugee status in 2000. "Accused Hutu Appears in Court," by Bill Curry and Tu Thanh Ha, *The Globe and Mail* (Toronto), Oct. 20, 2005.
21. Report of the Investigations of War Criminals in Australia, Attorney-General's Department, Australian Gov't Publishing Service, 1993, p. 215.
22. *Id.*, p. 14.
23. *Id.*, pp. 490-493.
24. "Jews in Australia Upset by Acquittal in 1942 War Crimes," by Bob Drogin, *The Los Angeles Times*, May 23, 1993; "First War Crimes Trial in Australia Ends in Acquittal," *The Toronto Star*, May 18, 1993.

25. [of the Australian Embassy, conceded as much, at an Aug. 1, 2000 meeting at OSI.] both B6

26. "Accused Nazi Too Costly to Pursue," by J. Swanwick, *The Courier-Mail* (Queensland, Australia), Dec. 6, 1997.

27. "Living with Demons from the Past," by Kay Dibben, *Sunday Mail* (Queensland), Jan. 9, 2000; "Call for Team to Track Down Kalejs Evidence," *The Age* (Melbourne), Jan. 11, 2000. The most promising case concerned Karlens Ozols, commander of a Latvian unit which murdered thousands of Jews at killing pits outside Minsk, Belarus. Ozols, who became an Australian chess champion, died in March 2001.

28. OSI filed the case in January 2002. Pursuant to standard Justice Department procedure, the defendant had been advised ten days before that the case would be filed. After receiving this notification, the defendant, Peter Bernes, returned to his native Lithuania. The U.S. court entered a default judgment, revoking his citizenship, in May 2002.

29. ABC newsmagazine *20/20*, Dec. 3, 1999. This program is discussed also at pp. 468-469.

30. "Australia's Nazi Hunting Defended," *The Jerusalem Post*, Jan. 10, 2000.

31. See p. 469. Asked if Kalejs would be welcome in Australia, the Justice Minister responded, "Would you expect a situation where any Australian citizen would not be?" "Nazi Suspect Would be Allowed to Settle in Australia," *Agence France-Presse*, Jan. 3, 2000.

32. The Australian Citizenship Act of 1948 included a ten-year statute of limitations on the revocation of nationality. Kalejs, who became a naturalized Australian citizen in 1957, could not be denaturalized when evidence of his wartime activities was developed by OSI in the 1980s. Although Australia ultimately eliminated the 10-year provision in the late 1990s, a grandfather clause protected those who, like Kalejs, had passed the ten-year mark before the amendment.

33. See pp. 474-475.

34. *The Los Angeles Times* referred to Kalejs as "the poster child for Australian tolerance of suspected Nazi war criminals." "Nazis Find an Aussie Sanctuary," by Richard Paddock, Jan. 10, 2001.

35. Apr. 5, 2001 letter from [] B6

36. May 5, 2000 letter to [] B6

[] See p. 425. [] B5

37. SWC 2003 and 2004 Annual Reports, "Worldwide Investigation and Prosecution of Nazi War Criminals."

38. SWC Press Release #1884, Apr. 27, 2003.

39. "War Crime Accused's Warrant Unearthed," by Paige Taylor, *The Australian*, June 9, 2005.

40. "Inquiry into 'Britain's Nazi Criminals:' Senior Prosecutors May Recommend Atrocity Trials in the UK," by Philip Webster, *The Times* (London), Feb. 9, 1988.

41. May 23, 1988 memorandum to United Kingdom's War Crimes Inquiry, re "Harijs Svikeris." See also, statement by Rosenbaum in "Straw Demands Inquiry into How Alleged Nazi War Criminal Entered UK," by Linus Gregoriadis, *The Guardian* (London), Dec. 30, 1999.

OSI historians found the subject's name on a list of persons in the Arajs Kommando who had received weapons permits. The same lists led OSI to two people in the U.S. who the office later prosecuted (Valdis Didrichsons and Edgars Inde).

42. "War Crimes Suspect Dies During Inquiry," by Stephen Ward, *The Independent* (London), Aug. 8, 1995.

43. "Criminal Waste of our £14m," by Ian Gallagher, *The Express* (London), Jan. 18, 1997. The defendant, Semion Serafimovich, had been brought to the attention of British authorities by OSI in the early 1980s. However, the British were unable to locate him at that time, apparently due to a variance in the transliteration of his name from Cyrillic. Jan. 28, 2003 e-mail from [redacted] to Judy Feigin, re "Assistance to United Kingdom Authorities" [redacted] B6

[Large redacted area]

Oct. 6, 1995 memo to [redacted] B6 from [redacted] B6 re [redacted] B5 After receiving assurances from OSI, the subject did cooperate fully with the British. B5

44. "Justice . . . 57 Years Too Late," by Don Mackay, *Scottish Daily Record & Sunday Mail*, Apr. 2, 1999. The defendant died in prison in 2005. "War Criminal Jailed in Britain Dies at 84," by Owen Bowcott, *The Guardian* (London), Nov. 8, 2005.

45. See pp. 468-469.

46. See, e.g., "I Can Still Call Australia Home," *The Sydney Morning Herald*, Jan. 8, 2000.

1 **Japan**

2
3 From the early 1930s until the end of World War II, Japan persecuted civilians in a
4 variety of ways. Among them: (1) the Japanese Imperial Army kidnaped approximately 200,000
5 girls (most of whom were from Korea) and imprisoned them in so-called “comfort stations,”
6 where they were forced to serve as prostitutes to the military; (2) conquering Japanese armies
7 brutally slaughtered civilians in their wake; (3) non-Japanese were used as slave laborers by
8 Japanese conglomerates; and (4) non-Japanese prisoners were unwillingly made subjects of
9 gruesome and often lethal medical experiments by the Imperial Army.¹

10 OSI, as the SLU before it, was created to investigate and prosecute persons who, in
11 association with the Nazi government *or its allies*, ordered, incited, assisted or somehow
12 participated in the persecution of any person because of race, religion, national origin or political
13 opinion. Despite this broad mandate, neither the SLU nor OSI at its founding, gave any thought
14 to investigating or prosecuting Japanese perpetrators who might be in the United States.²

15 There were many reasons for this, perhaps the most important being that nothing
16 indicated that a large number of Japanese persecutors ever came to the United States. Operation
17 Paperclip had no counterpart for Japanese scientists. Nor was there a DPA or RRA allowing an
18 extraordinary number of immigrants from Japan to enter.

19 Furthermore, Japan’s victims were not calling for prosecutions. This may be due to the
20 fact that many were culturally reticent to speak out. The shame of victimization, especially
21 among the women who had been raped, beaten and tortured, was acute. Many were shunned
22 even by their families at war’s end.

23 Even if the victims had been calling for action, however, their demands could not have

1 been easily met. The most serious impediment was the United States' inability to determine the
2 names of Japanese persecutors. In August 1945, the Japanese Imperial Army and Navy ordered
3 the destruction of incriminating or sensitive documents by field and headquarters units; in
4 response, as much as 70% of wartime military and government records were likely purged. The
5 United States retrieved what it could (approximately 18,000,000 pages).³ However, the
6 Japanese pressed for return of these documents and the United States acceded. Most of the
7 material was returned in 1958, although some was as late as 1962. Before the return, a group of
8 private scholars arranged for the microfilming of a portion of the records by the Library of
9 Congress under a grant from the Ford Foundation. Due to time and financial limitations,
10 however, only about 3 per cent of the available documents were copied. The United States made
11 no provision for future access to the returned records.⁴

12 Neither OSI nor the National Archives has fully reviewed the records the U.S. does have.⁵
13 Although belated efforts are being made to do so, OSI also wants access to the material in Japan.
14 This will provide more names of those who served in units known to have committed persecutory
15 acts. OSI can then compare those names with INS records of those who came to the United
16 States, just as it does with Nazi persecutors. Even if *no* Japanese persecutors settled in the United
17 States (an unlikely possibility), some may have visited at one time or another. OSI wants to place
18 the names of all those who served in units involved in persecution on the Watchlist to prevent
19 their entering even on a short-term basis.

20 OSI has been stymied in this effort by Japan's unwillingness to grant access to their files
21 or to provide relevant information. This is based on privacy concerns as well as Japan's view that
22 it has no right to place "ordinary citizens" at "a disadvantage by providing information about them

1 to foreign governments.⁶ Accordingly, Japan has consistently refused to release the names of
2 persons in particular units; they have also refused to provide date and place of birth information
3 for persons who the United States has independently determined were involved in acts of
4 persecution. The United States has been granted access only to the public archives. According to
5 a researcher hired by the Interagency Working Group (on which the Director of OSI sits as a
6 public member), the documents relating to war crimes are not accessible.⁷

7 The effect of these strictures on OSI's work is dramatic. Tens of thousands of possible
8 persecutors from the war in Europe have been placed on the Watchlist,⁸ yet as of this writing, only
9 31 Japanese are listed. Their names were added in 1996.⁹ Twenty of those listed were from Unit
10 731, an Imperial Army biological warfare unit that conducted gruesome wartime experiments on
11 prisoners of war, most of whom were Chinese. Two worked at a camp which transferred inmates
12 to Unit 731 for punishment, and three were involved in the establishment, operation or utilization
13 of comfort stations. One was connected to both comfort stations and Unit 731.

14 Due to Japan's sensitivity on the war crimes issue, OSI, at the State Department's
15 suggestion, gave the Japanese government the names of the men – something that is not typically
16 done for Watchlist entries. The alleged persecutors, forewarned about their listing, can now avoid
17 travel to the United States. This eliminates the public embarrassment attendant on being stopped
18 by the authorities – something the Japanese indicated was a matter of particular concern. Although
19 the Japanese offered to release more birthdate and place information in return for this notice, to
20 date they have not done so.

21 In further deference to Japan's sensitivity about alleged war crimes, the Justice
22 Department worked closely with the State Department about whether, and how, to announce the

1 new Watchlist entries.

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7 ⁹ Ultimately, the State Department agreed that a statement could be
8 issued, though they toned down considerably the draft originally prepared by OSI. The press
9 release references "inhumane and frequently lethal pseudo-medical experiments – including
10 vivisection" as well as the beating, torture and rape of women. However, it omitted some of the
11 horrific and graphic details which OSI wanted to include.¹¹

12 In 1998, a coalition of Asian-American human rights groups sought to bring to the United
13 States two men who had been involved in persecution of civilians on behalf of the Japanese. One
14 worked in Unit 731; the other admitted raping and murdering Chinese women during Japan's
15 1937 invasion of Nanking. The visitors were to speak at a conference on war crimes where they
16 intended to explain their wartime activities and to apologize for the work they had done. The goal
17 of the conference was to build pressure on the Japanese government to make formal apologies to
18 its war victims and to pay reparations.

19 Ironically, it was through media coverage of the event that OSI got sufficient background
20 information about the two speakers to have their names added to the Watchlist. The men
21 requested that the Attorney General, in the exercise of her discretion, allow them into the country
22 despite the Watchlist entry.¹²

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Although commending the Japanese for their willingness "in the face of considerable public disapproval in Japan, to testify about crimes committed by the Japanese Army," he noted that neither man had been prosecuted nor brought to justice. Moreover, the United States had previously denied Nazi persecution suspects entry despite humanitarian bases for their requests, e.g., medical care and family visitations. There were also political considerations.

[redacted]

[redacted]

B5

While the Attorney General was still considering the issue, one of the men flew to the United States. INS matched his name to the Watchlist and he was sent back to Japan. The Attorney General declined to intervene.

Public opinion was divided on use of the Watchlist to deter a penitent from entering. Many felt if ever an exception should be made to Watchlist exclusion, this was the time.¹⁴

B6

[B6] acknowledged that the applicants' intention to apologize and to explain what they had

1 done was laudable. Nonetheless, he feared that their admission would open the floodgates to
2 World War II persecutors who suddenly claimed to be remorseful.

3 Is the Government supposed to evaluate their sincerity? What happens if
4 they come here and refuse to leave, or fall ill and we can't remove them? And I
5 wonder whether people are prepared for the spectacle on their evening news of
6 Nazi and Japanese war criminals dining at the best restaurants in Manhattan and
7 Los Angeles. I doubt it.¹⁵
8

9 In the end, the Japanese participated in the symposium via videoconferencing provided by the
10 SWC.¹⁶ It may well be that the act of exclusion garnered more press for the issue than would have
11 been the case had the men been allowed to enter.

12 With approval from the Department, Director Rosenbaum has spoken out about Japan's
13 intransigence and has taken up the issue of the comfort women. As

14 of these women

15 He has met and corresponded with representatives for the women. He also
16 helped arrange, and presented the opening remarks at, a symposium on comfort women sponsored
17 by the U.S. Holocaust Memorial Museum in September 2000. He spoke as well at a ceremony on
18 Capitol Hill sponsored by the Washington Coalition for Comfort Women Issues in honor of ten
19 surviving victims.

20 By allowing OSI to take up this issue, the Department of Justice has reconfirmed the broad
21 scope of OSI's mission. To the extent that some justice or remuneration to World War II victims
22 may result – even if it is by governments other than our own – OSI does all it can to assist. The
23 comfort women symposium, intended to educate the public as well as to bring pressure on the
24 Japanese government to acknowledge its responsibility to make reparations, was a perfect forum
25 for OSI to pursue the public education and extraterritorial components of its mandate.

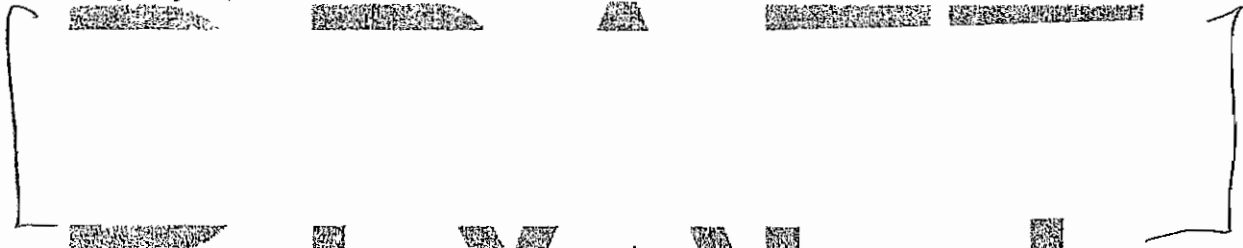
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1. See e.g., U.N. Economic and Social Council, Comm. on Human Rights, Sub-Comm. on Prevention of Discrimination and Protection of Minorities, "Systematic rape, sexual slavery and slavery-like practices during armed conflict" (June 1998) for information on comfort women; Iris Chang, *The Rape of Nanking* (New York, Basic Books, 1997) for discussion of slaughtered civilians; "Fund for Wartime Slaves Set up in Japan," by Stephanie Strom, *The New York Times*, Nov. 30, 2000 and "Lawyers Target Japanese Abuses," by Michael Dobbs, *The Washington Post*, Mar. 5, 2000 for discussion of corporate exploitation; and "Japan Keeps Stonewalling on WWII Bio-Research Atrocities," by R. Blumenthal and J. Miller, *The New York Times*, Mar. 7, 1999 for discussion of medical experiments.

As late as March 2007, the Japanese government denied that the Japanese military was involved in abducting girls as sex slaves. However, Japan's highest court, while denying compensation for the kidnaping, has acknowledged the military's role. "Japan's Court Rules Against Sex Slaves and Laborers," by Norimitsu Onishi, *The New York Times*, Apr. 28, 2007. As of this writing, a U.S. congressman is seeking support for a congressional resolution calling on the Japanese government to admit its history of wartime sex slaves and to apologize for it. "A Congressman Faces Foes in Japan as He Seeks an Apology," by Norimitsu Onishi, *The New York Times*, May 12, 2007.



3. This figure includes many documents that pre-date World War II.

4. Sept. 6, 2001 Report to the Interagency Working Group (IWG) of [redacted] re "The Disposition of Captured World War II-Era Japanese Records, 1945-1962; Apr. 20, 2000 "Brief Survey of the Disposition of Captured Japanese Records 1945-1962" by [redacted] National Archives and Records Administration. [redacted] the failure to provide access was probably an oversight; the agencies had intended otherwise.

5. In Oct., 2002, [redacted] disclosed at an IWG meeting that he had just discovered 4 boxes containing Japanese war criminal wanted lists prepared by various foreign governments. Some of the listings had date of birth information. Oct. 25, 2002 e-mail from [redacted] re "Leads for OSI's Japanese Project from Today's IWG Meetings."

6. Statement of Kazuhiro Fujimura, spokesman for the Japanese Embassy in Washington, D.C. as quoted in *The Washington Post*, "Lawyers Target Japanese Abuses," by Michael Dobbs, March 5, 2000. An alternative cultural explanation was offered to OSI by an FBI language specialist. He opined that in the Japanese culture everyone is responsible and therefore no one is responsible. Everyone repents and one therefore cannot point to any one person for inclusion on the Watchlist. *Accord*, Nov. 30, 1999 letter from Japanese Ambassador Shunji Yanai to Rep.

Tom Lantos.

7. Statement of Naotaka Ikeda at IWG meeting of June 6, 2002. B5

Ultimately, however, the State Department bore the entire cost in connection with the IWG's Disclosure Act implementation effort.

8. See p. 297.

9. OSI had been working on the matter for a while. It helped that in [] B6

10. May 14, 1996 Memorandum to [] re "Barring the Entry of World War II-Era Japanese War Criminals ("Unit 731" Medical Atrocities; Mass Rape Cases.)" B6

11. Oct. 11, 1996 memorandum to [] re "Exclusion of Suspected World War II Japanese War Criminals; Recommendation to Accept State Department Changes to Draft DOJ Press Release;" Dec. 3, 1996 DOJ Press Release; "Suspected Japanese War Criminals Placed on 'Watch List' of Excludable Aliens" B6

12. The Attorney General can allow in any alien "for reasons deemed strictly in the public interest."

13. June 10, 1998 memorandum from [] to the Deputy Attorney General re "Planned Visit of World War II - Era Japanese War Criminals to U.S.A." The memorandum was initialed also by [] B6

14. This view was expressed by the Executive Director of Center for Internee Rights in Miami Beach, a man whose father died while a prisoner of the Japanese. See "U.S. Bars Japanese Who Admits War Crime," by James Dao, *The New York Times*, June 27, 1998 (hereafter "Dao article").

15. Dao article, *supra*, n. 14.

16. One of the speakers acknowledged culturing bacteria used in lethal experiments and participating in five live autopsies. In 2001, he wanted to attend another conference along the lines of the earlier one. OSI again opposed the request and no waiver was granted. June 25, 2001 memo from [] re "Simon Wiesenthal Center Request to Waive Exclusion of Japanese War Criminal." B6

17. See e.g., "Japan Keeps Stonewalling on WWII Bio-Research Atrocities," by Ralph Blumenthal and Judith Miller, *The New York Times*, Mar. 7, 1999; "Lawyers Target Japanese Abuses," by Michael Dobbs, *The Washington Post*, Mar. 5, 2000; "Japan Blocking Probe of War Criminals, U.S. Says," by Teresa Watanabe, *The Los Angeles Times*, Dec. 9, 1998.

DRAFT

1 from Costa Rica.¹⁰ Dozens of congressmen, including Tom Lantos, the only Holocaust survivor
2 in Congress, petitioned the Costa Rican government.¹¹ In February 2000, Costa Rica's president
3 ordered Koziy's expulsion. It was unclear, however, where he should be sent. Prior to the war,
4 the scene of Koziy's activity was part of Poland. It became part of the Soviet Union as a result
5 of that nation's 1939 pact with Hitler. It is now located in Ukraine.

6 Jewish organizations and members of Congress urged Ukraine to admit Koziy and to
7 prosecute him.¹² By this time, however, only one of the eyewitnesses who had testified to
8 Koziy's atrocities was still alive, and she had recanted.¹³ The chance of a successful prosecution
9 in Ukraine was therefore significantly diminished. (He could possibly still be convicted of lesser
10 charges.) Nonetheless, [redacted] supported the effort to send Koziy to Ukraine, as **B6**
11 did the Department of State. [redacted] was of the view that if Koziy "end[ed] up in a country **B6**
12 where at least he knows he *might* be prosecuted, we would consider that a positive outcome."¹⁴

13 The Ukrainians were sending mixed messages about prosecuting Koziy. Although they
14 expressed an interest in investigating the matter, they never took up OSI's offer to review the
15 files – even after OSI offered to provide an interpreter, along with copies and translations of all
16 pertinent documents.¹⁵ Similarly confusing was the fact that they advised Koziy by letter that he
17 would be arrested if he set foot on Ukrainian soil – even as they conceded to OSI that they were
18 no longer sure they could mount a viable case.¹⁶

19 They were also sending mixed messages about his returning to their country. While they
20 had originally indicated they would grant him a visa if he applied,¹⁷ they in fact waited months to
21 respond to his request and then denied it on the ground that he had asked for the wrong type of
22 visa. Under Ukrainian law, he would have to wait at least one year before he could reapply for

1 the type they now claimed was appropriate.¹⁸

2 A Catch-22 situation was developing. Under Costa Rican law, Koziy had to choose a
3 country of destination before the expulsion could be effected. He had chosen Ukraine, yet
4 Ukraine would not have him -- at least not in the near future. Moreover, the very validity of the
5 expulsion order was put in question when Ukraine notified Koziy that he would be arrested.
6 Costa Rican law distinguishes expulsion, which is simply a removal process, from extradition, a
7 means to secure prosecution. Ukraine's statement allowed Koziy to argue that his expulsion was
8 a "disguised extradition, and as such, illegal."¹⁹ Both

] BG

9 [redacted] at the Department of State who was working with OSI on the Koziy
10 matter, [redacted]
11 [redacted]
12 [redacted]

] BG

13 It is easy to understand Koziy's motivation. He had a comfortable lifestyle and faced no
14 prospect of prosecution in Costa Rica. The Ukrainian position is more complex.]

] BG

15 [redacted]
16 [redacted]
17 [redacted]
18 [redacted]
19 [redacted]
20 [redacted]
21 [redacted]

] BG

22 In a series of meetings and phone calls with the Ukrainians, [redacted] in coordination

] BG

1 with the State Department, played on this fear to encourage the Ukrainians to pursue the case. At
2 a meeting with Ukraine's Consul General,

3 [REDACTED] } At a later meeting with
4 Ukrainian officials and representatives from the U.S. State Department, Rosenbaum commented

5 that one of the leading human rights advocates in Congress was anxious to raise the Koziy
6 matter.²³ [B6]

7 [REDACTED] BS
8 [REDACTED]
9 [REDACTED]
10 [REDACTED] [B6]
11 [REDACTED]
12 [REDACTED]

13 In June 2002; Bb and several State Department representatives met with various
14 Ukrainian officials, including the Deputy Procurator General (equivalent to the Deputy Attorney
15 General of the United States) to discuss the matter yet again. During the course of the meeting,
16 Bb and the Deputy Procurator General debated the goal to be achieved in the Koziy B6
17 matter. For; Bb] it was removing Koziy from Costa Rica and placing him in the part of
18 the world which bore responsibility for his crimes. As long as Koziy lived in fear of prosecution,
19 Rosenbaum believed there would be a measure of justice.

20 The Ukrainians disagreed with the premise that life in Ukraine was punishment in and of
21 itself. On the contrary, they noted that many in Ukraine would treat him as a hero simply
22 because he fought against the Russians during World War II. The Ukrainian goal was

1 prosecution; if they did not have the evidence to prosecute, it did not matter to them where Koziy
2 resided.

3 The U.S. participants left the meeting] B6
4 [B6] to learn in December 2002 that a Ukrainian court had ruled there
5 was sufficient evidence to seek Koziy's extradition on charges of treason.²⁵ Shortly thereafter, in
6 response to a request from Ukraine, the Department of Justice sent videotaped interviews of
7 seven witnesses and a transcript (on microfilm) of the entire U.S. trial record.

8 Around the same time, Poland asked OSI and Ukraine to forward evidence on Koziy.
9 (The SWC had been pressing Poland to take action.)²⁶ OSI complied with the request. Ukraine,
10 however, refused, contending that the crimes were committed in Ukrainian territory and should
11 be handled by that country alone.²⁷ In June 2003, at Poland's request, an OSI attorney
12 interviewed in the United States a witness who had testified for the government in the 1985
13 denaturalization proceeding.

14 Unsure whether a Polish indictment would ever be issued, OSI and the State Department
15 determined to press Ukraine to accept Koziy.²⁸ Poland, however, did follow up. In November
16 2003, Poland obtained a provisional arrest warrant for Koziy – a prerequisite to an extradition
17 request. Working with OSI's evidence as well as additional material they developed on their
18 own, they alleged Koziy was responsible for 15 murders. Two weeks later, Ukraine too obtained
19 a warrant.²⁹ The question then became which country would be first to formally present an
20 extradition request to the Costa Rican government.

21 The answer was Poland, which did so on November 21, 2003. Shortly after receiving
22 notification of the request, Koziy suffered a stroke. He died in Costa Rica nine days after the

1 request was filed.³⁰

2 Harry Männil

3 Harry Männil spent three months with the Estonian Self Defense Unit (Omakaitse) and a
4 like period with the Estonian Political Police. Both organizations worked with the Nazis to rid
5 Estonia of those whom the Nazis deemed undesirable because of their racial, religious, political,
6 ethnic and social identity.

7 During the period when Männil was with the Omakaitse (the summer of 1941), the
8 German focus was almost entirely on suspected Communists. By the time he joined the
9 Estonian Political Police, in the fall of 1941, the Germans were actively routing out Jews as

10 well.³¹

11 Germans determined the fate of arrestees based largely on reports and recommendations
12 from the Political Police.³² Reports of seven interrogations conducted by Männil while with the

13 Political Police are available in the Estonian State Archives; six of those interrogated were
14 Jewish or were questioned about the whereabouts of Jews. One of the six was murdered by the
15 Germans shortly after his interrogation; four were sent to concentration camps.³³

16 After the war, Männil emigrated to Venezuela where he became a citizen and successful
17 businessman.³⁴ In 1949 he obtained a visa to visit the United States, which he did many times
18 throughout the years.

19 Männil was brought to OSI's attention by the SWC in December 1993. Since he was
20 neither a U.S. citizen nor living in the United States, there was no suit to be filed. He was,
21 however, placed on the Watchlist in January 1994. Although he was two weeks later allowed to
22 change planes in Miami *en route* to Costa Rica, he has not since been permitted into the U.S.

1 Nonetheless, because of his significant and direct role in persecution, OSI has maintained a keen
2 interest in him.

3 As discussed earlier,³⁵ OSI tried, unsuccessfully, to persuade the Estonians to launch a
4 full-scale investigation of Männil. OSI hoped that he could be extradited to Estonia if charges
5 were filed. While showing some interest in the investigation, Estonia never filed charges.

6 In January 2003, Venezuela was in political and economic turmoil. Männil, interviewed
7 by an Estonian weekly, stated that he had moved to Costa Rica a month earlier.³⁶ The American
8 Embassy in Estonia informed OSI of the interview, and immediately B6
9 notified the Costa Rican ambassador to the United States.³⁷ The Ambassador, who had worked
10 closely with OSI on the Koziy matter, asked for any documentation which would support
11 expelling Männil from the country. OSI sent him a report detailing Männil's history. Shortly
12 thereafter, the Costa Ricans learned that Männil was planning a trip to Venezuela to settle some
13 business matters. Costa Rica's Director of Immigration boarded Männil's plane and handed him
14 a letter stating that he would not be allowed to return to Costa Rica. The letter explained that this
15 decision was based on "information received from the Justice Department of the Government of
16 the United States concerning your participation in activities of political persecution of Jews
17 which you carried out while a member of the Political Police of Tallinn, Estonia." Once Männil
18 was out of the country, the Costa Ricans held a press conference to announce his expulsion; the
19 event received news coverage worldwide.³⁸

20 OSI had coordinated its Costa Rican contacts with the State Department. Although OSI
21 had hoped that the information forwarded to Costa Rica would be made public, the State
22 Department precluded release of the documents. The Estonians were in the midst of an election

1 campaign in which one of the contentious issues had a Nazi twist. The Minister of the Interior
2 was being attacked for having sentenced several teenagers to prison during the Soviet era; he
3 defended the sentence on the ground that the teenagers were "fascists" fascinated with Nazi
4 memorabilia. Given this backdrop,

5 [REDACTED] B5
6 [REDACTED]

7 Ironically, although OSI's report was not released, the issue became a *cause célèbre* in
8 Estonia before their election took place. In February 2003,

9 [REDACTED] was asked about Männil after he gave a speech on an unrelated topic in
10 Tallinn. The questioner accused the U.S. of discriminating against Männil. The ambassador
11 defended the U.S. actions, noting that some of Männil's victims had been children and old
12 women. His comments created a furor in Estonia.⁴⁰

13 [REDACTED] Meanwhile, Männil's attorneys (one of whom was [REDACTED]) successfully B6
14 petitioned the Costa Rican government to reconsider its position. In early 2004, Costa Rica
15 dropped its opposition to Männil's reentry. The government did so on the grounds that Männil
16 was not facing charges abroad and had earlier spent extended time in Costa Rica without
17 incident.⁴¹

18 The Männil and Koziy cases illustrate OSI's effort in the hunt for World War II
19 persecutors worldwide. Although the United States lacks jurisdiction to prosecute criminally
20 those who committed crimes abroad on behalf of the Nazis, it has taken on the task of sharing
21 information it has on Nazis with like-minded countries throughout the world. It has also sought
22 to raise the awareness of countries abroad so that they are more sensitive of the need to rid

1 themselves of Nazis in their midst and to prosecute if possible.

DRAFT

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1. Feb. 13, 1983 memorandum re: "Deportation of Nazi War Criminals."

2. See pp. 466-475.

3. *United States v. Koziy*, 540 F. Supp. 25 (S.D. Fl. 1982), *aff'd*, 728 F.2d 1314 (11th Cir. 1984).

4. Aug. 17, 1983 memo to:

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6. *Matter of Koziy*, A07 347 878 (Imm. Ct., Miami, Fl. 1985).

7.

[B6]] BS

8. "Pressure Grows to Expel Accused War Criminal," by Brian Harris, *The Tico Times*, [Costa Rican English language daily], June 3, 1994. As late as 2000, the Costa Rican archbishop was proclaiming Koziy the victim of mistaken identity. "Let Me Die in Peace in Costa Rica, Pleads Ex-Nazi," *Reuters*, June 14, 2000.

9. Although the Soviet Ambassador sent a letter assuring that Koziy would not be executed, the Costa Rican Foreign Minister held this an insufficient guarantee against the use of capital punishment. "Pressure Grows to Expel Accused War Criminal," *supra*, n. 8.

10. "Costa Rica Harbors Nazi Killer," WJC International Report, Oct./Nov. 1994.

11.

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 "Ex-Nazi Loses Expulsion Appeal from Costa Rica," *Reuters*, Nov. 20, 2000.

12. "Costa Rica Court OK's Nazi Expulsion," *The Jerusalem Post*, Dec. 6, 2000; "Top Costa Rican Court to Rule on Nazi in Days," *Reuters*, May 1, 2000.

13. "Digging into the Past," by Mary Mycio, *The Los Angeles Times*, Oct. 18, 1994; "War Criminal Charges Case Falling Apart," by Brian Harris, *The Tico Times*, Sept. 30, 1994. For a discussion of the impact of this recantation, see p. 548, n. 22.

14. Statement made by [redacted] to Ukrainian Consul General at March 7, 2001 meeting. The Germans had long before refused to extradite or prosecute Koziy. See pp. 429-430. B6

15. Jan. 16, 2001 letter from [redacted] to [redacted] of Ukraine. B6

16. Jan. 23, 2001 e-mail from [redacted] re: "Koziy: Telcons w/ Costa Rican & Ukrainian Ambassadors." B6

17. May 15, 2000 telegram No. 151511Z from American Embassy, Kiev to Secretary of State.

18. June 5, 2002 e-mail from [redacted] re: [redacted] B6 B5

19. Mar. 30, 2000 e-mail from [redacted] B6

20. June 5, 2002 e-mail from [redacted] supra, n. 18. B6

21. See e.g., "A Grisly Mystery in Ukraine Leads to a Government Crisis," by Patrick Tyler, *The New York Times*, Jan. 30, 2001; "Headaches Pile Up on Ukraine Leader," by Patrick Tyler, *The New York Times*, Dec. 6, 2000.

22. Notes taken by the author at Mar. 7, 2001 meeting between OSI representatives and the Ukrainian Consul General and Embassy First Secretary. Mar. 27, 2001 memorandum from [redacted] to files concerning the same meeting. B6

23. June 26, 2002 memorandum to file prepared by [redacted] concerning meeting with Deputy Procurator General, a vice consul from the Ukrainian Embassy, and a representative from the Ukrainian MFA. B6

24. See e.g., Jan. 23, 2001 e-mail from [redacted] re "Koziy: Telcons w/ Costa Rican & Ukrainian Ambassadors." B6

25. The U.S.S.R. had sought his extradition from Costa Rica years earlier. A new ruling was necessary however, since Ukraine adopted a new criminal code in 2001. The old arrest warrant, issued by the Soviet Union, was therefore no longer valid. Nov. 8, 2002 Cable 04410 0815312 from the AmEmb Kiev to Sec'y of State.

26. "Costa Rica Praised for Expelling Ex-Nazi," [Harry Männil], by Elli Wohlgeleirter, *The Jerusalem Post*, Feb. 12, 2003. B6

27. May 29, 2003 e-mail from [redacted] to [redacted] re "Koziy and other OSI Matters." B6

28. July 23, 2003 e-mail from [redacted]

[redacted] to Feigin re [redacted]

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29. Oct. 16, 2003 Cable No. 003875 from AmEmb Kiev to Sec'y State.

30. "Alleged Ex-Nazi Dies in Hospital While Awaiting Extradition," AP, Dec. 1, 2003.

31. According to [redacted] Dr. Martin Sandberger, [redacted] head of the mobile killing unit whose area of operation included Estonia, the order to arrest Jews was given in early Sept. 1941. He so testified at the Nuremberg trial of *U.S. v. Otto Ohlendorf et al.*

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32. *Id.*

33. Aug. 7, 1996 Memorandum to [redacted]

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re [redacted]

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34. The circles in which he traveled are suggested by the persons who filed affidavits on his behalf when he challenged the U.S. government's decision to place him on the Watchlist. See p. 301. In addition to [redacted]



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35. See pp. 456-457. [redacted]

36. *Eesti Ekspress*, Jan. 16, 2003.

37. Jan. 17, 2003 e-mail to Ambassador [redacted] Costa Rica?"

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from [redacted]

re "2nd Nazi in [redacted]"

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38. See e.g., "Costa Rica Asks Estonian-Born Businessman to Keep Out Over Alleged Nazi Past," *BNS*, Feb. 6, 2003; "Costa Rica Praised for Expelling Ex-Nazi," by Elli Wohlgerlenter, *The Jerusalem Post*, Feb. 13, 2003; "Venezuela Asked to Take Action Against Nazi Collaborator," *Voice of America Press Release*, Feb. 7, 2003; "A Latin American Roundup," *The Miami Herald*, Feb. 6, 2003.

39. Feb. 4, 2003 e-mail from [redacted] re "Mannil: Costa Rica, Estonia and OSI's Report."

], to [redacted] B6

40. "In Estonia, U.S. Ambassador Says He's Seen Proof Alleged Nazi Männil Committed War Crimes," by Michael Tarm, AP, Feb. 12, 2003, referring to an article in the Estonian newspaper *Postimees* of the same date. (The *Postimees* is the leading daily paper of record in Estonia.) See pp. 456-457, concerning an article Amb. Thomas wrote about Nazi persecutors in 2002.

41. Aug. 8, 2004 e-mail from [redacted]
Readmitted to Costa Rica. [redacted]

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re "Suspected Nazi Criminal Harry Mannil Has Been

[redacted] B5

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Chapter Seven: Reaction to OSI

Introduction

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3 Although the founding of OSI came about after wide media coverage of “war criminals”
4 in America, the spotlight dimmed over the years. A few matters drew extensive media attention
5 – Demjanjuk, Barbie and Mengele being notable examples. But in general, aside from some
6 local attention paid to an OSI trial, the cases now go unreported. At this point – more than 25
7 years after OSI’s founding – it is unlikely that most members of the public at large are aware of
8 the office.

9 The big exception, of course, has always been those who have reason to follow OSI’s
10 cases and activity. The groups that fall most obviously into that category are two: (1) those who
11 see closure in OSI’s work (generally Jewish groups and Holocaust survivors); and (2) those who
12 fear they have been unfairly targeted by OSI (generally emigré groups, largely from Estonia,
13 Latvia and Lithuania, whose constituents make up the bulk of OSI defendants). Of course the
14 lines are not so simply drawn. Within the Jewish community, there has been occasional
15 criticism, and within the emigré community there has been some support. Moreover, there are
16 others, independent of each of these groups, who have taken stands on some aspect of OSI’s
17 work. How OSI has responded to both the support and criticism is key to understanding the
18 office and its legacy.

1 **The Jewish Community**

2
3 The Department of Justice represents Americans as a whole. However, it is not
4 uncommon for segments of the public, including non-governmental organizations, to be
5 particularly interested in certain areas of the Department's work. These groups sometimes prod
6 the Department to pursue matters of concern; at other times they may monitor, support or
7 criticize the Department's efforts. Such, for example, is the case with environmental groups and
8 the Environmental and Natural Resources Division, advocates for the minority and disabled
9 community with the Civil Rights Division, and Jewish organizations with OSI.

10 From the SLU era to the present day, the office has kept Jewish groups apprised of
11 significant matters. It has also shown particular concern for Holocaust survivors. When the
12 government moved to dismiss the case against Frank Walus, it did so because it believed he had
13 not committed the persecutory acts about which the survivors had testified.¹ Nonetheless, the
14 government issued a statement saying it had "no doubt that the witnesses who testified on behalf
15 of the government -- the survivors of the Nazi persecutions of Czestochowa and Kielce -- testified
16 sincerely and honestly." The Department showed similar deference to the sensitivity of the
17 survivors who identified John Demjanjuk as Ivan the Terrible. Although most within the
18 Department ultimately came to believe that Demjanjuk was not in fact Ivan (based in part of
19 evidence which became available only after Demjanjuk's extradition), there was never an official
20 acknowledgment of this change in viewpoint. This is so despite the fact that the Department
21 ultimately dropped all charges relating to Treblinka and reprosecuted Demjanjuk on other
22 grounds.

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Accordingly, he met with as many Jewish groups as

possible, asking for their confidence and encouraging them to tell their constituencies that this new office was here to "do business."

[B6]
There was assistance which Jewish groups in particular could provide, however.

Especially in the early years, before the Justice Department had its own databank or research and development system, outside help was crucial. Jewish groups provided information concerning possible subjects and connected OSI to survivor organizations whose members were potential witnesses.⁴ During trials, they attended to the religious needs of out-of-town witnesses.⁵ They sometimes filed briefs in support of OSI's position.⁶

Throughout the years, Jewish groups or leaders have spoken out on issues of moment to OSI. In doing so, they often serve as a surrogate for the office. They have publicized Germany's refusal to accept OSI defendants as deportees;⁷ convinced the Panamanian Ambassador to rescind his country's offer to accept Karl Linnas;⁸ launched a global campaign to pressure Costa Rica into expelling Bohdan Koziy and sending him to Ukraine to be tried for war crimes;⁹ and

1 urged Japan to furnish OSI with biographical data on possible persecutors.¹⁰ On the legislative
2 front, the WJC and ADL prevailed upon Congress to craft legislation which would exempt
3 records "related to or supporting any active or inactive investigation, inquiry, or prosecution"
4 from release under the Nazi War Crimes Disclosure Act.¹¹ The exclusion, which affects fewer
5 than 1% of documents covered by the Act, is designed to preclude the release of material that
6 would jeopardize ongoing OSI investigations.

7 Jewish groups have also defended OSI from criticism. During the 1980s, defendants
8 repeatedly challenged the reliability of evidence from Soviet and East European archives.¹² The
9 ADL issued a well-publicized report lambasting various emigré groups for using this issue to
10 "hamper and frustrate the OSI – and eventually to kill it."¹³ The WJC released a similar
11 analysis.¹⁴ In 1993, after the Sixth Circuit excoriated OSI in *Demjanjuk* for having a "mindset"
12 that required it to "try to please and maintain very close relationships with various interest groups
13 because their continued existence depended upon it," Jewish organizations attacked the
14 decision.¹⁵ They also lobbied against Judge Gilbert Merritt, one of the judges in both *Demjanjuk*
15 and *Petkiewytch*, when his name surfaced on a short list to fill a Supreme Court vacancy.¹⁶

16 This type of activity leads to a perception of symbiosis between OSI and the Jewish
17 community. That perception is enhanced by the fact that [

18 [] } B6
19 [] The perception sometimes works to OSI's advantage, as others fear that OSI can arouse
20 a powerful Jewish lobby if need be.¹⁸

21 Yet the symbiosis is not perfect. At times, OSI defendants have been represented by
22 Jewish lawyers. They have generally defended their decision to represent alleged Nazi

1 persecutors on the ground that refusing to represent a class of persons *per se* is reminiscent of the
2 treatment Jews received in Nazi Germany.

3 The dismissal of the *Walus* and *Soobzokov* cases, the prosecution of Jacob Tannenbaum,
4 and the negotiated settlement of some OSI cases, were all controversial decisions which aroused
5 mixed reactions among Jews.¹⁹ And in the case of André Bettencourt, OSI did not place him on
6 the Watchlist despite public pressure from renowned Nazi hunter Serge Klarsfeld.²⁰

7 Given the overall strength of the relationship between OSI and the established Jewish
8 leadership, disagreements of this sort have no long-term effects. There are, however, fringe
9 Jewish organizations whose activities are much more problematic for OSI. Indeed, some of their
10 activities have been counterproductive to OSI's mission. The most serious by far is their
11 apparent involvement in the death of Tschenin Soobzokov, discussed elsewhere in this report.²¹

12 There have been other problems as well. Jewish groups have disrupted trials,²² harassed
13 defense counsel,²³ and assaulted defendants. On the very day of Soobzokov's death, a fire broke
14 out in front of the home of Elmars Sprogis, whose order of denaturalization had been reversed
15 four months earlier. When the front door was opened to a passerby seeking to alert the occupants
16 of the fire, a bomb exploded. Although Sprogis was not harmed, the samaritan's lower leg had
17 to be amputated. Shortly after the incident, a call came to the local newspaper: "Listen carefully.
18 Jewish Defense League. Nazi war criminal. Bomb. Never again."²⁴ In 1980, a bomb went off
19 at an apartment building owned by an OSI defendant. The day prior, a man identifying himself
20 as a Holocaust survivor warned a local news agency that he would kill the defendant.²⁵ Frank
21 Walus, prosecuted before OSI's founding, was sprayed in the face with mace by a man
22 identifying himself as the head of the JDL in Chicago.²⁶

1 The most repeatedly victimized OSI defendant was Boleslavs Maikovskis, a Latvian chief
2 of police during World War II.²⁷ The INS filed suit against him in 1976. In 1978, with the
3 litigation still pending, several shots were fired into Maikovskis' home, wounding him seriously.
4 Although the JDL disclaimed responsibility, the national director of the group stated that the
5 organization was:

6 ecstatic that it happened. We're only unhappy the man is still alive. . . . We don't
7 go around shooting and killing people, but we hope to serve as an inspiration to
8 those who do.²⁸
9

10 The following year, a man representing himself as a reporter stabbed a guest in the
11 Maikovskis home and then fled. The anonymous assailant later identified himself to the media
12 as a member of a group called Jewish Executioners With Silence (JEWS) and said that
13 Maikovskis had been the target.²⁹ Gasoline bombs and flammable fluids were aimed at the
14 Maikovskis home several times in the succeeding years, although no one was injured. After one
15 such incident, a caller said the firebombing was "revenge for crimes [Maikovskis] committed."³⁰

16 Even during his deportation hearing in a public courtroom, Maikovskis was not safe.

17 B6 } blocked a would-be assailant from reaching the defendant. B6

18 Save the attempted courtroom assault, no arrests were made in any of the cases involving
19 violent acts against OSI defendants.³¹ As of this writing, FBI investigations into the crimes
20 remain open.

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1. See pp. 83-86.

2. See p. 10.

3. [] B6

4. E.g., in 1976 [] of the WJC provided INS with a list of 61 names of alleged B6 persecutors culled from media accounts. That same year, the WJC sent the SLU the names of Treblinka survivors to interview for the Fedorenko investigation. In 1980, the WJC contacted Yiddish newspapers worldwide in a search for survivors from a camp in Estonia headed by then OSI subject Karl Linnas.

Over the years, Jewish publications printed notices about OSI's need for witnesses from particular camps or regions. E.g., ADL notice in Spring, 1991 issue of *Briefings*, published by the Union of American Hebrew Congregations; item in June 27, 1991 issue of *Washington Jewish Week* and June 1991 issue of *One Generation After* re OSI seeking survivors of the Mauthausen camp.

5. E.g. if a witness wanted to attend services or dine in a kosher restaurant, Jewish groups assisted. [] interview, *supra*, n. 3. B6

6. E.g., the WJC filed an *amicus curiae* brief in the Second Circuit for the Linnas case and one in the Supreme Court for *Kungys*. At the time each of these was filed, [] B6

[] B6 The ADL, American Jewish Congress, Hadassah, United Synagogues of Conservative Judaism and Jewish War Veterans filed a joint brief supporting the Justice Department's request for rehearing in *Demjanjuk*. The Holocaust Survivors in Pursuit of Justice, the WJC, the International Association of Jewish Lawyers and Jurists (American Section), the American Jewish Committee, the American Jewish Congress, the ADL, the National Jewish Commission on Law and Public Affairs, the SWC, the Society of Survivors of the Riga Ghetto, the Union of Orthodox Jewish Congregations of America, and the WJC all filed in support of the government's petition for certiorari in that case.

7. E.g., June 9, 2005 press release from the SWC, "Wiesenthal Center Calls Upon German Gov't to Admit and Prosecute Nazi Collaborators Ordered Deported from the United States;" "Jewish Group: Germany Not Taking War Criminals," AP, June 5, 1985.

8. See p. 284.

9. See pp. 510-511.

10. Congressman [] wrote to the Japanese Prime Minister and met with the Japanese Ambassador in a futile effort to ameliorate the problem. Oct. 27, 1999 letter from [] to [] B6 [] B6 [] Apr. 11, 2000 letter from [] B6 [] discussing their meeting and the Ambassador's response. B6

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12. See pp. 537-540.

13. "An ADL Special Report, The Campaign Against the U.S. Justice Department's Prosecution of Suspected Nazi War Criminals," June 1985.

14. "East European Emigres Are Accused of Impeding Hunt for Nazis in U.S.," by Mary Thornton, *The Washington Post*, Apr. 6, 1985.

15. E.g., the ADL found the court's accusation "absolutely mindboggling." "Appellate Panel Rebukes Justice Dept on Demjanjuk," by Michael Isikoff, *The Washington Post*, Nov. 18, 1993.

16. See e.g., "Latest Version of Supreme Court List: Babbitt in Lead, 2 Judges Close Behind," by Thomas Friedman, *The New York Times*, June 8, 1993; "Grumbling Grows as Babbitt Considered for High Court," by Paul Richter, *The Los Angeles Times*, June 9, 1993.

At the time Jewish groups were lobbying against Merritt, the *Demjanjuk* ruling had not yet been issued. However, Chief Judge Merritt had already been instrumental in reopening the case and allowing Demjanjuk to return to the U.S. (When the opinion was issued, it was authored by Judge Lively, with Judges Merritt and Keith in full agreement.)

Whether Merritt would have been the nominee absent Jewish lobbying is unknown. He, however, believed that to be the case. "Demjanjuk Judge: Jews Torpedoed Bid for Top Court," *The Forward*, Feb. 10, 1995.

17.

[Redacted]

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Oct. 20, 1994 letter from,

to Attorney General Janet Reno. B6

[Redacted]

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18. [Redacted] sometimes used this subtle suggestion to prod various parties to action. E.g., in a May 3, 2000 phonecall with the State Department's Romanian Desk,

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19. *Tannenbaum* – editorial opposing the prosecution: *Washington Jewish Week*, June 18, 1987; statements of support by Jewish leaders: "Haunting Issues Surround Jewish Nazi Camp Overseer," by Samuel Freedman, *The New York Times*, May 26, 1987.

Walus – The Jewish United Fund of Metropolitan Chicago, The American Jewish Congress and the Anti-Defamation League all urged the government to pursue the case. Mar. 4, 1980 letter from Joel Sprayregen to U.S. District Attorney [sic] Thomas P. Sullivan; "Analysis of the Seventh Circuit Opinion in *U.S. v. Frank Walus*," by the ADL and the American Jewish Congress, Mar. 1980. The Israelis made public their displeasure with the government's decision: "Israeli Assails Justice Dept. Decision on Accused Nazi," *The New York Times*, Jan. 26, 1981; "Data Against Walus Ignored – 2 Israelis," *The Chicago Sun-Times*, Jan. 25, 1981.

Soobzokov – Although not angry at OSI Rep. Holtzman was angered by the implications of government wrongdoing which allowed Soobzokov to enter the country. "CIA 1952 Files Save Ex-Nazi in Deportation Case" by Thomas O. Toole, *The Washington Post*, July 10, 1980.

Re settlement of cases, see e.g., "Echoes from the Holocaust Sound for 2 Neighbors," by Séan P. Murphy, *The Boston Globe*, June 25, 1990, in which the ADL expressed disappointment that OSI was not seeking a defendant's deportation. (Due to the defendant's poor health, OSI accepted his forfeiture of citizenship in return for the government's commitment not to seek deportation.)

20. See pp. 301-302. In March 1995, Abraham Foxman, National Director of the ADL, told the French daily *Le Monde* that he opposed the efforts to bar Bettencourt's entry into the United States, both because Bettencourt's writings constitute insufficient grounds (in ADL's view) for placing him on the Watchlist and because Bettencourt "has publicly apologized to the Jewish people."

21. See pp. 349-350.

22. E.g., During the 1998 trial of Jacob Reimer, Jewish spectators screamed at the defendant. In 2000, during the Fedir Kwoczak trial, a lone Jewish protestor, wearing a skullcap and an armband imprinted with a Star of David and the word "Justice," stood menacingly behind the defendant and his family. He rejected the marshals' request to move and was persuaded to do so only after the judge spoke to him directly. In 1981, a Jewish spectator was barred from the trial of Bohdan Koziy after shouting at a defense witness outside the courtroom. During the 1985 extradition hearing of Andrija Artukovic, jeers and threats were exchanged between Croatian and Jewish groups attending the proceeding. A JDL member was arrested for disorderly conduct and failure to vacate federal property. "Artukovic Ruled Mentally Fit to Assist in Defense," by

William Overend, *The Los Angeles Times*, Jan. 31, 1985.

23. See e.g., "Artukovic's Attorney Tells of Threats," by William Overend, *The Los Angeles Times*, Jan. 28, 1985.

24. "Bomb Explodes at LI [Long Island] Home of Figure in Nazi Hearing," by Phil Mintz and Peter Marks, *Long Island Newsday*, Sept. 7, 1985. The injured samaritan later sued the U.S., claiming that, because of previous death threats to Sprogis, the government should have known and protected against the impending danger. A judge dismissed the lawsuit, ruling that the federal government was not responsible for the injuries. "Don't Blame U.S., Samaritan Told," by Edna Negron, *Long Island Newsday*, July 7, 1987.

25. "Threatening Letter Writer," *AP*, Jan. 30, 1980.

26. "Man Hurls Mace at Suspected Nazi, Seized," by Jim Casey, *The Chicago Sun-Times*, Feb. 2, 1977.

27. See pp. 427, 430-431 for a discussion of Maikovskis and his prosecution both in the U. S. and Germany.

28. *AP* Release by Arthur Everett, Aug. 4, 1978.

29. "Alleged Nazi's Guest Knifed on L.I." [Long Island], by Shawn G. Kennedy, *The New York Times*, June 14, 1979.

30. "More Violence on Tense Street," by Richard Firstman, *Long Island Newsday*, May 1980.

31. There was no prosecution as a result of the courtroom incident. It is unknown whether the assailant was Jewish or affiliated with any particular group.

The Coalition for the Protection of Constitutional Rights and Security, an organization of emigré groups opposed to OSI's methods and practices in the 1980s, held the Justice Department accountable for all the violence; they argued that the Department should have spoken out on the issue. "The Justice Department is Not Concerned About Justice," *Draugas*, Oct. 8, 1985.

1 **Critics**

2
3 OSI is not without its critics. They include a wide range of people whose objections vary
4 from procedural to substantive. Some of the criticism is directed at specific cases; some applies
5 to OSI prosecutions generally, and some to OSI officials in particular.

6 At the outset, many questioned the need for the office at all. Some felt that these
7 defendants, now elderly, were not a sufficiently high priority matter to warrant a separate unit
8 devoted to their prosecution.¹ Even some Jews were skeptical. They worried that if the effort
9 failed it would suggest impotence of the Jewish people, thereby furthering a stereotype that
10 lingered from World War II. Moreover, they were concerned that prosecutions, with attendant
11 media coverage, would bring increased pain to some Holocaust survivors.²

12 Once the office was established, some emigrés from the Soviet Union and the “captive
13 nations” of Latvia, Estonia and Lithuania feared that OSI was on a massive and unjustifiable
14 witchhunt. They suspected that political considerations led OSI to focus on those who emigrated
15 from Eastern Europe, while people from Japan and Nazi-occupied western Europe escaped
16 scrutiny.³ OSI sought to allay these concerns, explaining that since the DPA and RRA favored
17 those fleeing Communism, the concentration of Eastern European defendants was a function of
18 immigration patterns and not political agenda. Moreover, the East European community as a
19 whole was not targeted; very few were suspected of having assisted in persecution.⁴

20 Not everyone was convinced. Some emigré publications warned their readers that they
21 were in danger of being deported, and urged them not to cooperate with the Department of
22 Justice.⁵ This stymied OSI from developing sources of information or witnesses within the local
23 Baltic communities.

1 To the extent that OSI learned of possible subjects from Communist publications,⁶ and
2 relied on documents and witnesses from behind the Iron Curtain, defendants and critics argued
3 that the evidence was not credible. They posited that the Soviet Union (or its satellite countries)
4 fabricated charges and evidence in order to discredit activist emigrés in the United States.⁷
5 Various Department officials met with emigré leaders throughout the years to discuss the issue;⁸
6 there was also at least one meeting between emigrés and White House personnel.⁹ Nonetheless,
7 the alleged unreliability of Soviet-sourced evidence remained the most common defense to OSI
8 prosecutions for over a decade.

9 In fact, however, very few OSI defendants were active in the anti-Communist
10 movement.¹⁰ Moreover, there was no correlation between activism and tips from Soviet sources.
11 Their tips involved some who were active, as well as some who were politically quiescent. In
12 many instances, the Soviets had no information about an OSI subject; in one case, OSI dismissed
13 proceedings after a Soviet witness provided *exculpatory* evidence.¹¹ In any event, even if the
14 Soviet motivation for naming a person was suspect, that did not necessarily render the accusation
15 false. The case ultimately depended on the reliability of the witnesses and documents used to
16 support the charge, as tested by U.S. judicial standards for admissibility.

17 At first, the U.S. government itself sent mixed messages about the reliability of Soviet
18 witnesses in Nazi war crimes investigations. In the pre-OSI era, the Department of State (DOS)
19 routinely ignored requests from INS for assistance in working with the Soviets on Nazi
20 investigations. The DOS feared that it could not “verify the credibility or, indeed, the identity of
21 the witnesses provided us by the Soviet authorities.”¹² Moreover, to the extent that the Soviets
22 themselves had war crimes charges pending against some INS subjects, the State Department

1 feared that the Soviets would not make available any witnesses whose positions did not support
2 the Soviet prosecutions.¹³

3 The State Department's intransigence, in the face of repeated requests for assistance from
4 INS, aroused the ire of [REDACTED] B6
5 [REDACTED] It was only after [REDACTED] complained to the B6
6 Secretary of State, and to the President, that DOS requested information from the Soviets about
7 several INS subjects.¹⁴

8 As noted earlier, American officials made several trips to the U.S.S.R. to seek access to

9 witnesses in Nazi war crimes cases.¹⁵ Among them, [REDACTED] B6

10 [REDACTED]
11 [REDACTED] In addition, [REDACTED] B6

12 discussed the issue with the Soviet Chief Justice in 1979. As a result of these meetings, the

13 Soviets agreed to allow questioning of their citizens in accordance with procedures acceptable in

14 U.S. courts of law. Although a Soviet procurator (prosecutor) had to be present, (s)he would

15 have no prior notice of the questions. OSI attorneys and defense counsel could question and

16 cross examine the witnesses. Most importantly, the depositions would be videotaped. If a

17 witness were later unable to travel to the United States to testify, a judge could view the tape to

18 assess witness demeanor and credibility as well as the format of the deposition.¹⁶ In October

19 1989, [REDACTED] the first Attorney General to visit the Soviet Union, B6

20 signed a memorandum of understanding with his counterpart in which both countries agreed to

21 continue these practices and to further their cooperation in the pursuit of Nazi persecutors.

22 The Department of Justice maintained that these procedures assured the reliability of the

1 proceedings.¹⁷ OSI's critics and defendants were not as sanguine. They argued that the mere
2 presence of a Soviet procurator (and there were sometimes more than one representative from the
3 procurator's office) rendered the proceeding intimidating and coercive.¹⁸

4 There was support for both sides of the argument. In some cases, Soviet witnesses
5 assisted and even exonerated the defendant,¹⁹ in others, witnesses may have been inhibited from
6 giving exculpatory testimony by the procurator's derogatory comments about the defendant.
7 Some procurators referred to the defendant as a "war criminal"²⁰ and restricted cross
8 examination.²¹ In one case, years after OSI's proceedings were complete, a witness recanted,
9 saying she had been forced by the Soviet authorities to testify falsely.²²

10 The depositions were also very cumbersome. Many of the witnesses (e.g. Latvians and
11 Lithuanians) were not Russian speakers. Questions and answers were presented in their native
12 tongue, then translated into Russian (for the procurator) and then into English. These multiple
13 translations trebled the duration of the proceeding, making the videotape much more tedious to
14 watch. Critics feared that the courts would rely instead on the transcript, thereby losing the
15 benefit of demeanor evidence, which videotaping was designed to secure.²³ Such concerns were
16 especially important since -- despite Soviet assurances to the contrary -- none of the Soviet
17 witnesses was ever allowed to travel to the United States to testify.

18 Courts had mixed reactions to the depositions. Some accepted them at face value,²⁴
19 while others rejected them entirely,²⁵ some relied on them only to the extent that they were
20 corroborated by documentary evidence.²⁶

21 The documents were of two types: historical documents and protocols. The historical
22 documents were contemporaneous records made during the war; the protocols were interviews of

1 defendants and witnesses taken after the war and used in overseas war crimes trials.

2 Critics challenged the historical documents on the grounds that they were out of context
3 and/or Soviet fabrications. The context argument was based on the fact that for the duration of
4 the Cold War, neither OSI nor defense counsel had direct access to Soviet archives.²⁷ As noted
5 earlier, one could only request information and hope the authorities would respond.²⁸ If a party
6 worded its request poorly, related and relevant documents might be overlooked. There was no
7 opportunity for the litigating parties to sort through the files and serendipitously find supporting
8 material. Moreover, the Soviets searching for documents on behalf of the United States were
9 sometimes prosecutors rather than trained historians. They often had to rely on name-linked
10 indices which referenced only documents bearing a given subject's name. They therefore might
11 overlook documents detailing the activities of a unit and records pertaining to the setting of a
12 particular event.²⁹ These difficulties were compounded by the fact that not all Soviet archivists
13 knew German or had sufficient knowledge of the captured records held by their institutions.

14 Such ineffective research was more likely to stymy OSI's investigation than to hamper
15 the defense, but it could arguably impact negatively on both sides. The more forceful argument
16 for the defense, however, and one it raised in case after case, was that documents from the Soviet
17 Union were forgeries.³⁰ OSI relied on forensics, including handwriting, fingerprint, paper, ink,
18 glue, stamp and typewriter analysis to refute such allegations.

19 In a few instances, critical records had fingerprint identification which made it possible to
20 connect a document to the defendant.³¹ Some records had the defendant's signature or
21 handwriting. Matching the signature on a World War II document to current handwriting
22 samples is more complex than routine signature comparisons. There are complicating factors,

1 including the natural evolution of handwriting over time, the additional changes to handwriting
2 when poorly educated people become more educated, and the difficulty of matching Latin
3 alphabet letters with the Cyrillic lettering on many of the earlier documents.³² Despite these
4 hurdles, some matches were made.³³

5 In most cases, however, there are no relevant documents with the defendant's handwriting
6 or fingerprints. There are rosters, transfer rolls, military strength records, disciplinary reports and
7 medical records that contain the defendant's name, but these were signed by commanding
8 officers, military clerks, hospital officials and the like.

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18 Every court found the Soviet-sourced historical documents genuine.⁴¹ To the extent that
19 the forensic evidence establishes that the documents are of the proper vintage, and the various
20 documents are corroborative, it is hard to sustain the argument that they were Soviet fabrications.
21 One would have to believe that an extraordinarily elaborate scheme had been hatched which
22 involved fabricating documents from baptismal certificates to military and hospital records and

1 storing them around the world. Moreover, because some of the comparative records were of
2 persons *not* prosecuted by OSI, the Soviets would have had to have had the foresight to forge
3 documents of unrelated people and to keep them stored for decades before OSI sought them.
4 Courts concluded that such an elaborate conspiracy was implausible.⁴²

5 The protocols do not have the same inherent legitimacy. It is impossible to ascertain the
6 conditions under which these often decades-old interviews and interrogations had been taken.
7 OSI therefore uses them only if their details are corroborated in some respects. OSI looks for
8 such corroboration in the historical documents, other Soviet interrogations, and interrogations
9 from witnesses and subjects in Germany, Poland, Israel, Canada, the U.S., and post-Soviet
10 Russia and Ukraine. Some courts found the protocols reliable,⁴³ others were skeptical.⁴⁴

11 While Soviet-sourced evidence has been the most sustained criticism of OSI, critics also
12 deny the lack of procedural rights accorded OSI defendants. Because denaturalization and
13 deportation cases are civil proceedings, courts have held that the defendants have no Fifth
14 Amendment privilege against self-incrimination and no right to counsel or trial by jury. For the
15 same reason, neither a statute of limitations nor incompetency shields a defendant from
16 prosecution.⁴⁵ Moreover, the courts have ruled that the Holtzman Amendment violates neither
17 the *ex post facto* nor the bill of attainder provisions in the Constitution. These procedural
18 safeguards preclude punishment imposed retroactively or without a trial; however, deportation is
19 not deemed to be punishment.⁴⁶

20 Such rulings have led some critics to suggest legislation authorizing OSI to prosecute
21 defendants in the United States as war criminals. The rationale for this proposal is that it would
22 at least guarantee the panoply of procedural rights associated with criminal cases and protect

1 defendants from being deported and tried overseas.⁴⁷ However, the proposal never took hold,
2 probably for a variety of reasons. Among them are: (1) the *ex post facto* clause would almost
3 certainly prevent imposing criminal sanctions for activities abroad which violated no U.S.
4 statutes at the time the defendants emigrated; and (2) expanding rights in OSI cases would
5 necessitate a similar expansion in all deportations. While there are relatively few OSI
6 prosecutions, there are thousands of deportations annually; the cost, in both time and money,
7 would be enormous.

8 In addition to being denied some protections applicable in criminal proceedings, OSI
9 defendants cannot avail themselves of a defense generally applicable in civil matters. Laches is a
10 doctrine which allows cases to be dismissed if there is a lack of diligence in filing and the delay
11 prejudices the defendant. Although OSI cases involve events decades old, and in some cases the
12 government's investigation has spanned a decade or more, courts have uniformly rejected
13 defense requests to dismiss based on laches. Some have held that laches can never apply in a
14 denaturalization case;⁴⁸ others have simply concluded that there was insufficient evidence of
15 prejudice to consider the doctrine in a particular case.⁴⁹

16 Failing to win their cases in court, some defendants sought moral support from the United
17 Nations.⁵⁰ Between 1992 and 1996, these defendants, with emigré groups championing their
18 cause, filed a series of petitions to the U.N. Commission on Human Rights (UNCHR). They
19 raised many of the same arguments rejected by the courts. They also alleged that the government
20 had violated the Universal Declaration of Human Rights by rendering men stateless, subjecting
21 them to arbitrary exile, and leaving them destitute.⁵¹

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1 member of the State Department's Office of Human Rights and Refugees flew to Cyprus to
2 discuss some of these issues with one of the UNCHR staffers most troubled by the OSI
3 prosecutions. On August 28, 1996, the UNCHR subcommission voted to dismiss the complaints
4 without bringing them to the attention of the full committee.

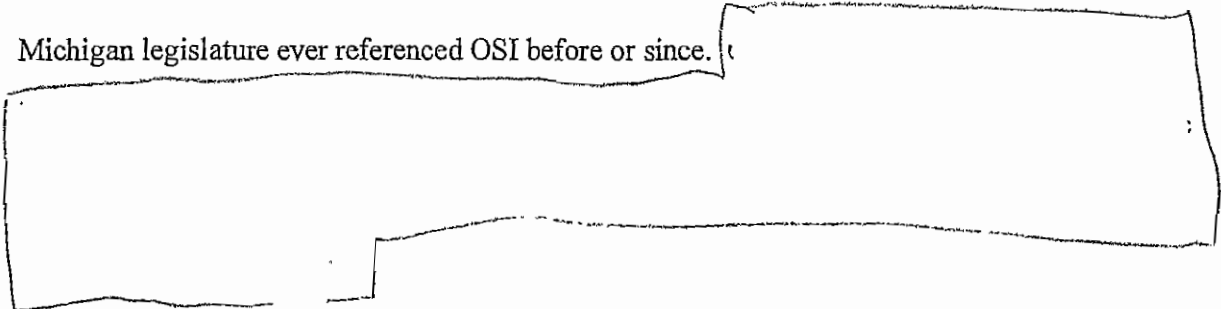
5 Criticism of OSI is not always so issue-oriented. It is sometimes case-driven. The
6 prosecutions which generated the most criticism were *Demjanjuk*, *Artukovic*, and *Linnas*, each of
7 which is discussed elsewhere in this report.⁵²

8 There is also an overriding philosophical debate. Was there anything one could do in the
9 United States to expiate a past of persecution on behalf of the Nazis? Those who defended
10 rocket scientist Arthur Rudolph, Yale instructor Vladimir Sokolov, and Austrian president Kurt
11 Waldheim certainly thought so. And much the same argument was made on behalf of many less
12 prominent OSI defendants, *to wit* their decades-long quiet and law-abiding lives in the United
13 States should outweigh anything done during their youth.

14 The *Demjanjuk* case raised a unique philosophical issue: he had already spent seven
15 years in solitary confinement in Israel on the erroneous adjudication that he was Ivan the
16 Terrible. Should he be retried, even if (as was proven) he had served as a guard at the Sobibor
17 death camp?⁵³ And what of Jacob Tannenbaum? His prosecution raised the issue of whether an
18 incarcerated Jew, facing almost certain extinction, should also be viewed as a persecutor.

19 Looking back at the criticism of OSI, it is evident that the bulk of it came from emigré
20 groups, although not all such groups were critical.⁵⁴ Criticism also came from other sources,
21 however. The Veterans of Foreign Wars (VFW) passed a resolution critical of OSI at their
22 national convention in August 1984.⁵⁵ The following year, 28 co-sponsors introduced a

1 resolution in the Michigan Senate condemning OSI for working with the Soviet authorities,
2 although the Senate adjourned without voting on the measure. Neither the VFW nor the
3 Michigan legislature ever referenced OSI before or since.



7 While the vast majority of OSI's detractors are well motivated, it is impossible to ignore
8 the fact that a small percentage of the criticism is redolent of anti-Semitism and Holocaust
9 revisionist history. Some critics questioned whether there had ever been gasings in
10 concentration camps;⁵⁹ some saw Jews as persecutors, rather than victims, blaming them for
11 tyranny and atrocities committed in the name of Communism.⁶⁰ Patrick Buchanan – whose
12 criticisms often focused on substance, procedure and political philosophy⁶¹ – doubted the value
13 of survivor testimony. He referred to it as “Holocaust Survivor Syndrome” replete with “group
14 fantasies of martyrdom and heroics.”⁶² Karl Linnas’ daughters, appealing to the Estonian
15 community for funds, implied that the “injustice” done to their father had been brought about by
16 Jewish judges, and opined that judges and prosecutors of Jewish origin should be required to
17 disqualify themselves from these cases. As they saw it, “These trials are a part of the overall
18 effort to use the holocaust as propaganda in order to gain further political and financial support
19 for the state of Israel.”⁶³ A board member of the Captive Nations Committee suggested that OSI
20 personnel showed greater loyalty to Israel than to the United States.⁶⁴

21 The criticism was greatest during the Cold War years, when the emigré groups were most
22 active and when Buchanan, the most prominent single critic, had a highly visible platform as a

1 syndicated columnist, television commentator and White House staffer.⁶⁵ On his last day in the
2 White House, Buchanan gave a wide-ranging interview. Among the many questions he was
3 asked, there was one about OSI. He explained his motivation. "I see these people as
4 undefended. Someone is called a Nazi war criminal, and there is an automatic presumption of
5 guilt, not of innocence."⁶⁶

6 At the time of this writing, the greatest remaining criticism is that OSI has outlived its
7 usefulness as a Nazi-hunting unit. According to this view, OSI may have prosecuted some
8 significant Nazi persecutors in the early years (*e.g.*, Otto von Bolschwing, Arthur Rudolph, Karl
9 Linnas and Andrija Artukovic), but since then the defendants have been "merely" camp guards or
10 members of auxiliary police units. These foot soldiers are too old, ill and insignificant to
11 prosecute at this late date.⁶⁷ Perhaps the most poignant articulation of the view was made by a
12 Holocaust survivor who was contacted by OSI in 1997 as a potential witness. He opined that it
13 was now:

14 too long a period for effective implementation of sanctions against these
15 individuals, even if they are correctly identified and accused with valid evidence.
16 These criminals must now be in their eighties and on their way out. Let God deal
17 with them, if He hasn't already. Men's action in the service of Justice after 50
18 years must necessarily be feeble at this stage. Accordingly, I respectfully suggest
19 that your formidable resources and energies be used for more current causes,
20 where they can do some good.⁶⁸

21 As the Department of Justice views it, however, allowing someone to remain in the U.S.
22 because his wartime activity was not discovered sooner, is to reward those who were most
23 successful in concealing the truth. While the decision to file a case is always discretionary, the
24 Holtzman Amendment – which in large measure parallels OSI's mandate – precludes any
25 discretionary relief for those whom the courts deem deportable because of their activities during

1 World War II. This suggests that Congress has closed the door to any "sympathy" argument on
2 behalf of those who persecuted in the name of the Nazis. And while guards may have been
3 simply cogs in the war machine, their role was nonetheless vital. As one appellate court noted:

4 If the operation of such a camp were treated as an ordinary criminal conspiracy,
5 the armed guards, like the lookouts for a gang of robbers, would be deemed
6 coconspirators, or if not, certainly aiders and abettors of the conspiracy; no more
7 should be required to satisfy the noncriminal provision of the Holtzman
8 Amendment that makes assisting in persecution a ground for deportation.⁶⁹
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1. E.g., Patrick Buchanan, on *After Hours*, Jan. 7, 1982, a locally-aired CBS television broadcast in Washington, D.C. referred to OSI defendants as:

a bunch of bums who are nearing 60, 70, 80 years old, who probably should have gone to prison, some of whom probably should have been shot. But if you've got a certain amount of law enforcement resources, and the problems you've got in this country, it just seems to me that allocating them to running down aggressively these people is just not proper use of resources.

2. July 15, 2005 e-mail from [redacted] to Judy Feigin re "Critics of OSI." Some Jewish concern persisted even after the office won cases. In 1984, *The New York Times* referenced – without naming them – "[s]ome people, including some Jews, [who] question whether the . . . effort to round up such relatively minor figures before old age claims them is worth the bother." "The Hunt for Nazis Shifts Into High Gear," by Stuart Taylor, Jr., Sept. 23, 1984. B6

3. See p.10. See also, S. Paul Zumbakis, *Soviet Evidence in North American Courts – An Analysis of Problems and Concerns with Reliance on Communist Source Evidence in Alleged War Criminal Trials* (Americans for Due Process, 1986), pp. 96-107 (hereafter Zumbakis). (This treatise was commissioned by the Ukrainian Canadian Committee and Americans for Due Process, a coalition of East European emigre groups); "The Lithuanian, Latvian and Estonian Declaration Regarding the OSI," *Draugas*, Nov. 13, 1985.

4. See p. 10. In 1980, [redacted] sent letters to members of the Estonian community who might have information about a concentration camp in that country. The letter included the statement: "Please be assured that this investigation focuses upon the acts of individuals; it in no way reflects upon Estonian-born Americans as a whole." Similarly, [redacted] Feb. 23, 1981 letter to [redacted], and his Sept. 17, 1982 letter to [redacted] stated: "I am well aware that many Eastern Europeans, Ukrainians among them, immigrated to the United States because they detested Soviet rule. And I need hardly add that only a very small minority of immigrants under the Displaced Persons Act had in fact been Nazi collaborators." B6 B6
[redacted] also spoke to various ethnic groups, such as the Ukrainian-American Bar Association in Newark, New Jersey. B6

5. E.g., "If You Fought Communism You Must be Deported Says 1979 U.S. Law," *Latvian News Digest*, Jan. 1985. See also, "How to Defend Oneself from Attacks by OSI," *Darbinikas* [a Brooklyn-based Lithuanian language weekly], Sept. 23, 1983. But see, "The Lithuanian, Latvian and Estonian Declaration Regarding the OSI," *supra*, n. 3, which, though excoriating OSI's practices, urged cooperation with the office in the search for "real war criminals."

6. E.g., Soviet publications first reported that Yale instructor Vladimir Sokolov had collaborated with the Nazis during World War II (see p. 194); a KGB publication was the first to identify Serge Kowulchuk, (see *U.S. v. Kowalchuk*, 571 F. Supp. 72, 77 (E.D. Pa. 1983), *aff'd en banc*, 773 F.2d 488 (3rd Cir. 1985)); and a Soviet newspaper identified Karl Linnas as chief of a

concentration camp in Estonia. "Reds Accuse Ller [Long Islander] of Nazi War Crimes," by Maurice Swift and Lou Schwartz, *Long Island Newsday*, May 23, 1961.

7. See e.g., *U.S. v. Kungys*, 571 F. Supp. 1104, 1124 (D.N.J. 1983), *rev'd on other grnds*, 793 F.2d 516 (3rd Cir. 1986), *rev'd*, 485 U.S. 759 (1988). See also, "Proclamation from the Leaders of Lithuanian Action," *Draugas*, Dec. 29, 1984; "Nazi-Hunt Methods Protested; Ethnic Coalition Objects to Soviet Evidence," by Jay Mathews, *The Washington Post*, Mar. 23, 1985.

While today such concerns may seem hyperbolic, they appeared less so during the Cold War, when tensions and distrust between the two superpowers were enormous. The Soviet judicial system, which had banished such well-known dissidents as Andre Sakharov and Anatoly Scharansky, was routinely criticized in the western media for its sham political trials.

8. E.g., Jan. 1982 meeting with [] B6; Nov. 1983 and Sept. 1985 meetings with [] B6; March 1987 meeting with [] R.G.

9. Representatives from Americans for Due Process met with White House personnel from the National Security Council, Office of the General Counsel and Office of Public Liaison on Oct. 14, 1983.

10. Those who were included Archbishop Trifa, Vladimir Sokolov (arrested in 1957 for protesting outside the Soviet embassy in New York), and Ferenc Koreh, discussed at pp. 192-238. However, the vast majority of OSI defendants were "quiet neighbors," as described by former [] in his 1984 book of the same name. B6

11. The case against [] had been filed before OSI was founded. OSI dismissed the suit in 1981. B6

12. July 5, 1974 letter to [] B6
Hearing on Alleged Nazi War Criminals bef. the Subctee on Imm., Citizenship and Internat'l Law of the House Judiciary Committee, 95th Cong., 1st Sess., Aug. 3, 1977, pp. 69-70 (hereafter 1977 Hearings). [] 1977 B6

13. Aug. 1, 1974 letter from [] 1977 Hearings, *supra*, n. 12, at p. 71. B6

14. July 13, 1976 letter to [] 1977 Hearings, *supra*, n. 12, at p. 80. [] B6

15. See p. 11.

16. See e.g., "Moscow Pledges Help in War Crimes Cases in U.S.," by David Shipler, *The New York Times*, Feb. 6, 1980.

None of the agreements prior to the memorandum of understanding was written. This led some critics of OSI to speculate that nefarious quid pro quos had been given. See e.g., Zumbakis, *supra*, n. 3, at pp. 29-33; "The Justice Department is Not Concerned About Justice,"

Draugas, Oct. 8, 1985. DOJ officials denied any quid pro quo.

17. See e.g., Nov. 23, 1983 letter from [b6] to [] responding to questions raised by the Americans Against Defamation of Ukrainians.] B6

18. See, "Soviet Proof Key in U.S. Nazi Cases," by Robert Gillette, *The Los Angeles Times*, Apr. 27, 1986. Moreover, according to one newspaper account, an unnamed Soviet official "confided to an American diplomat" that some witnesses were coached for days before being allowed to give depositions. "Soviet Aide Warned U.S. on War Crime Evidence," by Robert Gillette, *The Los Angeles Times*, Apr. 28, 1986.

19. The [] case, in which Soviet evidence led to the dismissal of charges, is the most conspicuous. The *Soobzokov* matter is also telling. If the Soviets were going to embellish or fabricate, one would expect this in *Soobzokov's* case since there were allegations that he had worked with the CIA. Yet the Soviet witnesses, interviewed after these allegations were made public, did not provide sufficient information to justify charges based on persecution. See p. 349. B6

20. E.g., *U.S. v. Linnas*, 527 F. Supp. 426, 433 (E.D.N.Y. 1981), *aff'd*, 685 F.2d 427 (2nd Cir.); *Matter of Laipenieks*, A11 937 435 (Imm. Ct., San Diego, Cal. 1982), p. 58, *rev'd*, 18 T.&N. Dec. 433 (BIA 1984), *rev'd*, 750 F.2d 1427 (9th Cir. 1985).

21. E.g., *Matter of Laipenieks*, *supra*, n. 20; *U.S. v. Kungys*, *supra*, n. 7, 571 F. Supp. at 1126-27.

22. "Digging Into the Past," by Mary Mycio, *The Los Angeles Times*, Oct. 18, 1994. The defendant was Bohdan Koziy. The witness' testimony would not have altered the outcome of the U.S. proceeding. Documentary evidence established that Koziy had been a member of the Ukrainian police force, a movement hostile to the United States. The recanted testimony accused Koziy of murdering a four year old Jewish child; other Soviet witnesses (who did not recant but who have since died), also testified about the murder.

23. See *Zumbakis*, *supra*, n. 3, at p. 21. While it is impossible to know how often judges resorted to the written text rather than the videotape, at least one judge acknowledged doing so. *U.S. v. Linnas*, *supra*, n. 20, 527 F. Supp. at 433, n.15. Another noted the difficulty of assessing demeanor from a videotape and through an interpreter. *U.S. v. Kowalchuk*, *supra*, n. 6, 571 F. Supp. at 79.

24. E.g., *Kalejs v. INS*, 10 F.3d 441, 447 (7th Cir. 1993); *U.S. v. Koziy*, 540 F. Supp. 25 (S.D. Fla. 1982), *aff'd*, 728 F.2d 1314 (11th Cir.); *U.S. v. Palciauskas*, 559 F. Supp. 1294 (M.D. Fl. 1983), *aff'd*, 734 F.2d 625 (11th Cir. 1984). In both *Koziy* and *Palciauskas*, the defense, protesting the taking of depositions in the U.S.S.R., refused to attend.

25. *United States v. Kungys*, *supra*, n. 7, 571 F. Supp. at 1123-1126; *United States v. Sprogis*, No. CV-82-1804 (E.D.N.Y. 1984), *aff'd*, 763 F.2d 115 (2nd Cir.); *U.S. v. Kowalchuk*, *supra*, n. 6, 571 F. Supp. at 79; *Laipenieks v. INS*, 750 F.2d 1427, 1432 (9th Cir.); *Matter of Maikovskis*,

A08 194 566 (Imm. Ct., N.Y., N.Y. 1983), *rev'd on other grnds* (BIA 1984), *aff'd*, 773 F.2d 435 (2nd Cir. 1985).

26. *U.S. v. Linnas*, *supra*, n. 20, 527 F. Supp. at 434, n.16; *Matter of Laipenieks*, *supra*, n. 20; *U.S. v. Osidach*, 513 F. Supp. 51, 90 (E.D. Pa. 1981).

27. *See e.g.*, *Zumbakis*, *supra*, n. 3, at p.16. A similar problem derived from the inability to travel at will within the Soviet Union during the Cold War. This sometimes precluded the parties from visiting places where persons familiar with the crucial events still resided. At least one court expressed some concern about this issue. *U.S. v. Kowalchuk*, *supra*, n. 6, 571 F. Supp. at 79.

28. *See* p. 12. When informed of defense concerns that the Soviets would favor requests from OSI over requests from the defense, the Justice Department agreed to pass along all requests; the Soviets were not told which party sought the information. Nov. 23, 1983 letter to defense counsel David Springer from [redacted] B6

29. "OSI and the Archives of the FSU [former Soviet Union]." Apr. 1994 address of OSI Senior Historian Michael MacQueen to the Association of Historians in the Federal Government, delivered at the U.S. Holocaust Memorial Museum.

Of course OSI historians routinely searched the National Archives' collection of captured German records, the Berlin Document Center, and records of associated investigations and/or trials conducted by the Germans in the early post-war years.

30. *E.g.*, *U.S. v. Ciurinskas*, 976 F. Supp. 1176 (N.D. Ind. 1997), *aff'd*, 148 F.3d 729 (7th Cir. 1998); *U.S. v. Demjanjuk*, 2002 WL 544622 (N.D. Ohio 2002), *aff'd*, 367 F.3d 623 (6th Cir. 2004); *U.S. v. Hajda*, 963 F. Supp. 1452 (N.D. Ill. 1997), *aff'd*, 135 439 (7th Cir. 1998); *U.S. v. Kairys*, 600 F. Supp. 1254 (N.D. Ill. 1984), *aff'd*, 782 F.2d 1374 (7th Cir.); *Matter of Kalejs*, A11 655 361 (Imm. Ct., Chicago, Ill. 1988), *aff'd*, (BIA 1992), *aff'd sub nom. Kalejs v. INS*, 10 F.3d 441 (7th Cir. 1993); *U.S. v. Koreh*, 856 F. Supp. 891 (D.N.J. 1994), *aff'd*, 59 F.3d 431 (3rd Cir.); *U.S. v. Koziy*, *supra*, n. 24, 540 F. Supp. 25; *Matter of Laipenieks*, *supra*, n. 20; *U.S. v. Lileikis*, 929 F. Supp. 31 (D. Mass. May 24, 1996); *U.S. v. Linnas*, *supra*, n. 20, 527 F. Supp. 426; *Matter of Maikovskis*, *supra*, n. 25; *U.S. v. Sokolov*, No. N-82-56-TFM (D. Conn. 1986), *aff'd*, 814 F.2d 864 (2nd Cir. 1987); *U.S. v. Stelmolkas*, 1995 WL 464264 (E.D. Pa. 1995), *aff'd*, 100 F.3d 302 (3rd Cir. 1996).

The two cases in which the issue of authenticity was most exhaustively litigated were *Demjanjuk* and *Kairys*. Not all defendants raised authenticity questions of course. OSI defendant George Theodorovich conceded the authenticity of some of the most damaging documents OSI ever gathered – two reports signed by him relaying the number of Jews he killed in "Jewish action[s]." (He denied the veracity of the reports however, contending in an interview with OSI attorneys that he had written the reports to cover up his anti-Nazi activities.)

[redacted] met B6
with OSI's director and deputy director in 1982. He told them that West Germany had been using evidence from the Soviet Union in war crimes trials since 1963, yet the fabrication

argument had never been raised. Apr. 19, 1982 memo to Kairys files from Sher re "Testimony of Dr. Ruckerl, OSI #97."

31. *E.g.*, *U.S. v. Kairys*, *supra*, n. 30, 600 F. Supp. at 1260. The most dramatic fingerprint evidence in an OSI case came in the *Trifa* prosecution. *See* p. 216.

32. Recorded interview with handwriting analyst [redacted] Dec. 6, 2000 (hereafter [redacted] interview.) [redacted] testified successfully for the government in the *Kairys*, *Kalejs*, *Sokolov*, and *Demjanjuk* cases. He was deposed in *Kalymon*. However, his credibility was called into question in two non-OSI cases. *Pasha v. Gonzales*, 433 F.3d 530, 535 (7th Cir. 2005) and *Wolf v. Ramsey*, 253 F. Supp. 2d 1323, 1347-1348 (N.D. Ga., 2003).

33. *E.g.*, *Matter of Kalejs*, *supra*, n. 30, at p.10; *U.S. v. Koziy*, *supra*, n. 24, 540 F. Supp. at 31; *U.S. v. Lileikis*, *supra*, n. 30, 929 F. Supp. at 38, n. 12. *See also*, *U.S. v. Linnas*, *supra*, n. 20, 527 F. Supp. at 434, where the court found "strong indications" that incriminating documents were authored by the defendant.

34. *E.g.* *U.S. v. Demjanjuk*, *supra*, n. 30, 2002 WL 544622; *U.S. v. Stelmokas*, *supra*, n. 30, 100 F.3d at 312 (3rd Cir. 1996); *U.S. v. Kairys*, *supra*, n. 30, 782 F.2d at 1382.

35. As discussed at p. 444, n. 9, the [redacted]

36. *E.g.*, Liudas Kairys had a scar on his hip. [redacted]

37. In *Kairys*, for example, a document from the Soviet archives stated that the granting of Lithuanian citizenship would be announced in a local newspaper. A copy of that newspaper was found in the Library of Congress.

38. Information about ink and paper forensic techniques comes from a recorded interview on Jan. 21, 2003 with [redacted] as well as [redacted] from "Analytical Methods for Detecting Fraudulent Documents," an article by Dr. Cantu published in the Sept. 1991 issue of *American Chemical Society*.

39. Some documents have multiple ink samples: In *Demjanjuk*, for example, the key document contained fountain pen ink, stamp pad ink, typewriter ribbon ink and printing ink. All were analyzed and dated. The stamp pad ink was not only dated, but a defect in the stamp was matched with the same defect on other unrelated documents prepared at about the same time.

40. Handwriting analyst [redacted] studied the features common among those who learned to write in the same country during the same era. To do so, he requested handwriting exemplars from members of ethnic organizations, language teachers and language students who learned to write in the place and time of OSI subjects. [redacted] interview. [redacted]

B5

The authenticity of a photograph which surfaced during the *Trifa* investigation is discussed at p. 212. The second instance concerned an OSI investigation that was aborted due to the subject's death. It involved a U.S. diplomat, born in the U.S.S.R. In 1977, while attending a UNESCO meeting in the Soviet Union, he was approached by Soviet agents who threatened to expose him as a war criminal unless he began working for Soviet intelligence. He refused to do so, and reported the attempted blackmail to the State Department when he returned. The incident received wide publicity, with the U.S. lodging a protest and the Secretary of State raising the issue with the Soviet Ambassador to the U.S. See e.g., "U.S. and Soviet Dispute Blackmail Incident," *The New York Times*, Nov. 2, 1977.

Two months after the diplomat returned to the U.S., the Soviets sent the State Department a packet of evidentiary material to bolster their assertion that the diplomat was a war criminal. The diplomat denied the allegations and a State Department inquiry exonerated him in October 1978.

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42. E.g., *U.S. v. Szehinskyj*, 104 F. Supp. 2d 480, 500 (E.D. Pa. 2000), *aff'd*, 277 F.3d 331 (3rd Cir. 2002). See also, *U.S. v. Stelmolkas*, *supra*, n. 30, 100 F. 3rd at 313; *U.S. v. Lileikis*, *supra*, n. 30, 929 F. Supp. at 37.

This conclusion was supported by [redacted] from 1979 to [redacted] 1986 to [redacted] two years following when he was stationed in Moscow, [redacted] B6 [redacted] In that position, and in the [redacted] B6 responsibilities included overseeing the Soviet response to OSI's requests for evidence. During a January 16, 2003 meeting with [redacted] B6 when serving as Principal Officer, Executive Office of the Secretary General of the United Nations, [redacted] B6 was adamant that there had never been any fabrication of documents by the Soviets in OSI cases, nor was there ever an attempt to frame anyone. According to [redacted] B6 the Soviets took cooperation on this issue "very, very seriously." B6 None of the cases presented a threat to national security; therefore they were not "vital" from the Soviet viewpoint. "What was vital was to keep the bridge open, which this did."

43. E.g., *U.S. v. Hajda*, 135 F.3d 439 (7th Cir. 1998).

44. E.g., *U.S. v. Reimer*, 2002 WL 32101927 (S.D.N.Y. 2002).

45. *U.S. v. Balsys*, 524 U.S. 666 (1998) (self-incrimination); *U.S. v. Schiffer*, 836 F. Supp. 1164, 1172 (E.D. Pa. 1993, *aff'd*, 31 F.3d 1175 (3rd Cir. 1994) (right to counsel); *U.S. v. Ciurinskas*,

supra, n. 30, 148 F.3d at 735 (jury trial); *U.S. v. Kowalchuk*, *supra*, n. 6, 571 F. Supp. at 78 (statute of limitations); *U.S. v. Mandycz*, 447 F.3d 951, 962 (6th Cir. 2006) (competency).

46. *Schellong v. INS*, 805 F.2d 655, 662 (7th Cir. 1986) (*ex post facto* and bill of attainder); *Linnas v. INS*, 790 F.2d 1024, 1029-30 (2nd Cir. 1985).

47. *E.g.*, “The Lithuanian, Latvian and Estonian Declaration Regarding the OSI,” *supra*, n. 3. *See also* discussion of the Mar. 5, 1987 meeting of six Baltic leaders with the Attorney General and several senior officials in the Justice Department at pp. 280-281. Patrick Buchanan made the same argument in a televised debate with Eli Rosenbaum, who was then serving in the private sector as General Counsel to the WJC. *CrossFire*, Apr. 15, 1987.

48. *U.S. v. Schuk*, 565 F. Supp. 613, 615 (E.D. Pa. 1983). The basis for this view is that *Fedorenko* barred all equitable defenses in denaturalization proceedings. *See also*, *U.S. v. Mandycz*, *supra*, n. 45.

49. *U.S. v. Kairys*, *supra*, n. 30, 782 F.2d at 1383; *U.S. v. Schmidt*, 1990 WL 6667 (N.D. Ill. 1990), *aff’d*, 923 F.2d 1253 (7th Cir.); *U.S. v. Koreh*, 59 F.3d 431, 445 (3rd Cir. 1995); *U.S. v. Demjanjuk*, *supra*, n. 30; 2002 WE 544622.

50. Martin Barfesch, Johann Breyer, John Demjanjuk, Nikolaus Schiffer, Anton Pittjung, Ferdinand Hammer.

51. Defendants who have been ordered deported lose their right to collect Social Security benefits. This is why some defendants leave the country voluntarily, either as part of a settlement agreement or by simply fleeing before proceedings are concluded. Whether a non-citizen can receive social security benefits when living overseas is determined on a country by country basis, depending on U.S. reciprocity agreements with the various nations.

52. *See* pp. 150-174, 239-258, 271-295.

53. *E.g.*, comments of Patrick Buchanan quoted in “The Edge,” *New Times*, June 10, 1999.

54. In 1985, many East European ethnic groups formed the Coalition for Constitutional Justice, a political action group dedicated to OSI issues. The coalition’s membership included the Estonian American National Council; the Lithuanian American Community of the U.S.; the Ukrainian National Information Service; the Byelorussian Anti-Defamation Federation; Americans Against Defamation of Ukrainians, the Joint Baltic American National Committee; Ban Coalition of Costa Mesa (formerly Ban the Soviets Coalition); and the Coalition Against Soviet Aggression, Los Angeles.

The coalition had three objectives: (1) the investigation of OSI by a congressional committee; (2) amendment of the laws under which OSI operates; and (3) preventing the deportation of any Baltic national to his country of origin. “Let’s Not Close Our Eyes to Danger, A Conversation with Antanas Mazeika,” *Draugas*, Mar. 15, 1985.

Some emigré organizations expressed confidence in the ability of the American judicial

system to evaluate Soviet sourced evidence. *See e.g.*, Jan. 9, 1985 letter to OSI Director from Aloysius Mazewski, President of the Polish American Congress, Inc.; Mar. 22, 1984 letter to the Attorney General and the Chairs of the House and Senate Judiciary Committees from self-described "Polish ethnic leaders:" Rev. Leonard Chrobot, Polish American Congress, Jan Nowak, Former Director, Polish Section, Radio Free Europe, Rev. John Pawlikowski, Professor, Catholic Theological Union, Dr. Thaddeus Gromada, Secretary-General, Polish Institute of Arts & Science.

55. Resolution 448, introduced by James MacDonald, was adopted by blanket motion (passed unless objected to). It described OSI as "the willing and subservient official American Government tool of the Russian Empire strategically placed in the offices of the U.S. Department of Justice" and called upon the President and the Senate to investigate the office. Nothing ever came of this request.



57. *E.g.*, Feb. 5, 1990 letter to the Attorney General.

58. As set forth on p. 340, n. 19, the Congressman contended that OSI played on Rudolph's ill health and fear of losing his NASA retirement benefits. "Traffican Supports Rudolph," by Mike Paludan, *The Huntsville Times*, May 13, 1990.

59. *E.g.*, Jan. 5, 1985 letter to Attorney General Meese from The Council of the Latvian Officers' Ass'n in Australia and New Zealand; Patrick Buchanan, "Deadly, Dubious I.D. Card," *Washington Times*, Mar. 19, 1990. The American Latvian Ass'n repudiated the Australian letter, condemning its "contents, tone and implications." May 15, 1985 letter to Attorney General Meese from Ojars Kalnins, Public Relations Director, American Latvian Ass'n.

Buchanan received much criticism for his alleged anti-Semitism. "U.S. Media Should Shun Buchanan," by Alan Dershowitz, *The Jerusalem Post*, Oct. 16, 1990; "The Heresies of Pat

Buchanan: Cruising for a Bruising; Antisemitism and Conservatism," by Jacob Weisberg, *The New Republic*, Oct. 22, 1990; "Forgive Them Not," by A.M. Rosenthal, *The New York Times*, Sept. 14, 1990; "Anger on the Right: Pat Buchanan's Venomous Crusade," issued by the ADL 1991; "Pat Buchanan & the Jewish Question," by Howard Kurtz, *The Washington Post*, Sept. 20, 1990; "Conservatism Gets Soiled," by George Will, *Newsweek*, Mar. 4, 1996. See also, the Dec. 30, 1991 issue of *The National Review* wherein William F. Buckley, Jr. raises the issue.

One of the newspapers in which Buchanan was syndicated took the extraordinary step of distancing itself from him because it deemed anti-Semitism to be the root of too many of his columns. "Pat Buchanan and the Jews," *New York Post*, Sept. 19, 1990.

60. Dec. 4, 1984 letter from [redacted] a member of the Board of Directors of the Captive Nations Committee, to Secretary of State George Shultz; Latvian Officers' Ass'n letter, *supra*, n. 59. B6

61. See pp. 95, n. 1, 174, n. 46, 277, 279-281, 337, 378, 552, notes 47 and 53.

62. "Deadly, Dubious I.D. Card," *supra*, n. 59.

63. June 14, 1983 letter from [redacted] to "Estonians and friends of Estonians." B6

64. Dec. 4, 1984 letter from [redacted] *supra*, n. 60. B6

65. Over the years, Buchanan was a presidential counselor and communications director (in the Reagan administration), speech writer (for both presidents Nixon and Reagan), syndicated columnist, television pundit, host of a nationally televised talk show (*Crossfire*), and presidential aspirant (1992 and 1996 in the Republican primaries and 2000 as the Reform Party candidate).

In addition to the columns and television appearance referenced in n. 61, *supra*, see "Nazi Criminal or U.S. Hero," *The New York Post*, July 16, 1989 (arguing against OSI's investigation of Arthur Rudolph); "Of Nazis and NASA: The Case of Arthur Rudolph," *CrossFire*, July 11, 1990; and "We Condemn Waldheim - but Embrace the Real Bad Guy," *The Chicago Sun-Times*, Mar. 3, 1988.

66. "Crucial Tests Confront Nazi-Hunting Bureau; Critics Question Use of Soviet-Supplied Evidence and Call for War-Crime Trials in U.S.," by Michael Dobbs, *The Washington Post*, Mar. 24, 1987.

67. E.g., Brian Gildea, a defense attorney who has handled several OSI cases, described the defendants as insignificant nobodys forced into uniform by Nazi conquerors. "Nazi Hunters Race the Grim Reaper for Aging Prey," by Frank Murray, *The Washington Times*, Sept. 7, 1997.

Defense attorney Robert Murtha, describing his client as "a crippled old man in a wheelchair, in dialysis," accused OSI of "persecuting old men in the interest of keeping their own jobs." "Nazi Hunter Battles Time to Ferret Out Hitler's Foot Soldiers," by Stephen Koff, 2002 *Newhouse News Service*.

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68. Oct. 13, 1997 letter to [redacted] from Alexander Rosner, a survivor of Plaszow, Gross Rosen, Auschwitz and Dachau. Mr. Rosner sent a copy of this letter to the Director of Registry of Holocaust Survivors at the United States Holocaust Memorial Museum in Washington, D.C.

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69. *Kairys v. INS*, 981 F.2d 937, 942 (7th Cir. 1992).

DRAFT

1 **Conclusion**

2 OSI evolved from an office focused solely on Nazi persecutors in the United States to an
3 office concerned with Nazis world-wide and with Holocaust issues that transcend any litigative
4 agenda. This evolution is due to a confluence of disparate factors. Some were foreseeable and
5 others not.

6 Most unexpected, perhaps, were geopolitical changes, including changes in the world's
7 thinking about genocide. Given a spate of world courts and tribunals examining modern war
8 crimes, it became more awkward for countries to ignore those who persecuted with, or on behalf
9 of, the Nazis. Moreover, the end of the Cold War – unthinkable at the time OSI was founded –
10 resulted in some former Eastern bloc countries seeking to join western economic and political
11 unions. Since some of these countries were the very ones most complicit in aiding the Nazis
12 during World War II, the U.S. suddenly had leverage over them which it had previously lacked.
13 Aided by the State Department, OSI made the most of such changing circumstances by
14 suggesting that prosecution of Nazi persecutors was one way to establish that a country shared
15 the values necessary for membership in these organizations.

16 OSI's role as a resource for resolution of World War II-related issues was arguably more
17 predictable than its role as an exhorter to other countries to pursue Nazi persecutors in their
18 midst. As courts issued rulings in OSI cases, the office scholarship and research gained the
19 imprimatur of jurisprudential approval. The publicity of the early cases, and the government's
20 determination to keep Congress and the public informed of OSI's work, kept these matters in the
21 public eye. It was natural, therefore, for Congressional and public pressure to build on OSI to
22 become involved in other World War II issues. The positive response to the Justice

1 Department's handling of the first of these issues, the role of the United States in Barbie's escape
2 from justice, led to subsequent assignments.¹

3 Because of OSI's enhanced role and responsibilities, the office legacy will be far greater
4 than could have been foreseen originally. Although it is too early to make a definitive
5 determination of that legacy, some of the components are clear.

6 The office prevailed in almost all its litigation and helped make groundbreaking law in
7 three Supreme Court decisions. Since its founding, it has filed more cases of its kind than any
8 country in the world.² Indeed, nine new defendants were charged as late as 2002 – more than in
9 any year since OSI's founding.³ That is an astonishing statistic, given that the pool of potential
10 defendants is steadily dwindling with the death of subjects. That the litigation continues is a
11 testament to the perseverance of OSI and the continuing commitment of the government through
12 successive administrations and Congresses.⁴

13 The prosecutions have added to the objective judicial record of World War II which was
14 begun at Nuremberg. The cases stand as a permanent and irrefutable response to those who
15 would deny the Holocaust and its horrors. Camp conditions, the role played by indigenous
16 groups, the means used by the Nazis to train people to perform dehumanizing acts, all are
17 outlined in case after case. The underlying documentation, some based on groundbreaking
18 scholarship by OSI historians, is accessible in court files. In addition, complete records
19 (including exhibits) of several early OSI trials were microfilmed and donated to the archives of
20 the Yad Vashem museum in Jerusalem.⁵ In December 2008, OSI turned over to the USHMM
21 the transcripts of all its trials and extraditions as well as copies of all its court decisions (both
22 published and unpublished). The material was also given to Yad Vashem in Jerusalem.

1 The cases give meaning to the term “assistance in persecution,” and the way they do so is
2 significant. They focus on the *impact* rather than on the *intent* of the perpetrators. It matters not
3 whether the perpetrator intended or even *wanted* to victimize. The message resonating from
4 OSI’s cases is that the United States does not choose to add to its populace persons whose
5 actions victimized innocent civilians -- even if the perpetrator was himself a victim of
6 circumstances.

7 That is a powerful message that many hope will have a prophylactic impact on future
8 persecutors. Whether that hope will be realized is problematical. It may well be that “[n]o
9 punishment can affect the calculations of the genocidal, who are not careful calculators of cost-
10 benefit ratios.⁶ Even if that is the case, however, the prosecutions serve an affirming purpose
11 by holding people accountable and endorsing the higher aspirations of the body politic.⁷

12
13 In preparing its reports, working on World War II related issues, and investigating and
14 litigating cases, OSI has gathered copies of many historical documents. A significant number
15 have been made public in OSI’s court filings. Some have been disclosed as part of the
16 underlying documentation for OSI reports. And an enormous amount, held by other government
17 agencies, has been released under the Nazi War Crimes Disclosure Act, which OSI, as the Justice
18 Department’s representative on the Interagency Working Group, helps administer. The
19 Department of Justice is committed to making its remaining historical material available -- as far
20 as possible consistent with privacy and national security concerns -- so that others may use it for
21 their own scholarly and educational pursuits.

22 Once OSI has completed its Nazi-era work, the Department also hopes to disclose much
23 of the office’s litigative material. This, unlike captured historical documents, cannot be accessed

1 elsewhere.⁸ It includes OSI's massive collection of investigative records – suspect interrogation
2 and witness interviews by OSI personnel, historians' reports, prosecution memos, depositions,
3 and the like. The material sheds light on many important aspects of the Nazi era and will help
4 put captured historical documents in context.

5 While the import of OSI's work may not be fully appreciated before this material is made
6 public, the written record is not the only means of documenting the work of the office. OSI's
7 work has set standards not only for other countries pursuing Nazi persecutors but for
8 prosecutions unrelated to World War II. In December 2003, the International Criminal Tribunal
9 for Rwanda cited both the *Koreh* and *Trifa* decisions in its conviction of three propagandists for
10 inciting genocide.⁹

11 Some of OSI's influence is less tangible but no less significant. The Department of
12 Justice has always considered education to be part of OSI's mission. With the Department's
13 encouragement, OSI historians have often participated in symposia at museums, universities and
14 scholarly institutions.¹⁰ OSI's Directors and staff have been guest speakers at public and civic
15 events including commencements and Holocaust remembrance programs. They have also
16 spoken to Jewish organizations, youth and survivor groups, students, residents in old age homes
17 and military personnel.

18 There is also a much less public aspect to OSI's work. It is a poignant footnote to the
19 office history. Presumably due to the publicity the office has received over the years, private
20 citizens have asked the office for help in resolving family issues relating to World War II. They
21 write to the office with shreds of information and want to know how to find out more. Was their
22 parent perhaps a Nazi collaborator? How can they find out? Although OSI does not do

1 independent research on their behalf, it routinely directs them to the appropriate archive or
2 government organization.

3 OSI's work has had a significant and personal impact on its own employees, on the men
4 investigated and prosecuted, and the families of those men. It is draining to work constantly on
5 an issue as overwhelming and depressing as the Holocaust. Within the office, some become
6 inured and black humor abounds. Many who leave speak of emotional burnout.

7 For those investigated and prosecuted, it is devastating to be charged with complicity in
8 some of the most heinous crimes in world history. The publicity of the charge itself brands the
9 defendants in a way more damaging than would most criminal allegations. In some cases, the
10 prosecution tears the family apart. Most spouses were unaware of the scope of the defendant's
11 wartime activities. The defendant's children—almost all born in the U.S.—are even more likely
12 to be ignorant of the past. Some have turned against their parents as a result of OSI's revelations.

13 Although the men do not face penal incarceration in the U.S., loss of citizenship and
14 expulsion from the country are not insignificant consequences. U.S. citizenship for these men
15 was a prize; it was not something they casually received as a birthright. Its loss means “an
16 expulsion from society. It's a defrocking, if you will. Day to day, [their] life is not going to
17 change. But it represents a very solemn judgment. . . that we as a society refuse to allow [them]
18 to live among us as . . . citizen[s].”¹¹

19 Leaving the country in the twilight of their lives is, of course, even more dire. A
20 defendant sent abroad at the end of his life is generally going to a country he no longer knows.
21 Even more significantly, his children and grandchildren (and sometimes even his spouse) usually
22 remain in the United States—a country to which the defendant can never return. If the defendant

1 was ordered deported, his Social Security benefits are terminated. Most OSI defendants are not
2 wealthy; loss of Social Security may therefore have a serious impact on their standard of living
3 abroad.¹² As the Supreme Court has noted, deportation may “result in loss of . . . all that makes
4 life worth living.”¹³

5 In the 1980s, at least seven men facing investigation or prosecution committed suicide.¹⁴
6 An eighth died from surgical complications after a shootout with the police. (The authorities
7 were called to his home because he was brandishing a gun at reporters seeking a comment after
8 OSI filed its complaint.)¹⁵

9 As discussed earlier in this report, some argue that the government should not continue to
10 pursue these cases; the defendants are too old and their acts of persecution too long past.¹⁶
11 However, such a blanket immunity would give Nazi-era persecutors protection that this country
12 denies other human rights violators from a bygone era. In 2005, the government convicted an
13 80-year old wheelchair-bound man of manslaughter for his role in the deaths of three civil rights
14 workers forty-one years earlier.¹⁷ Like most OSI subjects, he had led an unobtrusive and law-
15 abiding life after his perfidious behavior. His conviction may not be the last from the civil rights
16 era. In 2005, legislation was introduced to establish a civil rights prosecution unit, modeled in
17 part on OSI, to pursue other unsolved pre-1970 murders.¹⁸ That proposal is still pending as of
18 this writing.

19 Of course the civil rights cases differ from those handled by OSI in that the civil rights
20 subjects have generally played a more direct role in murder than the subjects now pursued by
21 OSI. As this report is being written, no one at OSI believes that there are any high-level or even
22 mid-level Nazis still to be found in the United States. Some see this as reason enough to end the

1 quest at this point. Others, including OSI, would argue, however, that one's role in the hierarchy
2 is not dispositive; indeed, it is not even relevant.

3 At the lower level, the guards, those were the people who the victims encountered.
4 They didn't see Himmler. But the nameless guard, who kept them in that camp,
5 knowing full well what was being done to them, that's the person they saw.¹⁹
6

7 Those who fled to the United States have had decades of benefits, including the
8 opportunity to live and raise their families in this country. In the view of the government, they
9 should not be allowed to benefit in perpetuity because the Justice Department was not able to
10 uncover their background earlier. The government was stymied largely by circumstances beyond
11 its control, especially the inaccessibility of crucial documents in Communist-controlled archives
12 during the Cold War.

13 There is, inevitably, the question of whether more could have been done.

14
15
16 At the time this report was begun, OSI's demise appeared inevitable. Because the office
17 was created by order of the Attorney General, its existence was at the pleasure of the Justice
18 Department. It seemed likely that OSI would quietly close its doors when there were no longer
19 any Nazi persecutors to pursue.

20 In 2004, however, the office got a new lease on life. The Intelligence Reform and
21 Terrorism Prevention Act gave OSI statutory recognition and purpose, expanding its mandate to
22 include modern war criminals.²¹ In addition to Nazi persecutors, the office is to detect,
23 investigate, and denaturalize those who took part at any time in genocide,²² torture,²³ or, under
24 color of law of a foreign nation, extrajudicial killings.²⁴ Deportations will be handled by the

1 Department of Homeland Security. Thus, the office, which no one expected to last more than
2 five years beyond its founding, will become a permanent unit within the Department of Justice.

3 It will likely be a somewhat different office from the one which investigated Nazi
4 persecutors. Although its new mandate covers only denaturalization, many of the modern war
5 criminals may also be subject to criminal prosecution. Since they entered recently, they may
6 have committed crimes which are not yet barred by the statute of limitations.²⁵ In such
7 instances, OSI will likely work with U.S. Attorneys offices to prosecute crimes.

8 Whether the office is working on a criminal matter or a denaturalization, there will not
9 likely be treasure troves of documents upon which to base a case. Very few governments are as
10 meticulous in their record keeping as were the Nazis. The irony is, therefore, that the office may
11 return in some measure to its earliest practices, relying on eyewitnesses to help the government
12 present its case and on investigators to find corroborative witnesses overseas. Some of the
13 eyewitnesses will be testifying about events in the recent past, however, and to that extent, the
14 office should avoid some of the problems presented by witnesses in early Nazi cases such as
15 *Walus* and *Demjanjuk*. Even the modern war crimes can go back an extended period, however.
16 For example, crimes committed in the 1970s in Cambodia are as far distant from the present as
17 were the World War II crimes when OSI was first founded.

18 The office has learned much from its Holocaust work which will be of benefit in its
19 investigations of modern war criminals. At OSI's founding – and for years thereafter – no one
20 foresaw its permanence. In part because of that short-timer mentality, there was insufficient
21 attention paid to creating a paper trail. The office was founded in the pre-computer era and there
22 was a blind assumption that the institutional history of the office would always be available from

1 those who worked there. As time went on, of course, employees left, and too often newcomers
2 were forced to reconstruct work done by their predecessors. A tremendous amount of effort is
3 directed toward avoiding this pitfall with the modern crimes.

4 Whatever OSI's achievements in modern war crimes cases, it will be largely due to the
5 work of its formative years. The office's groundbreaking Holocaust work is a lasting testament
6 to the U.S. government's commitment to accountability and historical truth. The significance of
7 the Holocaust in modern history, and the unfortunate but inevitable recurrence of other atrocities
8 throughout the world, assures that OSI's work will have continuing resonance and impact.

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1. There was, however, a certain element of chance to this as well. At the time of the Barbie, Verbelen, Mengele and Waldheim reports, no other governmental entity was devoted exclusively to Holocaust matters. OSI, therefore, ably filled a vacuum.

When the United States Holocaust Memorial Museum (USHMM) was dedicated in 1993, another extraordinary resource was suddenly available. But because OSI had by then attained stature as a national --indeed international -- repository of Holocaust scholarship, there was no question of its being supplanted by the Museum. Instead, OSI and the USHMM have together provided expertise and manpower on a variety of Holocaust matters, including the Nazi gold report and the Interagency Working Group which oversees the Nazi War Crimes Disclosure Act.

2. Of course several countries, Germany and the U.S.S.R. foremost among them, dealt with Nazi persecutors in their midst much sooner than did the United States. The number of cases they filed before OSI's founding far exceeds the number of cases filed by OSI. Also, at this late date, it is difficult to compare case filings. To the extent that statutes of limitations preclude countries of origin from filing anything other than murder charges, it is very difficult for these countries to prosecute. The evidence needed to establish an individual act of murder in a court of law is much greater than that needed in OSI's World War II cases, where membership in a specific persecutory unit can alone be enough.

3. Bernes, Bilaniuk, Bucmys, Friedrich, Gorshkow, Kuras, Miling, Palij and Zajankauskas. Two others, Gecas and Szehinskyj, faced new court proceedings, but litigation against them had begun earlier.

4. Four new cases (charging new defendants and therefore not including deportations following earlier denaturalizations) were brought in 2003 and three in 2004. None commenced in 2005. Two were pursued in 2006. The SWC, which began in 2000 to rank countries annually on the basis of their efforts to find and prosecute Nazi war criminals, has for five years placed the United States alone in the category of countries which have a "highly successful investigation and prosecution program."

That is not to suggest that other countries are not still involved in these cases, however. Some of them are discussed elsewhere in this report. *See* pp. 444, n. 11 (Germany), 486 (Canada), 465 and 493 (Lithuania), and 494 (Great Britain). One of the more active nations of late has been Italy. In 1996, 2 former SS officers were given life sentences for their role in a 1944 massacre wherein the Nazis killed 335 Italian civilians (approximately 10 for every German slain in a partisan attack). One of the SS men convicted was allowed to serve his sentence in a rest home, where he died, at age 92, in 2004. "Karl Hass, 92, Nazi Convicted of Mass Killing in Occupied Italy," *AP, The New York Times*, Apr. 22, 2004. The other was removed from a military prison in 1999 and placed under house arrest for health reasons. In 2005, at age 92, he was allowed to go on a police-supervised holiday as a reward for good conduct. However, his vacation was cut short because of protests over the event. "Former Nazi Officer's Temporary Release Sparks Protests in Italy," *AP*, Aug. 11, 2005; "Eric Priebke Returns to Rome House Arrest After Protests," *ANSA English Media Service*, Aug. 12, 2005.

In 2000, Italy convicted a naturalized Canadian citizen *in absentia* of war crimes for torturing and murdering 11 people at a Nazi prison camp in Italy. He too was sentenced to life

imprisonment. "Ex-Nazi Gets Bail," *The Toronto Sun*, Nov. 29, 2003. He was ordered extradited to Italy in Aug. 2003; as of this writing, that order is on appeal. And in 2005, Italy convicted 10 former SS men living in Germany for the massacre of 560 men, women and children (the youngest of whom was 21 days old) in a Tuscan village. These men also received life sentences. However, because of their advanced age, Italy decided against seeking extradition. "Ten Former Nazis Convicted of Tuscan Massacre," by Barbara McMahon, *The Guardian* (London), June 23, 2005. OSI played a role in this last prosecution. The office helped locate some witnesses and provided prosecutors with a sworn statement by one of the defendants that he had been a member of a particular SS Division. The statement had been given to INS when the defendant was refused entry to the U.S. in 1997. His name had been placed on the Watchlist at OSI's behest.

5. [presented the material to the Israeli Ambassador to the United States B6
on May 15, 1984.

6. "So Mengele Can Know Fear," by George Will, *The Washington Post*, Feb. 14, 1985.

7. See, S. Massey, "Individual Responsibility for Assisting the Nazis in Persecuting Civilians," 71 Minn. L. Rev. 97, 150 (1986).

8. Most of OSI's historical documents, including wartime records and post-war interviews, came from archives in the Soviet Union and Germany. These are now open to outside scholars. Although others may therefore gather the same material as has OSI, OSI's release of the documents will still be of some intrinsic value. The manner in which OSI organized the material (on various databases) will likely assist researchers, as it does OSI personnel, in connecting certain groups, organizations and people.

9. *Prosecutor v. Ferdinand Nahimana, et al.*, Judgment and Sentence, ICTR-99-52-T (2003), para.1010, fn. 1113.

10. In many instances, papers prepared for these occasions have been published, enhancing further OSI's contribution to Holocaust scholarship.

11. Allan Ryan, quoted in "Norwood Man Loses Rights as a Citizen," by Lyndsey Layton, *The Patriot Ledger* (South Boston), May 25-26, 1996.

12. Those who leave the country without a final order of deportation (e.g., as a result of settlement) may be able to receive benefits abroad if the United States has an agreement with the country that allows for such payments. Among the countries which allow residents to receive U.S. Social Security payments (and have been the destination for OSI defendants) are Australia, Canada, the United Kingdom and Germany. Lithuania allows such payments only if the recipient is a Lithuanian citizen. See www.socialsecurity.gov

13. *Ng Fung Ho v. White*, 259 U.S. 276, 282 (1922).

14. One did so the day before a scheduled interview, another on the day an interview was to be held, and two within days after being interviewed. Three committed suicide days after OSI filed its case.

15. "Suspected Nazi May Have Suffered Brain Injury from Surgery," *AP*, Jan. 5, 1997; "Suspected Nazi Dies Months after Shootout," *AP*, Mar. 11, 1997. According to a police report, the defendant asked the police "Why for you shoot me, I not Jew." He also called the police "Jew bastard[s]." "Nazi Suspect Used Slurs Report Says," *The Kansas City Star*, Jan. 15, 1997.

16. See p. 544.

17. "41 Years Later, Ex Klansman Gets 60 Years in Civil Rights Deaths," by Ariel Hart, *The New York Times*, June 24, 2005.

18. "Senate Approves New Justice Department Unit to Probe Old Civil Rights Cases," by Sam Hananel, *AP*, Sept. 15, 2005. Even without the legislation, some prosecutions are possible. In Jan. 2007, federal authorities arrested a 71 year old man for the kidnaping and murder two black teenagers in 1964. Trial is scheduled for May 2007. Also in May 2007, Alabama charged a former state trooper with the 1965 killing of a young black farmer. "Indictment in 65 Killing that Inspired Rights March," by Adam Nossiter, *The New York Times*, May 10, 2007.

In a similar vein, governments in South America have recently shown "surprising vigor" in prosecuting human rights violations that occurred decades earlier. "After Decades, Nations Focus on Rights Abuses," by Larry Richter, *The New York Times*, Sept. 1, 2005.

19. Recorded interview with [redacted] Dec. 9, 2003. B6

Three of the guards prosecuted by OSI did serve at death camps: Fedorenko at Treblinka, Demjanjuk at Sobibor and [redacted] however, was sent there after the killing operations were completed. B6

20. OSI's expenditure of funds has been comparatively modest. The office was allocated c. \$2,000,000 in earmarked funds at its founding. Its expenses now come from the overall Criminal Division budget. In Fiscal Year (FY) 2004, the last year for which figures are available, OSI's expenditures were c. \$5,869,000. (There have, occasionally, been additional infusions of funds, e.g. \$2,000,000 appropriated in FY 1999, to cover costs associated with the Nazi War Crimes Disclosure Act and \$300,000 in 1997 for research into German pension records. "Seeking Funds to Find Nazis," by Elaine Povich, *Newsday* (New York), Oct. 5, 1997; "Waffen Search a Huge Job," by Michael Shapiro, *Washington Jewish Week*, Oct. 9, 1997. The pension research was aborted by the German embassy, apparently on privacy grounds.)

Other countries have spent much more, though none has approached OSI's level of success. As one example, Australia's expenditures for the Fiscal Year ending June 30, 1991 were \$8.8 million (in U.S. dollars). "Report on the Operations of the War Crimes Act of 1945, to June 1991" (Canberra: Attorney-General's Dep't 1991).

21. P.L. 108-408, §§ 5501-26, 118 Stat. 3638 (2004).

22. The definition of genocide is taken from 18 U.S. C. § 1091(a):

(a) Basic offense. – Whoever, whether in time of peace or in time of war . . . and with the specific intent to destroy, in whole or in substantial part, a national, ethnic, racial, or religious group as such --

- (1) kills members of that group;
- (2) causes serious bodily injury to members of that group;
- (3) causes the permanent impairment of the mental faculties of members of the group through drugs, torture, or similar techniques;
- (4) subjects the group to conditions of life that are intended to cause the physical destruction of the group in whole or in part;
- (5) imposes measures intended to prevent births within the group; or
- (6) transfers by force children of the group to another group; or attempts to do so

23. The definition of torture is taken from 18 U.S.C. § 2340, enacted to complement the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to which the U.S. is a signatory. According to the statute, torture is

(1) an act committed by a person acting under the color of law specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control;

(2) “severe mental pain or suffering” means the prolonged mental harm caused by or resulting from --

- (A) the intentional infliction or threatened infliction of severe physical pain or suffering;
- (B) the administration or application, or threatened administration or application, of mind-altering substances or other procedures calculated to disrupt profoundly the senses or the personality;
- (C) the threat of imminent death; or
- (D) the threat that another person will imminently be subjected to death, severe physical pain or suffering, or the administration or application of mind-altering substances or other procedures calculated to disrupt profoundly the senses or personality

24. The definition of extrajudicial killing comes from the Torture Victims Protection Act, 28 U.S.C. § 1350, note:

a deliberated killing not authorized by a previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples. Such term, however, does not include any such killing that, under international law, is lawfully carried out under the authority of a foreign nation

25. One of the most likely bases for criminal prosecution will be 18 U.S. C. 1425, which bars illegal procurement of citizenship. The crime has a 10 year statute of limitations.

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Appendix

Below is a listing of the 134 Nazi persecutors OSI sought to have removed from the United States. Date of death is not always ascertainable; especially if the person died outside the U.S. Citations, when available, are listed for litigation determining citizenship, deportability and extraditability. Related litigation, generally involving discovery matters, is not included. Cases filed before OSI's founding are marked with an asterisk (*).

Artishenko, Basil **Born:** 1923, Byelorussia
 Died: 1989, U.S.
 Alleged Persecutory Activity: As a Nazi-recruited policeman in Byelorussia, Artishenko participated in several "actions" which resulted in the murder of approximately 100 Soviet Gypsy noncombatants, mostly women and children.
 Legal History: Denaturalization action filed in Nov. 1982. The case settled in Oct. 1984. Artishenko relinquished his citizenship and acknowledged that he had served with the local police. The U.S. agreed not to file a deportation action as long as Artishenko cooperated with the government in its investigation of others.

United States v. Artishenko, No. 82-3822 (JWB) (D.N.J. 1984)

Artukovic, Andrija* **Born:** 1899, Yugoslavia
 Died: 1988, Yugoslavia
 Alleged Persecutory Activity: As a Cabinet minister in Croatia, Artukovic was responsible for issuing decrees which resulted in the incarceration and death of tens of thousands of non-Aryan citizens.

Legal History: Artukovic never became a U.S. citizen. Deportation and extradition cases were filed in 1951. He was extradited to Yugoslavia in 1986 where he was convicted of war crimes. *See pp. 241-260.*

Extraditability: *Artukovic v. Boyle*, 140 F. Supp. 245 (S.D. Cal. 1956), *aff'd sub nom. Karadzole v. Artukovic*, 247 F.2d 198 (9th Cir. 1957), *vacated and remanded*, 355 U.S. 393 (1958), *decision on remand, United States v. Artukovic*, 170 F. Supp. 383 (S.D. Cal. 1959)

Extradition: *Matter of the Extradition of Artukovic*, 628 F. Supp. 1370 (C.D. Cal.), *stay denied sub nom. Artukovic v. Rison*, 784 F.2d 1354 (9th Cir. 1986)

Avdzej, John **Born:** 1905, Poland (now Belarus)
 Died: 1998, Germany

Alleged Persecutory Activity: Collaborated with the Nazis while serving as a regional mayor in Byelorussia. His work included arranging for the construction of a Jewish ghetto, helping Germans select Jews to execute, and disseminating German decrees, including one which prohibited giving food to those in the ghetto.

Legal History: Notified that OSI was about to file a

1 denaturalization action, Avdzej agreed to leave the country. He went to Germany in 1984 and
2 renounced his U.S. citizenship, conceding that he "carried out the orders of the Nazi occupation
3 authorities."

4
5 **Balsys, Aloyzas** **Born:** 1913, Lithuania
6 **Alleged Persecutory Activity:** Member of a secret police
7 organization that liquidated a Jewish ghetto

8 **Legal History:** Balsys never became a U.S. citizen. When OSI
9 sought to question him, Balsys invoked the Fifth Amendment on the ground that he might face
10 criminal prosecution abroad. The question of whether the Fifth Amendment applies in such
11 circumstances was litigated up to the Supreme Court. The Court ruled that the Amendment
12 could not be invoked. Rather than submit to questioning, Balsys left for Lithuania in May 1999.
13 He acknowledged that he had misrepresented his wartime activities when he entered the U.S.
14 See pp. 141-144.

15
16 *U.S. v. Balsys*, 918 F. Supp. 588 (E.D.N.Y. 1996), *vacated and remanded*, 119 F.3d 122
17 (2nd Cir. 1997), *rev'd and remanded*, 524 U.S. 666 (1998)

18
19 **Bartesch, Martin** **Born:** 1926, Romania
20 **Died:** 1989, Austria
21 **Alleged Persecutory Activity:** Guard at Mauthausen
22 concentration camp in Austria and one of its subcamps

23 **Legal History:** Denaturalization case filed in April 1986. The
24 district court revoked Bartesch's citizenship in May 1987 pursuant to a settlement agreement.
25 Under the terms of the settlement, Bartesch relinquished his certificate of naturalization and
26 agreed to leave the U.S. He went to Austria.

27
28 *United States v. Bartesch*, No. 86 C 2375 (N.D. Ill. 1987)

29
30 **Baumann, Anton** **Born:** 1911, Yugoslavia
31 **Died:** 1993, U.S.
32 **Alleged Persecutory Activity:** Guard at the Stutthof
33 concentration camp in Poland and Buchenwald concentration camp in Germany

34 **Legal History:** Denaturalization case filed in Mar. 1989.
35 Baumann's citizenship was revoked in May 1991 and he exhausted his appeals in Oct. 1992. A
36 deportation action was filed in two months later. The case settled in June 1993 with Baumann
37 agreeing to the entry of a deportation order for Germany. Based on Baumann's ill health, the
38 United States agreed not to enforce the order of deportation.

39
40 Denaturalization: *United States v. Baumann*, 764 F. Supp. 1335 (E.D. Wis. 1991), *aff'd*,
41 958 F.2d 374 (7th Cir.), *cert. denied*, 506 U.S. 831 (1992)

42 Deportation: *Matter of Baumann*, A7 811 295 (Imm. Ct., Milwaukee, Wis. 1993)

1 **Bauzys, Jonas**

Born: 1918, Lithuania

Died: 1998, U.S.

2
3 **Alleged Persecutory Activity:** Member of the 15th Lithuanian
4 Schutzmannschaft, a Nazi-directed paramilitary group which persecuted and murdered civilians

5 **Legal History:** Bauzys became a U.S. citizen in 1991. Because a
6 motion to reopen a naturalization can be filed within one year, in 1992 OSI filed such a motion
7 rather than a denaturalization action. The motion was denied. OSI did not file a denaturalization
8 case because it did not think its evidence could meet the higher standard of proof called for in
9 such cases.

10
11 **Benkunskas, Henrikas**

Born: 1920, Lithuania

Died: 1986, U.S.

12 **Alleged Persecutory Activity:** Served in a Nazi-collaborationist
13 Lithuanian police battalion which participated in several massacres in Kaunas, Lithuania and in
14 Slutsk, a suburb of Minsk, Byelorussia. Thousands of Lithuanian Jews, approximately 15,000
15 Byelorussian Jews, and 1,200 Soviet prisoners of war were murdered.

16
17 Operations by the battalion (the 2nd Lithuanian Schutzmannschaft, later renamed the 12th
18 Lithuanian Schutzmannschaft) were particularly brutal. According to a Nazi report introduced
19 into evidence during the Nuremberg trials, the Nazi civilian administrator of Byelorussia
20 complained about the brutality of the Slutsk slaughter. The police not only looted the bodies of
21 murdered Jews and broke into Jewish houses, but also beat the Byelorussian population in general
22 and stole indiscriminately. When the slaughter at the pits was over, the police did not bury their
23 victims deeply enough and some of the wounded worked their way out of the graves and returned
24 to Slutsk looking for help. According to the Nazis, the executions at Slutsk were carried out "with
25 indescribable brutality . . . bordering on sadism . . . on the part of both the German police officers
26 and particularly the Lithuanian partisans."

27 **Legal History:** Benkunskas never became a U.S. citizen. A
28 deportation case was filed in 1984. Benkunskas died before the case was resolved.

29
30 **Berezowskyj, Walter**

Born: 1924, Poland (now Ukraine)

31 **Alleged Persecutory Activity:** Camp guard at Trawniki
32 and Poniatowa labor camps in Poland, Sachsenhausen concentration camp in Germany and a
33 Mauthausen subcamp in Austria.

34 **Legal History:** Denaturalization proceedings commenced in
35 July 1997. Pursuant to a settlement agreement in Sept. 1998, Berezowskyj forfeited his
36 citizenship. The U.S. agreed not to pursue deportation unless there was a substantial
37 improvement in Berezowskyj's medical condition.

38
39 *United States v. Berezowskyj*, No. 3:97CV1450 (JBA) (D. Conn. 1998)

40
41 **Bernes, Peter**

Born: 1922, Lithuania

42 **Alleged Persecutory Activity:** Adjutant to the Nazi-
43 appointed commandant in Kupiskes, Lithuania. During Bernes' tenure, more than 1,000 Jewish

1 men, women and children and some 300 to 500 alleged communists were arrested, jailed, and shot
2 to death by a detachment of Lithuanians acting on the commandant's orders. No Jews are known
3 to have survived. On multiple occasions, Bernes went with the commandant to the local jail and
4 called out the names of prisoners who were then taken from their cells, kicked and beaten. The
5 victims were murdered a short distance from the jail.

6 **Legal History:** After being notified that OSI was about to
7 file a denaturalization case, Bernes left for Lithuania in Jan. 2002. His citizenship was revoked in
8 May 2002 pursuant to a default judgment order.

9
10 *United States v. Bernes*, 2002 WL 1067254 (W.D. Ill. 2002)

11
12 **Bernotas, Antanas**

Born: 1908, Lithuania

Died: 1998, U.S.

13
14 **Alleged Persecutory Activity:** Served as a guard in a
15 Jewish ghetto where he beat Jews and helped select some for execution. He also arrested,
16 interrogated and beat anti-Nazi partisans and members of the underground.

17 **Legal History:** Bernotas never became a U.S. citizen. Deportation
18 proceedings began in July 1983. In July 1989, the case settled. Bernotas conceded his
19 deportability and designated Germany as the recipient country. Because Bernotas was in ill
20 health, the U.S. agreed not to carry out the order of deportation.

21
22 *Matter of Bernotas*, A7 255 565 (Imm. Ct., Hartford, Conn. 1983)

23
24 **Bilaniuk, Jaroslaw**

Born: 1923, Poland (now Ukraine)

Died: 2007, U.S.

25
26 **Alleged Persecutory Activity:** Guard at Trawniki Labor
27 camp in Poland, member of the Trawniki Training Camp's anti-partisan "Deployment Company."
28 After the evacuation of Trawniki in the face of Soviet advances in July 1944, Bilaniuk served as a
29 member of SS "Streibel Battalion," composed of men from Trawniki. One of the primary
30 functions of the Streibel Battalion was to round up and guard Polish forced laborers.

31 **Legal History:** A denaturalization case was filed in Dec. 2002. Bilaniuk
32 died while it was pending.

33
34 **Blach, Bruno**

Born: 1919, Czechoslovakia

35 **Alleged Persecutory Activity:** Guard and dog handler at
36 Dachau concentration camp in Germany and at Wiener Neudorf concentration camp in Austria.

37 **Legal History:** Blach never became a U.S. citizen.
38 Deportation proceedings were begun in 1985; he was ordered deported to West Germany in Apr.
39 1987. While that order was on appeal, W. Germany requested his extradition. Blach did not
40 contest the matter and was extradited in Jan. 1990. He was tried in Germany for murdering three
41 prisoners during a forced march to the Mauthausen concentration camp in Austria. He was
42 acquitted in 1993.

1 *Matter of Blach*, A10 629 292 (Imm. Ct, Los Angeles, Cal. 1987), *appeal dismissed* (BIA
2 1990)

3
4 **Bless, Anton**

Born: 1924, Yugoslavia

5 **Alleged Persecutory Activity:** Guard at the Auschwitz
6 concentration camp in Poland

7 **Legal History:** After being notified that a denaturalization
8 case was about to be filed, Bless went to Germany in Aug. 1992. The court entered a default
9 judgment revoking his citizenship in Dec. 1992.

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11 *United States v. Bless*, No. 92-2075-JHG (D.D.C. 1992)

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27 **Bogdanovs, Boleslavs**

Born: 1917, Russia

Died: 1984, U.S.

28 **Alleged Persecutory Activity:** Member of the
29 "Arajs Kommando," a Latvian death squad responsible for mass execution of thousands of
30 civilians in Nazi-occupied Latvia. The victims of the mass shootings were mostly Jewish, but
31 also included political enemies (those believed to be Communists), gypsies and the mentally ill.
32 The leader of the organization, Viktor Arajs, was convicted in West Germany for leading the unit
33 in murdering more than 13,000 people.

34 **Legal History:** Denaturalization proceedings
35 commenced in Nov. 1983. Bogdanovs died before the case was resolved.

36
37
38 **Bojcun, Michael**

Born: 1918, Poland (now Ukraine)

39 **Alleged Persecutory Activity:** Member of the
40 Nazi-sponsored Ukrainian Auxiliary Police (UAP) in L'vov. During his service, the UAP was
41 involved in the murder of over 100,000 Jewish residents in the city. The UAP also escorted Jews
42 to forced labor sites and enforced persecutory measures including the arrest of Jews for document
43 violations or failure to wear the prescribed armband with the Star of David.

1 2nd/12th Schutzmannschaft during the Slutsk massacre (*see* Benkuskas)

2 **Legal History:** Denaturalization proceedings were
3 begun in Mar. 1993. Ciurinkas' citizenship was revoked in June 1997 and his appeals were
4 exhausted in June 1998. Deportation proceedings were begun in Oct. 1998. The case settled in
5 Apr. 1999 with Ciurinkas agreeing to leave within a month. He settled in Lithuania.

6
7 Denaturalization: *U.S. v. Ciurinkas*, 976 F. Supp. 1167 (N.D. Ind. 1997), *aff'd*, 148 F.3d
8 729 (7th Cir. 1998)

9 Deportation: *Matter of Ciurinkas*, A07 262 096 (Imm. Ct., Chicago, Ill. 1999)

10
11 **Dailide, Algimantas**

Born: 1921, Lithuania

12 **Alleged Persecutory Activity:** Member of the
13 Nazi-sponsored Lithuanian Security Police (the Saugumas), where he served in the "Communist-
14 Jews" section. The Saugumas arrested and turned over for punishment and execution those Jews
15 who attempted to escape the Vilnius ghetto, as well as any person who tried to help them. Jews
16 arrested by the Saugumas were generally shot under the direction of the Germans at execution pits
17 at Paneriai, a wooded area outside Vilnius. Approximately 50,000 Jews were murdered at
18 Paneriai.

19 **Legal History:** Denaturalization proceedings were
20 begun in Dec. 1994 and Dailide's citizenship was revoked in Jan. 1997. His appeals were
21 exhausted in Sept. 2000. The government began deportation proceedings in July 2001 and
22 Dailide was ordered deported to Lithuania in 2002. In 2003, while appeal of his deportation order
23 was pending, he left for Germany.

24 In July 2004, the Lithuanian government charged him with persecution of civilians
25 protected by international humanitarian law. He was convicted in March 2006. *See* p. 465.

26
27 Denaturalization: *U.S. v. Dailide*, 953 F. Supp. 192 (N.D. Ohio, 1997), *aff'd*, 227 F.3d
28 385 (6th Cir. 2000)

29 Deportation: *Matter of Dailide*, A7-412-330 (Imm. Ct., Bradenton, Fl. 2002), *appeal*
30 *dismissed* (BIA 2003), *aff'd*, *Dailide v. Ashcroft*, 387 F.3d 1335 (11th Cir. 2004)

31
32 **Demjanjuk, John***

Born: 1920, Ukraine

33 **Alleged Persecutory Activity:** Guard at Sobibor
34 death camp in Poland, the Majdanek and Flossenbürg concentration camps (in Poland and
35 Germany respectively) and Trawniki training camp in Poland.

36 **Legal History:** The U.S. Attorney's Office filed a
37 denaturalization action in Aug. 1977. Demjanjuk's citizenship was revoked in June 1981 after
38 the court concluded that he was "Ivan the Terrible" who had operated the gas chamber at the
39 Treblinka death camp. His appeals were exhausted in Nov. 1982. A deportation action was filed
40 in July 1982 and Demjanjuk was ordered deported to the U.S.S.R. in May 1984. Two years later,
41 while that ruling was on appeal, he was extradited to Israel. He returned to the U.S. in 1993 after
42 Israel concluded that he was not Ivan the Terrible, but that he had been a guard at other camps,
43 including Sobibor. The 1981 order of denaturalization was vacated in 1998 and a new

1 denaturalization lawsuit was filed in 1999 based on his guard service at Sobibor, Majdanek and
2 Flossenbürg. He was denaturalized in Feb. 2002. The ruling was affirmed in Apr. 2004, and the
3 Supreme Court denied review in Nov. 2004. Deportation proceedings were begun in Dec. 2004.
4 He was ordered deported in June 2005. Demjanjuk moved to preclude designation of Ukraine,
5 claiming that sending him there would violate the Convention Against Torture (CAT). He argued
6 that Ukraine would likely prosecute and torture him. His motion was denied in Dec. 2005 and he
7 was ordered deported to Ukraine. That ruling was affirmed in Dec. 2006. *See* pp. 150-174. In
8 June 2008, Equipo Kizkor, a Brussels-based human rights group asked a Spanish court to indict
9 Demjanjuk and seek his extradition to Spain for crimes against humanity in the persecution of
10 Spanish nationals at Flossenbürg.

11
12 First Denaturalization: *U.S. v. Demjanjuk*, 518 F. Supp. 1362 (N.D. Ohio 1981), *aff'd per*
13 *curiam*, 680 F.2d 32 (6th Cir.), *cert. denied*, 459 U.S. 1036 (1982)

14 Deportation: *Matter of Demjanjuk*, A08 237 417 (Imm. Ct., Cleveland, Ohio 1984), *aff'd*
15 (BIA 1985), *aff'd per curiam* (unpub'd), *U.S. v. Demjanjuk* 767 F.2d 922 (6th Cir.), *cert. denied*,
16 474 U.S. 1034 (1985)

17 Extradition: *Matter of Extradition of Demjanjuk*, 612 F. Supp. 544 (N.D. Ohio 1985),
18 *petition for writ of habeas corpus denied sub nom. Demjanjuk v. Petrovsky*, 612 F. Supp. 571
19 (N.D. Ohio), *aff'd*, 776 F.2d 571 (6th Cir. 1985), *cert. denied*, 475 U.S. 1016 (1986), *reopened sua*
20 *sponte*, No. 85-3435 (6th Cir. 1992), referred to special master (6th Cir. 1992), report of special
21 master, (6th Cir. 1993), *extradition vacated Demjanjuk v. Petrovsky*, 10 F.3d 338 (6th Cir. 1993),
22 *cert. denied sub nom. Rison v. Demjanjuk*, 513 U.S. 914 (1994)

23 Second Denaturalization: *United States v. Demjanjuk*, 2002 WL 544622 (N.D. Ohio
24 2002), *aff'd*, 367 F.3d 623 (6th Cir.), *cert. denied*, 125 S.Ct. 429 (2004)

25 Second Deportation: *Matter of Demjanjuk*, A08 237 417 (Imm. Ct., Cleveland, Ohio
26 June 16, 2005 and Dec. 28, 2005), *aff'd* (BIA 2006), *aff'd*, ___ F.3d ___ (6th Cir. 2008), *cert.*
27 *denied*, ___ (6/19/08). **GET CITES**

28
29 **Deneul, Mathias**

Born: 1920, Romania

Died: 2000, Germany

31 **Alleged Persecutory Activity:** Guard at Gusen
32 concentration camp in Austria. Also guarded prisoners on a transport from a camp in Poland to
33 Mauthausen concentration camp in Austria.

34 **Legal History:** Deneul never became a U.S. citizen.
35 A deportation action was filed in Aug. 1993. In Dec. 1993, Deneul agreed to leave the country.
36 He went to Germany in 1994.

37
38 **Denzinger, Jakob**

Born: 1924, Yugoslavia

39 **Alleged Persecutory Activity:** Guard at Auschwitz
40 death camp in Poland, Mauthausen concentration camp in Austria and one of its subcamps,
41 Sachsenhausen concentration camp in Germany, a subcamp of Buchenwald in Germany, and the
42 Plaszow concentration camp in Poland.

43 **Legal History:** Denzinger left for West Germany in

1 Aug. 1989 shortly after learning that the government planned to file a denaturalization complaint.
2 A default judgment revoking Denzinger's citizenship was filed in Nov. 1989. As of this writing,
3 he is in Croatia.
4

5 *United States v. Denzinger*, No. 89-2176-JNP (D.D.C. 1989)
6

7 **Dercacz, Michael**

Born: 1909, Ukraine

Died: 1983, U.S.

8
9 **Alleged Persecutory Activity:** As a member of the
10 Ukrainian Police, he assisted the Germans in keeping 2000 Jews deprived of necessities and
11 confined to a ghetto. The Jews were later murdered by the Germans.
12

13 **Legal History:** Denaturalization proceedings
14 commenced in July 1980. Dercacz' citizenship was revoked in Feb. 1982. A deportation
15 proceeding was filed later that year. Dercacz died before the case was fully litigated.
16

17 *U.S. v. Dercacz*, 530 F. Supp. 1328 (E.D.N.Y. 1982)
18

19 **Detlavs, Karlis***

Born: 1911, Latvia

Died: 1983, U.S.

20 **Alleged Persecutory Activity:** As a member of the
21 Latvian Auxiliary Security Police, he executed Jews in the Riga ghetto and chose Jews for
22 execution in the Dwinsk ghetto.
23

24 **Legal History:** Detlavs never became a U.S.
25 citizen. INS filed a deportation action in Oct. 1976. An immigration judge rejected the
26 government's case in 1980 and that decision was affirmed on appeal the following year.
27

28 *Matter of Detlavs*, A07 925 159 (Imm. Ct., Baltimore, Md. 1980), *aff'd*, (BIA 1981)
29

30 **Deutscher, Albert**

Born: 1920, Ukraine

Died: 1981, U.S.

31 **Alleged Persecutory Activity:** As a member of the
32 Selbstschutz, a Nazi paramilitary organization, Deutscher participated in the mass execution of
33 hundreds of Jews in Ukraine.
34

35 **Legal History:** The government filed a
36 denaturalization action in Dec. 1981. Deutscher committed suicide the following day.
37

38 **Didrichsons, Valdis**

Born: 1913, Latvia

Died: 1995, U.S.

39 **Alleged Persecutory Activity:** Member of the Arajs
40 Kommando (*see* Bogdanovs)

41 **Legal History:** The government filed a
42 denaturalization suit in May 1988. The case settled in Feb. 1990 with Didrichsons agreeing to
43 relinquish his citizenship. Because he was ill, the U.S. agreed not to institute deportation

1 proceedings.

2
3 **Dorth, Johann**

Born: 1924, Yugoslavia

Died: 1990, U.S.

Alleged Persecutory Activity: Guard at Auschwitz

4
5
6 concentration camp

Legal History: Dorth never became a U.S. citizen.

7
8 The government filed a deportation action in Jan. 1989. Dorth died while the case was in
9 litigation.

10
11 **Eckert, Josef**

Born: 1914, Austria-Hungary

Died: 1991, Austria

Alleged Persecutory Activity: Guard at Auschwitz

12
13
14 concentration camp and two Auschwitz subcamps in Poland

Legal History: Eckert never became a U.S. citizen.

15
16 The government filed a deportation action in Dec. 1987. In Sept. 1988, Eckert agreed to the entry
17 of an order of deportation and stipulated that he would leave the country within six months. He
18 settled in Austria.

19
20 *Matter of Eckert, A10 631 698 (Imm. Ct., Los Angeles, Cal. 1988)*

21
22 **Egner, Peter**

Born: 1922, Yugoslavia

Alleged Persecutory Activity: Guard and interpreter

23
24 with the Nazi-controlled Security Police and Security Service while the group acted as a Nazi
25 mobile killing unit in German-occupied Belgrade, Serbia

Legal History: A denaturalization case was filed in

26
27 July 2008.

28
29 **Ensin, Albert**

Born: 1922, Lithuania

Died: 1994, U.S.

Alleged Persecutory Activity: Guard at Auschwitz

30
31
32 death camp

Legal History: Ensin never became a U.S. citizen.

33
34 The government filed a deportation action in Feb. 1987. In June 1990, Eckert agreed to the entry
35 of a deportation order to West Germany. Due to Ensin's ill health, the U.S. agreed that it would
36 not have him removed from the United States.

37
38 *Matter of Ensin, A10 226 043 (Imm. Ct., Boston, Mass. 1990)*

39
40 **Fedorenko, Feodor***

Born: 1907, Ukraine

Died: 1987, U.S.S.R.

Alleged Persecutory Activity: Guard in the Jewish

41
42
43 ghetto of Lublin, Poland and at the Treblinka death camp

1 **Legal History:** The U.S. Attorney's Office filed a
2 denaturalization case in Aug. 1977. The district court rejected the government's case in July
3 1978. That decision was reversed a year later and the appellate decision was affirmed by the
4 Supreme Court in Jan. 1981. The government filed deportation proceedings in Mar. 1981 and
5 Fedorenko was ordered deported in Feb. 1983. The ruling was affirmed in Apr. 1984 and
6 Fedorenko was deported to the Soviet Union in Dec. 1984. The Soviets convicted him of war
7 crimes in 1986. He was executed the following year. *See* pp. 48-63.

8
9 Denaturalization: *U.S. v. Fedorenko*, 455 F. Supp. 893 (S.D. Fl. 1978), *rev'd and*
10 *remanded*, 597 F.2d 946 (5th Cir. 1979), *aff'd*, 499 U.S. 490 (1981)

11 Deportation: *Matter of Fedorenko*, A07 333 468 (Imm. Ct., Hartford, Conn. 1983), *aff'd*,
12 19 I. & N., Dec. 57 (BIA 1984)

13
14 **Firishchak, Osyp**

Born: 1919, Czechoslovakia (now Ukraine)

15 **Alleged Persecutory Activity:** Served in the 1st
16 Commissariat of the Ukrainian [Auxiliary] Police Lemberg in L'vov, Ukraine. During
17 Firishchak's service, the 1st Commissariat rounded up and transported more than 100,000 Jews to
18 killing centers or labor camps. Jews who attempted to flee these roundups were shot.

19 **Legal History:** A denaturalization case was filed in
20 Dec. 2003. Firishchak's citizenship was revoked in Aug. 2005. That ruling was affirmed in Nov.
21 2006. Deportation proceedings were begun in March 2007. He was ordered deported to Ukraine
22 in Nov. 2007. **IS IT ON APPEAL?**

23
24 Denaturalization: *U.S. v. Firishchak*, 426 F. Supp. 2d 780 (N.D. Ill. 2005), *aff'd*, 468 F.3d
25 1015 (7th Cir. 2006)

26 Deportation: **GET CITE**

27
28 **Friedrich, Adam**

Born: 1921, Romania

Died: 2006, U.S.

29 **Alleged Persecutory Activity:** Camp guard at Gross
30 Rosen concentration camp in Germany (present-day Poland) and Flossenbürg concentration camp
31 in Germany. Among his responsibilities, Friedrich twice guarded prisoners on forced marches
32 when camps were evacuated.

33
34 **Legal History:** A denaturalization case was filed in
35 July 2002 and Friedrich's citizenship was revoked in Feb. 2004. The ruling was affirmed in Mar.
36 2005 and the Supreme Court denied review in Oct. 2005. *See* pp. 67-68.

37
38 *U.S. v. Friedrich*, 305 F. Supp. 2d 1101 (E.D. Mo. 2004), *aff'd*, 402 F.3d 842 (8th
39 Cir.), *cert. denied*, 126 S. Ct. 495 (2005)

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7 **Gecas, Vytautas**

Born: 1922, Lithuania

8 **Alleged Persecutory Activity:** Member of the 2nd/
9 12th Lithuanian Schutamannschaft (*see* Benkuskas)

10 **Legal History:** Gecas never became a U.S. citizen.
11 In May 1999, the district court held him in contempt for defying its order to respond to an OSI
12 subpoena. Gecas spent 18 months in jail. In Dec. 2002, after his release, OSI filed a deportation
13 action. The case settled in May 2003 with Gecas admitting that he had served in the 2nd/12th
14 Lithuanian Schutzmannschaft and agreeing to leave the U.S. permanently. He settled in Lithuania
15 in Aug. 2003. *See* pp. 144-146.

17 **Geiser, Anton**

Born: 1924, Yugoslavia (now Croatia)

18 **Alleged Persecutory Activity:** Guard at
19 Sachsenhausen and Buchenwald concentration camps in Germany

20 **Legal History:** A denaturalization case was filed in
21 Aug. 2004. It is pending as of this writing. His citizenship was revoked in Sept. 2006 and the
22 ruling was affirmed by the Third Circuit in June 2008.

23 **CITES**

25 **Gimzauskas, Kazys**

Born: 1908, Lithuania

26 **Alleged Persecutory Activity:** Chief of the
27 interrogations/investigations division of the Saugumas (*see* Dailide) and thereafter Deputy Chief
28 for the entire Vilnius region.

29 **Legal History:** Gimzauskas left for Lithuania in
30 Oct. 1995, shortly before OSI filed suit to revoke his citizenship. The U.S. obtained a default
31 judgment of denaturalization in 1996. Gimzauskas was convicted in Lithuania of genocide in
32 2001. The court found that he had handed over at least three Jews to killing squads. *See* pp. 464-
33 465.

34 *U.S. v. Gimzauskas*, No. 1:95CV02033 (D.D.C. 1996)

36 **Gorshkow, Michael**

Born: 1923, Estonia

Alleged Persecutory Activity: Served as a Gestapo

1 interpreter/interrogator at the headquarters of the German security police in Minsk, Poland (now
2 Belarus). He also participated in the Nazi killing action at the Jewish ghetto in Slutsk (see
3 Benkuskas).

4 **Legal History:** OSI filed a denaturalization lawsuit
5 in May 2002 and Gorshkow departed for Estonia shortly thereafter. A default judgment was
6 entered revoking his citizenship. *See* pp. 461-462.

7
8 *U.S. v. Gorshkow*, No. 5:02CV186/LAC/MD (N.D. Fla. 2002)

9
10 **Grabauskas, Juozas**

Born: 1918, Lithuania

Died: 2002, Lithuania

11 **Alleged Persecutory Activity:** Officer in the
12 2nd /12th Lithuanian Schutzmannschaft (*see* Benkuskas).

13 **Legal History:** OSI filed a denaturalization suit in
14 Jan. 1993. The case settled nine months later when Grabauskas forfeited his citizenship and
15 agreed to leave the country within three weeks. He settled in Lithuania.
16

17 *U.S. v. Grabauskas*, No. 93 C 374 (E.D. Ill. 1993)

18
19
20 **Gruber, Michael**

Born: 1915, Croatia

Died: 2002, Austria

21 **Alleged Persecutory Activity:** Guard at
22 Sachsenhausen concentration camp in Germany
23

24 **Legal History:** Gruber never became a U.S. citizen.
25 OSI filed a deportation case in Aug. 1999. Gruber was ordered deported to Austria in Aug. 2000
26 and in May 2002 the BIA concluded that it lacked jurisdiction to hear the appeal. Gruber left for
27 Austria in June 2002 and died there two months later.

28
29 *Matter of Gruber*, A10-270-346 (Imm. Ct., N.Y., N.Y. 2000), *appeal dismissed* (BIA
30 2002)

31
32 **Gudauskas, Vytautas**

Born: 1918, Lithuania

Died: 1997, U.S.

33 **Alleged Persecutory Activity:** Member of the 2nd/
34 12th Lithuanian Schutzmannschaft (*see* Benkuskas)
35

1 **Hajda, Bronislaw**

Born: 1924, Poland

2 **Died:** 2005, U.S.

3 **Alleged Persecutory Activity:** Guard at the Treblinka labor
4 camp where he participated in the massacre of hundreds of Jews. After the liquidation of
5 Treblinka, Hajda joined the Streibel Battalion (see Bilaniuk).

6 **Legal History:** The government filed a denaturalization
7 suit in Aug. 1994 and Hajda's citizenship was revoked in Apr. 1997. His appeals were exhausted
8 in Mar. 1998. The government filed a deportation suit in Aug. 1998. Hajda was ordered deported
9 to Poland in Oct. 1998 and that ruling was affirmed in Jan. 2001. Neither Poland nor any other
10 country would accept him. See pp. 437-444.

11
12 Denaturalization: *U.S. v. Hajda*, 963 F. Supp. 1452 (N.D. Ill. 1997), *aff'd*, 135 F.3d 439
13 (7th Cir. 1998)

14 Deportation: *Matter of Hajda*, A07 804 583 (Imm. Ct., Chicago, Ill. 1998), *aff'd*, (BIA
15 2001)

16
17 **Hammer, Ferdinand**

Born: 1921, Croatia (now Yugoslavia)

18 **Alleged Persecutory Activity:** Guard at the Auschwitz
19 concentration camp in Germany and Sachsenhausen concentration camp in Austria. Guarded
20 inmates being transported from Auschwitz to Sachsenhausen and from Sachsenhausen to the
21 Mauthausen concentration camp in Austria.

22 **Legal History:** The U.S. filed a denaturalization lawsuit in
23 Dec. 1994. Hammer's citizenship was revoked in June 1996 and the government began
24 deportation proceedings in Oct. 1996. Hammer was ordered deported in Apr. 1997. His appeals
25 were exhausted in Feb. 2000; he was deported to Austria the following month.

26
27 Denaturalization: *U.S. v. Hammer*, No. 94-Cv-74985-DT (E.D. Mich. 1996)

28 Deportation: *Matter of Hammer*, A08 865 516 (Imm. Ct., Detroit, Mich. 1997), *aff'd*, (BIA
29 1998), *aff'd*, *Hammer v. INS*, 195 F.3d 836 (6th Cir. 1999), *cert. denied*, 528 U.S. 1191 (2000)

30
31 **Hansl, John**

Born: 1925, Yugoslavia (now Croatia)

32 **Died:** 2007, United States

33 **Alleged Persecutory Activity:** Guard at Sachsenhausen
34 concentration camp in Germany.

35 **Legal History:** A denaturalization lawsuit was filed in July
36 2003. Hansl's citizenship was revoked in Apr. 2005. That ruling was affirmed in Mar. 2006.

1 *U.S. v. Hansl*, 364 F.Supp.2d 966 (S.D. Iowa 2005), *aff'd*, 439 F.3d 850 (8th Cir. 2006)

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Hazners, Vilis*

Born: 1905, Latvia

Died: 1989, U.S.

Alleged Persecutory Activity: Selected Latvian Jews in the
Dwinsk ghetto for execution

Legal History: Hazners never became a U.S. citizen. A
denaturalization action was filed by INS in Jan. 1977. The government's claims were rejected in
1980 and OSI handled the appeal. The immigration judge's decision was affirmed in 1981.

Matter of Hazners, A10 305 336 (Imm. Ct., Albany, N.Y. 1980), *aff'd*, (BIA 1981)

B6

1 **Hrusitsky, Anatoly**

Born: 1917, Russia

2 **Died:** 1992, Venezuela

3 **Alleged Persecutory Activity:** Participation in atrocities,
4 including murder and torture of Jews, as a member of a regional police force in Ukraine

5 **Legal History:** The government filed a denaturalization
6 case in Aug. 1983. Shortly thereafter, Hrusitsky renounced his citizenship and went to Venezuela.
7

8
9 **Hutyrczyk, Serge**

Born: 1922, Poland

10 **Died:** 1993, U.S.

11 **Alleged Persecutory Activity:** Guard at the Koldyczewo
12 concentration camp in Byelorussia. His assignments included drill instructor and supervisory
13 guard. He was also a member of "the hunters," a group of guards who volunteered to participate
14 in the execution of Jews in the forests surrounding the camp.

15 **Legal History:** The government filed a denaturalization
16 action in Aug. 1990. Hutyrczyk's citizenship was revoked in Oct. 1992. He died while the ruling
17 was on appeal.

18
19 *U.S. v. Hutyrczyk*, 803 F. Supp. 1001 (D.N.J. 1992)

20
21 **Inde, Edgars**

Born: 1909, Latvia

22 **Died:** 1980, U.S.

23 **Alleged Persecutory Activity:** Member of the Arajs
24 Kommando (*see* Bogdanovs)

25 **Legal History:** The government filed a denaturalization suit
26 in Aug. 1988. Inde died before the court issued a ruling.
27

28 **Juodis, Jurgis**

Born: 1911, Lithuania

29 **Died:** 1986, U.S.

30 **Alleged Persecutory Activity:** Officer in the 2nd/12th
31 Schutzmannschaft (*see* Benkunskas)

32 **Legal History:** A denaturalization case was filed in Oct.
33 1981. It was pending when Juodis died.
34

35 **Kairys, Liudas**

Born: 1920, Lithuania

1 **Alleged Persecutory Activity:** Guard and platoon leader at
2 the Treblinka Labor Camp in Poland. Also served as a guard at the Trawniki SS Training Camp
3 in Poland and its detachment in Lublin.

4 **Legal History:** A denaturalization case was filed in Aug.
5 1980. Kairys' citizenship was revoked in Dec. 1984. He exhausted his appeals in May 1986.
6 Deportation proceedings began in Mar. 1986. He was ordered deported to Germany in July 1987.
7 His appeals were exhausted in Apr. 1993 and he was deported later that month. *See* p. 450, n. 43.

8
9 Denaturalization: *U.S. v. Kairys*, 600 F. Supp. 1254 (N.D. Ill. 1984), *aff'd*, 782 F.2d 1374
10 (7th Cir.), *cert. denied*, 476 U.S. 1153 (1986)

11 Deportation: *Matter of Kairys*, A07 161 811 (Imm. Ct., Chicago, Ill. 1987), *aff'd in part*
12 *and remanded*, (BIA 1989), *decision on remand* (Imm. Ct., Chicago, Ill. 1990), *aff'd*, (BIA 1991),
13 *aff'd*, *Kairys v. INS*, 981 F.2d 937 (7th Cir. 1992), *cert. denied*, 507 U.S. 1024 (1993)

14
15 **Kalejs, Konrads**

Born: 1913, Latvia

Died: 2001, Australia

16 **Alleged Persecutory Activity:** Officer in the Arajis
17 Kommando (see Bogdanovs) and a guard supervisor at the Salaspils concentration camp near
18 Riga, Latvia.

19
20 **Legal History:** Kalejs never became a U.S. citizen. A
21 deportation action was filed in Nov. 1984 and he was ordered deported to Australia in Nov. 1988.
22 His appeals were exhausted in Mar. 1994 and he was deported the following month. *See* pp. 469-
23 478, 493.

24 *Matter of Kalejs*, A11 655 361 (Imm. Ct., Chicago, Ill. 1988), *aff'd*, (BIA 1992), *aff'd*,
25 *Kalejs v. INS*, 10 F.3d 441 (7th Cir., 1993), *cert. denied*, 510 U.S. 1196 (1994)

26
27 **Kalymon, John**

Born: 1921, Poland

28 **Alleged Persecutory Activity:** Member of the Nazi-
29 sponsored Ukrainian Auxiliary Police in L'vov. His unit rounded up Jews, imprisoned them in a
30 ghetto, oversaw their forced labor, killed those attempting to escape, and delivered others to
31 killing sites for mass execution. Captured wartime reports include one in which Kalymon
32 acknowledged shooting Jews.

33 **Legal History:** A denaturalization action was filed in Jan.
34 2004. Kalymon's citizenship was revoked in March 2007. That ruling was affirmed by the Sixth
35 Circuit in Sept. 2008.

36 **CITES**

1 **Kaminskas, Bronius***

Born: 1903, Lithuania

2 **Died:** 1988, U.S.

3 **Alleged Persecutory Activity:** Participated in the shooting
4 of approximately 600 Jews in Lithuania.

5 **Legal History:** Kaminskas never became a U.S. citizen.
6 INS commenced deportation proceedings in Oct. 1976. A physician chosen by the government
7 deemed him incompetent shortly thereafter. By agreement of all parties, the case was continued
8 with periodic examinations to monitor his condition. The case was dismissed after his death.

9
10 **Karklins, Talivaldis**

Born: 1914, Latvia

11 **Died:** 1983, U.S.

12 **Alleged Persecutory Activity:** Member of Latvian District
13 Police and director of the Madona concentration camp in Latvia. As a member of the District
14 Police, he participated in two mass executions of hundreds of Jews and Soviet activists.

15 **Legal History:** A denaturalization case was filed in 1981. It
16 was pending when he died.

17
18 **Katin, Matthew**

Born: 1914, Lithuania

19 **Died:** 1991, U.S.

20 **Alleged Persecutory Activity:** Member of the 2nd/12th
21 Schutzmannschaft (*see* Benkuskas)

22 **Legal History:** A denaturalization case was filed in 1984.
23 It was pending when he died.

24
25 **Kauls, Juris**

Born: 1912, Latvia

26 **Alleged Persecutory Activity:** Deputy chief and
27 commander of the guards at a Nazi concentration camp near Riga, Latvia

28 **Legal History:** A denaturalization case was filed in 1984.
29 Kauls left for Germany in 1988 while the case was still pending. The court entered a default
30 judgment of denaturalization.

31
32 No citation available

33
34 **Kirsteins, Mikelis**

Born: 1916, Russia

35 **Died:** 1994, U.S.

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Alleged Persecutory Activity: Member of the Arajs

Kommando (*see* Bogdanovs)

Legal History: A denaturalization case was filed in July 1987. The case settled in Dec. 1991, with Kirsteins relinquishing his citizenship and the U.S. agreeing not to file a deportation action unless the defendant's medical condition improved.

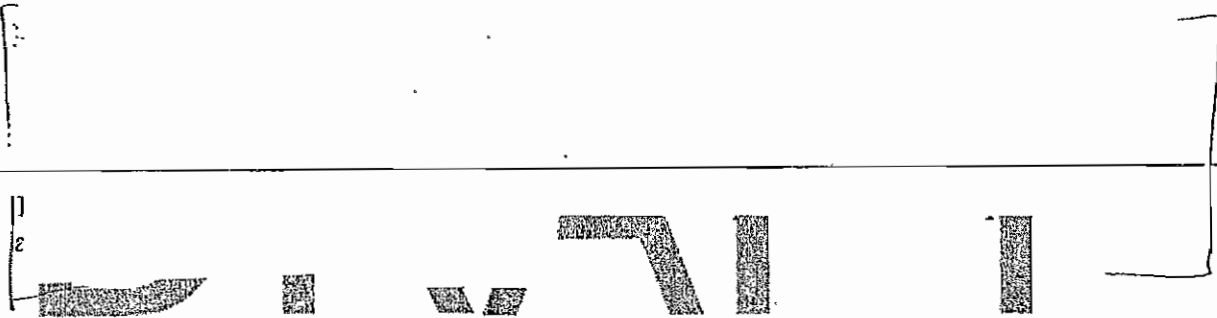
Kisielaitis, Juozas

Born: 1920, Lithuania

Alleged Persecutory Activity: Member of the 2nd/ 12th Schutzmannschaft (*see* Benkunskas)

Legal History: Kisielaitis never became a U.S. citizen.

OSI filed a deportation action in May 1984. Kisielaitis voluntarily left for Canada later that year while the case was still in litigation.



B:6

No citation available.

Kolnhofer, Michael

Born: 1917, Croatia (now Yugoslavia)

Died: 1997, U.S.

Alleged Persecutory Activity: Guard at Sachsenhausen and Buchenwald concentration camps in Germany

Legal History: OSI filed a denaturalization action in Dec. 1996. Kolnhofer began shooting at reporters who sought to interview him after the case was filed. Kolnhofer was shot by the police in the ensuing melee; he died two weeks later. *See* p. 565.

Koreh, Ferenc

Born: 1909, Hungary

Died: 1996, U.S.

Alleged Persecutory Activity: Propagandist who served as editor of a newspaper which published anti-Semitic articles advocating persecution of Jews

Legal History: The government filed a denaturalization action in June 1989 and the court revoked his citizenship in June 1994. He exhausted his appeals in Aug. 1995. The government filed a deportation action in Apr. 1996 but settled the case shortly

1 thereafter because of Koreh's failing health. He admitted responsibility for publishing anti-
2 Semitic articles, conceded his deportability, and designated Hungary as the country to which he
3 should be sent. The court entered an order of deportation and the government agreed not to effect
4 the order unless Koreh's health improved. He died three months later. See pp. 231-240.

5
6 Denaturalization: *U.S. v. Koreh*, 856 F. Supp. 891 (D.N.J. 1994), *aff'd*, 59 F.3d 431 (3rd
7 Cir. 1995)

8 Deportation: *Matter of Koreh*, A7 903 601 (Imm. Ct., Newark, N.J. 1997)

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20 **Kowalchuk, Serge***

Born: 1920, Poland (brother of Mykola)

Died: 1998, Paraguay

21
22 **Alleged Persecutory Activity:** As a member of the
23 Ukrainian militia, he participated in the liquidation of a Jewish ghetto.

24 **Legal History:** INS filed a denaturalization action in Jan.
25 1977 and the case was taken over by OSI at its founding. Kowalchuk's citizenship was revoked
26 in July 1983 (the court concluding only that he occupied a clerical position in a Persecutory unit).
27 Deportation proceedings began in Feb. 1986. Kowalchuk left for Paraguay in May 1987, before
28 the case was fully litigated. The court thereafter ordered his deportation to Paraguay.

29
30 Denaturalization: *U.S. v. Kowalchuk*, 571 F. Supp. 72 (E.D. Pa. 1983), *aff'd en banc*, 773
31 F.2d 488 (3rd Cir. 1985), *cert. denied*, 475 U.S. 1012 (1986)

32 Deportation: *Matter of Kowalchuk*, A07 408 669 (Imm. Ct., Phila., Pa. 1988)

33
34 **Koziy, Bohdan**

Born: 1923, Ukraine

Died: 2003, Costa Rica

35
36 **Alleged Persecutory Activity:** Ukrainian policeman who
37 helped round up Jews and forcibly relocate them to a ghetto. He murdered a four year old Jewish

1 child and a Jewish family.

2 **Legal History:** A denaturalization case was filed in Oct.
3 1979. Koziy's citizenship was revoked in Mar. 1982 and the appeals concluded in 1984.
4 Deportation proceedings began in June 1984. Koziy fled to Costa Rica in 1985, while the case
5 was pending. The proceedings concluded in his absence with the court ordering him deported to
6 the Soviet Union. Poland asked Costa Rica to extradite Koziy in Nov. 2003. He died in Costa
7 Rica nine days thereafter. *See* pp. 514-519.

8
9 Denaturalization: *U.S. v. Koziy*, 540 F. Supp. 25 (S.D. Fla. 1982), *aff'd*, 728 F.2d 1314
10 (11th Cir.), *cert. denied*, 469 U.S. 835 (1984)

11 Deportation: *Matter of Koziy*, A07 347 878 (Imm. Ct., Miami, Fl. 1985)

12
13 **Krysa, Wasyl**

Born: 1925, Poland

14 **Died:** 2004, U.S.

15 **Alleged Persecutory Activity:** Guard at the SS labor camp
16 Poniatowa in Poland and at a subcamp of the Mauthausen concentration camp in Austria

17 **Legal History:** A denaturalization case was filed in Nov.
18 1999 and the court revoked Krysa's citizenship in Oct. 2001. He died while the order was on
19 appeal.

20
21 *U.S. v. Krysa*, 1:99CV-2736 (N.D. Ohio 2001)

22
23 **Kulle, Reinhold**

Born: 1921, Germany

24 **Alleged Persecutory Activity:** Guard at the Gross-Rosen
25 concentration camp in Germany (present-day Poland)

26 **Legal History:** Kulle never became a U.S. citizen. A
27 deportation action was filed in Dec. 1982. He was ordered deported to West Germany in Nov.
28 1984. He went there in 1987 while the ruling was on appeal.

29
30 *Matter of Kulle*, A10 857 195 (Imm. Ct., Chicago, Ill. 1984), *aff'd*, 19 I. & N. Dec. 319
31 (BIA 1985), *aff'd*, *Kulle v. INS*, 825 F.2d 1188 (7th Cir. 1987), *cert. denied*, 484 U.S. 1042 (1988)

32
33 **Kumpf, Josias**

Born: 1925, Yugoslavia (now within Serbia & Montenegro)

34 **Alleged Persecutory Activity:** Guard at Sachsenhausen,
35 Buchenwald and Mittelbau concentration camps in Germany and the Majdanek concentration
36 camp in Poland. He also served at the Trawniki training camp in Poland. During a one-day

1 massacre there of some 7,000 Jews, Kumpf stood guard to prevent the Jews from escaping.

2 **Legal History:** A denaturalization action was filed in Sept.
3 2003; Kumpf's citizenship was revoked in May 2005. That ruling was affirmed in Feb. 2006.
4 Deportation proceedings were begun in June 2006. In Jan. 2007, Kumpf was ordered deported to
5 Germany, Austria or Serbia. The ruling was upheld by the BIA in May 2008. In June 2008,
6 Equipo Kizkor, a Brussels-based human rights organization, asked a Spanish court to indict
7 Kumpf and seek his extradition from the U.S. The suit alleges that he committed crimes against
8 humanity in the persecution of Spanish nationals at Sachsenhausen.

9
10 Denaturalization: *U.S. v. Kumpf*, 2005 WL 1198893 (E.D. Wis. 2005), *aff'd*, 438 F.3d 785
11 (7th Cir. 2006)

12 Deportation: *Matter of Kumpf*, A10 455 476 (Imm. Ct., Chicago, Ill. 2007)

13
14 **Kungys, Juozas**

Born: 1915, Lithuania

15 **Alleged Persecutory Activity:** Member of a locally-formed
16 Lithuanian group involved in the murder of approximately 2,000 Jews. Kungys helped round up
17 and transport Jews to an execution site, distributed firearms and ammunition to an execution
18 squad, forced victims into a mass grave, fired into the pit and exhorted others to do the same.

19 **Legal History:** A denaturalization action was filed in July
20 1981. The case, which went to the Supreme Court to determine what constitutes a "material"
21 misrepresentation, settled in Oct. 1988. Kungys agreed to forfeit his citizenship and the U.S.
22 agreed not to file a deportation action. *See* pp. 127-133.

23
24 *U.S. v. Kungys*, 571 F. Supp. 1104 (D.N.J. 1983), *rev'd and remanded*, 793 F.2d 516 (3rd
25 Cir. 1986), *rev'd and remanded*, 485 U.S. 759 (1988)

26
27 **Kuras, Andres**

Born: 1922, Poland (now Ukraine)

28 **Alleged Persecutory Activity:** Guard at the Trawniki,
29 Poniatowa and Dorohucza labor camps (all in Poland). At Trawniki and Poniatowa, all of the
30 prisoners – some 20,000 men, women and children – were shot to death within a 36-hour period
31 during Nov. 3-4, 1943. Although there is no evidence that Kuras was involved in the massacre,
32 he served as a guard at Trawniki during that time. He later served in the Streibel Battalion (*see*
33 Bilaniuk).

34 **Legal History:** OSI filed a denaturalization case in Sept.
35 2002. The court stripped Kuras of his citizenship in Mar. 2004. An appeal is pending as of this
36 writing.

37
38 *U.S. v. Kuras*, No. 02-4312 (D.N.J. 2004)

1 **Kwoczak, Fedir** Born: 1921, Poland (now Ukraine)
2 Died: 2003, U.S.
3 **Alleged Persecutory Activity:** Guard at Trawniki and
4 Poniatowa labor camps in Poland, took part in the liquidation of Jewish ghettos in Warsaw and
5 Bialystok, Poland and later served in the Streibel Battalion (*see* Bilaniuk)
6 **Legal History:** OSI filed a denaturalization complaint in
7 Sept. 1997; Kwoczak was denaturalized in June 2002. He died while the ruling was on appeal.

8
9 *U.S. v. Kwoczak*, 210 F. Supp.2d 638 (E.D. Pa. 2002)

10
11 **Laipeniks, Edgars** Born: 1913, Latvia
12 Died: 1998, U.S.
13 **Alleged Persecutory Activity:** Member of the Latvian
14 Political Police which pursued Jews and Communists.
15 **Legal History:** Laipeniks never became a U.S. citizen. A
16 deportation case was filed in June 1981. The government lost; the decision was reversed on
17 appeal, and then reversed again. *See* pp. 117-126.

18
19 *Matter of Laipeniks*, A11 937 435 (Imm. Ct. San Diego, Cal. 1982), *rev'd*, 18 I. & N.
20 Dec. 433 (BIA 1983), 1983 WL 183255, *rev'd sub nom. Laipeniks v. INS*, 750 F.2d 1427 (9th Cir.
21 1985)

22
23 **Lehmann, Alexander** Born: 1919, Ukraine
24 Died: 1997, U.S.
25 **Alleged Persecutory Activity:** As deputy chief of police in
26 a Ukrainian town, he ordered, directed and participated in the mass execution of about 350 Jewish
27 men, women and children.
28 **Legal History:** Lehmann never became a U.S. citizen.
29 Deportation proceedings commenced in Nov. 1981. The case settled in Feb. 1984 with the
30 defendant conceding his deportability and the U.S. agreeing not to have him deported unless his
31 health improved.

32
33 *Matter of Lehmann*, A11 218 851 (Imm. Ct., Cleveland, Ohio 1984)

34
35 **Leili, Stefan** Born: 1909, Austria-Hungary
36 Died: 1995, Germany

1 **Alleged Persecutory Activity:** Guard at Mauthausen
2 concentration camp in Austria where he killed a Jewish prisoner by shooting him in the back.

3 **Legal History:** Denaturalization proceedings commenced
4 in Apr. 1986. Leili left for West Germany shortly thereafter and the court issued a default order of
5 denaturalization.

6
7 *U.S. v. Leili*, No. 86-1370 (D.N.J. 1986)

8
9 **Leprich, Johann** **Born:** 1925, Romania

10 **Alleged Persecutory Activity:** Guard at Mauthausen
11 concentration camp in Austria

12 **Legal History:** Denaturalization proceedings commenced
13 in June 1986. The following year, while the case was pending, Leprich left for Canada. The court
14 then revoked his citizenship. In July 2003, Leprich was found hiding in a specially built
15 compartment beneath a basement staircase in his wife's home in Michigan. He was arrested and
16 taken into custody. OSI instituted deportation proceedings that month (based on his illegal entry
17 from Canada rather than his World War II activity.) In Nov. 2003, the court ordered Leprich
18 deported to Romania, Germany or Hungary. That ruling was affirmed by the Sixth Circuit in Jan.
19 2006. *See pp. 149, n. 12, 440-441.* In June 2008, Equipo Nizkor, a Brussels-based human rights
20 organization, asked a Spanish court to indict Leprich and to seek his extradition from the United
21 States. The case alleges that he was involved in crimes against humanity in the persecution of
22 Spanish nationals imprisoned at Mauthausen.

23 Denaturalization: *U.S. v. Leprich*, 666 F. Supp. 967 (E.D. Mich. 1987)

24 Deportation: *Matter of Leprich*, A08 272 762 (Imm. Ct., Detroit, Mich. 2003), *aff'd* (BIA
25 2004), *aff'd*, *U.S. v. Leprich*, 2006 WL 69258 (6th Cir. 2006)

26
27 **Lileikis, Aleksandras** **Born:** 1907, Lithuania

28 **Died:** 2000, Lithuania

29 **Alleged Persecutory Activity:** As Chief of the Saugumus
30 for Vilnius Province, Lileikis signed orders consigning Jewish men, women and children to death
31 by gunfire at Paneriai. *See* Dailide.

32 **Legal History:** Denaturalization proceedings commenced in
33 Sept. 1994. The court revoked Lileikis' citizenship in May 1996. He left for Lithuania the
34 following month, before OSI filed a deportation action. In 1998, Lithuania charged him with
35 genocide. The trial was suspended due to Lileikis' ill health; it resumed in 2000 but was
36 suspended again for health reasons. He died two months later. *See pp. 463-467.*

37
38 *U.S. v. Lileikis*, 929 F. Supp. 31 (D. Mass. 1996)

1 **Lindert, George**

Born: 1923, Romania

2 **Alleged Persecutory Activity:** Guard at Mauthausen
3 concentration camp in Austria and one of its subcamps

4 **Legal History:** Denaturalization proceedings commenced in
5 July 1992. The district court ruled against the government in Sept. 1995. *See* pp. 64-70.

6
7 *U.S. v. Lindert*, 907 F. Supp. 1114 (N.D. Ohio 1995)

8
9 **Linnas, Karl**

Born: 1919, Estonia

Died: 1987, U.S.S.R.

10 **Alleged Persecutory Activity:** Chief of concentration
11 camp in Tartu, Estonia

12 **Legal History:** Denaturalization proceedings commenced
13 in Nov. 1979. Linnas' citizenship was revoked in June 1981 and his appeals were exhausted in
14 Oct. 1982. A deportation action was filed in June 1982 and Linnas was ordered deported in May
15 1983. Appeals were exhausted in Apr. 1987 at which time he was deported to the U.S.S.R. *See*
16 pp. 273-297.

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19 **Denaturalization:** *U.S. v. Linnas*, 527 F. Supp. 426 (E.D.N.Y. 1981), *aff'd*, 685 F.2d 427
20 (2nd Cir.), *cert. denied*, 459 U.S. 883 (1982)

21
22 **Deportation:** *Matter of Linnas*, A08 085 626 (Imm. Ct., N.Y., N.Y. 1983), *aff'd in part*
23 *and remanded* (BIA 1984), *decision on remand* (Imm. Ct., N.Y., N.Y. 1985), *aff'd*, 19 I. & N.
24 Dec. 302 (BIA 1985), *aff'd*, *Linnas v. INS*, 790 F.2d 1024 (2nd Cir.), *cert. denied*, 479 U.S. 995
25 1986), *reh'g denied*, 479 U.S. 1070 (1987)

26
27 **Lipschis, Hans**

Born: 1919, Lithuania

28 **Alleged Persecutory Activity:** Guard at
29 Auschwitz and Birkenau concentration camps in Poland

30 **Legal History:** Lipschis never became a U.S. citizen.
31 Deportation proceedings commenced in June 1982. The case settled in December of that year,
32 with Lipschis agreeing to leave for West Germany within 120 days of the court entering an order
33 of deportation. The court entered its order on Dec. 23, 1982 and Lipschis departed in Apr. 1983
34 – the first OSI defendant to leave the country under court order.

35
36 *Matter of Lipschis*, A10 682 861 (Imm. Ct., Chicago, Ill. 1982)

1 **Lytwyn, Wasyl**

Born: 1921, Poland (now Ukraine)

2 **Alleged Persecutory Activity:** Guard at the Trawniki
3 training camp in Poland. Participated in the liquidation of the Warsaw ghetto and later served in
4 the Streibel Battalion (*see* Bilaniuk).

5 **Legal History:** The case settled in Sept. 1995 prior to the
6 commencement of proceedings. Lytwyn agreed to leave the U.S. within three months. The
7 agreement called for OSI to file a denaturalization complaint at the time of his departure and for a
8 consent order of denaturalization to be entered. The complaint was filed on Dec. 15, after Lytwyn
9 had departed for Ukraine.

10
11 *U.S. v. Lytwyn*, No. 95 C 7538 (N.D. Ill. 1995)

12
13 **Maikovskis, Boleslavs***

Born: 1904, Latvia

Died: 1996, Germany

14 **Alleged Persecutory Activity:** Latvian member of police who
15 participated in the arrest of civilians and the burning of their dwellings.

16 **Legal History:** Maikovskis never became a U.S. citizen.
17 INS filed a deportation case in Oct. 1976. Maikovskis was ordered deported to Switzerland in
18 Aug. 1984. Switzerland would not allow him entry and OSI asked the court to modify its order to
19 designate the U.S.S.R. In Oct. 1987, while that request was pending, Maikovskis left for West
20 Germany. In 1988, Germany charged him with war crimes. His trial was suspended due to the
21 defendant's ill health. *See* pp. 430, 433-434.

22
23
24 *Matter of Maikovskis*, A08 194 566 (Imm. Ct., N.Y., N.Y. 1983), *rev'd*, (BIA 1984), *aff'd*,
25 *Maikovskis v. INS*, 773 F.2d 435 (2nd Cir. 1985), *cert. denied*, 476 U.S. 1182 (1986)

26
27 **Mandycz, Iwan**

Born: 1920 in contested territory which became part of
28 Poland in 1921 (now Ukraine)

29 **Alleged Persecutory Activity:** Guard at Trawniki and
30 Poniatowa labor camps (both in Poland); guard at Sachsenhausen concentration camp in
31 Germany. He served at Poniatowa during the liquidation of the camp's remaining 14,000
32 prisoners in Nov. 1943 and during the burning of their bodies.

33 **Legal History:** Denaturalization proceedings commenced in
34 Apr. 2000. His citizenship was revoked in Feb. 2005. The ruling was affirmed in May 2006.

35 *United States v. Mandycz*, 359 F. Supp.2d 601 (E.D. Mich. 2005), *aff'd*, 447 F.3d 951 (6th
36 Cir. 2006)

1 **Miling, Jakob**

Born: 1924, Yugoslavia (now Serbia)

2 **Alleged Persecutory Activity:** Guard at Gross Rosen
3 concentration camp in Germany (present-day Poland) and the Sachsenhausen concentration camp
4 in Germany.

5 **Legal History:** In Sept. 2002, after learning that OSI was
6 about to file a denaturalization complaint, Miling left for Serbia. OSI filed the complaint the
7 following month. The suit was dismissed in Aug. 2003 after Miling voluntarily renounced his
8 citizenship.

9
10 **Milius, Adolph**

Born: 1918, Lithuania

Died: 1999, Lithuania

11 **Alleged Persecutory Activity:** Member of the Saugumas
12 (*see* Dailide). In Oct. 1941, Milius participated in the arrest of twelve Jews, including two
13 children, who were lured into attempting to escape from the ghetto in a truck driven by a
14 Saugumas informant. Milius also signed an inventory listing items (including wedding rings and
15 gold tooth crowns) seized from another group of Jews arrested for attempting to escape from the
16 ghetto.

17
18 **Legal History:** Denaturalization proceedings commenced in
19 Dec. 1996. Milius left for Lithuania while the case was pending; the court thereafter issued an
20 order of denaturalization.

21
22 *U.S. v. Milius*, No. 96-2534-CIV-T-25(A) (M.D. Fla. 1998)

23
24 **Mineikis, Antanas**

Born: 1918, Lithuania

Died: 1997, Lithuania

25 **Alleged Persecutory Activity:** As a member of the 2nd / 12th
26 Schutzmannschaft (*see* Benkuskas), Mineikis drove victims to the site of their execution.

27 **Legal History:** Denaturalization proceedings commenced in
28 Oct. 1991. Mineikis' citizenship was revoked in Jan. 1992 and OSI filed a deportation action in
29 June 1992. Mineikis was ordered deported to Lithuania in Aug. 1992 and was sent there the
30 following month.

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40 **Naujalis, Juozas**

Born: 1919, Lithuania

41 **Alleged Persecutory Activity:** Member of the 2nd / 12th
42 Lithuanian Schutzmannschaft (*see* Benkuskas)

1 **Legal History:** Naujalis never became a U.S. citizen.
2 Deportation proceedings commenced in Oct. 1995. Naujalis was ordered deported to Lithuania in
3 Sept. 1997. Once the ruling was affirmed by the Seventh Circuit, Naujalis left for Lithuania
4 rather than seeking review from the Supreme Court.

5
6 *Matter of Naujalis*, A07 258 120 (Imm. Ct., Chicago, Ill. 1997), *aff'd*, (BIA 2000), *aff'd*,
7 *Naujalis v. INS*, 240 F.3d 642 (7th Cir. 2001)

8
9 **Negele, Michael** **Born:** 1920, Romania
10 **Alleged Persecutory Activity:** Guard and dog handler at
11 the Sachsenhausen concentration camp in Germany and later at the Theresienstadt Jewish ghetto
12 in what is now the Czech Republic.

13 **Legal History:** Denaturalization proceedings commenced in
14 Sept. 1997. The court revoked Negele's citizenship in July 1999. His appeals were exhausted in
15 Feb. 2001 and OSI filed a deportation case two weeks later. He was ordered deported to
16 Romania, or alternatively Germany, in July 2003 and the decision was affirmed in June 2004.
17 The Supreme Court denied review. To date, no country is willing to accept him.

18
19 **Denaturalization:** *U.S. v. Negele*, No. 4:97CV01810ERW (E.D. Mo. 1999), *aff'd*, 222
20 F.3d 443 (9th Cir. 2000), *cert. denied*, 531 U.S. 1153 (2001)

21
22 **Deportation:** *Matter of Negele*, A7 443 824 (Imm. Ct., St. Louis, Mo. 2002), *aff'd* (BIA
23 2003), *aff'd*, *Negele v. Ashcroft*, 368 F.3d 981 (8th Cir. 2004), *cert. denied*, 125 S.Ct. 815 (2004)

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33 **Osidach, Wolodymir**

Born: 1904, Poland

Died: 1981, U.S.

Alleged Persecutory Activity: Member of a Ukrainian
36 police unit which placed Jews in ghettos and forced labor battalions.

37 **Legal History:** Denaturalization proceedings commenced in
38 Nov. 1979. (This was OSI's first trial.) The court revoked Osidach's citizenship in Mar. 1981.
39 He died two months later.

40
41 *U.S. v. Osidach*, 513 F. Supp. 51 (E.D. Pa. 1981)

42
43 **Palciauskas, Kazys**

Born: 1907, Lithuania

1 **Died:** 1992, U.S.

2 **Alleged Persecutory Activity:** As mayor of Nazi-occupied
3 Kaunas, then the capital of Lithuania, Palciauskas helped implement a Nazi directive ordering all
4 Jews into a ghetto. He also set up a special housing subcommittee which gave Lithuanians homes
5 formerly owned by Jews.

6 **Legal History:** Denaturalization proceedings commenced in
7 June 1981. The court revoked Palciauskas' citizenship in Mar. 1983. Appeals were completed in
8 June 1984 and OSI filed a deportation action that September. Palciauskas was ordered deported
9 to the Soviet Union in July 1986. On appeal, the Circuit sent the case back to immigration court
10 for additional findings. Palciauskas died before the findings were made.

11
12 Denaturalization: *U.S. v. Palciauskas*, 559 F. Supp. 1294 (M.D. Fla. 1983), *aff'd*, 734
13 F.2d 625 (11th Cir. 1984)

14 Deportation: *Matter of Palciauskas*, A7 149 053 (Imm. Ct., Atlanta, Ga. 1986), *aff'd* (BIA
15 1990), *rev'd in part and remanded*, *Palciauskas v. INS*, 939 F.2d 963 (11th Cir. 1991)

16
17 **Palij, Jakiw**

Born: 1923, Poland (now Ukraine)

18 **Alleged Persecutory Activity:** Guard at Trawniki labor
19 camp in Poland; later served in the Streibel Battalion (*see* Bilaniuk)

20 **Legal History:** Denaturalization proceedings commenced in
21 May 2002. The court revoked Palij's citizenship in July 2003. OSI filed a deportation action in
22 Nov. 2003 and the court ordered him deported to Ukraine in June 2004. In Sept. 2004, the order
23 was amended to allow deportation to Germany, Poland or any other country willing to accept him.
24 The BIA dismissed his appeal in Dec. 2006.

25
26 Denaturalization: *U.S. v. Palij*, No. CV 02-2802 (E.D.N.Y. 2002)

27 Deportation: *Matter of Palij*, A7 230 771 (Imm. Ct., N.Y., N.Y. 2004), *aff'd* (BIA 2006)

28
29 **Paskevicius, Mecis***
30 (aka Mike Pasker)

Born: 1901, Lithuania

Died: 1993, U.S.

31 **Alleged Persecutory Activity:** Member of the Lithuanian
32 Security Police

33 **Legal History:** INS filed a denaturalization case in Jan.
34 1977. Paskevicius' citizenship was revoked in Aug. 1979. OSI filed a deportation action in June
35 1980. In Dec. 1980, a court adjudged Paskevicius mentally incompetent and the case was
36 discontinued.

37
38 **Petkiewytch, Leonid**

Born: 1923, Poland

39 **Alleged Persecutory Activity:** Civilian guard at a labor
40 education camp in Germany

41 **Legal History:** Petkiewytch never became a U. S. citizen.
42 OSI filed a deportation action in 1985. In Mar. 1987 an immigration judge rejected OSI's claim.

1 The government appealed and the decision was reversed in May 1990. That decision, in turn, was
2 reversed in Sept. 1991. See pp. 134-140.

3
4 *Matter of Petkiewytsch*, A08 857 812 (Imm. Ct., Cincinnati, Ohio 1987), *rev'd*, (BIA
5 1990), *rev'd*, *U.S. v. Petkiewytsch*, 945 F.2d 871 (6th Cir. 1991)

6
7 **Popczuk, Michael** **Born:** 1919, Ukraine
8 **Died:** 1983, U.S.
9 **Alleged Persecutory Activity:** Ukrainian policeman
10 involved in a roundup and forced march of Jews. Witnesses reported that Popczuk harnessed
11 Jews to carts as if they were horses and forced them to haul loads between villages.
12 **Legal History:** OSI filed a denaturalization action in June
13 1983. Popczuk committed suicide six days later.

14
15 **Quintus, Peter** **Born:** 1915, Yugoslavia
16 **Died:** 1997, U.S.
17 **Alleged Persecutory Activity:** Guard at Majdanak
18 concentration camp in Poland
19 **Legal History:** OSI filed a denaturalization action in Mar.
20 1987. A consent decree revoking Quintus' citizenship was entered in June 1988. Due to
21 Quintus' ill health, the U.S. agreed not to file a deportation action.
22
23 *U.S. v. Quintus*, No. 87-CV-70950-DT (E.D. Mich. 1988)

24
25 **Reger, Stefan** **Born:** 1925, Yugoslavia
26 **Died:** 2003, Germany
27 **Alleged Persecutory Activity:** Guard at Auschwitz death
28 camp in Poland
29 **Legal History:** A denaturalization action was filed in Dec.
30 1987. Reger left for Germany while the case was pending. The court revoked his citizenship in
31 Sept. 1988.

32
33 *U.S. v. Reger*, No. 87-4906 (CSF) (D.N.J. 1988)

34
35 **Reimer, Jakob** **Born:** 1918, Ukraine
36 **Died:** 2005, U.S.
37 **Alleged Persecutory Activity:** Trainer and non-
38 commissioned officer at the training camp in Trawniki, Poland; participated in the liquidation of
39 the Jewish ghettos in Lublin, Warsaw and Czestochowa, Poland. Later served in the Streibel
40 Battalion (*see* Bilaniuk)
41 **Legal History:** OSI filed a denaturalization case in June
42 1992. The court revoked Reimer's citizenship in Sept. 2002. The appellate court affirmed in Jan.

1 2004. Deportation proceedings were begun in May 2005; Reimer died before the case was
2 adjudicated.

3
4 *U.S. v. Reimer*, 2002 WL 32101927 (S.D.N.Y. 2002), *aff'd*, 356 F.3d 456 (2nd Cir. 2004)

5
6 **Rinkel, Elfriede**

Born: 1922, Germany

7 **Alleged Persecutory Activity:** Guard at Rabensbrück
8 concentration camp in Germany. The camp housed only females. Rinkel never became a U.S.
9 citizen. OSI filed a deportation action in May 2006. The case settled, and in June 2006 the court
10 issued an order of deportation to Germany. Pursuant to the terms of the settlement, Rinkel left
11 for Germany in Aug. 2006.

12
13 **Rudolph, Arthur**

Born: 1906, Germany

Died: 1996, Germany

14 **Alleged Persecutory Activity:** Operations Director of the
15 Mittelwerk underground V-2 missile plant, part of the Dora-Nordhausen concentration camp
16 complex in central Germany. The plant used slave labor.

17
18 **Legal History:** The case settled prior to OSI's filing suit.
19 Rudolph went to Germany in Mar 1984 and surrendered his U.S. citizenship two months later.
20 See pp. 333-343.

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40 **Schellong, Conrad**

Born: 1910, Germany

41 **Alleged Persecutory Activity:** Served at the Sachsenburg
42 and Dachau concentration camps in Germany. He began as a platoon leader at Sachsenburg and
43 was subsequently given command over approximately 30 of the 100 to 120 guards.

1 **Legal History:** OSI filed a denaturalization case in Mar.
2 1981. The court revoked Schellong's citizenship in Sept. 1982. His appeals were exhausted in
3 Jan. 1984. OSI filed a deportation action Dec. 1983. In Sept. 1984, the court found him
4 deportable to the Federal Republic of Germany. He exhausted his appeals in Apr. 1987.
5 Germany agreed to accept him in Sept. 1988 and he was flown there immediately.
6

7 Denaturalization: *U.S. v. Schellong*, 547 F. Supp. 568 (N.D. Ill. 1982), *aff'd*, 717 F.2d 329
8 (7th Cir. 1983), *cert. denied*, 465 U.S. 1007 (1984)

9 Deportation: *Matter of Schellong*, A10 695 922 (Imm. Ct., Chicago, Ill. 1984), *aff'd*, (BIA
10 1985), *aff'd, sub nom. Schellong v. INS*, 805 F.2d 655 (7th Cir. 1986), *cert. denied*, 481 U.S. 1004
11 (1987)
12

13 **Schiffer, Nikolaus**

Born: 1919, U.S

14 **Alleged Persecutory Activity:** Guard at the
15 Sachsenhausen, Majdanek and Hersbrueck concentration camps in Germany; served at the SS
16 training and base camp in Trawniki, Poland

17 **Legal History:** OSI filed a denaturalization
18 complaint in Sept. 1991. The court revoked Schiffer's citizenship in Aug. 1993 and his appeals
19 were exhausted in July 1994. A deportation action was filed in Feb. 1995. He was ordered
20 deported to Romania in May 1997. Romania agreed to admit him in May 2002 at which time he
21 was deported. *See pp. 434-435.*

22 Denaturalization: *U.S. v. Schiffer*, 831 F. Supp. 1166 (E.D. Pa. 1993), *aff'd*, 31 F.3d 1175
23 (3rd Cir. 1994) (Table)
24

25 Deportation: *Matter of Schiffer*, A08 483 627 (Imm. Ct., Philadelphia, Pa. 1997), *aff'd*,
26 (BIA 1998), *aff'd*, (3rd Cir. December 28, 1999)
27

28 **Schmidt, Michael**

Born: 1923, Romania

29 **Alleged Persecutory Activity:** Armed guard at the
30 Sachsenhausen concentration camp in Germany.
31

32 **Legal History:** OSI filed a denaturalization case in
33 Nov. 1988. The court revoked his citizenship in Jan. 1990 and his appeals were exhausted in Oct.
34 1991. A deportation action was filed the following month. The case settled in May 1992 with
35 Schmidt agreeing to depart by the end of the year. He left for Germany in Jan. 1993. *See p. 451,*
36 *n. 49.*
37

38 Denaturalization: *U.S. v. Schmidt*, 1990 WL 6667 (N.D. Ill. 1990), *aff'd*, 923 F.2d 1253
39 (7th Cir.), *cert. denied*, 502 U.S. 921 (1991)
40

41 **Schuk, Mykola**

Born: 1909, Poland

Died: 1986, U.S.
42

1 **Alleged Persecutory Activity:** Served first as
2 deputy and then as interim chief of a Nazi-affiliated police force in Ukraine. One eyewitness
3 accused him of participating in a mass execution of Jews by machine gun fire before an open
4 trench.

5 **Legal History:** OSI filed a denaturalization
6 complaint in Feb. 1983. The case settled in Oct. 1985 with the court revoking Schuk's citizenship
7 and the U.S. agreeing not to file deportation proceedings. [

8
9
10 **Schweidler, Alexander**

Born: 1922, Slovakia

Died: 2000, England

11 **Alleged Persecutory Activity:** Armed guard at
12 Mauthausen concentration camp in Austria where he murdered two Russian prisoners of war.

13 **Legal History:** Schweidler never became a U.S.
14 citizen. OSI filed a deportation action in July 1993. The case settled in Oct. 1993 with
15 Schweidler agreeing to leave the country by Feb. 1994. He went to England. *See p. 495.*

16
17
18 **Sokolov, Vladimir**

Born: 1913, Russia

Died: 1991, Canada

19 **Alleged Persecutory Activity:** Propagandist for a
20 Nazi-run newspaper in the occupied region of the U.S.S.R.

21 **Legal History:** OSI filed a denaturalization action
22 in Jan. 1982. Sokolov's citizenship was revoked in June 1986 and he exhausted his appeals in
23 May 1988. OSI filed a deportation action that same month. Shortly thereafter, Sokolov left for
24 Canada. *See pp. 192-204.*

25
26
27 Denaturalization: *U.S. v. Sokolov*, No. N-92-56-TFM (D. Conn. 1986), *aff'd*, 814 F.2d 864
28 (2nd Cir. 1987), *cert. denied*, 486 U.S. 1005 (1988)

29 Deportation: *Matter of Sokolov*, A08 049 043 (Imm. Ct., Hartford, Conn. 1989)

30
31 **Soobzokov, Tscherim**

Born: 1918, Russia

Died: 1985, U.S.

32 **Alleged Persecutory Activity:** Soobzokov was not
33 charged with any persecutory activity, but rather with having failed to disclose his complete
34 military and criminal activity at the time of his visa application.

35 **Legal History:** A denaturalization complaint was
36 filed in Dec. 1979. The government dismissed the complaint in July 1980 when new information
37 indicated that Soobzokov had made full disclosure. Soobzokov was murdered in Aug. 1985 by
38 someone who believed he was involved in Nazi atrocities. *See pp. 344-357.*

39
40
41 **Sprogis, Elmars**

Born: 1914, Latvia

Died: 1991, U.S.

1 **Alleged Persecutory Activity:** Assistant Chief of
2 Police in Gulbene, Latvia. He was involved in the arrest, transportation, and confiscation of
3 property from nine Jews, the transportation of 100 to 150 Jews to the site of their execution, and
4 the appropriation of furniture from the homes of arrested Jews.

5 **Legal History:** A denaturalization complaint was
6 filed in June 1982. The government lost the case both in the district court and on appeal. *See pp.*
7 *101-105.*

8
9 *U.S. v. Sprogis*, No. CV-82-1804 (E.D.N.Y. 1984), *aff'd*, 763 F.2d 115 (2nd Cir. 1985)

10
11 **Stelmokas, Jonas**

Born: 1916, Russia

Died: 1998, U.S.

12 **Alleged Persecutory Activity:** Platoon commander
13 in the 3rd / 11th Schutzmannschaft, based in Kaunas (Kovno), Lithuania; commander of the guards
14 at the Jewish ghetto in Kaunas. His battalion took part in the massacre of 9,200 Jews in the
15 ghetto.
16

17 **Legal History:** The government filed a
18 denaturalization complaint in June 1992. Stelmokas' citizenship was revoked in Aug. 1995. He
19 exhausted his appeals in May 1997. The government filed a deportation action two months later.
20 Stelmokas was ordered deported to Lithuania in Apr. 1998. He died while that order was on
21 appeal.

22
23 **Denaturalization:** *U.S. v. Stelmokas*, 1995 WL 464264 (E.D. Pa. 1995), *aff'd*, 100 F.3d 302
24 (3rd Cir. 1996), *cert. denied*, 520 U.S. 1242 (1997)

25 **Deportation:** *Matter of Stelmokas*, A07 272 603 (Imm. Ct., Phila., Pa. 1998)

26
27 **Szehinskyj, Theodor**

Born: 1924, Poland (now Ukraine)

28 **Alleged Persecutory Activity:** Guard at the Gross
29 Rosen concentration camp in Germany (now Poland), Sachsenhausen concentration camp in
30 Germany and the Warsaw concentration camp in Poland.

31 **Legal History:** OSI commenced denaturalization
32 proceedings in Oct. 1999. Szehinskyj's citizenship was revoked in July 2000 and his appeals
33 were exhausted in Oct. 2002. A deportation action was filed in Sept. 2002 and in Apr. 2003 he
34 was ordered deported to Ukraine, Poland or Germany. That order was affirmed by the BIA in
35 Aug. 2004 and by the Third Circuit in Dec. 2005.

36
37 **Denaturalization:** *U.S. v. Szehinskyj*, 104 F. Supp.2d 480 (E.D. Pa. 2000), *aff'd*, 277 F.3d
38 331 (3rd Cir.), *cert. denied*, 537 U.S. 880 (2002)

39 **Deportation:** *Matter of Szehinskyj*, A8-900-159 (Imm. Ct., Phila., Pa. 2003), *aff'd*
40 (BIA 2004), *aff'd sub nom. Szehinskyj v. Attorney General*, 432 F.3d 253 (3rd Cir. 2005)

41
42 **Szendi, Jozsef**

Born: 1915, Hungary

Died: 2004, Hungary

1 **Alleged Persecutory Activity:** As a member of
2 the Royal Hungarian Gendarmerie, Szendi participated in searching for, arresting and transporting
3 Jews to annihilation sites in Poland. In one incident, Szendi participated in a raid on a Swedish
4 facility in search of Jews being hidden in the rescue effort directed by Swedish diplomat Raoul
5 Wallenberg. Finding a group of Jews, Szendi ordered them, at gunpoint, to surrender to his
6 comrades who were massed outside the building and armed with sub-machine guns.

7 **Legal History:** The government filed a
8 denaturalization action in Sept. 1992. The case was settled in Feb. 1993. Szendi agreed to leave
9 the U.S. within four months at which time his citizenship would be revoked. He went to Slovakia
10 in June 1993 and later moved to Hungary.

11
12 **Tannenbaum, Jakob**

Born: 1915, Poland

Died: 1989, U.S.

13
14 **Alleged Persecutory Activity:** Supervisory Jewish
15 kapo at the Goerlitz concentration camp in Poland.

16 **Legal History:** The government commenced
17 denaturalization proceedings in May 1987. The case settled in Feb. 1988. Tannenbaum
18 relinquished his citizenship and the U.S. agreed not to file a deportation action unless
19 Tannenbaum's health improved. See pp. 106-116

20
21 *U.S. v. Tannenbaum*, No. CV-87-15-5 (E.D.N.Y. 1988)

22
23 **Theodorovich, George**

Born: 1922, Poland

24 **Alleged Persecutory Activity:** As a member of
25 the Ukrainian police, he filed a report acknowledging that he had fired six rounds at Jews who
26 were hiding during a "Jewish action."

27 **Legal History:** The government commenced
28 denaturalization proceedings in Aug. 1983. Theodorovich failed to appear for his deposition and
29 the district court entered a default judgment, revoking his citizenship in Jan. 1984. The
30 government began deportation proceedings in Mar. 1984 and Theodorovich was ordered deported
31 to Argentina or the U.S.S.R. in Oct. 1987. He left for Paraguay in Dec. 1988 while the case was
32 on appeal.

33
34 **Denaturalization:** *U.S. v. Theodorovich*, 102 F.R.D. 587 (D.D.C. 1984), *aff'd per curiam*,
35 764 F.2d 926 (D.C. Cir. 1985)

36 **Deportation:** *Matter of Theodorovich*, A06 871 262 (Imm. Ct., Baltimore, Md. 1987),
37 *aff'd*, (BIA 1989)

38
39 **Tittjung, Anton**

Born: 1924, Yugoslavia

40 **Alleged Persecutory Activity:** Guard at
41 Mauthausen concentration camp in Austria and one of its subcamps

42
43 **Legal History:** The government commenced

1 denaturalization proceedings in Sept. 1989. The district court revoked citizenship in Dec. 1990.
2 Tittjung's appeals were exhausted in June 1992. Deportation proceedings were begun the
3 following month. He was ordered deported to Croatia in Mar. 1994. His appeals and collateral
4 attacks were exhausted in June 2001. As of this writing, he remains in the U.S. See pp. 437-447.
5 In June 2008, Equipo Nizkor, a Brussels-based human rights organization, asked a Spanish court
6 to indict Tittjung and to seek his extradition from the United States. The case alleges that he was
7 involved in crimes against humanity in the persecution of Spanish nationals imprisoned at
8 Mauthausen.

9
10 **Trifa, Valerian***

Born: 1914, Romania

Died: 1987, Portugal

11
12 **Alleged Persecutory Activity:** Leader of a fascist
13 student movement and editor of an anti-Semitic weekly newspaper

14 **Legal History:** The U.S. Attorney's office
15 commenced denaturalization proceedings in May 1975. OSI assumed responsibility in 1979. The
16 case settled in Aug. 1980 with Trifa agreeing to forfeit his citizenship. Deportation proceedings
17 began in Oct. 1980. Trifa consented to the entry of an order of deportation to Switzerland in Oct.
18 1982. Switzerland refused to accept him. He went to Portugal in Aug. 1984. See pp. 205-230.

19
20 **Trucis, Arnolds**

Born: 1909, Latvia

Died: 1981, U.S.

21
22 **Alleged Persecutory Activity:** Member of the
23 Latvian Auxiliary Police and the Security Service of the SS which guarded and beat Jewish
24 civilians.

25 **Legal History:** A denaturalization action was filed
26 in June 1980. Trucis died before the matter was resolved.

27
28 **Valkavickas, Vincas**

Born: 1920, Lithuania

29 **Alleged Persecutory Activity:** Member of Nazi-
30 sponsored Lithuanian auxiliary police who guarded Jews at a former Polish military training area.
31 While he served as a guard, 3,726 Jews were shot to death over a two-day period.

32 **Legal History:** Valkavickas entered the U.S. in
33 1950 but did not apply for citizenship until 1994. Based on information provided by OSI
34 (including information given by Valkavickas himself during an OSI interview), his application for
35 citizenship was denied. The government filed a deportation action in Sept. 1998. Pursuant to the
36 terms of a settlement agreement, Valkavickas left the U.S. for Lithuania in June 1999.

37
38 *Matter of Valkavickas, A07 900 398 (Imm. Ct., Chicago, Ill. 1999)*

39
40 **Virkutis, Antanas**

Born: 1913, Lithuania

Died: 1993, U.S.

41
42 **Alleged Persecutory Activity:** Warden of Siauliai
43 Prison, Lithuania from 1941 to 1944. The prison was used by the Germans as a detention center

1 for Jews and others, many of whom were brutalized and executed with the cooperation and
2 assistance of prison employees under Virkutis' command.

3 **Legal History:** OSI filed a denaturalization action
4 in Mar. 1983. The case settled in Apr. 1988. Virkutis relinquished his citizenship and, due to his
5 deteriorating health, the U.S. agreed not to file a deportation action.

6
7 *U.S. v. Virkutis*, No. 83 C 1758 (N.D. Ill. 1988)

8
9 **Von Bolschwing, Otto**

Born: 1909, Germany

Died: 1982, U.S.

10
11 **Alleged Persecutory Activity:** Working under
12 Adolf Eichmann in the Jewish Affairs Office of the Allgemeine SS, von Bolschwing proposed
13 various repressive measures against the Jews. As chief of Nazi intelligence agents in Romania he
14 provided sanctuary to several fascist leaders and helped arrange their escape to Germany.

15 **Legal History:** Denaturalization proceedings
16 commenced in May 1981. The case settled in Dec. 1981. Von Bolschwing forfeited his
17 citizenship and the U.S. agreed not to seek deportation unless von Bolschwing's health improved.
18 *See pp. 261-272.*

19
20 **Walus, Frank**

Born: 1922, Germany

Died: 1994, U.S.

21
22 **Alleged Persecutory Activity:** Member of the
23 Gestapo who turned Jews in and, in some cases, murdered them

24 **Legal History:** A denaturalization case was filed by
25 the U.S. Attorney's office in Jan. 1977. The district court revoked Walus' citizenship in May
26 1978. In Feb. 1980 the court of appeals remanded for a new trial based on newly-discovered
27 exculpatory evidence. Because the evidence did not support the prosecution, the government
28 dismissed the case. *See pp. 71-100.*

29
30 *U.S. v. Walus*, 453 F. Supp. 699 (N.D. Ill. 1978), *remanded*, 616 F.2d 283 (7th Cir. 1980)

31
32
33 **Wasylyk, Mykola**

Born: 1923, Poland (now Ukraine)

34 **Alleged Persecutory Activity:** Guard at Trawniki
35 and Budzyn labor camps in Poland. Later served in the Streibel Battalion (*see Bilaniuk*)

36 **Legal History:** OSI commenced denaturalization
37 proceedings in Nov. 1999. The district court revoked his citizenship in July 2001. OSI filed a
38 deportation action in Dec. 2001. In Oct. 2002, the court ordered Wasylyk deported to
39 Switzerland, or, if Switzerland would not accept him, Ukraine. The ruling was affirmed in Mar.
40 2004. In Sept. 2004, ICE arrested him (without any discussion with, or encouragement from,
41 OSI) for failing to do everything he could to effect his deportation. He was released in August
42 2005 because the law does not allow unlimited detention.

1 Denaturalization: *U.S. v. Wasyluk*, 162 F. Supp.2d 86 (N.D.N.Y. 2001)

2 Deportation: *Matter of Wasyluk*, A07 167 648 (Imm. Ct., N.Y., N.Y. 2002), *aff'd* (BIA
3 2004)

4
5 **Wieland, Joseph**

Born: 1908, Austria-Hungary (now Yugoslavia)

6 **Alleged Persecutory Activity:** Guard at Mauthausen
7 and one of its subcamps

8 **Legal History:** OSI commenced denaturalization
9 proceedings in Apr. 1986. Wieland left for West Germany shortly thereafter. In June 1986, the
10 district court entered a default judgment revoking Wieland's citizenship.

11
12 *U.S. v. Wieland*, No. C-86-1750 MHP (N.D. Cal. 1986)

13
14 **Wittje, Joseph**

Born: 1920, Romania

Died: 2006, U.S.

15
16 **Alleged Persecutory Activity:** Guard at the
17 Sachsenhausen concentration camp in Germany

18 **Legal History:** OSI commenced denaturalization
19 proceedings in Sept. 2003. In Aug. 2004, the district court revoked Wittje's citizenship.
20 The ruling was affirmed in Sept. 2005 and a deportation case was filed in Apr. 2006.

21
22 *U.S. v. Wittje*, 333 F. Supp.2d 737 (N.D. Ill. 2004), *aff'd* 422 F.3d 479 (7th Cir. 2005)

23
24 **Wojciechowski, Chester**

Born: 1920, Germany

25 **Alleged Persecutory Activity:** Guard at Majdanek
26 concentration camp in Poland

27 **Legal History:** OSI commenced denaturalization
28 proceedings in July 1985. Wojciechowski moved to West Germany two years later, before
29 litigation was complete. A consent order of denaturalization was issued in Oct. 1987. *See* p. 307.

30
31 **Zajanckauskas, Vladas**

Born: 1915, Lithuania

32 **Alleged Persecutory Activity:** Trained men at
33 Trawniki and participated in the final liquidation of the Warsaw ghetto; he later served in the
34 Streibel Battalion (*see* Bilaniuk)

35 **Legal History:** OSI began denaturalization
36 proceedings in June 2002. The district court revoked Zajanckauskas' citizenship in Jan. 2005.
37 The ruling was affirmed in Mar. 2006. Deportation proceedings were begun in July 2006. He
38 was ordered deported to Lithuania in Aug. 2007.

39
40 Denaturalization: *United States v. Zajanckauskas*, 353 F. Supp.2d 196 (D. Mass. 2005),
41 *aff'd*, 441 F.3d 32(1st Cir. 2006)

42 Deportation: CITE

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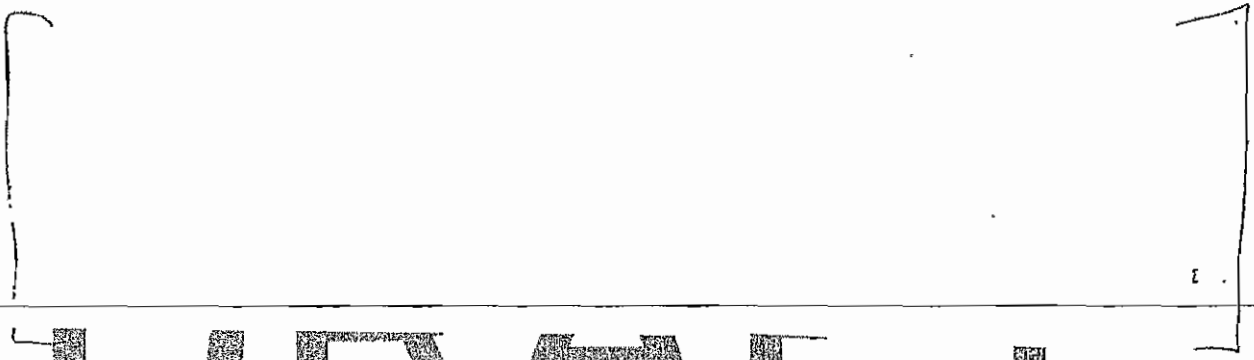
Ziegler, Johann

Born: 1907, Yugoslavia

Alleged Persecutory Activity: Guard at the Kaunas concentration camp in Lithuania and at the Stutthof and Gotenhafen concentration camps in Poland.

Legal History: OSI commenced denaturalization proceedings in June 1990. Ziegler left for Austria in early 1991. A default judgment of denaturalization was entered shortly thereafter.

U.S. v. Ziegler, No. 90-3064-CBM (C.D. Cal. 1991)



Glossary of Acronyms and Foreign Terms

AAG	Assistant Attorney General
Abwehr	German military intelligence
ADL	Anti-Defamation League
AK	Arajs Kommando – the Latvian Auxiliary Security Police
BDC	Berlin Document Center
BIA	Board of Immigration Appeals
CAT	Convention Against Torture
DAAG	Deputy Assistant Attorney General
DCM	Deputy in Charge of Mission (at U.S. embassy)
DHS	Department of Homeland Security
DD	Department of Defense
DOJ	Department of Justice
DOS	Department of State
DPA	Displaced Persons Act
DPC	Displaced Persons Commission
DHS	Department of Homeland Security
EU	European Union
FOIA	Freedom of Information Act
FRG	Federal Republic of Germany (West Germany)
GDR	German Democratic Republic (East Germany)
ICE	Immigration and Customs Enforcement

INA Immigration and Nationality Act

INS Immigration and Naturalization Service

IRO International Refugee Organization

IWG Interagency Working Group

JCR Commission on European Jewish Cultural Reconstruction

JDL Jewish Defense League

JDO Jewish Defense Organization

LPP Latvian Political Police

Ludwigsburg Zentrale
 Stelle repository for records from war crimes trials held in Germany

MFN Most Favored Nation

MOU Memorandum of Understanding

NSC National Security Council

NSDAP Nazi Party

NYO New York office

OIA Office of International Affairs

OIL Office of Immigration Litigation (DOJ)

Omakaitse Estonian Self Defense Unit which worked with the Nazis

OPC Office of Policy Coordination (CIA)

OPR Office of Professional Responsibility (Department of Justice)

OSI Office of Special Investigations

OSS Office of Strategic Services (predecessor to the CIA)

RCMP Royal Canadian Mounted Police

Rech Russian-language newspaper published by the Germans after they invaded the U.S.S.R.

RFE Radio Free Europe

RIS Romanian Intelligence Service

RRA Refugee Relief Act

RSA Reich Security Main Office

SA Nazi storm trooper

SD Intelligence gathering arm for the Nazis

SIU Special Investigations Unit (Australia)

SLU Special Litigation Unit, predecessor of OSI

Saugumas Lithuanian Security Police

Stasi East German secret police

SWC Simon Wiesenthal Center

TGC Tripartite Gold Commission

Totenkopf (Death's Head) battalion – organization whose members served as guards at Nazi concentration and death camps

UNCHR United Nations Commission on Human Rights

UNWCC United Nations War Crimes Commission

USAO United States Attorney's Office

VFW Veterans of Foreign Wars

Wehrmacht German Army

WJC World Jewish Congress

YIVO

a New-York based institute for East European Jewish studies

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