

12. "Robert Jan Verbelen Dies at 79," by Ralph Blumenthal, *The New York Times*, Jan. 8, 1991.

Josef Mengele – The Angel of Death

That a piece of Dr. Josef Mengele's scalp would wind up in the desk of the OSI Director is an irony that Mengele could hardly have imagined.

Josef Mengele was one of the most notorious Nazis to escape prosecution. He spent most of the war at the Auschwitz concentration camp, where he helped determine which inmates would go to the gas chambers and which, by virtue of their ability to work, could be used as forced laborers. Hundreds of thousands were sent to perish immediately. Many of those "spared" became subjects in gruesome and sadistic pseudomedical experiments, including castration, forced miscarriages and intentional exposure to fatal disease and radiation. Mengele's work at Auschwitz led many to refer to him as the Angel of Death.

Mengele's doings and whereabouts after the war were the subject of much pop culture speculation.¹ The general consensus was that he was in Paraguay, living in splendor under the protection of its dictator, General Alfredo Stroesser.² He was therefore not on OSI's agenda.³

All that changed in January 1985, when the SWC released documents obtained from the Department of Defense under the Freedom of Information Act. The material indicated that Mengele might have been arrested and released in the American occupation zone of Vienna shortly after World War II, and that he might have applied for a Canadian visa in 1962.⁴ This revelation set off a spate of news stories suggesting that Mengele had been in the United States.⁵

The story was particularly poignant as it came on the eve of the fortieth anniversary of the liberation of Auschwitz. The Canadian Prime Minister immediately called for an "urgent investigation." In Washington, the State Department's Assistant Secretary of State for Human Rights and Humanitarian Affairs announced that the Administration wanted the matter examined

by OSI.⁶

The Justice Department welcomed the opportunity.⁷ The Attorney General called on OSI to compile all credible evidence on Mengele's current whereabouts as well as information concerning his travel in occupied Germany, his suspected flight to South America and the reliability of reports that he had visited the United States.⁸

The proposed inquiry differed from the Barbie and Verbelen reports in one significant respect: there needed to be a worldwide hunt for Mengele. In light of this, the Department of Justice assigned the U.S. Marshals Service to work with OSI. As originally conceived, OSI would focus on the historical issues: had Mengele ever been in the U.S.? had he worked with U.S. agents? The Marshals Service would take the lead in finding him.⁹ Simon Wiesenthal, the West Germans and the Israelis were also committed to finding Mengele; all parties agreed to work cooperatively.

The matter galvanized the public. Spurred on, perhaps, by millions of dollars in privately sponsored reward money,¹⁰ citizens reported Mengele sightings as diverse as the Club Med in Bora Bora, a Chinese restaurant in Salt Lake City, and a nursing home in Massachusetts. After undergoing hypnosis, one citizen reported being tortured by a neo-Nazi group that included Mengele. A psychic offered to use her powers to help the government in its search.

Just as OSI was to begin its investigation, a Senate panel convened to hold hearings on the matter.¹¹ Allan Ryan was one of many speakers at a hearing filled with dramatic testimony. New York senator Alphonse D'Amato, citing CIA reports, testified that Mengele might have financed his life and travels as a fugitive in South America by trafficking in cocaine. The dean of the SWC passed on reports that Mengele was in Paraguay where he had taken up the hobby of

bee collecting. And a three-star general, Assistant Chief of Staff for Army intelligence, was strongly rebuked for not being fully informed on Mengele's post-war activity. The chair of the subcommittee opined that "[i]t is time the Army gave some priority to Josef Mengele."¹²

The Army took heed. That very day, a task force was established to assist the Department of Justice in its Mengele quest.¹³ The Army agreed to supply "approximately 20 personnel" to conduct a "frame by frame" search of relevant microfilm reels.¹⁴

All parties presumed that Mengele was alive. Director Sher was optimistic that Mengele would be brought to justice.¹⁵ The working assumption was that Mengele would be returned to Germany or Israel, each of which had an outstanding warrant for his arrest.¹⁶

Unfortunately, there were no good leads as to Mengele's whereabouts. The break came when German law enforcement officials, acting on a tip, raided the home of a long-time employee of the Mengele family business in Germany.¹⁷ They found a series of letters apparently mailed by Mengele from Brazil between 1972 and 1978, as well as letters from a Brazilian couple who had sheltered Mengele on the outskirts of Sao Paulo. A 1979 letter from the couple reported that Mengele was dead.¹⁸

Sao Paulo police raided the couple's home and found writings and diaries that the couple said were Mengele's. There were also pictures of an elderly man and of Rolf Mengele – Josef's grown son now living in Germany. The couple said Mengele had drowned in 1979 and they led the authorities to his putative grave. The Brazilians exhumed the body amid much publicity; they agreed to work with foreign experts to determine whether the remains were Mengele's.¹⁹

These developments created two independent strands to the investigation – determining whether (1) the writings, photos and possessions found in Brazil belonged to Mengele; and (2)

whether the exhumed body was his. OSI commissioned a handwriting analyst and a paper and ink document examiner to study the Brazilian writings. Both experts had worked on OSI cases before, analyzing whether World War II documents found in the Soviet Union were genuine. For the handwriting expert, the Mengele comparison was easier to make than most because the well-educated Mengele had ingrained writing habits by the time he joined the SS. The documents in the SS file and the Brazilian writings were so similar that they looked as if they were penned within weeks of each other.²⁰ The paper and ink analysis confirmed that the materials used had been available in Brazil during the 1970s when the diaries were purportedly written.²¹

A team of six American forensic experts traveled to Sao Paulo to study the remains. Three of the experts were chosen by the Marshals Service; the other three were selected by the SWC.

At the time of the exhumation, the two most reliable methods for rendering a positive identification were x-ray and fingerprint comparisons. Neither seemed possible in this case. There were no known x-rays of Mengele from Germany or Brazil to compare with the corpse. Although there were fingerprints in Mengele's SS file, the corpse's skin had so decomposed that no print could be taken.²² Nonetheless, in less than two weeks, the scientists made a preliminary assessment that the body was Mengele's. They expressed confidence "within a reasonable scientific certainty."²³

Their confidence was based on a variety of factors, the most persuasive of which was an innovative West German photographic comparison in which pictures of the exhumed skull were matched on a video terminal to known photographs of Mengele in his SS file. The skull pictures were also compared to the photographs found in Brazil. Given 24 points of comparison, there

was overwhelming identity among the pictures. In addition, the corpse's gender, height and age at death were consistent with Mengele's. The bones in the upper jaw of the skeleton showed a gap between the front teeth which matched a known gap in Mengele's jaw; it also matched a denture found with the Brazilian belongings. German dental records showed that Mengele had fillings in his molars; so too did the teeth from the skeleton. Moreover, the fillings in the skeletal teeth were European rather than Brazilian.

The Brazilian and German governments, as well as the SWC, quickly embraced the scientists' conclusion. The U.S. Attorney General was also convinced. He announced that OSI would now focus on the historical portion of the case, determining whether Mengele had ever been in U.S. custody or had any relationship with U.S. officials.²⁴ Director Sher and the associate director of the U.S. Marshals service told Congress that the Department "accept[ed] the conclusion" that the exhumed body was Mengele's.²⁵ The Marshals' role in the investigation was ended.²⁶

In fact, not everyone was fully convinced that the body was Mengele's. There were several loose ends that Israel, the U.S. Army, and some within OSI and the Department of Justice wanted resolved. Most importantly, there was no evidence of osteomyelitis in the skeletal bones despite the fact that Mengele's SS records indicated that he had suffered from the disease. In addition, there was concern that a careless exhumation might have compromised the integrity of the bone samples. Moreover, the Brazilian diaries mentioned dental x-rays, yet no one had located these films to compare with the teeth in the coffin. The diaries also documented root canal work performed by someone named Gama in the town of Sama. However, there was no such town and the only dentist named Gama who could be found had no records paralleling the

entries in the diary.²⁷

These unresolved issues raised two disturbing possibilities: (1) assuming Mengele had been living in Brazil, this was an elaborate hoax to connect him to an unrelated dead body in order to end the worldwide manhunt;²⁸ or (2) the scientists were right, but for insufficient reasons, and the case "would plague everyone forever."²⁹ Although the Attorney General's pronouncement had nominally ended inquiry into the identity of the corpse, the government kept the matter under review as part of its ongoing historical investigation. Thus, four months after the identity issue was supposedly resolved, DAAG Richard and Director Sher attended a meeting in Jerusalem with Israeli and German officials to discuss the need for more medical evidence. Director Sher attended a followup meeting the next month as well.³⁰

The most important breakthrough in the historical research occurred when OSI historian David Marwell reviewed a manuscript which Mengele had sent to his son.³¹ Mengele described it as an "autobiographical novel." In it, the protagonist explained that he had been detained briefly by the Americans after the war. He also described how his discharge papers (issued under an alias) had later been altered to another pseudonym. Marwell assumed that Mengele was the protagonist and that none of the people mentioned in the "novel" were identified by their real names. He then extrapolated from the code used to alter the protagonist's discharge papers, in order to ascertain the true name of a Munich doctor mentioned as having been with the protagonist in an American POW camp. The extrapolation was not precise, however; several names were possible fits.

This was the pre-computer era. Marwell checked old Munich telephone directories at the Library of Congress. One of the possible names was listed in the 1950 phonebook. Marwell

then went to the National Archives and searched through a microfilm card index of medical officers who served in the German military. He found a match, and the Consulate in Germany located the doctor in a small German village. Reluctantly, he spoke with Marwell. He provided a plethora of previously unknown information about Mengele's post-war aliases and travels.³² The military task force then located personnel files of those who could have come in contact with Mengele at the various places mentioned. The Army obtained current addresses for the men from the Veterans Administration.

OSI interviewed scores of these witnesses and learned that Mengele had been in custody in two separate POW camps immediately following the war. He had used an alias, at least initially, and U.S. forces never realized that he was a war crimes suspect. He was released in routine fashion in the chaotic conditions that existed at the time. He did not work with the U.S. authorities nor did he ever travel to Canada or the United States.³³

With the historical inquiry largely complete, a dramatic breakthrough was made in identifying the corpse. By happenstance, the U.S. Consul General in Sao Paulo was an erstwhile oral pathologist. The dental questions therefore particularly intrigued him. In a eureka moment, he realized that the reference to Sama, where Mengele's diary said he had his root canal work done, could be an abbreviation; the Consul General guessed it was shorthand for Santo Amaro:

There was one last hopeless place we had not looked – the yellow pages of the phone book. And there it was, Dr. Hercy Gonzago Gama Angelo in Santo Amaro. My secretary called and asked for an appointment and she was told, "yes, but Dr. Gama does only root canals."

Dr. Gama's records established that he had seen a patient using a known Mengele alias on the dates listed in Mengele's diary. Mengele's precise recording of payments also dovetailed

with the doctor's records, and the patient's address was the home of the couple who had sheltered Mengele. Although Dr. Gama had no x-rays, he mentioned that the patient had been referred by a dentist named Kasumasa Tutiya. As the Consul General recalled:

By then I was hyperventilating. . . . Mengele had told [the couple who sheltered him] that he went to a Japanese dentist because, he said, all Japanese looked alike and so Japanese could not tell one white from another. But he never told [them] the name of the dentist.

When visited, Dr. Tutiya promptly found the dental charts . . . and, disproving Dr. Mengele's thesis, he also recognized photographs of the patient.

. . . I then asked him sort of casually, "You wouldn't have any x-rays, would you?" And he said "Wait a minute" and came back 30 seconds later with eight dental films. . . . When the x-rays dropped on the table, I thought I had won the lottery.³⁴

Although there were no German x-rays with which to compare, the finding was key. The recent x-rays were consistent with dental information contained in Mengele's SS file and with the seven teeth found in the coffin. The dentist also confirmed that the bridges and crowns in the skull were his own work.³⁵ All but one of the dozens of dental appointments listed in Mengele's diary matched the dentist's records.

OSI pressured the Brazilians to obtain medical information from other doctors mentioned in Mengele's writings.³⁶ When they failed to do so, Marwell went to Brazil himself.

Accompanied by members of the German, Brazilian and Israeli investigative teams, he found and interviewed various doctors. Everything he learned corroborated the diaries. One interview was especially pivotal as it connected the diarist with the pre-war Mengele. The diary discussed a 1972 surgical procedure. The Brazilian doctor recollected the case as one performed in his out-patient clinic; he was certain that he would not have kept the records. Nonetheless, he acceded to Marwell's request for permission to search the files.³⁷ Within 15 minutes the team found records

under the name of a known Mengele alias. The patient's medical history stated that he had had a hernia operation 48 years earlier. That would have been 1924. Mengele's SS file listed such an operation that very year. Marwell returned from Brazil convinced that "we have removed the basis for any reasonable doubt that Josef Mengele died in Brazil in 1979."³⁸

There were, by now, plausible explanations for the osteomyelitis conundrum. Reading a German medical article from the 1920s, Marwell discovered that the term osteomyelitis in prewar Germany was broadly inclusive of various conditions, some of which would not be detectable on x-rays. In addition, a paleopathologist (expert in detecting disease in skeletal bones) examined Mengele's bones at OSI's behest. He noticed a previously undetected small circular depression on one of the bones which could have been caused by osteomyelitis as the Germans then defined it.³⁹

The Israelis, however, wanted more definitive proof.⁴⁰ For them there were "emotional and political reasons" which made it difficult to close the case.⁴¹ They prevailed upon the Justice department to defer issuing a report until DNA analysis – then a nascent technology – could be performed.⁴²

At OSI's request, the Consul General in Brazil obtained a judicial order authorizing release of part of the skeletal remains for examination in the U.S. (It was this which led to a piece of Mengele's scalp being held in Director Rosenbaum's drawer before being turned over to the FBI.) Although the FBI was unable to extract a sufficient quantity to create a DNA profile,⁴³ the British, using new techniques, could do so. However, there was no DNA from Josef Mengele with which it could be compared. The German, Israeli and American authorities proposed getting DNA from Mengele's former wife and his son Rolf, both of whom lived in Germany.

The comparison would establish whether the son was the biological offspring of the man buried in Brazil. If so, the body was Mengele's.

Unfortunately, the son and former wife refused to provide blood samples. The Israelis suggested retrieving DNA from saliva left on glasses in a restaurant, but were advised that this would violate German privacy laws. The German prosecutor proposed an alternative plan: Mengele came from a prominent family which operated the largest factory in the small town of Günzburg. The prosecutor directed two German policemen to go to Günzburg, find the local gravedigger, and ask him to point out where Mengele's father was buried. They were to warn the gravedigger to tell no one that they had been there.

The policemen followed these directions and then waited several days. Nothing happened. The prosecutor had them return and repeat the drill with the town's retired gravedigger. They did so. Three days later a call came from Mengele's son: he and his mother would submit to DNA testing.

This was, as Marwell saw it, "a wonderful story about a guy [the German prosecutor] who understood psychology and politics and what a company town was all about." He knew that word would get to Mengele's family and that they would fear that the authorities were about to exhume their ancestors in order to do a DNA analysis. Giving blood would avoid the desecration of ancestral remains.⁴⁴

Once the DNA comparison was made, there was no doubt that the body was Mengele's. Israel no longer objected to issuing the report and it was released in October 1992, almost eight years after it had been commissioned.

The OSI historian and attorney who had been given primary responsibility for preparing

the report had varying perspectives on the outcome. For the historian, there was satisfaction. This discrete project had overcome many hurdles and had resolved, definitively, a matter of important historical concern. The attorney was somewhat less sanguine. While he shared satisfaction in knowing that the historical issues were resolved, he had hoped that the report would lead to an expanded mandate for OSI. Had Mengele been found alive and brought to justice, the enormity of that accomplishment might have created pressure for OSI to assume an active role in searching for other prominent Nazis worldwide.⁴⁵ As it was, the focus remained on those who had come to the United States. For the most part, these were underlings.

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, Elizabeth Holtzman, then District Attorney in Brooklyn, N.Y., French Nazi-hunter Beate Klarsfeld, Menachem Rosenshaft, Chair of the International Network of Children of the Jewish Holocaust Survivors, and Bishop Rene Valero of the Brooklyn Catholic Diocese, 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.
 In Dec. 1984, Holtzman, on behalf of the group which had traveled to Paraguay two months earlier (*see* n. 2, *supra*), asked the Attorney General to send OSI personnel to Paraguay to "observe and/or participate" in a Paraguayan investigation of Mengele's whereabouts. Dec. 20, 1984 letter from District Attorney Holtzman to Attorney General Smith. As events unfolded, this request became moot.
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 Wohlgelemler, *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 AAG Trott re "Nazi War Criminal Josef Mengele."
8. Feb. 6, 1985 Department of Justice press release.
9. Statement of AAG Trott before the Senate Judiciary Juvenile Justice Subctee, Mar. 19, 1985.

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.
13. Feb. 20, 1985 memorandum for Chief of Staff, U.S. Army General Counsel from Secretary of the Army, John O. Marsh, Jr. re "Search for Information Concerning Dr. Mengele."
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 Thomas Taylor, Sr. Ass't to the Dep't of the Army General Counsel, to David Marwell, OSI Historian.

OSI historians were given unprecedented access to the military files. Ultimately, this became a cause for concern to the Army. Information serendipitously discovered by one of the OSI historians was relevant to another OSI investigation. When OSI requested access to the new material, the Army feared that OSI had exploited the situation. OSI denied the accusation, explaining that it was obligated to follow up on all relevant information. Oct. 22, 1985 memorandum from Marwell to Sher re "Meeting at Ft. Meade." See also, Jun. 13, 1986 letter from Sher to Lt. Col. Tom Johnson 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

Paper, Then of People," by Ralph Blumenthal, *The New York Times*, June 23, 1985.

19. "Brazil is Seen Accepting Foreign Help on Mengele," by Alan Riding, *The New York Times*, June 10, 1985.

20. Recorded interview with forensic document analyst Gideon Epstein, Dec. 6, 2000. It helped too that Mengele's diaries and SS documents were all written in German. In the more typical OSI cases, involving camp guards, the defendants were barely literate and poorly educated during the war. Their original language often had a cyrillic alphabet. Thus, comparisons have to be made between often primitive cyrillic script on military documents and more sophisticated Latin alphabet handwriting in the U.S. For further discussion of this, see pp. 537-538.

21. July 31, 1985 FBI Report prepared by Dr. Antonio Cantu to Howard Safir, Associate Director for Operations, U.S. Marshals Service.

22. So many people had handled the artifacts found in the Brazilian home that there were no prints identifiable as Mengele's. "Brazil is Seen Accepting Foreign Help on Mengele," by Alan Riding, *supra*, n. 19. Of course even if his prints were on the artifacts, that would not establish the identity of the corpse.

23. "Scientists Decide Brazil Skeleton is Josef Mengele," by Ralph Blumenthal, *The New York Times*, June 22, 1985.

24. Department of Justice press release, June 21, 1985.

25. "U.S. Justice Department Closes its File, Agrees Body in Brazil was that of Mengele," *AP*, *The Los Angeles Times*, Aug. 3, 1985.

26. Statement of Howard Safir, Associate Director for Operation, U.S. Marshals Service, before the Senate Subctee. on Juvenile Justice, Aug. 2, 1985.

27. July 16, 1985 memo to Sher from Philip Sunshine re "Mengele Investigation - Information on Death in Sao Paulo;" Oct. 30, 1985 Draft memo "For Discussion Purposes Only" from Sunshine to Sher re "Summary of Allegation that Mengele died on Feb. 7, 1979 in Sao Paulo, Brazil."

The paucity of corroborating medical evidence led the WJC to begin its own investigation of Mengele's death. "Jewish Group Questions Mengele Probe," by Jack Anderson and Dale Van Atta, *The Washington Post*, Jan. 29, 1986. Others also were skeptical that the body was Mengele's. E.g., "Nazi-Hunter [Tuviah Friedman] Believes Mengele is Still Alive," by Dody Tsiantar, *The Washington Post*, June 15, 1985; "Why the Nazi Hunters Keep Pressing On," *U.S. News and World Report*, June 24, 1985; "Evidence is Shaky in Mengele's Death; Witnesses Conflict," by Jack Anderson, *Newsday* (Long Island), June 26, 1985; "One Piece of Mengele Puzzle Won't Fit," by Jack Anderson and Joseph Spear, *The Washington Post*, Feb. 25, 1986; "Grave Doubts," *The Daily News* (New York), June 10, 1985.

28. Oct. 30, 1985 Draft memo, *supra*, n. 27.
29. Recorded interview with former OSI historian David Marwell, July 17, 2003.
30. Mar. 6, 1986 memo to the Attorney General from AAG Trott re "Developments in the Mengele Investigation – Submission of Final Forensic Report;" Jan. 2, 1986 memo to Mengele Files from Sher re "Meeting in Jerusalem (Dec. 11-12, 1985)."
31. The son had sold it to a German publishing company, which allowed Marwell to read the manuscript at their offices in Germany.
32. Oct. 21, 1985 memo from Marwell to Mengele File re "Interview with Dr. Fritz Ulmann."
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, with its attendant exhibits, can be accessed at <http://www.usdoj.gov/criminal/publicdocs/11-1prior/11-1prior.htm> (last visited, Sept. 2005).
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 Sher to DAAG Richard re "Update on Mengele Investigation."
37. The group with Marwell included two armed Brazilian policemen. Brazil had recently emerged from a period of brutal military dictatorship. Marwell suspected that the presence of the policemen was helpful in getting the doctor's acquiescence for the search. The policemen "gave us a lot of credibility." Recorded interview, July 17, 2003.
38. May 6, 1986 memo from Marwell to file re "Trip to Brazil," Apr. 16 - 23, 1986.
39. Dec. 18, 1985 memo to file from Sunshine re "Meetings with Dr. Ortner."
40. July 13, 1987 memo to file from Sunshine re "Current Israeli Position on Mengele – Additional Investigative Action to be Taken by Israel and the United States."
41. June 8, 1989 memo to the Attorney General from AAG Dennis re "Mengele Report."
42. July 1, 1988 memo to Sher from Marwell re "Mengele;" Dec. 12, 1988 memo from Sher to DAAG Richard re "Update on Mengele."
43. May 18, 1989 memo to DAAG Richard from Sher re "Mengele – Update on DNA Testing."

44. Information about the abortive effort to get a saliva sample comes from Director Rosenbaum. His source was Hans Klein, the prosecutor handling the Mengele investigation in Germany. By the time this report was prepared, Mr. Klein was deceased.

Details about the ruse at the cemetery come from a recorded conversation with David Marwell, July 17, 2003. His source was the two policemen sent to Günzburg. (As Marwell 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 Phil Sunshine, July 15, 2003.

Looted Assets

Looting by the Third Reich was both prodigious and notorious; the regime plundered vanquished nations as well as individuals. Booty included gold bullion, coins, metals, paper currency, securities, jewelry, precious and semi-precious stones, books, artwork, religious objects, even dental fillings and crowns. Between 16 and 30% of all gold accumulated by the Third Reich was likely taken from individuals.¹

The Nazis segregated gold from other assets. Most gold was smelted into bars and deposited in the Reichsbank, Germany's central bank at the time. Germany sold the majority of these gold reserves to neutral nations in order to acquire foreign currency for financing the war effort. The largest purchaser of gold from the Reichsbank was the Swiss National Bank.

At the end of the war, the Allies sought to recover, from Germany as well as from the neutral nations, assets appropriated by the Nazis. Representatives of 18 Allied nations agreed at the Paris Reparations Conference to distribute assets both to the nations whose treasuries had been plundered and to war victims.²

They struggled, at the Conference and thereafter, to categorize the gold and set rules for its distribution.³ In broad terms, "monetary gold" was defined as gold bars and coins; "non-monetary" gold was all else, including jewelry and dental work from camp inmates. They agreed that monetary gold should be returned to claimant countries in proportion to their losses. Non-monetary gold was to be liquidated and given to an international relief agency for humanitarian aid to the "non-repatriables" – Jewish and other homeless victims of the war.

Although the terms "monetary" and "non-monetary" were thus based on the form rather than the origin of the gold, shorthand descriptions often referred to the two categories as

“currency” and “victim gold.” This fostered the false impression that the former was inevitably pure and the latter inevitably “tainted.”

France, Britain and the United States established a Tripartite Gold Commission (TGC) to oversee the distribution of monetary gold. The procedure for identifying and collecting the gold was varied. While the Allies seized the reserves in defeated Germany, they could not do the same with neutral nations; they had to negotiate with these countries to determine the amount of gold involved.

Negotiations with the Swiss were especially contentious. They ultimately agreed to contribute \$58 million to the TGC. This was approximately two-thirds of the \$88 million that Switzerland acknowledged purchasing from the Reichsbank.

The Swiss contribution, combined with gold relinquished by other neutral nations, gold purchased with the proceeds from liquidation of assets of German diplomatic missions, and gold bars found by allied forces in defeated Germany, gave the TGC approximately \$260 million. It was all deemed monetary gold.

By 1996 (when the value of gold had increased almost tenfold), the TGC was ready to distribute the final \$68 million in its coffers. That money, referred to as “residual gold,” had been held back, in part to cover administrative expenses and contingencies. Before the final distributions were made, however, the matter of Nazi gold broke into the headlines.

It arose in relation to dormant Jewish bank accounts. In 1995, following the collapse of East Germany, the West gained access for the first time to records from the Stasi (East German secret police). Those records revealed the hitherto unknown fact that 13,000 Hungarian Jews had opened Swiss bank accounts in the hope of ransoming their lives from the Nazis.⁴ This added

urgency to ongoing requests by the World Jewish Restitution Organization for access to dormant accounts.⁵

In response to calls by Jewish organizations, both the House and Senate banking committees held hearings. The Senate committee, aided by the WJC, serendipitously uncovered some significant and headline producing documents concerning Nazi gold. One set of documents suggested that the Truman administration had downplayed the amount of gold Switzerland purchased from the Reichsbank.⁶ Although the State Department estimated that Switzerland had purchased almost \$300 million worth of Nazi gold, the Secretary of State discounted the estimate when questioned by a skeptical member of Congress.⁷ A second set of documents called into question the presumed purity of monetary gold. The documents suggested that the Reichsbank's wartime ingots contained gold smelted from the teeth of slaughtered Jews as well as from personal jewelry and other Jewish properties.⁸

Inclusion of victim gold into the Reichsbank reserve did not prove that "tainted" ingots had been sold to Switzerland or other neutral countries. However, it did raise the possibility that this was so. It also raised the possibility that gold transferred by the Allies from the Reichsbank reserves to the TGC was tainted. Given that some of that gold remained on deposit, Jewish organizations asked that this residual account be distributed to survivors, rather than to central banks.⁹

In part to determine whether the U.S. should support this request, President Clinton ordered a formal inter-agency effort to investigate the U.S. role in the seizure, retrieval and disposition of Nazi assets.¹⁰ The group's mandate included an investigation into "allied and neutral nation actions during and after the war to handle Nazi assets and dormant accounts."¹¹

The president asked Under Secretary of Commerce Stuart Eizenstat to oversee the project, including a report to be written by the State Department Historian.¹²

The Justice Department was one of 11 government components asked to assist in the effort.¹³ OSI served as the lead DOJ representative. It reviewed material already gathered by the WJC and the Senate Banking Committee and assumed some independent investigative efforts as well. Much as in its own case investigations, OSI studied wartime documents, post-war interrogations of SS officials, and trial transcripts from Nuremberg.¹⁴

The material established that from August 1942 until the war's end, the SS delivered valuables taken from victims in the concentration camps and extermination centers to the Reichsbank. This plunder included victim gold. The SS deposits were listed in an account under the name of Colonel Melmer, the SS officer who delivered the assets to the bank. The Reichsbank purchased the gold bullion and coins in the SS shipments at full value and credited the SS account at the Reich Ministry of Finance with the equivalent amount in Reichsmarks. The bank sent dental gold and other small items, such as wedding rings, to the Prussian mint for resmelting into ingots; they were then incorporated into Germany's gold reserves at the bank. Larger items were sent to the Berlin Pawn Shop which arranged for the more valuable items to be sold abroad for foreign currency; the remainder were sent to Degussa, a private refinery in Frankfurt, to be smelted and then added to the Reichsbank gold stocks. Some of these stocks were so impure that, after being seized by the Allies at war's end, they were refined and resmelted before going to the TGC.

Given these facts, OSI concluded that it was most likely – though not certain – that victim gold had been included both in some wartime shipments to Switzerland and in the Allies'

postwar shipments to the TGC.¹⁵

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

The State Department completed a draft of its report in January 1997. It held the Swiss accountable for serving as bankers and financial brokers for the Third Reich and suggested that their role might have helped prolong the war. Moreover, it characterized Swiss postwar conduct as obstructive and asserted that their participation in postwar European rehabilitation was insignificant both materially and morally.

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

Director Rosenbaum was sufficiently concerned about these two points to alert Ambassador Eizenstat on February 6, 1997 of the disagreements between OSI and the State Department historian. Rosenbaum warned that he could not “in good conscience” recommend that DOJ sign off on the report in its current form. Eizenstat encouraged him to do whatever possible to assure the accuracy of the report.¹⁸

The report was scheduled to be released on March 25. In late February, OSI found a “smoking gun” document proving that victim gold had been sent to Switzerland and had been incorporated into the TGC account as well.¹⁹ The document had been prepared by the U.S.

government before it transferred gold to the TGC.²⁰ It therefore established that the United States knew at the time that some portion of victim gold was being used to compensate looted treasuries rather than to help war victims.

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

OSI believed the material it had found did provide such definitive proof. Rosenbaum protested to the State Department and, at their suggestion, submitted a written summary of his concerns and proposed revisions.²² Ambassador Eizenstat 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, it remained concerned that the report did not address what OSI saw as the Truman Administration's dissembling to Congress. Not only had Secretary 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 Yet experts at both the State Department and the Treasury Department then believed the true amount to be much higher. The State Department's expert estimated the figure as \$414 million; Treasury's expert, relying on ledgers from the Reichsbank, estimated \$289 million.²⁵ Rosenbaum believed that it was essential to discuss the disparity between these studied estimates and the \$88 million figure given by the Swiss and supported by the

Administration. He warned that failure to do so might yet cause him to recommend that DOJ withhold support for the report.²⁶

In order to address Rosenbaum's concerns, Ambassador Eizenstat postponed publication of the report.²⁷ The postponement extended six weeks. When the report was finally issued in May 1997, all major points of contention had been resolved.

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

the Axis government of Croatia had transferred gold to the Vatican.³³ It hoped to publish this second report before a scheduled December 1997 conference in London on Nazi gold.

OSI was not involved in research for, or drafting of, the supplemental report, but it did receive a copy for comment. It recommended several changes which were ultimately incorporated into the report.

The supplemental draft noted that two private financial institutions in Germany, the Dresdner and Deutsche banks, sold gold on the Turkish free market; it cited a British report which opined that this gold had been looted from European central banks. OSI was able to document that at least some of the gold came from victims.³⁴

OSI also urged revision of the draft's contention that trade with Germany amounted to support of the Third Reich. OSI noted that trade had to be placed in context, including consideration of the amount of trade these same countries were doing with the Allies.³⁵ OSI opined that the draft was unduly harsh on Argentina.³⁶ These comments were of sufficient import to cause the State Department to postpone the release date until some time after the London conference.

The conference, with participants from 41 nations, dealt with the question of residual gold. In response to the revelation in the Preliminary Study that some of that gold was tainted, several countries agreed to contribute money due them to a fund for Holocaust survivors. While not all the residual gold was so distributed, a portion of it did go to needy survivors.³⁷

Coincidentally, just as the conference opened, a privately-held cache of microfilmed Reichsbank records became accessible.³⁸ The records belonged to an Austrian concentration

camp survivor who, after the war, did extensive research on the gold trade of the Reichsbank. His private collection included a report about the Melmer account by Albert Thoms, the wartime Reichsbank Director. At Ambassador Eizenstat's request, OSI reviewed this newly-available material. Based on Thoms' figures, OSI calculated that the SS had deposited over \$4.6 million dollars worth of gold into the Melmer account – much more than previously had been provable.³⁹

OSI also examined the records of the private smelting firm used by the Reichsbank to transform large gold articles in the SS shipments into bullion. Although the firm had intentionally destroyed most pertinent documents, enough was extant to show that the firm was aware that the gold came from Jews.⁴⁰ Both the revised Melmer figures and the smelting company's complicity were included in the final report. Ambassador Eizenstat described the recalculation of the Melmer account as "the most dramatic" finding of the study.⁴¹

OSI's contribution to the report is evident in other ways as well, especially in the report's nuanced distinctions among the neutral nations. OSI's information about victim gold for sale on the Turkish free market led inexorably to the conclusion that Turkey was more involved in the marketing of victim gold than had previously been known. OSI's analysis of Argentine gold records showed that Argentina was less involved; indeed, it had purchased no Nazi gold at all. The State Department acknowledged that OSI's analysis of these Argentine documents was crucial.⁴²

The Supplemental Study was released in June 1998.⁴³ It did not, however, end OSI's involvement on matters relating to Nazi assets. While working on the gold studies, OSI became

involved in additional asset issues.

According to a post-war agreement among the Allies, looted cultural items were to be returned to their country of origin, and, if possible, to their rightful owners. At an early (December 1996) meeting of the interagency working group on the Preliminary Study, one of the participants mentioned a 1940s memo from an Army archivist suggesting that the Library of Congress may have inappropriately acquired books looted by the Nazis. Director Rosenbaum asked an OSI historian to look into the matter.

OSI's research established that there was no basis for the allegation.⁴⁴ On the contrary, the Library had adopted and followed detailed regulations to ensure that it did not obtain or retain any books whose provenance could be ascertained. If the provenance was undeterminable and the material had national, cultural, or religious significance, the regulations called for distribution to an appropriate institution. Of the more than 3,000,000 looted books gathered by the U.S. government, two and a half million were distributed according to these guidelines. Since it was not possible to identify the owners or country of origin for the remaining half million, they were given to the Commission on European Jewish Cultural Reconstruction (JCR), an organization comprised of American Jewish religious leaders, scholars and educators. The JCR distributed them to centers of Judaism and Jewish learning throughout the U.S. and Israel. At the JCR's direction, several thousand volumes went to the Library of Congress.⁴⁵

The second asset forfeiture issue that spun off from OSI's work on Nazi gold involved looted artwork. In February 1997, a source informed the office of previously classified documents from the Office of Strategic Services (predecessor to the CIA) listing artworks the

OSS suspected had been stolen by the Nazis. The list, compiled shortly after the war, drew upon the memories and records of theft victims as well as art dealers who sold works on behalf of the Nazis. It also referenced captured German correspondence, receipts, museum accession reports, and inventories.

Despite these extensive sources, there were limitations to the OSS listings. Titles were often imprecise, either because the work was untitled or because the true title of the work was unknown to the person providing the information to the OSS. Thus, there were a number of “Still Life,” “Portrait” and “Landscape” entries. In addition, artists often created multiple works with the same title and the OSS list rarely contained distinguishing information, such as canvas dimensions. OSI pared down the list and then reviewed books, websites, and archival material (including post-war claims filed by private citizens) in an attempt to match works on its list with holdings in the U.S. and abroad. The office was particularly interested in determining whether any looted artwork was held at the National Gallery of Art. Ultimately, OSI identified four possibly looted pieces at the museum.⁴⁶ The National Gallery did additional research and determined that one of the four had indeed been taken from a Jewish family. The museum returned the painting to the owner’s heirs amid much public fanfare. In announcing this decision, the museum took sole credit for determining the provenance.⁴⁷ The Department of Justice issued its own statement crediting OSI with raising the issue.⁴⁸

Since the gold studies, OSI has periodically been called upon to share its expertise on asset issues.⁴⁹ OSI’s work in this area is yet another example of how the government has broadened OSI’s mandate and how the office has helped the public understand the history of Holocaust. To the extent that OSI’s scholarship has helped bring about restitution, it has also

shaped that history.

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 Secretary of State Acheson to Congressmen Joseph Baldwin, July 3, 1946. Portions of the letter are quoted in the State Department's Preliminary Study, *infra*, n. 32, at pp. 86-87.
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 Eizenstat was serving as Under Secretary of Commerce for International Trade and Special Envoy of the Department of State on Property Restitution in Central and Eastern

Europe. Shortly after the report was released, he became Under Secretary of State for Economic, Business & Agricultural Affairs.

13. The 11 were: CIA, the Departments of Commerce, Defense, Justice, State and Treasury, the FBI, the Federal Reserve Board, the National Archives and Records Administration (NARA), the National Security Agency (NSA) and the U.S. Holocaust Memorial Museum.

14. Several German bank executives were charged at the war's end. As noted earlier (*see p. 7*), Walter Rockler, OSI's first Director, had been on the bank prosecution team at Nuremberg. Among the defendants he prosecuted was the vice-president of the Reichsbank.

15. Feb. 2, 1997 memo from OSI Chief of Investigative Research Elizabeth White to Director Rosenbaum re "Evidence of SS-Looted Persecutee-Origin Gold in the TGC 'Gold Pool;'" Jan. 29, 1997 e-mail from White to Rosenbaum re "Monroe/Nuremberg Testimony."

16. Industrial diamonds are used, among other things, to shape artillery shells, to facilitate the manufacture of wire, to produce anti-aircraft artillery shell fuses, to cut and test tank armor, and to machine differential gears for vehicles. "The Conversion of Looted Jewish Assets to Run the German War Machine," by Michael MacQueen, *Holocaust and Genocide Studies* (Spring 2004).

17. "Quest for Nazis' Loot, Dispute Focuses on Role of Swiss Banks," *supra*, n. 4.

18. Mar. 17, 2001 letter from Rosenbaum to State Department Historian William Slany re "March 7, 1997 Draft Interim Report on 'Nazi Assets.'"

19. The document showed that gold from the Melmer account was added to a 1943 smelting of looted Dutch guilders. Eighty-three percent of the bars resulting from this smelting were eventually traded to the Swiss National Bank. In addition, a 1944 smelting of gold bars from the Netherlands included six gold bars that the Reichsbank had received from the SS. OSI determined the numbers given the bars after being resmelted and confirmed that six bars with these same numbers were transferred by U.S. forces from Germany's captured gold reserves to the TGC.

20. The report was prepared by the Foreign Exchange Depository of the U.S. Military Government in Germany.

21. "U.S. Can't Tie Holocaust Victims' Jewels, Dental Gold to Swiss," by Laura Myers, *AP*, Mar. 9, 1997.

22. Mar. 10, 1997 letter to Amb. Eizenstat from Rosenbaum; Mar. 11, 1997 letter from Rosenbaum to State Department Historian Slany.

23. Mar. 12, 1997 e-mail from Rosenbaum to DAAG Richard re "Nazi Assets: Important Update."

24. July 3, 1946 letter from President Truman to Senator Kilgore.

25. State Department's Preliminary Study, *infra*, n. 32, at p. 66.
26. Mar. 17, 1997 letter from Rosenbaum to State Department Historian Slany.
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 Rosenbaum to OSI attorney William Kenety re "J. Barnett - Reply."
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 Nov. 2005).
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.
34. An OSI historian recalled from her research for the Preliminary Study that the Reichsbank sold Melmer account gold to the Deutsche and Dresdner banks. Apr. 1, 2004 e-mail from Chief Historian Elizabeth White to Judy Feigin re "I got it, I think." An OSS document unearthed by the SWC added further detail included in the final report. It explained that the German

government used victim gold to finance overseas operations and to influence foreign nations' diplomats. Apr. 1, 2004 e-mail from White to Feigin re "query."

35. Sept. 30, 1997 letter to Bennett Freeman, Senior Advisor to the Under Secretary of State for Economic, Business, and Agricultural Affairs, from DAAG Richard.

36. In fact, German investment in, and trade with, Argentina was dwarfed by the British interests there. Moreover, the draft wrongly suggested that Argentina could have been made to return all German assets in its territory. Since Argentina joined the Allies before war's end and signed the 1945 Act of Chapultepec, it acquired exclusive rights to German assets in its territory. (More significant than these trade figures is the fact that Argentina accepted more Jewish refugees between 1933 and 1945 than any other country in the Western hemisphere.)

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 Amb. Eizenstat from Deputy Attorney General Eric Holder re "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 Rosenbaum to Amb. Eizenstat.

41. "A Lingerin 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 Nov. 2005).

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 Rosenbaum to Slany.)

46. Sept. 29, 1998 letter to Under Sec'y Eizenstat from DAAG Richard; Dec. 2, 2003 e-mail from Rosenbaum to Judy Feigin re "Re Query."

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. Nov. 1, 2004 memo to Daniel Meron, Principal Deputy Ass't Attorney General from Rosenbaum and Elizabeth White re "Proposed Formula for Arriving at a Settlement in *Rosner v. United States*." 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 AAG James Robinson from Director Rosenbaum 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 Nov. 2005). The report specifically acknowledged the contribution of OSI historian Robert Waite for his research on looted books and OSI attorney William Kenety for his investigation into looted art.

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 Rosenbaum to Adrien Silas re "Draft Testimony of Amb. Bindenagel."

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

reimmigration files (on individuals of ethnic German origin who immigrated or re-immigrated to Germany), applications for membership in German cultural organizations, court records, and registries of physicians and teachers. Some of these files include photographs, handwriting, and fingerprints as well as wartime activities and place of operation.

Until 1994, OSI's access to the BDC was assured, since it was under U.S. control.² Control was then ceded to the German government. In negotiating the transfer, the State Department consulted with OSI to ensure that the Justice Department's investigative and prosecutorial interests were protected.³ Germany agreed to microfilm all BDC documents for the U.S. National Archives and guaranteed the U.S. access, in perpetuity, to the original documents for forensic and judicial purposes.⁴

By contrast, the Ludwigsburg Zentrale Stelle is an entirely German operation. Established in 1958, it is the repository for records from war crimes trials held throughout Germany.

It was not initially clear that the Ludwigsburg material would be as readily available to OSI as was the BDC information. Mutual legal assistance agreements between the U.S. and Germany provide the U.S. access to German material for use in *criminal* prosecutions. OSI cases are *civil* matters. Nonetheless, West Germany from the outset opted to treat OSI's cases as if they were criminal, reasoning that the substance of the cases (often murder or accessory thereto) would be treated criminally in Germany.⁵ This flexibility has allowed OSI the full range of assistance available in criminal proceedings, including access to criminal trial records (a source of witnesses and corroborating testimony) and compelled testimony from reluctant German witnesses. As one German Justice Ministry official acknowledged, this piece of legal

legerdemain had a weak foundation; its maintenance required both the political good will of the FRG and OSI respect for FRG criminal procedures.⁶

German good will was evident in other ways as well. In several key areas, they allowed the Department of Justice to avoid the often cumbersome and time-consuming diplomatic process for handling matters of judicial assistance. Thus, as early as 1982, the West Germans allowed U.S. Embassy personnel to contact potential witnesses directly;⁷ they also sanctioned direct contact between OSI and personnel at Ludwigsburg. After a 1991 meeting with representatives from Australia, Great Britain, Canada and the United States, Germany authorized the free exchange of German sourced documents among those countries.⁸

This is not to suggest that there are not still areas of frustration. Most prominent is that requests that do go through the standard bureaucratic process (*e.g.*, pension inquiries) get caught in an administrative quagmire. Response times of over one year are not uncommon.⁹ Nonetheless, the overall working relationship between the Department of Justice and Germany in Nazi prosecution cases is productive and positive.

It is also mutually beneficial. Before reunification, both East and West Germany conducted World War II investigations and trials.¹⁰ The unified Germany continues to do so as of this writing.¹¹ OSI has assisted by interviewing and/or identifying witnesses of interest to the Germans,¹² sharing OSI research and records,¹³ and serving subpoenas on U.S. residents needed to testify in German prosecutions.¹⁴

Admitting OSI Defendants into Germany

Fulfilling the mission of OSI depends, ultimately, on being able to remove from the United States those who assisted the Nazis in persecuting civilians during World War II.

However, the United States cannot unilaterally send a defendant to a designated country; that country must be a willing recipient. Very few countries are anxious to have "Nazi war criminals" in their midst. Even Germany, which has expressed contrition and claimed responsibility for its role in the war,¹⁵ has been ambivalent about accepting OSI defendants.

The issue first surfaced in the pre-OSI era. Boleslav Maikovskis was a Latvian chief of police who, during World War II, had participated in the arrest of civilians and the burning of their dwellings. INS contacted West Germany in 1973 about seeking Maikovskis' extradition. The West Germans acknowledged that the branch of the auxiliary police to which Maikovskis belonged had been under the supervision of the German civil police; the higher police chiefs were appointed with the consent of the Germans, and these chiefs reported to, and were supervised by, the Germans. Nonetheless, they thought the significance of all this was outweighed by the fact that Maikovskis himself was immediately commanded by Latvians and paid with funds from the Latvian Police budget.¹⁶ Moreover, they claimed constraint because Maikovskis was not a "German national," either at the time the crimes were committed or currently and because his acts were not directed against German nationals.¹⁷ Although they could prosecute Maikovskis if he had been acting on behalf of the Reich, they concluded that he had not been. As the West Germans saw it, Latvian opposition to German occupation during the war was evidence that Latvia should be considered separate and apart from Germany.¹⁸

Despite this intransigence about Maikovskis, West Germany was not opposed to extradition in all cases. Around the same time that they rejected the Maikovskis request, they sought extradition of New York City housewife Hermine Braunsteiner Ryan. They distinguished her from Maikovskis because she had been a supervisor in a German concentration camp. As

such, her activities were undertaken "in the exercise of German sovereignty."¹⁹ Once she was extradited, she was tried, convicted, and sentenced to life in prison.

When OSI was established in 1979, the Department of Justice anticipated that extradition would be an oft-used procedure which would expedite removal.²⁰ Germany seemed to OSI the most likely venue for extradition for two reasons. First, Germany bore moral responsibility for the war. Second, many alternative destinations were not viable options. Most of OSI's subjects performed their wartime service in the U.S.S.R. (which, until 1989, included Estonia, Latvia and Lithuania), and the United States had no extradition treaty with the Soviet Union.

In October 1980, shortly after OSI's founding, Director Ryan went to Germany to discuss the mechanics of extradition. He was quickly disabused of the idea that extradition to Germany would be the default procedure for OSI. The Germans made clear that extradition would be a rare occurrence, possible only if the defendant could be tried for murder, the only relevant crime not foreclosed by the statute of limitations. Even then, if the defendant were a non-German who had acted outside Germany's borders, it would be problematic.²¹ Since most OSI subjects were Latvians, Ukrainians and Lithuanians, they would not fit within the parameters established by Germany.²²

Simon Wiesenthal put forth a proposal which would have resolved the impasse. He suggested that subjects be divided into two categories, those who worked on behalf of sovereign countries (e.g., Hungary or Romania) and those who worked for the Nazis in occupied areas. The latter group would include those from the Baltic states as well as Ukraine. Although the Germans agreed to consider the matter, and OSI was also interested, the proposal was never

adopted.²³

The Attorney General wrote to his counterpart in West Germany urging resolution of the problem. His plea was based on ethical rather than legal grounds.

As the highest legal officers of our respective governments, we share a solemn responsibility to see that justice is done in cases involving Nazi crimes. We recognize the extensive efforts that the Federal Republic has made to that end, and I am grateful for the cooperation that your government and your Ministry have extended to us in our recent efforts to gather evidence after so many years. Although many years have passed since the fall of the Nazi regimes, our common obligation to enforce our respective laws against those who were responsible for the crimes of that era continues.²⁴

In response, the West German Minister of Justice acknowledged that war crimes should not be “left unatoned.” Nonetheless, he reiterated that there was no jurisdiction to try foreign nationals for acts committed in “occupied territory” absent “exceptional circumstances.”²⁵

Although this was not encouraging, it did not preclude *deportation* or a voluntary departure to Germany. In either of these situations, unlike extradition, the person would not have to stand trial once he arrived in Germany.

OSI had its first opportunity to pursue one of these alternatives in October 1982, when Archbishop Trifa agreed to depart the United States under the terms of his settlement agreement. Although Trifa was not German, he had a strong nexus to the country, which gave him refuge during most of the war. Nonetheless, West Germany informed OSI that as a non-citizen, Trifa was inadmissible.²⁶

Trifa was not the only well-publicized OSI defendant to whom West Germany denied admittance. It also refused to accept Bohdan Koziy and Karl Linnas, both of whom are discussed elsewhere in this report.²⁷ Even after acknowledging that it had “no doubt” about OSI’s evidence

against Koziy (evidence which, among other things, showed him responsible for the cold-blooded murder of a four year old Jewish girl), West Germany still refused him entry. They did so on the grounds that (1) he never possessed German citizenship; (2) his crimes were committed on foreign (Ukrainian) soil; and (3) the government would be unable to establish "base motive," a prerequisite to a murder conviction under German law.²⁸

Two years later, the issue of Maikovskis' departure resurfaced. After West Germany refused to seek his extradition in 1973, INS had filed a deportation action. That case was ultimately taken over by OSI, and Maikovskis was ordered deported in 1984. He designated Switzerland as his chosen country of deportation. After the Swiss notified the Justice Department that they would not accept him, the State Department asked Germany if Maikovskis could enter as a deportee. They refused permission to do so.²⁹

There was a country which did want him, however – the U.S.S.R., which years ago had sentenced him to death *in absentia* for his World War II activity.³⁰ In 1987, OSI requested that the court modify its order to designate the U.S.S.R. as the country for deportation. Before the court ruled, Maikovskis fled to West Germany – having been given a visa to enter despite West Germany's earlier refusal to seek extradition or to accept him as a deportee. According to Maikovskis' attorney, the Germans issued the visa for "humanitarian reasons" when they learned that he might be sent to the Soviet Union.³¹

A year later – after the Soviets publicly called upon the West Germans to arrest Maikovskis, and only days before the West German Chancellor was scheduled to visit Moscow – the West Germans arrested the 84-year-old Maikovskis and placed him in custody. Although Germany had earlier refused to seek his extradition on the ground that he could not be criminally

charged, he was now brought to trial. One of the witnesses was the OSI attorney who had handled the deportation case. He testified about Maikovskis' admissions during the deportation proceedings, specifically that he had been chief of police and that he had carried out orders to arrest and imprison all villagers and to burn the village. The prosecution was suspended midway due to Maikovskis' ill health. It never resumed, and he died in Germany in 1996.

Additional tensions surfaced over emigrés who had entered the United States under the RRA. As noted earlier,³² one of the conditions for admittance under the RRA was that the country from which one departed had to guarantee that one would be taken back if in fact the visa had been procured through fraud or misrepresentation of material facts. Germany had made a written commitment to that effect in 1954; it covered all persons embarking from their shore. Although the number of native-born Germans coming to the U.S. in the early post-war years was limited,³³ many Eastern Europeans and Ukrainians came to the U.S. from displaced persons camps in Germany.

In 1983, during discussions about Trifa, Germany advised OSI that it doubted the validity and enforceability of its 1954 agreement.³⁴ And indeed, the German government later contended that it could not locate an original copy of such an agreement and therefore did not feel bound by its terms. At OSI's request, the State Department twice formally requested that Germany search its files.³⁵ In November 2005, the German government advised that it had finally located the document.³⁶

That it took over two decades to resolve this issue was frustrating for OSI. In fact, however, it did not affect large numbers of OSI defendants. OSI filed 21 cases against men who entered under the RRA. Of these, between 10 and 12 had departed from Germany. (Information

on the country of departure was not readily available in two of the cases.) Six of the men ultimately wound up in Germany, though they were not admitted pursuant to the agreement.³⁷ Two others went to Lithuania before deportation proceedings, and therefore before the U.S. could have demanded action under the agreement.³⁸ Of the four possibly remaining,³⁹ one died while his case was in litigation; the U.S. agreed not to seek deportation of the other three because of their ill health.

Indeed, Germany accepted many more OSI defendants than it declined. As of this writing, 23 OSI defendants have gone to Germany. One was extradited;⁴⁰ some fled in the midst of OSI proceedings;⁴¹ others left the United States as a result of pre- or post-filing settlements with OSI;⁴² some were admitted after deportation orders were entered.⁴³

Six of the twenty-three were German citizens, and thus had to be admitted under German law.⁴⁴ Most of the others entered unannounced with their U.S. passports. The Germans did not know at the time of entry that they were either OSI subjects or defendants.⁴⁵ In most cases where Germany later learned of the connection, they let the matter lie. Their reaction was quite different, however, in the two cases where OSI was involved in the defendant's plan to go to Germany.

John Avdzej and Arthur Rudolph went to Germany as part of an agreement with OSI to avoid prosecution in the United States. Each renounced his U.S. citizenship shortly after arrival. Although OSI knew about the defendants' plans, Germany had not been forewarned nor had the State Department.⁴⁶ When they entered Germany, neither man acknowledged that he was doing so in order to avoid prosecution in the United States.

The Germans sent a strongly worded Diplomatic Note in protest.⁴⁷ They made clear that

they would not have admitted either man had they known the true circumstances of his departure from the United States; the admittees' lack of candor rendered their admissions unlawful.⁴⁸ Germany asked the United States to take the men back and went so far as to threaten to withhold investigative cooperation in future OSI endeavors. Indeed, the Diplomatic Note pointedly warned that Germany might end the charade of treating these cases as criminal matters so that they would be covered under the mutual assistance treaty.

The Government of the Federal Republic of Germany also deems it necessary to point out that assistance to the OSI has been provided in accordance with the principles of judicial assistance in criminal matters. The present cases, however, lie outside the category of judicial assistance in criminal matters. They belong to the administrative process.⁴⁹

The U.S. refused to allow the men reentry although it did, ultimately, change its policy in response to White House pressure. AAG Jensen, DAAG Richard, and Director Sher were summoned to the National Security Council on June 7, 1984 to discuss the matter. Sometime thereafter, AAG Jensen advised DAAG Richard that the program of encouraging defendants to go to Germany unannounced could not be continued absent State Department support.⁵⁰

The State Department was not, however, in favor of OSI's policy in this regard. In December 1987, it issued a new policy: U.S. nationals who renounced their citizenship and had no other nationality or had not been accepted for permanent residence by another country could be involuntarily returned to the United States unless it was against U.S. interests to do so.⁵¹

In 1993, OSI agreed to provide the Germans with a list of current OSI defendants along with their date and place of birth, the status of the litigation, and a summary of the defendant's World War II service. The Germans wanted the information to help control their borders. They continued to accept some OSI defendants until well into the 1990s.⁵² However, in the late 1990s,

the Germans announced that they would no longer accept any non-German OSI defendants as deportees. It is unclear what caused this change. Some at the State Department thought that pending litigation concerning Holocaust victim assets might explain Germany's intransigence.⁵³ Director Rosenbaum thought it more likely that the collapse of the Soviet Union was the key factor. As he saw it, the Germans were willing to accept non-German OSI defendants only in order to prevent their deportation to the Soviet Union.⁵⁴

The problems caused by Germany's hardening position came to a head in the cases of Bronislaw Hajda, Anton Tittjung and Nikolaus Schiffer. Hajda, a Pole who served as an SS guard at various Polish camps, including the Treblinka labor camp, was denaturalized and ordered deported to Poland (his country of birth) or Germany (the country from which he embarked to the United States) in 1998. Poland refused to accept him on the ground that he had expatriated himself by his collaboration with the Nazis.

Tittjung, born in Yugoslavia (now Croatia), was a German national. As a member of the Waffen SS, he served as a guard at Mauthausen in German-annexed Austria. He lived in Austria for seven years after the war and received his entry visa there. He was denaturalized and ordered deported to Croatia in 1994. The Croatian government refused to accept him because he was neither born in that country nor a citizen thereof. The United States asked Austria to admit him, but the request was denied; Austria noted that he had never been a citizen of that country.⁵⁵

Schiffer, a German national from Romania, served in the Waffen SS as a concentration camp guard in both Poland and Germany, and was ordered deported to Romania in 1997. That country refused to accept him on the ground that he had surrendered his Romanian citizenship when he left Romania and voluntarily joined the German armed forces.⁵⁶

OSI urged the State Department to pressure Germany to accept all three men, warning that Congress, the media and the public would be highly critical if Germany did not.⁵⁷ Rosenbaum was particularly outraged since he felt that now, more than ever, Germany “owe[d] us big time.” (They had just obtained what he felt was an agreement overly favorable to them on the issue of slave labor reparations.)⁵⁸ The State Department, however, insisted on further pursuit of diplomatic channels with Poland, Croatia and Romania before increasing pressure on Germany. State hoped that as new democracies, these countries would want to be seen as “European” and therefore would respond favorably.⁵⁹

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

criminal offences against peace and humanity, war crimes or crimes against humanity.”⁶⁰

The United States continued to pressure Germany about the other two defendants. Rosenbaum met with the German Consul General and offered the Germans political cover in case they were concerned about world reaction if they failed to prosecute the men: Rosenbaum would explain publicly that the United States understood the difficulties of filing a case at this late date and was confident that the Germans would do an appropriate investigation.⁶¹ Shortly thereafter, the State Department sent a Diplomatic Note to Germany stating that “the United States believes that Germany has a compelling moral obligation to act as the receiving country of last resort.”⁶² A second diplomatic message was sent in March 2002⁶³ and a demarche the following summer.

Germany withstood the pressure. They maintained that although they could accept non-Germans for reasons of international law, political interest or humanitarian concern, practice dictated that there be current links to Germany; typically such links were either to family or property, neither of which applied to Tittjung or Hajda.⁶⁴ Ultimately, Germany turned down the U.S. request, emphasizing that the men were not German citizens and there was no “public interest” in Germany to accept the men since there were no criminal charges or investigations pending against them. Germany did not respond to the moral imperative argument.⁶⁵

In January 2003, the State Department proposed importuning Croatia and Poland again before applying renewed pressure on Germany. Meeting with the State Department’s Director of Austria, Germany and Swiss Affairs, Rosenbaum and his Principal Deputy Susan Siegel made plain their opposition to this proposal. They deemed it futile and a waste of time.⁶⁶ The State Department insisted however, and a demarche was sent to Poland and Croatia. Both countries

rejected the U.S. proposal.

At this point, diplomatic relations between the U.S. and Germany were strained, for reasons unrelated to OSI.⁶⁷ The media was reporting that Germany was anxious to improve the situation and Rosenbaum hoped that this might work to OSI's advantage. In May 2003, he contacted the State Department's Special Ambassador on War Crimes issues. Rosenbaum opined that unless the matter were resolved soon, "a major public controversy will soon erupt, and this entire sordid history will come out."⁶⁸

The Ambassador was supportive of the need to press the issue further with Germany. Very soon thereafter, and one day before the U.S. Secretary of State was scheduled to meet with the German Chancellor, the State Department delivered a Diplomatic Note to the Germans. This May 2003 document reviewed the history of the United States' efforts to deport Hadja and Tittjung and renewed the U.S. request that "Germany act as the receiving country of last resort for these individuals on the basis of Germany's compelling moral obligation to accept them." The U.S. added that neither Croatia nor Poland possessed "an equivalent moral obligation."⁶⁹

Rather than offering to accept Tittjung and Hajda, Germany asked the United States to take back Dmytro Sawchuk, an OSI defendant who had fled to Germany in 1999. Having renounced his U.S. citizenship when he reached Germany, Sawchuk, born in Poland, was stateless; the Germans were neither interested in prosecuting him nor in granting him German citizenship.

The United States rejected the German request. The State Department advised that the December 1987 agreement to readmit stateless persons did not control since there was an exception if readmittance was not best for U.S. interests. Sawchuk had guarded Jews who were

forced to exhume and burn corpses. From the U.S. perspective, that made him the precise type of person for whom the exception was created. Moreover, OSI had timely alerted the German Consulate that Sawchuk might flee to Germany. They therefore should not have been taken unawares when he entered the country.⁷⁰

As anxious as OSI was to have Germany accept OSI deportees, the office was not optimistic that any would face trial in Germany. Murder was the only relevant crime not barred by the German statute of limitations and it was almost impossible to establish the “base motive” called for in the statute. OSI had always understood base motive to mean that one would have to establish that the murder was inspired by something akin to racial hatred or that the perpetrator imposed extra suffering through extreme cruelty.⁷¹

In the summer of 2003, however, OSI learned that German courts had long ago upheld findings of base motive in cases of mass shootings or group death in gas chambers. According to one 1971 ruling by the German Federal Court of Justice:

Waiting for one’s own sure death, experiencing the preparations, and being herded into the gas chambers constituted additional mental torture for the victims of mass extermination.⁷²

This raised the possibility, for Rosenbaum, that Germany might be persuaded to seek the extradition of Jacob Reimer, an OSI defendant who had been denaturalized in December 2002.⁷³ Reimer, trained as a camp guard, had been involved in ghetto clearings and a pit execution.

Before broaching the topic of extradition, however, Rosenbaum wanted to pursue the issue of OSI deportees. In October 2003, Rosenbaum met with the Political Minister of the German Embassy. Rosenbaum presented a proposal, approved by the State Department, which would obligate the United States to seek other countries for deportation, but commit Germany to

accept those with German citizenship and those who are not granted admittance elsewhere.⁷⁴ Rosenbaum also alerted the Minister that two members of Congress had recently written to the Attorney General asking about OSI's deportation problems.⁷⁵ Unless the matter were settled before a response was due, Rosenbaum warned that he would "devote [him]self to doing whatever the Justice Department will permit me to do to fan the flames of controversy."⁷⁶

In December 2003, Germany issued a Note Verbale rejecting again both Hajda and Tittjung. The Note spoke of the lack of legal authority for their admission; again, Germany did not address the moral argument.

The issue took an unexpected turn in January 2004. An OSI defendant who had been ordered deported to Lithuania flew to Germany after all his appeals were exhausted. OSI had been working with Immigration and Customs Enforcement ((ICE) – successor to the INS) to locate the defendant and put him on a plane to Lithuania. He eluded the authorities and, with his still-valid Lithuanian citizenship, flew to Germany where he was admitted without a visa because Germany and Lithuania are both members of the European Union (EU).

As soon as OSI learned of this, it notified the State Department which passed the information on to Germany. A member of the German Embassy, grateful for the "heads up," acknowledged to Director Rosenbaum that his country had OSI's 1993 information concerning this defendant. However, the information had not been shared with airport security and so the entry was accomplished without incident.⁷⁷

Germany's inadvertent admission of an OSI defendant did not reduce the U.S. government's determination to convince Germany to knowingly accept OSI deportees. In January 2004, Rosenbaum, with State Department approval, met with staff of the two

Congressmen who had written to the Attorney General about the deportation issue. The State Department had a separate meeting with the staff shortly thereafter. The State Department reiterated OSI's message that Germany "has steadfastly refused to address the moral argument." However, State was less critical than OSI had been of Germany's overall actions on the deportee issue over the years.⁷⁸

In February 2004, the two Representatives wrote to the German chancellor asking him to recognize Germany's "moral responsibility" to accept Tittjung and Hajda.⁷⁹ The German response, issued by the foreign minister, acknowledged the country's "special historical responsibility." The Minister maintained, however, that the responsibility was met in large part by the payment of "comprehensive compensation" to Holocaust victims over the years. He reiterated Germany's position on deportees. It would only consider accepting people who were not – and never had been – German citizens, if there was a possibility of criminal prosecution in Germany. As he saw no such possibility for Tittjung and Hajda, they would not be admitted.

Moreover:

Admission outside of a legal assistance procedure would send the wrong signal. Since the persons in question cannot be convicted due to a lack of evidence against them, and due to the fact that on the contrary they would even have to be granted state aid, this would give the impression that Germany is providing protection and shelter to persons with a Nazi past. This would not be justifiable for both domestic and foreign policy reasons. The Federal Government sees the responsibility for admission of the persons in question as resting with the states whose citizenship they hold.⁸⁰

In March 2004, Director Rosenbaum advised the Germans that Johann Leprich, another OSI defendant, had been ordered deported to Germany.⁸¹ Leprich, an ethnic German born in Romania, had been a camp guard. He was denaturalized in 1987. Shortly before the ruling, he

fled the country. His attorney advised the court and OSI that he had gone to Canada.

Years later, a self-styled Canadian "Nazi hunter" began a public search for Leprich, maintaining that he had returned to the United States. Leprich was featured on a May 1997 segment of a popular U.S. television show, "America's Most Wanted." In 2003, he was found hiding in a secret compartment under the basement stairway of his wife's home in Michigan. He claimed that he had recently entered from Canada where he had no legal status. His illegal entry from Canada formed the basis for deportation.⁸² He requested Germany as his destination country.

OSI, with the State Department's approval, posited a new theory under which Leprich remained a German citizen and therefore had to be accepted back into the country. As OSI read German law of the era, as an ethnic German Leprich became a German citizen when he joined the Waffen SS. While Leprich renounced his German citizenship when he became a naturalized U.S. citizen, German law allows for renunciation only if one does not become stateless as a result. OSI claimed that Leprich's renunciation was ineffective since the district court which stripped him of his citizenship did so retroactively. Since he never properly became a U.S. citizen, he would be stateless without his German citizenship.⁸³

Germany rejected that analysis outright. It maintained that service in the SS did not automatically confer citizenship. Even if it had, Leprich would have lost citizenship based on lack of residence and/or acquisition of U.S. citizenship. That the U.S. retroactively stripped him of citizenship did not alter their view. Germany added another reason as well, one which applies to all OSI defendants who cannot be prosecuted criminally in Germany: Germany does not want to create the impression that it is "offering protection and shelter to persons with Nazi pasts."⁸⁴

To eliminate that possibility, the State Department offered to issue a statement explaining that Germany had taken Leprich only to accommodate the United States. Germany did not take up the State Department offer.⁸⁵

Both Hajda and Reimer died in the United States in 2005. That same year, a German television news magazine devoted a segment to Germany's refusal to readmit elderly Nazis ordered deported by U.S. courts.⁸⁶ A former OSI Deputy Director appeared on the program to argue for revision of the policy. In a letter sent to the program, but not read in its entirety on air, the Federal Ministry of the Interior defended the policy.

There are no obligations under international law, nor can the Federal Republic of Germany have any interest in accepting people into our country who, although they are suspected of committing Nazi crimes, cannot be proven to have committed them. If we did so, we would be encouraging, and be responsible for, a state of affairs in which these people have been accepted by the very country where the Nazi crimes originated, the people would then be supported here by German social services and could possibly even become active in the extreme right and anti-Semitic social scene. In addition, because we are doing everything possible to encourage the growth of an active Jewish life in Germany again, we cannot hospitably accept people from the Brown circle into our country at the same time. Although we completely understand that the United States would want to send these people out of its country after revoking their citizenship, they should be deported to the countries of their former citizenship, as prescribed by international law.⁸⁷

As of this writing, Sawchuk is still in Germany while Tittjung and Leprich remain in the United States.⁸⁸ The United States has begun discussions with the Russian government about the possibility of Russia's accepting OSI deportees whose crimes were committed in the Baltics.⁸⁹

1. Nov. 14, 1991 memo from Peter Black, OSI Historian, to OSI attorneys, historians and investigators re: "Former Stasi Archives in the Freienwalderstrasse, 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 OSI Chief Investigative Historian David Marwell, July 17, 2003.

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 David Marwell, former Chief Investigative Historian at OSI, was named Director of the BDC. He remained in that position until 1994.

3. Oct. 22, 1992 letter from then Principal Deputy Director Rosenbaum to W. David Straub, Central European Affairs, U.S. State Department.

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.

DAAG Richard testified in favor of the agreement before the House Subctee on International Security and Human Rights, Committee on Foreign Affairs, Apr. 28, 1994.

5. Not all countries have been as flexible. Contrast Germany's approach on this issue with Australia's, discussed at p. 490, and Austria's. In 1982, the Austrian Ministry of the Interior refused to allow OSI access to a Vienna District Court file on Bruno Blach, a former concentration camp guard then a defendant in deportation proceedings initiated by OSI. Austria noted that its treaty covered assistance only in criminal cases and this was "an administrative proceeding." March 22 1982 letter to OSI, from Dr. Zeyringer of the Austrian Ministry of the Interior.

6. Oct. 26, 1987 memorandum from OSI Historian Peter Black to Director Sher re "Issues for Discussion with FRG Officials."

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 from Peter Black re: "Release of Documents and Records Obtained from the FRG Through Requests for Judicial Assistance."

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 Rosenbaum from OSI Chief Historian Elizabeth White re:

"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 Rosenbaum to Donald Shermanski, Deputy Director State Dep't Office of Austrian, German and Swiss Affairs re "OSI Egner Investigation – German Denial of Access to His Pension Records."

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 OSI Chief Investigative Historian Michael MacQueen to Ludwigsburg Chief Kurt Schrimm forwarding a list of collaborators whose names came up in

recent research and who might still be in Germany; Aug. 9, 1989 letter to Reinald Walkemeyr, Ass't to the Amb., GDR, from Rosenbaum, Deputy Director OSI, notifying him of survivor witnesses in the U.S. who might have relevant information for an upcoming East German trial. OSI has even assisted by interviewing witnesses on matters somewhat outside OSI's traditional mandate. Thus, at the request of the Germans, and with the sanction of the State Department, an OSI attorney interviewed witnesses in the U.S. for a German investigation about the 1945 murder of Sudeten Germans in the Czech Republic. Mar. 18, 2003 e-mail from Rosenbaum to Stephen Markard, Assistant Director, Terrorism and Violent Crime Division, USNCB- Interpol Washington, re "WWII era war crimes - 20020303674."

13. *E.g.*, Aug. 12, 2002 letter from Rosenbaum to Schrimm inviting him to visit OSI and examine records. In 2005, as part of its investigation of John Kalymon, OSI learned the whereabouts in Germany of a citizen who had signed "bullet reports" describing the killing of Jews in Poland. OSI sent the Germans 21 relevant wartime documents and the Germans opened an investigation. Sept. 26, 2005 letter from Elizabeth White, OSI Deputy Director and Chief Historian to Criminal Chief Commissioner Manfred Haag, Ludwigsburg, Germany; Nov. 20, 2005 e-mail from White to Director Rosenbaum re "Kalymon: Message from German Prosecutor re Kerestil."

14. Aug. 9, 1989 letter to Reinald Walkemeyer, Ass't to the Amb., GDR, from Deputy Director Rosenbaum.

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 Samuel Zutty, INS Investigator; 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 Attorney General Smith to Jürgen Schmude, German Minister of Justice; Oct. 6, 2000 recorded interview with former OSI Director Ryan. 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

discussion of extradition.

21. A synopsis of Ryan's trip is set forth in the Jan. 4, 1982 letter from Attorney General Smith to West German Minister of Justice Schmude, *supra*, n. 20.

22. Of the 134 cases which OSI has either litigated or settled pre-filing as of this writing, only 7 involved persons born in Germany.

23. "Proposal to Speed War Crimes Cases Studied," by A. O. Sulzberger, Jr., *The New York Times*, Nov. 15, 1981.

24. Jan. 4, 1982 letter, *supra*, n. 20.

25. Feb. 12, 1982 letter to the Attorney General from the Federal Minister of Justice.

26. Jan. 28, 1983 memorandum from OSI Deputy Director Sher to DAAG Richard re "Meeting with West German Legal Official." OSI was so irate about West Germany's position that it proposed sending Trifa to the United States occupation sector of West Berlin. *See* pp. 218-219.

27. *See* pp. 271-295, 510-515.

28. Although base motive could be established if the defendant exploited the lack of suspicion or inability of the victim to put up a defense, West Germany advised that "[t]he fact that one of the victims was a four year old child in itself does not suffice to establish a determination of a cruel or underhanded killing according to . . . the Legal Code." Mar. 28, 1983 Note Verbale from German Foreign Office. (Of course, if Koziy were a deportee, Germany would not be obligated to try him in any event.) For a further discussion of base motive, *see* p. 340, n. 17.

29. Oct. 1, 1985 letter from German Embassy to Department of State.

30. Indeed, the U.S.S.R. had wanted to extradite Maikovskis, but in the absence of an extradition treaty between the United States and the U.S.S.R., the U.S. did not honor this request.

31. *JTA*, Feb. 20, 1991 reporting on testimony by Maikovskis' attorney. *See* also Maikovskis' May 10, 1996 obituary in *The Pittsburgh Post-Gazette* reporting that he had "secretly persuaded a German consul to grant him a visa."

32. *See* p. 38.

33. *See* pp. 35, 38.

34. Jan. 28, 1983 memo to DAAG Richard from Dep'ty Dir. Sher re "Meeting with West German Legal Official."

35. Notes Verbale, No. 195-C (May 24, 1995) and 1142-C (June 10, 2005).

36. Note Verbale, Ref. No. 508-516.50 (USA), Nov. 22, 2005.

37. The six were Mathias Denuel, Jakob Denzinger, Stefan Leili, Hans Lipschis, Peter Mueller and Wiatschelaw Rydlinskis. The circumstances of their entry are set forth in notes 41 and 43, *infra*.

38. The two were Kazys Gimzauskas and Aleksandras Lileikis.

39. Albert Ensin, Talivaldis Karklins, Mikelis Kirsteins and Alexander Lehmann.

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, Jakob Denzinger, Juris Kauls, Stephan Leili, Peter Mueller, Stephan Reger, Wiatschelsaw Rydlinskis, Dmytro Sawchuk, Josef Wieland, and Chester Wojciehowski. 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 German Consul General Ulf Hanel to Director Rosenbaum. However, he entered with a U.S. passport shortly after his denaturalization case was filed.

42. John Avdzej, Arthur Rudolph, Michael Schmidt.

43. Paul Bluemel, Algimantas Dailide, Mathias Denuel, Johann Hahner, Liudas Kairys, 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 Rosenbaum to German Consul General Ulf Hanel.

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 OSI Chief Historian Peter Black to German Justice Ministry official Reinhard Weth (hereafter Black draft). The letter was a followup to a May 11, 1993 telephone conversation between Weth and Black 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 German Ambassador Immo Stabreit from Director Sher. Kairys was admitted in Apr. 1993.

44. Paul Bluemel, Mathias Denuel, Johann Hahner, Reinhold Kulle, Hans Lipschis, and Peter Mueller.

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. Citizenship renunciations are not valid unless accepted by the State Department. In these cases, the State Department was initially reluctant to do so. The responsible consular officers were concerned that the renunciations might not be voluntary given the impending OSI prosecutions. The State Department requested an opinion from the Justice Department on the matter. The Office of Legal Counsel (OLC) concluded that the renunciations were in fact voluntary. Sept. 27, 1984 memo from Ralph Tarr, DAAG of the OLC to Daniel McGovern, Acting Legal Advisor of the State Department. The State Department accepted the renunciations shortly thereafter.

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 Black draft, *supra*, n. 43. They were also upset about Michael Schmidt's entering Germany in 1993. (Schmidt voluntarily agreed to leave the U.S. rather than face deportation charges.) The Germans resented that they had not been notified by the U.S. in advance of Schmidt's arrival. 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 DAAG Richard, Apr. 25, 2001.

51. All Diplomatic and Consular Posts (ALDAC) cable (87 State 386507), Dec. 12, 1987.

52. OSI defendants who went to Germany in the 1990s include Michael Schmidt (1990); Liudas Kairys and Johann Hahner (1993); Mathias Denuel and Wiatschelsaw Rydlinskis (1994); and Dmytro Sawchuck (1999). Kairys is discussed *supra*, n. 43.

53. Comment of James I. Gadsden, Deputy Asst. Secretary of State for European Affairs at State 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 Rosenbaum to Charles Cohen, Deputy Director, EUR/AGS Department of State. 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.

55. Aug. 24, Nov. 2, and Dec. 13, 2000 letters to Director Rosenbaum from Austrian Amb. Peter Moser.

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 Rosenbaum to Cohen, *supra*, n. 54; Aug. 27, 2001 letter from Rosenbaum to James Gadsden, Deputy Assistant Secretary of State for European Affairs.

58. In 2000, the United States and Germany approved an agreement that obligated Germany to place approximately \$5 billion in a compensation fund for those who had been forced to work in Nazis concentration camps, ghettos and factories. Half the money in the fund came from the German government and half from German industry (including some American subsidiaries of German companies). Payments ranged from \$2,200 to those who worked for German companies to \$7,500 for those in concentration camps or ghettos that aimed at "death through work."

Although most of the beneficiaries were not in the U.S., the United States helped negotiate the agreement after American lawyers filed class action lawsuits in the United States on behalf of victims from around the world. (Negotiations were handled by then Deputy Treasury Secretary Stuart Eizenstat.) To encourage Germany in the negotiations, the U.S. pledged to do everything it could to block the lawsuits.

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.

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 Maura Harty raised concern about Romania's unwillingness to accept OSI defendants. May 12, 2005 e-mail from Bob Gilchrist, Political Section Chief, U.S. Embassy Bucharest to OSI Director Rosenbaum re "Nazi Deportees - Romania." Gilchrist himself followed up in Aug. 2005 with his counterparts at the Romanian Embassy. Aug. 30, 2005 e-mail from Gilchrist to Rosenbaum re "Nazi Deportees - Romania (Negele, Leprich, Friedrich, Wittje)."

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 Dir. Rosenbaum from Radu Ioanid, Director of International Archival Projects at the USHMM, re "OSI/Romania."

As of this writing, the Romanian position has not changed.

61. Dec. 10, 2001 e-mail from Rosenbaum re "12/5/01 Meeting w/ German Consul General Germann."

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 Carol Van Voorst, DOS Director of Austria, Germany and Swiss Affairs re "Germany and Readmission of Nazis Fittjung & Hajda," to Rosenbaum and responsive e-mail of Jan. 2, 2003 from Rosenbaum to Van Voorst.

65. June 24, 2002 Note Verbale from the German Foreign Office, Case No. 200-533.00 USA.

66. Rosenbaum voiced the view that Germany would accept Tittjung and Hajda only if it believed that by doing so it could save the men from a worse fate – as Germany had accepted Maikovskis when it looked as if he might be sent to the U.S.S.R. Rosenbaum proposed threatening to send the defendants to Israel where they could be locked up as enemy combatants. The State Department was unreceptive to this suggestion. Jan. 13, 2003 meeting at OSI.

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 Rosenbaum to Amb. Pierre Prosper re “Germany-Nazis.” Rosenbaum reiterated that message to Van Voorst. May 12, 2003 e-mail re “Fwd: Re: Germany-Nazis.”

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 Rosenbaum to Steve Donlon, State Department re “OSI: Cable from Germany re: Sawchuk.”

71. See p. 340, n. 17.

72. Nov. 1, 2003 e-mail from Rosenbaum re “Reimer Extradition to Germany?” in which he quotes from a German decision reported at 1 StR 110/70 (May 18, 1971). The case was cited to him by Kurt Schrimm, the Director at Ludwigsburg Zentrale Stelle.

73. *U.S. v. Reimer*, 2002 WL 32110197 (S.D.N.Y.), *aff’d*, 356 F.3d 456 (2nd Cir. 2004).

74. The text reads as follows: With respect to the Nazi-era cases handled by the Office of Special Investigations of the Department of Justice, the United States Government agrees that it will always seek initially to remove persons who have retained foreign (i.e., non-U.S.) citizenship to their country of citizenship. This includes persons who formerly held German citizenship but were naturalized by third governments after World War II and have not lost or surrendered such citizenship. Germany will have no obligation to admit such individuals, other than those who have retained German citizenship. The United States Government further agrees that it will seek initially to remove stateless individuals to: 1) the countries in which they formerly held citizenship; 2) the countries of which they were previously nationals, or if such countries do not agree to admit the individuals, 3) the countries from which they immigrated to the United States. If none of these countries agrees to admit the individual, Germany agrees that it will be the receiving country, provided that the decision of the United States Government to seek removal/departure is predicated in whole or in part on the individual’s assistance or other participation in persecution while serving during World War II in a military, paramilitary, police, auxiliary police or other unit of, under the direction or control of, or sponsored by, the German Government or the NSDAP. Germany agrees that it will also continue to be the receiving country for persons who immigrated to the United States from Germany under the Refugee

Relief Act of 1953 through fraud or misrepresentation of material facts.

75. Oct. 27, 2003 letter to Attorney General Ashcroft from Rep. Tom Lantos, Ranking Member of the House International Relations Committee and Sheila Jackson Lee, Ranking Member, House Subcommittee on Immigration, Border Security and Claims.

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 Rosenbaum re "Meeting at German Embassy With Rolf Nickel Regarding OSI Deportees."-----

77. Jan. 13, 2003 e-mail from Rosenbaum re "Dailide Case: Tel. Call from German Embassy's Christian Germann."

78. Feb. 9, 2004 e-mail from Van Voorst to Rosenbaum re "Meeting with Congressional Staffers."

79. Feb. 25, 2004 letter from Congresswoman Sheila Jackson Lee and Congressman Tom Lantos to German Chancellor Gerhard Schroeder.

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 Director Rosenbaum from Chargé d'Affaires Peter Gottwald. The letter was in response to notification from OSI about developments in the Reimer case.

81. Mar. 3, 2004 letter from Rosenbaum to German Ambassador Wolfgang Ischinger 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 German Amb. Wolfgang Ischinger from Director Rosenbaum.

84. May 13, 2004 letter from Christian Germann, Consul General at the German Embassy in Washington, D.C. to Rosenbaum.

85. The suggestion was made by Don Shamanski, Deputy Director of AGS to German Consul General Hans Jörg Neumann, Oct. 28, 2004 as set forth in Oct. 28, 2004 memo to Leprich file from Rosenbaum re "Fascinating Meeting Today with German Consul General Neumann."

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. 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 www.dhs.gov/interweb/assetlibrary/OIG_06-33_Apr06.pdf (last visited Nov. 2006).

89. Nov. 9, 2005 e-mail from Director Rosenbaum re "OSI Deportees, Etc. - Meeting Today with Russian Embassy's Georgiy E. Borisenko."

The Baltics

Over one third of OSI defendants come from Estonia, Latvia and Lithuania. These former "captive nations" have a complex political history which affects their perspective on World War II, and consequently their working relationship with OSI.

All three nations were under Russian domination until the end of World War I. They then attained independence, but in 1940, partly as a result of the Soviet/German Molotov-Ribbentrop Pact, the Soviets annexed the three countries. When Germany invaded the U.S.S.R. in June 1941, it overran and occupied the Baltic nations. The invading forces included small mobile killing units (Einsatzkommandos) charged with annihilating Jews and others deemed inimical to the Reich. Indigenous groups within each country assisted the Germans in carrying out their mission.¹ At war's end, the Baltic nations were once again forcibly incorporated into the Soviet Union.

The three countries saw themselves as victims of both the Nazis and the Communists. Many who assisted the Nazis claimed they were seeking to rout their former Communist oppressors, not Jews; to the extent that there was any overlap, they saw it as incidental. This defense was raised in several OSI cases, once successfully.²

While the Baltic nations were part of the Soviet Union, OSI had access to documents in their archives to the same extent that it had access to documents in other Soviet archives: the Soviets would receive requests from OSI and produce documents they deemed responsive.³ Once the Baltic countries gained independence, they, like the other parts of the former Soviet Union, were generous in allowing OSI access to their archives. However, they have been reluctant to prosecute criminally those who assisted the Nazis.⁴

1. Estonia

About 75% of Estonia's Jewish community fled to the Soviet Union before the German invasion. Of the remaining 950 to 1,000, virtually all were killed by the Nazis. The Nazis also murdered hundreds of Estonian Roma (gypsies).

As a Soviet Socialist Republic, Estonia was prepared to prosecute Karl Linnas.⁵ Since it gained independence, Estonia has maintained that it is anxious to find and prosecute those who assisted the Nazis in persecution. In fact, however, independent Estonia has never prosecuted anyone for aiding the Axis powers. Several Estonian collaborators have come to OSI's attention.

a. Evald Mikson

In 1993, Iceland sought OSI's assistance in investigating former Estonian national and nationalized Icelandic citizen Evald Mikson. Mikson had been head of the Estonian Political Police. That organization, at the behest of the Germans, arrested, interrogated and imprisoned persons whose racial, religious, political, ethnic and social identity was deemed dangerous or undesirable. Iceland shared with OSI a 1993 report about Mikson that it had received from the Estonian Prime Minister's office. While positing that Estonians had "no power to run the country and its society" during the Nazi era, the report nonetheless referenced 28 arrest orders that Mikson had signed. It noted also that he had interviewed an unspecified number of the arrestees. Thirteen of the 28 arrest orders listed no crime; 11 of these 13 arrestees were Jews. The report made no mention of the ultimate fate of any of those arrested and concluded that there was no basis for accusing Mikson of war crimes. Mikson died in late 1993, at which time the Icelandic investigation was closed.⁶

In 1998, the president of Estonia appointed an international commission to investigate

crimes against humanity during World War II. The Commission presented its findings in 2001.⁷ It concluded that although Estonian police were formally subordinate to the Germans, they nonetheless “exercised significant independence of action in arresting and interrogating suspects, and determining and carrying out sentences.” While reluctant to assign personal responsibility to most members of the Estonian police, the Commission made an exception for the Political Police, *all* of whose members it held accountable. Within this culpable group, the Commission named those *most* responsible, including Mikson, who had “signed numerous death warrants.”

b. Harry Männil

Although Mikson was dead by the time the Commission issued its report, Harry Männil, one of his chief deputies, was alive and well in Venezuela.⁸ In March 2001, the SWC appealed to the Estonian Prime Minister to investigate Männil,⁹ and shortly thereafter the Estonian Security Police asked the United States for any documents relating to Männil’s World War II activities.¹⁰ OSI responded with a report, along with supporting documents, most of which came from the Estonian State Archives. The documents established that Männil had interrogated individuals in Political Police custody, including Jews and suspected Jews, and that the Germans had murdered at least one of the Jews interrogated.¹¹ After receiving the documents, the Estonian Security Police announced that there was no basis for accusing Männil of Nazi crimes and that Männil’s interrogations were “a legal, procedural act” that could not be considered a crime against humanity.¹²

In June 2002, OSI’s Principal Deputy Director and its Chief Historian went to Estonia to discuss, among other things, whether Estonia might seek Männil’s extradition from Venezuela. This trip came in the wake of a controversial Op-Ed piece about the Holocaust written by the

U.S. Ambassador to Estonia and published in one of that country's prominent newspapers. The article suggested that membership in NATO (which the Estonians were then seeking) depended in part upon eliminating resurgent anti-Semitism. It urged the Estonians to pursue those involved with the Holocaust "with the same vigor with which the state still pursues those suspected of Soviet crimes," and recommended national commemorations and education about the atrocities committed during that era.¹³ The piece created a furor in Estonia, where some viewed it as interfering with the internal affairs of a foreign country.¹⁴

OSI's discussions with the Estonian prosecutors were tense. Although the Estonians reluctantly acknowledged that Männil might be culpable under Estonian law,¹⁵ they changed their position shortly after the meetings concluded. In July 2002, the government announced that it could not prosecute Männil without evidence that he had actually issued (or carried out) the execution orders.¹⁶ The Estonians never confronted Männil with the documents sent by OSI nor interviewed potential witnesses in the United States. The investigation was officially closed in December 2005, with the Estonians announcing that the 85-year-old Männil was not guilty of crimes against humanity.¹⁷

A philanthropist and avid art collector, Männil was invited to Estonia in February 2006 to attend the opening of the country's new art museum. The U.S. ambassador boycotted the event because of Männil's presence.¹⁸ As of this writing, Männil still resides in Venezuela.

c. Kalijo Arvo Lehela

Kalijo Lehela, an Estonian-born Canadian citizen, was placed on the Watchlist and barred from entering the United States in 1990. The basis for his exclusion was a handwritten and signed statement he wrote as an officer candidate for the Waffen SS. In that document, he

reported serving as a criminal police official in the German Security Police and SD (Security Service) from October 20, 1941 to July 17, 1943, after which he joined the Estonian SS.

In support of Lehela's unsuccessful effort to have his name removed from the Watchlist, the Estonian Consul General in Toronto wrote letters stating that he did not believe Lehela was a proper subject for investigation. The Consul General also certified a translation of Lehela's autobiographical statement which OSI deemed "so far from the original as to be unquestionably fraudulent."¹⁹

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, Representative Tom Lantos asked the Estonian government for an update on their investigation of Gorshkow.²⁰ The Estonian reply professed commitment to the

investigation but noted that material from OSI was “great and labor consuming, which makes it difficult for us at the moment to complete the case rapidly.”²¹

Given that OSI had turned over only 36 pages of written material (plus 50 post-war interviews on a CD-ROM), OSI saw this as yet another example of Estonia’s “bad faith in dealing with the Nazi cases.”²² In December 2003, Estonia formally opened an investigation into Gorshkow. The Prime Minister assured Representative Lantos that he would “personally follow” the investigation.²³ Several months later, the Estonians concluded that there was insufficient basis for an indictment.²⁴

2. Lithuania

Over the years, Lithuania has sent mixed messages about its commitment to prosecuting alleged war criminals. After gaining independence, Lithuania seemed committed to prosecuting those who had persecuted civilians on behalf of the Nazis. In 1991, the government established an office to investigate “crimes against humanity” committed during the Nazi and/or Soviet eras; its mandate included determining whether the country had wrongly “rehabilitated” any Nazi collaborators.²⁵ Lithuania also signed an agreement to assist Australia in its efforts to prosecute former Lithuanian war criminals now resident in Australia, and offered to enter into a similar pact with both Israel and the United States.²⁶ The following year, Lithuania adopted a statute punishing Nazis and Nazi collaborators for crimes committed against the Lithuanian people during World War II. There is no statute of limitations and punishments range from five years imprisonment to death.²⁷ Lithuania also negotiated a Memorandum of Understanding (MOU) with the United States, whereby each country agrees to assist the other in the investigation of alleged war criminals.

Despite these intentions, by September 1994, when OSI filed a denaturalization suit against Lithuanian-born Aleksandras Lileikas, Lithuania had not yet prosecuted any Nazi collaborators.²⁸ OSI saw the Lileikas prosecution as “one of the most important Nazi cases brought anywhere in the world in recent history.”²⁹ As such, Lithuania’s handling of Lileikas issues became, for OSI, the litmus test of Lithuania’s commitment to prosecute those who had assisted the Nazis.

Lileikas had been chief of the Lithuanian Security Police (Saugumas) in Vilnius. On behalf of the Nazis, the Saugumas arrested Jews, suspected Jews, and those who aided, hid or did business with Jews. Tens of thousands of those incarcerated in Vilnius were marched or trucked to an excavation site at Paneriai, six miles away.

Not all those incarcerated in Vilnius were arrested there, nor were all those arrested in Vilnius rounded up by the Saugumas. Nonetheless, even with very incomplete records available, it is certain that at least several hundred of those sent to Paneriai were arrested by the Saugumas during Lileikas’ tenure. Once at Paneriai, the victims were stripped of their clothing and any remaining possessions, and then shot in groups of ten at the rim of pits by a Lithuanian volunteer unit. Vilnius had been home to 60,000 Jews before the war; at war’s end, only 5,000 were alive.³⁰

As chief of the Saugumas in Vilnius, Lileikas was the highest ranking Lithuanian prosecuted by OSI. The case, based on documents found by an OSI historian in the Lithuanian archives, included dozens of orders signed by Lileikas. There were arrest warrants as well as orders transferring many arrestees to the German Security Police, where they were “treated according to orders,” *i.e.*, murdered. The documents also showed that, during Lileikas’ tenure,

the Saugumas conducted a series of sting operations, in the course of which 38 Jews, including a ten year old boy, were lured out of the ghetto with a false promise of escape. The Saugumas then arrested the victims.³¹

Lileikis did not contest that he had been chief of the Saugumas and that as such he had ordered his men to arrest thousands of Jews and turn them over to the Nazis. Rather, he maintained that this was a "ministerial and custodial" position and did not amount to the "personal advocacy or assistance of persecution" necessary to revoke his admission to the United States under the RRA.³²

Almost immediately after the case was filed, the Lithuanian ambassador to the United States made clear that it would be "very difficult" to prosecute Lileikis in Lithuania, no matter what the documentary evidence. He suggested that Lileikis would have a viable defense if he simply claimed he did not know that those he had arrested and turned over would be killed.³³ Yet barely two weeks later, the Lithuanian premier, in Israel to sign a cultural and scientific cooperation agreement, apologized for his country's persecution of Jews during the Nazi era and indicated that Lithuania would seek Lileikis' extradition.³⁴ The Department of Justice forwarded copies of pertinent documents to Lithuania. U.S. officials made clear that they hoped Lithuania would request extradition even before the district court ruled on denaturalization, as an extradition request would expedite Lileikis' departure.³⁵

In February 1995, shortly before the Lithuanian president was due to visit Israel, his government claimed that there was insufficient evidence to warrant an investigation of Lileikis. The World Jewish Congress expressed outrage and warned that the upcoming trip might be "a diplomatic disaster."³⁶ On the eve of the visit, Lithuania opened an investigation.³⁷

A few months later, Lithuania again warned of pending problems. It suggested that since its 1924 extradition treaty with the United States did not cover genocide, it did not apply to Lileikis' alleged crimes.³⁸ Moreover, the Lithuanians indicated that the documentary evidence was insufficient; they wanted eyewitnesses.³⁹

Forty-nine U.S. Congressmen urged Lithuania to reconsider its extradition analysis and to file charges against Lileikis.⁴⁰ Jewish groups argued the same.⁴¹ Ninety-two members of the Israeli Knesset wrote to the Lithuanian president, prodding him to take action against Lileikis as well as against Kazys Gimzauskas, Lileikis' second in command, who had fled to Lithuania after OSI filed a denaturalization action against him in 1995.⁴²

In May 1996, a U.S. court stripped Lileikis of his citizenship and adopted OSI's analysis of the case.

[A]s the government nicely put it at oral argument, Lileikis is attempting to stand the classic Nuremburg defense on its head by arguing that "I was only *issuing* orders."⁴³

Within days of the denaturalization, Poland (which shares a border with Lithuania and lost tens of thousands of Polish Jews at Paneriai), announced that it had opened its own criminal investigation and might seek extradition.⁴⁴ The SWC asked Israel to do the same.⁴⁵

Lithuania made clear that Lileikis was welcome to return home and suggested that he would not be prosecuted since there were no eyewitnesses.⁴⁶ Lileikis returned voluntarily within three weeks of this news. He was 89 years old and the first OSI defendant to return to one of the new republics formed after the dissolution of the Soviet Union.

The SWC demanded that Lithuania follow through on its promise to prosecute war criminals.⁴⁷ The United States too weighed in. At the time, all the Baltic states were seeking

admission to NATO. The United States asserted that prosecution of Lileikis and other war criminals would be strong evidence of adherence to “western values,” a prerequisite to joining the alliance. Vice President Al Gore made this point when meeting with the president of Lithuania’s parliament in April 1997,⁴⁸ and thirty members of Congress reiterated the message in a November 1997 letter to the Lithuanian president.⁴⁹

Finally, in 1998, Lithuania charged Lileikis with genocide.⁵⁰ It was the first Nazi war crimes prosecution in post-Soviet Eastern Europe. Trial was suspended after a day, however, due to Lileikis’ health. The State Department expressed “deep disappointment” and called on Lithuania to take “whatever steps are necessary” to ensure that Lileikis and others involved in war crimes during the Nazi era were brought to justice.⁵¹ Three months later, trial not having resumed, Director Rosenbaum and a representative from the State Department’s Office of War Crimes met with the Lithuanian Ambassador. They proposed having Lileikis examined by an international panel of doctors, including one U.S. physician, with the United States covering all costs. Lithuanian prosecutors presented the proposal to the court, but it was rejected by the judge.

Lithuania’s admittance into NATO was on the agenda for an April 1999 NATO summit meeting. In a meeting with the U.S. Attorney General just one month before the scheduled summit, Lithuania’s Prime Minister asked for assistance in drafting a law allowing for the prosecution of war criminals *in absentia*. The Department of Justice forwarded material prepared by both OSI (concerning the standards for *in absentia* hearings) and OIA (concerning videoconferencing).

In January 2000, the State Department reiterated its call for Lithuania to prosecute Nazi

war criminals.⁵² Two months later, Lithuania amended its criminal code to provide that those charged with war crimes, genocide, and crimes against humanity can participate in court proceedings via closed circuit television if they are mentally competent but physically unable to appear in court. While no punishment may be imposed unless the defendant is subsequently deemed healthy enough to withstand a jail sentence, a verdict is rendered for purposes of “historical judgment.”

Lileikis’ trial resumed in June 2000 and was the first case to proceed under the new statute. Thirty minutes into the hearing, Lileikis complained of difficulty in breathing and was taken to the hospital. Trial was suspended indefinitely; he died two months later, at age 93.

Although the case had not proceeded to verdict, the Lithuanian Procurator General issued a press release stating that his office had enough evidence to substantiate Lileikis’ role in the commission of genocide. He promised to seek “historic justice” in other cases of war crimes and genocide.⁵³

He did so in the case of Lileikis’ wartime deputy, Kazys Gimzauskas. Relying largely on documents pointed out by OSI, Lithuania had originally charged Gimzauskas with genocide in 1998, shortly after Lileikis’ trial was first suspended. Gimzauskas’ case was repeatedly delayed and ultimately suspended due to his deteriorating mental condition. Despite the court’s finding that Gimzauskas was incapacitated from Alzheimer’s disease, the trial resumed via closed circuit television after Lileikis’ death.⁵⁴ Gimzauskas was convicted in 2001, at age 93, with the court finding that he had handed over at least three Jews to Lithuanian killing squads. The State Department and Director Rosenbaum lavished praise on Lithuania.⁵⁵

Gimzauskas’ conviction was the first Holocaust-related conviction in any of the successor

states to the former Soviet Union.

In June 2000, Lithuania's Procurator General met with the Deputy Attorney General and Director Rosenbaum. The Procurator General asked for DOJ's assistance in investigating Nazi-era war crimes. In response to that request, an OSI historian and an OSI attorney went to Lithuania in early 2001 to discuss several cases. The significance of the meetings was underscored by the fact that they were attended also by the U.S. Ambassador.

Lithuania has since asked for information about some subjects under investigation, although it has also declined to file charges against a Lithuanian ordered deported to Lithuania in May 2002.⁵⁶ Lithuania also initiated an extradition request to Scotland, although the subject died before court proceedings were completed.⁵⁷

In July 2004, Lithuania filed criminal charges against Algimantas Dailide, an OSI defendant who left for Germany during appeal of a court ruling ordering him deported to Lithuania. Lithuania did not seek his extradition, but expressed the hope that he would return voluntarily. He did, and was found guilty in March 2006 of collaborating with the Nazis and persecuting Jews. However, due to his advanced age, no sentence was imposed. The U.S. government praised Lithuania for the prosecution but expressed disappointment that Dailide was "not . . . punished for his crimes."⁵⁸ As of this writing, the case is on appeal.

Lithuania has also cancelled the rehabilitation of several dozen Nazi collaborators.⁵⁹ In 2002, Lithuania's parliament ratified a new extradition treaty with the United States. It covers genocide directly.

3. Latvia

As with Lithuania, Latvia has sent mixed signals about its perspective on its role in the

Second World War. The Supreme Council of the newly-independent Republic of Latvia issued a Proclamation Against Genocide and Anti-Semitism in September 1990. "In the name of the people of Latvia," the document:

unequivocally condemns the occurrence of genocide against the Hebrew Nation, during the years of Hitler's occupation, which resulted in the killing of more than 80,000 Latvian Hebrews. . .

With deep regret we acknowledge that among those who helped carry out the terror of the occupiers, there were also Latvian citizens. There is not now, nor can there ever be justification, nor a statute of limitations, for the bloody genocide against the Hebrew Nation – a crime against humanity.

In 1992, the Latvian Procurator's Office signed a MOU with the Department of Justice.

The parties agreed to provide legal assistance on a reciprocal basis in the investigation of individuals who are suspected of having engaged in Nazi-sponsored acts of persecution or of having assisted in the commission of such acts. And in February 1998, the Latvian president went to Israel and apologized for the role his country had played in the murder of Jews.⁶⁰

Yet barely one month later, the Latvian Army commander, the head of the Navy, and five members of parliament joined a parade of more than 500 former members of a Latvian SS unit to mark the unit's 55th anniversary. (The Army commander was fired for his participation.)⁶¹

OSI's dealings with Latvia were most intense in the case of Konrads Kalejs. Kalejs was a company commander in the Latvian Auxiliary Security Police (eponymously known as Araj's Kommando (AK) for its leader Viktors Araj's).⁶² The AK was an execution squad composed of Latvian volunteers who worked with German forces to murder "racially undesirable" persons and/or political enemies of Nazi Germany. After the war, Kalejs settled in Australia and became a naturalized citizen. He emigrated to the United States in 1959 but never sought U.S.

citizenship.

OSI serendipitously learned of his presence. When searching for another member of the AK, they learned that he was dead but that his widow was in the country. She was living with Kalejs, a name OSI recognized from the AK roster.

In October 1984, OSI filed suit to deport Kalejs on the ground that he had assisted in the persecution of civilians based on race, religion, national origin or political opinion and had concealed these material facts when he applied for a visa. The complaint pointed to the AK's role in liquidating Jews, shooting gypsies, and guarding prisoners at various camps. OSI presented testimony from an historian, three camp survivors, and Latvians who knew or served with Kalejs during World War II. (The latter group testified through depositions taken in the Soviet Union). There was also documentary evidence, including the text of an interview with Arajs himself. Kalejs' main defense was that the evidence was unreliable because it largely came from the Soviet Union. The court agreed that the deposition testimony was of limited value but relied heavily on the archival records in ordering Kalejs' deportation. The ruling was affirmed and he was deported to Australia in April 1994.⁶³

Kalejs' long-time companion lived in Winnetka, Illinois, and OSI suspected Kalejs might go to Canada to be near her. OSI alerted Canadian officials to be on the watch.

OSI's forebodings proved correct. Kalejs was arrested when he entered Canada in December 1994. In June 1995, a month before his Canadian deportation proceeding was to commence, he voluntarily returned to Australia. Three months later, he was caught again attempting to enter Canada. This time he did not depart before the hearing, which was held intermittently between February 1996 and March 1997. Most of the Canadian evidence was

material from OSI which had been used in the U.S. proceedings. The Canadians also introduced a report written by an OSI historian on the background of the AK.⁶⁴

Kalejs' defense, once again, was that he was framed by doctored Soviet evidence. The magistrate disagreed, concluding that as a guard commandant Kalejs was "a party to the offences of murder and kidnaping and failed to provide for the necessities of life." Such acts and omissions constituted war crimes or crimes against humanity. The Canadian magistrate stressed that there was no evidence to suggest that Kalejs "hated Jews or that he was a cruel, perverse sadistic monster with a blackened soul." That, as the magistrate saw it, was part of the ultimate tragedy.

Given the glorification of war and the manipulation of emotions and thoughts by regimes and society, creating a climate of hate and arrogance and intolerance, it may be that society asks too much of the individual, but often the individual does not ask enough of himself.

Kalejs was deported to Australia.

Jewish groups were outraged that he was returning to a life of ease.⁶⁵ Effraim Zuroff, Director of the SWC in Israel, urged the Australians either to prosecute Kalejs under the Australian War Crimes Act or to deport him.⁶⁶ Zuroff also met with the Latvian Ambassador to Israel to urge that he cooperate with the Australians in an endeavor to extradite Kalejs to Latvia.⁶⁷

OSI had, in due course after Kalejs' deportation, had him placed on the Watchlist. On December 6, 1997, INS got a "hit" and stopped Kalejs at Los Angeles International Airport. He had flown from Melbourne and was *en route* to Mexico. He was sent back to Australia that day.

In June 1999, Zuroff advised OSI that an investigator was working on a segment about Nazis in Australia for the ABC newsmagazine 20/20. The investigator discovered that Kalejs

had left Australia a year earlier. No one knew where he was now though Zuroff opined to ABC that he had likely snuck into the United States to be with his companion. Director Rosenbaum was very concerned that if he were in the U.S., the public would – unfairly – hold OSI responsible for not preventing his reentry. (OSI is not responsible for border security.)

OSI asked INS to contact the local mail carrier to determine if an elderly man was at the Detroit residence and/or whether mail had been addressed to him. The answer to both was no. An examination of his companion's phone records showed one, and sometimes two or three calls a day to Rugby, England. When ABC contacted Rosenbaum about its upcoming piece, he suggested the reporters might find Kalejs in Rugby. They did. He was living under an assumed name in a Latvian old age home.

OSI worked to keep the spotlight on Kalejs. Rosenbaum spoke with various members of the British media and encouraged Lord Greville Janner, chair of Britain's Holocaust Education Trust, to do the same.⁶⁸ On December 29, British Home Secretary Jack Straw called for an investigation into how Kalejs had been allowed into the country. The following month, he ordered Kalejs deported because his presence was detrimental to "the public good." Rather than face a hearing, Kalejs returned to Australia.⁶⁹

On January 26, 2000 the Latvian Minister of Justice came to the United States and met with Director Rosenbaum.⁷⁰ The discussion was very frank. Once the opening formalities were aside, Rosenbaum posited, and the Minister conceded, that the Latvians had requested the meeting in the wake of negative publicity about Kalejs. Rosenbaum voiced extreme disappointment that the Latvians had not prosecuted anyone involved in persecution on behalf of the Nazis. He reminded the Minister that although Arajs himself had been prosecuted by the

Germans, none of Araj's three lieutenants still alive, Kalejs and Ozols (both in Australia) and Zvikeris (in Great Britain) had been prosecuted by the Latvians. Yet in the ten years since they obtained independence from the Soviet Union, the Latvians had prosecuted several Soviets involved in *anti-Nazi* activities during World War II.⁷¹ Given those prosecutions, the Nazi cases could not be "too old" to pursue. Rosenbaum also contrasted the Latvians' inertia with that of the Croats, who in 1999 convicted the commandant of a Nazi concentration camp of "systemic" mass killings, torture and maltreatment of inmates.⁷² Rosenbaum pointed out that this had been "politically difficult" and "courageous," since it necessitated Croatia's working with Serbia.

Rosenbaum warned the Minister that now was the "last chance" to erase the impression that his country was intentionally delaying until all the Nazi defendants were either dead or too incapacitated to prosecute. Rosenbaum also suggested that prosecution of Nazis would be viewed "as a commitment to western values" – a not so subtle reference to Latvia's desire to join the European community.

The Minister blamed Latvian intransigence on years of operating under the Soviet paradigm. He offered to host an international meeting to discuss the Kalejs case and Rosenbaum agreed to send an OSI representative. Rosenbaum urged, however, that the meeting cover other Latvian persecutors as well as Kalejs. Rosenbaum also offered a carrot to the Latvians: if they knew of anyone in the United States who they believed was involved in crimes of persecution during the early Soviet occupation of Latvia (1940-41), OSI would assist in the investigation.⁷³

Four days after this meeting, Latvia issued formal invitations to prosecutors from Australia, Canada, Germany, the UK, Israel and the United States to meet in Riga on February 16-17, 2000. Principal Deputy Director Susan Siegal and historian Michael MacQueen, a

Latvian speaker and OSI's Chief of Investigative Research, represented the office. At the Minister's suggestion, they arrived two days before the international session began. They met first with the Latvian Deputy Chief Prosecutor. According to MacQueen, "[t]he most charitable and accurate manner of summarizing the meeting is to term it a hideous failure."⁷⁴ The Latvians claimed there was not sufficient evidence against Kalejs.

Siegal and MacQueen were particularly frustrated that Latvia denied having the original Kalejs documents which OSI said it had forwarded years earlier. Moreover, the Latvians had not done any independent research within their own archives in preparation for this international convocation.

The next day, Siegal and MacQueen, accompanied by U.S. Ambassador James Holmes, met with the Latvian Prosecutor General to express their "distress over the unmitigated disaster our two days of bilateral meetings had been." OSI complained about Latvia's public stance that there was "no evidence" against Kalejs and reiterated its offer to assist the Latvian government. They told the Prosecutor General that "we felt insulted and abused by our experiences of the past days."

The international conference fared much better from OSI's perspective than had the preliminaries.⁷⁵ There was discussion of where additional archival material might be found and OSI offered "the hands-on assistance of OSI's historical staff." The discussion even spilled over into potential prosecutions other than Kalejs.

By the end of the conference there was some structure to the proposed investigation. The participants had ranked the Kalejs evidence in terms of most likely avenues of success under Latvian law;⁷⁶ the Prosecutor General's office committed to hiring a historian to work on the

case; Latvian prosecutors planned to go to Britain to review material collected in a related investigation; MacQueen agreed to return to Riga to assist Latvian investigators; Siegal promised to send case records from OSI prosecutions similar to Kalejs'; the Latvian Prosecutor General agreed to contact his Russian counterpart and arrange for review of KGB files and other pertinent material in Russian possession; the Israelis promised assistance in finding eyewitnesses; and all parties agreed to reconvene in a few months to review progress.

Expectations were still guarded however. As the American Embassy in Riga reported:

Neither we nor anyone else should be under the illusion that the road to the extradition of Konrads Kalejs from Australia to Latvia nor his eventual arraignment before a Latvian court will be straight or smooth. The deeply entrenched Soviet era inclinations toward obstruction and evasion of forthright prosecutions among working level prosecutors, their lack of experience or competence in formulating sensitive cases of this nature, and their apparent residual sympathies towards Latvians who fought the Russians, albeit under a Nazi banner, foretell of numerous difficulties . . .⁷⁷

The international conference was scheduled to reconvene at the end of June. In May, Latvia's Acting Prosecutor General announced that a trial was unlikely because no strong evidence had been found.

John Withers, the Deputy in Charge of Mission (DCM) in Latvia, was a strong supporter of OSI's quest to make Latvia more responsive to the Nazi war crimes issue.⁷⁸ Among other things, he suggested some groundwork be done before the international meeting reconvened. Specifically, he recommended having Ivars Kreivans, a former DOJ Resident Legal Advisor to the Baltics, return to Latvia to discuss the legal issues with Latvian prosecutors. Siegal and Rosenbaum agreed, proposing that he be accompanied by OSI attorney Steven Paskey who was familiar with details of the Kalejs case.⁷⁹

Before Paskey and Krievans arrived, the State Department kept pressure on the Latvians. Secretary of State Madeleine Albright spoke with the Latvian president and "again reiterated that it is imperative for Latvia to bring Nazi war criminals to justice; the Ambassador [Holmes] said the same thing in his initial call on the new Latvian Prime Minister." Withers assured OSI that:

[W]e will press the Latvians to get to [the newly appointed Prosecutor General] and have him issue a statement repudiating [the Acting Prosecutor General's] comments. . . . Second, as soon as we can make the appointment next week, the Ambassador will see him and lay out in no uncertain terms what's at stake here. . . . Third, we need to get Krievans and Paskey out here as soon as possible. It is clear to me that the Latvians can't or won't put together a case, so we'll have to do it for them. . . . They still believe that this will somehow go away. We've got to keep hammering on them until they realize that it won't. I still think that as long as we keep our grip tight and our nerves steady, we're still on track.⁸⁰

In early June, Krievans and Paskey spent ten intense days in Latvia meeting with the new Prosecutor General and his Deputy as well as with the chief of the unit responsible for dealing with crimes involving totalitarian regimes. They discussed the Kalejs evidence, international war crimes laws and conventions, and the use of historians as experts in war crimes prosecutions.

At the close of the meetings, a joint statement issued by the United States and Latvia stressed the cooperation and coordination between the two governments. Latvia reaffirmed its commitment to investigate "actively and thoroughly" all Nazi-sponsored war crimes. Shortly after the Americans left, the Procurator General announced that Latvia would request Kalejs' extradition to stand trial for war crimes and genocide. The Latvians credited the Americans with having played a crucial role in the decision to prosecute.⁸¹

The following month, Latvia sent a list of questions to Australia which they wanted the authorities to pose to Kalejs. In addition, a Latvian prosecutor went to Moscow to examine Kalejs-related documents.

MacQueen, who had offered at the international conference to assist the Latvians, made good on his promise. From August 20 to September 3, he worked with the Latvians in Riga on Kalejs and related matters. MacQueen sensed that the Latvians were not fully committed to indicting Kalejs and he so informed Ambassador Holmes. In response, Holmes met with the President, Foreign Minister and Procurator General to encourage them to go forward.

Fortuitously for OSI, at the same time that pressure to proceed was emanating from the United States, Russia too was bearing down on the Latvians. Russia protested Latvia's prosecution of partisans who aided Russia during World War II while Nazis like Kalejs were left alone.⁸² Russia went so far as to threaten economic sanctions against its former Republic.⁸³

The Latvians of course were only one part of the equation. The Australians had to extradite and there was some concern in this regard. In August 2000, Australia's Justice Ministry notified the Latvian Procurator General that it was difficult to extradite for war crimes under Australian law.⁸⁴ When the United States learned about this, Ambassador Holmes urged the Australians to send an extradition expert to the upcoming multilateral conference (part II) now scheduled for mid-September. They agreed to do so.

Outside events here too were working in OSI's favor. Australia was scheduled to host the International Olympics in Sydney from Sept. 15 - Oct. 1, 2000. They were therefore particularly sensitive to negative press coverage. On the eve of the event, then-U.S. Senate candidate and First Lady Hillary Clinton urged the Australian government to help bring Kalejs to justice. Her letter drew banner headlines.⁸⁵

On September 28 (shortly after the second – and largely collegial – international conference concluded), the Latvians indicted Kalejs. Still OSI did not rest, fearing that Kalejs

would flee unless an extradition request were on file. OSI prodded the State Department to urge the Australians to send Latvia a formal request for a warrant. A few days later, Latvia announced it would seek both an arrest warrant and extradition. The arrest warrant was issued in November and a formal extradition request soon followed. Kalejs was arrested in Melbourne, Australia on December 13, 2000.

He attended his deportation hearings in a wheelchair but did not actively participate. His attorneys advised the court that he was suffering from dementia and prostate cancer. On May 29, 2001 an Australian magistrate ordered his deportation. The ruling was on appeal when he died on November 8, 2001.

1. For a discussion of how indigenous groups within each country assisted Germany, see *U.S. v. Linmas*, 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 F3d 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 (Charles Zendai, from Australia to Hungary. 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 Delores Brown, DCM [Deputy Counsel to Mission], U.S. Embassy, Tallinn from Director Rosenbaum.
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 Jüri Pihl, Director General of the Estonian Security Police Board. The request was sent to the Department of Justice from the Estonian Ministry of Justice. Ironically, in 1995, Pihl, as Director General of the Estonian Security Police Board, had written a letter stating that "Harry Mannil 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 Director Rosenbaum from Susan Siegal, Principal Deputy Director and Elizabeth White, Chief Historian, re "Meetings with Estonian Government and U.S. Embassy Officials in Tallinn, June 11-13, 2002" (hereafter Siegal/White 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. Siegal/White memo, *supra*, n. 11, at p. 10. The Estonian law at the time of the meeting allowed prosecution for war crimes, genocide and crimes against humanity, but only if the defendant had had direct knowledge of the crime. An amendment had recently passed, to go into effect Sept. 1, 2002. It allowed prosecution based on indirect intent, but only for genocide and crimes against humanity. OSI and the Estonians discussed whether either version of the code would apply to Männil.

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 Rosenbaum to Delores Brown, DCM, U.S. Embassy, Tallinn, Estonia.

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 Rep. Lantos to Ken-Marti Vaher, Estonian Minister of Justice.

21. Oct. 22, 2003 e-mail from Director Rosenbaum to Susan Siegal, Elizabeth White, Stephen Paskey, Jonathan Drimmer and Michael MacQueen re "Amazing Gorshkow Reply by the GOE to Rep. Lantos."

22. *Id.*

23. Feb. 18, 2004 letter to Rep. Lantos from Prime Minister Juhan Parts.

24. Notes from SWC representative in Israel, Effriam Zuroff of his May 5, 2004 meeting with Estonian Ambassador to Israel, H.E. Marina Kaljurand.

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 II 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-Presse*, Oct. 20, 1997.
68. In addition to speaking with the press, Lord Jenner, the only Jewish member of the House of Lords, met with Home Secretary Jack Straw and the Governor General of Australia.
69. OSI learned that Kalejs had first bought an airline ticket for Mexico. They advised Zuroff who alerted the Mexicans. Rosenbaum 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.
70. Details of the meeting come from a Jan. 26, 2000 memorandum to Rosenbaum from MacQueen, re "Conversation with Latvian Minister of Justice Valdis Birkavs; Meeting of Birkavs with Attorney General Reno," and my own notes of the meetings at which I was an observer. The Minister's meeting with the Attorney General covered a range of issues, with Kalejs only a very small portion.
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: Alfreds Noviks (sentenced in 1996 to life imprisonment for his role in deporting Latvians to Siberia during the 1940s), Mikhail Farbtukh (sentenced in 1999 to seven years for the same crime) and Vasilij Kononov (sentenced in 2000 to six years imprisonment for his role in the death of nine Latvian civilians during military operations in Latvia in 1944.)
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 Rosenbaum, Siegal and OSI Chief Historian Barry White from MacQueen re "U.S. -Latvian Bilateral Talks in the Kalejs and Related Cases, Held at Riga, 14-15 February 2000." All references to the pre-conference meetings come from this memo unless otherwise noted.

75. Undated memorandum to Rosenbaum and Siegal from MacQueen re "International Conference on Konrads Kalejs and Related Cases, Riga, Latvia, February 16-17, 2000." All 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. Feb. 22, 2000 cable, ICNbr TED0597, from AmEmb Riga to Sec'y State and the American Embassies in Canberra, London, Berlin, Tel Aviv, The Hague and Ottawa re "Konrads Kalejs: Latvian Prosecutors Agree on Investigation Follow-up."

78. Both Rosenbaum and Siegal believe that the Kalejs case could not have achieved the ultimate resolution it did without Withers' unstinting help. He advised OSI at all stages of the Latvian negotiations, often telling them who needed to be contacted, arranging for the meetings, and advising how best to deal with the various players. He went so far as to offer the guest room in his home to DOJ representatives coming to Latvia to work on the investigation if the Department would not provide sufficient funding for the trip.

Ambassador Holmes too was very much interested and involved. That may have happened in any event, or been prompted by Withers, but it should be noted that during this period, the son of former OSI Director Neal Sher married the Ambassador's daughter. Thus, there was a familial link to OSI.

79. Kreivans was no longer with the Department of Justice. He took leave from his position as a city prosecutor in St. Paul, Minn. to make the trip.

80. May 12, 2000 e-mail from Withers to Siegal re "Idea & call from Alvis Ronis."

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 Rosenbaum to DAAG Bruce Swartz re "Chronology of Konrads KALEJS Case." 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."

The Commonwealth Nations

While OSI has offered assistance to every foreign country willing to prosecute Nazi war criminals, it has coordinated most closely with prosecutors in Canada, Great Britain and Australia. In 1989, OSI hosted a meeting with representatives of each of these countries and a delegation from the Soviet Union. The outcome of that meeting was that the Soviet Union agreed to allow each of the participating countries to share with the others copies of material received from the Soviet archives as a result of Nazi war crimes inquiries. Original documents cannot be shared, however, and each western country still needs to obtain its own certified copies of the documents for use in court proceedings.¹ Nonetheless, the agreement – which still operates in the post-Soviet era – reduced significantly in many cases the amount of time needed to obtain pertinent material.

Canada

Shortly after OSI's founding, Canadian officials met with Director Ryan to discuss establishing an office similar to OSI.² In 1982, before any action was taken on the proposal, the Canadians arrested and extradited a naturalized Canadian citizen to West Germany to face charges of having murdered thousands of Lithuanian Jews.³ OSI was working on its own investigations of Lithuanian massacres at the time, and OSI and the Canadians shared information.

It was not until 1985, however, that the proposal for a separate prosecutorial office for Nazi war crime cases gained momentum. The impetus for this was an SWC report that Dr. Mengele might be in Canada. The publicity surrounding this announcement led the Canadians to appoint a commission to determine whether there were Nazi war criminals in the country who

could be prosecuted, extradited or deported.⁴ Although the commission found no evidence that Mengele had emigrated to Canada, it believed other war criminals might have. It therefore recommended laws providing for criminal prosecution as well as denaturalization and/or deportation of persons involved in the wartime persecution of civilians.⁵ Canada enacted such statutes in 1987.⁶

Over the next five years, the government filed four criminal cases. Three were aborted before verdict;⁷ the fourth defendant was acquitted after an eight month trial. Upholding the acquittal on appeal, the Canadian high court ruled that a defendant could refute the allegations by establishing that he was merely "following orders" (unless the order was "manifestly illegal.") In addition, he could not be convicted unless it was proven that he knew his activities constituted a war crime and that they would have been a crime in Canada.⁸ Because this ruling substantially increased the difficulty of establishing the government's case, the Canadians abandoned criminal prosecution in favor of denaturalization and deportation cases, similar to those prosecuted by OSI.⁹ Unlike the U.S. procedure, however, a final determination on denaturalization is not made by the court. Rather, the Cabinet considers the matter after a court rules that there is a legal basis for action.

In 1997, the Canadian government hired former OSI Director Neal Sher as a consultant on its war crimes prosecutions. He worked with the Canadians until March 2001. Sher is credited by some with having helped bring about a significant increase in Canadian case filings.¹⁰

The Canadians have filed twenty-three denaturalization/deportation cases to date. However, only one defendant has been deported. In 1992, he was sent to the Netherlands where he was imprisoned pursuant to a life sentence imposed *in absentia* in 1948. He was released

after twenty-eight months due to his advanced age.¹¹

OSI played a role in five Canadian cases. Two were against former OSI defendants, Arthur Rudolph and Konrad Kalejs. As discussed earlier, OSI provided material used by the Canadians to win judgments forcing both men to leave the country.¹²

Two other cases were brought to the attention of the Canadian authorities by OSI when the men were stopped by INS after a Watchlist hit. One had been changing planes in Detroit on his way back to Canada from a trip abroad; the other was stopped by INS during a pre-flight inspection in Vancouver as he was about to board a plane for the U.S. The Canadian courts dismissed charges against one of the men¹³ and revoked the citizenship of the other.¹⁴

The fifth case concerned a defendant who fled to the United States after the Canadians filed a denaturalization action. As described elsewhere in this report, he was returned to Canada by OSI and his citizenship was revoked in 2001.¹⁵ Deportation proceedings were halted in 2004 for investigation of the defendant's claim that his denaturalization had been tainted by a conflict of interest.¹⁶ The Canadian Federal Court restored his citizenship shortly thereafter. The court did so both because of the defendant's "50 years of irreproachable life in Canada" and because there was no evidence that he had personally participated in war crimes. (He served as an interpreter assigned to a mobile killing unit in Ukraine.)¹⁷

OSI has worked well over the years with the Canadian Justice Department. They have shared information and assisted one another on interviews and other matters. OSI has had less success with the Royal Canadian Mounted Police (RCMP), which has often been reluctant to share information.¹⁸

In early 2005, the Canadian government returned in kind the assistance OSI had provided

to the Canadians 25 years earlier. With OSI's mandate just expanded to cover "modern war criminals,"¹⁹ the office was struggling to determine how to develop and handle a new and potentially enormous investigative caseload. Five years earlier, the Canadians had also expanded their mandate.²⁰ OSI Director Rosenbaum and Deputy Director and Chief Historian Elizabeth White spent several days in January 2005 meeting with officials of the Canadian Border Services Agency. The Canadians shared their experiences and provided OSI with a database of information.

Australia

Australia's attitude toward Nazi persecutors has been ambivalent. In 1961, Australia's Attorney General and Acting Minister for External Affairs addressed the Parliament on his government's denial of an extradition request from the Soviet Union for an alleged Nazi war criminal. He described conflicting considerations.

On the one hand, there is the utter abhorrence felt by Australians for those offenses against humanity to which we give the generic name of war crimes. On the other hand, there is the right of this nation, by receiving people into its country, to enable men to turn their backs on past bitternesses and to make a new life for themselves and for their families in a happier community.

Believing the second factor to be weightier, he announced that "the time has come to close the chapter."²¹

It remained closed until 1986. That year Australian television ran a series (based on research by two Australians and a former OSI attorney) called "Nazis in Australia." This series, as well as another program aired that year, suggested that there were numerous Nazi war criminals in the country, and that they had been able to enter because American and British intelligence agencies had either deceived Australian officials or intentionally withheld relevant

information about the men.²²

In response to these allegations, the government called for a comprehensive review of the matter. The resulting report, concluding that there were likely a significant number of war criminals in Australia, led to establishment of a Special Investigations Unit (SIU) in 1987. Its staff was composed of lawyers, investigators and police – but no historians. The country's War Crimes Act was amended the following year to allow criminal prosecution for war crimes committed during World War II. A conviction subjects the defendant to possible incarceration but not deportation.

Over the years, OSI forwarded to the SIU the names of six persons OSI believed to be in Australia and worthy of investigation. Five were never located; the Australians had insufficient evidence to prosecute the sixth.²³ The SIU did, however, file three other cases, though only one was tried to conclusion. The jury acquitted in less than an hour, after the judge opined that the charges might have been better defended had they been more timely filed.²⁴ The other two filings were dismissed, one because several key witnesses had died, and the other because the defendant had suffered a heart attack from which he was not expected to recover. He died seven years later.

To help the Australians determine whether suspected persecutors were already in the country and to preclude the entry of persecutors seeking admission, OSI in 1989 sent the Australian government a list of approximately 30,000 names. These were culled from the OSI research and development database as well as its list of persons rejected for entry into the United States under the DPA. Contrary to OSI's hope, the Australians did not use the material as the starting point for their own research and development system.²⁵

The SIU was disbanded in 1992, apparently due to budgetary constraints.²⁶ At the time, there were 27 investigations still under way, at least one of which was “extremely promising,” according to the former head of the unit.²⁷ After the unit closed, the Australians shared with OSI some material from their archived files. A roster so obtained led to one OSI prosecution.²⁸

In 1999, OSI Director Rosenbaum created a furor in Australia when he stated during a television interview that “Any Nazi criminal who lives in Australia, and there must be hundreds there, knows he is home free, so to speak.”²⁹ Australia’s Justice Minister found the accusation offensive. “Nobody in Australia wants war criminals to sleep here comfortably, but equally no one wants the Australian government to engage in show trials.”³⁰ Just weeks after the broadcast, Konrad Kalejs, a naturalized Australian citizen, returned to his adopted country to avoid facing a deportation hearing in England.³¹ Under the terms of Australia’s citizenship laws, his naturalized citizenship could not be revoked.³² He could, however, be extradited. As discussed elsewhere in this report, Australia ultimately did order his extradition in the face of intense international pressure to do so.³³ Kalejs died in Australia while the order was on appeal.³⁴

In 2001, the Australians accepted Director Rosenbaum’s offer of an updated listing of names on the U.S. Watchlist.³⁵ To date, they have not used those names to establish a Watchlist of their own nor have any prosecutions been filed since the SIU was disbanded. Moreover, they have denied OSI the right to interview witnesses in Australia, on the ground that the mutual assistance treaty between the U.S. and Australia covers assistance only in criminal cases.³⁶ In 2003 and 2004, the SWC, reviewing the efforts of countries worldwide to investigate and prosecute Nazi war criminals, placed Australia among a group of nations which “made at least a minimal effort to investigate Nazi war criminals but which failed to achieve any practical results

or . . . in which the issue had no practical dimension during the period under review.”³⁷ The SWC attributed this to “a lack of the requisite political will.”³⁸ The 2005 report is more positive. It places Australia among those nations which failed to obtain any convictions or file an indictment, but have nevertheless “either advanced ongoing cases currently in litigation or have opened new investigations which have serious potential for prosecution.” That assessment is apparently due to Australia’s approval of a Hungarian request for extradition of Charles Zendai, a naturalized Australian citizen involved in the murder of a Jewish teenager in Budapest in 1944.³⁹ At the request of the SWC, OSI provided the Australian government with documents located at the National Archives concerning Hungary’s postwar request to U.S. occupation authorities for Zendai’s extradition.

Great Britain

In 1988, the British government appointed a committee to examine well-publicized allegations, from the SWC and a Scottish television show, that there were Nazis responsible for wartime atrocities living in the United Kingdom.⁴⁰ The committee concluded that there was a basis for the allegations and recommended legislation authorizing criminal prosecution. The resulting 1991 War Crimes Act allowed for trial of British citizens and U.K. residents on charges of murder and homicide committed between 1933 and 1945 in Germany and German-occupied territory. However, the government must prove the defendant’s personal responsibility and present eyewitness testimony. Scotland Yard established a War Crimes Unit which, at its peak, employed 11 police officers, two historians and support staff.

In 1988, OSI historians, doing research in West German archives, came across several documents incriminating a former Latvian Arajs Kommando officer who, according to an OSI

source, had settled in England. The British opened an investigation after receiving the documents and information from OSI.⁴¹ However, the subject died before the investigation was completed.⁴²

The British did file two cases, the first of which was brought to their attention by OSI. It was dismissed, however, after a jury found the defendant mentally unfit to stand trial.⁴³ The second was prosecuted, and in 1999 the defendant was sentenced to two life terms for gunning down 18 Jews in Belarus.⁴⁴ Shortly after he was convicted, the British investigative unit was scaled down and then disbanded for lack of additional viable cases. The law, however, remains on the books and there have been several related inquiries, all of which have involved OSI to some extent.

As detailed elsewhere,⁴⁵ in 1999 a television reporter, acting on a tip from OSI Director Rosenbaum, located Konrad Kalejs in Rugby, England. The story received worldwide publicity and the British government came under considerable criticism for allowing Kalejs to leave the country without prosecution.⁴⁶ Some of that criticism came from OSI.⁴⁷

In the wake of the Kalejs affair, a British newspaper reminded its readers that Alexander Schweidler, earlier prosecuted by OSI and deported to England, was still in the country.⁴⁸ Schweidler, by his own admission, had murdered two Russian prisoners of war at the Mauthausen concentration camp. Four days after the story surfaced, Schweidler died of a heart attack.

Just as the Kalejs affair awakened British interest in Schweidler, Schweidler's death renewed Scottish interest in a Nazi persecutor in their midst.⁴⁹ Antanas Gecas first came to the attention of the Scots when OSI Director Sher interviewed him in 1982 in connection with an

OSI investigation of someone in Gecas' unit. In 1987, he gained local notoriety when a Scottish television show charged that he had commanded a platoon which had massacred Jews and Soviet citizens in Lithuania and Belarus. Gecas sued the station for libel. In ruling against him, a Scottish judge said he was "clearly satisfied" that Gecas had taken part in atrocities, including the slaughter of more than 1,000 civilians over two days.⁵⁰ Despite this finding, the government concluded that there was not sufficient evidence to sustain a criminal prosecution.⁵¹

Lithuania, however, was willing to consider the matter. The Department of Justice, responding to a request for assistance from Lithuania's Prosecutor General, sent an OSI attorney and an historian to Lithuania to help them assess this case and others on their docket. OSI's team made various suggestions to modify a proposed Gecas indictment.⁵² Lithuania requested his extradition but Gecas died in Scotland before the proceedings were complete.⁵³

Lastly, in 2003, a British television producer, checking names from rosters which OSI had used in court proceedings and forwarded to him at his request, made a "hit." He discovered in England a concentration camp guard who allegedly had participated in the liquidation of both the Warsaw and Bialystok ghettos. In response to the publicity generated by this story, the British government agreed to investigate the case.⁵⁴ OSI forwarded copies of several pertinent German documents as well as an historian's report used in a related case. In April 2003, two detectives from the Anti-Terrorist Branch of Scotland Yard came to OSI to discuss the case. They met with several historians in the office as well as with OSI's director and former chief historian, now working at the U.S. Holocaust Memorial Museum. Whether charges would have been filed will never be known; the subject died in a car accident before a prosecutorial determination had been made.⁵⁵

In 2003, Scotland Yard began a search for survivors of one SS unit, many of whose members had settled in England. Approximately 7,100 Ukrainians serving in the unit had gone to Britain in 1947 after spending two years as prisoners of war; 1,200 of the men were still alive when the British began their search.⁵⁶ OSI was not optimistic that the investigations would be productive because OSI had never found any “credible/usable evidence . . . persuasively linking the . . . Division to the perpetration of nazi crimes.”⁵⁷ As of this writing, no cases have been filed.

However, a new avenue of case development may be in the offing. After years of rejecting OSI’s offer to share its Watchlist, in June 2005 UK officials told Director Rosenbaum they would be interested in obtaining the information for use in the research and development of cases.⁵⁸

1. Feb. 10, 1989 memorandum to file from Bruce Einhorn, Deputy Director re "Minutes of Meetings Held at OSI on Feb. 8, 1989."
2. Apr. 21, 1980 memo from Ryan to Neal Sher and Arthur Sinai, OSI Deputy Directors, re "Witnesses and Possible War Criminals in Canada."
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 Nov. 2005)
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 a 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. Barry Turner, Counsellor (Police Liaison) and Barry Welsby, Counsellor (Immigration), both of the Australian Embassy, conceded as much, at an Aug. 1, 2000 meeting at OSI.
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 Rosenbaum to Barry Welsby, Counsellor (Immigration), Australian Embassy.
36. May 5, 2000 letter to Department of Justice Senior Trial Attorney Betsy Burke, Office of International Affairs, from Shannon Cuthbertson, Attorney General's Department, International Branch. As discussed earlier, the Germans, faced with the same legal issue, adopted a much more flexible approach. See p. 425.

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 Serafirmovich, 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 Rosenbaum to Judy Feigin, re "Assistance to United Kingdom Authorities."

In order to assist the British prosecutors, OSI promised a subject in the United States that they would not seek to denaturalize or deport him if he cooperated in the investigation of Serafirmovich. He was an essential witness for the British but had been reluctant to cooperate. OSI surmised that his reluctance stemmed from fear that the U.S. would seek to denaturalize and deport him because of information he might reveal about his own wartime activities. OSI assessed its prospects of developing enough evidence against him as "quite slim," whereas Serafirmovich was "a major perpetrator of Nazi crimes, including mass murder." Moreover, since it was Britain's first war crimes trial, OSI worried that "the entire British effort to investigate and prosecute Nazi criminals" might depend on this prosecution being successful. Oct. 6, 1995 memo to DAAG Richard from Rosenbaum re "Proposed OSI Immunity to Wolczek (OSI #528) for His Cooperation in British Prosecution of Serafirmovich." After receiving assurances from OSI, the subject did cooperate fully with the British.

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.

47. Director Rosenbaum accused the British of failing to investigate Kalejs. "European Nations Shirking War Crimes Duties," by Ilsa Colson, *AAP Newsfeed*, Mar. 6, 2000. He made clear that the Department of Justice had given the British pertinent information about the case. "Straw Demands Inquiry into How Alleged Nazi War Criminal Entered UK," by Linus Gregoriadis, *The Guardian* (London), Dec. 30, 1999.
48. "Nazi War Criminal, Expelled from US, is Living in UK," *The Guardian* (London), Jan. 20, 2000.
49. "Time Running Out to Prosecute Gecas, Says War Crimes Investigator," *The Herald* (Glasgow), Jan. 26, 2000.
50. "Defamation Verdict Clears Way for War Crimes Trials," by James Grylls, *Daily Mail* (London), July 18, 1992.
51. "War Crimes Trial Ends in Pounds 5m Fiasco," by Ian Dow, *Scottish Daily Record and Sunday Mail*, Jan. 18, 1997.
52. Jan. 24, 2001 memo from OSI attorney Jeffrey Menkin and Chief of Investigative Research Michael MacQueen to Director Rosenbaum re. "Meetings in Vilnius with Lithuanian War Crimes Prosecutors (January 8-17, 2001)."
53. "Anger as Nazi Gecas Dies Without Trial," by Frank O'Donnell and Kizzy Taylor, *The Scotsman*, Sept. 13, 2001.
54. "'Wimbledon Academic' in Nazi War Crimes Inquiry," by Daniel Foggo, *The Sunday Telegraph* (London), Feb. 9, 2003; "London Man Denies Role in SS Massacres," by Daniel Foggo, *The Sunday Telegraph* (London), Jan. 26, 2003.
55. "Former SS Guard Killed in Crash," *The Sunday Telegraph* (London), Aug. 1, 2004.
56. "Police to Use NHS Records to Find Nazi War Criminals," by Daniel Foggo, *The London Telegraph*, June 22, 2003.
57. June 22, 2003 e-mail from Director Rosenbaum to OSI Staff re "Telegraph Reports That UK is Launching Major Probe of Nazi Collaborators."
58. That the offer had been previously rejected is evident from a Jan. 27, 2003 e-mail from Director Rosenbaum to Fiona Ferguson in the British Home Office re "Deportation Action Commenced Against V. Gecas." See also, "Straw Considering UK Entry Ban on Suspected Nazi War Criminals," by B. Josephs, *The Jewish Chronicle*, May 31, 2000.

Japan

From the early 1930s until the end of World War II, Japan persecuted civilians in a variety of ways. Among them: (1) the Japanese Imperial Army kidnaped approximately 200,000 girls (most of whom were from Korea) and imprisoned them in so-called “comfort stations,” where they were forced to serve as prostitutes to the military; (2) conquering Japanese armies brutally slaughtered civilians in their wake; (3) non-Japanese were used as slave laborers by Japanese conglomerates; and (4) non-Japanese prisoners were unwillingly made subjects of gruesome and often lethal medical experiments by the Imperial Army.¹

OSI, as the SLU before it, was created to investigate and prosecute persons who, in association with the Nazi government *or its allies*, ordered, incited, assisted or somehow participated in the persecution of any person because of race, religion, national origin or political opinion. Despite this broad mandate, neither the SLU, nor OSI at its founding, gave any thought to investigating or prosecuting Japanese perpetrators who might be in the United States.²

There were many reasons for this, perhaps the most important being that nothing indicated that a large number of Japanese persecutors ever came to the United States. Operation Paperclip had no counterpart for Japanese scientists. Nor was there a DPA or RRA allowing an extraordinary number of immigrants from Japan to enter.

Furthermore, Japan’s victims were not calling for prosecutions. This may be due to the fact that many were culturally reticent to speak out. The shame of victimization, especially among the women who had been raped, beaten and tortured, was acute. Many were shunned even by their families at war’s end.

Even if the victims had been calling for action, however, their demands could not have

been easily met. The most serious impediment was the United States' inability to determine the names of Japanese persecutors. In August 1945, the Japanese Imperial Army and Navy ordered the destruction of incriminating or sensitive documents by field and headquarters units; in response, as much as 70% of wartime military and government records were likely purged. The United States retrieved what it could (approximately 18,000,000 pages).³ However, the Japanese pressed for return of these documents and the United States acceded. Most of the material was returned in 1958, although some was as late as 1962. Before the return, a group of private scholars arranged for the microfilming of a portion of the records by the Library of Congress under a grant from the Ford Foundation. Due to time and financial limitations, however, only about 3 per cent of the available documents were copied. The United States made no provision for future access to the returned records.⁴

Neither OSI nor the National Archives has fully reviewed the records the U.S. does have.⁵ Although belated efforts are being made to do so, OSI also wants access to the material in Japan. This will provide more names of those who served in units known to have committed persecutory acts. OSI can then compare those names with INS records of those who came to the United States, just as it does with Nazi persecutors. Even if *no* Japanese persecutors settled in the United States (an unlikely possibility), some may have visited at one time or another. OSI wants to place the names of all those who served in units involved in persecution on the Watchlist to prevent their entering even on a short-term basis.

OSI has been stymied in this effort by Japan's unwillingness to grant access to their files or to provide relevant information. This is based on privacy concerns as well as Japan's view that it has no right to place "ordinary citizens" at "a disadvantage by providing information about

them to foreign governments.⁶ Accordingly, Japan has consistently refused to release the names of persons in particular units; they have also refused to provide date and place of birth information for persons who the United States has independently determined were involved in acts of persecution. The United States has been granted access only to the public archives. According to a researcher hired by the Interagency Working Group (on which the Director of OSI sits as a public member), the documents relating to war crimes are not accessible.⁷

The effect of these strictures on OSI's work is dramatic. Tens of thousands of possible persecutors from the war in Europe have been placed on the Watchlist,⁸ yet as of this writing, only 31 Japanese are listed. Their names were added in 1996.⁹ Twenty of those listed were from Unit 731, an Imperial Army biological warfare unit that conducted gruesome wartime experiments on prisoners of war, most of whom were Chinese. Two worked at a camp which transferred inmates to Unit 731 for punishment, and three were involved in the establishment, operation or utilization of comfort stations. One was connected to both comfort stations and Unit 731.

Due to Japan's sensitivity on the war crimes issue, OSI, at the State Department's suggestion, gave the Japanese government the names of the men – something that is not typically done for Watchlist entries. The alleged persecutors, forewarned about their listing, can now avoid travel to the United States. This eliminates the public embarrassment attendant on being stopped by the authorities – something the Japanese indicated was a matter of particular concern. Although the Japanese offered to release more birthdate and place information in return for this notice, to date they have not done so.

In further deference to Japan's sensitivity about alleged war crimes, the Justice

Department worked closely with the State Department about whether, and how, to announce the new Watchlist entries. The State Department was concerned that public disclosure might embarrass the Japanese government. OSI argued that failure to issue a press release would reward the Japanese for not confronting their past. Moreover, it would unfairly discriminate against the Germans whose crimes were routinely highlighted in press releases about OSI's activities. Tangentially, OSI also believed that recognition of rape as a crime warranting inclusion on the Watchlist might bolster the Bosnia war crimes tribunal in the Hague, then proceeding with the first war crimes trial for rape.¹⁰ Ultimately, the State Department agreed that a statement could be issued, though they toned down considerably the draft originally prepared by OSI. The press release references "inhumane and frequently lethal pseudo-medical experiments – including vivisection" as well as the beating, torture and rape of women. However, it omitted some of the horrific and graphic details which OSI wanted to include.¹¹

In 1998, a coalition of Asian-American human rights groups sought to bring to the United States two men who had been involved in persecution of civilians on behalf of the Japanese. One worked in Unit 731; the other admitted raping and murdering Chinese women during Japan's 1937 invasion of Nanking. The visitors were to speak at a conference on war crimes where they intended to explain their wartime activities and to apologize for the work they had done. The goal of the conference was to build pressure on the Japanese government to make formal apologies to its war victims and to pay reparations.

Ironically, it was through media coverage of the event that OSI got sufficient background information about the two speakers to have their names added to the Watchlist. The men requested that the Attorney General, in the exercise of her discretion, allow them into the country

despite the Watchlist entry.¹²

Both OSI and DOJ's Violence Against Women Office recommended against making a discretionary exception. The Acting AAG agreed.¹³ 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.

Allowing the two Japanese suspects to enter the United States would set a precedent that might be difficult to limit. Furthermore, should [they] be permitted to enter the United States, the media attention that they can be expected to attract might elicit a request from the Chinese Government that the United States surrender the men for trial in China or a demand that the United States try the individuals. Since the U.S. has no extradition treaty with China and there is no statute that would confer criminal jurisdiction on U.S. courts, the U.S. would likely be powerless to do anything but permit the men to return to Japan where there is no appreciable likelihood of prosecution. This could prove particularly awkward, all the more so because the visit of the two suspects would be occurring during a scheduled visit to China by the President. A U.S. grant of permission for the two men to enter this country would look worse still if Ottawa, as expected, bars them from entering Canada. On balance, this would seem to be a situation tailor-made for utilization of satellite technology or other electronic means that would enable the men to interact with domestic media without physically entering the United States.

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 OSI

Director Rosenbaum acknowledged that the applicants' intention to apologize and to explain what they had done was laudable. Nonetheless, he feared that their admission would open the floodgates to World War II persecutors who suddenly claimed to be remorseful.

Is the Government supposed to evaluate their sincerity? What happens if they come here and refuse to leave, or fall ill and we can't remove them? And I wonder whether people are prepared for the spectacle on their evening news of Nazi and Japanese war criminals dining at the best restaurants in Manhattan and Los Angeles. I doubt it.¹⁵

In the end, the Japanese participated in the symposium via videoconferencing provided by the SWC.¹⁶ It may well be that the act of exclusion garnered more press for the issue than would have been the case had the men been allowed to enter.

With approval from the Department, Director Rosenbaum has spoken out about Japan's intransigence¹⁷ and has taken up the issue of the comfort women. As Rosenbaum notes, the story of these women "has everything – sex, violence, children," and yet it has not caught hold of the public's imagination. He has met and corresponded with representatives for the women. He also helped arrange, and presented the opening remarks at, a symposium on comfort women sponsored by the U.S. Holocaust Memorial Museum in September 2000. He spoke as well at a ceremony on Capitol Hill sponsored by the Washington Coalition for Comfort Women Issues in honor of ten surviving victims.

By allowing OSI to take up this issue, the Department of Justice has reconfirmed the broad scope of OSI's mission. To the extent that some justice or remuneration to World War II victims may result – even if it is by governments other than our own – OSI does all it can to assist. The comfort women symposium, intended to educate the public as well as to bring pressure on the Japanese government to acknowledge its responsibility to make reparations, was

a perfect forum for OSI to pursue the public education and extraterritorial components of its mandate.

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.

2. Recorded interviews with David Crosland (Apr. 10, 2001), INS General Counsel during the SLU era; Allan Ryan (Oct. 6, 2000), OSI Director 1981-1983; Walter Rockler (May 10, 2000), OSI Director May 1979-March 1980; Robin Boylan (Sept. 27, 2000), an SLU attorney who transitioned to OSI; Art Sinai (Oct. 1, 2001), Deputy Director of OSI from 1979-1981. *Accord*, Apr. 2000 discussion with DAAG Richard.

3. This figure includes many documents that pre-date World War II.

4. Sept. 6, 2001 Report to the Interagency Working Group (IWG) of Marc Susser, Historian of the Department of State, 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 Greg Bradsher, National Archives and Records Administration. According to Bradsher, the failure to provide access was probably an oversight; the agencies had intended otherwise.

5. In Oct., 2002, NARA historian Greg Bradsher 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 Rosenbaum 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. In 2001, OSI offered to share with the State Department the cost of hiring a researcher to survey the publicly available records in Japan. 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 1996 OSI had its first (and to this date still the only) Japanese speaker in the office. He was a summer intern.
10. May 14, 1996 Memorandum to DAAG Richard from Director Rosenbaum re "Barring the Entry of World War II-Era Japanese War Criminals ("Unit 731" Medical Atrocities; Mass Rape Cases.)"
11. Oct. 11, 1996 memorandum to DAAG Richard from Director Rosenbaum 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."
12. The Attorney General can allow in any alien "for reasons deemed strictly in the public interest."
13. June 10, 1998 memorandum from John C. Keeney, Acting AAG to the Deputy Attorney General re "Planned Visit of World War II - Era Japanese War Criminals to U.S.A." The Keeney memorandum was initialed also by DAAG Richard.
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 Rosenbaum to DAAG Swartz re "Simon Wiesenthal Center Request to Waive Exclusion of Japanese War Criminal."
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.

**Tracking Persecutors Outside the U.S.:
Case Studies of Bohdan Koziy and Harry Männil**

The Justice Department's main concern has always been to ensure that no persecutors are in the United States. At times, it seemed that this was the only concern. Thus, at an August 14, 1984 press conference to announce Bishop Valerian Trifa's departure to Portugal, AAG Trott was asked whether it would have been better to send Trifa to a country where he could be tried for his wartime activities. He responded that the government's mission was simply to remove Trifa from the U.S. Trott's predecessor, AAG Jensen, was of a similar mind. In a memorandum to the Deputy Attorney General about finding a country to accept Trifa, AAG Jensen wrote: "As far as the Department of Justice is concerned, our interest is in removing him from the country; it matters little where he goes."¹

Yet even before these statements were made, the Department had evidenced interest in some matters beyond the country's borders. As early as 1983, when the Department asked OSI Director Ryan to prepare a report on Klaus Barbie, it knew that Barbie was not in the United States. There was a question as to whether he had entered the country years earlier, but he was already in France when the report was commissioned.

Since at least the mid 1980s, OSI has sought to ensure that persecutors do not settle in a country willing to provide a too-comfortable safe haven. Konrad Kalejs, discussed elsewhere, is one such example.² Bohdan Koziy and Harry Männil are two others. Männil, unlike Kalejs and Koziy, was never prosecuted by OSI. But for one change of planes, he is not known to have ever been in the country.

Bohdan Koziy

Koziy was one of the first cases filed by OSI. As a Ukrainian policeman during World War II, he had helped round up Jews and forcibly relocate them to a ghetto. At his denaturalization proceeding, witnesses testified that he had murdered a four-year-old Jewish child by shooting her at point blank range as she pled for her life; they also had seen him murder an entire Jewish family.

His citizenship was revoked in 1982.³ While the case was on appeal, the Justice Department hoped to persuade Poland to seek Koziy's extradition and to try him for war crimes.⁴ The Poles were uninterested.⁵ In 1985, after his citizenship had been revoked, and while deportation proceedings were pending, Koziy fled to Costa Rica.

The deportation hearing continued in his absence, and the court ordered him deported to the Soviet Union.⁶ Since he was outside the United States, however, there was no way to enforce the court's order. From OSI's vantage point, Koziy had "escape[d] from justice."⁷

The Soviets were of the same view. A year after Koziy arrived in Costa Rica, the Soviet Union sought to have him extradited to stand trial for treason. Costa Rica initially agreed. However, Koziy generated public support in Costa Rica by holding a gun to his head and saying, "I want to die in a free country." In addition, the Catholic church, both in Ukraine and Costa Rica, came to his aid. According to the Ukrainian Cardinal, Koziy was being "falsely accused by the communists and the Jews."⁸ In 1987, the Costa Rican government reversed its earlier ruling and rejected the Soviet request for extradition. The stated reason for this change was concern that Koziy faced the death penalty in the Soviet Union.⁹

After the fall of the Soviet Union, the WJC announced a global campaign to expel Koziy

from Costa Rica.¹⁰ Dozens of congressmen, including Tom Lantos, the only Holocaust survivor in Congress, petitioned the Costa Rican government.¹¹ In February 2000, Costa Rica's president ordered Koziy's expulsion. It was unclear, however, where he should be sent. Prior to the war, the scene of Koziy's activity was part of Poland. It became part of the Soviet Union as a result of that nation's 1939 pact with Hitler. It is now located in Ukraine.

Jewish organizations and members of Congress urged Ukraine to admit Koziy and to prosecute him.¹² By this time, however, only one of the eyewitnesses who had testified to Koziy's atrocities was still alive, and she had recanted.¹³ The chance of a successful prosecution in Ukraine was therefore significantly diminished. (He could possibly still be convicted of lesser charges.) Nonetheless, Director Rosenbaum supported the effort to send Koziy to Ukraine, as did the Department of State. Rosenbaum was of the view that if Koziy "end[ed] up in a country where at least he knows he *might* be prosecuted, we would consider that a positive outcome."¹⁴

The Ukrainians were sending mixed messages about prosecuting Koziy. Although they expressed an interest in investigating the matter, they never took up OSI's offer to review the files – even after OSI offered to provide an interpreter, along with copies and translations of all pertinent documents.¹⁵ Similarly confusing was the fact that they advised Koziy by letter that he would be arrested if he set foot on Ukrainian soil – even as they conceded to OSI that they were no longer sure they could mount a viable case.¹⁶

They were also sending mixed messages about his returning to their country. While they had originally indicated they would grant him a visa if he applied,¹⁷ they in fact waited months to respond to his request and then denied it on the ground that he had asked for the wrong type of visa. Under Ukrainian law, he would have to wait at least one year before he could reapply for

the type they now claimed was appropriate.¹⁸

A Catch-22 situation was developing. Under Costa Rican law, Koziy had to choose a country of destination before the expulsion could be effected. He had chosen Ukraine, yet Ukraine would not have him – at least not in the near future. Moreover, the very validity of the expulsion order was put in question when Ukraine notified Koziy that he would be arrested. Costa Rican law distinguishes expulsion, which is simply a removal process, from extradition, a means to secure prosecution. Ukraine's statement allowed Koziy to argue that his expulsion was a "disguised extradition, and as such, illegal."¹⁹ Both Director Rosenbaum and Steve Donlon, a Consular Affairs officer at the Department of State who was working with OSI on the Koziy matter, were suspicious that Koziy and the Ukrainians were working together – each pretending that the goal was to have him return to Ukraine when in fact, each for their own reason, wanted him to remain in Costa Rica.²⁰

It is easy to understand Koziy's motivation. He had a comfortable lifestyle and faced no prospect of prosecution in Costa Rica. The Ukrainian position is more complex. Rosenbaum surmised that the Ukrainians wanted Koziy to remain in Costa Rica because there was insufficient evidence to prosecute him in Ukraine; they feared they would be castigated by the United States and Jewish groups for failing to prosecute someone the United States had branded a Nazi murderer. Rosenbaum believed the Ukrainians were particularly sensitive about negative publicity because they were receiving much of it on other unrelated issues: they were in a battle with the International Monetary Fund concerning overdue payments, and the Ukrainian president was in the midst of a scandal linking him to the beheading of a muckraking journalist.²¹

In a series of meetings and phone calls with the Ukrainians, Rosenbaum, in coordination

with the State Department, played on this fear to encourage the Ukrainians to pursue the case. At a meeting with Ukraine's Consul General, Rosenbaum opined that the matter could well become "big news" which would embarrass the Ukrainian government.²² At a later meeting with Ukrainian officials and representatives from the U.S. State Department, Rosenbaum commented that one of the leading human rights advocates in Congress was anxious to raise the Koziy matter.²³ At every meeting, and during every phone call, Rosenbaum balanced the implicit threat of exposure with an offer to assist the Ukrainians in investigating the case. He also gave his word that if it turned out there was insufficient evidence to sustain a prosecution, he would issue a statement praising the Ukrainians for their efforts and blaming the problems on the death of crucial witnesses while Koziy remained in Costa Rica. Rosenbaum assured the Ukrainians that his explanation would be accepted by those who might otherwise criticize the Ukrainians.²⁴ His reference – though he did not say so explicitly – was to Jewish organizations.

In June 2002, Rosenbaum and several State Department representatives met with various Ukrainian officials, including the Deputy Procurator General (equivalent to the Deputy Attorney General of the United States) to discuss the matter yet again. During the course of the meeting, Rosenbaum and the Deputy Procurator General debated the goal to be achieved in the Koziy matter. For Rosenbaum, it was removing Koziy from Costa Rica and placing him in the part of the world which bore responsibility for his crimes. As long as Koziy lived in fear of prosecution, Rosenbaum believed there would be a measure of justice.

The Ukrainians disagreed with the premise that life in Ukraine was punishment in and of itself. On the contrary, they noted that many in Ukraine would treat him as a hero simply because he fought against the Russians during World War II. The Ukrainian goal was

prosecution; if they did not have the evidence to prosecute, it did not matter to them where Koziy resided.

The U.S. participants left the meeting believing that no progress had been made. They were therefore quite surprised to learn in December 2002 that a Ukrainian court had ruled there was sufficient evidence to seek Koziy's extradition on charges of treason.²⁵ Shortly thereafter, in response to a request from Ukraine, the Department of Justice sent videotaped interviews of seven witnesses and a transcript (on microfilm) of the entire U.S. trial record.

Around the same time, Poland asked OSI and Ukraine to forward evidence on Koziy. (The SWC had been pressing Poland to take action.)²⁶ OSI complied with the request. Ukraine, however, refused, contending that the crimes were committed in Ukrainian territory and should be handled by that country alone.²⁷ In June 2003, at Poland's request, an OSI attorney interviewed in the United States a witness who had testified for the government in the 1985 denaturalization proceeding.

Unsure whether a Polish indictment would ever be issued, OSI and the State Department determined to press Ukraine to accept Koziy.²⁸ Poland, however, did follow up. In November 2003, Poland obtained a provisional arrest warrant for Koziy – a prerequisite to an extradition request. Working with OSI's evidence as well as additional material they developed on their own, they alleged Koziy was responsible for 15 murders. Two weeks later, Ukraine too obtained a warrant.²⁹ The question then became which country would be first to formally present an extradition request to the Costa Rican government.

The answer was Poland, which did so on November 21, 2003. Shortly after receiving notification of the request, Koziy suffered a stroke. He died in Costa Rica nine days after the

request was filed.³⁰

Harry Männil

Harry Männil spent three months with the Estonian Self Defense Unit (Omakaitse) and a like period with the Estonian Political Police. Both organizations worked with the Nazis to rid Estonia of those whom the Nazis deemed undesirable because of their racial, religious, political, ethnic and social identity.

During the period when Männil was with the Omakaitse (the summer of 1941), the German focus was almost entirely on suspected Communists. By the time he joined the Estonian Political Police, in the fall of 1941, the Germans were actively routing out Jews as well.³¹

Germans determined the fate of arrestees based largely on reports and recommendations from the Political Police.³² Reports of seven interrogations conducted by Männil while with the Political Police are available in the Estonian State Archives; six of those interrogated were Jewish or were questioned about the whereabouts of Jews. One of the six was murdered by the Germans shortly after his interrogation; four were sent to concentration camps.³³

After the war, Männil emigrated to Venezuela where he became a citizen and successful businessman.³⁴ In 1949 he obtained a visa to visit the United States, which he did many times throughout the years.

Männil was brought to OSI's attention by the SWC in December 1993. Since he was neither a U.S. citizen nor living in the United States, there was no suit to be filed. He was, however, placed on the Watchlist in January 1994. Although he was two weeks later allowed to change planes in Miami *en route* to Costa Rica, he has not since been permitted into the U.S.

Nonetheless, because of his significant and direct role in persecution, OSI has maintained a keen interest in him.

As discussed earlier,³⁵ OSI tried, unsuccessfully, to persuade the Estonians to launch a full-scale investigation of Männil. OSI hoped that he could be extradited to Estonia if charges were filed. While showing some interest in the investigation, Estonia never filed charges.

In January 2003, Venezuela was in political and economic turmoil. Männil, interviewed by an Estonian weekly, stated that he had moved to Costa Rica a month earlier.³⁶ The American Embassy in Estonia informed OSI of the interview, and Director Rosenbaum immediately notified the Costa Rican ambassador to the United States.³⁷ The Ambassador, who had worked closely with OSI on the Koziy matter, asked for any documentation which would support expelling Männil from the country. OSI sent him a report detailing Männil's history. Shortly thereafter, the Costa Ricans learned that Männil was planning a trip to Venezuela to settle some business matters. Costa Rica's Director of Immigration boarded Männil's plane and handed him a letter stating that he would not be allowed to return to Costa Rica. The letter explained that this decision was based on "information received from the Justice Department of the Government of the United States concerning your participation in activities of political persecution of Jews which you carried out while a member of the Political Police of Tallinn, Estonia." Once Männil was out of the country, the Costa Ricans held a press conference to announce his expulsion; the event received news coverage worldwide.³⁸

OSI had coordinated its Costa Rican contacts with the State Department. Although OSI had hoped that the information forwarded to Costa Rica would be made public, the State Department precluded release of the documents. The Estonians were in the midst of an election

campaign in which one of the contentious issues had a Nazi twist. The Minister of the Interior was being attacked for having sentenced several teenagers to prison during the Soviet era; he defended the sentence on the ground that the teenagers were “fascists” fascinated with Nazi memorabilia. Given this backdrop, the State Department feared that release of OSI’s underlying information (even if it were done through the Costa Ricans) would be seen as the U.S. intervening to assist the minister.³⁹

Ironically, although OSI’s report was not released, the issue became a *cause célèbre* in Estonia before their election took place. In February 2003, Joseph De Thomas, the U.S. Ambassador to Estonia, was asked about Männil after he gave a speech on an unrelated topic in Tallinn. The questioner accused the U.S. of “discriminating” against Männil. The ambassador defended the U.S. actions, noting that some of Männil’s victims had been children and old women. His comments created a furor in Estonia.⁴⁰

Meanwhile, Männil’s attorneys (one of whom was Martin Mendelsohn) successfully petitioned the Costa Rican government to reconsider its position. In early 2004, Costa Rica dropped its opposition to Männil’s reentry. The government did so on the grounds that Männil was not facing charges abroad and had earlier spent extended time in Costa Rica without incident.⁴¹

The Männil and Koziy cases illustrate OSI’s effort in the hunt for World War II persecutors worldwide. Although the United States lacks jurisdiction to prosecute criminally those who committed crimes abroad on behalf of the Nazis, it has taken on the task of sharing information it has on Nazis with like-minded countries throughout the world. It has also sought to raise the awareness of countries abroad so that they are more sensitive of the need to rid

themselves of Nazis in their midst and to prosecute if possible.

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 T. Michael Peay, State Dep't from Director Sher; Aug. 17 routing slip from DAAG Richard to Sher re DAAG Richard's discussion of the matter with the State Department.
5. Oct. 16, 1984 routing slip to Sher from DAAG Richard noting the lack of interest when he discussed the case informally with Polish officials in Warsaw.
6. *Matter of Koziy*, A07 347 878 (Imm. Ct., Miami, Fl. 1985).
7. Mar. 1, 2002 note from Rosenbaum to Koziy case file. In response to prompting from the United States, the Costa Ricans arrested Koziy while they investigated the circumstances of his admission into the country. He was in custody for three days before a court determined that he had entered legally. "Alleged War Criminal Ordered Freed by Court," *AP*, Aug. 23, 1985.
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. June 22, 1994 letter to Costa Rican Ambassador Sonia Picado from Congressman Lantos; Aug. 2, 1995 letter to H.E. Jose Maria Figueres, president of Costa Rica signed by 64 U.S. Congressmen. In March, 2000, 22 Congressmen signed a letter urging the Ukrainian government to take Koziy back and to hold him accountable. "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 Rosenbaum to Ukrainian Consul General at March 7, 2001 meeting. The Germans had long before refused to extradite or prosecute Koziy. See pp. 429-430.
15. Jan. 16, 2001 letter from Rosenbaum to V.V. Kudriavtsev, Deputy Prosecutor General of Ukraine.
16. Jan. 23, 2001 e-mail from Rosenbaum re: "Koziy: Telcons w/ Costa Rican & Ukrainian Ambassadors."
17. May 15, 2000 telegram No. 151511Z from American Embassy, Kiev to Secretary of State.
18. June 5, 2002 e-mail from Rosenbaum re: "Koziy: Bad News – Kiev Sandbags Us, Probably Permanently."
19. Mar. 30, 2000 e-mail from Janet Weber [Consul General, US Embassy, San Jose] to Steve Donlon, Citizen Service Specialist, Consular Affairs Office, State Department.
20. June 5, 2002 e-mail from Rosenbaum, *supra*, n. 18.
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 OSI historian Michael MacQueen to files concerning the same meeting.
23. June 26, 2002 memorandum to file prepared by Jonathan Drimmer, OSI attorney, concerning meeting with Deputy Procurator General, a vice consul from the Ukrainian Embassy, and a representative from the Ukrainian MFA.
24. See e.g., Jan. 23, 2001 e-mail from Rosenbaum re "Koziy: Telcons w/ Costa Rican & Ukrainian Ambassadors."
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 Wohlgelemerter, *The Jerusalem Post*, Feb. 12, 2003.
27. May 29, 2003 e-mail from Evgeniy Suborov (AmEmb Kiev) to Donlon re "Koziy and other OSI Matters."

28. July 23, 2003 e-mail from Rosenbaum to Feigin re "Corrected Text: Summary Account of Today's Meeting with US Amb. To Ukraine John Herbst."
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 Dr. Martin Sandberger, 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.*
32. *Id.*
33. Aug. 7, 1996 Memorandum to OSI Director Eli Rosenbaum from Elizabeth White, OSI Chief of Investigative Research, re "Harry Männil – Admissibility under Title 8, U.S. Code."
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 former President Gerald Ford, they included Robert D. Stuart, Jr., former CEO of Quaker Oats (1966-1980) and U.S. Ambassador to Norway (1984-1989); George W. Landau, U.S. Ambassador to Venezuela (1982 to 1985) and President of the Americas Society (1985-1993); and John E. Avery, retired Group Chairman of Johnson & Johnson and Chairman of the Americas Society and the Council of the Americas.
35. *See pp. 456-457.*
36. *Eesti Ekspress*, Jan. 16, 2003.
37. Jan. 17, 2003 e-mail to Ambassador Jaime Daremblum from Rosenbaum re "2nd Nazi in Costa Rica?"
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 Wohlgeleinter, *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 State Department Baltic Affairs Officer Maria Germano, to Eli Rosenbaum, re "Männil: Costa Rica, Estonia and OSI's Report."
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 Rosenbaum re "Suspected Nazi Criminal Harry Mannil Has Been Readmitted to Costa Rica." The e-mail recounts a telephone conversation Rosenbaum had with Ms. Villalobos, the DCM at the U.S. Embassy in Costa Rica.

Chapter Seven: Reaction to OSI

Introduction

Although the founding of OSI came about after wide media coverage of “war criminals” in America, the spotlight dimmed over the years. A few matters drew extensive media attention – Demjanjuk, Barbie and Mengele being notable examples. But in general, aside from some local attention paid to an OSI trial, the cases now go unreported. At this point – more than 25 years after OSI’s founding – it is unlikely that most members of the public at large are aware of the office.

The big exception, of course, has always been those who have reason to follow OSI’s cases and activity. The groups that fall most obviously into that category are two: (1) those who see closure in OSI’s work (generally Jewish groups and Holocaust survivors); and (2) those who fear they have been unfairly targeted by OSI (generally emigré groups, largely from Estonia, Latvia and Lithuania, whose constituents make up the bulk of OSI defendants). Of course the lines are not so simply drawn. Within the Jewish community, there has been occasional criticism, and within the emigré community there has been some support. Moreover, there are others, independent of each of these groups, who have taken stands on some aspect of OSI’s work. How OSI has responded to both the support and criticism is key to understanding the office and its legacy.

The Jewish Community

The Department of Justice represents Americans as a whole. However, it is not uncommon for segments of the public, including non-governmental organizations, to be particularly interested in certain areas of the Department's work. These groups sometimes prod the Department to pursue matters of concern; at other times they may monitor, support or criticize the Department's efforts. Such, for example, is the case with environmental groups and the Environmental and Natural Resources Division, advocates for the minority and disabled community with the Civil Rights Division, and Jewish organizations with OSI.

From the SLU era to the present day, the office has kept Jewish groups apprised of significant matters. It has also shown particular concern for Holocaust survivors. When the government moved to dismiss the case against Frank Walus, it did so because it believed he had not committed the persecutory acts about which the survivors had testified.¹ Nonetheless, the government issued a statement saying it had "no doubt that the witnesses who testified on behalf of the government – the survivors of the Nazi persecutions of Czestochowa and Kielce – testified sincerely and honestly." The Department showed similar deference to the sensitivity of the survivors who identified John Demjanjuk as Ivan the Terrible. Although most within the Department ultimately came to believe that Demjanjuk was not in fact Ivan (based in part of evidence which became available only after Demjanjuk's extradition), there was never an official acknowledgment of this change in viewpoint. This is so despite the fact that the Department ultimately dropped all charges relating to Treblinka and re-prosecuted Demjanjuk on other grounds.

OSI's first Director, Walter Rockler, viewed the directorship in traditional prosecutorial

terms, which meant that he did not seek community input into the process. Nevertheless, because of his Nuremburg experience, the Jewish community knew and trusted him. His successor, Allan Ryan, was unknown to them.

Ryan saw public relations as a large component of the job, and believed that support of the Jewish community was essential.² 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.” As a non-Jew, he had a special point to convey.

When I came along, people said “Boy, this guy’s not even Jewish. How do you like that?” It gave me the opportunity to say “This is not a Jewish prosecution. This is not a Jewish issue exclusively. This is an American issue. And as much as Jews obviously are deeply involved in this and have a special relationship to it, I am here as a representative of the Department of Justice to pursue an issue that is important on the American agenda. This should not be seen as something that is exclusively the concern of the Jews.”³

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 Linas;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

urged Japan to furnish OSI with biographical data on possible persecutors.¹⁰ On the legislative front, the WJC and ADL prevailed upon Congress to craft legislation which would exempt records “related to or supporting any active or inactive investigation, inquiry, or prosecution” from release under the Nazi War Crimes Disclosure Act.¹¹ The exclusion, which affects fewer than 1% of documents covered by the Act, is designed to preclude the release of material that would jeopardize ongoing OSI investigations.

Jewish groups have also defended OSI from criticism. During the 1980s, defendants repeatedly challenged the reliability of evidence from Soviet and East European archives.¹² The ADL issued a well-publicized report lambasting various emigré groups for using this issue to “hamper and frustrate the OSI – and eventually to kill it.”¹³ The WJC released a similar analysis.¹⁴ In 1993, after the Sixth Circuit excoriated OSI in *Demjanjuk* for having a “mindset” that required it to “try to please and maintain very close relationships with various interest groups because their continued existence depended upon it,” Jewish organizations attacked the decision.¹⁵ They also lobbied against Judge Gilbert Merritt, one of the judges in both *Demjanjuk* and *Petkiewytch*, when his name surfaced on a short list to fill a Supreme Court vacancy.¹⁶

This type of activity leads to a perception of symbiosis between OSI and the Jewish community. That perception is enhanced by the fact that Director Rosenbaum spent two years as General Counsel to the WJC and Director Sher left OSI to join a prominent Jewish lobbying group.¹⁷ The perception sometimes works to OSI’s advantage, as others fear that OSI can arouse a powerful Jewish lobby if need be.¹⁸

Yet the symbiosis is not perfect. At times, OSI defendants have been represented by Jewish lawyers. They have generally defended their decision to represent alleged Nazi

persecutors on the ground that refusing to represent a class of persons *per se* is reminiscent of the treatment Jews received in Nazi Germany.

The dismissal of the *Walus* and *Soobzokov* cases, the prosecution of Jacob Tannenbaum, and the negotiated settlement of some OSI cases, were all controversial decisions which aroused mixed reactions among Jews.¹⁹ And in the case of André Bettencourt, OSI did not place him on the Watchlist despite public pressure from renowned Nazi hunter Serge Klarsfeld.²⁰

Given the overall strength of the relationship between OSI and the established Jewish leadership, disagreements of this sort have no long-term effects. There are, however, fringe Jewish organizations whose activities are much more problematic for OSI. Indeed, some of their activities have been counterproductive to OSI's mission. The most serious by far is their apparent involvement in the death of Tscherim Soobzokov, discussed elsewhere in this report.²¹

There have been other problems as well. Jewish groups have disrupted trials,²² harassed defense counsel,²³ and assaulted defendants. On the very day of Soobzokov's death, a fire broke out in front of the home of Elmars Sprogis, whose order of denaturalization had been reversed four months earlier. When the front door was opened to a passerby seeking to alert the occupants of the fire, a bomb exploded. Although Sprogis was not harmed, the samaritan's lower leg had to be amputated. Shortly after the incident, a call came to the local newspaper: "Listen carefully. Jewish Defense League. Nazi war criminal. Bomb. Never again."²⁴ In 1980, a bomb went off at an apartment building owned by an OSI defendant. The day prior, a man identifying himself as a Holocaust survivor warned a local news agency that he would kill the defendant.²⁵ Frank Walus, prosecuted before OSI's founding, was sprayed in the face with mace by a man identifying himself as the head of the JDL in Chicago.²⁶

The most repeatedly victimized OSI defendant was Boleslavs Maikovskis, a Latvian chief of police during World War II.²⁷ The INS filed suit against him in 1976. In 1978, with the litigation still pending, several shots were fired into Maikovskis' home, wounding him seriously. Although the JDL disclaimed responsibility, the national director of the group stated that the organization was:

ecstatic that it happened. We're only unhappy the man is still alive. . . . We don't go around shooting and killing people, but we hope to serve as an inspiration to those who do.²⁸

The following year, a man representing himself as a reporter stabbed a guest in the Maikovskis home and then fled. The anonymous assailant later identified himself to the media as a member of a group called Jewish Executioners With Silence (JEWS) and said that Maikovskis had been the target.²⁹ Gasoline bombs and flammable fluids were aimed at the Maikovskis home several times in the succeeding years, although no one was injured. After one such incident, a caller said the firebombing was "revenge for crimes [Maikovskis] committed."³⁰ Even during his deportation hearing in a public courtroom, Maikovskis was not safe. OSI attorney Jeffrey Mausner blocked a would-be assailant from reaching the defendant.

Save the attempted courtroom assault, no arrests were made in any of the cases involving violent acts against OSI defendants.³¹ As of this writing, FBI investigations into the crimes remain open.

1. See pp. 83-86.
2. See p. 10.
3. Ryan recorded interview, Oct. 6, 2000.
4. E.g., in 1976, Dr. Oscar Karbach of the WJC provided INS with a list of 61 names of alleged 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. Ryan interview, *supra*, n. 3.
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, Eli Rosenbaum was General Counsel for the WJC. 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 Lantos 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 Rep. Lantos to Prime Minister Keizo Obuchi; Apr. 11, 2000 letter from Ambassador Shunji Yanai to Rep. Lantos discussing their meeting and the Ambassador's response.

11. Discussion with Director Rosenbaum.

Even documents in closed OSI investigations are covered under the exemption because they may have information (including subject or witness names) relevant to ongoing investigations. However, the exclusion is not rigid. It can be waived, and indeed, OSI has done so many times.

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. Sher joined AIPAC, the American Israel Public Affairs Committee. In 1994, when writing to the Attorney General to urge the Department to investigate Allan Ryan (see p. 168), Judge Merritt made pointed reference to this move.

[Jewish special interest] groups, no matter how powerful politically, should no longer be permitted to influence the administration of justice in the Department. I call to your attention the fact that in the past few months the head of OSI went over to run the most important of these groups, APAC [sic].

Oct. 20, 1994 letter from Chief Judge Merritt to Attorney General Janet Reno.

After leaving AIPAC, Sher joined the International Commission on Holocaust Era Insurance Claims. He resigned in 2002 amid allegations that he had misappropriated \$136,000. He was disbarred in the District of Columbia in August 2003.

18. Director Rosenbaum 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, Rosenbaum

opined that the Jewish community would be very upset if Romania did not agree to accept Nikolaus Schiffer as a deportee. That same month he wrote to the State Department, noting that Congress and the public would be critical if Germany did not accept two other deportees. He made a similar argument to the State Department's Special Ambassador on War Crimes. When speaking with the German Political Minister about Germany's refusal to take in OSI deportees, Rosenbaum suggested that he was able to fan the flames of controversy. See p. 439.

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 Sean 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.

Critics

OSI is not without its critics. They include a wide range of people whose objections vary from procedural to substantive. Some of the criticism is directed at specific cases; some applies to OSI prosecutions generally, and some to OSI officials in particular.

At the outset, many questioned the need for the office at all. Some felt that these defendants, now elderly, were not a sufficiently high priority matter to warrant a separate unit devoted to their prosecution.¹ Even some Jews were skeptical. They worried that if the effort failed it would suggest impotence of the Jewish people, thereby furthering a stereotype that lingered from World War II. Moreover, they were concerned that prosecutions, with attendant media coverage, would bring increased pain to some Holocaust survivors.²

Once the office was established, some emigrés from the Soviet Union and the “captive nations” of Latvia, Estonia and Lithuania feared that OSI was on a massive and unjustifiable witchhunt. They suspected that political considerations led OSI to focus on those who emigrated from Eastern Europe, while people from Japan and Nazi-occupied western Europe escaped scrutiny.³ OSI sought to allay these concerns, explaining that since the DPA and RRA favored those fleeing Communism, the concentration of Eastern European defendants was a function of immigration patterns and not political agenda. Moreover, the East European community as a whole was not targeted; very few were suspected of having assisted in persecution.⁴

Not everyone was convinced. Some emigré publications warned their readers that they were in danger of being deported, and urged them not to cooperate with the Department of Justice.⁵ This stymied OSI from developing sources of information or witnesses within the local Baltic communities.

To the extent that OSI learned of possible subjects from Communist publications,⁶ and relied on documents and witnesses from behind the Iron Curtain, defendants and critics argued that the evidence was not credible. They posited that the Soviet Union (or its satellite countries) fabricated charges and evidence in order to discredit activist emigrés in the United States.⁷ Various Department officials met with emigré leaders throughout the years to discuss the issue,⁸ there was also at least one meeting between emigrés and White House personnel.⁹ Nonetheless, the alleged unreliability of Soviet-sourced evidence remained the most common defense to OSI prosecutions for over a decade.

In fact, however, very few OSI defendants were active in the anti-Communist movement.¹⁰ Moreover, there was no correlation between activism and tips from Soviet sources. Their tips involved some who were active, as well as some who were politically quiescent. In many instances, the Soviets had no information about an OSI subject; in one case, OSI dismissed proceedings after a Soviet witness provided *exculpatory evidence*.¹¹ In any event, even if the Soviet motivation for naming a person was suspect, that did not necessarily render the accusation false. The case ultimately depended on the reliability of the witnesses and documents used to support the charge, as tested by U.S. judicial standards for admissibility.

At first, the U.S. government itself sent mixed messages about the reliability of Soviet witnesses in Nazi war crimes investigations. In the pre-OSI era, the Department of State (DOS) routinely ignored requests from INS for assistance in working with the Soviets on Nazi investigations. The DOS feared that it could not “verify the credibility or, indeed, the identity of the witnesses provided us by the Soviet authorities.”¹² Moreover, to the extent that the Soviets themselves had war crimes charges pending against some INS subjects, the State Department

feared that the Soviets would not make available any witnesses whose positions did not support the Soviet prosecutions.¹³

The State Department's intransigence, in the face of repeated requests for assistance from INS, aroused the ire of Congressman Joshua Eilberg, Chair of the House Subcommittee on Immigration Citizenship and International Law. It was only after Eilberg complained to the Secretary of State, and to the President, that DOS requested information from the Soviets about several INS subjects.¹⁴

As noted earlier, American officials made several trips to the U.S.S.R. to seek access to witnesses in Nazi war crimes cases.¹⁵ Among them, Chairman Eilberg and Congresswoman Holtzman went in 1975, SLU Director Martin Mendelsohn in 1978, and OSI Director Walter Rockler and his then-deputy Allan Ryan in 1980. In addition, Attorney General Civiletti discussed the issue with the Soviet Chief Justice in 1979. As a result of these meetings, the Soviets agreed to allow questioning of their citizens in accordance with procedures acceptable in U.S. courts of law. Although a Soviet procurator (prosecutor) had to be present, (s)he would have no prior notice of the questions. OSI attorneys and defense counsel could question and cross examine the witnesses. Most importantly, the depositions would be videotaped. If a witness were later unable to travel to the United States to testify, a judge could view the tape to assess witness demeanor and credibility as well as the format of the deposition.¹⁶ In October 1989, Attorney General Richard Thornburgh, the first Attorney General to visit the Soviet Union, signed a memorandum of understanding with his counterpart in which both countries agreed to continue these practices and to further their cooperation in the pursuit of Nazi persecutors.

The Department of Justice maintained that these procedures assured the reliability of the

proceedings.¹⁷ OSI's critics and defendants were not as sanguine. They argued that the mere presence of a Soviet procurator (and there were sometimes more than one representative from the procurator's office) rendered the proceeding intimidating and coercive.¹⁸

There was support for both sides of the argument. In some cases, Soviet witnesses assisted and even exonerated the defendant;¹⁹ in others, witnesses may have been inhibited from giving exculpatory testimony by the procurator's derogatory comments about the defendant. Some procurators referred to the defendant as a "war criminal"²⁰ and restricted cross examination.²¹ In one case, years after OSI's proceedings were complete, a witness recanted, saying she had been forced by the Soviet authorities to testify falsely.²²

The depositions were also very cumbersome. Many of the witnesses (*e.g.*, Latvians and Lithuanians) were not Russian speakers. Questions and answers were presented in their native tongue, then translated into Russian (for the procurator) and then into English. These multiple translations trebled the duration of the proceeding, making the videotape much more tedious to watch. Critics feared that the courts would rely instead on the transcript, thereby losing the benefit of demeanor evidence, which videotaping was designed to secure.²³ Such concerns were especially important since – despite Soviet assurances to the contrary – none of the Soviet witnesses was ever allowed to travel to the United States to testify.

Courts had mixed reactions to the depositions. Some accepted them at face value,²⁴ while others rejected them entirely;²⁵ some relied on them only to the extent that they were corroborated by documentary evidence.²⁶

The documents were of two types: historical documents and protocols. The historical documents were contemporaneous records made during the war; the protocols were interviews of

defendants and witnesses taken after the war and used in overseas war crimes trials.

Critics challenged the historical documents on the grounds that they were out of context and/or Soviet fabrications. The context argument was based on the fact that for the duration of the Cold War, neither OSI nor defense counsel had direct access to Soviet archives.²⁷ As noted earlier, one could only request information and hope the authorities would respond.²⁸ If a party worded its request poorly, related and relevant documents might be overlooked. There was no opportunity for the litigating parties to sort through the files and serendipitously find supporting material. Moreover, the Soviets searching for documents on behalf of the United States were sometimes prosecutors rather than trained historians. They often had to rely on name-linked indices which referenced only documents bearing a given subject's name. They therefore might overlook documents detailing the activities of a unit and records pertaining to the setting of a particular event.²⁹ These difficulties were compounded by the fact that not all Soviet archivists knew German or had sufficient knowledge of the captured records held by their institutions.

Such ineffective research was more likely to stymie OSI's investigation than to hamper the defense, but it could arguably impact negatively on both sides. The more forceful argument for the defense, however, and one it raised in case after case, was that documents from the Soviet Union were forgeries.³⁰ OSI relied on forensics, including handwriting, fingerprint, paper, ink, glue, stamp and typewriter analysis to refute such allegations.

In a few instances, critical records had fingerprint identification which made it possible to connect a document to the defendant.³¹ Some records had the defendant's signature or handwriting. Matching the signature on a World War II document to current handwriting samples is more complex than routine signature comparisons. There are complicating factors,

including the natural evolution of handwriting over time, the additional changes to handwriting when poorly educated people become more educated, and the difficulty of matching Latin alphabet letters with the Cyrillic lettering on many of the earlier documents.³² Despite these hurdles, some matches were made.³³

In most cases, however, there are no relevant documents with the defendant's handwriting or fingerprints. There are rosters, transfer rolls, military strength records, disciplinary reports and medical records that contain the defendant's name, but these were signed by commanding officers, military clerks, hospital officials and the like.

OSI uses various means to authenticate such documents. First, historians testify that the Soviets had collected and stored the material at war's end and that finding the documents in expected locations in and of itself gave them credibility.³⁴ Even more importantly, OSI compares documents about the defendant to records of other soldiers and to information about the defendant from a variety of sources. OSI searches for, and often finds, relevant records scattered in archives throughout Europe and the United States. Birthdate, place of birth, lineage, religion and other information in the defendants' hometowns (from baptismal certificates, school records, employment applications, etc.) are matched with military records elsewhere. OSI also compares military and police records for their internal consistency, *e.g.*, matching a promotion form in one archive with records in another archive indicating the defendant's new rank. Likewise, records of others promoted on or about the same date are examined to determine whether the promoting officer was the same. Post-war pension requests are examined to determine dates and places of wartime service.³⁵ Hospital records are reviewed to compare the personal histories therein with identifying information in military records. Wounds and scars are

noted and compared with those on the defendant in the courtroom.³⁶ Hometown European newspapers, copies of which might be in the Library of Congress as well as overseas, are examined for stories corroborating information from the Soviet-sourced evidence.³⁷

OSI also calls upon forensic chemists to determine the age of the paper and ink on the relevant documents.³⁸ Inks have varying chemical profiles, and many inks manufactured during the war years are no longer in use. The International Ink Library maintained by the U.S. Secret Service has thousands of ink formulas from around the world, with their dates of manufacture recorded. By removing several small plugs (1 - 2 mm) from the ink on OSI documents, forensic chemists compare ink profiles (by visual examination as well as by ultraviolet and infrared techniques) with those in the library. If there is no match (perhaps because a particular ink was not in the library), plugs are taken for comparison from documents in the U.S. Archives written during the same era and in the same region.³⁹

Chemists determine the age of the paper by analyzing those characteristics that vary over time – color, the solubility and migration of ink components, fold endurance, tensile and tear strength. Although the defense occasionally argued that the Soviets might have stockpiled old ink and old paper, and recently created a document, the stylistic characteristics of handwriting on the documents helped refute this contention.⁴⁰

Every court found the Soviet-sourced historical documents genuine.⁴¹ To the extent that the forensic evidence establishes that the documents are of the proper vintage, and the various documents are corroborative, it is hard to sustain the argument that they were Soviet fabrications. One would have to believe that an extraordinarily elaborate scheme had been hatched which involved fabricating documents from baptismal certificates to military and hospital records and

storing them around the world. Moreover, because some of the comparative records were of persons *not* prosecuted by OSI, the Soviets would have had to have had the foresight to forge documents of unrelated people and to keep them stored for decades before OSI sought them. Courts concluded that such an elaborate conspiracy was implausible.⁴²

The protocols do not have the same inherent legitimacy. It is impossible to ascertain the conditions under which these often decades-old interviews and interrogations had been taken. OSI therefore uses them only if their details are corroborated in some respects. OSI looks for such corroboration in the historical documents, other Soviet interrogations, and interrogations from witnesses and subjects in Germany, Poland, Israel, Canada, the U.S., and post-Soviet Russia and Ukraine. Some courts found the protocols reliable;⁴³ others were skeptical.⁴⁴

While Soviet-sourced evidence has been the most sustained criticism of OSI, critics also decry the lack of procedural rights accorded OSI defendants. Because denaturalization and deportation cases are civil proceedings, courts have held that the defendants have no Fifth Amendment privilege against self-incrimination and no right to counsel or trial by jury. For the same reason, neither a statute of limitations nor incompetency shields a defendant from prosecution.⁴⁵ Moreover, the courts have ruled that the Holtzman Amendment violates neither the *ex post facto* nor the bill of attainder provisions in the Constitution. These procedural safeguards preclude punishment imposed retroactively or without a trial; however, deportation is not deemed to be punishment.⁴⁶

Such rulings have led some critics to suggest legislation authorizing OSI to prosecute defendants in the United States as war criminals. The rationale for this proposal is that it would at least guarantee the panoply of procedural rights associated with criminal cases and protect

defendants from being deported and tried overseas.⁴⁷ However, the proposal never took hold, probably for a variety of reasons. Among them are: (1) the *ex post facto* clause would almost certainly prevent imposing criminal sanctions for activities abroad which violated no U.S. statutes at the time the defendants emigrated; and (2) expanding rights in OSI cases would necessitate a similar expansion in all deportations. While there are relatively few OSI prosecutions, there are thousands of deportations annually; the cost, in both time and money, would be enormous.

In addition to being denied some protections applicable in criminal proceedings, OSI defendants cannot avail themselves of a defense generally applicable in civil matters. Laches is a doctrine which allows cases to be dismissed if there is a lack of diligence in filing and the delay prejudices the defendant. Although OSI cases involve events decades old, and in some cases the government's investigation has spanned a decade or more, courts have uniformly rejected defense requests to dismiss based on laches. Some have held that laches can never apply in a denaturalization case;⁴⁸ others have simply concluded that there was insufficient evidence of prejudice to consider the doctrine in a particular case.⁴⁹

Failing to win their cases in court, some defendants sought moral support from the United Nations.⁵⁰ Between 1992 and 1996, these defendants, with emigré groups championing their cause, filed a series of petitions to the U.N. Commission on Human Rights (UNCHR). They raised many of the same arguments rejected by the courts. They also alleged that the government had violated the Universal Declaration of Human Rights by rendering men stateless, subjecting them to arbitrary exile, and leaving them destitute.⁵¹ Both the State and Justice Departments feared that this might become a political issue at the U.N. In 1995, Director Rosenbaum and a

member of the State Department's Office of Human Rights and Refugees flew to Cyprus to discuss some of these issues with one of the UNCHR staffers most troubled by the OSI prosecutions. On August 28, 1996, the UNCHR subcommission voted to dismiss the complaints without bringing them to the attention of the full committee.

Criticism of OSI is not always so issue-oriented. It is sometimes case-driven. The prosecutions which generated the most criticism were *Demjanjuk*, *Artukovic*, and *Linnas*, each of which is discussed elsewhere in this report.⁵²

There is also an overriding philosophical debate. Was there anything one could do in the United States to expiate a past of persecution on behalf of the Nazis? Those who defended rocket scientist Arthur Rudolph, Yale instructor Vladimir Sokolov, and Austrian president Kurt Waldheim certainly thought so. And much the same argument was made on behalf of many less prominent OSI defendants, *to wit*, their decades-long quiet and law-abiding lives in the United States should outweigh anything done during their youth.

The *Demjanjuk* case raised a unique philosophical issue: he had already spent seven years in solitary confinement in Israel on the erroneous adjudication that he was Ivan the Terrible. Should he be retried, even if (as was proven) he had served as a guard at the Sobibor death camp?⁵³ And what of Jacob Tannenbaum? His prosecution raised the issue of whether an incarcerated Jew, facing almost certain extinction, should also be viewed as a persecutor.

Looking back at the criticism of OSI, it is evident that the bulk of it came from emigré groups, although not all such groups were critical.⁵⁴ Criticism also came from other sources, however. The Veterans of Foreign Wars (VFW) passed a resolution critical of OSI at their national convention in August 1984.⁵⁵ The following year, 28 co-sponsors introduced a

resolution in the Michigan Senate condemning OSI for working with the Soviet authorities, although the Senate adjourned without voting on the measure. Neither the VFW nor the Michigan legislature ever referenced OSI before or since. Congressman James Traficant was also often critical of OSI.⁵⁶ He accused the office of using evidence doctored by the Eastern bloc in both the Demjanjuk and Artukovic prosecutions⁵⁷ and of inappropriately intimidating Rudolph into leaving the country.⁵⁸

While the vast majority of OSI's detractors are well motivated, it is impossible to ignore the fact that a small percentage of the criticism is redolent of anti-Semitism and Holocaust revisionist history. Some critics questioned whether there had ever been gassings in concentration camps;⁵⁹ some saw Jews as persecutors, rather than victims, blaming them for tyranny and atrocities committed in the name of Communism.⁶⁰ Patrick Buchanan – whose criticisms often focused on substance, procedure and political philosophy⁶¹ – doubted the value of survivor testimony. He referred to it as “Holocaust Survivor Syndrome” replete with “group fantasies of martyrdom and heroics.”⁶² Karl Linnas' daughters, appealing to the Estonian community for funds, implied that the “injustice” done to their father had been brought about by Jewish judges, and opined that judges and prosecutors of Jewish origin should be required to disqualify themselves from these cases. As they saw it, “These trials are a part of the overall effort to use the holocaust as propaganda in order to gain further political and financial support for the state of Israel.”⁶³ A board member of the Captive Nations Committee suggested that OSI personnel showed greater loyalty to Israel than to the United States.⁶⁴

The criticism was greatest during the Cold War years, when the emigré groups were most active and when Buchanan, the most prominent single critic, had a highly visible platform as a

syndicated columnist, television commentator and White House staffer.⁶⁵ On his last day in the White House, Buchanan gave a wide-ranging interview. Among the many questions he was asked, there was one about OSI. He explained his motivation. "I see these people as undefended. Someone is called a Nazi war criminal, and there is an automatic presumption of guilt, not of innocence."⁶⁶

At the time of this writing, the greatest remaining criticism is that OSI has outlived its usefulness as a Nazi-hunting unit. According to this view, OSI may have prosecuted some significant Nazi persecutors in the early years (*e.g.*, Otto von Bolschwing, Arthur Rudolph, Karl Linnas and Andrija Artukovic), but since then the defendants have been "merely" camp guards or members of auxiliary police units. These foot soldiers are too old, ill and insignificant to prosecute at this late date.⁶⁷ Perhaps the most poignant articulation of the view was made by a Holocaust survivor who was contacted by OSI in 1997 as a potential witness. He opined that it was now:

too long a period for effective implementation of sanctions against these individuals, even if they are correctly identified and accused with valid evidence. These criminals must now be in their eighties and on their way out. Let God deal with them, if He hasn't already. Men's action in the service of Justice after 50 years must necessarily be feeble at this stage. Accordingly, I respectfully suggest that your formidable resources and energies be used for more current causes, where they can do some good.⁶⁸

As the Department of Justice views it, however, allowing someone to remain in the U.S. because his wartime activity was not discovered sooner, is to reward those who were most successful in concealing the truth. While the decision to file a case is always discretionary, the Holtzman Amendment – which in large measure parallels OSI's mandate – precludes any discretionary relief for those whom the courts deem deportable because of their activities during

World War II. This suggests that Congress has closed the door to any “sympathy” argument on behalf of those who persecuted in the name of the Nazis. And while guards may have been simply cogs in the war machine, their role was nonetheless vital. As one appellate court noted:

If the operation of such a camp were treated as an ordinary criminal conspiracy, the armed guards, like the lookouts for a gang of robbers, would be deemed coconspirators, or if not, certainly aiders and abettors of the conspiracy; no more should be required to satisfy the noncriminal provision of the Holtzman Amendment that makes assisting in persecution a ground for deportation.⁶⁹

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 Mark Richard 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.

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 emigré groups); "The Lithuanian, Latvian and Estonian Declaration Regarding the OSI," *Draugas*, Nov. 13, 1985.

4. *See* p. 10. In 1980, Director Ryan 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, Ryan's Feb. 23, 1981 letter to Pedro Mirchuck, President of the Ukrainian Society of Political Prisoners, Inc., and his Sept. 17, 1982 letter to Ihor Rakowsky, Esq., Ukrainian American Bar Ass'n 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."

Ryan also spoke to various ethnic groups, such as the Ukrainian-American Bar Association in Newark, New Jersey.

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 AAG Jensen; Nov. 1983 and Sept. 1985 meetings with AAG Trott; March 1987 meeting with Attorney General Meese and AAG Weld.

9. Representatives from Americans for Due Process met with White House personnel from the National Security Counsel, 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 OSI Director Allan Ryan in his 1984 book of the same name.

11. The case against Mykola Kowalchuk had been filed before OSI was founded. OSI dismissed the suit in 1981.

12. July 5, 1974 letter to Joshua Eilberg, Chair of the House Subcommittee on Imm., Citizenship and Internat'l Law, from Linwood Holton, Ass't Sec'y for Congressional Relations, DOS. 1977 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).

13. Aug. 1, 1974 letter from Holton to Eilberg, 1977 Hearings, *supra*, n. 12, at p. 71.

14. July 13, 1976 letter to Eilberg from Lawrence Eagleburger, Deputy Under Secretary of State, 1977 Hearings, *supra*, n. 12, at p. 80.

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 DAAG Richard to Congressman Bill McCollum, responding to questions raised by the Americans Against Defamation of Ukrainians.

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 Mykola Kowalchak 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.

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 I.&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 AAG Trott.

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. 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.)

Adalbert Ruckerl, the head of West Germany's War Crimes Unit in West Germany, met 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 Gideon Epstein, Dec. 6, 2000 (hereafter Epstein interview.) Epstein 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 pension application gave OSI crucial service information for the prosecution of Kazys Ciurinskas.

36. *E.g.*, Liudas Kairys had a scar on his hip.

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 Antonio Cantu, forensic ink specialist with the U.S. Secret Service, as well as 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 Gideon Epstein 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. Epstein interview.

41. This is not to say that OSI never doubted any forensic evidence from the Eastern bloc. However, OSI did not use evidence of which it was uncertain. The author is aware of two cases in which OSI had concerns about the evidence. Both were highly political matters caught up in Cold War intrigue, as contrasted with the more typical apolitical OSI defendant.

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. Because of the nature of the charges, OSI looked into the matter. An OSI memorandum referred to one Soviet document on which "the line spacing looks irregular, which suggests the possibility that the document has been altered" and another on which "many of the items next to his name are not aligned with the other entries." Apr. 25, 1980 memorandum from OSI attorney Robin Boylan to Neal Sher re "Status Report: Warvariv, Constantine." (The diplomat's name was reported in the press.) The documents had not undergone forensic testing before Warvariv's death in 1982.

42. E.g., *U.S. v. Szebinskyj*, 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 Vladimir Grachev, Second Secretary from 1979 to 1986 to Anatoly Dobrynin, Soviet Ambassador to the United States. In that position, and in the two years following when he was stationed in Moscow, Dr. Grachev's responsibilities included overseeing the Soviet response to OSI's requests for evidence. During a January 16, 2003 meeting with OSI Director Rosenbaum, Dr. Grachev, then serving as Principal Officer, Executive Office of the Secretary General of the United Nations, 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 Grachev, the Soviets took cooperation on this issue "very, very seriously." 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); *Linmas 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 WL 544622.

50. Martin Bartesch, Johann Breyer, John Demjanjuk, Nikolaus Schiffer, Anton Tittjung, 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.

56. In 1984, Traficant, an Ohio county sheriff, had been prosecuted by the Department of Justice for bribery. He was elected to Congress following his acquittal. One of his major themes in office was alleged prosecutorial misconduct by the Justice Department.

Traficant proposed various remedies for OSI's alleged perfidies. These included the appointment of a special prosecutor to handle the Demjanjuk case, Congressional review of OSI's handling of the Rudolph matter, and having the House investigate the "practices and patterns of behavior" of OSI. "Traficant: Justice, Heal Thyself and Leave Demjanjuk Alone," by Michael Hedges, *The Washington Times*, Jan. 5, 1994; H. Res. 404, 101st Cong., 2d Sess., May 24, 1990; "Traficant Says Memos Show 'Ivan the Terrible' Witness Lied," by C. Harvey, *The Washington Times*, Aug. 3, 1989. Traficant cited OSI's conduct in Demjanjuk as one justification for an independent federal agency to investigate allegations of wrongdoing by Justice Department personnel. Testimony before the House Judiciary Subcommittee on Commercial and Administrative Law on H.R. 4105, the "Fair Justice Act," July 27, 2000. None of Traficant's proposals was adopted.

In 2002, Traficant was convicted of corruption, bribery, racketeering and tax evasion. He was sentenced to eight years in prison and expelled from Congress.

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. "Traficant 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 Eduard Rubel, 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.

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 Anu, Tiina and Epp Linnas to “Estonians and friends of Estonians.”

64. Dec. 4, 1984 letter from Eduard Rubel, *supra*, n. 60.

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*.

Art Sinai, a deputy director for one year at OSI’s founding, was interviewed about the office

in 2001. He felt it had “degenerate[d]” into prosecution of people who had volunteered or been drafted into some ethnic group, people who were simply Nazi sympathizers, had no high profile, were not involved in specific atrocities, and who “just served,” as opposed to the high level people OSI had expected to find at the outset. “They are doing God’s work but it is a bureaucracy that just won’t let go, and it is too sensitive a thing for anyone to stop.” Sinai opined that prosecuting a guard who is now in his 80s squandered “Jewish credibility.” Recorded interview, Oct. 1, 2001.

68. Oct. 13, 1997 letter to OSI attorney Ellen Chubin 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.

69. *Kairys v. INS*, 981 F.2d 937, 942 (7th Cir. 1992).

Conclusion

OSI evolved from an office focused solely on Nazi persecutors in the United States to an office concerned with Nazis world-wide and with Holocaust issues that transcend any litigative agenda. This evolution is due to a confluence of disparate factors. Some were foreseeable and others not.

Most unexpected, perhaps, were geopolitical changes, including changes in the world's thinking about genocide. Given a spate of world courts and tribunals examining modern war crimes, it became more awkward for countries to ignore those who persecuted with, or on behalf of, the Nazis. Moreover, the end of the Cold War – unthinkable at the time OSI was founded – resulted in some former Eastern bloc countries seeking to join western economic and political unions. Since some of these countries were the very ones most complicit in aiding the Nazis during World War II, the U.S. suddenly had leverage over them which it had previously lacked. Aided by the State Department, OSI made the most of such changing circumstances by suggesting that prosecution of Nazi persecutors was one way to establish that a country shared the values necessary for membership in these organizations.

OSI's role as a resource for resolution of World War II-related issues was arguably more predictable than its role as an exhorter to other countries to pursue Nazi persecutors in their midst. As courts issued rulings in OSI cases, the office scholarship and research gained the imprimatur of jurisprudential approval. The publicity of the early cases, and the government's determination to keep Congress and the public informed of OSI's work, kept these matters in the public eye. It was natural, therefore, for Congressional and public pressure to build on OSI to become involved in other World War II issues. The positive response to the Justice

Department's handling of the first of these issues, the role of the United States in Barbie's escape from justice, led to subsequent assignments.¹

Because of OSI's enhanced role and responsibilities, the office legacy will be far greater than could have been foreseen originally. Although it is too early to make a definitive determination of that legacy, some of the components are clear.

The office prevailed in almost all its litigation and helped make groundbreaking law in three Supreme Court decisions. Since its founding, it has filed more cases of its kind than any country in the world.² Indeed, nine new defendants were charged as late as 2002 – more than in any year since OSI's founding.³ That is an astonishing statistic, given that the pool of potential defendants is steadily dwindling with the death of subjects. That the litigation continues is a testament to the perseverance of OSI and the continuing commitment of the government through successive administrations and Congresses.⁴

The prosecutions have added to the objective judicial record of World War II which was begun at Nuremberg. The cases stand as a permanent and irrefutable response to those who would deny the Holocaust and its horrors. Camp conditions, the role played by indigenous groups, the means used by the Nazis to train people to perform dehumanizing acts, all are outlined in case after case. The underlying documentation, some based on groundbreaking scholarship by OSI historians, is accessible in court files. In addition, complete records (including exhibits) of several early OSI trials were microfilmed and donated to the archives of the Yad Vashem museum in Jerusalem.⁵ Once OSI has completed its Nazi-era work, it will likely turn over similar material from more recent trials (though not in microfilm format) to the U.S. Holocaust Museum as well as to Yad Vashem.

The cases give meaning to the term “assistance in persecution,” and the way they do so is significant. They focus on the *impact* rather than on the *intent* of the perpetrators. It matters not whether the perpetrator intended or even *wanted* to victimize. The message resonating from OSI’s cases is that the United States does not choose to add to its populace persons whose actions victimized innocent civilians – even if the perpetrator was himself a victim of circumstances.

That is a powerful message that many hope will have a prophylactic impact on future persecutors. Whether that hope will be realized is problematical. It may well be that “[n]o punishment can affect the calculations of the genocidal, who are not careful calculators of cost-benefit ratios.”⁶ Even if that is the case, however, the prosecutions serve an affirming purpose by holding people accountable and endorsing the higher aspirations of the body politic.⁷

In preparing its reports, working on World War II related issues, and investigating and litigating cases, OSI has gathered copies of many historical documents. A significant number have been made public in OSI’s court filings. Some have been disclosed as part of the underlying documentation for OSI reports. And an enormous amount, held by other government agencies, has been released under the Nazi War Crimes Disclosure Act, which OSI, as the Justice Department’s representative on the Interagency Working Group, helps administer. The Department of Justice is committed to making its remaining historical material available – as far as possible consistent with privacy and national security concerns – so that others may use it for their own scholarly and educational pursuits.

Once OSI has completed its Nazi-era work, the Department also hopes to disclose much of the office’s litigative material. This, unlike captured historical documents, cannot be accessed

elsewhere.⁸ It includes OSI's massive collection of investigative records – suspect interrogation and witness interviews by OSI personnel, historians' reports, prosecution memos, depositions, and the like. The material sheds light on many important aspects of the Nazi era and will help put captured historical documents in context.

While the import of OSI's work may not be fully appreciated before this material is made public, the written record is not the only means of documenting the work of the office. OSI's work has set standards not only for other countries pursuing Nazi persecutors but for prosecutions unrelated to World War II. In December 2003, the International Criminal Tribunal for Rwanda cited both the *Koreh* and *Trifa* decisions in its conviction of three propagandists for inciting genocide.⁹

Some of OSI's influence is less tangible but no less significant. The Department of Justice has always considered education to be part of OSI's mission. With the Department's encouragement, OSI historians have often participated in symposia at museums, universities and scholarly institutions.¹⁰ OSI's Directors and staff have been guest speakers at public and civic events including commencements and Holocaust remembrance programs. They have also spoken to Jewish organizations, youth and survivor groups, students, residents in old age homes and military personnel.

There is also a much less public aspect to OSI's work. It is a poignant footnote to the office history. Presumably due to the publicity the office has received over the years, private citizens have asked the office for help in resolving family issues relating to World War II. They write to the office with shreds of information and want to know how to find out more. Was their parent perhaps a Nazi collaborator? How can they find out? Although OSI does not do

independent research on their behalf, it routinely directs them to the appropriate archive or government organization.

OSI's work has had a significant and personal impact on its own employees, on the men investigated and prosecuted, and the families of those men. It is draining to work constantly on an issue as overwhelming and depressing as the Holocaust. Within the office, some become inured and black humor abounds. Many who leave speak of emotional burnout.

For those investigated and prosecuted, it is devastating to be charged with complicity in some of the most heinous crimes in world history. The publicity of the charge itself brands the defendants in a way more damaging than would most criminal allegations. In some cases, the prosecution tears the family apart. Most spouses were unaware of the scope of the defendant's wartime activities. The defendant's children – almost all born in the U.S. – are even more likely to be ignorant of the past. Some have turned against their parents as a result of OSI's revelations.

Although the men do not face penal incarceration in the U.S., loss of citizenship and expulsion from the country are not insignificant consequences. U.S. citizenship for these men was a prize; it was not something they casually received as a birthright. Its loss means "an expulsion from society. It's a defrocking, if you will. Day to day, [their] life is not going to change. But it represents a very solemn judgment. . . that we as a society refuse to allow [them] to live among us as . . . citizen[s]."¹¹

Leaving the country in the twilight of their lives is, of course, even more dire. A defendant sent abroad at the end of his life is generally going to a country he no longer knows. Even more significantly, his children and grandchildren (and sometimes even his spouse) usually remain in the United States – a country to which the defendant can never return. If the defendant

was ordered deported, his Social Security benefits are terminated. Most OSI defendants are not wealthy; loss of Social Security may therefore have a serious impact on their standard of living abroad.¹² As the Supreme Court has noted, deportation may “result in loss of . . . all that makes life worth living.”¹³

In the 1980s, at least seven men facing investigation or prosecution committed suicide.¹⁴ An eighth died from surgical complications after a shootout with the police. (The authorities were called to his home because he was brandishing a gun at reporters seeking a comment after OSI filed its complaint.)¹⁵

As discussed earlier in this report, some argue that the government should not continue to pursue these cases; the defendants are too old and their acts of persecution too long past.¹⁶ However, such a blanket immunity would give Nazi-era persecutors protection that this country denies other human rights violators from a bygone era. In 2005, the government convicted an 80-year old wheelchair-bound man of manslaughter for his role in the deaths of three civil rights workers forty-one years earlier.¹⁷ Like most OSI subjects, he had led an unobtrusive and law-abiding life after his perfidious behavior. His conviction may not be the last from the civil rights era. In 2005, legislation was introduced to establish a civil rights prosecution unit, modeled in part on OSI, to pursue other unsolved pre-1970 murders.¹⁸ That proposal is still pending as of this writing.

Of course the civil rights cases differ from those handled by OSI in that the civil rights subjects have generally played a more direct role in murder than the subjects now pursued by OSI. As this report is being written, no one at OSI believes that there are any high-level or even mid-level Nazis still to be found in the United States. Some see this as reason enough to end the

quest at this point. Others, including OSI, would argue, however, that one's role in the hierarchy is not dispositive; indeed, it is not even relevant.

At the lower level, the guards, those were the people who the victims encountered. They didn't see Himmler. But the nameless guard, who kept them in that camp, knowing full well what was being done to them, that's the person they saw.¹⁹

Those who fled to the United States have had decades of benefits, including the opportunity to live and raise their families in this country. In the view of the government, they should not be allowed to benefit in perpetuity because the Justice Department was not able to uncover their background earlier. The government was stymied largely by circumstances beyond its control, especially the inaccessibility of crucial documents in Communist-controlled archives during the Cold War.

There is, inevitably, the question of whether more could have been done. Director Rosenbaum is haunted by the belief that additional prosecutions could have been brought had there been more resources – both financial and manpower – available.²⁰

At the time this report was begun, OSI's demise appeared inevitable. Because the office was created by order of the Attorney General, its existence was at the pleasure of the Justice Department. It seemed likely that OSI would quietly close its doors when there were no longer any Nazi persecutors to pursue.

In 2004, however, the office got a new lease on life. The Intelligence Reform and Terrorism Prevention Act gave OSI statutory recognition and purpose, expanding its mandate to include modern war criminals.²¹ In addition to Nazi persecutors, the office is to detect, investigate, and denaturalize those who took part at any time in genocide,²² torture,²³ or, under color of law of a foreign nation, extrajudicial killings.²⁴ Deportations will be handled by the

Department of Homeland Security. Thus, the office, which no one expected to last more than five years beyond its founding, will become a permanent unit within the Department of Justice.

It will likely be a somewhat different office from the one which investigated Nazi persecutors. Although its new mandate covers only denaturalization, many of the modern war criminals may also be subject to criminal prosecution. Since they entered recently, they may have committed crimes which are not yet barred by the statute of limitations.²⁵ In such instances, OSI will likely work with U.S. Attorneys offices to prosecute crimes.

Whether the office is working on a criminal matter or a denaturalization, there will not likely be treasure troves of documents upon which to base a case. Very few governments are as meticulous in their record keeping as were the Nazis. The irony is, therefore, that the office may return in some measure to its earliest practices, relying on eyewitnesses to help the government present its case and on investigators to find corroborative witnesses overseas. Some of the eyewitnesses will be testifying about events in the recent past, however, and to that extent, the office should avoid some of the problems presented by witnesses in early Nazi cases such as *Walus and Demjanjuk*. Even the modern war crimes can go back an extended period, however. For example, crimes committed in the 1970s in Cambodia are as far distant from the present as were the World War II crimes when OSI was first founded.

The office has learned much from its Holocaust work which will be of benefit in its investigations of modern war criminals. At OSI's founding – and for years thereafter – no one foresaw its permanence. In part because of that short-timer mentality, there was insufficient attention paid to creating a paper trail. The office was founded in the pre-computer era and there was a blind assumption that the institutional history of the office would always be available from

those who worked there. As time went on, of course, employees left, and too often newcomers were forced to reconstruct work done by their predecessors. A tremendous amount of effort is directed toward avoiding this pitfall with the modern crimes.

Whatever OSI's achievements in modern war crimes cases, it will be largely due to the work of its formative years. The office's groundbreaking Holocaust work is a lasting testament to the U.S. government's commitment to accountability and historical truth. The significance of the Holocaust in modern history, and the unfortunate but inevitable recurrence of other atrocities throughout the world, assures that OSI's work will have continuing resonance and impact.

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. Attorney General Smith presented the material to the Israeli Ambassador to the United States 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. 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 Director Rosenbaum, Dec. 9, 2003.

Three of the guards prosecuted by OSI did serve at death camps: Fedorenko at Treblinka, Demjanjuk at Sobibor and Sawchuk at Belzec. Sawchuk, however, was sent there after the killing operations were completed.

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

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, Jan

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

denaturalization action, Avdzej agreed to leave the country. He went to Germany in 1984 and renounced his U.S. citizenship, conceding that he "carried out the orders of the Nazi occupation authorities."

Balsys, Aloyzas

Born: 1913, Lithuania

Alleged Persecutory Activity: Member of a secret police organization that liquidated a Jewish ghetto

Legal History: Balsys never became a U.S. citizen. When OSI sought to question him, Balsys invoked the Fifth Amendment on the ground that he might face criminal prosecution abroad. The question of whether the Fifth Amendment applies in such circumstances was litigated up to the Supreme Court. The Court ruled that the Amendment could not be invoked. Rather than submit to questioning, Balsys left for Lithuania in May 1999. He acknowledged that he had misrepresented his wartime activities when he entered the U.S. See pp. 141-144.

U.S. v. Balsys, 918 F. Supp. 588 (E.D.N.Y. 1996), *vacated and remanded*, 119 F.3d 122 (2nd Cir. 1997), *rev'd and remanded*, 524 U.S. 666 (1998)

Bartesch, Martin

Born: 1926, Romania

Died: 1989, Austria

Alleged Persecutory Activity: Guard at Mauthausen concentration camp in Austria and one of its subcamps

Legal History: Denaturalization case filed in April 1986. The district court revoked Bartesch's citizenship in May 1987 pursuant to a settlement agreement. Under the terms of the settlement, Bartesch relinquished his certificate of naturalization and agreed to leave the U.S. He went to Austria.

United States v. Bartesch, No. 86 C 2375 (N.D. Ill. 1987)

Baumann, Anton

Born: 1911, Yugoslavia

Died: 1993, U.S.

Alleged Persecutory Activity: Guard at the Stutthof concentration camp in Poland and Buchenwald concentration camp in Germany

Legal History: Denaturalization case filed in Mar. 1989. Baumann's citizenship was revoked in May 1991 and he exhausted his appeals in Oct. 1992. A deportation action was filed in two months later. The case settled in June 1993 with Baumann agreeing to the entry of a deportation order for Germany. Based on Baumann's ill health, the United States agreed not to enforce the order of deportation.

Denaturalization: *United States v. Baumann*, 764 F. Supp. 1335 (E.D. Wis. 1991), *aff'd*, 958 F.2d 374 (7th Cir.), *cert. denied*, 506 U.S. 831 (1992)

Deportation: *Matter of Baumann*, A7 811 295 (Imm. Ct., Milwaukee, Wis. 1993)

Bauzys, Jonas**Born:** 1918, Lithuania**Died:** 1998, U.S.**Alleged Persecutory Activity:** Member of the 15th Lithuanian Schutzmannschaft, a Nazi-directed paramilitary group which persecuted and murdered civilians**Legal History:** Bauzys became a U.S. citizen in 1991. Because a motion to reopen a naturalization can be filed within one year, in 1992 OSI filed such a motion rather than a denaturalization action. The motion was denied. OSI did not file a denaturalization case because it did not think its evidence could meet the higher standard of proof called for in such cases.**Benkunskas, Henrikas****Born:** 1920, Lithuania**Died:** 1986, U.S.**Alleged Persecutory Activity:** Served in a Nazi-collaborationist Lithuanian police battalion which participated in several massacres in Kaunas, Lithuania and in Slutsk, a suburb of Minsk, Byelorussia. Thousands of Lithuanian Jews, approximately 15,000 Byelorussian Jews, and 1,200 Soviet prisoners of war were murdered.

Operations by the battalion (the 2nd Lithuanian Schutzmannschaft, later renamed the 12th Lithuanian Schutzmannschaft) were particularly brutal. According to a Nazi report introduced into evidence during the Nuremberg trials, the Nazi civilian administrator of Byelorussia complained about the brutality of the Slutsk slaughter. The police not only looted the bodies of murdered Jews and broke into Jewish houses, but also beat the Byelorussian population in general and stole indiscriminately. When the slaughter at the pits was over, the police did not bury their victims deeply enough and some of the wounded worked their way out of the graves and returned to Slutsk looking for help. According to the Nazis, the executions at Slutsk were carried out "with indescribable brutality . . . bordering on sadism . . . on the part of both the German police officers and particularly the Lithuanian partisans."

Legal History: Benkunskas never became a U.S. citizen. A deportation case was filed in 1984. Benkunskas died before the case was resolved.**Berezowskyj, Walter****Born:** 1924, Poland (now Ukraine)**Alleged Persecutory Activity:** Camp guard at Trawniki and Poniatowa labor camps in Poland, Sachsenhausen concentration camp in Germany and a Mauthausen subcamp in Austria.**Legal History:** Denaturalization proceedings commenced in July 1997. Pursuant to a settlement agreement in Sept. 1998, Berezowskyj forfeited his citizenship. The U.S. agreed not to pursue deportation unless there was a substantial improvement in Berezowskyj's medical condition.

United States v. Berezowskyj, No. 3:97CV1450 (JBA) (D. Conn. 1998)

Bernes, Peter**Born:** 1922, Lithuania**Alleged Persecutory Activity:** Adjutant to the Nazi-appointed commandant in Kupiskes, Lithuania. During Bernes' tenure, more than 1,000 Jewish

men, women and children and some 300 to 500 alleged communists were arrested, jailed, and shot to death by a detachment of Lithuanians acting on the commandant's orders. No Jews are known to have survived. On multiple occasions, Bernes went with the commandant to the local jail and called out the names of prisoners who were then taken from their cells, kicked and beaten. The victims were murdered a short distance from the jail.

Legal History: After being notified that OSI was about to file a denaturalization case, Bernes left for Lithuania in Jan. 2002. His citizenship was revoked in May 2002 pursuant to a default judgment order.

United States v. Bernes, 2002 WL 1067254 (W.D. Ill. 2002)

Bernotas, Antanas

Born: 1908, Lithuania

Died: 1998, U.S.

Alleged Persecutory Activity: Served as a guard in a Jewish ghetto where he beat Jews and helped select some for execution. He also arrested, interrogated and beat anti-Nazi partisans and members of the underground.

Legal History: Bernotas never became a U.S. citizen. Deportation proceedings began in July 1983. In July 1989, the case settled. Bernotas conceded his deportability and designated Germany as the recipient country. Because Bernotas was in ill health, the U.S. agreed not to carry out the order of deportation.

Matter of Bernotas, A7 255 565 (Imm. Ct., Hartford, Conn. 1983)

Bilaniuk, Jaroslaw

Born: 1923, Poland (now Ukraine)

Alleged Persecutory Activity: Guard at Trawniki Labor camp in Poland, member of the Trawniki Training Camp's anti-partisan "Deployment Company." After the evacuation of Trawniki in the face of Soviet advances in July 1944, Bilaniuk served as a member of SS "Streibel Battalion," composed of men from Trawniki. One of the primary functions of the Streibel Battalion was to round up and guard Polish forced laborers.

Legal History: A denaturalization case was filed in Dec. 2002. It is pending as of this writing.

Blach, Bruno

Born: 1919, Czechoslovakia

Alleged Persecutory Activity: Guard and dog handler at Dachau concentration camp in Germany and at Wiener Neudorf concentration camp in Austria.

Legal History: Blach never became a U.S. citizen. Deportation proceedings were begun in 1985; he was ordered deported to West Germany in Apr. 1987. While that order was on appeal, W. Germany requested his extradition. Blach did not contest the matter and was extradited in Jan. 1990. He was tried in Germany for murdering three prisoners during a forced march to the Mauthausen concentration camp in Austria. He was acquitted in 1993.

Matter of Blach, A10 629 292 (Imm. Ct. Los Angeles, Cal. 1987), *appeal dismissed* (BIA

1990)

Bless, Anton

Born: 1924, Yugoslavia

concentration camp in Poland

Alleged Persecutory Activity: Guard at the Auschwitz

Legal History: After being notified that a denaturalization case was about to be filed, Bless went to Germany in Aug. 1992. The court entered a default judgment revoking his citizenship in Dec. 1992.

United States v. Bless, No. 92-2075-JHG (D.D.C. 1992)

Bluemel, Paul

Born: 1902, Germany

Alleged Persecutory Activity: As Senior Mayor of the German city of Hirschberg from 1934 to 1938, Bluemel helped enforce the Nuremberg Decrees. After the Nazi invasion of the U.S.S.R., Bluemel served as a District Kommissar in various Ukrainian cities, including Tschudnow and Retschitza. The District Kommissar was the highest civilian authority over both the German police and indigenous Ukrainian auxiliary police.

During Bluemel's tenure in Tschudnow, several thousand Jews were murdered by the German and Ukrainian police. In Retschitza, Bluemel was in charge of anti-partisan operations, gave orders to the German and Ukrainian police to shoot any members of the anti-Nazi partisans who were captured, and oversaw the roundup of forced laborers to work in Germany.

Legal History: Bluemel never became a U.S. citizen. He agreed to leave the country in Mar. 1985 before OSI filed a deportation case. He settled in West Germany.

Bogdanovs, Boleslavs

Born: 1917, Russia

Died: 1984, U.S.

Alleged Persecutory Activity: Member of the "Arajs Kommando," a Latvian death squad responsible for mass execution of thousands of civilians in Nazi-occupied Latvia. The victims of the mass shootings were mostly Jewish, but also included political enemies (those believed to be Communists), gypsies and the mentally ill. The leader of the organization, Viktor Arajs, was convicted in West Germany for leading the unit in murdering more than 13,000 people.

Legal History: Denaturalization proceedings commenced in Nov. 1983. Bogdanovs died before the case was resolved.

Bojcun, Michael

Born: 1918, Poland (now Ukraine)

Alleged Persecutory Activity: Member of the Nazi-sponsored Ukrainian Auxiliary Police (UAP) in L'vov. During his service, the UAP was involved in the murder of over 100,000 Jewish residents in the city. The UAP also escorted Jews to forced labor sites and enforced persecutory measures including the arrest of Jews for document violations or failure to wear the prescribed armband with the Star of David.

Legal History: A denaturalization case was filed in

Dec. 2004. It is pending as of this writing.

Breyer, Johann

Born: 1925, Czechoslovakia

Alleged Persecutory Activity: Guard at

Buchenwald concentration camp in Germany and Auschwitz Death Camp in Poland

Legal History: Denaturalization proceedings

commenced in Apr. 1992; shortly thereafter Breyer began administrative proceedings to establish derivative citizenship because his mother had been born in the U.S. The court ruled in Breyer's favor and that decision was affirmed on appeal. He was therefore able to remain in the U.S. See pp. 175-191.

Breyer v. Meissner, 2002 WL 31086985 (E.D. Pa. 2002), *aff'd*, 350 F.3d 327 (3rd Cir. 2003)

Bucmys, Ildefonsas

Born: 1920, Lithuania

Alleged Persecutory Activity: Served in an

indigenous police force organized by the Germans in occupied Lithuania and later as a guard at the Majdanek concentration camp in Poland.

Legal History: Denaturalization proceedings were

begun in Sept. 2002. Because Bucmys entered under the INA (the DPA and RRA having since expired), no assistance in persecution count could be filed. He was charged with lack of good moral character (based on failure to answer truthfully at his naturalization interview) and misrepresentation (based on failure to say on his naturalization application that he had assisted in persecution). He was also charged with failure to submit a written naturalization application containing all material facts (a charge, based in 8 U.S.C. § 1445(a), which OSI had never previously filed). The case settled in Feb. 2005. Bucmys consented to an order revoking his naturalized citizenship, admitted that he had not provided a correct answer when he stated on his naturalization application that he had not assisted in persecution, and agreed to comply with any future government request for testimony involving anyone who served at Majdanek during the period when Bucmys did so. The government agreed that it would not file a deportation action.

Budreika, Juozas

Born: 1916, Lithuania

Died: 1996, Lithuania

Alleged Persecutory Activity: Member of the

2nd/12th Schutzmannschaft during the Slutsk massacre. See Benkuskas

Legal History: A denaturalization action was filed

in Sept. 1994. In Jan. 1996, Budreika agreed to forfeit his citizenship and to leave the country. He died two weeks later, the day after arriving in Lithuania.

Ciurinskas, Kazys

Born: 1918, Lithuania

Died: 2001, Lithuania

Alleged Persecutory Activity: Member of the

2nd/12th Schutzmannschaft during the Slutsk massacre (see Benkuskas)

Legal History: Denaturalization proceedings were begun in Mar. 1993. Ciurinskas' citizenship was revoked in June 1997 and his appeals were exhausted in June 1998. Deportation proceedings were begun in Oct. 1998. The case settled in Apr. 1999 with Ciurinskas agreeing to leave within a month. He settled in Lithuania.

Denaturalization: *U.S. v. Ciurinskas*, 976 F. Supp. 1167 (N.D. Ind. 1997), *aff'd*, 148 F.3d 729 (7th Cir. 1998)

Deportation: *Matter of Ciurinskas*, A07 262 096 (Imm. Ct., Chicago, Ill. 1999)

Dailide, Algimantas

Born: 1921, Lithuania

Alleged Persecutory Activity: Member of the Nazi-sponsored Lithuanian Security Police (the Saugumas), where he served in the "Communist-Jews" section. The Saugumas arrested and turned over for punishment and execution those Jews who attempted to escape the Vilnius ghetto, as well as any person who tried to help them. Jews arrested by the Saugumas were generally shot under the direction of the Germans at execution pits at Paneriai, a wooded area outside Vilnius. Approximately 50,000 Jews were murdered at Paneriai.

Legal History: Denaturalization proceedings were begun in Dec. 1994 and Dailide's citizenship was revoked in Jan. 1997. His appeals were exhausted in Sept. 2000. The government began deportation proceedings in July 2001 and Dailide was ordered deported to Lithuania in 2002. In 2003, while appeal of his deportation order was pending, he left for Germany.

In July 2004, the Lithuanian government charged him with persecution of civilians protected by international humanitarian law. He was convicted in March 2006. *See p. 465.*

Denaturalization: *U.S. v. Dailide*, 953 F. Supp. 192 (N.D. Ohio, 1997), *aff'd*, 227 F.3d 385 (6th Cir. 2000)

Deportation: *Matter of Dailide*, A7-412-330 (Imm. Ct., Bradenton, Fl. 2002), *appeal dismissed* (BIA 2003), *aff'd*, *Dailide v. Ashcroft*, 387 F.3d 1335 (11th Cir. 2004)

Demjanjuk, John*

Born: 1920, Ukraine

Alleged Persecutory Activity: Guard at Sobibor death camp in Poland, the Majdanek and Flossenbürg concentration camps (in Poland and Germany respectively) and Trawniki training camp in Poland.

Legal History: The U.S. Attorney's Office filed a denaturalization action in Aug. 1977. Demjanjuk's citizenship was revoked in June 1981 after the court concluded that he was "Ivan the Terrible" who had operated the gas chamber at the Treblinka death camp. His appeals were exhausted in Nov. 1982. A deportation action was filed in July 1982 and Demjanjuk was ordered deported to the U.S.S.R. in May 1984. Two years later, while that ruling was on appeal, he was extradited to Israel. He returned to the U.S. in 1993 after Israel concluded that he was not Ivan the Terrible, but that he had been a guard at other camps, including Sobibor. The 1981 order of denaturalization was vacated in 1998 and a new denaturalization lawsuit was filed in 1999 based on his guard service at Sobibor, Majdanek and

Flossenbürg. He was denaturalized in Feb. 2002. The ruling was affirmed in Apr. 2004, and the Supreme Court denied review in Nov. 2004. Deportation proceedings were begun in Dec. 2004. He was ordered deported in June 2005. Demjanjuk moved to preclude designation of Ukraine, claiming that sending him there would violate the Convention Against Torture (CAT). He argued that Ukraine would likely prosecute and torture him. His motion was denied in Dec. 2005 and he was ordered deported to Ukraine. That order is on appeal as of this writing. See pp. 150-174.

First Denaturalization: *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)

Deportation: *Matter of Demjanjuk*, A08 237 417 (Imm. Ct., Cleveland, Ohio 1984), *aff'd*, (BIA 1985), *aff'd per curiam* (unpub'd), *U.S. v. Demjanjuk* 767 F.2d 922 (6th Cir.), *cert. denied*, 474 U.S. 1034 (1985)

Extradition: *Matter of Extradition of Demjanjuk*, 612 F. Supp. 544 (N.D. Ohio 1985), *petition for writ of habeas corpus denied sub nom. Demjanjuk v. Petrovsky*, 612 F. Supp. 571 (N.D. Ohio), *aff'd*, 776 F.2d 571 (6th Cir. 1985), *cert. denied*, 475 U.S. 1016 (1986), *reopened sua sponte*, No. 85-3435 (6th Cir. 1992), referred to special master, (6th Cir.1992), report of special master, (6th Cir. 1993), *extradition vacated, Demjanjuk v. Petrovsky*, 10 F.3d 338 (6th Cir. 1993), *cert. denied sub nom. Rison v. Demjanjuk*, 513 U.S. 914 (1994)

Second Denaturalization: *United States v. Demjanjuk*, 2002 WL 544622 (N.D. Ohio 2002), *aff'd*, 367 F.3d 623 (6th Cir.), *cert. denied*, 125 S.Ct. 429 (2004)

Second Deportation: *Matter of Demjanjuk*, A08 237 417 (Imm. Ct., Cleveland, Ohio June 16, 2005 and Dec. 28, 2005)

Deneul, Mathias

Born: 1920, Romania

Died: 2000, Germany

Alleged Persecutory Activity: Guard at Gusen concentration camp in Austria. Also guarded prisoners on a transport from a camp in Poland to Mauthausen concentration camp in Austria.

Legal History: Deneul never became a U.S. citizen.

A deportation action was filed in Aug. 1993. In Dec. 1993, Deneul agreed to leave the country. He went to Germany in 1994.

Denzinger, Jakob

Born: 1924, Yugoslavia

Alleged Persecutory Activity: Guard at Auschwitz death camp in Poland, Mauthausen concentration camp in Austria and one of its subcamps, Sachsenhausen concentration camp in Germany, a subcamp of Buchenwald in Germany, and the Plaszow concentration camp in Poland.

Legal History: Denzinger left for West Germany in Aug. 1989 shortly after learning that the government planned to file a denaturalization complaint. A default judgment revoking Denzinger's citizenship was filed in Nov. 1989. As of this writing, he is in Croatia.

United States v. Denzinger, No. 89-2176-JNP (D.D.C. 1989)

Dercacz, Michael

Born: 1909, Ukraine

Died: 1983, U.S.

Alleged Persecutory Activity: As a member of the Ukrainian Police, he assisted the Germans in keeping 2000 Jews deprived of necessities and confined to a ghetto. The Jews were later murdered by the Germans.

Legal History: Denaturalization proceedings commenced in July 1980. Dercacz' citizenship was revoked in Feb. 1982. A deportation proceeding was filed later that year. Dercacz died before the case was fully litigated.

U.S. v. Dercacz, 530 F. Supp. 1328 (E.D.N.Y. 1982)

Detlavs, Karlis*

Born: 1911, Latvia

Died: 1983, U.S.

Alleged Persecutory Activity: As a member of the Latvian Auxiliary Security Police, he executed Jews in the Riga ghetto and chose Jews for execution in the Dwinsk ghetto.

Legal History: Detlavs never became a U.S. citizen. INS filed a deportation action in Oct. 1976. An immigration judge rejected the government's case in 1980 and that decision was affirmed on appeal the following year.

Matter of Detlavs, A07 925 159 (Imm. Ct., Baltimore, Md. 1980), *aff'd*, (BIA 1981)

Deutscher, Albert

Born: 1920, Ukraine

Died: 1981, U.S.

Alleged Persecutory Activity: As a member of the Selbstschutz, a Nazi paramilitary organization, Deutscher participated in the mass execution of hundreds of Jews in Ukraine.

Legal History: The government filed a denaturalization action in Dec. 1981. Deutscher committed suicide the following day.

Didrichsons, Valdis

Born: 1913, Latvia

Died: 1995, U.S.

Alleged Persecutory Activity: Member of the Araj's Kommando (*see* Bogdanovs)

Legal History: The government filed a denaturalization suit in May 1988. The case settled in Feb. 1990 with Didrichsons agreeing to relinquish his citizenship. Because he was ill, the U.S. agreed not to institute deportation proceedings.

Dorth, Johann

Born: 1924, Yugoslavia

Died: 1990, U.S.

Alleged Persecutory Activity: Guard at Auschwitz concentration camp

Legal History: Dorth never became a U.S. citizen. The government filed a deportation action in Jan. 1989. Dorth died while the case was in litigation.

Eckert, Josef

Born: 1914, Austria-Hungary

Died: 1991, Austria

Alleged Persecutory Activity: Guard at Auschwitz concentration camp and two Auschwitz subcamps in Poland

Legal History: Eckert never became a U.S. citizen. The government filed a deportation action in Dec. 1987. In Sept. 1988, Eckert agreed to the entry of an order of deportation and stipulated that he would leave the country within six months. He settled in Austria.

Matter of Eckert, A10 631 698 (Imm. Ct., Los Angeles, Cal. 1988)

Ensin, Albert

Born: 1922, Lithuania

Died: 1994, U.S.

Alleged Persecutory Activity: Guard at Auschwitz death camp

Legal History: Ensin never became a U.S. citizen. The government filed a deportation action in Feb. 1987. In June 1990, Eckert agreed to the entry of a deportation order to West Germany. Due to Ensin's ill health, the U.S. agreed that it would not have him removed from the United States.

Matter of Ensin, A10 226 043 (Imm. Ct., Boston, Mass. 1990)

Fedorenko, Feodor*

Born: 1907, Ukraine

Died: 1987, U.S.S.R.

Alleged Persecutory Activity: Guard in the Jewish ghetto of Lublin, Poland and at the Treblinka death camp

Legal History: The U.S. Attorney's Office filed a denaturalization case in Aug. 1977. The district court rejected the government's case in July 1978. That decision was reversed a year later and the appellate decision was affirmed by the Supreme Court in Jan. 1981. The government filed deportation proceedings in Mar. 1981 and Fedorenko was ordered deported in Feb. 1983. The ruling was affirmed in Apr. 1984 and Fedorenko was deported to the Soviet Union in Dec. 1984. The Soviets convicted him of war crimes in 1986. He was executed the following year. See pp. 48-63.

Denaturalization: *U.S. v. Fedorenko*, 455 F. Supp. 893 (S.D. Fl. 1978), *rev'd and remanded*, 597 F.2d 946 (5th Cir. 1979), *aff'd*, 499 U.S. 490 (1981)

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

Firishchak, Osyp**Born:** 1919, Czechoslovakia (now Ukraine)**Alleged Persecutory Activity:** Served in the 1st Commissariat of the Ukrainian [Auxiliary] Police Lemberg in L'vov, Ukraine. During Firishchak's service, the 1st Commissariat rounded up and transported more than 100,000 Jews to killing centers or labor camps. Jews who attempted to flee these roundups were shot.**Legal History:** A denaturalization case was filed in Dec. 2003. Firischak's citizenship was revoked in Aug. 2005. That ruling is on appeal as of this writing.*U.S. v. Firishchak*, 426 F. Supp. 2d 780 (N.D. Ill. 2005)**Friedrich, Adam****Born:** 1921, Romania**Died:** 2006, U.S.**Alleged Persecutory Activity:** Camp guard at Gross-Rosen concentration camp in Germany (present-day Poland) and Flossenbürg concentration camp in Germany. Among his responsibilities, Friedrich twice guarded prisoners on forced marches when camps were evacuated.**Legal History:** A denaturalization case was filed in July 2002 and Friedrich's citizenship was revoked in Feb. 2004. The ruling was affirmed in Mar. 2005 and the Supreme Court denied review in Oct. 2005. *See pp. 67-68.**U.S. v. Friedrich*, 305 F. Supp. 2d 1101 (E.D. Mo. 2004), *aff'd*, 402 F.3d 842 (8th Cir.), *cert. denied*, 126 S. Ct. 495 (2005)**Galan, Orest****Born:** 1921, Poland (now Ukraine)**Alleged Persecutory Activity:** Member of the Nazi-sponsored Ukrainian Auxiliary Police (UAP) in L'vov during the time in which it provided forces for the final liquidation of the Jewish ghetto (*see* Bojcun).**Legal History:** The case settled in Nov. 2006, with the U.S. filing a denaturalization suit and Galan agreeing to an order revoking his citizenship. Pursuant to the terms of the agreement, he left for Ukraine that same month.**Gecas, Vytautas****Born:** 1922, Lithuania**Alleged Persecutory Activity:** Member of the 2nd/12th Lithuanian Schutzmannschaft (*see* Benkunas)**Legal History:** Gecas never became a U.S. citizen. In May 1999, the district court held him in contempt for defying its order to respond to an OSI subpoena. Gecas spent 18 months in jail. In Dec. 2002, after his release, OSI filed a deportation action. The case settled in May 2003 with Gecas admitting that he had served in the 2nd/12th Lithuanian Schutzmannschaft and agreeing to leave the U.S. permanently. He settled in Lithuania

in Aug. 2003. *See* pp. 144-146.

Geiser, Anton

Born: 1924, Yugoslavia (now Croatia)

Alleged Persecutory Activity: Guard at Sachsenhausen and Buchenwald concentration camps in Germany

Legal History: A denaturalization case was filed in Aug. 2004. It is pending as of this writing.

Gimzauskas, Kazys

Born: 1908, Lithuania

Alleged Persecutory Activity: Chief of the interrogations/investigations division of the Saugumas (*see* Dailide) and thereafter Deputy Chief for the entire Vilnius region.

Legal History: Gimzauskas left for Lithuania in Oct. 1995, shortly before OSI filed suit to revoke his citizenship. The U.S. obtained a default judgment of denaturalization in 1996. Gimzauskas was convicted in Lithuania of genocide in 2001. The court found that he had handed over at least three Jews to killing squads. *See* pp. 464-465.

U.S. v. Gimzauskas, No. 1:95CV02033 (D.D.C. 1996)

Gorshkow, Michael

Born: 1923, Estonia

Alleged Persecutory Activity: Served as a Gestapo interpreter/interrogator at the headquarters of the German security police in Minsk, Poland (now Belarus). He also participated in the Nazi killing action at the Jewish ghetto in Slutsk (*see* Benkuskas).

Legal History: OSI filed a denaturalization lawsuit in May 2002 and Gorshkow departed for Estonia shortly thereafter. A default judgment was entered revoking his citizenship. *See* pp. 461-462.

U.S. v. Gorshkow, No. 5:02CV186/LAC/MD (N.D. Fla. 2002)

Grabauskas, Juozas

Born: 1918, Lithuania

Died: 2002, Lithuania

Alleged Persecutory Activity: Officer in the 2nd /12th Lithuanian Schutzmannschaft (*see* Benkuskas).

Legal History: OSI filed a denaturalization suit in Jan. 1993. The case settled nine months later when Grabauskas forfeited his citizenship and

agreed to leave the country within three weeks. He settled in Lithuania.

U.S. v. Grabauskas, No. 93 C 374 (E.D. Ill. 1993)

Gruber, Michael

Born: 1915, Croatia

Died: 2002, Austria

Alleged Persecutory Activity: Guard at Sachsenhausen concentration camp in Germany

Legal History: Gruber never became a U.S. citizen. OSI filed a deportation case in Aug. 1999. Gruber was ordered deported to Austria in Aug. 2000 and in May 2002 the BIA concluded that it lacked jurisdiction to hear the appeal. Gruber left for Austria in June 2002 and died there two months later.

Matter of Gruber, A10-270-346 (Imm. Ct., N.Y., N.Y. 2000), *appeal dismissed* (BIA 2002)

Gudauskas, Vytautas

Born: 1918, Lithuania

Died: 1997, U.S.

Alleged Persecutory Activity: Member of the 2nd/12th Lithuanian Schutamannschaft (*see* Benkuskas)

Legal History: OSI brought a denaturalization action in June 1984. With the case still in its discovery stage ten years later, the government settled. Gudauskas forfeited his citizenship and the U.S. agreed not to file a deportation action.

U.S. v. Gudauskas, No. 84-000215-T (D. Mass. 1994)

Guzulaitis, Juozas

Born: 1924, Lithuania

Died: 2003, U.S.

Alleged Persecutory Activity: Member of the 252nd Lithuanian Schutamannschaft battalion, guard at the Majdanek concentration camp and the Hersbruck Forced Labor Camp (both in Poland), and guard on the death march from Hersbruck to the Dachau concentration camp in Germany

Legal History: A denaturalization action was filed in Nov. 2001. Guzulaitis died while the case was pending.

Habich, Jakob

Born: 1913, Romania

Died: 1995, U.S.

Alleged Persecutory Activity: Guard in the Lublin and Auschwitz concentration camp systems in Poland. His duties included guarding prisoners on work details. He also transferred prisoners from an Auschwitz subcamp to the Mauthausen concentration camp in Austria.

Legal History: A denaturalization suit was filed in Oct. 1987. It settled in Mar. 1990. Habich relinquished his citizenship and conceded that he was subject to deportation. The U.S. agreed not to institute deportation proceedings due to Habich's ill health.

U.S. v. Habich, No. 87 C 9546 (N.D. Ill. 1990)

Hahner, Johann

Born: 1920, Yugoslavia

Died: 2001, Germany

Alleged Persecutory Activity: Guard at the Auschwitz death camp

Legal History: Hahner never became a U.S. citizen. The government filed a deportation action in Sept. 1991. The case settled in Oct. 1992 when Hahner admitted he had served at Auschwitz and agreed to leave the country permanently. He went to Germany in June 1993.

Hajda, Bronislaw

Born: 1924, Poland

Died: 2005, U.S.

Alleged Persecutory Activity: Guard at the Treblinka labor camp where he participated in the massacre of hundreds of Jews. After the liquidation of Treblinka, Hajda joined the Streibel Battalion (*see* Bilaniuk).

Legal History: The government filed a denaturalization suit in Aug. 1994 and Hajda's citizenship was revoked in Apr. 1997. His appeals were exhausted in Mar. 1998. The government filed a deportation suit in Aug. 1998. Hajda was ordered deported to Poland in Oct. 1998 and that ruling was affirmed in Jan. 2001. Neither Poland nor any other country would accept him. *See* pp. 437-444.

Denaturalization: *U.S. v. Hajda*, 963 F. Supp. 1452 (N.D. Ill. 1997), *aff'd*, 135 F.3d 439 (7th Cir. 1998)

Deportation: *Matter of Hajda*, A07 804 583 (Imm. Ct., Chicago, Ill. 1998), *aff'd*, (BLA 2001)

Hammer, Ferdinand**Born:** 1921, Croatia (now Yugoslavia)**Alleged Persecutory Activity:** Guard at the Auschwitz concentration camp in Germany and Sachsenhausen concentration camp in Austria. Guarded inmates being transported from Auschwitz to Sachsenhausen and from Sachsenhausen to the Mauthausen concentration camp in Austria.**Legal History:** The U.S. filed a denaturalization lawsuit in Dec. 1994. Hammer's citizenship was revoked in June 1996 and the government began deportation proceedings in Oct. 1996. Hammer was ordered deported in Apr. 1997. His appeals were exhausted in Feb. 2000; he was deported to Austria the following month.Denaturalization: *U.S. v. Hammer*, No. 94-Cv-74985-DT (E.D. Mich. 1996)Deportation: *Matter of Hammer*, A08 865 516 (Imm. Ct., Detroit, Mich. 1997), *aff'd*, (BIA 1998), *aff'd*, *Hammer v. INS*, 195 F.3d 836 (6th Cir. 1999), *cert. denied*, 528 U.S. 1191 (2000)**Hansl, John****Born:** 1925, Yugoslavia (now Croatia)**Alleged Persecutory Activity:** Guard at Sachsenhausen concentration camp in Austria**Legal History:** A denaturalization lawsuit was filed in July 2003. Hansl's citizenship was revoked in Apr. 2005. That ruling was affirmed in Mar. 2006.*U.S. v. Hansl*, 364 F.Supp.2d 966 (S.D. Iowa 2005), *aff'd*, 439 F.3d 850 (8th Cir. 2006)**Hausberger, Franz****Born:** 1919, Austria**Alleged Persecutory Activity:** Member of the 1st SS Infantry Brigade which participated in mopping-up operations on the Eastern Front that resulted in the death of thousands of Jews, gypsies, communists and other unarmed civilians**Legal History:** Hausberger, the mayor of a ski village in the Austrian Alps, came to the U.S. for a two week visit to promote tourism in 1984. His visit received media attention and a local B'nai B'rith chapter asked that he be ordered to leave. OSI concluded that his entry violated the Holtzman amendment and INS ordered him to leave before his visit was complete.**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)

Hrusitsky, Anatoly

Born: 1917, Russia

Died: 1992, Venezuela

Alleged Persecutory Activity: Participation in atrocities, including murder and torture of Jews, as a member of a regional police force in Ukraine

Legal History: The government filed a denaturalization case in Aug. 1983. Shortly thereafter, Hrusitsky renounced his citizenship and went to Venezuela.

Hutyrczyk, Serge

Born: 1922, Poland

Died: 1993, U.S.

Alleged Persecutory Activity: Guard at the Koldyczewo concentration camp in Byelorussia. His assignments included drill instructor and supervisory guard. He was also a member of "the hunters," a group of guards who volunteered to participate in the execution of Jews in the forests surrounding the camp.

Legal History: The government filed a denaturalization action in Aug. 1990. Hutyrczyk's citizenship was revoked in Oct. 1992. He died while the ruling was on appeal.

U.S. v. Hutyrczyk, 803 F. Supp. 1001 (D.N.J. 1992)

Inde, Edgars

Born: 1909, Latvia

Died: 1980, U.S.

Alleged Persecutory Activity: Member of the Arajs

Kommando (*see* Bogdanovs)

Legal History: The government filed a denaturalization suit in Aug. 1988. Inde died before the court issued a ruling.

Juodis, Jurgis

Born: 1911, Lithuania

Died: 1986, U.S.

Alleged Persecutory Activity: Officer in the 2nd/12th Schutzmannschaft (*see* Benkunskas)

Legal History: A denaturalization case was filed in Oct. 1981. It was pending when Juodis died.

Kairys, Liudas

Born: 1920, Lithuania

Alleged Persecutory Activity: Guard and platoon leader at the Treblinka Labor Camp in Poland. Also served as a guard at the Trawniki SS Training Camp in Poland and its detachment in Lublin.

Legal History: A denaturalization case was filed in Aug. 1980. Kairys' citizenship was revoked in Dec. 1984. He exhausted his appeals in May 1986. Deportation proceedings began in Mar. 1986. He was ordered deported to Germany in July 1987. His appeals were exhausted in Apr. 1993 and he was deported later that month. *See* p. 450, n. 43.

Denaturalization: *U.S. v. Kairys*, 600 F. Supp. 1254 (N.D. Ill. 1984), *aff'd*, 782 F.2d 1374 (7th Cir.), *cert. denied*, 476 U.S. 1153 (1986)

Deportation: *Matter of Kairys*, A07 161 811 (Imm. Ct., Chicago, Ill. 1987), *aff'd in part and remanded*, (BIA 1989), *decision on remand* (Imm. Ct., Chicago, Ill. 1990), *aff'd*, (BIA 1991), *aff'd*, *Kairys v. INS*, 981 F.2d 937 (7th Cir. 1992), *cert. denied*, 507 U.S. 1024 (1993)

Kalejs, Konrads

Born: 1913, Latvia

Died: 2001, Australia

Alleged Persecutory Activity: Officer in the Arajs Kommando (*see* Bogdanovs) and a guard supervisor at the Salaspils concentration camp near Riga, Latvia.

Legal History: Kalejs never became a U.S. citizen. A deportation action was filed in Nov. 1984 and he was ordered deported to Australia in Nov. 1988. His appeals were exhausted in Mar. 1994 and he was deported the following month. *See* pp. 469-478, 493.

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), *cert. denied*, 510 U.S. 1196 (1994)

Kalymon, John

Born: 1921, Poland

Alleged Persecutory Activity: Member of the Nazi-sponsored Ukrainian Auxiliary Police in L'vov. His unit rounded up Jews, imprisoned them in a ghetto, oversaw their forced labor, killed those attempting to escape, and delivered others to killing sites for mass execution. Captured wartime reports include one in which Kalymon

acknowledged shooting Jews.

Legal History: A denaturalization action was filed in Jan. 2004. It is pending as of this writing.

Kaminskas, Bronius*

Born: 1903, Lithuania

Died: 1988, U.S.

Alleged Persecutory Activity: Participated in the shooting of approximately 600 Jews in Lithuania.

Legal History: Kaminskas never became a U.S. citizen. INS commenced deportation proceedings in Oct. 1976. A physician chosen by the government deemed him incompetent shortly thereafter. By agreement of all parties, the case was continued with periodic examinations to monitor his condition. The case was dismissed after his death.

Karklins, Talivaldis

Born: 1914, Latvia

Died: 1983, U.S.

Alleged Persecutory Activity: Member of Latvian District Police and director of the Madona concentration camp in Latvia. As a member of the District Police, he participated in two mass executions of hundreds of Jews and Soviet activists.

Legal History: A denaturalization case was filed in 1981. It was pending when he died.

Katin, Matthew

Born: 1914, Lithuania

Died: 1991, U.S.

Alleged Persecutory Activity: Member of the 2nd/ 12th Schutzmannschaft (*see* Benkunskas)

Legal History: A denaturalization case was filed in 1984. It was pending when he died.

Kauls, Juris

Born: 1912, Latvia

Alleged Persecutory Activity: Deputy chief and commander of the guards at a Nazi concentration camp near Riga, Latvia

Legal History: A denaturalization case was filed in 1984. Kauls left for Germany in 1988 while the case was still pending. The court entered a default judgment of denaturalization.

No citation available

Kirsteins, Mikelis

Born: 1916, Russia

Died: 1994, U.S.

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* Benkuskas)

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.

Klimavicius, Jonas

Born: 1907, Lithuania

Alleged Persecutory Activity: Member of the 2nd/ 12th

Schutzmannschaft (*see* Benkuskas)

Legal History: OSI filed a denaturalization action in May 1984. The case settled in Nov. 1988. The defendant relinquished his citizenship and the U.S. agreed not to file a deportation action.

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.

Korch, 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 thereafter because of Koreh's failing health. He admitted responsibility for publishing anti-Semitic articles, conceded his deportability, and designated Hungary as the country to which he should be sent. The court entered an order of deportation and the government agreed not to effect the order unless Koreh's health improved. He died three months later. *See pp. 231-240.*

Denaturalization: *U.S. v. Koreh*, 856 F. Supp. 891 (D.N.J. 1994), *aff'd*, 59 F.3d 431 (3rd Cir. 1995)

Deportation: *Matter of Koreh*, A7 903 601 (Imm. Ct., Newark, N.J. 1997)

Kowalchuk, Mykola*

Born: 1925, Poland

Alleged Persecutory Activity: Served with the Ukrainian police and participated in the liquidation of a Jewish ghetto in the Ukraine

Legal History: INS filed a denaturalization action in Jan. 1977, before the SLU was established. The prosecution relied essentially on eyewitness testimony. The case ultimately passed on to OSI which dismissed it in 1981 for lack of evidence. (The key witness had died and the only other eyewitness recanted most of his original claims. The only documentary evidence – an ID card issued in the defendant's name – existed only as a reproduction, which would be inadmissible in court. The Soviets could not find the original.)

Kowalchuk, Serge*

Born: 1920, Poland (brother of Mykola)

Died: 1998, Paraguay

Alleged Persecutory Activity: As a member of the Ukrainian militia, he participated in the liquidation of a Jewish ghetto.

Legal History: INS filed a denaturalization action in Jan. 1977 and the case was taken over by OSI at its founding. Kowalchuck's citizenship was revoked in July 1983 (the court concluding only that he occupied a clerical position in a Persecutory unit). Deportation proceedings began in Feb. 1986. Kowalchuk left for Paraguay in May 1987, before the case was fully litigated. The court thereafter ordered his deportation to Paraguay.

Denaturalization: *U.S. v. Kowalchuk*, 571 F. Supp. 72 (E.D. Pa. 1983), *aff'd en banc*, 773 F.2d 488 (3rd Cir. 1985), *cert. denied*, 475 U.S. 1012 (1986)

Deportation: *Matter of Kowalchuk*, A07 408 669 (Imm. Ct., Phila., Pa. 1988)

Koziy, Bohdan

Born: 1923, Ukraine

Died: 2003, Costa Rica

Alleged Persecutory Activity: Ukrainian policeman who helped round up Jews and forcibly relocate them to a ghetto. He murdered a four year old Jewish child and a Jewish family.

Legal History: A denaturalization case was filed in Oct. 1979. Koziy's citizenship was revoked in Mar. 1982 and the appeals concluded in 1984. Deportation proceedings began in June 1984. Koziy fled to Costa Rica in 1985, while the case was pending. The proceedings concluded in his absence with the court ordering him deported to the Soviet Union. Poland asked Costa Rica to extradite Koziy in Nov. 2003. He died in Costa Rica nine days thereafter. See pp. 514-519.

Denaturalization: *U.S. v. Koziy*, 540 F. Supp. 25 (S.D. Fla. 1982), *aff'd*, 728 F.2d 1314 (11th Cir.), *cert. denied*, 469 U.S. 835 (1984)

Deportation: *Matter of Koziy*, A07 347 878 (Imm. Ct., Miami, Fl. 1985)

Krysa, Wasyl

Born: 1925, Poland

Died: 2004, U.S.

Alleged Persecutory Activity: Guard at the SS labor camp Poniatowa in Poland and at a subcamp of the Mauthausen concentration camp in Austria

Legal History: A denaturalization case was filed in Nov. 1999 and the court revoked Krysa's citizenship in Oct. 2001. He died while the order was on appeal.

U.S. v. Krysa, 1:99CV-2736 (N.D. Ohio 2001)

Kulle, Reinhold

Born: 1921, Germany

Alleged Persecutory Activity: Guard at the Gross-Rosen concentration camp in Germany (present-day Poland)

Legal History: Kulle never became a U.S. citizen. A deportation action was filed in Dec. 1982. He was ordered deported to West Germany in Nov. 1984. He went there in 1987 while the ruling was on appeal.

Matter of Kulle, A10 857 195 (Imm. Ct., Chicago, Ill. 1984), *aff'd*, 19 I. & N. Dec. 319 (BIA 1985), *aff'd*, *Kulle v. INS*, 825 F.2d 1188 (7th Cir. 1987), *cert. denied*, 484 U.S. 1042 (1988)

Kumpf, Josias

Born: 1925, Yugoslavia (now within Serbia & Montenegro)

Alleged Persecutory Activity: Guard at Sachsenhausen, Buchenwald and Mittelbau concentration camps in Germany and the Majdanek concentration camp in Poland. He also served at the Trawniki training camp in Poland. During a one-day massacre there of some 7,000 Jews, Kumpf stood guard to prevent the Jews from escaping.

Legal History: A denaturalization action was filed in Sept. 2003; Kumpf's citizenship was revoked in May 2005. That ruling was affirmed in Feb. 2006. Deportation proceedings were begun in June 2006.

U.S. v. Kumpf, 2005 WL 1198893 (E.D. Wis. 2005), *aff'd*, 438 F.3d 785 (7th Cir. 2006)

Kungys, Juozas

Born: 1915, Lithuania

Alleged Persecutory Activity: Member of a locally-formed Lithuanian group involved in the murder of approximately 2,000 Jews. Kungys helped round up and transport Jews to an execution site, distributed firearms and ammunition to an execution squad, forced victims into a mass grave, fired into the pit and exhorted others to do the same.

Legal History: A denaturalization action was filed in July 1981. The case, which went up to the Supreme Court to determine what constitutes a "material" misrepresentation, settled in Oct. 1988. Kungys agreed to forfeit his citizenship and the U.S. agreed not to file a deportation action. *See* pp. 127-133.

U.S. v. Kungys, 571 F. Supp. 1104 (D.N.J. 1983), *rev'd and remanded*, 793 F.2d 516 (3rd Cir. 1986), *rev'd and remanded*, 485 U.S. 759 (1988)

Kuras, Andres

Born: 1922, Poland (now Ukraine)

Alleged Persecutory Activity: Guard at the Trawniki, Poniatowa and Dorohucza labor camps (all in Poland). At Trawniki and Poniatowa, all of the prisoners – some 20,000 men, women and children – were shot to death within a 36-hour period during Nov. 3-4, 1943. Although there is no evidence that Kuras was involved in the massacre, he served as a guard at Trawniki during that time. He later served in the Streibel Battalion (*see* Bilaniuk).

Legal History: OSI filed a denaturalization case in Sept. 2002. The court stripped Kuras of his citizenship in Mar. 2004. An appeal is pending as of this writing.

U.S. v. Kuras, No. 02-4312 (D.N.J. 2004)

Kwoczak, Fedir

Born: 1921, Poland (now Ukraine)

Died: 2003, U.S.

Alleged Persecutory Activity: Guard at Trawniki and Poniatowa labor camps in Poland, took part in the liquidation of Jewish ghettos in Warsaw and Bialystok, Poland and later served in the Streibel Battalion (*see* Bilaniuk)

Legal History: OSI filed a denaturalization complaint in Sept. 1997; Kwoczak was denaturalized in June 2002. He died while the ruling was on appeal.

U.S. v. Kwoczak, 210 F. Supp.2d 638 (E.D. Pa. 2002)

Laipeniks, Edgars

Born: 1913, Latvia

Died: 1998, U.S.

Alleged Persecutory Activity: Member of the Latvian Political Police which pursued Jews and Communists.

Legal History: Laipeniks never became a U.S. citizen. A deportation case was filed in June 1981. The government lost; the decision was reversed on appeal, and then reversed again. *See* pp. 117-126.

Matter of Laipeniks, A11 937 435 (Imm. Ct., San Diego, Cal. 1982), *rev'd*, 18 I. & N. Dec. 433 (BIA 1983), 1983 WL 183255, *rev'd sub nom. Laipeniks v. INS*, 750 F.2d 1427 (9th Cir. 1985)

Lehmann, Alexander

Born: 1919, Ukraine

Died: 1997, U.S.

Alleged Persecutory Activity: As deputy chief of police in a Ukrainian town, he ordered, directed and participated in the mass execution of about 350 Jewish men, women and children.

Legal History: Lehmann never became a U.S. citizen. Deportation proceedings commenced in Nov. 1981. The case settled in Feb. 1984 with the defendant conceding his deportability and the U.S. agreeing not to have him deported unless his health improved.

Matter of Lehmann, A11 218 851 (Imm. Ct., Cleveland, Ohio 1984)

Leili, Stefan

Born: 1909, Austria-Hungary

Died: 1995, Germany

Alleged Persecutory Activity: Guard at Mauthausen concentration camp in Austria where he killed a Jewish prisoner by shooting him in the back.

Legal History: Denaturalization proceedings commenced in Apr. 1986. Leili left for West Germany shortly thereafter and the court issued a default order of denaturalization.

U.S. v. Leili, No. 86-1370 (D.N.J. 1986)

Leprich, Johann

Born: 1925, Romania

Alleged Persecutory Activity: Guard at Mauthausen concentration camp in Austria

Legal History: Denaturalization proceedings commenced in June 1986. The following year, while the case was pending, Leprich left for Canada. The court then revoked his citizenship. In July 2003, Leprich was found hiding in a specially built compartment beneath a basement staircase in his wife's home in Michigan. He was arrested and taken into custody. OSI instituted deportation proceedings that month (based on his illegal entry from Canada rather than his World War II activity.) In Nov. 2003, the court ordered Leprich deported to Romania, Germany or Hungary. That ruling was affirmed by the Sixth Circuit in Jan. 2006. *See pp. 149, n.12, 440-441.*

Denaturalization: *U.S. v. Leprich*, 666 F. Supp. 967 (E.D. Mich. 1987)

Deportation: *Matter of Leprich*, A08 272 762 (Imm. Ct., Detroit, Mich. 2003), *aff'd* (BIA 2004), *aff'd*, *U.S. v. Leprich*, 2006 WL 69258 (6th Cir. 2006)

Lileikis, Aleksandras

Born: 1907, Lithuania

Died: 2000, Lithuania

Alleged Persecutory Activity: As Chief of the Saugumus for Vilnius Province, Lileikis signed orders consigning Jewish men, women and children to death by gunfire at Paneriai. *See Dailide.*

Legal History: Denaturalization proceedings commenced in Sept. 1994. The court revoked Lileikis' citizenship in May 1996. He left for Lithuania the following month, before OSI filed a deportation action. In 1998, Lithuania charged him with genocide. The trial was suspended due to Lileikis' ill health; it resumed in 2000 but was suspended again for health reasons. He died two months later. *See pp. 463-467.*

U.S. v. Lileikis, 929 F. Supp. 31 (D. Mass. 1996)

Lindert, George

Born: 1923, Romania

Alleged Persecutory Activity: Guard at Mauthausen concentration camp in Austria and one of its subcamps

Legal History: Denaturalization proceedings commenced in July 1992. The district court ruled against the government in Sept. 1995. *See pp. 64-70.*

U.S. v. Lindert, 907 F. Supp. 1114 (N.D. Ohio 1995)

Linnas, Karl

Born: 1919, Estonia

Died: 1987, U.S.S.R.

Alleged Persecutory Activity: Chief of concentration camp in Tartu, Estonia

Legal History: Denaturalization proceedings commenced in Nov. 1979. Linnas' citizenship was revoked in June 1981 and his appeals were exhausted in Oct. 1982. A deportation action was filed in June 1982 and Linnas was ordered deported in May 1983. Appeals were exhausted in Apr. 1987 at which time he was deported to the U.S.S.R. *See pp. 273-297.*

Denaturalization: *U.S. v. Linnas*, 527 F. Supp 426 (E.D.N.Y. 1981), *aff'd*, 685 F.2d 427 (2nd Cir.), *cert. denied*, 459 U.S. 883 (1982)

Deportation: *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*, *Linnas v. INS*, 790 F.2d 1024 (2nd Cir.), *cert. denied*, 479 U.S. 995 (1986), *reh'g denied*, 479 U.S. 1070 (1987)

Lipschis, Hans

Born: 1919, Lithuania

Alleged Persecutory Activity: Guard at Auschwitz and Birkenau concentration camps in Poland

Legal History: Lipschis never became a U.S. citizen. Deportation proceedings commenced in June 1982. The case settled in December of that year, with Lipschis agreeing to leave for West Germany within 120 days of the court entering an order of deportation. The court entered its order on Dec. 23, 1982 and Lipschis departed in Apr. 1983 – the first OSI defendant to leave the country under court order.

Matter of Lipschis, A10 682 861 (Imm. Ct., Chicago, Ill. 1982)

Lytwyn, Wasyl

Born: 1921, Poland (now Ukraine)

Alleged Persecutory Activity: Guard at the Trawniki training camp in Poland. Participated in the liquidation of the Warsaw ghetto and later served in the Streibel Battalion (*see* Bilaniuk).

Legal History: The case settled in Sept. 1995 prior to the commencement of proceedings. Lytwyn agreed to leave the U.S. within three months. The agreement called for OSI to file a denaturalization complaint at the time of his departure and for a consent order of denaturalization to be entered. The complaint was filed on Dec. 15, after Lytwyn had departed for Ukraine.

U.S. v. Lytwyn, No. 95 C 7538 (N.D. Ill. 1995)

Maikovskis, Boleslavs*

Born: 1904, Latvia

Died: 1996, Germany

Alleged Persecutory Activity: Latvian chief of police who participated in the arrest of civilians and the burning of their dwellings.

Legal History: Maikovskis never became a U.S. citizen. INS filed a deportation case in Oct. 1976. Maikovskis was ordered deported to Switzerland in Aug. 1984. Switzerland would not allow him entry and OSI asked the court to modify its order to designate the U.S.S.R. In Oct. 1987, while that request was pending, Maikovskis left for West Germany. In 1988, Germany charged him with war crimes. His trial was suspended due to the defendant's ill health. *See* pp. 430, 433-434.

Matter of Maikovskis, A08 194 566 (Imm. Ct., N.Y., N.Y. 1983), *rev'd*, (BIA 1984), *aff'd*, *Maikovskis v. INS*, 773 F.2d 435 (2nd Cir. 1985), *cert. denied*, 476 U.S. 1182 (1986)

Mandycz, Iwan

Born: 1920 in contested territory which became part of Poland in 1921 (now Ukraine)

Alleged Persecutory Activity: Guard at Trawniki and Poniatowa labor camps (both in Poland); guard at Sachsenhausen concentration camp in Germany. He served at Poniatowa during the liquidation of the camp's remaining 14,000 prisoners in Nov. 1943 and during the burning of their bodies.

Legal History: Denaturalization proceedings commenced in Apr. 2000. His citizenship was revoked in Feb. 2005. The ruling was affirmed in May 2006.

United States v. Mandycz, 359 F. Supp.2d 601 (E.D. Mich. 2005), *aff'd*, 447 F.3d 951 (6th Cir. 2006)

Miling, Jakob**Born:** 1924, Yugoslavia (now Serbia)**Alleged Persecutory Activity:** Guard at Gross Rosen concentration camp in Germany (present-day Poland) and the Sachsenhausen concentration camp in Germany.**Legal History:** In Sept. 2002, after learning that OSI was about to file a denaturalization complaint, Miling left for Serbia. OSI filed the complaint the following month. The suit was dismissed in Aug. 2003 after Miling voluntarily renounced his citizenship.**Milius, Adolph****Born:** 1918, Lithuania**Died:** 1999, Lithuania**Alleged Persecutory Activity:** Member of the Saugumas (*see* Dailide). In Oct. 1941, Milius participated in the arrest of twelve Jews, including two children, who were lured into attempting to escape from the ghetto in a truck driven by a Saugumas informant. Milius also signed an inventory listing items (including wedding rings and gold tooth crowns) seized from another group of Jews arrested for attempting to escape from the ghetto.**Legal History:** Denaturalization proceedings commenced in Dec. 1996. Milius left for Lithuania while the case was pending; the court thereafter issued an order of denaturalization.

U.S. v. Milius, No. 96-2534-CIV-T-25(A) (M.D. Fla. 1998)

Mineikis, Antanas**Born:** 1918, Lithuania**Died:** 1997, Lithuania**Alleged Persecutory Activity:** As a member of the 2nd / 12th Schutzmannschaft (*see* Benkuskas), Mineikis drove victims to the site of their execution.**Legal History:** Denaturalization proceedings commenced in Oct. 1991. Mineikis' citizenship was revoked in Jan. 1992 and OSI filed a deportation action in June 1992. Mineikis was ordered deported to Lithuania in Aug. 1992 and was sent there the following month.**Mueller, Peter****Born:** 1923, Yugoslavia**Alleged Persecutory Activity:** Guard at Natzweiler concentration camp in Alsace, France and at Schorzingen subcamp of Natzweiler in Germany.**Legal History:** Mueller never became a U.S. citizen. When advised in Mar. 1994 that the Justice Department was about to file a deportation action, Mueller left for Germany.**Naujalis, Juozas****Born:** 1919, Lithuania**Alleged Persecutory Activity:** Member of the 2nd / 12th Lithuanian Schutzmannschaft (*see* Benkuskas)

Legal History: Naujalis never became a U.S. citizen. Deportation proceedings commenced in Oct. 1995. Naujalis was ordered deported to Lithuania in Sept. 1997. Once the ruling was affirmed by the Seventh Circuit, Naujalis left for Lithuania rather than seeking review from the Supreme Court.

Matter of Naujalis, A07 258 120 (Imm. Ct., Chicago, Ill. 1997), *aff'd*, (BIA 2000), *aff'd*, *Naujalis v. INS*, 240 F.3d 642 (7th Cir. 2001)

Negele, Michael

Born: 1920, Romania

Alleged Persecutory Activity: Guard and dog handler at the Sachsenhausen concentration camp in Germany and later at the Theresienstadt Jewish ghetto in what is now the Czech Republic.

Legal History: Denaturalization proceedings commenced in Sept. 1997. The court revoked Negele's citizenship in July 1999. His appeals were exhausted in Feb. 2001 and OSI filed a deportation case two weeks later. He was ordered deported to Romania, or alternatively Germany, in July 2003 and the decision was affirmed in June 2004. The Supreme Court denied review. To date, no country is willing to accept him.

Denaturalization: *U.S. v. Negele*, No. 4:97CV0181OERW (E.D. Mo. 1999), *aff'd*, 222 F.3d 443 (9th Cir. 2000), *cert. denied*, 531 U.S. 1153 (2001)

Deportation; *Matter of Negele*, A7 443 824 (Imm. Ct., St. Louis, Mo. 2002), *aff'd* (BIA 2003), *aff'd*, *Negele v. Ashcroft*, 368 F.3d 981 (8th Cir. 2004), *cert. denied*, 125 S.Ct. 815 (2004)

Oberlander, Helmut

Born: 1924, Ukraine

Alleged Persecutory Activity: Interpreter assigned to a mobile killing unit

Legal History: A naturalized Canadian citizen, Oberlander entered the U.S. in 1995, the day after Canada commenced denaturalization proceedings. OSI learned of his entry shortly after his arrival and interviewed him. He returned to Canada rather than face a hearing on his admissibility into the U.S. *See p. 490.*

Osidach, Wolodymir

Born: 1904, Poland

Died: 1981, U.S.

Alleged Persecutory Activity: Member of a Ukrainian police unit which placed Jews in ghettos and forced labor battalions.

Legal History: Denaturalization proceedings commenced in Nov. 1979. (This was OSI's first trial.) The court revoked Osidach's citizenship in Mar. 1981. He died two months later.

U.S. v. Osidach, 513 F. Supp. 51 (E.D. Pa. 1981)

Palciauskas, Kazys

Born: 1907, Lithuania

Died: 1992, U.S.

Alleged Persecutory Activity: As mayor of Nazi-occupied Kaunas, then the capital of Lithuania, Palciauskas helped implement a Nazi directive ordering all Jews into a ghetto. He also set up a special housing subcommittee which gave Lithuanians homes formerly owned by Jews.

Legal History: Denaturalization proceedings commenced in June 1981. The court revoked Palciauskas' citizenship in Mar. 1983. Appeals were completed in June 1984 and OSI filed a deportation action that September. Palciauskas was ordered deported to the Soviet Union in July 1986. On appeal, the Circuit sent the case back to immigration court for additional findings. Palciauskas died before the findings were made.

Denaturalization: *U.S. v. Palciauskas*, 559 F. Supp. 1294 (M.D. Fla. 1983), *aff'd*, 734 F.2d 625 (11th Cir. 1984)

Deportation: *Matter of Palciauskas*, A7 149 053 (Imm. Ct., Atlanta, Ga. 1986), *aff'd* (BIA 1990), *rev'd in part and remanded*, *Palciauskas v. INS*, 939 F.2d 963 (11th Cir. 1991)

Palij, Jakiw

Born: 1923, Poland (now Ukraine)

Alleged Persecutory Activity: Guard at Trawniki labor camp in Poland; later served in the Streibel Battalion (*see* Bilaniuk)

Legal History: Denaturalization proceedings commenced in May 2002. The court revoked Palij's citizenship in July 2003. OSI filed a deportation action in Nov. 2003 and the court ordered him deported to Ukraine in June 2004. In Sept. 2004, the order was amended to allow deportation to Germany, Poland or any other country willing to accept him. The BIA dismissed his appeal in Dec. 2006.

Denaturalization: *U.S. v. Palij*, No. CV 02-2802 (E.D.N.Y. 2002)

Deportation: *Matter of Palij*, A7 230 771 (Imm. Ct., N.Y., N.Y. 2004), *aff'd* (BIA 2006)

Paskevicius, Mecis*
(aka Mike Pasker)

Born: 1901, Lithuania

Died: 1993, U.S.

Alleged Persecutory Activity: Member of the Lithuanian Security Police

Legal History: INS filed a denaturalization case in Jan. 1977. Paskevicius' citizenship was revoked in Aug. 1979. OSI filed a deportation action in June 1980. In Dec. 1980, a court adjudged Paskevicius mentally incompetent and the case was discontinued.

Petkiewytsch, Leonid

Born: 1923, Poland

Alleged Persecutory Activity: Civilian guard at a labor education camp in Germany

Legal History: Petkiewytsch never became a U. S. citizen. OSI filed a deportation action in 1985. In Mar. 1987 an immigration judge rejected OSI's claim.

The government appealed and the decision was reversed in May 1990. That decision, in turn, was reversed in Sept. 1991. See pp. 134-140.

Matter of Petkiewytsch, A08 857 812 (Imm. Ct., Cincinnati, Ohio 1987), *rev'd*, (BIA 1990), *rev'd*, *U.S. v. Petkiewytsch*, 945 F.2d 871 (6th Cir. 1991)

Popczuk, Michael

Born: 1919, Ukraine

Died: 1983, U.S.

Alleged Persecutory Activity: Ukrainian policeman involved in a roundup and forced march of Jews. Witnesses reported that Popczuk harnessed Jews to carts as if they were horses and forced them to haul loads between villages.

Legal History: OSI filed a denaturalization action in June 1983. Popczuk committed suicide six days later.

Quintus, Peter

Born: 1915, Yugoslavia

Died: 1997, U.S.

Alleged Persecutory Activity: Guard at Majdanak concentration camp in Poland

Legal History: OSI filed a denaturalization action in Mar. 1987. A consent decree revoking Quintus' citizenship was entered in June 1988. Due to Quintus' ill health, the U.S. agreed not to file a deportation action.

U.S. v. Quintus, No. 87-CV-70950-DT (E.D. Mich. 1988)

Reger, Stefan

Born: 1925, Yugoslavia

Died: 2003, Germany

Alleged Persecutory Activity: Guard at Auschwitz death camp in Poland

Legal History: A denaturalization action was filed in Dec. 1987. Reger left for Germany while the case was pending. The court revoked his citizenship in Sept. 1988.

U.S. v. Reger, No. 87-4906 (CSF) (D.N.J. 1988)

Reimer, Jakob

Born: 1918, Ukraine

Died: 2005, U.S.

Alleged Persecutory Activity: Trainer and non-commissioned officer at the training camp in Trawniki, Poland; participated in the liquidation of the Jewish ghettos in Lublin, Warsaw and Czestochowa, Poland. Later served in the Streibel Battalion (see Bilaniuk)

Legal History: OSI filed a denaturalization case in June 1992. The court revoked Reimer's citizenship in Sept. 2002. The appellate court affirmed in Jan.

2004. Deportation proceedings were begun in May 2005; Reimer died before the case was adjudicated.

U.S. v. Reimer, 2002 WL 32101927 (S.D.N.Y. 2002), *aff'd*, 356 F.3d 456 (2nd Cir. 2004)

Rinkel, Elfriede

Born: 1922, Germany

Alleged Persecutory Activity: Guard at Rabensbrück concentration camp in Germany. The camp housed only females. Rinkel never became a U.S. citizen. OSI filed a deportation action in May 2006. The case settled, and in June 2006 the court issued an order of deportation to Germany. Pursuant to the terms of the settlement, Rinkel left for Germany in Aug. 2006.

Rudolph, Arthur

Born: 1906, Germany

Died: 1996, Germany

Alleged Persecutory Activity: Operations Director of the Mittelwerk underground V-2 missile plant, part of the Dora-Nordhausen concentration camp complex in central Germany. The plant used slave labor.

Legal History: The case settled prior to OSI's filing suit. Rudolph went to Germany in Mar. 1984 and surrendered his U.S. citizenship two months later. *See pp. 333-343.*

Rydlinskis, Wiatschelaw

Born: 1924, Lithuania

Alleged Persecutory Activity: Guard and dog handler in the Auschwitz and Buchenwald concentration camps; guard during the evacuation of prisoners from a Buchenwald subcamp to the Dachau concentration camp in Mar. 1945.

Legal History: OSI filed a denaturalization action in Dec. 1994. Rydlinskis left for Germany shortly thereafter and renounced his U.S. citizenship in June 1995. The court entered a default judgment of denaturalization the following month.

U.S. v. Rydlinskis, No. 94C-7341 (N.D. Ill. 1995)

Sawchuk, Dmytro

Born: 1924, Ukraine

Alleged Persecutory Activity: Armed guard at the Trawniki and Poniatowa labor camps (both in Poland); participated in the 1943 liquidation of the Jewish ghetto in Bialystok, Poland; served at Belzec where he guarded Jews who were forced to exhume and burn corpses; served in the Streibel Battalion (*see Bilaniuk*).

Legal History: OSI filed a denaturalization action in June 1998. Within days, Sawchuck left for Germany and renounced his U.S. citizenship.

Schellong, Conrad

Born: 1910, Germany

Alleged Persecutory Activity: Served at the Sachsenburg and Dachau concentration camps in Germany. He began as a platoon leader at Sachsenburg and was subsequently given command over approximately 30 of the 100 to 120 guards.

Legal History: OSI filed a denaturalization case in Mar. 1981. The court revoked Schellong's citizenship in Sept. 1982. His appeals were exhausted in Jan. 1984. OSI filed a deportation action Dec. 1983. In Sept. 1984, the court found him deportable to the Federal Republic of Germany. He exhausted his appeals in Apr. 1987. Germany agreed to accept him in Sept. 1988 and he was flown there immediately.

Denaturalization: *U.S. v. Schellong*, 547 F. Supp. 568 (N.D. Ill. 1982), *aff'd*, 717 F.2d 329 (7th Cir. 1983), *cert. denied*, 465 U.S. 1007 (1984)

Deportation: *Matter of Schellong*, A10 695 922 (Imm. Ct., Chicago, Ill. 1984), *aff'd*, (BIA 1985), *aff'd, sub nom. Schellong v. INS*, 805 F.2d 655 (7th Cir. 1986), *cert. denied*, 481 U.S. 1004 (1987)

Schiffer, Nikolaus

Born: 1919, U.S

Alleged Persecutory Activity: Guard at the Sachsenhausen, Majdanek and Hersbrueck concentration camps in Germany; served at the SS training and base camp in Trawniki, Poland

Legal History: OSI filed a denaturalization complaint in Sept. 1991. The court revoked Schiffer's citizenship in Aug. 1993 and his appeals were exhausted in July 1994. A deportation action was filed in Feb. 1995. He was ordered deported to Romania in May 1997. Romania agreed to admit him in May 2002 at which time he was deported. *See pp. 434-435.*

Denaturalization: *U.S. v. Schiffer*, 831 F. Supp. 1166 (E.D. Pa. 1993), *aff'd*, 31 F.3d 1175 (3rd Cir. 1994) (Table)

Deportation: *Matter of Schiffer*, A08 483 627 (Imm. Ct., Philadelphia, Pa. 1997), *aff'd*, (BIA 1998), *aff'd*, (3rd Cir. December 28, 1999)

Schmidt, Michael

Born: 1923, Romania

Alleged Persecutory Activity: Armed guard at the Sachsenhausen concentration camp in Germany.

Legal History: OSI filed a denaturalization case in Nov. 1988. The court revoked his citizenship in Jan. 1990 and his appeals were exhausted in Oct. 1991. A deportation action was filed the following month. The case settled in May 1992 with Schmidt agreeing to depart by the end of the year. He left for Germany in Jan. 1993. *See p. 451, n. 49.*

Denaturalization: *U.S. v. Schmidt*, 1990 WL 6667 (N.D. Ill. 1990), *aff'd*, 923 F.2d 1253 (7th Cir.), *cert. denied*, 502 U.S. 921 (1991)

Schuk, Mykola

Born: 1909, Poland

Died: 1986, U.S.

Alleged Persecutory Activity: Served first as deputy and then as interim chief of a Nazi-affiliated police force in Ukraine. One eyewitness accused him of participating in a mass execution of Jews by machine gun fire before an open trench.

Legal History: OSI filed a denaturalization complaint in Feb. 1983. The case settled in Oct. 1985 with the court revoking Schuk's citizenship and the U.S. agreeing not to file deportation proceedings. Schuk agreed to assist the government in its investigations.

Schweidler, Alexander

Born: 1922, Slovakia

Died: 2000, England

Alleged Persecutory Activity: Armed guard at Mauthausen concentration camp in Austria where he murdered two Russian prisoners of war.

Legal History: Schweidler never became a U.S. citizen. OSI filed a deportation action in July 1993. The case settled in Oct. 1993 with Schweidler agreeing to leave the country by Feb. 1994. He went to England. See p. 495.

Sokolov, Vladimir

Born: 1913, Russia

Died: 1991, Canada

Alleged Persecutory Activity: Propagandist for a Nazi-run newspaper in the occupied region of the U.S.S.R.

Legal History: OSI filed a denaturalization action in Jan. 1982. Sokolov's citizenship was revoked in June 1986 and he exhausted his appeals in May 1988. OSI filed a deportation action that same month. Shortly thereafter, Sokolov left for Canada. See pp. 192-204.

Denaturalization: *U.S. v. Sokolov*, No. N-92-56-TFM (D. Conn. 1986), *aff'd*, 814 F.2d 864 (2nd Cir. 1987), *cert. denied*, 486 U.S. 1005 (1988)

Deportation: *Matter of Sokolov*, A08 049 043 (Imm. Ct., Hartford, Conn. 1989)

Soobzokov, Tschirim

Born: 1918, Russia

Died: 1985, U.S.

Alleged Persecutory Activity: Soobzokov was not charged with any persecutory activity, but rather with having failed to disclose his complete military and criminal activity at the time of his visa application.

Legal History: A denaturalization complaint was filed in Dec. 1979. The government dismissed the complaint in July 1980 when new information indicated that Soobzokov had made full disclosure. Soobzokov was murdered in Aug. 1985 by someone who believed he was involved in Nazi atrocities. See pp. 344-357.

Sprogis, Elmars

Born: 1914, Latvia

Died: 1991, U.S.

Alleged Persecutory Activity: Assistant Chief of Police in Gulbene, Latvia. He was involved in the arrest, transportation, and confiscation of property from nine Jews, the transportation of 100 to 150 Jews to the site of their execution, and the appropriation of furniture from the homes of arrested Jews.

Legal History: A denaturalization complaint was filed in June 1982. The government lost the case both in the district court and on appeal. See pp. 101-105.

U.S. v. Sprogis, No. CV-82-1804 (E.D.N.Y. 1984), *aff'd*, 763 F.2d 115 (2nd Cir. 1985)

Stelmokas, Jonas

Born: 1916, Russia

Died: 1998, U.S.

Alleged Persecutory Activity: Platoon commander in the 3rd / 11th Schutzmannschaft, based in Kaunas (Kovno), Lithuania; commander of the guards at the Jewish ghetto in Kaunas. His battalion took part in the massacre of 9,200 Jews in the ghetto.

Legal History: The government filed a denaturalization complaint in June 1992. Stelmokas' citizenship was revoked in Aug. 1995. He exhausted his appeals in May 1997. The government filed a deportation action two months later. Stelmokas was ordered deported to Lithuania in Apr. 1998. He died while that order was on appeal.

Denaturalization: *U.S. v. Stelmokas*, 1995 WL 464264 (E.D. Pa. 1995), *aff'd*, 100 F.3d 302 (3rd Cir. 1996), *cert. denied*, 520 U.S. 1242 (1997)

Deportation: *Matter of Stelmokas*, A07 272 603 (Imm. Ct., Phila., Pa. 1998)

Szehinskyj, Theodor

Born: 1924, Poland (now Ukraine)

Alleged Persecutory Activity: Guard at the Gross Rosen concentration camp in Germany (now Poland), Sachsenhausen concentration camp in Germany and the Warsaw concentration camp in Poland.

Legal History: OSI commenced denaturalization proceedings in Oct. 1999. Szehinskyj's citizenship was revoked in July 2000 and his appeals were exhausted in Oct. 2002. A deportation action was filed in Sept. 2002 and in Apr. 2003 he was ordered deported to Ukraine, Poland or Germany. That order was affirmed by the BIA in Aug. 2004 and by the Third Circuit in Dec. 2005.

Denaturalization: *U.S. v. Szehinskyj*, 104 F. Supp.2d 480 (E.D. Pa. 2000), *aff'd*, 277 F.3d 331 (3rd Cir.), *cert. denied*, 537 U.S. 880 (2002)

Deportation: *Matter of Szehinskyj*, A8-900-159 (Imm. Ct., Phila., Pa. 2003), *aff'd* (BIA 2004), *aff'd sub nom. Szehinskyj v. Attorney General*, 432 F.3d 253 (3rd Cir. 2005)

Szendi, Jozsef

Born: 1915, Hungary

Died: 2004, Hungary

Alleged Persecutory Activity: As a member of the Royal Hungarian Gendarmerie, Szendi participated in searching for, arresting and transporting Jews to annihilation sites in Poland. In one incident, Szendi participated in a raid on a Swedish facility in search of Jews being hidden in the rescue effort directed by Swedish diplomat Raoul Wallenberg. Finding a group of Jews, Szendi ordered them, at gunpoint, to surrender to his comrades who were massed outside the building and armed with sub-machine guns.

Legal History: The government filed a denaturalization action in Sept. 1992. The case was settled in Feb. 1993. Szendi agreed to leave the U.S. within four months at which time his citizenship would be revoked. He went to Slovakia in June 1993 and later moved to Hungary.

Tannenbaum, Jakob

Born: 1915, Poland

Died: 1989, U.S.

Alleged Persecutory Activity: Supervisory Jewish kapo at the Goerlitz concentration camp in Poland.

Legal History: The government commenced denaturalization proceedings in May 1987. The case settled in Feb. 1988. Tannenbaum relinquished his citizenship and the U.S. agreed not to file a deportation action unless Tannenbaum's health improved. See pp. 106-116.

U.S. v. Tannenbaum, No. CV-87-15-5 (E.D.N.Y. 1988)

Theodorovich, George

Born: 1922, Poland

Alleged Persecutory Activity: As a member of the Ukrainian police, he filed a report acknowledging that he had fired six rounds at Jews who were hiding during a "Jewish action."

Legal History: The government commenced denaturalization proceedings in Aug. 1983. Theodorovich failed to appear for his deposition and the district court entered a default judgment, revoking his citizenship in Jan. 1984. The government began deportation proceedings in Mar. 1984 and Theodorovich was ordered deported to Argentina or the U.S.S.R. in Oct. 1987. He left for Paraguay in Dec. 1988 while the case was on appeal.

Denaturalization: *U.S. v. Theodorovich*, 102 F.R.D. 587 (D.D.C. 1984), *aff'd per curiam*, 764 F.2d 926 (D.C. Cir. 1985)

Deportation: *Matter of Theodorovich*, A06 871 262 (Imm. Ct., Baltimore, Md. 1987), *aff'd*, (BIA 1989)

Tittjung, Anton

Born: 1924, Yugoslavia

Alleged Persecutory Activity: Guard at Mauthausen concentration camp in Austria and one of its subcamps

Legal History: The government commenced

denaturalization proceedings in Sept. 1989. The district court revoked citizenship in Dec. 1990. Tittjung's appeals were exhausted in June 1992. Deportation proceedings were begun the following month. He was ordered deported to Croatia in Mar. 1994. His appeals and collateral attacks were exhausted in June 2001. As of this writing, he remains in the U.S. See pp. 437-447.

Trifa, Valerian*

Born: 1914, Romania

Died: 1987, Portugal

Alleged Persecutory Activity: Leader of a fascist student movement and editor of an anti-Semitic weekly newspaper

Legal History: The U.S. Attorney's office commenced denaturalization proceedings in May 1975. OSI assumed responsibility in 1979. The case settled in Aug. 1980 with Trifa agreeing to forfeit his citizenship. Deportation proceedings began in Oct. 1980. Trifa consented to the entry of an order of deportation to Switzerland in Oct. 1982. Switzerland refused to accept him. He went to Portugal in Aug. 1984. See pp. 205-230.

Trucis, Arnolds

Born: 1909, Latvia

Died: 1981, U.S.

Alleged Persecutory Activity: Member of the Latvian Auxiliary Police and the Security Service of the SS which guarded and beat Jewish civilians.

Legal History: A denaturalization action was filed in June 1980. Trucis died before the matter was resolved.

Valkavickas, Vincas

Born: 1920, Lithuania

Alleged Persecutory Activity: Member of Nazi-sponsored Lithuanian auxiliary police who guarded Jews at a former Polish military training area. While he served as a guard, 3,726 Jews were shot to death over a two-day period.

Legal History: Valkavickas entered the U.S. in 1950 but did not apply for citizenship until 1994. Based on information provided by OSI (including information given by Valkavickas himself during an OSI interview), his application for citizenship was denied. The government filed a deportation action in Sept. 1998. Pursuant to the terms of a settlement agreement, Valkavickas left the U.S. for Lithuania in June 1999.

Matter of Valkavickas, A07 900 398 (Imm. Ct., Chicago, Ill. 1999)

Virkutis, Antanas

Born: 1913, Lithuania

Died: 1993, U.S.

Alleged Persecutory Activity: Warden of Siauliai Prison, Lithuania from 1941 to 1944. The prison was used by the Germans as a detention center for Jews and others, many of whom were brutalized and executed with the cooperation and assistance of prison employees under Virkutis' command.

Legal History: OSI filed a denaturalization action in Mar. 1983. The case settled in Apr. 1988. Virkutis relinquished his citizenship and, due to his deteriorating health, the U.S. agreed not to file a deportation action.

U.S. v. Virkutis, No. 83 C 1758 (N.D. Ill. 1988)

Von Bolschwing, Otto

Born: 1909, Germany

Died: 1982, U.S.

Alleged Persecutory Activity: Working under Adolf Eichmann in the Jewish Affairs Office of the Allgemeine SS, von Bolschwing proposed various repressive measures against the Jews. As chief of Nazi intelligence agents in Romania he provided sanctuary to several fascist leaders and helped arrange their escape to Germany.

Legal History: Denaturalization proceedings commenced in May 1981. The case settled in Dec. 1981. Von Bolschwing forfeited his citizenship and the U.S. agreed not to seek deportation unless von Bolschwing's health improved. *See pp. 261-272.*

Walus, Frank*

Born: 1922, Germany

Died: 1994, U.S.

Alleged Persecutory Activity: Member of the Gestapo who turned Jews in and, in some cases, murdered them

Legal History: A denaturalization case was filed by the U.S. Attorney's office in Jan. 1977. The district court revoked Walus' citizenship in May 1978. In Feb. 1980 the court of appeals remanded for a new trial based on newly-discovered exculpatory evidence. Because the evidence did not support the prosecution, the government dismissed the case. *See pp. 71-100.*

U.S. v. Walus, 453 F. Supp. 699 (N.D. Ill. 1978), *remanded*, 616 F.2d 283 (7th Cir. 1980)

Wasylyk, Mykola

Born: 1923, Poland (now Ukraine)

Alleged Persecutory Activity: Guard at Trawniki and Budzyn labor camps in Poland. Later served in the Streibel Battalion (*see Bilaniuk*)

Legal History: OSI commenced denaturalization proceedings in Nov. 1999. The district court revoked his citizenship in July 2001. OSI filed a deportation action in Dec. 2001. In Oct. 2002, the court ordered Wasylyk deported to Switzerland, or, if Switzerland would not accept him, Ukraine. The ruling was affirmed in Mar. 2004. In Sept. 2004, ICE arrested him (without any discussion with, or encouragement from, OSI) for failing to do everything he could to effect his deportation. He was released in August 2005 because the law does not allow unlimited detention.

Denaturalization: *U.S. v. Wasylyk*, 162 F. Supp.2d 86 (N.D.N.Y. 2001)

Deportation: *Matter of Wasyluk*, A07 167 648 (Imm. Ct., N.Y., N.Y. 2002), *aff'd* (BIA 2004)

Wieland, Joseph

Born: 1908, Austria-Hungary (now Yugoslavia)
Alleged Persecutory Activity: Guard at Mauthausen

and one of its subcamps

Legal History: OSI commenced denaturalization proceedings in Apr. 1986. Wieland left for West Germany shortly thereafter. In June 1986, the district court entered a default judgment revoking Wieland's citizenship.

U.S. v. Wieland, No. C-86-1750 MHP (N.D. Cal. 1986)

Wittje, Joseph

Born: 1920, Romania

Died: 2006, U.S.

Alleged Persecutory Activity: Guard at the Sachsenhausen concentration camp in Germany

Legal History: OSI commenced denaturalization proceedings in Sept. 2003. In Aug. 2004, the district court revoked Wittje's citizenship. The ruling was affirmed in Sept. 2005 and a deportation case was filed in Apr. 2006.

U.S. v. Wittje, 333 F. Supp.2d 737 (N.D. Ill. 2004), *aff'd* 422 F.3d 479 (7th Cir. 2005)

Wojciechowski, Chester

Born: 1920, Germany

Alleged Persecutory Activity: Guard at Majdanek

concentration camp in Poland

Legal History: OSI commenced denaturalization proceedings in July 1985. Wojciechowski moved to West Germany two years later, before litigation was complete. A consent order of denaturalization was issued in Oct. 1987. *See p. 307.*

Zajanckauskas, Vladas

Born: 1915, Lithuania

Alleged Persecutory Activity: Trained men at

Trawniki and participated in the final liquidation of the Warsaw ghetto; he later served in the Streibel Battalion (*see Bilaniuk*)

Legal History: OSI began denaturalization proceedings in June 2002. The district court revoked Zajanckauskas' citizenship in Jan. 2005. The ruling was affirmed in Mar. 2006. Deportation proceedings were begun in July 2006 and are pending as of this writing.

United States v. Zajanckauskas, 353 F. Supp.2d 196 (D. Mass. 2005), *aff'd*, 441 F.3d 32 (1st Cir. 2006)

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)

Zultner, Martin

Born: 1912, Romania

Mauthausen subcamps in Austria

Alleged Persecutory Activity: Guard at three

Legal History: Zultner was a naturalized U.S. citizen living in Austria when OSI commenced denaturalization proceedings in Aug. 1990. Two weeks later Zultner renounced his citizenship at the American consulate in Salzburg. His renunciation was approved by the State Department in Oct. 1990, at which point the government withdrew its complaint.