

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 Arajs Kommando (AK) for its leader Viktors Arajs).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 Arajs' 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 F.3d 441, 442 (7th Cir. 1993) (Latvia).
2. *Laipenieks v. INS*, 750 F.2d 1427 (9th Cir. 1985), discussed at pp. 117-126.
3. See pp. 12, 537.
4. Frustrated by the dearth of prosecutions, in 2002 a wealthy U.S. businessman underwrote Operation Last Chance, a project launched by the SWC and the Targum Shlishi Foundation of Miami. The project offered \$10,000 to anyone with tips leading to prosecution of Nazi war criminals in the Baltic states; it was later expanded to include Poland, Romania, Austria, Croatia, Hungary and Germany. As of this writing, several investigations have been opened as a result of the project and one extradition has been ordered (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 17.7.143 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 Inds).

42. "War Crimes Suspect Dies During Inquiry," by Stephen Ward, *The Independent* (London), Aug. 8, 1995.

43. "Criminal Waste of our £14m," by Ian Gallagher, *The Express* (London), Jan. 18, 1997. The defendant, Semion Serafimovich, had been brought to the attention of British authorities by OSI in the early 1980s. However, the British were unable to locate him at that time, apparently due to a variance in the transliteration of his name from Cyrillic. Jan. 28, 2003 e-mail from 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 Serafimovich. 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 Serafimovich 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 Serafimovich." 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 Troit 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. Troit'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 Darembaum 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 Wohlgelemler, *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 reprosecuted 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 Linna's 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 Linnaas 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 Linneas 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 F.3d 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 Sherre "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. Szehtinskyj*, 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