

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

**DRAFT**

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## Chapter One: The Creation of OSI

### Introduction

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

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

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

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

## The Beginning

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 Crosland and Associate Attorney General (AAG) Michael Egan ]

19 [ Mendelsohn (backed by Jewish groups and Holtzman) ]

] The

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20 solution to both the stature and funding problems, as Holtzman and Mendelsohn saw it, ]

21 [ This would instantly

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

1 allocation could easily be spent in such an environment.<sup>25</sup>

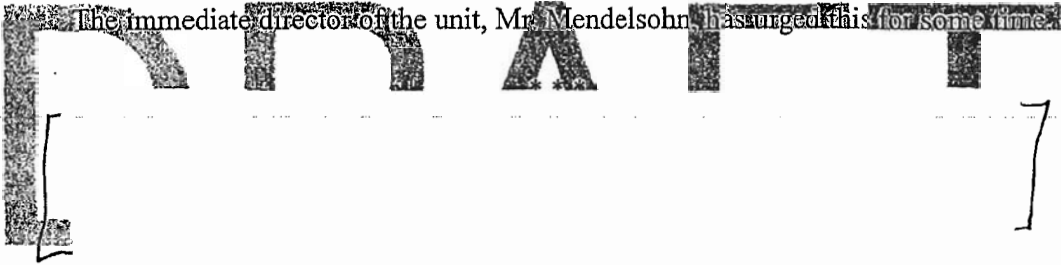
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6 ] Testifying before Holtzman's

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

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

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



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20 addition, she felt

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

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

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

5 [ ]  
6 ] He asked [ ] a former Nuremberg prosecutor and then a partner in a D.C.  
7 law firm, to help in the search.<sup>35</sup> [ ]

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9 [ ]  
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11 [ ]  
12 [ ] Moreover, at Nuremberg he had  
13 investigated and prosecuted bankers [ ]

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14 ] And finally, he thought the cases [ ]

15 ] But eventually, [ ]

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

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

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

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

In January 1980, DAAG Richard, acting on directions from AAG Heymann, assigned Mendelsohn to another section. The move infuriated Holtzman and various Jewish groups; emotions ran high on all sides.<sup>43</sup>

Rockler's successor was to be Allan Ryan.<sup>44</sup> Just as

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

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

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

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

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

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4 Although Holtzman made peace with Ryan's ascension to the directorship, she remained  
5 vigilant about OSI matters, issuing press releases to announce OSI filings and victories,  
6 exhorting the State Department to work with OSI to update its Watchlist<sup>53</sup> (they did), demanding  
7 that State modify its visa application form to take into account new legislation precluding the  
8 entry of Nazi persecutors (also done),<sup>54</sup> and notifying OSI when she learned of a potential  
9 subject. The priority she gave OSI matters was evident when she left Congress in December  
10 1980; one of her last speeches on the Floor stressed the issue of Nazi war criminal prosecutions.<sup>55</sup>

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5. See pp. 203-228.

6. Howard Blum (Times Books).

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

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

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

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

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

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

14. Aug. 25, 1975 Holtzman press release.

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

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

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

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

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

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

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

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

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

36. Rockler recalled his reaction to the waiver: [

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37. Rockler originally estimated his time would be [

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

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

41. See pp. 210-211.

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

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

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

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

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

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

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

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

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

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

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

49. See p. 547, n. 8.

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

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

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

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

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

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

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

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

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

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

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

61. See e.g.,

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

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

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

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

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

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

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

## The Historians

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

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

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

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

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

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

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

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

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

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

10 [REDACTED] Ex. B5  
11 [REDACTED]  
12 While their academic training led historians to seek archival evidence, there were  
13 practical considerations as well. The *Walus* prosecution<sup>8</sup> had made abundantly clear the  
14 problems of witness identification. Moreover, even if memories were accurate at the outset – a  
15 dubious proposition considering the fact that victims rarely knew their captors’ names and had  
16 little occasion for direct eye contact – these memories were much less reliable as witnesses and  
17 subjects aged.

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

22 Inevitably, [



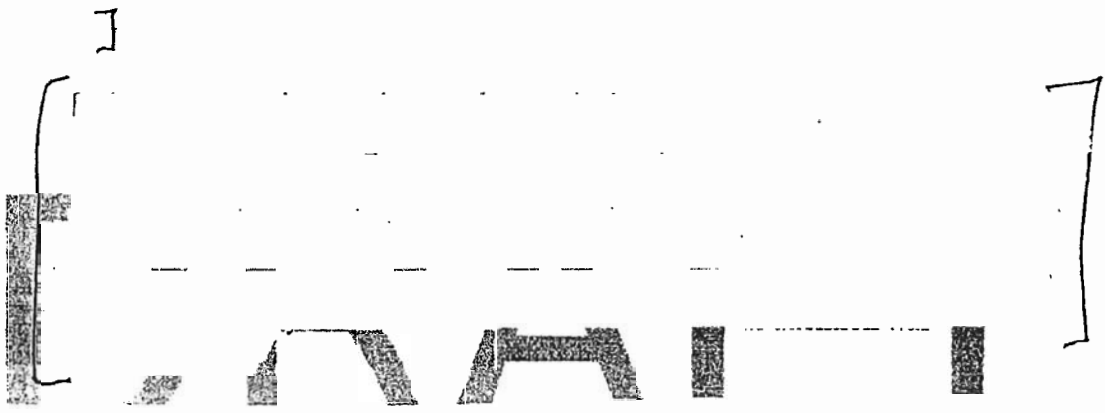
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When Allan Ryan became Director in March 1980, he began to reassess the office paradigm. As he saw it, the

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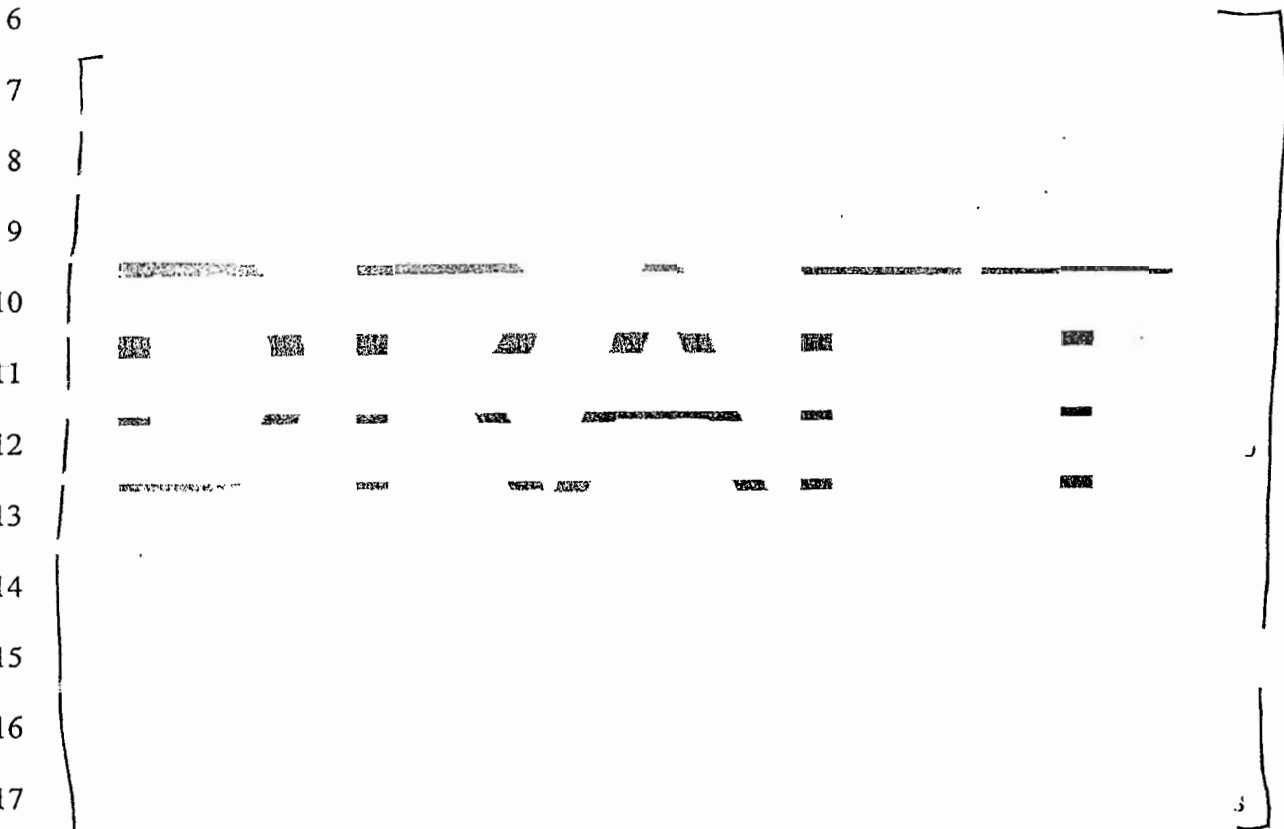
One immediate problem in hiring historians was salary. Lawyers entered government service at the GS-11 level and moved quickly to GS-13; historians with PhDs started as GS-9s.<sup>11</sup> Ryan turned to DAAG Richard who arranged for historians to be promoted quickly to GS-11s.

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

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

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

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



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

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

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4 Other factors too affected the increasing role for historians. Some of the traditional work  
5 performed by investigators -- finding defendants and witnesses -- became routine and simple with  
6 the advent of computers and, much later, the internet. For example, it is no longer necessary to  
7 do world-wide searches for survivor witnesses. Internet sites and genealogy links give instant  
8 information. On-line access to government records also makes searching for a subject simple.

9 Within a matter of minutes, OSI can ascertain whether someone in the United States is alive and,  
10 if so, where he is living. This effort used to take months of investigators' time.

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

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

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

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

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

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

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

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

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

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

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

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

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[ D R A F T ]

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

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

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

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

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

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

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

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

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

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

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



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

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

**Update number**

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

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

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

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

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

## Chapter Two: The Limits of the Law

### Introduction

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

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

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

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

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

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

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

DRAFT

1 **Statutes and Procedures**

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

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

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

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

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

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

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

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

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

1 not yet been organized.

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

1 from providing discretionary relief.

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

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

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

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

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

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

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

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

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

16

1. Annex I of the Constitution of the International Refugee Organ, 62 Sat. 3037, 3051 (1946).  
*See also*, IRO Manual for Eligibility Officers, p. 33.
2. Immigrants admitted under the DPA were to be counted against the nationality quota in future years.
3. Many displaced Jews fled Poland in 1946 following a brutal post-war pogrom. "Polish Jews' Exit is Put at 20,000 Since Pogrom," *AP, The New York Times*, Aug. 15, 1946; "100,000 More Jews Seen Fleeing Poland," *The New York Times*, Aug. 4, 1946.
- President Truman, who had urged Congress to pass liberalizing immigration legislation, signed the DPA bill with much hesitation. He felt that some of its categorizations were "wholly inconsistent with the American sense of justice." "New DP Measure Called Unworthy," *The New York Times*, June 28, 1948.
4. Whether a movement qualified as "hostile" was determined by reference to a list of "inimical organizations" prepared by the Displaced Persons Commission. The list was periodically revised although some organizations were permanently listed. Among them were indigenous police groups who worked with Nazi mobile killing units and the SS Totenkopf battalion whose members served as camp guards.
5. "Alleged Nazi War Criminals," Hearings bef. the Subctee on Imm., Cit., and Internat'l Law, 95<sup>th</sup> Cong., 2<sup>nd</sup> Sess. p. 151 (July 19-21, 1978).
6. 10 Fed. Reg. 8995, 8997, 9000 (1945); 8 C.F.R. §§ 175.52(a), 175.53(j) (1947S); 22 C.F.R. § 58 (1947S).
7. *America and the Survivors of the Holocaust* by Leonard Dinnerstein (Columbia Univ. Press). An additional 40,000 Jews had entered between 1945 and June 30, 1948 (when the DPA was enacted). The 40,000 were admitted under a Dec. 1945 directive by President Truman which gave priority to displaced persons within existing American quota laws. Review by Leonard Dinnerstein of "Post-Holocaust Politics: Britain, the United States, and Jewish Refugees, 1945 - 1948," by Arie Kochavi. The review is posted at [www.politicalreviewnet.com/polrev/reviews/diph/R\\_1045\\_2096\\_046.asp](http://www.politicalreviewnet.com/polrev/reviews/diph/R_1045_2096_046.asp) (last visited Nov. 2005).
8. The DP Story, The Final Report of the United States Displaced Person Commission, 1952, p. 243.
9. Final Report of the Administrator of the Refugee Relief Act of 1953, Nov. 15, 1957, p. 8 (hereafter RRA Report). Persons entering between expiration of the DPA and enactment of the RRA came in solely under the standard INA quotas. Unlike the DPA, the RRA did not require that entrants be charged to future nationality quotas.
10. "Alleged Nazi War Criminals," Hearings bef. the House Subctee on Imm., Cit., and Internat'l Law, 95<sup>th</sup> Cong., 1<sup>st</sup> Sess. (Aug. 3, 1977), p. 46; RRA Report, *supra*, n. 9 at p. xiii.

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

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

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

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

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

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

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

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