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REPORT BY THE

Comptroller General

OF THE UNITED STATES

Widespread Conspiracy To Obstruct Probes Of Alleged Nazi War Criminals Not Supported By Available Evidence-- Controversy May Continue

There was, in the past, a lack of progress by the Immigration and Naturalization Service in investigating and prosecuting alleged Nazi war criminals residing in the United States.

Controversy has existed as to whether the lack of progress was due to a conspiracy involving Service personnel and possibly other Federal agencies.

It is unlikely that a widespread conspiracy existed, but GAO cannot absolutely rule out the possibility of undetected, isolated instances of deliberate obstruction. GAO's investigation was hindered by the effect of the passage of time on the availability of information and limited access to agencies' records. In any event the inherent difficulty in establishing the existence of a conspiracy must be recognized.

Recently, Service efforts in this area have improved.

The Chairman, House Judiciary Subcommittee on Immigration, Citizenship, and International Law requested this report.



GGD-78-73
MAY 15, 1978



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-125051

The Honorable Joshua Eilberg, Chairman
Subcommittee on Immigration, Citizenship,
and International Law
Committee on the Judiciary
House of Representatives

Dear Mr. Chairman:

In response to your January 13, 1977, request, we reviewed the progress and controversy about the Immigration and Naturalization Service, Department of Justice, investigation and prosecution of alleged Nazi war criminals residing in the United States.

As arranged with your Subcommittee, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from the date of the report. At that time we will send copies to interested parties and make copies available to others on request.

The Departments of Justice, Defense, and State and the Central Intelligence Agency have reviewed the information included in this report and their comments were considered where appropriate.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "James B. Atchefs".

Comptroller General
of the United States

REPORT OF THE
COMPTROLLER GENERAL
OF THE UNITED STATES

WIDESPREAD CONSPIRACY TO
OBSTRUCT PROBES OF ALLEGED
NAZI WAR CRIMINALS NOT
SUPPORTED BY AVAILABLE
EVIDENCE--CONTROVERSY MAY
CONTINUE

D I G E S T

It is unlikely that any widespread conspiracy has existed in Federal agencies--especially in the Immigration and Naturalization Service--to obstruct investigations of allegations that individuals, now residents of the United States, committed atrocities before or during World War II while serving the Nazi government of Germany.

Since the war there have been many such allegations. While GAO concludes that no widespread conspiracy existed, it cannot absolutely rule out the possibility of undetected, isolated instances of deliberate obstruction of investigations of some alleged Nazi war criminals. GAO efforts to obtain the facts were hindered by

--the effect of the passage of time
on the availability of information
and

--limited access to agencies' records.

In any event, the inherent difficulty in establishing the existence of a conspiracy must be recognized.

GAO reviewed Service case files on 94 individuals, 40 of whom had allegations made against them before 1973. Two were expelled from the country, one by deportation and one by extradition. Investigations on some others appeared to be thorough. Probable cases were developed and prosecuted but, for various reasons, the individuals were allowed to remain in this country. In most other cases

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there appeared to have been only routine inquiries with other agencies, while in several cases there were no indications that any inquiries were made. (See p. 11.)

GAO'S PRINCIPAL OBSERVATIONS

- In the early 1970s a Service employee complained that his investigation of alleged Nazi war criminals was hampered by agency officials. Both the Service and the FBI investigated his complaints. Neither found irregularities.
- Service investigations of most cases before 1973 were deficient or perfunctory. In some, no investigation was conducted. (See ch. 2.)
- The Service established a control office in 1973 in New York City to investigate alleged Nazi war criminals and established liaison with Israel to obtain witnesses and information.
- At that time, the Service did not know how many allegations of Nazi war criminals it had. Attempts were made to accumulate the data from the various Service offices. Allegations were also received by the control office in New York.
- By April 1978 the Service had a list of 252 allegations. Those cases on which actions had been taken before 1973 were re-evaluated and investigations on some reopened. The Government had instituted legal proceedings against 13 individuals. Five of these cases had been closed before 1973. (See p. 22.)
- While the quality of investigations has improved since 1973, further improvements still are needed.

--There have been no successful prosecutions since 1973 and the possibility exists that some individuals under prosecution now or in the future may never leave the United States due to legal appeals and procedures.

THE ROLE OF OTHER AGENCIES

GAO provided the CIA, FBI, and the Departments of Defense and State a list of 111 names selected from Service files. These agencies had information on, and contacts with, some of the individuals.

The CIA said it had contacted 22 of them as sources of information. One decided not to be involved; of the other 21, 7 were paid for information or services provided. The CIA said its contacts with some of them came at a time when there was an acute shortage of intelligence on Soviet intentions and on developments in Eastern Europe.

The FBI had information on 47 of the 111 individuals on GAO's list. It had a confidential relationship with two of them; they were not paid.

In the past the Department of State did not cooperate with investigations of war criminals because it was reluctant to pursue leads overseas or to seek information from Soviet sources. The Department expressed concern that the Communist countries would use its actions for propaganda. In the 1960s, the Soviet Union had done so to embarrass the West, particularly the Federal Republic of Germany. The Department had information on 46 individuals, one of whom was employed as a consultant.

The Department of Defense had information on 33 of the 111 individuals, one of whom was provided employment.

GAO reviewed correspondence and case files and held discussions with many current and previous Service employees including all the Commissioners serving since 1954. These reviews did not reveal evidence that any agency had interfered with, or attempted to influence, Service investigations of alleged Nazi war criminals.

However, the deaths of some individuals and unclear memories of others prevented GAO from determining reasons for certain decisions and the type of investigations conducted.

At least three of the individuals included on GAO's list had been assisted in entering the United States by Federal agencies. The CIA Director used his authority to bring a former senior official of the German Foreign Ministry during the Nazi era (an expert on the Soviet Union) into the country. He departed in 1953 and records show that it was not until years later that the Service received an allegation that he had been involved in atrocities.

No information was found in the files of the Service, the CIA, the FBI, Defense, or State to indicate these or other agencies engaged in a conspiracy to withhold or quash information in their possession or to obstruct prosecution deliberately. Nevertheless, a number of factors, such as lack of assurances that GAO saw all documentation and the passage of time, prevent GAO from being assured of the validity of the above conclusion.

In addition, the factors below should be considered in evaluating the Service's lack of progress even though some cannot be validated and some are conjecture.

--Some allegations were not investigated because they were flimsy.

- Some allegations were not investigated, or investigation was perfunctory, because the allegation originated from Communist countries or from Communist propaganda.
- Although certain cases were investigated and prosecuted before 1973, some deportation orders were overturned and individuals were able to remain in the United States. The investigations of other cases may have been curtailed or not undertaken because they were considered to be fruitless attempts.
- Although the Service did know in some cases and may have known in others that information was available at other Federal agencies, the Service may not have obtained the information because it related to internal or foreign security matters.

Although the overall validity, degree, and inter-relationship of all the above factors is unknown, they should help clarify some of the controversy about the Service's progress over the years in investigating and prosecuting alleged Nazi war criminals residing in this country.

Even considering all these factors, some people probably will persist in questioning the Service's investigative and prosecutive efforts. Publicity, interest, and controversy about the Service's lack of progress may continue.

RECENT EVENTS

In August 1977 the Department of Justice established the Special Litigation Unit in the Service's central office to better control and expedite investigations and prosecutions of alleged Nazi war criminals. The Unit's work should further improve the Service's efforts in these matters.

Tear Sheet

The Service could also improve its investigations by:

- Reviewing cases where eyewitness testimony has been received to determine if this is sufficient evidence to warrant action.
- Establishing procedures for prompt receipt of the results of checks by other Federal agencies, including those involving Department of State requests for information from other countries.
- Reviewing closed cases to determine if other sources of information are now available to substantiate the need for further investigation or to validate the previous decision to close the case.
- Visiting the Federal Republic of Germany document center and the Berlin Document Center as well as other foreign document centers to determine information available that might assist requests for information from such sources for both current and future cases.
- Updating inquiries with other Federal agencies and foreign governments to substantiate that an individual who left the United States has not, in fact, returned.

The Service agreed with these suggestions and said that actions would be taken to accomplish them.

SCOPE OF REVIEW

The Chairman, House Judiciary Subcommittee on Immigration, Citizenship, and International Law, requested this report.

GAO's work was carried out primarily at the Service's New York office as well as in Washington, and at various places in the United States where its cases were maintained. GAO analyzed immigration and naturalization laws relevant to alleged Nazi war criminals, reviewed Service procedures for handling allegations, and interviewed current and former Service employees.

GAO also reviewed records and interviewed officials at the Department of State in Washington and visited Department offices in Tel Aviv, Vienna, Bonn, Stuttgart, and Berlin; and the Director of the Berlin Document Center. Further, work was carried out at the CIA, FBI, and the Department of Defense.

GAO also interviewed the Chief, Israeli Police Section for Investigation of Nazi War Crimes, Tel Aviv, Israel; Director, Documentation Center for Nazi War Crimes, Vienna, Austria; Director, International Criminal Section of Federal Republic of Germany Justice Ministry, Bonn, Germany; and the Director, Central Authority of State Justice Administration, Ludwigsburg, Germany.

AGENCY COMMENTS

The Departments of Justice, State, and Defense commented that the report was generally a fair and accurate reflection of the record. (See app. IV to VI.) The CIA's formal response was not received in time to be included in the final report. The Agency orally informed GAO that it agreed with the comments of the other agencies as expressed above.

Tear Sheet

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ABBREVIATIONS

CIA	Central Intelligence Agency
FBI	Federal Bureau of Investigation
GAO	General Accounting Office
INS	Immigration and Naturalization Service

CHAPTER 1

INTRODUCTION

The Chairman, House Judiciary Subcommittee on Immigration, Citizenship, and International Law, requested that we review the Immigration and Naturalization Service's (INS) progress in investigating alleged Nazi war criminals in the United States and to determine whether INS personnel deliberately obstructed active prosecution of alleged Nazi war criminal cases or engaged in a conspiracy to withhold or quash any information in its possession. (See app. I.)

Certain facts need to be recognized in order to understand the problems INS has encountered and will continue to encounter in investigating, prosecuting, and deporting these individuals.

First, the term alleged Nazi war criminal has been commonly used and publicized over the years in referring to the individuals in question and therefore is the term we used throughout our report. The majority of the individuals against whom allegations have been made, however, are from countries now under Soviet jurisdiction and are not Germans, but are alleged collaborators of the Nazis.

Next, no authority exists to institute proceedings against an individual solely because allegations have been made against him or her. The constitutional guarantees of due process and equal protection under the law are applicable to all persons in the United States, whether they are citizens or aliens. Further, the Supreme Court of the United States has ruled that proceedings under the Immigration and Nationality Act can be proved only by clear, unequivocal, and convincing evidence. Meeting these criteria is difficult since the allegations relate to events which allegedly occurred more than 30 years ago in other countries.

LEGISLATION AFTER WORLD WAR II INCLUDED PROHIBITIONS AGAINST WAR CRIMINALS AND OTHER PERSECUTORS

In order to resolve the problem created by the presence in Europe of more than 1 million displaced persons in the aftermath of World War II, special measures were taken to facilitate the immigration of some aliens to the United States. Under a directive issued by President Truman on

December 22, 1945, about 40,000 displaced persons were admitted to this country between December 22, 1945, and June 30, 1948.

Congress, after a thorough study of the problem, passed the Displaced Persons Act in 1948. Through June 30, 1953, 339,698 persons were admitted to the United States under the act, as amended.

The continuing concern of the United States about the displaced person problem in Europe and the economic and political threat created by refugees and escapees from behind the Iron Curtain led to the enactment, on August 7, 1953, of the Refugee Relief Act of 1953. This act permitted 214,000 aliens to become permanent residents of the United States in addition to the admissions authorized by the Immigration and Nationality Act. Of these 214,000 aliens, the vast majority were refugees and escapees from Communist persecution or from natural calamity or military operations.

The Refugee Relief Act and the Displaced Persons Act, as amended, contained provisions for barring entry to those who had persecuted other persons on the basis of race, religion, or national origin.

The Displaced Persons Act established a three-member Displaced Persons Commission to issue regulations and administer the act. This Commission published regulations which reiterated the provision of the act placing the burden of establishing eligibility upon the applicant. They also provided that

"No person shall be eligible to receive the benefits of the Act, who * * * advocated or assisted in the persecution of any person because of race, religion, or national origin."

A Commission regulation provided that the Department of the Army furnish the necessary investigative and administrative assistance and submit a written statement as to whether the investigation showed that an applicant had advocated or assisted in the persecution of any person because of race, religion, or national origin. Evidence and statements of information were to be attached to the written report by the Army made to the Commission. These regulations were in response to section 13 of the act as amended by the act of June 16, 1950, which provided that

"No visa shall be issued. * * * to any person who advocated or assisted in the persecution of any person because of race, religion, or national origin."

The Refugee Relief Act, administered by the administrator of the Department of State's Bureau of Security and Consular Affairs, also provided in section 14(a) that

"No visa shall be issued under this Act to any person who personally advocated or assisted in persecution of any person or group of persons because of race, religion, or national origin."

Our analysis of immigration and naturalization laws relevant to alleged Nazi war criminals is included in appendix II.

PUBLICITY, INTEREST, AND CONTROVERSY
EXISTS ABOUT ALLEGED NAZI WAR CRIMINALS
RESIDING IN THE UNITED STATES

In spite of the provisions of certain of the laws discussed in the previous section, since the end of World War II there have been rumors and charges that of the thousands of displaced persons as well as others who entered the United States, a number had participated in Nazi war crimes in the U.S.S.R., Eastern Europe, and the Baltic states.

Also, Congress received testimony in the early 1950s which (1) criticized the International Refugee Organization for its apparent laxity in determining the eligibility of displaced persons and the Displaced Persons Commission for accepting certain international refugee organizations and (2) indicated that a number of aliens appeared to have been admitted to the United States despite adverse reports in the Berlin Document Center relating to membership in the Nazi Party or its auxiliaries.

In the 1950s and 1960s newspaper articles, various publications and radio commentaries discussed the allegations against some of these individuals. In recent years books and radio and television programs have covered the subject and Members of the Subcommittee and others have shown interest. Statements by some parties have included charges of INS misconduct in its investigations of alleged

Nazi war criminals. In the early 1970s an INS employee complained that his investigation of alleged Nazi war criminals was hampered by INS officials. Two investigations of his complaints were made and neither disclosed any irregularities. (See p. 18.)

Also, a book on the subject of Nazis in the United States indicated that documents were missing and files were misrouted, misplaced, or lost, and that INS was infiltrated by an organization dedicated to protect Nazi war criminals who escaped prosecution for their crimes.

SCOPE OF REVIEW

We analyzed immigration and naturalization laws relevant to alleged Nazi war criminals and reviewed (1) INS procedures for handling allegations and (2) 94 of 111 cases selected from INS files.

In March 1977 we selected an initial sample of 75 cases. In August 1977, during hearings by the Subcommittee on the status of our work, Representative Holtzman requested us to expand the scope of our review to include all cases where allegations were received before 1973. After screening investigative files, and cases identified in a report prepared for INS in March 1977, 1/ we selected 36 additional cases for review. We were not able for various reasons (see app. III) to review all of the 111 cases in our sample; of the 94 cases reviewed, 40 contained allegations received before 1973.

We interviewed current and former INS employees, Department of Defense, Central Intelligence Agency (CIA), and Federal Bureau of Investigation (FBI) officials; and other persons considered knowledgeable sources concerning Nazi war criminals.

Our review was performed primarily at the INS New York district office and central office in Washington, D.C., and at various INS locations in the United States where

1/A former INS employee, under contract with INS, performed a study of actions taken by INS with regard to Nazi war criminals and prepared the above March 1977 report. Some of the background information and other material included in our report was excerpted from his report. (See p. 19.)

the cases were maintained. We also visited and interviewed the Chief, Israeli Police Section for Investigation of Nazi War Crimes, Tel Aviv, Israel; Director, Documentation Center for Nazi War Crimes, Vienna, Austria; Director, International Criminal Section of Federal Republic of Germany Justice Ministry, Bonn, Germany; and the Director, Central Authority of the State Justice Administration, Ludwigsburg, Germany.

We reviewed records and interviewed officials at the Department of State in Washington, D.C. In addition, we visited Department offices in Tel Aviv, Israel; Vienna, Austria; and Bonn, Stuttgart, and Berlin, Germany. Further, we visited and interviewed the Director of the U.S. Berlin Document Center, Berlin, Germany.

We have no indication that the information provided to us by the various agencies was not accurate and complete. Because of our restricted access to the files, however, we cannot adequately assure the Subcommittee and the Congress that our findings are complete.

The matter of access to intelligence-type information by the Congress or its agents, such as GAO, is complicated. Executive agencies must be concerned with protecting sensitive information and congressional committees need the information to properly carry out their oversight functions. Thus, the conflict between the need to know and the need to protect exists. Therefore, when we began our work in January 1977 an arrangement was needed that accommodated both.

In April 1977, with the assistance of Chairman Eilberg, we reached an agreement with the agencies whereby INS would screen the appropriate files and cases for third-agency documents and would obtain approval from the third agency, such as the CIA, FBI, and the Departments of Defense and State, to release the documents for our review. However, it was not until August that the majority of the third-agency documents were cleared and provided to us. Also in August, the Department of Justice authorized us, under certain guidelines, access to cases recommended for or under legal proceedings.

We submitted our sample of 111 names to the CIA, FBI, and the Departments of Defense and State and requested that we be allowed to review any information these agencies may have concerning the individuals in question. We also stated in our request that we were interested in any contacts the agencies may have had, including oral communication, with INS personnel, Department of Justice officials, other Government agencies, and administration officials concerning the subject matter.

The CIA and FBI as agreed prepared summaries in lieu of providing original documents of any file holdings on our sample of 111 names. We reviewed the summaries, and the agencies when requested provided original documents appropriately sanitized to remove intelligence sources and methods on any matters which they considered to be significant to the investigation. The summaries included references to information originated by other agencies so that we could contact those agencies to obtain the documents if necessary. The agencies' summaries, as agreed, did not contain personal identities, intelligence sources or methods, and other information not related to our inquiry.

Also, the CIA said that the staff of the House Judiciary Subcommittee on Immigration, Citizenship, and International Law was allowed to review the summaries it provided to us and copies of original CIA documents, after appropriate sanitization, on those cases of particular interest to the Subcommittee.

It was further understood by all agencies involved in this review, that since a number of the cases were under current or possible future litigation by the Department of Justice, Department guidance would be obtained in providing available information for our review. This understanding was necessary so that the agencies involved would not in any way prejudice any ongoing litigation by the Department. In addition, as part of our agreement with the Department, the contents of this report were reviewed and approved on the basis that its contents would not prejudice any ongoing litigation. In addition, all agencies involved and the Subcommittee agreed that the individuals included in our sample would not be named.

This agreement was made in order that we not prejudice any ongoing litigation and also to protect those individuals against whom allegations either have not been proven or investigations have not been completed. Included in our sample are individuals who died before INS received the allegation about them. INS' investigation ceases when it finds that the individual has died; thus the allegation is neither proved nor disproved.

The above arrangements and agreements appeared reasonable in view of the complicated matter of access to intelligence-type information, and agency officials were cooperative and open in our discussions with them. We have made certain conclusions and observations based on the material we have seen

and persons we have interviewed. However, due to the constant screening of files, lack of an INS centralized file system or, before 1973, lack of a program concerning alleged Nazi war criminals, and the fact that we had to use CIA and FBI prepared summaries in lieu of receiving actual case files, we do not have the assurance that we have seen the necessary documentation which would have enabled us to make any valid determinations as to the objectives of the Subcommittee's request.

CHAPTER 2

INVESTIGATION AND PROSECUTION OF ALLEGED

NAZI WAR CRIMINALS BEFORE 1973

We identified 57 cases in which INS had received allegations before 1973 of Nazi war criminals residing in the United States. These allegations came to the attention of INS from a variety of sources. Most allegations about these individuals resulted from newspaper reports, a series of articles, and books. The allegations generated inquiries to all levels of Government from private individuals and organizations. Some of them were referred to INS by means of congressional inquiries and others by the FBI, CIA, and Department of State.

As discussed in appendix III, we reviewed in detail 40 of the 57 cases. INS had not conducted investigations in 20 of the 40 cases. INS had made inquiries, however, in some cases before a decision was made not to investigate. In five cases, for example, INS inquiries had disclosed that two subjects were deceased, two had left the country, and one was a diplomat and not subject to immigration laws. In another case, INS limited inquiries to other Federal agencies and decided not to investigate. The reasons investigations were not conducted in the other 14 cases were not evident from a review of the case files.

Of the 20 cases in which investigations were conducted, inquiries were made with overseas sources in nine. In five of the nine cases, investigations appeared to be thorough, and convincing cases were developed and prosecuted. Although two persons were expelled from the country, legal procedures allowed the other individuals to remain. In most of the other 15, investigations appeared to have been deficient or perfunctory.

INS' lack of progress led to charges of misconduct in the handling of these cases. A review of INS and other agency files, interviews with INS personnel and other knowledgeable individuals, and a review of other investigations relating to alleged INS misconduct indicate that INS was not involved in any deliberate effort to obstruct either investigation or prosecution of these cases.

CASES NOT INVESTIGATED

For the 14 cases not investigated, the allegations on 10 originated from a freelance journalist or a Member of Congress. The FBI had supplied INS with allegations in five cases; one of which was also submitted by the journalist.

Allegations by a journalist
and a Member of Congress

During the early 1960s a freelance journalist published articles citing persons who allegedly committed wartime atrocities. A list of 16 names was submitted to the Attorney General for inquiry. The journalist stated that in some cases several foreign governments had requested extradition, while in others INS hearings or trials had been held. INS replied to the journalist that no extradition proceedings were pending against any of these individuals. INS furnished in the reply biographical information showing that it reviewed these case files.

The journalist, not satisfied with the INS response, informed the Attorney General that substantive questions--how many Nazi war criminals are in the U.S. and what is going to be done about them--had not been answered. A Justice Department official subsequently informed the journalist that additional information would not be provided.

A Member of Congress made an inquiry about 23 persons alleged to be Nazi war criminals, allegation on 16 had been previously furnished by the journalist. INS also supplied the Member with biographical information on the subjects.

Our review of 19 of the 23 allegations showed that 5 had been previously investigated. Of the 14 not investigated, one was deceased, two had left the country, and one was a diplomat not subject to immigration laws. For the remaining 10, we found no specific reason why an investigation was not initiated either in the files or in our interviews with INS officials who may have been involved in handling these allegations. Certain officials said the cases had occurred so long ago they could not remember details. Although the journalist characterized INS' handling of these cases as evasive and negligent, he did not believe that there was a concerted effort within INS or other agencies to suppress investigations.

Information referred
by the FBI not reviewed

The FBI had informed INS of five persons alleged to be Nazi war criminals. One of them had also been referred by the journalist. There is no indication in the INS files that it reviewed the information referred and took appropriate action.

For example, the FBI provided INS with information in 1964 that a subject was alleged to have committed crimes against Soviet citizens during the war. The information was obtained from various sources which included a domestic newspaper and a letter from a Russian resident. The FBI interviewed people living in the United States but could not find any proof of the allegations. There is no evidence in the file to indicate that INS reviewed the information when it received the allegation. This individual and one other later applied for citizenship and naturalization examiners upon review of the files requested an investigation apparently on the basis of the FBI documents. For two other cases, one referred in 1964 and the other in 1972, no investigations were conducted until after the INS New York Project Office had been established in July 1973. After this office was established, other allegations were received and investigations were conducted in these two cases.

In the fifth case, the FBI provided an INS district office with information stating that the subject was a member of a Nazi execution group. The district office asked six people to appear at the office. The file indicates that two affidavits were taken; the investigator told us that he did not record all the interviews because the testimony related to hearsay knowledge of alleged atrocities committed by the subject.

He also told us that he discussed the case with his supervisor and based only upon the above interviews, it was decided that there was no reason to investigate. A memorandum of this discussion was not in the file, and the investigator could not recall if a memorandum was prepared. Because the file did not include proper documentation, the investigator's reason for not investigating this case appears questionable.

An INS official said that there was no formal procedure for reviewing documents referred by other agencies. In addition, a former INS official stated that it was a common

practice for district office personnel not to review FBI documents received by mail. When the documents were received, clerical personnel merely placed them in the file.

CASES INVESTIGATED

Of the 20 cases investigated before 1973, INS had obtained information from domestic and foreign sources in nine. In three of the nine cases, because the Department of State had precluded INS from obtaining information from communist countries, the investigations were closed. In a fourth case, the file did not contain a justification for closing the investigation. An investigator assigned to the case told us that the subject when interviewed was not mentally competent and the investigation was closed. INS had initiated litigation proceedings in five cases.

In the other 11 cases INS had not made inquiries overseas. The rationale for closing the investigation in three of these cases was reasonable. In one of the three cases, the INS investigation consisted of interviewing the subject and making inquiries with local police. INS found the subject had been a naturalized citizen since 1921 and the person making the allegation had mental problems. In the other two cases persons were suspected of being members of the Nazi party, but neither had been accused of committing atrocities. INS investigations included making inquiries to the FBI and CIA and interviewing the subjects. It concluded there was no evidence to substantiate the allegations that the subjects were members of the Nazi party.

Investigations in the other eight cases were deficient because

- in six cases INS did not attempt to contact overseas sources, even though the subjects were alleged to have committed crimes in foreign countries;
- in one case INS did not fully pursue investigative leads; and
- in one case INS did not investigate potentially derogatory information.

Some investigations resulted
in litigation proceedings

Litigation proceedings were initiated in five of the nine cases in which inquiries were made overseas. One individual who was a visitor was deported and another consented to denaturalization and was extradited. In the other three cases, the individuals were ordered deported by the INS special inquiry officers, but due to legal appeals and procedures, they remained in the United States. We did review two other cases that were prosecuted in the period before 1973. (See app. III.)

The following illustrates some of the difficulties INS had in deporting individuals, even when prosecution was initially successful. In one case, a special inquiry officer ordered an individual deported in June 1955. The Board of Immigration Appeals sustained his decision. The subject then filed an application under section 243(h) of the Immigration and Nationality Act (1952) to stay his deportation because he would be politically persecuted by the country to which he was to be deported.

The Regional Commissioner ordered in September 1958 that the subject's application be denied. Until November 1962 when the Department of State informed INS that the foreign authorities would not issue travel documents to effectuate his deportation, the decision was under appeal.

In another case that had been closed previously, deportation proceedings were reopened in 1962 for introduction of new and material evidence. In March 1977 a special inquiry officer ruled that

"* * * it is clear, beyond doubt, that in determining the cause initially, I applied, as the standard of burden of proof, that the Service was required to establish its case by reasonable, substantial and probative evidence. The quantum and degree of proof have not been materially added to subsequent to my determination of 1960 and the Board's determination of 1961. The law, however, has been materially changed. The Supreme Court of the United States, in Woodby v. Immigration and Naturalization Service, and Sherman v. Immigration and Naturalization Service, 35 L.W., 4053, and 4056 (December 12, 1966) has decreed that

'* * * no deportation order may be entered unless it is found by clear, unequivocal and convincing evidence that the facts alleged as grounds for deportation are true.' This is a much more precise and strict standard. I now find the evidence, in its entirety, in this cause, as adduced in support of the charges, does not rise to the exacting stature now required * * *."

He ordered that the deportation proceedings be terminated.

INS inability to obtain
information from Communist
countries impeded investigations

During the early 1960s INS requested the Department of State to obtain information from Communist countries on three persons who were alleged to have committed crimes in the Soviet Union during the war, but INS was precluded from obtaining such information. In one case, the American Embassy in Moscow told INS that information on alleged crimes was not openly available and, if requested, the Soviet Union would furnish only information it considered to serve its purposes. Further, the Embassy said that the motivation of Soviet newspapers in publishing allegations has been to embarrass the western country rather than to seek justice. The Department concurred in the Embassy's view.

Although the case files do not contain evidence that this Departmental action influenced INS decisions not to request information from the Soviet Union in other cases, INS officials told us that it may have influenced investigators from making such inquiries.

Some investigations were deficient

As mentioned on page 11, investigations in 8 of 20 cases were deficient. In six of the eight cases, where the subjects were alleged to have committed crimes in Communist countries, INS efforts were generally limited to making routine record checks with other agencies, interviewing subjects, and in one case interviewing potential witnesses living in the United States. No inquiries were made to the Communist countries. As previously discussed, the Department of State precluded INS from obtaining information from Communist countries in other cases, which may have influenced INS actions in these cases. These investigations were closed because there was no evidence to substantiate the allegations.

In another case investigative leads were not fully pursued. Two persons provided INS with an affidavit stating that a subject was a commandant of a Nazi SS group and directed men to liquidate Jews. The affidavit also stated that the subject killed an individual, and identified a potential witness living in an eastern city. The central office directed the district office to conduct a thorough investigation.

Sources in New York as well as inquiries with the FBI and CIA did not reveal any derogatory information in this case. The potential witness stated that his only knowledge of the subject's activities as a Nazi was obtained from the people who signed the affidavit and that they had obtained the information from an individual living in a midwestern city. We found no reports in the case file concerning the nature, scope, and results of the investigation nor evidence to indicate that the persons who signed the affidavit or the potential midwestern witness were interviewed.

In another case potentially derogatory information was not investigated. After INS closed an investigation in the 1950s, the FBI provided several reports, one citing testimony of a witness that the subject committed atrocities. We found no evidence to indicate that this information was reviewed by either the INS investigative section or the naturalization examiner before the subject became a naturalized citizen.

VIEWPOINTS CONCERNING INS' HANDLING OF ALLEGATIONS

There was no centralized direction for investigating alleged Nazi war criminals before 1973. Current and former INS officials believe that this investigative effort did not exist probably because of higher priority work and because no one saw a need to have a specialized program. Another reason given was that during the 1950s, INS decentralized its operations and assigned responsibilities for managing investigations and case control to field offices. The INS March 1977 report indicated that little headquarters attention was given war crimes because of the relatively few allegations with substance and preoccupation with other types of cases given a higher priority for a variety of reasons.

We interviewed numerous individuals who had responsibilities for these cases or who were in positions of authority, including past and present INS officials and

investigators and other persons said to be knowledgeable of the area. Some people who were involved in these cases are deceased or in ill health and not available for interviews. Some people interviewed said that due to the passage of time they had unclear memories as to the reasons for certain decisions and the type of investigations conducted.

The persons interviewed--including all of the INS Commissioners since 1954--said that INS and other agencies were not involved in a conspiracy to withhold or quash information in INS' possession and did not deliberately obstruct active prosecution of cases. All of the INS officials said that there had been no attempts by other Government officials or agencies to interfere in any of the cases.

An INS investigator said that judgmental decisions were made by INS officials in the 1960s concerning the nature and extent of investigations conducted, and these decisions must be analyzed in the nature of the times and the fact that sources now available, such as in Israel and the U.S.S.R., were not available when the allegations were received. Former INS officials stated that the political atmosphere of the cold war with the U.S.S.R. may have been a factor affecting INS' handling of these cases.

Judgmental factors influenced
investigative decisions

As stated previously it is unclear why a number of the cases were not investigated. INS officials said that decisions to investigate an allegation were judgmental. Decisions to investigate allegations received at district offices and the central office were made by various officials over the years. We were informed that in making decisions these officials, depending on the time and circumstances, probably considered the merits of the allegation and the following factors.

- Investigative priorities both within the district and Service-wide and the number of investigative personnel available to be assigned.
- The cold war situation including whether (1) the allegation may have been Communist propaganda and (2) potential information and witnesses were needed from countries under Soviet jurisdiction.

In addition, we believe that INS past investigations and prosecutions may have influenced decisions not to investigate.

INS investigative priorities
before 1973 did not include
war crimes

The INS March 1977 report and some INS officials we interviewed stated that before 1973 INS investigative priorities were in the areas of subversion, smuggling, and antiracketeering. Officials stated that investigations of subversives were emphasized in view of the congressional and public opinion concerning Communism during the postwar years. This resulted in assigning these cases to the most experienced and talented personnel and in the most generous allocation of resources.

The extensive INS efforts spent on subversive cases resulted in deportation of 230 persons during the 10-year period 1951 to 1960. Only 15 persons were deported on subversive or anarchistic grounds during the following 10 years--1961 to 1970.

Centralized control and supervision of the efforts in smuggling operations was a natural development due to the increasing volume of this type of operation and the danger of introduction of subversive elements by this method.

The Government-wide antiracketeering measures automatically involved INS because of its authority to investigate immigration status of aliens and to administer the exclusion and deportation provisions of the Immigration and Nationality Act. There were indications that organized crime was involved in lucrative smuggling arrangements.

Some allegations were considered
Communist propaganda

In the 1960s, the Soviets periodically requested extradition of alleged war criminals who were then residing in the United States. No response was made to the requests because there is no extradition treaty between the United States and the U.S.S.R. Also, some of the Department of State files on the subject of war crimes and war criminals indicate that these extradition requests, as well as other U.S.S.R. reports concerning alleged war criminals residing in the United States and elsewhere, were considered to be propaganda. As previously mentioned, the Department of State precluded INS in one instance from obtaining information from Communist countries due in part to the fact that the Soviet Union would only furnish information it considered to serve its purposes.

The U.S.S.R. reports were distributed to other Government agencies such as the National Security Council, the CIA, the FBI, and the Department of Justice. In fact, we found references in some of the case files that the allegations were considered to be propaganda. Also, subjects of some allegations claimed this to be the case when interviewed by investigators.

During an investigation of an alleged Nazi war criminal, INS contacted a knowledgeable source who commented on the propaganda aspects of the case. The source stated that charges against the subject were questionable because of a newspaper article which appeared during the "cold war." He said the newspaper which wrote about the subject of the investigation was an instrument of the Soviet Communist Party and the author of the article was a Communist. (The newspaper had other articles about individuals alleged to have participated in atrocities.) He said the author was probably given the information from a Soviet source.

He stated that the subject might have been considered for recruitment into Soviet intelligence and the Soviets may have threatened him with exposing his wartime activities if he did not comply. The source also informed us that he felt that blackmail tactics were used against people whom the Soviets tried to recruit as intelligence agents to work in the United States.

Past INS experience may have affected decisions not to investigate

We believe INS' past performance in investigating and prosecuting Nazi cases may have indirectly affected some of the later decisions to investigate. To illustrate:

- A great deal of time and effort was spent in investigating and prosecuting the five cases during the 1950s and 1960s previously mentioned, without overall successful results.
- Investigations had been initiated but were limited because INS could not pursue overseas sources of information.
- The Supreme Court ruling that the evidence needed for deportation had to be clear, convincing, and unequivocal may have dissuaded investigators from pursuing cases.

Several INS personnel indicated these factors may have been considerations in judgmental decisions. They also indicated investigators and/or their supervisors may have decided that because certain investigations would have been fruitless, they pursued other types of cases where their chances of success were higher. Some former INS investigators stated that certain allegations should have been investigated but that the above factors may have affected the decisions not to investigate.

CHARGES OF INS MISCONDUCT
WERE NOT SUBSTANTIATED

Due to the charges of INS misconduct, two investigations were undertaken--one by the INS' Internal Investigations Unit in August 1975 and the other by the FBI in September 1973. Also, on January 6, 1977, INS contracted with a former INS employee to independently--not as an agent of the Government--study INS actions taken with regard to Nazi war criminals during the period since 1945. Previous references have been made to his study in this report.

Also, during the early 1970s, the Department of Justice conducted an investigation, called "Operation Cleansweep," of alleged INS wrongdoings. According to a Departmental official this investigation did not include any allegations of wrongdoings by INS personnel or by others involved in investigating and prosecuting alleged Nazi war criminal cases.

Internal Investigations Unit

The INS Internal Investigations Unit investigated INS' handling of allegations of complicity or participation in wartime atrocities because of public statements a former INS investigator made that investigations had been suppressed, blocked, and improperly closed. The investigation was conducted from April to July 1975 in New York, Boston, Detroit, Chicago, San Francisco, Los Angeles, and San Diego. The Unit's report, dated August 11, 1975, includes the finding that there was no "roadblocking" or any improper activity relative to the Nazi war criminal investigations.

FBI

In 1973 an FBI administrative inquiry into INS activities was predicated on receipt of a memorandum from the Deputy Attorney General, which cited a former INS investigator's

allegations of security leaks and roadblocks. The FBI interviewed the investigator who made the allegations, the district director, the security officer, and other employees who worked in his office. Also, the FBI reviewed related INS files and memorandums. The investigator furnished additional information concerning his allegations, but the others interviewed had no information about security leaks. The FBI found no evidence during its inquiry to substantiate the allegations.

Independent study

The INS contractor issued his report to INS in March 1977. A former INS Commissioner requested the study because of the allegations about INS wrongdoings with regard to its investigation of Nazi war criminals. The report contained in part background information about Nazi Germany, INS post-World War II procedures for refugees and displaced persons, and early investigations and current INS investigations.

On the basis of a search of INS central office subject files for information on or allegations against suspected Nazi war criminals and interviews with current and former INS personnel the contractor was able to identify certain Nazi war criminal cases. Some were known cases because of special INS efforts to either exclude or expel the individual.

The report said that because statistical data was not maintained for these types of cases, no information existed as to when individual cases commenced, why they were started, where they led, or when and how they were concluded. Our review substantiated this aspect of the contractor's report.

He found as we did that the recollection of personnel was helpful only to a limited extent. Employees could recall isolated incidents and details of cases but could not tell us specifically what happened or who was responsible for the actions taken in some cases.

The contractor stated that the cases that could be identified generally represented a substantial effort with a low percentage of success in accomplishing exclusion or expulsion. He believes additional cases exist in the more than 30 million other files in areas under the jurisdiction of 49 INS offices, but such cases would not be retrievable without better information.

The contractor's conclusions, in part, were:

- The volume of cases of alleged Nazi war criminals has never been more than minimal.
- The likelihood is slight that INS will have greater success in current and future investigations and proceedings against alleged Nazi war criminals.
- The lack of credible eyewitnesses is likely to be a continuing problem.
- The actual deportation of an individual is improbable because of lack of statutory authority, eligibility for administrative remedy, unavailability of travel document, introduction of private bills in Congress, litigation, and inability to travel due to poor health.
- Some cases that might have been investigated were not when the allegations were originally received.
- Some investigations did not appear warranted.
- Administrative delays have been minimal in the investigation of allegations of complicity or participation in atrocities. (The public relations problem, however, causing loss of time and productivity, is likely to continue.)

The contractor noted that the decision to investigate was made on the basis of various criteria, presumably, on the circumstances and the nature, extent, and source of the allegations in each case as well as on jurisdiction and authority to investigate.

CONCLUSIONS

Based upon a review of INS files and other agency information, interviews with various INS personnel and individuals knowledgeable in the subject matter and a review of other investigations relating to INS' misconduct, it appears that INS was not involved in a deliberate effort to suppress information.

We reviewed 40 cases in which INS received allegations before 1973. Twenty cases were not investigated, and in 11 of the other 20, investigations were limited to domestic sources.

Some cases were not investigated because the individual was deceased or had left the country. Some allegations may have been flimsy; for example, the nature of the allegation may have been only that a person thinks a certain individual was a Nazi. Others were not investigated or the investigation was perfunctory or deficient because the allegation originated from Communist countries; for example, in three cases, the Department of State precluded INS from obtaining information from Communist countries.

Thus, judgments were made in these types of cases in light of the political atmosphere prevailing during the times in question, and other cases were probably not pursued for the same reason. Also, the judgment of INS and other Federal agencies that these allegations were Communist propaganda may have been valid in view of their experience and the political atmosphere.

The decentralization of operations within INS and unclear memories or death of some individuals prevented us from determining the reasons for certain decisions, the type of investigation conducted, and who should have been or was responsible for the decisions made.

Investigations were either not conducted or deficient in some cases apparently due to INS inefficiencies. For example, in some cases, information from the FBI was not reviewed when received. We brought this to the attention of INS officials so that corrective procedures could be developed.

Some cases were investigated and prosecuted before 1973. Two persons were expelled from the country, but orders for the expulsion of others were overturned and procedures available under the law enabled the individuals to remain in the United States in yet other cases.

CHAPTER 3

INVESTIGATION AND PROSECUTION OF
ALLEGED NAZI WAR CRIMINALS AFTER 1973

In early 1973, INS took actions to improve its investigative efforts in cases involving allegations against Nazi war criminals in the United States by establishing:

- A Project Control Office in New York to coordinate these cases.
- Liaison with Israel, organizations, and individuals having knowledge of atrocities committed during World War II.
- Procedures with the Department of State to obtain information from foreign countries including Communist countries.

As a result of these improvements and increased attention given to Nazi war criminal cases, sufficient evidence was developed to initiate legal proceedings against some individuals who had been previously investigated. Further, in August 1977 INS decided that Nazi war criminals cases should be placed in the central office under the direct control of the General Counsel. The Special Litigation Unit, was subsequently established to handle these cases. INS expects the Unit to be fully staffed in May 1978.

INS reported that as of April 1978, it had received 252 allegations. Eighty-one cases were not investigated either because the individual was deceased, had left the country, could not be located, could not be identified with the allegation, or the allegation itself was not sufficient. Two cases were pending preliminary inquiry to determine if an investigation should be conducted. INS reported that 169 cases had been assigned for investigation, 21 of which had been recommended for legal proceedings. Legal actions had been initiated on 13 of the 21 cases (5 of the 13 had been closed prior to 1973).

For 54 cases we reviewed in which allegations were filed after 1973, INS had substantially improved its handling of such cases. Further improvements should result from INS' centralizing the Nazi war criminal project in a special unit in the central office. Several areas, however, need additional improvement.

PROJECT CONTROL OFFICE
IMPROVED INVESTIGATION RESULTS

In 1973 INS established a Project Control Office in the New York district to give emphasis and priority to alleged Nazi war criminal cases. The Office began to more actively investigate, both domestically and overseas, alleged criminals who now reside in the United States.

An operations committee was set up to supervise the cases and to recommend to the eastern regional commissioner when a case should be closed or a deportation or revocation proceeding instituted. The final decision to close a case was made by the central office. The Office achieved results-- as evidenced by the fact that 13 cases were under legal proceedings after 1973 as compared to 7 before 1973.

Although investigations of such cases were centralized, prosecutions were divided between denaturalization cases handled by U.S. attorneys and deportation cases handled by INS district office attorneys.

INS ESTABLISHED LIAISON WITH ISRAEL,
ORGANIZATIONS, AND INDIVIDUALS

After establishment of the Project Control Office, INS tried through its Athens, Greece, office to establish liaison with two Israeli officials in 1974. According to INS, the American Embassy in Tel Aviv recommended that because of the nature of the request, the Department of Justice should submit it to the Department of State. It was not until the following year that the Project Office was given permission by the Department of State to establish liaison with Israeli officials in the United States. The Superintendent of the Section for the Investigation of Nazi War Crimes of the Israeli Police said that his section's first official contact with the American authorities about investigations of Nazi war criminals was in 1975.

The central office directed the Project Office, as part of the investigation procedures, to prepare a list of all organizations, individuals, and sources of information contacted during investigations of alleged Nazi war crimes. This information was to be included in the subject's file and in the investigation report before the investigation was completed.

The Project Office subsequently submitted the names of each individual investigated to 70 sources located domestically and overseas, including Israel, war document centers, German district attorneys, Jewish organizations, individuals, and others. In addition, the INS district office, assigned by the Project Office to investigation domestically was directed to contact local sources of information.

DEPARTMENT OF STATE ESTABLISHED
PROCEDURES FOR OBTAINING INFORMATION

In 1974 INS sent requests to the Department of State to obtain information from foreign governments concerning alleged Nazi war criminals residing in the United States. In 1975 dossiers on some of these individuals were transmitted by INS to the Department. After information on cases had been received from the Berlin Document Center and the Federal Republic of Germany, the Department submitted the first list of names through the American Embassy in Moscow to the Soviet government in January 1976. Representatives Eilberg and Holtzman were instrumental in insisting that information from Communist countries be obtained, particularly from the U.S.S.R.

The following procedures were developed by the Department in handling these cases:

- INS prepares a dossier containing a memorandum of facts about the allegation (the subject's identity and the nature and source of the allegation), visa application, affidavits concerning the allegations, and a photograph. Before submission to the Department, INS seeks additional information from Israeli authorities and from the Jewish Documentation Center in Vienna.
- The dossiers are reviewed by an attorney in the Department and assigned a priority depending on the seriousness of the allegations and the reliability of the source.
- All names are forwarded to the Berlin Document Center where captured Nazi government records are kept under American control. The files often contain, among other useful information, dates and places of assignment. The names are checked against various indexes at the Berlin Document Center and any information obtained is attached to the file.

--The Federal Republic of Germany compares the names against its central files at the Central Office of the State Judicial Administration in Ludwigsburg and also refers the names to the central authority of state courts to determine if reference to the individual in question was made in trial testimony or pretrial investigations. Further, the central authority refers each case to the appropriate state prosecutor. The Department receives from these sources copies of court proceedings, judicial investigations, and court summaries that refer to the person under investigation.

--The results of the Berlin Document Center and Federal Republic of Germany checks are returned to the Department for translation. The original allegations and additional information collected from the Berlin Document Center and Federal Republic of Germany are reviewed in the Department to determine location of possible witnesses and to see whether any shifts in priority are warranted.

--Simultaneous with the referral to German sources, the case is referred to other appropriate foreign governments. Information provided by foreign governments, such as the U.S.S.R., includes affidavits taken by Justice Ministry officials who interview contemporaneous sources, copies of documents from state archives (e.g., police reports or decrees signed by the individual being investigated), photographs of massacre sites identified by witnesses, and photographs of individuals being investigated identified by witnesses. This information is given to the American Embassy, which sends it to the Department for translation. The translated materials are then forwarded to INS.

As of April 1978, the Department reported it received 139 cases from INS. The Department has referred 133 cases to foreign governments--110 to the U.S.S.R. and the majority of the other 23 to eastern European countries. It has received replies to 36 of its 133 referrals. Of the other six, three were referred only to the Berlin Document Center at the request of INS, and three were not referred because (a) two subjects were deceased and (b) INS believes it has sufficient evidence to initiate proceedings in the other case.

SPECIAL LITIGATION UNIT WILL HANDLE
ALLEGED NAZI WAR CRIMINAL CASES

After an internal review of the entire Nazi war criminal project in August 1977, INS proposed to the Department of Justice that the project be placed in the central office under the direct control of the General Counsel. The Department approved the plan and the Special Litigation Unit was formed.

The Unit is under the direct supervision of the General Counsel and the chief attorney of the unit was appointed in September 1977. There were various administrative delays in staffing the Unit until March 1978, but in the interim the Unit Chief worked with four INS attorneys, several assistant U.S. attorneys, and the New York Project Office on case investigations. From October to March, the attorneys spent about 10 weeks in litigation of various cases.

As of April 1978, the Unit functioned with four attorneys, two secretaries, and one paralegal. In May it is expected to have five attorneys (not including the three special assistant U.S. attorneys in New York who have contributed to this effort), three secretaries (not including the secretary assigned to the U.S. attorney staff in New York), two paralegals, and three investigators.

All existing files and material connected with the Nazi war criminal project were transferred from New York and other district offices to the Unit at the end of March. The Unit will be responsible for reviewing all case files, even those previously closed, to ascertain whether there is a prima facie case already existing or whether further investigation is required.

The attorney responsible for each case is to determine the extent of the investigation necessary to develop the case and convey his request for domestic investigation directly to the appropriate district office's investigations branch. The investigation report will in turn be sent directly from the district office for review by the attorney involved. Requests for foreign investigation will be forwarded to the Department of State or directly when necessary to the appropriate official in the foreign government concerned.

The attorney will also determine what witnesses should be interviewed and he will see that interviews are conducted both at home and abroad. Where the evidence is sufficient to initiate either a deportation or revocation of

citizenship case, the attorney will file the appropriate pleadings and will be responsible for developing and litigating each case to its conclusion, including appeal where necessary.

CASES RECOMMENDED FOR OR
UNDER LEGAL PROCEEDINGS

As of April 1978, INS reported that 8 cases had been recommended for legal proceedings and 13 were under legal proceedings, the earliest case was in March 1975. Of the eight recommended for legal proceedings 7 are denaturalization cases under section 340(a) and one is a deportation case under section 241(a) of the Immigration and Nationality Act of 1952. The earliest date of these cases was July 1977, and the average number of months these cases had been pending as of April 1978 was 6 months.

For 7 of the 13 cases under legal proceedings, denaturalization pursuant to section 340(a) is presently being sought in United States District Court. Hearings have been completed on one case although a decision has not been rendered, and hearings are scheduled for two cases. Hearing dates have not been set for the other four cases, three of which are undergoing discovery and in the fourth depositions from witnesses are scheduled.

In 4 of the other 6 cases, the subjects are presently under deportation proceedings brought pursuant to section 241(a) and hearings are in process. In a fifth case, INS informed an alien who had already been found deportable that it intends to withdraw an order of temporarily withholding deportation under section 243(h) of the act. An action has been filed by the alien in United States District Court and a temporary restraining order has been entered against the Service. The last case is under grand jury investigation.

ADMINISTRATIVE IMPROVEMENTS
STILL NEED TO BE MADE

Even though INS has improved its handling of alleged Nazi war criminal cases since 1973, certain administrative improvements still need to be made and should be considered by the Special Litigation Unit in its review of all case files.

Eyewitness testimony should be reviewed to determine if it contains sufficient evidence to warrant action

According to INS officials, testimony from at least two eyewitnesses is needed, as a rule, to initiate proceedings. Our review of case files revealed that an investigation in one case was closed and not reopened when eyewitness testimony was subsequently received. Two other cases, one pending with the Department of State and one under active investigation, also contain eyewitness testimony. These cases should be closely reviewed by the Unit to see if the testimony from one eyewitness is sufficient.

Federal agencies should respond to INS inquiries in a more timely manner

INS offices make requests during investigations for routine record checks of the CIA, FBI, and the Departments of Defense and State by the use of a printed form. The request usually asks if the agency has derogatory information on the subject in question. These agencies usually responded that they had no derogatory information, but in some no response was found in the file. If no response is received within 40 days from the agency, INS assumes there is no derogatory information at the agency and no followup procedures are initiated.

INS has also requested the Department of State to furnish information from foreign governments. As of April 1978, 97 cases had been categorized as "Pending with State Department." In several cases these inquiries had been outstanding for more than 2 years.

INS should review closed cases to determine if additional information is available

When INS was not able to locate an individual, it closed the case. Inquiries varied according to the information provided in the allegation. For example, if a specific address was provided, attempts were made to determine if the subject lived at the location. In 11 of the 54 cases filed after 1973 which we reviewed, the allegation originated from sources within the Soviet Union but INS did not ask the Department of State to determine whether additional information on the cases was available in the Soviet Union.

Additional information may be available at overseas locations

INS has requested through the Department of State information on people from the Berlin Document Center and the Federal Republic of Germany. A quantity of information is available concerning such matters as individuals and German government activities during World War II and trials after World War II. INS requests information on individuals' names; however, information may be available under other categories such as concentration camps, battles, sites of atrocities, and trials of people who may have been associated with the individual in question. INS agreed with our suggestion that it visit these locations to ascertain the best means of obtaining available information on a case-by-case basis. We also suggested that INS seek sources of information in other countries such as Poland and the U.S.S.R.

Inquiries relating to persons who left the United States should be updated

INS has classified three cases as "left U.S." In two, it received allegations in the 1960s that the subjects were Nazi war criminals. Evidence obtained revealed that the subjects were no longer in the United States. When the cases were reactivated in 1973, investigators relied merely upon information collected in the 1960s and did not determine whether the subjects were now living in the United States.

DIFFICULTIES IN DENATURALIZING AND DEPORTING INDIVIDUALS

As noted on p. 27, only 1 of 13 cases under legal proceedings since 1975 had been completed. Eight others recommended for legal proceedings as early as July 1977 have not gone to trial.

In chapter 2 we discussed five cases that were prosecuted before 1973:

- One was a visitor who was deported.
- One was subject to both a revocation of citizenship hearing and a deportation hearing. The individual consented to denaturalization and subsequently was extradited.
- Three were initially issued orders of deportation, but due to legal appeals and procedures, all three have remained in this country.

Excluding the one completed case, 13 of the 20 now recommended for or under legal procedure are denaturalization cases which means both denaturalization and deportation procedures must be completed for the individual to be ordered deported. Six are deportation cases and the other is under grand jury investigation. All of the individuals are entitled under law to certain rights such as appeal.

In some cases, legal requirements add to deportation problems. For example, once a person has been determined to be deportable, the Immigration and Nationality Act requires that a country agree to accept the individual before he can be deported. Another problem INS faces is that an alleged Nazi war criminal who entered the country under the Immigration and Nationality Act of 1952 may not be deported on the basis of criminal acts committed unless he has been convicted or has admitted committing such acts. The 1952 act repealed laws that provided for exclusion of Nazis based on something other than conviction. (See app. II.)

Because of delays, appeals, and other procedures available under the law and the age of a number of these individuals and potential witnesses, it appears doubtful that the Government will ever be able to deport many subjects of allegations regardless of the case it develops.

INDIVIDUALS THAT ENTERED THE
UNITED STATES AFTER 1952
CANNOT BE PROSECUTED

A person who entered the United States solely under the act of 1952 would not be deportable because of war crimes committed unless that person had been convicted of or admitted committing such crimes. Representative Holtzman has introduced in the 95th Congress, two bills, H.R. 410 and H.R. 412, to remedy this situation.

Under the provisions of H.R. 410, the Immigration and Nationality Act would be amended to exclude from admission into and to deport from the United States all aliens who persecuted others on the basis of religion, race, national origin, or political opinion. Under H.R. 412, which is narrower in scope, the Immigration and Nationality Act would be amended to exclude from admission into and to deport from the United States all aliens who persecuted others on the basis of religion, race, or national origin under the direction of or in association with the Nazi government of Germany. The passage of either one of these bills would assist INS prosecutive efforts.

CONCLUSIONS

The establishment of the New York Project Office in 1973 and liaison with other Government agencies, Communist countries, Israel, Germany, and organizations has improved the quality of INS investigations conducted after 1973. The results of the above improvements are illustrated by the fact that sufficient evidence was developed to initiate legal proceedings in 13 cases as compared to 7 before 1973.

The establishment of the Special Litigation Unit should further improve INS investigations and prosecutions. We believe the Unit could further improve its investigative effort by:

- Reviewing cases where eyewitness testimony has been received from one person to determine if INS has sufficient evidence to warrant action. In three cases there is an eyewitness account but the cases are respectively categorized as pending with State, under active investigation, and allegation not sustained.
- Implementing procedures so that other Federal agency checks are received in a more timely manner, including Department of State requests for information from foreign countries.
- Reviewing closed cases to determine if other sources of information are now available to substantiate (1) the need for further investigation or (2) the previous decision to close the case.
- Visiting the Federal Republic of Germany document center and the Berlin Document Center as well as other countries' document centers to determine the information available that may assist INS in requesting information from such sources for both ongoing and future cases.
- Updating inquiries with other Federal agencies and foreign governments to substantiate that an individual who left the United States has not, in fact, returned.

We discussed these matters with INS during our review. INS agreed with our suggestions and said that actions would be taken to accomplish them.

CHAPTER 4

INFORMATION AVAILABLE AT OTHER

FEDERAL AGENCIES CONCERNING ALLEGED

NAZI WAR CRIMINALS

As noted in chapters 2 and 3, if an INS investigation was conducted, it included "routine record checks" with several Federal agencies. On February 7, 1977, Representatives Eilberg and Holtzman asked the INS Commissioner if routine record checks with several Federal agencies revealed whether persons under investigation were employed or assisted by any of these agencies.

The Commissioner responded in March 1977 that

"* * * there is nothing in the files that indicate any agency, United States Government or otherwise has expressed a desire to interfere with, impede or dissuade our investigations of alleged Nazi war criminals."

In other correspondence to Representative Holtzman the Commissioner refers to a Federal agency's expression of interest in one case but also states his assurance that this interest played absolutely no role in the outcome of the investigation.

Our review of INS files and information provided by other agencies confirmed the truth of the Commissioner's statements. However, the question as to whether persons under investigation were employed or assisted by any of these agencies was not answered. The information provided to us shows that certain persons on our sample list were employed or assisted by Federal agencies. We did not evaluate the merits of the employment or assistance provided.

We requested information from the CIA, FBI, and the Departments of Defense and State concerning the 111 individuals on our list.

The U.S. Army and the Displaced Persons Commission did the background investigations (see p. 2) on some of the individuals. However, Commission records, except for those in INS or other agency files, were destroyed in accordance with Federal regulations. Commission and Army records in

INS files indicated that individual investigations were somewhat limited apparently because information and records about these individuals had been destroyed during the war or because information and records on individuals were from countries under Soviet jurisdiction and could not be obtained.

CIA

The CIA stated that an intensive search of its files for information pertaining to individuals on our list indicated there was no information on 54 or on any of the aliases or name variants we listed for them. For the remaining 57, summaries were prepared on the basis of information in the files and indexes. The summaries on 35 of the 57 individuals contained references to newspaper articles and other Federal agencies that may have information, correspondence with other agencies, and general background information. There was no indication the CIA had any contacts with them. Also, 10 of the summaries said the individuals were considered possible sources of information but were never contacted by the CIA.

The summaries on the other 22 individuals indicated that:

- One was assisted by the Agency for entry into the country under section 8 of the Central Intelligence Agency Act of 1949, with the concurrence of the Departments of Justice and State. The CIA informed us that the individual was a senior official of the German Foreign Ministry during the Nazi era, who was an expert on the Soviet Union, and that he was paid for his services while he resided here. The record shows he left the United States in 1953 and the earliest record of an allegation against this individual was not received by INS until years later.
- Seventeen were contacted by the CIA in the United States and one decided not to be involved. Of the other 16, 4 were paid for the information or services they provided. Also, 7 of the 16 had contact with the CIA prior to entering the country, 4 of whom were paid for their services.
- One was contacted and provided information before but not after he entered the country. He was not paid for his services.

--Two had not entered the country but were considered and contacted as sources of information. Only one of them provided information and was paid.

--One, not contacted while he resided in this country, contacted the CIA and volunteered information after he left.

The last known contact with any of these individuals was 1965.

The CIA stated that except for the one individual mentioned above it did not provide any type of assistance for the other individuals' entry into the United States. The CIA also stated that it had not intervened in or obstructed any INS investigation or prosecution concerning the individuals on our list.

CIA summaries did indicate the Agency was aware of allegations against some individuals during the time contact was made and information was provided. The CIA informed us that unproven allegations existed indicating that some of the individuals of whom operational use was subsequently made had been members of wartime German organizations. The CIA stated that its use of these individuals was not ruled out by these allegations against them because they had been screened by other Federal agencies and admitted to the United States. The Agency stated, however, that in no case did it make use of anyone against whom allegations of war crimes were well-founded.

Further, the CIA stated its contacts with these individuals came at a time when there was an acute shortage of intelligence on Soviet intentions and developments in Eastern Europe in general. The question of early warning against a Soviet attack was pressing, particularly in the period following the blockade of Berlin. The individuals concerned were all strongly anti-Communist and their willingness to cooperate and their knowledgeability were the definitive factors leading to their use by CIA.

FBI

The FBI stated that an intensive search of its central files did not identify information on 64 individuals regarding alleged Nazi war crimes or any of the aliases or name variants listed. Summaries were prepared on the basis of information in its files on the remaining 47 on our list.

Guidelines established with the FBI provided that if the search of the files indicated information other than alleged Nazi war criminality, no summaries were to be prepared. In addition, if the file on an individual did contain both information of alleged Nazi war criminality and other information, only the information relating to alleged Nazi war criminality was included in the summary. The analyst reviewing the file decided what information was to be included in a summary, if any.

The summaries on the 47 individuals indicated that:

- Fifteen were investigated between 1947 and 1972; 14 for purposes of security, and 1 as a Federal job applicant. Information was provided to INS on the 15.
- Twenty-three were never the subject of an FBI investigation. The summaries of 13 made reference to a newspaper article and one other referred to several newspaper articles, all of which appeared in the 1970s. Also, two other summaries made reference to information which might be available at other agencies. On the other hand, information on seven was received from varied sources that the individuals collaborated with the Germans and/or participated in atrocities during World War II. Four of these appeared in an "open letter to the President" in 1966 about alleged Nazi war criminals residing in the U.S. According to the FBI, the files do not reflect that the letter was ever answered or disseminated. The FBI could only speculate that it was not disseminated because of the format of the letter and the singular, uncorroborated information it contained.
- Four were mentioned in relation to other investigations done by the FBI.
- Five individuals were the subject of inquiries by the FBI: two in the late 1940s and early 1950s and two in the early and mid-1960s. The other has been the subject of several inquiries since the late 1950s.

The FBI said that two of the individuals had had a confidential relationship with the FBI but had not been paid for their services. The last known contact with these

individuals was in 1954 and 1972, respectively. Regarding the latter, the FBI said it had received information from another agency of allegations against the individual in 1954 and that it made no inquiry as to the other agency's actions regarding the allegations.

We were informed that these individuals provided information to the FBI in confidence, fully expecting that their identities would be protected. Also, since the continued flow of information from such sources, which is vital to FBI operations, depends almost exclusively on the confidence of these individuals that their identities not be disclosed, the FBI did not tell us the identities of the two. The FBI said this is its standard policy with all Federal agencies.

The FBI stated that it had not intervened in or obstructed any INS investigation or prosecution concerning the individuals on our list.

Department of Defense

The Department of Defense stated that an intensive search of its files for information pertaining to individuals on our list indicated there was no information on 78 or on any of the aliases or name variants we listed for them. The Department also informed us that investigative records pertaining to routine investigations regarding some of these individuals may have been destroyed in accordance with the National Archives and Records Service's disposal authority.

The U.S. Army did have information on 31 individuals while the Air Force had information on 3, 1 for whom the Army had similar information. Information provided on 29 individuals generally pertained to investigations conducted to determine individual eligibility as a displaced person and to correspondence concerning background investigations. None of the documents disclosed derogatory information. Departmental information on the other four individuals indicated that:

- One of the Defense agencies assisted an individual's entry into the United States and provided employment after entry under a Presidentially approved program to aid our postwar military research. No known or alleged war criminals were to be brought to the United States under this program. The agency had done an extensive investigation

on the individual; its report and other investigative information was in INS files along with the documentation that the individual had been assisted. INS investigated allegations received against this individual years after his entry. Because the investigation did not substantiate the allegations, the investigation was closed.

--An Army intelligence agent had assisted the individual described on p. 38 in his entry into the United States.

--Army intelligence investigated but could not substantiate war criminal allegations against two individuals before their entry into the United States. This information was made known to other Federal agencies.

Departmental representatives advised that a search of above-described investigative files revealed no information that any of its members intervened in or obstructed any INS investigation or prosecution concerning the individuals on our list.

Department of State

The Department's Bureau of Consular Affairs, Office of Special Consular Services had active case files on 139 alleged Nazi war criminals as of April 1978. The information in the files was received by the Bureau from INS under the dossier system. (See pp. 24 and 25.) The first group of dossiers on some of the individuals was transmitted by INS in 1975.

Before the establishment of the system, the Department, like INS, had no centralized program concerning alleged Nazi war criminals. We were informed that information concerning the subject matter could be scattered in various Department files, and that the information in these files was voluminous and any search on our part would necessitate a great deal of time and effort. A Bureau official had searched some of the files back to 1963 and made notes and copies of some of these documents. This official's notes generally dealt with other countries' extradition requests on certain of the individuals, and indicated that information regarding allegations by the U.S.S.R. about individuals being alleged Nazi war criminals both here and in another country was propaganda.

For the list of 111 names on whom we requested information from the Department of State, the Department's Bureau of Intelligence and Research, Foreign Affairs Document and Reference Center, Office of Security, and Visa Office searched their respective files. The Bureau of Intelligence and Research reported it had no information and the others reported they had information on 44, 2, and 8 individuals, respectively, which in some cases pertained to the same individual.

The information from the three offices pertained to 46 individuals and generally consisted of:

- Correspondence between the Department and other Federal agencies as well as its Embassy in Moscow regarding extradition requests in the 1960s and requests for information under the dossier system in the mid-1970s.
- Congressional inquiries and Department responses.
- Internal memorandums between Department organizations.
- Letters of appreciation from some of the individuals on the Department's position against Communist domination of their former countries.

Other information indicated that one of the individuals had applied for employment but was not hired for various reasons, none of which related to alleged Nazi war criminality. Another individual previously discussed on p. 33 was employed as a consultant in the early 1950s because of his knowledge of the Soviet Union; allegations against this individual were not received until years later.

Assistance, as described below, had been provided for one individual's entry into the United States. Department information concerning such assistance was in INS files.

In the late 1940s, two Department of State Embassy officials in the Consular Section stated in a memorandum that they waived a clearance for an individual and approved his visitor's visa due to the apparent interest in his trip of another Embassy section and of another Federal agency and to the fact the individual was recommended by persons in whom they had confidence. Also, one consular official stated that the other Federal agency had provided funds for the individual's trip to the United States. Shortly after the individual entered the country, he was arrested and subsequently deported by INS because his entry was found to

have been prejudicial since he had advocated and acquiesced in activities contrary to decency in behalf of the Axis countries during World War II. From our review of the files, it appears that the other Federal agency as discussed on p. 37 was aware of his wartime involvement prior to his entry.

In addition to the above individual, the Department stated it was aware of Federal agency assistance to the two individuals discussed on pp. 33 and 36. The Department stated, however, that in these two cases as well as in any cases in which Federal agency assistance is provided under law to an individual, it knows of the assistance but usually is without knowledge of the individual's background. The Department also stated it had not intervened in or obstructed any INS investigation or prosecution concerning the individuals on our list.

CONCLUSIONS

INS records showed that three individuals against whom it had received allegations of war crimes were assisted by Federal agencies for purposes of entry into the United States. One or more Federal agencies contacted individuals for investigations of matters other than war crimes and/or for purposes of obtaining information of an intelligence nature. Some were paid for their services. We did not evaluate the merits of this involvement by Federal agencies. Each agency involved informed us that it had not intervened in or obstructed any INS investigation or prosecution concerning alleged Nazi war criminals.

Federal agencies will provide information to other Federal agencies when such information will not disclose confidential sources. We did not evaluate this policy of the intelligence community or whether providing this type of information would have assisted INS investigative and prosecutive efforts. Information that we reviewed regarding such individuals and information they may have provided, as well as the identities of individuals who were employed, have been classified by the individual agencies.

CHAPTER 5

THE CONTROVERSY--ALLEGED NAZI WAR
CRIMINALS RESIDING IN THE UNITED STATES--

MAY CONTINUE

INS decentralized its operation in the mid-1950s and assigned responsibility for managing caseloads to the field offices. Under this operating procedure, INS headquarters officials generally would not have been aware of allegations of Nazi war crimes. Top officials of INS before 1973 indicated that they had little or no involvement in or knowledge of the allegations.

They said that with a few exceptions, Nazi war crime allegations were not high priority cases and headquarters officials therefore would not have been advised of them. Under such a procedure it is hard to pinpoint responsibility for many actions. In one or a small number of cases malfeasance would be possible but difficult to determine; in a large number of cases, however, because of the number of people and offices involved, a conspiracy to quash allegations would have been much easier to determine, if it existed.

Different people will undoubtedly interpret the information we developed in different ways, depending on the preconceived notions they already have. Some will be persuaded, as we were, that the existence of a widespread conspiracy was unlikely. Others will probably find cause to strengthen their belief that deliberate obstruction did occur. In any event, let us summarize our principal observations.

- INS' investigations of most cases before 1973 were deficient or perfunctory. In some cases, no investigation was conducted. (See ch. 2.)
- The quality of INS investigations has improved since 1973; however, improvements are still needed. There have been no successful prosecutions and the possibility exists that some individuals under prosecution now or in the future may never leave the country due to appeals and other procedures available under the law. (See ch. 3.)
- Three individuals were identified as being assisted by Federal agencies for entry into the country. (See ch. 4.)

--Various individuals were contacted by one or more Federal agencies during other types of investigations and/or for purposes of obtaining information of an intelligence nature. Regarding the latter, some individuals were paid for their services. (See ch. 4.)

We realize the involvement of other Federal agencies with individuals under investigation by INS is controversial. However, we found no information in INS files or at other agencies to indicate any of these agencies or others engaged in a conspiracy to withhold or quash any information in their possession or deliberately obstructed active prosecution. But a number of factors--lack of assurances that we have seen all documentation, the passage of time which has resulted in unclear memories, the death of some of the individuals involved, the inherent difficulty in establishing the existence of a conspiracy, and changes in the political atmosphere--prevent us from being assured as to the validity of this conclusion. However, we believe the factors below, some of which cannot be validated and in some instances are conjecture, should be considered in evaluating INS' lack of progress.

--Some cases were not investigated because the individual was deceased or had left the country. Some allegations were flimsy; for example, the allegation may have been that a person only thinks a certain individual was a Nazi with no other details provided. Others were not investigated or the investigation was perfunctory because the allegation originated from Communist countries; for example, in three cases the Department of State precluded INS from obtaining information from Communist countries. Thus, judgments were made in these cases in light of the political atmosphere prevailing during the times in question, and other cases were probably not pursued for the same reason. Also, the judgment of INS and other Federal agencies that these allegations were Communist propaganda may have been valid in view of their experience and the political atmosphere.

--The time interval since the initial processing of most of the cases under question makes it difficult to reconstruct the situation. Unclear memories or the death of some individuals prevented us from determining both the reasons for certain decisions and the type of investigation conducted

as well as who should have been and who actually was responsible.

--Cases were investigated and prosecuted before 1973, but some deportation orders were overturned or legal procedures enabled the individuals to remain in the United States. As a result, investigators may have curtailed or not undertaken ongoing or future investigations because they considered the investigations to be fruitless and therefore considered the pursuit of other types of cases to be more productive.

--INS did know in some cases and may have known in others that information was available at other agencies. Although conjecture, this information may not have been obtained because it related to internal or foreign security matters.

--We did not evaluate the merits of the involvement of the Federal agencies. These agencies informed us that they did not intervene in or obstruct any INS investigation or prosecution of alleged Nazi war criminals. The CIA's reasons for contacts and assistance--that the individuals, the majority of whom were from, and were knowledgeable about activities in, countries under Soviet jurisdiction--appear valid.

--Federal agencies will provide information to other Federal agencies when such information will not disclose confidential sources. We did not evaluate this policy of the intelligence community or whether providing this type of information would have assisted INS investigative and prosecutive efforts. Information that we reviewed regarding such individuals and information they may have provided as well as the identities of individuals who were employed, have been classified by the individual agencies.

Although the overall validity, degree, and interrelationship of the above factors is unknown, we believe they should help clarify some of the controversy about INS' progress over the years in investigating and prosecuting alleged Nazi war criminals residing in the United States. Moreover, the truth of the allegation that there was an overt conspiracy by personnel from INS or by INS and other Federal agencies or that these agencies have been infiltrated by an organization dedicated to protect such criminals is unlikely.

However, even considering all of the factors listed, doubt will still persist as to whether there was wrongdoing. We recognize this dilemma. Thus, the publicity, interest, and controversy about INS' lack of progress may continue. The controversy may be compounded because legal delays, appeals, and other procedures, considered with the age of the individuals and potential witnesses make it doubtful that the Government will ever be able to deport many subjects of the allegations. Further, if cases involving evidence and witnesses from the U.S.S.R. or countries under its influence are not prosecuted or are unsuccessfully prosecuted, then these countries may very well use the controversy with these cases as examples for purposes of propaganda against the United States.

AGENCY COMMENTS

The Departments of Justice, State, and Defense commented that the report was a fair and accurate reflection of the record. (See app IV to VI.) The CIA's formal response was not received in time to be included in the final report. The Agency orally informed us that it agreed with the comments of the other agencies as expressed above.

APPENDIX I

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NINETY-FOURTH CONGRESS

SUBCOMMITTEE ON IMMIGRATION, CITIZENSHIP, AND
INTERNATIONAL LAW

JOSHUA EILBERG, PA., CHAIRMAN
PAUL S. SARBANES, MD. HAMILTON FISH, JR., N.Y.
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Committee on the Judiciary
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Washington, D.C. 20515

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ALEXANDER B. COOK, ASSOCIATE COUNSEL
FRANCES F. CHRISTY, LEGISLATIVE ANALYST

January 13, 1977

Honorable Elmer B. Staats
Comptroller General of the United States
General Accounting Office
Washington, D.C.

Dear Mr. Staats:

The Immigration and Naturalization Service, with the cooperation of the Department of State, is presently compiling evidence on alleged Nazi war criminals who entered the United States fraudulently. Three cases are in the process of being heard by judicial authorities and it is expected that proceedings in a number of other cases will be instituted in the near future.

For the past two years I have been following closely the action being taken by the Service in these cases. Certain allegations have emerged which lead me and some of my colleagues to believe that the existence and backgrounds of these individuals were known to the Service for a long time without any action having been taken.

These people entered the United States and acquired benefits under the Immigration and Nationality Act in contravention of United States law. No adequate explanation has been forthcoming from the Service as to why they did not proceed against these individuals until Congress brought the matter to their attention.

I would like to enlist the cooperation of the General Accounting Office in conducting a thorough investigation of this situation, especially to determine if Immigration personnel deliberately obstructed active prosecution of these cases or engaged in a conspiracy to withhold or quash any information in its possession.

I intend to explore all avenues to get the true facts behind these cases and the apparent negligent attitude adopted by the Immigration Service.


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I consider this matter to be of extreme urgency and would be grateful if you would consider this investigation on that basis.

With kindest personal regards,

Sincerely,


JOSHUA EILBERG
Chairman

JE:prd

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IMMIGRATION AND NATURALIZATION LAWS RELEVANT
TO ALLEGED NAZI WAR CRIMINALS

GROUND FOR DEPORTING ALLEGED NAZI WAR CRIMINALS

According to section 241(a) of the Immigration and Nationality Act (1952), 8 U.S.C. §1251(a):

"Any alien [a person who is not a citizen] in the United States * * * shall, upon the order of the Attorney General, be deported who--

"(1) at the time of entry was within one or more of the classes of aliens excludable by the law existing at the time of such entry;

"(2)* * * is in the United States in violation of this chapter or in violation of any other law of the United States;* * *"

The law existing at the time a person enters the country is thus a determining factor in deportation. The immigration laws existing when World War II ended contained the following provision that could be the basis for excluding Nazis:

"The following classes of aliens shall be excluded from admission into the United States:

* * * * *

"(e) Criminals.

Persons who have been convicted of or admit having committed a felony or other crime or misdemeanor involving moral turpitude: Provided, That nothing in sections 136 or 137 of this title shall exclude, if otherwise admissible, persons convicted, or who admit the commission,

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or who teach or advocate the commission of an offense purely political--* * *" (Former 8 U.S.C §136)

A Nazi who entered the country when this law was in existence would be deportable if he had been convicted of any war crimes.

In addition to this law, the Act of May 22, 1918, 40 Stat. 559, as amended by the Act of June 21, 1941, 55 Stat. 252, could be the basis for deporting a Nazi who entered the United States within a short time after the war ended. The Act of 1918, as amended, authorized the President, when in the best interest of the country, to restrict and prohibit in time of war departure from or entry into the United States. Pursuant to this law, 8 C.F.R. 175-53(j) (10 F.R. 8995, 8997, July 21, 1945), prohibited from entry into the United States:

"Any alien found to be, or charged with being, a war criminal by the appropriate authorities of the United States or one of its co-belligerents, or an alien who has been guilty of, or who has advocated or acquiesced in activities or conduct contrary to civilization and human decency on behalf of the Axis countries during the present World War."

Under the above provision one did not have to actually participate in or commit atrocities to be excludable and thus deportable from the United States. Membership in the Nazi party might have been sufficient.

A few years after the war ended, the Displaced Persons Act of 1948, 62 Stat. 1009, was passed to allow admission into the United States, without regard to quota limits, of certain Europeans displaced during the war. Nazis who were able to gain admission into the country under this act would be deportable because: (1) they probably lied about their situations to make themselves eligible for admission as displaced persons and section 10 of that act provides:

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"* * * Any person who shall willfully make a misrepresentation for the purpose of gaining admission into the United States as an eligible displaced person shall thereafter not be admissible into the United States. * * *"

and (2) they were excludable under section 13 which provided:

"No visas shall be issued under the provisions of this Act to any person who is or has been a member of, or participated in, any movement which is or has been hostile to the United States or the form of Government of the United States."

Section 13 was amended in 1950, 64 Stat. 227, to provide:

"No visas shall be issued under the provisions of this Act * * * to any person who is or has been a member of or participated in any movement which is or has been hostile to the United States or the form of government of the United States, or to any person who advocated or assisted in the persecution of any person because of race, religion, or national origin, or to any person who has voluntarily borne arms against the United States during World War II. * * *"

Here, again, participation in or commission of war crimes is not required for exclusion and deportation. Section 13 was amended on June 16, 1950, by §11 of the Displaced Persons Act amendments, 64 Stat. 219, 227, of which the relevant part provides:

"No visas shall be issued under the provisions of this Act * * * or to any person who advocated or assisted in the persecution of any person because of race, religion, or national origin, or to any

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person who has voluntarily borne arms against the United States during World War II."

The Internal Security Act of 1950, 64 Stat. 987, amended the immigration laws to exclude from the United States members or affiliates of totalitarian parties. The Act of March 28, 1951, 65 Stat. 28, amended this to cover only voluntary members. This seems to have provided adequate basis for excluding members of the Nazi party until enactment of the Immigration and Nationality Act of 1952, see below, which defined "totalitarian party" as one advocating totalitarianism in the United States. The new law did not and does not appear to exclude members of the Nazi party.

On June 27, 1952, the Immigration and Nationality Act, 66 Stat. 163, was passed, to be effective 180 days later (December 24, 1952). The 1952 Act repealed the laws referred to above and excluded from entering the country the following classes within which a Nazi might be included:

* * * * *

"(9) Aliens who have been convicted of a crime involving moral turpitude (other than a purely political offense), or aliens who admit having committed such a crime, or aliens who admit committing acts which constitute the essential elements of such a crime;

* * * * *

"(19) Any alien who seeks to procure, or has sought to procure, or has procured a visa or other documentation, or seeks to enter the United States, by fraud, or by willfully misrepresenting a material fact; * * *"

Under the 1952 law, Nazis could thus be excluded only on the basis of conviction of war crimes or a showing that entry into the United States was by fraud or misrepresentation. Anything less than conviction, such as membership in the Nazi party or even proof of participation in war crimes, does not appear to be sufficient by itself to exclude someone who entered the country under the 1952 Act.

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Anyone entering the country after the effective date of the 1952 Act would be excluded on the basis of something less than conviction of war crimes if that person entered as a refugee under the Refugee Act of 1953, 67 Stat. 400. Section 14(a) of that act provides:

"No visa shall be issued after this Act to any person who personally advocated or assisted in the persecution of any person or group of persons because of race, religion, or national origin."

Even here, however, membership in the Nazi party alone does not seem to be sufficient to exclude a person from entering the country.

COUNTRIES TO WHICH ILLEGAL ALIENS MAY BE DEPORTED

Under section 243(a) of the 1952 Act, 8 U.S.C. §1253(a), the deportation of an alien should be first to a country of his designation, unless it would be prejudicial to the interests of the United States. No alien may make more than one designation. (According to an attachment to a July 3, 1974, letter from INS Commissioner Chapman to Congresswoman Holtzman, one individual, see below, made two designations-- Ireland and Switzerland.) If the designated country does not, within 3 months, agree to accept the alien, the Attorney General may deport him to the country from which the alien last entered the United States; the country in which is located the foreign port from which the alien embarked for the United States; the country of his birth; the country in which the place of his birth is situated; any country he resided in; or the country that had sovereignty over the birthplace of the alien at the time of his birth. Finally, if deportation to each of these places is impractical, inadvisable, or impossible, then the alien could be deported to any country willing to accept him. Section 243(h), 8 U.S.C. §1253(h), further authorizes the Attorney General to withhold deportation to any country where he thinks "the alien would be subject to persecution on account of race, religion, or political opinion * * *." (Before being amended in 1965, this section referred to "physical persecution.")

Thus, a problem could arise, as it did in the case of an individual, against whom a deportation order was issued in 1953 on the basis of his wartime activities, if countries

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are unwilling to accept the deportable alien. In 1959, Ireland and Switzerland refused to accept this person, and Yugoslavia was ruled out because it was determined he would be subject to political persecution if sent there. As far as we know, INS made no further attempt to deport him until 1974 when West Germany refused to accept him. He still resides in the United States.

DENATURALIZATION

If an alleged war criminal has been naturalized as a citizen, he cannot be deported until he is denaturalized (i.e., naturalization is revoked). Regarding revocation of naturalization, section 340(a) of the Immigration and Nationality Act, as amended, 8 U.S.C. §1451(a), provides:

"It shall be the duty of the United States attorneys for the respective districts, upon affidavit showing good cause therefor, to institute proceedings * * * for the purpose of revoking and setting aside the order admitting such person to citizenship and canceling the certificate of naturalization on the ground that such order and certificate of naturalization were illegally procured or were procured by concealment of a material fact or by willful misrepresentation * * *."

Under this section, a person may be denaturalized (where the evidence is clear, unequivocal, and convincing, Baumgartner v. United States, 322 U.S. 665 (1944)) where naturalization was illegally procured or procured by concealment or misrepresentation of material fact.

Naturalization is considered to have been illegally procured whenever an alien has obtained citizenship which was unauthorized by law. United States v. Mulvey, 232 F. 513 (2d Cir. 1916). Naturalization is illegally procured when statutory qualification does not exist in fact, United States v. Beda, 118 F.2d 458 (2d Cir. 1941). Thus, whenever an alien who does not qualify for citizenship is naturalized, the naturalization is considered illegally procured. For example, in order to qualify for naturalization, a person

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must be of good moral character. 8 U.S.C. §1427(a). A person lacking good moral character, such as a Nazi might be considered, could thus have his naturalization revoked on the basis that it was illegally procured. Furthermore, any misrepresentation regarding entry into the country or naturalization could constitute, in and of itself, proof of a lack of good moral character. See, for example, In re Petition of Haniatakis, 376 F.2d 728 (3d Cir. 1967). Lack of good moral character is ground for revoking naturalization. United States v. De Francis, 50 F.2d 497 (D.C. Cir. 1931).

Naturalization could be considered to have been "procured by concealment of a material fact or by willful misrepresentation" when the following types of facts were concealed or misrepresented: (1) membership in the Nazi party; (2) membership in the German Army; (3) participation in atrocities; (4) past arrests for wartime activities; (5) past convictions for war crimes; (6) names, dates, or places that might have led the Government to further information regarding eligibility. In determining whether a concealed or misrepresented fact was material so as to be a basis for revocation, the test is not whether naturalization would have been refused if the defendant had revealed the truth, but whether, by his false answers, the Government was denied the opportunity to investigate the facts relating to eligibility. United States v. Chandler, 152 F. Supp. 169 (D. Md. 1957).

APPENDIX III

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CASES SELECTED AND REVIEWED

	<u>Allegations received</u>		<u>Total</u>
	<u>Before 1973</u>	<u>And After 1973</u>	
Original sample of cases (note a)	24	51	75
Additional cases (note b)	<u>33</u>	<u>3</u>	<u>36</u>
Total cases selected for review	<u>57</u> --	<u>54</u> --	<u>111</u> ---
Cases reviewed	40	54	94
Cases not reviewed (note c)	<u>17</u>	--	<u>17</u>
Total	<u>57</u> --	<u>54</u> --	<u>111</u> ---

a/Selected from INS report dated February 1977 which contained 213 allegations. The breakout of allegations received before and after 1973 was done after reviewing case files.

b/In August 1977 Representative Holtzman requested us to expand the scope of our review to include all cases where allegations were received before 1973. After screening investigative files and cases identified in a report prepared for INS in March 1977, we identified 36 additional cases for review.

c/Of the 17 cases not reviewed, hearings were being conducted in two cases and our access would have interfered with active litigation; time constraints prevented us from reviewing 15 cases. Of the latter cases, we obtained information, if available, from the CIA, FBI, and the Departments of Defense and State. Information in INS case files revealed that

--five individuals are deceased, one of whom was ordered deported but his appeal was sustained;

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- six individuals were investigated after 1973; because of new allegations, four have been recommended for or are under litigation while two are still under investigation;
- two individuals were not investigated since 1973; one had undergone deportation proceedings but this action was terminated by the Special Inquiry Officer and the other investigation in the 1960s disclosed that the subject could not be identified with the allegation;
- one individual had entered the country as a visitor, but information obtained during INS' investigation indicated that the person had left the country before the allegation was received by INS; and
- one individual had not entered the country according to information obtained during INS' investigation; information also indicated that foreign authorities were aware of the allegation.

APPENDIX IV

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UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D.C. 20530

MAY 1978

Address Reply to the
Division Indicated
and Refer to Initials and Number

Mr. Victor L. Lowe
Director
General Government Division
United States General Accounting Office
Washington, D.C. 20548

Dear Mr. Lowe:

This letter is in response to your request for comments on the draft report entitled "Investigation and Prosecution of Alleged Nazi War Criminals Residing in the United States--A Lack of Progress Surrounded by Controversy."

The report presents a reasonably factual assessment of the historical events and problems which hampered the investigation of alleged Nazi war criminals. Many of the problems had been identified by the Immigration and Naturalization Service (INS) prior to the report, and formed the motivating reason for the establishment of a Special Litigation Unit described by GAO on page 43 of the report.

Although we have no major disagreements with the report, there are some minor points which we believe need to be clarified and incorporated into the final report in order to provide a more lucid and accurate document. Our comments refer to the following pages in the draft report.

Cover Summary

The first sentence states that there has been a lack of progress by INS in investigating and prosecuting alleged Nazi war criminals since the 1950s. In fact, since October 1977, five cases went to trial. One of those cases is completed and we are awaiting the decision of the judge. It would seem appropriate to qualify the first sentence as to a lack of progress from the 1950s until a later specific date. In August 1976, a team of lawyers went to Israel and obtained evidence which resulted in these recent prosecutions.



Page i

In the second full paragraph, the report states that "actions (and inactions)" appeared "explainable in the circumstances of the time." The report does not state the specific time period, although a careful reading of the entire report would indicate the report refers to the 1950s.

Pages 13 and 33

It appears that the cover summary is inconsistent with specific conclusions elsewhere in the report. The cover summary states:

"GAO believes it unlikely that there was a conspiracy but it cannot absolutely rule out the possibility of undetected isolated instances of deliberate obstruction because its research efforts were hindered by (1) the effect of the passage of time on the availability of information, (2) limited access to agencies' records, and (3) the inherent difficulty in establishing the existence of a conspiracy."

However, on page 13 and a similar quote on page 33 of the report states:

"Based upon a review of INS and other agency files, interviews with INS personnel and individuals knowledgeable in the subject matter, and a review of other investigations relating to alleged INS misconduct, it appears that INS was not involved in any deliberate effort to obstruct either investigation or prosecution of these cases."

Page 15

The second full sentence makes reference to a journalist's characterization of INS' handling of cases as "evasive and negligent." It might be useful for the committee members and the public to know also that Inspector Russek of the Israeli Police, who is in charge of the Nazi war criminal investigations, attended two of the trials in the last few months and on a recent visit to our offices stated that he was very pleased with the way cases are now being handled.

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Page 46

Beginning on page 46 and going through page 53 the report recommends the following:

- INS should not require at least two eyewitnesses to initiate proceedings.
- New procedures for more timely responses by the Federal agencies should be initiated.
- Closed cases should be reviewed to determine whether any further information is needed.
- Overseas locations should be visited to obtain information; specifically, the Berlin Document Center should be visited.
- Inquiries should be made about alleged Nazi war criminals who left the United States to determine whether they are still outside the United States.
- Legislation should be enacted such as that proposed by Representative Holtzman to provide jurisdiction by persons who entered after 1952.

Although the creation of the Project Control Office in 1973 centralized to some extent the direction of investigations of these cases, we recognize that it did not provide supervision and direction from the receipt of the allegations through the trial and appellate courts. For example, a Freedom of Information request could sidetrack a claim to the Freedom of Information Unit. Similarly a request by an investigator to another agency which went unanswered could sidetrack an investigation for a long period of time. No one person was primarily responsible for reviewing incoming allegations, directing detailed investigations and planning for litigation. In 1977 the Special Litigation Unit was formed to fulfill that function. The Special Litigation Unit has five lawyers on board now. These lawyers are reviewing all cases which have been filed or recommended for filing. After their review is completed, they will

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coordinate their discovery in such a way as to maximize resources, such as visiting the Berlin Document Center for several cases rather than merely one. The total circumstantial and direct evidence will be weighed in determining whether or not to file a particular case.

There are no inflexible standards such as the requirement that there be two eyewitnesses to an incident. The Chief of the Special Litigation Unit has met with other Federal agencies and already worked out specific procedures to insure that the maximum amount of pertinent information will be provided in a timely manner.

All closed files will be reviewed in instances where the subject of the investigation is still alive and still in the United States. This has been the INS position since last summer.

The INS has publicly supported the concept proposed in bills introduced by Congresswoman Holtzman and Congressman Eilberg.

Other Comments

The Criminal Division was instrumental in causing the extradition in 1973 of Hermine Ryan to Germany, where she was charged with war crimes, including murder. That case is mentioned in the draft report. Additionally pursuant to its responsibilities for international judicial assistance, the Division has sought to obtain information from abroad in two cases in which prosecution is contemplated against suspected war criminals in connection with false statements furnished to INS. One foreign country has declined to respond and the other is looking into the matter but has not yet responded.

The Criminal Division has also received from INS its recommendations that legal action be initiated under 8 U.S.C. §1451(a) to revoke the naturalization of seven naturalized citizens who are alleged to have committed atrocities in Europe. The Division has reviewed the material submitted

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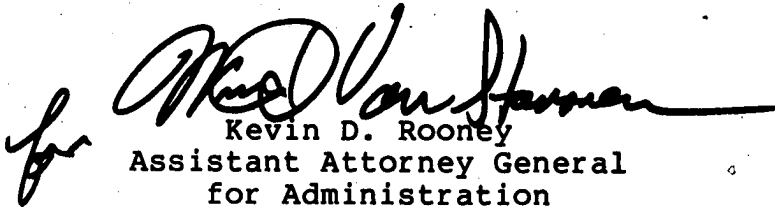
APPENDIX IV

by INS and referred each case to the appropriate United States Attorney. A complaint was filed in each case, and the cases are now at various stages of litigation, as indicated in the draft report.

We noted that some files, which your investigators requested, were not reviewed because of time constraints. Should you need additional information you may contact representatives of INS and the files will be made available for review.

We appreciate the opportunity given us to comment on the report. If you have any additional questions, please feel free to contact us.

Sincerely,


Kevin D. Rooney
Assistant Attorney General
for Administration

GAO Note: Page numbers cited in this appendix do not correspond to page numbers in the final report.

APPENDIX V

APPENDIX V



DEPARTMENT OF STATE

Washington, D.C. 20520

May 8, 1978

Mr. J. K. Fasick
Director
International Division
U.S. General Accounting Office
Washington, D. C.

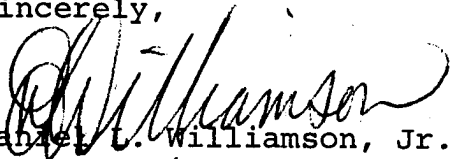
Dear Mr. Fasick:

I am replying to your letter of May 1, 1978, which forwarded copies of the draft report: "Investigation and Prosecution of Alleged Nazi War Criminals Residing in the United States--A Lack of Process Surrounded by Controversy."

The enclosed comments were prepared by the Assistant Secretary for the Bureau of Consular Affairs.

We appreciate having had the opportunity to review and comment on the draft report. If I may be of further assistance, I trust you will let me know.

Sincerely,


Daniel L. Williamson, Jr.
Deputy Assistant Secretary
for Budget and Finance

Enclosure: As stated

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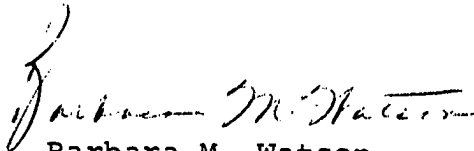
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MAY 5 1978

GAO DRAFT REPORT: "INVESTIGATION AND PROSECUTION
OF ALLEGED NAZI WAR CRIMINALS RESIDING IN THE UNITED
STATES--A LACK OF PROCESS SURROUNDED BY CONTROVERSY"

The Department of State appreciates the opportunity to comment on the draft report concerning the investigation and prosecution of alleged Nazi war criminals in the United States. We have reviewed the report and have found it to be generally a fair and accurate reflection of the record. We would like to emphasize, however, that the record shows that the Department of State has consistently, with but one exception, cooperated fully with the Immigration and Naturalization Service in providing judicial and other assistance.

In the early 1960's, the State Department did recommend that approaches not be made to the Eastern European countries for evidence about the cases since in our judgment at that time, such an action would have been an invitation to a propaganda response and would not have served the interests of justice. As the report correctly points out, our caution in so advising the Immigration and Naturalization Service was understandable, given the international political climate of the time.



Barbara M. Watson
Assistant Secretary
Bureau of Consular Affairs



OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE
WASHINGTON, D. C. 20301

10 MAY 1978

COMPTROLLER
(Administration)

Mr. Victor L. Lowe
Director, General Government
Division
United States General
Accounting Office
Washington, D.C. 20548

Dear Mr. Lowe:

We have reviewed your proposed report "Investigation and Prosecution of Alleged Nazi War Criminals Residing in the United States -- A Lack of Progress Surrounded by Controversy" and have met with your representatives concerning that portion of your report on page 61 that deals with matters pertaining to the Department of Defense. Enclosed is a copy of the final draft of that page. This letter formalizes our concurrence with its contents.

We trust our response to your April 7, 1978, letter request for records in support of your report was satisfactory. All available pertinent DoD records were provided your representative for review by April 28.

If there are any questions concerning the DoD data contained in the draft, please have your project officer contact Lieutenant Colonel Richard B. Webb, 697-9678.

Sincerely,

A handwritten signature in cursive script, appearing to read "D. O. Cooke".

D. O. Cooke
Deputy Assistant Secretary of Defense

Enclosure

GAO Note: Enclosure not included.
The page number cited does not correspond
to the page number in the final report.

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