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THE AFTERMATH OF NUREMBERG . . . THE PROBLEMS OF SUSPECTED WAR CRIMINALS IN AMERICA

I. INTRODUCTION

Treblinka. Auschwitz. Sobibor. The mere mention of these places and others like them is a devastating reminder of the ultimate experience in human suffering. These were a few of the many concentration camps -- death camps -- designed to carry out Hitler's Final Solution: to exterminate as many Jews, Slavs, Gypsies, and Homosexuals as possible and create a supreme Aryan¹ society. Millions upon millions of innocent civilians would suffer miserable deaths before the liberation would come.² Who were these persecutors? While the Nazis³ devised "the plan," supplied the materials and man-power to build the camps, and supervised these atrocities, only a few of the death camps were actually located in Germany. The camps were situated in various Slavic countries which had capitulated under Nazi onslaught.⁴ To assist them in their crimes, the Nazis obtained the cooperation of some of the local people and prisoners of war.⁵ Whether their participation was voluntary or not,

1. According to Hitler, the Aryan race, similar to the Nordic people, was composed of "tall, blond, thin, blue-eyed, large-boned Germans who looked like Gods." L.L. SNYDER, *HITLER AND NAZISM* 94 (1961). Hitler believed the Aryan race was superior to all others, and concluded that Germany could be a world power only after the Aryan race was "purified" of all "imperfections" which had been the result of intermarriage with "inferior races." *Id.* at 94-95. For a further explanation of this "theory," see A. HITLER, *MEIN KAMPF* 160-87 (J. Murphy trans. 1981).

2. It is estimated that the number of Jews killed in this manner was at least five million. G. FLEMING, *HITLER AND THE FINAL SOLUTION* 193 (1982); Y. BAUER, *A HISTORY OF THE HOLOCAUST* 335 (1982). Approximately ten million other civilians were killed similarly. M. GILBERT, *THE HOLOCAUST* 824 (1985). These figures were based on official records and are generally deemed to be conservative estimates. G. FLEMING, *supra* at 193.

3. Nazi is German for "Nationalsozialist." WEBSTER'S NEW COLLEGIATE DICTIONARY 760 (1979). The Nazi party was "the German Fascist Party controlling Germany from 1933-1945 under Adolph Hitler." *Id.*

4. Dachau (near Munich), Buchenwald (near Weimer), Sachsenhausen and Oranienburg (near Berlin) were all in Germany. W.L. SHIRER, *THE RISE AND FALL OF THE THIRD REICH* 272 (1960). Auschwitz, Belzec, Treblinka, Sobibor, and Chelmo were in Poland. *Id.* at 967. These camps all used the gas chamber as the principle method of murder. *Id.* Smaller camps located near Riga (Latvia), Vilva and Kaunas (Lithuania), and Lviv (Ukraine) killed prisoners by shooting them. *Id.*

5. A. RYAN, *QUIET NEIGHBORS* 8-19 (1984). See, e.g., Feodor Fedorenko, *infra* notes 128-50 and accompanying text. Fedorenko was a Soviet soldier who was captured immediately after the Nazis invaded the Soviet Union, and then conscripted by the Nazis to serve at Treblinka as a guard. *United States v. Fedorenko*, 455 F. Supp. 893, 900 (S.D. Fla. 1978).

their actions, along with the Nazis', would result in the cruel and senseless deaths of millions of people.

After the war, many of these people would find their way to America. Posing as displaced persons,⁶ and lying on their visa applications, they were able to enter the United States, literally coming in "through the front door."⁷ Once in America, they would apply for citizenship, maintain a low-profile, and live in virtual anonymity. Not wanting to call attention to themselves or their past, they lead very uneventful, normal lives.⁸ Presently, most of these people are retired and look forward to the last few quiet years life has left to offer. However, simple justice requires that these people, regardless of their age or post-war activities, be tried for their crimes,⁹ just as high-ranking Nazis in the upper echelon of the Third Reich¹⁰ were tried in Nuremberg after the war.¹¹

The prosecution and conviction of war criminals means more to the international community than a particular sovereign merely punishing a single seventy-five year old man. The continuing search for war criminals is a symbol of international cooperation. It also provides a warning to other violators of international law: national borders do not provide safe haven for criminals. Criminals will be

See also John Demjanjuk, *infra* notes 252-305 and accompanying text. Demjanjuk was a Soviet soldier who was captured at the Crimean Front and subsequently operated the deadly gas chamber as a guard at Treblinka. *United States v. Demjanjuk*, 518 F. Supp. 1362, 1364 (N.D. Ohio 1981); Rabin, *Israel Court Convicts Demjanjuk of Atrocities at Treblinka Camp*, N.Y. Times, Apr. 19, 1988, at A1, col. 2.

6. See *infra* notes 74-78 and accompanying text.

7. A. RYAN, *supra* note 5, at 5. Those who immigrated to America did so with "all their papers in order." *Id.* They came "by the thousands, through the openly deliberate public policy of [the United States], formulated by Congress and administered by accountable officials." *Id.* The effect was that these people were virtually "invited" to America. *Id.* at 28.

8. *Id.* at 6.

9. See *infra* notes 43-45 and accompanying text.

10. Third Reich literally means "Third Empire." LANGENSCHIEDT, GERMAN-ENGLISH ENGLISH-GERMAN DICTIONARY 215 (1970). The Third Reich was proclaimed in Berlin on January 30, 1933; its leader was Adolf Hitler. W.L. SHIRER, *supra* note 4, at 5. The Third Reich evolved from the Weimar Republic (1919-33) as well as from the growing popularity of the Nazi Party in Germany from 1925-1933. *Id.* at 2-5, 117-50.

11. Those tried at Nuremberg in 1946 were considered to be top leaders of the Third Reich. A. TUSA & J. TUSA, THE NUREMBERG TRIAL 93-94 (1984). The 22 defendants held government positions such as Deputy Fuhrer (second in command under Hitler, Rudolf Hess), Head of the Party Chancellery (Nazi Party "whip," Martin Bormann), Supreme Commander of the German Armed Forces and President (Karl Doenitz), and Commander-in-Chief of the Prussian Police and Gestapo (Hermann Goering) to name a few. *Id.* at 494-97.

handed over to prosecutors to be properly tried before a competent court. The punishment of war criminals in particular is symbolic. Whether the offender is imprisoned or executed, the message is the same: regardless of the time and money needed to do so, criminals will be held responsible for their acts.

Over the last two decades there has been a rejuvenation of interest in the events of the World War II era, especially in the atrocities of the Holocaust.¹² Various lectures,¹³ movies,¹⁴ books and articles,¹⁵ libraries,¹⁶ and memorials to those who died in the Holocaust¹⁷ are evidence of the renewed fascination in this area.

12. The Holocaust (in Hebrew, Sho'ah or Hurban. 6 THE NEW ENCYCLOPEDIA BRITANNICA 13 (15th ed. 1987)) generally refers to that period of time in Europe between the years 1933 and 1945 when Jews were persecuted by the Nazis. *Id.* This reign of terror "was marked by increasing barbarism of methods . . . which climaxed in the 'final solution'." *Id.*

13. In 1976 Colgate University enrolled 141 students in its "Literature of the Holocaust" class. A. RYAN, *supra* note 5, at 333. In 1979, high schools across the nation initiated pilot programs on the study of the Holocaust. *Id.* The United States Department of Education funded a Holocaust education program entitled "Facing History and Ourselves" which was taught to 20,246 teenagers in the 1986-87 academic year. *Fund Denied for Holocaust course is Upheld*, N.Y. Times, Jan. 5, 1989, at A19, col. 1. The Government denied further funding for the program in 1989. *Id.*

14. There have been numerous movies made about the Nazi brutalities and murders of the Holocaust. See, e.g., *Holocaust* (NBC television broadcast in four parts, 1978); *Sho'ah: An Oral History of the Holocaust* (PBS television broadcast, 1985) (produced by Claude Lanzmann); *Playing for Time* (NBC television broadcast, 1984) (based on the book of the same title by Fania Fenelon (1977) about a musician in the orchestra which greeted new arrivals to Auschwitz); *Missing Hero* (BBC television broadcast, 1983) (based on the book by John Bierman, *RIGHTEOUS GENTILE* (1981) about Raoul Wallenberg who helped hundreds of Jews escape Nazi persecution by smuggling them out of Europe); *Escape from Sobibor* (CBS television broadcast, 1987, a Chrysler Showcase Presentation) (based on the book of the same title by Richard L. Rashke (1982)); *Dauchau: Time to Forget* (UPI television News, 1972). See also *The House on Garibaldi Street* (based on the book of the same title by Isser Harel (1975)); *About the Holocaust* (Anti-Defamation League, 1983); *Anne Frank in Maine* (Anti-Defamation League, 1983); *The Diary of Anne Frank* (20th Century Fox, 1959); *Children of the Holocaust* (Joseph S. Kutzreba, 1983); *Christopher Close-up: Child of the Holocaust* (Anti-Defamation League, 1983); *Kitty: A Return to Auschwitz* (CBS-Films Inc, 1981); *The Legacy of Anne Frank* (CPM McGraw Hill, 1969); *Exodus* (1947) (based on the book by Leon Uris).

15. The catalogue of books and articles discussing the Holocaust, especially personal accounts of experiences in concentration camps, has grown significantly.

16. For example, The Holocaust Center of Northern California in San Francisco; The Central Agency for Jewish Education in Miami, Florida; The B'nai Beshurun Temple on the Heights -- Jack Jacobson Memorial Library in Pepper Pike, Ohio. 1 DIRECTORY OF SPECIAL LIBRARIES & INFORMATION CENTERS 622, 288, 171 (12th ed. 1989).

17. The United States Government commissioned a Holocaust memorial to be constructed in Washington, D.C. A. RYAN, *supra* note 5, at 335. New York City is presently developing plans for a Holocaust Memorial/Museum. Barsky, *Holocaust Museum and Hotel Linked*, N.Y. Daily News, Sept. 25, 1988, at 16, col. 1. The Israeli memorial to the six million Jews who died in the Holocaust, Yad Vashem, is located in Jerusalem. *The Nazi Time: Younger Jews*

Furthermore, the enormous interest in "Nazi-Hunting"¹⁸ can be attributed to Simon Wiesenthal¹⁹ and his incredible, much publicized hunt for Adolf Eichmann (the engineer of the Final Solution).²⁰ Wiesenthal's efforts led to Eichmann's conviction and execution in Israel in 1962.²¹ However, the worldwide failure to bring more of these war criminals to justice has resulted in intense public pressure on the governments of many nations to take action.²²

Try to Comprehend, N.Y. Times, Jan. 4, 1989, at A6, col. 3.

18. A person who searches for Nazi War Criminals is commonly referred to as a Nazi-Hunter. See generally S. WIESENTHAL, *THE MURDERERS AMONG US - THE SIMON WIESENTHAL MEMOIRS* (1967). Usually, the goal of the search is to find the subject in order to prosecute him for war crimes. *Id.*

19. Simon Wiesenthal was born in the Soviet Union and spent four and a half years in Nazi Concentration Camps during World War II. S. WIESENTHAL, *EVERY DAY REMEMBRANCE* (1987) (book jacket blurb). He founded the Vienna Documentation Center for the tracing of War Criminals and has "helped bring to justice 1,100--among them Adolf Eichmann." *Id.* He also established the Simon Wiesenthal Center for Holocaust Studies. *Id.* See also S. WIESENTHAL, *supra* note 18.

20. Adolf Eichmann's official position in the Third Reich was Head of the Jewish Affairs Division of the Reich Security Office. D. RABINOWITZ, *ABOUT THE HOLOCAUST . . . WHAT WE KNOW & HOW WE KNOW IT* 21 (1979). Eichmann was a lower-ranking Nazi official who attended a special secret conference in January, 1942 to determine what was to be done about the so-called "Jewish-Problem." S. WIESENTHAL, *supra* note 18, at 340. At this meeting it was decided that Jews would be deported to the East (mainly Poland), provide forced labor, and then be executed en masse. *Id.* Eichmann was selected to make the appropriate arrangements and oversee the entire operation. *Id.* Because he was responsible for the "success" of the plan, he is generally known as the chief executioner of the Holocaust. 4 *THE NEW ENCYCLOPEDIA BRITANNICA* 396-97 (15th ed. 1987) For an excellent account of Eichmann's life, see H. ARENDT, *EICHMANN IN JERUSALEM* (1963). For an interesting account of the search for and capture of Eichmann, see I. HAREL, *THE HOUSE ON GARIBALDI STREET* (1975).

21. Attorney Gen. of Israel v. Eichmann, 36 I.L.R. 5 (D. Ct. Jerusalem 1961), *aff'd*, 36 I.L.R. 277 (S. Ct. Isr. 1962).

22. For example, in 1987 Canada amended its criminal code to include "war crimes" and "crimes against humanity" as offenses punishable under the law. Criminal Code R.S.C. § 6 (1.91) amended by Bill C-71, 33d Parliament, 2d Sess. June 23, 1987. The law was, in part, a response to the report by the government's Deschenes Commission of Inquiry on War Criminals. Bociurkiw, *Canadian Criminal Code Amendment Tabled*, *Ukrainian Weekly*, May 3, 1987, at 3, col. 3. Australia began intense investigations of more than 200 immigrants suspected of having committed war crimes and is considering amending its 1945 War Crimes Act to permit Australian courts to try such suspects. Mydans, *Australia is Investigating 200 for Nazi Crimes*, N.Y. Times, Feb. 4, 1988, at A5, col. 1. At the last minute the British "backed away" from amending their criminal code to include some sort of provision for the prosecution of war criminals presently living in Great Britain. Goodwin & Oienaar, *Hurd Reluctant to Amend Justice Bill for War Crimes*, *The Independent*, Jan. 19, 1988, at 6, col. 1. Douglas Hurd, the British Home Secretary, however, is not expected to let the issue of war criminals go without action, since public pressure on the Home Office has intensified. *Id.* The pressure is a result of the arrival in London of over 1,500 United Nations War Crimes files which detail charges against suspected war criminals who may be living in Britain. *Id.*; Helm, *Hurd Likely to Rule Out Prosecution of Ex-Nazis*, *The Independent*, Jan. 16, 1988, at

In the United States, a Congressional investigation was ordered in 1985 to determine the whereabouts of Joseph Mengele, the Angel of Death.²³ In addition, a special office in the criminal division of the Justice Department was created to investigate suspected war criminals and, where appropriate, file legal actions against them.²⁴ But how does a government legally try its own citizen for a crime committed over forty years ago, on foreign soil and against foreign civilians? This paper will analyze the procedures used by the United States to address this problem, discuss some notable case examples, and suggest an alternative method to use.

II. HISTORICAL TREATMENT OF WAR CRIMINALS SINCE 1945

World War II was unlike any war previously fought or any war fought since. It was a "great global conflict, the art of war was carried to its ultimate point of sophistication."²⁵ The tools of war, the weaponry, were incredibly refined and developed compared to those used in World War I.²⁶ However, the price for progress was high -- "no conflict in human history had been as destructive to life and property as [World War II]."²⁷ The military casualties, alone, doubled those of World War I, while military expenditures topped

4, col. 4.

23. Josef Mengele was an S.S. "doctor" who spent 21 months at the Auschwitz concentration camp. G.L. POSNER & J. WARE, *MENGELE; THE COMPLETE STORY* xvii (1986). He became "the symbol of the Third Reich's perversion of medicine in pursuit of racist scientific theories. His mocking smile and soft but deadly touch earned him the title 'the Angel of Death.'" *Id.* At Auschwitz, Mengele conducted gruesome experiments on human subjects, particularly on identical twins. *Id.* at 3. He believed that identical twins were the nexus of genetics and if he discovered their "secret," he would be able to control the genetic composition of the European population to bring about Aryan perfection. *Id.* at 3. See generally G. ASTOR, *THE LAST NAZI* (1985). It is believed Mengele died in Paraguay in the early 1980's. S. Res. 14, 99th Cong., 2d Sess., 131 CONG. REC. 2506 (1985). For an excellent account of the life, death, and hunt for Mengele, see generally G.L. POSNER & J. WARE, *supra* and G. ASTOR, *supra*.

24. Pub. L. No. 96-132, 93 Stat. 1050 (1979). The Office of the Special Investigator is part of the Criminal Division of the United States Justice Department. A. RYAN, *supra* note 5, at 62. See also note 86 and accompanying text.

25. G.A. CRAIG, *EUROPE SINCE 1914*, at 658 (3d ed. 1972).

26. *Id.* For example, radar detection systems to track submarines, the jet aircraft, the Schnorkel air mast (which enabled U-boats to stay underwater for weeks without resurfacing), and the atomic bomb. *Id.* at 658-59. For an excellent, concise description of the development of weaponry in World War II, see *id.*

27. *Id.* at 659.

an estimated one trillion dollars.²⁸ Property losses were incalculable -- the Battle of Britain,²⁹ the Occupation of Paris,³⁰ the Nazi invasion of the Soviet Union (Operation Barbarossa),³¹ as well as the results of the atomic bombings on Hiroshima and Nagasaki³² are just a few examples³³ of the extent of the damage incurred.

Recovery from these devastations was difficult. Resolutions to problems were hammered out in various international conferences and treaties.³⁴ While many of the resolutions were vigorously debated, there was a general and undisputed consensus among the Allied powers³⁵ that the Axis powers,³⁶ especially the Nazis, would have to take responsibility for their actions.³⁷

28. *Id.* Seventeen million men died in battle while another eighteen million noncombatants were killed in "one way or another." *Id.*

29. The Battle of Britain began in early August, 1940 and lasted approximately one month. *Id.* at 670. The Nazis planned to systematically bomb Britain into submission. *Id.* The Nazi plan failed but the bombings "killed 51,509 British civilians and damaged or destroyed one out of five British homes." W.R. KEYLOR, *THE TWENTIETH CENTURY WORLD* 190 (1984).

30. The French government capitulated on June 22, 1940 after nearly six weeks of resistance. W.R. KEYLOR, *supra* note 29, at 188. The Nazis occupied France until the liberation in late 1944. *Id.* at 198.

31. Operation Barbarossa began in December, 1940 but the actual invasion commenced in late 1942. G.A. CRAIG, *supra* note 25, at 676. This plan failed because of the Russian winter which arrived three weeks early and immobilized the Nazi troops. *Id.* However, the Nazis captured over a million prisoners of war and conquered a substantial amount of Soviet land. *Id.*

32. The first atomic bomb was dropped on Hiroshima on August 6, 1945 destroying the city and killing over 78,000 civilians. *Id.* at 697. The second atomic bomb was dropped on Nagasaki three days later with similar results. *Id.*

33. *See generally id.* at 659-97; W.R. KEYLOR, *supra* note 29, at 160-205.

34. 21 *THE ENCYCLOPEDIA BRITANNICA* 801 (15th ed. 1987). *See also* Potsdam Conference, July 26, 1945, United States-Great Britain-USSR, 2 *FOREIGN REL.* 285-86 (1945) (calling for the demilitarization of post-war Germany, preparation for the reconstruction of German political life, destruction of the Nazi party and all of its institutions, discussions of reparations); Yalta Conference, Feb. 11, 1956, United States-Great Britain-USSR 3 *FOREIGN REL.* 184-86, 250, 552 (1945) (delineating the zones of occupation, endorsing preliminary plans for a United Nations Organization, determining reparations, and deciding the fate of Poland).

35. The more significant Allied Powers were Great Britain, France, the United States and later the Union of the Soviet Socialist Republic. G.A. CRAIG, *supra* note 25, at 628-697.

36. The Axis Powers comprised the three countries of Germany, Italy, and Japan, and were at war against the Allied nations in World War II. W.R. KEYLOR, *supra* note 29, at 185.

37. Declaration Regarding the Defeat of Germany and the Assumption of the Supreme Authority with respect to Germany by the Governments of the United States of America, the Union of the Soviet Socialist Republic, the United Kingdom, and the Provisional Government of the French Republic, June 5, 1945, 60 Stat. 1649, T.I.A.S. No. 1520, 68 U.N.T.S. 189.

Article II

- (a) The Principal Nazi leaders as specified by the Allied Representatives, and all

By 1943, the United States had recognized the horrors of the Nazi reign of terror and called for the punishment of those responsible for the outrageous atrocities committed in eastern and central Europe against the civilian populations, and especially for the mass murder of Jews.³⁸ The Moscow Declaration of 1943³⁹ mandated that Nazis who had participated in war atrocities and crimes should be sent back to the countries in which their crimes were committed, to be tried and punished according to the laws of those nations.⁴⁰ Furthermore, the London Agreement of 1943⁴¹ established the International Military Tribunal (IMT) for the purpose of trying war criminals "whose offenses have no particular geographical location whether they be accused individually or in their capacity as members" of the Nazi party.⁴² The International Military Tribunal found jurisdiction to prosecute such persons if their acts constituted crimes against peace,⁴³ war crimes,⁴⁴ and/or crimes against humanity.⁴⁵

persons from time to time named or designated by rank office or employment by the Allied Representatives as being suspected of having committed, ordered or abetted war crimes or analogous offenses, will be apprehended and surrendered to the Allied Representatives.

Id., art. II, § a.

38. Nazi Outrages Resolution, S. Res. 9, 57 Stat. 721 (1943). "That the dictates of humanity and honorable conduct in war demand that . . . those guilty, directly or indirectly, of these criminal acts [atrocities inflicted upon the civilian populations of Nazi occupied countries] shall be held accountable and punished in a manner commensurate with the offenses for which they are responsible." *Id.* at 722.

39. Moscow Declaration, Nov. 1, 1943, United States-Great Britain-USSR, Annex X, 1943 FOREIGN REL.(I) 749. The Moscow Conference met from October 19 to October 30, 1943. *Id.*

40. *Id.*

41. The London Agreement, Aug. 8, 1945, United States-Great Britain-USSR-French Republic, 59 Stat. 1544, E.A.S. No. 472, 82 U.N.T.S. 275.

42. *Id.*

43. *Id.* Crimes against peace include "planning, preparation, initiation or waging of a war of aggression, or a war in violation of international treaties, agreements or assurances or participation in a common plan or conspiracy for the accomplishment of any of the foregoing." *Id.*

44. *Id.* War crimes are defined as:

violations of the laws or customs of war. Such violations shall include, but not be limited to, murder, ill-treatment or deportation to slave labor or for any other purpose of civilian population of or in occupied territory, murder or ill-treatment of prisoners of war or persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns or villages, or devastation not justified by military necessity.

Id.

45. *Id.* Crimes against humanity include:

murder, extermination, enslavement, deportation, and other inhumane acts

Under these legal theories, the IMT issued indictments in 1945 against twenty-four Nazis who had been considered major war criminals -- nineteen of the twenty-two who eventually stood trial were found guilty at Nuremberg in 1946.⁴⁶ The Nuremberg Trial was only the first step in bringing these criminals to justice.

The proceedings of the Nuremberg Trial profoundly affected the United Nations, which ultimately passed many resolutions calling for international cooperation regarding war criminal prosecutions.⁴⁷ By unanimous vote, the United Nations General Assembly reaffirmed the principals of both the Moscow Declaration and the London Agreement.⁴⁸ Shortly thereafter, genocide was unanimously accepted as a crime under international law.⁴⁹ This "new concept" of the crime of genocide as a separate crime from murder was defined as "a denial of the right of existence of entire human groups, as homicide is the denial of the right to live of individual human beings."⁵⁰ The General Assembly then called for the member states to enact the necessary legislation for the prevention and punishment of such crimes and to cooperate with each other in order to facilitate the speedy prevention of such acts and order the ap-

committed against any civilian population, before or during the war, or persecutions on political, racial, or religious grounds in execution of or in connection with any crime within the jurisdiction of the [International Military] Tribunal, whether or not in violation of the domestic law of the country where perpetrated.

Id.

46. The Nurnberg Trial, 6 F.R.D. 69 (IMT 1946). For example, Hjalmar Schacht, Hane Fritsche, and Franz von Papen were acquitted of all charges and released from custody. *Id.* Robert Ley committed suicide in prison a week after his indictment; Gustov Krupp von Bohlen und Hallbach was found to be unfit to stand trial at that time and was held in custody until such time as he was fit; Martin Bormann was tried *in absentia*. *Id.* Twelve of those found guilty at Nuremberg were eventually executed and twelve others were executed in "follow-up" trials. Warder, *Viewpoint: Collaboration with Communists to Prosecute Nazis, Part I*, Ukrainian Weekly, July 26, 1987, at 5, col. 1. Of the 13 million Nazis who could have been charged with various war crimes, 3.5 million were actually charged, and approximately 2.5 million were amnestied without trial. *Id.* For an excellent account of the proceedings at Nuremberg, see generally A. TUSA & J. TUSA, *THE NUREMBERG TRIAL* (1984).

47. See *infra* notes 48-54 and accompanying text.

48. Extradition and Punishment of War Criminals Resolution, G.A. Res. 3(I), 1 U.N. GAOR (32d plen. mtg.) at 9, U.N. Doc. A/64 (1946) (recommending that United Nations members "take all the necessary measures to cause the arrest of those war criminals . . . and to cause them to be sent back to the countries in which their abominable deeds were done." *Id.*); G.A. Res. 95(I), 1 U.N. GAOR (55th plen. mtg.) at 188, U.N. Doc. A/64/Add.1 (1946) (affirmation of the principles of international law recognized by the Charter of the Nuremberg Tribunal).

49. G.A. Res. 96(I), 1 U.N. GAOR (55th plen. mtg.) at 188, U.N. Doc. A/64/Add.1 (1946).

50. *Id.*

propriate punishments.⁵¹ Similar resolutions have been passed by the General Assembly periodically over the past forty years.⁵² At least one resolution has all but accused specific member nations of harboring and protecting Nazis within their borders,⁵³ obviously in reference to some South American countries reputedly notorious for such acts.⁵⁴

III. JURISDICTION OF INTERNATIONAL CRIMES

Traditionally, jurisdiction of a court over a defendant in a criminal proceeding in the United States is based upon the locale of the alleged crime.⁵⁵ However, in regard to war crimes, this basis is lost since the crimes were not committed within United States

51. *Id.* The United States finally approved this provision in 1988. *Anti-Genocide Law*, *Newsday*, Nov. 5, 1988, at 9, col. 1.

52. G.A. Res. 260 (III), 3 U.N. GAOR at 174, U.N. Doc. A/810 (1948) (genocide is an international crime and should be punished); G.A. Res. 489 (V), 20 U.N. GAOR Supp. (No. 20) at 77, U.N. Doc. A/1775 (1950) (possibility of establishing an international judicial court for the trial of persons charged with genocide and other crimes); G.A. Res. 2583 (XXIV), 30 U.N. GAOR Supp. (No. 30) at 58, U.N. Doc. A/7630 (1969) (the arrest and punishment of persons who have committed war crimes is "an important element in the prevention of such crimes, the protection of human rights, and fundamental freedoms." *Id.*); G.A. Res. 2840 (XXVI), 29 U.N. GAOR Supp. (No. 29) at 88, U.N. Doc. A/8429 (1971); G.A. Res. 3020 (XXVII) U.N. GAOR Supp. (No. 30) at 51, U.N. Doc. A/8730 (1972); G.A. Res. 3074 (XVIII) at 78, U.N. Doc. A/9030 (1973).

53. G.A. Res. 2712 (XXV), 28 U.N. GAOR Supp. (No. 28) at 78, U.N. Doc. A/8028 (1970). "[M]any war criminals and persons who have committed crimes against humanity are continuing to take refuge in the territories of certain states and are enjoying protection." *Id.*

54. S. WIESENTHAL, *supra* note 18. Traditionally, most South American countries have "a strong conception of political sanctuary." *Id.* at 158. This is especially true since many of these "guests" are social acquaintances and political supporters of the "right" people. *Id.* Joseph Mengele enjoyed the protection of Paraguay after many years. S. Res. 14, 99th Cong., 2d Sess., 131 CONG. REC. 2506 (1985). Adolph Eichmann hid in Argentina until he was kidnapped and brought to Israel. *WORLD ALMANAC* 733 (Bicentennial ed. 1976). Klaus Barbie was finally expelled from Bolivia and sent to France to stand trial in 1983. A. RYAN, *supra* note 5, at 273; B. MURPHY, *THE BUTCHER OF LYON, THE STORY OF INFAMOUS NAZI KLAUS BARBIE* 305 (1983). Joseph Leo Schwammberger was finally arrested after living in Argentina for years. *Alleged Nazi Criminal*, *Newsday*, Nov. 15, 1987, at 12, col. 2.

55. FED. R. CRIM. P. 18 (with respect to venue, "[e]xcept as otherwise permitted by statute . . . the prosecution shall be had in the district in which the offense was committed." *Id.*); 18 U.S.C. § 3231 (1982) ("The district courts of the United States shall have original jurisdiction, exclusive of the courts of the States, of all offenses against the laws of the United States." *Id.*); U.S. CONST. art. III, § 2, ¶ 3 ("The Trial of all crimes . . . shall be held in the State where the said Crimes shall have been committed." *Id.*); U.S. CONST. amend. VI ("In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed." *Id.*).

borders.⁵⁶ Therefore, the government cannot try a person in United States courts as a war criminal, due to lack of jurisdiction. Although the United States cannot prosecute such criminals, it is its duty under international law to assist those nations which claim jurisdiction in the interest of justice and human rights.⁵⁷ The United States has generally attempted to expel alleged Nazi war criminals from this country, therefore subjecting those persons to foreign jurisdiction and criminal proceedings (if that nation so desires).⁵⁸

The question of jurisdiction in a criminal proceeding where the crime is committed outside the territory of the convicting state is the foundation for any legal proceeding in international law.⁵⁹ It is generally accepted that there are five bases of jurisdiction over extraterritorial crimes:⁶⁰ (1) territorial; (2) nationality; (3) protective; (4) passive-personality; and (5) universality.⁶¹

Under the territorial principle, a state has jurisdiction over conduct which occurs within the territorial boundaries of the convicting state.⁶² Under such a theory, for example, Poland would be permitted to try someone for war crimes committed at Treblinka or Auschwitz since the conduct at issue occurred within the borders of Poland.⁶³ The nationality or allegiance of the defendant determines the forum of jurisdiction under the nationality theory.⁶⁴

56. Moeller, *United States Treatment of Alleged Nazi War Criminals: International Law, Immigration Law, and the Need for International Cooperation*, 25 VA. J. INT'L L. 793, 846 (1985).

57. G.A. Res. 3 (I), 1 U.N. GAOR (32d plen. mtg.) at 6, U.N. Doc. A/64 (1946).

58. For example, the case of Feodor Fedorenko, *infra* note 128 and accompanying text. Fedorenko was deported to the Soviet Union in 1984. *TASS Announces Execution of Fedorenko*, Ukrainian Weekly, Aug. 2, 1987, at 3, col. 1. In 1986, the Soviets tried him for treason and for the mass murder of foreign citizens. *Id.*

59. Blakesley, *Jurisdiction as Legal Protection Against Terrorism*, 19 CONN. L. REV. 895, 904-05 (1987).

60. An extraterritorial crime is one committed outside the jurisdiction of the state where the defendant is tried. BLACK'S LAW DICTIONARY 528 (5th ed. 1979).

61. Blakesley, *supra* note 59, at 906.

62. *Id.* at 906 n.30. The territorial principle has its foundation in the general principle that a state has the power and duty to prescribe and enforce "rules of conduct within its physical boundaries." 2 M.C. BASSIOUNI, INTERNATIONAL EXTRADITION - UNITED STATES LAW AND PRACTICE, § VI, at 2-1 (1983).

63. This theory would also be applicable to the case of Klaus Barbie who was tried in France for crimes committed while he was stationed in Lyon during the German occupation. *See infra* note 309.

64. Blakesley, *supra* note 59, at 906 n.30. The "nationality theory, like the territorial principle, is based upon state sovereignty which provides, in part, that nationals of a state are entitled to the state's protection even when they are outside its territorial boundaries." 2

Under this theory, the Soviet Union would have jurisdiction over Feodor Fedorenko since Fedorenko was a Soviet citizen (subsequent to his American citizenship denaturalization) even though the crimes he committed occurred in Poland.⁶⁵ The protective principle, also known as the "injured-forum theory," is based on the premise that the acts committed are particularly harmful to the national interest of the state asserting jurisdiction.⁶⁶ Israeli jurisdiction over war criminals has been asserted under the passive-personality theory based upon Israel's existence as a Jewish State.⁶⁷ The passive-personality theory is principled on the nationality of the *victim* of the crime alleged.⁶⁸ Lastly, the universality theory allows any state to assert jurisdiction in a proceeding where the crimes alleged to have been committed are considered to be "particularly heinous or harmful to humankind generally."⁶⁹ This theory is commonly applied in situations where terrorist activity is waged against a nation or its nationals.⁷⁰ Moreover, the universality theory has been used to obtain personal jurisdiction over an individual accused of war crimes.⁷¹

Because the United States has generally refrained from asserting broad extraterritorial jurisdiction,⁷² it will usually seek to expel an alleged war criminal from its borders. Exportation and deportation are two of the most frequently used methods to expel a person from the United States. The laws governing deportation and extradition are straightforward enough, but complications arise from the nature

M.C. BASSIOUNI, *supra* note 62, § VI, at 3-1.

65. United States v. Fedorenko, 455 F. Supp. 893, 896 (S.D. Fla. 1978).

66. Blakesley, *supra* note 59, at 906 n.30. This theory is basically a "'longarm' jurisdictional theory which allows a state to reach beyond its physical boundaries to protect its interests from harmful effects arising from conduct abroad." 2 M.C. BASSIOUNI, *supra* note 62, § VI, at 5-1.

67. See Attorney Gen. of Israel v. Eichmann, 36 I.L.R. 18 (D. Ct. Jerusalem 1961), *aff'd*, 36 I.L.R. 277 (S. Ct. 1962).

68. Blakesley, *supra* note 59, at 906 n.30. It was under this theory that Israel exercised jurisdiction over Adolf Eichmann. *Eichmann*, 36 I.L.R. at 18.

69. Blakesley, *supra* note 59, at 906 n.30. Such crimes are often referred to as *delicti jus gentium*, crimes referred to by the law of nations. 2 M.C. BASSIOUNI, *supra* note 62, § VI, at 6-1.

70. Blakesley, *supra* note 59, at 911.

71. Demjanjuk v. Petrovsky, 776 F.2d 571, 581-82 (6th Cir. 1985).

72. Lubet & Reed, *Extradition of Nazis from the United States to Israel: A Survey of Issues in Transnational Criminal Law*, 22 STAN. J. INT'L L. 1, 30 (1986) (the United States only relies on the universality and protective principle). Historically, the United States has exercised broad extraterritorial jurisdiction over persons accused of piracy. *Id.*

of the facts in dispute and the people involved in these circumstances.

IV. DEPORTATION

At the end of World War II, Congress estimated that approximately eight million people had been liberated from concentration camps, released as prisoners of war, freed from forced labor in Germany, or had fled into occupied territory⁷³ to escape the advancing Russian army.⁷⁴ Of these eight million people, seven million eventually repatriated, leaving one million people without a homeland in the Allied zones of Germany, Austria, and Italy.⁷⁵ To assist the European states' resolution of this refugee problem, Congress passed the Displaced Persons Act (DPA) in 1948.⁷⁶ The DPA was designed to provide limited access into the United States for eligible displaced persons from Europe.⁷⁷ Any person who had aided or participated in the Axis activities was automatically excluded from eligibility as was any person who had willfully made a misrepresentation to the Displaced Persons Commission in order to gain admission.⁷⁸

Approximately 400,000 persons came to the United States under the DPA.⁷⁹ These people were primarily from Eastern European countries who had feared forces from both the East and West: Hitler and Stalin.⁸⁰ To gain admission to America after the war,

73. The Occupied Territories included virtually all of Europe: France, Belgium, the Netherlands, Denmark, Norway, Finland, Czechoslovakia, Austria, Hungary, Yugoslavia, Rumania, Bulgaria, Albania, Greece (including Crete), Poland, Ukraine, Lithuania, Estonia, and Latvia. W.L. SHIRER, *supra* note 4, at xi. Italy (including Sicily, Sardinia, and Corsica) Germany, and East Prussia comprised the Axis powers in Europe. *Id.*

74. Legislative History of Displaced Persons Act, 1948 U.S. CODE CONG. SERV. 2028, 2035.

75. *Id.*

76. Displaced Persons Act, ch. 647, 62 Stat. 1009 (1948).

77. *Id.* at 1010. The number of visas which could be issued by the United States during the two years following the passage of the DPA could not exceed 202,000. *Id.* For example, "not less than 40 per centum of the visas issued . . . shall be available exclusively to eligible displaced persons whose place of origin or country of nationality has been de facto annexed by a foreign power." *Id.*

78. *Id.* at 1013-14. "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 to the United States." *Id.*

79. Warder, *supra* note 46; A. RYAN, *supra* note 5, at 25.

80. Most notably, the victim-states of this double onslaught were Poland, Ukraine, Rumania, Lithuania, Latvia, Estonia, Bulgaria, and Hungary. G.A. CRAIG, *supra* note 25, at

many refugees hid details about their past, facts concerning their birth place, wartime activities, and other specifics regarding their whereabouts during the war.⁸¹ Based on these misrepresentations, the United States has legal grounds to strip these naturalized Americans of their citizenship and expel them from the country through deportation proceedings under the provisions expressed in the DPA.⁸²

Deportation is not a criminal proceeding; it is civil in nature and was designed in part to expel those aliens who entered the country but should have been prohibited from immigration on the premise that certain types of aliens are undesirable.⁸³ Before a citizen may be deported, however, he must first be denaturalized so as to become an "alien."⁸⁴ The denaturalization proceedings commence when a United States Attorney files a suit, showing good cause, alleging the defendant obtained his certificate of naturalization illegally or through misrepresented facts.⁸⁵ Although denaturalization is a civil suit, the criminal division of the United States Justice Department authorizes the United States Attorney to file the denaturalization suit against a war criminal.⁸⁶ The Office of the

651-61, 676-78. These Soviet citizens believed that by joining the Nazi advance into the Soviet Union, Stalin would capitulate and be forced to free their homelands from Soviet domination. Warder, *supra* note 46, at 5; It is estimated that about one million Soviets joined the Nazi army, and many others aided the Nazis in various wartime activities and war crimes. *Id.*; A. RYAN, *supra* note 5, at 9. "Some . . . Ukrainians saw in the Germans their liberators from Soviet rule. These Ukrainians were a nationalistic people, restless for change and unhappy to be the 'Ukrainian Soviet Socialist Republic' ruled from Moscow through local Ukrainian communists." *Id.* The 1941 German advance into the Soviet Union resulted in large numbers of military equipment and troops being captured by the Nazis - over 635,000 men, 6,400 tanks, and 6,000 guns. H.M. HYDE, *STALIN: THE HISTORY OF A DICTATOR* 442 (1971). In addition, thousands deserted the Soviet army to join the enemy, while many civilians welcomed the advancing German army. "It was only when Hitler appeared in his true colours as a brutal and merciless conqueror that the inhabitants of the occupied territories realized that they were merely exchanging one form of domestic tyranny for another." *Id.* See generally W. STRIKFELDT, *AGAINST STALIN AND HITLER 1941-1945* (D. Footman trans. 1973).

81. See *Did Your Grandfather Tell the Whole Truth When He Fled to America?*, Christian Sci. Monitor, Oct. 8, 1986, at 9, col. 1.

82. Displaced Persons Act, ch. 647, 62 Stat. 1009, 1013 (1948).

83. Moeller, *supra* note 56, at 833.

84. Cf. 8 C.F.R. § 340.11 (1988).

85. 8 U.S.C. § 1451(a) (1982).

86. See Pub. L. No. 96-132, 93 Stat. 1050 (1979) (creating the Office of the Special Investigator).

Special Investigator (OSI)⁸⁷ establishes the initial case against the person and determines whether denaturalization and deportation proceedings should be filed. The target of the investigation may be notified by the OSI at any time during this pre-trial investigation, which may last for years.⁸⁸

Once the targeted individual is denaturalized, deportability must be established by "clear and convincing evidence" and the judicial decision must be based on "reasonable, substantive and probative evidence."⁸⁹ If he is found to be deportable, the alien must then designate the country to which he wishes to be sent, and that country must accept him.⁹⁰ The Immigration and Naturalization Service (INS) may disregard the alien's choice if the choice country is deemed to be prejudicial to the interests of the United States.⁹¹

V. EXTRADITION

The extradition laws of the United States have evolved without any major changes from the first national extradition legislation in 1848.⁹² The process is a criminal action brought against an individual, on behalf of a foreign state, who is either accused of a crime, has been convicted but has escaped, or has been convicted *in absentia*.⁹³ The United States may only surrender a person,

87. A. RYAN, *supra* note 5, at 246-51. The OSI was formed in 1979 for the purpose of bringing suspected war criminals to trial. *Id.* The Office must first identify people who are suspected of war crimes. *Id.* After the targets are determined, it is the job of the OSI to investigate and file the complaint against them and finally lead the team of prosecutors. *Id.*

88. *Id.* For example, the OSI began its investigation of John Demjanjuk in 1979, when a Treblinka survivor had recognized Demjanjuk's photo in a picturespread during an identification investigation of Feodor Fedorenko. *Id.*

89. J. MURPHY, PUNISHING INTERNATIONAL TERRORISTS: THE LEGAL FRAMEWORK FOR POLICY INITIATIVES 85-86 (1985).

90. 8 C.F.R. § 237.6(b) (1988). An alien may be deported to the country from which the alien entered the United States. *Id.* If that country refuses to accept him, he may be sent to any country which will accept him. *Id.* § 237.6(b)(4).

91. 8 U.S.C. § 1253(a) (1982). See also J. MURPHY, *supra* note 89, at 83.

92. 1 M.C. BASSIOUNI, *supra* note 62, § II, at 2-2. There was no national legislation concerning extradition in the United States before 1848. *Id.*

93. 18 U.S.C. §§ 3184, 3186 (1982). See Lubet & Reed, *supra* note 72, at 4. *Eg.*, Demjanjuk v. Petrovsky, 612 F. Supp. 571 (N.D. Ohio 1985). Demjanjuk was accused of war crimes by the Israelis and subsequently extradited to Israel. *Id.*; *In re Doherty*, 599 F. Supp. 270 (S.D.N.Y. 1984). Doherty was held in prison in Belfast, Northern Ireland pending trial for the murder (and other related offenses) of a British Army captain in 1980. *Id.* at 272. On June 10, 1981 after the trial had ended but before a verdict was rendered, Doherty escaped from the prison. *Id.* He was convicted *in absentia* on June 12, 1981 for murder,

American citizen or otherwise, if the appropriate treaty and treaty provisions exist,⁹⁴ including a list of the particular crimes deemed to be extraditable.⁹⁵ If a person is suspected by the requesting country of having committed one or more of these crimes,⁹⁶ an authorized agent of that country may then file a formal request for the surrender of that individual into its custody.⁹⁷ At the conclusion of an extradition hearing, a district court may then certify the individual extraditable and surrender him to the proper authorities.⁹⁸ It must be noted, however, that the language of the extradition statutes does not impose an *obligation* on the United States to surrender an individual, even if he is deemed to be extraditable by a competent court.⁹⁹ The extradition, itself, is always subject to the discretion of the Executive Branch.¹⁰⁰

Once a formal request has been filed by the requesting nation, the United States government may file a complaint on behalf of the requesting state with a court of competent jurisdiction.¹⁰¹ The complaint should include the following: "(1) the identity of the individual sought; (2) the validity of the extradition treaty between

attempted murder, illegal possession of firearms and ammunition, and membership in the outlawed Irish Republican Army (I.R.A.). *Id.* Great Britain seeks Doherty's extradition as an escapee and as a convicted murderer. *Id.*

94. 18 U.S.C. §§ 3181, 3184 (1982). The extradition treaty between the United States and the requesting country must include the specific crime charged to the defendant, and the treaty must be in force at the time the request is made. *Id.* Most common law countries, including Great Britain, require a treaty with the appropriate extradition provisions to be in force as a prerequisite for an extradition. 2 M.C. BASSIOUNI, *supra* note 62, § IX, at 2-22.

95. 18 U.S.C. § 3184 (1982). For example, most extradition treaties between the United States and other nations include extraditable offenses such as murder, piracy, robbery, rape, and kidnapping. *See, e.g.*, Extradition Treaty, Oct. 25, 1901, United States-Kingdom of Serbia, 32 Stat. 1890, T.S. No. 406 (entered into force June 12, 1902); Extradition Treaty, Dec. 10, 1962, United States-Israel, art. II, 14 U.S.T. 1707, T.I.A.S. No. 5476 (entered into force Dec. 5, 1963). *See generally* S.T. SPEAR, *LAW OF EXTRADITION* 39 (1879).

96. 2 M.C. BASSIOUNI, *supra* note 62, § IX, 2-13.

97. Lubet & Reed, *supra* note 72, at 5. The requesting state may petition the Secretary of State in addition to seeking judicial relief. *Id.* The Secretary of State may then issue a preliminary mandate on behalf of the petitioning state. *Id.* *See also* 18 U.S.C. § 3184 (1982).

98. 18 U.S.C. §§ 3184, 3186 (1982).

99. *Id.* The United States "may order the person . . . delivered to any authorized agent of [the] foreign government" requesting the extradition. *Id.* (emphasis added).

100. Reiss, *The Extradition of John Demjanjuk: War Crimes, Universality Jurisdiction, and the Political Offense Doctrine*, 20 CORNELL INT'L L.J. 281, 290 (1987). Scholars have pointed out that this policy is inconsistent with international law practices. *Id.* at 290 n.57.

101. 18 U.S.C. § 3184 (1982). A complaint may be filed with any federal or state court which has personal jurisdiction over the individual. *Id.* In practice, most extradition complaints are filed in federal courts. Lubet & Reed, *supra* note 72, at 5 n.35.

the two countries; (3) the nature of the charge against the accused; and (4) the specific act or acts which comprise the extraditable offense."¹⁰² Finally, a warrant for the arrest of the individual named in the complaint may be issued and an extradition hearing scheduled.

The purpose of the extradition hearing is to determine whether there is sufficient evidence against the defendant to warrant the transfer of that individual into the custody of the requesting state.¹⁰³ The actual determination of guilt or innocence in regard to the acts alleged to have been committed by the defendant is not at issue.¹⁰⁴ Rather, the court must determine whether there is "probable cause" or "reasonable grounds" to believe the individual committed the acts with which he is charged.¹⁰⁵ Because the extradition hearing, although criminal in nature, relies on a different set of standards,¹⁰⁶ the rules by which the proceeding is governed also differ.

The most notable deviation from other criminal proceedings is that extradition hearings are governed by a modified version of the rules of evidence.¹⁰⁷ Generally, the government may use any documents, affidavits, depositions, warrants or other types of written and visual devices to prove its case, so long as each is properly authenticated.¹⁰⁸ Hearsay is also admissible,¹⁰⁹ and it is well established that the government may base its entire case on documents without ever calling a single witness.¹¹⁰ On the other hand, the defendant may not present any evidence which would contradict the facts presented by the government, but is limited to merely explaining the circumstances at issue.¹¹¹ The defendant may also present

102. Lubet & Reed, *supra* note 72, at 5 (citations omitted).

103. 18 U.S.C. § 3184 (1982). "If, on such hearing, [the court] deems the evidence sufficient to sustain the charge under the provisions of the proper treaty or convention, [the court] shall certify [the defendant extraditable]." *Id.*

104. 2 M.C. BASSIOUNI, *supra* note 62, § IX, at 5-1.

105. *Id.*

106. The usual standard in the United States in criminal proceedings for finding the defendant guilty beyond a reasonable doubt is replaced in extradition hearings with the standard of "probable cause" and "reasonable grounds." Reiss, *supra* note 100, at 291.

107. Lubet & Reed, *supra* note 72, at 7.

108. 18 U.S.C. § 3190 (1982).

109. Lubet & Reed, *supra* note 72, at 7.

110. *Id.*; Reiss, *supra* note 100, at 291.

111. *In re* Extradition of Demjanjuk, 603 F. Supp. 1463, 1464 (N.D. Ohio 1984). The difference between evidence which "contradicts" and that which "explains" is "difficult to articulate, but it is essentially the line between 'evidence rebutting probable cause and evidence in defense.'" *Id.* (citation omitted).

evidence to show that he is not the individual sought by the requesting state, or to establish the elements of a political offense exception.¹¹² Under United States law, acts committed in a foreign nation which constitute political offenses are exceptions to extradition laws, and therefore people charged with their commission are not extraditable.¹¹³

The court decision in an extradition hearing is not appealable, as are other criminal proceedings.¹¹⁴ A defendant may seek a limited review of the decision through a writ of habeas corpus,¹¹⁵ but if the final determination on the writ favors extradition, the only resource left for the defendant is an independent review by the Executive Branch, specifically, the Secretary of State.¹¹⁶ If the Secretary of State determines that surrender of the individual to the requesting nation is appropriate, the Secretary of State may then order the individual to be delivered into the custody of an authorized agent of the requesting state to be tried for the offense charged.¹¹⁷ Once this has occurred, the extradition process is completed and the United States is free from all future legal involvement.¹¹⁸

112. Lubet & Reed, *supra* note 72, at 7-8; *Demjanjuk*, 603 F. Supp. at 1468, 1470-71. Demjanjuk claimed he was not the person named in the Israeli extradition request. *In re Extradition of Demjanjuk*, 612 F. Supp. 544, 547 (N.D. Ohio 1985). See also *infra* notes 161-72 and accompanying text. (Andrija Artukovic used the political offense doctrine to escape extradition in 1954).

113. The political offense exception to extradition laws is grounded in the principles of asylum and sovereignty. Blakesley, *supra* note 59, at 912 n.50. It was originally designated to prevent regimes in power from using their position to suppress their political enemies through prosecution in the judicial process. *Id.*

114. Lubet & Reed, *supra* note 72, at 8. Because United States Magistrates, as well as District Court Judges, are authorized to conduct extradition hearings, "the lowest ranking officer in the federal judiciary can make an unreviewable decision that binds the conduct of U.S. foreign affairs." *Id.* at 8 n.55. 2 M.C. BASSIOUNI, *supra* note 62, § IX, at 6-1.

115. Lubet & Reed, *supra* note 72, at 8. The scope of review of the writ is "quite narrow." *Demjanjuk v. Petrovsky*, 776 F.2d 571, 576 (6th Cir. 1985) (referring to Justice Holmes in *Fernandez v. Phillips*, 268 U.S. 311, 312 (1925)).

116. Lubet & Reed, *supra* note 72, at 8-9. The Secretary of State conducts a totally independent review of the case - he is not bound by the court records or findings and may exercise broad discretion in his own determination. *Id.* at 9. Because extradition is an act of the Executive Branch, "[t]he ultimate decision to extradite is a matter within the exclusive prerogative of the Executive in the exercise of its powers to conduct foreign affairs." *Escabedo v. United States*, 623 F.2d 1098, 1105 (5th Cir. 1980)).

117. 18 U.S.C. § 3186 (1982).

118. Lubet & Reed, *supra* note 72, at 9.

In 1981, a Senate subcommittee proposed a bill which would significantly change and update the extradition laws.¹¹⁹ A major purpose of the bill was to combat international crimes involving violence, narcotics trafficking, and terrorism.¹²⁰ Three major revisions of present extradition law were proposed by this bill:

First, the United States Attorney General, instead of the actual foreign state, would serve as the complainant in extradition proceedings. This would eliminate the possibility of foreign states filing unjustifiable claims.¹²¹

Second, the Secretary of State would be granted the authority to determine if the extradition is being sought for a "political offense." This would be consistent with the procedures used for people seeking asylum.¹²²

Third, the Attorney General would be given the authority to make all arrangements necessary to take custody of fugitives found to be extraditable to the United States by foreign nations.¹²³

These revisions were designed to address specific problems arising out of the present extradition laws; specifically, one of the most common disputes concerned the formal request for extradition which must be filed by a foreign government.¹²⁴ Because present laws do not specify who is qualified to be an authorized agent of the requesting state, courts are forced to determine, on an ad hoc basis, if the request is legitimately from a foreign government.¹²⁵ As a result, extradition proceedings are constantly delayed while the court decides if the person who filed the request - whether a diplomat, foreign consular representative, foreign police officer, or a private citizen claiming to act on behalf of the foreign government - is a person who has the authority to make such a request.¹²⁶ Although the bill died in the Senate, it did raise important issues and concerns regarding the procedures used for extraditions.

119. S. 1639, 97th Cong., 1st Sess., 127 CONG. REC. 21169 (1981).

120. *Id.* at 21170. (Letter from Robert A. McConnell, Assistant Attorney General, to Sen. Strom Thurmond, Chairman, Committee of the Judiciary, U.S. Senate (Aug. 4, 1981).

121. *Id.* at 21169.

122. *Id.*

123. *Id.*

124. *Id.* at 21171.

125. 2 M.C. BASSIOUNI, *supra* note 62, at § IV, 2-9. The representative need not be a "consular or diplomatic officer, provided that the person making the complaint is authorized to do so by the requesting state." *Id.*

126. *Id.*

VI. CASE STUDIES

A. *Feodor Fedorenko*

The case which has had the greatest impact on the prosecution of war criminals since *Chaunt v. United States*,¹²⁷ is *Fedorenko v. United States*.¹²⁸ In *Fedorenko*, the defendant, an admitted concentration camp guard at Treblinka,¹²⁹ argued that his citizenship should not be revoked under the Immigration and Nationality Act of 1952¹³⁰ because the false statements made on his 1949 application

127. *Chaunt v. United States*, 364 U.S. 350 (1960). The Court in *Chaunt* held that in denaturalization proceedings, the government must show by "clear, unequivocal and convincing" evidence that the facts suppressed by the defendant, if known, would have warranted the denial of citizenship or would have led to an investigation possibly leading to the discovery of other facts warranting the denial of citizenship. *Id.* at 353. The petitioner in *Chaunt* was admitted to citizenship in 1940. *Id.* at 350. The complaint alleged that Chaunt had concealed from his application for citizenship, his membership in the Communist Party, and also his arrest record. *Id.* at 351. The charge against Chaunt was based on violations of the Immigration & Nationality Act of 1952, as codified in 8 U.S.C. § 1451(a) (1982), that Chaunt had obtained his citizenship "by concealment of a material fact or by willful misrepresentation." *Id.* at 351. The court declared that since "[a]cquisition of American citizenship is a solemn affair," *id.* at 352, and the potential consequences to the citizen so "grave," *id.* at 353, the evidence in such circumstances must be "clear, unequivocal, and convincing." *Id.* The court concluded that since the totality of the circumstances surrounding the arrests, and Chaunt's Party membership, did not "bring them, inherently, even close to the requirement of 'clear, unequivocal, and convincing' evidence," his citizenship was not illegally procured within the meaning of the statute. *Id.* at 354. The effect of *Chaunt* was to put a heavier burden of proof on the government in denaturalization proceedings. Not only did the government need to prove that the misrepresentation was material or willful, but also that the evidence supporting their facts was "clear, unequivocal, and convincing" and not merely circumstantial or likely.

128. *Fedorenko v. United States*, 449 U.S. 490 (1981).

129. *Id.* at 500. Fedorenko was drafted into the Russian Army in 1941 and was captured by the German Army. *Id.* at 494. He was trained as a camp guard at Trawniki and served as a guard at Treblinka from 1942 to 1943. *Id.* In 1943 he was sent to a POW camp and became a forced laborer in Hamburg, Germany in 1945. *Id.*

"After the outbreak of the war . . . as the Nazi policy of mass extermination took shape with the Jews as primary target, the major 'killing centers' . . . began to operate . . . Treblinka . . . w[as] designed for one thing only: to kill as many people as possible, as fast as possible." Des Pres, *Forward* to J. STEINER, TREBLINKA at xi (1967).

130. Immigration and Nationality Act of 1952, ch. 477, 66 Stat. 280 (codified at 8 U.S.C. § 1451(a) (1982)). The pertinent section of the Act reads:

It shall be the duty of the United States attorneys for the respective districts, upon affidavit showing good cause . . . 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 [they] were illegally procured or were procured by concealment of a material fact or by willful

for a displaced person's visa were not misrepresentations of "material facts" as required under the law and as interpreted in *Chaunt*.¹³¹ The district court accepted the defendant's argument and, alternatively, found that the evidence was inconclusive as to his participation in war crimes.¹³² The Court of Appeals for the Fifth Circuit reversed, holding that the District Court misinterpreted *Chaunt* and that the disclosure of the truth would have led to an investigation which might have resulted in the denial of Fedorenko's citizenship.¹³³ The Supreme Court granted certiorari to determine whether such non-disclosure rendered his citizenship revocable under the law and, if so, whether the District Court was still within its discretion in entering judgment for the defendant.¹³⁴

The Supreme Court decision in *Fedorenko* remains a milestone in the area of war criminals' trials because it established the burden of proof needed by the government to denaturalize a citizen of the United States.¹³⁵ The Court affirmed the Fifth Circuit decision to revoke Fedorenko's citizenship but based its decision on grounds neither party had argued.¹³⁶ Under the DPA, only an eligible

misrepresentation.

Id.

131. *Chaunt*, 364 U.S. 350.

132. *United States v. Fedorenko*, 455 F. Supp. 893 (S.D. Fla. 1978), *rev'd*, 597 F.2d 946 (5th Cir. 1979), *aff'd*, 449 U.S. 490 (1981). The district court found, specifically, that in light of the evidence Fedorenko was not a Volksdeutscher (German who lived in occupied German territory) or a zugwachmann. *Fedorenko*, 455 F. Supp. at 905. The court was apparently unsure as to whether witnesses and evidence meant "zugwachmann," a leader of a group of guards or sentries in which the group is the size of a squad, *id.* at 904 n.13, or "zuchtwachmann," a prison guard or sentry. *Id.* The court explained that its conclusions would not be changed in either case. *Id.* Furthermore, the fact that Fedorenko lied about his place of birth and occupation would have been grounds to *deny* his application for citizenship, but the standards for *revoking* citizenship are much higher. *Id.* at 914-15 (citing *Chaunt*, 364 U.S. 350) (emphasis added). Therefore, the court found that since the record of Fedorenko's conduct during World War II was inconclusive, the government failed to meet its burden of proof. *Id.* at 921.

133. *Fedorenko*, 597 F.2d at 946. The court discussed the various conflicting interpretations of *Chaunt* among the courts of appeals. The court then rejected the district court's interpretation since it destroyed the utility of the second *Chaunt* test. *Id.* at 951. This part of the test states "[misrepresentation or concealment] is material [if the government proved] that the disclosure [of the facts which were suppressed] might have been useful in an investigation possibly leading to the discovery of other facts warranting denial of citizenship." *Chaunt*, 364 U.S. at 352-53.

134. *Fedorenko*, 449 U.S. at 490.

135. *Id.*

136. *Id.* at 505, 514-15.

displaced person¹³⁷ could apply for admission to the United States.¹³⁸ In 1949 Fedorenko claimed to be an eligible displaced person and had gained admission to the United States under the DPA.¹³⁹ Because he admitted service to the Nazis as a concentration camp guard, regardless of whether such service was voluntary or involuntary,¹⁴⁰ the defendant's acts made him a displaced person who was ineligible to enter the United States under the provisions of the DPA.¹⁴¹ Because Fedorenko's naturalization was based on an illegal entrance into the United States, the Court held that his citizenship was illegally procured and should be revoked.¹⁴²

Fedorenko successfully argued that he was a captured Russian soldier and had not voluntarily assisted the enemy.¹⁴³ The district court noted that if the DPA was interpreted to exclude anyone who had aided the enemy, voluntarily or not, then many "innocent" people who were guilty by reason of their acts in the concentration camps would also be excluded.¹⁴⁴ Justice Stevens' dissent explained the district court's conclusion:

The District Court refused to construe the statute to bar relief to any person who assisted the enemy, whether voluntarily or not, however, because such a construction would have excluded the Jewish prisoners who assisted the

137. A "displaced person" was defined as a person who came within the definition of a displaced person or refugee under the International Refugee Organization; and an "eligible displaced person" was defined as a person who either (1) was persecuted by the Nazis while living in Germany or Austria and was eligible to enter the United States under immigration laws, or (2) was a native of Czechoslovakia and had fled that country as a direct result of persecution or fear of persecution and was eligible to enter the United States under immigration laws. Displaced Persons Act, 62 Stat. 1009, 1009-10 (1948), *amended by* Pub. L. No. 81-555, 64 Stat. 219 (1950).

138. *Id.* at 1009.

139. *United States v. Fedorenko*, 455 F. Supp. 893, 916 (S.D. Fla. 1978).

140. Fedorenko claimed, and the District Court found, that he was forced to serve as an armed guard at Treblinka, therefore his service was not voluntary. *Id.* at 914.

141. Displaced Persons Act, 62 Stat. 1009, 1014: "No visas shall be issued under the [DPA] 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." *Id.*

142. *United States v. Fedorenko*, 449 U.S. 490, 505-18 (1981).

143. *Fedorenko*, 455 F. Supp. at 913-14.

144. *Id.* at 900-01, 913. The district court listed some examples of such "working" prisoners: those who led new arrivals to be executed; those who cut the hair of the females to be executed; and those who played in the orchestra which welcomed new arrivals at the gate. *Id.* at 913.

SS in the operation of the concentration camp. These prisoners performed such tasks as cutting the hair of female prisoners prior to their execution and performing in a camp orchestra as a ruse to conceal the true nature of the camp [S]uch prisoners did not perform their duties voluntarily and . . . should not be considered excludable under the DPA.¹⁴⁵

The majority distinguished the conduct of Jewish prisoners from the acts of Fedorenko by noting that camp guards were issued uniforms and weapons, received a stipend, and were able to visit a nearby town while prisoners were unquestionably confined to the camp by force.¹⁴⁶ Fedorenko was deported to the Soviet Union in 1984 after the Supreme Court declined to stay his expulsion from this country.¹⁴⁷ In 1986, he was tried in the Soviet Union for treason, for voluntary transfer to the Nazi side, and for the mass murder of foreign citizens.¹⁴⁸ On July 27, 1987, ten years after the United States first moved to revoke his citizenship, Feodor Fedorenko - the first alleged war criminal to be sent to the Soviet Union from the United States - was executed.¹⁴⁹ He was eighty years old.¹⁵⁰

B. *Andrija Artukovic a/k/a Alros Anich*

In 1951, Yugoslavia filed a formal request for the extradition of Andrija Artukovic from the United States.¹⁵¹ Although he was not

145. *Fedorenko*, 449 U.S. at 534 (citations omitted). Also included in this category are the "kapos" - Jewish prisoners who supervised the Jewish workers at the camps. *Id.* Kapos were generally ordered by camp administrators to beat the prisoners. Beatings were done with just enough force to appear realistic but to avoid serious injury to the prisoners. *Id.* at 535.

146. *Id.* at 512 n.34, 510 n.32.

147. *TASS Announces Execution of Fedorenko*, *supra* note 58, at 3, col. 1.

148. *Id.*

149. *Id.*

150. *Id.*

151. *Artukovic v. Boyle*, 107 F. Supp. 11 (S.D. Cal. 1952), *rev'd sub nom.*, *Ivanevic v. Artukovic*, 211 F.2d 565 (9th Cir. 1954), *cert. denied*, 348 U.S. 818 (1954), *reh'g denied*, 348 U.S. 889 (1954); *sub nom.*, *Artukovic v. Boyle*, 140 F. Supp. 245 (S.D. Cal. 1956), *aff'd sub nom.*, *Karadzole v. Artukovic*, 247 F.2d 198 (9th Cir. 1957), *vacated*, 355 U.S. 393 (1958), *decision on remand*, 170 F. Supp. 383 (S.D. Cal. 1959); *In re Extradition of Artukovic*, 628 F. Supp. 1370 (S.D. Cal. 1986), *stay denied sub nom.*, *Artukovic v. Rison*, 784 F.2d 1354 (9th Cir. 1986). Artukovic was arrested in Los Angeles on August 29, 1951 pursuant to a warrant issued in response to a request for extradition. *Artukovic*, 107 F. Supp. at 12. The complaint

charged with personally killing anyone, the complaint indicated that 250,000 murders were carried out upon his orders.¹⁵² The extradition request was premised on United States law¹⁵³ and the 1902 Treaty of Extradition between the United States and the Kingdom of Serbia.¹⁵⁴ Artukovic petitioned for a writ of habeas corpus claiming: (a) there was no treaty in effect between the United States and Yugoslavia and (b) even if there was a treaty, the charges against him were political in nature and therefore not extraditable offenses.¹⁵⁵

Artukovic's first defense was based on Yugoslavian history. For centuries, the area which would later be known as Serbia was ruled and dominated by the Turkish Empire.¹⁵⁶ By 1878 the Kingdom of Serbia was officially recognized throughout the world as an independent and sovereign nation.¹⁵⁷ After World War I,¹⁵⁸ the various south Slav people were unified into a single state called the Kingdom of Serbs, Croats, and Slovenes.¹⁵⁹ In 1928 the Kingdom of Serbs, Croats, and Slovenes became the Kingdom of Yugoslavia, thereby changing governmental structure and the official name of

was signed by Rafo Ivancevic, the Consul General of the Federal People's Republic of Yugoslavia. *Id.*

152. *Artukovic*, 107 F. Supp. at 12-13; 247 F.2d at 204. The complaint listed the names of 1,293 persons who were allegedly killed upon the orders of Artukovic. *Artukovic*, 140 F. Supp. at 247. The complaint also alleged that numerous unnamed persons were killed as a result of Artukovic's orders: 30,000 persons, 3,000 persons, 200,000 persons plus 17,600 children bringing the total number to 250,600 people. *Id.*

153. 18 U.S.C. §§ 3181, 3184, 3195 (1982). *See also supra* notes 92-126 and accompanying text.

154. Extradition Treaty, Oct. 25, 1901, United States-Kingdom of Serbia, art. II, 32 Stat. 1890, T.S. 406 (entered into force June 12, 1902). The Kingdom of Serbia was incorporated into the country presently called Yugoslavia. *See infra* notes 156-61 and accompanying text.

155. *Artukovic*, 107 F. Supp. at 15; 211 F.2d at 566.

156. G.A. CRAIG, *EUROPE, 1815-1914*, at 24 (3d ed. 1972). By the 1830's, the Turkish Empire recognized the Kingdom of Serbia as an independant state, with Prince Milos Ubrenovitch as its leader. *Id.* Serbia continued to pay an annual tribute to the Turkish Emperor in exchange for the recognition. *Id.*

157. *Id.* at 376. The Congress of Berlin in 1878 officially recognized the autonomy of the Kingdom of Serbia. *Id.*

158. World War I was triggered by the assassination of Archduke Francis Ferdinand of Austria in Sarajevo by a Serbian patriot in 1914. *Id.* at 444. The war officially ended on November 11, 1918. G.A. CRAIG, *supra* note 25, at 484.

159. Treaty of Versailles, June 28, 1919, Parry's T.S. 596. The Treaty of Versailles was the peace instrument of World War I. *Id.* It included a variety of provisions to determine which parties were guilty of aggressive action during the war, reparations, land divisions, and the location of borders and boundaries. *Id.* The Kingdom of Serbs, Croats, and Slovenes was created and geographically defined by the Treaty of Versailles. *Id.*

the state.¹⁶⁰ Further internal changes developed in the post-World War II period: in 1945 the Communist regime was in power and the country became the Federal People's Republic of Yugoslavia.¹⁶¹

At the extradition trial, Artukovic claimed that the 1902 Extradition Treaty constituted an agreement between the United States and the Kingdom of Serbia and that this agreement was subsequently invalidated when the Kingdom of Serbia was absorbed into the Kingdom of Serbs, Croats, and Slovenes in 1918.¹⁶² He alleged that the government formed in 1918 was a completely separate and independent entity from the Kingdom of Serbia and therefore all foreign obligations outstanding under the Kingdom of Serbia were terminated when the Kingdom of Serbs, Croats, and Slovenes was formed.¹⁶³ Artukovic did concede, however, that the various governmental changes which occurred in 1928 and 1945 did *not* invalidate any treaty which may have been in effect during the regimes of the Kingdom of Serbs, Croats, and Slovenes (1918), the Kingdom of Yugoslavia (1928), and the Federal People's Republic of Yugoslavia (1945).¹⁶⁴ Artukovic argued that the Kingdom of Serbia was not part of the same chain of continuity which linked the three subsequent governments from 1918-1945.¹⁶⁵ Because the Kingdom of Serbia was not part of this continuous chain, Artukovic contended that the 1902 Extradition Treaty was invalid because one

160. See Jordan, *Yugoslavia: Six Republics in One*, NAT'L GEOGRAPHIC, May 1970, at 589, col. 2.

161. *Id.* For various accounts of Yugoslavian history, see *Artukovic*, 107 F. Supp. at 24-33; 211 F.2d at 567-72, 567 n.6 (the account from the Yugoslavian government's brief.)

162. *Artukovic*, 107 F. Supp. at 18. Artukovic argued that the Kingdom of Serbia ceased to exist as a foreign "country," "state," or "independent sovereign" when the Kingdom of Serbs, Croats, and Slovenes was proclaimed in 1918. *Id.* He also claimed that since the Kingdom of Serbia was no longer a "foreign country," 18 U.S.C. § 3181 (1982) was not applicable. *Id.* 18 U.S.C. § 3181 states: "[t]he provisions of this chapter relating to the surrender of persons who have committed crimes in *foreign countries* shall continue in force only during the existence of any treaty of extradition with such foreign government." *Id.* (emphasis added).

163. *Artukovic*, 107 F. Supp. at 18.

164. *Id.* *E.g.*, Debt Funding Agreement, May 3, 1926, United States-Kingdom of Serbs, Croats, and Slovenes, 45 Stat. 399, 12 Bevans 1246; Treaty of Arbitration, Jan. 21, 1929, United States-Kingdom of Serbs, Croats, and Slovenes, 46 Stat. 2293, T.S. No. 790; Preliminary Agreement for Lend-Lease, July 24, 1942, United States-Kingdom of Yugoslavia, 56 Stat. 1570, E.A.S. No. 263; Special Tariff Position of Philippines, Oct. 3, 1946, United States-Federal People's Republic of Yugoslavia, 61 Stat. 2451, T.I.A.S. No. 1572; *But see* Treaty of Commerce, Oct. 14, 1881, United States-Kingdom of Serbia, 22 Stat. 963, T.S. No. 319.

165. *Artukovic*, 107 F. Supp. at 18.

of the parties, the Kingdom of Serbia, no longer existed.¹⁶⁶ The trial court agreed with Artukovic and ordered that the extradition request be denied since there was no valid extradition treaty in existence between the United States and Yugoslavia.¹⁶⁷

The Court of Appeals for the Ninth Circuit rejected Artukovic's contention and held that the 1902 Extradition Treaty between the United States and the Kingdom of Serbia was still valid based on the political history of both Yugoslavia and Serbia.¹⁶⁸ The court of appeals reasoned that the government formed in 1918 from the principalities of Serbia, Croatia, and Slovenia became a new sovereign state, the Kingdom of Serbs, Croats, and Slovenes, which retained Serbia as the nucleus or nexis of that nation.¹⁶⁹ The court also noted that the official state policies of both the United States and Yugoslavia recognize a single continuous chain of power beginning with the Kingdom of Serbia and ending with the Federal People's Republic of Yugoslavia.¹⁷⁰ Because of this continuous chain, the court held that the 1902 Extradition Treaty between the United States and the Kingdom of Serbia was still in effect.¹⁷¹

Artukovic next contended that even if there *was* a valid treaty in effect between the United States and Yugoslavia, he was not extraditable because the offenses charged were political in nature.¹⁷² The court held that although Artukovic's acts were probably war crimes, his official position in the Yugoslavian government¹⁷³ and his association with Pavelic's administration,¹⁷⁴ led the court to conclude

166. *Id.* at 18-22; *Artukovic*, 211 F.2d at 566-72.

167. *Artukovic*, 107 F. Supp. at 33.

168. *Artukovic*, 211 F.2d at 571-72.

169. *Id.*

170. See *Artukovic*, 107 F. Supp. at 18 n.5 (United States Department of State Bulletins entitled: "Recognition of New Yugoslav Regime" and "Establishment of Diplomatic Relations With Yugoslavia").

171. *Artukovic*, 211 F.2d at 572-73, 575.

172. *Artukovic*, 107 F. Supp. at 15; 211 F.2d at 566.

173. Artukovic was the Minister of the Interior, an official Cabinet position, in the government of Ante Pavelic, Prime Minister of Croatia. A. RYAN, *supra* note 5, at 142.

174. After Prince Paul of Yugoslavia signed an agreement with Hitler, the people of Belgrade staged an uprising to protest the relationship. *Id.* at 142-43. When Hitler learned that the people had overthrown their government, he enacted "Operation Punishment," an unrestrained and merciless blitzkrieg against the Yugoslavian people. *Id.* at 143. A puppet government was installed as soon as the country capitulated. The government was headed by Ante Pavelic, a leader of a Croatian separatist group called the Ustashi, who were devoutly anti-Serb and anti-semitic, and were therefore the perfect puppets for the Nazis. *Id.* at 143-44.

that his acts were political in nature.¹⁷⁵ Although Artukovic's actions were barbaric and the atrocity of the crimes great, the court found no probable cause to justify extraditing the defendant under the treaty provisions which specifically excluded political acts as extraditable offenses.¹⁷⁶ The court suggested that the treaty be changed or amended to handle these types of problems or to set-up an international tribunal which would have proper jurisdiction for these and similar circumstances.¹⁷⁷

In 1954, Artukovic was victorious, but only temporarily so. The government of Yugoslavia continued to pressure the United States until the Immigration Service finally reopened the case in the late 1970's.¹⁷⁸ An extradition request was formally filed by the Yugoslavian government¹⁷⁹ on July 19, 1984 pursuant to a February, 1984 indictment in the District Court of Zagreb.¹⁸⁰ Artukovic was charged with murder as well as "criminal offence[s] [sic] against humanity and international law - war crime[s] committed against the civilian population" in accordance with newly enacted legislation.¹⁸¹

175. *Karadzole v. Artukovic*, 247 F.2d 198, 204 (9th Cir. 1957). The principles of the Ustashi became the official state policy. See *Artukovic*, 107 F. Supp. at 15. Serbs were slaughtered relentlessly and Jews were deported to Nazi death camps. A. RYAN, *supra* note 5, at 144-49. The country was not governed by law, but by the knife: killing Serbs was not "good enough," an Ustashi had to mutilate to be effective. *Id.* In his position as Minister of the Interior, Artukovic handled all questions relating to Jews, including the establishment of concentration camps - death camps - the most notorious being the one at Jasenovac, Croatia. *Id.*

176. *Artukovic*, 247 F.2d 198, 204. Extradition Treaty, Oct. 25, 1901, United States-Kingdom of Serbia, art. VI, 32 Stat. 1890, T.S. 406 (entered into force June 12, 1902). Article VI reads: "A fugitive criminal shall not be surrendered if the offense [charged] is of a political character, or if he proves that the requisition for his surrender has, in fact, been made with a view to try to punish him for an offense of a political character." *Id.*

177. *Artukovic*, 247 F.2d at 205-06.

178. Blumenthal, *Andrija Artukovic, 88, Nazi Ally Deported to Yugoslavia, is Dead*, N.Y. Times, Jan. 19, 1988, at D23, col. 3.

179. The Honorable Borislav Krajina, Federal Secretary for Justice, signed the extradition request on behalf of the Federal Socialist Republic of Yugoslavia. *Artukovic v. Rison*, 628 F. Supp. 1370, 1372 (C.D. Cal. 1986).

180. *Id.* Zagreb is the capitol of the Croatian Republic and the second largest city in Yugoslavia. Jordan, *supra* note 160, at 615. It is located approximately 225 miles west of Belgrade and 200 miles northwest of Sarajevo. *Id.* at 593.

181. *Artukovic*, 628 F. Supp. at 1372. The original indictment in 1951 charged Artukovic with murder under Yugoslavian Criminal Law Article 135(2) then in force. *Id.* The 1984 indictment amended and incorporated the original indictment and also charged Artukovic with "war crimes" pursuant to Article 142. *Id.*

Much of the evidence at this new extradition trial had also been presented in the original extradition trial in 1959.¹⁸² There, the court held that there was insufficient evidence for a finding of probable cause for Artukovic's extradition.¹⁸³ However, the affidavit of Avdic Bajro¹⁸⁴ dated July 6, 1984 provided overwhelming probable cause linking Artukovic with the murder of 400 to 500 prisoners in a camp outside of Zagreb.¹⁸⁵ The affidavit of Franjo Truhar¹⁸⁶ also provided sufficient evidence to support a finding of probable cause that Artukovic participated in the murder of one Jesa Vidic, a national delegate.¹⁸⁷ The Ninth Circuit Court of Appeals, upheld denial of the writ because "[n]one of the legal arguments raised by [his] appeal present[ed] a 'serious legal question.'"¹⁸⁸ The court noted, particularly, that the 1902 Extradition Treaty was valid and effective,¹⁸⁹ that the charged crimes were within the scope of that treaty,¹⁹⁰ and finally that the doctrine of *res judicata* does not apply to extradition proceedings.¹⁹¹ The effect of this last determination

182. *Id.* at 1377.

183. *Artukovic*, 170 F. Supp. 383, 389-90 (S.D. Cal. 1959). Artukovic petitioned for a writ of habeas corpus. *Artukovic*, 628 F. Supp. at 1370.

184. Avdic Bajro was born in 1924 and served as a member of the escort battalion for state officials of the Pavelic government in 1941-43. *Artukovic*, 628 F. Supp. at 1373. Bajro testified he was present at three separate occasions when Artukovic ordered the mass execution of hundreds of helpless civilians. *Id.* at 1373-74. Bajros estimated that about 400-500 persons were killed outside of Kerestinec (a collecting camp near Zagreb), over 500 persons were killed in the village of Vrgin Most and the towns surrounding the monastery at Moscenica, and several hundred more people were put to death in the town of Samobor. *Id.*

185. *Artukovic*, 628 F. Supp. at 1373-74.

186. Frank Truhar was a Croat who was appointed Chief of Police in Zemon in April-May, 1941. *Id.* at 1373. Jese Vidic, a former national delegate had been imprisoned in 1941 and his wife had appealed to Truhar for Jese's release. *Id.* Truhar referred the petitioner to Artukovic for consideration. *Id.*

187. *Id.* at 1373, 1378. Truhar's affidavit was dated April 25, 1952 and gave a startling account of Artukovic's blatant disregard of human life. *Id.* at 1373. Artukovic issued an order for the death of Vidic and the confiscation of his land. *Id.*

188. *Artukovic v. Rison*, 784 F.2d 1354, 1356 (9th Cir. 1986).

189. *Id.* See generally *Ivancevic v. Artukovic*, 211 F.2d 565, 575 (9th Cir. 1954), *cert. denied*, 348 U.S. 818 (1954).

190. *Artukovic*, 784 F.2d at 1356. Because Artukovic was charged with offenses involving murder under Yugoslavian law, and murder is an extraditable offense enumerated under the treaty, the court held that the scope of the treaty embraced the charges stated. *Id.* "Artukovic's argument that his indictment in Yugoslavia for 'war crimes' falls outside the treaty is absurd and offensive." *Id.* (citing *Demjanjuk v. Petrovsky*, 776 F.2d 171, 180 (6th Cir. 1985)).

191. *Artukovic*, 784 F.2d at 1356. The court also noted that the affidavits of the witnesses were competent evidence and that "public interest [would] be served by the United States

negated Artukovic's argument that the 1950 proceedings barred his impending extradition. Consequently, the court held that Artukovic was extraditable.¹⁹²

Artukovic was extradited to Yugoslavia in February, 1986.¹⁹³ There, he was tried, convicted, and sentenced to death by firing squad, but "his failing health spared him from execution."¹⁹⁴ He died on January 16, 1988 from undisclosed ailments at the age of eighty-eight.¹⁹⁵ According to Yugoslavia's death penalty statute, his remains were cremated and the ashes scattered to avoid creating a memorial.¹⁹⁶

The case of Andrija Artukovic is illustrative of the inefficiency of the present American system as applied to war criminals. Artukovic had committed horrible acts of violence against thousands of civilians.¹⁹⁷ Yet, he was able to live comfortably in a California beach house for over thirty years¹⁹⁸ before he was forced to accept responsibility for his crimes. The failure of the United States to resolve the Artukovic case within a reasonable time clearly demonstrates the need for change in the system if war criminals are ever to be tried for their abominable deeds committed during World War II.

C. Karl Linnas

Karl Linnas' case began in 1979 when the United States government filed denaturalization proceedings against him.¹⁹⁹ No one could have guessed that it would take eight years, seventeen tribunal decisions, four trips to the United States Supreme Court, numerous appearances before immigration judges, and a review by the Executive Branch of the Reagan Administration before Karl Linnas

complying with a valid extradition application from Yugoslavia under the treaty." *Id.*

192. *Id.* at 1356-57.

193. Blumenthal, *supra* note 178, at col. 3.

194. Andrija Artukovic, in Yugoslav Jail, Official Called "Butcher of Balkans," *Newsday*, Jan. 19, 1988, at 35, col. 2.

195. Blumenthal, *supra* note 178, at col. 3.

196. *Id.*

197. *Id.*

198. *Id.*

199. *United States v. Linnas*, 527 F. Supp. 426 (E.D.N.Y. 1981); A. RYAN, *supra* note 5, at 358.

would be deported from the United States.²⁰⁰ The case of Karl Linnas presents many interesting questions about the efficiency of the denaturalization and deportation process as applied to suspected war criminals.

Karl Linnas was born in Estonia and lived there until approximately 1945.²⁰¹ He immigrated to the United States under provisions of the DPA in 1951 and became a naturalized United States citizen in 1960.²⁰² In 1979, the government instituted denaturalization proceedings against him on the grounds that his citizenship was "illegally procured . . . by concealment of material fact or by willful misrepresentation."²⁰³ The government charged that the defendant had failed to disclose his actual wartime activities to the proper officials at the time he applied for immigration status under the DPA and on his subsequent application for citizenship.²⁰⁴ The disputed facts focus on the defendant's whereabouts and activities between 1940 and 1943: Linnas claimed on his visa application that he was a university student; the government claimed that he was a member of the Estonia Home Guard, the Selbstschutz,²⁰⁵ and had been the Chief Guard of the Nazi Concentration Camp outside of Tartu, Estonia.²⁰⁶

The United States government had obtained depositions of four citizens of the Soviet Union who testified as eye witnesses to Linnas' activities in the notorious Selbstschutz and Tartu Concentration Camp.²⁰⁷ These depositions were video-taped in the

200. A. RYAN, *supra* note 5, at 358.

201. *Linnas*, 527 F. Supp. at 429-430, *aff'd*, 685 F.2d 427 (2d Cir. 1982) (without opinion), *cert. denied*, 459 U.S. 883 (1982), *later proceeding*, *Linnas v. I.N.S.*, 790 F.2d 1024 (2d Cir. 1986), *cert. denied*, 107 S. Ct. 600 (1986). Estonia is a Baltic state which was a province under Imperial Russia, and became an independent nation between the two World Wars. *WORLD ALMANAC*, *supra* note 54, at 659. Estonia was incorporated into the U.S.S.R. in 1940 but the United States has never formally recognized this incorporation. *Id.*

202. *Linnas*, 790 F.2d at 1026.

203. *Linnas*, 527 F. Supp. at 428. *See supra* note 82-85 and accompanying text.

204. *Linnas*, 527 F. Supp. at 428.

205. The Germans invaded Estonia in 1941. *Id.* at 430. Mobile units called Einsatzkommandos roamed Estonia and Tartu specifically, carrying out Nazi policies, including the mass slaughter of Jews and other "non-desirables." *Id.* The Einsatzkommandos were assisted by the Estonia Home Guard called the Selbstschutz. *Id.* at 430-31.

206. *Linnas*, 790 F.2d at 1026. The concentration camp was located near Tartu. *Id.* The witnesses who testified at trial all placed Linnas at the concentration camp, especially near the Kuperjanov Barracks on Kastani Street. *Linnas*, 527 F. Supp. at 431-33.

207. *Linnas*, 527 F. Supp. at 431-34.

Soviet Union,²⁰⁸ always in the presence of Soviet authorities, and each tape was admitted into evidence in the United States trial. The four testimonies were extremely damaging to the defense.

Three of the four witnesses worked at the Tartu death camp: the first was a guard supervisor, the second was a guard personally recruited by the defendant, and the third was a bus driver who transported prisoners to the mass grave site outside of Tartu.²⁰⁹ The fourth witness was imprisoned at Tartu for his political beliefs, not for his religion or nationality.²¹⁰ His testimony confirmed Linnas' presence at the camp and described the horrible conditions there.²¹¹ Three of the four witnesses had identified Linnas from a picturespread.²¹²

The defense challenged the truthfulness and reliability of the Soviet-supplied evidence (the witnesses' testimony) in light of the general unreliability of information which is communicated through official sources in the Soviet Union.²¹³ For example, the defense

208. *Id.* at 432-33. Linnas' attorney did not attend the depositions in the Soviet Union because he "contended that any such proceeding conducted there would be a sham." *Id.* at 433.

209. *Id.* at 432-33.

210. *Id.* at 433. Elmer Puusepp was arrested in the summer of 1941 "because he had been a political officer under the Soviet Government." *Id.*

211. *Id.* at 432-33. Puusepp testified that "prisoners were fed soup made out of '[h]alf-rotten horse corpses or horse carcasses' . . . lice prevented the prisoners from sleeping . . . and the barracks were so tightly packed that, at times, it was impossible to turn over." *Id.* at 433.

212. *Id.* at 431-33. Hans Laats, Olav Karikosk, and Oskar Art each identified Linnas from a picturespread comprised of eight photographs. *Id.* at 431. The district court found the picturespread identification to be reliable. *Id.* at 432 n.11. The photo of Linnas used in the picturespread was taken from his 1951 visa application. *Id.* at 433 n.14.

213. Linnas' attorney attempted to convince the court that the Soviets have "manipulated . . . and manufactured evidence" on many occasions, in order to convict innocent Soviet citizens "for the purpose of attaining political objectives of the Soviet Communist party." *Id.* Various Eastern European ethnic groups in America agree with this theory. Warder, *Viewpoint: Collaborating with Communists to Prosecute Nazis, Part II*, Ukrainian Weekly, Aug. 2, 1987, at 5, col. 1. Recently one scholar cited more than a few examples in the last two decades where Soviet authorities have officially denied or clouded the facts of various incidents, including the Chernobyl Nuclear Plant crisis, a mutiny on a Soviet destroyer in 1975, and a 1986 tragedy involving a Soviet ship in the Black Sea. See generally J.E. OBERG, UNCOVERING SOVIET DISASTERS: EXPLORING THE LIMITS OF GLASTNOST (1988). In addition, a Congressional report expressly found that Soviet policy under Josef Stalin resulted in the deaths of millions of Ukrainians by a man-made famine in 1932-33. COMMISSION ON THE UKRAINIAN FAMINE, REPORT TO CONGRESS, 100th. Cong., 2d Sess. vi-vii (1988). The Commission found that Stalin and those in his administration committed genocide against Ukrainians during those years. *Id.* Further, and most importantly, the Commission found that the Western Press Corps "cooperated with the Soviet government to deny the existence

noted that before each deposition was taken, the Soviet authorities referred to the suit as "an action by the United States against the *former war criminal* Karl Linnas," and the defendant as "the *Facist prisoner murder[er]*, Karl Linnas."²¹⁴ The court rejected these objections not because they were not substantially grounded, but because the defense had waived its right to such objections when it refused to go to the Soviet Union to attend the depositions.²¹⁵

The government also offered copies of four documents with the defendant's signature over the title of "Chief of Tartu Concentration Camp."²¹⁶ These documents were dated 1941 and were authenticated by Soviet authorities.²¹⁷ A United States government expert testified as to the authenticity of the documents - their age, originality, and unaltered status.²¹⁸ The defense did not produce an expert to challenge the reliability of the documents or the signatures.²¹⁹

The defense at trial centered around the *per se* unreliability of Soviet provided evidence - whether in testimony or document form.²²⁰ The court was not prepared to broadly discredit all evidence, based solely on the fact that the Soviet Union provided it.²²¹ Particularly, the court noted that the defense could not refer specifically to "any instance in a western court in which falsified, forged, or otherwise fraudulent evidence had been supplied by the Soviet Union to a court or other government authority."²²² Furthermore, the court acknowledged the government's heavy burden

of the Ukrainian Famine." *Id.* at xxiv. Specifically, the Commission noted various incidents where the Soviets falsified information to support their position denying of the existence of the famine. *Id.* at 69-96.

214. *Linnas*, 527 F. Supp. at 434 n.16 (emphasis added). The court expressed its concern over the disturbing lack of objectivity in these remarks. *Id.* Therefore, the court only considered the testimonies as "supportive and corroborative of the Government's primary evidence of Linnas' involvement at the Tartu Concentration Camp." *Id.*

215. *Id.* at 434.

216. *Id.*

217. *Id.* See FED. R. EVID. 902(3), 902(4); FED. R. CIV. P. 44.

218. *Linnas*, 527 F. Supp. at 434. The government had the documents examined and verified by an expert document examiner of the Federal Bureau of Investigation. *Id.*

219. *Id.*

220. *Id.*

221. *Id.* at 433. The court concluded that the "defendant's defense by innuendo is without any merit." *Id.* at 434.

222. *Id.* at 433-34 (citing the Record at 470, 597-98, 646).

of proof, as established in *United States v. Fedorenko*,²²³ and concluded that it had been met.²²⁴ It found the defendant had unquestionably procured his citizenship by willful misrepresentation of material facts of his wartime activities in Tartu and ordered the defendant's denaturalization.²²⁵

After Linnas was denaturalized, the government filed deportation proceedings against him.²²⁶ In 1983, an immigration judge found Linnas to be deportable.²²⁷ The defendant's choice for the receiving state was "the free and independent Republic of Estonia."²²⁸

Linnas had intended to be "deported" to the exiled underground government of Estonia located in a Park Avenue high-rise in New York City's fashionable Upper Eastside.²²⁹ The immigration judge interpreted his choice as "that geographic territory historically associated with the Republic of Estonia and currently incorporated in the Soviet Union."²³⁰ The immigration judge then ordered Linnas deported to Estonia, S.S.R. and if Estonia indicated her refusal to receive him, then to the Soviet Union.²³¹ Linnas appealed the decision to the Board of Immigration Appeals (BIA) and the BIA remanded the case because the United States does not recognize the Soviet domination of Estonia.²³² On remand the immigration judge ordered Linnas deported to the Soviet Union.²³³

Linnas appealed the decision on two grounds: (a) the applicable statute (The Holtzman Amendment to the Immigration and

223. *United States v. Fedorenko*, 449 U.S. 490 (1981). See *supra* notes 128-50 and accompanying text.

224. *Linnas*, 527 F. Supp. at 439 n.34.

225. *Id.* at 440.

226. *Linnas v. I.N.S.*, 790 F.2d 1024, 1027 (2d Cir. 1986). The government instituted proceedings under 8 U.S.C. § 1252 (1982). *Linnas*, 790 F.2d at 1027.

227. *Linnas*, 790 F.2d at 1027. On May 19, 1983, Immigration Judge Howard I. Cohen found Linnas to be deportable. *Id.*

228. *Id.* at 1027. See *supra* note 201. See also W.R. KEYLOR, *supra* note 29, at 186.

229. *Linnas*, 790 F.2d at 1027.

230. *Id.*

231. *Id.* An alien who is ordered to be deported should be sent back to the country from which the vessel he traveled on (to arrive in America) came. *Id.* If that country refuses to accept an alien he should be deported to: "(1) The country of which the alien is a subject, citizen, or national; (2) The country where the alien was born; (3) The country where the alien has a residence; or (4) Any country willing to accept the alien." 8 C.F.R. § 237.6(b) (1987).

232. *United States v. Linnas*, 527 F. Supp. 426, 428 (E.D.N.Y. 1981).

233. *Linnas*, 790 F.2d at 1027-28.

Naturalization Act)²³⁴ constituted a bill of attainder²³⁵ and (b) his deportation to the Soviet Union was a disguised extradition in violation of his rights under the equal protection and due process clauses.²³⁶ The Second Circuit Court of Appeals rejected the defendant's claim that the Holtzman Amendment was a bill of attainder and therefore unconstitutional,²³⁷ citing the legislative history of bills of attainder in general, traditional forms of bills of attainder, and the legislative history and congressional intent of the Holtzman Amendment.²³⁸ However, Linnas' second claim, that his deportation to the Soviet Union was a disguised extradition and was therefore illegal because of the non-existence of an extradition treaty with the Soviet Union,²³⁹ was a new twist in the defense argument.

The defendant was tried in the Soviet Union, *in abstensia*, found guilty, and sentenced to death in 1962.²⁴⁰ The defendant, however, maintained that the Soviet trial was a hoax, based solely on Soviet retaliation for the defendant's outspokenness against the Communist regime.²⁴¹ The court of appeals refused to hear the defendant's

234. Holtzman Amendment, 8 U.S.C. §§ 1182(a)(33), 1251(a)(19) (1982 & Supp. IV. 1986). The Amendment provides for the exclusion or deportation from the United States of "[a]ny alien who during the period beginning on March 23, 1933, and ending on May 8, 1945" had in any way assisted or cooperated with the Nazis. *Id.* § 1182(a)(33).

235. A bill of attainder:

[is any] legislative act[] . . . that appl[ies] either to named individuals or to easily ascertainable members of a group in such a way as to inflict punishment on them without a judicial trial. [citations omitted]. An act is a "bill of attainder" when the punishment is death and a "bill of pains and penalties" when the punishment is less severe; both kinds of punishment fall within the scope of the constitutional prohibition.

BLACK'S LAW DICTIONARY 150 (5th ed. 1979) (citation omitted).

236. *Linnas*, 790 F.2d at 1026.

237. U.S. CONST. art. 1, § 9. "No Bill of Attainder or ex post facto Law shall be passed." *Id.*

238. *Linnas*, 790 F.2d at 1028-30. The court noted that the Holtzman Amendment was held not to be a bill of attainder in *Artukovic v. I.N.S.*, 693 F.2d 894, 897 (9th Cir. 1982). H.R. 12509, 95th Cong., 2d Sess., 124 CONG. REC. H31646-H31648 (daily ed. Sept. 26, 1978) reprinted in, 4 U.S. CODE CONG. & ADMIN. NEWS 4700-02 (1978). *Contra* 124 CONG. REC. at H31649 (statement by Rep. Wiggins who argued that the Holtzman Amendment was an unconstitutional Bill of Attainder and ex post facto law.).

239. The United States has never had an extradition treaty with the Soviet Union. See 18 U.S.C. § 3181 (1982).

240. *Linnas*, 790 F.2d at 1030.

241. *Id.* The results of Linnas' trial in 1962 were announced three weeks before its conclusion. *Linnas' Sentence had been Commuted, Says Daughter Upon Return From USSR*, Ukrainian Weekly, July 12, 1987, at 3, col. 1 [hereinafter *Linnas' Sentence*].

argument. First, the court pointed out that Linnas had enjoyed as much due process as any other person in the United States; perhaps more, considering that his denaturalization process had, at that time, taken seven years.²⁴² Furthermore, the court noted that there had been no statutorily required request from the Soviet Union to extradite Linnas (the court characterized the Soviet Union's involvement as an interest in the trial of a suspected war criminal).²⁴³

Karl Linnas was finally deported to Estonia, S.S.R. in April, 1987.²⁴⁴ He asked the Supreme Court of Estonia to pardon him, and when that failed, he sought a new trial. The Soviet authorities rejected his request.²⁴⁵ By June, his health was failing rapidly and he was transferred to a Leningrad hospital where he underwent two operations in eight days.²⁴⁶ Within a matter of days, Karl Linnas, sixty-seven years old, was dead.²⁴⁷

The case of Karl Linnas raised some interesting questions concerning the denaturalization and deportation process of suspected war criminals in America. The most important, by far, was the controversy surrounding the use of Soviet supplied evidence in American courts. Linnas argued that all Soviet supplied evidence is unreliable as a rule.²⁴⁸ This issue would be re-examined in John Demjanjuk's case.²⁴⁹ The significance of using Soviet supplied evidence in American courts is great. The Soviet Union does not permit foreigners to examine Soviet archives, so the verification of

242. *Linnas*, 790 F.2d at 1031. The Second Circuit found that Linnas' due process argument was "an appeal to the court's sense of decency and compassion. Noble words such as 'decency' and 'compassion' ring hollow when spoken by a man who ordered the extermination of innocent men, women, and children." *Id.* at 1032.

243. *Id.* at 1031.

244. Feduschak, *Linnas Deportation to USSR Sets Dangerous Legal Precedent*, Ukrainian Weekly, Apr. 26, 1987, at 3, col. 4. The United States had made a series of unsuccessful attempts to find another state which would accept Linnas. *Id.* Panama had originally agreed to such an arrangement but refused Linnas at the last minute due to pressure from lobbying groups. *Id.*

245. *Linnas Seeks Pardon*, Ukrainian Weekly, May 17, 1987, at 3, col. 1; *Linnas Denied New Trial*, Ukrainian Weekly, June 14, 1987, at 3, col. 1.

246. *Linnas' Sentence*, *supra* note 241, at col. 1.

247. *Id.* The Soviets had decided to commute Linnas' death sentence, but at the time of his death, had not publicly announced its decision. *Id.*

248. See *supra* note 213 and accompanying text. See also *United States v. Linnas*, 527 F. Supp. 426, 433-34 (E.D.N.Y. 1981). For more information on such views, see generally J.E. OBERG, *supra* note 213.

249. See *infra* notes 252-305 and accompanying text.

documents rests *solely* on Soviet authorities.²⁵⁰ Furthermore, instead of qualified American experts, for either the government or the defense, examining the document or the actual source from which it came (be it from the State Archives or a citizen's private papers), the United States' judicial process must blindly rely on the good faith of the Soviet Union -- an idea many would reject on face value.²⁵¹

D. John Demjanjuk

The Treblinka death camp was undoubtedly the most gruesome of all of the camps constructed by the Nazis to carry out the "Final Solution." It operated for little more than a year and its effect was horrifying.²⁵² Three hundred thousand Jews from Warsaw alone, were murdered there.²⁵³ Another 900,000 non-Aryans coming from as far away as Holland and as nearby as Czechoslovakia were also killed.²⁵⁴ A total of 1,200,000 people were killed in 400 days.²⁵⁵ Of all the people who worked at Treblinka, one in particular is remembered most vividly by those few who survived; they called him Ivan Grozny - Ivan the Terrible.²⁵⁶ He was the sadistic guard responsible for operating the gas chamber and for other brutal beatings and inhumane deaths.²⁵⁷ Thirty-five years after Treblinka was shut down, he was found. According to the Government, he was a Ford factory worker living in a Cleveland suburb. Ivan

250. United States v. Demjanjuk, 518 F. Supp. 1362, 1365-66 (N.D. Ohio 1981) (emphasis added).

251. See J.E. OBERG *supra* note 213; UKRAINIAN FAMINE REPORT, *supra* note 213.

252. A. RYAN, *supra* note 5, at 97. For an excellent depiction of Treblinka, see generally J. STEINER, *supra* note 129. See also United States v. Fedorenko, 455 F. Supp. 893, 901 n.12 (S.D. Fla. 1978).

253. A. RYAN, *supra* note 5, at 97.

254. *Id.*

255. *Id.*

256. *Id.* at 101.

257. United States v. Demjanjuk, 518 F. Supp. 1362, 1369 (N.D. Ohio 1981), *aff'd*, 680 F.2d 32 (6th Cir. 1982), *cert. denied*, 459 U.S. 1036 (1982); *later proceeding sub nom.*, *In re Extradition of Demjanjuk*, 584 F. Supp. 1321 (N.D. Ohio 1984), 603 F. Supp. 1463 (N.D. Ohio 1984); 603 F. Supp. 1468 (N.D. Ohio 1984), *dismissed*, 762 F.2d 1012 (6th Cir. 1985), 612 F. Supp. 544 (N.D. Ohio 1985); *later proceeding sub nom.*, *Demjanjuk v. Petrovsky*, 612 F. Supp. 571 (N.D. Ohio 1985), *aff'd*, 776 F.2d 571 (6th Cir. 1985), *cert. denied*, 475 U.S. 1016 (1986); *later proceeding sub nom.*, *Demjanjuk v. Meese*, 784 F.2d 1114 (D.C. Cir. 1986).

Grozny, the notorious guard, was John Demjanjuk.²⁵⁸

The government filed an action in 1981 to denaturalize John Demjanjuk alleging that the defendant willfully misrepresented material facts on his application for an immigration visa in 1952.²⁵⁹ The government also alleged the defendant illegally procured his citizenship because of these willful misrepresentations and because he did not have the requisite good moral character for citizenship.²⁶⁰ The government claimed that Demjanjuk failed to reveal that he had served with the German SS at the Trawniki training camp in Poland and at the death camps at Treblinka and Sobibor.²⁶¹

Government evidence and the defendant's admissions are in agreement concerning that defendant's service in the Russian Army which began in 1940.²⁶² Demjanjuk was sent to the Crimean Front where he was captured.²⁶³ As a Prisoner of War, he was sent to two German camps, in Rovno and in Chelm.²⁶⁴ The facts in dispute arose from the defendant's whereabouts after Chelm: the government contended he was sent to the Trawniki training camp and

258. *Demjanjuk*, 518 F. Supp. at 1369.

259. *Id.* at 1363.

260. *Id.* The Government filed a six-count complaint.

In counts I-II, the Government allege[d] that defendant illegally procured his citizenship because (1) his activities during the war precluded him from obtaining a valid visa as an 'eligible displaced person' under the DPA, and (2) the visa actually obtained by [Demjanjuk] was invalid since he willfully misrepresented his whereabouts during the war. Counts III-IV allege[d] that [Demjanjuk] procured his naturalization by concealing and misrepresenting his service with [the] German SS . . . The Government also allege[d] that [Demjanjuk] illegally procured his naturalization since he was not a person of good moral character. Count VI allege[d] that [Demjanjuk's] failure to disclose his service in the German SS . . . also indicate[d] a lack of good moral character that is a prerequisite to naturalization.

Id.

261. *Id.*

262. *Id.* at 1364. Demjanjuk's memory as to the exact dates and places of his activities between 1940 and 1944 was imprecise. *Id.* The court based its factual conclusions upon the information supplied by Demjanjuk and a government expert witness, Dr. Earl F. Ziemke, a military historian who specialized in the Eastern Front during World War II. *Id.*

263. *Id.* at 1364.

264. *Id.* A. RYAN, *supra* note 5, at 132-33. Demjanjuk testified he was in Rovno during 1942-43 and in Chelm until 1943 or 1944. *Demjanjuk*, 518 F. Supp. at 1364. Dr. Ziemke testified that it was highly unlikely that the defendant was at Chelm in 1944 since, during this time, the Russian Front was rapidly moving westward. *Id.* Dr. Ziemke concluded that it would therefore be improbable for the Germans to have maintained a POW camp at Chelm in 1944. *Id.* The court agreed and found that Demjanjuk was probably at Chelm in 1943. *Id.*

from there to Treblinka where he assisted in the deaths of thousands of innocent civilians.²⁶⁵ Demjanjuk denied ever being at Trawniki or Treblinka.²⁶⁶

The government produced a copy, and later the original, of a Trawniki identification card alleged to belong to the defendant.²⁶⁷ This Trawniki card was supplied by Soviet authorities and certified under the Federal Rules of Evidence.²⁶⁸ Just as Karl Linnas had objected to the use and authenticity of Soviet documents offered as evidence in American trials, Demjanjuk objected. The defense and the court both noted that this Trawniki card is the only one known to exist, even though an estimated 4,000 men were trained at Trawniki and would have received similar cards.²⁶⁹ However, the defendant did not offer any evidence to challenge the authenticity of the Trawniki card even though the original was eventually made available for testing and inspection by the defense.²⁷⁰

From photographs, six eyewitnesses, one German guard, and five Jewish survivors from Treblinka each identified John Demjanjuk as the man they knew as Ivan Grozny.²⁷¹ The court rejected the defense arguments that the photographic arrays used were suggestive or improper, and that the world media coverage containing photographs of the defendant was prejudicial.²⁷² The defense then

265. *Id.* Russian POWs, who assisted the Nazis at concentration camps, were generally taken "from prisoner of war camps in Eastern Poland, among them, Rovno and Chelm . . . [P]risoners from Rovno and Chelm were [then] taken to Trawniki [to be trained]." *Id.* The court found as a historical fact that "former Russian POWs, often Ukrainians, were trained at Trawniki and later sent to serve at . . . Treblinka." *Id.* at 1369. The court noted that Feodor Fedorenko admitted that he had first trained at Trawniki and was later sent to Treblinka where he served as a guard. *Id.* at 1369 n.15; *United States v. Fedorenko*, 455 F. Supp. 893, 901 n.12 (S.D. Fla. 1978).

266. *Demjanjuk*, 518 F. Supp. at 1364.

267. *Id.* at 1365-66.

268. *Id.* at 1366; *See* FED. R. EVID. 902(3)-(4).

269. *Demjanjuk*, 518 F. Supp. at 1365 n.5, 1366 n.7. The government's witness, Dr. Wolfgang Scheffler, testified to the historical accuracy of the information appearing on the card, but also admitted that he had never seen a card identical to the one allegedly from Trawniki. *Id.* at 1366.

270. *Id.* at 1366.

271. *Id.* The testimony of Otto Horn, the German guard, was videotaped and submitted into evidence. *Id.* The five Jewish survivors testified at trial and each previously identified the defendant as Ivan the Terrible of Treblinka in picturespreads. *Id.* at 1371-73. Otto Horn had been tried and acquitted for his activities at Treblinka in Germany in 1965. *Id.* at 1369-70.

272. *Id.* at 1375-76. Although the court showed some concern for the possibility of "suggestiveness" concerning the photo-identification of Demjanjuk, it concluded that the

offered the testimony of Feodor Fedorenko, who at the time was appealing his own denaturalization proceeding.²⁷³ The court found this testimony to be totally devoid of credibility.²⁷⁴ The court concluded, based on the testimony of the six government witnesses, that John Demjanjuk was at Treblinka during 1942-43.²⁷⁵ Because the defendant had willfully misrepresented material facts concerning his whereabouts and activities during this period, the court revoked his citizenship.²⁷⁶

In late 1983, while Demjanjuk appealed the 1981 denaturalization decision, Israel filed a request for his extradition.²⁷⁷ The request charged the defendant with "the crimes of murder and malicious wounding; inflicting grievous bodily harm."²⁷⁸ When the extradition hearing commenced in 1984,²⁷⁹ three issues were presented: (1) Was the defendant the party named in the complaint?; (2) Were the crimes for which the defendant was charged extraditable offenses under the treaty?; (3) Was there probable cause to believe the defendant committed the acts for which he was charged?²⁸⁰

The defense contended that John Demjanjuk was not the person whom Israel sought, but that Ivan Grozny and John Dem-

"totality of circumstances" established the reliability of identifications. *Id.* at 1375.

273. *Id.* at 1376.

274. *Id.* Fedorenko's deposition indicated that he had never seen the defendant at Treblinka nor had he any recollection of an Ivan who operated the gas chamber. *Id.* The court noted that at Fedorenko's own trial he had testified that someone named Ivan had operated the gas chamber. *Id.*

275. *Id.* Because this court found that Demjanjuk had been at Trawniki and Treblinka, the court did not determine whether he was ever at Sobibor. *Id.* at 1376 n.31.

276. *Id.* at 1381-82.

277. *In re* Extradition of Demjanjuk, 584 F. Supp. 1321, 1324 (N.D. Ohio 1984). The Israeli Request for Extradition was filed on November 18, 1983. *Id.*

278. *In re* Extradition of Demjanjuk, 612 F. Supp. 544, 546 (N.D. Ohio 1985). These charges are expressly enumerated in the United States-Israeli treaty as extraditable offenses. Extradition Treaty, Dec. 10, 1962, United States-Israel, 14 U.S.T. 1717, T.I.A.S. 5476. The pertinent provision of the treaty reads: "Article II: Persons shall be delivered up according to the provisions of the present Convention for prosecution when they have been charged with . . . any of the following offenses: (1) Murder . . . (3) Malicious wounding; inflicting grievous bodily harm." *Id.*

279. By the time the extradition trial began, the United States Supreme Court had denied certiorari to review defendant's denaturalization trial. *United States v. Demjanjuk*, 518 F. Supp. 1362 (N.D. Ohio 1981), *aff'd*, 680 F.2d 32 (6th Cir. 1981), *cert. denied*, 459 U.S. 1036 (1982). On May 23, 1984, the defendant was found deportable and the U.S.S.R. was designated as the receiving state. *In re* Extradition of Demjanjuk, 612 F. Supp. at 546.

280. *In re* Extradition of Demjanjuk, 612 F. Supp. at 547.

janjuk were two different people.²⁸¹ The court concluded that there was probable cause to believe that the defendant was the person in the request and that probable cause (not absolute certainty) is all that need be shown in extradition identification proceedings.²⁸² The defense next argued that Israel lacked jurisdiction to try him for the alleged crimes, therefore, the defendant could not be extradited there.²⁸³ However, Israel previously recognized its own power to assert jurisdiction in such cases through statute and case law.²⁸⁴ Finally, the court held that there was probable cause to believe the defendant committed the alleged acts based on the affidavits submitted by the government.²⁸⁵

The court addressed the defense argument that the Nazi and Nazi Collaborators Punishment Law, the applicable statute in Israel, violated International law prohibiting *ex post facto* laws.²⁸⁶ The defendant's argument was twofold: (1) the law criminalized activity after the fact and (2) Israel could not prosecute someone for crimes which were committed before the State of Israel existed.²⁸⁷ The court held that the defendant's argument had two major flaws. First, murder is *malum in se*,²⁸⁸ and therefore illegal no matter when the murder was committed.²⁸⁹ Second, courts in other war

281. *Id.* The Federal Extradition Request listed an alias, "Ivan Grozny," which the defense challenged. *Id.* at 549.

282. *Id.* at 552. Five of the nine documents used to identify the defendant were affidavits or testimony from Demjanjuk's denaturalization trial. *Id.* at 550-52.

283. *Id.* at 554.

284. *Id.* at 554-55. See The Nazi and Nazi Collaborators Punishment Law, *Sefer Ha-Chukkim* No. 57 of the 26th Av, 5710 (1950) at 281. *In re* Extradition of Demjanjuk, 612 F. Supp. at 554 n.8. See also Attorney Gen. of Israel v. Eichmann, 36 I.L.R. 5 (D. Ct. Jerusalem 1961), *aff'd*, 36 I.L.R. 277 (S. Ct. Isr. 1962).

285. *In re* Extradition of Demjanjuk, 612 F. Supp. at 566.

286. *Sefer Ha-Chukkim* No. 57 of the 26th Av, 5710 (1950) at 281. *In re* Extradition of Demjanjuk, 612 F. Supp. at 567. An *ex post facto* law is one which is enacted "after the occurrence of a fact or commission of an act, which retrospectively changes the legal consequences or relations of such fact or deed." BLACK'S LAW DICTIONARY 520 (5th ed. 1979). In the United States, passage of *ex post facto* laws is prohibited. U.S. CONST. art. I, § 9, cl. 3 & § 10, cl. 1.

287. *In re* Extradition of Demjanjuk, 612 F. Supp. at 567-69.

288. An act is "*malum in se*" if it is "inherently and essentially evil, that is, immoral in its nature and injurious in its consequences, without any regard to the fact of its being noticed or punished by the law of the state[] [s]uch . . . as murder." BLACK'S LAW DICTIONARY 865 (5th ed. 1979).

289. The generally accepted principal is that there is no statute of limitation on murder. See MODEL PENAL CODE § 1.06(1) ("[a] prosecution for murder may be commenced at any time." *Id.*).

crimes cases have always specifically rejected the contention of an ex post facto defense.²⁹⁰ The court certified the defendant, John Demjanjuk, extraditable to Israel.²⁹¹ After losing all his appeals, Demjanjuk was finally extradited to Israel in February, 1986.²⁹² John Demjanjuk is the only person to be extradited to Israel and the first person since Adolf Eichmann to stand trial in Israel for war crimes.²⁹³

On April 18, 1988, after a fifteen month trial, ten thousand pages of court documents and just three hours of deliberation, an Israeli court found John Demjanjuk guilty of "crimes against the Jewish people, crimes against humanity, war crimes, and crimes against a persecuted people."²⁹⁴ One week later, he was sentenced to death by hanging.²⁹⁵ Members of the legal community, however, continue to doubt whether Demjanjuk was actually Ivan Grozny--Ivan the Terrible of Treblinka.²⁹⁶ First, the defense provided by the numerous attorneys in both the American and Israeli proceedings was obviously poor and almost embarrassing. In total, Demjanjuk was represented by eight different attorneys.²⁹⁷ Second, unusual events surrounded the proceedings: the lead attorney who handled Demjanjuk's case in America and Israel resigned midway through the Israeli trial,²⁹⁸ an expert witness tried to commit suicide after her testimony,²⁹⁹ and finally one of the attorneys handling the

290. The Nurnberg Trial, 6 F.R.D. 69 (IMT 1946); Attorney Gen. of Israel v. Eichmann, 36 I.L.R. 5 (D. Ct. Jerusalem 1961).

291. *In re* Extradition of Demjanjuk, 612 F. Supp. at 571.

292. Reiss, *supra* note 100, at 282. Kerr, *Ukrainian Facing A Trial in Israel*, N.Y. Times, Feb. 28, 1986, at A10, col. 1.

293. *Court's dilemma: Which Survivors are Correct?*, Ukrainian Weekly, Mar. 27, 1988, at 12, col. 4.

294. Rabin, *supra* note 5, at A1, col. 2; Katz, *'Ivan the Terrible' Sentenced to Death by Israeli Judges*, Newsday, Apr. 26, 1988, at 5, col. 1.

295. Kifner, *Demjanjuk Given Death Sentence For Nazi Killings*, N.Y. Times, Apr. 26, 1988, at A1, col. 3. An appeal before the Israeli Supreme Court is scheduled to begin on May 4, 1989. *Demjanjuk Lawyer Eitan Dies in Apparent Suicide; Sheftel Injured in Attack by Holocaust Survivor*, Ukrainian Weekly, Dec. 4, 1988, at 1, col. 1.

296. See generally Adams, *Ivan The Terrible's Terrible Defense*, AM. LAW., Oct. 1988, at 147.

297. *Id.* at 149-54.

298. *Id.* at 153-54. Mark O'Connor resigned from the case near the end of the prosecutor's case. *Id.* at 153. After Demjanjuk, who was the first witness to testify for the defense, O'Connor made several remarks to the Israeli press which proved to be damaging to the defense's case. *Id.* at 155.

299. *Id.* at 156.

case on appeal apparently committed suicide.³⁰⁰ Third, there were serious flaws in the prosecution's case which raise doubts concerning the identity issue, the connection between Ivan of Treblinka and John Demjanjuk. The two most striking defects in the case were the testimonies of the prosecution's star witnesses: Elijah Rosenberg and Pinchas Epstein.³⁰¹ Although both identified the defendant's picture from photospreads and had testified at the denaturalization proceedings, both had previously testified to significantly different facts. In Rosenberg's 1947 affidavit, he swore that Ivan the Terrible had been killed in August, 1943 in the Treblinka uprising.³⁰² Epstein never mentioned an Ivan the Terrible in his 1947 affidavit.³⁰³ Also, at least one Treblinka scholar and two survivors swear that Ivan the Terrible was killed by Jewish inmates in August, 1943, thus corroborating Rosenberg's earlier testimony.³⁰⁴ OSI records also revealed that during *its* investigation, nearly forty Treblinka survivors failed to identify Demjanjuk as Ivan the Terrible,

300. *Nazi's Lawyer Killed In Plunge in Jerusalem*, N.Y. Times, Nov. 30, 1988, at A11, col. 1. The attorney, Dov Eitan, was a former Israeli judge who was to handle Demjanjuk's appeal of his conviction and death sentence. *Id.* His death occurred a week before the appeal was originally scheduled. *Id.* At the funeral for Mr. Eitan, a Holocaust survivor splashed acid in the face of Yoram Sheftel, another Israeli member of the defense team. *Nazi's Lawyer Hurt*, Newsday, Dec. 2, 1988, at 7, col. 2.

301. *Demjanjuk*, 518 F. Supp. at 258. See also A. RYAN, *supra* note 5, at 105-06. Epstein also testified at the trial of Feodor Fedorenko. *United States v. Fedorenko*, 455 F. Supp. 893, 903 (S.D. Fla. 1978).

302. *Treblinka Survivor Recalled To Stand*, Ukrainian Weekly, Jan. 31, 1988, at 1, col. 3. Rosenberg's 68-page affidavit was handwritten in Yiddish sometime in 1945. *Id.* He described Ivan's death as occurring after the 1943 Treblinka inmate uprising: "Afterwards we broke into Ivan's machine room. He was asleep at the time. Gustof [a fellow inmate] hit him in the head with a spade, leaving him there for all eternity." *Id.* Rosenberg admitted that the statement was his, that it existed, "but [he] did not know where it could be found." *Id.* The defense had acquired a photocopy of the affidavit (in time for closing statements at the Jerusalem trial) after months of visa difficulties. *Id.* Demjanjuk's son-in-law was finally "able to travel to the Jewish Historic Institute in Poland" in early February, 1988. *Coalition Reports on News Coverage of Demjanjuk Case Revelations*, Ukrainian Weekly, Feb. 7, 1988, at 3, col. 1.

303. Buchanan, *Nazi Butcher or Mistaken Identity?*, Wash. Post., Sept. 28, 1986, at C1, col. 5. Rosenberg also testified at the denaturalization proceedings that Ivan Grozny had personally murdered two of his cousins. *Id.* This charge was conspicuously absent from his lengthy 1947 affidavit. *Id.*

304. *Id.* "Jean-Francis Steiner, the author of 'Treblinka'- a 1966 book based on survivors' testimony - also wrote that Ivan died on August 2, 1943, knifed to death by [J]ewish inmates." *Id.* Avraham Goldfarb and Joaquin Garcia Ribes, both Treblinka survivors, swear that Ivan was killed in August, 1943. *Id.*

compared to the five who did.³⁰⁵

The impact of the Demjanjuk case in both American and International courts is yet to be determined. He was first identified in 1975, however today, fourteen years later, his case is *still* pending before the courts. Perhaps legislatures will realize the significance of this lengthy process and be inspired to take remedial action.

VII CONCLUSION

There are approximately ten thousand suspected war criminals presently in the United States.³⁰⁶ Assuming most of these people were twenty to forty years of age at the time the alleged crimes were committed, and because over forty years has since elapsed, the targets of the OSI investigations and the subjects of the extradition requests are presently at least sixty-five years old. If the world community wants to bring these people to justice, speed and efficiency are top priority. Lengthy and continuous litigation on preliminary matters works to the advantage of the person who wants to avoid legal responsibility for as long as possible. The case of Andrija Artukovic is illustrative of how such a targeted individual can avoid justice for over thirty years.³⁰⁷ The Demjanjuk case in Israel³⁰⁸ along with the Klaus Barbie case in France³⁰⁹ attracted extensive media attention and consequently, more public pressure was applied to various national legislative bodies calling for the prosecution of war criminals. In recent years, at least two suspects have been found in foreign lands and face extradition proceedings,³¹⁰

305. *Court's Dilemma: Which Survivor's are Correct?*, *supra* note 293 at 1, col. 1.

306. *Ryan Reiterates: 10,000 War Criminals in U.S.*, *Ukrainian Weekly*, June 29, 1987, at 3, col. 3. Allan A. Ryan, Jr., former head of the OSI, uses 10,000 as a conservative estimate. *Id.*

307. *Supra* notes 151-98.

308. *Supra* notes 252-305.

309. Klaus Barbie, Butcher of Lyon, was sent to France in 1942 as second in command of the Nazi Occupation Forces. A. RYAN, *supra* note 5, at 274. One of Barbie's duties was to eliminate the French Resistance. *Id.* After the war, he fled to Bolivia and remained there until 1983. *Id.* at 277-78. In 1983, he was sent to France to stand trial for eight counts of "crimes against humanity" -- including ordering a Gestapo raid on a French orphanage north of Lyon. *Id.* at 275. The 52 children at the orphanage were sent to Auschwitz to be killed. *Id.*

310. *Nazi Extradition Asked*, *Newsday*, Nov. 14, 1987, at 8, col. 1 (Alois Brunner hiding in Syria for over 30 years); *Alleged Nazi Criminal*, *Newsday*, Nov. 15, 1987, at 12, col. 1 (Joseph

while the OSI continues to file suits against suspected war criminals in America.³¹¹ American criminal laws do not directly address war crimes³¹² and because of this, the government must use the lengthy process of denaturalization and deportation to expel the person from this country. Deportation does not guarantee, however, that the suspect will ever stand trial for his crimes. Once the targeted individual leaves the United States, his future lies with the receiving nation and prosecution remains within their discretion.

Faced with similar problems, the Canadians proposed and passed a bill in the Canadian House of Commons to amend the Canadian Criminal Code so as to assume jurisdiction to try war criminals.³¹³ The law grants Canadian courts the authority to try war criminals for their crimes, even though the crimes were committed on foreign soil and against foreign citizens.³¹⁴ Similar laws are being considered in Great Britain and Australia.³¹⁵ The United States should take notice of the Canadian efforts.³¹⁶ By trying war criminals in the United States, the target would be directly "attacked" for his crimes and the real issue, his crimes, would not be circumvented by denaturalizing him for lying on his visa application.

The time has come to take swift and immediate action concerning war criminals in America. A possible solution would be to pass national legislation to make war crimes, crimes against humanity, and crimes against peace, as well as genocide, a federal crime punishable in the United States through the American judicial process. The proposal would, most likely, be more efficient and less costly than the present methods used. In cases where the United States government has had to litigate denaturalization, deportation, and extradition proceedings the cost and time of a single criminal trial would prove to be far more beneficial to the government and the defendant. Besides this more practical argument, there is an

Leo Schwammberger arrested in Argentina).

311. *Nazi Guard Punished*, Newsday, July 14, 1988, at 14, col. 2; Blumenthal, *Fugitive Ex-Nazi Given German Visa*, N.Y. Times, Oct. 30, 1988, at 9, col. 1.

312. See *supra* notes 55-56.

313. Bociurkiw, *supra* note 22, at col. 4.

314. Criminal Code R.S.C. § 6(1.91) (*amended by Bill C-71, 33d Parliament, 2d sess., June 23, 1987.*) See also *supra* note 22.

315. See *supra* note 22.

316. Imre Finta, a Hungarian emigre, will be the first alleged Nazi war criminal to be tried in Canada. *Controversial Lawyer to Defend First Accused War Criminal to be Tried in Canada*, Simon Wiesenthal Center Response, Feb. 1988, at 6, col. 1.

even better reason for such legislation. Simply stated, a national law would finally criminalize those acts which had been socially condemned for years. There *is* a difference between trying to expel someone from the country, and actively seeking to punish him for his wrongdoings. Although expulsion may have grave consequences in and of itself, there is no criminal element recognizable from a moral standpoint.

In another twenty years all of the people responsible for the unimaginable atrocities of World War II will have died and the only thing left for the world to do will be to apologize for not playing a more substantial role in bringing them to justice. By then, there will only be stories of horrible deeds committed, and how the world stood by, as the victims tried to put their lives back together and the criminals lived peacefully for the rest of their lives without reparation. Is this the type of world in which we want to live?

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