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UNITED STATES INVOLVEMENT WITH NAZI WAR CRIMES

ELIZABETH HOLTZMAN *

I very much appreciate the opportunity to be a panelist with such distinguished people and to address such an extraordinarily important subject. I think I can contribute most to this discussion by recounting a little bit of the history of the United States' involvement with Nazi war crimes.

Until the mid 1970s, with one or two small exceptions,¹ the United States government was not particularly interested in the presence of Nazi war criminals in this country.² Indeed, at the very time that it was prosecuting the Nuremberg cases, the United States was sheltering such Nazi war criminals as Klaus Barbie from accountability for war crimes committed in France.³ In addition, a United States government report found that government officials committed crimes in their effort to protect Klaus Barbie.⁴

In another case, this one having its situs in Belgium, the United States government again violated either its own laws or foreign laws in protecting Nazi war criminals from local accountability.⁵ The whole story, however, has never been disclosed to the American people: the story of the numbers involved, who was involved and what actions were taken. It nevertheless is known that the United States government brought Nazi war criminals to this country.⁶ In some cases, this was accom-

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1. There is one rather well-known exception: the case of Hermine Braunsteiner Ryan, who was a concentration camp guard at Maidonick. She was identified on the street, I believe, in Queens, New York. She was a Queens resident. She was extradited from the United States and stood trial in Europe. Aside from this prosecution, nothing was done by the United States government. See *Barbie Called One of Many Ex-Nazis Aided by U.S.*, N.Y. Times, Feb. 20, 1983, § 1, at 4, col. 1. See generally *Ex-U.S. Agents Tell of Efforts to Help Barbie*, N.Y. Times, July 6, 1983, at A3, col. 1.

2. See generally Lippman, *The Denaturalization of Nazi War Criminals in the United States: Is Justice Being Served?*, 7 HOUS. J. INT'L L. 169, 171 (1985).

3. See A. RYAN, *QUIET NEIGHBORS: PROSECUTING NAZI WAR CRIMINALS IN AMERICA* 281 (1984); Goldberg, *Klaus Barbie and the United States Government*, 19 HARV. C.R.-C.L. L. REV. 1 (1984); Kamen, *U.S. Routinely Hired Nazi War Criminals, Report Says*, Wash. Post, June 17, 1988, at A23, col. 1.

4. See *Alleged Nazi War Criminals, 1978: Hearings Before the Subcomm. on Immigration, Citizenship and International Law of the Comm. on the Judiciary*, 95th Cong., 2d Sess. 70-71 (1979) [hereinafter *1979 House Hearings*] (statement of Anthony DeVito, Former Immigration and Naturalization Service Investigator); see also Doman, *Aftermath of Nuremberg: The Trial of Klaus Barbie*, 60 U. COLO. L. REV. 449, 450-51 (1989); U.S. *Still Using Nazis as Spies: Ex-Justice Aide*, Chi. Tribune, June 29, 1985, at 3, col. 4; O'Toole, *Apologies to France: U.S. Admits Sheltering Barbie*, Wash. Post, Aug. 17, 1983, at A1, col. 1.

5. See Blumenthal, *U.S. Faulted in Hiring of Belgian Nazi War Criminal*, N.Y. Times, June 17, 1988, at A9, col. 1; see also Lippman, *supra* note 2, at 175.

6. See A. RYAN, *supra* note 3, at 282; Lippman, *supra* note 2, at 176-77, 197; Note,

plished apparently in defiance of presidential directives;⁷ in other cases, it was done through various means of deceit.⁸ The General Accounting Office has documented these activities in its various reports on the subject.⁹

There were some estimates that as many as ten thousand Nazi war criminals came to this country on their own without direct government support.¹⁰ To this number must be added the untold number of war criminals that the United States government brought to the United States.

Finishing the Work of Nuremberg? Nazi War Criminals and American Law, 20 CONN. L. REV. 633, 639 (1988); Blumenthal, *Axis Supporters Enlisted by U.S. in Postwar Role*, N.Y. Times, June 20, 1982, at A22, col. 1; see also *Fedorenko v. United States*, 449 U.S. 490 (1981); *Maikovskis v. INS*, 773 F.2d 435 (2d Cir. 1985); *United States v. Linnas*, 527 F. Supp. 426 (E.D.N.Y. 1981); *United States v. Demjanjuk*, 518 F. Supp. 1362 (N.D. Ohio 1981); *United States v. Osidach*, 513 F. Supp. 51 (E.D. Pa. 1981) (cases showing that "brought" also includes indirectly making it easier for Nazi war criminals to enter and stay in the United States through lengthy deportation proceedings and lax enforcement of immigration investigations, i.e., the Displaced Persons Act).

7. See Goldberg, *supra* note 3, at 2; Note, *U.S. Exclusion and Deportation of Nazi War Criminals: The Act of October 30, 1978*, 13 N.Y.U. J. INT'L L. & POL. 101, 116 (1980); Hershey, *U.S. Recruited Nazis For Intelligence Work, Investigators Say*, N.Y. Times, May 17, 1982, at B11, col. 1.

8. See Goldberg, *supra* note 3, at 3; Blumenthal, *Possible Cover-up on Nazis Is Focus of New U.S. Inquiry*, N.Y. Times, May 23, 1982, at A1, col. 1; see also *Fedorenko*, 449 U.S. 490; *Maikovskis*, 773 F.2d 435; *Linnas*, 527 F. Supp. 426; *Demjanjuk*, 518 F. Supp. 1362; *Osidach*, 513 F. Supp. 51 (Nazi war criminals deceiving the United States by lying about their previous work experiences); *1979 House Hearings, supra* note 4, at 64-71 (United States government officials deceiving the United States by relying on the Nazi war criminals to tell the truth about their previous work experiences instead of conducting a full investigation into their backgrounds).

9. See U.S. COMP. GEN. REP., WIDESPREAD CONSPIRACY TO OBSTRUCT PROBES OF ALLEGED NAZI WAR CRIMINALS NOT SUPPORTED BY AVAILABLE EVIDENCE—CONTROVERSY MAY CONTINUE, 32-39, 179 (May 15, 1978) [hereinafter U.S. COMP. GEN. REP.]; see also Moeller, *U.S. Treatment of Alleged Nazi War Criminals: International Law, Immigration Law, and the Need for International Cooperation*, 25 VA. J. INT'L L. 793, 817 (1985).

10. See Comment, *Denaturalization of Nazi War Criminals*, 40 MD. L. REV. 39, 41-42 (1981); Note, *Nazi Persecutors in the U.S.: Proposed Consolidation of the Denaturalization and Deportation Proceedings*, 9 B.C. INT'L & COMP. L. REV. 361, 362 (1985); Note, *supra* note 6, at 636 (calling estimate of 10,000 a "speculation in very light clothing"); Blumenthal, *Giving Nazis a Break*, N.Y. Times, Nov. 11, 1984, § 7, at 31, col. 1; see also *Belated Push to Deport Former Nazis*, U.S. NEWS & WORLD REP., June 30, 1980, at 33 [hereinafter *Belated Push*]. But see *Ukrainian Reply to Nazi Hunter*, Chi. Tribune, Mar. 23, 1985, at 10, col. 3 (claiming that the actual number of Nazi war criminals who came to the United States is unknown).

One such war criminal is Arthur Rudolph, who is residing in West Germany.¹¹ The West Germans, however, have refused to proceed against him.¹² Rudolph left this country to evade being tried for war crimes.¹³ He was one of the top administrators in a slave labor camp where 28,000 people were worked to death.¹⁴ Despite his affiliations, Rudolph was brought here in apparent violation of presidential directives, which precluded Nazi war criminals from being brought to this country.¹⁵ It should be emphasized that Rudolph was not a scientist, but merely a camp administrator.¹⁶ Nevertheless, he became an important figure in the NASA space program, which awarded him various medals.¹⁷ Even though the United States government knew the allegations against him, Rudolph managed to flee this country and avoid trial.¹⁸ It remains a mystery how many other Arthur Rudolphs were brought to this country.

As I said, it is estimated that ten thousand people, maybe more, maybe less, came here without the benefit of government assistance on their arrival. These are people who engaged in a whole variety of war crimes. We know now of some of those cases, but the whole story still has never been written: who these people are, what their crimes were, to what extent the government knew of their presence here and so forth.

I was a newly elected member of Congress and a member of the

11. See Blumenthal, *supra* note 10, at 31, col. 1; *Arthur Rudolph's Dark Past*, L.A. Daily J., Oct. 24, 1984, at 4, col. 1; Blumenthal, *German-Born NASA Expert Quits U.S. to Avoid a War Crimes Suit*, N.Y. Times, Oct. 18, 1984, at A1, col. 1 (claiming that Rudolph went back to West Germany to avoid being prosecuted for war crimes in the United States).

12. See *Arthur Rudolph's Dark Past*, *supra* note 11, at 4, col. 1. It should be noted that the statute of limitations has run, thus preventing the West German government from prosecuting Rudolph. Blumenthal, *supra* note 11, at A1, col. 2.

13. See Blumenthal, *supra* note 11, at A1, col. 1.

14. *But see Arthur Rudolph's Dark Past*, *supra* note 11, at 4, col. 1 (claiming that 20,000 workers died, not 28,000).

15. See Top Secret Memorandum from the President Harry S. Truman to Robert P. Patterson, Secretary of War (Aug. 30, 1946). See generally O'Toole, *U.S. Used Many Ex-Nazis Sought for War Crimes*, Wash. Post, Mar. 28, 1983, at A1, col. 6.

16. See Blumenthal, *supra* note 11, at A1, col. 1 (describing Rudolph as a production manager at a rocket plant at Dora-Nordhausen camp). *But see* Thornton, *Alleged Nazi-Era War Criminal To Be Deported to Soviet Union*, Wash. Post, Dec. 21, 1984, A18, col. 1 (describing Rudolph as a scientist and an engineer).

17. Rudolph was awarded the Exceptional Service Medal in 1968 and the Distinguished Service Medal in 1969, the agency's highest honor. See *NASA Refuses to Comment on Its Former Official*, N.Y. Times, Oct. 18, 1984, at A13, col. 1.

18. See Blumenthal, *supra* note 11, at A1, col. 1.

Immigration Subcommittee in 1974 when I was informed that there were Nazi war criminals living in the United States. I also learned that the United States government, particularly the immigration service, had a list of these people and was doing nothing about it. My reaction was one of disbelief; it made no sense to me that Nazi war criminals would be here, and it made even less sense to me that the United States government would know something about it and do nothing. Consequently, in the spring of 1974, I asked at a public hearing of the Commission of Immigration whether it was true that the immigration service had a list of alleged Nazi war criminals living in this country. The answer was "yes." I then asked what the government was doing about this list, and there was no answer. I proceeded to look at many of the files and saw quite clearly that there was no serious, systematic investigation whatsoever being conducted on the matter. While the allegations were very serious against these people, the standard United States government response was to send an immigration official to question the subject of the allegations and to ask that person about his or her health.¹⁹

In 1974, I made public the facts that the United States government had a list of alleged Nazi war criminals, that there was no systematic investigation being conducted on the matter, that there was no systematic effort to obtain documents or witnesses overseas and that there was no professional or trained staff assigned to the case. I think that one of the testaments of a democratic society is that ultimately a government responds to the concerns of the public; to its credit, as time went by, the government began to take some steps towards solving the problem of Nazi war criminals in the United States.

In 1977, there was a special unit set up in the Department of Justice to investigate these cases, and a number of cases were commenced.²⁰ Unfortunately, this effort turned out to be rather unsatisfactory. The Immigration Service is riddled with bureaucracy and a lack of high morale. Therefore, in 1979, not through any legislation, but through an offer that could not be refused, the administration acceded to my insistence that a special unit be created in the criminal division of the

19. I was not aware until that moment that the immigration service considers itself to be a public health agency, but I think that was the view it took of its job. Maybe it was also waiting for these people to die. It is very hard to understand what the motivation was, but that was the extent of the investigation. See *1979 House Hearings, supra* note 4, at 3.

20. *Fedorenko v. United States*, 449 U.S. 490 (1981); *United States v. Demjanjuk*, 518 F. Supp. 1362 (N.D. Ohio 1981); see Reiss, *The Extradition of John Demjanjuk: War Crimes, Universality Jurisdiction, and the Political Offense Doctrine*, 20 CORNELL INT'L L.J. 281, 286 (1987).

Department of Justice, a division that was one of well-recognized professionalism and expertise. Thus, the Office of Special Investigation (the OSI) was created in 1977 and has functioned since that time.²¹

In addition, the government began to express its clear support of the prosecution of these cases. Specifically, the attorney general of the United States, Benjamin Civiletti, argued the first case to reach the Supreme Court under the renewed effort that took place during the mid or late 1970s.²² That case dealt with the deportation of a concentration camp guard in Treblinka.

The OSI has functioned on the whole in a very professional, if not extraordinary, fashion. One must imagine what it is like to bring cases not ten years, not twenty years, but thirty years after the fact. Furthermore, there were supposed to be no witnesses left to tell the story. In addition, documents were scattered all over the world; survivors were all over the world. It took an extended effort to uncover information, to assess the information and to bring the cases. Not only was the OSI, but for the first time since the Nuremberg Trials, the United States government formally asked countries in Eastern Europe, as well as the Soviet Union, to cooperate in providing information about these cases.²³ As a consequence, United States government officials were permitted to examine materials in the archives in Poland, the Soviet Union and other countries of Eastern Europe. OSI has won significant praise for its professionalism worldwide and has operated successfully. If we look at the statistics, as of today twenty-seven Nazi war criminals have been expelled from the United States; there are twenty cases pending in United States courts, and 511 cases are under investigation in the United States.

One may ask for a moment why trials were not conducted in the United States. Under the original legislation covering some of these

21. See Mueller, *Four Decades After Nuremberg: The Prospect of an International Criminal Code*, 2 CONN. J. INT'L L. 499, 501 (1987); Note, *supra* note 10, at 361; Note, *supra* note 6, at 634-35, 641; Civiletti, *War Criminals in the United States*, L.A. Daily J., Feb. 22, 1980, at 28, col. 1; see also *Maikovskis v. INS*, 773 F.2d 435 (2d Cir. 1985); *United States v. Linnas*, 527 F. Supp. 426 (E.D.N.Y. 1981); *United States v. Osidach*, 513 F. Supp. 51 (E.D. Pa. 1981). See generally U.S. COMP. GEN. REP., *supra* note 9, at 165; *Belated Push*, *supra* note 10, at 33.

22. See Comment, *supra* note 10, at 42-43; see also Thornton, *supra* note 16, at A18, col. 1 (noting that this was Civiletti's one and only appearance in front of the Supreme Court as attorney general); Reiss, *supra* note 20, at 286, 286 n.20; *Fedorenko*, 449 U.S. 490.

23. See Moeller, *supra* note 9, at 845; Note, *supra* note 6, at 651; see also U.S. COMP. GEN. REP., *supra* note 9, at 167; Swisher, *Soviets Sign Holocaust Agreement; Pact Gives U.S. Council Access to Nazi Records*, Wash. Post, Aug. 18, 1988, at C1, col. 6.

cases, the Displaced Persons Act, the Refugee Relief Act and under the so-called Holtzman Amendment, which called for the deportation and exclusion of Nazi war criminals from this country, there were no provisions for trials in the United States. The reason for this was and remains evident today: in this country, we have a serious problem with prosecutions under those laws because of the *ex post facto* provisions in the United States Constitution.²⁴ Any legislation holding people criminally accountable in this country for crimes committed abroad that were not in violation of the then-applicable laws would be unlikely to get through Congress or to be upheld by the courts. Furthermore, questions would be raised as to the propriety of trying people in the United States for crimes that were committed abroad, as opposed to having the people prosecuted in the countries in which they committed the crimes. There may be any number of other reasons that could justify not prosecuting them here. Nevertheless, the constitutional qualms were the central ones and still suffice even to this day.

Problems also exist in arranging for the prosecution of war criminals abroad. First of all, with regard to the issues of deportation and denaturalization, the proceedings here are what you would call labyrinthine and byzantine: they are way too long and way too cumbersome. The deportation of a United States citizen requires two time-consuming steps, which include several sub-steps. The first stage is the denaturalization process, which involves first a trial or a proceeding in a federal district court then an appeal to a United States court of appeals and then an appeal to the United States Supreme Court.²⁵ The second stage is the deportation process,²⁶ which includes proceedings in

24. U.S. CONST. art. I, § 9, cl. 2 (providing in pertinent part, "no Bill of Attainder or *ex post facto* Law shall be passed"); see also 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, 48 (1986); Moeller, *supra* note 9, at 834; Winicki, *The Denaturalization and Deportation of Nazi Criminals: Is it Constitutional?*, 11 LOY. INT'L & COMP. L.J. 117 (1989); Comment, *Holtzman Amendment—The Legacy of Nuremberg: Disguised Extradition and Karl Linnas: Linnas v. Immigration and Naturalization Service*, 790 F.2d 1024 (2d Cir. 1986), 11 SUFFOLK TRANSNAT'L L.J. 277, 281 (1987); Note, *Denaturalization and Deportation of Nazi War Criminals in the United States: Upholding Constitutional Principles in a Single Proceeding*, 10 N.Y.L. SCH. J. INT'L & COMP. L. 201 (1989); Note, *supra* note 7, at 127. See generally C. GORDON & H. ROSENFELD, IMMIGRATION LAW AND PROCEDURE, vol. 1A, § 4.3c (1988).

25. See Immigration and Naturalization Act of 1952, ch. 477, § 340(a), 66 Stat. 260 (1952) (current version at 8 U.S.C. § 1451(a) (1988)) [hereinafter Naturalization Act]; see also Note, *supra* note 10, at 364; Note, *Denaturalization of Nazi War Criminals After Fedorenko*, 15 N.Y.U. J. INT'L L. & POL. 169, 170-71 (1982); Note, *supra* note 7, at 129; *Belated Push*, *supra* note 10, at 33. See generally *Fedorenko*, 449 U.S. 490.

26. See Naturalization Act, *supra* note 25; see also Abramson, *Reflections on the*

Immigration Court, Board of Immigration Appeals, federal court of appeals and United States Supreme Court.²⁷ The entire process contains seven separate legal proceedings.²⁸ I have urged for more than a decade that these proceedings be combined and that deportation be ordered as part of the legal remedy in the denaturalization case, when the evidence warrants it. Congress, however, has refused or failed to act on my urgings even though it would speed up the process enormously.

The following cases serve to illustrate the length of this process. The case of John Demjanjuk, who was ultimately extradited to Israel, lasted well over eight years.²⁹ The same is true of Manuekal Bowlas Maikovskis' case, which, though originally brought in 1976, had not yet finished when he fled the country in 1987 or 1988.³⁰ Thus, it appears that what should be developed are ways in which the proceedings in these cases can be expedited consistent with due process. This can be done easily in the deportation-denaturalization situation because both proceedings can be combined into one proceeding, with the deportations as a remedy the government can request once the commission of the war crimes has been found. Moreover, when the person is not a United States citizen, the government must be able to hasten the completion of these cases.

Time is clearly on the side of the war criminals. Many of the victims are now quite old or deceased, and their memories are fading. In addition, documents remain increasingly difficult to find. Therefore, it is crucial to speed up this process.³¹

Another problem deserving mention deals with evidence that recently

Unthinkable: Standards Relating to the Denaturalization & Deportation of Nazis & Those Who Collaborated with the Nazis During World War II, 57 U. CIN. L. REV. 1311 (1989).

27. See Naturalization Act, *supra* note 25; see also Note, *supra* note 10, at 364 ("A deportation action entails an initial administrative hearing before an immigration judge, an administrative appeal to the Board of Immigration Appeals (BIA), and then a subsequent right to judicial review by a circuit court of appeals and by the U.S. Supreme Court, upon a grant of certiorari.")

28. See Naturalization Act, *supra* note 25; see also Note, *supra* note 10, at 365.

29. *United States v. Demjanjuk*, 518 F. Supp. 1362 (N.D. Ohio 1981); Reiss, *supra* note 20, at 281; Note, *Extradition-Nazis-Under Principal of Universal Jurisdiction*, 10 SUFFOLK TRANSNAT'L L. J. 607, 610 (1986); Note, *Extradition-Universal Jurisdiction- "War Crimes,"* 80 AM. J. INT'L L. 656, 657 (1986).

30. *Maikovskis v. INS*, 773 F.2d 435 (2d Cir. 1985).

31. See Morowitz, *Prosecuting Nazi War Criminals in the United States: The Time in Which to Punish Them Is Running Out*, 15 SYRACUSE J. INT'L L. & COM. 257 (1989). But see Gelfand, *Nazi War Criminals in the United States: It's Never Too Late for Justice*, 19 VAND. J. TRANSNAT'L L. 855 (1986).

has arisen. Apparently, the West German government is now asking for all the documents in the Berlin Document Center to be turned over to West Germany.³² The United States government has had jurisdiction over these documents since the war.³³ These documents, seized from the Nazis, have been crucial to the investigation of Nazi war crimes and the prosecution of cases, not only in the United States but in Canada, Australia, Great Britain, West Germany, Israel and elsewhere.³⁴

I am very concerned about the surrender of these documents to West Germany. They do not belong to any particular country. They belong to history. They belong to the world. After the occupation of Austria by the allies ended in the 1950s, we turned over to the Austrian government the equivalent of the Berlin Document Center documents. During the Waldheim case, documents central to that case were found missing from those files.

Once those files are out of our hands, there is no longer any way of assuring their integrity. The integrity of those files is crucial, not just for prosecutions now, but, for the preservation of the facts in the face of the naysayers and revisionists and deniers of the Holocaust, who unfortunately exist in so many countries today. There has been an effort recently to prevent the United States government from turning these documents over to West Germany as part of the unification effort. I certainly hope that this effort succeeds.

I will make two final points. One is that, in addition to trying to speed up the process of trying war criminals, I think it is imperative for us to try to find out how it was that the United States government collaborated with war criminals abroad, brought them to this country and allowed thousands of them to stay here. That story has never been told. For many years, I advocated the creation of a commission with full subpoena powers to search the files of the CIA, OSI, FBI, army intelligence and other military personnel, in order to find out the whole story. My motivation was the belief that what took place here was a policy of great immorality; a policy that was never approved by the people of this country; a policy that was never approved by the Congress; and a policy that was contrary, and in some cases directly contrary, to the laws of this country.

32. See *Bonn Pressing for Return of Nazi Files*, L.A. Times, Mar. 15, 1990, at A19, col. 1.

33. See Schmemmann, *Germans Open Trial on Thefts from Nazi Archive*, N.Y. Times, Dec. 6, 1988, at A17, col. 1.

34. See, e.g., D. MATAS & S. CHARENDOFF, *JUSTICE DELAYED: NAZI WAR CRIMINALS IN CANADA* (1987).

In the support and protection of Klaus Barbie and in the bringing of Arthur Rudolph to this country, involved government officials reveal a belief that the ends justify the means, including means that are illegal and immoral. The story of this nation's collaboration with Nazi war criminals is actually the story of an assault on our basic democratic structure. It is a story that needs to be told. If we do not tell it soon, few people will be around to complete that history and thereby assist us in making sure that it never happens again.

Since the statute of limitations has long run on many possible prosecutions, perhaps the best protection against war crime recurrence is the exposure of people who engaged in conduct like this. To this day, it is unknown how many, or which, government officials were involved. This is not only a story that raises some very serious and sobering questions; it is also a story demonstrating that, with diligence and perseverance, standards of justice can be upheld. It is important to uphold them. This is not just a matter of history. This is not just a matter of resurrecting the past. This is not just a matter of revenge. If the world cannot do justice in the case of the most heinous crimes committed in the history of humankind, then what is the message to others who would engage in such conduct? The message is—simply hide or escape—because the world will simply yawn in the end; nobody cares. If we are committed to international human rights, that is, human rights in any country, then I believe we have to be committed to upholding a standard of justice.

Most countries in the world do not accept a statute of limitations when it comes to murder. Therefore, the denial of accountability, not for the murder of one person, but, for the murder of six million Jews and millions of non-Jews, in the most bestial, inhumane, abhorrent and repugnant fashion, would leave justice totally devoid of meaning.

Thank you very much.

