

United States Holocaust Memorial Museum

Interview with Peter Black
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PREFACE

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PETER BLACK
October 27, 1995

Question: Good morning, Peter.

Answer: Good morning, Joan.

Q: Nice to have you here.

A: It's great to be here.

Q: Peter, can you just tell me what your name was at birth, was it --

A: It was Peter -- Peter Black, has been all my life.

Q: And where were you born?

A: I was born in Boston, Massachusetts --

Q: Of course.

A: -- and grew up in the suburbs of Boston.

Q: And what -- what month and year were you born?

A: December 29th, 1950.

Q: And tell me just a little bit about your -- your family background, and your childhood, just a bit.

A: I grew up in a Boston Jewish family, non-Jewish, no temple, as my son will say now. And I stayed in Boston til I was 17 and went to the University of Wisconsin for undergraduate school, finished my graduate studies at Columbia University. I was certainly satisfied growing up in Boston, but anxious to get away, as any teenager might be.

Q: And were you always interested in history?

A: Yes. I did actually begin with a -- after the traditional dinosaur session as a young child.

Q: What's dinosaur?

A: Dinosaur session. As in dinosaurs, those beasts that rock the --

Q: Aha, dinosaurs, I see, it's your Boston accent.

A: Yeah, rock the earth --

Q: Right.

A: -- millions of years before. I went through a Civil War interest period, and about the time of the appearance of William Shirer's book, "The Rise and Fall of the Third Reich," I began to become interested in the military history of World War II, and that matured into an interest in the political history of the second World War, and the Nazi regime by my high school years.

Q: And when you went to University of Wisconsin, was George Masse there?

A: George Masse was there, my decision to go to Wisconsin was dictated in part by the desire to get away, and in part by the strength of the history department there. And I worked with a scholar on the Nazi regime, and particularly, the particular interest in the SS, Robert Kale.

Q: Uh-huh.

A: Who had been teaching at Wisconsin until very recently --

Q: Right.

A: -- he retired just a couple of years ago.

Q: So did you t -- also take any courses with George Masse?

A: I didn't take any courses with George Masse and that was because I decided to take a junior year abroad and took most of my German history courses in Germany at the University of Bonn. By the time I came back and was eligible for the upperclassman courses for -- that Masse and Hammereau, who was also another major scholar at the University of Wisconsin, were teaching, I had already run out of my requirements, and had to take other than history courses or non-European history courses to complete the degree.

Q: Did you ever sneak in and watch him lecture?

A: Yes, on occasion, on occasion.

Q: And what did you think?

A: I thought he was great.

Q: Yeah.

A: He was a wonderful lecturer and I certainly used his source material at the time. At that time he was perhaps most famous for his book, "The Crisis of German Ideology," which came out in the mid-60's.

Q: Right.

A: And this book was in part instrumental in educating me as to the root of the nat -- roots of the Nazi ideology, that is the intellectual roots of the Nazi ideology.

Q: Mm-hm. So when you went to Columbia, why w -- why the choice to Columbia, not to stay at Wisconsin, do you think?

A: I had wanted to stay at Wisconsin, but at the time my professor, Professor Kale was going through a difficult personal time, and he -- as it turned out wisely for me, said that he was not going to take on any new students at this time and advised that -- advised strongly that I should go to Columbia. At Columbia I worked under Professor Ishtvan Dayak, who was an east European scholar, but had excellent contacts in the former countries of the hap -- the former countries that made up the old Hapsburg monarchy. And between the Columbia University name and Dayak's contacts, it eventually opened up some doors in central and eastern Europe that might not have been opened had I stayed at Wisconsin.

Q: And how did you continue your work at Columbia? What was your major -- this -- this --

A: I came to Columbia with the idea of majoring in central and east European history. There was more financial aid available for east European history. This was the early 70's, in the time of détente, and it was very -- very important that young people study the history of this region, in fact there were national defense scholarships for study of east European languages and I obtained one for studying Romanian. But primarily I went with the idea of studying German policy in Austria and in eastern Europe and that became my field of concentration.

Q: Let me go back a little bit. Was there any -- besides the intellectual connection, and -- and the interest starting from Shirer's book, was there a personal connection in your family to World War II and the Holocaust that wa -- was also important for you, or --

A: No, no, this was -- this was purely coming at it through history, and -- and frankly through military history. My family had, for the most part, had the good fortune, or perhaps the bad fortune to be the victims of pogroms or Tsarist draft notices, and fled to the New World at the beginning of this century. So with rare exceptions, particularly some cousins in Romania, who managed to survive the war in Romania, most of the family was over in the United States before World War I.

Q: Oh, I see. So when -- you graduated Columbia when? [indecipherable]

A: I got the PhD in 1981.

Q: 1981. And you decided not to teach, or -- si -- wa -- I had [indecipherable] you moved into --

A: Well that -- that -- that wasn't my decision exactly. The 70's was a very difficult time for new graduates coming out and obtaining teaching jobs. I had had a couple of the -- they call them thousand dollar courses now, at that time I think they were 500 dollar courses. I'd taught a course on early modern European history, and I was scheduled to teach a course on World War II and on eastern Europe at Columbia when I was called by a representative of the U.S. attorney's

office in New York, and asked whether I would be interested in working for a short term period, gathering evidence for a case against a Nazi offender. In this particular case it was a Latvian auxiliary policeman named Boleslaus Maikovskis, who -- whose case had been publicized on "60 Minutes" some six months earlier, in the spring of 1978. So I was not only aware of the case, I was also -- I was also interested in the work, and should -- little anecdote that goes with that call, at the time I received the call, I was working in a fairly dead end job putting data onto computer sheets on the other side of the justice department's suit against the telephone company at that time, the AT & T, which was the telephone company at that time. And it was a pretty dead-end job and I was home sick, suffering from a kidney stone, and about ready to go to the hospital when the call came in. And I had been feeling very sorry for myself, and thinking idly that it was too bad that I was too young to have been around at the time of the Nuremberg Trials. So it was almost like a stroke of a -- a divine stroke that that call came in at that time, and when asked if I was interested in working on such a project, I said, just let me pass the kidney stone, I'll be right in for an interview.

Q: Le -- let me ask you a question a bit about graduate school, just t -- t-to know what the texture was at the -- at the time. Were there a lot of people studying World War II, and the Nazis and the -- the Holocaust, or the structure of the Nazi regime, or were you an oddity at the time at Columbia? I mean, what -- what was it like?

A: Columbia didn't have at that time, a specific World War II scholar. It did have a strong eastern European department, but its modern -- its eastern European modernist, Voytek Mastney, who was my professor my first year at Columbia didn't get tenure and had to leave at the end of 1972 - 1973. He went on to post-war studies in Communism. And that was the focus at Columbia University, but that doesn't mean that there weren't -- there wasn't a generation of

scholars, not studying the Holocaust per se, because that was still very much a political term, and not the term of [indecipherable] for this period as yet, certainly not in academic parlance. But there were a group of scholars who had been spawned and encouraged by the availability of captured German records on microfilm at the national archives. They were first available in an easy to use format on the microfilm in the early 1960's. And this was also the time in which the originals, which had been captured by the U.S. army, were returned to the Federal Republic of Germany in the mid-60's, according to treaty. And we -- I was sort of at the tail end of that generation of young scholars who were interested in the Nazi regime, and interested in the organizations of the Nazi regime, and also fascinated with the personnel files of the individuals, fascinated with the ideas of -- of motivate -- what made these people tick, and how did they operate as individuals and as an organization. And that spawned my interest in the SS, and my interest in doing a biography.

Q: Was -- was Hillberg's work important to you at that time, or not?

A: Yes, yes.

Q: It was.

A: Hillberg's work came out in 1961 --

Q: Right.

A: -- and he was one of the earliest part of that generation. Hillberg had actually worked with the captured German records, analyzed as a document analyst in the late 40's and early 50's, and wrote his book based on that documentation before it was microfilmed, and you can tell that from the citations in his book, he still has the original file folder numbers there. And his book first came out in 1961 and by the time I was ready to get serious when I started college in '68, a paperback version was out, and easily available even to a poor graduate student.

Q: Right, right, that Bible -- that Bible-looking --

A: Yes, it was a Bible even then.

Q: Right, yes. All right, so you get the call, and you obviously passed your kidney stone.

A: I did, not without difficulty, but I did.

Q: Right. So then what happened? What's the next -- what's the next step? Your --

A: Well basically I went in to the U.S. attorney's office in the southern district of New York in south Manhattan, was interviewed by an attorney there, and he gave me the information a -- his name was Tom Balout, was a lawyer from Connecticut who's long since gone into private practice. And he told me a little bit about the Maikovskis case, and about the problems with the Maikovskis case, and he explained to me that the members of the special litigation unit in Washington, D.C., which had been formed the year earlier, 1977, and which had recently, in the spring of 1978 expanded to a staff of approximately four lawyers, two paralegals and one part-time historian, needed someone who was based in New York, who could conduct research in the archives in New York, the main one of which was the Yiddish institute for Jewish research, which at that time was located on the corner of East 81st Street, and I believe it was Fifth Avenue.

Q: Right.

A: And they had been canvassing a-around in Washington for contacts, and one of the attorneys at the time, George Parker, had talked to my first advisor at Columbia, Voytek Mastney, who was on a stint with Johns Hopkins at the time. And Mastney recom -- recommended me as a possibility, that's how they got my name. And I came in, and --

Q: So did you go down to Washington to talk with these folks, or did you s --

A: No, I was hired from New York.

Q: From New York, so -- okay.

A: And I was based in the New York office from -- from my start date in September '78, until shortly after the office was moved from the immigration service, was called the special litigation unit, under the Immigration and Naturalization Service, and it was moved into the criminal division in May, 1979. Six months after that I had already requested a transfer, and I requested also to be able to work pa -- full time. And they were interested in me, and they brought me down on January first, 1980.

Q: And by that time Ryan, Alan Ryan was -- was -- was OSI formed at that point?

A: OSI was for --

Q: Was taken out of --

A: -- OSI was formed in May 1979, and -- under a temporary director, Walter Rockler, who had been a Nuremberg prosecutor. I believe -- I'm not sure, I believe he was a prosecutor in the Deutsche Bank case at Nuremberg. And he was brought in by the criminal division to reorganize the special litigation unit, expand its staff, and deploy it effectively as a central agency to investigate and if necessary litigate all of the Nazi offender cases in the United States. Rockler was the director from September -- I'm sorry, he was the director from May 1979 until approximately March 1980. I believe it was a nine month detail, or a 10 month detail. And Ryan was brought on as the deputy sometime in -- he was there when I moved down to Washington, so it must have been sometime in 1979. And then he -- he came -- Ryan came from the solicitor general's office in the Department of Justice, and he took over as director when Rockler withdrew and went back to private practice in March 1980.

Q: Right. So tell me a little bit about this first case that you did in New York. What -- what -- what were they asking you to do? They were asking you to go to the archives and find -- can you talk about that?

A: Well, they didn't -- they didn't really know what to ask me to do. They asked me to find evidence about this case, and I wasn't quite sure what they wanted me to do either, so I did -- what I did know how to do was go to then -- go to the published records, the Nuremberg trial records, and put together, I think it was about a 10 or a 15 or 20 page essay on the Latvian auxiliary police in -- in -- under German occupation in 1941. Maikovskis was accused of having been a precinct chief in an eastern region of Latvia, around Rezekne, Rossitten in German. And he had been accused of participating in killings of local Jews in the summer and autumn of 1941. And I went to some of the basic sources, there's a lengthy Nuremberg document which was written by the commander of the security police, in SD in the Baltic States, the former Einsatzgruppen chief, Walter Stahlecker, which was a lengthy report of about, oh, 250 pages dealing with the German occupation of the Baltic States and the operations of the police, in particular the auxiliary police. We also had in New York, copies of the Einsatzgruppen reports, which were on microfilm at the time, and I reviewed those and gathered the material that were relevant to Latvian auxiliary police killings of Jews and others in Latvia in the summer of 1941, and I put it together in a basic historical essay that I would write as a college paper at that time. This was before I had the PhD., and in fact it was at the time when I was writing the PhD.

Q: Uh-huh.

A: And the attorney was pleasantly surprised, and particularly by the speed in which it was gathered. It wasn't such a big thing to a historian, but it was obviously something that was very helpful to the attorney. And the reason for that was that the case had run into a snag. The original

allegations had come from witnesses, primarily Israeli witnesses, who had Maikovskis little -- literally in every location in Latvia, killing people. And the U.S. attorneys had gone over to Latvia to take depositions of former Soviet -- Soviet Latvian citizens who had been Maikovskis's comrades, and who placed Maikovskis solely in one area of Latvia, in southeastern Latvia by Rezekne. And the judge in the case was extremely hostile to the idea of deporting someone for Nazi offenses. Not -- and th-th-there's no reason to believe that he was sympathetic to the Nazis, he just didn't like the idea of throwing someone out of the United States on the basis of old evidence and evidence that had come in part from the Soviet Union. And the judges hostility made it difficult for the attorneys to use the witness evidence, which, as it turned out, was a good thing for the Maikovskis case because the government eventually withdrew the charges against Maikovskis in the complaint, in -- in the order to show cause, Maikovskis was a alien, he wasn't a citizen. The -- the charges that placed Maikovskis anywhere outside of Rezekne were withdrawn, and the case then focused solely on what was going on in Rezekne. And with a combination of documents in U.S. archives, which gave the general picture of what was going on in the Soviet -- in -- in -- in German occupied Latvia, in that region, and the statements, the depositions, complete with cross examination of Soviet witnesses -- that is Soviet citizens who had been comrades of Maikovskis, who described from their eyewitness point of view what had happened, enabled us to secure Maikovskis's order of deportation. If I remember correctly, we lost -- the judge was hostile enough to rule against us, but we won on appeal, at the board of immigration appeals. And Maikovskis eventually fled to West Germany before he was actually deported.

Q: Deported, I see. We -- do you know if he was ever tried in Germany? Or did he si --

A: Th-The German -- the -- the Germans investigated Maikovskis, and here -- I'm not sure, I think they actually -- I'm not sure if they indicted him, but he was placed under investigation, and the investigation was still ongoing when he died. He was an older man, I think he was born in 1909, if I remember correctly.

Q: Uh-huh. Did you go to the hearing on the -- in this particular --

A: The U.S. -- the U.S. hearing, yes --

Q: Yes, yes.

A: -- I was present at the hearing, which was -- took place in -- in New York in -- I -- it was either the summer of '81 or the summer of '82.

Q: W-When you first got involved in this, had -- di-did you know about the legal basis on which all of these cases were going to be tried, and --

A: I knew nothing more because I -- I'm -- I was not a great newspaper reader at the time, and I knew nothing more than what I had heard on the "60 Minutes" program. I don't remember what I heard on the "60 Minutes" program, but I suspect it probably wasn't too erudite about the legal ramifications. I learned most of what I learned about the law on the job.

Q: So te -- tell me what -- what the tri -- the trials, or the ability to -- I don't -- do one -- does one call it an indictment, or --

A: No.

Q: -- bringing a case.

A: No, no.

Q: It's not a criminal procedure?

A: I used the word indictment for the German case because it was a criminal proceeding --

Q: Criminal pro -- right.

A: -- in -- in Germany, but the proceedings in the United States are all civil cases, and there -- they're of two types. There's a denaturalization, if the individual is a U.S. citizen, there's a denaturalization process, and -- and the equivalent of the indictment is called a complaint. The government makes a complaint, and the government is the plaintiff, and the defendant is the person against whom the -- in this case the Nazi offender. If the individual is a -- just a permanent resident, is -- is an alien, then it's -- it's an order to show cause for deportation.

Q: Right.

A: The complaint is filed in the U.S. District Court, because the U.S. District Court has the authority to confer and revoke citizenship. And the -- the order to show cause is filed in immigration court, because it becomes a immigration and naturaliz -- I-Immigration and Naturalization Service matter for non-citizens.

Q: So that's why these are separate, be -- because the jurisdiction over this particular kind of process --

A: Yes.

Q: -- is in one place, and the other is in the other place.

A: Yes, absolutely. And -- and there -- a --a citizen has different rights than an alien, obviously. And there's a procedure -- i-in terms of a citizen, we -- we, that is the OSI had to go through a process of denaturalization, and then the whole set of appeals and then deportation. After the denaturalization, appeals had been exhausted. If a person had been denaturalized, and the appeals were exhausted, and those appeals could go all the way up to the Supreme Court, then the process would start again, because the person was now an alien.

Q: Right.

A: The process would start again in immigration court, and go through that series of appeals, which could again go up to the Supreme Court before someone was actually deported or removed from the country.

Q: The -- this particular process, to not have it be a criminal prosecution, is this because of something in international law, or was this a decision the United States government made, not to make this a criminal proceeding, but rather to talk about willful misrepresentation, that someone misrepresented who they were, and we wouldn't have let them into the country before. Why not try these people for what they actually did?

A: I think there were a lot of factors involved in that. One clearly was, unlike the -- the Great Britain, which decided to go the criminal route, the Australians and the brit -- and the Canadians also decided, with total lack of success, to go the criminal proceedings route. The United States had a Constitution of 200 years, and to create a criminal jurisdiction for trying these cases in the United States, under criminal procedures would -- was, as I understand it, possible, but would have involved considerable difficulty, and considerable delay in setting up the apparatus. It also would have held the government to an extremely strict standard, as it did in the cases of Australia, Great Britain and Canada, of proving potentially, an individual case of murder. The -- on the other hand, the immigration procedures were in place, and had been in place, particularly since many of the offenders had come in under the Displaced Persons Act, and the Refugee Relief Act of the -- the -- the legislation that was extant in the late 40's and early 50's. And there was legislation on the books already that if these applicants for immigration, and later for naturalization gave willful, false statements about their past, that they could be denaturalized, and ultimately deported. They would return to their pre-immigration status. That is, as an alien, which now the truth was known, was ineligible to enter the United States. And an ineligible alien

face -- who is in the United States, faces deportation. U.S. immigration law, sometimes for many of the wrong reasons, is extremely harsh, and does not make many exceptions. And it was evidently decided -- this is not first-hand knowledge of -- of mine, it was evidently decided that this would be an appropriate process to deal with the issue of Nazi offenders living in the United States. It was hoped, I think initially, that for many of these individuals, that the nations where they had committed their offenses, would request their extradition. And in fact, there was some precedent for that. There was an outstanding request on the part of the former Yugoslav government, for the former Croat Minister of the Interior, Andrea Artukovich, since the early 50's. And in 1972, the West German government requested and obtained the extradition of a Long Island housewife named Hermine Braunsteiner-Ryan, who had been a camp guard at the Lublin Majdanek concentration camp, and who had evaded justice afterwards, married an American serviceman, and had come over to live in the United States, and who was sort of the epitome of the quiet neighbor that Allan Ryan tried to reflect in the title of his book in 1983.

Q: So it's a -- it's an -- I'm -- yeah.

A: So there's some precedent for the idea that the nations on whose soil these individuals had committed their crimes, would want these people back in order to try them. And of course, we found -- we, that is the United States government, found very quickly that most of these nations, regardless of whether they made bellicose statements about dealing with Nazi offenders, were not terribly excited about having them back, and this is something that we found out quite quickly in the Trifa case, where the Romanians really had no interest in having Valerian at the time, Viarel Trifa back to Romania to try him for anything. The Soviet Union was often prepared to take people back in the 1970's and 1980's, but the United States government was not prepared at that time to send individuals back to the Soviet Union.

Q: So this had to be somewhat frustrating, because th-the results are -- could be seen as kind of minimal. People could escape to other countries if they were not extradited back to the original country to be tried.

A: Yeah, the opportunity to escape was quite available to anyone, particularly to citizens. There was no authority to the uni -- for the United States government to imprison a citizen of the United States during a denaturalization proceeding. The immigration and naturalization service can imprison an individual who is about to be ordered deported, and of whom it can be surmised that he will se -- seek to flee to avoid deportation. The INS can put someone in the slammer for that. But the United States government did not have the authority to imprison an individual who faced denaturalization proceedings.

Q: Right.

A: And so those individuals could leave, in fact, with their citizenship, and the worst they faced was a in absentia denaturalization proceeding.

Q: So you wa -- you might continue --

A: We would continue the proceedings --

Q: -- the com -- the -- cedure -- procedure, uh-huh.

A: -- to denaturalize, regardless of whether the individual was in the United States, because it was our intention that in the cases of those who fled, they were ineligible to enter the United States, and denaturalization would render them, now under the Holzman amendment, ineligible to ever return --

Q: To return.

A: -- to the United States.

Q: Just a -- just as a technical point, if you would do a case like that, would there be a defense attorney there, or you would simply do your case before the judge with --

A: Often there was a defense attorney, yes.

Q: -- and -- uh-huh.

A: Often there was a di -- an attorney representing the interests of the defendant, who sometimes still had property in the United States.

Q: I see, I see. Can you talk a -- a bit about how you understand the -- the law, starting with the Displaced Persons Act, and until you get to actually -- well, when is it, the Holzman amendment is in 1980 passing --

A: Holzman amendment is passed, if I'm correct -- if I'm correct, it was passed in -- by Congress in 1978, and ratified in 1980. So it became effective in 1980. It really goes back to United States immigration policy at the end of World War II. The United States clearly saw that it had been remiss -- the United States government at the time, and -- and -- and this was backed by popular support, that it had been remiss in granting sanctuary to refugees prior to World War II, and there was a concerted effort to provide special immigration legislation for refugees after World War II, that would exceed the narrowly restricted quotas which developed out of the 1924 Immigration and Naturalization Act. And the first of these special -- first of two -- actually three special laws, was the Displaced Persons Act, which was passed in 1948, and took effect from 1948 until the last day of 1952. And it created a separate category, over and above the quotas, of displaced persons who were eligible beyond the quotas to receive visas to immigrate to the United States. And if memory serves me correct, some 400,000 people -- I think just under 400,000 people immigrated to the United States under the Displaced Persons Act from various countries in Europe. There were -- the Displaced Persons Act also provided for the establishment of a DP

commission, which operated in Europe and administered displaced person's camps to provide sanctuary for survivors of the Holocaust, refugees from Communist takeovers in eastern Europe, and displaced persons uprooted by the Nazis during their occupation of eastern Europe who could -- could not, or would not be repatriated, to give them a place where they could find shelter and food, and in the case of kids, find some education and training, while they awaited the completion of the application process for a visa. When the Displaced Persons Act expired, the U.S. Congress, and again, backed by considerable public support, and this was -- keep in mind this was the time of the McCarthy era, despite the concerns with Communism, a refugee relief act was passed, which permitted further refugees, some of those who were ineligible under the Displaced Persons Act, to come to the United States on special visas that went over and beyond the numbers and the quotas. And these visas, the last big blup of visas, came in December 1956, and spilled over to January 1957 to accommodate the refugees from Hungary, from the Hungarian revolution of 1956. Now each of these decrees, each of these laws, as well as a 1945 regulation, if I remember correctly, there were increasingly less strict restrictions on eligibility to those who were either German, or received some benefit from the Nazi regime, or had collaborated with the Nazi regime. There was a regulation -- a -- a State Department regulation already in 1945, barring Nazi collaborators from coming into the United States. The Displaced Persons Act had fairly stringent restrictions on Nazi collaborators, those who assisted in persecution on the basis of race, religion and national origin, from entering the United States. The Refugee Relief Act also had similar, except somewhat vaguer language, but still had language that excluded persons who personally participated in persecution from entering the United States. Now, initially, as an example of how the legislation was relaxed in this aspect is the following; under the Displaced Persons Act of 1948, SS membership rendered one ineligible

from entering the United States, regardless of what you had done in the SS -- what -- what an individual had done as a member of the SS. Membership in the SS alone, was enough to exclude from the United States. In -- under the amendment of 1950, which mems -- mere membership in the SS was no longer sufficient to exclude. One had to, as a member of the SS, have participated in persecution. The amendment in 1950 also allowed for nationals of, for instance, the Baltic States to enter as displaced persons, even if they had served in collaborative units, like the Latvian legion of the Waffen SS. Latvians could come before, through the Displaced Persons Act, but they can -- could not have been affiliated with Nazi organizations. Under the DP Act as amended, they were now no longer ineligible.

Q: And why --

A: But their membership -- they did -- they were required to tell the truth --

Q: About the membership.

A: -- about the membership, so as not to cut off an avenue of inquiry about their activities. So in other words it -- it remained against the law for a Latvian who had been a member of the Waffen SS to say that he was a bookkeeper during the war, when in fact he'd been a member of the Waffen SS, even if it had -- it w -- would later have been found that he had done nothing more than been a combat soldier. If he had admitted under the DP Act as amended that he was a Waffen SS combat soldier, and nothing more could be found against him, then he was eligible to enter the United States. But having concealed that information, that was already concealing, omitting, giving false statement, to obtain a federal benefit, which --

Q: Right, right.

A: -- brought a whole other exclusionary process to bear.

Q: So, before we get to the -- the -- the next amendment, why do you think they made this change?

A: I-I'm sure there were many factors involved. The one that comes to mind is that there was a -- a shortage of agricultural labor in the United States, and a lot of the east European refugees from Communism were farmers, and farmer's sons. And the -- and al -- and many of them were also ethnic Germans from eastern Europe. And I have no doubt that the idea of providing sanctuary to individuals who were escaping Communist regimes was a significant factor in amending the Displaced Persons Act. There was also a feeling even at the time that for those who served in combat units that were affiliated with Nazi Germany, that particularly for Ukrainians, for members of the Baltic states, whose annexation by the Soviet Union the United States never recognized, that these people had had very bad choices, and that the one that they chose was only marginally less worse than the -- the other that was available to them. And so I think i -- th -- a combination of factors led to the amendment of the Displaced Persons Act, and also led to the -- the slight differences in the Refugee Relief Act.

Q: And so then what is the next change that happens? Is it --

A: After -- after the Refugee Relief Act expired, at the end of -- in 1952, and a new Immigration and Naturalization Act had been passed, which was slightly less restrictive, and here I'm -- here I'm speaking off the top of my head -- slightly less restrictive than the '24 act, but it was a quota act again. And that came back into force, and remained in force until 1986 or '96, the new immigration act -- the new immigration act, I think it was 1996, replaced the '52 act. Under these acts, all of these acts, the '52 act in particular, but also the other special immigration legislation, that an individual who was ordered deported, could apply for what was called discretionary relief, for a number of reasons, whether they've been a good citizen, and they were -- when they

-- while they lived in the United States, if their wi -- were married to U.S. citizens, if they had children who were U.S. citizens, if they had close relatives who were dependent on them who were U.S. citizens. And another very important and applicable one in these cases, if by deportation to the country from whence they came, they would be subjected to political persecution. And this was a particularly applicable part of the statute for the Communist regimes, and was applied in the case of the former Croat Minister of the Interior, Andrea Artukovich who came in the -- into the United States under a false name, was clearly involved in persecution. He came even before the DP act, he came under the 1924 act, I believe. And he was actually ordered deported in 1953 at the conclusion of a proceeding, but the order of deportation was stayed because he was successfully able to argue that he would be persecuted in a Communist Yugoslavia, and would not get a fair trial. And this very much stems from the -- the -- the Cold War atmosphere of the time, and this was an atmosphere that continued affecting the few cases that actually were prosecuted, or were litigated during the 50's and 60's, until the Vietnam era.

Q: Uh-huh. And what was the change with the Holzman Amendment?

A: The Holzman Amendment, which was passed in 1978 radically changed this in that for persons who participated in persecution on the basis of race, religion, national origin and political opinion, they added political opinion under Holzman, under the aegis of Nazi Germany or its allies, or in territories occupied by Nazi Germany between January 30th, 1933, and May eighth, 1945, if found to be deportable, if found to be ineligible to enter the United States, could not apply for discretionary relief on any basis. And so this there -- this therefore opened the door for an actual result to these cases, you didn't have to go through the litigation only to find that the individual could apply for and get discretionary relief, either because his children were U.S. citizens, or because he could claim political persecution from a Communist country. Now, did it

mean that we were -- we, the U.S. government were willing to deport these people just to any country, as a practice? Not yet, but at least legally the possibility was there to obtain an order of deportation and actually carry it out.

Q: And the Cold War is still going on, so what allowed Holzman's amendment to actually be passed when people still had a very -- I don't know, shall we call it a rigid view, or at least a Cold War view of eastern European countries under the Soviet Union?

A: Again, I think it was a combination of factors. Clearly important was the precedent of the Braunsteiner-Ryan case in 1972, which sparked questions about how many other Nazi criminals were living in our midst, so to speak. And that created a certain degree of public pressure, in part from Jewish groups, and survivor groups, which unlike 1945 - 1950, where they were immigrants with no -- no confidence to say what they wanted, and no strong desire to relive the immediate past as opposed to dealing with creating a new life and a future, were now established U.S. citizens, quite conscious and aware of their rights to lobby congressmen, to get some results on this. A second key factor was the development of a -- the process of détente between the United States and the Soviet Union. The year that Braunsteiner-Ryan was extradited, 1972, was also the year that President Nixon visited Moscow and ushered in the era of détente, which lasted more or less until the election of Ronald Reagan in 1980. This was also a time at which we in the United States, and to a greater degree, prosecutors in West Germany were beginning to see glimpses of the types of usable evidence, credible evidence that existed behind the iron curtain. In the 50's this stuff just was not available in any way. In the 60's, particularly in the early 60's, trickles of documentary material captured by the Red army, came into the public domain through west German trials, and also through Soviet propaganda pamphlets in the late 60's and early 70's, denouncing the western powers for harboring Nazi criminals. Now the pamphlets were --

were -- were nonsense, and -- and often many of the statements in the pamphlets were nonsense, as well as the interpretations. But the documents that were photocopied, if genuine, and one couldn't tell if they were genuine unless they subjected -- subjected them to careful forensic testing, were not only interesting in themselves, but fascinating as examples of the type of material that had survived the war, and that was in Soviet hands. One of the key driving forces behind the office of special investigation's success, was an early agreement in 1980 with the Soviet Union to take videotaped depositions from Soviet citizens, all of whom were comrades of the defendants in the United States, and of whom, while it might be questioned what kinds of pressures they were in the Soviet Union, it couldn't be questioned that they knew the defendants involved, whereas with the survivor witnesses, defense attorneys could raise questions as to how they could possibly know that this was the man who did this, that and the other thing. The comrades who worked with them on a daily basis, and who may have known them from their hometowns couldn't be questioned. They -- their knowledge of the defendants as members of these units was much more credible, even if it was coming from behind the Iron Curtain. We also were unable at that time to get unrestricted access to Soviet records, but we were able to get access to copies of documentation, at least pertaining to our defendants at that time, and in response to the general objection of the defense that these documents were always forged by the Soviet Union, the Soviet authorities quickly understood that in order for the United States government to be credible, that they would have to fork over the originals. And this started already in 1980 - 1981, where the Soviet authorities would have the original document sent to the Soviet embassy or Soviet consulate, depending on where the trial was taking place, in the United States, where the document could then be examined by the government's forensics examiners for handwriting, for paper, for typing quality, for signatures. And also by teams hired

by the defense. And at no time did the Soviets ever represent to OSI that a document was genuine when it was not genuine.

Q: Really?

A: Never. Never. In some of their pamphlet literature, they would leave things out, but when we -- when we in the United States government asked where's the beef, the Soviet Union always provided the beef.

Q: So from all of these laws and amendments, the essential question, if I have it correctly, when you make a complaint, is was there willful misrepresentation of a person's past in connection with the Nazi regime, is that --

A: A basic --

Q: Is that --

A: Yes.

Q: -- in general.

A: That's a little too general. It's not simply willful misrepresentation. It i -- it's actually material misrepresentation, and the materiality must go to the fact that had the information been known, it would or might have led to an investigation that would or might have uncovered facts that would have re -- rendered the defendant ineligible. So in other words, there had to be some basis that would render the individual ineligible beyond the simple fact of lying.

Q: Right.

A: Beyond the simple fact of --

Q: It wasn't lying about anything, it had to be lying about that which was materially relevant.

A: Yes. And in the Nazi offender cases, that involved participation and persecution on the basis of race, religion, national origin or political opinion. Now that -- that -- that's how the

immigration statute read, and that -- the natu -- the natural -- denaturalization complaints were worded somewhat differently, you had to prove that a person was of bad moral character because they materially misrepresented, because they illegally procured a visa, having materially misrepresented, and that misrepresentation was material because it concealed information or data that might have led to uncovering this person's participation and persecution. So it was a participation and persecution that was the --

Q: That was central.

A: -- vital issue.

Q: So it's not --

A: You never --

Q: -- not membership?

A: No.

Q: So if one is -- was a member of the Nazi party, that's not sufficient. If -- if they --

A: If it's something -- if it was something as general and as amorphous as the Nazi party, or even the SS, or even a given military unit, yes. But there were some units whose *raison d'être* was involved in persecuting people in the basis of race, religion, national origin and political opinion.

A -- a -- a example that the Supreme Court examined in the Federenko case was that of a concentration camp guard. And the Supreme Court ruled that by the very daily duties of a concentration camp guard, even if he did nothing personally against a prisoner; never shot a prisoner, never beat a prisoner, never so much as looked at a prisoner, by standing there on the perimeter of the camp with a rifle in his hand, he is acting as a deterrent fra -- for the prisoners from escaping, and that this was participation in persecution. So there were certain units that if you could prove, if we the U.S. government could prove that the individual was a member of that

unit, and carried out the normal daily routine of that unit, we would -- that -- that person could be proven, if we could prove those facts, a judge could make a finding that that person participated in persecution. Or that that person was a -- a person of bad moral character because he participated in persecution.

Q: Right. So different from a criminal trial. Had -- had the United States government gone to do criminal trials, you would have had to prove the actual event of the person doing something, whereas within the context of the naturalization trial, if you could prove the connection with a type of action that was common, even if you couldn't prove this person did it, but if they were concentration camp guards, they were part of the Waffen SS, if they were --

A: It -- if it was understood that by carrying out his daily duties --

Q: He could be.

A: -- he was doing it.

Q: Oh.

A: That -- no, he was doing it.

Q: He was doing it.

A: It wasn't that he could do it. A concentration camp guard, by standing there with a rifle, is assisting-- it -- it's participation, assistance, advocacy and acquiescence. Now I -- I don't think we ever were able to deport anyone or denaturalize anyone because he --

Q: Advocated.

A: -- or she acquiesced.

Q: Uh-huh.

A: Advocacy, no, advocacy, the Trifa case was based a lot on advocacy of persecution. But acquiescence alone usually didn't cut it as a matter of discretion on whether to file a case. But in

terms of participation and assistance, a gar -- a cordon guard at a mass killing, or a camp guard, is certainly helping the leadership of that tex -- mass killing, or the leadership of that camp to persecute people, and that was assistance in persecution. Now had the United States gone the criminal route, it's hard to know what would have happened, and it's a route not taken, but the standard of evidence would have been beyond a reasonable doubt, whereas the standard of evidence in the civil cases was clear and convincing. Judges often held the United States government fairly close to a beyond a reasonable doubt, but we could make this culpability as a reflection of membership, or membership being culpability, membership in an organization that did as its daily business the persecution of individuals on the basis of race, religion, national origin and political opinion. That we could do. It's conceivable that in a criminal case, with the way we have conspiracy -- you know, prosecutions against conspiracy where the -- where the driver of the escape vehicle is as much guilty as the individual who fires the gun of the murder that's committed in the bank, it's conceivable we might have gone that way, but the standards would have been higher, and it may well have been very difficult to obtain convictions.

Q: Right. We're going to have to take a break for --

A: Shortly.

Q: -- tape.

End of Tape One

Beginning Tape Two

Q: Peter, let's -- let's start with part of what we ended up with from the last tape and talk about what does it mean to talk about acquiescence within the context of a complaint, wa --

A: Well, the sta -- the Holzman Statute refers to four patterns of activity related to persecution; assistance, participation, or maybe participation is a better one to start with, assistance, advocacy, and acquiescence. Acquiescence as I understood while I was working with OSI, and as I think my colleagues on the legal side of it understood it, was basically standing by without any specific official or unofficial relation to the events, and letting it happen. And to my knowledge we never -- we never filed a case based on acquiescence alone. It was always at least some active participation, assistance or advocacy that met the standard for us to make a decision to file a complaint or an order to show cause.

Q: So somebody who was standing by, wasn't connected with a -- a unit of some kind, but was watching, common folks.

A: Yes.

Q: That would not be considered --

A: No, no, we would not have, to best of my knowledge we wouldn't -- and I certainly would have advised against -- as a historian I would have advised against on the basis of the evidence, filing a case against, for instance, a bystander who watched an execution. Now, a bystander who took a rifle and -- and started shooting, that's -- that's a little bit different, that becomes participation or assistance. There might be other problems with the proof in that case, because if it was just a by -- i -- if we're just dealing with a bystander, his connection to an official organization would be difficult if not impossible to prove. But in terms of just standing and watching an act of persecution take place, this was not sufficient by itself.

Q: And advocacy does not mean simply intellectual advocacy. Th-There seems to be some implication of some kind of act, not simply believing that this -- whatever I'm watching should be done, right? I mean, it's --

A: Yes.

Q: -- not an ideolo -- it's not an ideological advocacy.

A: As we looked at it, i-in the United States we -- we tend to have a tradition of not holding people criminally or civilly responsible for the things that they believe in, no matter how bad they are. But advocacy in this sense we looked at very much in -- in a way that would be similar to a -- a -- potentially a criminal case, in that the person was advocating in a public forum, where the statements that the person was making, whether it was a speech, or in the print media, or over the radio, would be calculated to incite racial hatred, and from which actual events took place that involved killing, or persec -- other persecution of individuals on the basis of race, religion, national origin or political opinion. And we did have cases against several propagandists. Viarel Trifa was perhaps the best known in the early years, but there were others, Verence Korair, wa -- who, as a Hungarian newspaper editor in Transylvania, and Vladamir Sokolof wrote for a Russian paper in central Russia that was published by the Wehrmacht for the local population.

Q: So is -- is the principle based on the -- the holz -- I don't want to call it a doctrine, but you can't yell -- you can't yell fire in a theater, you don't have the freedom of speech to do that, but if that, saying that?

A: It's more in the -- it -- it -- it's more in the context of actively inciting acts of violence or acts of persecution on the basis of racial hatred, or religious prejudice.

Q: Right, no, I un -- I understand, but what it means is th-that speech has an active component. It isn't -- si -- speech is not simply speech all the time.

A: Yes.

Q: Is --

A: I -- I -- okay, I understand --

Q: That's -- that's what I meant, I didn't mean that it was --

A: Yes.

Q: -- equivalent because yelling fire in a theater is not exactly the same thing.

A: Yes, yes, it would -- i-it wou -- it really wasn't in any of our cases an individual act of speech, no matter how heinous. It was really in -- in all of these cases an individual who held a responsible position either as a journalist or as a propaganda official, or as a newspaper editor who was responsible for content of speech or print media that incited to racial hatred and from which we could argue reasonably that actions of persecution created an atmosphere in which acts of persecu -- acts of persecution could be justified.

Q: All right, let -- let me go back and -- and ask you --

A: Sure.

Q: -- about sort of the context in which you -- into which you came when you went to

Washington as this young PhD person, in this new --

A: Not quite PhD yet, but --

Q: Oh you -- no, not yet?

A: When I moved to Washington I had not quite finished the PhD. I had to fini -- I moved to Washington on the first of January 1980, and I got the PhD I believe a year and a half later.

Q: Wow, so you were --

A: In November '81.

Q: So you were working full time as -- at the same time you were finishing a dissertation.

A: Yes. I got most of the writing done between 1979 -- during the year 1979, which enabled me to be editing at the time I was working full time. I worked part time from '78 to '80, while I was in New York.

Q: Uh-huh. So what did you come in to? What was the -- ha -- what was the organization like? Were there a lot of people now that --

A: The organization had moved over from the immigration service to the criminal division. It made a physical move into -- in the old days with the immigration service we were in a gigantic room, separated by small partitions and there were maybe -- oh, if I remember, maybe between 10 and 15 of us, from attorney to secretary. And when I came down to Washington in 1980 to begin full time work, we were all of a sudden a staff of over 40, each -- almost each of us with his or her own office, although I shared an office with two others, which reflected the status of the historians in that early period. And we -- we had roughly, if I remember correctly, around 20 attorneys, around 10 or 15 investigators and then the remaining 10 or 15 were a combination of historians, paralegals and other support staff. And at the time, Rockler, Walter Rockler, who was the first director of the OSI, gathered together a number of attorneys, private -- from private practice or other government agencies, and a number of investigators, almost all from other federal agencies ranging from the custom service to state department security to the INS for that matter. And this unit was melded together in a relatively short period of nine months, into a fairly effective investigative -- combination investigative and litigative unit.

Q: Do you remember the first meeting? Was there one?

A: There probably was, but I don't remember it. I've never been a great fan of meetings, and -- but I don't -- I -- I don't -- I do remember the meeting at which it was announced that we were going to file two new cases, and it may have been the first two that were filed subsequent to my arrival in Washington, and that was the case against Kairys, who was a camp guard at the Treblinka labor camp, and against Swubsakof who was a member of a auxiliary SS unit from -- operative in the Caucasus. That second case was ultimately dropped. But I do remember a meeting at which it was announced that those two cases were filed, and that had to be sometime during 1980.

Q: So what -- all right, so you can't remember a meeting, all right. So I was trying to figure out how --

A: Specifically.

Q: Specifically, right. But how -- were the historians sort of the low people on the totem pole in this group?

A: I-In terms of the professional staff support staff at this point we were, in fact, the low persons on the totem pole. Generally the United States government when it -- when it prosecutes, it has investigators develop cases, and then attorneys prosecute them. And in many ways the attorneys and the investigators, most of whom were very, very good, came with those ideas in mind of how things should run. And I remember being interviewed -- the historians were originally under the investigative wing, and I was interviewed by the chief of investigations in the new unit, when I was applying to come down as a full time worker, to move to Washington. And his question to me -- or, it was more of a statement than a question, well you're not going to be able to write any books down here. And the idea, the implication was that what a historian did was go to a library

and read books. And unfortunately he was even wrong on that particular thing because see that tome -- I wrote that Trifa tome --

Q: Right.

A: -- within a year after he made that statement. But what happened was, as we got the cases, we began to investigate them as a historian would investigate them. And in order to -- they were like little biographies, and I ha -- of course, had written a biography for my dissertation, and it was a biography of an individual, the chief of the Nazi security police SD, Ernst Karltenbrunner, who had left very little of himself behind. And I had to go at his biography by dealing with the organizations to which he belonged, and by dealing with the individuals with whom he associated. And in many ways, OSI, on a much lower level, dealt with that type of investigative process. And so what the historians started to do, and now again my colleague, my former colleague David Marlowe and I talked about this quite a bit when we were both at OSI as young historians, what we started to do was to gather documentation, primary source documentation. We understood, as historians what kinds of documentation bore what weight of reliability. We'd gather documentation on the institutions that were relevant to the charges in the complaint. We'd gather information on the individual, but we'd also gather information on the comrades of the individuals. And this served two purposes. On the one hand we wanted to talk to those comrades if they were still alive, because they could tell us things that the victims of the defendant couldn't, and they could also tell us about the daily routine, which th -- which information the defendant was not going to give us. We couldn't get it from any other source other than the hints that were left in the documentation. And for a second reason is that the personnel material, and the administrative material of the organization that these people belonged to, whether it was a concentration camp, or a security police unit, or an auxiliary police unit, gave us a fairly

accurate, and fairly reliable picture of what the daily life of this defendant was, so that an expert witness could get up in front of a judge and say with complete conviction that on a daily basis, on a normal day, so and so rotated into these particular guard assignments, and this was part of his daily duty. Now, maybe he didn't do it on this day or that day, but if you take a period of time, whether it was a week or three months, he was doing it in this order at least some time, and that this was part of the daily routine, the standard operating procedure of this particular unit in this particular place. And so in gathering this type of documentation, we were able to put together cases that were based on paper.

Q: Right.

A: And were not subject to the inaccuracies -- inaccuracies and shifts of personal memory. The attorneys and the investigators were often used to working primarily with live bodies, with witnesses, whether it was an expert witness, an expert historical witness, and expert forensic technician, a survivor witness, even a -- a perpetrator witness. But a live body who could say what happened, meaning more than the paper documentation. And because of some of the problems with the early witness statements, particularly survivor statements, we came to rely on in part, I think, because the -- of the historians work, more solidly on the documentation and the witnesses, particularly the survivor witnesses became much more important to show to the judge what it was the victims underwent as a result of the defendants participation, assistance or advocacy in persecution. And it changed somewhat -- this was something that historians and attorneys in particular, and investigators to a certain degree, sort of worked towards without consciously saying this is how we're going to change it, this was just -- it just became a -- a -- I won't say instinctual dynamic, but a professional dynamic in that the historians wanted to know everything they could about the way a place operated, and how the people operated within

a place. And the attorneys and the investigators wanted to win cases. And the combination of those two elements produced cases that we could put on that were based primarily on paper, that went through an expert historical witness. But the witness's testimony alone was usually not enough. We tried as much as possible to have the elements of the expert witness testimony backed at every point by a specific piece of paper that the judge could read and say yes, I can see why he comes to that opinion. So that the judge, if the judge chose, could go back and pick apart the component parts of the expert's testimony. And that was the idea that we developed. And by we, I say both historians and attorneys working together, that we developed, in terms of putting together a case that we felt would be as airtight as possible.

Q: I don't want to keep saying that we're going to go back, but in a way I'm going back. How in heaven's name do cases come? Wi -- did it change over the years, or what --

A: That's a good question. Yet -- i-in the early days, in -- in some of the more famous cases that came about in this way, it could come either from rumors from the old country, like Trifa was -- charges surfaced against Trifa both from the ra -- Communist Romanian regime, but also from Romanian émigrés from the moment he stepped off the boat as a displaced person in 1950. Andrea Artukovich was uncovered by, I believe, I -- I can't remember, but I think he was actually seen and denounced by someone. There were people who would pick up on rumors. The Soviets would float pamphlet literature in the United States denouncing this person or that person. Maikovskis was denounced in the early 60's, after having been tried and sentenced to death in absentia, in a typical Soviet style trial in the early 1960's. And the response of the early authorities in the seven -- in the early 70's was to follow these leads and be reactive to what was coming in from the outside. When the OSI hired full-time historians to work on the cases that were floating around, and the OSI inherited 300 -- approximately 350 from the INS, many of

which had been kicking around since the 50's and the 60's uninvestigated, particularly after the Artukovich fiasco in the mid-50's. The historians, in their search for documentation relating to the place or places where the defendants served, and relating to the units in which the defendants served, came across rosters of individuals, many of them with birthdates and birthplaces. And early on, beginning even in 1980, the investigators were running lists -- post-war lists developed by American authorities of war crime suspects through the Immigration and Naturalization Service to see whether matches had taken place, or whether there were hits, we called them hits. That the indi -- an individual of the same name, and same birth year at least, and it's o-often the same birthdate, of this war crime suspect had actually entered the United States on such and such a date. Once we started collecting rosters, this became a -- a -- a fairly large operation, and we were the first and only unit outside of the federal republic of Germany, and the Soviet Union to investigate in this way. And so we began, I would say, certainly by 1982 - 1983, 95 percent if not better of our cases originated in this way. The historians would gather rosters in the course of one a -- investigation, in order to identify other members of that unit, in part as potential sources for witnesses, and in part as potential evidence for that particular investigation. And then would run those names through the Immigration and Naturalization Service, to determine whether these people came to the United States. And if we could determine whether they came to the United States then th-they either became witnesses themselves that we wanted to talk to about their comrades, or they became -- and in most cases they did become subjects.

Q: It would seem sort of, I don't know, nor -- natural to me that these people would have changed their names. They would have come in with no identification, say, the war, I don't have any identification, this is my name, and then you'd never find them.

A: You would think that.

Q: Yeah.

A: You would think that, and it -- it certainly happened in the case of Artukovich, he did change his name, and he did get in under a false name. However, most of the people who came in were small fry. Most of them were certainly aware that there was some documentation about themselves, had existed at one time. Some of them were under the impression that the Nazis destroyed personnel documentation. Others understood that in the late 40's and the early 50's, that where the documentation was, was in a place that at that time was inaccessible to --

Q: Uh-huh, right.

A: -- to western investigators. And at the time of the Displaced Persons Act and the Refugee Relief Act, those who applied would have to go through a background check to determine whether they were eligible. And these background checks were conducted by the counter-intelligence corps of the United States army. And they would make a check to the usual sources of documentation that were available at the time. These included the Berlin document center, and the German armed forces information agency, as well as regional German police agencies. Now, most of these people, most of the OSI subjects, 90 percent if not better, were from eastern Europe and most of them were small fry, and most of them were either non-German, or were ethnic Germans from the east. So if they were not at a certain level, or had not been members of the SS or the Nazi party, the Berlin document center check would surface nothing, and the armed forces information check would surface, if anything, possibly and -- the name of an army unit or a police unit, and nothing more. When the individual was called in, if all the inve -- all the vice consul had, or the counter-intelligence corps investigator had was the number of a police unit, well, the investigator was essentially at the mercy of what the applicant had to say about what those duties were. I mean, you could be guarding buildings in a police unit, and under the

amended Displaced Persons Act, that would not render you ineligible. There was just no access to the type of documentation that became available only beginning with the west German trials in the 60's, and to the United States investigators after the period of détente in the early 70's.

Q: I don't know if you can comment on this, so obviously you'll say no if you can't. We've known, I don't know for how many years about Operation Paper Clip, and the ways in which certain people were brought in by the government in order to help us, especially in science. And their past was whited out. Was it ever -- was there ever a time that you got -- as OSI got -- somebody slipped the information and that you were now in a position to know that we were protecting a Nazi, and then what happened?

A: With Operation Paper Clip, we actually did have one case involving an Operation Paper Clip subject, Arthur Rudolf, whom we did end up -- he denaturalized himself essentially, by default. The difference with Operation Paper Clip, and the problem with Operation Paper Clip for the -- for proc -- litigation in this context was that these individuals were brought specifically to the United States, not despite what they'd done, but because of what they'd done. And this, if you go back to the context of that time, the purpose of bringing them to the United States was number one, to obtain whatever missile expertise they might have, and also to deprive the Soviet Union of that missile expertise. Which, whatever the morality of the situation is, looking back at it at that time, it was not an unreasonable decision given the national security interests at the time. This, obviously, did present a problem in the 1970's and 80's when we were looking into these investigations, because one could not say that the person gave false information. Another issue that was problematic is that many of these people had, in the broader context, a rather marginal connection with the persecution. The connection was generally at its worst responsibility for forced laborers, perhaps denouncing a forced laborer for -- for not working hard enough, as a

result of which that forced laborer would be sent to a concentration camp, or sent to a worse concentration camp, or a worst case scenario, executed. This was clearly something that was not a priority for U.S. officials in the 40's and 50's when they were trying people, they were trying people who were shooting people. They were trying people who were direct, hands-on killers, and they had plenty of them. By the 1980's, because the big fry were either already tried, or die - - had died, there was a broader and more intensive public and legal concentration on different types of connections with Nazi crimes, and the connection with forced labor was clearly one of those. The ro -- for the roc -- for the majority of the rocket scientists, their connection with the forced labor was in comparison to that of a concentration camp guard, or a police official, relatively marginal. So the cases were that much tougher to prove, even without the problem of why the men were brought in.

Q: Okay. So now you got a case. Now what happens? Is there a team and you sit around and you strategize, Peter, you have to do this, we need this from you. Or do you just get the case and then you all go off in your own separate directions? What happens?

A: No, it's -- it -- it -- it's much more systematic than that. Cases are developed through the OSI research and development department. This is a department that grew out of the investigative wing of the unit in the mid-1980's, and it is responsible for the -- it -- i-it -- it functions among many other things, as a transmission belt for these names that are dredged up by the historians, based on the original documentation to and from the INS. If a hit occurs where a person of the same name and same birthdate as someone who is a suspect of being a member of a unit involved in Nazi offenses, has also entered the United States, the research and development unit also takes several other steps to determine whether the person is still in the United States, whether the person is still alive, and whether the person is in good health. And also to make

certain that the individual who resides in the United States is identical with the individual whose name appears on the roster that -- that was originated in the Nazi era. Once all of those bases are covered, so to speak, then the research and development -- the chief of the research and development, I think her -- her name is Elizabeth White, we had Dr. Black and Dr. White, and she then opens a case, gives it an OSI number and it becomes an investigation. The case is then assigned to an attorney and to a historian, and to a paralegal. And together the historian does the investigations, and OSI has some minimal investigative personnel to locate people, locate witnesses, locate files from federal agencies. But the historian does the investigation, works at the investigation to a point where the attorneys consider it ready for what we call a pre-filing interview. Cause we assume that all defendants are innocent until proven guilty, and that there could be some explanation for whatever it is we've put together. We obviously, if we get to the point where we want to talk to someone, we obviously feel that we have a -- a good -- we being the U.S. government, feels that we have a good case, that we can litigate if necessary, but there's always a possibility that there's a reasonable explanation for the documentation that we find in our hands. And so we usually attempt to interview the subject of the OSI investigation prior to filing a case. And as citizens -- if they're citizens, the subject can refuse to speak to us. Doesn't have to come. It's a civil case, the subject does not have to appear. If the subject is an alien, the subject must appear, but he does not have to say anything to us, other than name, rank and serial number, if he wants. Based on that pre-filing interview, depending on what the unit gets, and depending on what that means for the case, the direction of OSI makes a determination of whether a case, a complaint, or an order to show cause should be filed. And then once that determination is made, the -- the documentation is drafted, and a case is filed in court.

Q: Let me a -- let me ask you how the priorities are set. You've got a -- you can have hundreds of rosters, maybe thousands of rosters, and maybe you can make hundreds of possible connections. Who is the person who decides? Is there sort of a hierarchy of importance? Or is it simply whatever comes up first, well this works, let's -- let's take it, I mean how --

A: It -- no, this -- generally the hierarchy of importance revolves around the likelihood of an individual belonging to a specific unit that is in its daily routine involved in persecution. So we will go the u -- the United States government will push names for instance, of concentration camp guards before they might push the names of a -- an obscure police unit in an area that we're not sure that there was persecution, at least Holzman type persecution. We will push Trawniki train guards fairly quickly, though if we have Trawniki train guards who came in late 1943 or early 1944, they might not have the same priority as a Trawniki train guard who was at Belzec.

Q: Right.

A: Or at Sobibor. Then of course, we're gonna -- we're going to put a higher priority. The priority -- priorities that are assigned tend to reflect our experience in what constitutes a winnable case.

Q: But the -- the role of the historian here, because at least in the beginning, I'm assuming that the lawyers and the paralegals don't know much of this history, and that you historians are the ones who can say look, this is really more important. Or am I -- or am I wrong? Did -- did they come in with a lot of knowledge as well?

A: They're -- OSI has several attorneys who've been around for --

Q: Now for a period -- right.

A: -- a long time. So they have -- they have a good sense -- and -- and they've prosecuted a lot of cases, and so they have a good sense of what constitutes a winnable case. And they can also impart that good sense to the newer attorneys, who -- there's much more turnover among the attorneys than there is among the historians. But the process of opening cases is a process that's more or less run by my former colleague, Elizabeth White. She is the one who makes a determination on whether a case should be opened or not. It does go through her superior, her direct superior who is the director of the office, Eli Rosenbaum, and he -- he needs to approve, but I don't know of any cases where he has rejected a recommendation from her that a case be filed. She's --

Q: Would -- would she go to you and -- and ask your advice on whether a case should be opened, or did she really --

A: She's been around long enough -- she was a -- she was trained in German and European history and she's been with the office since 1983. And she's been running the R and D section since the departure of David Marwell in 1988. So she's quite capable --

Q: Right.

A: -- and knowledgeable in her own right to know what constitutes a -- a -- a unit, based on the documentation that exists, what constitutes a unit that -- who's an -- individuals are likely to participating in persecution.

Q: So if we would take an example like the Trifa case which -- I think we ought talk about the notion of advocacy here, and propaganda and -- as well. But how -- you wrote this huge tome, I don't know, six or sev -- 800 pages, it's huge. It's very heavy, Peter.

A: It is heavy.

Q: At what -- do you write a short version of that in order to say to the lawyers and the investigators, look, here is a lot of information, we really should move ahead. So -- or did you do all of that before the actual complaint is filed? I mean, how --

A: That's a good question, and -- and -- and actually the Trifa case is probably not a good example --

Q: Uh-huh, then pick another one.

A: -- because it's an early case.

Q: Okay.

A: But I -- I didn't -- I -- I feel I should explain why that tome is so big. It has to do with some of the specifics of the Trifa case. Trifa was not a case which was developed by OSI. It was a case that was developed through denunciation. And Trifa in his defense was able to make statements that were half-truths, that required a significant amount of documentation to develop an understanding among the attorneys of what the actual truth was. Trifa, for example, was able to say he was incarcerated in a concentration camp during the war. And what did that mean? He was able to say that the Romanian Iron Guard was anti-German. What did that mean? He could say that the Germans didn't trust the Iron Guard. What did that -- all of those things were -- were truth, but they weren't the whole truth. And the whole truth was dependent on a rather acute analysis of what the documentation was, what the conditions were like for the Iron Guards when they were in German captivity. It was clear from the documentation. But it took 40 pages of that particular part of the case to explain to the prosecuting attorneys, and also -- who would then explain it to the judge, through the expert witness, of what exactly was the nature of the persecution of Trifa. The same is true for the Iron Guards anti-German behavior, or the Iron Guards rebellion against the Fascist Romanian military dictatorship which was backed by the

Germans. And for Trifa's own particular role in persecution, which was -- had to be shifted from the original emphasis on physical mistreatment of individuals, which came from witnesses, many of whom didn't, as it turned out, pan out, to a more -- persecution based more on advocacy, particularly within the student rubric, and student organizations of exclusion and discrimination against Jews and Gypsies and Greeks in Romania. And also towards a print advocacy of -- with intent to instill hatred of these minority groups, and to help to create an atmosphere in which the authorities could, with reasonable support from the general population, engage in physical persecution of these individuals. And if you'll notice in that particular tome at the end of each section, there is a contrast between Trifa's statements, and what evidence exists, based on the historical context in the chapters, that would contradict what Trifa -- Trifa's version of events. And that was an unusual case.

Q: Right.

A: A -- a much more normal type of reporting, and in fact it became institutionalized in the 90's when courts began demanding an expert witness report, which was essentially a historical biography of the official duties of the defendant. And I -- I don't remember exactly which year we -- the courts began to require these reports, but I think it was in the early 90's. A much better example is the Schellong report, Conrad Schellong, who was a -- who was a concentration camp guard and security officer at Dachau in the years before the war, and I can tell you now that someone in OSI when I first at -- was assigned to the case was disappointed that he was only there before the war, and even said something to the effect, well before the war they were just like prisons, weren't they? And that signaled to me as a historian that even before we went outside to deal with judges and defense attorneys, we had to lay a context for what Dachau was, and a context to prove, in a sense, that the people who were in Dachau, despite Nazi euphemisms

and misstatements about who they were and why they were there, were in that camp for reasons of race, religion, national origin and political opinion --

Q: Right.

A: -- and were being persecuted for those reasons. And a key hooker to that was dealing with the instrument, the legal police instrument of schutzhaft, or protective detention is the loose translation. And by dealing with the regulations of protective detention, which was imposed by the Gestapo outside the concentration camp, and had little to do with the individual's sojourn within the camp, except to bring him or her in, or bring him or her out if he or she managed to survive. But the schutzhaft provided the proof that the people who were in that camp were in that camp because of their race, because they were Jewish in 1938, because of their national origin, because of their religious convictions, Jehovah's Witnesses, or because of their political opinion; Socialists, Communists and -- and what have you. And that was quite clearly expressed in schutzhaft orders and in the discussion of what schutzhaft was and how schutzhaft was supposed to be applied in the documentation of the Gestapo, of the Reich Ministry of the Interior, and of the concentration camp commandants themselves. And so we -- we as historians were responsible for putting together a context of how the prisoners came into the concentration camp, by what pseudo-legal means they came into the concentration camp, of how the guards were recruited, of what their duties were, and of how their daily duties involved keeping these people in a place where they were being persecuted on the basis of race, religion and so forth. And through that, if we could prove all of those facts, and we could prove that the defendant was a member of this unit, then we could prove -- then -- then a judge could reach a finding that this individual persecuted, or assisted -- participated in persecution. And the purpose in writing a report, and people always used to joke about my long reports -- the purpose of writing the report

was not only to inform the attorneys, but also to solidify in the mind of the historian, what the framework of this inquiry was going to be, and so that the historian could be sure that all relevant documentation, some of it -- some of which was often obscure and by itself meaningless, how it fit in. And y -- we could use the report even though we didn't show the reports to the expert witnesses until the courts began to require us to provide an expert witness report, we didn't show -- these were work product. But we would use the framework established by that report to work out the testimony of the expert witness, and then test it against the expert witnesses, cause after all, he was an independent individual, or she -- a-and I think most of our expert witnesses were male.

Q: Right.

A: I think all of them were male, I can't remember a female expert witness.

Q: W-Would they even get the report, or would they just --

A: No, they wouldn't -- in the early days they would not get the report.

Q: Right.

A: The report was work product for the attorney and for the historian. But the attorney -- the areas that the attorney wanted to cover in the testimony were informed by the contents and context that was reflected in the report.

Q: Let me ask you a question of detail, cause it just struck me the other day as I was reading through the requirements for what kind of persecution or torture, or advocacy, it never includes sexual preference. So that when you talk about those people who were put into the concentration camps, especially before the war, there -- and I'm just wondering, is there a connection betw -- because the United States is not letting in people who said they were homosexuals at a certain

point, and that -- so it didn't matter that there were homosexuals who were being persecuted in the concentration camps. Cause there's no reference.

A: You know, again, and here's something that I don't -- I don't -- I -- I'm not sure of why it isn't in there. I -- certainly in 1978, when the legislation was drafted, the focus on sexual preference, and on persecution for sexual pref -- on the basis of sexual preference, was unfortunately not as consciously not this -- not of the same conscious concern to U.S. authorities or anyone else, frankly, as it is today. We -- there's also, if you notice in the legislation, there's no provision for the persecution of people who were engaged in what the Nazis called asocial behavior.

Q: Right.

A: Whether it was panhandling on the street, or flashing, or what have you.

Q: [indecipherable] right.

A: And part of the problem, no doubt, rests with -- the drafters of the legislation may well have felt, well we're probably not going to pass this legislation at this time if we say that it's wrong to persecute homosexuals when we have many states that still have sodomy laws on the books.

Q: Right.

A: And we're certainly not going to be able to pass this legislation if we count locking up panhandlers, or flashers or what have you, whatever asocial behavior you choose to -- to focus on, you're not going to be able to pass this legisla -- we want to pass this legis -- we want to pass this legislation in very clear and convincing areas that we know at the time, in the context of the 70's that there will be a consensus among Americans that this is wrong, that we don't want people who engage in this activity, persecution of these people, for these reasons in our United States. Do I know that for -- do I know that for -- whether that was really behind -- in the minds?

I don't know, it's speculation. But I suspect that wherever there was the possibility that we the United States might prosecute the same things, this would clearly present an argument for any defendant to say you [indecipherable]

Q: And where do Gypsies fit into those categories?

A: Gypsies would have -- Gypsies in -- in terms of that, we could have fit that into racial persecution.

Q: Yeah, right.

A: Yes.

Q: Okay, so you --

A: And in fact we did use, in concentration camp cases, where Gypsies were in concentration camps --

Q: Uh-huh.

A: -- we used evidence of that to indicate persecution on the basis of race. This was impossible to do, obviously, in the case of German homosexuals.

Q: Right.

A: Because the persecution was not on the basis of race, it was not on the basis of religion, it was not on the basis of national origin. It was not even on the basis of political opinion, at least not directly. And it is also true that for those homosexuals who were willing to make the attitude adjustment, that they could get out, if they ceased practicing their homosexual activity, which was not so true for the Communists, at least on the higher levels, or certainly not for the Jews at a later time.

Q: And given what we said about what you just said, given the response in the American public against Communists, and our own treatment of people who were Communist, or who had that

inclination, would that matter if somebody said, look, look at how you treat Communists here, it's an outlaw party, or you know, you imprison people because of it, or you think they're conspiring to overthrow the government. So I persecuted them, who cares? Why -- you know, same thing. Is [indecipherable]

A: There -- that -- this clearly had -- had their only been Communists --

Q: In there --

A: -- in a concentration camp, it -- it would have been a problem, I think --

Q: Uh-huh.

A: -- because it would have been an issue that would have been much harder to argue because of the United States own recent past, and recent hysteria. The Vietnam war after all, was only a decade earlier, not to mention the McCarthy period here. That being said, I don't recall, at least it's not -- it hasn't been in my history books, and there's no reason to assume that even at its worst, the United States government treated Communists the way the Nazi government treated Communists. But it would have been a harder issue to argue --

Q: Right.

A: -- if it had been only Communists. We were not afraid, despite whatever misgivings we might have had about the tactics of it, to argue that charge. That if it -- we -- we said Communists were in there because they expressed their political opinion. If they were in a prison because they blew up a bridge, that was a little different, that would be a tough thing to argue. But a Communist newspaper editor in a concentration camp was a person who was being persecuted on the basis of his political beliefs --

Q: Right, right.

A: -- political opinion.

Q: It's so interesting because it's -- it's clear that the notion of criminality, or -- is -- or is also so contextualized.

A: Yes.

Q: There's no objective relationship between the law and the crime. In -- in a --

A: I'm not sure I --

Q: Well, you ha -- you -- people make decisions about what criminality is. So, in --

A: Yeah, in terms of discretion, people make --

Q: Right, yeah, yeah.

A: -- th--there's a statue, and then of course any -- any prosecuting, or you know, assize case, litigating institution has discretion as to what level it's going to prosecute, and that's often -- or -- or litigate, and that's often determined by whether a given case is winnable or not.

Q: Right.

A: Whether you can make an argument that will convince, in this case, a judge. And there you have to take into context the -- or take into account the context of an American judge in the early 1980's -- remember, that was the Reagan era, the era of the evil empire, sitting in an American courtroom and thinking about what constitutes persecution.

Q: Right.

A: And the persecution of political opinion has always -- that's always been a bad thing in the United States, thankfully. It's always been a bad thing. It's a good thing that Nazis are able to speak, like Nazis here in the United States. It's also a good thing that we prosecute them if -- if they commit a crime after having done so. But that's something that we don't or shouldn't -- our Constitution says we shouldn't hold people liable, criminally liable for expression of their political beliefs.

Q: Although at various times suppression of speech obviously --

A: Yeah.

Q: -- happens in various forms. I think what I was talking -- talking about, and we'll -- we'll close because the tape is going off is -- is that for instance, if a Jew blows up a bridge against the Nazis, or a Communist -- forget the Communist might be Jewish, but let's say a Communist non-Jewish person blows up a bridge during that particular era, 60's - 70's - 80's, it may be the case that somebody would say, Jews right to blow it up, look what the Nazis are doing to the Jews. Communist isn't, that's terrorism. So that's -- I think that's what I was referring to is prior to decision about whether you could make a complaint and win in the courtroom, which is obviously a strategic decision.

A: Right. A-And -- and in a sense, that made partisan cases virtually impossible for us to litigate against, because in a sense partisans were also, in occupied territories, were expressing their political opinion.

Q: Right.

A: That is not to be -- that they didn't want to be occupied by the Germans. But they were also blowing up bridges, and shooting German soldiers, and with the Vietnam experience fresh, and the parallel often drawn by our own attorneys, some of whom had served in Vietnam, and certainly drawn by judges who had handled civil cases involving problems dealing with Vietnam, this was obviously an issue that we weren't going to be able to win a case, even if the Communist happened to be a Jew, and the -- and the Communist Jew blew up a bridge, that an army occupying a country, unfortunately it has the right to kill people who are blowing up bridges.

Q: Okay, we're going to take a break now because the tape is running out.

A: Good.

Q: Okay.

End of Tape Two

Beginning Tape Three

Q: Peter, can we talk about the -- the -- the way in which evidence is gathered? For instance, in the Trifa case, did all the -- the huge tome that you wrote, was that all information you got from the archives in the United States, or were you able to get things from Romania?

A: There was a combination. Actually, I was not the first assigned to the Trifa case, it had predated OSI, and in fact pre-dated the SLU, the Special Litigation Unit in the INS, had actually been filed in the U.S. attorney's office in Detroit, I believe it was, in 1975. Some of the early research for the SLU, in records both in the national archives and in Romania, were done by none other than Paul Shapiro, who worked as a contractor for the SLU for a short time in '78 - '79. I'm -- maybe '77 - '78. When I was hired and brought down to Washington, I had a look at the existing evidence, and there was still a s -- a number of gaps that needed to be filled at that point, primarily from material that was held at the United States National Archives, and primarily from captured German records, SS records, and German foreign office records. And what I did was to gather the rest of that material and pull that material, together with the material that had been gathered from Romania, and with some newer material that had been gathered from the Library of Congress, which had the monetoral officiale, which was the legal gazette of the Antonescu regime in Romania. And -- cause we weren't at war with Romania during the period that the Iron Guard was in power in the autumn and winter of 1940 and 1941. And I integrated the information from these various sources, into a narrative that was broken down into the topics that were relevant to our -- the components of our complaint and the defenses that Trifa had made against the charges of the government.

Q: So how is that huge document used by the lawyers? You -- you would write this, and then they would take it over?

A: In this particular case, the lawyers used it as a cheat sheet in a way, for developing a line that -- their line of questioning of the expert witness on direct examination. And they also used -- it was written in such a way so that the attorneys could use that which they needed, to deal with rebuttal questions that came up on cross-examination, the -- the questions, if he says this to this, or if the pro -- if the defense attorney asks the expert to explain this, this is what -- this is a -- a reasonable response if the independent expert agrees. And sometimes the defense attorney would not ask the question, and you wouldn't need to introduce the e -- there was no reason to introduce the evidence on direct examination. Let me see if I can think of a good exa -- good example. We could argue -- here's an example, I -- I don't remember if this exactly was in my mind at the time, or this be -- was an issue at the trial, but Trifa claimed that he was persecuted by the Nazis, that he was a concentration camp prisoner. Our direct examination involved his sojourn with the other Iron Guard leaders in the Birkenbrook SS house, where -- from where he had a special vacation for his stomach ulcers, where he was at spas, and going to movies, and writing home about -- home to his buddies at Birkenbrook about his stomach illnesses, and his medicines, and what the weather was like, not -- not exactly the regular concentration camp prisoner's life.

Q: Right.

A: After Coriasima, the Iron Guard leader escaped from Birkenbrook, and was tracked down in Rome and brought back. At the behest of the foreign ministry, the SS did put the -- the Iron Guard leaders in a concentration camp, I believe it was at Buchenwald, but I can't remember where -- which camp at the moment. I think Seymour went to Sachsenhausen and the rest of them went to Buchenwald. But even here, and this was the issue that was brought up for rebuttal; if he says, oh I was in a concentration camp, and I was treated poorly, even here there is evidence

that the Iron Guard leaders were clearly prominent persons, kept in a separate compound, they had a radio they could listen to, and they even had a -- a -- Jehovah's Witness as a -- as a -- a person who would clean their -- their rooms, and what have you. Again, it was not the typical concentration camp existence, and they were clearly not in there because of Nazi persecution of their politics, they were in there because the Nazis needed to keep tabs on them for foreign policy reasons, and they also wanted to keep them in reserve in the event that the Antonescu regime ever tried to desert the axis, as it did in 1944. So it was that type of evidence that I felt, and other historians working on their cases felt that the attorneys ought to have, either for rebuttal purposes, or for their general background. And in some cases it was information that the expert witness might not have, but might be able to evaluate in a useful way, to frame his or her testimony.

Q: Uh-huh. Wh-When the law -- when the lawyers would get this information from you, like -- like with the big book, would you then have a conversa -- would they sit with you and say, I don't quite understand what this means, or how I can use it, I mean, was it transparent to them, how to use these things, or would there be conversations between you --

A: This would be an ongoing --

Q: Uh-huh.

A: -- it would be an ongoing conversation that we would have, and it would often be a conversation that we would have in the context of selecting -- selecting specific documents, and giving them priority as to how we ought to use them. As I remember it, in our cases, in the cases I worked on, there were four levels of priority. We selected documents that we were definitely going to introduce as evidence on direct examination, through the vehicle of the expert witness. And this involved a whole procedure of making sure that they were properly translated, making

sure that they were properly certified as to the chain of custody, which was particularly for materials from the Soviet Union, and the eastern bloc, these were -- this could be a very, very complicated process. The second level required similar preparation because these were documents that were selected to be used if necessary to rebut possible defenses, or documentation submitted in support of possible defenses. So in other words, you had to have these documents ready as if you wanted to move them into evidence, whether you moved them into evidence or not. But a decision to move them into evidence would be made, perhaps very close to trial, or maybe during the trial itself. The third level of priority were those documents that we felt that the expert witness should see. That we would not use them as evidence, they were not appropriate as evidence, either because they were not relevant, or because, for instance, they involved a witness statement where the witness was no longer alive and couldn't be cross examined, and it was not an old enough document to come in under an ancient documents exception to the hearsay rule. Or it was simply general background and general context that the expert witness should either see for the first time, or refresh his memory and have it as part of the context of the case, but it was not necessary to introduce as evidence. It was something that the expert could talk about without having to document it. An example of that might be -- an example of that might be a report about a specific event that occurred in 1941, that was written in 1944, either by the government that perpetrated the event, or that was presiding over the event, or by the successor government. Was something that the expert probably should be aware of, but it was not something that was appropriate to use as evidence. And then the fourth rung were those documents that were either exonerating, or in some way that could potentially adversely affect the case, so that the expert witness would have an opportunity to know what they were,

and to reconcile them with the theory of the case as developed through this cooperation between the expert witness and the prosecution team.

Q: Wa -- I want to ask you more about that, but can you explain the hearsay rule?

A: Well a -- I'm not a lawyer here --

Q: No.

A: -- an -- and we moved documentation, historical documentation, not only contemporaneous German and other axis documentation, but even post-war interrogations under an -- an exception to the hearsay rule, which is called the ancient documents exception. And I believe to remember that the -- the year -- I think there's a year limit, and there is a requirement that the document is not created in the interests of the present proceeding. So in other words, it has to be old enough, first of all, so that there's no shadow of a doubt as to whether the document was created for this proceeding. And by the same token, it had to be totally d -- think of a good word -- totally de-linked from the existing proceeding, cause technically even an order, written right prior to an operation, is a hearsay document. The document only says what it says, it's not proof that the order was carried out, it's not -- the signature isn't proof that the person who signed it actually signed it, unless you test the handwriting, nor is it proof that the person who actually signed it read it, and intended that order to be -- to be implemented. But the expert witness could argue on the basis of his experience, on the basis of his having seen many similar documents, that this was a normal document of the type created by this type of agency in this type of situation. And that's how this document came to be. And this went for post-war interrogation protocols as well, which were na -- not even word for word testimony. They were summaries that were written by police or prosecutors of what the witness said, and then the witness later signed it, which is the normal way of procedure in -- in continental law. There's no word for word witness testimony in a pre-

trial interrogation. The witness talks, the prosecutor or police interrogator summarizes it, types it up, and the witness is -- is -- reads it and then either signs to it or makes whatever changes the witness deems are appropriate and accurate.

Q: So -- so this is why in the Hajda case, the early testimony of the sister and the father, in a totally separate, de-linked case could be accepted as to what they said about the -- the brother and the son.

A: It may -- it -- it made it appropriate to move that info -- those documents into evidence. It came in under an exception to the hearsay rule. Now, as -- as far as the weight that's given to that documentation, in that case, both the prosecution, first -- when we first got the material, and the judge finally gave it what weight, as evidence he or she saw fit. And in this case, in -- in that particular case, because of some certain specific -- specificity of language of the sister's -- of the sister's description of the defendant's unit, we -- we gave -- we, the prosecution and the judge as well, gave it considerable weight, because she used a term that she couldn't have known, or wouldn't have used. It was a foreign term, and it was a specific unit, and she got part of that term right. She just wouldn't have known it if he wasn't, in fact, in that unit.

Q: Uh-huh. So when you had expert witnesses, y-you said -- the historians associated with OSI can't act as expert witnesses, right --

A: No, that's --

Q: -- you have to --

A: -- that has not happened as yet.

Q: Right.

A: In fact, I will serve as an expert witness for OSI this coming year in a case, and I am as -- as far as I know, the first former staff member, but I am a former staff member, because the expert is an independent expert --

Q: Right.

A: -- and the historians on staff at this point, up to this point are -- have still been considered in a self-censoring way by the prosecuting agency, as part of the prosecution --

Q: Right.

A: -- and therefore vulnerable to charges by the defense that they -- they know who they're getting, th -- they know where their salaries come from, and they'll testify accordingly.

Q: Right. Now, do ex -- do the expert witnesses usually function -- now I've read one trial testimony about Hajda, and I don't want to go -- necessarily go into the detail of that, but Charles Sidner is somebody whose function as an expert witness --

A: Yes.

Q: -- and I suppose Hillberg has functioned as a s --

A: Hillberg is an expert witness.

Q: A-Are their usual functions to add to this kind of general picture, more than focusing on the particular person, placing that person's unit, or what that unit might have done in the larger context? Is that what the --

A: The expert offers evidence on -- provided it's there --

Q: Right.

A: -- the expert offers evidence -- excuse me -- on what the unit did, o-on the big picture, first of all, so we -- usually the -- the -- the way it's laid out is we deal with ideological issues, what the German aims were at the very top, what the specific conditions and administrative structures

were in the particular region involved, and then getting down to the particular organization or organizations in chronological sequence as much as possible. And then going down as far as the documentation permits the expert to make a judgment. For instance, if the expert sees a month's worth of guard rotation assignments at a concentration camp, that expert can talk about those rotations, because he's seen enough evidence to convince him of how -- or -- or to define for him what the daily routine was like. If there's no evidence, he can speak about -- if there's no evidence -- well, let me -- let me retract that. If there's -- if we don't have the daily rotations, but only have evidence of the concentration camp within the system, then the expert, if he feels so comfortable in doing so, can talk about how -- what the normal routine was within the concentration camp system, and how in his expert opinion there's no reason to assume that for this particular concentration camp, it went any way differently. He cannot -- or I wouldn't, as an expert witness, try to get into the detail as to who was rotated where at what time, or even what the specific places of rotation were. That you'd have to do on the basis of the evidence. You can't know that if you don't have the -- i-if -- if there's a gap in that documentation. And for instance, to give you an example, in the Schellong case, we didn't have that documentation for Dachau. We only knew that he was a security officer, and we knew that there were regular functions for security officers in concentration camps. And the expert testified as to that. We did have rotation rosters for the guards at Sachsenburg, where Schellong was at before he went to Dachau. And there the expert could talk very specifically that Conrad Schellong, on such and such a day, was outside the bunker. Or that he checked in on the bunker as security officer every three or four hours, whatever the -- the case might have been. For instance in the Hajda case, we could talk because we had, through a three tiered level of documentation, contemporaneous documentation of individuals who were in the Trawniki system, and who served at the Treblinka

labor camp, individuals who after the war testified in western countries, where there was -- where you didn't have the baggage of what the Soviet system was like, that they had indeed been there, and done this, that and the other thing, and then of course, the Soviet protocols, in so far as the information contained therein was consistent with the original documentation, and the testimony in the western protocols. And through a s -- a combination of those three types of sources, we were able to identify where virtually every single individual who served at the Treblinka labor camp between March 1943, and its dissolution in July 1944, where they were. We were able even to determine what happened to the people who appeared on one roster and were no longer on the other roster. One was sent back because he was a chronic drunk, and we had documentation -- his own testimony in that case, that he became an alcoholic at Treblinka one. A post-war testimony in a German proceeding, a west German proceeding. In another case, an individual deserted, and we found the -- the German wanted list, indicating that this indi -- individual had deserted and was being sought at a time between the dates of the two rosters. And so the expert was able to speak in significant detail about who was at Treblinka one, when, and what they were doing there; and in a way that was very convincing to the judge.

Q: W-What is unique about the Trifa complaint in your -- in your view? Is it not common that one is making a complaint against someone who is an advocate, but not necessarily who actually did the persecution, but was so -- is that what's interesting about that case?

A: I think Trifa's -- the interest for Trifa -- we had a couple of journalists. Trifa was primarily a journalist, he was also a student leader. He was unique among OSI subjects -- well not u-unique, but rare among OSI subjects in that he was in the highest level of leadership. He was next to the - - he was in that group that was close to the -- the leader Horia Sima himself. But he was -- he was unique in that much of what he said in his defense, in contrast to it being an outright lie, did

contain a grain of truth. And -- but was significant more for what he omitted to say, than what he actually admitted. In other words, Trifa was a concentration camp prisoner, or was ca -- I take that back, I'm going to withdraw that. He was, for a time, confined in a concentration camp. He was in the custody of the Germans. He was a member of a movement that the Germans didn't fully trust, and that rebelled against the regime that the Germans supported. All of these issues -- I can't think at the moment of another defendant that, given the hope of prosecutorial ignorance, had a better defense in that he could rely on half-truths, rather than simply claiming to be in another place other than he was, or claiming to have been a combat soldier when he really was a concentration camp guard, or simply denying ever having served with the Germans, or in the Hajda case, as you saw, rather unwisely claiming that the information, though accurate as to his person, wasn't him, that somebody else was using his birth data, for reasons that no one could ever explain.

Q: Did -- did Trifa actually come to trial?

A: Yes.

Q: Trif -- it's Trifa?

A: Trifa, Trifa.

Q: And he actually came to trial?

A: Trifa came to trial twice -- I take that back, I withdraw that. He came to -- he was supposed to come to trial twice, both times -- once before the trial at denat stage, and once during the trial at the deport stage, he threw in the towel.

Q: At both times?

A: At both times. Shortly before denaturalization, Trifa voluntarily turned in his certificate, and renounced his citizenship. Didn't stop him from appealing the decision afterwards. His attorney,

a -- a man -- a man by the name of Woods, I think, I can't recall his first name, at that time wrote a gigantic tome in defense of Trifa, and criticizing Trifa for withdrawing, and bitterly attacking the government for persecuting Trifa, which was another issue that we -- we had to deal with in putting together the deportation case, because we had every reason to believe that once Trifa appealed the denaturalization decision, which came as a result of his voluntary act of throwing in the towel, we had every reason to believe that he would fight at deportation. And he did take it to trial at deportation, and I'm still convinced -- I was at the trial, I'm still convinced that due to the tremendous talent of the lead attorney on the case, Kathleen Coleman, who still works for the Justice Department, and the way she was orchestrating -- well, I co -- wouldn't say orchestrating, the way she was permitting the expert witness, Bayla Vargo, to explain the context of what this documentation relating to Trifa really meant, that of everyone in the courtroom, Trifa probably knew best where the testimony was going.

Q: I see.

A: And after two days of it -- the expert was on the stand for two days, Trifa's lawyers approached Allen Ryan who was at the trial and again ultimately offered to throw in the towel and agreed to an order of deportation.

Q: And why would somebody do that? To not pay money to his lawyer, or to --

A: I h -- I ha -- I don't know exactly, but this -- this is only speculation on my part that Trifa -- Trifa, perhaps even better than the judge, saw that -- saw what the prosecution was proving, what we were capable of proving in the courtroom. There could be other reasons, Trifa may have felt that this was too much of an embarrassment. This may have been an issue at the denaturalization stage, after all, he was the head of the Romanian American Orthodox church, he wasn't just a private citizen. Which certainly helped in terms of funding to pay his lawyers, but might have

been a problem in terms of his parishioners. There may have been problems in the church. Other church leaders may have been a little upset at Trifa's posi -- Trifa being who he was, and what that was doing to the reputation of the rom -- Romanian American church, but I don't know that. I don't know what went into that ultimate decision to throw in the towel.

Q: Peter, you said you were at the trial, that y --

A: Yes.

Q: -- that -- the tri -- the deportation, cause the --

A: The deportation hearing, yeah.

Q: Do you have a role there as part of the staff, are you simply an observer?

A: No, we definitely -- the historian is definitely a part of the prosecution team. This was something that came to be established fairly early on. I was at the -- the first case that I went to trial with was the Schellong case, which went, I believe in the summer of 1981, and I also was at the trial in the Maikovskis case. And the role the historian played there was a -- ultimately, other than the expert, the case historian has the strongest knowledge of the historical documentation, we're talking in the Trifa case we had over 700 exhibits, and the historian, more than the attorney could pull not only the exhibits that were geared for exhibits, but the exhibits that were there as background, that were -- m-might become important for one reason or another during the course of the trial. Only the historian had that knowledge at his -- or in Elizabeth White's case, hers -- her fingertrip -- her fingertips.

Q: Right.

A: And this was something that relieved the attorney of having to worry about that. And it relieved the paralegal, who could read the translations but could not read the original documents, and if there was a discrepancy it relieved the paralegal of having to worry about that, and

allowed him or her to concentrate on the location, the physical location of the individual exhibits. There was another function as well. One -- one never knew what kinds of defenses would come up, what kinds of issues would come up at trial. There might be an unanticipated defense, an unanticipated piece of evidence, something that the -- that the defense would introduce at the last moment, whether it'd been turned over in discovery or not. One could never know whether the judge would let it in, regardless of what the rules were, and the rules were pretty lax in immigration court. And the historian had to be there in order, if it were in a foreign language, to read the language, and also to analyze the context of the document so that the prosecution could be ready to move forward, regardless of the issue. And so it was -- it was very much to manage the knowledge --

Q: Right.

A: -- manage the data, not -- not the knowledge but the data contained in the documents, and also as a preventative, a prophylactic measure a-against surprises in -- in terms of evidence that the defense might present, or materials that the defense might present that the prosecution didn't anticipate.

Q: Now what languages are you fluent in, so if --

A: I could read German, in which most of the documentation was involved, and during periods in my career, I could read some kitchen Polish and kitchen Romanian. I've forgotten both of the last two. I can still pick out certain words, but if there was something that was purported to be a police document for instance, depending on the letterhead, you could get a se -- an immediate sense of whether this was a genuine document or not, and be in a position to advise the attorney, look, we need to have a recess, we need to fax this back to the office, we need to get somebody

to look at it and translate it, to -- to take those steps, if necessary, to get the contents of the document available to the prosecution team.

Q: What did the room look like? What kind of a room was it? Was it a courtroom courtroom, or was it a --

A: Yes, it was a courtroom. It was a courtroom -- in every case it was a courtroom not so different than the kinds that you see on court TV.

Q: Yes?

A: Yes.

Q: And so you would sit at -- at the left or right side [indecipherable]

A: The historian would be, in most cases, at the very beginning, there was a sort of an attorney - not attorney thing, and the attorneys wanted to sit at the table, and the historian was to be in the front row of the audience --

Q: I see.

A: -- but given the practical momentum or -- or dynamic of how a trial went, the attorneys quickly -- the lead attorneys quickly insisted that the historian be there --

Q: Be there.

A: -- be there. And the attorneys -- you would often have two or three attorneys in a case, and each attorney was responsible for different witnesses and different parts of the presentation, you'd have a -- an introductory argument most of the time, you'd have a closing argument.

You'd have one attorney responsible for the expert witness, which was after all the crux of the prosecution's case. That same attorney, or possibly another attorney would be responsible for the testimony of the defendant, if the defendant was either called -- occasionally we called the defendant as a prosecution witness, but more often the defendant testified in his own behalf, and

the government's attorney then had an opportunity to cross examine. Then you had another attorney, more often a -- a -- a more junior attorney responsible for survivor witnesses and for witnesses who testified as to the immigration process, the qualifications for certification as refugee, the qualifications for certification as a displaced person, and the vice counsels.

Q: And could other people be there? Was this -- this was an open hearing?

A: These were public trials.

Q: They were public trials?

A: Yes, they were public trials. I don't recall -- certainly none of the cases I was involved in was a see -- was a si -- was a closed trial.

Q: Reporters could come as well?

A: Yes.

Q: And report on what was going on?

A: Yes, yes.

Q: Uh-huh.

A: Oh, yes.

Q: Were expert witnesses rehearsed, or were they supposed to be to --

A: They were prepped the way any witness would be prepped in any kind of civil or criminal case. Our witnesses -- w-we'd go over the questions we wanted to ask them, and listen to their answers, and there were often times when the answer we were expecting was not one that the expert was comfortable with, and there was a dynamic, and h-here the historian played a significant role, often in the evening before trial, and in the evenings between the -- betwe -- between testimony of the expert witness in finding a common ground where the prosecution and the expert witness could both be comfortable with what the expert witness was saying, because

there would be disputes and the expert witness was truly an independent witness and if he wouldn't say what the lawyer expected him to say, that was a problem. And none of the OSI attorneys wanted to be accused of coaching a witness to say something that wasn't true. And the staff historian often played a role, using his or her knowledge of the documentation at finding something that both expert witness and prosecuting attorney could feel comfortable with.

Q: Right. So of course, the attorney doesn't want to be surprised at trial. You need to have a real sense of what's going to happen.

A: Absolutely, absolutely, and there is also a process of preparing the expert witness for cross examine questions -- cross examination questions that he might get, and they -- the whole process of prepping for that. But this is something that's not unusual and happens in all proceedings and the defense does it with their witnesses as well.

Q: Right. Not -- not that I'm going to ask you to name names, I'd never ask you to do that, but I would imagine you folks had favorite expert witnesses, and people you said we're not going to use this person again, or this is -- were there qualities that you needed in an expert witness besides his expert -- or her -- not that you had any, but in this case, males, their expert -- knowing something doesn't mean they will be effective in the courtroom.

A: Yes, th-the expert had to be comfortable enough with the material to be able to speak, offer his opinions with confidence.

Q: Mm-hm.

A: And -- and in a sense that's really what it was, it was an issue -- the expert had to be an expert, had to be comfortable enough with the data to be able to get up there and speak with confidence. And you can't just, in my experience -- and I worked well with all of the experts that I worked with, the one I worked with most often was a gentleman named Charlie Sidmore, and I

worked with him in the Hajda case, as you saw from the transcript. But it -- it had to -- there had to be enough knowledge, enough familiarity with the material on the part of the expert, which meant the expert really had to do some work, and independent work, so that he could get up on the stand and feel really comfortable about what he was saying and even if he did make a mistake, which we're all human and we do make a mistake, that we could make sure that it was cleared up on a follow-up question, or on redirect examination, if the mistake was made on cross examination. Cause the -- the -- the nature of these cases, and the level at which the information was relevant -- most historians deal with the upper levels of an agency, and where we were dealing with people on the ground that are -- is generally not of much historical -- broader historical significance, given the complexity of the documentation, experts would forget this or that, or the other thing, and a follow-up question was often all one needed to trigger off what the expert already knew.

Q: I'm interested to hear what happens to you when you're an expert witness, and I'm wondering if you can comment on this. Most people you have as expert witnesses are academics, I imagine, of -- of some kind. Am I right?

A: All have an academic background.

Q: Academic background.

A: All are trained as academics. We had at least one expert witness who was not -- did not hold a university position in the most recent 10 years of his career, but he continued to be academically active.

Q: Right.

A: In other words, they were all experts in the sense that they continued to work with primary source documents, they continued to write history, they continued to analyze documentation, and they kept up on the latest research in the field in which they were expert.

Q: Is it uncomfortable in some ways for academics to do it in a court setting, because ambiguity is not what you're looking for, you're loo -- you're looking for a very specific kind of clarity.

Now maybe it's my bias, because I was a philosopher, being -- living with ambiguity is sort of the rule, and maybe as an historian that's not quite as true, but --

A: I -- I think -- i-it's been my experience, at least from what I've observed with experts on the stand, that there are times when the moo -- th-the rules of the courtroom, as to what gets in, what -- what -- what doesn't get in, can be frustrating to the effort to explain the context of a situation. But I noticed in -- and I'm thinking of at least two or three expert witnesses, who were able to overcome quickly, that discomfort and work with the rules of -- of evidence.

Q: Okay.

A: And in a sense, i-it just requires you to know your material very, very well. To get a sense of the dynamic of the questioning. To not be flustered by interruptions by the defense, because the defense attorney's job is to try to disrupt as much as possible, the train of thought of the expert, and to try to -- even the most decent of defense attorneys -- to try to catch the expert witnesses -- witness, in errors of fact or interpretation that would serve to undermine his whole testimony. And those experts who accepted that, were competent enough in their material not to get flustered by those interruptions and kept going back and kept listening to, and following the direction of the questions, usually got most of what the -- they intended to say, out.

Q: Uh-huh.

A: And in -- in -- in that sense, the expert testimony, taken together with the trial record offered a fairly good picture of the history of this particular defendant.

Q: Now what about the use of survivor testimonies, or I don't know how you call them, other kinds of witnesses, they're not considered expert witnesses, but experiential witnesses.

A: Eyewitnesses, in a sense.

Q: Eyewitness, yeah.

A: W-We use two types -- actually three types of eyewitnesses. There were two -- there was a traditional type of eyewitness, whether it was a survivor, or a fellow perpetrator who actually saw specific events at hand. We also used, a-a-and in this case survivor witnesses who may not have probably i-in many cases, most cases, didn't know the defendant, had no idea what the defendant did, but could talk in general about what his or her perception of what the guards were doing was, and also more important, what life was like. There's no one, no book, no perpetrator testimony, no historian can possibly get across with the same intensity as a survivor talking, what it felt like to the survivor. And it -- when the survivor talks, in that sense, if one ac-accepts the testimony as being no more than what it is, that survivor's memory, some of the inaccuracies that inevitably come up in human memory, even when they can't be reconciled with an explanation, still don't detract from the image of what life was like in a concentration camp, or in a line waiting to be shot at a pit. That this is something that -- this kind of testimony lends an immediacy that the dry documentation just can't give. But it also is less immu -- less vulnerable to attack than testimony, I saw him do it, because that raises all sorts of questions of how the witness knew who he was. And remember, he was most often wearing a uniform, and a cap, and looked pretty much like the next him and the next him after that. And how does this witness remember this particular person as opposed to anyone else? And in a trial with a dynamic where

the defense attorney has the opportunity and must have the opportunity to question that witness's memory, to try to trip that witness, to try to ask questions, well isn't it possible that you could be mistaken? How do you really know that it was this person and not someone else? And in that kind of dynamic, that kind of testimony, unless there was some reason for the survivor witness to have known the man, the way you would -- the way you would judge the credibility of any eyewitness, in any criminal case, the eyewitnesses -- the survivor testimony was often much more effective to give a picture of the climate of persecution, to offer evidence as to the identity of the people who are being persecuted through their own persons. This was stuff that they knew. This was stuff that they would not be mistaken about and could not be mistaken about. Then we had a third type of witness, we had to develop how the process of certifying refugees, and how the refugees applied for visas, we had to establish that particular process. And we did that by locating individuals who had actually worked on those processes. In other words, displaced persons -- officials from the displaced persons commission. Officials from the counter-intelligence corps, state department visa officials. In -- in -- I -- I can't remember a single case frankly, where any one of these officials remembered the specific case that they were asked to testify. Well, after all, during the DP act there were 400,000 visas. That meant 400,000 investigations and 400,000 pre-application interviews. And no reasonable individual could be expected to remember one person as opposed to another, particularly if there wasn't a -- a specific hooker about that -- that case. But what we could ask them about was what was the regular procedure? Did you swear it was -- was -- was the applicant required to swear to the truth of what he was saying? What did the applicant need in order to become eligible to be a displaced person, to receive a visa? What were the exclusionary measures? How were they implemented? And in that way, the witness could take -- offer the judge testimony on how things actually

worked. And we used those witnesses -- the OSI used those witnesses to introduce documentation regulations of the international refugee organization, regulations of the d -- Displaced Persons Commission. Visa regulations, advisory reports and what have you, that were relevant to the process of how a displaced person entered the United States and what information he was required to offer about his person in order to complete his application.

Q: Right. We're not -- it's Hajda, right?

A: Hajda, yeah.

Q: Hajda. In the Hajda case you had two survivors from Treblinka, who interestingly enough could mention the names of two other guards, but of course did not know -- Hajda was -- was interesting, and th-the emphasis on the testimony was apparently not very much. There was an argument about inclusion of the testimony and the judge agreed to include it, but then didn't use it very much in the final decision. And so, was it to give it a -- a taste of what this place was like, so that one could make a connection between what Hajda must have been doing, had he been there?

A: I -- I -- I think the judge wanted to hear that. And -- a-and that certainly was the purpose of those witness -- they couldn't say anything about Hajda personally, neither of them, as I remember. They -- they -- even though it was a small camp, there were only roughly a hundred, 120 guards there at any one time. I-In that particular camp, the -- the commandant was a psychopath who often personally took pleasure in torturing individual prisoners, so he was a person who was fairly well known, even by name, to the prisoners of the camp. It was a small prison camp too, there were under a thousand people in the camp, under a thousand Jews. And there was one guard, a particularly cruel guard, who had the bad luck to have a patch over his eye. And so he was remembered, not necessarily by name, but they all remembered the one with

the patch over his eye, and that's natural. And in fact, the one with the patch over his eye, bad as he was, often got blamed for virtually everything because a -- a -- a -- a survivor witness, in remembering bad things that happened also remembered the guy with the patch over his eye, and that the guy with the patch over his eye was a bad guy, and so the connection was made. And in many cases they were right, and in some cases they weren't right. But Hajda was just one guard among many and it -- in -- in that case it was very typical of the survivor's relationship to the normal -- normal in quotes -- prisoner guar -- the normal guard, that he was a person in a uniform, that unless there was some reason to know him on a daily basis, like a prisoner worked in a tailor shop and the guard commonly came to the tailor shop to get his boots fixed, there was some relationship that was ongoing. But just a guard on the perimeter was someone that the witness, after 40 years, couldn't be expected -- it wouldn't be fair to burden the witness with trying to remember that particular person. And so in this particular case it was made easy for us because the defendant stipulated to all of the horrors in the Treblinka one camp.

Q: Right, right.

A: He stipulated to that, he said, okay I can see all of that. The issue was, was Bronislaw Hajda the person who was listed as Bronislaw Hajda in the -- in the documentation. And this is why the judge was so concerned about the prosecution's efforts to document exactly what happened to each person who was on those two and -- and -- and later three and four when you take Battalion Streibel into the process, rosters to document their whereabouts, to convince as in this case the OSI did, to convince the judge that the information ab -- of the -- i -- contained in these rosters, the personal data and the information as to where these people were, was accurate, and did refer to these particular people. And the judge was convinced of that.

Q: Do you ever remember a case where an eyewitness, who was a survivor, who was at the place, was actually able to identify a particular person and be accepted for that, not because it was a vague remembrance, but was there ever an instance where that was the case, th-that it worked, people --

A: There was one case that I was on, the Bruno Blach case, where I was personally convinced that the survivor knew -- identified correctly, the individual as a guard. I was never quite certain that he correctly identified the individual as the person who committed a killing, which he did identify. But the reasons that his particular recognition of this person struck me as viable, and I saw him -- I saw him look at the photo spread, and in fact was -- when -- when the person was extradited to West Germany, the defendant was extradited to West Germany, I had to testify as a witness, an eyewitness to that identification process. There was no question that the face, the likeness of that picture registered with the -- with the witness in that case, in my mind. I was watching him when he looked at the photo spread, and I knew which photo was the defendant. And I was not asking the questions, an investigator was asking the questions, I was watching. And I saw him -- I -- I saw him when he hit that particular photo, flinch. And this was a very small camp, it was a sub-camp of Mauthausen, about 2000 prisoners, maybe a hundred guards and a small squad of guards with canines, about 15 of them. And this was one of the guys with a canine. He was a Sudaten German, and he also had a particularly handsome face. He was -- he was just striking looking. He was someone that one might remember in the context of a small group of people in a small camp, where the individual who was a Polish prisoner was -- was there for two years, both in -- both prisoner and guard were there for two years. The prisoners all worked in one factory, the guards all escorted them every day to that one factory. I don't know to this day whether the identification of this person as the killer in this case, was accurate. I don't

know to this day. Under interrogation later in the West German proceeding against this individual, the evidence became so contradictory, even as to the identity of the victim of that shooting, that the defendant was ultimately acquitted in a criminal trial of the specific murder. But there's no question in my mind that that face was known to the witness. But that was the only case that I worked on in which I was convinced completely that an eyewitness recognized the defendant.

Q: Mm-hm. I think we're going to take a break and then go through what you consider to be the most important pieces of these cases that we've been mentioning, okay?

A: Sure.

Q: All right, you can stop now.

End of Tape Three

Beginning Tape Four

Q: Okay. Peter, I wa -- ga -- I -- I want to have us have some discussion about these four trials that we said we would talk about. But before we do that I wanted to ask you a question about the denaturalization process.

A: Mm-hm.

Q: Is the denaturalization process answering a question, is this person of moral character? And is the lack of moral character based on the fact that there was a material misrepresentation in the denaturalization process -- or the naturalization process? Is that where it comes from, or is it a judgment of who they were during the war?

A: No, it's the -- the bad moral character is a judgment based on the material misrepresentation. That because one lied, the violation is that one made false statements to obtain a federal benefit -
-

Q: Okay.

A: -- which citizenship is. And that that indicated that this was a person of bad moral character. But the false statements, again, had to be material.

Q: Right.

A: And in these specific cases, they had to cons -- they had to relate to information concealed that could have or would have led to -- led to the uncovering of persecution.

Q: Now this -- this I know is a hypothetical question because I'm not sure it ever -- it ever happened, but I'm wondering what you -- you think might happen in a case like this. Suppose somebody was in some sense a war criminal. They were members of these organizations which if they identified themselves as part of them, would have denied them citizenship. So let's say they did come under false pretenses, and you find this out, and you start a complaint, and what the

person does is confess, but also talk about how they hated what they did, or they changed their what -- that they -- they're a different person. Is there ever -- could there ever be an instance where somebody could be considered -- I don't know, do I say becomes --

A: Reformed?

Q: -- reformed? Would that matter, or if someone tried to become -- admitted who they were honestly, and said, but I renounce that. They say it honestly to the people who --

A: Now if it -- there's really two questions. If someone is at -- and i -- this goes for any immigrant, there's -- there's nothing special about the Nazi cases in this. If someone admits to an activity or an affiliation that would make that person ineligible to enter the United States, and if it was a long time ago, or if the person could convince the -- the consular official that he or she did in fact renounce that, there's obviously discretion. There's -- there's dis -- there's discretion to permit, to give a visa anyway, the -- each official has discretion. Now, if the person lied and got in on the basis of concealing the information, the theory as I understand it, and it's probably best to ask the attorneys when you do interview them, the theory as I understand it is that because you lied, in theory if we prove that you lied, your status goes back to where you were before you obtained the visa, which is as an alien about which we can then determine whether you are eligible to enter the United States. Now, the burden of proof is on the government once you're here. In other words, the OSI always had the burden of proof in its cases against individuals who are here. But if you're an alien seeking entry into the United States, the burden of proof that you're eligible is upon the alien. So the alien must convince and demonstrate to the immigration official, and to the consular official, that he is a person, or she is a person eligible to enter the United States. We've never had to my knowledge, and I can -- I've never had a case that I worked on where individuals -- I should maybe strike that, there was one individual who

confessed and said that he was sorry, but I couldn't be sure that he wasn't just saying that because now he was caught, and that this was an effort to sort of get some mitigating circumstance. I've never had a situation here in the United States where we ran into an individual who was torn up about what he had done because of what it was that he had done --

Q: Right.

A: -- not because of the situation he found himself vis-à-vis the immigration authorities. May have played a role, but we have not had people actually come in without us finding them to confess and say that they wish they hadn't done it.

Q: Is -- was --

A: So it's hard to separate --

Q: Yeah.

A: -- the confession from the circumstance in which the defendant or subject finds himself. Been through some rocky times, and there have been some instances where the families of defendants had no idea, had no clue what the father had done, or had been during the second World War. And this is certainly a hard thing for the families to suddenly have to deal with this, and they deal with it -- and they've dealt with it, at least as far as I've seen, in very different -- in different ways, from outright aggression against the government to really despair over who they are and where they came from. But no, we've never had a situation where we could be sure -- where I could be sure, I can only speak for myself, that the remorse was unconnected to the situation of having been caught in the lie.

Q: I hadn't thought about the families, now that you mention it. In most cases, would you say that the families resent the government and are angry at the government and don't believe the government?

A: In some cases.

Q: Some cases.

A: I-I think it varies.

Q: Uh-huh.

A: I think it varies. What -- what I was saying was that in some cases the children and -- and possibly even the spouse, particularly if the subject met the spouse after the war, or met her here in the United States, they have no clue that subject X -- that husband and father X was a concentration camp guard, or was a shooter in a -- in a police squad in the east. And it's got to be shocking information if you had no idea before that.

Q: Right, right.

A: There are some cases where the spouse at least knows, or suspects, and perhaps there are some cases where the children know to a c -- to a certain degree, but I have seen cases where they didn't. And that this was a complete surprise.

Q: And th -- and you've seen cases where the -- the children or the spouse had to separate out themselves from the father, that -- that this was so awful that they couldn't -- or were they always filled with ambivalence because --

A: That -- that's pretty hard to determine --

Q: Yeah.

A: -- because the only time that we -- we the historians, at any rate, saw the families, if at all, was at the pre -- in -- pre-filing interview, if there was one. At the post-filing deposition, where the testimony of the defendant is -- is obtained on the record, or sometimes at trial, but sometimes not. So often we -- if -- if a spouse or a son, wa -- who would now be grown, was -- was present, we'd sometimes see the reaction of the spouse or the son to what they were hearing.

And sometimes it was -- seemed apparent, or sometimes it seemed likely that they were hearing this for the first time. But it's hard to know what would happen, at least in my eye -- since I didn't follow the families in many of the -- these cases, it's hard to know what their ultimate -- what the ultimate affect of this case was on the family life.

Q: In most of the cases, if not all of the cases that you were a part of, since people were here in this country for a number of years before you made a complaint against them, were most of them living honest, upright lives? Not members of racist groups, or neo-Nazi groups, or --

A: Most of them were living fairly ordinary middle class, or lower middle class lives. There were a few that had made it quite well, and there were a few that were sort of on the margins. But with rare exceptions, they were not, as such, lawbreakers, in the United States.

Q: And -- and did you -- do you folks working at OSI sort of have little question marks in your head? I mean, what does this -- what does this mean about that particular era? These people come and they radically -- they become -- I don't want to say normal citizens, cause I don't know what in heaven's name that really means, but they're not criminals any more. And they live a life that is not a bad life.

A: Well, that -- that's an interesting question. The way I look at it is -- is another way, in that it's important for all of us, I think, as ordinary, if that --

Q: Yes.

A: -- is a meaningful word, as ordinary citizens of a society, that there be at least the potential, if we do something like what was done during the second World War, regardless of the circumstances in which the individual found himself, whether he was compelled to do it, or whether he did it out of his own a -- a -- as a volunteer, that there be some possibility of legal consequence for that, no matter how many years go by, in terms of that type of crime, I -- I feel -

- in a recent news reports of the proceedings against the Chilean -- former Chilean dictator, Augusto Pinochet, that this -- though there are legal problems at every stage, there's serious legal problems, the idea that our world, as a world society now, is no longer prepared to sweep responsibility for crimes in an official position, where an official abuses the law and causes death and suffering to people in his care, or her care, if in the future, that -- that there shouldn't be some, somewhere down the line, the possibility of legal consequence for that. So I'm quite comfortable with that for these particular crimes. It doesn't mean that I'm -- I'm a believer that people can't -- that I believe that people can't be re -- rehabilitated, but I do believe that people need to take responsibility for what they've done.

Q: Right, right.

A: Even if it's something that they were compelled to do. I guess the ideal for me personally, would be to get to a point where each one of us has a sense that there are certain things that we're not going to do, that it -- it's better to die than to do.

Q: Right.

A: And there was one statement, Soviet protocol of a former Trawniki man, who made this statement, and regardless of what you might say about Soviet protocols, this clearly wasn't -- it was so unusual that it clearly wasn't canned. The individual involved had been a Soviet soldier who was captured and was selected out of a Soviet prisoner of war camp, where he probably would have starved had he not been selected for service at Trawniki. And he stated, after having served as a Trawniki trained guard -- and I can't remember where he served, he stated to his interrogator after the war, to his Soviet interrogator, that it would have been better for me had I died in that prison camp. And if we are at a stage where there are things of that nature, that we as human beings will not do to other human beings, even faced with death, dictatorships are going

to have a hard time carrying out mass murders. And one element of that is at least having some potential of legal consequence for participation in that kind of crime.

Q: Now, I know you're not a psychiatrist or a psychologist, but the other part of the question is -- and I -- y-you certainly don't even have to try to answer it if it doesn't make sense, is how do people do that kind of thing, and then become a non-criminal, and -- do you -- do you know what I mean? It's a -- it's -- it --

A: Yeah.

Q: -- what -- what is it about what you see in these people? Is it just -- it's -- it's opportunistic. I don't mean that they took the opportunity -- or some -- some well may have, to do certain things, but it's opportunistic within a certain situation. It's not opportunistic, it's not the best way to be in another situation, so they become like everybody else. So it's -- I-I -- I don't -- I haven't actually thought about this before reading all this stuff, but it's curious to me, the sort of --

A: I -- is the question you're asking, how can someone who's done something like this --

Q: Just --

A: -- just turn it all off --

Q: Yeah, yeah.

A: -- and become a normal citizen? Obviously it's different --

Q: Yeah.

A: -- for different people, but clearly this was an extraordinary time. And many of those who participated in it as perpetrators, as well as those who experienced it as victims, recognize that it was an extraordinary time in which things were done that you don't normally do. Many of the perpetrators, certainly most of the perpetrators that were prosecuted by OSI were youngsters. Teenagers, or late teens, early 20's when this process began for them. So it was, sadly, a part of

their maturing process, and it wasn't necessarily a part of their quote normal unquote behavior. Once it was over, once there was no authority, no compulsion -- no authority to encourage, or compulsion to compel to participate in those acts, for many it was not that hard to rationalize what had happened, and even to say, well from now on I'm going to be a good citizen. From now on -- even perhaps because of this past, I'm going to be very careful about the laws in my new country. For the perpetrators, in many ways, those who came to the new world, they were starting, particularly the young ones, they were starting as much of a new life, sadly, as the survivors, with much less right to do so.

Q: Yeah, right. The tri -- trif -- Trifa case.

A: Trifa, yeah.

Q: Go back and forth in my pronunciations. That is a case about -- primarily about a propaganda, so what I'd like to do is see how we can contrast each of these four -- for what's sort of at the center of the accusation to get a -- a sense of the range of OSI [indecipherable]

A: Well, I -- I -- I thought of these particular four cases, in fact three are fairly similar. Schellong is a concentration camp guard at an officer level. Bartsch is a concentration camp guard at -- at the grunt level.

Q: Right.

A: And Hajda is also a concentration camp guard at the grunt level in a different system.

Q: That's true, right.

A: When I chose those cases, the -- the thing they had in common, other than the fact that I was assigned to them, and they were meaningful to me because I was with each one of them, in a sense, from beginning -- well, Trifa not quite, but from beginning to end, was that each in its own way reflected a rather unique feature of advancing the role of the historian, or advancing the

nature of the research that went into dev -- the development of these cases. Schellong was the first concentration camp case.

Q: Uh-huh.

A: The -- that -- the first WVHA concentration camp case --

Q: Really.

A: -- that we had. We'd had -- Federenko was a Treblinka guard before that, we'd had -- I don't think we'd had another concentration camp case before that. So the whole WVHA system, the whole concept of protective arrest, the camps in the era before the war, this was something that historically new ground had to be broken in terms of how we presented that evidence. It was also my first case, so it was the first -- it was my learning process, and I worked together with two excellent attorneys, Joe Lynch and Janet DeCosta, who were very flexible about giving me the autonomy to do what I felt needed to be done. It was an excellent working relationship, and I -- for me, it developed the model of the working relationship between the do -- two professions, which despite all the names and epithets we call one another, look at evidence in not always so dissimilar ways. A-An-And certainly are capable and have in many cases, collaborated quite well in the presentation, not only of a good case, but of a fairly good historical record as well.

Q: How would you characterize that relationship, since it became a model for you? What -- what -- what are you --

A: The attorneys that I have worked with on cases, it's a very good relationship, it's based on mutual respect, it's based on a mutual understanding of what each of us -- and -- and each of us as representatives of our profession, can contribute to the development of this case, and the present -- an-and the successful presentation of the case before a judge. And it's a good dynamic, I think. It worked -- it -- it worked very, very well from the first case, the Schellong case, to the

last case I worked on, which was the Hajda case, there were rarely -- I-I'm not -- that's not to say that there weren't arguments and -- and screaming matches from time to time which were -- were -- were a part of the workplace.

Q: Right.

A: But there was always a -- a mutual understanding that we needed one another --

Q: Mm-hm.

A: -- very much, in order to do what our common aim was, was to u-u-uncover the individual's responsibility for the violation and to make possible the appropriate adjudication of the case.

And that was a common goal, and despite whatever conflicts there were, there was always that return to the cooperation, and in -- in my case, I -- I have to say there were relatively few -- few conflicts.

Q: Right.

A: I mean, that it -- it was a -- a normal and healthy working relationship from -- for 20 years.

Q: Was the Schellong case a difficult case?

A: The Schellong case was actually a fairly simple case. It was -- it's -- it's -- I think it, if I remember correctly, Schellong was identified as being in the United States in approximately March 1980, and he was removed from the United States in '83 or '84. That was after denaturalization, deport, and all the -- all the -- all the appeals processes in between. Which is a relatively short time.

Q: Right.

A: The trial was in the summer of 1981, it's 18 months, which isn't -- it isn't a very long time to put together a case. So the mechanics of the case -- most of the material was in the United States, some of it was in the Federal Republic of Germany, but most of it was in the United States, easy

to get ahold of, easy to have certified, easy to have translated. What was special about the case from my perspective, was the fact that it was this learning process, of learning what was needed of me, as a historian, to make this case go. And learning -- learning to understand the perspective of the attorneys, to understand, at least in what they would call a minimal way, how the rules of the courtroom affect the presentation of evidence, and how to reconcile, as much as possible, the historical record with the rules of evidence. And I think where we were successful in doing that, we had not only winning cases, but cases that -- that offer something to history as well. With Trifa, I -- I mentioned it earlier, that -- that Trifa had special aspects to his defense which required a much broader and deeper analysis of each particular segment of that case, and they were broken down essentially into the 10 segments that you -- that you had to carry around and read over the last couple of weeks.

Q: Right.

A: With Bartesch, which we haven't talked much about --

Q: Cou -- cou -- li -- before we get to Bartesch, I want to --

A: Sure.

Q: -- ask you something about Schellong, because it was --

A: Sure.

Q: -- interesting to me in reading the judgment about Schellong is that he was training people. He was --

A: Yes, at Dachau.

Q: Dachau. And -- however, it was very clear in the judgment that there was no proof that he did anything to a prisoner, that he had anything to do -- he was not part of the commandant's staff,

and so I wonder -- suppose he had trained these people outside of Dachau. Would that have been as much of a problem?

A: If the --

Q: I mean -- or more -- it wouldn't create a -- a -- more of a problem in terms of making a complaint against him.

A: If the purpose of the training was to train concentration camp guards, if the concentration camp guards are assisting in persecution, certainly the person who trains them is also assisting in persecution. It s -- would have been an issue if, as a practical matter -- that's a -- that's theory, as a practical matter, if he had been training them in basic guard detail, where the guardi -- i-it could be guarding prisoners or guarding buildings at a site away from the concentration camp, that would have been a harder case to make.

Q: Uh-huh, uh-huh.

A: The case that would have had to have been made would have been the case that he was training these men to be concentration camp guards, and this is what it means to be a concentration camp guard. And that would, in our estimation when we brought the case, would constitute participation in persecution, or assistance in persecution.

Q: Who ra -- I'm now trying to remember, I don't know whether you remember who raised the question of the fact that he never -- there's no evidence that he beat a prisoner, or that he was actually having much to do with prisoners at all. Was it your side, or was it that he [indecipherable] can't remember?

A: I can't recall that. I suspect it was the defense at that point --

Q: Yeah, yeah.

A: -- but it -- that was really the issue to a certain degree, that was decided by the Supreme Court in Federenko, which was -- the Supreme Court decision came down in 1980 in Federenko, which was right before the Schellong case, that it didn't matter whether Federenko personally beat, assaulted or -- or -- or hurt a prisoner in any way. Just the fact that he was guarding was --

Q: Was enough.

A: -- constituted assistance in persecution, that a camp guard, a member of a camp guard unit, by doing his daily duties, was assisting in persecution.

Q: Right.

A: And that was the issue that was ultimately decided in Schellong, and that was the issue that -- that -- that form that pr -- precedent comes from Federenko that formed the precedent for the e -- every subsequent case that involved a concentration camp.

Q: Okay, let's go to Bartesch.

A: Bartesch was unique for me in that it was the one case where there was credible evidence, perhaps not beyond a reasonable doubt evidence, but certainly clear and convincing evidence that he, Martin Bartesch shot someone on whom a name could be pinned. And it was also interesting in how that evidence came up, and how it was found. We had a series of concentration camp cases related to Mauthausen, and th -- and this is a -- a good example of how OSI operates. The Bruno Blach case, which I was assigned to, involved a sub-camp of Mauthausen, and that case was already under investigation as early as 1980. In investigating that case during the mid-80's when I investigated it, I went to the National Archives, to look through each of the U.S. military trials of Mauthausen personnel, that U.S. military personnel had conducted at the site of the Dachau concentration camp, in the records of the Judge Advocate General. Here -- at that time it was downtown here in -- well, no, I'm -- I'm sorry, at that time it

was at Sootland, at the Sootland repository, now they're up in College Park, Maryland. And in the process of looking through all of that stuff, Bruno Blach was never at the main camp except for one day, he was transferred right away to a sub-camp called Wiener Neudorf. But in the process of identifying everyone whom I could, who went through the Mauthausen system, I gathered documentation from all of the Mauthausen and sub-camp trials so that I could put together an effective report eventually on how a person like Bruno Blach would come from Dachau, where he was before, via Mauthausen to Wiener Neudorf. Among the records that I found and didn't pay too much attention to at the time was a -- oh, it must have been about a hundred, 120 page document called an unnatural death book, unnatürliches Todesfälle. U-Un -- c-cases of unnatural death. Which was a log kept by the authorities of the central camp of Mauthausen of all unnatural deaths that were unplanned unnatural. That didn't mean that they weren't planned, but it meant a -- a prisoner -- if some guards were having fun, and pushed a prisoner towards the wire, the guard shot, he was dead. That was recorded. I found it useful, has - has names of guards, I copied it, but filed it because there were -- I did actually do more than file it because there were a couple of cases of shootings in Wiener Neudorf. Not by Bruno Blach, but by others and that's evidence that if an expert witness wants to say prisoners were shot trying to escape at Wiener Neudorf, and the judge or the defense asks well, what do you base that on? What evidence? And then you have this log. Here so and so was shot on such and such a day, and by the way by this ga -- by this particular guard. Not Bruno Blach, but we have records of this. Now as it turned out, during that search I also found a Nuremberg document, 2176 PS, which was a collection of records that Mauthausen camp prisoners secured from destruction after the war, upon liberation, and turned over to the U.S. army investigator investigating crimes at Mauthausen from the day that the camp was liberated. He was a major named Eugene Cohen,

who we actually found after the war and talked to after the war, although this case never went to trial, and so he -- therefore he was not a witness. But among these records were a series of rosters of Mauthausen guards, both at the main camp and at some of the sub-camps. And those rosters contained birthdates and ranks, and even last known addresses, what address that they had before they came to Mauthausen, before they entered German service. And so -- a-and again in -- in accordance with standard operating procedure at OSI we turned these over to the research and development department, and they ran them through the INS. And Martin Bartesch came up along with three others as a hit. And we then, in going back -- I had the Mauthausen cases originally, in the mid-80's. In going back through the documentation, I came back to this book of unnatural cases of death, and started reading each of the entries. And sure enough, Bartesch, Martin was assigned as a guard who shot a French Jewish teenager on such and such a date, I think it was October 1943. Bartesch himself was a teenager at that time. Bartesch was born, I believe in October 1926. I think it was October of '26, and so he was not quite 17, or just turned 17 when he shot a teenager, who I believe was 15 or 16 or 17, about the same age. And we also found another one of the cases, another one of the subjects who had come up on the roster was also on the list as having shot another French Jew at around the same time. And in that other case, which was the case of Stefan Riley, that individual actually confessed to having shot at a person whose name he didn't know, when confronted with that information. Both cases never went to trial because both individuals I believe -- Bartesch before -- Bartesch went without a lawyer, quickly. In fact, I think it was the same lawyer who later turned up in the Hajda case. Bartesch was also from Chicago, so the fact that this guy represented Bartesch, made him known to Hajda as well, later, I think. I don't know -- I don't know that for sure, but I do -- I do think

Collins was also Bartesch's lawyer. Bartesch pled -- refused to talk to us, as was his right as a citizen. And was protected from doing so by his attorney, and fled to Austria before --

Q: Before the denaturalization?

A: -- I think even before -- it's conceivable that it was even before we filed, but it might have been after we filed, just don't remember any more. But he did flee to Austria, and I believe he was denaturalized after -- yes, he was a citizen. I believe he was denaturalized after his departure.

Riley, who was the other concentration camp guard, both each at different sub-camps, I believe - - no, they both shot at Mauthausen, but they each went to different sub-camps later. Riley went to Bavaria, where he was, as I understand it, briefly investigated by the Bavarian authorities.

Q: And Bartesch? What happened to him there?

A: Bartesch, I don't -- I think the Austrians -- I don't really know. I think the Austrians did a pro forma, opened a pro forma case, but Bartesch died shortly after, even though he was still a relatively young man. Riley, I -- I -- is presumably dead by now, but at the last I heard he was still alive, which would be late 80's.

Q: And the Hajda case is an interesting --

A: The Hajda case was significant for me for two reasons. Three reasons, really. It was the first case that I as a historian with the attorney, the partner this time was someone I -- one of my very best and closest friends in the office -- in the OSI, Ned Stuttmann. This was the first case that we had actually gone to trial with using primarily evidence that came as a result of the collapse of the Communist regimes in the Soviet Union and eastern Europe. This case was built, not exclusively, but at least three-quarters -- 75 percent of the evidence was evidence that was taken from witnesses, or found in documentation that had been held behind the Iron Curtain since 1945. And it also represented our first, as an office, our first extensive use of post-war Soviet

protocols, of witness interrogations, where we no longer had the witness alive to be cross-examined. And we used them very, very carefully in that we didn't accept them all at face value. We were up front about our doubts about the conditions under which this testimony was taken. We were also up front about the possibility that Soviet investigators at that time had specific information that was going into that protocol whether the witness said it or not. But we used them where the evidence contained in them was consistent with documentation, whether it was testimony given in the west, or captured German documentation, either captured by the western powers or by the Soviets, where the information was consistent, we could regard this evidence in the protocols as cooperative evidence. In other words, it didn't stand alone, but just because it was protocols taken, quite frankly, by Soviet intelligence agents, didn't mean necessarily that we as investigators could, a priori say this is all phony, this is all fake. We had to look at that evidence the way any historian -- and here in a sense the lawyers went the way of the historians, the way any historian looks at any evidence, with no a priori preconceptions, a priori suspicions but testing those elements of the testimony that made good historical sense, and being aware of those elements of the testimony which one should rightfully have doubts about. And I can give you an example. There were statements of former Treblinka guards, who identified Hajda, and there was a whole issue, as you probably saw, about the spelling of Hajda, because the Polish -- the s -- the -- the sound of Hajda, there's no H in Russian, and the interrogations were always in Russian. There's no H. The Russians replace H with the Cyrillic equivalent of the --

Q: G.

A: -- the English, or the Roman G, and so it was always Gajda, and there were any variation of Gajda, it could be G-a-i-d-a. It could be G-a-y-d-a, it could be G-a-y apostrophe d-a. And there was any number of variations of that. And then of course there were the obvio -- the -- the

misspellings, and the mistranslations, and the -- the misspellings in the translation. But there were certain testimonies that identified Hajda as a Pole. Now the Russians -- the Soviets didn't have Hajda. Hajda was in the United States, they didn't have him. He was only of interest to them in that he was a name, another identification. There's no evidence that they even knew that he was in the United States, although the Soviets knew about many of the émigrés who were in the United States. There was no interest because he was Polish, and because Poland was also a Communist country, that the Soviets were interested in extraditing him. But there were some witnesses who testified that Hajda was a Pole, even though most of the rest of the people -- a Pole was an anomaly among the Trawniki men. There were very small Polish recruiting drives, and there were only two of them who ever served at Treblinka one, two Poles. And not every witness said Hajda was a Pole. If every witness had said Hajda was a Pole, then one would have been suspicious. If every witness had gotten the first name right, one would be suspicious. But some of them got the first name, some didn't. Some got the wrong first name. Some didn't remember a first name at all, they just remembered a g -- a Hajda who was a Pole. And in a group of a hundred guards, that is more credible. On the other hand, you would get testimonies where the Soviet interrogator was clearly asking to identify what people were involved in the massacre of the surviving Jewish prisoners when the camp was evacuated in July 1944. And there you'd have a list of 40 names. So and so -- I know so and so participated in the murder of 350 prisoners on the day that the camp was evacuated. The next guy would -- the s -- the exact same thing. The next guy would the exact same thing. And then you get Hajda's name, the exact same thing. As a historian, I tended to discount. Didn't mean that Hajda didn't participate, but I discounted that evidence as something that Soviet interrogators were interested in getting it because of the r -- the repeated question, it was just plugging a name into this statement, that they

wanted. It was the oddities, the things that were different, that could be corroborated by other evidence, and Hajda's Polish origins were corroborated by personnel documents, and his place of birth. That could be used in these statements. We, in prosecuting the case, never charged that Hajda personally participated in the killings. We did charge that he was there at the time the killings happened, and we did describe, as you read, in -- in some detail, what the guards, the hundred of them, you know, there were a hundred, hundred and 10, were doing while these killings were taking place. So the judge had the data to make a judgment that well, we don't know what Hajda was doing, but we know he was participating in some way, because guards weren't sitting around. They were all doing one thing, either guarding the people who were guarding the perimeter of the camp while the people were being taken out to the woods in groups to be shot, guarding those who were left in the camp while the rest were being taken out to be shot, escorting groups to the camp, or actually shooting them. It was one of those things, all the guards were involved in that because that's what they were doing on that day. And that was based on the Soviet protocols, and the primary source documentation. And we were able to prove that Hajda was there because of a group of documents from the successor unit of the Trawniki training camp, the Battalion Streibel. There was a group of 20 men, all still working with the commandant of Treblinka one, who as well was evacuated. Every one of those 20 men were on rosters at Treblinka one. So it made no sense, it made no common sense, this was a common sense issue for Hajda not to have been there at the time of the killings, and still be on that post-evacuation roster with 20 other men who are all at the camp throughout, from 1943 through its evacuation in 1944.

Q: Now, his lawyer, Collins, if I remember correctly, was making a big deal that on the personnel [indecipherable] you don't have a fingerprint and you don't have a phot -- a

photograph, am I right? And yet you have fingerprints from almost all the other people. Was there some significance to that or didn't --

A: No, there -- this was a -- a particular problem, it was -- it was an interesting case. It was -- was one of the reasons why we had to go into such detail concerning the personnel data of each of the people on the two Treblinka rosters, the one from March 22nd in which -- when Hajda was sent to Treblinka one, and the sort of inventory roster of 1944, approximately March 30th -- 30th, 1944. Hajda's personnel file was missing. We didn't have his personnel file. When we finally -- when our investigator -- our historical investigators, those who could read Russian, finally got access to the records of the Trawniki trained guards in the federal security -- the archive of this Federal Security Service of the Russian Federation in the early 90's, they found the notes of the KGB investigator who saw that file, and the notes that he took were consistent with the type of information that was on other personnel files. So it was clear that there was a personnel file of Hajda. And later we were able to actually track where that file went. It went with a bunch of personnel files to Ukraine, which was part of the Soviet Union in 1949. And tragically, tragically, this was very frustrating. It was, a-according to the Ukrainian authorities, it was destroyed in the spring of 1992. The case was filed in the summer of 1992. So before we made a request of the Ukrainians, it was destroyed, as the Ukrainian says, part of a normal documents destruction process.

Q: One other interesting part of the -- the testimony and the -- the use of older testimony and the analysis of it was the testimony of the father and the sister in a -- in the collaboration trial. They were being tried for possible collaboration.

A: Yes.

Q: And the father was dead, and the sister was not dead at the time of --

A: I can't remember the sister --

Q: Probably can't remember, b --

A: -- yes, the sister was alive --

Q: -- but I think the father was dead.

A: -- and we -- we had -- we brought the sister over to the United States and she gave a deposition at which I was present, before the trial.

Q: And denied what she --

A: Yes.

Q: -- had said before.

A: Claimed that it was a -- claimed that it -- she was forced to say it.

Q: Right.

A: If I remember correctly.

Q: Yeah.

A: But there was -- the father's testimony in itself wouldn't have been enough. The father used language that -- well, I don't remember exactly what the father said, but the father's knowledge was a little less direct. He only said that his son was in service with the Germans, or it was some -- something vague like that, I can't remember exactly what it was. The sister, if I remember correctly, used a ter -- the German term Wachmannschaft, which happened to be the term describing -- Wachmannschaft was something -- it was the term that described a part of the Battalion Streibel. And she used the term Wachmannschaften in Jedrzejow. And Jedrzejow is city in central -- south central Poland, along the vistu -- Vistula River, where the Trawniki men were evacuated in July 1944, in order to press gang forced Polish laborers into building fortifications along the vis -- Vistula. You -- you'll remember from your history that the Red

Army was stopped on the Vistula in front of Warsaw, and all up and down the Vistula, the offense ran out of steam, and the next offensive didn't come until January 1945. So these Trawniki men had, between July 1944, late July 1944, and the middle of January 1945, they were on the Vistula River, supervising local forced labor, digging fortifications on the west side of the Vistula. She knew either -- and I can't remember now, either she visited him or she got a letter from him that he was in the Wachmannschaften in Jedrzejow. Now there was nothing that was particularly horrible about -- yeah, bad things happened there, but it wasn't like Treblinka. It wasn't like Belzec, it wasn't like Trawniki. It was a later time that seemed to be no conceivable reason for Polish investigators in 1945 -- remember, this was January '45, this was before the Soviet offensive that liberated Jedrzejow. This family is in -- near Zakopane, on the other side of the Vistula, they're being interrogated, and here she is saying that he is in the Wachmannschaften in Jedrzejow. Now he was in a company, but the headquarters of the Streibel battalion was in fact at that time in Jedrzejow. And that was convincing to me as a historian, to the attorneys as prosecutors and ultimately to the expert and to the judge, that in fact, Bronislaw Hajda was in the Streibel battalion, and gave a tremendous amount of authenticity to our use of all of those rosters, because the Streibel bat -- if the Streibel battalion rosters, which contained similar information to the Treblinka rosters, were valid -- and -- an-and not -- not only in the sense of authenticity, but in terms of the accuracy of the information, the accuracy of the personnel data, and the accuracy of where these place -- where these units were stationed, that gave greater credibility, because of the names on the Streibel battalion rosters, to the names on the Treblinka rosters. And it gave an e -- extra added push of credibility to the paper. And that's how paper and witness testimony can corroborate one another, whereas a reasonable person

might have questions about either one, but the exact fit, that just wouldn't happen if you were forging.

Q: Right, right.

A: You couldn't forge it that well. You could take a blank personnel form and forge someone's name, birth data. That kind of document you could forge very easily. As I said before, the Soviets never sent us one of those. They may have made them but they never sent us one of those. And we tested plenty. But that kind of connection, that this woman, interrogated by Polish authorities in January 1945, while her brother, and the German authorities were still in Jedrzejow, that she would know Wachmannschaft in Jedrzejow in January 1945, that's not something forgers hit -- at that time, could have created. Now, we tested that document, and found it to be a document that did -- our experts found it to be a document that did originate in 1945, and from Polish authorities.

Q: Now, I don't remember whether it was in the judgment by the judge, or whether it was the -- the lawyer for OSI who was saying that one of the important things about her testimony then was that she was -- first of all, it's completely de-linked from what happened later, and that she was in a very vulnerable position. And here she was admitting this piece of evidence, and that there was some -- there -- it -- it made it more convincing.

A: Yeah, it's what the lawyers call a statement against interest.

Q: Interest, right, right.

A: That it was against her interest to admit to Polish Communist authorities in January 1945, that her brother was serving with the Germans. Given that s -- the suspected charges that were up against her and her family --

Q: Right, right.

A: -- of collaboration. But even if -- even if the Polish authorities had beaten the hell out of her to get that information, there's no way that they could have known in January 1945 that this was a Wachmannschaft, that that's what the unit was called -- basically means guard unit, or that it was stationed in Jedrzejow.

Q: Right.

A: That couldn't be forged.

Q: Peter, tell me something. When you look back on your almost 20 years, right? 18 years?

A: 19 years, 19 years.

Q: 19 years.

A: Almost exactly.

Q: I don't want to -- I don't want to ask this question so all I get is a yes or no answer, I'm trying to make it a little more complicated, but do you have a -- a real sense of pride in having worked with OSI, that there's a kind of service that you've done, as small as it might be given all the people who may well have been criminals, that this is an important service to m-more than the United States?

A: Yes, I do take a -- a strong professional and personal satisfaction in having worked at OSI. I learned a lot at OSI. I learned through, as I said when I -- at my good-bye dinner, and -- and there may have been some surprised to hear it, I said that working with the attorneys over that many years had taught me how to be a better historian. And certainly the need to prove things from scratch had taught me how to question assumptions that we so easily take for granted, that may or may not be based on actual evidence. And to really look at the evidence, and draw one's conclusion from the primary source evidence. To give you an example of that, it's common knowledge -- and I put that in quotations, that the Nazis like to give their auxiliaries alcohol

before sending them out on a mission. Everybody says that, and in fact, witnesses talk about auxiliaries being drunk while they were shooting. But, in all the hundreds of statements of Trawniki men that I read, and in all the documents of Trawniki -- relating to Trawniki trained guards, there's nothing about issuing of alcohol rations prior to an operation. And in fact, when you think of it, it makes no sense. You don't give men whom you're going to put rifles in their hands, and whom you may not entirely trust, alcohol to drink, for fear of nothing else that they'll shoot each other, or they'll shoot you instead of the people they're supposed to shoot. But why were -- why did witne -- were witnesses wrong when they saw some of them drunk? No, not in the cases of the Trawniki men, because of during the shooting and during deportations, the Trawniki were constantly extorting on their own whatever valuables, whether it be cash or booze that the victims had. Sometimes it was cash and they turned it into booze, so that some of the auxiliaries did have booze, and did partake of booze prior to a operation, and that's -- so what the witnesses saw, what the survivors saw, what they perceived to have seen was not entirely inaccurate. But the assumption that was drawn, that everybody just kind of believed, was inaccurate.

Q: Right, right. We're going to have to take a break.

End of Tape Four

Beginning Tape Five

Q: Peter, at the end of the last tape you were describing your sense of service to the OSI.

A: Yes. Yeah, I wanted to continue i-in terms of professionally satisfying, it was professionally satisfying cause of reasons that I had discussed, in terms of learning how to become a better historian, in terms of getting access to records that might not have thought, or been able to get access to had I not been with the Justice Department. Becoming interested in areas such as the auxiliary police, and Poland, and the Trawniki trained guards that might not have come across my radar screen as serious interests had I not been at OSI. The a-ability to put these pieces together in -- in original formulations. Subjects that nobody had written about because there was no public evidence available for people to construct a thesis on. This was all professionally very satisfying as a historian, I think prepared me in many ways, broadened me in many, many ways, that made me perhaps better pra -- prepared to take over the position of the senior historian at the Holocaust Memorial Museum. Personally, I find it very satisfying because as a federal civil servant I felt that I was doing a service to the American people in the sense that, having grown up in the Vietnam generation, I was contributing to a process where individuals who committed crimes during wartime, with all the excuses that one has to commit acts of atrocity during wartime, were being called to account, despite the fact that they were small fry. Despite the fact that in some cases they were compelled to be in the positions where they eventually committed their crimes. Despite the fact that decades and decades had passed, and that there was some reason for them to feel that this would never come back to haunt them. That this was a process, a judicial process, a fair process by which people who had committed crimes could be called to account. And if there is a potential for that in the future, conceivably the perpetrators of the future might stop to think twice before perpetrating crimes along the lines of these crimes that

were perpetrated during the second World War. And if that potential of legal consequence even works to prevent one killing, I feel that it would be worth that effort, both for the future in terms of prevention, and in terms of bringing closure to the past.

Q: What are your feelings about this? Do you have -- do -- I know as an historian you -- you -- you keep away from that, but I can't believe for a minute --

A: Well, we have feelings.

Q: -- that there isn't some sense of -- I don't know, maybe revenge is too much, but that a real feeling of relief when these people do get denaturalized and deported and even more so if they are extradited, and they get put on trial, they get punished. After all, denaturalization, deportation is a certain form of punishment, but --

A: Well, deportation, if -- particularly if you're over 70 and you've been living in the same place for 35 years, I wouldn't underestimate that --

Q: Right.

A: -- the severity of that as a punishment. Clearly, deportation -- denaturalization and deportation is -- is symbolic in comparison to a prison sentence, but it's certainly much more effective that simply deciding well, too many years have passed --

Q: Right.

A: -- we shouldn't go back to these things. I feel, in a sense, that a certain degree of justice has been done, not only to the victims of these perpetrators, but also in the process of immigration as an American, these people, by posing as displaced persons took a slot that might have gone to a person who was really in need, who was not fleeing prosecution, as opposed to persecution -- or who was fleeing prosecution, excuse me, rather than persecution. And that this is something that if we are going to have the immigration laws that we do, that we shouldn't make an exception, a

lenient exception for Nazi offenders. There are some of these people who were real small fries, and I -- I can't say that I feel glee that their lives in America are destroyed by the processes that we institute against them. And frankly for their families, particularly the families that knew nothing about what the defendant had done, this is -- this can be really tragic. On the other hand, I go back to the people -- if people are going to kill in a wartime situation, and they're going to kill illegally, at some point it's very important for all of us who survive those things, and who might have to undergo them in the future, that we know that that won't ever go away, that there will be some consequence for that action during the second World War, that there will some consequence for those who commit crimes during the Yugoslav civil war, that there will be some consequence for those who committed crimes in Rwanda. If that becomes a habit of political behavior, if that becomes a habit of judicial behavior in the 21st century, and prospects seem better than ever before, and if the proc -- if OSI's success for 20 years, and for my colleagues who are still there, I hope another 10, this will be a wonderful service that we've done for the United States and for the world at large.

Q: When you were working for -- when is the Calley trial, the ma -- the My Lai massacre? Is that af --

A: '71, I think was the arrest.

Q: '71. Earlier.

A: I think the events happened in '69.

Q: I'm just wondering, when you think about would this country -- and I'm not putting it on this country, but that's where we're working at because -- would have been as aggressive against its own citizens, you know, i-in the sense of its own citizens having committed a crime, because the United States government was doing certain things, would be as aggressive this way? How -- h-

how does a country look at itself and do these kinds of things? Most countries won't. We only convicted Calley, he certainly was the scapegoat for all sorts of people up and down the line who were advocating these kinds of massacres all over the place, right?

A: Well, it -- the -- the Calley case clearly illustrates and reflects very clearly the problems with a government policing --

Q: Right. Itself.

A: -- and adjudicating itself. A-And -- and that's one thing, for all the criticism that the former West German government and the German government has gone through for the small number of defendants that had actually been charged and convicted, and served real sentences as opposed to token sentences, it still remains the one country outside of the Soviet Union where many people actually went to jail for the crimes they committed.

Q: Right, right, right.

A: And it's -- Lieutenant Calley is clearly a reflection of how difficult it is for a nation to police itself while it's in the heat of the fray. It's one thing to start to police oneself 40 years after the events, when the people who are responsible are no longer in power, and maybe no longer alive. But it's quite another to stop the process while it is happening. That being said, the fact that Calley was tried at all under those circumstances is also a significant event.

Q: Right. So let's talk about truth, justice -- truth and justice. Or truth --

A: Slash justice.

Q: Slash justice, or dash justice, I don't know. Or -- when you think back about the Nuremberg trials, and the subsequent Nuremberg trials, the Dachau trials and all of the national trials that happened, and then you think about the numbers of people who committed crimes, most of whom were not indicted, but even the thousands who were indicted were never put to trial

because there was not enough evidence even if you were convinced that they were truly guilty.

What does this mean about what justice does to the truth of the nature of war crimes, and the nature of war criminals and the ability to actually convict -- have a legal process against them?

A: I -- I -- I think that efforts to represent a judicial process as a history of the events that are relevant to the crime is a mistake, although it's one commonly made. I certainly came to OSI, or the SLU at that time with the excitement of being able to write history and convey history to a broader public, to historians, but also to a broader public through the legal process, and I've come to realize that a legal proceeding is just that, it has a specific purpose, and that is to ascertain a violation or a crime, a civil case violation and criminal case a crime, to ascertain a defendant, to assign or determine what the responsibility of the defendant is, and to determine an appropriate punishment for the crime. I think as a result of that, or at least as a result of an investigation, a part of the historical record, whether it's through witness testimony, perpetrator or survivor, or through documentation that otherwise would not have been uncovered, or would not have been uncovered as quickly, can push forward a broader but different process of trying to understand and analyze what happened. I think a trial deals with an individual, or in rare cases a small group of individuals, to determine their responsibility for very specific events, and to understand a broader historical process requires a different process. And to expect the justice system to fulfill that latter purpose, to understand why things happened on a deeper level, those who expect that are going to be disappointed by the judicial process because they're putting too much on it, that this is a subject of a broader and more intensive inquiry.

Q: But suppose I would say to you, most of the guilty never get tried, for-forgetting maybe in most crimes, but in this particular kind of crime, in war crimes, they don't get tried. So ho-how well can it function? What does it -- what does it really do? Does it really issue fear in the next

group of people? We've seen the Nuremberg trials and the -- the national trials. We still have had Rwanda and Cambodia and Bosnia and Sierra Leone, and -- and on and on and on, it doesn't -- so what --

A: There's obviously no guarantee. I don't think the argument that most of the guilty don't get tried is any reason not to try the ones a-a-and obtain convictions against the ones who you can try. Because one couldn't try Al Capone for murder, didn't mean it was a bad thing to try him for tax evasion. And I think it's very important to set a standard, a fair standard for prosecuting, a-a-and in this sense, war crimes like this -- or I hate to call the -- I -- I'll call them Nazi offenses rather than war crimes, are not different from other criminal acts in terms of the need to establish a consistent and fair process to try these individuals and judge them, and if found guilty, and the -- the innocent -- the -- the acquittals are as important as the guilty verdicts for the survival of the system and for an expectation that the system will be fair, that this is an important process. It has already, to a certain degree, the idea of trying people for crimes committed in other countries, decades after the event, is catching on. Pinochet is -- is an example, it's an interesting example. And again, if this becomes a habit of political behavior and a legal response to regimes that violate human rights, this might make the world a better place. And because there's no guarantee that the world will be a better place, doesn't mean that we shouldn't stop trying.

Q: And hence, are you in favor of an international criminal court, rather than having sp-sp-Spain and England saying, we're going to -- your -- your -- we're going to extradite you, whoever you are, whether it's Pinochet or it's somebody else, that it --

A: It -- it would be great if there were an international criminal court that could review all of these cases. I think when that fails, one should use the systems that one has in process. It would have been great if the United States could have tried these criminals as criminals --

Q: Right.

A: -- under criminal proceedings. But the chances, because of the way our Constitution is written, because of Constitutional precedent, because of real concerns about *expos facto* prosecutions, about jurisdiction, the chances that a criminal trial of these individuals could have taken place in the United States may have ended up as an excuse for doing nothing. What was there was immigration legislation, and a -- a -- a legal response to violations of immigration legislation that did ultimately provide a framework in which perpetrators of Nazi offenses could be uncovered, tried in a process that allowed for extensive appeals, a-available to any immigrant and could ultimately have a process where they would be removed from the United States because as Nazi offenders, they were ineligible to enter at the time they entered.

Q: Wou -- would you if you -- if you could advocate, would you advocate that the United States sign the international tribunal agreement that other countries have signed? Would you think that that was -- or are you not sure?

A: I'm not -- I -- I would prefer to have an international criminal tribunal. I'm not sure at this point that such a one would be any freer of the international and political pressures that a national tribunal is subject to. And I'm not certain as well that the precedents are strong enough yet for an international criminal tribunal to really have teeth, the way a national tribunal -- Pinochet will probably -- if he is ever punished, will probably receive perhaps a more appropriate punishment in Chile, more than anywhere else.

Q: Well, but one is not in conflict with the other because if the country wishes to prosecute someone like they're doing in Chile, then the international court would not come into play. Isn't -- isn't the idea if the national country is will to do it --

A: Yes.

Q: -- then it's hands off for the international tri -- in terms of what has been written so far.

A: Yes, but keep in mind that the Chileans were not ready --

Q: Right.

A: -- to enter this process until the Spaniards requested -- started the process by -- by using an established procedure, Spanish citizens were killed by Pinochet.

Q: Right, right.

A: The Spaniards -- if you interpret that law, i-if you interpret that yo-you -- that murder against one citizen, that a country has a right to protect its own citizens --

Q: Right.

A: -- that a nation can try someone, even the head of a foreign state that kills its citizens illegally.

Q: Right.

A: And in a sense the Spaniards used what was existing legislation. Never been tried before, but it was existing criminal legislation to make an extradition request that set off a chain of events that ultimately, without an international court, has led to an investigation in Chile that might -- might end in an indictment. And even if Pinochet isn't punished, in my mind the fact that there is such an investigation for these events, a generation later, is an important thing. It wouldn't have happened a generation ago.

Q: Okay, then I want to ask you, the -- the other side of the question. Some countries like South Africa have decided to have a truth and reconciliation commission, and I -- I am one of those people who think of apartheid as a form of genocide. It's not physical genocide in the sense of the Nazis, but it -- it is a form of a murder of a cultural and psychological and -- and in some cases, real murder. But the country decided rather than going and setting up trials, that they

would ask people to talk the truth, and seek amnesty if it wa -- and not everybody's going to get it who is speaking the truth, if they don't speak enough truth.

A: Or if the truth they speak is the zi -- is just too --

Q: [indecipherable] is not -- is not -- right. Now it's in-in-interesting thing to think about, does a justice system, a legal system give one truth in the same way that a truth and recons -- and they don't call it truth and justice, they call it a truth and reconciliation system commission, because they're trying to do something more to the society than what a legal system can do. So what do you think about that?

A: You know, I -- i -- i -- it's not clear what the effects of the South African experiment will be in terms of healing the society. It's not clear whether, for instance, a truth and reconciliation process would heal those in Argentina now, who are calling for justice for their disappeared relatives 20 years after the event. On the other hand, given the problems that individual nations have had policing themselves, I wouldn't exclude it as an alternative method of trying to bring some closure where the society is not prepared to adjudicate it through existing criminal procedures, or where the absence of existing criminal procedures to handle cases like that precludes efforts to actually adjudicate or to prosecute wrongdoers by their peers, who may have been their former allies or compatriots. It's an interesting experien -- experiment, and I think it's too early to tell if -- I think we need -- we're going to need another 10 or 20 years to see what the effects of it are, because if you keep in mind that not everybody who's morally responsible is legally --

Q: Right.

A: -- responsible enough to obtain a conviction.

Q: Right.

A: Whereas the truth and reconciliation process might offer the opportunity to bring some of the moral responsibility out into the open. Might. But it's too early to -- I'd have to reserve judgment on that. I think it's an interesting experien -- e-experiment, particularly if a society is not ready to hand down indictments.

Q: What do you think the effect of the Nuremberg trials are? We're 55 years later. Do we know that?

A: I think the effect of the Nuremberg trials has been positive, even 55 years later, and I'm looking at two issues. Not only the post-Nuremberg Nazi offender trials, whatever country they might be in, that still go to this day, and that will go until the last perpetrator dies. But also if you look at the Gulf War, it's really difficult for a nation to attack its neighbor, and annex it any more, without provoking some sort of international reaction. And I suspect that that -- the ability to actually fight a war, whether we agree with American intervention or not, to reverse the Iraqi occupation and annexation of Kuwait was something that would not necessarily have been possible or easy prior to 1945.

Q: But if there weren't oil, would we have done it? We don't do it in Africa.

A: Has it -- has it --

Q: We don't do it in the Congo.

A: Has it really happened where one country has simply annexed another?

Q: Right.

A: The way Iraq annexed Kuwait? I mean, it's true, the oil -- the oil heightened interest and atten -- and attention, there's no question about that. But the response, the capacity to respond as a United Nations, rather than just one country defending its interests, defending its economic

interests, the capacity to respond as a United Nations seemed much more difficult as it was, much more realizable than the League of Nations capacity to respond to Nazi aggression.

Q: But Peter, let's -- let's go back to Bosnia for a moment. Even if one doesn't think that Bosnia declaring itself a state and croa -- Croatia declaring itself a state, the -- the western world, anyway, accepted their dec-declaration of independence. And then Milosevic and the Serbs, and the Bosni -- they attack. We don't do anything for four years, four and a half years. Nothing.

A: I think it --

Q: So the --

A: I think because this was the disintegration of a state in a civil war, the issues were much more murky than they were in the case of Iraq and Kuwait. I don't think it was only oil. I think the international issue was much more murky, and the United States and other powers were uncertain as to whether there was still a Yugoslavia or whether these new states emerging from the break-up of Yugoslavia were legitimate states. The first --

Q: But we accepted that, right?

A: The first nation to accept them --

Q: Germany.

A: -- was Germany, but Germany had other than humanitarian reasons to do that.

Q: Well --

A: Germany was following a traditional pro-Croatian policy.

Q: Right.

A: And it's -- it's more similar to the response of had the British or the French recognized the confederate states of America, which after all, declared their independence of the union, and determined to defend itself --

Q: Right.

A: -- against the central government that was seeking to essentially destroy that confederate nation and reunite it with the United States. Britain and France -- the situation was at that time also very murky. But there was no Nuremberg at that time.

Q: Right. But you know it better than I do, that the world we live in now is probably going to be very easy to declare that's a civil war, that's a civil war, that's a civil war. This is not like Kuwait, this is not like Germany marching into Poland. I want to say Austria. S -- and so consequently, the murkiness gets built into a decision not to do anything. It helps -- it -- it helps to say it's murky, when if you actually look at the situation, why shouldn't one go into certain so-called civil wars? Do you know what I mean? I think if -- I think that the term is used as an -- as an excuse not to do something.

A: I-I don't think that Nuremberg, that the Nuremberg trials really provides much of a precedent of what to do with a nation that is breaking up. The nur -- the international military tribunal was established to deal with a nation that planned and conceived and waged an aggressive war --

Q: Right.

A: -- against other nations. You've really got to look at this as -- as a progression. Prior to World War II there was no international apparatus to deal with that. After World War II, with -- with all its ineffectiveness, we do now have a United Nations which is going to respond when one country attacks another. Now, the next step is what do when a country disintegrates, or when one minority in a country starts butchering another minority in a country. That's something that perhaps the development of an international court, and the devel -- certainly the development of more cohesive international reaction. Certainly the development of a quicker response in terms of providing shelter for refugees, which is something we ought to have learned from the last

world war. That all of these initiatives are going to have to come into play in the future. Whether we'll be able to prevent all killings, we as human beings, I'm not talking about we as the United States, but we as citizens of the world, will be able to prevent killings is something no one's going to be able to guarantee. But to work towards mitigating killings, to work towards providing sanctuary -- speedy sanctuary for people who might be the victims of killings, and that -- that is something that we certainly could have done more quickly in Rwanda at least, and quite probably in Yugoslavia as well. But there -- each situation is different, and we, as citizens of the world again, not just we the United States, or we the west, we as citizens of the world are going to have to work towards strategies for dealing with internal disturbances, internal civil wars, internal persecution, in a way that is effective.

Q: I mean, when you mentioned Rwanda, that becomes even more complicated. It's not just that there was a genocide in the country, then the genocidiars leave and go to the Congo and become --

A: And spilled into another country.

Q: -- helped by Novato, and then Rwanda supports Cabilla going in and then bi -- Cabilla becomes who he is. And now you have incursions back and forth, so it's no longer a so-called civil war.

A: Yeah.

Q: And the world is not responding to stop it --

A: No.

Q: -- it keeps tra -- it -- there's no teeth in the response.

A: No, and the world is -- the -- there's -- your -- you're absolutely right, and that's -- this -- this is a different situation that the Nuremberg Tribunal was never set up to address. This is

something that we now have to deal with in the 21st century and we now have to develop a means of preventing, if possible, mitigating if possible, and -- and ultimately adjudicating if possible, in a way that is credible to the -- the victims, and credible i-if you understand what I mean, to the perpetrators as well.

Q: Seems like there are too many victims and too many criminals.

A: Yes, yes.

Q: Yeah.

A: Yes, there's -- without question, that's true.

Q: So what would you like to say that you haven't talked about, or --

A: Hm. I think in many ways, at the moment -- I'll probably think about and think of 10 things that I'd want to say, but I'm going to be around for awhile, so if -- if it comes again -- but at the moment I think we've covered --

Q: Okay. I really -- I thank you so much for being so open and full with your responses. It's really been a pleasure for me.

A: Well, it's been a pleasure for me, and I hope that this -- this tape will be helpful in the future.

Q: I'm sure it will. Thanks, Peter.

A: Thank you, Joan.

End of Tape Five

Conclusion of Interview