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Investigation of Alleged Nazi War Criminals Residing in the United States by the Immigration and Naturalization Service, Department of Justice. August 3, 1977. 6 pp. + enclosure (7 pp.).

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With a few notable exceptions, investigations by the Immigration and Naturalization Service (INS) of alleged Nazi war criminals prior to 1973 generally were perfunctory. Since 1973 INS has given greater emphasis and priority to these cases, due in great part to the work of the House Subcommittee on Immigration, Citizenship, and International Law.
Findings/Conclusions: Investigation of INS progress in investigating alleged Nazi war criminals in the United States has been severely hampered by problems and delays in getting access to needed records in the possession of the Department of Justice. Only very recently has GAO been granted access to third agency documents in the alleged Nazi war criminal files, and Justice has still not ruled on GAO access to cases recommended for or under legal proceedings. GAO's review of 62 case files included 12 cases that had allegations prior to 1973, nine of which had been analyzed. All nine cases were closed. The volume of cases of alleged Nazi war criminals has never been more than minimal and the INS has had very little success in excluding or deporting alleged Nazi war criminals. INS is presently more actively investigating these alleged criminals both domestically and overseas than it was prior to 1973. The results of such increased activity is attested to by the fact that as of July 22, 1977, domestic investigations were underway in 13 cases; 69 cases had been referred to the Department of State for inquiry in Europe; and 21 cases were recommended for or under legal

proceedings. (SC)

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STATEMENT OF

VICTOR L. LOWE, DIRECTOR, GENERAL GOVERNMENT DIVISION

BEFORE THE

SUBCOMMITTEE ON IMMIGRATION, CITIZENSHIP,

AND INTERNATIONAL LAW

HOUSE JUDICIARY COMMITTEE

ON THE

INVESTIGATION OF ALLEGED NAZI WAR CRIMINALS

RESIDING IN THE UNITED STATES BY THE

IMMIGRATION AND NATURALIZATION SERVICE,

DEPARTMENT OF JUSTICE

Mr. Chairman and Members of the Subcommittee:

As you requested, our testimony today deals with the status of our review of the Immigration and Naturalization Service progress over the years in investigating alleged Nazi war criminals in the United States. Mr. Chairman, your letter dated January 13, 1977, asked us to initiate this review and determine whether INS personnel deliberately obstructed active prosecution of alleged Nazi war criminals cases or engaged in a conspiracy to withhold or quash any information in its possession.

As you know, Mr. Chairman, our progress on this assignment has been severely hampered by problems and delays in getting access to needed records.

Despite the support of this Subcommittee and the authority given to us by the Budget and Accounting Act, 1921 (31 U.S.C. 54), and the Legislative Reorganization Act of 1970 (31 U.S.C. 1156), we have not been given proper access to investigative files and other records. Without proper access to basic information necessary for our work, we cannot independently develop or verify information and the Congress cannot have adequate assurance as to the completeness of our work.

When we began our work in January, the INS Commissioner informed us that generally we could have access to whatever records we needed. Shortly thereafter, we were informed that in accordance with Department of Justice regulations, we could not have access to alleged Nazi war criminal files and cases until third-agency documents were removed. Also, in accordance with Department regulations, we could not have access to cases recommended for or under legal proceedings. Mr. Chairman, at a meeting you attended on April 5, between GAO and representatives of the Department of Justice, including INS, and the State Department and Central Intelligence Agency, agreement was reached that the appropriate files and cases would be screened by INS for third-agency documents and approval obtained from the third agency to release the documents for our review. After this meeting, INS requested that the Department, under certain guidelines, authorize us access to cases recommended for or under legal proceedings.

Mr. Chairman, that was in April. Despite numerous efforts by us and by the Subcommittee since then, little progress was made until just a few days ago when we finally got clearance to look at third-agency documents

in the cases provided to us. However, the Department has still not ruled on our access to cases recommended for or under legal proceedings. Furthermore, even if the Department rules favorably this access problem is compounded by the fact that these cases would still have to be screened for third-agency documents, approval obtained, etc. We assume that this would continue to be the process for any cases or files we request.

The matter of access to intelligence-type information by the Congress or its agents, such as GAO, is complicated. Executive agencies must be concerned with protecting such sensitive information. However, executive agencies such as Justice must also be more forthcoming with information if congressional committees are to properly carry out their oversight functions. The conflict between the need to know and the need to protect exists. An arrangement is needed that accommodates both.

We believe the agreements reached at the April meeting with the Subcommittee and cognizant agencies were appropriate, and there was every indication the necessary records would be available within a few weeks. As you know, this did not occur.

The constant screening of files and the lack in prior years of a centralized program or filing system regarding alleged Nazi war criminals has from the start of this review given us doubts that we could ever have reasonable assurance that we have seen the necessary documentation which would enable us to make any valid determination as to whether INS personnel deliberately obstructed active prosecution of the cases or engaged in a conspiracy to withhold or quash any information in its possession.

Despite the access problem we have made some progress. We have had up to seven staff members assigned full-time to this project and INS has made available to us central office files and certain individual case files (with third-agency documents removed). Accordingly, we have reviewed INS procedures for handling allegations; reviewed 59 of 62 cases except for third-agency documents which were removed; interviewed current and former employees; and analyzed immigration and naturalization laws relevant to alleged Nazi war criminals (see attachment).

Based on our work to date, it appears that with a few notable exceptions, INS's investigations of alleged Nazi war criminals prior to 1973 generally were perfunctory. Our review of the 62 case files included 12 cases that had allegations prior to 1973. At that time, INS investigative efforts were limited in two cases to routine inquiries with other agencies; in three they went beyond routine inquiries and the scope of the investigations appeared reasonable; and in four we found no evidence any inquiries were made. All nine cases were closed. The other three cases were only recently provided to us and we have not made our analysis. However, one of these cases concerned an individual who was extradited to West Germany. The following are examples of the nine cases we reviewed.

--INS examined an allegation published in a domestic newspaper which was based on a foreign newspaper and decided to confine efforts to inquiries to other agencies since it was unable to verify the allegation from the foreign source. Since these agency checks did not provide any information, the case was closed.

--INS examined an allegation published in a domestic newspaper and interviewed potential witnesses living in the United States, took a sworn statement from subject, conducted agency checks, and requested State Department assistance overseas. The investigation did not disclose any derogatory information and the case was closed.

--In response to an inquiry to the Attorney General for information about an alleged Nazi collaborator, INS stated that the subject had been admitted to the United States and there was no extradition proceeding pending against him. In this case, we found no evidence in the files of any further inquiries by INS.

In some cases, requirements in the law add to deportation problems. For example, once a person has been determined to be deportable, the Immigration and Nationality Act requires that a country agree to accept the individual before he may be deported. Another problem INS faces is that the only basis for deporting an alleged Nazi war criminal who entered the country under the Immigration and Nationality Act of 1952 appears to be conviction or admission of such crimes. The 1952 act repealed laws that provided for exclusion of Nazis based on something other than conviction (see attachment).

A March 1977 INS report prepared by a contractor (a retired INS employee) concerning activity relative to alleged Nazi war criminals identified a number of cases of alleged Nazi war criminals investigated by the Service during the late 1940's, the 1950's, and the 1960's. As stated in the contractor's report, INS had a low percentage of success in excluding or

deporting any of these alleged criminals. The report concluded in part that the volume of cases of alleged Nazi war criminals has never been more than minimal and the Service has had very little success in excluding or deporting alleged Nazi war criminals.

Since 1973 INS has given greater emphasis and priority to these cases, due in great part to the work of this Subcommittee. With the establishment of the New York Project Office and the encouragement of the Subcommittee and others, INS is more actively investigating such alleged criminals both domestically and overseas.

The results of such increased activity is attested to by the fact that as of July 22, 1977, domestic investigations (which include inquiries in Israel) were underway in 13 cases; 69 cases had been referred to the Department of State for inquiry in Europe; and 21 cases were recommended for or under legal proceedings such as revocation of naturalization or deportation. Furthermore, we understand that INS will address in its prepared statement proposed organization and procedural changes which it believes will result in more efficient and effective processing of alleged Nazi war criminal cases.

We believe it important that this effort continue and that the Subcommittee continue its monitoring efforts to satisfy itself that INS is diligently pursuing these cases.

This concludes my prepared statement. We hope this information will assist the Subcommittee in its oversight of INS activities. We would be pleased to respond to any questions.

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IMMIGRATION AND NATURALIZATION LAWS RELEVANT TO ALLEGED NAZI WAR CRIMINALS

Grounds for Deporting Alleged Nazi War Criminals

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

> "Any alien [a person who is not a citizen] in the United States * * * shall, upon the order of the Attorney General, be deported who--
>
> "(1) at the time of entry was within one or more of the classes of aliens excludable by the law existing at the time of such entry;
>
> "(2)* * * is in the United States in violation of this chapter or in violation of any other law of the United States;* * *"

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

> "The following classes of aliens shall be excluded from admission into the United States:
>
> * * * * *
>
> "(e) Criminals.
> Persons who have been convicted of or admit having committed a felony or other crime or misdemeanor involving moral turpitude: Provided, That nothing in sections 136 or 137 of this title shall exclude, if otherwise admissible, persons convicted, or who admit the commission,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

> "* * * * *
>
> "(9) Aliens who have been convicted of a crime involving moral turpitude (other than a purely political offense), or aliens who admit having committed such a crime, or aliens who admit committing acts which constitute the essential elements of such a crime;
>
> * * * * *
>
> "(19) Any alien who seeks to procure, or has sought to procure, or has procured a visa or other documentation, or seeks to enter the United States, by fraud, or by willfully misrepresenting a material fact;* * *"

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

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

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

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

Countries to Which Illegal Aliens May be Deported

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

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

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

Denaturalization

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

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

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

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

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

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