Nazi War Crimes & Japanese Imperial Government Records Interagency Working Group

Final Report to the United States Congress
April 2007

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"In a world of conflict, a world of victims and executioners, it is the job of thinking people not to be on the side of the executioners."

— Albert Camus

IWG Membership

Allen Weinstein, Archivist of the United States, Chair

Thomas H. Baer, Public Member

Richard Ben-Veniste, Public Member

Elizabeth Holtzman, Public Member

Historian of the Department of State

The Secretary of Defense

The Attorney General

Director of the Central Intelligence Agency

Director of the Federal Bureau of Investigation

National Security Council

Director of the U.S. Holocaust Memorial Museum

National Archives
Archivist of the United States
Washington, DC 20408

April 2007

I am pleased to present to Congress, the Administration, and the American people the Final Report of the Nazi War Crimes and Japanese Imperial Government Records Interagency Working Group (IWG).

The IWG has now successfully completed the work mandated by the Nazi War Crimes Disclosure Act (P.L. 105-246) and the Japanese Imperial Government Disclosure Act (P.L. 106-567). Over 8.5 million pages of records related to Japanese and Nazi war crimes have been identified among Federal Government records and opened to the public, including certain types of records never before released, such as CIA operational files. The groundbreaking release of these records in no way threatens the nation's security. Rather, it has enhanced public confidence in government transparency.

In order to avoid further delay of the release of this report, members of the IWG did not seek unanimous agreement on a single "official" version of their declassification effort. Instead, this report presents the larger issues that arose while affording participants an opportunity to present personal or institutional perspectives on issues important to them and to those whom they represent. These appear in a separate chapter at the end of the report.

It is my sincere hope that this report will produce in Congress, the Administration, and the public a greater appreciation of the enormous human and financial resources required to declassify important U.S. Government records and make them publicly available in a timely manner. Moreover, I have no doubt that in the years ahead these records—and this report—will be used to the fullest capacity by researchers throughout the world.

Allen Weinstein

ALLEN WEINSTEIN
Archivist of the United States

IWG

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Preface

As acting chair of the Nazi War Crimes and Japanese Imperial Government Records Interagency Working Group (IWG) for more than five years, and from the perspective of someone who spent more than 30 years inside the Federal Government promoting the declassification of records of permanent historical value—frequently without a positive outcome—I can vouch that the IWG has been tremendously successful.

The IWG leaves two legacies. First, the IWG has ensured that the public finally has access to the entirety of the operational files of the Office of Strategic Services (OSS), totaling 1.2 million pages; over 114,200 pages of CIA materials; over 435,000 pages from FBI files; 20,000 pages from Army Counterintelligence Corps files; and over 7 million additional pages of records. Historians, political scientists, journalists, novelists, students, and other researchers will use the records the IWG has brought to light for many decades to come.

As researchers pore over this extraordinary collection of important and interesting documents, will they rewrite the history of World War II, the Holocaust, or the Cold War? Probably not. But as the IWG historians have already shown in *U.S. Intelligence and the Nazis*, the details of major and lesser-known events will now be far richer, and as nuances of these events comes to light, historians will reinterpret and revise our previously accepted narratives.

The IWG's second legacy may ultimately be more important than its first: it has demonstrated that disaster does not befall America when intelligence agencies declassify old intelligence operations records. Before the Nazi War Crimes Disclosure Act (NWCDA), intelligence agencies, supported by the President, the Congress, and the Federal courts, routinely and consistently exempted files containing intelligence sources and methods from declassification, regardless of the age or actual sensitivity of the information.

One of the intelligence methods that remained protected is the fact that U.S. intelligence agencies have relationships with the intelligence agencies of allied or even non-allied nations. That intelligence agencies may cooperate across national borders is so obvious and well documented that merely stating it sounds sophomoric. However, U.S. intelligence agencies have routinely and consistently denied access to records that disclosed such a relationship, claiming that revealing such relationships will threaten or damage our ability to cooperate with foreign governments in the future.

The NWCDA pointedly disavowed such categorical exemptions, insisting instead that continued classification is justified only with evidence that the release of particular information would harm our national security today. This principle resulted in the release of a vast quantity of records. For example, for at least a quarter of a century, the National Archives and Records Administration (NARA) had sought to persuade the CIA to declassify and send to NARA the operational files of the OSS, which has been defunct since 1945. Over the years, the CIA delayed declassifying these records, largely on the grounds that disclosing these records could harm our intelligence relationship with foreign governments. The OSS records indeed reveal the vast interrelationship between British intelligence and the OSS: they contains tens of thousands of pages of intelligence first gathered by the British and shared with us, and the records document

the disagreements that are inevitable in such a close relationship. Nevertheless, it is preposterous to suggest that releasing OSS records under the NWCDA is a threat to our current working relationship with the United Kingdom. All OSS records could have been safely released decades ago.[1]

In this second legacy lies the balance of the IWG's work. Having worked in this arena for many years, I see as clearly as anyone does the significance of the single individual to the declassification process. Whether a request for declassification is answered with a yes or a no is essentially determined by whoever happens to make the disclosure or non-disclosure decisions. All of the laws and orders and regulations, all of the classification and declassification guides and guidance can be cited to support either answer this person cares to give. The individual in charge makes the call based on his or her experiences, biases, proclivities, knowledge, or ignorance, and for many years thereafter, all of us may be stuck with it.

For that reason, I hope that those individuals who sit in decision-making positions in the CIA, FBI, NSA, the Departments of State, Defense, Army, Navy, Air Force, or elsewhere recognize through the example of the IWG that government secrets, even intelligence secrets, are finite. To that end, I hope that those individuals recognize and take credit for the extraordinary contribution both to history and public accountability that their agencies have made through their work with the IWG. They have enhanced the public's knowledge without jeopardizing the national security of the United States or the ability of U.S. agencies to perform their important functions on behalf of our national security.

Let me be clear. The declassification lessons learned during the implementation of the Disclosure Acts *can* and *should* be applied to other intelligence records of similar age, and may even be applied to records of somewhat more recent vintage, no matter how sensitive the information within these records once was.

Whatever our successes, any enterprise as ambitious and untested as the one undertaken by the IWG is certain to have its disappointments. Among the disappointed will be those who had hoped for a voluminous release of U.S. records relating to Japanese war crimes. My understanding of the depth of feeling surrounding this issue changed dramatically in 2001, when I spoke to a meeting of the Global Alliance for Preserving the History of World War II in Asia. The Global Alliance is a federation of organizations and individuals from many different countries who share a single goal: to tell the world about the horrors that took place in Asia in conjunction with the occupation forces of the Japanese Imperial Government. Until my conversations during that meeting with many committed individuals from the United States, Canada, China, Korea, the Philippines, Japan, and elsewhere, I did not fully appreciate the concern of millions of survivors and their families, friends, and associates that this story is virtually untold. Many people around the world had hoped that the IWG would unearth records that would help them document Japanese atrocities.

To these people, I state unequivocally that the IWG was diligent and thorough in its search for relevant records about war crimes in Asia. The IWG uncovered and released few Asian theatre records because few such U.S. records remained classified. Unclassified records were not under IWG jurisdiction. To address any concerns that may arise relating to the dearth of documents released under the JIGDA, we refer readers to publications that document the capture, exploitation, and return of Japanese records from World War II.[2]

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1. Although the vast bulk of OSS records had already been released by the CIA to the National Archives, under the Disclosure Acts, it released 1.2 million pages of its most sensitive records, making virtually all OSS records available for researchers.

2. See, for example, Greg Bradsher, *World War II Japanese Records: History of their Capture, Exploitation, and Disposition* (forthcoming).

NARA archivists attest that the real problem with Japanese documents from World War II is not that they are few in number, but that they are largely underused by researchers. To encourage the full review of these records, the IWG published *Researching Japanese War Crimes: Introductory Essays*.[3] With this volume, we hope to expose the interested public to the breadth of previously declassified or unclassified records within the National Archives that bear on these subjects and that remain to be fully exploited by scholars, journalists, and other researchers. Further, *Researching Japanese War Crimes* outlines the current level and nature of English and Japanese language scholarship that pertains to the subject of Japanese Imperial Government war crimes. Finally, it discusses the reasons why the volume and specificity of records about Asian war crimes is much smaller than records of Nazi war crimes. The book is accompanied by a searchable CD-ROM of a 1,700-page finding aid to these NARA records, as well as a smaller finding aid to select Japanese War Crimes records. We are confident that records exist that will present in time a very clear picture of the scope and horrors of war crimes in Asia before and during World War II. We very much hope that *Researching Japanese War Crimes* will spur the research and scholarship necessary to achieve this end.

***

The IWG leaves a vast product and several important legacies. These came about only because of our extreme good fortune in bringing together the talent, hard work, and commitment of so many individuals, many of whose names are not even specifically revealed in these pages. Each of those mentioned or unmentioned was a *sine qua non* to the accomplishments of the IWG.

First, we must recognize the extraordinary personal and professional contribution and commitment of Senator Mike DeWine and Member of Congress Carolyn Maloney. They were our congressional champions from day one and throughout our entire existence. They and their most competent and committed staff members were always there for the IWG. On behalf of the American people, we thank you.

"The declassification lessons learned during the implementation of the Disclosure Acts ***can*** and ***should*** be applied to other intelligence records of similar age, and may even be applied to records of somewhat more recent vintage, no matter how sensitive the information within these records once was."

What can I say about our three public members, Elizabeth Holtzman, Tom Baer, and Richard Ben-Veniste? Their commitment, their refusal to relent, their forthrightness are unlike anything I have ever experienced elsewhere. I can only hope that in their continuing pursuits they take a moment to step back and take pleasure in the fruits of their labor. Unlike IWG government members, who implemented the acts as an additional part of their regular duties, the three public members selflessly devoted hour upon hour of their lives to understanding the nuances of

3. Edward Drea, et al., *Researching Japanese War Crimes: Introductory Essays* (Washington, DC: GPO) 2006.

these particular laws and striving to get each agency to implement the law fully. They consulted with various experts to obtain the information necessary to assist the agencies in implementing the laws, and lobbied the Hill to extend the life of the IWG so that agencies had every opportunity to comply with the Disclosure Acts. Their unwillingness to settle for anything less than our best effort shows a rare and inspiring leadership, and their tenacity is the reason IWG can claim its success.

None of the IWG's accomplishments would have been realized without the unwavering commitment within the government itself to a fundamental belief in the public's right to know shown by the government members of the IWG. This began with the leadership of the IWG's first chair, Michael Kurtz of the National Archives and Records Administration. By the time I came to the IWG, Dr. Kurtz had already assured through his devotion and hard work that the IWG would be successful. Dr. Kurtz and then-United States Archivist John Carlin extended their generosity throughout the life of the IWG. Archivist of the United States Allen Weinstein stepped in at a critical time and through his exemplary management ushered the IWG to its successful conclusion.

NARA's contributions to the success of the declassification effort are too numerous to name in detail. It must suffice to say that NARA devoted an inordinate amount of financial, human, and intellectual resources to the declassification effort. David Van Tassel, William Cunliffe, and the other IWG staff at NARA put their archival, records-management, and history expertise to work, and the American people have been vastly better served because of it. Among their myriad other duties, NARA staff makes the millions of pages of documents declassified by the IWG accessible to the public, and their work in this regard will continue long after other members of the IWG have turned their attention elsewhere.

The independent historians employed by the IWG, Richard Breitman, Norman Goda, Timothy Naftali, Robert Wolfe, and Daqing Yang, became *ex officio* members of the IWG, and their contributions pervade every aspect of our work. Their volume, *U.S. Intelligence and the Nazis*, published by the IWG, brilliantly exploits and exposes the records declassified and disclosed in the IWG's work and adds greatly to our public exposure.

The IWG's work and publications benefited immeasurably from the input of the IWG's Historical Advisory Panel, chaired by the extraordinary and irrepressible Gerhard Weinberg, Professor Emeritus of History at the University of North Carolina, Chapel Hill. The expertise in World War II history of these historians and authors, their experience with the records under and related to the IWG's jurisdiction, and their understanding of the agencies that hold these records made them invaluable to the IWG's declassification effort.

Eli M. Rosenbaum and his top aides at the Department of Justice/Office of Special Investigations also served the IWG far beyond their official responsibilities. OSI contributed resources, information, and ideas that became essential to agency declassification efforts.

As competing responsibilities at times overwhelmed my schedule, IWG Executive Director Larry Taylor became my alter ego. With so much talent and commitment invested in the IWG, Larry and I were simply the traffic cops. Larry's intelligence, patience, cool-headedness, steadfastness, and ability to work well with all types of personalities served this role perfectly and speaks volumes about the training and experience he received during his prior career in the Foreign Service. I am most indebted to him.

Kris Rusch brilliantly edited and managed the publication of the two IWG historical volumes and this report. Her forbearance with the demands of so many contributors is truly amazing. She was a great addition to our resources.

Science Applications International Corporation (SAIC) expertly managed the contract that supported the historians and numerous other contractors.

Finally, I ask the reader to turn to appendices 1 and 4 for the names of some of the others who enabled the IWG to successfully implement the

largest congressionally mandated declassification effort in history. I am immensely proud of the record we have achieved, and I thank most sincerely those who worked in the spotlight and those who worked behind the scenes to make it possible.

Steven Garfinkel
Acting Chair, January 2001–September 2006
Washington, April 2007

Abbreviations and Acronyms

ADA	Army Declassification Activity
CIA	Central Intelligence Agency
CIC	U.S. Army Counterintelligence Corps
CROWCASS	Central Registry of War Criminals and Security Suspects
DCI	Director of Central Intelligence
DOD	Department of Defense
DOJ	Department of Justice
DOJ/OSI	Department of Justice/Office of Special Investigations
FBI	Federal Bureau of Investigation
FOIA	Freedom of Information Act
FRB	Federal Reserve Board
GAO	Government Accounting Office (now Government Accountability Office)
HAP	Historical Advisory Panel
HERU	Historical and Executive Review Unit (FBI)
IMT	International Military Tribunal
INA	Immigration and Nationality Act of 1952
INS	Immigration and Naturalization Service
INSCOM	Intelligence and Security Command (Army)
IPS	Office of Information Programs and Services (State)
IRR	Investigative Records Repository (Army)
IWG	Nazi War Crimes and Japanese Imperial Government Records Interagency Working Group
JCS	Joint Chiefs of Staff
JIGDA	Japanese Imperial Government Disclosure Act of 2000
JIOA	Joint Intelligence Objectives Agency (Pentagon)
NARA	National Archives and Records Administration
NASA	National Aeronautics and Space Administration
NCIS	Naval Criminal Investigation Service
NSC	National Security Council
NSA	National Security Agency
NWCDA	Nazi War Crimes Disclosure Act of 1998
OGC	Office of General Counsel (CIA)
OMGUS	Office of Military Government–United States
OSS	Office of Strategic Services
PERSCOM	U.S. Army Total Personnel Command
PIDB	Public Interest Declassification Board
SAS	State Archiving System (State)
SCAP	Supreme Commander of the Allied Powers
TGC	Tripartite Gold Commission
UNWCC	United Nations War Crimes Commission
USCIS	U.S. Citizenship and Immigration Services

1. Introduction

From the 1960s through the 1990s, the U.S. Government declassified the majority of its security-classified records relating to World War II, providing scholars and researchers a vast trove of information on the war and its aftermath. Yet, nearly 60 years after the war, millions of pages of wartime and postwar records remained classified. Many of these records contained information related to war crimes and war criminals, information that had been sought over the years by Congress, government prosecutors, historians, and victims of war crimes. In 1998, the Nazi War Crimes and Japanese Imperial Government Records Interagency Working Group (IWG), at the behest of Congress, launched what became the largest congressionally mandated, single-subject declassification effort in history. As a result of this landmark effort, over 8.5 million pages of records have been opened to the public under the Nazi War Crimes Disclosure Act and the Japanese Imperial Government Disclosure Act.[4] While these newly released records do not command a dramatic revision of the history of World War II and the postwar period, they do provide important historical detail that will help us to better understand the Holocaust and other war crimes as well as the U.S. Government's involvement with war criminals during the Cold War.

In October 1998, President Clinton signed into law the Nazi War Crimes Disclosure Act (NWCDA), which required the U.S. Government to locate, declassify, and release in their entirety, with few exceptions, remaining classified records about war crimes committed by Nazi Germany and its allies. The act required the President to establish an Interagency Working Group to oversee its implementation. The IWG consists of high-level officials of seven key Executive Branch agencies (who designated representatives), and three public members appointed by the President (see figure 1). The act charged the IWG to "take such actions as necessary to expedite the release of such records to the public" and to report the outcome to Congress. Although the NWCDA covered records related to all of Germany's allies, the Japanese Imperial Government Disclosure Act of 2000 (JIGDA) made explicit the Government's responsibility to open its remaining classified records on Japanese

Figure 1. IWG Participants

Chair

Allen Weinstein, Archivist of the United States

Public Members

Thomas H. Baer, Los Angeles, New York, 1999-2007
Richard Ben-Veniste, Washington, DC, 1999-2007
Elizabeth Holtzman, New York, 1999-2007

Agency Participants

Stewart Aly, Office of the Secretary of Defense
John Collingwood, Federal Bureau of Investigation
David Holmes, Central Intelligence Agency
William Leary, National Security Council
David Marwell, U.S. Holocaust Memorial Museum
Eli Rosenbaum, Department of Justice, Office of Special Investigations
William Slany, Department of State

4. See appendix 2 for the full text of the NWCDA (P.L. 105-246), and appendix 3 for the full text of the JIGDA (P.L. 106-567).

war crimes. The JIGDA provided for a fourth public member, who was not appointed.

In January 2004, Congress extended the JIGDA for one year to provide additional time for the CIA to comply with the law with respect to both Japanese and Nazi war crimes records. In February 2005, the Congress again extended the act until 2007 at the urging of the IWG public members, who viewed the task as yet unfinished primarily because of the reluctance of the CIA to release all its records on suspect individuals used as intelligence assets during the Cold War.

Congressional sponsors of the NWCDA explicitly stated their desire to strike a balance among several fundamental public interests affected by the law, including the public's right to know, an individual's right to privacy, and the Government's responsibility to protect national security. The members of the IWG represented this diversity of interests, and naturally, on occasion, these interests conflicted. For example, citing the NWCDA's "presumption that the public interest … will be served by the disclosure and release of the records," the IWG strove for the release of pertinent records that were not demonstrably covered by national security exemptions.[5] In some cases, this interpretation of the act conflicted with certain agency positions, such as when an intelligence agency felt that declassification would jeopardize its sources and methods. Similarly, the NWCDA excluded records pertaining to the investigations and prosecutions of Nazi criminals by the Department of Justice/Office of Special Investigations (DOJ/OSI) in order to protect OSI's ongoing work. Some IWG members argued that a rigid application of this provision was unduly restrictive. These and other challenges faced by the IWG are discussed in this report.

No agency received appropriated funds to implement the acts. The DOJ/OSI voluntarily transferred $400,000 to the National Archives and Records Administration (NARA) to assist the IWG with startup costs, and later gave an additional $30,000 for other expenditures. The IWG received no independent funding for its work, which was supported by NARA at the cost of approximately $12 million. IWG public members were not compensated for their participation. In all, the IWG estimates that the implementation of the two Disclosure Acts cost taxpayers $30 million.[6]

This report details how, despite a lack of funding, a shortage of personnel, the events of 9/11, and challenges inherent in the Disclosure Acts themselves, the efforts of the IWG resulted in a significant achievement: the declassification and release to the public of over 8.5 million pages of World War II and postwar records. Chapter 2 describes the nature of U.S. war crimes records and explains why there was a call for further disclosure. Chapter 3 surveys the political context that supported passage of the acts. Chapter 4 introduces the roles of the IWG, its staff, and its consultants, and describes the steps the IWG took to implement the Disclosure Acts. We also cover the oversight process here. Chapter 5 describes each major agency's course of action in complying with the statutes, the numbers of pages each declassified, and the associated costs. In chapter 6, we discuss public policy issues and offer recommendations to Congress. The final chapter presents individual perspectives of IWG members regarding this unprecedented declassification process.

This report is concerned with the process of implementing the Disclosure Acts and with the effectiveness of the acts, including the extent to which the acts resulted in the release of relevant records, the extent to which records were not released, and why. The report does not attempt to assess the historical value of the documentation covered by the acts; nor does it describe or present historical analyses or interpretations of declassified documentation. These interpretive tasks are appropriately left to historians and others with the expertise to study the raw sources made

5. P.L. 105-246 Sec 3(b)(3)(A), 112 stat 1859.

6. IWG's costs are discussed in chapter 4. For individual agency costs, see chapter 5.

available by the Disclosure Acts, a task that was only begun with respect to the records related to Germany with the release of several reports by independent historians employed by the IWG, and by the IWG's 2004 publication of the book *U.S. Intelligence and the Nazis*.[7] The records related to Japanese war crimes required a different sort of interpretive task to account for the relative paucity of records remaining classified and yet to show that a wealth of documentation exists relating to the subject. To address these issues, the IWG published *Researching Japanese War Crimes: Introductory Essays*.[8] This book was accompanied by a CD containing two finding aids to these records: *Japanese War Crimes and Related Topics* and *Select Documents on Japanese War Crimes*.[9]

7. Richard Breitman et al., *U.S. Intelligence and the Nazis* (Washington, DC: National Archives Trust Fund Board for the Nazi War Crimes and Japanese Imperial Government Records Interagency Working Group, 2004).

8. Edward Drea, et al., *Researching Japanese War Crimes: Introductory Essays* (Washington, DC: National Archives for the Nazi War Crimes and Japanese Imperial Government Records Interagency Working Group, 2006).

9. Greg Bradsher, *Japanese War Crimes and Related Topics: A Guide to Records in the National Archives* (Washington, DC: National Archives and Records Administration, 2006), compact disc; and William H. Cunliffe, *Select Documents on Japanese War Crimes and Japanese Biological Warfare, 1934-2006* (Washington, DC: National Archives and Records Administration, 2006), compact disc.

2. The Nature of War Crimes Records

As World War II drew to a close, the United States Government faced an array of unprecedented global responsibilities, including replacing the former political structures of Germany and Japan and rebuilding the economies of Europe and Asia while administering occupied areas and sorting out diplomatic ties with Allies, former enemies, and new adversaries. Amid this confusion and turmoil, the United States and its Allies sought to identify, apprehend, and prosecute war criminals. At the same time that the United States was helping to prosecute war criminals at Nuremberg, in Tokyo, and elsewhere, U.S. intelligence agencies protected and employed some Nazis and collaborators for their purported knowledge of the Soviet Union and other Communist states. In the name of securing a staunch ally against Communism in Asia and in return for information on biological warfare, the United States was lenient with important Japanese war criminals. Some features of U.S. relationships with war criminals during this period have remained murky for almost 60 years.

The U.S. Government generated enormous quantities of records in its wartime and postwar activities. Many of these records were never classified or were declassified in the decades after the war. Yet millions of pages of records relevant to war criminals or containing war crimes information, principally intelligence records, remained security classified, scattered among the vast quantities of files stored in the National Archives and individual Federal agencies.

Previously Available War Crimes Records

The bulk of U.S. Government records directly related to war crimes are those that were created during the process of apprehending, investigating, and prosecuting suspected war criminals. The National Archives houses several major record groups related to the war crimes prosecutions of Nazis, Japanese, and Axis allies (see figure 2). The core records alone constitute 7,500 cubic feet of war crimes documentation, or just under 19 million pages. In addition, the National Archives holds microfilm of captured German records and related items that amount to 6,000 cubic feet (over 65 million images) of records, which are a primary source for evidence of war crimes and personnel records of war criminals. Though these records have long been open to the public, because of their sheer volume they have not yet been fully exploited by researchers. The following sections offer a few examples of the war crimes-related records that U.S. Government agencies created, collected, and maintained.

Nazi War Crimes Records

In 1943, the Allies established the United Nations War Crimes Commission (UNWCC) to investigate war crimes committed by the Axis powers and to advise the Allied governments on the legal processes for bringing war criminals to justice. To assist the UNWCC and Allied governments in finding suspected war criminals in Europe, the Supreme Headquarters Allied Expeditionary Force established a Central Registry of War Criminals and Security Suspects (CROWCASS) in the spring of 1945. CROWCASS collected information on individuals wanted on war crimes charges, and it published lists of suspects for use by the UNWCC and Allied countries. In its three years of operation, CROWCASS issued or processed over 200,000 reports on suspects

Figure 2. Major record series of previously opened war-crimes-related documents

Record Group	Record Series Title	Approximate number of pages	Approximate number of motion pictures, photos, and artifacts
153	Records of the War Crimes Branch of the Office of the Judge Advocate General (Army), Records relating to World War II war crimes	2,782,500	799
220	Records of the Clemency and Parole Board for War Criminals	42,500	
242	National Archives Collection of Foreign Records Seized	65,000,000	395,000
260	Records of the U.S. Occupation Headquarters, World War II, Records of OMGUS Organizations Concerned with War Crimes Trials 1945-49	162,500	
238	National Archives Collection of World War II War Crimes Records, including Records of the Office of the United States Commissioner, United Nations War Crimes Commission	8,745,000	22,378
331	Records of Allied Operational and Occupation Headquarters, World War II, Records of the SCAP Legal Section 1945-52, records of other general and special staff sections, Records of the SCAP International Prosecution Section	5,647,500	
466	Records of the U.S. High Commissioner for Germany, Records of the U.S. Element of the Extradition Board 1945-55	237,500	
549	Records of American participation in war crimes proceedings in Europe, and Records of the War Crimes Branch, U.S. Army, Europe, 1942-57	1,017,500	
	Total	83,635,000	418,177

NOTE: A complete list of National Archives record groups that contain previously opened war crimes related documents is found in appendix 5. The National Archives estimates that it holds 120 million previously declassified pages on the subject.

for use by investigators, and it published voluminous lists of people sought for crimes against humanity.[10]

The U.S. Army Counterintelligence Corps (CIC) bore the greatest responsibility for identifying and apprehending these suspects in the U.S. occupation zones. The Army CIC captured some 120,000 Germans listed for automatic arrest, including SS, Gestapo, and Nazi Party leaders.[11]

Immediately at the end of World War II in Germany, the Allies established the International Military Tribunal (IMT) at Nuremberg, which rendered its judgment on 21 top officials and six organizations of the Third Reich on October 1, 1946. The United States later tried 177 major criminals in subsequent proceedings at Nuremberg. In addition, the four-power Control Council for Germany authorized each of the Allied powers to hold trials in its zone of occupation. The United States tried 1,700 German and other Axis nationals at Dachau for concentration camp crimes, and it extradited numerous suspects to

10. United Nations War Crimes Commission, *History of the UNWCC and the Development of the Laws of War* (London: His Majesty's Stationery Office, 1948), 379. UNWCC records are held by the United Nations in New York and are not subject to the Disclosure Acts, but Commission records appear throughout U.S. holdings of war crimes and diplomatic records. The United Nations opened its UNWCC files to researchers in 1987 in the wake of disclosure that one UNWCC file pertained to former UN Secretary Kurt Waldheim.

11. Ian Sayer and Douglass Botting, *America's Secret Army* (London: Grafton Books, 1989), 294.

other countries to stand trial.[12] These proceedings created voluminous records.

The Allies were assisted in the prosecution of war criminals by the availability of a large body of captured records, which included records of the Nazi party and the SS.[13] Most of these records were microfilmed before the originals were returned to Germany and Italy in the 1950s and 1960s. The availability of the microfilm at the National Archives aided the IWG in developing information on individual war criminals.

Japanese War Crimes Records

As with the Nazi trials, each of the Japanese war crimes trials occasioned the collection and preparation of large bodies of records. Prosecutors combed captured and American records, secured affidavits and statements, and produced court submissions and background materials that resulted in a significant and voluminous war crimes archive.

The International Military Tribunal for the Far East (known as the Tokyo War Crimes Tribunal) began in May 1946. There were 28 Class A defendants from a cross-section of senior Japanese officials, including generals, admirals, career diplomats, and bureaucrats. Most prominent among them were Hideki Tojo, Prime Minister of Japan through most of the war, and wartime foreign ministers Koki Hirota (a former premier), Mamoru Shigemitsu, and Shigenori Togo. Class A defendants were charged with three categories of offenses: conspiracy to commit aggression, aggression, and conventional war crimes. The prosecution produced more than 400 witnesses, almost 800 witness affidavits, and more than 4,000 other documents.[14] Additional tribunals that sat outside of Tokyo judged over 5,500 individuals in more than 2,200 trials. These Class B and C war criminals were charged with committing atrocities during battle, during occupation, or against prisoners of war. Some of these trials were held in Yokohama and others were convened throughout the former theater of war.[15]

General MacArthur's hastily organized trials in Manila, the first war crimes trials in the Far East, found Japanese generals Tomoyuki Yamashita and Masaharu Homma guilty, and both were executed. In Shanghai, American tribunals were also held for Japanese soldiers who participated in the trial and execution of American pilots under the "Enemy Airmen's Act," promulgated by the Japanese after the Doolittle raid on Japan in April 1942, as well as for personnel at POW camps in China who abused prisoners. The U.S. Navy held trials for war crimes committed in the Pacific. Many of these proceedings involved close cooperation with British, Australian, and Dutch authorities. Once the trial records had served their administrative and legal purposes, they were transferred to the National Archives.[16]

The records of other nations' war crimes trials are not subject to the Disclosure Acts because they were never in the possession of the U.S. Government. For instance, the Nationalist Chinese Government's trials

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12. Report of the Deputy Judge Advocate for War Crimes, June 1955–July 1948, National Archives, RG 549, Records of the U.S. Army Europe, Judge Advocate Division, War Crimes Branch General Administrative Records, 1942-1947, Box 13, 290/59/17/3.

13. Consistent with U.S. military usage, the term "captured" includes confiscated, seized, or otherwise acquired records, whether taken into U.S. custody as a direct result of battle or during peace.

14. Solis, Horwitz, "The Tokyo Trial," *International Conciliation*, no. 465 (Nov. 1950): 542.

15. Philip R. Piccigallo, *The Japanese on Trial: Allied War Crimes Operations in the East, 1945-1951* (Austin: University of Texas Press, 1979), xiv.

16. These records may be found primarily in Record Group 125, Records of the Office of the Judge Advocate General (Navy); Record Group 238, National Archives Collection of World War II War Crimes Records; and Record Group 331, Records of Allied Operational and Occupation Headquarters, World War II.

of Japanese war criminals held in Nanjing did not result in American records despite the heinousness and notoriety of the war crimes committed there by the Japanese.

In its canvass of records possibly useful for war crimes information, the IWG looked closely at the history and disposition of a large body of captured Japanese records. The IWG was concerned that valuable war crimes information may have been lost with the return of the records to Japan in the late 1950s and early 1960s.

Many captured Japanese records were used in court exhibits and otherwise integrated into the war crimes records in the United States. Army Judge Advocate General records relating to the Far East trials consist of more than 400,000 pages. Most of these records were never security classified, and those that were had been declassified by 1982. Supreme Commander of the Allied Powers (SCAP) Legal Section records involving war crimes trials throughout the Pacific region comprise some 1.5 million pages of documentation and include many captured Japanese records. Most of these records were also never security classified, and the rest were declassified by 1982. In addition, the military had collected and shipped to the United States for intelligence exploitation over 7,000 cubic feet of captured records that eventually came under the control of the CIA. After the CIA and other interested agencies finished exploiting these records, they were returned to Japan beginning in 1958. The return was consistent with international practice and carried out in the name of normalization of diplomatic relations. The IWG staff inquired closely into the matter to determine whether war crimes records had indeed been returned. The staff found no evidence that the records were war-crimes related; instead, they consisted largely of diplomatic records from the 1920s and earlier, technical records related to military matters, and naval oceanographic records.

The National Archives staff produced three documents concerning declassified Japanese war crimes documents. The first is a 1,700-page archival guide, or finding aid, to Japanese World War II war crimes records in NARA holdings, including newly released records. The second is a finding aid focused on Japanese biological warfare. The third, *Researching Japanese War Crimes: Introductory Essays*, is a book undertaken in response to concern about the alleged loss of war crimes information and the underuse of available documentation. It addresses starting points for engaging in war crimes research and also contains the first full explanation of how captured documents were thoroughly exploited for military and intelligence uses as well as their use for war crimes investigations.[17]

Intelligence Records and Foreign Government Information

By 1998, when the first Disclosure Act was enacted, the majority of war crimes records that still remained classified were related to intelligence. For the most part, U.S. intelligence agencies did not create records in order to document war crimes. Though intelligence records may have been used in war crimes prosecutions, their primary purpose was to help win the war and, afterward, to fight the Cold War. By 1946, U.S. intelligence organizations had begun to focus more on the Soviet Union and other Communist regimes, in some cases using former Nazis who claimed to be experts on numerous subjects, none of which were associated with war criminality. In the years since then, the CIA and other intelligence agencies have been reluctant to release many files from this period for fear of endangering the sources named in them, compromising methods, or hindering the recruitment of new sources.

Some still-classified information originated with foreign governments, who shared it with the United States. Protective of longstanding cooperative relationships with British intelligence agencies, U.S. in-

17. Edward Drea, et al., 2006.

telligence agencies often automatically retained classification of information that was received through that relationship or that revealed information about the nature of that relationship. In fact, as declassification efforts proceeded from the end of the war through the late 1990s, the CIA (successor to the OSS), and to some extent the Army, automatically withheld from release, without substantive review, most information of British origin, and in lesser volume, some information of French, Canadian, and other foreign origin. Until the Disclosure Acts were implemented, there was not sufficient motivation for these agencies to engage in substantive declassification review of these records rather than reflexively closing them under sources and methods or foreign government information restrictions.

Compared with the number of remaining classified records related to Germany, there were far fewer still-classified records about Japan for two reasons. First, the U.S. military—not the OSS—had greater control of most of the Pacific Theater records and could release these documents to the public with more ease than the OSS, which had to consider relationships with foreign governments and intelligence agency policies. As a result, most of these Japan-related records, including wartime intelligence records, were routinely declassified in the 1970s and 1980s by the Army, Navy, and other Department of Defense entities in the course of their regular review programs. Second, there were few still-classified postwar records relating to Japanese war criminals because there was not a continuing hunt for Japanese perpetrators as there was for Nazis, so the CIC, CIA, and FBI did not create dossiers on large numbers of Japanese individuals as possible intelligence assets, suspected spies, or as prospective immigrants. Therefore, by the time the IWG began its work, there were relatively few postwar records related to Japanese war criminals that remained classified. This leaves aside the cases of former Japanese war criminals who, after being convicted and serving their sentences, went on to become high government officials. Releasing these files was problematic for the intelligence agencies, but, finally, was a notable success for the IWG.

3. Background of the Acts

One of the IWG's aims was to uncover documentation that would shed light on the extent to which the U.S. Government had knowingly used and protected war criminals for intelligence purposes. Increasing public concern over the U.S. Government's involvement with WWII Nazi war criminals, combined with growing interest in several related issues such as looted assets, Japanese war crimes, and Nazi war criminals who had become U.S. citizens, reached critical mass in the late 1990s, resulting in passage of the Disclosure Acts. These issues are discussed briefly below.

U.S. Government Use of Axis Criminals and their Collaborators

In May 1945, the Joint Chiefs of Staff (JCS) issued a directive to General Dwight Eisenhower, commander of U.S. forces in Europe, to arrest and hold all war criminals—with some exceptions. The JCS asked Eisenhower to use his "discretion" to exempt war criminals who could be used "for intelligence and other military reasons" (see figure 3).[18]

As early as the summer of 1945, U.S. intelligence agencies in occupied Germany and Austria began using Germans and individuals from other Axis nations as sources of information. Initially, the United States employed these individuals, including former German military and intelligence personnel, to search for people subject to automatic arrest or to counter suspected Nazi resistance movements against the Allied occupation. The Army CIC and the OSS were both active in these early postwar intelligence operations.

With tensions mounting between East and West, each side soon began to use former enemy personnel to learn more about the other. The U.S. Army, for example, extensively interrogated German military personnel who had served on the eastern front. The Army's intelligence component, G-2, sought information about Soviet military organization, equipment, tactics, and combat effectiveness. Eventually, the Army provided financing to General Reinhard Gehlen, the former chief of the Fremde Heere Ost (Foreign Armies–East), the German Army Staff responsible for intelligence on the USSR during World War II. To fulfill his responsibilities, Gehlen employed former German officers and others who had operated in Eastern Europe to form a large German intelligence service known as the Gehlen Organization, the predecessor of the Bundesnachrichtendienst (BND), the Federal (West German) Intelligence Service.[19]

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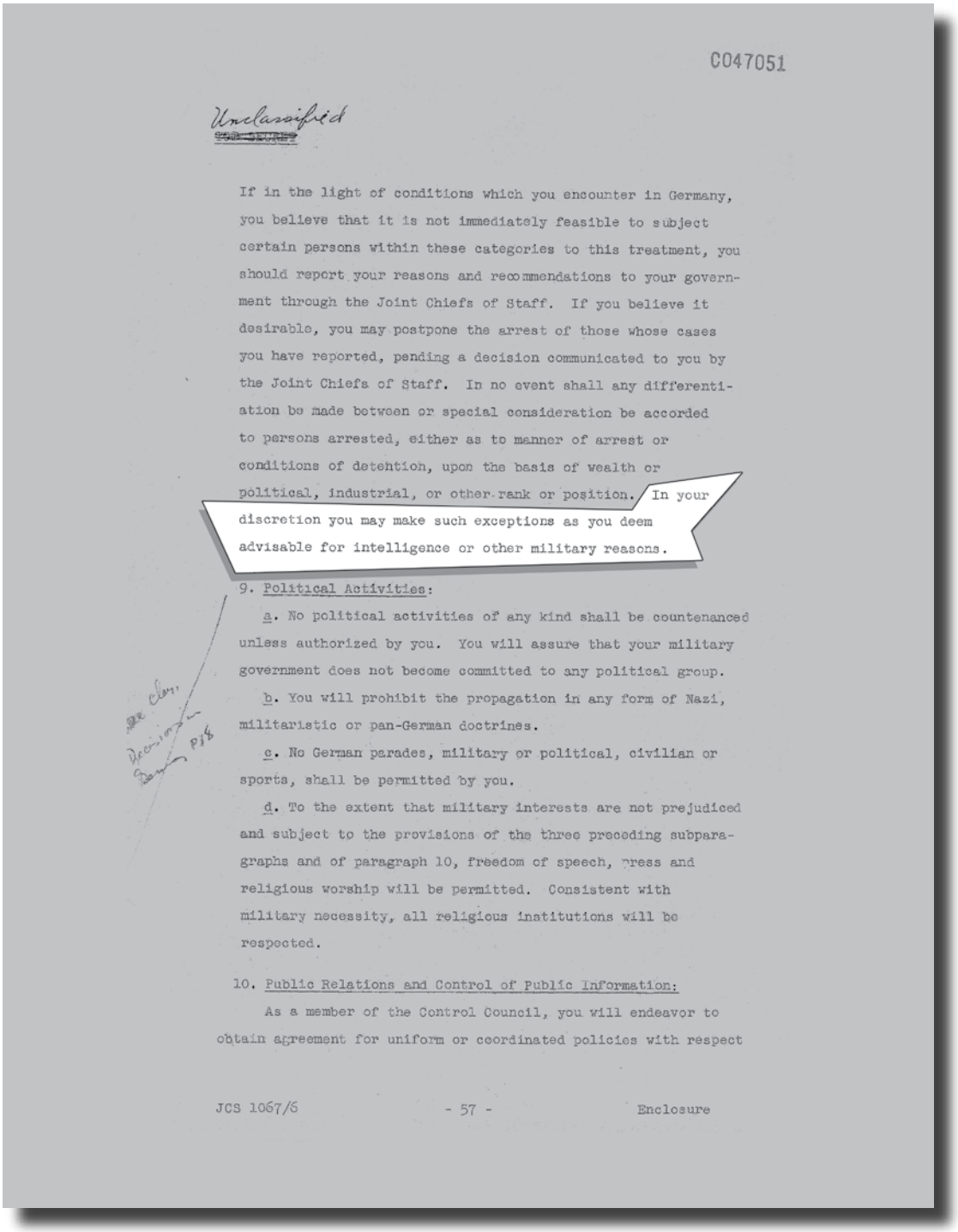
18. Direction to the Commander-in-Chief of the United States Forces of Occupation Regarding the Military Government of Germany, May 10, 1945, reprinted in United States Department of State, *Documents on Germany*, Department of State Publication 9446 (Washington, DC: n.d.), 21.

19. Information on the CIA's release of files related to members of the Gehlen organization is treated in the CIA section of chapter 5. See also Timothy J. Naftali, "Reinhard Gehlen and the United States," *U.S. Intelligence and the Nazis* (Washington, DC: National Archives Trust Fund for the Nazi War Crimes and Japanese Imperial Government Records Interagency Working Group, 2004).

Figure 3. JCS directives to General Dwight Eisenhower



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If in the light of conditions which you encounter in Germany, you believe that it is not immediately feasible to subject certain persons within these categories to this treatment, you should report your reasons and recommendations to your government through the Joint Chiefs of Staff. If you believe it desirable, you may postpone the arrest of those whose cases you have reported, pending a decision communicated to you by the Joint Chiefs of Staff. In no event shall any differentiation be made between or special consideration be accorded to persons arrested, either as to manner of arrest or conditions of detention, upon the basis of wealth or political, industrial, or other rank or position. In your discretion you may make such exceptions as you deem advisable for intelligence or other military reasons.

9. Political Activities:

a. No political activities of any kind shall be countenanced unless authorized by you. You will assure that your military government does not become committed to any political group.

b. You will prohibit the propagation in any form of Nazi, militaristic or pan-German doctrines.

c. No German parades, military or political, civilian or sports, shall be permitted by you.

d. To the extent that military interests are not prejudiced and subject to the provisions of the three preceding subparagraphs and of paragraph 10, freedom of speech, press and religious worship will be permitted. Consistent with military necessity, all religious institutions will be respected.

10. Public Relations and Control of Public Information:

As a member of the Control Council, you will endeavor to obtain agreement for uniform or coordinated policies with respect

JCS 1067/6 - 57 - Enclosure

Source: RG 218, Entry 2, Box 71, Folder "CCS 383.21 Germany (2-22-44) sec. 7," Direction to the Commander-in-Chief of the United States Forces of Occupation Regarding the Military Government of Germany, May 10, 1945.

By the late 1940s, the Army CIC had established many agent networks within the occupation zones and extending into Eastern Europe. These networks employed numerous agents, some of whom had tainted wartime backgrounds. The Army CIC in Germany, for example, recruited and sheltered Klaus Barbie, "The Butcher of Lyon," an SS officer later convicted for his role in rounding up Jews in France and for brutally suppressing the French Resistance. The U.S. Army smuggled Barbie out of Europe through a "ratline" of secret escape routes, enabling him to escape justice for more than 30 years in his South American hideouts.[20] As the facts in the Barbie case became known in the 1980s, the question naturally arose as to whether the United States gave others the same protective treatment and whether there was evidence of such protection in U.S. Government records.

The CIA, created in September 1947, inherited intelligence operations—which later included the Gehlen Organization—and agents in Europe from the U.S. Army and the organizations that had succeeded the OSS after it was disbanded in October 1945. The demands of American policymakers for intelligence on the Soviet Union, coupled with a significant expansion of the CIA's worldwide missions, led to rapid acceleration of agent recruitment after 1948. The late 1940s and early 1950s, particularly after the outbreak of the Korean War, saw a major expansion of CIA intelligence projects targeting the Soviet Union. These projects used a number of people in Europe who had been Nazis or who had collaborated with them only a few years earlier.

In the act establishing the CIA, Congress authorized the Director of Central Intelligence, with agreement from the Attorney General and the Commissioner of Immigration, to allow up to a hundred people a year to enter the United States if their entry was determined to be in "the interest of national security or essential to the furtherance of the national security mission."[21] This so-called Hundred Persons Act was used primarily to resettle defectors into the United States to save them from kidnapping or even murder at the hands of the Soviet intelligence service. Many of these people could not be admitted through regular immigration procedures because immigration quotas were limited or because U.S. immigration laws prohibited the entry of aliens who were, or had been, Communist party members or Nazis. However, under the Hundred Persons Act, some people were enabled to enter the United States "without regard to their inadmissibility under immigration or any other laws or regulations."

While the OSS and its successors used former Nazis and their collaborators for intelligence purposes, the War Department began a major effort to bring German scientists and engineers to the United States. This effort served two purposes: to obtain the benefits of German scientific research and technological advances, and to deny those benefits to the Soviets, who were likewise seeking to procure the services of German scientists and engineers. In July 1945, the Joint Chiefs of Staff specifically authorized an effort to exploit "chosen rare minds whose continuing intellectual productivity we wish to use" under the top-secret project code named Overcast.[22] The JCS directed that up to 350 specialists, mainly from Germany and Austria, should be brought immediately to the United States.[23] The first such specialist arrived in the United

20. See *Klaus Barbie and the United States Government: A Report to the Attorney General of the United States* (Washington, DC: GPO, August 1983). Available at www.usdoj.gov/criminal/publicdocs/11-1prior/crm15.pdf.

21. Central Intelligence Agency Act of 1949 Section 8, (63 Stat. 208), June 20, 1949.

22. Memorandum for the Commanding General, Army Ground Forces, 6 July 1945, NA, RG 319, NM-3, Entry 47B, 400.112 (Research) 14 May 1945, Folder–Implem. Gen. Policy, Tab 1 (pages 16-18), Exploitation of German Specialists in Science and Technology in the United States, n.d., 270/05/04/01, Box 991.

23. Clarence Lasby, *Project Paperclip* (New York: Atheneum, 1975) 89, citing cable, G-2, War Department to Commanding General U.S. Forces European Theater, July 25, 1945.

States in 1945, while the war with Japan was still being waged.

By 1946, the Pentagon's Joint Intelligence Objectives Agency (JIOA) had begun pushing for a revised and larger program of recruiting German and Austrian scientists and technicians. The JIOA wanted 1,000 former enemy scientists, and it sought authority to grant them American citizenship. The JIOA needed Presidential authority because many of the German scientists and technicians had been members of Nazi organizations; missile expert Wernher von Braun, for instance, had been an SS officer. President Truman authorized the JIOA's plan in September 1946, but insisted that only "nominal participants" in the Nazi Party, not "active supporters," be permitted to participate in the program, which took the code name Project Paperclip. However, Truman advised that specialists who were awarded "position or honors" by the Nazi regime for "scientific or technical ability" should not be automatically disqualified from the program.[24] It was left to a panel consisting of representatives of the Departments of Justice and State to rule on each specialist whom the JIOA wanted to bring to the United States. In early 1947, this panel began reviewing dossiers prepared in Germany by the Office of Military Government—United States (OMGUS). The dossiers were based on Army CIC investigations. If the candidate had been classified as an actual or potential threat to the security of the United States, there was little chance of the specialist's receiving permission to immigrate to the United States. Some of the scientists were identified as such on the basis of Nazi pasts, and the review panel accordingly rejected the Pentagon's request that those individuals be permitted to immigrate. Consequently, the JIOA director wired the director of intelligence at the U.S. European Command and requested that the Army CIC revise some security reports so that certain scientists could participate in Project Paperclip (figure 4).

Between 1945 and 1955, 765 scientists, engineers, and technicians were brought to the United States under Overcast, Paperclip, and similar programs. Author Clarence Lasby estimates that up to 80 percent of the immigrant specialists were former Nazi Party members. By the late-1980s, three of them had left the country for various reasons relating to their wartime activities.[25] The most well known of these was Arthur Rudolph. During World War II, Rudolph served as one of the chief production engineers for the German V-2 missile project. Rudolph went to work for the War Department, where he was ultimately placed in charge of building the Pershing missile. He transferred to NASA after its creation in 1958, serving as the project director of the Saturn V rocket program. He left the United States in 1984 and surrendered his U.S. citizenship following OSI's discovery of his role at Mittelwerk, the underground V-2 missile factory in Nordhausen, where numerous concentration camp inmates brought in to perform slave labor were worked to death or killed outright.[26]

Searching for Axis Criminals in the United States

While a few war criminals and collaborators entered the United States with the assistance of the United States Government, many more are known to have come to this country without formal intercession. The Displaced Persons Act of 1948 authorized the im-

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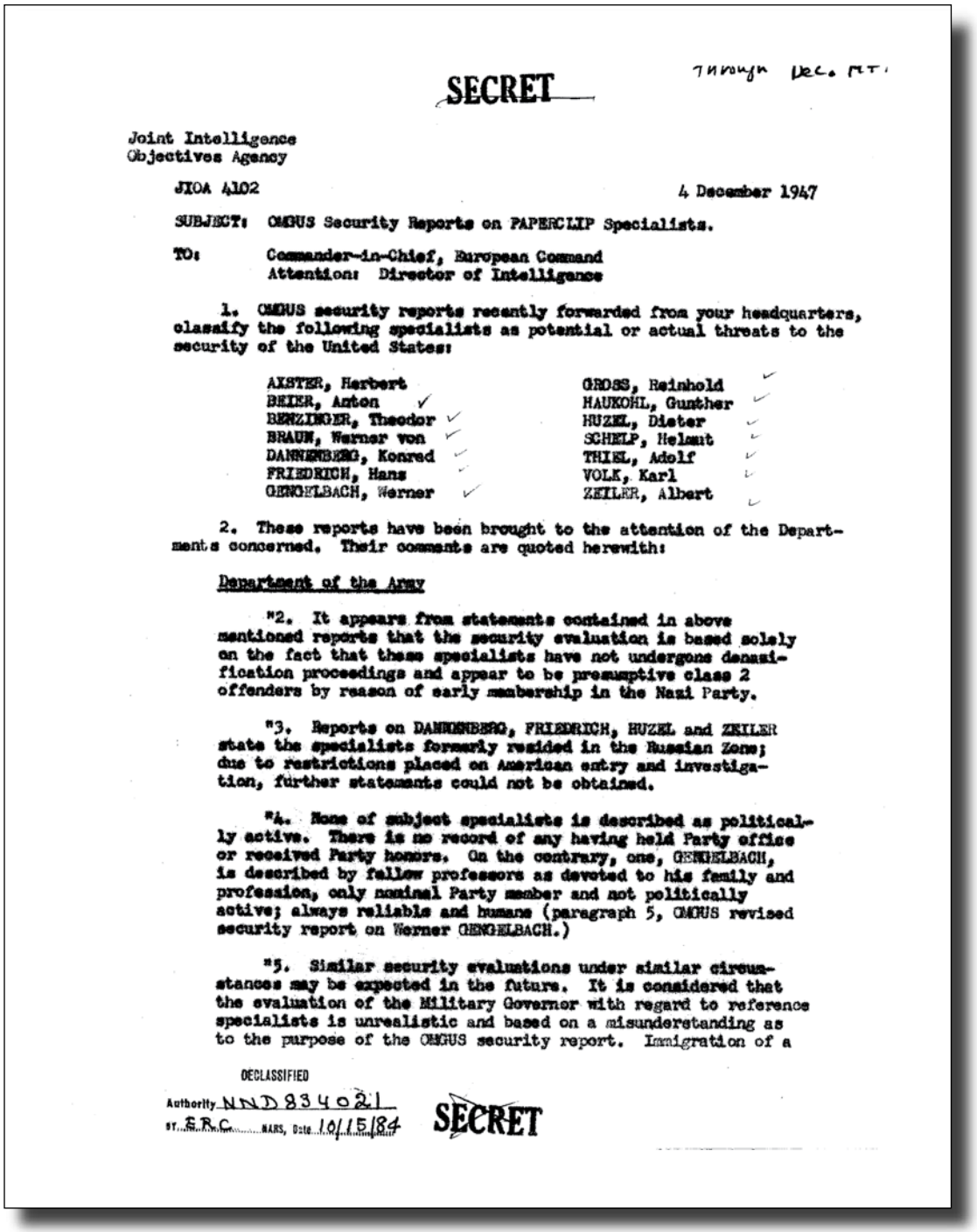
24. GPO, "Interim Exploitation of German and Austrian Specialists Under Project Paperclip," *Foreign Relations of the United States 1946*, 5 (1969):690. See also Linda Hunt, *Secret Agenda: The United States Government, Nazi Scientists, and Project Paperclip, 1945-1990* (New York: St. Martin's Press, 1991).

25. Lasby, *Project Paperclip*; Tom Bower, *The Paperclip Conspiracy: The Hunt for Nazi Scientists* (Boston: Little, Brown, & Co., 1987); Hunt, *Secret Agenda*.

26. On conditions at Mittelwerk and Rudolph's role in slave labor operations, see Michael J. Neufeld, *The Rocket and the Reich: Peenemünde and the Coming of the Ballistic Missile Era* (New York: The Free Press, 1995), 184-189, 200-213, 227-229.

Figure 4. JIOA memorandum on Project Paperclip, 4 December 1947



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through Dec. 47

Joint Intelligence
Objectives Agency

JIOA 4102 4 December 1947

SUBJECT: OMGUS Security Reports on PAPERCLIP Specialists.

TO: Commander-in-Chief, European Command
Attention: Director of Intelligence

1. OMGUS security reports recently forwarded from your headquarters, classify the following specialists as potential or actual threats to the security of the United States:

AISTER, Herbert	GROSS, Reinhold
BEIER, Anton ✓	HAUKOHL, Gunther ✓
BENZINGER, Theodor ✓	HUZEL, Dieter ✓
BRAUN, Werner von ✓	SCHELP, Helmut ✓
DANNENBERG, Konrad ✓	THIEL, Adolf ✓
FRIEDRICH, Hans ✓	VOLK, Karl ✓
GENGELBACH, Werner ✓	ZEILER, Albert ✓

2. These reports have been brought to the attention of the Departments concerned. Their comments are quoted herewith:

Department of the Army

"2. It appears from statements contained in above mentioned reports that the security evaluation is based solely on the fact that these specialists have not undergone denazification proceedings and appear to be presumptive class 2 offenders by reason of early membership in the Nazi Party.

"3. Reports on DANNENBERG, FRIEDRICH, HUZEL and ZEILER state the specialists formerly resided in the Russian Zone; due to restrictions placed on American entry and investigation, further statements could not be obtained.

"4. None of subject specialists is described as politically active. There is no record of any having held Party office or received Party honors. On the contrary, one, GENGELBACH, is described by fellow professors as devoted to his family and profession, only nominal Party member and not politically active; always reliable and humane (paragraph 5, OMGUS revised security report on Werner GENGELBACH.)

"5. Similar security evaluations under similar circumstances may be expected in the future. It is considered that the evaluation of the Military Governor with regard to reference specialists is unrealistic and based on a misunderstanding as to the purpose of the OMGUS security report. Immigration of a

DECLASSIFIED
Authority NND 834021
By ERC NARS, Date 10/15/84

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Source: Cable JIOA 4102, OMGUS Security Reports on PAPERCLIP Specialists, Bosquet N. Web to Director of Intelligence, European Command, 4 December 1947, (page 1 of 3) in RG 330, Records of the Office of the Secretary of Defense, Office of Research and Engineering, JIOA, General Correspondence 1946-1952, Entry 1A, Box 9, Folder "Theater Correspondence (Misc.) from Jan.-Dec. 1947.

migration of over 400,000 Europeans to the United States over a four-year period. The law specifically denied eligibility to people who assisted Nazi Germany in persecuting civilians.[27] The Army CIC screened all applicants who wished to come to the United States under the 1948 Displaced Persons Act and many of those who later sought entry under the 1953 Refugee Relief Act. U.S. authorities rejected thousands of visa applicants for their suspected wartime activities; however, the Army could not collect sufficient information on all applicants because the majority came from Communist Eastern European countries that were not cooperating with U.S. authorities. War criminals succeeded in evading identification by simply not telling American officials about their activities between 1933 and 1945 or by lying about their pasts and promoting themselves as "anti-communist."[28]

The United States had other programs that admitted foreigners in the years after 1945. The Lodge Act of 1950 as amended, for example, authorized the U.S. Army to recruit 12,000 alien nationals outside the United States, granting citizenship after five years of service. The Immigration and Nationality Act (INA) of 1952 did not explicitly prohibit Nazi war criminals and collaborators from entering the United States. Prior to increased congressional concern in the mid-1970s, the Immigration and Naturalization Service, which had the responsibility to investigate allegations about aliens who might be subject to deportation, pursued few deportation cases against alleged Nazis and collaborators, only one of whom was successfully prosecuted to actual deportation.[29] One other Nazi criminal, Hermine Braunsteiner-Ryan, was removed from the United States in 1973 pursuant to an extradition request from the West German Government, which sentenced her to life imprisonment for crimes committed at Majdanek Concentration Camp. According to a 1978 GAO report, INS investigations of most cases before 1973 "were deficient or perfunctory," and in some cases "no investigation was conducted." [30] Indeed, IWG member and then-Member of Congress Elizabeth Holtzman recalled her dismay upon reviewing INS investigation files in 1974: "I opened the first file. It contained information from several sources, each claiming that the person had been a Nazi police officer in Latvia and had killed many Jews. The Immigration Service, in response, merely visited the man and inquired about his health."[31]

In 1978, the Holtzman Amendment to the Immigration and Nationality Act declared ineligible for entry into the United States any alien who "ordered, incited, assisted, or otherwise participated in the persecution of any person because of race, religion, national origin, or political opinion" between March 23, 1933, and May 8, 1945. A related provision of the amendment allowed the deportation of perpetrators already in the country. The Holtzman Amendment is the direct antecedent of the Disclosure Acts, which use the same language to define war criminality.

Attention from the public and from Congress resulted in increased INS efforts after 1974. By April 1978, the agency had collected a list of 252 allegations, and cases pursued before 1973 were re-evaluated and sometimes reopened. In addition, the Government

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27. Alan J. Ryan Jr., *Quiet Neighbors: Prosecuting Nazi War Criminals in America* (New York: Harcourt, Brace, Jovanovich, 1984), 5.

28. Comptroller General of the United States, *Nazi and Axis Collaborators Were Used to Further U.S. Anti-Communist Objectives in Europe—Some Immigrated to the United States*, GAO Report GGD-85-66 (Washington, DC: GAO, 1985), 11-12.

29. Ryan, *Quiet Neighbors*, 42-45.

30. Comptroller General of the United States, *Widespread Conspiracy To Obstruct Probes of Alleged Nazi War Criminals Not Supported By Available Evidence—Controversy May Continue*, GAO Report GGD-78-73 (Washington, DC: GAO, 1978).

31. Elizabeth Holtzman with Cynthia L. Cooper, *Who Said it Would be Easy? One Woman's Life in the Political Arena* (New York: Arcade, 1996), 92.

instituted legal proceedings against 13 people.[32] The attention also led to the formation of a Special Litigation Unit at the INS in 1977. In September 1979, "Nazi hunting" in the United States was initiated on a comprehensive basis with the creation of the Office of Special Investigations within the Criminal Division of the Department of Justice. OSI's mission is to identify, denaturalize, and deport individuals who participated in Nazi- and other Axis-sponsored acts of persecution. To date, OSI has won legal victories against 104 defendants who assisted in Nazi crimes and has blocked more than 175 suspected Axis criminals from entering the United States. At this writing, the small unit has 16 civil prosecutions against Nazi criminals underway in Federal courts across the country.

OSI has also investigated several allegations that the United States employed Nazi war criminals as intelligence informants. OSI's 1983 report on its Klaus Barbie investigation publicly documented the role played by the Army CIC in Barbie's evasion of justice for more than 30 years and prompted the United States to issue a formal apology to France. A June 1988 OSI report revealed that at least 14 suspected Nazi war criminals, a number of whom likely were involved in the murder of Jews in occupied Europe, had been employed as intelligence informants by the Army CIC in Austria.[33]

On May 17, 1982, the Chair of the House Committee on the Judiciary, following allegations made on the television program *60 Minutes* that Federal agencies made a conscious effort to bring Nazi war criminals into this country and protect them once they were admitted, asked the GAO to reopen its 1978 investigation to determine whether there were any U.S. Government programs to help Nazi war criminals and Axis collaborators immigrate to the United States and conceal their backgrounds. The Committee also asked the GAO to investigate whether U.S. agencies worked with and protected Klaus Barbie, in particular.

The GAO informed Congress in June 1985 that it had found no evidence of any U.S. agency program designed specifically to help Nazis or Axis collaborators immigrate to the United States. However, it did identify five Nazis or Axis collaborators with undesirable or questionable backgrounds who received some individual assistance in entering the country. Two of them, the GAO noted, were subsequently protected from investigation. Although the GAO did not name the individuals, they appear to have been Mykola Lebed and Otto von Bolschwing.[34] The CIA supported Lebed's immigration under the Displaced Persons Act, and the immigration of von Bolschwing under the regular German quota. Lebed was a Ukrainian nationalist who collaborated with the Nazis when convenient. Bolschwing had authored a Nazi policy document on "the Jewish problem," had been involved in the notorious Jewish Affairs Department, and had been liaison to the Romanian Iron Guard, among his other anti-Semitic activities. The GAO reported that it did not find any discrepancies between its investigation and OSI's 1983 public report that confirmed that Klaus Barbie had been employed and protected by the Army CIC. In addition, the GAO was not certain "that it obtained all relevant information" from U.S. intelligence agencies or "identified all Nazi and Axis collaborators whom U.S. agencies helped immigrate,"

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32. GAO, *Nazi War Criminals Not Supported by Available Evidence*, ii.

33. See http://www.usdoj.gov/criminal/publicdocs/11-1prior/crm22.pdf for the Verbelen report and http://www.usdoj.gov/criminal/publicdocs/11-1prior/crm15.pdf for the Barbie report.

34. Bolschwing was successfully prosecuted by OSI and is discussed in Timothy Naftali, "The CIA and Eichmann's Associates," *U.S. Intelligence and the Nazis* (Washington, DC: National Archives Trust Fund Board for the Nazi War Crimes and Japanese Imperial Government Records Interagency Working Group, 2004). The IWG received declassified files from the CIA on all 12 of the individuals reported on in the GAO study.

and it declined to speculate on the actual number of individuals who were assisted into the country.[35] Such uncertainty, engendered by the reluctance of intelligence agencies to produce documentary evidence, strengthened calls for legislation mandating full disclosure by the agencies.

Amid this questioning of the U.S. intelligence relationships with Nazis, the matter of Kurt Waldheim (UN Secretary-General 1972-81) arose as the proximate cause of disclosure legislation. In the mid-1980s, the World Jewish Congress and the OSI each investigated Waldheim's wartime service in the German Army in the Balkans. These investigations revealed Waldheim's association, in some capacity, with the reprisal killing of hostages, the transportation of victims to concentration and death camps, slave labor, and mistreatment and execution of prisoners of war in Yugoslavia and Greece.[36] Assertions by Professor Robert E. Herzstein that the CIA had employed Waldheim after the war as an intelligence asset or agent led to calls by members of Congress and other public figures, including Elizabeth Holtzman, for the CIA to share with Congress or to release to the public the information that it had collected on Waldheim.[37] The agency was not forthcoming, and withheld these records purportedly to protect "foreign government information" and "sources and methods." The agency generally treated Congressional requests on this matter, as one CIA staff historian phrased it, with "a cavalier attitude."[38] The CIA's unresponsiveness led to suspicion that the agency was covering up an intelligence relationship with Waldheim or that it had certain evidence of his war criminality.

In April 1987, acting on OSI's recommendation, the Attorney General placed Waldheim's name on the border control watch list, permanently barring him from the United States under the Holtzman Amendment.

The CIA remained uncooperative through the 1980s and most of the 1990s, giving bureaucratic responses to Congressional requests for documentation, at one point even telling Congressman Steve Solarz to file a Freedom of Information Act (FOIA) request to obtain the information on Waldheim he requested.[39]

Much of the Waldheim file was released under the NWCDA in 2001. As it turned out, the CIA had not done much research on Waldheim's wartime activities.

Tracing Stolen Assets

Additional pressure to declassify Nazi-related documents came from renewed interest in tracing and recovering looted assets and obtaining redress from institutions that had profited from Nazi theft. Research in Europe by the World Jewish Congress in 1995 resulted in important discoveries about the holdings of Swiss banks, which in turn inspired a campaign to learn the full truth about the disposition of bank accounts, gold, and other assets of victims of Nazi persecution.

The search for information in U.S. Government records on looted assets began in March 1996, when researchers from the World Jewish Congress visited

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35. GAO, *Nazis and Axis Collaborators Were Used to Further U.S. Anti-Communist Objectives*.

36. Neal M. Sher, *In the Matter of Kurt Waldheim*, (Washington, DC: Office of Special Investigations, Criminal Division, 1987), 5.

37. Robert E. Herzstein, *Waldheim: The Missing Years* (London: Grafton, 1988). See also Robert E. Herzstein, testimony before the Subcommittee on Government Management, Information, and Technology of the U.S. House of Representatives, July 14, 1998; and Elizabeth Holtzman, testimony before the Subcommittee on Government Management, Information, and Technology of the U.S. House of Representatives, July 14, 1998. Transcripts of both are available at http://www.fas.org/sgp/congress/hr071498/index.html.

38. Kevin C. Ruffner, "Kurt Waldheim and the Central Intelligence Agency," 52.

39. Ruffner, "Kurt Waldheim and the Central Intelligence Agency," 56.

the National Archives to search for records regarding World War II–era dormant Swiss bank accounts belonging to Jews. Their research expanded into issues surrounding looted gold, art, and other stolen assets. By midsummer 1996, there were scores of researchers looking into "Nazi Gold" records at the National Archives, as well as at other archives around the world.[40]

Citing a desire to "bring whatever measure of justice might be possible to Holocaust survivors, their families, and the heirs of those who have perished," in the fall of 1996, President Clinton asked then-Under Secretary of Commerce Stuart E. Eizenstat, who also served as Special Envoy of the Department of State on Property Restitution in Central and Eastern Europe, to chair an interagency group charged with preparing a report that would fully describe efforts to recover and restore gold the Nazis had taken from the central banks of occupied Europe, as well as gold and other assets stolen from individuals.[41]

The Eizenstat group eventually issued two reports.[42] Recognizing that "the U.S. Government had in its possession a tremendous amount of information bearing on looted assets, including the emotionally charged but little understood issue of 'Nazi Gold,'" the reports were based primarily on the records of the State Department, the Treasury, the Army, and the OSS, agencies involved with assets questions during the war and postwar period. The reports presented the first proof, discovered by OSI historians working with National Archives personnel, that gold stolen from Nazi victims had been transferred during the war by the German Reichsbank to the Swiss National Bank, and that other victim-origin gold had been transferred by the United States from the Reichsbank into the gold stocks of the Tripartite Gold Commission (TGC). As a result of this evidence, millions of dollars worth of TGC gold was sold, and the proceeds from the sale were used to benefit victims of Nazi persecution.

In June 1998, lingering questions about Holocaust-era assets that may have come under the control of the United States Government led Congress to create a Presidential Advisory Commission on Holocaust Assets in the United States. The IWG worked closely with the Assets Commission. The Commission issued a report in December 2000, finding that, although the U.S. Government's effort to restore assets to rightful owners was "exemplary," it nonetheless fell short.[43]

The documentary evidence about looted assets increased the expectation that classified government records would hold answers to many lingering questions beyond those specifically regarding assets, including questions about war criminals and U.S. Government relationships with them.

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40. Relevant records at the National Archives, most of which had been publicly available for some time, are contained within thirty record groups and comprise some 15 million pages of documents.

41. Office of the Press Secretary, "Remarks by President on Signing of Holocaust Victims Redress Act," Presidential Remark, 13 February 1998. Available at http://www.clintonpresidentialcenter.org/legacy/021398-remarks-by-president-on-signing-of-holocaust-victims-redress-act.htm.

42. U.S. Department of State, *U.S. and Allied Efforts to Recover and Restore Gold and Other Assets Stolen or Hidden by Germany During World War II: Preliminary Study*, Report S 1.2:G 56/Prelim (Washington, DC: GPO, 1997); and *U.S. and Allied Wartime and Postwar Relations and Negotiations with Argentina, Portugal, Spain, Sweden, and Turkey on Looted Gold and German External Assets and U.S. Concerns About the Fate of the Wartime Ustasha Treasury*, Report S 1.2:G 56/SUPP (Washington, DC: GPO, 1998).

43. *Plunder And Restitution: Findings and Recommendations of the Presidential Advisory Commission on Holocaust Assets in the United States and Staff Report* (Washington, DC: GPO 2000). Available at http://www.holocaustassets.gov/PlunderRestitution.html/html/Home_Contents.html.

Japan Under Scrutiny

Public interest in Japanese war crimes arose intermittently in the postwar period as the stories of victims received public notice as a result of historical and popular studies and media attention. Books such as the late Sheldon Harris' 1994 *Factories of Death: Japanese Biological Warfare 1932-1945 and the American Cover-up* and the late Iris Chang's 1997 best seller, *The Rape of Nanking*, helped give the subject visibility.[44] The earliest groups to receive attention were American POWs and civilian internees who made claims under the War Claims Act after its passage in 1948. However, mistreated POWs, sex slaves (the so-called "comfort women"), civilian internees, and forced laborers remained dissatisfied with the extent of compensation—if any—for their suffering. Even more of an irritant to these groups, however, has been the failure of the Japanese Government to apologize fully for its wartime behavior with regard to acts of cruelty such as harsh forced labor, conditions aboard the POW transports known as "hell ships," and the criminal brutality of the Bataan Death March. Victims have repeatedly called for redress, citing as precedent settlements in the late 1990s between victims of Nazi looting and the German Government and Swiss banks.

In the 1990s, no fewer than 16 measures dealing with Japanese war crimes were introduced in the Congress in attempts to secure some sort of redress for victims.[45] For instance, in 1997 a joint resolution was introduced in Congress that expressed a number of groups' frustration with the stance of the United States and Japanese governments with respect to Japanese accountability for war crimes committed by Imperial Japan. House Concurrent Resolution 126 sought to express the sense of Congress concerning war crimes committed by the Japanese military during World War II. After listing particular offenses, characterized as "atrocious crimes against humanity," the resolution called on Japan to

> (1) formally issue a clear and unambiguous apology for the atrocious war crimes committed by the Japanese military during World War II; and (2) immediately pay reparations to the victims of those crimes, including United States military and civilian prisoners of war, people of Guam who were subjected to violence and imprisonment, survivors of the "Rape of Nanjing" from December, 1937, until February, 1938, and the women who were forced into sexual slavery and known by the Japanese military as "comfort women."[46]

Although not passed, the resolution recognized the longstanding frustration of victims and registered dissatisfaction with the Government's position that American lawsuits against Japan and Japanese companies over war crimes were precluded by the 1951 Peace Treaty between the United States and Japan, despite side agreements providing Americans with treatment comparable to that of compensated victims in other countries. The movement to call Japan to account stemmed in part from dissatisfaction with perceived postwar leniency toward Japan and Japanese war criminals, a leniency that was part of the effort to get that country firmly in the American camp during the Cold War.

By February 2000, more than a dozen class-

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44. Sheldon H. Harris, *Factories of Death: Japanese Secret Biological Warfare, 1932-45, and the American Coverup*, Rev. ed. (New York: Routledge, 2002); Iris Chang, *The Rape of Nanking: The Forgotten Holocaust of World War II* (New York: Basic Books, 1997).

45. Report by Jaryk Reynolds, "U.S. Prisoners of War and Civilian Citizens Captured and Interned by Japan in World War II: The Issue of Compensation by Japan" (Washington, DC: Congressional Research Service, July 7, 2001).

46. House Concurrent Resolution 126 "Expressing the Sense of Congress Concerning War Crimes Committed By the Japanese Military During WWII," 105th Congress. Available online at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=105_cong_bills&docid=f:hc126ih.txt.

action lawsuits had been filed in the United States against Japanese corporations by former Allied prisoners of war, civilian internees, and Asian slave laborers. Additional suits were filed and in preparation for Japanese courts seeking redress for "comfort women," slave laborers, and other victims of Japanese crimes, all of whom demanded a Japanese apology and compensation from Japanese courts. The Simon Wiesenthal Center lobbied Attorney General Janet Reno and the Pentagon for the release of U.S. documents concerning amnesties granted to Japanese war criminals, including amnesties granted to supervisors of Japan's biological and chemical warfare program in exchange for the data obtained from experiments conducted on humans in the infamous Unit 731, Japan's biological warfare unit.

Passage of the Statutes

In 1992, with the unresponsiveness of the CIA over the Waldheim affair in the background, former Congresswoman and U.S. Senate candidate Elizabeth Holtzman wrote to the Director of Central Intelligence requesting the release of files on Nazi war criminals, charging that "[i]n the process of employing these people and bringing them to safe haven in the United States and elsewhere, laws were broken, lies were told, and the President, Congress, other government agencies and the public were deceived. But we still don't know the whole story." In response, the Acting DCI, Adm. William O. Studeman, made a commitment to Holtzman that the files would be reviewed and transferred to the National Archives.[47] The promise was not fulfilled.[48]

A year and a half later, A. M. Rosenthal, citing the Waldheim case, and aware of the CIA's nonresponsiveness, editorialized in the *New York Times* that it was time for the Congress to pass legislation "preventing government agencies from denying information about World War II war crimes."[49] Taking up the cause of full disclosure, and asserting that "the CIA withheld critical information about Kurt Waldheim's Nazi past," Representative Carolyn Maloney (D-NY) introduced "The War Crimes Disclosure Act" in August 1994. The bill expressed the sense of Congress that "United States Government agencies in possession of records about individuals who are alleged to have committed Nazi war crimes should make these records public." The CIA opposed the measure on grounds that it would compromise CIA officers and the protection of sources and methods.[50] Although the Congress took no final action that year, Ms. Maloney reintroduced the bill in March 1995 with numerous sponsors and greater attention by the media, principally the *New York Times*.[51] The act passed in September 1996, with Maloney noting that while many nations were making their Nazi war criminal files public, some U.S. agencies had "routinely denied Freedom of Information Act requests for information about individuals who committed Nazi war crimes," and that the disclosure of such records posed no threat to U.S. national interests.[52] The Senate concurred and President Clinton signed the act into law on October

47. Elizabeth Holtzman to DCI Robert Gates, 26 March 1992, and Adm. William O. Studeman to Holtzman, 10 August 1992. Copies of the letters are in the CIA Lebed Name Files quoted by Kevin C. Ruffner, "Intelligence Missteps: Kurt Waldheim and the Central Intelligence Agency," *Studies in Intelligence* (2003), 60. Ruffner, a CIA staff historian, describes the CIA's response to the Waldheim revelations and congressional interest in this account. The account was declassified and released under the Nazi War Crimes Disclosure Act.

48. Ruffner, "Kurt Waldheim and the Central Intelligence Agency," 61.

49. A. M. Rosenthal, "The Waldheim File," *New York Times*, 24 May 1994, A19.

50. Kevin C. Ruffner, "Kurt Waldheim and the Central Intelligence Agency," *Studies in Intelligence* (2003), 61.

51. A. M. Rosenthal, "Ms. Maloney and Mr. Waldheim," *New York Times*, 25 June 1996, A21.

52. H.R. 1281 104th Congress, 2nd session. Congressional Record, (September 24, 1996).

19, 1996. However, advocates of greater openness recognized that it would take more than urging by Congress for agencies to reverse longstanding policies of protecting intelligence records.

In November 1997, Senator Mike DeWine (R-Ohio) introduced the Nazi War Crimes Disclosure Act (S. 1379), a bill based on the language and presumptions of the earlier act but providing additional direction to the Executive Branch and an Interagency Working Group as a mechanism for implementation. The Senate adopted the bill in June 1998. At that time, Senator DeWine noted that "this pro-active search is necessary because a full government search and inventory has never been completed." He continued, "[W]hat we are trying to do with this bill is strike a clear balance among our government's legitimate national security interests, the legitimate privacy interests of individuals, and the people's desire to know the truth about Nazi atrocities." Senator Daniel Patrick Moynihan (D-NY) added,

> Researchers seeking information on Nazi war criminals and the assets of their victims will have unprecedented access to relevant materials in the possession of the United States Government, which until now have remained classified. It is my view that these documents have been held for far too long. Well beyond the time when their disclosure might have posed a threat to national security—if indeed such disclosure ever did.[53]

In June 1998, Representative Maloney introduced The Nazi War Crimes Disclosure Act in the House where it was passed in August 1998. President Clinton signed the act into law on October 8.

The inclusion of Japanese war crimes records under this act was confirmed formally on several occasions. Section 3(a)(1)(D) of the act covers records relating to "any government which was an ally of the Nazi Government of Germany." After deliberating over the intent of the act, the IWG concluded that the inescapable meaning of the act's language encompassed not only war crimes records relating to Nazi Germany and its European allies, but also to Japan. Further, in hearings before the Senate Select Committee on Intelligence on September 16, 1999, and the House Subcommittee on Government Management, Information and Technology on June 27, 2000, the principal House and Senate sponsors of the legislation supported the inclusion of Japanese-related records. Finally, the inclusion of Japanese-related records within the ambit of the Nazi War Crimes Disclosure Act was confirmed by the Executive Branch in the December 2000 tasking memorandum to major Executive Branch agencies from Samuel Berger, the Assistant to the President for National Security Affairs.[54]

Pressure for an act specifically directed at Japanese war crimes nonetheless gained momentum. In December 2000, as part of the Intelligence Authorization Act, Congress passed the Japanese Imperial Government Disclosure Act to make explicit the requirement to include Japanese war crimes among the records to be identified and declassified.

This act specifically added declassification and release of records related to Japanese war crimes before and during World War II to the IWG's responsibilities. Upon its passage, the act required some clarification because the title and definitions in the act could have been construed to mean that the object of the legislation was the release of records in the possession of the Japanese government. In December 2000, in a colloquy on the floor of the Senate held to explain the terms of the act, the act's principal sponsor, Senator Dianne Feinstein (D-CA), clearly defined that the records covered by the act were records in U.S. Government possession.

Upon signing the Intelligence Authorization Act,

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53. Nazi War Crimes Disclosure Act, *Congressional Record*, 105th Congress, 2d session, (June 19, 1998) S6727.

54. See Berger Memorandum, "Phase Two Implementation of the Nazi War Crimes Disclosure Act: Identification and Disclosure of Japanese War Crimes Records" in appendix 6.

on December 27, 2000, President Clinton provided his understanding that Japanese war crimes-related records already being processed for disclosure under the Nazi War Crimes Disclosure Act would continue to be processed under that act:

> Title VIII of the Act sets forth requirements governing the declassification and disclosure of Japanese Imperial Army records, as defined by the Act. The Executive Branch has previously been declassifying United States Government records related to Japanese war crimes under the provisions of the Nazi War Crimes Disclosure Act, Public Law 105-246; consequently, I understand that title VIII does not apply to records undergoing declassification pursuant to the Nazi War Crimes Disclosure Act.[55]

Because of the paucity of remaining classified Japanese war crimes records and the fact that Japanese war crimes-related classified records were already being processed under the NWCDA, the IWG recognized no difference in the treatment of records under the combined acts.

In January 2004, Congress extended the Japanese Imperial Government Disclosure Act for one year, until March 2005, and again in February 2005 until March 2007. Both extensions were urged by the IWG public members, who determined that the CIA needed additional time to comply with the law with respect to both Japanese and Nazi war crimes records. The JIGDA was extended, rather than the NWCDA, because the Nazi War Crimes Act had expired in 2002 and all subsequent search and declassification activities, for both the Pacific and European Theaters, were being carried out under the JIGDA.

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55. Signing statement on H.R. 5630. the "Intelligence Authorization Act for Fiscal Year 2001, Statement by the President," the White House, Office of the Press Secretary, December 27, 2000.

4. Overview of the IWG and its Functions

From January 1999 to March 2007, the full IWG met 38 times. An informal subcommittee (discussed below) met many more times to deal with implementation issues in detail.

The IWG kept the public informed of its progress in a number of ways. First, IWG meetings were open to the public, except for the portions in which classified information was discussed. In addition, the IWG held open forums in New York, Los Angeles, and Cleveland to report progress to the public and to solicit information to assist in the search for records. The IWG also periodically published a newsletter, *Disclosure*. The IWG released to Congress its interim report on the Nazi War Crimes Disclosure Act in October 1999, and its interim report on the Japanese Imperial Government Disclosure Act in March 2002. It issued press releases and responded to media inquiries. Further, the IWG held public openings of particularly significant collections of material. For instance, the IWG held media briefings on four occasions on the opening of CIA name files and significant FBI files. The IWG's Web site, maintained by the National Archives, carries an abundance of information about the IWG's work, including copies of *Disclosure*, meeting minutes, IWG's guidance to agencies, press releases, and news updates. Most important, the Web site includes lists of newly declassified files, which provide researchers immediate notice of availability.[56] Finally, as an important contribution to scholarship as well as an illustration of how the newly opened documentation can contribute to understanding our national past, the IWG published *U.S. Intelligence and the Nazis*, a volume of independent historical studies by IWG historians; *Researching Japanese War Crimes: Introductory Essays*, a set of descriptive essays about Japanese war crimes records and approaches to using them; and two electronic finding aids.

IWG Personnel

While agency members of the IWG were primarily concerned with locating and declassifiying records in possession of their agencies, general oversight responsibilities were handled by an IWG subcommittee consisting of the IWG Acting Chair, its public members, the executive director, the staff director, the OSI director, IWG auditors, NARA archivists, IWG historians, and various advisors, depending on the topic at hand. The subcommittee met repeatedly to review agency compliance with the Disclosure Acts and to troubleshoot various declassification issues, including helping agencies locate potential documents, suggesting improvements in agency search strategies, providing guidance and parameters for agency searches, and encouraging agencies to declassify as much material as possible, thereby complying fully with the laws. The Acting Chair, assisted by the IWG Staff Director and IWG Executive Director, also managed IWG consultants.

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56. www.archives.gov/iwg/.

Staff

National Archives and Records Administration archivists supervised and conducted the daily work of the IWG, acting as principal liaisons with the agencies, providing guidance and expertise in records and archives management, maintaining records of agency compliance, reviewing certain records for declassification, preparing declassified materials for public access, providing research assistance to the historians, developing finding aids for the newly declassified material, and providing reference service to researchers and the media. NARA also provided and funded all administrative services necessary to support the operations of the IWG, including budgetary, financial, and contracting services; travel and other logistical arrangements for the IWG and the Historical Advisory Panel; and secretarial and computer services.[57]

Historians

Early in the project, the IWG recognized a need for historical expertise to assist in the search for relevant classified records, place them in historical context, and determine their historical value. These tasks were undertaken by independent historians, who worked closely with IWG staff archivists.

Initially, the historians worked with the IWG staff to guide the agencies in their preliminary records searches. The historians contributed key words for electronic searches, provided leads to records based on their experience with similar agency records, and posed questions (such as, "What did the U.S. Government know about the Holocaust as it was being perpetrated?"), which helped to hone search strategies. The historians helped the IWG demonstrate to agencies the relevance of certain documents, enabling their release under the acts. As newly released records suggested the presence of records still undiscovered, the historians questioned the agencies regarding the existence of additional records, which led to the declassification and opening of other important materials. The historians' second and more publicly visible task was to illustrate to the Congress and the public how newly declassified documents expand and refine the existing body knowledge about war crimes and war criminals. This task was embodied in the historical and archival works mentioned above.

The Historical Advisory Panel

To garner broader historical advice about its policies and search strategies, the IWG enlisted the aid of distinguished scholars in the field. This unpaid Historical Advisory Panel (HAP) recommended measures to improve the effectiveness of the IWG and the federal agencies in implementing the Disclosure Acts. The panel, chaired by Professor Gerhard L. Weinberg, met several times each year to formulate advice to the IWG based on collective experience in historical research and analysis. The HAP also reviewed and offered valuable advice on this report and on the IWG's two books on the declassified records.

IWG Audit Team

To ensure that the agencies complied with the search and declassification requirements, the IWG contracted for the services of two principal auditors, who possessed substantial declassification and legal experience, as well as experience in the intelligence community and with intelligence records. The auditors were cleared at the Top Secret SCI level. As described in more detail below, the auditors pushed for consistency and strove to assure that agencies practiced maximum disclosure. In addition, they ensured the process as a whole was conducted in a lawful and transparent manner.

Statutory Functions of the IWG

The Disclosure Acts required the IWG to locate classified Nazi and Japanese war criminal and war-crimes related records held by the United States, recommend the declassification of these records, and make them

57. See appendix 1 for a list of IWG staff and consultants.

available to the public (with specific exceptions). The following sections detail the IWG's approach to implementing the acts (illustrated by figure 3).[58]

Locating Records

On February 22, 1999, Samuel Berger, Assistant to the President for National Security Affairs, directed agencies to begin implementing the Nazi War Crimes Disclosure Act.[59] He ordered agencies to undertake a preliminary survey of their records, directing them to "take an expansive view of the act in making this survey and in subsequent identification of records and declassification review." He attached to his memorandum the IWG's initial guidance to the agencies, clarifying the types and topics of records considered relevant and reiterating the open spirit of the law. "To the extent permitted by law," he stated, "such guidance should be considered authoritative." He issued a similar directive on December 5, 2000, to initiate the search for Japanese war crimes related records.[60]

IWG Guidance on Preliminary Surveys

The IWG directed agencies to include in their preliminary surveys any records that were *likely* to contain information on war crimes, war criminals, acts of persecution, and looting of assets. Although the Nazi War Crimes Disclosure Act targeted records of crimes committed 1933–45 in particular geographic locations, relevant records could be dated up to the present, and they could be located among Government records relating to any country in the world.

In his December 5, 2000, memorandum, Berger directed agencies to locate records held by the U.S. Government relating to war crimes committed by agents of the Government of Japan during the period 1931–45, although the records themselves could have been created later. The IWG advised agencies to give particular attention to locating any records related to topics of great interest to the public and to historians, particularly materials related to

- Japanese treatment of prisoners of war and civilian internees, including any materials related to forced or slave labor;
- persecution of and atrocities against civilian populations;
- development and use of chemical and biological warfare agents, especially the work of General Ishii, medical experimentation on humans, and Unit 731;
- the so-called "comfort women" program—the Japanese systematic enslavement of women of subject populations for sexual purposes; and
- the U.S. Government decision after the war not to prosecute the Emperor and certain war criminals.

The IWG enjoined agencies to conduct their surveys with the intention of discovering and eventually declassifying *as many documents as possible*, not merely those that were indisputably required by a narrow interpretation of the law.

Search Tools

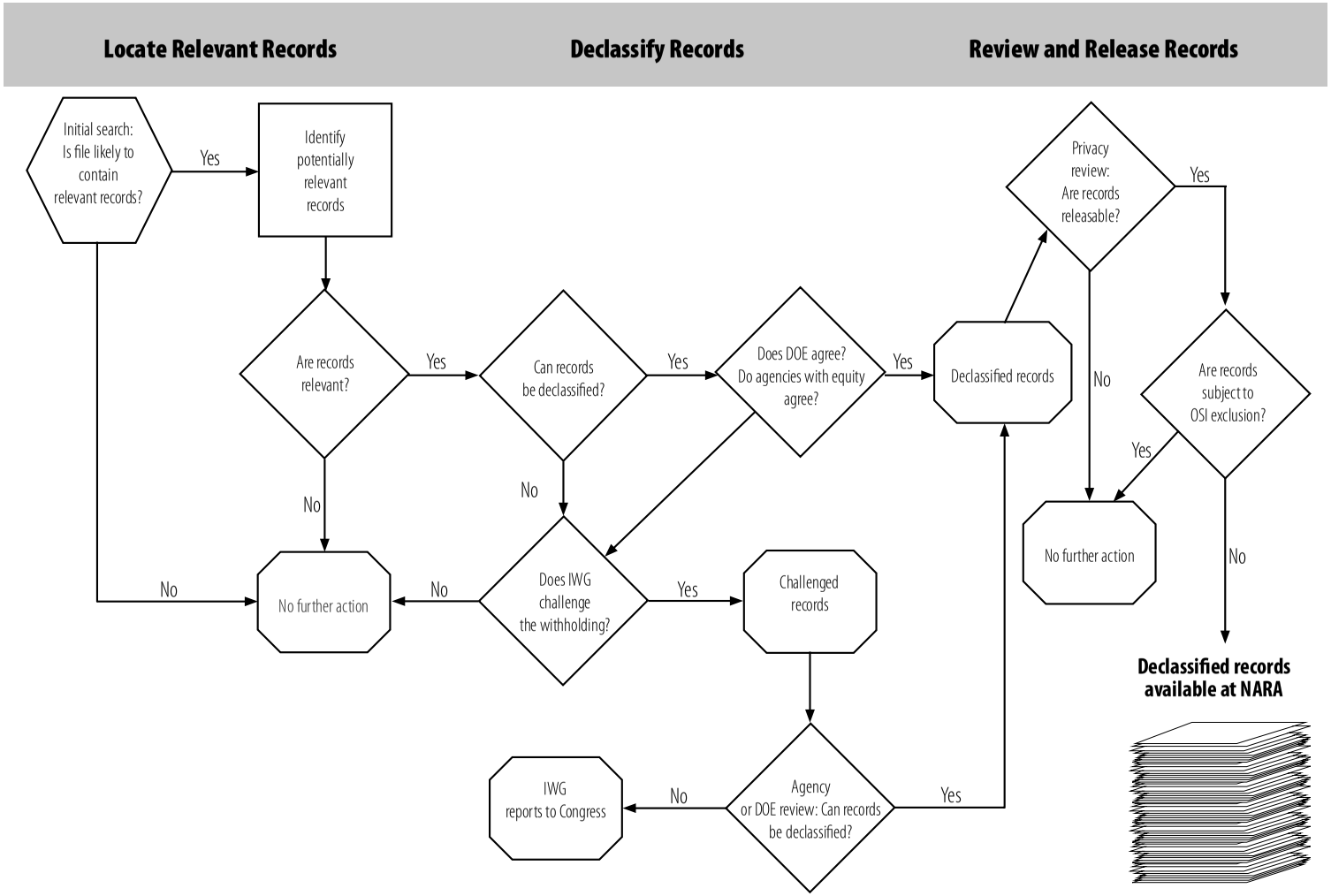
To help agencies fulfill their responsibility to declassify war crimes records, the IWG first had to help the agencies find relevant records among the millions of records relating to all other aspects of World War II and the immediate postwar period. Conducting a successful preliminary survey was an enormous challenge to agencies for several reasons. The primary reason was that agencies simply did not file or maintain their records according to categories that were obviously meaningful to the Disclosure Acts. Most

58. Chapter 5 provides details of each agency's implementation process.

59. These agencies were the departments of Commerce, Defense, Energy, Justice, State, Treasury, CIA, FBI, NARA, FRB, NASA, and USIA.

60. The Berger directives are found in appendix 6.

Figure 5. IWG declassification process



agencies filed records by names of individuals or programs. These names could be searched, but which of these millions of names might be relevant? Agency personnel were not expected to be experts on World War II. Agency files also varied by medium. Some agencies began keeping at least part of their files in electronic form as early as the 1970s. Others kept records in paper or microform, but indexed them electronically. In many cases, a full text search of some files was possible, while in others only indices could be searched by key words. All agencies also maintained paper files. In some cases, paper files had been copied to microfilm and the originals destroyed. At most agencies, the sheer volume of files that needed to be searched for possible declassification presented no small challenge. The IWG therefore took an active role in helping agencies search their records, developing a variety of search tools to enhance agency surveys, including:

- initial and supplemental guidance to agencies for implementing the acts;
- a so-called "60,000 Names List," actually a database developed by OSI that contains the names of SS officers, individuals charged by the UN War Crimes Commission, individuals convicted of Nazi war crimes, individuals extradited by the U.S. military government to stand trial for Nazi crimes, and individuals generally regarded by historians as having been major perpetrators of Nazi crimes;
- a list of terms, code names, operations, and other terminology compiled by the IWG staff and supplemented by OSI, the historians and the HAP;
- a 66-page key-word list of approximately 2,000 subjects, organizations, and individuals associated with war crimes in East Asia and the Pacific;
- leads for information that IWG historians, the HAP, and staff suggested would likely be found in agency files; and
- additional lists of names and topics provided by IWG members, historians, the HAP, and National Archives staff as related subjects emerged from the records.

The IWG frequently consulted with historians and, based on recommendations from the scholars, frequently sent agencies updated lists of operational terms, biographical details, and other very specific information to assist their key-word searches.

Offering search strategies and guidance to agencies was very important because the personnel actually searching agency records were unlikely to have the subject-matter expertise necessary to conduct a thorough search. Name lists were the IWG's most straightforward search tool, so most agencies seized on the name search as their primary—sometimes only—approach. As a result, agencies found predominately case files and dossiers, to the possible neglect of policy files and other files that were not organized by name. The IWG strove throughout to supplement lists and encourage wider searches, but for all agencies except the National Archives and the State Department, the name search remained the basic approach.

Most agencies were fully engaged in searching for Nazi war crimes materials when the directive to begin the Japan-related search was issued before the passage of the Japanese Imperial Government Disclosure Act. Every agency except the National Archives chose to conclude its Nazi search before beginning a new search for relevant Japanese materials.

Preliminary Survey Results

Preliminary surveys were substantially completed by July 30, 1999, for the Nazi-related records and by January 27, 2002, for the Japan-related records. Agencies had submitted status reports and implementation plans to the IWG, which described and quantified their efforts and results to that point and set forth a schedule for complying with the law.

Agency surveys identified more than 620 million pages that contained material *potentially* relevant to the acts. These pages were then surveyed in more depth to identify records that were *actually* responsive to the

acts and in fact subject to declassification review.

As expected, searches for classified Japanese materials did not produce a large quantity of documents. These searches appeared to be as rigorous as those for Nazi-related material, but there was much less remaining classified material related to Japan.

Reviewing Records for Relevance

After preliminary surveys located bodies of records likely to contain Nazi and Japanese war criminal documents, agencies examined them to determine which files or documents from among the larger bodies of material were relevant to the acts and therefore subject to declassification review. The IWG recommended that all records identified as potentially relating to Nazi and Japanese war crimes be reviewed for declassification, no matter what the subject or circumstance of their creation.[61] While the IWG unanimously agreed in principle to a broad interpretation of the acts, in practice, certain member agencies disagreed, sometimes adamantly, about which documents were in fact relevant.

Which Files are Relevant?

Disagreement arose over interpretation of section 3(a)(1) of the NWCDA, which identified as relevant those records that "pertain to any person with respect to whom the United States Government, in its sole discretion, has grounds to believe ordered, incited, assisted, or otherwise participated in the persecution of any person because of race, religion, national origin, or political opinion …"

The IWG sought the disclosure of *all* records related to Nazi war crimes or criminals, even later records of suspected criminals, asserting that only this broader understanding fulfilled the spirit of the law and served the purpose of full disclosure in the historical and archival context. In a paper dated July 26, 2001, the IWG emphasized that "reviewers making decisions regarding relevancy of materials are reminded that files are relevant if they shed light on any Nazi/Japanese war crime or persecution even though the file in question, whether for an individual, organization, or operation, does not contain direct evidence of or information about specific war crimes."[62]

Generally, disagreements over relevance revolved around questions of whether any record that related to an individual of interest was relevant, even if the record itself had no relation to war crimes. Especially at issue were documents related to the activities during the 1950s and 1960s, and even later, of individuals guilty of or suspected of war crimes. For example, the question was pertinent to records of former SS members, untried for war crimes, who later worked for the Gehlen Organization in support of U.S. intelligence operations. It was also pertinent to the relevance of Cold War era intelligence records about Japanese war criminals who, having served their sentences, became officials of the Japanese Government.[63]

Consistency

Differing definitions of relevance produced some inconsistent results among agencies, or even within a single agency. For example, the Army and the FBI interpreted the laws broadly, agreeing that files produced from searches using the 60,000 Names List and other IWG-provided search terms were presumptively relevant. In contrast, for the first six years of the project, CIA considered a postwar file on an individual to be relevant only if (1) the subject was a convicted war criminal, (2) the individual's file contained information on specific war crimes, or (3) there was sufficient information indicating there were grounds to believe that the subject was involved in war crimes or acts of persecution.[64]

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61. Agency-specific guidance is described in chapter 5.

62. See appendix 7 for the 26 July 2001 memorandum.

63. Instances of these challenges are reported in the individual agency accounts in chapter 5.

64. The CIA's review of OSS files was an exception in that the CIA opted for wholesale release of these records.

Dissatisfaction with the CIA's interpretation of the law, particularly on the part of the public members, led to two extensions of the acts. In 2004, the acts were extended for one year, and 2005, the acts were extended again for two years. The IWG public members felt, and interested members of Congress agreed, that the CIA needed to broaden its definition of what was relevant under the act to be compatible with the intent of Congress. In February 2005, the CIA agreed to re-review previously withheld information and to make additional searches under a broadened definition of relevance. This new approach produced a quantity of additional material, including information previously redacted (see figure 6). The Agency's renewed effort was groundbreaking in the nature of material it produced, as described in the CIA section chapter 5.

Agencies using a broad standard of relevance also helped to preserve the integrity of declassified files because a greater number of documents in each file could be declassified and kept together. On the other hand, a broad interpretation of the law increased an agency's workload and costs. After the attacks of September 11, 2001, law enforcement, intelligence, foreign affairs, and military agencies shifted resources to the war on terrorism and away from implementation of the Disclosure Acts.

From the universe of 620 million pages, agencies identified a total of 113 million pages that merited screening for possible relevance. From these, more than 8.5 million pages were identified as containing relevant material and warranting declassification review under the acts. A very large majority was related to Nazi war crimes or war crimes in Europe; only 142,000 pages were related to Japanese war crimes.

The process of identifying relevant documents was entirely separate from the process of reviewing documents for declassification. As discussed below, documents identified as relevant may nonetheless be withheld for reasons of national security at a later stage, or they may be declassified yet be exempt or excluded from release under the provisions of the Disclosure Acts.

Declassifying Relevant Records

The IWG consistently maintained that there were no sufficient *a priori* reasons for continuing security classification of relevant records; that is, there were no *types* of records that could be withheld automatically, and any relevant record must undergo a thorough declassification review by appropriate authorities. The Disclosure Acts exempted records from declassification for ten specified reasons, including U.S. foreign relations and diplomatic activities, intelligence sources and methods, and certain military matters. Accordingly, IWG guidance to agencies specified that no document could be withheld or redacted unless it was covered explicitly by one of these exemptions. "Even then," IWG guidance continued, "specific damage to U.S. national security interests must be demonstrated to justify withholding or redacting relevant information."[65]

The agency that created a document was responsible for its declassification review and for notifying any other agency that may have had equity (interest) in the document. Each organization with equity in a document was entitled to conduct its own review of the document. In some cases, a document declassified by one agency was withheld by another.

Agencies declassified documents in whole or in part. When an agency deemed that some information in a document must be withheld because it contained some sensitive information (for example, the name of a recent intelligence source), the IWG insisted that the agency redact portions rather than withhold an entire document. While redaction required a time-consuming line-by-line review, much more information was released as a result (see figure 7). Some agencies offered substitute or explanatory language where portions were withheld, making the redacted document more useful (figure 8).

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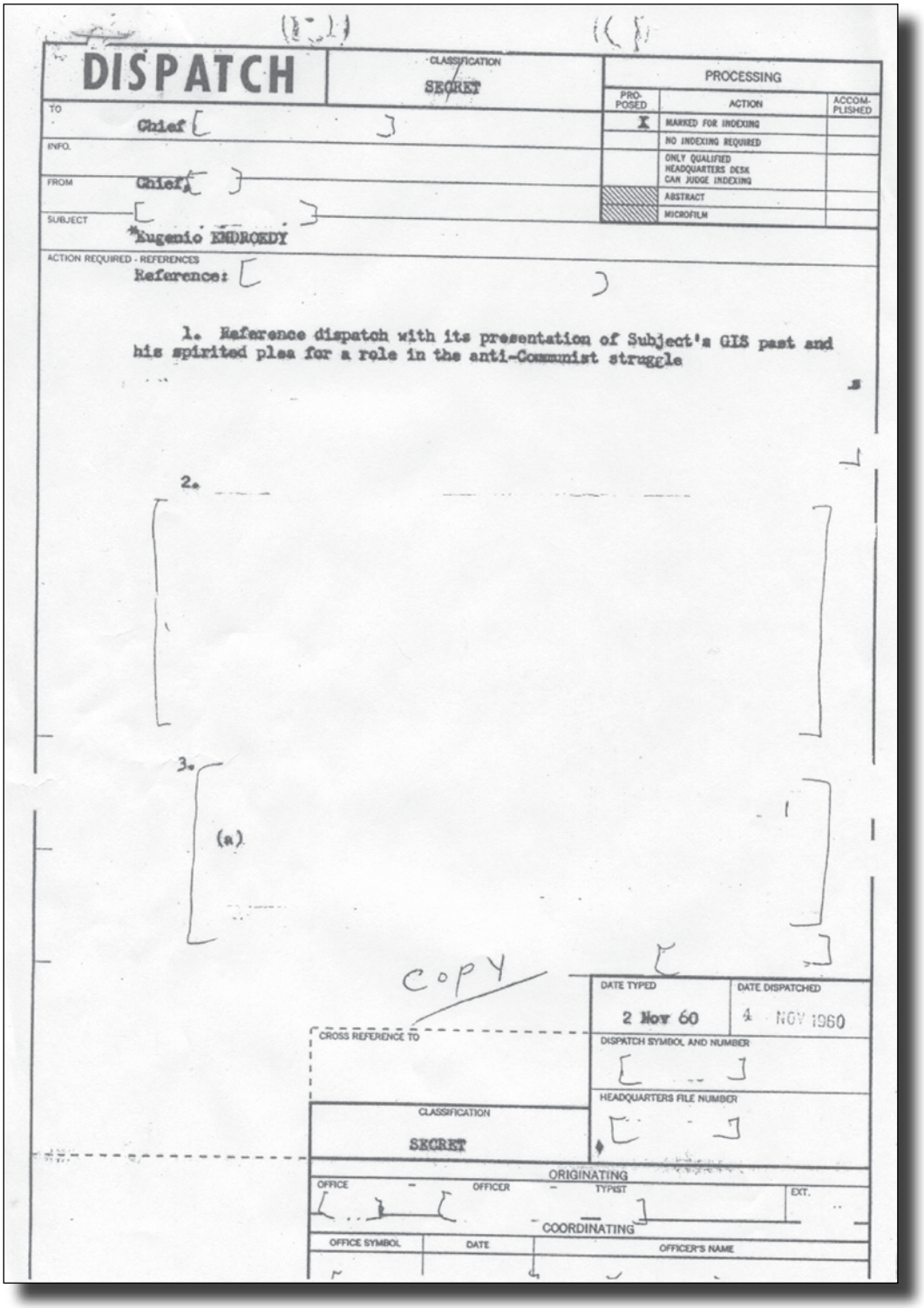
65. Appendix 7, Memorandum on Relevancy, 26 July 2001, attachment, p. 2.

Figure 6. Sample of first and second release of CIA document



DISPATCH

CLASSIFICATION: SECRET

PROCESSING

PROPOSED	ACTION	ACCOMPLISHED
X	MARKED FOR INDEXING	
	NO INDEXING REQUIRED	
	ONLY QUALIFIED HEADQUARTERS DESK CAN JUDGE INDEXING	
	ABSTRACT	
	MICROFILM	

TO: Chief [redacted]

INFO.

FROM: Chief [redacted]

SUBJECT: *Eugenio ENDROEDY

ACTION REQUIRED - REFERENCES

Reference: [redacted]

1. Reference dispatch with its presentation of Subject's GIS past and his spirited plea for a role in the anti-Communist struggle

2. [redacted]

3. (a) [redacted]

COPY

DATE TYPED: 2 Nov 60

DATE DISPATCHED: 4 NOV 1960

CROSS REFERENCE TO

DISPATCH SYMBOL AND NUMBER: [redacted]

HEADQUARTERS FILE NUMBER: [redacted]

CLASSIFICATION: SECRET

ORIGINATING

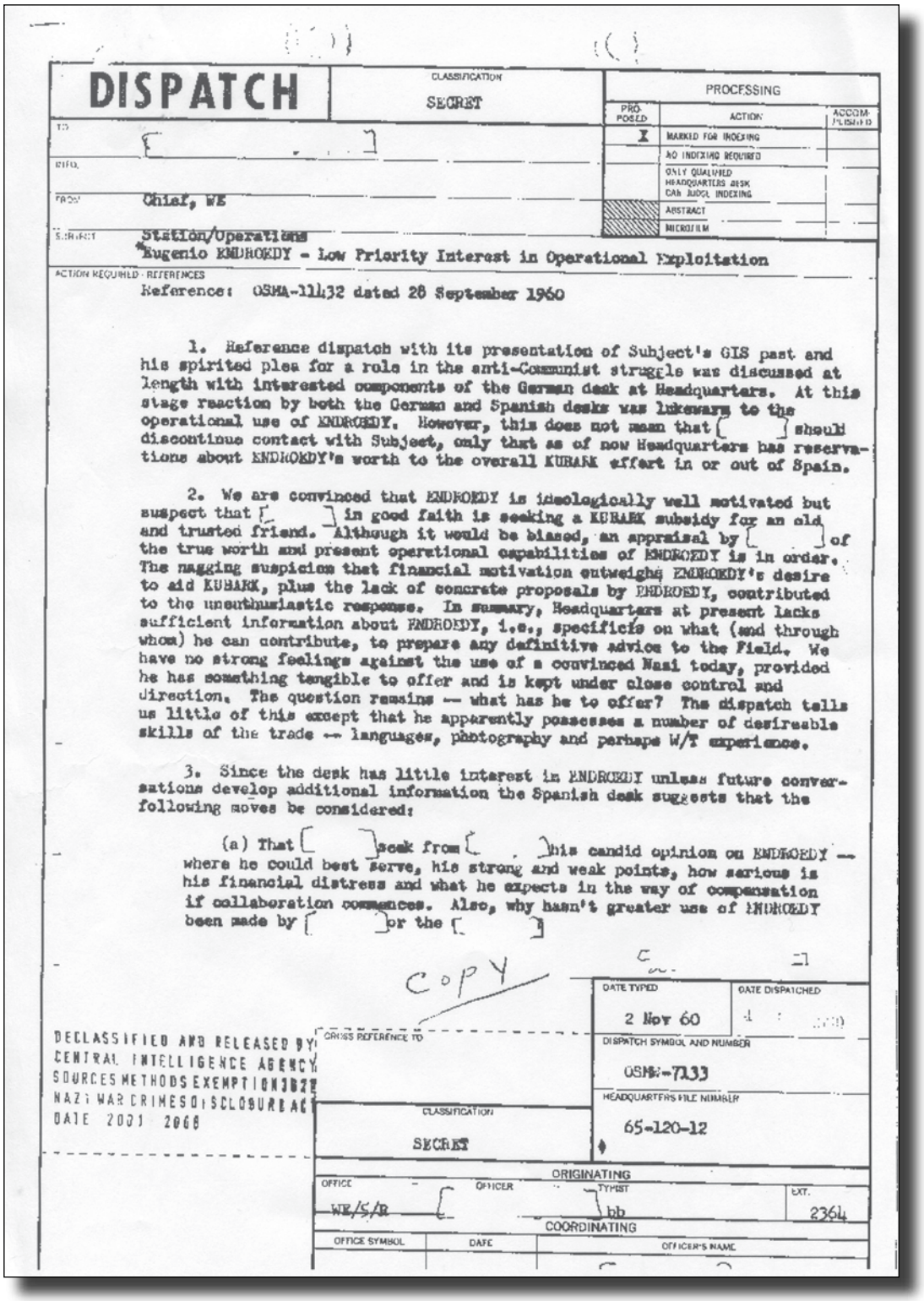
OFFICE – OFFICER – TYPIST | EXT.

[redacted]

COORDINATING

OFFICE SYMBOL	DATE	OFFICER'S NAME

Source: RG 263, CIA Name Files, first release, file: Endroedy, Eugenio.



DISPATCH

CLASSIFICATION: SECRET

PROCESSING

PROPOSED	ACTION	ACCOMPLISHED
X	MARKED FOR INDEXING	
	NO INDEXING REQUIRED	
	ONLY QUALIFIED HEADQUARTERS DESK OR BUDGL INDEXING	
	ABSTRACT	
	MICROFILM	

TO: [redacted]

INFO.

FROM: Chief, WE

SUBJECT: Station/Operations
Eugenio ENDROEDY - Low Priority Interest in Operational Exploitation

ACTION REQUIRED · REFERENCES
Reference: OSHA-11432 dated 28 September 1960

1. Reference dispatch with its presentation of Subject's GIS past and his spirited plea for a role in the anti-Communist struggle was discussed at length with interested components of the German desk at Headquarters. At this stage reaction by both the German and Spanish desks was lukewarm to the operational use of ENDROEDY. However, this does not mean that [redacted] should discontinue contact with Subject, only that as of now Headquarters has reservations about ENDROEDY's worth to the overall KUBARK effort in or out of Spain.

2. We are convinced that ENDROEDY is ideologically well motivated but suspect that [redacted] in good faith is seeking a KUBARK subsidy for an old and trusted friend. Although it would be biased, an appraisal by [redacted] of the true worth and present operational capabilities of ENDROEDY is in order. The nagging suspicion that financial motivation outweighs ENDROEDY's desire to aid KUBARK, plus the lack of concrete proposals by ENDROEDY, contributed to the unenthusiastic response. In summary, Headquarters at present lacks sufficient information about ENDROEDY, i.e., specifics on what (and through whom) he can contribute, to prepare any definitive advice to the Field. We have no strong feelings against the use of a convinced Nazi today, provided he has something tangible to offer and is kept under close control and direction. The question remains -- what has he to offer? The dispatch tells us little of this except that he apparently possesses a number of desireable skills of the trade -- languages, photography and perhaps W/T experience.

3. Since the desk has little interest in ENDROEDY unless future conversations develop additional information the Spanish desk suggests that the following moves be considered:

(a) That [redacted] seek from [redacted] his candid opinion on ENDROEDY -- where he could best serve, his strong and weak points, how serious is his financial distress and what he expects in the way of compensation if collaboration commences. Also, why hasn't greater use of ENDROEDY been made by [redacted] or the [redacted]

COPY

DECLASSIFIED AND RELEASED BY
CENTRAL INTELLIGENCE AGENCY
SOURCES METHODS EXEMPTION 3B(2
NAZI WAR CRIMES DISCLOSURE AC
DATE 2001 2008

CROSS REFERENCE TO

DATE TYPED: 2 Nov 60

DATE DISPATCHED:

DISPATCH SYMBOL AND NUMBER: OSHA-7133

HEADQUARTERS FILE NUMBER: 65-120-12

CLASSIFICATION: SECRET

ORIGINATING

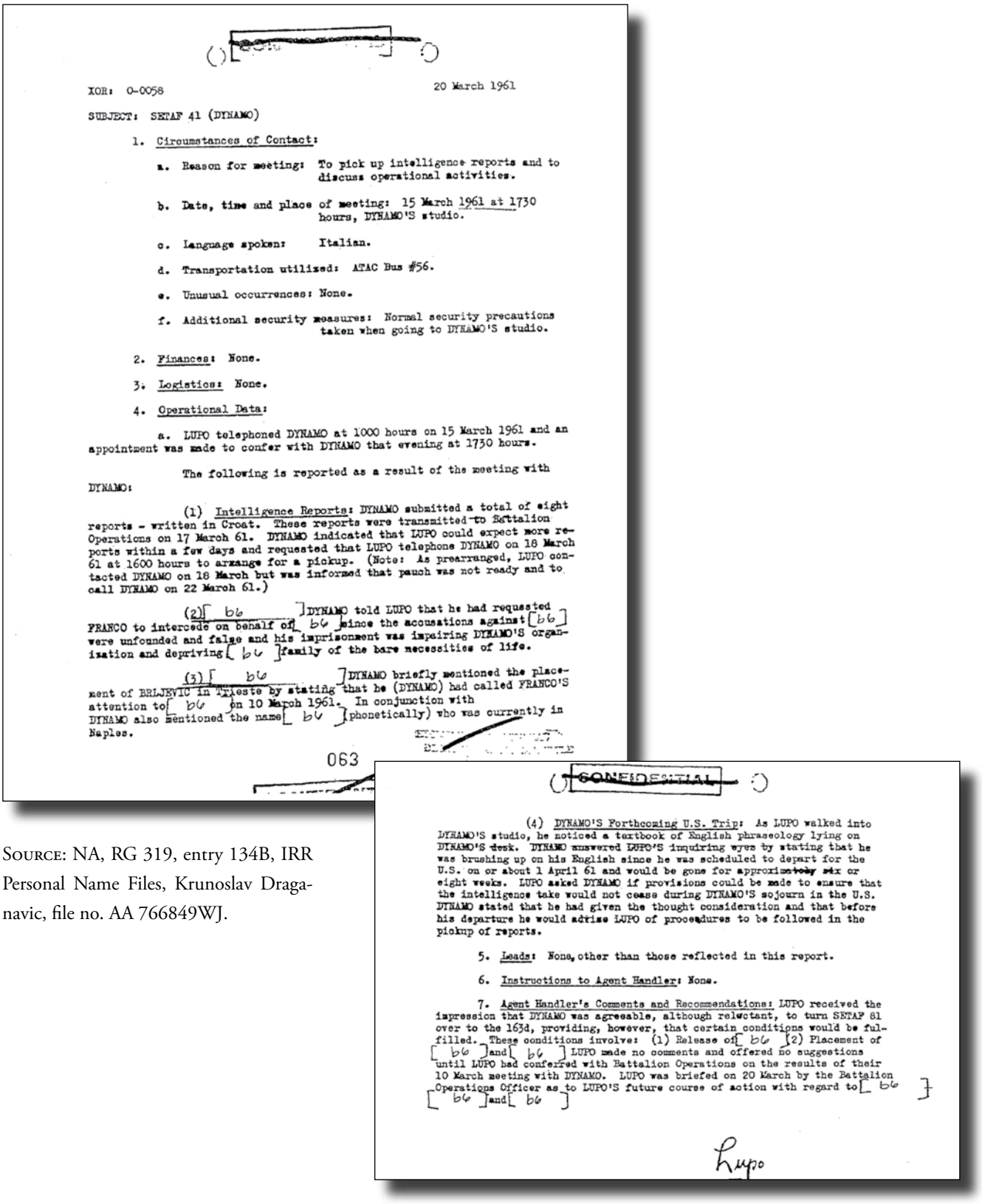
OFFICE	OFFICER	TYPIST	EXT.
WE/S/R	[redacted]	bb	2364

COORDINATING

OFFICE SYMBOL	DATE	OFFICER'S NAME

Source: RG 263, CIA Name Files, second release, file: Endroedy, Eugenio.

Figure 7. Sample of documents released with redactions



XOR: O-0058 20 March 1961

SUBJECT: SETAF 41 (DYNAMO)

1. Circumstances of Contact:

a. Reason for meeting: To pick up intelligence reports and to discuss operational activities.

b. Date, time and place of meeting: 15 March 1961 at 1730 hours, DYNAMO'S studio.

c. Language spoken: Italian.

d. Transportation utilized: ATAC Bus #56.

e. Unusual occurrences: None.

f. Additional security measures: Normal security precautions taken when going to DYNAMO'S studio.

2. Finances: None.

3. Logistics: None.

4. Operational Data:

a. LUPO telephoned DYNAMO at 1000 hours on 15 March 1961 and an appointment was made to confer with DYNAMO that evening at 1730 hours.

The following is reported as a result of the meeting with DYNAMO:

(1) Intelligence Reports: DYNAMO submitted a total of eight reports - written in Croat. These reports were transmitted to Battalion Operations on 17 March 61. DYNAMO indicated that LUPO could expect more reports within a few days and requested that LUPO telephone DYNAMO on 18 March 61 at 1600 hours to arrange for a pickup. (Note: As prearranged, LUPO contacted DYNAMO on 18 March but was informed that pauch was not ready and to call DYNAMO on 22 March 61.)

(2) [b6] DYNAMO told LUPO that he had requested FRANCO to intercede on behalf of [b6] since the accusations against [b6] were unfounded and false and his imprisonment was impairing DYNAMO'S organization and depriving [b6] family of the bare necessities of life.

(3) [b6] DYNAMO briefly mentioned the placement of BRLJEVIC in Trieste by stating that he (DYNAMO) had called FRANCO'S attention to [b6] on 10 March 1961. In conjunction with DYNAMO also mentioned the name [b6] phonetically) who was currently in Naples.

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(4) DYNAMO'S Forthcoming U.S. Trip: As LUPO walked into DYNAMO'S studio, he noticed a textbook of English phraseology lying on DYNAMO'S desk. DYNAMO answered LUPO'S inquiring eyes by stating that he was brushing up on his English since he was scheduled to depart for the U.S. on or about 1 April 61 and would be gone for approximately six or eight weeks. LUPO asked DYNAMO if provisions could be made to ensure that the intelligence take would not cease during DYNAMO'S sojourn in the U.S. DYNAMO stated that he had given the thought consideration and that before his departure he would advise LUPO of procedures to be followed in the pickup of reports.

5. Leads: None, other than those reflected in this report.

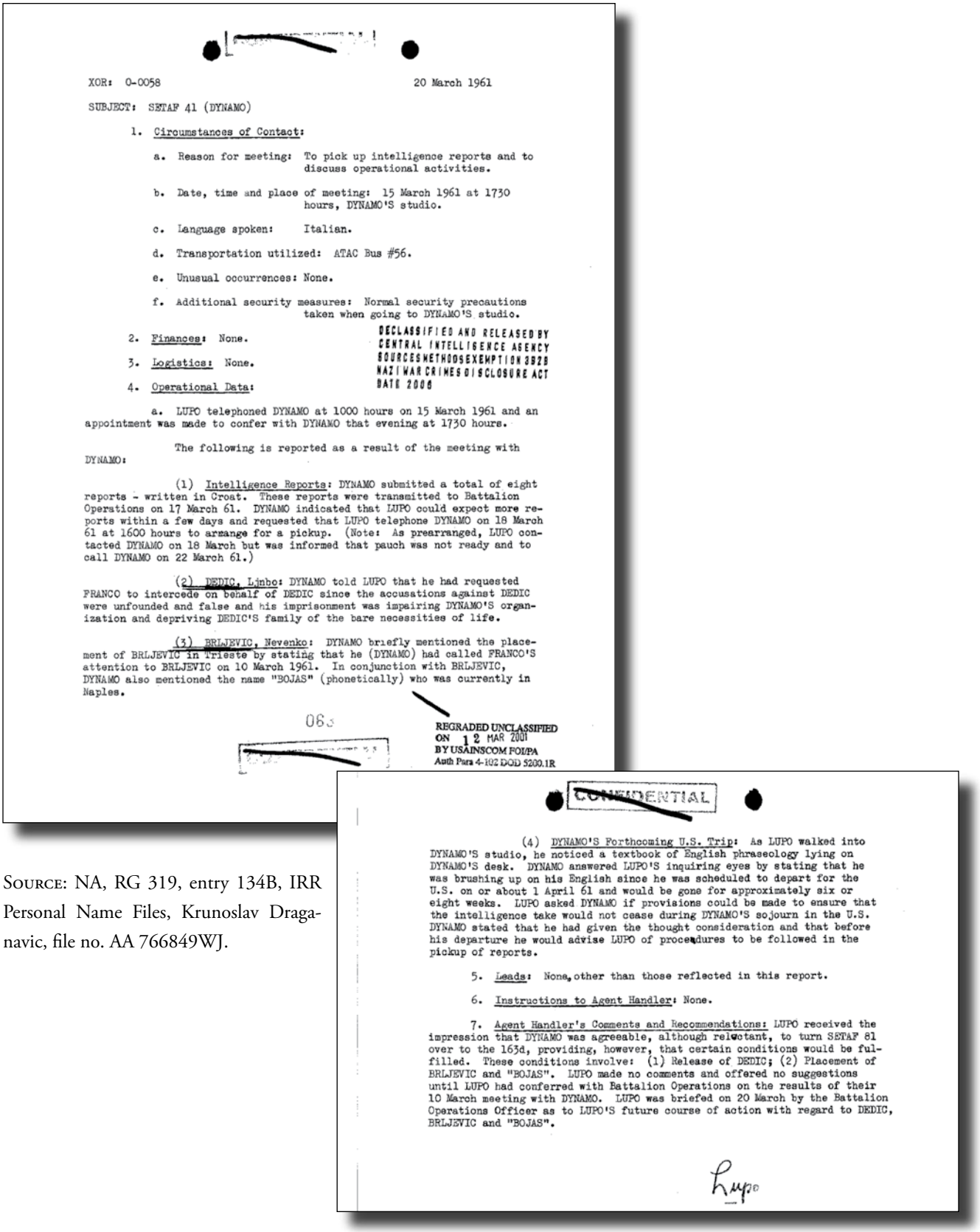
6. Instructions to Agent Handler: None.

7. Agent Handler's Comments and Recommendations: LUPO received the impression that DYNAMO was agreeable, although reluctant, to turn SETAF 81 over to the 163d, providing, however, that certain conditions would be fulfilled. These conditions involve: (1) Release of [b6] (2) Placement of [b6] and [b6] LUPO made no comments and offered no suggestions until LUPO had conferred with Battalion Operations on the results of their 10 March meeting with DYNAMO. LUPO was briefed on 20 March by the Battalion Operations Officer as to LUPO'S future course of action with regard to [b6] [b6] and [b6]

Lupo

Source: NA, RG 319, entry 134B, IRR Personal Name Files, Krunoslav Draganavic, file no. AA 766849WJ.

These same document released with information restored.



XOR: 0-0058 20 March 1961

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c. Language spoken: Italian.

d. Transportation utilized: ATAC Bus #56.

e. Unusual occurrences: None.

f. Additional security measures: Normal security precautions taken when going to DYNAMO'S studio.

DECLASSIFIED AND RELEASED BY CENTRAL INTELLIGENCE AGENCY SOURCES METHODS EXEMPTION 3B2B NAZI WAR CRIMES DISCLOSURE ACT DATE 2006

2. Finances: None.

3. Logistics: None.

4. Operational Data:

a. LUPO telephoned DYNAMO at 1000 hours on 15 March 1961 and an appointment was made to confer with DYNAMO that evening at 1730 hours.

The following is reported as a result of the meeting with DYNAMO:

(1) Intelligence Reports: DYNAMO submitted a total of eight reports - written in Croat. These reports were transmitted to Battalion Operations on 17 March 61. DYNAMO indicated that LUPO could expect more reports within a few days and requested that LUPO telephone DYNAMO on 18 March 61 at 1600 hours to arrange for a pickup. (Note: As prearranged, LUPO contacted DYNAMO on 18 March but was informed that pauch was not ready and to call DYNAMO on 22 March 61.)

(2) DEDIC, Ljubo: DYNAMO told LUPO that he had requested FRANCO to intercede on behalf of DEDIC since the accusations against DEDIC were unfounded and false and his imprisonment was impairing DYNAMO'S organization and depriving DEDIC'S family of the bare necessities of life.

(3) BRLJEVIC, Nevenko: DYNAMO briefly mentioned the placement of BRLJEVIC in Trieste by stating that he (DYNAMO) had called FRANCO'S attention to BRLJEVIC on 10 March 1961. In conjunction with BRLJEVIC, DYNAMO also mentioned the name "BOJAS" (phonetically) who was currently in Naples.

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CONFIDENTIAL

(4) DYNAMO'S Forthcoming U.S. Trip: As LUPO walked into DYNAMO'S studio, he noticed a textbook of English phraseology lying on DYNAMO'S desk. DYNAMO answered LUPO'S inquiring eyes by stating that he was brushing up on his English since he was scheduled to depart for the U.S. on or about 1 April 61 and would be gone for approximately six or eight weeks. LUPO asked DYNAMO if provisions could be made to ensure that the intelligence take would not cease during DYNAMO'S sojourn in the U.S. DYNAMO stated that he had given the thought consideration and that before his departure he would advise LUPO of procedures to be followed in the pickup of reports.

5. Leads: None, other than those reflected in this report.

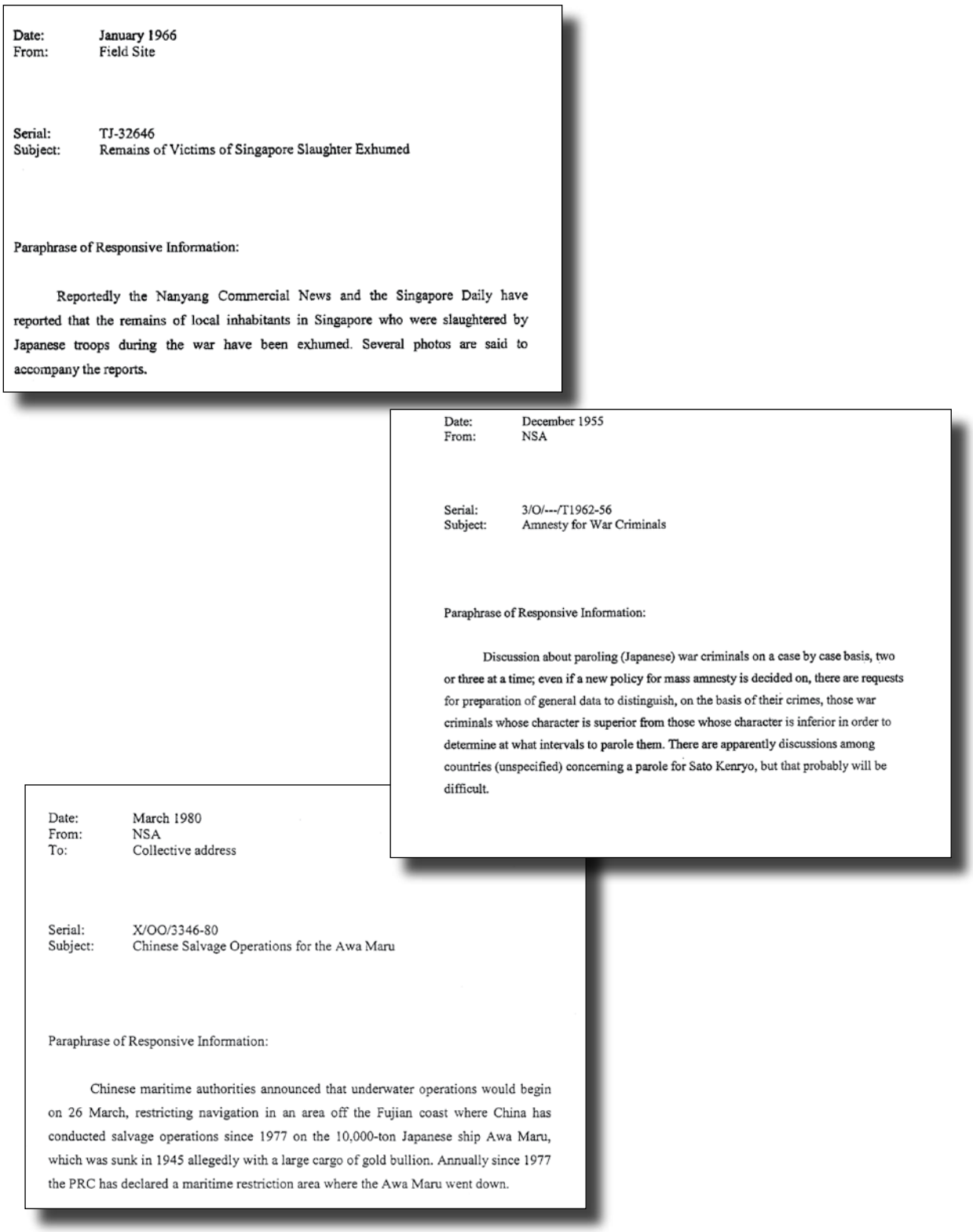
6. Instructions to Agent Handler: None.

7. Agent Handler's Comments and Recommendations: LUPO received the impression that DYNAMO was agreeable, although reluctant, to turn SETAF 81 over to the 163d, providing, however, that certain conditions would be fulfilled. These conditions involve: (1) Release of DEDIC; (2) Placement of BRLJEVIC and "BOJAS". LUPO made no comments and offered no suggestions until LUPO had conferred with Battalion Operations on the results of their 10 March meeting with DYNAMO. LUPO was briefed on 20 March by the Battalion Operations Officer as to LUPO'S future course of action with regard to DEDIC, BRLJEVIC and "BOJAS".

Lupo

Source: NA, RG 319, entry 134B, IRR Personal Name Files, Krunoslav Draganavic, file no. AA 766849WJ.

Figure 8. Sample of documents released with explanatory language



Date: January 1966
From: Field Site

Serial: TJ-32646
Subject: Remains of Victims of Singapore Slaughter Exhumed

Paraphrase of Responsive Information:

Reportedly the Nanyang Commercial News and the Singapore Daily have reported that the remains of local inhabitants in Singapore who were slaughtered by Japanese troops during the war have been exhumed. Several photos are said to accompany the reports.

Date: December 1955
From: NSA

Serial: 3/O/---/T1962-56
Subject: Amnesty for War Criminals

Paraphrase of Responsive Information:

Discussion about paroling (Japanese) war criminals on a case by case basis, two or three at a time; even if a new policy for mass amnesty is decided on, there are requests for preparation of general data to distinguish, on the basis of their crimes, those war criminals whose character is superior from those whose character is inferior in order to determine at what intervals to parole them. There are apparently discussions among countries (unspecified) concerning a parole for Sato Kenryo, but that probably will be difficult.

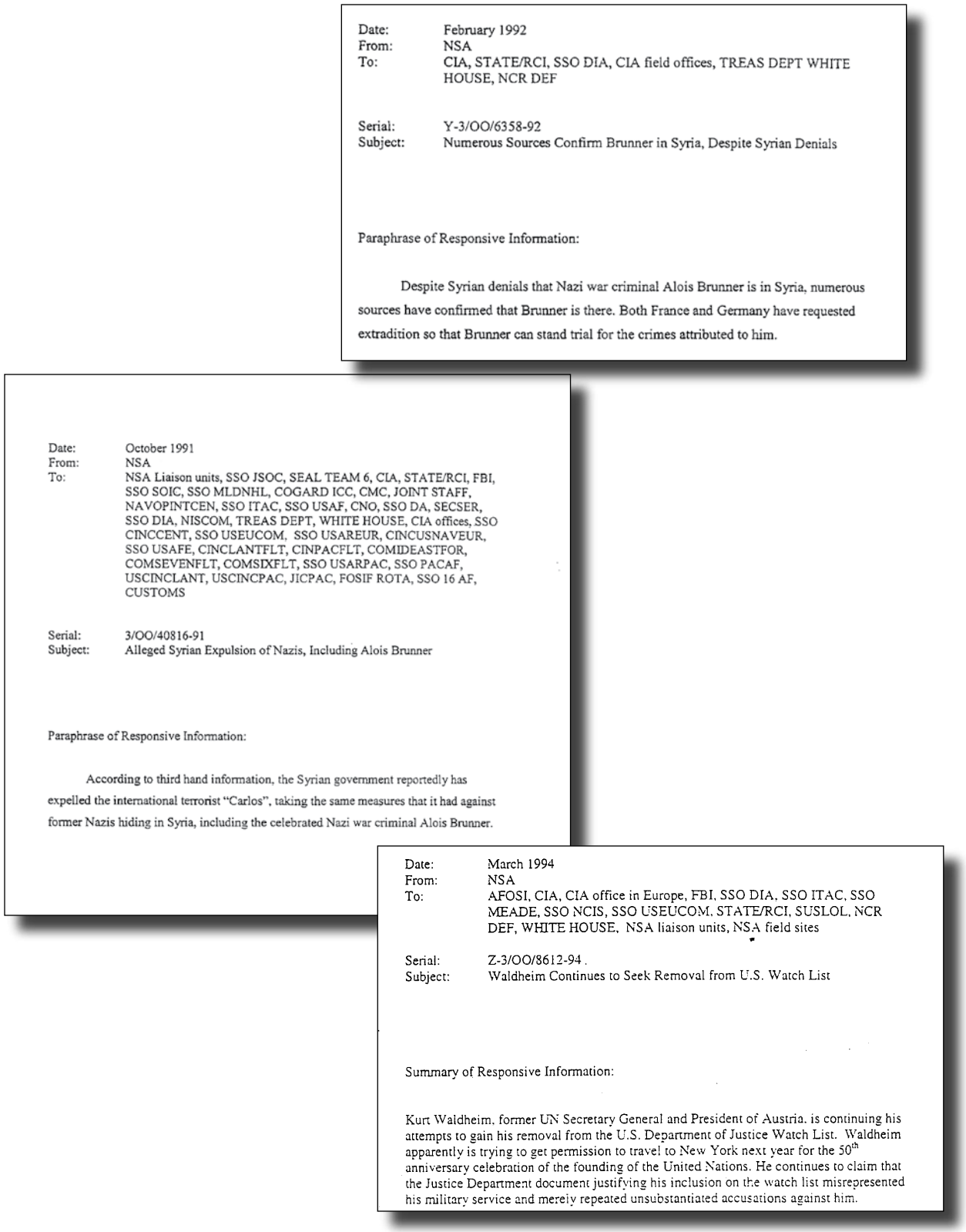
Date: March 1980
From: NSA
To: Collective address

Serial: X/OO/3346-80
Subject: Chinese Salvage Operations for the Awa Maru

Paraphrase of Responsive Information:

Chinese maritime authorities announced that underwater operations would begin on 26 March, restricting navigation in an area off the Fujian coast where China has conducted salvage operations since 1977 on the 10,000-ton Japanese ship Awa Maru, which was sunk in 1945 allegedly with a large cargo of gold bullion. Annually since 1977 the PRC has declared a maritime restriction area where the Awa Maru went down.

Source: RG 457, Select Documents released under NWCDA, Box 1, Paraphrases, 1937-1980, Entry ZZ10.



Date: February 1992
From: NSA
To: CIA, STATE/RCI, SSO DIA, CIA field offices, TREAS DEPT WHITE HOUSE, NCR DEF

Serial: Y-3/OO/6358-92
Subject: Numerous Sources Confirm Brunner in Syria, Despite Syrian Denials

Paraphrase of Responsive Information:

Despite Syrian denials that Nazi war criminal Alois Brunner is in Syria, numerous sources have confirmed that Brunner is there. Both France and Germany have requested extradition so that Brunner can stand trial for the crimes attributed to him.

Date: October 1991
From: NSA
To: NSA Liaison units, SSO JSOC, SEAL TEAM 6, CIA, STATE/RCI, FBI, SSO SOIC, SSO MLDNHL, COGARD ICC, CMC, JOINT STAFF, NAVOPINTCEN, SSO ITAC, SSO USAF, CNO, SSO DA, SECSER, SSO DIA, NISCOM, TREAS DEPT, WHITE HOUSE, CIA offices, SSO CINCCENT, SSO USEUCOM, SSO USAREUR, CINCUSNAVEUR, SSO USAFE, CINCLANTFLT, CINPACFLT, COMIDEASTFOR, COMSEVENFLT, COMSIXFLT, SSO USARPAC, SSO PACAF, USCINCLANT, USCINCPAC, JICPAC, FOSIF ROTA, SSO 16 AF, CUSTOMS

Serial: 3/OO/40816-91
Subject: Alleged Syrian Expulsion of Nazis, Including Alois Brunner

Paraphrase of Responsive Information:

According to third hand information, the Syrian government reportedly has expelled the international terrorist "Carlos", taking the same measures that it had against former Nazis hiding in Syria, including the celebrated Nazi war criminal Alois Brunner.

Date: March 1994
From: NSA
To: AFOSI, CIA, CIA office in Europe, FBI, SSO DIA, SSO ITAC, SSO MEADE, SSO NCIS, SSO USEUCOM, STATE/RCI, SUSLOL, NCR DEF, WHITE HOUSE, NSA liaison units, NSA field sites

Serial: Z-3/OO/8612-94 .
Subject: Waldheim Continues to Seek Removal from U.S. Watch List

Summary of Responsive Information:

Kurt Waldheim, former UN Secretary General and President of Austria, is continuing his attempts to gain his removal from the U.S. Department of Justice Watch List. Waldheim apparently is trying to get permission to travel to New York next year for the 50th anniversary celebration of the founding of the United Nations. He continues to claim that the Justice Department document justifying his inclusion on the watch list misrepresented his military service and merely repeated unsubstantiated accusations against him.

Source: RG 457, Select Documents released under JIGDA, Box 1, Paraphrases, 1937-1980, Entry ZZ10.

Agencies seeking to continue classification of any document bore the burden of justifying continued withholding. The agency head was required by law to report the applicable exemption to appropriate committees of Congress. The IWG informed the agencies that in the absence of legitimate justification for continued classification, it would challenge such decisions and report agency decisions to retain classification in the face of such challenges to Congress.[66]

National Security Interests

National security exemptions allowed under the Disclosure Acts were identical to the exemptions allowed for 25-year-old material under the 1995 Executive Order 12958, which governs the treatment, classification, and declassification of U.S. Government information generally (as amended by Bush Executive Order 13292 in March 2003). The IWG encouraged agencies to implement the Disclosure Acts and Executive Order 12958 in concert. Despite this similarity, the NWCDA theoretically demanded greater release than Executive Order 12958 because the NWCDA expressly did *not* allow *types* of information (such as intelligence sources) to be withheld wholesale under the National Security Act of 1947.[67] For example, information on intelligence sources could be withheld under the NWCDA, but in each case the agency intending to keep the information classified would be obligated to justify why its release would threaten national security.

Some relevant material required review by the Department of Energy under the Kyl and Lott Amendments to assure that it did not contain sensitive nuclear information. National Archives staff also reexamined records previously declassified to ensure they did not violate any restrictions implemented in response to the September 11 terrorist attacks. These restrictions were intended to withhold information that might be of use to terrorists, such as chemical formulas.

Foreign Government Information

Documents frequently contained information that was provided by a foreign government or that described another government's intelligence activities (other than Axis governments). Questions about how to handle such material arose in the implementation of the Disclosure Acts. Before Executive Order 12958, such information was usually automatically withheld unless the foreign government explicitly allowed its release, even though most of the wartime and immediate postwar intelligence information of foreign origin had long lost its sensitivity. However, foreign government information was not an exempt category under EO 12958 or the Disclosure Acts. Agencies were reminded of this in a May 10, 2001, memo from the Chair.[68] The IWG encouraged agencies to negotiate general agreements with their foreign counterparts to allow the agencies to release certain classes of information in very old records without consultation in each instance. The FBI and CIA used this approach and saved much time and effort in the review process.

Overseeing Agency Implementation of the Disclosure Acts

As the day-to-day IWG liaison to the agencies, the audit team monitored progress on site, assessed agency adherence to IWG guidance, and measured productivity. Auditors provided the IWG detailed reports on agency search strategies; frequent statistical reports on records located, declassified, and transferred to the National Archives; and regular status reports on agency progress and problems. These reports gave the IWG a basis for deciding whether closer oversight was needed and whether it was advisable to take up any problems with high-ranking agency officials.

The IWG audit team examined documents that

66. Instances of these challenges are reported in the individual agency accounts in chapter 5.

67. The National Security Act allows a blanket withholding of information related to intelligence sources and methods.

68. The 10 May 2001 memorandum is available in appendix 8.

were identified as relevant under the Disclosure Acts but were not yet declassified by the agencies. In materials intended for release with redactions, the audit team reviewed the information being redacted to ensure that the redaction was legally justified under the Disclosure Acts. The audit team also inspected withheld documents to determine whether the reasons given for continued classification were justified under the acts.

When the audit team believed that record searches were too narrow in scope or that declassification review was inadequate, the auditors alerted the IWG to these problems early enough in the process for adjustments to be made.[69]

As the need arose, the IWG contracted with several retired officials from agencies to assist the auditors. All of those involved in the audit process were cleared at the Top Secret SCI level.

Releasing Declassified Records to the Public

Once materials were declassified by the agencies, copies or originals were physically transferred to the National Archives. Agencies varied in their means of declassifying their documents and transferring them to the National Archives. Three different models emerged.

1. Transferring original files. An agency located original relevant documents, declassified them, and transferred entire files containing original responsive documents to the National Archives. If a file contained relevant documents, the whole file was kept intact and processed for release, even though it also contained documents that were not relevant. The FBI, the National Archives, and, to some extent, the Army Investigative Records Repository used this method. The Department of State used this method on one of its largest files.

2. Transferring copies of documents. Agencies using this method made copies of relevant documents, declassified those copies, and transferred the declassified copies to the National Archives. This approach was used primarily by the CIA and the Department of State. The Army used a version of this approach with microfilm files, electronically imaging the bulk of its relevant files and marking the sensitive passages before transferring them to the National Archives for final processing and release. Later in the course of the project, the Army agreed to transfer all 13,000 reels of its microfilm as well as all of the digital scans of that film to the National Archives.

3. Transferring paraphrased documents. NSA, the only agency to use this method, paraphrased sensitive documents and transferred the paraphrase to the National Archives. Paraphrasing protected the agency's intelligence collection techniques while still resulting in a coherent document, whereas documents redacted to protect that information would have been so altered as to be meaningless without the paraphrasing.[70]

Once these declassified files reached the National Archives, its staff reviewed the records for privacy considerations as well as for potential relevance to the statutes' OSI exclusion.

Privacy Review

Reviewing records to protect the privacy rights of U.S. citizens is a normal activity of the National Archives with respect to all accessioned records; thus, the agencies were advised that the National Archives would assume responsibility for reviewing records released under the Disclosure Acts. In accordance with the acts, privacy considerations were taken into account before a declassified document was released to ensure that its release would not "constitute a clearly unwarranted invasion of personal privacy." Legal constraints that protect privacy rights were weighed against the public interest served by disclosure. At the request of the IWG, the Office of the General Counsel at the National Archives prepared guidance for use in ex-

69. See, for example, the State Department section in chapter 5.

70. Historians are accustomed to seeing the notation that a document has been paraphrased in the Foreign Relations of the United States series.

empting documents from disclosure based on privacy grounds.[71] This privacy review was based on the same considerations as those taken into account in FOIA reviews, including the fact that, like the FOIA, the NWCDA and the JIGDA are disclosure statutes under which not all privacy interests require mandatory exemption. All releases under the Disclosure Acts were accompanied by a disclaimer meant to guard against unfairly characterizing as war criminals innocent individuals mentioned in the records.

Review by the Office of Special Investigations

Reviewing documents for potential relevance to DOJ/OSI investigations was the final step in determining whether particular declassified materials would be made available to the public immediately or released at a later date. Records identified by OSI as relating to its investigations were excluded from release under the acts in order to protect its ongoing investigations and prosecutions of Axis criminals in the United States or seeking entrance into this country (this subject is covered in more detail in the DOJ section of chapter 5).

Making Documents Publicly Accessible

Preparing millions of pages of documents for public use was an extraordinarily time-consuming and labor-intensive process. Archivists first examined all files for preservation and stabilization. Old, fragile, often-crumbling wartime paper was first placed in Mylar and then placed in acid free folders. Files were then arranged according to the original schema, if possible, to make them retrievable by date, file number, alphabet, or by some other orderly arrangement. Record series were then described in some manner, from minimal identification such as type of record and origin to detailed databases listing and describing individual documents in the files. NARA staff then formally withdrew all still-classified or otherwise restricted documents, placing public notices in the files in place of the withdrawn documents. Where documents were withheld in part, the staff prepared redacted versions for the files.

While libraries arrange their books according to subject and author, archives arrange their holdings by origin, or provenance, of a record. A document's provenance refers not necessarily to the person who created or even signed it, but to the agency that filed it. Under the Disclosure Acts, it was not uncommon for several U.S. Government agencies to declassify files on the same subject or individual. In accordance with standard archival practice, this information, though related by subject matter, remains in its original file as created or received by the agency.

Archivists create finding aids to help researchers locate specific information. These finding aids include enough information to place the documents in organizational context and to illuminate why the records were kept and how they were collected; they do not explain the meaning or significance of documents or attempt to present a historical interpretation. The primary finding aid that was developed as a result of the JIGDA, which covers both newly declassified and previously open Japanese war crimes records, is 1,700 pages, yet it cannot be considered exhaustive: no guide to voluminous archival records can be considered to have identified all information on a subject. Another finding aid that focuses on records relating to Japanese biological warfare was also created. Numerous lists, guides, databases, and other finding aids exist for the German-related records, and these will be further supplemented to help locate records among the more than 8 million pages declassified under the NWCDA.

The process of creating finding aids for materials released under the Disclosure Acts is complicated. Normally, finding aids identify a body of records that has been accessioned and transferred in its entirety from the agency of origin, and the body of records is filed in an archive as it was created at the agency. That is, all records in any particular agency file will remain

71. Privacy guidance is found in appendix 9.

together in files at the National Archives. Under the Disclosure Acts, however, many records, particularly those from the CIA, State, and NSA, were pulled from larger bodies of records that were not declassified.[72] Further, a number of records from the CIA and other agencies were released only in part. The resulting collections of these records at the National Archives require additional descriptive work to attempt to set them in their institutional, archival, and historical context.

As of March 2007, much of this work is yet to be done. The Archivist of the United States will continue to work with other executive branch agencies to ensure ongoing disclosure of records relevant to the issues of this report. In some cases, processing cannot be done adequately with the information currently available. For example, the files released by the CIA were compiled solely to comply with the Disclosure Acts. These files are not intact, original files, but instead comprise pages gathered from various CIA files. The CIA removed all file numbers on the released pages, rendering it difficult to ascertain the location of the original file at the agency.[73]

Costs

Direct costs for the IWG totaled over $12 million for its lifetime (see table 1). Individual agency costs, estimated to be $17 million, are discussed in chapter 4.

Table 1. Interagency Working Group direct support costs, Jan. 1999–Mar. 2007

Item/Year	FY1999	FY2000	FY2001	FY2002	FY2003	FY2004	FY2005	FY2006	FY2007*
Contracts Historians, Auditors, Consultants, Database Support, Media Relations, Editor, Space	154,528	421,591	685,259	1,236,717	1,034,785	740,024	435,959	469,157	270,000
Staff Costs NARA	357,791	620,434	829,190	826,252	801,644	662,514	625,980	727,345	762,375
Other Costs									
Supplies/Equip	1,233	43,796	1,200	1,200	1,200	1,200	1,200	1,200	1,200
Meeting space, clearances		4,597	8,500	10,500	7,383	10,000	5,000	3,000	
Travel	22,678	30,263	70,000	65,700	40,236	24,000	24,000	24,000	15,000
Printing								15,000	20,000
TOTAL	536,230	1,120,681	1,594,149	2,140,369	1,885,248	1,437,738	1,092,139	1,239,702	1,068,575
GRAND TOTAL									**$12,114,831**

*Full year support staff costs included for necessary follow up work

. . .

72. This issue is discussed in the CIA section of chapter 5.

73. See CIA section in chapter 5 for more on this topic.

5. Agency Implementation of the Acts

From a universe of 620 million pages, U.S. Government agencies screened over 100 million pages for relevance under the Nazi War Crimes Disclosure Act and screened over 17 million pages under the Japanese Imperial Government Disclosure Act. Only a small percentage of these screened pages were found to be responsive to the Disclosure Acts: nearly 8.5 million pages of documents were relevant to the NWCDA, and over 142,000 pages were relevant to the JIGDA. While the vast majority of relevant pages were subsequently declassified and released to the public, some were not (see figures 9 and 10, next page).

It is important to note here that of the 8.5 million pages released as containing records relevant to the Disclosure Acts, only a small portion relate directly to war crimes. These relevant war crimes records are often found among large groups of non-relevant records kept in the same files. In most cases, the files have been kept together and opened under the Disclosure Acts to preserve their integrity.

Agencies spent an estimated $17 million to implement the acts (see table 2).

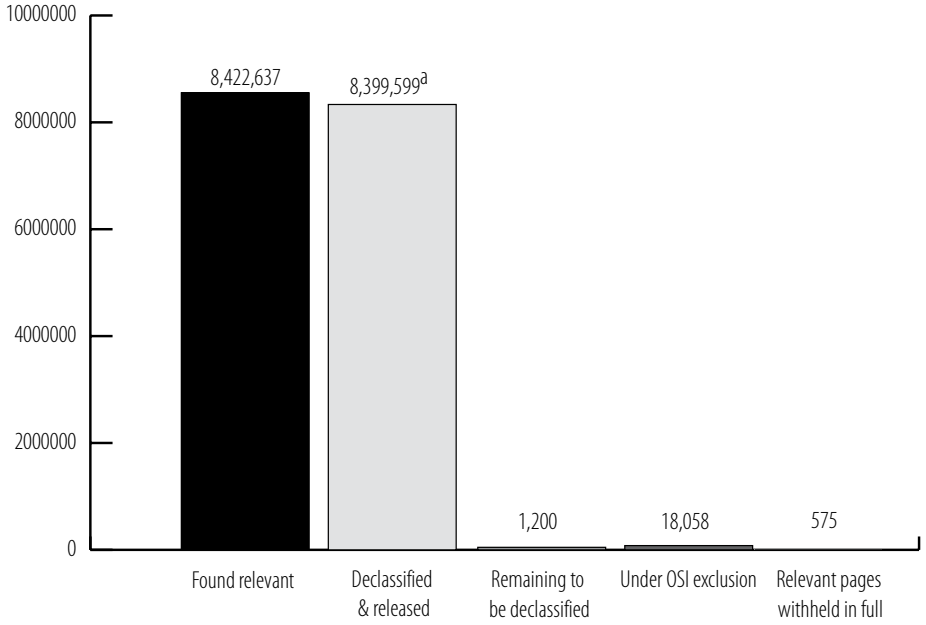
The remainder of this chapter looks at each agency's effort to comply with the Disclosure Acts.

Table 2. Cost of implementing NWCDA and JIGDA, by agency

Agency	Cost
CIA	$3,100,000*
Army	$1,886,000
Navy	$100,000
Air Force	$60,000
JCS	$18,000
NSA	$2,103,000
DIA	$51,000
DOJ (Civil, Criminal, incl. OSI and INS)	$1,650,575
Pardon Attorney	$1,000
FED	$5,000
FBI	$5,800,000
NARA	$1,452,000
NSC	$3,000
State	$939,000
Treasury	$24,000
TOTAL	**$17,192,575**

*estimate based on personnel hours

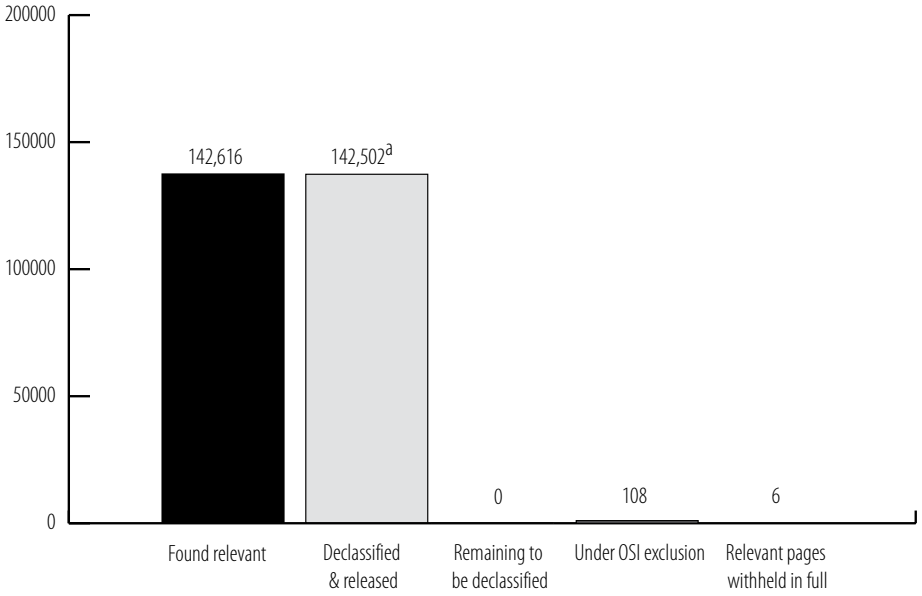
Figure 9. NWCDA summary, March 2007



SOURCE: March 2007 IWG statistical report.

[a]Figure includes pages in files that were released in full to preserve file integrity. Only a small number of pages in these files contains relevant war crimes documentation.

Figure 10. JIGDA summary, March 2007



SOURCE: March 2007 IWG statistical report.

[a]Figure includes pages in files that were released in full to preserve file integrity. Only a small number of pages in these files contains relevant war crimes documentation.

Central Intelligence Agency

Table 3. CIA declassification summary (number of pages)

	Screened	Found relevant	Declassified & released	Withheld in full	Under OSI exclusion
NWCDA (CIA-era)	2,950,000	114,465	109,200	265	1795
NWCDA (OSS-era)	1,200,000	1,200,000	1,200,000	0	0
JIGDA	50,000	5,000	5,000	0	0

SOURCE: March 2007 IWG statistical report.

Search Strategies

The CIA's declassification effort encompassed records from two different periods: its OSS-era (wartime and the immediate postwar period), and its CIA-era (post-1947). The agency searched, reviewed, and released its OSS-era holdings differently from its CIA-era records, with dramatically different results. Ultimately, the IWG convinced the CIA to be forthcoming to an unprecedented extent in releasing information on CIA-era sources, methods, and operations. Given the agency's longstanding policy of withholding such information, its release of Cold War-era materials related to U.S. contacts with war criminals was significant both historically and as a matter of public policy. Major issues regarding the CIA's implementation of the acts are discussed below.

OSS Records

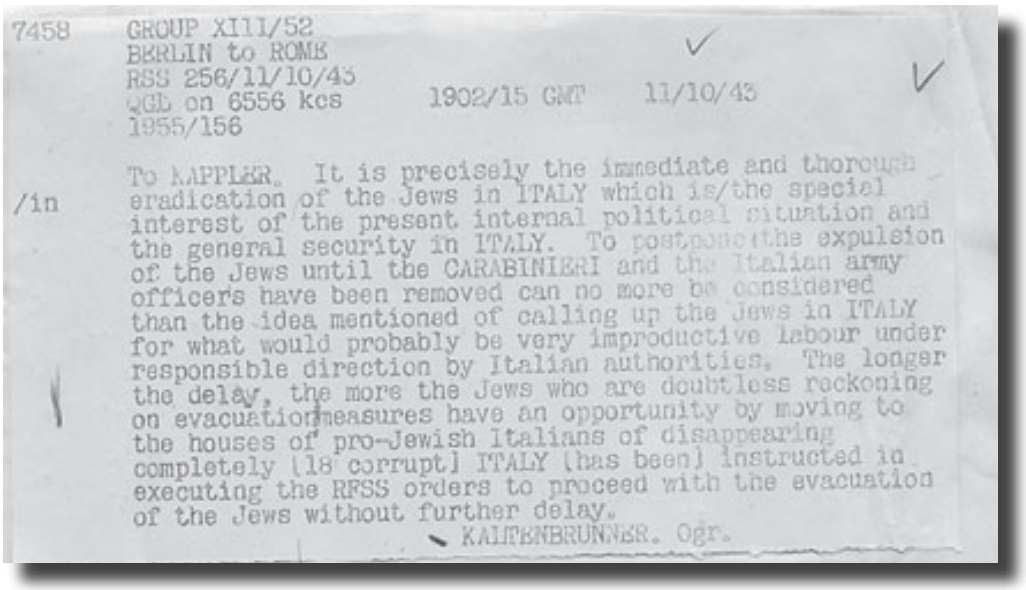
A five-person CIA team conducted a page-by-page review of 1.2 million pages of OSS records that had been previously accessioned into the National Archives but had remained classified. Initially, the CIA considered about 10,000 of these pages to be relevant, but the IWG persuaded the agency to expand its definition of relevancy regarding these records. The agency opened its OSS records in their entirety, retaining the integrity of the files as they had been created by the OSS and administered by the agency. The CIA consulted with foreign governments as needed to clarify the sensitivity of foreign government information, suspending its usual practice of automatically closing materials that related to, were received from, or contained references to foreign intelligence services. As a result, the CIA opened a vast archive of OSS records related to all aspects of intelligence operations during the war, including some important new information on the Holocaust, such as the intercepted and decoded message in figure 12.

CIA-era Records

The agency initially used the 60,000 Names List and the IWG Term List to search electronic and manual indices for records likely to contain responsive material. Historians and staff from the CIA and from the IWG provided additional names and search terms, and other names and terms were identified through interviews with former CIA and OSS personnel who were actively involved with U.S. intelligence operations during and immediately after World War II. Other than the OSS records (discussed below), the records of the Directorate of Operations, the Directorate of Intelligence, and the CIA History Staff contained the most significant relevant documentation.

Based on the results of these searches, the CIA copied all documents in the full original files on the named individuals (name files) or the subjects (subject files). Any other documents related to these individuals or subjects that were located were added to these files. The agency then executed a line-by-line declassification review of these files. Some of these files contained information that the agency considered directly responsive to the Disclosure Acts. Other files contained information that the agency considered

Figure 11. British share decrypts with OSS



7458 GROUP XIII/52
BERLIN to ROME
RSS 256/11/10/43
QGb on 6556 kcs 1902/15 GMT 11/10/43
1955/156

/in To KAPPLER. It is precisely the immediate and thorough eradication of the Jews in ITALY which is/the special interest of the present internal political situation and the general security in ITALY. To postpone the expulsion of the Jews until the CARABINIERI and the Italian army officers have been removed can no more be considered than the idea mentioned of calling up the Jews in ITALY for what would probably be very improductive labour under responsible direction by Italian authorities. The longer the delay, the more the Jews who are doubtless reckoning on evacuation measures have an opportunity by moving to the houses of pro-Jewish Italians of disappearing completely [18 corrupt] ITALY [has been] instructed in executing the RFSS orders to proceed with the evacuation of the Jews without further delay.
KALTENBRUNNER. Ogr.

SOURCE: Records of the Office of Strategic Services, RG 226, Entry 122, Misc. X-2 files, Box 1, Folder 5–Italian Decodes.

not responsive to, but related to, the acts, and which it reviewed for release because they were historically significant, specifying that any release was a matter of discretion not statutory obligation.

The CIA conducted additional searches throughout the life of the project based on leads from the material that they were reviewing and in response to specific requests from IWG staff and historians.

Japanese Records

Since the U.S. military services were the primary agent in the Pacific and Asia during and immediately after the war, OSS and CIA documentation on Japanese war crimes is relatively small. The CIA conducted its searches for Japanese materials in 2001 initially using the 66-page IWG keyword list. It screened approximately 300,000 pages. The CIA declassified and released four Japanese name files and three Japanese subject files, totaling 782 pages.

While the IWG had never expected any agency's search to yield as many Japanese-related files as German ones, it nevertheless expected the CIA's search to produce files on individuals of particular interest, who were prominent in the postwar era. The IWG therefore asked the agency to search for documents related to 45 individuals likely to be in its files. These requests concerned individuals who were suspects or convicted war criminals and who later became important leaders in Japanese government, politics, and industry.

The IWG assumed that while such postwar files would likely not contain specific war crimes information, they would report on any activities of these former war criminals with U.S. government officials in Japan. The CIA requested that the IWG provide available biographic information (e.g., date-of-birth) on the 45 named individuals to assist in searching their record systems and identifying documents. The IWG staff provided this information in 2003 and the CIA conducted the requisite searches. The CIA delivered an additional seventeen files on prominent Japanese war criminals and suspects in 2005. The files, which are not voluminous and contain notable time gaps between documents, reflect the information available for collection at the time. The CIA has assured the IWG that if any additional material is located, it will be declassified and released to NARA.

CIA Compliance with the Acts

As the agency whose reluctance to release materials on U.S. Government postwar relationships with Nazis had occasioned the Disclosure Acts, the CIA received the IWG's most intense attention, particularly from the IWG public members. That attention resulted in frequent exchanges with the agency and several meetings with the Director of Central Intelligence in which the IWG set forth its position that the Disclosure Acts required greater disclosure than the agency was prone to provide. As a result of arduous negotiations between the CIA and the IWG public members, staff, and historians, and the involvement of Members of Congress, the CIA was persuaded, particularly after the final two-year extension of the acts in February 2005, to be forthcoming to an unprecedented extent in release of information on sources, methods, and operations.

In implementing the Disclosure Acts, the CIA was challenged to balance the statutes' call for unprecedented openness with the agency's statutory obligation to protect intelligence sources and methods. The Disclosure Acts required the agency to declassify types of information that it had historically been allowed to protect (see figure 12). The IWG pressed the CIA—as it pressed all agencies—to implement the act fully.

From early in the project, the CIA worked closely with IWG historians and staff to identify names and topics that might yield files relevant to the Disclosure Acts. The CIA gave appropriately cleared members of the IWG staff, the audit team, and the historians access to all materials selected and copied as potentially relevant. But beginning in the spring of 2001, the CIA grew less likely to accept the historians' definition of what information was relevant. Disagreements between the IWG and the agency over exactly what the CIA was obligated to disclose under the acts centered on three issues: (1) what constituted a relevant file, (2) whether postwar materials that touched on sources and methods were to be released, and (3) whether the acts required the transfer to the National Archives of original, intact files. These issues are discussed below.

Establishing Relevancy Criteria

Until early 2005, the CIA searched and reviewed its own records using one of the narrowest definitions of relevancy applied by any agency. The CIA reported to the IWG in September 2002, "No challenge has been greater for CIA throughout this effort than to establish relevancy guidelines that comply with the statute and with the broader IWG interpretation on the one hand and that appropriately protect agency equities on the other."[74] At the beginning, the CIA Office of General Counsel (OGC) played a major role in developing relevancy guidelines pursuant to the acts. However, some members of the IWG pressed the CIA for a more expansive view of materials covered by the Disclosure Acts, a view more compatible with initial IWG and NSC guidance to the agencies. The CIA disagreed with the IWG's interpretation of the statutes, and continued to follow the guidance of their Office of General Counsel. The IWG subcommittee and staff objected and discussed the issue of relevancy with the CIA several times during this declassification effort.

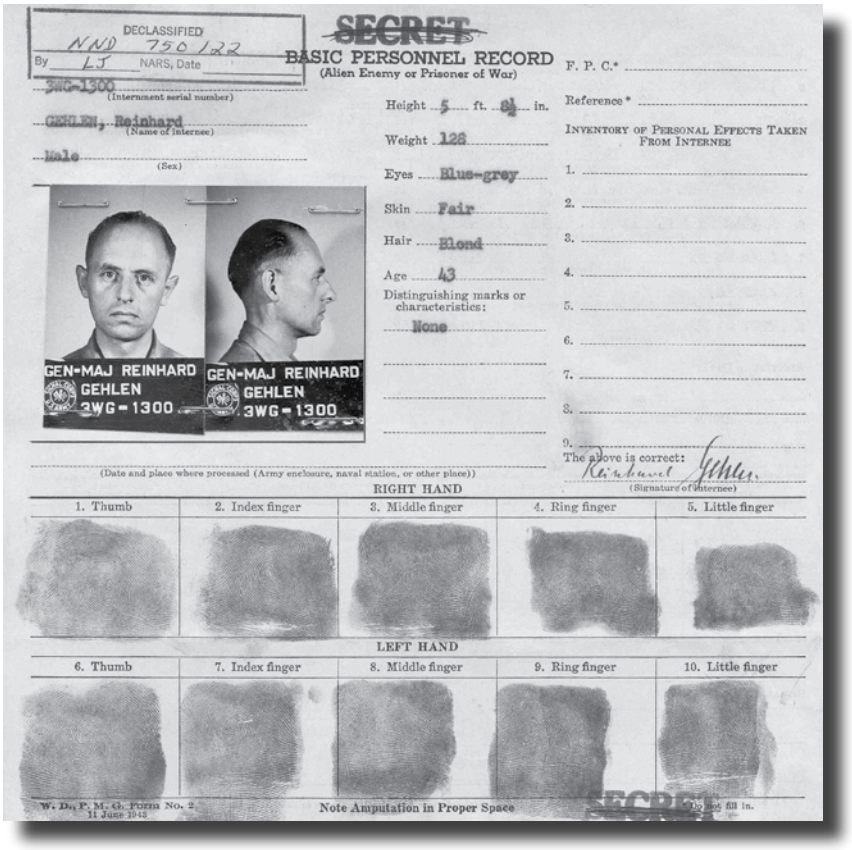
Until February 2005, the CIA maintained that files were subject to the acts only if they contained either direct information about war crimes or information suggesting that there were grounds to believe that the subject was involved in war crimes, acts of persecution, or looting. OGC granted that information from files not meeting this standard of relevance to the acts could nevertheless be released "as a matter of discretion." When a file was being released pursuant to the acts, most information it contained about an individual's postwar operational activities would not be released because the Director of Central In-

74. See appendix 10, David P. Holmes to Steven Garfinkel, "CIA response to IWG report questions," memorandum, September 20, 2002.

Figure 12. The Gehlen files

In an October 2000 court filing in the Freedom of Information Act case *Oglesby v. Army*, the CIA acknowledged that it had maintained an intelligence relationship with, and held records related to, former German General Reinhard Gehlen. While these files had been exempted from release under FOIA (complying with the Director of Central Intelligence's obligation to protect intelligence sources and methods), the CIA pledged to acknowledge the intelligence relationship with General Gehlen in records processed for release under the Disclosure Act. The CIA's announcement marked its first acknowledgment that it had any relationship with Gehlen.

Although Gehlen is not considered a Nazi war criminal, he had served as Hitler's senior military intelligence officer on the Eastern Front. After the war, he became a U.S. intelligence resource, initially for the Army, and later for the CIA. His extensive network, known as the Gehlen Organization, included operatives and agents with Nazi, collaborationist, and war criminal backgrounds. The Organization was the foundation of the West German intelligence service, the BND. Gehlen's network purportedly received millions in U.S. funding.


DECLASSIFIED
NND 750122
By LJ NARS, Date

SECRET

BASIC PERSONNEL RECORD
(Alien Enemy or Prisoner of War)

F. P. C.* .....

3WG-1300
(Internment serial number)

GEHLEN, Reinhard
(Name of internee)

Male
(Sex)

Height 5 ft. 9½ in.
Weight 126
Eyes Blue-grey
Skin Fair
Hair Blond
Age 43
Distinguishing marks or characteristics:
None

Reference * .....

INVENTORY OF PERSONAL EFFECTS TAKEN FROM INTERNEE

1. .....
2. .....
3. .....
4. .....
5. .....
6. .....
7. .....
8. .....
9. .....

GEN-MAJ REINHARD GEHLEN 3WG-1300

GEN-MAJ REINHARD GEHLEN 3WG-1300

(Date and place where processed (Army enclosure, naval station, or other place))

The above is correct:
Reinhard Gehlen
(Signature of internee)

RIGHT HAND

1. Thumb	2. Index finger	3. Middle finger	4. Ring finger	5. Little finger

LEFT HAND

6. Thumb	7. Index finger	8. Middle finger	9. Ring finger	10. Little finger

W. D., F. M. G. FORM No. 2
11 June 1942

Note Amputation in Proper Space

Do not fill in.

Reinhard Gehlen's Personnel Record, created when he was interrogated by the U.S. Army as a POW in August 1945 (NA, RG 238, Entry 160, Interrogation Records, microfilm publication M 1270, Roll 24, Gehlen, Reinhard, Box 26.)

The CIA approved the release of the 2,100-page Army Gehlen file, and in addition released nearly 2,100 pages of materials relating to Gehlen from its own files as well as files on many of Gehlen's personnel and agents—including the operational information in all of these files. For more on Gehlen, see Timothy Naftali, "Reinhard Gehlen and the United States," Richard Breitman et al., *U.S. Intelligence and the Nazis* (Washington, DC: National Archives Trust Fund for the Nazi War Crimes and Japanese Imperial Government Records Interagency Working Group, 2004).

telligence invoked the Disclosure Acts' sources and methods exemption. When a file was being released as a matter of discretion, such nonspecific war crimes information was not released because it was considered not relevant to the acts.

Nevertheless, in accordance with these restrictive guidelines, the CIA declassified and released approximately 50,000 pages of CIA documents in 775 name files and 36 subject files. According to the CIA, more than half of these files did not contain information about war crimes but were declassified and released as a matter of discretion. By late 2004, the CIA contended that it was virtually finished and that no information on war crimes and no relevant information on war criminals had been withheld from release.

The CIA indicated that the documents withheld from release in these files pursuant to the sources and methods exemption in the NWCDA would be addressed in a classified memorandum to the IWG and appropriate Congressional committees.

Included in the 775 name files declassified and released was a group of 214 files on SS officers that the CIA was initially reluctant to release at all because these files contained no explicit information about war crimes. However, the IWG contended that even though no specific war crimes were mentioned in the files, individuals named in the files had been members of organizations (most often the SS) declared to be criminal by the International Military Tribunal at Nuremberg. After a protracted dispute, the agency informed the IWG that it would review all 214 files and would release all information that did not jeopardize intelligence sources and methods, and that it would acknowledge intelligence relationships (if such relationships existed) only after the IWG provided evidence of the individual's specific culpability for war crimes, beyond membership in a criminal organization. This requirement forced OSI, the IWG staff, and IWG historians to comb the microfilmed German SS personnel files and CIC records held by the National Archives and the records of other agencies for persuasive evidence on the criminality of each individual.

Protection of Sources and Methods

During the CIA's first year of implementing the Nazi War Crimes Disclosure Act, the IWG and the agency struggled to agree on what type of information could be legitimately withheld under the act. The CIA's initial approach was to use standards that it normally applied to Freedom of Information Act requests, which is to say the agency did not adjust its review process to meet the more liberal requirements of the Disclosure Acts. The IWG objected to the CIA's approach as too restrictive. The resulting uncertainty about what could be legitimately withheld under the act delayed the first release of files, those on 22 of the most notorious Nazis.

The IWG devoted its April 11, 2000, meeting to reaching agreement with the CIA on declassification review standards. The IWG cited the NWCDA statutory prohibition against invoking the blanket protection of operational files under the National Security Act. The IWG and the agency reached an agreement, largely pertaining to the use of substitute language for redacted information, which was codified in an April 14, 2000, guidance memorandum.[75]

However, in its September 2002 progress report to the IWG, the agency asserted the following:

> The CIA has a statutory obligation to protect sources and methods. This obligation underlies all decisions made with respect to the release of documents. Moreover, the need to protect sources and methods is not only a statutory obligation, but is also a principle central to the successful conduct of CIA's business. Most importantly, the need to maintain such protection is not attenuated by time. It is for this reason that we have been so careful in our release decisions.[76]

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75. See appendix 11 for the full text of the April 14, 2000, memorandum.

76. Appendix 10.

Before February 2005, the CIA's practice of withholding specific information about sources, methods, and intelligence relationships, no matter how old the information, was mitigated somewhat by its agreement to release very general information about operational matters when a file contained information about known war criminals. In some instances, the CIA was willing to provide substitute language for withheld information. The agency also consulted with foreign governments to negotiate the release of information concerning wartime relationships and shared intelligence, which was particularly fruitful concerning information released by the CIA on Reinhard Gehlen and the German Secret Service (Bundesnachrichtendienst). The locations of most CIA stations abroad, operational information, and the names of suspect, but unproven, war criminal assets were not released.

Transferring Records to NARA

The CIA transferred no "original" (that is, record copy) CIA-era files to NARA under the Disclosure Acts. (The general transfer of all historically valuable non-current CIA records to NARA under the Federal Records Act is a matter of ongoing negotiation between the agencies.) To make records publicly available, CIA reviewed copies of the name and subject files. Each of these files consists of copies of all documents in the full original file. Any other documents related to these individuals or subjects that were located were added to these files. If the documents were determined to be relevant or were to be released as a matter of discretion, CIA analysts then reviewed them for declassification. Only after the name and subject files were declassified did the CIA transfer copies of the documents to the National Archives. By releasing files in this manner, the CIA protected information about the nature and structure of its filing system.

February 2005: A Turning Point

The Disclosure Acts were extended twice, primarily to persuade the CIA to follow a release policy more aligned with IWG guidance and the implementation practices of other major agencies. In January 2004, Congress extended JIGDA for one year, but the results of that extension were not entirely satisfactory to the IWG. Therefore, at the behest of the IWG public members and with the assistance of the Congressional sponsors of the legislation, Senator Mike DeWine and Representative Carolyn Maloney, in February 2005 Congress extended JIGDA for two more years with the understanding that the CIA would revisit and revise its positions on relevance and declassification.

The CIA's renewed declassification effort resulted in much broader releases, with far fewer redactions in partially released documents, and with no documents remaining wholly classified. More specifically in February 2005, CIA agreed to:

- Re-review previously released files and declassify more material
- Declassify and release information on individuals connected to the Nazis whether war criminals or not
- Declassify and release operational project files where Nazis were involved
- Undertake additional searches that the IWG historians or CIA thought necessary

The CIA response was prodigious and dramatic. Updated versions of the previous 811 released files restored redacted information in the 47,400 pages and added 21,800 previously unreleased pages. Further, the CIA responded to the broadened searches including operational files of 1,000 new names and subjects, to produce 276 new files covering some 45,000 pages. In addition, the agency produced a lexicon/research aid containing the cryptonyms and terms in declassified agency files to assist scholars using the files.

Department of Defense – Air Force

Table 6. Air Force declassification summary (number of pages)

	Screened	Found relevant	Declassified & released	Withheld in full	Under OSI exclusion
NWCDA	6,700	0	0	0	0
JIGDA	2,300,000	1,000	1,000	0	0

SOURCE: March 2007 IWG statistical report.

Search Strategy

The Air Force initially reported that thousands of pages housed in the Federal Records Center in St. Louis, Missouri, were related to Operation Paperclip and relevant under the NWCDA. Subsequently, the Air Force and the Federal Records Center determined that these records had been mistakenly identified in the Records Center control system and, in fact, were not pertinent to the IWG effort. The Air Force discovered 32 pages relevant to the NWCDA among National Archives holdings, and these are accounted for in NARA's totals.

The Air Force did locate among its holdings at the Air Force Historical Research Agency, Maxwell Air Force Base, Alabama, a large file with references to Japanese war crimes in the Pacific Islands. This thousand-page file was declassified in full.

Department of Defense – Army

Table 4. Army declassification summary (number of pages)

	Screened	Found relevant	Declassified & released	Withheld in full	Under OSI exclusion
NWCDA	12,000,000	274,952	268,135	0	6,817
JIGDA	1,500,000	20	20	0	0

SOURCE: March 2007 IWG statistical report.

Search Strategy

The U.S. Army Total Personnel Command (PERSCOM) tasked all Army commands to respond to the acts; however, it was clear that the majority of Army records related to Nazi and Japanese war crimes was already in the National Archives. Over many years, the Army had transferred to NARA much of its World War II combat and operational documentation. Most of the documents that were classified when they arrived at the National Archives were declassified after their transfer. The majority of responsive records remaining in Army custody were classified intelligence and counterintelligence records at the Intelligence and Security Command (INSCOM) Investigative Records Repository (IRR) at Fort Meade, Maryland. Consequently, the Army focused its efforts on the holdings of the IRR. NARA reviewed, declassified, and processed Army records already in its holdings.[77]

Investigative Records Repository

IRR files generally concerned three topics: (1) foreign personnel and organizations, which were the majority of responsive records; (2) intelligence and counterintelligence sources; and (3) counterintelligence security investigations. Most IRR dossiers originated with Army Counterintelligence Corps (CIC) units, especially those in Germany and Austria following the war. The Army CIC created records containing detailed intelligence and counterintelligence information gathered during missions to support Allied efforts to apprehend war criminals and to counter Soviet espionage as the Cold War began. It also conducted background investigations of individuals who applied to immigrate to the United States under the Displaced Persons or Refugee Relief Acts. In later years, the OSI used IRR dossiers in its Nazi-hunting investigations.[78]

Among the IRR's holdings, the greatest number of records potentially relevant to the Disclosure Acts were those stored on more than 13,000 reels of 35mm microfilm, which contained nearly 1.3 million files originally filmed by the Army CIC in Europe after World War II, as well as in some 460,000 individual paper files. All these records had to be searched to identify those that met IWG criteria. The sheer volume of the Army CIC dossiers, combined with the very poor quality of the microfilm—the only surviving record of a majority of the dossiers—made this a complex and challenging undertaking.

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77. For information on the Army's special activities and intelligence records at the National Archives that remained classified at the time of the passage of the acts see the NARA section of this chapter.

78. More than 8,000 of these dossiers were already in the custody of the National Archives at the time the IWG came into being. Some of these files were declassified under the FOIA, and many still classified became subject to review under the Disclosure Acts. For more background on the Army CIC, see chapter 2.

Army Files at the National Archives

To respond to the 1995 Executive Order 12958, the Army created the Army Declassification Activity (ADA) to review the 270 million pages subject to automatic declassification on December 31, 2006. The ADA also began to implement the Disclosure Acts, even though at a December 1999 meeting of the IWG, the Army said that it could not simultaneously comply with both the Executive Order and the Disclosure Acts without additional funding.[79] A related concern for the IWG was that ADA's initial approach to declassification, though allowed under the Executive Order, was incompatible with IWG standards. Under the Executive Order, the ADA could withhold an entire file if it contained a single classified item. The IWG, in contrast, determined that including as much material as possible by redacting sensitive information on a line-by-line basis was most responsive to the law.

To resolve this impasse, the IWG approached the Assistant Secretary of the Army to work out a solution. As result, in the spring of 2000 the IWG and the DOD agreed that National Archives staff would review Army records held by the National Archives. The DOD gave the National Archives the authority to review potentially relevant files of the armed forces, as well as armed forces equities in other agency files, to determine their relevance and, if relevant, to review them for declassification under the broad release authority of the NWCDA.

The large volume of Army classified archival records at NARA meant that this task continued throughout most of the remaining life of the IWG. Information concerning the nature and content of these archival records is found in the NARA section of this chapter.

Japanese Documents

The few Army files responsive to the JIGDA were among those that had already been transferred to the National Archives and declassified. The search and review of remaining records took only two weeks.

However, a major item of Congressional inquiry remains outstanding and only partially answered by the Army and the Department of Defense. When Senator Dianne Feinstein introduced the act in the Senate, she included in the record portions of a correspondence from Professor Sheldon Harris, the author of *Factories of Death*, the well-regarded account of Japan's development and use of biological warfare agents, including human experimentation.[80] In his letter, Professor Harris recounted his frustration in attempting to gain access to materials at Dugway Proving Grounds, Utah, and Fort Detrick, Maryland, related to medical war crimes. He alleged that at least some of the documentation was subsequently moved or destroyed. The IWG asked the Army and DOD on several occasions to respond to Professor Harris's charges by producing the records in question or by giving an account of their disposition for inclusion in this record. Despite repeated requests between 2001-2006, the IWG was not provided contact with Army's records managers for Ft. Detrick, nor did Army provide the IWG with a detailed accounting of the transfer, disposal, or destruction of its Japanese biological warfare records sent to Ft. Detrick during the two decades following World War II. The Army did notify the IWG that reference files maintained by its Public Affairs office had been disposed of after Harris' visit and that other open files had been returned to Dugway Proving Grounds.

The IWG has received a statement by the Army that it "…did perform several informal inquiries into

79. Ultimately, Army provided ADA $900,000 to assist in declassification review in support of the Disclosure Acts.

80. The letter is in appendix 12.

the matter and found no corroboration of Professor Harris' allegations." Following renewed requests for additional searches, the Army notified the IWG that their searches "uncovered no evidence in support of the charge that documents related to Japanese biological warfare experiments were destroyed at Ft. Detrick. The Army concluded that all permanent records related to Japanese biological warfare experiments were transferred to NARA." (The IWG had to make a formal request to Dugway for electronic copies for its records, as the originals had been sent to the Library of Congress.)

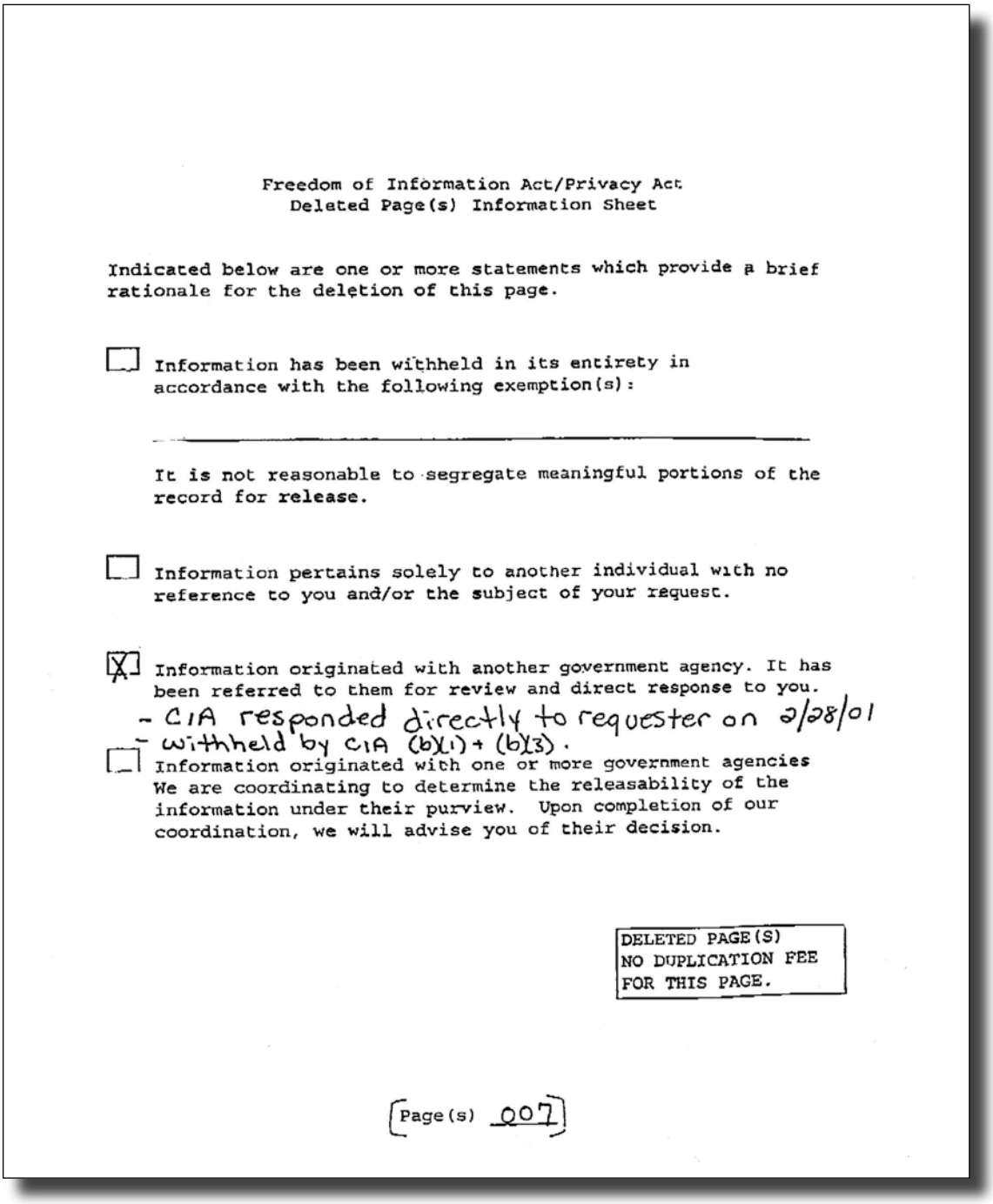
Army Compliance with the Acts

Initially, the IRR estimated that manually identifying the relevant files among the microfilm and indices would require 181 years of staff time, which did not include the time required to conduct a thorough declassification review of the files once they were found. Naturally, the IWG became concerned about IRR's ability to fulfill its obligations under the law. INSCOM commander Maj. Gen. Robert Noonan addressed the IWG's concerns at an October 1999 IWG meeting and committed INSCOM to completing declassification work on relevant IRR files within one year.

To meet Noonan's goal, the Army scanned the microfilm to create digitized images of the files, which it then searched electronically for relevant files using the 60,000 Names List. The Army then reviewed and declassified the files identified as relevant and turned them over to the National Archives as digitized images. Simultaneously, IRR staff conducted a manual review of the files that the Army still maintained in paper form.

In September 2000, the Army delivered to the National Archives a stand-alone computer server holding in excess of 15,700 digitized files. The next summer the Army delivered several thousand more digitized files and additional paper files for a total of nearly 20,000 files found in response to searches for individuals on the 60,000 Names List. While the vast majority of the files were declassified in full, the Army had redacted limited portions, primarily foreign government information or intelligence sources and methods. IWG staff arranged for agencies with equities in the Army files to review the records. After it finished digitizing its files, IRR staff undertook further searches as the IWG staff, IWG historians, and other participating agencies identified additional relevant names, projects, and operations that came to their attention during the course of their work. The IRR retained the full file of images that were scanned from the 13,000 reels of microfilm but transferred the original microfilm to the National Archives in 2002. As it became clear that additional scanned files were relevant to the war crimes disclosure acts, technical and administrative consultations between the IRR and the National Archives were initiated to accomplish the transfer of the full set of image files, consisting of 1.3 million files. These arrangements took nearly three years but were finally accomplished in October 2005, when NARA accepted full responsibility for administering the files both technically and for reference purposes. Because this very large set of records was the source file for all of the IRR's information on war criminals, IWG staff and NARA successors will continue for many years to mine the file for relevant records. Figure 13 (next page) contains an example of an Army file released under the NWCDA.

Figure 13. IWG obtains release of document withheld in FOIA request



Freedom of Information Act/Privacy Act
Deleted Page(s) Information Sheet

Indicated below are one or more statements which provide a brief rationale for the deletion of this page.

☐ Information has been withheld in its entirety in accordance with the following exemption(s):

It is not reasonable to segregate meaningful portions of the record for release.

☐ Information pertains solely to another individual with no reference to you and/or the subject of your request.

☒ Information originated with another government agency. It has been referred to them for review and direct response to you.
- CIA responded directly to requester on 2/28/01
- withheld by CIA (b)(1) + (b)(3).

☐ Information originated with one or more government agencies We are coordinating to determine the releasability of the information under their purview. Upon completion of our coordination, we will advise you of their decision.

DELETED PAGE(S)
NO DUPLICATION FEE
FOR THIS PAGE.

Page(s) 007

This Freedom of Information Act/Privacy Act Deleted Page Information Sheet shows that the CIA, which held equities in the Army document to the right, withheld the page in its entirety. In *Levy v. CIA* (1995), the court upheld CIA's action.

This June 19, 1961, memorandum to Col. Breen, 163rd MI Battalion, concerned Ljubomir Dedic. The memo reveals that Army Intelligence was interested in Father Draganovic and warned that Draganovic and other Dedic associates were highly compromised.

The paragraph was redacted because it concerns a source of information obtained from a foreign government organization relating to the activities of refugees and émigrés associated with Dedic. The redacted text contained no information on war criminals.

Father Krunoslav Draganovic was a Franciscan priest who actively served the Nazi satellite regime in Croatia, which was responsible for the deaths of 330,000–390,000 Orthodox Serbs and about 32,000 Jews. Following the war, Draganovic facilitated the escape of numerous Croatian war criminals to South America via the College of Saint Jerome in Rome. From 1959 to 1962, Father Draganovic worked as a spy for U.S. Army Intelligence against the Yugoslav regime. The CIA also kept a file on Draganovic.

The IWG asked the CIA to review the document again in light of the Nazi War Crimes Disclosure Act, which resulted in the release of the redacted memorandum.

To [redacted]
163rd MI Battalion, Verona

19 June 196

Fm: [262]

Subject: Ljubomir DEDIC, born 1 January 1923

1. The following information is classified SECRET-NOFORN, and is to be restricted to American officials only:

2. [

262

]

3. Specifically, Subject has received letters from one fnu KUSAN in London, who indicates he (Kusan) is in written contact with colleagues in the AFL/CIO. Subject also received and sent letters to Luzia RUKAVINA, secretary of SOHDE, and received letters from SOHDE (or UHNJ) President Andrija ILIC. A letter was received by Subject from Branko CRLOVIC, living in Eislinger, West Germany, specifically telling Subject to refrain from mentioning true names in his correspondence. Letters were received by Subject from Father DRAGANOVIC. In one letter written by Subject he accused the Austrian authorities of not giving Yugoslav refugees proper treatment. Subject received a letter from one Delov PANCE, living in Salzburg, Ignaz Harrerstrasse 2, in which PANCE specifically offered to collect intelligence on Yugoslavia for Subject. All of the above letters were dated within the last six months.

4. We are sending you this information because you have at one time or another had an interest in one or more of the people mentioned above. The degree of compromise which is now known to exist not only in Subject but in his circle of correspondents, would dictate extreme caution, if not outright cessation, of any contact by your organization with these people. Naturally we leave specific action in this regard to you.

5. Unfortunately [262] the letters could not be retained [262] only had an opportunity to read them on the spot. [262] The correspondence contained no allegation that any of the correspondents have or had connection with American intelligence. However the subversive nature of the political activity engaged in by Subject and his confreres is a sensitive subject to [262], who will probably continue to monitor this activity closely for an indefinite period.

[redacted]

007 [262]

[redacted] NOFORN

Declassified and Approved for Release
by the Central Intelligence Agency
Date: 2002

Department of Defense – National Security Agency

Table 7. NSA declassification summary (number of pages)

	Screened	Found relevant	Declassified & released	Withheld in full	Under OSI exclusion
NWCDA	5,996,000	4,574	4,537	36	1
JIGDA	3,174,949	2,799	2,799	0	0

SOURCE: March 2007 IWG statistical report.

Search Strategy

The NSA was created in 1952 to consolidate the communications intelligence activities of the various U.S. Armed Services. During World War II, one of the Allies' most potent skills proved to be intercepting messages and breaking enemy codes. After the war, the collection, translation, and analysis of worldwide communications produced significant NSA holdings of classified intelligence records. In an unprecedented effort, NSA undertook a full examination of these records in response to the Disclosure Acts.

The primary record holdings in NSA custody consist of message files on paper, microfilm, and, more recently, in electronic format. NSA reviewed record indices and finding aids to locate files that potentially contained information on war crimes and war criminals. In addition, NSA holds collateral intelligence information, generally received from other agencies, which it also searched. NSA searched its German-related information before turning to its Japanese-related records. The entire process took over three years.

Initially, NSA's search strategy focused on running the 60,000 Names List, IWG search terms, and several hundred added names and subjects against some 30 million electronic communications records dating from 1967–1998. When an apparent match was made with one of the search terms, a copy of the document was printed, and an NSA analyst examined the communication to determine if it held information that was relevant under the acts.

Following its search of electronic records, NSA reviewed some 20 million pages of paper copies of intercepted messages and communications. Of these, over 3 million pages covering many different message series were identified as being potentially relevant. These records, whose dates ranged from 1930–1992, were searched page-by-page twice to identify possibly relevant messages. As with NSA's electronic files, each potentially relevant intercept was printed, and an NSA analyst examined the document to determine its relevancy.

NSA also searched 2,724,000 pages of microfilm-based records dating from 1930–1960, and 432,000 pages of microfiche-based records dating from 1960–1970. Again, each image was examined on a page-by-page basis and potentially relevant messages were printed. An NSA analyst then made a relevancy determination.

NSA Compliance with the Acts

Most of NSA's printed selections were eliminated when the match to a search term or name was discovered to be not about a war criminal or war crime. For example, the search may have uncovered a person with the same name as a war criminal.

After responsive documents were identified, NSA determined what kinds of information in an intercepted message could be declassified and what remained sensitive. Initial attempts to create redacted releases proved unsatisfactory both to NSA and to the IWG because the redaction of sensitive information left the messages incomprehensible. By agreement, paraphrases provided a means to extract the relevant information while allowing the agency to protect cryptographic details. The NSA analysts and the IWG audit team worked closely to assure that the proposed paraphrases provided an accurate but unclassified ren-

dition of the intercepts.

In one instance, the DOJ/OSI member and public members objected that a proposed NSA paraphrase was insufficiently informative and could be misleading. NSA declined to make any changes, and as a result, neither the document in question nor any paraphrase of it was released.

Department of Defense – Navy

Table 5. Navy declassification summary (number of pages)

	Screened	Found relevant	Declassified & released	Withheld in full	Under OSI exclusion
NWCDA	95,000	0	0	0	0
JIGDA	1,201,096	1,096	1,096	0	0

SOURCE: March 2007 IWG statistical report.

Search Strategy

The Navy's Declassification Office, using IWG keywords and names, queried the Department of the Navy Declassification Database and other Navy databases to identify relevant records among its classified records. These databases include records of the Chief of Naval Operations, Secretary of the Navy, Naval Criminal Investigative Service, Office of Naval Intelligence, and many other programs and components.

The Navy's Declassification Office of the Naval Criminal Investigation Service (NCIS) reported that it possessed 287,000 pages that were potentially relevant to the NWCDA. Ultimately, however, NCIS determined that none of these records was responsive. (The files related to communists in the early postwar period rather than to Nazis.)

To locate records potentially relevant to the JIGDA, the Navy used lists of terms supplied by the IWG to search its holdings in Navy offices, holding areas, the Naval Historical Center in the Washington Navy Yard, Federal Records Center, and the National Archives. Navy searches of other repositories and the Federal Records Center failed to yield previously undiscovered relevant records. Some of these searches, however, turned up duplicate copies of Allied Translator and Interpreter Section reports and other such documents long ago declassified and available at the National Archives. Some relevant Naval documentation in the custody of the National Archives was declassified under the DOD declassification authority given to the National Archives for the IWG effort.

A small amount of classified, relevant material was located among records that the Navy had already transferred to the National Archives. These documents are reported in the National Archives section of this chapter.

Department of Justice – Criminal and Civil Divisions

Table 8. DOJ Criminal and Civil Divisions declassification summary (number of pages)

	Screened	Found relevant	Declassified & released	Withheld in full	Under OSI exclusion
NWCDA					
Civil	207,000	10,000	10,000	0	0
Criminal	1,641,300	20,000	20,000	0	0
JIGDA	1,641,300	N/A	N/A	N/A	N/A

SOURCE: March 2007 IWG statistical report.

Search Strategy

DOJ Criminal and Civil Divisions both used the 60,000 Names Lists and the list of IWG furnished terms, operation names, and code words to search records stored in the Washington National Records Center and in their offices. The results produced records related to the Hundred Persons Act as well as subject files on investigative topics. The vast majority of Hundred Persons Act files related to Eastern Europeans suspected of having been communists. DOJ transferred these files under the acts; however, they contain very few records related to former Nazis. Totals in table 8 overstate the war crimes content.

Department of Justice – Immigration and Naturalization Service (U.S. Citizenship and Immigration Services)

Table 9. INS declassification summary (number of pages)

	Screened	Found relevant	Declassified & released	Withheld in full	Under OSI exclusion
NWCDA	4,281,000	3,000	18,000 [a]	0	. . . [a]
JIGDA	N/A	N/A	N/A	N/A	N/A

SOURCE: March 2007 IWG statistical report.

[a]Processing and review by OSI to be completed.

Search Strategy

In 1999, the INS began to search its extensive holdings housed throughout the country using the 60,000 Names List. Because the INS does not have original classification authority, it projected that its search would produce a very small volume of documents. Its relevant files would include classified documents received by the Service from other agencies, as well as INS documents that contained derivative classifications. After searching for nearly two years, INS had located no relevant classified files.

The IWG remained interested in the search for INS files after the INS was moved from DOJ into the Department of Homeland Security and renamed the U.S. Citizenship and Immigration Services (USCIS). OSI identified 36 classified INS files on individuals whom it had investigated over the years. Some of the files were still being used by OSI, and, with the information provided by OSI, USCIS was able to locate all but one of the rest. As OSI had a photocopy of the missing file in its records, it was able to supply a copy to USCIS. OSI returned the borrowed files to USCIS as it ceased to have a need for them. Ultimately, all of the files were declassified and transferred to the National Archives in accordance with the acts, although many remain closed because they relate to OSI cases.

Department of Justice – OSI

Among all U.S. Government agencies, the Office of Special Investigations is the only one whose records pertain almost exclusively to Nazi criminals and their crimes. However, because of the nature of OSI's mission, the Disclosure Acts expressly excluded OSI's records. Records of other agencies in which OSI has an interest were also excluded from release under the acts in order to protect OSI's ongoing investigations and prosecutions.

The laws state that the provisions for release of declassified records "shall not apply to records (A) related to or supporting any active or inactive investigation, inquiry, or prosecution by the Office of Special Investigations of the Department of Justice; or (B) solely in the possession, custody, or control of that office."[81]

Although Provision B in the NWCDA clearly fenced off from IWG attention all records held by OSI, the DOJ/OSI member of the IWG nevertheless invited IWG historians to examine OSI's records, and such reviews did take place. OSI also discovered that it possessed the only complete existing record of the original Army and Air Force files of Arthur Rudolph and provided copies of those files to NARA for release. Similarly, after the Department of Homeland Security was unable to locate the immigration records of Tscherim Soobzokov, OSI located a photocopy of those records in its files and provided a copy.

Provision A, however, became a point of contention. The OSI took the exclusion provision to be clear in its intent, noting that while other agencies were granted *exemptions* for certain types of information, the OSI *exclusion* was the only provision of its kind in the Disclosure Acts, and that, by its express terms, it covered both active and inactive files. According to OSI's understanding, the laws meant that the IWG was not at liberty to release such records related to subjects of investigation regardless of the document's age, the agency of origin, the status of the case to which it pertained, or whether the subject of the record was living or dead.

Several IWG members, staff, and historians, and the public members in particular, objected that there were several classes of now-declassified documents whose release could not affect current OSI cases. Namely, these were documents relating to closed cases, deceased war criminals or suspects, or individuals who had never entered the United States, none of which records mentioned or was any way concerned with OSI's investigative activities. OSI countered that much of the documentation was interconnected, so that sources of information revealed in one case could be sources in other cases, for example, and that information in seemingly unrelated files could indeed affect current cases in a number of subtle but important ways. For these reasons, OSI argued, the statute expressly exclude material related to any OSI cases.

OSI interpreted the exclusion to apply to records that were from, to, or about the office or that related to individuals who were the subject of an OSI investigation, and not to records that were only nominally related to OSI investigations in that they pertained to units, events, institutions and organizations that had been part of OSI's cases. In order to insure that the exclusion did not prevent the release of records of significant public interest, the OSI Director informed the IWG early in the project that he was willing to review a limited number of statutorily excluded files with a view to waiving the exclusion. As it turned out, however, this review effort far exceeded his expectations. Of the pages that OSI identified as falling under the exclusion, the OSI Director waived 23,660. 18,125 pages remain excluded.

Before OSI could review any files for possible

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81. See section 3(b)(4) of the Nazi War Crimes Disclosure Act and Section 803(d) of the Japanese Imperial Government Disclosure Act, found in appendices 2 and 3, respectively.

waiver, it was necessary to identify which documents among the millions of pages declassified by the agencies were excluded from release. To avoid overburdening the Office by directing *all* declassified materials to OSI for review, agencies were initially instructed to mark any records that had potential OSI interest prior to transferring the records to the National Archives.[82] Unfortunately, this was not done in every case, so many potentially excludable records remained unmarked, resulting in an additional review burden for IWG, NARA, and OSI staff. OSI assigned its longest-serving historian to screen the flagged records as well as unmarked records considered likely to hold information subject to the OSI exclusion and to prepare detailed notes on them. National Archives staff treated all documents marked by the OSI historian as presumptively excluded until specifically waived, at which point they were processed for public release. The OSI Director and the OSI Chief Historian then examined the reviewing historian's notes and, in many instances, the documents themselves, to determine which records fell under the statutory exclusion and also to identify records that the Director should personally review for possible waiver.

The OSI Director principally used the following criteria to identify those records that he would consider waiving: (1) relevance to issues concerning U.S. Government and foreign government use of suspected Nazi criminals; (2) materials requested by the IWG's historians; and (3) materials containing significant new information about the Holocaust.[83]

Some IWG members and staff would have liked *all* excluded files reviewed for potential waiver, but the very large number of files, and the fact that the OSI Director felt that he alone had the experience and authority to make final decisions, rendered a general review impossible. Citing ethical requirements, the OSI Director also declined to review for waiver excluded records that pertained to: (1) defendants who prevailed in litigation brought by the DOJ, in which it was established that they did *not* participate in Nazi-sponsored crimes, (2) subjects of OSI investigations in which OSI determined that the allegations were clearly untrue; and (3) subjects of OSI investigations in which OSI was unable to find any evidence to support a reasonable suspicion that the allegation might be true.[84]

The types of materials that have been excluded varied considerably by agency. Much of the excluded material from the State Department, for example, involved cable traffic between Washington and the field that the State Department sent on OSI's behalf. The excluded State Department material often pertains to OSI's investigations and prosecutions of individual subjects. The majority of excluded FBI and Army records (many of which originated in the late 1940s and 1950s) pertain to past or present OSI subjects but not to OSI's investigation of them. The OSI maintains that such records can be particularly important to OSI's immigration and naturalization fraud prosecutions insofar as they document the extent of the U.S. Government's knowledge about a subject's wartime activities at the time of immigration or naturalization. Examples of waived files include those of well-known cases, such as Klaus Barbie, Otto von Bolschwing, and Kurt Waldheim.

According to an agreement reached between DOJ/OSI and the IWG, all documents currently being withheld because they fall under the OSI exclusion will be released once details of their release have been coordinated between the National Archives and the Department of Justice.

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82. See appendix 13 for this 12 May 2000 memorandum.

83. Memorandum, "Statutory Exclusion of OSI-Related Records Under the Two Disclosure Acts," Eli M. Rosenbaum to Steven Garfinkel, February 7, 2003, IWG Administrative Files.

84. *Ibid*.

Department of Justice – U.S. Pardon Attorney

Search Strategy

In response to the IWG, the Office of the Pardon Attorney released approximately four cubic feet (about 10,000 pages) of war crimes–related records to the National Archives. Included within this accession are a number documents pertaining to efforts to gain clemency for Tomoya Kawakita, a Japanese-American dual citizen found guilty of treason in 1948 for mistreating American POWs while he was employed as a civilian interpreter at a prison labor camp in wartime Japan. Also included in the accession is the pardon application of Iva Ikuko Toguri D'Aquino (aka Tokyo Rose), a Japanese American convicted in 1949 of treason for broadcasting Japanese propaganda during the Pacific War.

Department of State

Table 10. Department of State declassification summary (number of pages)

	Screened	Found relevant	Declassified & released	Withheld in full	Under OSI exclusion
NWCDA	6,502,500	48,889	41,317	269	7303
JIGDA	5,205,000	3,716	3,602	6	108

SOURCE: March 2007 IWG statistical report.

Search Strategy

The Department of State searched all records still in its custody likely to hold relevant documentation. The Executive Secretary of the Department sent a total of four formal tasking memoranda to all major offices and bureaus of the Department, and to embassies and other overseas posts and missions, calling first for the identification of relevant documents, and then for the actual production of documents. The tasking memoranda provided extensive written guidance and required the submission of detailed written reports on document search results. Each bureau or office was required to task its subordinate offices and overseas posts under its jurisdiction. There was extensive follow-up by telephone, written correspondence, e-mail, and telegrams to overseas posts.

The IWG and the HAP questioned the completeness of the Department's search for JIGDA documents because the tasking order requiring the search was dated only one day before the search was to be concluded. Investigating further, the IWG staff determined that State's patently impossible schedule was the result of bureaucratic delays in issuing the formal tasking. The Foreign Service posts had actually received the tasking informally several weeks prior, in time to conduct an adequate search by the due date.

The State Department also searched its State Archiving System (SAS), which contains about 25 million records, and its retired paper records. Primarily, the Department searched records dated after 1973, so the volume of records collected for initial evaluation and finally determined to be relevant under the acts was relatively small.[85] Since 1973, the SAS has served largely as an electronic repository for cable traffic between headquarters and its posts.

The State Department began its electronic records search of the SAS using broad terms such as "Nazi," "crime," and "war criminal," which it assumed would be sufficient to identify all potentially relevant records. Relevant records from among this batch were printed and processed for declassification. However, this method was discovered to be inadequate when the State Department's search of its paper records began to produce items that should have been identified in the electronic search. The State Department then decided to search its electronic files again using a test list of the names of 20 Nazis. This test revealed several hundred additional documents that were potentially relevant to the acts. Five of the individuals on the test list were selected for further analysis. This focused search on the five subjects turned up 762 documents, of which 407 were deemed relevant by the State Department's document analysts. Before this test, the Department had found only 78 of these 407 documents.

85. In accordance with Executive Order 12958 and its predecessors, the State Department had already systematically reviewed for declassification and transferred to the National Archives most of its retired files dated before 1973. In recent years the Department of State had been more aggressive than any other Cabinet-level agency in reviewing its records and transferring them to the National Archives.

The State Department considered reexamining its electronic files using the 60,000 Names List, but because the list was created from names with wartime and immediate postwar relevance, the agency decided it would not be productive to manually enter these names in order to search a database of records created nearly three decades after the war. Instead, with the consent of the IWG staff, the Department used a list of notorious Nazis and a list of 2,300 suspected war criminals known to have had encounters with the U.S. Government (principally concerning immigration and visa issues), which were considered more likely than the 60,000 Names List to yield relevant documents from among the Department's post-1972 records. This search produced approximately 20,000 potentially relevant documents. A large number of the names produced no documents, and many documents were found to be about individuals who merely had the same name as someone on the search list. The State Department eliminated the non-relevant and duplicate documents, then declassified the remaining materials and processed them for transfer to the National Archives.

The information contained in relevant files related primarily to more recent issues, such as the search for Nazi gold, the extradition and deportation of Nazi war criminals resulting from OSI cases, and worldwide investigations to verify reported sightings of Nazi war criminals. For example, the Department of State records collected and reviewed included information related to the cases of Klaus Barbie, Josef Mengele, Walter Rauff, Viorel Trifa, John Demjanjuk, Karl Linnas, and Andrija Artukovic.

State Department Compliance with the Acts

Given the relatively small volume of potentially relevant records remaining in the custody of the State Department that would need to be examined under the NWCDA and JIGDA, the IWG expected that the Department would be able to complete its work quickly. Regrettably, that was not the case.

Part of the problem lay in the statute itself. The NWCDA specifically designated the Historian of the Department of State as the Department's IWG representative. In contrast, agency heads were statutory members for all other agencies.[86] The Historian had no direct administrative or operational control over the departmental components actually managing and administering the State Department's records declassification program. Although the Historian's Office is not the Department's records management and declassification authority, it has broad expertise on historical issues, and its responsibilities include advising the Department on issues relating to the declassification, maintenance, and preservation of important historical records. The Office of the Historian was thus extensively involved in the overall discussions of how the Department of State would carry out its NWCDA responsibilities.

However, it was another element of State, the Office of Information Programs and Services (IPS), under the Assistant Secretary for Administration, that actually carried forward the records search and declassification effort. IPS, using its experienced declassification and FOIA reviewers, managed and implemented the search for relevant documents. Several State officers with extensive experience in German affairs and knowledge of the Nazi era reviewed the documents for relevancy and undertook their declassification.

Initially, this disjunction between Office of the Historian and State's declassification authority resulted in lengthy delays and confusion over the course of the Department's efforts to satisfy requirements of the acts. For example, on several occasions, the IWG and the HAP sought clarifications on matters that were not under the jurisdiction of the Historian's office but instead required the direct involvement of officials from other areas of the Department. Ultimately, this problem was overcome and the Department worked

86. The statutory members in turn named their representatives to IWG.

effectively during the latter years of the IWG effort.

Also at the beginning of the Department's declassification effort, copies of documents that State Department analysts deemed non-relevant to the Disclosure Acts were destroyed without a record. After the IWG audit team learned of this procedure, the State Department changed its practice and saved copies of documents deemed non-relevant for audit team review.

As the document search proceeded, the Department worked closely with the IWG staff, and particularly with the IWG audit team, to assure a smooth administrative effort and to enlarge and expand the substantive parameters of the document search. Extensive personal follow-up with Department of State officials, and with embassies and other overseas posts and missions, produced many relevant records that might otherwise have been overlooked. In cases in which the auditors disagreed with the State Department's determination of relevancy, or with the preliminary decision to withhold declassification of a document or a significant segment thereof, the IWG urged the Department to re-review the previously classified material and to be less restrictive in exempting further records from declassification. The Department of State was fully responsive to this request, concurred with the IWG's interpretation of the declassification standards, and re-examined previously withheld records. As a result, additional information was declassified. Some of the records that were subsequently declassified included reports of U.S. discussions with European government officials regarding compensation for Holocaust victims. Others concerned gold acquired by the Nazis that they had transferred to other countries.

Department of the Treasury

Table 11. Department of Treasury declassification summary (number of pages)

	Screened	Found relevant	Declassified & released	Withheld in full	Under OSI exclusion
NWCDA	1,400,000	430	430	0	0
JIGDA	N/A	N/A	N/A	N/A	N/A

SOURCE: March 2007 IWG statistical report.

NOTE: Treasury files possibly relevant under JIGDA are in the custody of the National Archives and are included in the Archives' figures (see table 13).

Search Strategy

The Treasury Department made a detailed search of its holdings and found that the majority of its relevant records related to compensation for stolen assets or Nazi gold. Some files related to GAO inquiries on Nazi war criminals who may have entered the United States. The Treasury Department searched for records under JIGDA, but found none that were classified.

Federal Bureau of Investigation

Table 12. FBI declassification summary (number of pages)

	Screened	Found relevant	Declassified & released	Withheld in full	Under OSI exclusion
NWCDA	3,250,186	364,919	363,015	5	1,899
JIGDA	127,085	71,485	71,485	0	0

SOURCE: March 2007 IWG statistical report.

Search Strategy

The FBI's Historical and Executive Review Unit (HERU), Records Management Division, was tasked with ensuring that the FBI complied with the Disclosure Acts. HERU's structure and organization were well suited to the task of locating relevant records in the elaborately cross-indexed FBI filing system.

In general, FBI records relate to criminal and national security investigations conducted by the Bureau. The Bureau organizes its records into numbered classifications corresponding to specific violations of law or activities, such as classification 100 (domestic security), 065 (espionage), and 105 (foreign counterintelligence).

The Bureau used its traditional investigative file search process to locate records relevant under the acts. First, in cooperation with an IWG staff archivist who had extensive experience with FBI records, HERU analysts began by reviewing classifications that promised to hold war crimes information, such as Foreign Counterintelligence, Foreign Police Matters, Foreign Military and Naval Matters, and Foreign Funds. Those classifications likely to contain relevant files were examined on a file-by-file basis to identify pages that were responsive to the acts. HERU also searched less obvious classifications, such as those with possible relevance to stolen assets.

Using the FBI's Automated Case Support System and its 65 million–card manual indices, HERU searched the selected classifications for files naming individuals in the 60,000 Names List, as well as organizations and terms specified in the Japanese keyword list, and the IWG term lists. HERU reviewed files that were created as early as 1920 and as recently as 1998. The FBI also canvassed former employees who were likely to have knowledge of FBI operations during World War II. HERU then interviewed several former Special Agents who were intimately involved in FBI wartime and postwar operations. These interviews yielded additional strategies for exploring the files. Lastly, IWG historians briefed HERU on World War II and war crimes topics. Additional IWG staff visits helped the FBI to keep its analysts fully informed on issues related to the acts and war crimes. IWG historians, using the files of other agencies, turned up some references to FBI activities, which yielded further leads.

In addition to the above strategies, HERU conducted independent research based on its initial findings. These efforts led HERU to closely examine its Project Paperclip files, which resulted in over 600 additional files being released under the individual names of German scientists.

During World War II and afterwards, most files concerning war matters were initiated at FBI Headquarters. Nevertheless, HERU canvassed FBI field offices for files relevant to the Disclosure Acts and incorporated findings from field offices into its headquarters filing system. In nearly all instances, the original FBI file was later transferred to the National Archives along with the FBI index cards for the file.

FBI Compliance with the Acts

Once the searches were completed and the files located, all files were retrieved by the FBI's Central Records System. Next, HERU staff reviewed the files for relevancy. As the primary files were being reviewed, the

FBI continued to search its holdings using additional subjects or terms.

The FBI reviewed its files using a broad definition of relevancy. If the materials in a file related even generally to German or Japanese prosecution of the war (for example, if they contained information about the German wartime economy), the file was deemed relevant under the acts. As a result, the FBI declassified hundreds of thousands of pages. Further, if an FBI file contained some relevant information, HERU attempted to declassify the entire file in order to preserve the integrity of the record.

Before declassifying a document, the FBI reviewed it twice: the initial review was subsequently confirmed by a more experienced classification expert. To protect sensitive information, HERU redacted classified text rather than withholding an entire document that contained some classified information. Pages containing sensitive information were also reviewed twice.

Before any of these files were transferred to NARA, the program manager reviewed all redacted information to determine whether any redacted material could in fact be released. IWG auditors compared all redactions and withheld documents with the originals, identifying any questionable withholdings for further review.

Of the 436,000 pages identified by HERU as relevant under the Disclosure Acts, only five full pages required continued classification. Approximately 1.5 percent of the transferred pages (6,044 relating to Nazis and 388 relating to Japan) required redaction of classified information. Over 98 percent of all redactions concerned (1) information about a confidential source or (2) information, which, if released, would impair relations between the United States and a foreign government. None of the withheld names identified a war criminal or a war crimes suspect. Other statutory bases for redactions included information related to grand jury investigations, Federal income tax data, and individual social security numbers.

The FBI initially determined that information from several foreign governments required continued protection. At the IWG's request, the FBI contacted those governments and reached agreements that allowed virtually all its foreign government information to be declassified. Only a few redactions of names or information relating to individuals associated with those governments remain.

A total of 116 pages from 24 files were deemed not relevant. These were placed in an envelope marked non-relevant and transferred to NARA with the original files in order to keep the original files intact.

Over a period of two years, the FBI made 32 shipments of relevant records to the National Archives. See figure 14 for an example of a declassified FBI record.

Figure 14. Fake passport

After the war, Walter Schellenberg, head of SD Foreign Intelligence, attempted to downplay his wartime activities. However, newly released documents help historians draw a more accurate picture. Given one year by Himmler to create an effective agency, Schellenberg overhauled and restaffed SS Foreign Intelligence—in part with former Gestapo members—and by 1943 it had a staff of 2,000. Under Schellenberg's reign, SD Foreign Intelligence figured prominently in both the formation and implementation of Nazi policy.

Newly released FBI records include the passports pictured below as well as voluminous files related to Schellenberg's intelligence and counterintelligence activities, especially interrogations on the personnel and structure of the Nazi intelligence services. Schellenberg was captured in Sweden after the war attempting to escape under a false identity, and sentenced to a six-year term for war crimes.

Presumably stolen original U.S. passport (above) used to make a forgery for Schellenberg (right). Classification 65, Serial 47826 EBF.

National Archives And Records Administration

Table 13. NARA declassification summary (number of pages)

	Screened	Found relevant	Declassified & released	Withheld in full	Under OSI exclusion
NWCDA	57,665,700[a]	7,581,408[b]	7,581,165	0	243
JIGDA	2,037,500[a]	57,500[b]	57,500	0	0

SOURCE: March 2007 IWG statistical report.

[a]Figure includes classified records that were transferred to the National Archives before the Disclosure Acts. The National Archives searched its holdings for German- and Japanese-related documents at the same time; the number of documents screened under each act is therefore an estimate.

[b]Number represents whole files, released to preserve file integrity. Only a small portion of these files includes relevant war crimes documentation.

Under the Disclosure Acts, the National Archives released whole archival file series rather than selected documents, which had a major impact on the quantity of records searched and the large number of pages declassified. It is important to understand that most of the National Archives holdings processed under the acts do not, in fact, directly touch on war crimes. However, the release of entire files that include war crimes information eliminates any question of whether relevance may have been defined too narrowly.

Search Strategy

Like every Executive Branch agency holding classified records, the National Archives was required to examine all classified records in its custody in order to identify relevant war crimes documents for declassification review and release. However, unlike other agencies, the NARA's search did not focus on its own operational records. As the legal repository for the permanently valuable records of the U.S. Government, the National Archives made a preliminary survey using lists and indices of over 300 million pages of archival records created by other agencies. These surveys focused on two bodies of records: accessioned records that had not gone through systematic declassification review, known as "unprocessed records," and classified documents that had been withheld from previously declassified record series, known as "withdrawn records." The surveys identified over 57 million pages of records requiring further examination for relevancy under the acts. The massive volume of records was then divided into three general groups, which were ranked to reflect their likelihood of containing relevant war crimes information. Processing focused on those records with the highest probabilities of containing classified war crimes information.

Unprocessed Records

As the custodian of records transferred from many different agencies, the National Archives is the heir to many types of record keeping systems. The billions of pages of individual documents held by the National Archives are generally organized just as they were created and maintained at originating agencies. As a result, the National Archives had to employ multiple approaches to search for and identify potentially relevant unprocessed records. The National Archives searched both its formal descriptive information about the records and its archival processing files. Electronic searches on unprocessed records identified the principal materials requiring further examination. Accession dossiers of recent acquisitions and discussions with archivists provided further leads on new records holdings or materials soon to be transferred. Finally, the National Archives examined guides, inventories, and finding aids to refine its search for potentially relevant sources. In general, files were deemed likely to be relevant based on subject, geographic location,

time period, and governmental units involved. Given the fact that most of the records so identified had been created before 1960, NARA either declassified them or urged their declassification by reviewing agencies because, even if they were only remotely relevant, release would correct previous negligent declassification and assure the opening of the full historical record of the period. This approach was taken in the belief that a full record will yield information and insights in the future study of war crimes that may not be immediately evident.

Withdrawn Records

The National Archives identified potentially relevant withdrawn records by searching electronic databases of classified record holdings, reviewing paper-based dossiers of all past declassification projects, and reviewing printouts that provided brief descriptions of all withdrawn documents. When withdrawn records were in any way related to war criminals, based on the known attributes of the open records from which the withdrawals had been made, and then on actual review, they were declassified. Thus, for instance, all records previously withdrawn from State Department files related to Spandau Prison (where high level Nazi war criminals were incarcerated) were automatically considered relevant and were either referred by NARA to State Department reviewers for release or were declassified by NARA using existing State Department guidelines. While all identification of withdrawn records was not as obvious as the Spandau files, as with unprocessed records, NARA attempted to err on the side of inclusion when any question of relevance was posed.

Presidential Libraries

The National Archives holds and administers all Presidential papers since the Hoover administration. Each of the Presidential Libraries conducted a search of the documents in its collections for relevant material. Libraries searched their records by subject or governmental organizations. Libraries able to conduct electronic searches (such as the Reagan Library) used likely key words as suggested by events and issues of the particular administration. For example, the Truman Library and Eisenhower Library searched for any material related to the decision not to prosecute the Emperor of Japan and other prominent Japanese officials. The Truman, Eisenhower, Kennedy, Ford, and Reagan Libraries located responsive materials.

NARA Compliance with the Acts

During its search for records, the National Archives expanded its definition of what information was relevant under the Disclosure Acts. Initially, it concentrated on records known to have direct reference to war criminals, such as Army Counterintelligence Corps files on German detainees. As the process advanced, archivists moved to include all of the OSS files, for instance, because the miscellaneous nature of such files meant they contained a wide variety of information, which often unexpectedly related to aspects of war crimes. Even general records on, say, wartime finances in Switzerland, without any reference to war crimes, could lead to details about looted Nazi assets or Nazi counterfeiting operations that supported criminal activity. Such discoveries early in the process led the National Archives to define relevancy as broadly as possible.

The National Archives approached declassification in the same expansive manner as its determination of relevancy. The declassification staff worked to release entire files and record series to maintain the archival context and file integrity of the newly released war crimes information. That is, the declassification authority derived from the Disclosure Acts was applied at the broadest level, to whole integral records series among which responsive files were discovered, rather than limiting review to individual war crimes documents. NARA urged agency declassifiers to resist the tendency to withhold intelligence information simply because certain kinds of information had traditionally been withheld. This effort produced a broad release of World War II intelligence and investigative information, which went beyond specific war crimes and war criminal documents to provide a fuller his-

torical backdrop to those narrower topics.

Declassification of records in the National Archives usually requires coordination with, and advice and assistance from, federal agencies with equities in the classified information in the documents, regardless of who created the documents. Indeed, the National Archives faced some of its most complex work in coordinating reviews of records that had multiple-agency equities. All agencies responded diligently to IWG requests for assistance with reviewing these records.

The National Archives staff also coped with the problems of releasing information that identified victims as well as perpetrators of war crimes. Some potentially sensitive personal information was contained in very recent records. NARA's General Counsel provided advice on information that could require withholding for reasons of privacy. The National Archives assumed responsibility for the privacy review of both records in its custody and of records transferred to the Archives under the Disclosure Acts.

In addition, all of the materials to be released under the Disclosure Acts had to be separately screened in whole or part for four special interests. First, NARA staff gave the immediate review priority to records of interest to the Holocaust Assets Commission, which was completing its legal mandate. Second, under specific provisions in the Disclosure Acts, the National Archives oversaw review by the DOJ/OSI of all records, deferring release of some 18,000 pages of statutorily excluded records while processing for immediate release more than 23,000 pages pursuant to waivers of the exclusion given by the DOJ/OSI member. Third, under the Kyl and Lott Amendments, the Department of Energy had to review all records to be released. Following the DOE review, the National Archives tabbed and withdrew several hundred pages from the files before public release to guard against dissemination of technical nuclear information. Finally, in compliance with the Records of Concern program instituted after the September 11 attacks, the National Archives reviewed all records touching on Japanese, German, and Allied chemical and biological warfare to prevent release of technical information on weapons of mass destruction.

Other Agencies

The **Defense Intelligence Agency, Department of Energy, Department of Commerce, United States Information Agency, Federal Reserve Board, Joint Chiefs of Staff**, and **National Aeronautics and Space Administration** were asked to examine their holdings for records that were potentially relevant under the Disclosure Acts.[87] Each of these agencies informed the IWG that it found no relevant classified records in their searches. The **National Security Council** also searched its records and found a single responsive document.

The staff of the **Federal Reserve Board** executed a thorough search of its records using the 60,000 Names List. While the Board does not have original classification authority, it occasionally receives classified documents from other agencies. The FRB reviewed over 10,000 pages in its custody, and assisted in initiating a review of records in the custody of the Federal Reserve Bank in New York. While this review produced no relevant classified records, it did result in the identification of some 3,000 pages of unclassified documents, which related to World War II-era seized assets, copies of which were transferred to the National Archives.

NASA determined early in the declassification effort that it held no relevant records in any of its office space, records holding areas, or in the Federal Records Center. A NASA official briefed the IWG in August 1999 on the agency's response to the acts and formally notified the IWG and the Archivist of the United States that any relevant classified records in the custody of the National Archives containing NASA equities were to be reviewed and declassified by NARA.

The **National Security Council** made a thorough search of its holdings using the 60,000 Names List and located only one document that was responsive to the acts. Following its declassification review, the NSC transferred to the National Archives a copy of this document, which contained minutes from an NSC meeting containing references to the Klaus Barbie affair. Since the minutes contained information on a number of non-war crimes related topics still requiring national security protection, the NSC declassified that portion of the minutes relating to Barbie and redacted the remainder. The National Archives accepted this redacted copy and released it as part of the IWG Reference Collection. Responsive classified materials created or received by the NSC that are no longer in NSC custody are among the holdings of the National Archives and its Presidential libraries, and were handled by the Archives in response to the acts.

87. NARA reviewed Joint Chiefs of Staff records in its custody.

6. Findings and Policy Recommendations

The Disclosure Acts cost the American people approximately $30 million, or about $3.50 per page, to locate, declassify, and open government records that were largely over 50 years old.[88] Was it worth it? In other words, are single-subject, targeted, locate-and-declassify projects worth the extraordinary level of effort required of government agencies and the high costs required of the American taxpayer? The IWG was deeply concerned about whether the openness that has been achieved through the release of records under the Disclosure Acts could have been reached more completely and more efficiently by another mechanism.

Openness itself is not in question. As seen in chapter 3 of this report, lack of openness was a major impetus behind the Disclosure Acts. Congressional dissatisfaction with the responsiveness of U.S. intelligence agencies to questions about their use of Nazi war criminals in postwar intelligence work, and public dissatisfaction with the lack of aggressiveness in prosecuting Japanese war criminals and holding Japan accountable roused suspicion that government cannot be trusted to tell the truth even about events well over a half century past. Some even charge that there is a concerted cover-up in progress. The IWG believes that openness to the maximum extent consistent with national security will ameliorate such suspicions. The following findings, analyses, and recommendations are offered in that spirit.

Finding 1: The opening of documentation related to war crimes required a targeted, legislatively mandated effort. The 8 million pages of largely intelligence-related material released under the Disclosure Acts had very little prospect of being released in a timely manner through routine declassification mechanisms. In fact, many of the documents released under the Disclosure Acts that are most historically valuable, particularly records of the Army Counterintelligence Corps and the Office of Strategic Services, had recently undergone systematic review under Executive Order 12958 and were not released. These documents, reviewed under Executive Order 12958 (amended by Executive Order 13292), were withheld simply because they belonged to a *category* of information normally withheld, not because their content was still sensitive or would harm national security if released. In other cases, documents were set aside for review by another agency because the agency with declassification authority was reluctant to make a decision without consultation. Similarly, FBI records released under the Disclosure Acts would not have been released as a body without the Acts because they were not subject to any regular review. They would have been released only piecemeal under scattered Freedom of Information Act requests.

Keeping records classified is the path of least resistance for agencies, and too often a rote response. Superficial declassification review often results when

88. These costs are estimates because the activities involved are not often susceptible to strict accounting and because agencies did not all report fully. CIA withheld cost information in adherence to the policy that intelligence budget information is security classified.

agencies, in panic at approaching automatic declassification deadlines, hire contractors to quickly review large bodies of materials. Those contractors find it more expeditious—not to mention beneficial for their continuing contract—to continue classification. The IWG found that systematic declassification reviews conducted by contractors generally yielded inadequate results.

The IWG concluded that the overwhelming majority of materials released under the Disclosure Acts should have been released earlier under Executive Order 12958. Had the declassification mechanisms already in place been working properly, the Disclosure Acts would not have been necessary. In an effective system, documentation 50 and 60 years old would be reviewed for declassification with the presumption that it is releasable unless its release would *demonstrably* injure the security of the nation.

Recommendation 1: Congress should enable the Executive Branch to enforce the declassification system currently in place. Agencies should insist, and Congress should provide oversight to assure, that agency reviewers engage in substantive review of classified material, even though that material may contain information related to intelligence sources and methods. Congress should provide the necessary resources to support enough personnel devoted to declassification review and to assure that those personnel are adequately trained to be able to make sound declassification decisions.

Finding 2: Targeted, subject-specific search and declassify efforts are an expensive and inefficient way to address overdue declassification. The $3.50 per page cost of finding, declassifying, and releasing war crimes records far exceeded typical spending on declassification activities. According to the Information Security Oversight Office, which monitors the nation's classification system, the cost per page of material declassified through systematic review in 2003 was $1.26.[89] In 1997, the Moynihan Commission reported several instances of mass declassification projects that brought the cost down to pennies, or even less, per page.[90]

Records released under the Disclosure Acts could have been released earlier at a fraction of the cost. The OSS records reviewed under the Disclosure Acts, for instance, could easily have been reviewed with a method less intensive and tedious than a line-by-line review, and the same result would have been reached.

The establishment of an automatic declassification date for all materials would provide additional reassurance that the public would eventually get information that could not be released during normally scheduled review, perhaps lessening the pressure for special reviews.

Recommendation 2: An absolute declassification date should be established for exempt records. In addition to enforcing the current declassification system, a time period should be established, preferably through law, beyond which materials may not remain withheld from public access. This may be a very long period, perhaps 75 years. The IWG recognizes that there may be information that will require protection for a very long period in order to protect the Nation's security, for instance, to prevent the dissemination of chemical, biological, and nuclear weaponry information. However, as the experience of the Disclosure Act demonstrates, there is a point at which protection is no longer cost-effective or wise for information that has lost its sensitivity, such as sources who are long dead and technologies that are widely known.

Finding 3: The Disclosure Acts are unsuitable as a model for the release of materials overdue for declas-

89. http://www.archives.gov/isoo/reports/2003_annual_report.html#11/.

90. Report of the Commission on Protecting and Reducing Government Secrecy 1997, Senate Document 105-2, Pursuant to Public Law 236, 103rd Congress (Washington: Government Printing Office, 1997).

sification. Although the Disclosure Acts addressed a failure of the current declassification system, single-subject declassification efforts have several inherent problems. One problem is that files transferred under this model can distort the historical record. Because CIA documents released under the Acts lack their original file identifiers and place in the file, the meaning derived from file context and surrounding documentation is, to some degree, compromised.

The State Department also released individual documents because its files were electronic and not arranged in categories meaningful to the acts. The State Department is transferring its electronic files in full to the National Archives in the normal course of disposition (its electronic files from 1973-1975 are already available at the National Archives). The lack of arrangement of these files presages a problem that will be encountered with future electronic files that are randomly compiled. National Security Agency files also presented this problem, with additional security complications.

Another problem with single-subject declassification efforts is agency difficulty with searches. Agency personnel who actually conduct searches under laws such as these cannot be counted on to be subject-area experts. Searching for Nazi and Japanese war crimes records was possible only because there was already a large historical record to use as a source for search terms and definitions, there was a full body of scholarship on the subject, and there was a basic public understanding of, and continuing interest in war crimes records. Even with widely available information on the subject of war criminals, it was necessary for the IWG to provide historical expertise and to constantly monitor the quality of agency searches.

Nearly all of the personnel devoted to implementing the Disclosure Acts, whose work totaled some 172 full-time staff years, were already reviewing records under systematic declassification mechanisms (such as Executive Order 12958) or responding to citizens' Freedom of Information Act requests. Staff had to put these responsibilities aside while they implemented the Disclosure Acts.

Finally, the IWG had great success in part because the acts pertained to Nazis, the Holocaust, and Japanese mistreatment of American POWs. The Disclosure Acts, (like the President John F. Kennedy Assassination Records Collection Act), touched on topics that spur significant public activism, which agencies do not want turned against them.

Recommendation 3: Targeted declassification projects should be limited to subjects of exceptional public interest that have not been adequately addressed by the declassification system. Implementing the Disclosure Acts showed us that subject-specific declassification projects are effective when the subject is well defined and relatively narrow. Targeted records search-and-declassification efforts might be appropriate to answer public questions that have some degree of urgency, such as the searches for records on POWs and MIAs or the search for materials related to Gulf War illness, which involve the fates and current well being of American soldiers. Outside of such conditions, it would not seem useful or efficient to adopt the Disclosure Acts experience as a model to address the problems of overdue declassification generally.

Finding 4: Greater precision in the definition of the intent of the Disclosure Acts and of the role and authority of the Interagency Working Group would have spared time, money, and contention. At the beginning of the implementation period, there was some uncertainty about the scope of the Nazi War Crimes Disclosure Act and, later, about the object of the Japanese Imperial Government Disclosure Act that impeded progress.

However, a greater hindrance to full implementation of the Acts was uncertainty about the IWG's role and authority. The IWG was given authority only to recommend records for declassification and release. As discussed in chapter 4, the Disclosure Acts gave respective agency heads the decision-making authority over the declassification and release of relevant documents, which led to great inconsistency among agency approaches to implementation. The law provided no

mechanism to adjudicate differences of opinion about a document's relevance or sensitivity.

Without authority to impose standards of relevance and declassification, and without a statutory resolution process to follow (such as that prescribed by the Kennedy Assassination Records Collection Act), often the IWG's only course was to address historical and moral arguments to high agency officials. Although the IWG's public members used this course at times to telling effect, meaningful compliance with the law remained, at base, voluntary.

Recommendation 4: Legislation mandating targeted declassification projects should be clear in its intent and clear in the authority given to any body established to provide oversight. Clear statutory definition and intent, coupled with an organized and authoritative oversight establishment, would have resulted in more consistent search and declassification review across the Executive Branch.

The recent establishment of the Public Interest Declassification Board (PIDB), as required by the Public Interest Declassification Act of 2000, appears to satisfy this recommendation in respect to its call for a more formal oversight establishment. The IWG commends the PIDB to the attention of Congress as a partial solution to declassification review of material related to subjects of high public interest. The IWG also notes however, that such a body is not a solution to the more general problem of the accumulation of classified records and the inadequate declassification of those records as they age.

Finding 5: The public must be involved in oversight of the search and declassification process. Left to the government records and declassification establishment alone, the implementation of the Disclosure Acts would not have yielded nearly the amount or quality of information that it eventually produced. The inclusion of committed, knowledgeable, and insistent public members serving the IWG saved the declassification effort from being routine and perfunctory. Those members, together with a Historical Advisory Panel, the holding of public forums, and a general practice of openness, kept the entire IWG accountable to several important constituencies, resulting in the release of more information.

Recommendation 5: Appoint Public Members to Oversight Boards. Because outside oversight was crucial to the success of this declassification effort, the failure to appoint a fourth public member, as required under the Japanese Imperial Government Disclosure Act, may have harmed the credibility of the implementation of the acts, and this error should not be repeated in future efforts. Oversight bodies that include public representation are more likely to be skeptical of routine declassification decisions, more likely to remain independent, and less subject to Government agency pressures. Together with a clear and open decision-making process and an informative public information program, public representation will foster acceptance of Government declassification efforts.

Finding 6: As unfunded mandates, the Disclosure Acts adversely affected systematic declassification review programs and other access programs at some agencies. The costs for implementation of the Disclosure Acts were borne entirely out of regular agency budgets. This meant that resources normally allocated to systematic review programs and Freedom of Information Act processing were at least partially diverted to meet the demands of the acts. Although most agencies were able to continue both activities, both activities suffered from lack of resources because normal declassification and other information access activities are traditionally under funded. For a small agency such as the National Archives, the $12 million cost of implementing the Disclosure Acts and providing all administrative support for the IWG required the curtailment of other access-related activities, resulting in slower public access to materials often equally as important as those covered by the Disclosure Acts.

Recommendation 6: Access and declassification legislation should include adequate funding.

7. Perspectives

Thomas H. Baer

IWG Public Member

"While the Congress and the President had ordered massive government-wide disclosure of long-secret Nazi and Imperial Japanese war crimes documents, no money was appropriated and no professional staff was afforded. We were on our own in implementing the legislation."

The honor of public service has played a major role in my life. My service as a reservist in the Army and the Navy, as a federal prosecutor, and as a lawyer investigating fraud and abuse in the State of New York has convinced me that public service is a public trust. The public trust requires a total adherence to the interests of the citizenry, the ultimate beneficiary of public service.

It was from this background that I approached my appointment by President Clinton as a public member of the IWG. With my profoundly skilled colleagues, Richard Ben-Veniste and Elizabeth Holtzman, I surveyed the legislation and the task ahead.

It soon became apparent that the legislation creating the IWG was fulsome and comprehensive in mandating our disclosure task but silent or defective in directing the concrete steps needed to accomplish it. While the Congress and the President had ordered massive government-wide disclosure of long-secret Nazi and Imperial Japanese war crimes documents, no money was appropriated and no professional staff was afforded. We were on our own in implementing the legislation. As detailed in this report, the money came from the government agencies themselves and from NARA.

The public members early decided that the IWG needed historians to guide the search, to set standards of relevance and to argue for disclosure on the occasions when the IWG might be faced with agency resistance. Hiring a cadre of leading historians working for the IWG (and a stellar Historical Advisory Panel to provide further guidance) was initially resisted by some of the agency representatives serving on the IWG and, curiously, by some at NARA.

Resistance to hiring historians was based upon the four corners of the legislation that made no explicit provision for them and by the philosophical argument that we were but to "disclose," an alleged rote task supposedly not requiring analysis. That resistance faded when the public members insisted that we needed advice of experts to effectively satisfy our public trust both when we needed to require disclosure and when the public interest mandated no disclosure or disclosure in redacted or summary form. Reliance on our guesswork would not do when experts had the answers. The historians became crucial partners with us.

Our historian partners guided us when the disclosure of relevant materials would damage the current interests of the United States. In most instances when agencies requested redactions or summaries, the public members agreed. While the events we were reviewing took place many years ago, certain classified Government documents collected more recently had no business being made public. The public members

knew that intelligence gathering is part of our safety as Americans and we resisted any disclosures that would be harmful.

While each of the agencies had IWG representatives, with the exception of the Department of Justice they limited themselves to disclosures made by their own agencies. I was disappointed that these representatives did not work the common weal. I had envisioned IWG agency members working and strategizing to effectuate disclosures throughout the government. But that never happened.

I was deeply impressed with the NARA staff members assigned to us, but I was not impressed by the first Archivist of the United States with whom we dealt, John Carlin. Actually, I saw him once in five years. It appeared to me that his appetite for the disclosures we were to make was not very robust, although he did supply funds from NARA's budget. But his legislative representative curiously resisted the IWG appropriation we had negotiated with the Congress at the time of our most recent two-year extension. His successor, Archivist of the United States Dr. Allen Weinstein, now our IWG Chair, has been a dedicated collaborator in our task and I am glad I served with him.

After September 11, 2001, the CIA began resisting disclosure. The public members developed a strategy of seeking incremental disclosures, hoping to make a record justifying fuller disclosure. This procedure was demeaning, time-consuming, and ineffective.

For example, notwithstanding an executive order requiring "an expansive view of the act" and a statutory presumption favoring disclosure, the CIA insisted that its records pertaining to the SS men it had employed during the Cold War could not be revealed unless IWG demonstrated precisely what each SS operatives had done to persecute and destroy European Jewry. That the entire SS was declared a "criminal organization" at Nuremberg made no impression on the CIA. The CIA knew that our job was not to initiate a court of inquiry into the behavior of its SS associates, thus remitting us to a no-man's-land where we had to tell the CIA facts that they knew without the CIA letting us know them. The unsatisfactory incremental approach got us a list of the names of those who had files at the CIA, nothing more.

The dispute got to the point that on December 23, 2002, the then-General Counsel of the CIA refused to meet with the public members "in order to discuss CIA's position" that the public members contended was in violation of law.

Thereafter, due to the forceful and courageous actions of former Senator Mike DeWine (ably abetted by Congresswoman Carolyn Maloney), the CIA reversed its position and steered a course of cooperation that included the CIA's consent to a two-year extension of the existence of the IWG by the Congress and President Bush. But there is and was a duty to comply in the first instance.

Had the public members been unwilling or unable to insist that our public service was a public trust, no such result would have obtained and the disclosures ultimately made by the CIA would never have happened.

Looking to the future, any declassification mandated by Congress should provide independent funding to the agency charged with oversight of the process and should explicitly direct the retention of experts to guide it.

I am grateful to all who served so ably to successfully complete this enormous job. All of their names appear elsewhere in this report. I am honored by my appointment by President Clinton and its continuation by President Bush.

And I am proud that I had a chance to serve the public once again. They are the citizen beneficiaries of the public trust.

Richard Ben-Veniste

IWG Public Member

"There is far too much secrecy in government. Secrecy often acts as the handmaiden of complacency, arrogance, and incompetence … In a democratic society, openness should be the rule; the right to know should trump the impulse to withhold, except in truly justifiable circumstances."

Unprecedented best characterizes the eight-year work of the Nazi War Crimes and Japanese Imperial Government Records Interagency Working Group (IWG). The laws and the persistent effort to locate, identify, declassify, and provide access to more than 8 million pages of government documentation dated from 1933 through 1998 from among a universe of over 100 million pages are unique. There are several keys to the success of this effort. The law (PL 105-246)—which precluded agencies from automatically invoking Section 701(a) of the 1947 National Security Act (50 USC 431) and thereby excluding from review classified operational intelligence records—provided the statutory framework for the IWG's results. Contributing to the positive outcome was the commitment by the Clinton Administration evidenced in the executive order and the NSC tasker to the agencies, which urged them to "take an expansive view of the act …"

After signing the War Crimes Disclosure Act, Mr. Clinton expressed his hope that this Act and the IWG would at last open all U.S. records on war crimes, war criminals, and the involvement of the United States Government. Another key to the IWG's accomplishments was its decision to act upon the public members' recommendation and obtain the services of expert historians in the fields of WWII, the Holocaust, and the U.S. intelligence establishment. These five historians (Richard Breitman, Norman Goda, Tim Naftali, Robert Wolfe, and Marlene Mayo) provided essential guidance in searching the various agencies' records and offered an informed and independent analysis of the declassified and released material, enhancing public understanding of the significance of these materials in historical context. The volume they have produced is indeed a major contribution to the scholarship on WWII, war criminals, the Holocaust, and our government's knowledge about and association with individuals marked with the stain of acts of persecution and genocide.

The Disclosure Act empowered the IWG to recommend the declassification of all relevant Federal Agency records. Responsibility for accomplishing the actual review as set forth in the legislation rested with the agencies, not the IWG. The Working Group provided guidance by specifying the kinds of records and the kinds of information deemed relevant under the Act's definition of war crimes, war criminals, and war criminal records. The IWG coordinated with the agencies' staffs and monitored agency activities to ensure compliance, particularly in terms of the "expansive" view and "public interest" in disclosure of all relevant records.

There are several cases that highlight the successes

resulting from the IWG effort. Two in particular are exemplary: the responsiveness of the U.S. Army's Intelligence and Security Command (INSCOM), and the laudatory efforts of the Federal Bureau of Investigation (FBI). Early on in the implementation process, it was clear that the important and extensive volume of relevant files at INSCOM's Investigative Records Repository (IRR) constituted one of the most important sources for relevant war crimes records. The problem was the sheer massiveness of the collection, its archaic access system, often-illegible microfilm copies of paper records no longer in existence, and a host of other issues that could jeopardize releasing the information to the public. After others assigned to this project by the Army threw up their hands in defeat, Maj. General Robert Noonan, the commander of INSCOM, took charge. In October 1999, Gen. Noonan pledged that the IRR would digitize its microfilm holdings, declassify the war criminal records based upon IWG guidance, and transfer digitized copies of the National Archives by September 30, 2000—one year later. General Noonan committed the units responsible for the IRR, the 902 Military Intelligence Group and the 310th Military Intelligence Battalion, to the task. Their success was a superb accomplishment.

Likewise, the efforts of the FBI reflect the positive commitment of Directors Freeh and Mueller to the letter and spirit of the Disclosure Act. Director Freeh met with the public members early on in the process. His commitment to the disclosure, and the leadership he exerted provided the touchstone of the Bureau's response. His leadership extended to directing his staff to work with representatives of other governments to foster the opening of relevant foreign government information found in the FBI files.

The Bureau made a Herculean effort in reviewing its holdings, both paper and electronic. More than 65 million index cards had to be reviewed. The exceptional outcome of this effort, which involved actually screening in excess of 3 million pages, is reflected in the 200 cubic feet of original Bureau files (more than 10 percent of the pages examined for relevancy), which the FBI transferred to the National Archives with minimal redactions taken in accord with the Act's exemptions. The impact of the FBI's work in support of the Act is visible in the important information these records impart on topics and individuals connected with Nazi and Japanese war crimes. The IWG historians have found the FBI documentation of great significance in illuminating a range of war crimes and related topics including persecution, Nazi asset confiscation schemes, exploitation of German scientific personnel (Operation Paperclip), espionage, and counterespionage.

Unfortunately, the response of the CIA to implementation of the Act was more convoluted and required the application of maximum pressure to achieve acceptable compliance.

Initially, the Agency performed commendably in dealing with classified OSS records, which it had transferred to the National Archives prior to the establishment of the IWG. These records, nearly a million pages, along with a body of OSS records still in Agency custody, which came to be transferred to the National Archives as a result of the IWG effort, were examined and declassified by the Agency (directed by personnel at NARA's College Park facility). The work was done expeditiously and, with the assistance of NARA staff who provided substantive historical and contextual guidance, in a highly professional manner. These pre-CIA records, dating up to October 19, 1946, are fascinating in content, and are key to enriching our understanding of war criminality during and immediately after WWII. The minimum number and non-substantive sources and methods redactions taken in these records reflect an unequivocal response to the Act's requirements.

By contrast, all CIA records and those of its immediate predecessor, the Central Intelligence Group (CIG) dated after October 19, 1946, which were potentially relevant and covered by the Disclosure Act, remained in CIA's possession. After its initial promising response, the CIA retreated into a defensive posture regarding these records. This approach reflected an entrenched reluctance by certain factions within the Agency to declassify information and abide

by the "expansive" and openness called for in the Act and executive orders. Despite repeated assurances by Director Tenet that CIA would abide by the spirit and the letter of law, other forces within the Agency launched a program of obstruction and delay. CIA chose to reinvent the definition of "relevancy" in place of the guidance provided by the IWG, which had been theretofore accepted by CIA as well as all the other government agencies covered by the Act. CIA chose to "compartment" some files and then imposed a long and convoluted process of reviewing those files in response to continued pressure by the IWG's public members. Despite personal assurances from the DCI to the IWG public members, the Agency parsed, parried, and thwarted the goal of opening all CIA war crimes related records.

Significant time and effort was expended (requiring extension of the Act by Congress) while negotiations dragged on. Finally, the impasse was broken when the public members invited the original congressional sponsors of the Act, Sen. Mike DeWine and Rep. Carolyn Maloney, to attend a meeting with CIA representatives, at which DeWine and Maloney could hear firsthand the CIA's rationale for withholding the disputed records. Sen. DeWine and Rep. Maloney rejected CIA's interpretation of its obligations under the Act and suggested that the CIA representatives convey their view directly to DCI Porter Goss. Within 48 hours, CIA informed the IWG that it would drop its reinterpretation and comply fully with the letter and spirit of the Act. Thereafter, under the very able stewardship of retired CIA official Stan Moscowitz, CIA became a "model citizen" of the IWG, working cooperatively with us to make its relevant records available. Tragically, Stan Moscowitz died suddenly in 2006, a terrible institutional and personal loss to all of us who had come to know him.

The 2005 extension of the Nazi War Crimes Disclosure Act and the subsequent order of Director Goss requiring compliance led to the CIA's delivery of substantial new materials and more complete files on many subjects of interest previously identified. No single file or series of files were found where CIA discussed or set forth a clear policy regarding the use of former Nazi war criminals (or suspected war criminals) as agents or sources. Instead, the IWG historians accumulated evidence from specific files of individuals investigated or used by CIA to try to discern a pattern upon which broader conclusions might be drawn.

For example, in November 1960 a CIA official wrote: "We have no strong feelings against the use of a convicted Nazi today, provided he has something tangible to offer and is kept under close control and direction. The question remains—what has he to offer?" Later, in the same document, headquarters adds, "Regarding your request in paragraph five for a general comment on the present usefulness of former German intelligence personnel now in Spain, both the German desk and this desk agree that each case must be reviewed on its individual merits and that no blanket Headquarters comment is possible." These comments appear in a file on a man named Eugenio Endroedy, which was declassified in September 2006, but they were not included in an earlier version of the Endroedy file that was declassified in 2001.

CIA also located and declassified files on additional subjects of potential interest supplied by the IWG historians. For example, a significant new file on Haj Amin al-Husseini, the Grand Mufti of Jerusalem, provided details of his involvement in the planning of wartime operations directed against Palestine and Iraq, including parachuting Germans and Arab agents to foment attacks against the Jews in Palestine. Haj Amin al-Husseini also played an important role in raising Muslim troops for the Waffen-SS in the Balkans.

According to reliable information received by the Strategic Services Unit, a predecessor of the CIA, the French government originally planned to prosecute Haj Amin al-Husseini at the end of the war, but the British objected—and even threatened to foment Arab uprisings against the French in their North African colonies if the French went ahead with their plan. As a result, the French not only released Haj Amin al-Husseini in Paris, but let him fly to Syria, where, ironically, he soon began to cause problems for the

British in Palestine, while claiming that the Jews had forged all evidence of his collaboration with Nazi Germany. CIA closely followed Haj Amin al-Husseini's activities, but shunned any relationship with him. His file, which also contains a wealth of information about Arab politics up to 1963 and some evidence of his sponsorship of terrorism, was declassified in December 2006.

If I were to identify an area of disappointment, albeit in the context of an overall impressive and successful effort, it is that the individual agencies—with one exception—did not work collaboratively to ensure that all agencies produced the most expansive production of records possible. In the face of this general "stovepiping" by each agency, limiting its concern to its own issues, only DOJ representatives Eli Rosenbaum and Dr. Elizabeth White of the Office of Special Investigations (OSI) contributed their impressive knowledge of the subject toward the collective IWG effort. I believe the IWG could have done a better, more efficient job had the other agencies followed the example of OSI, allowing us to harness the synergies of a cooperative cross-agency effort.

As with so many projects with which I have been associated over the years, the qualities and capabilities of the individuals involved have proved to be every bit as important as the laws and regulations under which they operate. The IWG had the advantage of having an extraordinary and dedicated staff at NARA who worked tirelessly and with great professionalism to overcome obstacles and to review and release the documents in a user-friendly format, complete with finding guides. It has been my privilege to work with Michael Kurtz, Steve Hamilton, Bill Cunliffe, Dick Meyers, David van Tassel, and with the recently appointed Archivist of the United States, Allen Weinstein, who provided important leadership and commitment to ensure completion of the project. It is worth repeating that our outside historian consultants provided invaluable assistance. Their contribution, along with that of a distinguished board of historians led by Gerhard Weinberg, provided essential guidance, context and independent credibility to our effort. Our first chairman, Mike Kurtz, got us off to a great start; Steve Garfinkel, assisted by Larry Taylor, continued stewardship of the IWG, and Allen Weinstein took over the reins to lead us to a strong finish. Kris Rusch performed admirably in putting the report together.

I am not a professional historian, nor did I possess any particular expertise in Holocaust studies when President Clinton appointed me as one of three IWG public members in 1998. My contribution to this effort was in facilitating the process: identifying issues, mediating disputes, reviewing materials, and utilizing the expertise of our outside historians and committed NARA personnel to encourage the most robust search for and declassification of relevant documents. I could not have had two more dedicated, insightful, and indefatigable colleagues than Elizabeth Holtzman and Thomas Baer. Liz and Tom gave unsparingly of their time, putting in countless pro bono hours. The ultimate success of the IWG is directly attributable to the efforts of these two outstanding public servants.

There is far too much secrecy in government. Secrecy often acts as the handmaiden of complacency, arrogance, and incompetence. It is far too easy to use the classification pen to keep the information flow of government from public view. There is no question that documents containing legitimate national security material must be protected. But far too often documents are classified to avoid embarrassment, or, more often still, simply because it is easy to do so without accountability. In a democratic society, openness should be the rule; the right to know should trump the impulse to withhold, except in truly justifiable circumstances.

In the end, there was really no good reason why these documents—reflecting information about our government's action, or inaction, during the most horrific period of the last century and its aftermath—were kept secret for so long. As the late Daniel Patrick Moynahan, revered champion of openness in government, observed, ". . . Secrecy in the political realm is always ambiguous. Some things should never be made secret. Some things should be made secret, but then

released as soon as the immediate need has passed. Some things should be made secret and remain that way. The problem is that organizations within a culture of secrecy will opt for classifying as much as possible, and for as long as possible."

Hopefully, the work of the IWG will stand as a milestone on the road to greater openness in government—a noble and achievable aim of our great democracy, if our political leaders demonstrate the leadership and will make it so.

Elizabeth Holtzman

IWG Public Member

"It is not clear that Nazis provided us with any useful intelligence, and we know that in some cases at least they were a serious detriment to us. Given the intelligence failures of the Iraq war, it might be important for U.S. policymakers to understand that using very bad people for intelligence activities does not automatically get us very good results and, instead, may get us very bad results."

As a member of the Interagency Working Group, I am pleased to join in the report to Congress about our work in overseeing the declassification of the U.S. Government's secret files on Nazi and Japanese war criminals.

I think we can safely say that all government agencies ultimately complied with the law, and more than 8.5 million pages, mostly related to intelligence activities, were declassified. The IWG did its job as completely as possible, given the constraints of U.S. Government filing systems.

Our biggest obstacle was the absence of a magic button that could be pushed to release all relevant documents. Because most documents are filed under an individual's name, without the name, the document cannot be found, as a general matter. The IWG did not have the names of all the war criminals, particularly those Nazi collaborators who lived in Eastern Europe and parts of the former Soviet Union, such as Ukraine and the Baltic countries. So, even though we employed various search strategies to obtain these documents, there are undoubtedly huge gaps in our work. (We did provide the agencies with a 60,000 name list compiled by the Office of Special Investigations in the Justice Department. That list was supplemented by other names uncovered in the course of our work.)

That is why only bulk declassification can assure that all documents dealing with Nazi and Japanese war criminals in U.S. Government files are made public. Based on the documents we saw, there is no reason that full declassification of documents from World War II and the immediate postwar years (say through 1965) cannot take place. Of the 8.5 million pages declassified, virtually none (except a couple of pages of a much more recent vintage) should have remained classified for as long as they were.

Not only should all the documents from that period be declassified, but there needs to be an ongoing periodic declassification of intelligence documents in the future. It goes without saying, of course, that documents dealing with weapons of mass destruction, poisons, and the like should not be disclosed.

What We Learned

The documents declassified by the IWG make two large points. First they show the U.S. Government

knew earlier than was thought about the horrors being inflicted on European Jewry. This knowledge seems to have prompted no response on the part of our government. In another example of indifference, we found that the United States and Great Britain learned that the Nazis were about to round up of the Jews of Rome within a matter of days and exterminate them. We could find nothing to show that any effort was made to prevent the pending tragedy.

Second, the documents fill out the story, the outlines of which have been known for some time, about the U.S. Government's collaboration with and protection of Nazi war criminals after World War II.

One example uncovered in our project involved former top Nazi, Hans Globke, who became national security advisor to Chancellor Konrad Adenauer of West Germany. Globke, the author of racial classification laws used against Jews, was going to be linked to Adolf Eichmann, one of the architects of the Final Solution, in a Life magazine story to be published around the time of Eichmann's trial. Terrified that the linkage could cause greater scrutiny of Globke and his Nazi past, the West German government asked CIA Director Allen Dulles to squelch the reference to Globke in the story. Dulles obliged and the mention of Globke was deleted from the Eichmann story.

Moreover, when Eichmann was still unapprehended, the CIA became aware of an alias for Eichmann—not the actual alias but a name very close to it. Nonetheless, the CIA did not use the information to see Eichmann brought to justice, either through furnishing it to the Israelis or otherwise.

We now know as a result of the declassification that the use of Nazi war criminals was harmful, in other than moral ways, to the United States. For example, the Soviets, it turns out, were targeting and hoping to "turn" Nazi war criminals being hired in droves by our spy network in West Germany headed by former Hitler general Reinhard Gehlen. The Russians understood the vulnerability to blackmail of Nazi murderers who had blood on their hands. But Americans appear not to have understood the risk, nor did they appear to care about the moral issues. The CIA learned about the Soviet's targeting effort only after discovering that a top spy in our West German network, a former SS officer, Hans Felfe, was a Soviet double agent. There were few if any U.S. or NATO secrets he withheld from the Soviets.

It is also likely that Nazis created another problem for us. Since they were being hired by the United States to inform on the Soviet threat, their jobs and their lives may well have depended on ensuring that the United States believed the threat was real and serious. The Nazis may have had an agenda: to emphasize, if not exaggerate, the Soviet threat. I hope scholars will explore the documents carefully to determine whether and the extent to which U.S. use of Nazi war criminals tainted our foreign policy after World War II.

Lessons for Today

It is not clear that Nazis provided us with any useful intelligence, and we know that in some cases at least they were a serious detriment to us. Given the intelligence failures of the Iraq war, it might be important for U.S. policymakers to understand that using very bad people for intelligence activities does not automatically get us very good results and, instead, may get us very bad results. Using morality as a yardstick is not necessarily naïve, but may be the smartest way to approach intelligence-gathering activities.

Reasons for IWG's Success

Congressional Leadership

Without the extraordinary leadership of Senator Mike DeWine (R-Ohio) and Representative Carolyn Maloney (D-NY), who won passage of the legislation, this declassification effort would never have been undertaken. Senator Feinstein also is responsible for adding to the disclosure statute the explicit focus on Japanese war criminals, an extremely important contribution. This was a bi-partisan, or perhaps more accurately, a non-partisan effort.

The Congressional staffs also deserve enormous credit, including in particular Pete Levitas, Ben Chevat, and Orly Isaacson. Louis Dupart, former aide to Senator DeWine, is the unsung hero of this project,

having guided the original statute to passage and offering us the benefit of his wise counsel throughout.

Most important, the sponsors of the legislation took an active interest in our progress. Without their ongoing support, the process might have fallen flat, as will be explained later in the section on the CIA.

Hiring Historians

The public members of the IWG made an early decision to employ eminent historians who could analyze the documents being declassified and report to Congress and the American people on what was new and significant about them. One result of their important work was the book *U.S. Intelligence and the Nazis*, which analyzed 250,000 of the 8.5 million pages declassified.

The historians also played an important role in educating agencies on the relevance of certain documents and the harmfulness of proposed redactions. Their usefulness cannot be overstated. Thanks go to Professors Richard Breitman, Norman Goda, and Timothy Naftali, all distinguished academics, and Robert Wolf, a retired government archivist with substantial experience in the area.

We also formed a historical advisory council, chaired by the noted historian Gerhard Weinberg, which also gave us invaluable guidance throughout. We appreciate the assistance of the members of the advisory council greatly.

Public Members

The declassification project worked as well as it did because Congress added three non-governmental members to the Interagency Working Group, which was comprised of the heads of key federal agencies including the Department of Defense and the Department of State. I want to salute my two public member colleagues, Thomas Baer and Richard Ben-Veniste, for their extraordinary dedication, their refusal to accept bureaucratic temporizing, and their intelligence and good strategic sense in winning agency compliance. It was an honor and a privilege to serve with them.

In particular I want to thank Thomas Baer for working with me on securing the CIA's written agreement to comply with the disclosure act. That agreement was critical to our efforts.

Agency Compliance—and Noncompliance

Initially, the Department of Defense and the FBI balked at the task, but ultimately—after much persuasion, including a meeting with FBI Director Louis Freeh and letters to the Secretary of Defense—agreed to comply. Director Freeh, in particular, offered the full help of his agency, even going so far as to seek the aid of retired agents with relevant information.

The State Department adopted a unique approach to examining its files, one that after repeated explanations and testing won only grudging acceptance from our historians and the historical advisory panel.

The CIA was the only agency that steadfastly refused to declassify certain documents, acting in violation of the statute. At the outset, the Agency was cooperative and Director George Tenet assured us of his personal support on several occasions. Nonetheless, shortly before 9/11 the CIA shifted gears. It advised us that while it would disclose an agency relationship with people on our search list, it would not disclose what they had done for the CIA unless we could prove the persons had actually engaged in persecution. Being a "mere member of the SS," in the CIA's phrase, was not sufficient to require declassification under the law, even though the SS was declared a criminal organization at Nuremberg. The CIA's position was totally unacceptable—and the three public members completely agreed on this. Its position differed from that adopted by all the other agencies and from the position it initially took.

The CIA's hostility reached a boiling point, and it decided to "compartmentalize" many Nazi war crimes files, meaning that additional hurdles were placed in the way of seeing agency documents, even though all of the public members and a number of our historians had full security clearance. The compartmentalization was later removed.

Congress granted us a one-year extension to see if we could work out our differences with the CIA. We could not. Just before the extension expired, Senator DeWine called a meeting with the public members of the IWG and representatives of the CIA. Representative Maloney was present, as was the staff of Senator Feinstein. The CIA was asked to justify its position, but when it pointed to a certain aspect of the statute, Senator DeWine advised the CIA that he had written the statute and its interpretation was flatly wrong. He said he would hold public hearings on the matter. The New York Times wrote an article about the CIA's position.

The CIA backed down. It is now in full compliance with the law and is giving us all the material we believe is relevant under the act. For this, thanks go to Director Porter Goss. Tragically, Stan Moscowitz, a former CIA employee who was retained by the CIA to oversee its new policy of compliance, died before the task was finished, but fortunately not before he could see how much progress had been made. Major kudos, too, go to Mary Walsh, who has worked indefatigably and painstakingly on getting documents to the IWG from the inception of our project.

Plainly, even the most recalcitrant agency will do the right thing if Congress has the will to make it do so and the press is available to expose the problem.

Unfortunately, the time wasted by the CIA in fighting disclosure has hampered our work to the extent that we may not be able to provide the public with the kind of analysis of the newly released that we have with other documents in the past. Still, we will try to make as much sense of the material for the public as we can before we go out of business.

The National Archives

The assistance given our project by the Archives has been enormous and important. This project could not have been accomplished without their assistance and their expertise. Thanks go to Michael Kurtz and his successor Steve Garfinkel, NARA representatives who chaired the IWG. Thanks go as well to Alan Weinstein for his wholehearted support of the project.

Conclusion

My involvement in issues of Nazi war criminal has a long history. In 1974, as a new member of Congress, I uncovered the presence of Nazi war criminals in the United States, thanks to a whistleblower, and began the long process of forcing our government to bring them to justice. It is only after establishing a proper administrative and legal structure—creating a special Nazi hunting unit, the Office of Special Investigations in the Justice Department, and strengthening the law authorizing the deportation of Nazi war criminals and barring them from our shores—that I could turn to discovered why Nazis were in the United States and what their relationship was to our government. By that time, 1981, however, I had given up my seat in Congress.

The task remained undone for twenty-sever years afterwards—even though I tried, unsuccessfully, in the early 1990s to get the CIA to declassify its Nazi war crimes files. It actually promised to do so in a letter to me, but then reneged.

Finding the truth about our government's secret dealings with Nazi war criminals is not just a musty historical exercise. Using mass murderers secretly as an instrument of American policy raises serious and troubling issues. More than 50,000 Americans gave their lives and more than 100,000 Americans were wounded in the effort to defeat Hitler and his Japanese allies. Employing Hitler's henchmen and protecting them from accountability made a mockery of our troops' sacrifice. The Nazis and their collaborators slaughtered six million Jews and millions of non-Jews. America's use of these killers desecrated the suffering and deaths of their victims. Our government's hiding its use of Nazi murderers from the American people and Congress degraded and undermined American democracy. And, by adopting the principle that the end justifies the means, our government betrayed its deepest values.

The work of declassification, of finding and telling the truth, even these many years later, begins in a small way to repair the damage of our government's indifference to the crimes of the Nazis.

It is also a tribute to our democracy that the files

can be released and public debate can be had on what in my opinion, at least, was the sordid and immoral use of Nazi war criminals—mass murderers or accomplices in mass murder—by the U.S. Government.

I hope that the work of the IWG will encourage all other governments with documents relating to Nazi and Japanese war criminals, including in particular Great Britain, France, and Russia, to open their files on this period, as well.

Eli M. Rosenbaum

DOJ Office of Special Investigations

"The documents found and released include many important, and sometimes disturbing, materials. As the present report indicates, while these materials do not compel any dramatic revision of mainstream scholarship on the war and its aftermath, they do enhance our understanding of those events and add some hitherto unreported events to the chronology."

The conclusion of the IWG's eight-year effort to locate, declassify, and disclose, at long last, classified records in U.S. government possession relating to Axis criminals brings to an end the largest search-declassify-and-disclose project in world history.

From the start, participating in this long overdue effort seemed to those of us at the Justice Department's Office of Special Investigations (OSI) to be a natural follow-on to the work that OSI has been doing for more than 25 years to secure not just juridical justice on behalf of the victims of monstrous Axis crimes, but historical justice as well. In addition to locating, investigating, and taking legal action against Nazi and other Axis criminals, OSI had produced and secured the public release of landmark studies that confirmed the postwar employment by U.S. intelligence agencies of Klaus Barbie and other former Nazis; traced the fate of the infamous Auschwitz selector and experimenter Dr. Josef Mengele; proved that gold taken from Holocaust victims was traded by the Third Reich to the Swiss National Bank during the war and was placed after the war in the so-called "Gold Pool" by the U.S. government; and established that Nazi-looted artwork made its way to the collection of the venerable National Gallery of Art, in Washington. Consequently, although OSI is a small office (employing a staff of 24 at present, with an annual budget of less than $6 million) and although OSI is the only U.S. government component whose records were specifically *excluded* from release by the terms of the Disclosure Acts, OSI devoted major resources (over 10,000 person-hours and some $1.5 million) to helping to ensure the successful implementation of the two statutes' provisions.

Even before the compliance effort formally began in 1999, OSI put its two decades of experience in investigating and prosecuting Nazi persecutors to use for the benefit of the government's soon-to-be-launched effort to identify classified records in its possession pertaining to Axis crimes. In late 1998, shortly after the first Disclosure Act became law, I presented a detailed OSI-prepared draft implementation plan at the first meeting held, at the White House, to discuss how the daunting mission assigned to the government by the legislation might be carried out. After the IWG was formally constituted the next year, the implementation plan that it ultimately adopted retained

many of the key strategies that had been proposed in that early OSI draft. Most notably, the Justice Department proposal—made initially in discussions on Capitol Hill even before the legislation was enacted —that independent historians be engaged to evaluate and publicly appraise the voluminous materials that would undoubtedly be found received strong support from the public members and then-Chair Michael Kurtz, and it was eventually adopted by the IWG.

Among the significant challenges that OSI predicted the government would face was that many of the records most likely to include relevant information are contained in files that are traceable only by the names of the indivduals who are the subjects of those files, rather than by searches based on keywords (such as "Nazi"). OSI therefore volunteered to develop a list of individuals who met the statutory definition of "Nazi war criminal" – a list that federal agencies could use in searching for and identifying relevant records. OSI's proposal was accepted by the IWG at its first meeting. In creating the list, OSI faced an immediate problem: a significant percentage of the perpetrators of Nazi and other Axis crimes are unknown and will never be known. In addition, the desire to include as many suspected Nazi war criminals as possible had to be balanced against considerations of fairness; while the vast majority of persons who merited inclusion on such a list would never have been convicted by a court of law (as prosecutions were mounted after the war against only a minority of the perpetrators), the release of their files under the Acts would logically brand them publicly as suspected Nazi war criminals. At the same time, the list had to be produced quickly, so that federal agencies could employ it within the short time-frame for compliance provided in the original statute. By engaging the services of a contractor and devoting hundreds of hours of work by OSI's small staff of historians, we were able, within only a few months, to deliver to the IWG a database containing the names of 59,742 suspected Axis criminals. This "60,000-name list," as it would come to be called, became the principal tool employed by key federal agencies in their compliance efforts, and its use resulted in the discovery, declassification and—following Privacy Act review by National Archives personnel—release of an enormous amount of documentation.

OSI personnel devoted many thousands of hours to assisting the IWG in a variety of other ways as well, including: contributing to the keyword lists used to identify relevant records; identifying for the Department of Homeland Security classified immigration records in its possession pertaining to suspected Nazi criminals; supplying evidence of criminality on the part of individual SS officers in order to persuade a U.S. intelligence agency to release records pertaining to those persons; and providing historical/investigative assistance to IWG historians as they conducted their research. OSI also coordinated the compliance efforts of the Justice Department's offices, boards and divisions. An OSI senior historian spent thousands of hours reviewing and taking detailed notes on tens of thousands of pages of records to help expedite the compliance effort.

I am deeply grateful to have been afforded the opportunity by three Attorneys General to serve as the representative of the Justice Department's divisions, boards, and offices. I am abidingly indebted to OSI Deputy Director and Chief Historian Dr. Elizabeth B. White and OSI Senior Historian Dr. Steven B. Rogers for the outstanding work they performed in order to facilitate and expedite disclosure of important documents. Their dedication helped make it possible for OSI to play a key role in the eight-year compliance effort while simultaneously winning court cases against nearly thirty Nazi criminals. I am grateful as well for the Criminal Division's generosity in approving my proposal for a voluntary allocation of more than $400,000 in Department of Justice funds to support the operational needs of the IWG. Other than the (much larger) contribution of funds made by the National Archives, these were the only monies contributed to the operation of the IWG by any agency of the U.S. government.

In further pursuit of the Disclosure Acts' goals, the Justice Department volunteered near the start of the project to, in effect, waive any objection to the

release of some documents that were covered by the statutory exclusion of OSI-related records. We hoped that by volunteering such waivers, the Department could help to ensure that important categories of disclosures were not blocked because of the Congress' understandable insistence that OSI's increasingly time-sensitive law enforcement efforts be given priority over a history project, even one so important as this. When these discretionary waivers were initially volunteered, however, I emphasized that they could be given only in a modest number of cases, as OSI's small staff could easily be overwhelmed if more than a limited number of waiver candidates was processed. I stated then that OSI personnel would be able to review perhaps 15 to 20 key files for possible waiver, presumably totaling some hundreds of pages. It was never imagined that we would end up providing waivers on more than *twenty-five thousand pages* of Nazi-related documents, principally found in FBI, CIA, Defense Department, State Department, and NSA files. In the end, the Justice Department waived objection to release of the vast majority of documents determined to be covered by the statutory exclusion of OSI-related records, with the result that just two hundredths of one percent of the documents found and processed in the IWG effort will have been excluded from release because of that provision of federal law. In deciding which statutorily excluded documents should be considered for waivers, the Justice Department gave top priority to documents evidencing relationships between suspected Nazi persecutors and agencies of the U.S., Soviet and other governments. We also gave priority to documents that the independent historians engaged by the IWG asked us to consider for waiver in light of their possible historical significance. In a number of instances, moreover, we took the initiative to provide waivers, even without any request therefor having been made

I would be remiss in discharging my responsibilities if I did not address the very disappointing manner in which some media reported on the documents found and released by the IWG. This was particularly true in the cases of two of the most notorious of all Nazi criminals—Heinrich Mueller, wartime chief of the Gestapo, and Adolf Eichmann, the SS official in charge of organizing the deportation and mass murder of Europe's Jews. Mueller disappeared after the war and his fate has never been conclusively determined. Eichmann was apprehended in Argentina in 1960 by Israeli agents, who took him to Israel, where he was tried, convicted, and executed. The CIA's records on Mueller were released by the IWG in 2001, along with a report by four eminent independent historians concluding that (1) the documents disprove suspicions voiced by some that Mueller was employed by U.S. intelligence after the war, (2) an individual held in a U.S. internment camp in Germany in 1945 by the name of Heinrich Mueller was a different person who possessed the same (common) name as the Gestapo chief, and (3) in all likelihood, Mueller died as Germany fell to Allied forces in May 1945. However, the History Channel continues to broadcast (and sell videotapes of) a film it commissioned called "Escape from Hitler's Bunker," the narration of which asserts that "secret documents released in 2001 by the National Archives" in Washington "finally solve the mystery"of Mueller's disappearance. Those documents, the narrator continues, reveal that he was held by the U.S. in an internment camp in Germany in 1945 and that he was thereafter "employed by American intelligence as an undercover agent during the Cold War" to "combat the Soviets in eastern Europe." Similarly incorrect, but reported last year by major media throughout the world, is the claim that the CIA was opposed to efforts to bring Eichmann to justice and knew, but withheld from Israeli authorities, facts that would have enabled the Israelis to locate Eichmann months earlier than they did. In fact, the CIA documents released by the IWG reveal that the Central Intelligence Agency attempted, without success, to locate him in the 1950s so that he could be brought to trial and that, after his 1960 capture by Israeli agents, the CIA made extraordinary, important, and previously undisclosed efforts to assist the Israelis in gathering evidence to use in court.

The wisdom of the statutory requirement that public members serve on the IWG was manifest

throughout the implementation effort, especially on the numerous occasions on which some agencies refused to release various documents that were covered by the acts. The other agencies represented on the IWG declined to participate in the initiatives that were launched by the IWG to overcome these obstacles to disclosure, and in the end, the IWG chairs, the three public members, and the Justice Department representative were the only IWG members who were willing to participate in these arduous efforts. Other agency representatives were, perhaps not surprisingly, reluctant to take positions that were at odds with those asserted by agencies with which they regularly deal on a broad array of issues. (Similarly, the IWG chairmen, the three public members, and the Justice Department representative, joined in the concluding period of the implementation effort by the CIA representative, were the only members willing to serve on the IWG's executive committee.) In any event, without the indefatigable efforts of the public members—who labored under no such inhibiting conditions—to pursue disclosure of documents that agencies sought to withhold, large amounts of important documentation would undoubtedly have remained undisclosed.

With the completion of the implementation effort, the most important question is, of course, this one: Were *all* of the classified Axis-related documents in federal possession actually found and released? This question must be answered in the negative, and not merely because agencies withheld a small percentage of documents from release for national security, statutory exclusion, and other reasons. As a principal combatant in the largest and deadliest military conflict in human history and as a major postwar investigator and prosecutor of war criminals in postwar Europe and Japan, the U.S. government created, captured, and otherwise acquired vast quantities of WWII-related documents. These were held by numerous military and civilian components of the government at countless locations in the United States and abroad, and frequently they were not archived in a manner that would facilitate their retrieval, decades later, on the basis of a possible nexus to Axis crimes and criminals. Thus, locating "all" of the documents was a virtual impossibility. I do, however, believe that the overwhelming bulk of the documents covered by the two disclosure acts has, in fact, been located and reviewed by the IWG for release and that what has been found and released is broadly reflective and representative of the contents of the full corpus of material. Although the IWG's final report and recommendations, prepared by IWG staff at the direction of the group's Chair, were not submitted to a vote of the IWG's members, the report fairly summarizes the complex compliance effort that was devised and implemented by the interagency group.

The documents found and released over the past eight years include many important, and sometimes disturbing, materials. As the present report indicates, while these materials do not compel any dramatic revision of mainstream scholarship on the war and its aftermath, they do enhance our understanding of those events and add some hitherto unreported events to the chronology. Although no materials surfaced that identified instances that were previously unknown to OSI of suspected Nazi or Japanese war criminals having immigrated to the United States, it is to be hoped that this result reflects the thoroughness of the efforts that have been made during more than two decades of OSI operations to identify and investigate such persons and that it also speaks well of the cooperation that OSI has received over the years from other U.S. government agencies.

CIA

The Central Intelligence Agency's (CIA's) release of information in this important endeavor—the Nazi War Crimes Disclosure Act (NWCDA) and the Japanese Imperial Government Disclosure Act (JIGDA)—is unprecedented.

Volume Declassified and Released: CIA has released approximately 114,200 pages of CIA documents and 1.2 million pages of OSS information. The CIA documents are the results of searches related to NWCDA and JIGDA. The OSS documents had previously been transferred to the National Archives and were reviewed there for declassification by a CIA team.

Resources: CIA's search, review, and declassification effort was accomplished by the participation of some 100 current and former CIA employees and contractors (about 35 person years) during 1999-2007.

CIA takes very seriously its response to NWCDA and JIGDA and, hence, its responsibility to declassify and release all documents covered by the Disclosure Acts to the fullest extent possible.

For some 30 years, CIA has been struggling with the nettlesome problem of how to balance the public's interest in the historical record of CIA's connections to Nazis, and an intelligence Agency's need, for ethical and utilitarian reasons, to protect the identities of sources. The passage of time has shifted the balance, as time frequently does.

Prior to January 2005, CIA declassified and released approximately 50,000 pages in more than 800 files in connection with these Disclosure Acts. The documents in these declassified files contained significant redactions based on the Acts' sources and methods exemption. After the IWG expressed serious concern to Congress about CIA's use of this exemption, Senator DeWine, Congresswoman Maloney, and IWG representatives met with senior Agency personnel in early February 2005. As a result, the Director of CIA decided that all of this old material should be declassified and released and that any use of the Acts' sources and methods exemption would be extremely rare.

In Feb. 2005, CIA agreed to:

- Re-review material that had been released/redacted.
- Declassify information on all Nazis.
- Declassify operational files associated with those Nazis.
- Undertake additional searches that the IWG historians or the Agency thought necessary.

CIA has followed through on these agreements and has completed all of the work it agreed to do.

"For some 30 years, CIA has been struggling with the nettlesome problem of how to balance the public's interest in the historical record of CIA's connections to Nazis, and an intelligence Agency's need, for ethical and utilitarian reasons, to protect the identities of sources. The passage of time has shifted the balance, as time frequently does."

Since February 2005, CIA has declassified and released to NARA approximately 114,200 pages in 1,087 files, which include 5,000 pages of Japanese material, and consist of:

- New files: 45,000 pages in 276 files.
- Re-Reviewed files: 69,200 pages in 811 files, including 47,400 pages released with minimal redactions, and 21,800 pages previously withheld and now released.

Much of this material is new. It deals with previously released files now re-reviewed on such individuals as Heinz Felfe, Hans Globke, Mykola Lebed, and Theo Saevecke. It includes operational files on Plan IVY, which was the OSS plan to prevent German sabotage in northern Italy, and the KIBITZ and SATURN staybehind programs.

CIA has researched close to 1,000 new names in the last two years, about half identified by CIA itself. The Agency has also produced a lexicon/research aid to assist scholars.

At the conclusion of these Disclosure Acts on 31 March 2007, CIA has completed its work related to these Acts: 114,200 pages in 1087 files.

All 811 files released prior to January 2005 have been re-reviewed and declassified and re-released with fewer redactions. All of the pages in these files are released, except for 265 pages that have been withheld in full. The IWG concurs with CIA withholding this information.

Two hundred seventy six (276) new files (not released prior to January 2005) have been declassified and released with minimal redactions and no documents withheld in full. These files consist of:

- 75 files (from the searches of 500 names submitted by the IWG historians).
- 151 name/personality files (identified by CIA).
- 50 operational project files (identified by CIA).

The documents in these declassified files have minimal redactions and, as noted above, only 265 pages in all of these files have been withheld in full. CIA has withheld nothing of substance.

CIA hopes that the documents released by this Agency under these Disclosure Acts will serve to illuminate, at least to a small degree, the historical record of a most horrific period in world history.

Marc J. Susser

The Historian, U.S. Department of State

"The process underscored the importance of achieving a balance among legitimate national security issues, legitimate privacy interests of individuals, and the people's desire to know the truth about the atrocities committed by Nazi and Japanese war criminals."

At the outset of its work in early 1999, it would have been hard for most observers to imagine how successful and productive the IWG ultimately would be. As things turned out, after much hard work and coordination, the IWG totally fulfilled its mission to identify and declassify an unknown but obviously massive quantity of critically important and heretofore unreleased government records on Nazi and Japanese war criminals. The IWG continuously expanded its scope and pushed forward with a clear vision of what it could accomplish. During its more than seven years of existence, the IWG made an enormous contribution, set records for constructive activity, and established important precedents for future government declassification efforts.

I was pleased to serve as a member of the IWG for much of its seven-year effort. During this time, the leadership of the Department of State fully supported the IWG's work and in fact took it very seriously. All of our components, from the offices of the most senior Department officials to the smallest bureau or overseas post, were asked to contribute to the search for documents, and all responded carefully and fully, in spite of the often crushing burden of other responsibilities. The Office of the Historian worked closely with the records management and declassification authorities of the Department. We provided historical background and context, helped to identify experts (including current and retired Foreign Service Officers), and consulted extensively with our embassies and other overseas posts and missions.

I and my staff worked closely with IWG members and staff on questions of policy and approach, and the development and refinement of guidance to the agencies. I applaud the leadership, energy, and creativity that IWG Chairs Michael Kurtz, Steven Garfinkel, and Allen Weinstein provided, as well as the outstanding work of their staffs. They fostered a team effort and a spirit of cooperation among representatives of many agencies and staffs working together for an important common end.

The Office of the Historian had some earlier experience on related issues, including the records of the United Nations War Crimes Commission (UNWCC) and the question of Holocaust Era Assets (Nazi Gold). We prepared two major historical studies for then-Under Secretary of Commerce Stuart E. Eizenstat, who also served as Special Envoy of the Department of State on Property Restitution in Central and Eastern Europe. These reports described efforts to recover and restore gold that the Nazis had taken from the central banks of occupied Europe, as well as gold and other assets stolen from individuals.

I periodically reported on the progress of the IWG's work to the Department of State's Advisory

Committee on Historical Diplomatic Documentation, a group of distinguished scholars from outside the U.S. Government that meets four times a year to review progress and make recommendations concerning the Department's official historical series, Foreign Relations of the United States. This series began in 1861 and now comprises over 400 individual volumes. More recent volumes contain declassified documents of the White House and all the foreign affairs agencies. Department of State records management and declassification officials join me in these quarterly meetings of the Advisory Committee. While the work of the IWG was not directly a part of our Advisory Committee's mandate, members were interested, strongly supported the effort, and recognized that it was a useful model and precedent for current and future declassification efforts in other areas.

In the course of our review of Department of State records, an interesting question arose concerning substantively significant "unclassified" documents that may have been buried in previously unreviewed or unreleased files and not marked with any classification. Should these documents be included among the final group of declassified and released records? I argued that they should be included—they were, after all, buried or hidden within predominantly classified files, and the IWG would be performing a useful service by producing them. The Acts, of course, quite literally covered only classified documents, not unclassified ones, presumably on the theory that classified documents were the most important. In the end, significant unclassifed records were included or noted in the final production of records.

In retrospect, the legislation and the IWG process were significant in many ways. The IWG process reflected a renewed recognition by the Federal Government of the importance of history, and of the importance of paying attention to vital records long overdue for declassification and release. The legislation proved to be highly effective. The IWG provided a practical and useful mechanism for the full, honest, and constructive discussion of issues relating to document search, declassification, and substantive historical questions

The declassification work was in keeping with forward-looking thinking on secrecy: declassify as much as possible consistent with national security. The process underscored the importance of achieving a balance among legitimate national security issues, legitimate privacy interests of individuals, and the people's desire to know the truth about the atrocities committed by Nazi and Japanese war criminals.

I believe that the Department of State's overall record of declassifying documents has provided a useful lesson and example—and perhaps a stimulus—to other agencies, by demonstrating that most issues once considered secret no longer need be classified. The process also benefited the Department of State by serving as a reminder to officers in the Department and the Foreign Service about the importance of preserving and declassifying the historical record.

New technology also played a role, both in the development of databases to track and review older paper records, and in the production of stored digital images from paper and microform records. The Department of State made use of the largest electronic database of foreign policy records, the State Archiving System (SAS), which includes the fully searchable texts of 35 million telegrams dating from the year 1975. However, it was also clear that, at times, the necessary technology was not available, and that the technology that was on hand could not perform at the level we might have desired. For example, the earlier portion of the Department of State's electronic system is actually a patchwork of earlier-generation technologies. Unfortunately, it could not perform feats of wonder, like the advanced systems of other agencies. To the surprise of many on the IWG, the Department's system did not operate in the same manner—or nearly as efficiently—as Google.

Critics of the IWG process have suggested that the resources expended should have been applied to the general declassification of all records of the period, not just records on a narrow subject such as Nazi and Japanese war criminals. However, the IWG effort, because of its concentrated focus, produced results that

would not otherwise have been achieved. Moreover, it helped identify in much more detail the challenges, actual requirements, and true costs of such a document identification and declassification operation. I believe that the IWG effort unquestionably enhanced, catalyzed, and intensified the overall long-term declassification efforts of the U.S. Government.

It has been a privilege to serve as a member of the IWG, to participate in the overall effort, and to work collegially and share information with colleagues from many other parts of the government, from the academic world, and from the public.

Gerhard L. Weinberg

Chair, IWG Historical Advisory Panel

"The discovery that there are vast quantities of relevant records that have long been declassified but hardly ever consulted has brought and will now bring more attention to them."

At the suggestion of Dr. Michael Kurtz, the first chair of the IWG, a Historical Advisory Panel (HAP) was organized to assist the IWG in its work. Dr. Kurtz asked me to chair the panel and to discuss with him the possible membership. The HAP has met numerous times over the past seven years, and, in addition, I have frequently been asked to attend meetings of the IWG as well as meetings of the IWG's staff with the IWG public members. The HAP has regularly reported to the IWG after its meetings. It has also reviewed and discussed with the historians employed by the IWG the drafts of their reports. In looking back over the meetings and the reports received by the IWG and the HAP, certain impressions stick out as of special significance and interest.

The concept of dividing the reports of the IWG to the Congress and to the public into two separate types of works originated with the HAP. It has been clear to us as that individual historians have to take the responsibility for their work; when they put their name to it, that's what they do. In the field of the IWG's responsibility, there cannot possibly be a requirement for the IWG as an institution or group of individuals to take responsibility for what any one historian sees as important among the newly released documents and how that information should be interpreted or should revise the hitherto accepted interpretation. There are innumerable publications by agencies of the U.S. Government that contain a disclaimer to make it clear that the views expressed by the various contributors are those of the individual authors and not of the sponsoring or publishing agency. Having myself repeatedly seen pieces I had written published in such a fashion, I am most pleased that the IWG accepted the recommendation of the HAP that part of the final report deal with the experiences, accomplishments, and recommendations of the IWG, while all other publications contain the individually signed reports of the professional historians. These reports with their references to specific newly released documents will surely be of great help to future historians who work with the records that the IWG has succeeded in having declassified. Obviously, the reports can deal with only a small fraction of the masses of newly opened archives, but they will stimulate interest in those not covered by calling attention to the richness and potential of what has been produced by the work of the IWG.

It has been possible for the HAP as a group and myself as an individual to point out to the IWG certain issues that require careful scrutiny lest they be overlooked. One of these that has proved very fruitful is the relationship of various U.S. Government agencies to the Gehlen organization and to the often-dubious backgrounds of many recruited or hoping to be recruited by that organization. Although some relevant materials have had to be redacted or kept closed, the whole story of American involvement with this intelligence operation that was financed for years by American taxpayers but largely run from Moscow will now be much clearer, as will the screening out of many potential members by more alert American

government employees. In the process of declassifying records pertaining to the Far East, is has become evident that a somewhat similar situation—an intelligence network financed by the US but largely run from Moscow—also existed in the postwar era there.

It has also been useful to stress the importance of the OSS records still held by the CIA in addition to those the agency had already transferred to NARA. There were also some instances in which OSS records had been incorporated into CIA files. The review process in regard to all these materials has produced a major harvest of important declassified records. It has been a pleasant surprise for the HAP to see such substantial material opened to research by the FBI and also to note the many instances where in response to specific requests it has been possible for the Office of Special Investigations of the Department of Justice to waive its exemption from the terms of the Disclosure Act.

An area where the HAP has not been able to assist the IWG as much as we had hoped was in regard to Japanese war crimes. It was not only that the State Department had failed to insist on clauses assuring future access to shipments of archives returned to the Japanese without their having been filmed beforehand. There has also been a general sense in the HAP that the State Department has been reluctant to be as forthcoming as we think appropriate when it comes to the wartime and postwar records pertaining to Japanese industrialists and to individuals who attained high office in postwar Japan. It has been difficult for the HAP to understand the Department's very much greater sensitivity when documents affect Japan than when they affect Germany. The double standard that appears to be applied simply makes no sense to HAP members. The possible inference that Japan is so much more valuable as an ally than Germany and must therefore be treated with exceptional consideration for its sensitivities is not consistent with the purpose of the Disclosure Acts and potentially harmful rather than helpful.

Like the members of the IWG, we have become aware of the great discrepancy in the quantity of records newly declassified pertaining to German war crimes as contrasted with those of Japan. It is, however, something of a consolation to us that the discovery that there are vast quantities of relevant records that have long been declassified but hardly ever consulted has brought and will now bring more attention to them. It is fortunate that new reference tools for such records as the National Archives is either producing or plans to produce will assist scholars in utilizing very substantial quantities of archives that have simply been overlooked for years.

In view of the general prior experience of historians with the reluctance to open records in the United Kingdom, we have all been surprised and delighted by the extent to which the British have agreed to the release of Foreign Government Information that they had provided to the United States, primarily during and right after World War II. A substantial portion of such records was located among the OSS files, and it will be of enormous interest to scholars to have these opened for research.

The fact that such a high proportion of the newly opened records is due to the review of materials that had hitherto been exempted from systematic review for declassification because they related to intelligence sources and methods or because they contained Foreign Government Information opens an obvious question. Much of this material would probably have been opened years ago if it had been reviewed earlier. Two examples, one from each category: the OSS material concerning the provision of important secret German documents by Fritz Kolbe to the wartime office of the OSS in Switzerland, and the interrogation of Otto Ohlendorf by the British when they arrested him in 1945. The former material certainly pertains to intelligence sources and methods, but the outlines of the story have been known for years, and there could hardly be anything in this file of current security concern. But it is of enormous interest to historians of modern Germany, of the war, and of American intelligence in the war. The British gave the United States copies of Ohlendorf's interrogations when they turned him over to the United States late in

1945 to be first a witness and then a defendant at the Nuremberg trials. After his trial by the United States Military Tribunal in Case 9, he was hanged in 1951. His interrogations immediately after the capture are of great importance; they could have been declassified with British agreement had they been reviewed many years ago.

I am certain on the basis of the IWG-HAP experience that rather than having a blanket exemption from systematic review, the two categories of intelligence sources and methods and Foreign Government Information need a separate date, perhaps 35 or 40 years, for review, with the Foreign Government Information checked with the government that provided it as has been done by the IWG. A two-tiered system of 25 years for the bulk and a longer period for special categories makes much more sense than the present one. Now the government has to stretch its security resources over vast quantities of records that could have been released but which, because they remain classified, make the truly sensitive ones all the more vulnerable to penetration. The fewer secrets that have to be protected, the more likely it is that they can be guarded with the protection resources available.

What will long stay in my memory are the dedicated efforts of the IWG members and the declassification monitors they employed; the seemingly endless and patient work of the National Archives staff assigned to the IWG program; and the congenial association with fellow members of the HAP.

Appendix 1. IWG Members, Staff, and Consultants

IWG Members

Allen Weinstein (Chair, 2006-2007)
Steven Garfinkel (Chair, 2000-2006), NARA
Michael Kurtz (Chair, 1999-2000), NARA
Stewart Aly, Department of Defense
Thomas Baer, Steinhardt Baer Pictures Company
Richard Ben-Veniste, Mayer, Brown, Rowe, and Maw
Christina Bromwell, Department of Defense
John E. Collingwood, FBI
David Holmes, CIA
Elizabeth Holtzman, Herrick, Feinstein, LLP
William Hooton, FBI
Harold J. Kwalwasser, Department of Defense
William Leary, National Security Council
David Marwell, United States Holocaust Memorial Museum
David Patterson, Department of State
Eli Rosenbaum, Department of Justice
Paul Shapiro, United States Holocaust Memorial Museum
William Slany, Department of State
Marc Susser, Department of State

IWG Agency Representatives

Edward Arnold, Department of the Army
Susan Arnold, National Security Agency
Steve Baker, FBI
Elizabeth B. White, Department of Justice
Paul Claussen, Department of State
Richard Corriveau, National Security Agency
Brian Downing, Department of State
Wayne Dunaway, National Security Agency
Eleni Kalisch, FBI
Carol Keeley, FBI
Michael Leahy, Citizenship and Immigration Services
Shelly Lopez-Potter, Department of the Navy
Steven Raho, Department of the Army
Steven Rogers, Department of Justice
Elaine Rogic, Department of the Army
Lisa Scalatine, Department of the Navy
Andrew Swicegood, Department of the Army
(CIA members names withheld)

IWG Staff at NARA

David Van Tassel (Staff Director)
William Cunliffe (Senior Archivist)
Greg Bradsher (Senior Archivist)
Paul Brown (Researcher)
Steven Hamilton (Archives Specialist)
Miriam Kleiman (Researcher)
Sean Morris (Researcher)
Richard Myers (Senior Archivist)
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Michael Petersen (Researcher)
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Robert Skwirot (Researcher)
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Norman Goda, Ohio University
James Lide, History Associates Incorporated
Marlene Mayo, University of Maryland, College Park
Timothy Naftali, University of Virginia
Robert Wolfe, NARA
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Consultants

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Patricia Bogen (Administrative Assistant)
Giuliana Bullard (Public Relations)
John Pereira (Auditor)
J. Edwin Dietel (Auditor)
Kris Rusch (Editor)
Raymond Schmidt (Reviewer)
Kirk Lubbes (Contract Management)

Historical Advisory Panel

Gerhard Weinberg (Chair), University of North Carolina, Chapel Hill
Rebecca Boehling, University of Maryland, Baltimore County
James Critchfield, Central Intelligence Agency (deceased)
Carol Gluck, Columbia University
Robert Hanyok, National Security Agency
Peter Hayes, Northwestern University
Linda Goetz Holmes, Independent Scholar
Christopher Simpson, American University
Ronald Zweig, New York University

Appendix 2. Nazi War Crimes Disclosure Act (P.L. 105-246)

Nazi War Crimes Disclosure Act

Public Law 105-246

Section 1. Short Title

This Act may be cited as the "Nazi War Crimes Disclosure Act."

Section 2. Establishment of Nazi War Criminal Records Interagency Working Group

(a) Definitions -- In this section the term

(1) "agency" has the meaning given such term under section 551 of title 5, United States Code;

(2) "Interagency Group" means the Nazi War Criminal Records Interagency Working Group established under subsection (b);

(3) "Nazi war criminal records" has the meaning given such term under section 3 of this Act; and

(4) "record" means a Nazi war criminal record.

(b) Establishment of Interagency Group --

(1) In general -- Not later than 60 days after the date of enactment of this Act, the President shall establish the Nazi War Criminal Records Interagency Working Group, which shall remain in existence for 3 years after the date the Interagency Group is established.

(2) Membership -- The President shall appoint to the Interagency Group individuals whom the President determines will most completely and effectively carry out the functions of the Interagency Group within the time limitations provided in this section, including the Director of the Holocaust Museum, the Historian of the Department of State, the Archivist of the United States, the head of any other agency the President considers appropriate, and no more than 3 other persons. The head of an agency appointed by the President may designate an appropriate officer to serve on the Interagency Group in lieu of the head of such agency.

(3) Initial Meeting -- Not later than 90 days after the date of enactment of this Act, the Interagency Group shall hold an initial meeting and begin the functions required under this section.

(c) Functions -- Not later than 1 year after the date of enactment of this Act, the Interagency Group shall, to the greatest extent possible consistent with section 3 of this Act --

(1) locate, identify, inventory, recommend for declassification, and make available to the public at the National Archives and Records Administration, all Nazi war criminal records of the United States;

(2) coordinate with agencies and take such actions as necessary to expedite the release of such records to the public; and

(3) submit a report to Congress, including the Committee on the Judiciary of the Senate and the Committee on Government Reform and Oversight of the House of Representatives, describing all such records, the disposition of such records, and the activities of the Interagency Group and agencies under this section.

Section 3. Requirement of Disclosure of Records Regarding Persons Who Committed

Nazi War Crimes

(a) Nazi War Criminal Records -- For purposes of this Act, the term "Nazi war criminal records" means records or portions of records that

(1) pertain to any person with respect to whom the United States Government, in its sole discretion,

has grounds to believe ordered, incited, assisted, or otherwise participated in the persecution of any person because of race, religion, national origin, or political opinion, during the period beginning on March 23, 1933, and ending on May 8,1945, under the direction of, or in association with --

(A) the Nazi government of Germany;

(B) any government in any area occupied by the military forces of the Nazi government of Germany;

(C) any government established with the assistance or cooperation of the Nazi government of Germany; or

(D) any government which was an ally of the Nazi government of Germany; or

(2) pertain to any transaction as to which the United States Government, in its sole discretion, has grounds to believe --

(A) involved assets taken from persecuted persons during the period beginning on March 23, 1933, and ending on May 8, 1945, by, under the direction of, on behalf of, or under authority granted by the Nazi government of Germany or any nation then allied with that government; and

(B) such transaction was completed without the assent of the owners of those assets or their heirs or assigns or other legitimate representatives.

(b) Release of Records --

(1) In General -- Subject to paragraphs (2), (3), and (4), the Nazi War Criminal Records Interagency Working Group shall release in their entirety Nazi war criminal records that are described in subsection (a).

(2) Exception for Privacy, etc. -- An agency head may exempt from release under paragraph (1) specific information, that would --

(A) constitute a clearly unwarranted invasion of personal privacy.

(B) reveal the identity of a confidential human source, or reveal information about the application of an intelligence source or method, or reveal the identity of a human intelligence source when the unauthorized disclosure of that source would clearly and demonstrably damage the national security interests of the United States;

(C) reveal information that would assist in the development or use of weapons of mass destruction;

(D) reveal information that would impair United States cryptologic systems or activities;

(E) reveal information that would impair the application of state-of-the-art technology within a United States weapon system;

(F) reveal actual United States military war plans that remain in effect;

(G) reveal information that would seriously and demonstrably impair relations between the United States and a foreign government, or seriously and demonstrably undermine ongoing diplomatic activities of the United States;

(H) reveal information that would clearly and demonstrably impair the current ability of United States Government officials to protect the President, Vice President, and other officials for whom protection services, in the interest of national security, are authorized;

(I) reveal information that would seriously and demonstrably impair current national security emergency preparedness plans; or

(J) violate a treaty or international agreement.

(3) Application of Exemptions --

(A) In General -- In applying the exemptions listed in subparagraphs (B) through (J) of paragraph (2), there shall be a presumption that the public interest in the release of Nazi war criminal records will be served by disclosure and release of the records. Assertion of such exemption may only be made when the agency head determines that disclosure and release would be harmful to a specific interest identified in the exemption. An agency head who makes such a determination shall promptly report it to the committees of Congress with appropriate jurisdiction, including the Committee on the Judiciary of the Senate and the Committee on Government Reform and Oversight of the House of Representatives. The exemptions set forth in paragraph (2) shall constitute the only authority pursuant to which an agency head may exempt records otherwise subject to release under paragraph (1).

(4) Limitation of title 5 -- This subsection shall not apply to records --

(A) related to or supporting any active or inactive investigation, inquiry, or prosecution by the Office of Special Investigations of the Department of Justice; or

(B) solely in the possession, custody, or control of that office.

(c) Inapplicability of National Security Act of 1947 Exemption -- Section 701(a) of the National Security Act of 1947 (50 U.S.C. 431) shall not apply to any operational file, or any portion of an operational file, that constitutes a Nazi war criminal record under section 3 of this Act.

Section 4. Expedited Processing of FOIA Requests for Nazi War Criminal Records

(a) Expedited Processing -- For purposes of expedited processing under section 552(a)(6)(E) of title 5, United States Code, any requester of a Nazi war criminal record shall be deemed to have a compelling need for such record.

(b) Requester -- For purposes of this section, the term "requester" means any person who was persecuted in the manner described under section 3(a)(1) of this Act who requests a Nazi war criminal record.

Section 5. Effective Date

This Act and the amendments made by this Act shall take effect on the date that is 90 days after the date of enactment of this Act.

Approved October 8, 1998.

Appendix 3. Japanese Imperial Government Disclosure Act (P.L. 106-567)

Japanese Imperial Government Disclosure Act of 2000
December 6, 2000

SEC. 801. SHORT TITLE.

This title may be cited as the "Japanese Imperial Government Disclosure Act of 2000".

SEC. 802. DESIGNATION.

1. DEFINITIONS- In this section:

1. AGENCY- The term `agency' has the meaning given such term under section 551 of title 5, United States Code.

2. INTERAGENCY GROUP- The term `Interagency Group' means the Nazi War Crimes and Japanese Imperial Government Records Interagency Working Group established under subsection (b).

3. JAPANESE IMPERIAL GOVERNMENT RECORDS- The term `Japanese Imperial Government records' means classified records or portions of records that pertain to any person with respect to whom the United States Government, in its sole discretion, has grounds to believe ordered, incited, assisted, or otherwise participated in the experimentation on, and persecution of, any person because of race, religion, national origin, or political opinion, during the period beginning September 18, 1931, and ending on December 31, 1948, under the direction of, or in association with--

1. the Japanese Imperial Government;

2. any government in any area occupied by the military forces of the Japanese Imperial Government;

3. any government established with the assistance or cooperation of the Japanese Imperial Government; or

4. any government which was an ally of the Japanese Imperial Government.

4. RECORD- The term `record' means a Japanese Imperial Government record.

2. ESTABLISHMENT OF INTERAGENCY GROUP-

1. IN GENERAL- Not later than 60 days after the date of the enactment of this Act, the President shall designate the Working Group established under the Nazi War Crimes Disclosure Act (Public Law 105-246; 5 U.S.C. 552 note) to also carry out the purposes of this title with respect to Japanese Imperial Government records, and that Working Group shall remain in existence for 3 years after the date on which this title takes effect. Such Working Group is redesignated as the `Nazi War Crimes and Japanese Imperial Government Records Interagency Working Group'.

2. MEMBERSHIP- Section 2(b)(2) of such Act is amended by striking `3 other persons' and inserting `4 other persons who shall be members of the public, of whom 3 shall be persons appointed under the provisions of this Act in effect on October 8, 1998.'

1. FUNCTIONS- Not later than 1 year after the date of the enactment of this Act, the Interagency Group shall, to the greatest extent possible consistent with section 803--

2. locate, identify, inventory, recommend for declassification, and make available to the public at the National Archives and Records Administration, all classified Japanese Imperial Government records of the

United States;

3. coordinate with agencies and take such actions as necessary to expedite the release of such records to the public; and

4. submit a report to Congress, including the Committee on Government Reform and the Permanent Select Committee on Intelligence of the House of Representatives, and the Committee on the Judiciary and the Select Committee on Intelligence of the Senate, describing all such records, the disposition of such records, and the activities of the Interagency Group and agencies under this section.

3. FUNDING- There is authorized to be appropriated such sums as may be necessary to carry out the provisions of this title.

SEC. 803. REQUIREMENT OF DISCLOSURE OF RECORDS.

1. RELEASE OF RECORDS- Subject to subsections (b), (c), and (d), the Japanese Imperial Government Records Interagency Working Group shall release in their entirety Japanese Imperial Government records.

2. EXEMPTIONS- An agency head may exempt from release under subsection (a) specific information, that would--

1. constitute an unwarranted invasion of personal privacy;

2. reveal the identity of a confidential human source, or reveal information about an intelligence source or method when the unauthorized disclosure of that source or method would damage the national security interests of the United States;

3. reveal information that would assist in the development or use of weapons of mass destruction;

4. reveal information that would impair United States cryptologic systems or activities;

5. reveal information that would impair the application of state-of-the-art technology within a United States weapon system;

6. reveal United States military war plans that remain in effect;

7. reveal information that would impair relations between the United States and a foreign government, or undermine ongoing diplomatic activities of the United States;

8. reveal information that would impair the current ability of United States Government officials to protect the President, Vice President, and other officials for whom protection services are authorized in the interest of national security;

9. reveal information that would impair current national security emergency preparedness plans; or

10. violate a treaty or other international agreement.

3. APPLICATIONS OF EXEMPTIONS-

1. IN GENERAL- In applying the exemptions provided in paragraphs (2) through (10) of subsection (b), there shall be a presumption that the public interest will be served by disclosure and release of the records of the Japanese Imperial Government. The exemption may be asserted only when the head of the agency that maintains the records determines that disclosure and release would be harmful to a specific interest identified in the exemption. An agency head who makes such a determination shall promptly report it to the committees of Congress with appropriate jurisdiction, including the Committee on the Judiciary and the Select Committee on Intelligence of the Senate and the Committee on Government Reform and the Permanent Select Committee on Intelligence of the House of Representatives.

2. APPLICATION OF TITLE 5- A determination by an agency head to apply an exemption provided in

paragraphs (2) through (9) of subsection (b) shall be subject to the same standard of review that applies in the case of records withheld under section 552(b)(1) of title 5, United States Code.

4. RECORDS RELATED TO INVESTIGATIONS OR PROSECUTIONS- This section shall not apply to records--

1. related to or supporting any active or inactive investigation, inquiry, or prosecution by the Office of Special Investigations of the Department of Justice; or

2. solely in the possession, custody, or control of the Office of Special Investigations.

SEC. 804. EXPEDITED PROCESSING OF REQUESTS FOR JAPANESE IMPERIAL GOVERNMENT RECORDS.

For purposes of expedited processing under section 552(a)(6)(E) of title 5, United States Code, any person who was persecuted in the manner described in section 802(a)(3) and who requests a Japanese Imperial Government record shall be deemed to have a compelling need for such record.

SEC. 805. EFFECTIVE DATE.

The provisions of this title shall take effect on the date that is 90 days after the date of the enactment of this Act.

Speaker of the House of Representatives.

Vice President of the United States and President of the Senate.

Appendix 4. Honoring the Life of Stan Moskowitz

HONORING THE LIFE OF STAN MOSKOWITZ

HON. CAROLYN B. MALONEY

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

CONGRESSIONAL RECORD, Thursday, July 27, 2006

Mrs. MALONEY. Mr. Speaker, I rise to express deep and profound sadness at the passing of Stan Moskowitz, CIA Director of Congressional Affairs and integral partner to the Interagency Working Group on Nazi War Crimes, IWG. Mr. Moskowitz passed away suddenly, after playing tennis, on June 29, 2006. It was a great shock to many who were privileged and fortunate to work with him.

Mr. Moskowitz played an integral role in ensuring the disclosure of documents related to Nazi war crimes. When the Nazi War Crimes Disclosure Act was extended for 2 years in February 2005, then Director of Central Intelligence Porter Goss asked Mr. Moskowitz, who at the time was retiring as CIA's Director of Congressional Affairs, to help him guide the Agency toward a full disclosure of the historical record as captured in CIA files. Based on Porter Goss's commitment, Mr. Moskowitz promised the IWG that CIA would do the following: Declassify information on all Nazis; Declassify operational files associated with those Nazis: Re-review material that had been redacted; undertake such additional searches that historians or CIA thought necessary as the work progressed.

Under the leadership of Mr. Moskowitz, the CIA has made good on each of these promises. He played a key role in ensuring the success of CIA's work during the 2-year extension and made a quick, sensitive, and good humored shift from all of his prior responsibilities to an entirely new, important and difficult role.

I first learned of Mr. Moskowitz's death from those of us working with the IWG in an effort to release U.S. Government records related to crimes committed by the Nazi and Japanese Governments during World War II. The response to the news was immediate and heartfelt. Since his colleagues conveyed Stan Moskowitz's remarkable character and important contribution he made to history, I would like to share with you some of their thoughts. One person wrote: "Stan was a man whose broad experience, character and personality drew you in a few have the ability to do. He just radiated intelligence, understanding, empathy, insight, and yes, wit. I will miss Stan." Another wrote: "Stan was a major reason for our success. He may not have always agreed with our conclusions, but he wanted to be sure that the historical record was as complete as possible." Finally: "What terrible, shocking news. Stan was a wonderful person who was unswervingly dedicated to pursuing truth, and he performed great service to his country in a long and distinguished career. He will be greatly missed."

Mr. Speaker, these are just a few of the statements from those who knew and worked with Mr. Moskowitz. I think they speak volumes of this man who contributed significantly to our Nation's history. Most recently, I met Stan Moskowitz at the IWG press conference on June 6. As usual, his comments were informative and insightful. He truly was a national treasure.

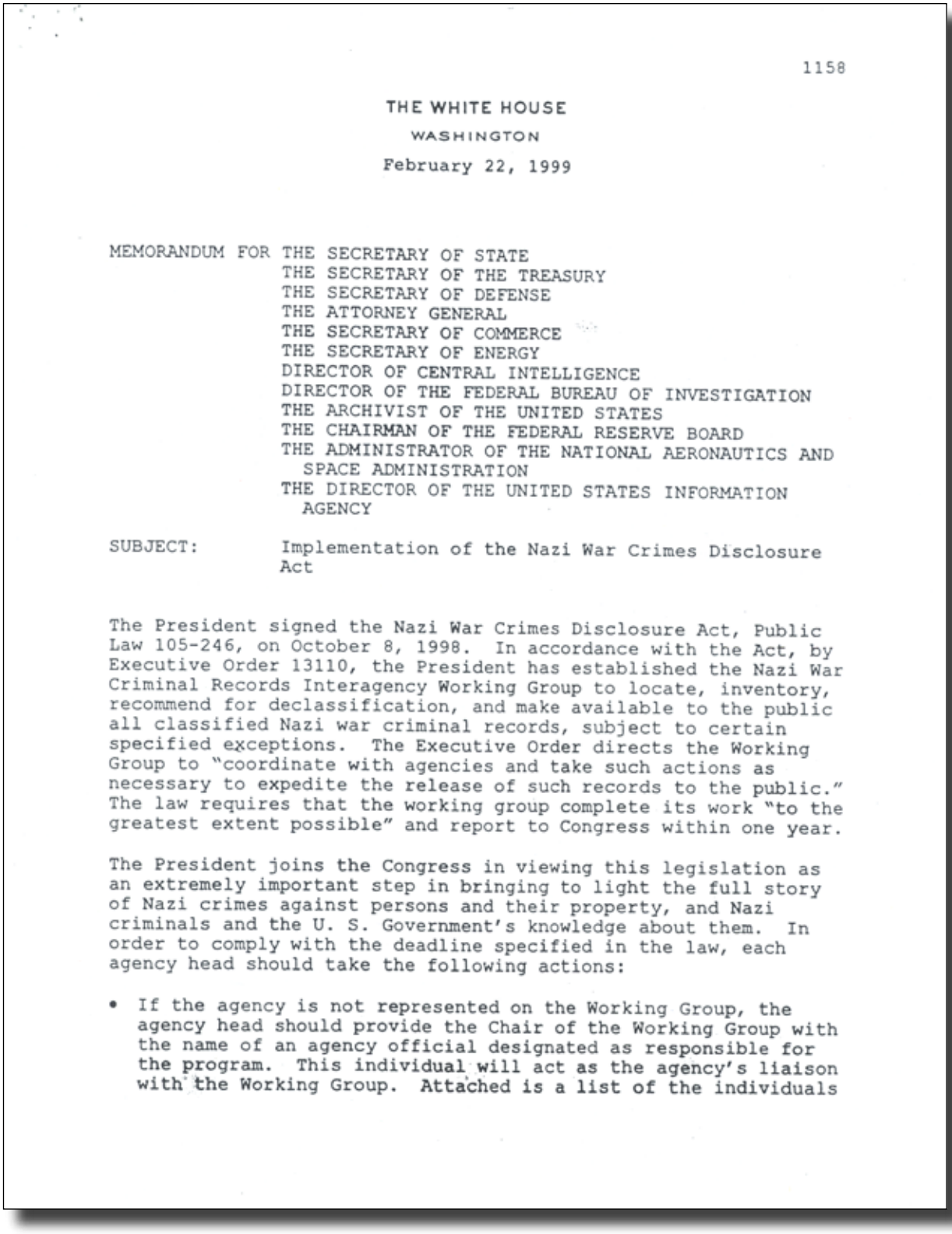
I would like to note that Mr. Moskowitz earned many high honors including two Presidential Distinguished Officer Awards, the Director's Medal, the Distinguished Career Intelligence Medal, the Distinguished Intelligence Medal, and the Intelligence Community Medal of Merit. Mr. Speaker, Stan Moskowitz served his Agency, his government, and the people of the United States loyally and with honor. I would like to offer Mr. Moskowitz's family my deepest condolences. He will truly be missed.

Appendix 5. Previously Opened War Crimes Related Documents

Record Group	Record Group Title
038	Records of the Office of the Chief of Naval Operations
043	Records Relating to the Far East Commission
056	Records of the Department of the Treasury
059	General Records of the Department of State
060	Records of the Department of Justice
065	Records of the Federal Bureau of Investigation
080	General Records of the Department of the Navy, 1798-1947
082	Records of the Federal Reserve System
084	Records of the Foreign Service Posts of the Department of State
107	Records of the Secretary of War
125	Records of the Office of the Judge Advocate General (Navy
127	Records of the U.S. Marine Corps
131	Records of the Office of Alien Property
153	Records of the Office of the Judge Advocate General (Army)
165	Records of the War Department General and Special Staffs
200	National Archives Gift Collection
208	Records of the Office of War Information
218	Records of the US Joint Chiefs of Staff
226	Records of the Office of Strategic Services
238	National Archives Collection of World War II War Crimes Records
242	National Archives Collection of Foreign Records Seized
243	Record of the United States Strategic Bombing Survey
256	Records of Foreign Assets Control
260	Records of US Occupation Records, World War II
262	Records of the Foreign Broadcast Intelligence Service
263	Records of the Central Intelligence Agency
299	Records of the Foreign Claims Settlement Commission
319	Records of the Army Staff
330	Records of the Office of the Secretary of Defense
331	Records of Allied Operational and Occupation Headquarters
353	Records of Interdepartmental and Intradepartmental Committees (State)
389	Records of the Office of the Provost Marshal General
407	Records of the Adjutant General's Office
457	Records of the National Security Agency
466	Records of the High Commissioner for Germany
492	Records of Mediterranean Theater of Operations, United States Army
493	Records of the U.S. Forces in the China-Burma-India Theater of Operations
494	Records of the U.S. Army Forces in the Middle Pacific (World War II)
495	Records of HQ, U.S. Army Forces, Western Pacific (World War II)
496	Records of GHQ, Southwest Pacific Area and U.S. Army Forces, Pacific (World War II)
549	Records of United States Army, Europe
554	Records of GHQ, Far East Command, SCAP, and United Nations Command

Appendix 6. The Tasking Orders

February 1999 Memorandum



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THE WHITE HOUSE

WASHINGTON

February 22, 1999

MEMORANDUM FOR THE SECRETARY OF STATE
THE SECRETARY OF THE TREASURY
THE SECRETARY OF DEFENSE
THE ATTORNEY GENERAL
THE SECRETARY OF COMMERCE
THE SECRETARY OF ENERGY
DIRECTOR OF CENTRAL INTELLIGENCE
DIRECTOR OF THE FEDERAL BUREAU OF INVESTIGATION
THE ARCHIVIST OF THE UNITED STATES
THE CHAIRMAN OF THE FEDERAL RESERVE BOARD
THE ADMINISTRATOR OF THE NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
THE DIRECTOR OF THE UNITED STATES INFORMATION AGENCY

SUBJECT: Implementation of the Nazi War Crimes Disclosure Act

The President signed the Nazi War Crimes Disclosure Act, Public Law 105-246, on October 8, 1998. In accordance with the Act, by Executive Order 13110, the President has established the Nazi War Criminal Records Interagency Working Group to locate, inventory, recommend for declassification, and make available to the public all classified Nazi war criminal records, subject to certain specified exceptions. The Executive Order directs the Working Group to "coordinate with agencies and take such actions as necessary to expedite the release of such records to the public." The law requires that the working group complete its work "to the greatest extent possible" and report to Congress within one year.

The President joins the Congress in viewing this legislation as an extremely important step in bringing to light the full story of Nazi crimes against persons and their property, and Nazi criminals and the U. S. Government's knowledge about them. In order to comply with the deadline specified in the law, each agency head should take the following actions:

- If the agency is not represented on the Working Group, the agency head should provide the Chair of the Working Group with the name of an agency official designated as responsible for the program. This individual will act as the agency's liaison with the Working Group. Attached is a list of the individuals

named to the Working Group by the President or by the agency heads appointed by the President.

- As a step toward implementing the first phase of compliance with the law, that of locating relevant documents, each agency should undertake a preliminary survey of classified records in the agency's legal custody to locate bodies of records that can reasonably be believed to contain information that (1) pertains to any individual who the U.S. Government has grounds to believe ordered, incited, assisted, or otherwise participated in the persecution of any person because of race, religion, national origin, or political opinion, during the period of Nazi rule in Germany (1933-45); or (2) involves assets taken, whether or not under color of law, during that period from persons persecuted by the Nazi regime or governments associated with it.

For purposes of this preliminary survey, agencies should include any bodies of records that are likely to contain information on war crimes, war criminals, acts of persecution, or assets taken by, under the direction of, or in association with the Nazi government of Germany or any government of a European country allied with, occupied by, or established with the assistance or cooperation of Nazi Germany.

Agencies should take an expansive view of the act in making this survey and in subsequent identification of records and declassification review. Special efforts should be made to locate records that may shed light on U.S. Government knowledge about, policies toward, and treatment of Nazi war criminals, especially during the Cold War years.

The Working Group has prepared the attached initial guidance on the scope of this project, including the basic requirements for the preliminary survey of records. Please report the results of the preliminary survey to the Chair of the Working Group, together with an estimate of the personnel and budget resources and the time necessary to comply with the Act, by March 31, 1999.

The Interagency Working Group will monitor agency activity and provide guidance to assist agencies in expeditiously completing the initial survey and each of the subsequent phases of compliance with the legislation. To the extent permitted by law, such guidance should be considered authoritative.

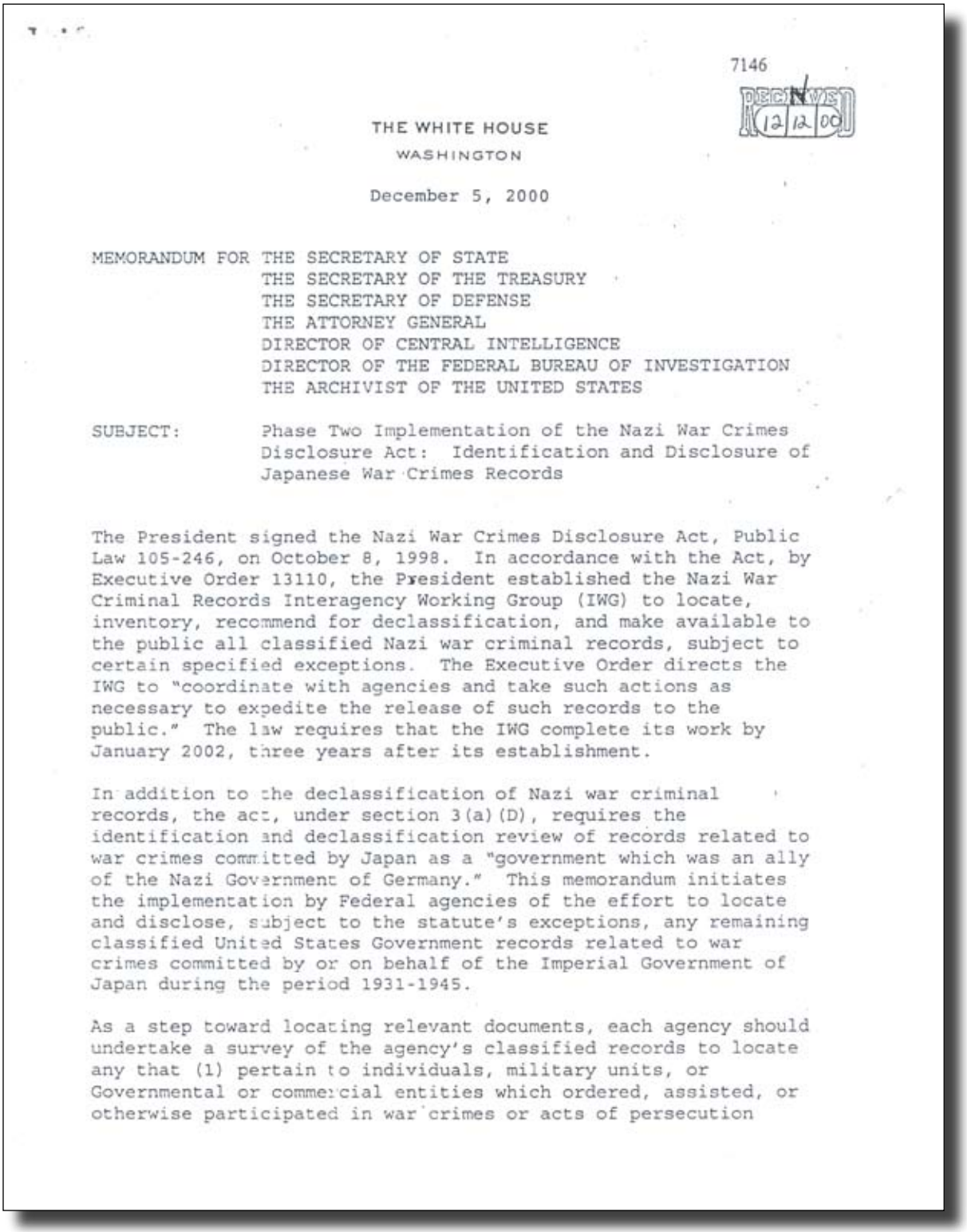
Dr. Michael Kurtz, Assistant Archivist for Records Services, National Archives and Records Administration, will chair the Working Group.

Samuel R. Berger

Samuel R. Berger
Assistant to the President
for National Security Affairs

Attachments

December 2000 Memorandum



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THE WHITE HOUSE

WASHINGTON

December 5, 2000

MEMORANDUM FOR THE SECRETARY OF STATE
THE SECRETARY OF THE TREASURY
THE SECRETARY OF DEFENSE
THE ATTORNEY GENERAL
DIRECTOR OF CENTRAL INTELLIGENCE
DIRECTOR OF THE FEDERAL BUREAU OF INVESTIGATION
THE ARCHIVIST OF THE UNITED STATES

SUBJECT: Phase Two Implementation of the Nazi War Crimes Disclosure Act: Identification and Disclosure of Japanese War Crimes Records

The President signed the Nazi War Crimes Disclosure Act, Public Law 105-246, on October 8, 1998. In accordance with the Act, by Executive Order 13110, the President established the Nazi War Criminal Records Interagency Working Group (IWG) to locate, inventory, recommend for declassification, and make available to the public all classified Nazi war criminal records, subject to certain specified exceptions. The Executive Order directs the IWG to "coordinate with agencies and take such actions as necessary to expedite the release of such records to the public." The law requires that the IWG complete its work by January 2002, three years after its establishment.

In addition to the declassification of Nazi war criminal records, the act, under section 3(a)(D), requires the identification and declassification review of records related to war crimes committed by Japan as a "government which was an ally of the Nazi Government of Germany." This memorandum initiates the implementation by Federal agencies of the effort to locate and disclose, subject to the statute's exceptions, any remaining classified United States Government records related to war crimes committed by or on behalf of the Imperial Government of Japan during the period 1931-1945.

As a step toward locating relevant documents, each agency should undertake a survey of the agency's classified records to locate any that (1) pertain to individuals, military units, or Governmental or commercial entities which ordered, assisted, or otherwise participated in war crimes or acts of persecution

during the period of Japanese aggression prior to and during World War II; or (2) involve assets taken during that period from persons persecuted by the Imperial Japanese regime or its allies. For purposes of this survey, agencies should include any records that are likely to contain information, or lead to information, on war crimes, war criminals, or looted assets regarding Japan, or countries allied with, occupied by, or established with the assistance or cooperation of the Imperial Japanese Government, or in the Pacific Theater during World War II.

Agencies should report the results of this survey by January 26, 2001, to the IWG through channels already established during the initial implementation of the Nazi War Crimes Disclosure Act. The Nazi War Criminal Records Interagency Working Group will monitor agency activity and provide guidance to assist agencies in expeditiously completing the initial survey and each of the subsequent phases of compliance with the legislation. To the extent permitted by law, such guidance is to be considered authoritative.

Samuel R. Berger
Assistant to the President
for National Security Affairs

Appendix 7. Memorandum on Relevancy, 26 July 2001

IWG

Nazi War Crimes and Japanese Imperial Government Records Interagency Working Group

July 26, 2001

MEMORANDUM FOR: Members, Nazi War Crimes and Japanese Imperial Government Records Interagency Working Group (IWG)

FROM: Steven Garfinkel
Chair

SUBJECT: Relevancy standards

In recent weeks, we have confronted several specific situations in which the question of relevancy of particular records to the scope of our task has been raised. To help resolve this issue, I requested the IWG staff, in coordination with our expert historians, to prepare a guidance paper on this subject that reiterates prior agreements among IWG members. I attach the resulting guidance for your application in your review of records, and have instructed our auditing team to rely on this guidance in the scope of their review of your work. In addition to our historians, this guidance has also received the concurrence of our representative from the National Security Council, confirming its consistence with the taskings that have gone out from the NSC pursuant to both pertinent statutes.

It is particularly important to emphasize that the statutes under which we are working call for the application of standards based on a historical analysis of war crimes and war criminals in determining relevancy, and not the far narrower standards that might apply for judicial/prosecutorial purposes. I call your attention to my public comments before the release of the CIA "name files" in April:

> [T]he members of the IWG view their mandate as one requiring a historical and archival perspective of relevant records. From this perspective, it is critical to provide scholars and other researchers the most extensive group of records that may directly or indirectly bear on the issue of war crimes or war criminals. . . . . To this end, the IWG has purposely instructed agencies to use a wider, not a narrower brush in searching for and declassifying relevant records. The IWG fully accepts responsibility to the extent that this broader approach may lead to the mention of, or information about an individual who is not a war criminal.

This final comment may be particularly important to some agencies. It is the IWG, not the reviewing agency, that assumes ultimate responsibility for the breadth of the product that is declassified and opened to the public.

c/o National Archives and Records Administration, College Park, Maryland 20740

IWG

Finally, I draw your attention once again to language from the statute that pertains to the application of exemptions. I believe that the spirit and intent of this language is just as pertinent to the issue of relevancy as it is to the issue of exemptions.

> In applying the exemptions . . . there shall be a presumption that the public interest in the release of Nazi war criminal records will be served by disclosure and release of the records. Assertion of such exemption may only be made when the agency head determines that disclosure and release would be harmful to a specific interest identified in the exemption. An agency head who makes such an exemption shall promptly report it to the committees of Congress with appropriate jurisdiction . . ..
> [Section 3(b)(3)(A) of the Act]

I thank you once again for your extraordinary cooperation and diligence, which are contributing so significantly to the public record.

Attachment

IWG

Nazi War Crimes and Japanese Imperial Government Records Interagency Working Group

July 26, 2001

Guidance for Agency Search, Review, and Release of Documents Subject to the Nazi War Crimes Disclosure Act and the Japanese Imperial Government Disclosure Act

Agencies should apply the following criteria in searching for and reviewing for release records subject to the Nazi War Crimes Disclosure Act and the Japanese Imperial Government Disclosure Act. In applying the criteria, agencies should refer to the Acts, guidance issued by the Assistant to the President for National Security Affairs dated 22 February 1999 and 5 December 2000, and the name and keyword lists distributed by the Department of Justice Office of Special Investigations (OSI) and the Nazi War Crimes and Japanese Imperial Government Records Interagency Working Group (IWG).

It should be kept in mind that the object of the Disclosure Acts is not the prosecution of individuals but the bringing to light of evidence to aid in historical understanding. The following guidance is based on deliberations and decisions of the IWG arrived at by consensus in meetings attended by all member agencies. It reflects the injunction of the Congress, as evident in the legislative history, that the release of information be as broad as possible subject to limited, specified exemptions consistent with the protection of national security.

Definition of Relevant Documents:

- All documents directly or indirectly related to activities of the Nazi government of Germany, its members, its collaborators, countries occupied and members of governments of such countries, and its allies during the period 1933 to 1945 and those of the Imperial Government of Japan during the period 1931 to 1945 that pertain to war crimes, war criminals, persecution, or looting. Reviewers making decisions regarding relevancy of materials are reminded that files are relevant if they shed light on any Nazi/Japanese war crime or persecution even though the file in question, whether for an individual, organization, or operation, does not contain direct evidence of or information about specific war crimes.

- All documents directly or indirectly related to any individual on the OSI search lists, including the list of SS officers' names and names from the United Nations War Crimes Charge Files, or other individuals suspected of war crimes. This includes all documents about activities anytime during the period 1933-1998 of Nazis whose names appear on the OSI lists and activities from 1931-1998 of suspected Japanese war criminals whose names appear on the OSI lists. Files of former members of the Gestapo, the SS, and other Nazi or collaborationist organizations are relevant to the Nazi War Crimes Disclosure Act even though individuals named in the files may not have been charged with specific war crimes.

IWG

These records are relevant because information on the operations of those organizations, which were judged criminal in postwar prosecutions, sheds light on war crimes and persecution generally. Members of criminal organizations meet the requirement of Section 3(a) of the law in that records relating to them "pertain to any person with respect to whom the United States Government, in its sole discretion, has grounds to believe ordered, incited, assisted, or otherwise participated in the persecution of any person because of race, religion, national origin, or political opinion. . . ."

As research on this project continues, additional search criteria and supplemental lists (including individual names, operation names, names of governmental entities, and geographic locations) may be developed and distributed by the IWG for use in identifying relevant records.

Declassification Review and Release:

- The declassification decision-making process is entirely separate from the process of identifying relevant documents. Relevant records may not be withheld for any reason other than the exemptions specified in the Acts.

- No document may be withheld or redacted unless the withholding is authorized by the agency head and covered by a specific exemption under the Act. Even then, specific damage to U.S. national security interests must be demonstrated to justify withholding or redacting relevant information. An agency head may exercise discretion to declassify documents that are arguably exempt.

- There should be no automatic withholding of intelligence sources or other categories of information. A specific justification and analysis must be made in each case where there is a redaction or withholding of information. Individual names, cryptonyms, pseudonyms, etc., of Nazis on the OSI search lists and others suspected of war crimes may not be redacted even if the person was a source, informant, contact, etc., unless the revelation of the information would, in the language of the law, "clearly and demonstrably damage the national security interests of the United States." Always, in the case of information related to war crimes, war criminals, persecution, or looting, "there shall be a presumption that the public interest in the release of Nazi war criminal records will be served by disclosure and release of the records."

- The standards of the Acts must be applied consistently across Government. Part of the IWG's mission is to assure this consistency through oversight.

IWG

- If information from a document or file is withheld because it is not relevant to the Act this should be indicated in the released file, together with the number of pages withheld and the reason for withholding. Information that is not covered by the Act that must be withheld will be marked "Redacted information not relevant to the [cite Act]."

- Normally, file segments should be treated as integral units so as to retain the context of included files and documents. Normally, single documents should be treated as not segregable. When selected documents and files are alienated from their original file structure, a note on provenance should accompany the released documents in order to provide context.

- Where it is important to the meaning of the document, substitute language should be used to describe what has been withheld in the interest of national security as nearly as possible without compromising the information.

Appendix 8. Guidance to Agencies on Foreign Government Information

The Nazi War Crimes and Japanese Imperial Government Records Interagency Working Group

May 10, 2001

MEMORANDUM FOR: Members, Nazi War Crimes and Japanese Imperial Government Records Interagency Working Group (IWG)

FROM: Steven Garfinkel, Chair

SUBJECT: Foreign Government Information

At our last meeting, the representatives of two agencies raised the issue of exempting foreign government information. The purpose of this memorandum is to remind the member agencies that "foreign government information" is not an exemption category per se under Executive Order 12958, "Classified National Security Information," for historical material over 25 years old. The applicable exemptions under the Nazi War Crimes Disclosure Act, which mimic the national security exemptions in E.O. 12958, also do not include a specific exemption for foreign government information. Therefore, in order to exempt information that originated from a foreign government, the responsible agency head, not the foreign government, must determine that the information clearly falls within another exemption to disclosure under the Act.

Some background information on this subject may be informative. Under the predecessor classification systems to E.O. 12958, foreign government information was a specific exemption category for information whatever its age. However, under these systems, many agencies had experienced situations in which older records of historical value, which otherwise were no longer sensitive, remained classified because the foreign government refused to authorize declassification. Often these decisions were made by liaisons from the comparable agency of the foreign government without any input from a higher authority. In some notable situations, these actions resulted in ludicrous decisions for continued classification that brought public ridicule to the entire security classification system, and made the protection of truly sensitive information more difficult.

As a result, with the development of E.O. 12958, the White House made a purposeful decision not to include foreign government information as a specific exemption category for historical records over 25 years old. Instead, in accordance with the Order's implementing directive (32 CFR § 2001.51(g)), the responsible agency or the Department of State is encouraged to consult with the foreign government, but the ultimate decision rests with an authorized official of the agency (the agency head under the Nazi War Crimes Disclosure Act).

With respect to records subject to the exemption standards of the Nazi War Crimes Disclosure Act, agencies must exercise this responsibility with particular care. The onus for relevant records, even records that may include foreign government information, clearly leans toward declassification and disclosure.

In applying the exemptions… there shall be a presumption that the public interest in the release of Nazi war criminal records will be served by disclosure and release of the records. Assertion of such exemption may only

be made when the agency head determines that disclosure and release would be harmful to a specific interest identified in the exemption. An agency head who makes such an exemption shall promptly report it to the committees of Congress with appropriate jurisdiction…

[Section 3(b)(3)(A) of the Act]

Appendix 9. Guidance on Privacy

NARA preliminary analysis of privacy issues

I. The exemption from disclosure on privacy grounds

A. The Nazi War Crimes Disclosure Act amends the Freedom of Information Act (FOIA) to require disclosure of classified "Nazi war criminal records," with certain exceptions:

* Section 3(b)(2)(A) of the Act allows an agency head to exempt from release "specific information, that would . . . constitute a clearly unwarranted invasion of personal privacy." In keeping with the fact that the Nazi War Crimes Disclosure Act, like the FOIA itself, is a disclosure statute, not a withholding statute, the exemptions are not mandatory.
* The term "clearly unwarranted invasion of personal privacy" is also used in the Freedom of Information Act Exemption 6, 5 U.S.C. § 552(b)(6). We can look to FOIA's extensive case law for an interpretation of what the term means and how to apply it to "specific information" in Nazi war criminal records.

B. Elements of FOIA Exemption 6 (personal privacy):

* Even to be considered for potential withholding, the information must be identifiable with a specific individual, not a large group of individuals or an organization.
* Once that threshold requirement is met, the question is whether the disclosure of the information "would constitute a clearly unwarranted invasion of personal privacy." That answer depends upon the outcome of a balancing of the public's right to disclosure against the individual's right to privacy.
* First, is there a privacy interest to be protected? If there is no identifiable privacy interest to begin with, then no further analysis is needed: the information is disclosed.
* In what circumstances might there be no privacy interest? Although there are almost always exceptions, the general rules are: no privacy interest in information in the public domain; no privacy for dead people or for organizations, companies or corporations; no privacy expectation for federal employees in information regarding their employment status or duties.
* If a privacy interest exists, then you must identify the public interest, if any, in disclosure and weigh it against the privacy interest. If there is no public interest in disclosure, or if the privacy interest outweighs the public interest, then the invasion of privacy would be unwarranted and the information should be withheld.
* If the public interest outweighs the privacy interest, then the invasion of privacy would be warranted and the information should be disclosed.
* What constitutes "public interest"? For purposes of FOIA, the public's interest is in information that sheds light on an agency's performance of its statutory duties--i.e., it shows "what the government is up to." To be considered in the balancing test, the information asserted to be in the public interest must reveal something about the operations and activities of the federal government.

C. "Public interest" considerations raised by the Nazi War Crimes Disclosure Act:

* The Act expressly provides that in applying the other exemptions from release--those relating to national

security concerns [Sec. 3(b)(2)(B)-(J)]--there is a "presumption that the public interest in the release of Nazi war criminal records will be served by disclosure and release of the records." Sec. 3(b)(3)(A). Assertion of the national security exemptions also requires an agency head to make the determination that release of the exempted information "would be harmful to a specific interest identified in the exemption." Sec. 3(b)(3)(A).

* Although this presumption is not expressly applicable to the privacy exemption, such a presumption is implicit in the FOIA itself and the privacy exemption's balancing test requires that the public interest be factored into any determination to apply the exemption. Moreover, in conducting the balancing test, the courts have instructed that the "clearly unwarranted" language in the exemption weights the scales in favor of disclosure.

* The Supreme Court has emphasized that a core public interest embodied in the FOIA itself is "to hold the governors accountable to the governed," to inform the public of violations of the public trust. The legislative history of the Nazi War Crimes Disclosure Act and the National Security Advisor's tasking memorandum of February 22, 1999, make clear that this core purpose is integral to implementation of the Act. For example, Senator Leahy noted in his statement in support of the Act the need for "full disclosure by federal agencies about what our government knew, and when, about Nazi atrocities and the criminals who committed those atrocities."

Finally, it is important to remember that even if a privacy interest in withholding is found to outweigh a public interest in disclosure, FOIA requires release of all reasonably segregable non-exempt information in a record.

As processing of records proceeds, NARA will provide agencies with examples of records that will help in making these privacy determinations.

II. List to be provided by Office of Special Investigations, DOJ – privacy issues

* The Justice Department's Office of Special Investigations (OSI) will be providing agencies with a list of approximately 60,000 names that can be used to search for responsive records. The bases for the list will be (1) the names of SS officers and (2) individuals named by the United Nations War Crimes Commission. Although both of these lists are open and available to the public, the OSI-compiled list will likely be supplemented by names of individuals who may not have been publicly associated with criminal activity but whose names could help lead to records encompassed by the Act.

* Accordingly, the OSI-compiled list should be characterized in a way that avoids having the government unfairly stigmatize persons who have never been charged with or publicly accused of a crime. One approach would be to designate the list as a "key word list for conducting searches" or similar title that avoids an implication of wrongdoing on the part of each and every individual who is on the list.

III. Potential Privacy Act issues

NARA has identified at least two areas in which implementation of the Nazi War Crimes Disclosure Act could be impacted by the provisions of the Privacy Act:

(1) The Office of Special Investigations has asked that agencies, once they have located responsive records, pass the records to OSI for its review and determination whether the records fit within the Nazi War Crimes Disclosure Act's exclusion from disclosure for records "related to or supporting any active or inactive investigation, inquiry, or prosecution" by OSI. In anticipation that at least some responsive records may be located in

Privacy Act systems of records, agencies should check their Privacy Act routine uses to see whether a disclosure of those records to OSI would fit within an existing published routine use. Another way to deal with such a disclosure would be for OSI to make a written request to the agencies that comports with the requirements of the Privacy Act's subsection (b)(7) (allowing an agency to disclose Privacy Act-protected records for a specified law enforcement purpose). Yet another approach could be for agencies to publish a specialized routine use for purposes of implementing the Nazi War Crimes Disclosure Act, as discussed immediately below.

(2) Agencies that wish to withhold information in responsive records under one of the exemptions in the Nazi War Crimes Disclosure Act at Section 3(b)(2) will need concurrence by the Interagency Working Group before an exemption is invoked and information is withheld. In order to get the IWG's concurrence, agencies will need to provide those records to the IWG for its review. It is likely that at least some of these records will come from Privacy Act systems of records. It is unlikely, however, that agencies have an already-published routine use that would allow such a disclosure from the agencies to the IWG. Therefore, agencies should consider publishing a new routine use to cover such a disclosure. Such a new routine use could also be written in such a way to permit the disclosure discussed above in point (1).

Agencies are strongly advised to consult with their General Counsel's Offices, and with the Office of Management and Budget and the Department of Justice, on strategies to deal with the potential Privacy Act problems noted in the foregoing two points.

Finally, agencies will be turning over their declassified records to NARA to be made available to the public under the Nazi War Crimes Disclosure Act. NARA believes that disclosure of such records to NARA by the agencies is permitted under subsection (b)(6) of the Privacy Act.

Office of General Counsel May 1999
National Archives at College Park

Appendix 10. CIA Response to IWG Report Questions

CIA Response to IWG Report Questions
September 2002

Addendum to CIA Response to IWG Questions

CIA Relevancy Guidelines:

No challenge has been greater for CIA throughout this effort than to establish relevancy guidelines that comply with the statute and with the broader IWG interpretation on the one hand and that appropriately protect Agency equities on the other. It should be emphasized that the CIA is the only Intelligence Community agency that is releasing its documents (rather than summaries of documents) while seeking to provide as much information as possible. The CIA has a statutory obligation to protect sources and methods. This obligation underlies all decisions made with respect to the release of documents. Moreover, the need to protect sources and methods is not only a statutory obligation, but is also a principle central to the successful conduct of CIA's business. Most importantly, the need to maintain such protection is not attenuated by time. It is for this reason that we have been so careful in making our release decisions. Finally, the fact that other non-intelligence USG agencies have provided extensive releases under this Act that may or may not contain information about war crimes as described in the statute cannot detract from our need to carefully consider our decisions. It is based on our unique requirements that the guidelines set forth below were established.

CIA's guidelines for determining the relevancy of documents to the Nazi War Crimes Disclosure Act were based on guidance from the Agency's Office of General Counsel (OGC).

- A document relevant or responsive to the Act is about a person or a transaction, where:
  - The person committed any of the specified war crimes set out in the statute.
  - The transaction involved assets taken from the persecuted without their consent, as described in the statute.
- A person is considered to have committed war crimes if the individual is among the 3,000 (on DOJ's watchlist of 60,000 names) who were actually "convicted" of war crimes, or if information about the person's war crimes is contained either in CIA documents or in documents provided by another USG agency.

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CIA Response to IWG Report Questions
September 2002

- If the person was not convicted of war crimes and there is no information in CIA documents or evidence from another USG agency that the person committed war crimes as defined under the Act, then any documents on that person are deemed "outside the scope of the Act."

- However, the CIA has reviewed and released on a discretionary basis numerous documents on individuals who were suspected of war crimes as indicated by the person's name being on the DOJ watchlist of 60,000 names and also listed on the United Nations War Crimes Commission Charge List, listed as "extradited," or listed as "notorious." In addition, the CIA has also reviewed and released discretionarily many World War II era documents which are of historical value and do not contain war crimes information. Approximately 65 percent of the 35,000 pages released to NARA by CIA have been released discretionarily.

Appendix 11. Consensus Decisions and Guidance from IWG Arising from IWG Meeting, April 11, 2000

Nazi War Criminal Records Interagency Working Group

IWG Memo

To: CIA

From: IWG Staff

Date: 04/14/00

Re: Consensus decisions and guidance from IWG arising from IWG meeting, April 11, 2000

OSS Records

1. OSS records not selected as relevant by CIA from among the withdrawn records at NARA will be screened to identify additional relevant material. This re-review will be done cooperatively by CIA, IWG Staff, the historians, and the Declassification Review Team.

2. The IWG has no objection to redactions of names and identification numbers requested by the British provided reviewers are alert to the need to identify and release the names of war criminals.

3. Names of CIA employees. CIA will attempt if at all possible to determine if a name can be released when release is necessary to understanding.

201 Files

1. Identification of sources.
   - Decisions on sources proposed for redaction will be held in abeyance for further research when it is unclear whether the source may have been involved in war crimes.
   - If a source is connected to war crimes, this will be acknowledged and discussed with the IWG members and staff if CIA proposes redaction.
   - Substitute language will be used for redacted source descriptions where important to meaning. Substitute language for source deletions should be used in the six high priority 201 files. Substitute language should be as specific as possible in order to afford the researcher as much context and indication of reliability as possible.

2. Identification of CIA officials
   - Where redaction is necessary to protect national security, substitute language should be used as necessary to give context and meaning.
   - Job descriptions should not be routinely redacted

3. Identification/ location of stations.
- Locations of stations and bases in Germany through 1955 will be released.
- Domestic sites. The city name will be deleted, but not the office designation.
- Substitute language giving a general geographic area should be used lieu of the station location when it is important to the meaning of the document.

4. Cryptonyms. Substitute language to be used when important to context and meaning.

5. Organizational designations.
- Header information (distribution and routing) to be redacted in all but "notorious" files. An explanation will be inserted about what was redacted.
- Header information will be edited and redacted in detail in "notorious" files.
- Organization designation will be released at the division level and above.

7. 201 file numbers and other file numbers will be redacted except for the files of "notorious 6" and other high priority files.

8. Foreign government information. Continue coordination with foreign governments.

9. Waldheim file.
- Current "non-relevant" materials are to be withheld in full for now for reasons of national security.
- If new information warrants, the decision to withhold the material will be revisited.

10. Phone numbers. No objection to redaction.

11. Barbie 201 file to be re-reviewed.

12. CIA should proceed with searching the records of the DI and other CIA components.

Appendix 12. Feinstein Statement on Bill S1902

Statements on Bill S1902

Introduced by Senator Mrs. Feinstein of CA

Mr. President,

I rise today to introduce the Japanese Imperial Army Disclosure Act of 1999.

This legislation will require the disclosure under the Freedom of Information Act classified records and documents in the possession of the U.S. Government regarding chemical and biological experiments carried out by Japan during the course of the Second World War.

Let me preface my statement by making clear that none of the remarks that I will make in discussing this legislation should be considered anti-Japanese. I was proud to serve as the President of the Japan Society of Northern California, and I have done everything I can to foster, promote, and develop positive relations between Japan, the United States, China, and other states of the region. The legislation I introduce today is eagerly sought by a large number of Californians who believe that there is an effort to keep information about possible atrocities and experiments with poisonous gas and germ warfare from the pubic record.

One of my most important goals in the Senate is to see the development of a Pacific Rim community that is peaceful and stable. I have worked towards this end for over twenty years. I introduce this legislation to try to heal wounds that still remain, particularly in California's Chinese-American community.

This legislation is needed because although the Second World War ended over fifty years ago--and with it Japan's chemical and biological weapons experimentation programs--many of the records and documents regarding Japan's wartime activities remain classified and hidden in U.S. Government archives and repositories. Even worse, according to some scholars, some of these records are now being inadvertently destroyed.

For the many U.S. Army veteran's who were subject to these experiments in POW camps, as well as the many Chinese and other Asian civilians who were subjected to these experiments, the time has long since passed for the full truth to come out.

According to information which was revealed at the International Military Tribunal for the Far East, starting in 1931, when the so-called `Mukden incident' provided Japan the pretext for the occupation of Manchuria, the Japanese Imperial Army conducted numerous biological and chemical warfare tests on Chinese civilians, Allied POWs, and possibly Japanese civilians as well.

Perhaps the most notorious of these experiments were carried out under General Ishii Shiro, a Japanese Army surgeon, who, by the late 1930's had built a large installation in China with germ

breeding facilities, testing grounds, prisons to hold the human test subjects, facilities to make germ weapons, and a crematorium for the final disposal of the human test victims. General Ishii's main factory operated under the code name Unit 731.

Based on the evidence revealed at the War Crimes trials, as well as subsequent work by numerous scholars, there is little doubt that Japan conducted these chemical and biological warfare experiments, and that the Japanese Imperial Army attempted to use chemical and biological weapons during the course of the war, included reports of use of plague on the cities of Ningbo and Changde.

And, as a 1980 article by John Powell in the Bulletin of Concerned Asia Scholars found,

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Once the fact had been established that Ishii had used Chinese and others as laboratory tests subjects, it seemed a fair assumption that he also might have used American prisoners, possibly British, and perhaps even Japanese.

Some of the records of these activities were revealed during the Tokyo War Crimes trials, and others have since come to light under Freedom of Information Act requests, but many other documents, which were transferred to the U.S. military during the occupation of Japan, have remained hidden for the past fifty years.

And it is precisely for this reason that this legislation is needed: The world is entitled to a full and compel record of what did transpire.

Sheldon Harris, Professor of History Emeritus at California State university Northridge wrote to me on October 7 of this year that:

1. **In 1991, the Librarian at Dugway Proving Grounds, Dugway, Utah, denied me access to the archives at the facility. It was only through the intervention of then U.S. Representative Wayne Owens, Dem., Utah, that I was given permission to visit the facility. I was not shown all the holdings relating to Japanese medical experiments, but the little I was permitted to examine revealed a great deal of information about medical war crimes. Sometimes after my visit, a person with intimate knowledge of Dugway's operations, informed me that `sensitive' documents were destroyed there as a direct result of my research in their library.**

2. **I conducted much of my American research at Fort Detrick in Frederick, Md. The Public Information Officer there was extremely helpful to me. Two weeks ago I telephoned Detrick, was informed that the PIO had retired last May. I spoke with the new PIO, who told me that Detrick no longer would discuss past research activities, but would disclose information only on current projects. Later that day I telephoned the retired PIO at his home. He informed me that upon retiring he was told to `get rid of that stuff', meaning incriminating documents relating to Japanese medical war crimes. Detrick no longer is a viable research center for historians.**

3. **Within the past 2 weeks, I was informed that the Pentagon, for `space reasons', decided to rid itself of all biological warfare documents in its holdings prior to 1949. The date is important, because all war crimes trials against accused Japanese war criminals were terminated by 1949. Thus, current Pentagon materials could not implicate alleged Japanese war criminals. Fortunately, a private research facility in Washington volunteered to retrieve the documents in question. This research facility now holds the documents, is currently cataloguing them (estimated completion time, at least twelve months), and is guarding the documents under `tight security.'**

Your proposed legislation must be acted upon promptly. Many of the victims of Japanese war crimes are elderly. Some of the victims pass away daily. Their suffering should receive recognition and some compensation. Moreover, History is being cheated. As documents disappear, the story of war crimes committed in the War In The Pacific becomes increasingly difficult to describe. The end result will be a distorted picture of reality. As an Historian, I cannot accept this inevitability without vigorous protest.

Please excuse the length of this letter. However, I do hope that some of the arguments I made in comments above will be of some assistance to you as you press for passage of the proposed legislation. I will be happy to be of any additional assistance to you, should you wish to call upon me for further information or documentation.

Sincerely yours,
SHELDON H. HARRIS,

Professor of History emeritus,
California State University, Northridge.

Appendix 13. 12 May 2000 Memorandum

NAZI WAR CRIMINAL RECORDS INTERAGENCY WORKING GROUP
8601 Adelphi Road, College Park, Maryland 20740

May 12, 2000

MEMORANDUM FOR IWG Members and Liaisons for FBI, CIA, State, Army, NARA

SUBJECT: Clarification of Responsibility for Identifying Materials Pertaining to OSI Subjects

As you are aware, Section 3(b)(4) of the Nazi War Crimes Disclosure Act specifies that records "(A) related to or supporting any active or inactive investigation, inquiry, or prosecution by the Office of Special Investigations of the Department of Justice; or (B) solely in the possession, custody, or control of that office" are exempt from the requirement for release and may not be released without explicit authorization from the Office of Special Investigations (OSI).

As you are also aware, the IWG process for implementing this provision is to assure a second review, after declassification but prior to release. This review for OSI interest will be accomplished by representatives of that office after they are notified by the IWG staff that materials have been declassified, but before any public notice of release for public access at the National Archives.

In order to assist with the identification and notification process, certain agencies are now asked to flag records that fall under the OSI exemption because they pertain directly to OSI investigations and/or the subjects of those investigations, prior to transferring those documents to the National Archives. These would be documents that pertain to individuals named on the list of ca. 2200 OSI subjects that was made available to your agency in the fall of 1999. Although the identification of documents of possible OSI "interest" has been an implicit part of the process and is required during the completion of the database submission that describes the records, we are emphasizing that the identification and flagging of documents pertaining to individuals who are or have been OSI subjects should be an additional part of the process of transferring records to the National Archives for those agencies that have been given access to the list of OSI subjects. *Flagging the documents consists of marking them with tabs and providing a description or list of the documents and the boxes in which they are located.*

Michael J. Kurtz

MICHAEL J. KURTZ
Chair, Interagency Working Group