

Department of Justice



**STATEMENT OF
ELI M. ROSENBAUM
DIRECTOR
OFFICE OF SPECIAL INVESTIGATIONS
CRIMINAL DIVISION
DEPARTMENT OF JUSTICE**

**BEFORE THE
SUBCOMMITTEE ON CRIME, TERRORISM AND HOMELAND
SECURITY
COMMITTEE ON THE JUDICIARY
UNITED STATES HOUSE OF REPRESENTATIVES**

**CONCERNING
GENOCIDE AND THE RULE OF LAW**

OCTOBER 23, 2007

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Eli M. Rosenbaum
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Chairman Scott, Ranking Member Forbes, and distinguished Members of the Subcommittee, thank you for inviting the Department of Justice to testify at this hearing. Perpetrators of genocide have participated in the commission of some of the ghastliest crimes in modern history, and so long as these individuals are at liberty they pose a continuing danger to the civilized world. As the Director of the Criminal Division's Office of Special Investigations, I am pleased to address the Department of Justice's ongoing efforts against the perpetrators of genocide, war crimes and crimes against humanity.

Bringing these perpetrators to justice is a mission of the very highest importance. As Ambassador Alejandro Wolff, the then-Acting U.S. Permanent Representative to the United Nations, said earlier this year in introducing a landmark U.S.-drafted General Assembly resolution to condemn Holocaust denial, "all people and all states have a vital stake in a world free of genocide."¹ Acting on President Bush's injunction that those who commit war crimes must face justice, both "to advance the cause of justice ... [and] to consolidate peace and promote the rule of law,"² we continue to utilize all avenues available against human rights violators and

¹Statement of the United States Permanent Representative on the Introduction of the Resolution on Holocaust Denial, January 25, 2007. www.state.gov/p/io/rls/rm/79424.htm The resolution, which had 104 co-sponsors, was adopted by consensus the following day. See State Department January 26, 2006, press release at <http://usinfo.state.gov/xarchives/display.html?p=washfile-english&y=2007&m=January&x=20070126160123eafas0.887356>, reprinted at http://media-newswire.com/release_1042289.html.

²Statement by the President on Bringing War Criminals to Justice, August 3, 2001, www.whitehouse.gov/news/releases/2001/08/20010803-15.html ("Those who commit war crimes must face justice. As I said in Kosovo, we must not allow difference to be license to kill, and vulnerability an excuse to dominate.")

war criminals found in this country – including criminal prosecution, denaturalization, extradition and removal. The United States also continues to provide assistance to foreign governments and to various international tribunals that are investigating and prosecuting cases abroad against these individuals.

Federal efforts directed against participants in genocide are part of an important and time-honored national commitment. The United States government has long been a key participant in global law enforcement efforts to help end impunity for genocide, war crimes and crimes against humanity. Thus, for example, our nation has taken a leading role in establishing and supporting such notable institutions as the Nuremberg and Tokyo Tribunals after World War II and, more recently, the International Criminal Tribunals for Rwanda³ and the former Yugoslavia, the Special Court for Sierra Leone, and the Iraqi High Tribunal. Both the chief prosecutor at Nuremberg and the American judge at the tribunal were former attorneys general, and the chief prosecutor at the Tokyo trial had served as assistant attorney general in charge of the Criminal Division. Most recently, the United States has been the worldwide leader in diplomatic efforts to stop the unspeakable atrocities in Darfur. In 2004, the U.S. State Department commissioned an Atrocities Documentation Team which, on only a few weeks notice, assembled a team of experienced law enforcement investigators and legal experts, including Department of Justice personnel. The team interviewed over 1,100 Darfurian refugees who had taken shelter in refugee camps in neighboring Chad. Based on the information elicited in those interviews, then-Secretary of State Powell was able to conclude and state publicly that genocide has been committed in Darfur.

The Department of Justice provides training and other assistance to national and international investigative and prosecutorial authorities that are pursuing justice in the aftermath of conflicts that were characterized by large-scale human rights violations and war crimes. By way of example, the Department of Justice loaned a significant number of experienced law enforcement professionals to the International Criminal Tribunal for the Former Yugoslavia (ICTY) during the period of the ICTY's most intensive activity. Indeed, the former head of the Domestic Security Section of the Department's Criminal Division was detailed to that tribunal by the Department, as was a senior Federal prosecutor who now serves in the State Department as the Ambassador-at-Large for War Crimes Issues. The Justice Department provides extensive assistance to authorities in countries in which human rights violations and war crimes took place,

³The full name of the Rwanda Tribunal is "The International Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighboring States."

in part via the training programs that the Department operates for foreign prosecutors and judges through its international network of Resident Legal Advisors.

Three components of the Justice Department's Criminal Division provide much of the assistance given to foreign law enforcement authorities. The Office of International Affairs (OIA) takes the lead in executing foreign requests for evidence or other legal assistance and works closely with the State Department in matters relating to international extradition. OIA has responded to dozens of requests for assistance in matters relating to genocide, war crimes and crimes against humanity. Similarly, the Criminal Division's Office of Overseas Prosecutorial Development and Training (OPDAT) and the Division's International Criminal Investigative Training Assistance Program (ICITAP) take the lead for the Department in providing training and assistance in criminal justice sector reform and development.

OPDAT has provided capacity-building assistance in the investigation and prosecution of war crimes to the various countries and jurisdictions of the former Yugoslavia, principally Serbia and Bosnia-Herzegovina, as well as Croatia, and to a lesser extent (and more recently) Kosovo, Macedonia and Montenegro. This has included provision of training services; advice on legislation; assistance in the development of witness protection programs; videoconferencing equipment (to allow witnesses in criminal cases, including war crimes cases, to testify from one country to another); and assistance to promote the exchange of information and cooperation among the countries and jurisdictions in the region. Prosecutors and other personnel of the National Security Division's Counterterrorism Section, the U.S. Attorney's Office for the District of Columbia, and the Criminal Division's Office of Special Investigations have also participated in the training programs in Croatia.

The Justice Department's efforts in the former Yugoslavia have been coordinated with the ICTY. For example, we have sponsored study tours by Bosnian prosecutors to the Tribunal (at The Hague), and ICTY representatives have participated in conferences that we have sponsored, such as a regional conference held last October in Montenegro. Earlier this month, OPDAT, in cooperation with the U.S. Ambassador-at-Large for War Crimes Issues, conducted a follow-on war crimes conference in Croatia attended by officials from Serbia, Croatia, Bosnia and Herzegovina, Montenegro, and Macedonia. This conference focused on ICTY transition issues and on cooperation between the countries of the region on war crimes cases.

The assistance that we have provided in the former Yugoslavia, as elsewhere, is given in large part with a view toward increasing the ability of these countries and jurisdictions to prosecute war crimes cases. This capability is especially important now that the ICTY is progressing towards its U.N. Security Council-endorsed closure and transfers a number of cases to the individual countries in the region for investigation and prosecution.

ICITAP has similarly provided assistance directly to foreign law enforcement authorities in the former Yugoslavia. In Bosnia and Herzegovina, Croatia and Serbia, ICITAP conducted extensive assessments of the needs of law enforcement authorities responsible for investigating and prosecuting war crimes cases. Equipment, software, and training that ICITAP subsequently

supplied has significantly enhanced the capacity of the local authorities to identify and investigate complex and politically charged crimes. In Croatia, ICITAP, in coordination with OPDAT, provided specialized training to members of the criminal justice system who are directly responsible for the investigation and prosecution of war crimes cases. That training focuses on evidence collection, courtroom presentation, and witness protection. The work undertaken in this field by OPDAT and ICITAP draws extensively on the resources of Federal investigating agencies and the U.S. Attorney's Offices. It is an integral part of the Justice Department's commitment to assisting cognizant foreign governments and tribunals.

When evidence surfaces that implicates residents of this country in genocide, war crimes or crimes against humanity, the Federal government moves swiftly to investigate and take legal action where possible. In some instances of offenses committed outside the United States, Federal criminal prosecution is possible. However, even when offenders are not subject to prosecution here (for example, when the crimes were committed before the applicable Federal statutes were enacted, as was the case with World War II-era Nazi criminals, among others), the U.S. government can often employ other effective law enforcement tools, such as extradition; denaturalization and/or removal; or domestic prosecution for other crimes such as visa fraud, unlawful procurement of naturalization, and making false statements.

Among the numerous Federal agencies involved in these law enforcement efforts are the Department of Justice's Criminal Division (primarily through the Domestic Security Section, the Office of International Affairs and the Office of Special Investigations) and National Security Division (through its Counterterrorism Section), the United States Attorneys Offices, the Federal Bureau of Investigation, and the U.S. Immigration and Customs Enforcement (ICE) within the Department of Homeland Security. Their efforts receive important support from the State Department and other components of the Federal government.

At the Justice Department, we have made great efforts to facilitate the criminal prosecution abroad of the perpetrators of genocide, war crimes and crimes against humanity found in this country. For example, in March 2000, following the conclusion of hard-fought litigation,⁴ the United States turned over Elizaphan Ntakirutimana to the International Criminal Tribunal for Rwanda (ICTR). He had been a pastor in Rwanda at the time of the 1994 genocide. Ntakirutimana was accused of devising and executing a lethal scheme in which Tutsi civilians were encouraged to seek refuge in a local religious complex, to which he then directed a mob of armed attackers. With his participation, the attackers thereupon slaughtered and injured those inside. The United States surrendered Ntakirutimana to the ICTR in response to a request made by the Tribunal pursuant to an Executive Agreement by which the U.S. agreed to transfer Rwandan suspects in its territory to the ICTR for trial.⁵ Indeed, this is the only case to date in

⁴See Ntakirutimana v. Reno, 184 F.3d 419 (5th Cir. 1999), *cert. denied*, 528 U.S. 1135 (2000).

⁵Agreement on Surrender of Persons Between the Government of the United States and the ICTR, Jan. 24, 1995, U.S.-Int'l Trib. Rwanda, KAV No. 4529, 1996 WL 165484 *as*

which an international tribunal has made a formal request to the United States for the arrest and transfer of a suspect. In 2003, Ntakirutimana, a onetime Texas resident, was convicted by the Tribunal of aiding and abetting genocide and he was sentenced to ten years' imprisonment. A prosecutor from the Justice Department played a significant role in charging Ntakirutimana.

The United States has extradited other perpetrators to other countries to stand trial in their domestic courts. A recent extradition of an accused human rights violator in the bilateral context was the January 2006 extradition of Mitar Arambašić to Croatia. Arambašić had been convicted in absentia in Croatia and sentenced to twenty years' imprisonment for crimes against humanity and war crimes perpetrated against civilians during the break-up of the former Yugoslavia. The charges included the murder of two Croatian police officers in 1991 and the beheading of civilians with an axe. The Department of Justice vigorously and successfully pursued this extradition, which was contested by Arambašić in litigation spanning three years, and he was returned to Croatia, where he faced a trial in person. The Justice Department also accomplished the extradition of several accused participants in World War II-era Nazi crimes between 1973 and 1993 (when the last such extradition request was received).

Extradition matters are coordinated within the Justice Department by the Criminal Division's Office of International Affairs, which also responds each year to thousands of requests and inquiries from foreign law enforcement authorities for assistance in their investigations and prosecutions. The Federal government works diligently to locate international fugitives and return them to the countries in which their alleged crimes were committed. Extradition, however, is contingent upon receipt of a request from a foreign government with which the United States has an extradition treaty, and the United States has received relatively few such requests in these cases.

implemented by National Defense Authorization Act, Pub. L. 104-106, § 1342, 110 Stat. 486 (1996).

Perpetrators in this country who have violated Federal criminal laws are prosecuted for those violations by the Department of Justice. Although the Title 18 genocide statute, which was enacted in 1988, is limited to cases in which genocide has either been committed in the United States or committed abroad by a U.S. national,⁶ the Justice Department makes use of other criminal and civil charges to ensure that the perpetrators of genocide, war crimes and crimes against humanity do not find safe haven in the United States. The Criminal Division's Office of Special Investigations has compiled a 28-year record of identifying, investigating, and bringing civil denaturalization and removal actions against World War II-era participants in genocide and other Nazi crimes. OSI has successfully pursued more than one hundred of these criminals and it is widely considered to be the most successful law enforcement operation of its kind in the world. One of the program's most recent victories was recorded on January 3, when a U.S. immigration judge ordered the removal of Josias Kumpf of Racine, Wisconsin. By his own admission, during a mass killing operation in occupied Poland in 1943 Kumpf stood guard at a pit containing dead Jewish civilians and others he described as "halfway alive" and "still convuls[ing]," with orders to shoot to kill anyone who attempted to escape. Also this year, OSI accomplished the denaturalization of Ivan (John) Kalymon after proving in federal district court in Detroit that he had shot Jews while serving in a Nazi-sponsored police unit during the 1942 liquidation of a Jewish ghetto in L'vov, Poland. Just last month, OSI accomplished the denaturalization and return to Germany of Martin Hartmann of Mesa, Arizona, based on his admitted participation in Nazi-sponsored acts of persecution while serving as an armed SS Death's Head guard at the infamous Sachsenhausen Concentration Camp and several of its subcamps in Germany during World War II.

To date, some 60 Nazi criminals have been returned to countries of Europe that possess the criminal jurisdiction that the United States lacks in the World War II cases. OSI continues to work with prosecutors overseas to facilitate the criminal prosecution of Nazi criminals, including, of course, those perpetrators whom we succeed in removing from the United States. Those efforts have borne fruit in a number of important instances. For example, in Vilnius, Lithuania, in 2001, former OSI defendant Kazys Gimzauskas became the first person ever convicted on genocide charges in any of the successor states to the former Soviet Union. Year after year, in recognition of its commitment to, and success in, pursuing justice in the World War II Nazi genocide cases, the United States government has been the only government in the world to receive the "A" rating of the Simon Wiesenthal Center, the Los Angeles-based organization named after the renowned Nazi-hunter.

In 2004, the Intelligence Reform and Terrorism Prevention Act expanded OSI's mission to include investigating and bringing civil denaturalization cases and criminal prosecutions for unlawful procurement of U.S. citizenship against post-World War II participants in genocide, extrajudicial killings and torture perpetrated under color of foreign law. With this law, OSI became only the newest component of a comprehensive Federal interagency effort to ensure that

⁶See 18 USC 1091.

perpetrators of these terrible crimes find no sanctuary in this country. A leading role in this effort is played by the Department of Homeland Security, particularly ICE and its Human Rights Violators and Public Safety Unit and Human Rights Law Division, as well as Citizenship and Immigration Services. Other components of the Department of Justice that participate in this effort are the Criminal Division's Domestic Security Section and Office of International Affairs, the National Security Division's Counterterrorism Section, the FBI and the U.S. Attorneys Offices. In 2005, seeking to strengthen their collaborative work on these often very challenging cases, the aforementioned agencies, along with the Department of State and the Central Intelligence Agency, formed the Ad Hoc Interagency Working Group on Human Rights Violator Cases. The member agencies meet frequently to share information and to coordinate enforcement strategies.

This law enforcement partnership has achieved numerous significant successes by employing a variety of legal tools, including criminal prosecution for such Federal offenses as visa fraud, unlawful procurement of naturalization, and false statements, as well as seeking civil and administrative remedies like denaturalization and removal. For example, in April 2005, ICE removed Enos Kagaba from this country to his native Rwanda on the basis of his participation in the genocide that ravaged his country in 1994. His removal was effected on the grounds of a provision of the Immigration and Nationality Act, added by Congress in 1990, that renders any alien who "engaged in conduct that is defined as genocide" by the International Convention on the Prevention and Punishment of Genocide removable from this country.⁷ In 2004, Jean-Marie Vianney Mudahinyuka was convicted in Chicago of lying on his U.S. immigration forms to gain entry to the U.S. as a refugee. He was sentenced to 51 months in prison for that offense and for assaulting Federal officers who arrested him. Upon his release from prison, Mudahinyuka will also be subject to removal. He is wanted in Rwanda on charges of genocide and crimes against humanity.

In September 2005, more than a dozen Bosnian Serbs who lied on immigration forms about their prior service in the Bosnian Serb army were arrested by ICE in Phoenix and indicted by the U.S. Attorney's Office on immigration-related charges. Two of those who have since been removed by ICE to Bosnia were indicted last December 13 by Bosnian authorities on charges of murder and other serious offenses.⁸ Also in December of last year, sixteen individuals in six states were charged with criminal violations in connection with their efforts to obtain refugee status in the United States by concealing their prior service in the Bosnian Serb military. One of the defendants is described in a Federal affidavit as having been a commander of a police unit that cooperated with other Bosnian Serb entities in the Srebrenica massacres. All but one of the defendants face criminal charges that include immigration fraud and/or making false statements. The maximum sentence for making false statements is five years in prison,

⁷Section 212(a)(3)(E)(ii) of the Immigration and Nationality Act, 8 USC 1227(a)(4)(D).

⁸ The two men are Zdravko Bozic and Mladen Blagojevic, who were arrested in Phoenix in 2005 and subsequently convicted there on visa fraud and related charges.

while the maximum sentence for immigration fraud is 10 years imprisonment. One defendant is a naturalized U.S. citizen, and he has been charged with unlawful procurement of citizenship and making false statements, offenses that carry maximum potential sentences of 10 and 5 years, respectively. The cases were investigated by ICE special agents with assistance from the Justice Department's Office of Special Investigations, and both agencies are actively reviewing other cases for further action.. The U.S. Attorney's Offices that have prosecuted these cases include those in the Middle District of Florida; Eastern District of Wisconsin; Middle District of North Carolina; District of Colorado; Eastern District of Michigan; Northern District of Ohio, District of Oregon, District of Utah and District of Arizona. (The Office of Special Investigations is also participating in the prosecution of the U.S. citizen defendant, in Tampa, Florida, and a Bosnian Serb defendant in Utah.)

The Kelbessa Negewo case is another example of Federal agencies working together to pursue justice in human rights violator cases. Negewo served as a local official under the repressive military regime that ruled Ethiopia from 1974 to 1991. He subsequently immigrated to the United States, settled in Georgia, and obtained U.S. citizenship. Three Ethiopian women later filed suit against him under the Alien Tort Claims Act in U.S. District Court in Atlanta, alleging that they had been tortured in a jail that he had controlled. The district court found that Negewo had both supervised and directly participated in the torture of the women, and the court awarded damages. A civil denaturalization action was filed against Negewo in May 2001 by the U.S. Attorney's Office in Atlanta. His U.S. citizenship was revoked in October 2004 pursuant to a settlement agreement negotiated by that office. Removal proceedings were initiated by ICE in 2005 following Negewo's denaturalization. These proceedings were the first to charge participation in torture and extrajudicial killings, charges that were added under amendments made to the Immigration and Nationality Act by the 2004 Intelligence Reform and Terrorism Prevention Act. This past October, Negewo was removed to Ethiopia and handed over to Ethiopian authorities, where he had already been convicted in absentia of numerous human rights violations, including murder, disappearance, torture, and unlawful taking of property.

In conclusion, Mr. Chairman, I would like to express to you and the Subcommittee the Justice Department's appreciation for this opportunity to discuss the government's ongoing efforts to ensure that justice is pursued both here and abroad on behalf of the victims of genocide, war crimes and crimes against humanity. We are very grateful for the tools that Congress has provided for law enforcement use in these enormously important cases. We will continue to wield those tools, both to bring the perpetrators of these terrible crimes to justice and, it is to be hoped, to hasten the arrival of the day in which the post-Holocaust imperative "Never Again" becomes, at long last, not just a slogan or a barely imaginable aspiration, but a *reality*.

I would be pleased to answer any questions that the Subcommittee may have.