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THE IMPLEMENTATION OF THE NAZI WAR CRIMES DISCLOSURE ACT

HEARING

BEFORE THE

SUBCOMMITTEE ON GOVERNMENT MANAGEMENT, INFORMATION, AND TECHNOLOGY

OF THE

COMMITTEE ON GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

ONE HUNDRED SIXTH CONGRESS

SECOND SESSION

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THE IMPLEMENTATION OF THE NAZI WAR CRIMES DISCLOSURE ACT

TUESDAY, JUNE 27, 2000

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON GOVERNMENT MANAGEMENT,
INFORMATION, AND TECHNOLOGY,
COMMITTEE ON GOVERNMENT REFORM,
Washington, DC.

The subcommittee met, pursuant to notice, at 10 a.m., in room 2154 Rayburn House Office Building, Hon. Stephen Horn (chairman of the subcommittee) presiding.

Present: Representatives Horn, Biggert, Turner, Maloney, and Owens.

Staff present: J. Russell George, staff director and chief counsel; Heather Bailey, professional staff member; Bonnie Heald, director of communications; Bryan Sisk, clerk; Will Ackerly, Chris Dollar, and Meg Kinnard, interns; Trey Henderson, minority counsel; and Jean Gosa, minority clerk.

Mr. HORN. A quorum being present, this hearing of the Subcommittee on Government Management, Information, and Technology will come to order.

The Nazi War Crimes Disclosure Act of 1998 was enacted to ensure that documents held by the U.S. Government that pertain to the Holocaust would be declassified and made available to the public.

In October 1999, the National Archives and Records Administration and the Interagency Working Group released an interim report to Congress on the declassification of these Second World War documents. According to the report, more than 300,000 pages of documents were to have been declassified by the fall of 1999. But at the time, less than half of that amount had been declassified.

Since then, most agencies have picked up the pace to declassify documents of this era. Yesterday, the Interagency Working Group announced 400,000 pages of newly declassified documents were released today, mostly from the Office of Strategic Services, a forerunner of the Central Intelligence Agency.

By the time this declassification process is completed, roughly 5 to 8 million pages documenting this horrific period in history will be available for public scrutiny.

I would especially like to welcome representative Tom Lantos, my colleague from California, who authored the Nazi War Crimes Disclosure Act. I welcome all of our witnesses today, and look forward to their testimony.

And I welcome Mrs. Maloney.

[The prepared statement of Hon. Stephen Horn follows:]

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"Implementation of the Nazi War Crimes Disclosure Act"

OPENING STATEMENT
REPRESENTATIVE STEPHEN HORN (R-CA)
Chairman, Subcommittee on Government Management, Information, and Technology
June 27, 2000

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By the time this declassification process is completed, roughly 5 to 8 million pages documenting this horrific period in history will be available for public scrutiny.

I would especially like to welcome Representative Tom Lantos, my colleague from California who authored the Nazi War Crimes Disclosure Act. I welcome all of our witnesses today, and look forward to their testimony.

Mr. HORN. So we have the group before us that has really done a wonderful job in pressing all of the various points of the executive branch to make sure that this complete bipartisan proposal was made several years ago in both the Senate and the House, and we are glad to have with us today the ones as we have entitled this, the government compliance on the Nazi War Crimes Disclosure Act. We look forward to you witnesses, who have devoted a tremendous amount of your time, and we will give you a little background.

I think you have all been here before. Since we are an investigative committee, we do swear in all witnesses. When we have called upon you in accord with the agenda, the full text of your written remarks goes automatically into the record. We don't want you to read your written remarks. We don't have the time for it.

Take about 5 to 8 minutes for each person. What we want is a dialog after all of that to see where the loose ends are and what can be done by you and what can be done by the Congress, if we need to do it.

For example, Japanese war crimes and other situations like that, do we need to amend the law? Can we do it under this authority?

I have a lot of lawyers in front of me with no fees to send to me, so we would welcome your views, gentlemen.

So stand if you will, and I am going to swear you in and then Mr. Turner will make an opening statement.

[Witnesses sworn.]

Mr. HORN. The clerk will note that all witnesses have said yes, and I now yield to the gentleman from Texas, Mr. Turner, for an opening statement.

Mr. TURNER. Mr. Chairman, I will just file my opening statement for the record.

[The prepared statement of Hon. Jim Turner follows:]

Statement of the Honorable Jim Turner
GMIT Hearing: "Implementation of the Nazi War Crimes Disclosure Act"
June 27, 2000

Thank you, Mr. Chairman. Until recently, much of the federal government's information on Nazi war criminals remained secret for more than 50 years after the end of World War II. Individuals who suffered from the war atrocities perpetrated by the Nazis are growing older everyday, and the time remaining for them to obtain answers to the questions that have troubled them for decades will soon come to an end.

In response to these concerns, Representative Carolyn Maloney (D-NY), my predecessor as ranking member of this subcommittee, introduced the Nazi War Crimes Disclosure Act which was referred to this Subcommittee and eventually signed into law by President Clinton on October 8, 1998. I would like to commend Rep. Maloney for her steadfast leadership on this important issue. This beneficial law allows for an expedited processing of Freedom of Information Act requests of survivors of Nazi persecution. The law also established the Nazi War Criminal Records Interagency Working Group which would to the greatest extent possible locate, identify, inventory, declassify and make available for the public all Nazi war records held by the United States. Therefore, all materials would be required to be released in their entirety unless a federal agency head concludes that the release of all or part of these records would compromise privacy or national security interests. The agency head must notify Congress of any determination to not release records. Thus, Congress is in the position to review material being withheld to ensure that it was being done for valid reasons consistent with this legislation.

In sum, the law attempts to 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. These records, once released, are held in a repository at the National Archives.

We are here to examine agency compliance with the Nazi War Crimes Disclosure Act and determine how document declassification is helping inform to answer the many unanswered questions about the Holocaust. To date, close to 1.5 million pages have been declassified. I was pleased to learn that recently the CIA and National Archives released to the public over 400,000 pages of previously withheld records relating to war crimes committed in World War II. I commend the Chairman for his focus on this issue and welcome the witnesses here this morning. In particular, I am especially pleased that my distinguished colleague from California, Rep. Tom Lantos, is here today to share his perspective on this issue. Clearly, the release of the remaining secrets about the Holocaust is in the public interest and we need to ensure that this important law is working in the manner Congress intended it to. Thank you.

Mr. HORN. Mrs. Maloney or Mrs. Biggert.

We will go directly to our guests and again we are delighted with all of you and your hard work.

We will start with Dr. Michael J Kurtz, Assistant Archivist of the United States for the National Archives and Records Administration.

STATEMENTS OF DR. MICHAEL J. KURTZ, ASSISTANT ARCHIVIST OF THE UNITED STATES, NATIONAL ARCHIVES AND RECORDS ADMINISTRATION; ELIZABETH HOLTZMAN, ESQ., THOMAS BAER, AND RICHARD BEN-VENISTE, MEMBERS OF THE INTERAGENCY WORKING GROUP; KENNETH LEVIT, SPECIAL COUNSEL, OFFICE OF THE EXECUTIVE DIRECTOR, CENTRAL INTELLIGENCE AGENCY; JOHN COLLINGWOOD, ASSISTANT DIRECTOR, OFFICE OF CONGRESSIONAL AND PUBLIC AFFAIRS, FEDERAL BUREAU OF INVESTIGATION; AND COLONEL LEWIS THOMPSON, COMMANDER OF THE 902d MILITARY INTELLIGENCE GROUP, INTELLIGENCE AND SECURITY COMMAND, U.S. ARMY

Mr. KURTZ. Thank you. I am appearing here in my capacity as Chair of the Interagency Working Group for implementing the Nazi War Crimes Disclosure Act of 1998. On behalf of the IWG, I would like to thank you for holding this hearing and for your ongoing leadership on this matter. And certainly I want to note the contribution of Congresswoman Maloney in sponsoring the original legislation and the interest of Congressman Lantos and Senator DeWine.

I would like to briefly introduce the panel members. President Clinton appointed three public members to serve on the Interagency Working Group, and we have all three members—former Congresswoman Elizabeth Holtzman, who has been involved with these issues for a considerable period of time; Mr. Thomas Baer, former Assistant U.S. Attorney and businessman who joins us from Los Angeles, CA; Mr. Richard Ben-Veniste, well known for his service to Congress and the government in a variety of capacities.

Next to Mr. Ben-Veniste we have Kenneth Levit, who represents the Central Intelligence Agency, and John Collingwood from the FBI and Colonel Thompson, Commander of the 902nd Military Intelligence Group which has jurisdiction over some of the most important Army records.

I think everyone is well aware of the bill and what we are charged to do, and I would like to report what we have achieved since our October interim report and mention several challenges that lie ahead of us.

The agencies have screened, originally, approximately 600 million pages as potentially relevant to the act, records that might contain war crimes information. That has been refined to approximately 90 million pages, and so the search for relevant documents continues as well as the declassification effort. To date, we have declassified 1.5 million pages for release. And we estimate, by the end of the project, we should have 5 to 8 million pages completed after the relevant searches have been completed and the declassification actions.

The agencies that we have here on the panel are the ones that have the bulk of the documentation that remains to be reviewed, and this—the way we organized our work, the Interagency Working Group first focused on what we called phase one, which is Germany and the European Theater of Operations; and we are beginning to focus on phase two, which relates to Japan and the Far Eastern situation. So we will be dealing with the totality of war crimes activities, worldwide, as part of World War II and its aftermath.

There is an extensive amount of work to do. We have a statutory deadline of January 2002, to complete our work, and it is a very daunting task. There is a great deal, obviously, from the brief summary that I have given of how much remains to be done. In addition, we need to begin the work with the Japanese records.

I should also note, as far as resources go, we have not received a direct appropriation to support this effort. But through the support from the Office of Special Investigations of the Department of Justice and from the National Archives and from the Archivist, we have received financial support that has enabled us to set up a very important infrastructure. By that I mean, we have two historians who serve as consultants to the IWG.

The validity of that approach was proven yesterday with the release of documentation and their ability to put it into context and not just have a disgorging of a mass of undigested documentation.

We also have an audit team working for the IWG that works with the agencies to review their declassification actions, to raise any issues to our attention and facilitate an early resolution.

I would also note that as we are going through our work we have ascertained that a great deal of the documentation is in very poor physical condition requiring some extensive preservation action which I would be glad to discuss later. There is also a need for continued staff and enhanced staff support for the IWG to get through the remaining work related to Germany as well as dealing in the Far Eastern arena. So I would like to just conclude my comments and permit time for others to speak.

Mr. HORN. Thank you very much.

[The prepared statement of Dr. Kurtz follows:]

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Statement of Dr. Michael J. Kurtz, Chair,
Nazi War Criminal Records Interagency Working Group
before the House Subcommittee on
Government Management, Information and Technology
June 27, 2000

Mr. Chairman, I am Dr. Michael Kurtz of the National Archives and Records Administration. I appear before you today in my capacity as Chair of the Nazi War Criminal Records Interagency Working Group (IWG), which is charged with the implementation of the Nazi War Crimes Disclosure Act (PL 105-246). I wish to thank you, Mr. Chairman, for holding this hearing today and for your ongoing interest and leadership in this matter. I look forward to updating you and the Committee on the implementation of this important public law. I would also like to note the contribution of Congresswoman Maloney in sponsoring and in providing the leadership for the passage of this significant legislation. I note that the IWG provided a special briefing for Congress last July at your invitation and that of Congresswoman Maloney and Senator DeWine. We are pleased to be back to report substantial progress.

Background

On January 11,1999, in accordance with the Nazi War Crimes Disclosure Act (PL 105-246), President Clinton issued Executive Order 13110 establishing the Nazi War Criminal Records Interagency Working Group. The Law and the Executive Order charge the IWG with the following responsibilities:

- Locate, identify, inventory, recommend for declassification, and make available at the National Archives all classified Nazi war criminal records, subject to certain specified restrictions.

- Coordinate with federal agencies and expedite the release of such classified records to the public.

- Complete its work to the greatest extent possible and report to Congress one year after passage of the legislation i.e., in October, 1999.

President Clinton appointed three public members to the IWG: former Congresswoman Elizabeth Holtzman, businessman and former Assistant United States Attorney Thomas Baer, and Richard Ben-Veniste who has served the Congress and the government so effectively in numerous capacities. The President also designated the heads of seven key executive agencies as members. Those agency heads have designated high level officials to represent them: Harold Kwalwasser (Department of Defense), Kenneth Levit (Central Intelligence Agency), John Collingwood (Federal Bureau of Investigation), Eli Rosenbaum (Department of Justice, Office of Special Investigations), William Slany (Historian, Department of State), David Marwell (U. S. Holocaust Memorial Museum) and William Leary (observing for the National Security Council). The

Archivist of the United States asked me to serve in his place as Chair of the IWG. The National Archives and Records Administration (NARA) provides project management and administrative support to the IWG.

The IWG works closely with the Presidential Advisory Commission on Holocaust Assets in the United States, which was created by Congress two years ago and is chaired by Edgar Bronfman, President of the World Jewish Congress. Much of our declassification work is contributing to the Commission's report that is due in December.

Five employees of the National Archives and Records Administration (NARA) provide primary program and administrative support to the IWG under the immediate direction of the Chair and in accordance with general guidance from the IWG. The Office of Special Investigations (OSI) at the Department of Justice furnished $400,000 to NARA for travel, meeting expenses, and contractor support for the IWG. The National Archives has contributed $200,000 to pay for this year's contractor support. The IWG has no independent funding, and no funding is scheduled for next year.

Activities of the Interagency Working Group

The Act and accompanying Executive Order directed the IWG to coordinate with Federal agencies to expedite the release of Nazi war crimes records to the public. On February 25, 1999, Samuel Berger, Assistant to the President for National Security Affairs, issued a compliance order that specified how the statutory tasks would be accomplished. The IWG first met in January and subsequently has held 14 regular meetings. In addition, special public forums were held in Los Angeles and New York to solicit information from experts, historians, Holocaust scholars, and the general public. A public presentation is scheduled for Cleveland in August at the invitation of Senator DeWine. We testified last October before the Senate Select Committee on Intelligence.

On October 27, 1999, the IWG submitted its interim report to the Congress, describing progress thus far and setting forth an implementation plan.

The public members and I have conferred with FBI Director Louis Freeh and CIA Director George Tenet to discuss specific issues related to compliance with the Act. These agencies together with the National Archives and the Army hold the bulk of classified documentation that needs to be examined under the Act.

The IWG has a website (www.nara.gov/iwg) that provides minutes of the meetings, reference materials, and other important information concerning this effort, including links to related websites.

Progress Toward Accomplishing Specific Statutory Tasks

Task 1. Locate all classified Nazi war criminal records of the United States:

All agencies that might hold relevant records were required to conduct a preliminary survey of their record holdings and to submit a report on the results by March 31, 1999. Each agency undertook to locate any bodies of classified records that could potentially contain information that (1) pertains to any individual who the Government has grounds to believe ordered, incited, assisted or otherwise participated in the persecution of any persons because of race, religion, national origin, or political opinion during the Nazi rule in Germany (1933-45), or (2) involves assets taken during that period from persons persecuted by the Nazis or governments associated with them.

Agencies included any records 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 the Nazis. Supplemental guidance identified the specific countries.

The European Theater focus constitutes phase one of the IWG work. Phase two will begin this summer and will concentrate on the Far East and Germany's ally, Japan. In preparation for this phase, we have added an expert on Japanese war crimes, Linda Goetz Holmes, to our historical advisory panel and we are preparing guidance for the agencies that the IWG will issue later this summer.

The White House directed agencies to take an "expansive" view of the Act in completing their surveys. Agencies were advised to take special notice of U. S. Government policy and operational records relating to war criminals and war crimes generally in addition to those that relate to specific war crimes, individual war criminals, acts of persecution, or specific transactions involving taking of assets.

As a result of the survey, a universe of more than 600 million pages was identified, consisting of bodies of records that might contain responsive documents under the Act. *It should be emphasized that this initial page count represents only the materials that must be further searched in order to identify records that must be reviewed for declassification. By last July, agency screening had reduced the universe of possible responsive pages to 90 million. Agencies continue to screen documents and we estimate that the number of responsive documents is likely to be between 5 and 8 million pages when all records have been screened.*

Among the bodies of records located in the survey, those held by the following agencies are likely to contain the most responsive documents:

Central Intelligence Agency:

Records among the files of the Directorates of Operations and Intelligence, 1947-1998, including operational, personality, country, and project files; analytical production, source material, and biographic reports. 5.7 million pages are being screened.

Files of organizations that were predecessors of CIA, 1941-1947. Records of Coordinator of Information, Office of Strategic Services, Strategic Services Unit, and the Central Intelligence Group. Approximately 1 million pages in NARA custody being screened.

Department of Army:

Army Intelligence and Security Command Foreign Personnel and Organization files, 1900-1975 (61,000 dossiers). Army unit records, 1941-1975. 11,400 microfilm reels are being scanned to create digital images.

Federal Bureau of Investigation:

Selected Security Information Files, 1922-1998. 5.4 million pages being screened.

National Archives and Records Administration:

3.7 million pages of records transferred to NARA from various agencies that were withdrawn from files previously reviewed for declassification because of continuing sensitivity. In addition, with the authorization of the Army, NARA has undertaken responsibility for screening of 50 million pages of records and declassification review of resulting records identified as responsive to the Act.

Task 2. Identify all classified Nazi war criminal records of the United States:

Reviewing the specific classified records in each agency that were subject to the Act involved more rigorous surveys of those specific bodies of potentially relevant documents identified earlier.

In order to assist agencies in identifying files related to individual war criminals, agencies were provided a list of names and birth dates of 59,742 suspected Nazi war criminals. The list was created by the Depart of Justice, Office of Special Investigations and includes SS officers, persons on the wanted lists of the UN War Crimes Commission, persons convicted of Nazi war crimes, individuals extradited by OMGUS in Germany to stand trial for Nazi war crimes, and Axis political and military persons notorious for their role in ordering or fostering Nazi persecution. In addition, the IWG instructed agencies to search not only files based on names but functional and other files as well and also to identify records related to Holocaust-era misappropriated assets and war crimes not necessarily linked to particular individuals. To assist

the agencies with their searches the IWG provided them with historical bibliographies, lists of operational terms, and code words. The IWG also briefed the agencies on the historical context of the records and arranged briefings by independent historians. With the initial location and identification tasks substantially completed by July 30, each agency submitted information on files to be reviewed and a status report describing and quantifying the results of their survey up to that point. The results of this survey were compiled and a database was developed. Each agency provided an implementation plan summarizing resources required to complete the effort in terms of funds and FTE.

Task 3. Inventory all classified Nazi war criminal records of the United States:

Normally, in an archival environment and given enough time, the practice would be to describe the records in enough detail to set the documents in their historical and organizational context, to explain why the records were kept, how they were arranged, and how they relate to broad subjects of interest. The intention here is to provide information on the provenance of the records and to describe the records in enough detail to make them accessible to reviewers and researchers.

Agencies are submitting their information in electronic form in a relational database system capable of maintaining descriptive information and permitting progress to be tracked at various stages during the review process. These submissions comprise the IWG database that will enable monitoring of declassification reviews, Kyl Amendment review, application of OSI's exemption, privacy reviews, and IWG actions on decisions by agencies to retain security classifications.

Following initial development by the IWG staff, a private contractor with knowledge of the federal records and declassification programs has taken over maintenance and further development of the database. The contractor will maintain, expand, and produce reports from the database.

So far the identification phase of the operation has resulted in the location and description of 2 million pages of records, with more being identified as the screening of files continues and is expanded to include records related to Japanese war crimes.

Task 4. Recommend for declassification all Nazi war criminal records of the United States:

The Act states that there is to be a presumption that the public interest will be served by release of Nazi war criminal records. The IWG's position is that each record must be judged on its own merits and sensitivity; no records should be automatically withheld because they contain certain classes of information. Further, the relevance and historical importance of individual documents must be weighted much more heavily than in the past in balancing between release or continued withholding of records for national security reasons. The IWG is prepared to challenge any agency decision to maintain classification of a document when such classification is not strongly justified by one or more of the Act's exemptions or when it determines that the public interest

outweighs security considerations. The Act requires that an agency head report to Congress when it is determined that an exemption is to be applied. The exemptions are identical to those allowed for 25-year old material under Executive Order 12958.

Judicious use of redactions can preclude withholding the entire document and yet protect information that remains sensitive. Intelligence agencies understandably may be concerned about protecting several categories of information, particularly sources and methods, identities of agents, and liaison relationships, notwithstanding the passage of time rendering such matters less significant, and may redact to protect this information. This process, of course, is very time-consuming since a line-by-line review must be done.

The agency that created a document, or its successor, is responsible for declassification review of the document and for notifying any other Federal agency that may have an interest (equity) in the document. The OSS documents opened yesterday at the National Archives had been in Archives custody since being transferred in two groups in the mid-1980s and in 1997. However, they remained classified and closed until declassification review by the CIA was finished just recently. Each organization with equity in a document is entitled to conduct its own review. This additional step can delay the review process, particularly if, as often happens, there are multiple agencies with equities in a single document. Coordination is essential here, and the IWG is playing an essential role in tracking and expediting that process.

The U. S. Government has in its possession documents that were either (1) provided by another government or (2) contain information that was provided by another government. Often such foreign government information is shared with the U. S. Government with the understanding that the information will not be made public without the agreement of the government that shared it. In order to expedite the review of older documents of this type, the IWG has asked U. S. agencies to work with their foreign counterparts to establish a process to enable declassification of documents relevant to the Act without the need for a detailed consultation in each instance.

Some material identified as responsive under the Act may also require review by the Department of Energy (DOE) under the Kyl Amendment to ensure that it does not contain Restricted Data or Formerly Restricted Data that would reveal sensitive nuclear information. DOE must review a very large volume of records from other agencies; as a consequence, this review could delay declassification of Nazi war criminal records.

Task 5. Make available to the public at the National Archives and Records Administration all classified Nazi war criminal records of the United States:

Prior to release to the public, certain declassified documents require additional reviews. In accordance with Section 3(b)(2)(A) of the Act, privacy considerations must be taken into account before a declassified document can be released to assure there will be no unwarranted invasion of personal privacy. Legal constraints that protect an individual's privacy must be weighed against the public interest in disclosure. At the request of the IWG, the Office of General Counsel at

NARA has prepared guidance to be used by agencies in making determinations regarding exemptions from disclosure based on privacy grounds.

Section 3(b)(4) of the Act contains a special provision for records that relate to investigations and other activities of the Office of Special Investigations (OSI). Certain records, although declassified, must be referred to OSI for further review before a final decision on their release is made. This provision is meant to assure that ongoing Nazi war criminal investigations that would be harmed by premature disclosure will be protected. OSI has volunteered to waive its statutory exemption in appropriate cases.

The IWG faces the challenge of preparing for the orderly release of millions of pages of documents from hundreds of sources. Normally, archival description relates to a body of records that has been transferred intact to NARA from the originating agency. The Nazi War Crimes Disclosure Act, however, often will result in records being selected, on the basis of their subject, from larger bodies of records not yet declassified or transferred to NARA. Many documents will have redactions and therefore will be released in part. Copies of many documents, not the originals, may be transferred to NARA if it is determined that the original files from which the individual documents came should remain at the agency. The result will be the creation of collections of selected documents. This will necessitate the preparation of special descriptions that set the records in their institutional, archival, and historical context so that they are useful to researchers.

As mentioned above, to date the Government has declassified approximately 1.5 million documents in response to the Act. It will take many years before historians and other interested specialists can evaluate the full value of these newly-declassified documents, but we know that the documents are answering some specific questions important to individuals and are filling in the details of history. For instance, in recently released OSS files is documentation of Hitler specifically ordering the Jews of Rome rounded up as Italy was preparing to surrender. According to the documentation, British and American intelligence services were aware of this order which resulted in the transportation and extermination of over 1000 Roman Jews.

In order to help us do such evaluation of the record as is possible consistent with expedited release, the IWG has retained two historical consultants, Professor Richard Breitman of American University and Professor Timothy Naftali of the University of Virginia, and has established an Historical Advisory Panel chaired by distinguished World War II historian Gerhard Weinberg. These historians aid us in the search for relevant materials among the labyrinths of Government records and help us to give some evaluation of the importance of the documentation that is being released.

Completing the Task

All of the IWG's efforts focus on releasing information to the public to the fullest extent possible by the statutory deadline of October 2001. The IWG is committed to accomplishing this goal.

The 1.5 million pages declassified thus far include records of the Tripartite Gold Commission, the DoD's Foreign Scientists Case Files, investigative dossiers compiled by the Army's Counter Intelligence Corps, and just yesterday we released 400,000 pages of OSS records dealing with all aspects of intelligence activity during the War that we believe scholars will be using profitably for years to come and that may help to answer questions about how much our government knew about the Holocaust as it was being perpetrated. By the end, we expect the project to yield 5 to 8 million pages of war crimes related records. We are now at roughly 20 to 30 percent of completion and, after the initial startup period, the pace of declassification and release is accelerating.

Successful completion of the task depends, of course, on the availability of sufficient resources for administrative support, educational outreach, and preservation of deteriorating records. Available resources for the agencies are subject to competing requirements for declassification under FOIA, Executive Order, and special programs.

NAZI WAR CRIMES DISCLOSURE ACT (PL-105-246)
Agency Processing and Declassification Status
June 27, 2000

Note: As agencies continue to review for relevancy, figures in the second column change to reflect additional pages.

Agency	Pages to be Screened for Relevancy Based upon Detailed Agency Surveys (June/July 1999)	Pages Determined to be Relevant as of June 2000	Relevant Pages Declassified as of June 2000	Relevant Pages Remaining to be Declassified as of June 2000	Comments	Milestone--Projected Completion
CIA	5,684,000	80,000	0	80,000	**CIA reviewed and declassified in excess of 400,000 pages at NARA including OSS records. *** Relevancy review continues on records in CIA custody; declassification review is underway.	January 2002
FBI	5,400,000	166,000	34,000	133,000	Relevancy review continues; declassification review continues.	June 2002
DOD Army	12,000,000	18,468	12,000	6,468	Relevancy review continues; declassification review continues. CIC dossiers on microfilm and paper will be completed October 2000.	October 2000
Navy	287,000	0	0	0	Relevancy review not complete.	October 2000
AF	6,700	6,700	0	6,700	PAPERCLIP files being shipped from St. Louis Records Center for declassification review.	October 2000

***The CIA reviewed OSS and other records having CIA equities in the custody of the National Archives.**

Agency	Pages to be Screened for Relevancy	Pages Determined to be Relevant	Relevant Pages Declassified.	Relevant Pages Remaining to be Declassified	Comments	Milestone
NSA	4,000,000	93	0	93	Relevancy review of electronic files to be completed by June 2000; declassification of these records by December 2000. Relevancy review of paper records begun; declassification to be completed by June 2002	November2001
NARA	56,400,000	1,500,000	1,300,000	200,000	Relevancy review continues; declassification review continues.	October 2001
DOJ Civil	207,000	10,000	0	10,000		January 2001
Criminal	1,641,300	20,000	0	20,000		January 2001
I&NS	4,281,000	1,424	0	1,424		January 2002
State Department	387,000	217,732	212,500	5,232	Relevancy review continues; declassification review continues	January 2002
Treasury Department	1,400,000	430	10	420	Declassification review continues	July 2000
NSC	7	7	7	0	Relevancy and declassification reviews completed.	Completed February 2000
TOTALS	**91,694,007**	**2,021,554**	**1,558,517**	**463,757**	//	////////////////

Mr. HORN. We will now call on Elizabeth Holtzman, former Member of Congress and a member of the Interagency Working Group. Welcome.

Ms. HOLTZMAN. Thank you, Mr. Chairman. It is a pleasure to appear before you. Again I want to join the Chair of the IWG in acknowledging your leadership and that of Representative Carolyn Maloney, without whose help we would not be here today.

I will skip most of my prepared remarks to focus on what the challenges are in the future. The first issue, in my opinion, has to do with finishing the job of declassification. I think it is important to note that despite serious and intensive efforts being made by all of the agencies, only a fraction of the job of declassification has been completed. I believe this committee needs to ascertain how the agencies expect to finish their task within the 3 years of IWG's existence.

Remember, the process of declassification thus far has been on a page-by-page, line-by-line method and that going through millions of pages, page by page, line by line is extremely time-consuming. I need to point out, too, that even though it has taken us this long to get this far and we are nowhere near complete, we have not yet touched the issue of the Japanese war crimes and that is another huge area. I would ask the committee to consider whether this can all be accomplished within the legislative framework, and what the committee can do to help us speed up this process. And this is not to diminish from the intensive effort that the agencies are making at that point.

The second issue has to do with the completeness of our search. As the members of this committee probably know, there is no magic button that you can push that states Nazi war criminals and you get all of the files. In fact, most of the files are organized by name and so you need to know the name of the Nazi war criminal. You have to know the answer before you even ask the question.

Part of this problem has been addressed by Eli Rosenbaum and the Office of Special Investigations, which has compiled a list of some 57,000 former SS officers. That list has been enhanced by the U.N. War Crimes Commission list and supplemented by several hundred other names.

But I think it is fair to say, Mr. Chairman and members of this committee, that those names are just a fraction of the universe of war criminals. If we just look for those names, we will never find the totality of Nazi war criminals, and it is hard to say what percentage we will have found. I believe we have to develop new strategies to become more inclusive.

One strategy I suggest is to consider as relevant all files under programs that we know employed numbers of Nazi war criminals, such as Operation Rollback, and there may be a variety of others. If we have to operate only on the basis of knowing the answer before we ask the question, we will never be able to get the answers that we need.

The third issue is a familiar one to Members of Congress, but I also read the front pages of the paper today, so it should not be quite as difficult as it has been in the past, and that has to do with resources.

You will be very pleased to note that we have been extremely economical. We have operated on the thinnest, narrowest shoestring we have ever seen. We don't have a full-time staff director; we don't have a staff. We have been functioning, thanks to Michael Kurtz and the National Archives, with borrowed resources; and we have done, I think, an amazing job. But we can't do it anymore on this shoestring because, as probably you have seen in the Washington Post today—it was a very important story, indicating the significance of some of the materials that have just recently been declassified—we have to hire two historians to accomplish that result; and they themselves will not be able to go through 8 million pages of documents and begin to tell the American people what the significance of the materials is.

Dr. Kurtz pointed to the necessity of preservation of materials. We have worked with a number of committees, on both the Senate and the House side, on a bipartisan basis because this is a bipartisan matter, to get some funding to permit us to do our job properly; and I would hope that this committee would assist us in that effort. I believe we have asked for $5 million, and I would hope that we can get your support in that effort.

Thank you very much, Mr. Chairman and members of the committee.

Mr. HORN. Thank you. Those are very good challenges and we need to get a thorough airing of them before we close up the session this morning.

[The prepared statement of Ms. Holtzman follows:]

Testimony
by

Elizabeth Holtzman

before the

House Subcommittee on Government Reform, Information and Technology

June 27, 2000

Mr. Chairman, Ms. Maloney and Members of the Subcommittee:

Thank you very much for the invitation to appear before you today. I especially want to commend the chair of the subcommittee, Representative Stephen Horn, for his leadership in holding this hearing and in passing the Nazi War Crimes Disclosure Act. My commendation goes as well to the ranking minority member, Representative Carolyn Maloney. Without her exceptional commitment to seeing the truth disclosed about Nazi war criminals, we would not be here today.

In many respects this is a good news hearing. In 1998, Congress mandated the disclosure (with a few exceptions) of previously classified documents relating to Nazi war criminals. Starting in 1999, the various agencies of government that have jurisdiction over these documents began the major task of reviewing and declassifying them.

The Interagency Working Group, created under the Act, has taken a step beyond simple declassification. We have hired two noted historians to help make sense of the documents that are declassified, so that Congress and the American people can make clearer judgments about the actions of the United States both during and after the war with respect to Nazi war criminals.

Thus, just yesterday, the IWG released 400,000 pages of previously classified OSS files. I thank the CIA, its Director George Tenet and his able assistant, Ken Levitt, as well as the British intelligence agencies for agreeing to the declassification. Democracies prove their strength by their willingness to let the truth out; we will never learn from our mistakes if we don't know what they are.

The IWG's historians pointed out that the previously classified OSS materials raise important questions. For example, having learned from decoding Nazi communications that the Jews of Rome faced imminent annihilation, could the British and/or the US have taken steps to save Jewish lives? Similarly, was a top Himmler aide given immunity from war crimes prosecution for fifteen years by the OSS for enabling an earlier surrender of the German armies in Northern Italy, and if so was that appropriate?

These are grave factual and moral questions; I suspect we will be debating them for many years to come.

But our very success yesterday in the OSS release raises other questions this committee, I believe, needs to confront:

1. The first issue has to do with finishing the job of declassification. Despite serious efforts made by all the agencies, only a fraction of the job of declassification has been completed. The committee needs to ascertain how the agencies expect to finish their task within the three years of the IWG's existence.

In this respect, the IWG's public members met with the heads of two of the three agencies with the most relevant material, Director George Tenet and Director Louis Freeh. Both acknowledged the importance of the declassification project and expressed personal commitment to it. Unfortunately, the Secretary of Defense has so far declined to meet with us; nonetheless, the Army, after inexplicable and inordinate delays, has finally gotten itself organized and has promised us an October 2000 completion date.

It is important to bear in mind that I have been referring to finishing the declassification task on the European and North African theatres. Almost nothing has yet been done on Japanese war criminals, the next area of focus for the IWG and the agencies under the Nazi War Crimes Disclosure Act. How is the whole task going to get done under the time-consuming line by line, page by page method of review presently used?

2. The second issue has to do with the completeness of our search. As you probably know, there is no magic button labeled Nazi war criminals that can be pushed to produce all the relevant documents. Most files are organized by a person's name; this means that unless we know the names of the Nazis before we start to look we may never find the files of those whose names we do not know. Fortunately, Eli Rosenbaum of OSI has helped address one aspect of this problem: he has forwarded the names of some 57,000 former SS officers. The UN War Crimes Commission list and a few other names have supplemented that list. But it is plain that this search strategy is ultimately unsatisfactory. I now believe that to get at the files of Nazi war criminals whose names we do not know will require a supplemental approach. We do know the names of programs, such as "Rollback," that employed numbers of Nazi war criminals and collaborators. I believe we must take the position that all of the files of these programs are relevant under the act; if the files meet the other standards for declassification they should be declassified in toto. Unless we take a somewhat more wholesale approach such as this, untold numbers of Nazi war crimes files will still remain secret, even when we say we have finished our mission.

3. The third issue is money. We have functioned so far on a shoestring, surviving on the handouts of NARA and moneys earmarked for us that were given to OSI. We have had no executive director and no staff dedicated to our own operations. Nonetheless, thanks to the extraordinary work of Dr, Michael Kurtz and his NARA staff and the co-operation

of the various agencies, enormous progress has been made. But we need help. It is essential for us to have the funds to do this job properly.

In particular, it is crucial to have enough historians and staff available to review the material we are releasing and inform the public of its significance. The work that was done on the OSS release is a crucial example of how invaluable the contribution of historians is to our mission. Professors Breitman and Naphtali are stars in their field; we are lucky to have them. But they cannot do the job alone. They need help to do what the Congress and American public expect. That is why I hope this committee will strongly support the appropriations of $5 million that we are seeking.

Thank you very much for giving me this opportunity to express my views today. I would be happy to answer any questions you may have.

Mr. HORN. Mr. Baer, you are a member of the Interagency Working Group?

Mr. BAER. Yes, sir.

Thank you, Mr. Chairman for the opportunity to address you and to comment on our work. I also want to take this opportunity to thank Michael Kurtz and staff and the other members of the IWG represented here today. All have made a sincere commitment to fulfill our mandate. The agency heads and their representatives have made a concerted effort to declassify documents 60 years on, but much remains to be done.

Because the Nazi War Crimes Disclosure Act, under which they are operating, imports the exceptions to declassification contained in the Defense Act of 1947, such as sources and methods, the agencies have taken the position that a page-by-page review, which Ms. Holtzman just referred to, is indicated as opposed to bulk declassification.

I strongly believe that bulk declassification is permissible under the statute, but I have not been successful in persuading the agencies. Without engaging in any extended analysis, which I will be glad to do, the gist of my argument is that the statute says that the agency heads may invoke the exceptions, not that they must do so.

When one measures the time and expense attendant upon page-by-page review against the possible danger to the security of the United States arising from bulk declassification of World War II and cold war documents, it would appear that the benefits of bulk declassification outweigh the detriments of revelation of source and method secrets of the 1940's and 1950's. I believe that this analysis would justify agency head discretion to bulk declassifying for most agencies and most collections.

The agencies differ. They say that revelation of sources and methods of the 1940's and 1950's imperils their operations today. Learned Hand wrote, "The spirit of liberty is the spirit that is not too sure it is right." Similarly, I confess that I am not too sure that I am right. On the merits of what we have released and what we will release in the future, it will be for historians to judge its significance—an opportunity, Mr. Chairman, that this overdue and wise legislation finally affords them.

I will be glad to answer any questions later on. Thank you.

Mr. HORN. Thank you very much.

[The prepared statement of Mr. Baer follows:]

TESTIMONY OF THOMAS BAER, PUBLIC MEMBER, NAZI WAR CRIMES RECORDS INTERAGENCY WORKING GROUP

U.S. CONGRESS, WASHINGTON, D.C. JUNE 27, 2000

Mr. Chairman, Members of the Subcommittee:

Thank you for the opportunity to address you and to comment on our work to date.

I wish to take this opportunity to thank Dr. Michael Kurtz, his staff, and the other members of the IWG represented here today. All have made a sincere commitment to fulfill our mandate.

The agency heads and their representatives have made a concerted effort to declassify documents sixty years on but much remains to be done. Because the Nazi War Crimes Disclosure Act under which they are operating imports the exceptions to declassification contained in the Defense Act of 1947, such as sources and methods, the agencies have taken the position that a page-by-page review is indicated as opposed to bulk declassification. I strongly believe that bulk declassification is permissible under the statute but I have not been successful in persuading the agencies. Without engaging in an extended analysis, the gist of my argument is that the statute says that the agency heads "may" invoke the exceptions, not that they must do so.

When one measures the time and expense attendant upon page-by-page review against the possible danger to the security of the United States arising from bulk declassification of World War II and cold war documents, it would appear that the benefits of bulk declassification outweigh the detriments of revelation of source and method secrets of the forties and fifties. I believe that this analysis would justify agency head discretion to bulk declassify for most agencies and most collections.

The agencies differ. They say that revelation of sources and methods of the forties and fifties imperils their operations today. Learned Hand wrote, "the spirit of liberty is the spirit that is not too sure it is right." Similarly, I confess that I am not too sure that I am right.

On the merits of what we have released and what we will release in the future, it will be for the historians to judge its significance, an opportunity, Mr. Chairman, that this overdue and wise legislation finally affords them.

Mr. HORN. We now go to Mr. Ben-Veniste, member of the Interagency Working Group.

Mr. BEN-VENISTE. Thank you, Mr. Chairman. I am happy to report the substantial progress that is reflected in Dr. Kurtz's statement and the substantial materials which are appended to his formal statement by way of a report to this committee.

Yesterday's release of 400,000 pages of OSS documents and the media coverage that it received, including today's front page story in the Washington Post, reflects the importance of the new material which was released. In particular, the information related to the intercepted and decoded messages from the Nazi high command, relating to the Nazi's murderous plan for the Jews of Italy in the fall of 1943, will continue to stimulate the debate about whether something could have been done to provide assistance to the Jews of Italy. After all, the Italian people were unwilling, despite the Axis Alliance to carry out Hitler's plan for the murder of the Jewish population of Europe. And yet when these materials were made available and decoded and available in real time, nothing was done to provide warning to the Jews of Italy, and that is reflected in the documents that were released yesterday. And that is a reflection of the strength of our democracy in being able to shed light on these materials.

After all, they would not have been made available but for the fact that the British foreign intelligence services, together with the CIA and the efforts of Director Tenet and Mr. Levit here at my left in persuading the British intelligence services to release this material was responsible for its being made available yesterday. It could not have been made available but for these efforts.

The material released also touches on other areas of vital interest to supplement the historical record. For example, the Allied treatment of Nazi war criminals during the postwar period is very much reflected in some of the materials we received yesterday, and we expect a great deal more information to be released on that subject. Similarly, business relationships, including insurance contracts and what happened with those, are also reflected in these materials.

We are hopeful that the attention received from the disclosures will stimulate World War cooperation from governments who still maintain the stamp of secrecy on documents of important historical value. Our country owes you and others on this committee, Mrs. Maloney and others, and in the Senate as well as President Clinton, a debt of gratitude for putting our country in the forefront of openness and strength in carrying forth the objectives of this important legislation. This is, as it should be, in our democracy.

I would like, on a personal note, to express my deep appreciation for the work of Dr. Kurtz and his staff at the National Archives. They have worked unfailingly to make the objectives of this legislation a reality; and of course there is much, much more work to be done and more to come. Our panel of experts are also owed a debt of gratitude.

This was a proposal that sort of came about, I think, stimulated by the public members reflecting on the fact that we did not have the historical basis within our own resources to analyze this material, to separate the wheat from the chaff and the new from the

old. And it is our fervent hope that with the supplemental appropriation, we will be able to provide much more in the way of resources to analyzing this information and to explaining it, as was done yesterday with respect to only 400,000 pages of material, only a portion of which our historical panel had the opportunity to actually review, simply by reason of resources and no other reason—certainly not from lack of interest.

I would also like to thank the CIA and the FBI and Director Tenet and Director Freeh, as well as the Department of the Army, for their commitment to carry out this—the objectives of this legislation, again without any direct appropriation to do so.

The funds that have been requested I think will be very well spent for the purposes of providing additional resources in historical analysis, in preserving the documents, many of which are deteriorating, many of which were on paper that was used during World War II, where maybe these kinds of materials was not of the best quality. In fact, they used inferior quality paper, which is in the process of deteriorating.

Finally, I think these resources, additional resources, will provide us the opportunity to hold an international symposium where we can explain the efforts that our government has made, the challenges which we have faced and—to stimulate discussion and, hopefully, emulation from other democracies throughout the world to do what we have attempted to do and are beginning to do with our own records.

Thank you, Mr. Chairman.

Mr. HORN. We thank you for that excellent presentation.

We now have Kenneth Levit, Special Counsel, Office of the Executive Director to the CIA.

Mr. LEVIT. Thank you, Mr. Chairman. It is a pleasure to be here today to report to you about the progress of the Central Intelligence Agency with regard to the Nazi War Crimes Disclosure Act. I can report to you that the declassification effort pursuant to this act is among the largest records declassification effort in our history. CIA is committed to a thorough search for all documents that may have anything to do with Nazi war crimes, so they can be identified and declassified in an expeditious manner.

As you alluded to in your statement, Mr. Chairman, yesterday CIA and the National Archives released to the public over 400,000 pages of previously withheld records relating to the Office of Strategic Services, that deal with World War II and the European Theater. Much of this material deals directly on the issue of war crimes, and approximately 6,100 pages of that collection were released exclusively as a result of CIA's program to implement the act and reflect our commitment to work with foreign governments who passed us intelligence, in secret, related to war crimes.

The vast majority of the 6,100 pages contain information from original foreign government reports or from foreign government sources, usually British or French, and consist primarily of POW interrogation reports, refugee and emigre debriefings, OSS missions into France and Norway, Operation Safe Haven, the interagency program to identify and block the transfer of German assets, as well as British intercepts of German messages between Rome and Berlin.

I should say that these releases came as a result of the direct efforts and hard work by Director Tenet to reach out to his foreign colleagues that run the services, the intelligence services, of these countries so that these documents could be released. Director Tenet has taken a personal interest in ensuring that these records can be opened and as much can be made known as possible with regard to these war crimes and their history.

The debriefing reports of refugees and emigres, many of whom narrowly escaped persecution or death at the hands of the Nazis, add significant detail to the historical record and to our understanding of the period of time. CIA has redacted very little information from the OSS records, and in fact we have not held—and particularly with regard to the 6,100 pages of foreign government records, a single page that we have identified as relevant. And the very few redactions consist of names and other identifications of British sources and the names of CIA employees.

I think this speaks well of the way that the legislation was crafted and, more importantly, the spirit of the legislation, which CIA and the Intelligence Community on behalf of the work of Director Tenet is seeking to implement in its full spirit.

In addition to the first tranche of 6,100 pages, we expect to release an additional 3,096 pages of OSS material in the coming weeks, that we feel is directly relevant to the issue of war crimes.

I would also like to report to you, Mr. Chairman, that our efforts will not stop at the OSS; rather, our search for relevant documents will also address the records of the CIA, including the operational files that are otherwise exempt from the 25-year declassification program, as well as the Freedom of Information Act. There is no blanket exemption. Relevant documents will be identified and, where possible, declassified to the fullest extent.

A couple of months ago the Interagency Working Group came to closure on the approach CIA would use to declassify many of its most sensitive files, and the public can expect significant releases of CIA material by the end of summer.

In closing, Mr. Chairman, I will only reiterate the commitment of Director Tenet and of the CIA in this effort. We hope that we will do all that we can in order to allow as much relevant material as possible to be fully released. These documents provide powerful testimony to our generation and to those of the future. By learning from them, we may hope to be better equipped to fulfill our common commitment, the commitment to "never again."

Mr. HORN. Thank you. That was a very thorough statement.

[The prepared statement of Mr. Levit follows:]

Testimony of Kenneth J. Levit, Special Counsel to the DCI, on CIA Compliance with the Nazi War Crimes Disclosure Act before the House Subcommittee on Government Management, Information and Technology

Mr. Chairman, members of the Committee, last month—on Yom Hashoah—the international day devoted to remembrance of the Holocaust, CIA was honored to have as our guest, Alice Lok Cahana. Mrs. Cahana, like your distinguished colleague Representative Tom Lantos, was swept up in the whirlwind of brutality that characterized the effort to destroy the Jews of Hungary. Her story, again like that of Congressman Lantos, was recounted in Steven Spielberg's award-winning documentary—The Last Days.

The CIA officers present to hear from Mrs. Cahana on that Yom Hashoah were deeply moved. Mr. Chairman, there is no substitute for first-hand exposure to the testimony of a holocaust survivor in our quest—our obligation—to confront the Holocaust, to understand what it means about the precarious nature of democracy and of human decency.

That is exactly why Director Tenet and the entire CIA are committed to the thorough and expeditious compliance with the Nazi War Crimes Disclosure Act. **The documents from the era are also survivors in their own right. They bear witness to the atrocities of the era and speak to us with an authority—a genuineness—that only a surviving document of the era can.**

Yesterday, CIA and the National Archives released to the public over 400,000 pages of previously withheld records relating to the Office of Strategic Services that deal with World War II and the European theater. Much of this material bears directly on the issue of war crimes. In fact, approximately 6100 pages of that collection were released

exclusively as a result of CIA's program to implement the Act and reflect the CIA's commitment to work with foreign governments who passed us intelligence relating to war crimes. The vast majority of the 6100 pages contain information from original foreign government reports or from foreign government sources—usually British or French and consists primarily of P.O.W. interrogation reports, refugee and emigre debriefings, OSS missions into France and Norway, operation Safehaven—the interagency program to identify and block the transfer of German assets, as well as British intercepts of German messages between Rome and Berlin.

The debriefing reports of refugees and emigres, many of whom narrowly escaped persecution or death at the hands of the Nazis add significant detail to the historical record and to our understanding of the period. CIA has redacted very little information from the OSS records and has not yet been required to hold back any document in its entirety. The few redactions consist mainly of names or other identification of British sources and the names of CIA employees. In addition to the first tranche of 6100 pages, we expect to release an additional 3,096 pages of OSS-era material in the coming weeks.

CIA's efforts will not stop at the OSS. Rather, our search for relevant documents will also address the records of the CIA, including the operational files that are otherwise exempt from the 25-year declassification program or the Freedom of Information Act. There is no blanket exemption; relevant documents will be identified and where possible declassified to the fullest extent. Two months ago, the interagency working group came to closure and approved the approach CIA would use to declassify its most sensitive files, and the public can expect significant releases of CIA material by the end of the summer.

In closing, Mr. Chairman, I will only reiterate the commitment of Director Tenet and of the CIA in this effort. We hope to do all we can in order to allow as much relevant material as possible to be released. These documents—like the holocaust survivors of our day—provide powerful testimony to our generation and to those of the future. By learning from them, we may hope to be better equipped to fulfill our common commitment – the commitment to Never Again.

Thank you.

Mr. HORN. We now have Mr. John Collingwood, Assistant Director, Office of Congressional and Public Affairs, FBI.

Mr. COLLINGWOOD. Thank you, Mr. Chairman.

The most important thing that I can communicate to the committee today is that we in the FBI collectively share the enthusiasm that your committee has for this project. Recognizing that the FBI is primarily a domestic agency with mostly domestic records, already we have physically reviewed approximately 1.9 million pages and have identified and are processing for release 166,000 pages relevant under the act.

As Congresswoman Holtzman described, the challenge for the FBI, as for all agencies, is to locate relevant records within our central record system, a system of records that has been in existence since 1921. Arguably, when we finish, we will have screened approximately 6 billion pages of records. The vast majority, as you would expect, however, will not be relevant. They will pertain to traditional FBI-type activities—bank robberies, organized crime, cybercrime and terrorism—and these are, as Congresswoman Holtzman described, normally retrievable through indices searches.

To ensure that we comply with the act, and comply not only with the letter of the act but with the spirit of the act, we have worked with the group, the IWG, and Archives to develop what we describe as a three-pronged approach to resolving this dilemma.

The first is through the traditional indices search mechanism. We have conducted approximately 60,000 name searches against both our automated indices and our manual indices. We have, as well, identified—working with Archives, identified nine file series that the FBI maintains that most likely would contain relevant documents. The file series—and the FBI maintains its records in file series, such as all bank robberies are put together and all terrorism cases are put together—is ongoing; and we have identified nine separate series that are most likely to contain relevant materials. We have finished the review of six of those series, and the remainder are in process.

In addition, we are—as we go through these records, we are identifying and conducting additional research on our own. We are searching out records that pertain to names of individuals and organizations and operations that we find in the records that are produced. The results, to date, hopefully reflect our enthusiasm for this project.

Of the 1.9 million actual pages that I identified, 166,000 have been deemed relevant; 149,000 came through indices searches, and another 11,000 came through the file by file searches that are ongoing, and additional research has identified an additional 27,000 pages. We are processing those pages as resources permit and accessioning them to Archives as quickly as we can; and consistent with the other agencies' approach to this, the redactions are minimal, and often instances of redactions are limited to the simple number of the source or the like. The primary redactions from the FBI are those instances of information received from foreign governments, and we expect that information ultimately to be disclosed.

In conclusion, I think we are clearly committed to releasing the maximum volume of records, whether previously classified or not.

The FBI for a long time didn't mark documents for classification because we maintain all of our documents as if they were classified. We have spent approximately $2 million on this effort. We have 31 people working full time, and we are absolutely committed to finishing on schedule and know of no reason that we will not.

From a personal standpoint, I would like to mention that it was not until this project that I personally had an appreciation for what Archives does for this country. Dr. Kurtz and all of his staff and everybody at the National Archives make a contribution to preserving the history of this country that I never before realized the magnitude and I suspect that the American people do not realize the importance of. They are really the unsung heroes when it comes to this type of thing.

Finally, I am not sure, as the legislation was drafted, who had the idea of adding public members to the IWG, but it was indeed a brilliant idea. Anyone who suspects in any way, shape or form that any of the government agencies that are involved in this effort are going to be less than fully forthcoming with their documents need only discuss that with our three public members, who provide us the closest possible oversight.

Thank you.

Mr. HORN. Thank you.

[The prepared statement of Mr. Collingwood follows:]

STATEMENT OF
JOHN E. COLLINGWOOD
ASSISTANT DIRECTOR
OFFICE OF PUBLIC AND CONGRESSIONAL AFFAIRS
FEDERAL BUREAU OF INVESTIGATION
BEFORE THE
UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON GOVERNMENT REFORM
SUBCOMMITTEE ON GOVERNMENT MANAGEMENT,
INFORMATION AND TECHNOLOGY

JUNE 27, 2000

Good morning, Mr. Chairman and members of the Subcommittee. My name is John Collingwood and I currently serve as Assistant Director of the FBI's Office of Public and Congressional Affairs. I am pleased to be here this morning to report on the FBI's progress in locating, identifying, reviewing, and declassifying Nazi war criminal records within FBI investigative files.

On behalf of FBI Director Louis Freeh, I would like to commend this Subcommittee for its leadership in passing the Nazi War Crimes Disclosure Act. As a result of this Subcommittee's persistence and tireless efforts, federal agencies are working together to create and preserve a thorough historical collection documenting U. S. Government knowledge of Nazi war criminality. The FBI is proud to be a part of this effort and of the Interagency Working Group (IWG) created by the Act. Director Freeh publicly supported this endeavor long before the legislation was enacted. The Director's commitment to this project is known and shared by the FBI employees conducting this important document review. We are aware that the collection of material derived from this undertaking will undoubtedly have a profound impact on the surviving World War II generation and for

generations to come.

In providing the Subcommittee with a progress report, I would like to begin by explaining the FBI's records system and the search strategy developed to comply with the Act. I will then provide a statistical breakdown of our accomplishments to date, including the status of relevant pages reviewed and accessioned to the National Archives.

THE FBI'S RECORD SYSTEM

Although the Nazi War Crimes Disclosure Act directs each agency to review for declassification all "classified" Nazi war criminal records, the FBI does not segregate its classified records from its unclassified records, except in certain limited circumstances. The FBI maintains all of its records "as if" they are classified. We are, therefore, faced with the task of locating Nazi-related records within the billions of pages of documents in our system of records. Further, we are committed to disclosing relevant records whether classified or not. We are, of course, committed to completing this project within the prescribed time period and, with the strategy developed jointly with the National Archives, believe we are on schedule to do so.

The Central Records System

The FBI's primary records repository is the Central Records System (CRS) which was created in 1921. The CRS contains the FBI's investigative, personnel, applicant, administrative, and general files totaling over six billion pages. Although the FBI

has other records systems, such as the National DNA Index System and the Bureau Mailing Lists, the CRS is the primary and most important system for retrieving any records pertinent to the Nazi War Crimes Disclosure Act.

In 1978, the FBI developed an automated index to the CRS to enhance our search and retrieval capabilities. The automated index, however, does not contain pre-1978 information. Therefore, the FBI has maintained the old manual card index of the CRS. This index consists of over 65 million alphabetized index cards which must be reviewed by hand to identify any pre-1978 case files on any subject that is indexed into the system.

For purposes of producing records pursuant to the Nazi War Crimes Disclosure Act, an FBI analyst assigned to the Nazi War Crimes project completes a "search slip" indicating the name, and any other identifying information (e.g., date and place of birth) of the subject to be searched. While searching the automated and manual indices of the CRS, the search analyst notes on the search slip the file numbers associated with that individual subject. Those files are then retrieved from storage, usually at the off-site location in Virginia, and sent to FBI Headquarters.

An FBI analyst assigned to the Nazi War Crimes project then conducts a page-by-page review of the responsive files to identify information pertinent to the Act. Documents containing pertinent information are then processed for public release pursuant to the terms of the Act.

The FBI's Search Strategy

Given the manner in which the FBI records are maintained and indexed, only individual subjects identified by name could be searched. We recognized the potential for overlooking relevant information in our files that may not surface through name searches. Therefore, in conjunction with the National Archives and the Interagency Working Group, the FBI developed a three-prong search strategy to ensure that most if not all Nazi-related documents in FBI files would be located.

(1) Indices Searches

As described above, the FBI maintains both a manual and an automated index of its case files. Through the efforts of the IWG and the Office of Special Investigations, each agency has been provided with lists of approximately 60,000 names of Nazi-related programs, operations, activities and individuals. These 60,000 names have been checked, by hand, against our 65 million alphabetized index cards identifying FBI subjects from 1921 through 1978. The same list of 60,000 names also has been run against our computerized index of subjects dating from 1978. Any "hits" on the manual or computerized indices searches leads to case files which are reviewed for relevant materials.

(2) File By File Review

The FBI, in conjunction with the National Archives and the IWG, has identified nine file classifications which, based on extensive prior research about FBI records, are most likely to contain relevant records under the Act based on the type of

information captured by the classification (e.g., Foreign Economic Matters, Foreign Funds, and Informant Files). Those nine classifications contain over five million pages. Because of our unwavering commitment to locate Nazi-related information, FBI employees are painstakingly reviewing these files by hand.

(3) Additional Research

The third, and perhaps most productive approach to searching for relevant documents, is through independent research by FBI analysts. When a relevant file is located through either the indices search or the file by file review, we often discover references to other individuals or activities not included in the lists of 60,000 names. When that occurs, our analysts note the name and identifying information, complete a search slip, and locate the potentially relevant files.

While this three-prong search strategy is time-consuming and demanding, I am confident that it is the most effective means of searching our record system for relevant materials. Compliance with the Nazi War Crimes Disclosure Act is an enormous undertaking, not just for the FBI, but for many other federal agencies. Our efforts, however, must focus on the great historical significance and the rights of holocaust victims and their families to have access to the truth.

RESULTS TO DATE

The FBI currently has 31 employees dedicated to the Nazi records review project. These employees have met with historians from the National Archives and Records Administration to learn

more about the World War II era. I believe that educating these employees on Nazi and post-war activities is critical to a successful review of our records.

(1) Indices Searches

As explained above, over 60,000 names have been run through the FBI's manual and automated indices. A "potential hit" occurs when a name from the list matches a name in the index. The results of the indices searches are as follows:

Manual Index:	20,247 potential hits
Automated Index:	23,386 potential hits
TOTAL:	43,633 potential hits

FBI case files relating to the potential hits are being located and reviewed by analysts to determine whether the subject of the FBI file is identical to the named subject. If so, the file is deemed relevant and is being processed for declassification and release to the National Archives.

To date, FBI analysts have reviewed 675,817 pages from case files based on the potential hits. Of those pages, 149,439 pages (22 percent) have been deemed relevant to the Act.

(2) File by File Review

The FBI's hand review of certain case files deemed likely to contain relevant documents is ongoing. To date, the FBI has reviewed 1,178,797 pages in the following file classifications: Censorship, Foreign Economic Matters, Foreign Social Conditions,

Foreign Funds, Foreign Military and Naval Matters, and Alien Property Custodian Matters. The review of FBI informant files is ongoing.

Of the 1,178,797 pages reviewed to date, 11,025 pages (.9 percent) have been deemed relevant to the Act.

(3) Additional Research

Based on information developed from FBI file reviews and from consulting other source material, FBI analysts have identified individuals and entities associated with Nazi war criminality that have not been included on any of the lists provided. To date, the FBI has compiled a list of almost 5,000 such names and checked them against our indices, both manual and automated. Those searches resulted in 2,918 potential hits which led to the review of 27,326 pages. From that review, the FBI has identified 6,128 relevant pages (22 percent), to date.

REDACTION AND ACCESSIONING

The final stages of processing relevant Nazi-related documents includes redaction of classified and certain sensitive information, followed by accessioning to the National Archives. Because of our commitment to release as much information as possible, the FBI has made only limited redactions to materials relevant to the Act.

Although the Act provides for ten different exemptions of information, at this time, the FBI has exempted, or redacted, pursuant to only two of the authorized exemptions: (1) pursuant

to Section 3(b)(2)(A) regarding identities of confidential human sources or human intelligence sources or methods, and; (2) pursuant to Section 3(b)(2)(G) regarding information that would seriously and demonstrably impair foreign relations. I would like to mention that we are working with our counterparts in several foreign governments in an effort to reach agreement as to the release of their information contained in our files. Until those agreements are reached, however, we are required to protect foreign government information from disclosure.

To date, the FBI has accessioned to the National Archives over 34,000 pages of Nazi-related documents. Of those pages, the FBI has not sought to exempt a single page in its entirety, and has made partial redactions to only 43 pages to protect FBI information. Among the significant material released by the FBI are documents pertaining to German scientists, captured German documents, Heinrich Himmler, and Klaus Barbie.

By the end of this week, the FBI will be accessioning an additional 14,000 pages to the National Archives bringing the FBI's total to nearly 50,000 pages. This week's release will include materials on Rudolf Hess, Adolph Hitler, Heinrich Mueller, and Kurt Waldheim.

In subsequent releases, the FBI is focusing on subjects of priority interest to the IWG and presumably to historians and Holocaust survivors. We will produce materials relating to known or suspected Nazi war criminals who served as informants for the FBI, files relating to looted assets, and files on the German

Police and German Intelligence Service. Following release of the priority materials, the FBI will continue its review and accessioning of the relevant documents identified through its three-pronged search strategy.

The FBI is committed to completing this project by 2002 in accordance with the statutory mandate. I am proud to report that we are on schedule to meet this deadline and will continue to devote the necessary resources to this project to maintain our progress.

Finally, I would like to commend Dr. Michael Kurtz and his staff at the National Archives for their leadership and invaluable counsel in focusing the efforts of the Interagency Working Group toward a successful and timely completion of this project. Under the guidance of Dr. Kurtz, the agencies and the three public members of the IWG are able to express concerns, suggestions, criticisms, and recommendations, knowing that we all share the common goal of releasing as much Nazi-related information as possible contained in documents held by the United States Government. The FBI and, undoubtedly each of the agencies represented in the IWG, are benefitting enormously from the experience and expertise brought to this endeavor.

Mr. HORN. Colonel Lewis Thompson is Commander of the 902d Military Intelligence Group of the Intelligence and Security Command of the U.S. Army. I was fascinated by your piece here, because I was in the 458th Strategic Intelligence Unit, and we had a whole bunch of German-speaking colonels. You could have used them and put them to work.

Colonel THOMPSON. Mr. Chairman and members of the subcommittee, I appreciate the opportunity to represent the Army and provide testimony on this important subject.

I am Colonel Lewis Thompson, the Commander of the 902d Military Intelligence Group, U.S. Army Intelligence and Security Command. My group conducts the Army's strategic counterintelligence mission. My group also contains the Army's investigative records repository.

With me today are two substantive experts, Lieutenant Colonel Jasey Briley, the Commander of the 310th Military Intelligence Battalion that houses the Investigative Records Repository; and Mr. Andy Swicegood, from the battalion operations section.

The Investigative Records Repository is the Army's repository for some intelligence and all counterintelligence related investigative files. It contains over 1.9 million pages of paper and microfilm files, some of which date back to World War II. These aging files and film have been deteriorating for many years. Recognizing their historical value, the Army initiated efforts in 1992 to digitize all of the holdings in the repository.

In 1995, the President signed Executive Order 12958 requiring the review for declassification determination of all classified holdings 25 years of age or older, to be completed not later than April 21, 2000.

In October 1998, the Nazi War Crimes Disclosure Act was signed requiring us to review all repository holdings, declassify to the maximum extent possible related files and provide those files to the National Archives and Records Administration.

The digitization of the files in our repository that began in 1992 is not directly related to the Executive order or public law, but facilitates our compliance with both. In order to comply with the Nazi War Crimes Disclosure Act, we must review over 1.9 million files, subsequently releasing what we currently estimate to be 15,000 files pertinent to the act. Without the digitization initiative, we estimate the process would take more than 181 man-years to complete. With digitization, we estimate we will be able to complete the task in about 7 months.

In order to facilitate this effort, the Secretary of the Army has made $1.3 million available to the U.S. Army Intelligence and Security Command for the conversion of the reels of microfilm to optical disk. I currently have over 100 military and civilian employees dedicated to this effort, working three shifts around the clock 6 days a week, with the 7th day allocated to systems maintenance and backup. We are working toward a completion date of October 1, 2000.

Thank you for the opportunity to provide this testimony today. I would be happy to answer any questions you might have.

Mr. HORN. Thank you very much.

[The prepared statement of Colonel Thompson follows:]

RECORD VERSION

STATEMENT BY

COLONEL LEWIS H. THOMPSON

COMMANDER, 902d MILITARY INTELLIGENCE GROUP
INTELLIGENCE AND SECURITY COMMAND
UNITED STATES ARMY

BEFORE THE

SUBCOMMITTEE ON GOVERNMENT MANAGEMENT, INFORMATION AND TECHNOLOGY

UNITED STATES HOUSE OF REPRESENTATIVES

SECOND SESSION, 106TH CONGRESS

JUNE 27, 2000

NOT FOR PUBLICATION
UNTIL RELEASED
BY THE
GOVERNMENT REFORM AND OVERSIGHT COMMITTEE
HOUSE OF REPRESENTATIVES

Mr. Chairman and Members of the Subcommittee. I appreciate the opportunity to represent the Army and provide testimony on this important subject.

I am Colonel, Lew Thompson, the commander of the 902d Military Intelligence Group, United States Army Intelligence and Security Command. My Group conducts the Army's strategic counterintelligence mission. My Group also contains the Army's Investigative Records Repository (IRR).

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In 1995, the President signed Executive Order 12958, requiring the review for declassification determination of all classified holdings 25 years of age or older, to be completed not later than April 21, 2000. In October, 1998 the Nazi War Crimes

Disclosure Act (Public Law No. 105-246) was signed, requiring us to review all IRR holdings, declassify to the maximum extent possible related files, and provide those files to the National Archives and Records Administration.

The digitization of IRR files that began in 1992 is not directly related to the Executive Order or Public Law, but facilitates our compliance with both. In order to comply with the Nazi War Crimes Disclosure Act, we must review over 1.9 million files, subsequently releasing what we currently estimate to be 15,000 files pertinent to the Nazi War Crimes Disclosure Act. Without the digitization initiative, we estimate the process would take more than 181 man-years of effort to complete. With digitization, we estimate we will be able to complete the task in about seven months. In order to facilitate this effort, the Secretary of the Army has made $1.3 million available to the U.S. Army Intelligence and Security Command (INSCOM) for the conversion of the reels of microfilm to optical disk.

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Thank you for the opportunity to provide this testimony today. I would be happy to answer any questions you might have.

Mr. HORN. Right now we are going to turn to two of our Members who are very devoted to this issue. We mentioned earlier Mrs. Maloney, she will be one of them, and the Honorable Tom Lantos, who has a great perspective of the whole historical situation.

I believe Mrs. Maloney has some comments and then Mr. Lantos.

STATEMENT OF HON. CAROLYN B. MALONEY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mrs. MALONEY. First of all, I would like to congratulate all of the members of the panel and the members of the public group that I made sure were part of the legislation—Tom Baer, Richard Ben-Veniste and my good friend, Liz Holtzman, who has a long history of accomplishment on this issue.

I must say that this was one of the first bills that I introduced in 1992, and it was a long, hard effort to get it passed into law; and I congratulate my dear friend and colleague, Chairman Horn, for his consistent support. We had many, many hearings, probably more than he would like, but he was always there with hearings, with oversight, and in support of the legislation; and of course Senator DeWine, who carried it in the Senate.

Congressman Lantos is an incredibly important Member of Congress on many fronts. He also brings a deep understanding, as the only Holocaust survivor to be elected to Congress, and he is certainly a moral mentor to me and to all of our colleagues.

I would like to put my comments in the record, but I would like to respond with a few questions to the people who are here today; and you are just in time, because the supplemental budget may be on the floor this week, and as you said, we need to get our $5 million, or extra, resources in.

I am glad it was enacted into law, but I am very concerned about certain foreign nations that are not cooperating with us in the release of documents. It is very, very important, and it is incredibly important that we complete the work, including Japan—a complete analysis of what happened in Japan. And many of the people here have said that you expect that you will be able to complete the work by October 2001, and I believe that would include the Japanese aspect also.

All I can say is that it is incredibly important. These documents will increase all our understanding of what happened, when it was known, what efforts were there to protect Nazi war criminals after the war, why those efforts were there; and I have a series of questions, and then I hope my colleagues on this panel will join me in working to make sure that the moneys are part of the supplemental that come up today.

But I think you've started an important journey, but we must complete it with all of the aspects, including Japan.

I yield back the balance of my time.

[The prepared statement of Hon. Carolyn B. Maloney follows:]



14th District • New York

Congresswoman

Carolyn Maloney

Reports

2430 Rayburn Building • Washington, DC 20515 • 202-225-7944
1651 Third Avenue • Suite 311 • New York, NY 10128 • 212-860-0606

Statement by Rep. Carolyn Maloney
Gov Reform Nazi War Crimes Oversight Hearing
10:00 AM 2154 Rayburn
Tuesday, June 27, 2000

Thank you Mr. Chairman for holding this timely hearing today. I appreciate your continued commitment to this issue. I'm delighted, Mr. Chairman, to welcome our witnesses this morning. Congressman Tom Lantos, the only Holocaust survivor to be elected to Congress, is a moral mentor to me and to all of our colleagues.

I also want to thank the members of the Interagency Working Group joining us today for its tireless work, especially the public members--Thomas Baer and my good friend Liz Holtzman. We all know that Liz has a long history of accomplishment on this issue -- she is one of the original Nazi Hunters, and passed the original law creating the Nazi-hunting office that continues that work today. I thank all of you for your commitment to exposing the facts surrounding one of the most disturbing periods in our nation's history.

I am very proud to have authored the original Nazi War Crimes Disclosure Act with my colleague, Mr. Horn, and with Senator DeWine, which was signed into law by President Clinton in 1998. This was an historic achievement, paving the way for the biggest declassification effort in our nation's history. I am very pleased that the Interagency Working Group established by my bill has been working diligently to declassify documents maintained by federal agencies about Nazi war criminals. It's work has led to the release of 1.5 million pages so far, with 400,000 pages released yesterday from records of the Office of Strategic Services. With the release of these documents, we now have new information pertaining to our governments knowledge of the Nazi's Holocaust perpetration into Italy. These documents show that we had evidence during the war that the Nazi leaders were ready to extend their systematic destruction of the Jews to Italy before it began. We cannot underestimate the value of this information that the IWG is working to declassify and make available to the public.

Since I first came to Congress in 1993, I have been working as a member of this Committee to make our government work better, and have been following this issue very closely. I was surprised to learn that many U.S. government agencies had secret information on individuals who ordered, incited, assisted, or otherwise participated in Nazi war crimes. I believe that a half-century after World War II, there is no public policy benefit to the continued refusal of United States government agencies to disclose Nazi war crimes files. Especially when you consider that other nations including Russia, Argentina, Lithuania, France, Germany, and others are opening their war crimes files. It is time for our own government's information to be made public--whether the information that is uncovered is good or bad. We need to know the truth about the United State's role in World War II.

Now is the time to finish the work of the IWG while we still have the individuals with first-hand knowledge of the atrocities of this time with us. Even with the excellent work the Interagency Working Group has accomplished over the last year and half, there are still numerous documents to review without the necessary resources to accomplish this daunting task in a timely fashion. The statutory deadline ends October 2001.

Even with their diligence, it is my understanding that the IWG is just one-third of the way through completing their research. As yesterday's release of documents shows us, it is vital to keep the work of the Interagency Working Group active. Yesterday's documents cover just one aspect of World War II and the Holocaust. However, with just two academics appointed to review the latest materials, I am concerned about the IWG's ability to reach their goals by October 2001. That means there are just two individuals working on more than 400,000 pages of material with millions of more pages expected.

Today I look forward to hearing from our witnesses how the IWG plans to proceed in its work in light of its progress so far and with its current resources and also what the group needs to finish this job and reach its goals.

Thank you.

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Especially when you consider that other nations including Russia, Argentina, Lithuania, France, Germany, and others are opening their war crimes files. It is time for our own government's information to be made public--whether the information that is uncovered is good or bad.

We need to know the truth about the United State's role in World War II. Now is the time to finish the work of the IWG while we still have the individuals with first-hand knowledge of the atrocities of this time with us.

Even with the excellent work the Interagency Working Group has accomplished over the last year and half, there is still numerous documents to review without the necessary resources to accomplish this daunting task in a timely fashion.

The statutory deadline for the Interagency Working Group ends October 2001.

Even with their diligence and hardwork, it is my understanding that the IWG is just 1/3 of the way through their work.

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Tody I look forward to hearing from our witnesses how the IWG plans to proceed in their work in light of their progress so far and with their current resources and also what they need to finish this job and reach thier goals.

Thank you.

Mr. HORN. Now with the next witness, both a member and a colleague, we are delighted to have Mr. Lantos here, the gentleman from California, who probably knows more on this subject than the rest of us put together.

STATEMENT OF HON. TOM LANTOS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. LANTOS. Thank you, Mr. Chairman. I want to associate myself with the laudatory comments of my friend, Congresswoman Maloney, with respect to the group before us and the ones who may not be here.

Mr. Chairman, I have a comprehensive statement I would like to place in the record.

Mr. HORN. We will put it in the record as read.

Mr. LANTOS. First, I want to thank you for your unwavering support and strong and deep personal commitment to bring to justice Nazi war criminals through the full declassification of documents in possession of the National Archives. I also want to thank my good friend, Jim Turner, the ranking member, for his invaluable work. And I would be derelict in my responsibilities if I did not pay tribute to the former ranking member, Dennis Kucinich, for his strong commitment to declassification issues in the pursuit of Nazi war criminals and human rights offenders around the world.

I want to single out Congresswoman Maloney, who introduced this legislation and shepherded it through, and who has a passionate and deep personal commitment to bring justice and closure to this issue and all other issues; and I publicly want to thank her for this.

I also want to recognize the contribution of my friend, Senator Mike DeWine.

Mr. Chairman, the goal of the Nazi War Crimes Disclosure Act is to declassify and make public any remaining documents in U.S. possession concerning Nazi crimes, criminals, and looted property. At the same time, this right to know must be balanced against legitimate reasons to continue to withhold certain documents. Since we are dealing with documents that are half a century old, clearly the bias should be in favor of declassification.

President Clinton created the IWG. It is composed of a group of most distinguished individuals, and they have done an outstanding job in fulfilling this mandate. Some million and a half pages have been released, 400,000 pages were released just yesterday with some startling consequences. These documents are now available to the public, to scholars at the National Archives.

I regret, Mr. Chairman, that we in Congress have failed to provide the funds needed for the work of declassification, but fortunately, the National Archives and the Office of Special Investigations provided some funding to assist in the project. We in Congress should do more to fund this important task.

I would like to say a word about the Japanese issue, Mr. Chairman. While the original legislation does include language that permits declassification of records relating to war crimes created under the Imperial Japanese Government, there are some areas where additional legislation is necessary. I am currently completing draft legislation which my staff has discussed with officials of the

National Archives. My written statement includes considerable detail on this legislation; I expect to introduce it within the next few days. Among the most important provisions of my legislation will be to extend the life of declassification for 1 more year.

A great deal has been accomplished, but much remains to be done and this additional year is essential for the work to be completed.

I want to thank you, Mr. Chairman, and I hope the subcommittee will consider my legislation expeditiously.

[The prepared statement of Hon. Tom Lantos follows:]

Statement of
Congressman Tom Lantos
of California

Subcommittee on Government Management, Information, and Technology
June 27, 2000

Oversight on the Implementation of the Nazi War Crimes Disclosure Act (P.L. 105-246)

Mr. Chairman, thank you for convening this very important hearing on the implementation of the Nazi War Crimes Disclosure Act, and thank you for allowing me to testify today.

Mr. Chairman, before I begin my statement, I would like to take this opportunity to thank you for your unwavering support and strong personal commitment to bring to justice Nazi war criminals through the full declassification of documents in possession of the National Archives and Records Service. Throughout your distinguished congressional career, your commitment to human rights has been second to none, and your strong leadership was essential in the passage of the Nazi War Crimes Disclosure Act.

I would also like to thank the current Ranking Member of the Subcommittee, Congressman Jim Turner, and the former Ranking Member, Congressman Dennis Kucinich, for their strong commitment to declassification issues in the pursuit of Nazi war criminals and human rights offenders around the world.

I also want to thank Congresswoman Carolyn Maloney and Senator Mike DeWine, who introduced the Nazi War Crimes Disclosure Act in the House and Senate.

The Exemplary Implementation of the Nazi War Crimes Disclosure Act by the National Archives and Records Administration

Mr. Chairman, the successful implementation of any bill passed by Congress will have to be measured against the goals it set out to achieve. The goal of the Nazi War Crimes Disclosure Act is to declassify and make public any remaining documents in U.S. possession concerning Nazi crimes, criminals and looted property. At the same time this "right to know" must be balanced against legitimate reasons to continue to withhold certain documents. Since we are dealing with documents that are now half a century old, however, there clearly should be a bias in favor of declassification.

For that purpose and in compliance with Section 2 (b)(1) of the Nazi War Crimes Disclosure Act, President Clinton issued Exec. Order 13110 on January 11, 1999, which created the "Nazi War Criminal Records Interagency Working Group (IWG)." The Members of the IWG are Chairman Michael J. Kurtz of the National Archives and Records Administration (NARA), Thomas H. Baer of Steinhardt Baer Pictures Company, Richard Ben-Veniste of Weil. Gotshal & Manges, John E. Collingwood of the FBI, former Congresswoman Elizabeth Holtzmann, Kenneth J. Levit

of the CIA, Harold J. Kwalwasser of the Office of the Secretary of Defense (OSD), William H. Leary of the National Security Council staff, David Marwell of the U.S. Holocaust Memorial Museum, Eli M. Rosenbaum of the Office of Special Investigations at the Department of Justice, and William Z. Slany of the Department of State. In addition, a Historical Advisory Panel composed of seven outstanding historians supports the IWG in their endeavors. Two historians, in particular have played a critical role in the work of the IWG – Dr. Richard Breitman and Dr. Timothy Naftali.

Mr. Chairman, I want to pay tribute to the members of the IWG. No matter how well intended and carefully crafted legislation is, the people who are chosen to implement it have a great impact upon assuring that the intention of the Congress is met. I am gratified that the efforts of the IWG have been outstanding.

This has been a mammoth undertaking. In its interim report on the implementation of the Nazi War Crimes Disclosure Act – a report which is mandated in Sec. 2 (c)(3) of the Act – the IWG reported that all agencies completed a preliminary survey of their records which could potentially be covered by the Act's requirement for declassification review. In the first year of its operations, the IWG has screened over 600 million pages of material to identify potentially applicable files, principally at the CIA, Department of Defense, FBI, and archival records in the National Archives. During this initial screening, some 50 million pages of material meeting the criteria of the legislation has been identified and is being further screened to determine if declassification is covered by terms of the Nazi War Crimes Disclosure Act.

Mr. Chairman, this process is massive and tedious. An enormous amount of material needs to be categorized, catalogued, and systematically searched. In the all too frequent absence of an existing catalogue system responsive to the special focus outlined in the Nazi War Crimes Disclosure Act, a line-by-line review of many, many documents has often been required.

Additional problems have occurred when documents are found that were given to the United States by allied foreign intelligence services with the understanding that the United States would not publicly disclose them. Special permission to make such documents public in many cases has required careful negotiation.

Despite these problems, in its short life span, the IWG has declassified 1.5 million pages of documents and has released about 1.3 million pages which are now available to the public at the National Archives and Records Administration. In addition, the IWG has published "finding aids" to the records on Nazi war crimes and Holocaust-era assets which are housed at the National Archives in College Park in order to make the released documents more easily accessible and useable to the general public.

Mr. Chairman, while the Nazi War Crimes Disclosure Act authorizes the funds necessary to conduct all this work (Sec. 2(b)(d)), the IWG did not receive any appropriations for its heroic

effort. The Office of Special Investigations (OSI) of the Department of Justice made available $400,000 for IWG support from an appropriation related to the Act. The National Archives, which is charged by the President with the administrative support of the IWG, will provide from its own budget nearly $1 million in staff and other support services by the end of FY 2000. This support falls far short of what is required to satisfy the requirements of the Act.

In addition, the Nazi War Crimes Disclosure Act imposes a "Sun Set Provision" of 3 years after enactment of the bill (Sec. 2(b)(1)). Mr. Chairman, I believe that the monumental task we as Members of Congress have given to the IWG cannot be fully completed in this time. Additional time will certainly be required.

Mr. Chairman, let us never forget why these very able people work extremely hard to bring justice to victims and survivors of the Holocaust. It is simply unconscionable that war criminals can escape justice – many times by hiding in the U.S. It is essential that we work so that family members of the victims of Hitler's tyranny can know the fate of their loved ones, and that assets illegally seized from the victims not remain forever hidden.

Mr. Chairman, as this review clearly demonstrates, we have made incredible progress in opening up United States archives to records relating to the war crimes and the crimes against humanity that were perpetrated by the government of Nazi Germany.

Japanese World War II War Crimes Disclosure Act

The Nazi War Crimes Disclosure Act (Sec. 2(c)(1)) defines Nazi war criminal records as those pertaining to persons who have committed their crimes under the direction of, or in association with the Nazi government of Germany, any government in occupied territories established by military forces, any collaborator government, or any government which was an ally for the German Nazi government. This broad definition clearly includes – and the Congress intended that it include – records relating to the Imperial Japanese government and atrocities that were committed under its responsibility throughout Asia.

I welcome and fully support the decision of the IWG to move now to wartime records relating to Imperial Japan in an effort to bring to light the war crimes that were committed by units of the Imperial Japanese military forces during World War II. The task of dealing with the Japanese records are more difficult. This requires the assembly of a whole new team of scholars and historians, and different language capability is required for these documents than is required for the Nazi records.

Mr. Chairman, in order to make clear the Congressional intention in this regard and to provide additional necessary time and resources for the completion of the task that has been begun, I will be introducing in the next few days "the Japanese World War II War Crimes Disclosure Act." This legislation has been developed by my staff in consultation with officials at the National

Archives and Records Administration in order to enable them to complete this important work which they have begun. My legislation has several important provisions that enhance what has been done already under the Nazi War Crimes Disclosure Act.

First, it makes explicit the inclusion of Imperial Japanese government records during the World War II era in the work of the IWG, and it provides the appropriate dates for the Imperial Japanese records to be considered. As I have already noted, the original legislation on Nazi war crimes documents does include a broad enough definition to include Japanese records, but my legislation removes any doubt about their inclusion. Furthermore, the dates for Japanese records in this new bill are more inclusive, including periods of time before the Nazi government came to power in Germany but when the Imperial government was involved in activities that may involve war crimes.

Second, the new legislation provides for a one-year extension of the mandate of the Nazi War Crimes Disclosure Act and the IWG. It is abundantly clear that the tasks remaining, particularly those related to the examination and release of documents relating to Japanese war crimes, will require more time than that provided in the original legislation.

Third, my legislation provides for the authorization of $1 million for the work of the IWG in fiscal years 2002 and 2003. As I have noted already, the work of the IWG mandated by the Nazi War Crimes Disclosure Act has been carried out without the authorization or appropriation of any additional funds by the Congress. The National Archives and Records Administration with the assistance of the Office of Special Investigations of the Department of Justice has come up with the necessary funding from their own limited budgets. I commend them for this effort, but I think the Congress must provide additional funding for this important task. This is why it is important to include these authorization of funding for these efforts.

Fourth, the legislation requests that the Secretary of State inform the Government of Japan that the United States has undertaken this process of making our records public, and that the Secretary express to the Government of Japan the sense of the Congress that it should follow a similar process of making its records public. Records in Japan are less readily available, and it is important that we let the Japanese government know of our interest in this project.

Relation of this Legislation to Similar Legislation that has Already Been Introduced

Mr. Chairman, my staff has consulted with the Staff of Senator Diane Feinstein in preparing this legislation. Earlier Senator Feinstein introduced S. 1901, the Japanese War Crimes Disclosure Act. The same legislation was introduced in the House by our fellow Californian, Mr. Bilbray, as H.R. 3561. This legislation has serious flaws that will hamper the efforts of the IWG to carry out its work as intended in the Nazi War Crimes Disclosure Act.

First, it creates a duplicate organization to carry out the declassification of records relating to

Imperial Japan. The legislation essentially duplicates the structures of the Nazi War Crimes Disclosure Act and ignores what has already been done under that act. As I have already noted, the IWG established under the Nazi War Crimes Disclosure Act has most of the authority it needs to carry out this declassification and publication of materials. S. 1901 / H.R. 3561 would create a duplicate structure. Since the existing IWG is already in place, it would be a waste of resources to create another similar body.

Second, S 1901 / H.R. 3561 does not deal with those problems and deficiencies of the existing authorizing legislation – a one-year extension of the period needed by the IWG to complete its work and the authorization of resources for the work of the IWG.

As I mentioned earlier, my staff has been working with the staff of Senator Feinstein and with the National Archives and Records Administration to come up with this new legislation that deals with these problems.

Mr. Chairman, I again want to thank you for your commitment to the Nazi War Crimes Disclosure Act. The bipartisan approach that you have taken in dealing with this matter is exemplary. I thank you again for holding these hearings today and for providing this opportunity for me to express my thoughts on the implementation of this important legislation.

Mr. HORN. As you know, the subcommittee has always moved very rapidly on most of these things.

I want to go back to some fundamentals here so we get it out on the table. One of the ways of getting at this is file by file and name. Another is bulk. I would just like to go down the line and say—and get from each of you, since you are all experts, what is the problem there and what can we do to resolve it?

Mr. KURTZ. My agency colleagues, I am sure, can amplify, Mr. Chairman, but from my perspective, I think there are three problems.

First, sources and methods: I think that is a particular issue for both the CIA records, for the Army's records, and I think also, to some extent, for the FBI records; and all of them also share—perhaps the CIA to the greatest extent—foreign government issues. It is very significant that Director Tenet and Ken Levit have worked so assiduously on the foreign government issue, because much of what was released yesterday, that had a rather startling impact, would not be possible without their cooperation.

But I am concerned over the time limits. Even if we get an additional year, we still have all of the Japanese issues to deal with, which in some ways are more complicated from a records point of view than the German records issue; and a file-by-file through everything is very—very time-consuming. I would hope that we would be able to work out with the agencies some sort of triage.

Not everything needs to go through a page-by-page or a line-by-line. I think we might agree certain categories of information do, and if we can refine this and get a more targeted strategy so we can get through more rapidly those records that permit that, we would have time to deal with the issues that are most knotty.

Mr. HORN. We obviously have a lot of Holocaust scholars in this country, and we can turn them loose once you have a series of files there. Is that the plus of the bulk approach, get them into the situation where scholars can say, I would like to see X number of files, even if they don't have a name?

Mr. KURTZ. Well, my experience with bulk declassification goes back to the President's Executive order in 1994 on World War II records, and the National Archives very much supports an approach, whether bulk or survey—whatever term might be used—to avoid to the greatest extent possible line-by-line, and there are many advantages. One, it gets into the hands of those who want and need them in a more expeditious fashion; it is more economical from the point of view of resources; and it enables the government to focus on those areas where there might be some sensitivity.

Mr. HORN. Now, have you in your role with this Interagency Working Group been able to obtain various documents internationally from, say, Russia and Japan; or is that something that you are considering in the future?

Mr. KURTZ. Well, let me address Japan.

I had a meeting with the archivist from Japan several months ago, and we discussed trying to get documentation or a report from them to detail where the records are now that were captured by the United States, brought to the United States and then returned to Japan in 1958. There are serious questions about their availability and access.

Mr. HORN. Before we returned them, did anybody have the sense to make microfilm out of those records?

Mr. KURTZ. The government did not follow the same policy with the Japanese documents as with the German Government before they were returned.

Mr. HORN. What was the difference?

Mr. KURTZ. It was 1958, and I am not sure. I was alive, yes, definitely. But anyway, we are going back and forth with the archivist of Japan to get a useful report, where these records are and are they available; and so far, not a great deal of success.

Mr. HORN. How about the Russian records?

Mr. KURTZ. We have not started dealing with the Russians.

Mr. HORN. Isn't that a likely possibility to see what they knew at what point in time?

Mr. KURTZ. Yes.

Mr. HORN. Because I know that we have a few Russian generals who came from their equivalent of OSS.

Mr. KURTZ. That is a good point.

Mr. HORN. We will just go down the line.

Ms. Holtzman.

Ms. HOLTZMAN. Thank you very much, Mr. Chairman.

I think it is not names versus—well, it may be. It is bulk versus line-by-line, and if we are going line-by-line, then the question is, are there strategies that can help us in terms of the names issue. Even if we do bulk declassification, what are we going to declassify?

Obviously, agencies like the CIA and the Army have very deep concerns about protecting what needs to be protected. But I would say, Mr. Chairman, it may well be that we can take the position with regard to documents of World War II that we can just bulk declassify those, unless, of course, there are any documents that we know of that have formulas for atomic weapons or poison gas or something like that.

But aside from that, it is hard to understand why—aside from the principle of preserving the secrecy of foreign information or the principle of preserving sources. We are talking about matters that are over 53 years old, 54, 55 years old; yesterday some of the documents were 57 years old. So I would say, there are some approaches like that.

But we can take some timeline, the end of World War II—obviously, the more recent, the more reason there may be not to disclose. Privacy concerns, as well, may come up. I would say that is one area that this committee could give us guidance.

My own personal view is, if we could do bulk declassification within some kind of timeframe, that would save time and money.

Second, if we don't know the names, how are we going to get the information? I would hope that the agencies would agree, and we could work out, with the help of the Archives and their excellent staff, a method of agreeing that all documents within certain programs would be relevant; whether they then would be declassifiable would be another subject.

But I think the other thing that it just raises with regard to the issue of Japan, I don't even know, Mr. Chairman, if we returned those documents to the Japanese, that we will be given access to

those documents, but it would be quite extraordinary for us to have returned the documents and not be permitted to see them.

Mr. HORN. Do we know who was in charge? Was it the State Department or the Army or what? We ought to write the appropriate people and ask them to give us whatever historically happened there. We do know that Secretary Dulles was very anxious to get a peace treaty with Japan, and we know a lot of things, but the question is, who had the control of them?

Mr. KURTZ. I would recommend, Mr. Chairman, checking with the Department of State, because they handled all of the negotiations on treaties, records, claims. So if there was any requirement written into any agreements about providing access, it should be known to the Department of State.

Mr. BEN-VENISTE. I think this would be appropriate for us to make inquiries and report back to this subcommittee what we have found about the historical record relating to the return of those documents, Mr. Chairman.

Mr. HORN. Mr. Baer.

Mr. BAER. Thank you for asking about this subject. Briefly, the legislation contemplates this vital issue and is a major question, bulk versus line-by-line or bulk versus a search.

Mr. Chairman, in the Congressional Record of 1998, August 6, you said, "Much of the government information on alleged Nazi war criminals has remained secret even though researchers have filed Freedom of Information Act requests to secure copies of the records. Federal agencies have routinely denied these requests, citing exemptions for national defense, foreign relations and intelligence. More than half a century after the Second World War, it is time," you said, "to end the sweeping equity exemptions that have shielded Nazi war criminals from full public disclosure."

Now, the legislation imports two points of view, reflecting the committee and Congress' desire to change the method of releasing this. No. 1, unlike Freedom of Information Act requests where people have to be making requests, the burden here is placed upon the government agency to make revelations. And the revelations do require exemptions for sources and methods, but the legislation says they can't be blanket, they can't be general, there has to be a specification of injury to the United States made by the agency head. So the legislation changes the Freedom of Information Act from initiated by a person seeking information to initiated by an agency.

The second element of the legislation which speaks to bulk declassification is the necessity of speed, because time is running out. In that connection, Representative Maloney, in the debate, said, "It is our intention that affected agencies should declassify all documents recommended by the Interagency Working Group as quickly as possible. It is our expectation that all such documents become public as soon as possible, preferably within the first year and most certainly by the end of the 3-year period during which the IWG is in existence." So that the scheme is agency action rather than request, speed rather than delay.

Fortunately, I have looked into this, to try to fulfill my obligations as a member by asking for some advice, and I went to a place I know quite well called the Yale Law School, and I asked them

to look into this; and they provided me with a letter of opinion, which I furnished to the staff and which I am sure you have.

Mr. HORN. And I would like to put it in the record at this point if there is no objection. It is by Robert A. Burt, a professor of law at the Yale Law School; and this is correspondence to Mr. Thomas H. Baer as of February 8, 2000.

[The information referred to follows:]



Yale Law School

Robert A. Burt
Alexander M. Bickel
Professor of Law

February 8, 2000

Mr. Thomas H. Baer
Steinhardt Baer Pictures Company
9229 Sunset Boulevard
West Hollywood, CA 90069

Dear Mr. Baer:

In your capacity as a public member of the Nazi War Criminal Records Interagency Working Group, you have asked my opinion regarding the legality of the Department of the Army's refusal to declassify in bulk documents in their custody which are subject to the Nazi War Crimes Disclosure Act (P.L. 105-246). After reviewing the statute and its legislative history, I have reached the following conclusions: (1) the Executive Branch has clear authority under the Act to engage in bulk declassification of documents; (2) the head of each custodial agency cannot delegate the decision whether or not to exercise this statutory authority for bulk declassification but must make a specific, explicit judgment; (3) the Act embodies a congressional intention strongly favoring bulk declassification of documents relating to Nazi war crimes.

The following considerations led me to these conclusions:

(1) The Executive Branch has clear authority under the Act to engage in bulk declassification of documents.

Prior to enactment of the Nazi War Crimes Disclosure Act, the Executive Branch was authorized to declassify documents relating to Nazi war crimes under the Freedom of Information Act and related statutes. Under FOIA, Congress specifically exempted from disclosure documents "to be kept secret in the interest of national defense or foreign policy" or documents whose "disclosure ... would constitute a clearly unwarranted invasion of personal privacy" or documents "compiled for law enforcement purposes ... [which] could reasonably be expected to disclose the identity of a confidential source" 5 USC sec. 552 (b) (1), (6), (7)(D). Various claimants sought disclosure of classified documents relating to Nazi war crimes under FOIA's generalized authority. Congress found, however, that FOIA was not sufficiently generous in requiring disclosure of classified documents specifically regarding Nazi war crimes. Thus, in the 1998 congressional deliberations on the Nazi War Crimes Disclosure Act, Representative Horn, chair of the Subcommittee on Government Management, Information and Technology of the House Government Reform and Oversight Committee, stated:

P.O. BOX 208215, NEW HAVEN, CONNECTICUT 06520-8215 · TELEPHONE 203 432-4960 · FACSIMILE 203 432-8260
COURIER ADDRESS 127 WALL STREET, NEW HAVEN, CONNECTICUT 06511 · BURT@MAIL.LAW.YALE.EDU

> Much of the government information on alleged Nazi war criminals has remained secret even though many researchers have filed Freedom of Information Act requests to secure copies of the records. Federal agencies have routinely denied these requests citing exemptions for national defense, foreign relations, and intelligence. More than a half century after the Second World War, it is time to end the sweeping equity exemptions that have shielded Nazi war crimes and criminals from full public disclosure.[1]

In enacting this new legislation, Congress clearly intended to mandate more extensive disclosure for this specific class of documents than FOIA's general disclosure requirements. At the same time, however, section 3(b)(2) of the Nazi War Crimes Disclosure Act authorized exemptions for release of documents "that would – (A) constitute a clearly unwarranted invasion of personal privacy; (B) reveal the identity of a confidential human source ... (E) reveal information [regarding] state-of-the-art technology ... weapon systems [or] (G) reveal information that would seriously and demonstrably impair relations between the United States and a foreign government ..." These exemptions on their face might appear quite close to the statutory exclusions from disclosure requirements in FOIA. In fact, however, such a reading would make nonsense of the clear congressional intention to "end the sweeping equity exemptions [under FOIA] that have shielded Nazi war crimes and criminals from full public disclosure."

The disclosure exemptions in the Nazi War Crimes Disclosure Act explicitly differ from FOIA's exemptions in several ways. The most obvious difference is provided in section 3 (A) which specifies that "in applying the exemptions ... there shall be a presumption that the public interest ... will be served by disclosure and release of [Nazi war criminal] records." There is no such explicit presumption in FOIA. Furthermore, Congress clearly intended that the Executive Branch take an active initiative in disclosing documents regarding Nazi war crimes whereas FOIA permits Executive Branch passivity, awaiting specific requests for document disclosure by outsiders. Congressional sponsors of the Nazi War Crimes Disclosure Act were explicit in their demand that Executive Branch act on its own initiative; this was the congressional purpose in establishing the Nazi War Criminal Records Interagency Working Group, including presidentially appointed public members, to oversee effectuation of the disclosure mandate.

Moreover, and most significantly, Congress specified that the Executive must act with considerable speed in carrying out the disclosure mandate. Thus Representative Maloney, the House sponsor of the Act, stated:

> It is our intention that affected agencies should declassify all documents recommended by the Interagency Group as quickly as possible. It is our expectation that all such documents shall become public as soon as possible, preferably within the first year, and

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[1] 144 Cong. Rec. H7295-07 (daily ed. August 6, 1998) (statement of Representative Horn).

> most certainly by the end of the three-year period during which the interagency group is in existence.[2]

Senator DeWine, the Senate sponsor of the Act, spoke to the same effect regarding the expectation of rapid action:

> [T]here are extensive documents holdings that must be reviewed. The bulk of this work should be done in the first year. The three year life of the Working Group cannot become an excuse to proceed slowly.[3]

In the House debate, Chairman Horn further observed:

> Senator DeWine, the author of this legislation in the other body, has indicated his interest in holding early oversight hearings on the implementation of this legislation. The House Government Reform and Oversight Committee may hold such hearings as well, and certainly will if there is any indication of stalling on the part of any executive agency.[4]

This clear expectation that the Executive Branch must take a strong initiative to disclose Nazi war crimes documents and to ensure that disclosure takes place rapidly demonstrates that there is a clear procedural as well as substantive implication to the congressional enactment of the presumption favoring disclosure. If there were nothing but a substantive meaning to this presumption, an Executive Branch agency such as the Army could justify "business as usual" – as the FOIA already provides – to apply the exemption criteria by individualized, time-consuming document-by-document review. It is clear, however, that Congress envisioned a speedier process for disclosure.

This means, at a minimum, that the Nazi War Crimes Disclosure Act gives the Executive Branch discretion to engage in bulk declassification rather than being restricted to individualized document review. This intention was clearly expressed by the statutory directive in section 3 (b) (2) that "an agency head *may exempt* from release" documents which meet the various criteria specified [italics supplied]. By contrast, FOIA provides that the Act as such "does not apply" where the exempting criteria exist. 5 USC. sec. 552 (b). Unlike FOIA, the Nazi War Crimes Disclosure Act provides clear discretion to an agency head to release Nazi war crimes documents

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[2] 144 Cong. Rec. H7295-07 (daily ed. August 6, 1998) (statement of Representative Maloney). This statement was made, according to Representative Maloney, "in the absence of a committee report" and therefore served as such.

[3] 144 Cong. Rec. S6727 (daily ed. June 19, 1998) (statement of Senator DeWine).

[4] 144 Cong. Rec. H7295-07 (daily ed. August 6, 1998) (statement of Representative Horn).

even if their disclosure would meet one or another of the exempting criteria listed. The Act, that is, envisions the possibility of some risk to "invasion of personal privacy" or "revealing the identify of a confidential human source" or the other exempting criteria in furtherance of the dominant congressional "presumption that the public interest ... will be served" by disclosing Nazi war crimes records. In the Senate debate, Senator Moynihan explicitly articulated this congressional finding "that the public interest in the release of Holocaust records outweighs the damage to national security that might reasonably be expected to result from disclosure."[5]

(2) The head of each custodial agency cannot delegate the decision whether or not to exercise this statutory authority for bulk declassification but must make a specific, explicit judgment.

It is well-established as a general legal proposition that when Congress vests a discretionary judgment in an Executive Branch agency, that discretion must be clearly and demonstrably exercised. The discretionary judgment cannot, that is, be made by default or inadvertence.[6] In enacting the Nazi War Crimes Disclosure Act, Congress mandated special attention to, and a presumption in favor of, disclosure of this one specific category of documents. Notwithstanding the congressional presumption and insistence on rapid disclosure processes, if agencies engage in time-consuming individualized document review essentially similar to FOIA procedures, this process must be affirmatively decided by the custodial agency head. Because Congress gave each custodial agency head explicit discretion to forego document-by-document review by opting for disclosure notwithstanding the existence of some exempting criteria, this choice must be affirmatively exercised and not simply allowed to lapse by default. The agency head must, that is, make the general policy determination whether or not to carry out bulk declassification; otherwise the discretionary judgment that Congress vested in the Executive Branch would not be made.

This general policy decision, moreover, cannot be delegated to subordinate officials within the custodial agency. Congress's intention that the general treatment of disclosure exemptions be given specific attention by the agency head is in effect conveyed by the explicit terms of section 3 (3) (A) of the Act; after setting out the public interest presumption favoring disclosure, this subsection continues: "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 ... ." This subsection clearly envisions direct oversight of the exempting process at the highest levels of governance –

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[5] 144 Cong. Rec. S6727-01 (daily ed. June 19, 1998) (statement of Senator Moynihan).

[6] See, e.g., United States ex rel. Accardi v. Shaughnessy, 347 U.S. 260, 268 (1954) ("[W]e are not here reviewing and reversing the manner in which discretion was exercised. ... Rather, we object to the [agency's] alleged failure to exercise its own discretion ... .")

involving both the agency head and the responsible committees of the Congress. The high level oversight explicitly envisioned in this subsection demands that the general determination whether to waive application of exemptions and engage in bulk declassification must be made by the accountable agency head rather than some subordinate official.

At the current time, the Department of the Army is proposing to go forward with a cumbersome, time-consuming document-by-document review which would necessarily violate the intentions expressed by both House and Senate sponsors of the Act that complete disclosure of Nazi war crimes documents take place "preferably within the first year, and most certainly by the end of the three-year period ..." after enactment of the Act. The Army is proceeding, however, without any explicit directive by the Secretary of Defense or any determination by him that he should not exercise his statutory authority to engage in bulk declassification of these documents.

(3) The Act embodies a congressional intention strongly favoring bulk declassification of documents relating to Nazi war crimes.

In deciding whether to exercise his statutory authority for bulk declassification, the Secretary must be guided by a strong presumption in its favor embodied in the Act. In addition to the expressions of intention regarding full and expedited disclosure already cited, there is further indication of congressional intention favoring bulk declassification based on the appropriations decisions made to implement the Act.

The basic congressional decision was that funds already appropriated to carry out all of the document disclosure processes under the Freedom of Information Act and related statutes would be sufficient to accomplish the specific, expedited disclosures envisioned for Nazi war crimes documents. The only funds specifically appropriated for carrying out the Nazi War Crimes Disclosure Act was a modest sum of $2 million to the Office of Special Investigations (OSI) in the Department of Justice for screening documents after they had already been designated for disclosure by the custodial agencies. Senator DeWine's statement about the OSI appropriation underscored the congressional judgment that "quick review" was expected under this Act:

> [T]o ensure that the high priority investigations continue and all relevant documents found during the search are quickly reviewed for declassification, my colleagues and I have asked the Appropriations Committee to provide a small increase of $2 million in OSI's budget to enable the staff to take on and complete both of these tasks.[7]

By contrast, the Army has estimated that its intended page-by-page review for the Nazi war crimes documents in its custody alone would cost $8 million and occupy 134 staff years. If

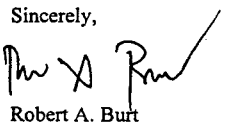
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[7] 144 Cong. Rec. S6727 (daily ed. June 19, 1998) (statement of Senator DeWine).

the Army's refusal to engage in bulk declassification is a correct interpretation of executive branch authority under the Nazi War Crimes Disclosure Act, this would mean that Congress had passed the Act but then made it impossible to carry out by refusing to appropriate implementing funds. It is, however, "hornbook law" that a statute should never be interpreted "in a way which renders it ineffective . . . in the face of a perfectly plausible and consistent alternative construction of the statute."[8] A different interpretation of the Nazi War Crimes Disclosure Act is not only plausible but compelling – that Congress decided that additional funding, except for the modest OSI appropriation, was not necessary because Congress clearly intended that rapid, relatively inexpensive declassification procedures should be followed under this Act. The appropriations decisions, that is, would not "render [the Act] ineffective" but were based on a clear judgment about the limited funding necessary accomplish what Representative Horn identified as the basic purpose of the Act – "to end the sweeping equity exemptions that have shielded Nazi war crimes and criminals from full public disclosure."[9]

The Secretary might conclude that some scheme of document sampling could be joined to a general policy of bulk declassification in order to adequately address the unlikely possibility of contemporary harm to specific interests from disclosure of fifty-year old documents (which constitute the great bulk of the documents at issue). Such a scheme would faithfully execute Congress's enactment of a presumption favoring rapid, full disclosure of documents regarding Nazi war crimes. The current position taken by the Army is not authorized by the Nazi War Crimes Disclosure Act.

Sincerely,



Robert A. Burt

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[8] Federal Trade Comm'n v. Retail Credit Co., 515 F.2d 988, 994-95 (D.C Circuit, 1975).

[9] 144 Cong. Rec. H7295-07 (daily ed. August 6, 1998) (statement of Representative Horn).

Mr. BAER. That's correct. Just to complete this, the issue here is a complicated issue with certain collections and certain protections of national security. The release of sources and methods of the 1940's and 1950's, it is argued by the agencies, with those agencies imperils current intelligence because individuals who are spies or otherwise covert operatives for the United States in 2000 do not want to continue their activity if they are in peril of ever having their names released or their activities disclosed by the fact of release later on; and I recognize that.

But Ms. Holtzman, I think, and Dr. Kurtz, in his typical effective way, have put their fingers on it. There has to be some method of wedding this protection with bulk declassification; and guidance is important. For example, if the committee were to say, look, find a method of inclining your way toward bulk while preserving this; that is what we want you to do—I think that kind of guidance would be important.

Finally, I am not a historian, but it is the position of the historian community that bulk declassification is the most effective method because the integrity of the documents, their placement, one to the other, in and of itself gives great help to the historian in making the record.

Thank you, Mr. Chairman.

Mr. HORN. Thank you.

Mr. Ben-Veniste.

Mr. BEN-VENISTE. Thank you, Mr. Chairman.

I think John Collingwood of the FBI put it very gently in terms of the debate which we have had internally, within the Interagency Working Group, about the speed and the methodology of the declassification effort. To a large extent, with respect to the European Theater records, I think we may be at a point where this is mooted out. It is our understanding that the Army, who has the largest repository of relevant records, will release all of its relevant records in October.

Without getting into some of the internal discussions we had, we have seen various representatives come and go before our Interagency Working Group until we had received assurances that we are now basing our report to you on. But should those assurances not hold to be true, you can be guaranteed of our return quickly before this subcommittee to explore whether something went wrong and what the nature of the representations made to us were and on what basis they were made.

But at this point Secretary Caldera has assured us that the records not just at Fort Meade, but if I am not incorrect, all of the records within the possession of the U.S. Army, which of course had the lead in terms of the wartime and postwar intelligence-gathering effort and dealing with the former Nazis and the de-Nazification program and whatever exceptions were made to that—those records, which we feel are very important in illuminating the historical record, are due to be released in October.

With respect to Japan, which we have not even begun to deal with, the question of bulk declassification becomes far more relevant from a practical standpoint, because we are nowhere with respect to those materials; and I think we should give very important consideration to the issue of bulk declassification there, again, with

the caveat that things involving our nuclear secrets, things involving the potential for information of some potential danger to our society to fall into the wrong hands through this release of information should continue to be something of concern.

But by the same token, we've learned that this material has been available through other sources for quite some time. So although theoretically we are concerned about its dissemination from a practical standpoint I think there needs to be some rule of reason applied.

Mr. HORN. Mr. Levit.

Mr. LEVIT. Thank you. I don't think it will come as a big shock to the committee that, as a CIA representative, we have a hard time with the idea of bulk declassification. A couple of problems for starters: The National Security Act, in 1947, charges the Director to protect sources and methods. If material is shipped out without being reviewed, that is a hard mandate to live up to.

The second issue is the Kyl amendment that poses questions for review on a page-by-page theory of materials for declassification, for review of restricted data information. So it is a question that I think we need to address whether or not bulk declassification is even possible in light of that legislation.

That said, I don't think this issue is quite as binary as it is sometimes presented. There are classes of documents—let's go back to the World War II era records and separate out from those those that are not foreign government information. I can tell you that at the CIA we have a pretty efficient, fast, systematic method of declassifying records; we call it the "declassification factory." We have been at this under the Executive order for some time, and they are declassifying millions of pages a year.

Most of the 400,000 pages that came out yesterday were mainly a product of the 25-year program, although they were rereviewed under the guidelines for this statute to make sure that we weren't redacting more than we should.

But I think that there are classes of documents that can get a level of review that is different than other classes. When we go to our operational files, for instance, we will have to give a line-by-line review of those records. There is no other way in order to protect sources and methods because they are chock full. But on some of these older records, things that are not foreign government information, we can move this quickly. It is not bulk, but it is fast.

One footnote: We have released in the last 20–25 years World War II era—or OSS information, more specifically over 14 million pages—so this 400,000 pages that was released yesterday is just another chapter of that release; and I think we are approaching the very near end of all of those records.

Thank you.

Mr. HORN. Mr. Collingwood.

Mr. COLLINGWOOD. It is a larger process issue, and for the FBI, it really does not come down necessarily to a classification issue. For example, in all of the records that the FBI, to date, has accessioned to Archives, 367 pages have been withheld because they maintain classification. Of those 367, none remain classified because of U.S. or FBI information, all remain classified because of foreign government interests and because they were collected from

foreign governments under long-standing agreements with foreign government organizations. We would expect all 367 pages to be declassified in whole or in part when we get permission from those governments.

But the protection of foreign government information to law enforcement is critical, particularly now; it has become more critical than at any time in our history as we deal with international organized crime, terrorism, cybercrimes and others. The interaction between foreign law enforcement agencies and domestic law enforcement agencies has become so commonplace, and these agreements have become so important, that they are critical.

But bulk declassification does not address that, and there is really no way to get around that because of the existing agreements.

I agree with what Ken is saying. Like the CIA, we have a process for declassifying this stuff, and we would describe it as an incredibly fast pace, but because of the way that the documents are created and maintained, it is nearly impossible just to give wholesale, bulk declassification of the documents.

Mr. HORN. Colonel Thompson.

Colonel THOMPSON. Thank you, Mr. Chairman.

The Department of Defense is on record as opposed to bulk declassification, sir. I will add that we will meet our requirements without the need for bulk declassification.

As for our process, we faced three challenges at the outset of this task, first, the sheer volume of material. I mentioned earlier that we have 1.9 million files; 1.2 million of those are contained on microfilm, which complicates the task. So the challenge in the volume was to figure out how to reduce the volume that would enable us to meet our objectives.

The second challenge is the age of the film. It is very brittle. It breaks, and it is not as simple as having one file located on one roll. Sometimes they are located on multiple rolls, and you have to find them.

The third challenge was resourcing. We had to triple the work force in our repository to undertake this task. We also had to—in addition to building and training the team, we had to develop a process that enabled us to get our hands around the magnitude of this task and pare down the volume of material.

We put together a state-of-the-art, cutting-edge process. We think that it is the most advanced of its kind in the country using sophisticated search engines. We are currently processing 60,000 to 70,000 files or about 1 million images per week on the microfilm. To date, of the 11,500 reels of microfilm, we have already digitized over 8,000 or about 960,000 files. Out of those, our search engine has identified 7,539 files as possibly relevant. Further inspection of those files has given us an indication that at least 4,064 are definitely relevant; that is, approximately 40,000 pages.

Thank you.

Mr. HORN. Thank you. I now yield to the gentleman from Texas, Mr. Turner, for questioning.

Mr. TURNER. Thank you, Mr. Chairman.

As I listen to you, it certainly causes me to want to thank each of you who have served on this Interagency Working Group, particularly the public members who have devoted so much time and

energy and effort to this endeavor. I cannot help but be impressed once again, as I listen to you, regarding the importance of peeling back the layers of secrecy, one document at a time, of the darkest chapter in the history of modern man. And I can't help but feel a recommitment to being sure that this work is continued, irrespective of how tedious, irrespective of how legally challenging it may be to determine the proper way to accomplish the task.

And I particularly want to thank Mrs. Maloney, whose 6-year crusade led us to the point of the creation of this effort, and who brings a great deal of insight in terms of the progress that has been made.

Mr. Chairman, I would like to yield all of the time that I have for questioning to Mrs. Maloney and let her pursue that inquiry.

Mr. HORN. Let us pursue it for about 10 minutes.

Mrs. MALONEY. I thank Mr. Turner for yielding to me and, again, the chairman.

I would like to get back to the time question. One of you mentioned that only a third of the job is done. Will we be able to complete it by the timeframe that we have before us? I include Japanese records. That was our intent, and it was mentioned in the legislation.

Mr. KURTZ. I would say, picking up what Mr. Ben-Veniste was talking about, the extra challenges, I don't think by January 2002 we will be able to complete the totality of the European and Pacific Theaters. So when Congressman Lantos was discussing the need for an additional year, I think that would be a year well used.

Mrs. MALONEY. Do you think that you could complete it in an additional year?

Mr. KURTZ. Yes, I do.

Mrs. MALONEY. Would other members of the panel like to comment on the timeframe and what is needed with regard to Japanese war criminals and the funding and everything else to complete the job?

Ms. HOLTZMAN. Congresswoman Maloney, I just want to say that I have some questions as to whether we will complete the European Theater within the timeframe. I know that we have made terrific progress, and I really take my hat off to every one of the agencies involved. You can see, just from the statements of Colonel Thompson, the kind of effort that the Army is making; and you can see from the statements of both representatives—very able representatives of the CIA and the FBI what kind of efforts they are making, but you have to note, for example, with regard to the CIA the release yesterday was of OSS materials.

This is pre the end of World War II. We have many years after the end of World War II that have to be looked at. Can that process be completed? I don't mean that with any criticism.

So I would say that I think it is good to keep the pressure on. So if we give the IWG an extra year to focus on the Japanese materials—but that is one of the reasons that I raised the question about the timeframe. Perhaps the agencies could give you a sense of whether they will complete—in their own mind, whether they can complete the assigned task, putting Japan aside, within the time allotted.

Mr. BAER. Representative Maloney, the agencies are putting on a Herculean effort; there is no question. Their cooperation has been outstanding for the most part. But I would have to agree with Ms. Holtzman, perhaps for a slightly different reason.

With the current resources of the IWG, which is a loan from this one and a loan from that one, it is almost impossible to complete the task, particularly the public information function, the outreach to historians, the educational function, within that timeframe. Although they will come up with as much as they can, Dr. Kurtz and the members of his staff are not really sufficient, and I think they would agree with this, to complete it without separate resources.

Mr. BEN-VENISTE. Let me focus on another issue.

We have received status reports from the relevant agencies, which all indicate completion of their task within the European Theater within the statutory period. However, from my point of view, which is something that we have recurrently discussed, the process of identifying the relevant records is to some extent an interactive process.

There will be materials which will be reviewed and which will then stimulate the request for other records in other files. This, in turn, implicates the sources for reviewing these materials by experts in the period, who will then be able to identify other things which may have been overlooked.

So the process in its first iteration may well be completed within time, and we are entirely hopeful and very thankful for the dedication that you have heard expressed here today from the relevant agencies; but in practical terms, I don't think there is anyone here who can give the assurance that the task, as I have outlined it, could be completed within that time period on the basis of the resources presently available.

And that excepts the Japanese question from our analysis. We have not even begun to get our arms around the Japanese document issue.

We have not seen Congressman Lantos' legislation. We are very interested in seeing it, but we can certainly give no assurance, Congresswoman Maloney, at this point—at least I cannot—about the conclusion of the effort.

Mrs. MALONEY. How much time do you think would be needed to review the Japanese documents also?

Mr. BEN-VENISTE. Certainly the additional year is very well advised. But until we really have the opportunity to get our arms around the challenge, which is the way we began functioning with respect to the Nazi documents—it took us a substantial amount of time to identify who had the records, where they were and what the processes would be for reviewing them.

Obviously we have learned a lot, and those lessons will be applied to the issue of the Japanese documents. And by the same token, suggestions—the potential for bulk declassification would be most useful in that regard to the extent we get our arms around the issue quickly, and it would appear more feasible.

But at this point, perhaps Dr. Kurtz could be more informative with respect to the Japanese issue.

Mr. KURTZ. I would like to discuss how we are going to begin our efforts with the Japanese documents. We meet monthly. Our July

meeting is focused on various search strategies for the Japanese records. We are not going to have available to us the wonderful tool that the Office of Special Investigations was able to put together; but there are a variety of search strategies, and we are going to be presenting them to the IWG to get their input and feedback to see if we can craft an effective strategy.

I would also like to comment on former Congresswoman Holtzman's idea or suggestion about how to ensure kind of a more complete search, so that there is a higher level of reliability possible. I agree with her. I think we can work out using various program and operational names, putting out a requirement that all records that fall within those operations and programs be deemed relevant. I think we can really raise the reliability and effort level, and I am confident that this is something that we can work out with all of the members of the IWG.

I think the other issue I would just want to reiterate—and Congresswoman Maloney is well aware of it as the author of the legislation—is that we feel fully confident, under the terms of the existing legislation, to move and to deal with the Japanese records; and that a second or supplemental IWG is not something that would be required in order to do our work.

Mrs. MALONEY. OK. Anyone else?

Mr. COLLINGWOOD. Our projections of completing what is on the table right now are based primarily on an identified universe of documents. We know what the parameters are that we have to deal with, and we know the resources that are being applied to it.

Mr. Ben-Veniste is exactly correct: In the process of producing documents, we have identified several thousand additional names that we have searched. We have reviewed 27,000 additional pages and identified 6,000 additional relevant pages. So given that the task at hand can grow to some unknown degree during this process, but not speaking for the other agencies, but confident that they will give you the same response, we are of course willing to produce whatever additional resources we need to complete the task at hand within the time we are required to do so.

Mrs. MALONEY. Do you think that we can complete the Japanese section too within the time designated in the bill?

Mr. COLLINGWOOD. No. The projections that we have now are based on the European Theater.

Mrs. MALONEY. The Japanese, do you have any sense for that?

Mr. COLLINGWOOD. We have not yet surveyed our own records to know what the possible parameters would be.

Mrs. MALONEY. Earlier you mentioned, and Mr. Levit mentioned, some documents were not released because of foreign government objections. Can you mention which foreign government and the impact of the foreign government objection?

Mr. LEVIT. I am happy to handle that question, Congresswoman. Thus far, we have only received the fullest cooperation from all of the foreign governments that we have approached. We have not crossed the barrier where a foreign government has asked us to withhold a document that we believed was relevant. They have sought to review documents. They have sought to make sure that their other government agencies were aware of the record at issue, but we have not received a denial.

So I am thankful that I am able to report to you that at this point we are getting the fullest level of cooperation. I will use this point to dovetail for a moment into the time question.

Our plan, our intent, our projection, is to conclude within the 3-year window, and again I am referring to the European Theater. The wild card, in my view, is the universe of documents which is foreign government information. When you consult with foreign governments, when they take possession of copies of documents and ask to consult with their government agencies which have equities in a certain foreign government document, you are in their hands to allow some time to pass. So thus far, the review by foreign governments has been extraordinarily expeditious, but I think we have to be concerned about those records that may take more time.

Mrs. MALONEY. Yet you testified earlier that some documents were being kept classified because of foreign government concerns, I thought. Didn't you say that?

Mr. COLLINGWOOD. I mentioned we have 367 documents, but we have every expectation that those will be declassified and released consistent with what Ken is saying. It is just a matter of going through the process.

So from our perspective, while it is an unknown, it does not appear at this point to be a substantial unknown for us.

Mrs. MALONEY. Thank you. My time is up. Back to the chairman.

Mr. HORN. I thank the gentlewoman from New York, and I now yield to the gentlewoman from Illinois.

Mrs. BIGGERT. Thank you, Mr. Chairman.

Dr. Kurtz, I believe you mentioned at some point about the condition of some of the documents that you have that are on microfilm. And then I think you mentioned about some of the Japanese documents that have been returned without any record of them or without copying them.

Why were they returned?

Mr. KURTZ. Well, let me deal with the preservation question, and then I will go into the Japanese records issue.

These World War II documents—and they are paper and microfilm—they were created on very poor paper, and so many of the files being transferred to us from other agencies are crumbling. You pick them up and they are falling apart. Our concern as an IWG, our concern as the National Archives, we are not going to fulfill the mandate to make records available if they are falling apart. So we have begun at the National Archives to put together a preservation strategy to identify the records that are most at risk, and if we are able to get the resources required, we are going to start an extensive preservation effort.

On the Japanese records, I received some information from my staff regarding your original questioning, Mr. Chairman. Apparently when the State Department negotiated with Japan the return of the records, there was no provision for access. That was not included in the agreement.

I would have to speculate, as far as the situation was different with Japanese records from German records, I think there was more extensive interest in the captured German records. There was much more vigorous war crimes and trial efforts in Germany in

comparison to the Far East, and the American Historical Association in the mid-50's was very interested in these captured German records and put a great deal of pressure to ensure that there would be copies of these records here in the United States. So the government developed a film and restitute program.

There was not similar interest with Japanese records at that time.

Mrs. BIGGERT. Maybe I should ask the question of Colonel Thompson and Mr. Collingwood and Mr. Levit, if the records pertaining to Japan were returned with any conditions. In other words, does the United States have any right of review of those records that were returned?

Mrs. BIGGERT. Mr. Ben-Veniste.

Mr. BEN-VENISTE. Perhaps I can at least raise the question that we don't have a conclusive answer to, and that was the fact that apparently the historical record reveals that within our government there was discussion and, indeed, there seems to have been agreement that a condition should have been placed, or would be placed, on the return of the Japanese documents providing for access by appropriate American Government officials to those materials, on request.

That does not appear to have been reflected in the treaty agreement itself, I am advised; but as I indicated to Chairman Horn earlier, I think it is appropriate for us to undertake the research with respect to that question—it is a very important, perhaps critical, question with respect to these documents—and report back to this subcommittee what we have found.

Mr. KURTZ. The IWG——

Mrs. BIGGERT. Mr. Levit or Mr. Collingwood or Colonel Thompson, do you have any information as to whether there were any conditions placed on the return of the documents?

Mr. LEVIT. I am simply not in a position to comment upon it. I don't know.

Mr. COLLINGWOOD. The same would hold true for me. Our task, when we turn to that, will be producing those documents which remain in our possession, which we will be glad to do.

Colonel THOMPSON. I have no knowledge, ma'am.

Mrs. BIGGERT. Mr. Baer.

Mr. BAER. One of the things about the three of us is, we are not in the government, so we are allowed to take a nonbureaucratic approach. Assuming for purposes of argument that they were imprudently returned without any right of review, the ordinary person's suggestion would be that someone should talk to them and ask them to please make them available. I suppose that it would be very useful for the Congress, for this committee, to advise us in writing that we should take this up with the Department of State to have a bilateral discussion for purposes of achieving what it is your question suggests.

Mrs. BIGGERT. Thank you.

Dr. Kurtz, have you had any discussions with the Japanese Government regarding the return or review of these documents?

Mr. KURTZ. The conversation that I have had was with the archivist of Japan, and our focus in the discussion was to get a report

from him to describe where these records went, what repository in Japan has them, and what are the conditions for access.

I agree very much with Mr. Ben-Veniste's comment about doing some research on this issue and getting back to the committee. We certainly—the IWG staff will do that first of all for the IWG, and we certainly will respond to the subcommittee.

Mr. BEN-VENISTE. There is an obvious practical question that is raised by the review of a large repository of Japanese records, and that is that these records will be in Japanese. It also calls into question the issue of resources to be able to review such materials. So, seriatim, things lead back to the same issue of resources available to us to do the kind of effective job in implementing this important legislation that I know that the Congress and the administration expect.

Mrs. BIGGERT. How many of the documents that—well, with the documents that are in German with the Nazi documents—I would assume that most all of them are, unless they have been translated.

Mr. BEN-VENISTE. A large number decoded were translated, but we have already released a cache of captured German documents which were in the original language; and perhaps Dr. Kurtz can expand on that.

Mr. KURTZ. The bulk of the documentation released to date is in English. As Mr. Ben-Veniste noted, the decodes that were released yesterday had already been translated, and it was a relatively small cache of German records that are now available but not translated. The bulk of the documents released so far are in English.

Ms. HOLTZMAN. Most will be in English because it deals with contact between American agencies and various foreign—and Americans on the issue of Nazi war criminals.

With regard to the issue of Japan, I think once we get a better handle on exactly what happened here, whether it was the intention of our government and the Japanese Government to allow, for example, access, and they just forgot to write it in; or whether it was the intention not to. I think you need to know that before you can take appropriate action, and we need to know that before we can take appropriate action. Once the facts are known, this committee can act.

I would hope that the Japanese Government would understand that this material should be open in the interest of justice and truth. After all, we gave the documents back, and they should be open to American scholars and Japanese scholars. I think there is a great deal of interest in Japan about this subject, as well, as there will be here undoubtedly, too.

Mrs. BIGGERT. Are there other foreign countries or allies who may still have some of the documentation that they might have acquired that we would be seeking also under this legislation?

Mr. KURTZ. We have discussed at the IWG trying to utilize what resources we have, and I think that is where Mr. Ben-Veniste's point—and also raised by Congresswoman Holtzman and Mr. Baer about resources. With additional resources, we want to contact the British and other governments to ascertain what they are releasing, so we can create a unified pool of knowledge, what they and

we are all making available, and see where there are gaps in information and documentation, where there is overlap and where there is complement.

Mr. BAER. Mrs. Biggert, you should also know that we are planning a major international conference with, I believe—Dr. Kurtz, there are going to be 30 countries that have these historical commissions?

Mr. KURTZ. Right.

Mr. BAER. Thirty countries that have historical commissions that are somewhat similar to what we are doing. And so we would intend that there be an international movement.

Also recently, in Stockholm, you may recall that there was a meeting in which the foreign minister of Sweden spoke out in favor of the sorts of things that this Congress has done, namely revelation finally of these secrets worldwide. So the point is extremely well taken.

Mrs. BIGGERT. Could the IWG advise this committee when it determines the status of the Japanese records and whether we should pursue a formal request, or not, if that is not possible?

Mr. KURTZ. Certainly. We will make a report when the facts are known and analyzed.

Mrs. BIGGERT. Thank you very much.

Thank you, Mr. Chairman.

Mr. HORN. Before I turn to Major Owens, I want to clear the record here on the Japanese situation.

Mr. Bilbray has put in, with Mr. Lipinski, the following bill, H.R. 3561, on February 1, 2000; and the essence of it gets down to the records of the Japanese Imperial Army in a manner that does not impair any investigation or prosecution conducted by the Department of Justice for certain intelligence matters and for other purposes.

Do you think that that bill is too limited in terms of the Japanese Imperial Army, or how should Mr. Lantos draft it? What do we know about the number of records that will not come under the Japanese Imperial Army?

Mr. KURTZ. Mr. Chairman, I would think that using the framework that Congresswoman Maloney and others who crafted the original Nazi War Crimes Disclosure Act would be perhaps more useful. In other words, any bill that is just restricted to the Japanese Imperial Army, does not get at foreign ministry records, navy records or intelligence records.

So something crafted, which was very broad in the Nazi War Crimes Disclosure Act, with the appropriate date span that would have to be worked out for the Japanese records, I think that—I would be concerned if anything is just restricted to the Imperial Army.

Mr. HORN. I would be interested in another aspect of this. Ever since I came here in 1992, along with Mrs. Maloney, I have been worried about the so-called "comfort woman" situation. Do you consider that under your jurisdiction in terms of the exploitation of these women by the Japanese Imperial Army?

Mr. KURTZ. I would, yes.

Mr. HORN. My reaction is, we don't ever seem to get a reaction from the Japanese Government. They just deny it—sorry, denied.

I suspect that we will have problems with this, and what we need is a Freedom of Information welfare group in Japan to say, we would like to see the government's various documents. Maybe that is the way that you do it.

Now, I am delighted to yield to my colleague from New York, Major Owens.

Mr. OWENS. Thank you, Mr. Chairman. I would like to welcome Liz Holtzman, a former Member of Congress.

I would like not to be redundant. However, I had "comfort woman" in my notes here also. Let me just try to summarize my notes and ask a broad question here.

Are we dealing with a situation which has been caused by official apathy, that nobody really cares about these records; bureaucratic sluggishness, somebody does care, but we will get around to it sooner or later? Are we dealing with a mystique which surrounds this whole classification phenomenon?

I have gone to many classified hearings and been upset that information we get, 90 percent is already in the New York Times. There is a lot of tendency to classify and hold on to things that don't need to be classified.

Are we dealing with a situation where something of great value is being—a number of things of great value are being held back? Is there some Rosetta Stone among all of these documents that will lead to the discovery of some other startling and unusual facts? It was a Swiss Guard, I believe, who blew the whistle on some burning of records from Swiss banks several years ago; and he set in motion a whole series of events which led to billions of dollars being put up by the Swiss banks and Swiss Government.

And also a fallout from that was the situation in Germany where billions of dollars are being set forth for the forced labor workers who were forced to work in German industry. So there is a lot at stake in some of these records.

Is there some kind of conspiracy behind the scenes that keeps them from being expedited with a great sense of urgency? It has been over 50 years, and we hear about current intelligence being imperiled by records that are 50 years old. Statutes of limitations are involved, and some things you might discover there is no way to prosecute certain kinds of crimes.

The Japanese have sort of acknowledged the "comfort women" situation, but refused to apologize. That is a minor matter compared to deliberately fostering epidemics and infecting populations.

These are events which are pivotal in the 20th century and in the history of the world in terms of the kinds of things that have happened as a result of it. So I would just like to have a response.

And let me start with you, Ms. Holtzman, in terms of what is at stake here.

Ms. HOLTZMAN. It makes a difference on a lot of levels. There are some people today who deny the Holocaust. Just in the materials that were opened yesterday, it turns out that British intelligence was overhearing and listening in on conversations among German prisoners of war; and they had captured generals, and the generals were discussing a specific atrocity that took place in one of the Baltic countries in extreme detail.

Well, someone could say, what does he know and maybe he made it up. It turns out that there is one video that was taken by the Germans of these kinds of atrocities where Jews were taken, they had to dig the ditches and then were shot to death. Hundreds of Jews, one on top of each other. The one single video that the German army made is of exactly this description of the incident that was given by the German general. That provides stark and important evidence, a small piece of evidence, that the atrocities took place.

What else was at stake? These documents also raise questions, very important questions, that we as a Nation, Britain as a nation, have to look at. I don't know if the Japanese want to confront these issues yet, but the issues—what was disclosed yesterday, did we do enough during World War II to prevent the atrocities, or were the atrocities committed against Jews something that is not even a footnote—that is important to know about ourselves. Maybe this will never happen again.

The other question that was raised pursuant to just yesterday's revelation, a top aide to Hitler who was sent directly to Italy to oversee the annihilation of Italy was given a free pass for 15 years at the end of World War II. He should have been tried in Nuremberg. Why wasn't he? Was he given a free pass because he may have helped in the surrender of the German armies in northern Italy? That is raised by these materials.

Other questions raise other questions about the U.S. conduct and the conduct of our allies, and Mr. Ben-Veniste mentioned it, it is one of the great tests of a democracy, the willingness to look in a mirror and learn what happened and learn from our mistakes. Of course, there are other practical consequences here, too, sure. Will some of this material be available for survivors seeking assets? That's possible. There may be some information with respect to the collaboration of German industries; that may be here, too.

Who knows what we will find in the Japanese documents if we ever get access to them, the atrocities that nobody knows of yet that have not hit the front pages—"comfort women," countries have denied that they have engaged in certain conduct and they can be proven.

For example, one of the claims that the Germans have made is that their army wasn't involved in atrocities, it was only the SS, it was only that evil group of people. Well, these documents prove differently. There are some people who argue that the German people were totally unified in their support of Hitler and their hatred of the Jews and yet if you read these documents, there was tremendous disgust among some of the generals and their discussions of what had been done and disdain for Hitler and condemnation of him.

These are things that we can all learn from, and I think that the work of this—and who can say now all of the lessons that can be drawn from these materials? But these secrets must be made public, and we can learn a lot about our country and I hope prevent what happened in the past, at least that, from what is undertaken here.

Mr. BAER. I just want to respond to one part of your question which is the issue of delaying or a culture of secrecy continuing or

some kind of foot-dragging that your question suggested that you wanted to know about.

That culture has dramatically changed in the agencies before you today. The three of us, the three public members, along with Mr. Kurtz and the National Security Council, have met with Director Freeh personally and with Director Tenet personally; and I think it is fair to say—and the others can speak for themselves—we were extraordinarily impressed by their intention to put it out from the top of these agencies, that these secrets were not going to be kept any longer, and that the legislation was going to be enforced and then, from the very top, the word was going to go forth.

This stuff is going to be revealed, so there—this has changed. In fact, Director Tenet and Mr. Levit here today are to be commended for the work they did in getting out the material that we have got.

As to what is at stake, it is simply a matter of the record of American history. We cannot make that conclusion, the historians will have to do so, but the fact is that the America of today, the America of today, Mr. Owens, is the America that the world admires principally because of its efforts to defeat the forces of evil during World War II. And secret from this reputation and revealed to some degree has been a somewhat checkered record with respect to what happened and what knowledge was available.

Today's Washington Post says it quite very eloquently on the page 1 story by Michael Dobbs. So continuation of this effort is vital to liberty and democracy because it makes available to us, our children and grandchildren, what the real truth is and makes it known to people in government today that you can't turn to somebody and say, quote, no one will ever know.

Mr. OWENS. In terms of resources, if the private sector foundations were to offer enormous sums of money to help get the resources that you need and the bodies you need to do the declassification—and I am a former librarian, you need some former librarians—would that be acceptable and speed the process? If foundations were to offer——

Mr. BAER. We tried it. When we met in January 1999, with Dr. Kurtz and all of us together, we didn't have any money, and we don't have any money today. The first thing that we tried to do was raise money, I know that I did, from a lot of people. I went to some of the places that you would think that I would go.

Mr. OWENS. No positive response?

Mr. BAER. No.

Mr. OWENS. Would you have accepted it if you had gotten a positive response?

Mr. BAER. Of course.

Mr. OWENS. The Army would accept it?

Mr. BAER. We are talking about the Interagency Working Group, this level. The Army would have to speak for themselves. But we actually entered into an effort to try to raise money from foundations for the group that has been created by the legislation. But we were unable to do so; I was unable to do so.

Mr. BEN-VENISTE. I think this was a very personal and desultory effort to raise the funds, but we think the appropriate place to receive funds for this public group is from the Congress appropriating them. We have scrounged around, and have depended on the kind-

ness of the National Archives and the Department of Justice for the limited funds we have received.

Mr. OWENS. We have a $200 billion surplus anticipated this year, and we will keep adding money over the next 10 years. It is a matter of how important is this to our decisionmakers.

Mr. BEN-VENISTE. We think that it is important not only to supplement the historical record, but also to demonstrate the strength of our democracy.

As my two colleagues, Ms. Holtzman and Mr. Baer have very eloquently stated, we have the strength in this country to look at ourselves in the mirror and recognize that where we have made mistakes, we can shine the light on those as well and learn from them. This legislation is a very important manifestation of the strength of our democracy, and it shows the world that we are willing to look at these issues.

In terms of the culture of secrecy, yes, these records have been kept secret, and I don't believe we have seen anything at this point to indicate that it is the result of some conspiracy or dark motive, but rather these agencies exist for the purpose of maintaining the important secrets of our country in connection with national security; and this material has been lumped in with that generalization. We are dealing with an appropriate culture of secrecy for the CIA and, to some lesser extent, the FBI as well and the Army; but with respect to these records, we can all say with a reasonable degree of common sense, there isn't any reason to have maintained their secrecy this long other than the inertial forces that continue.

This was kind of like turning an aircraft carrier in the opposite direction. We are dealing with agencies that are based on a culture of secrecy, and we have seen very significant cooperation and personal dedication efforts which are manifested in the resources that have been applied to making this statute work and to provide the public with the information that is contained in these records.

Let me say that one of the areas that I feel will be very important from a historical perspective, in addition to everything we have heard about, is the question of the postwar utilization of certain tainted individuals, tainted by war crimes, by our intelligence services. I think the exposition of this information will stimulate an appropriate debate which will be useful for us going forward in the future as to the role of expediency; and when the analysis is made of the postwar, cold war period, whether the expedient use of individuals who had tainted histories was in fact, in the final analysis, a disservice rather than a service to our country.

Only when these materials are released and historians have them available to them for this discussion can those conclusions be accurately reached on the basis of vigorous debate.

Mr. OWENS. I think my time is up, but the situation is galloping into greater complexity that you have just outlined. Right now, there is a new movement in Germany, stating that the Holocaust helped to stop communism. I worry about the capacity to retrieve these records having decreased. They are deteriorating and decaying, and there are a lot of things that you will never get after 50 years.

Mr. BEN-VENISTE. The category of Holocaust deniers, it is my view that they are in the same category as people who believe that

the world is flat. I doubt that this information will change many minds in that category, nor do I care. I think what is important is that the historical record is supplemented so that people of integrity and intelligence can look at this material and learn from it.

Mr. HORN. I have to conclude this hearing. We want to send you a few questions, but it will go too long now and we have problems on the floor and so forth. But I would like to ask Dr. Colonel Thompson the exhibits you gave us, is that appropriate if we add that to the record?

Colonel THOMPSON. Yes, sir.

Mr. HORN. Without objection, that will be put in the record.

Mrs. MALONEY. My office has been calling your office, Dr. Kurtz. Are the documents up on the Internet now?

Mr. KURTZ. They are at the National Archives in College Park, and I will make sure that one of my staff members calls your office and assists with any access issues.

Mrs. MALONEY. Great. We have not been able to secure them yet, and we have been calling.

Mr. KURTZ. We will take care of that.

Mr. HORN. My one last question will be, will you review these documents that might have been produced by occupied countries—for example, Poland, Ukraine, the USSR, we talked about earlier, and Austria which was occupied by Russia, at least in the postwar period. Has there been any thought of trying to—we mentioned Russia, so apparently they aren't in the ball game, but what about Austria?

Mr. KURTZ. We really have not had an opportunity. We have been focused on the task at hand. As we look toward trying to have completion in the European phase of the operation, we need to consider any other contacts with nations that we need to make.

Mr. HORN. Well, thank you. I thank each of you because you have done a marvelous job, and I wish you would let us know on the monetary side. We can go and try to beg the cardinals that run various and sundry things. It happens to be, if you are under the Department of Justice, we just missed the vote; that passed last night. If you are under the Archives, I think you have got a fund there where you can solve some of those problems.

Since I spent yesterday at your Suitland facility——

Mr. KURTZ. I understand that it was time well spent, Mr. Chairman.

Mr. HORN. It was.

Mr. KURTZ. IWG funding would be under the Treasury, Postal bill for the National Archives.

Mr. HORN. So, Mr. Kolbe. I will be with him in a few minutes.

Mr. KURTZ. Mr. Chairman, I have some documents from yesterday's release, some copies that you might find of interest, perhaps using them with Mr. Kolbe. I will be happy to make them available to you.

Mr. HORN. Without objection, they will be put in the hearing record at this point.

I welcome—Dr. Kurtz, I would welcome a budget of sorts as to what is needed.

[The information referred to follows:]

24 Jan 1950

1. Name: K O T L W Sofia Aliases:
2. Case Classification: visa 3. File No: 8540 d
4. Present address: DP Camp UF 307 Bois-Brule Aschaffenburg/Main
5. Previous address:
6. Date and place of birth: 14.8.35 Radwaniw/Poland
7. Height: 152 Weight: 41 Hair: brown Eyes: brown Scars: none
8. Occupation: 9. Marital status: M [ ] S [S] D [ ] 10. Sex: M [ ] F [X]
11. Nationality: Ukr. 12. Citizenship: 13. SIG Reg. No:
14. Identity documents: DP ID 873125

POLITICAL AND CASE HISTORY (1. For Suspects: Any details of the case and of action taken which will assist in identification. Reference to files on the case. Cross-reference to names of associated individuals. 2. For Informants: How first contacted. Estimated reliability. Cross-reference to suspects or cases reported by the informant.)

No Derogatory Information
Region W 7970th CIC Group
Visa Control Section

AGENT REPORT

LEITNER, Anton CIC 22 January 1904
LEITNER, Maria CIC 29 January 1907

5 October 1951

LNZ 52210 / PT-10774/3

DP--Background Investigation

PURPOSE OF INVESTIGATION:

To obtain complete information concerning SUBJECT's character and historical background in order to furnish the US DP Commission information to assist them in determining whether SUBJECT is admissible into the US under authority of the DP Act of 1948.

REFERENCE:

Ltr. HQ USFA (AG 383.7.GAI) dated 6 October 1948. Subj: Loyalty and Integrity Investigations of DP Applicants for Immigration to the US.

RESULTS OF INVESTIGATION:

1. On 21 September 1951, this Agent interviewed Mrs. Theresia HELMIG, housewife, born 27 July 1911 in Ohlsdorf, Austria. Source resides at Aichlham # 6, Austria and has known SUBJECTS since 1950. Source stated, in substance, the following: SUBJECTS are Volksdeutsch and were born in Hungary. They attended Grade school there and were married in 1926. ANTON was drafted into the Hungarian Army in 1944 and was stationed in Oedenburg, Hungary for a time. SUBJECT was captured by the American Army at Nuernberg, Germany and was released at Heilbronn, Germany in January 1946. He then joined his family in Hungary but his farm was confiscated by the Communists in 1947. SUBJECTS were resettled to East Germany in January 1948 and worked in Coal mines there until February 1948 when they fled to Roithham, Upper Austria. Source has never heard of SUBJECTS being involved in any Police trouble and does not know their political opinions. (P-5)

2. On 21 September 1951, this Agent conducted the following agency checks:

Ohlsdorf Housing Office: SUBJECTS registered on 21 March 1950 and came from Deutsch Ernstdorf (country unknown). (B-2)

Ohlsdorf Police: No record

Gmunden Labor Office: ANTON has been employed as a farmhand in the Gmunden area since 8 May 1948. (C-3)

Gmunden DP Police: SUBJECTS' Identity Cards were verified. (C-3)

RAY F. LOHOF
430th CIC SUB DET "E" LINZ

Mr. KURTZ. Yes. We will be glad to provide that, Mr. Chairman.

Mr. HORN. Thank you all. With that, we have a staff that we thank; and that is Russell George back there, chief counsel, staff director; Heather Bailey, professional staff member with this hearing; Bonnie Heald, director of communications; Bryan Sisk, clerk; Bill Ackerly, intern; Chris Dollar, intern; Meg Kinnard, intern.

And the minority staff, Trey Henderson as counsel and Jean Gosa is the minority clerk. And we thank the Official Reporter of Debates, Doreen Dotzler.

With that, we thank you all.

[Whereupon, at 12:02 p.m., the subcommittee was adjourned, subject to the call of the Chair.]

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