H.R. 4007 AND S. 1379, THE NAZI WAR CRIMES DISCLOSURE ACT

HEARING

BEFORE THE

SUBCOMMITTEE ON GOVERNMENT MANAGEMENT, INFORMATION, AND TECHNOLOGY

OF THE

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT HOUSE OF REPRESENTATIVES

ONE HUNDRED FIFTH CONGRESS

SECOND SESSION

ON

H.R. 4007 AND S. 1379

TO AMEND SECTION 552 OF TITLE 5, UNITED STATES CODE, AND THE NATIONAL SECURITY ACT OF 1947 TO REQUIRE DISCLOSURE UNDER THE FREEDOM OF INFORMATION ACT REGARDING CERTAIN PERSONS, DISCLOSE NAZI WAR CRIMINAL RECORDS WITHOUT IMPAIRING ANY INVESTIGATION OR PROSECUTION CONDUCTED BY THE DEPARTMENT OF JUSTICE OR CERTAIN INTELLIGENCE MATTERS, AND FOR OTHER PURPOSES

JULY 14, 1998

Serial No. 105–203

Printed for the use of the Committee on Government Reform and Oversight

U.S. GOVERNMENT PRINTING OFFICE

55–732 CC WASHINGTON : 1999

For sale by the U.S. Government Printing Office
Superintendent of Documents, Congressional Sales Office, Washington, DC 20402
ISBN 0-16-058532-5

AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

DAN BURTON, Indiana, *Chairman*

BENJAMIN A. GILMAN, New York
J. DENNIS HASTERT, Illinois
CONSTANCE A. MORELLA, Maryland
CHRISTOPHER SHAYS, Connecticut
CHRISTOPHER COX, California
ILEANA ROS-LEHTINEN, Florida
JOHN M. McHUGH, New York
STEPHEN HORN, California
JOHN L. MICA, Florida
THOMAS M. DAVIS, Virginia
DAVID M. McINTOSH, Indiana
MARK E. SOUDER, Indiana
JOE SCARBOROUGH, Florida
JOHN B. SHADEGG, Arizona
STEVEN C. LaTOURETTE, Ohio
MARSHALL "MARK" SANFORD, South Carolina
JOHN E. SUNUNU, New Hampshire
PETE SESSIONS, Texas
MICHAEL PAPPAS, New Jersey
VINCE SNOWBARGER, Kansas
BOB BARR, Georgia
DAN MILLER, Florida
RON LEWIS, Kentucky

HENRY A. WAXMAN, California
TOM LANTOS, California
ROBERT E. WISE, JR., West Virginia
MAJOR R. OWENS, New York
EDOLPHUS TOWNS, New York
PAUL E. KANJORSKI, Pennsylvania
GARY A. CONDIT, California
CAROLYN B. MALONEY, New York
THOMAS M. BARRETT, Wisconsin
ELEANOR HOLMES NORTON, Washington, DC
CHAKA FATTAH, Pennsylvania
ELIJAH E. CUMMINGS, Maryland
DENNIS J. KUCINICH, Ohio
ROD R. BLAGOJEVICH, Illinois
DANNY K. DAVIS, Illinois
JOHN F. TIERNEY, Massachusetts
JIM TURNER, Texas
THOMAS H. ALLEN, Maine
HAROLD E. FORD, JR., Tennessee

BERNARD SANDERS, Vermont (Independent)

KEVIN BINGER, *Staff Director*
DANIEL R. MOLL, *Deputy Staff Director*
DAVID A. KASS, *Deputy Counsel and Parliamentarian*
JUDITH McCOY, *Chief Clerk*
PHIL SCHILIRO, *Minority Staff Director*

SUBCOMMITTEE ON GOVERNMENT MANAGEMENT, INFORMATION, AND TECHNOLOGY

STEPHEN HORN, California, *Chairman*

PETE SESSIONS, Texas
THOMAS M. DAVIS, Virginia
JOE SCARBOROUGH, Florida
MARSHALL "MARK" SANFORD, South Carolina
JOHN E. SUNUNU, New Hampshire
RON LEWIS, Kentucky

DENNIS J. KUCINICH, Ohio
PAUL E. KANJORSKI, Pennsylvania
MAJOR R. OWENS, New York
CAROLYN B. MALONEY, New York
JIM TURNER, Texas

EX OFFICIO

DAN BURTON, Indiana
HENRY A. WAXMAN, California

J. RUSSELL GEORGE, *Staff Director and Chief Counsel*
JOHN HYNES, *Professional Staff Member*
MATTHEW EBERT, *Clerk*
MARK STEPHENSON, *Minority Professional Staff Member*

CONTENTS

	Page
Hearing held on July 14, 1998	1
Text of H.R. 4007	2
Text of S. 1379	4
Statement of:	
DeWine, Hon. Mike, a U.S. Senator from the State of Ohio	11
Slany, William Z., historian of the Department of State; Lewis Bellardo, Deputy Archivist of the U.S. National Archives and Records Administration; Robert Herzstein, professor of history, University of South Carolina; Elizabeth Holtzman, former Member of Congress; and Douglas Bloomfield, Washington representative, World Jewish Congress	32
Letters, statements, etc., submitted for the record by:	
Bellardo, Lewis, Deputy Archivist of the U.S. National Archives and Records Administration, prepared statement of	44
Bloomfield, Douglas, Washington representative, World Jewish Congress, prepared statement of	66
DeWine, Hon. Mike, a U.S. Senator from the State of Ohio, prepared statement of	14
Herzstein, Robert, professor of history, University of South Carolina, prepared statement of	53
Holtzman, Elizabeth, former Member of Congress, prepared statement of	58
Horn, Hon. Stephen, a Representative in Congress from the State of California, prepared statement of	9
Kucinich, Hon. Dennis J., a Representative in Congress from the State of Ohio, prepared statement of	80
Leahy, Hon. Patrick, a Representative in Congress from the State of Vermont, prepared statement of	25
Slany, William Z., historian of the Department of State, prepared statement of	36

H.R. 4007 AND S. 1379, THE NAZI WAR CRIMES DISCLOSURE ACT

TUESDAY, JULY 14, 1998

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON GOVERNMENT MANAGEMENT,
INFORMATION, AND TECHNOLOGY,
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT,
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, Sessions, and Maloney.

Staff present: J. Russell George, staff director and chief counsel; John Hynes, professional staff member; Randy Kaplan, counsel; Matthew Ebert, clerk; and Mark Stephenson, minority professional staff member.

Mr. HORN. The hearing of the Subcommittee on Government Management, Information, and Technology will begin. This morning, we will be moving in and out because some of us have to be at a speech the President has prepared. Since we urged him to do it 2½ years ago, and he is now doing it on the year 2000 problem, a couple of us will absent ourselves for about an hour. Mr. Sessions as vice chairman will preside, but let me start in on why we are here today.

Over a half century after the Nazi era, the United States Government continues to keep secret much of the information it has on Nazi war criminals. It is imperative that this information receive full scrutiny by the public. Only through an informed understanding of the Nazi era and its aftermath can we guard against a repeat of one of the darkest moments in human history.

H.R. 4007, the Nazi War Crimes Disclosure Act, provides for the disclosure of Nazi war criminal records in the possession of the United States Government. It calls for the establishment of an Interagency Working Group to administer and facilitate the disclosure of Nazi war crimes records. The bill also provides for expedited processing of Freedom of Information Act [FOIA], requests of Holocaust survivors. S. 1379, which is identical to H.R. 4007, was introduced by Senator DeWine of Ohio and passed the Senate by unanimous consent on June 19.

[The texts of H.R. 4007 and S. 1379 follow:]

105TH CONGRESS
2D SESSION

H. R. 4007

To amend section 552 of title 5, United States Code, and the National Security Act of 1947 to require disclosure under the Freedom of Information Act regarding certain persons, disclose Nazi war criminal records without impairing any investigation or prosecution conducted by the Department of Justice or certain intelligence matters, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 5, 1998

Mrs. MALONEY of New York (for herself, Mr. HORN, Mr. BURTON of Indiana, Mr. WAXMAN, Mr. KUCINICH, Mr. GOSS, Mr. DICKS, and Mr. CONYERS) introduced the following bill; which was referred to the Committee on Government Reform and Oversight, and in addition to the Committees on Intelligence (Permanent Select), and the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

---

A BILL

To amend section 552 of title 5, United States Code, and the National Security Act of 1947 to require disclosure under the Freedom of Information Act regarding certain persons, disclose Nazi war criminal records without impairing any investigation or prosecution conducted by the Department of Justice or certain intelligence matters, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

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

SEC. 2. ESTABLISHMENT OF NAZI WAR CRIMINAL RECORDS INTERAGENCY WORKING GROUP.

(a) DEFINITIONS.—In this section the term—

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

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

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

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

(b) ESTABLISHMENT OF INTERAGENCY GROUP.—

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

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

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

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

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

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

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

(d) FUNDING.—There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

SEC. 3. REQUIREMENT OF DISCLOSURE OF RECORDS REGARDING PERSONS WHO COMMITTED NAZI WAR CRIMES.

(a) NAZI WAR CRIMINAL RECORDS.—For purposes of this Act, the term "Nazi war criminal records" means classified records or portions of records that—

(1) pertain to any person with respect to whom the United States Government, in its sole discretion, has grounds to believe ordered, incited, assisted, or otherwise participated in the persecution of any person because of race, religion, national origin, or political opinion, during the period beginning on March 23, 1933, and ending on May 8, 1945, under the direction of, or in association with—

(A) the Nazi government of Germany;

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

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

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

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

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

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

(b) RELEASE OF RECORDS.—

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

(2) EXCEPTION FOR PRIVACY, ETC.—An agency head may exempt from release under paragraph (1) specific information, that would—

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

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

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

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

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

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

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

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

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

(J) violate a treaty or international agreement.

(3) APPLICATION OF EXEMPTIONS.—

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

(B) APPLICATION OF TITLE 5.—A determination by an agency head to apply an exemption listed in subparagraphs (B) through (I) of paragraph (2) shall be subject to the same standard of review that applies in the case of records withheld under section 552(b) of title 5, United States Code.

(4) LIMITATION ON APPLICATION.—This subsection shall not apply to records—

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

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

(c) INAPPLICABILITY OF NATIONAL SECURITY ACT OF 1947 EXEMPTION.—Section 701(a) of the National Security Act of 1947 (50 U.S.C. 431) shall not apply to any operational file, or any portion of any operational file, that constitutes a Nazi war criminal record under section 3 of this Act.

SEC. 4. EXPEDITED PROCESSING OF FOIA REQUESTS FOR NAZI WAR CRIMINAL RECORDS.

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

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

SEC. 5. EFFECTIVE DATE.

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

○

105TH CONGRESS
1ST SESSION

S. 1379

To amend section 552 of title 5, United States Code, and the National Security Act of 1947 to require disclosure under the Freedom of Information Act regarding certain persons, disclose Nazi war criminal records without impairing any investigation or prosecution conducted by the Department of Justice or certain intelligence matters, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 5, 1997

Mr. DEWINE (for himself, Mr. MOYNIHAN, Mr. HATCH, Mr. D'AMATO, Mr. DODD, Mr. KOHL, Mr. COVERDELL, Mr. KENNEDY, Mr. INOUYE, Mr. LEIBERMAN, Ms. SNOWE, Mr. HUTCHINSON, Mr. THURMOND, Mr. MCCAIN, Mr. SHELBY, Mr. CAMPBELL, and Mr. WYDEN) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

---

A BILL

To amend section 552 of title 5, United States Code, and the National Security Act of 1947 to require disclosure under the Freedom of Information Act regarding certain persons, disclose Nazi war criminal records without impairing any investigation or prosecution conducted by the Department of Justice or certain intelligence matters, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

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

SEC. 2. REQUIREMENT OF DISCLOSURE UNDER FREEDOM OF INFORMATION REGARDING PERSONS WHO COMMITTED NAZI WAR CRIMES.

(a) IN GENERAL.—Section 552 of title 5, United States Code, is amended—

(1) in subsection (a)(4)(B) in the second sentence, by inserting "or subsection (h)" after "subsection (b)"; and

(2) by inserting after subsection (g) the following:

"(h)(1) For the purposes of this subsection, the term 'Nazi war criminal records' means records or portions of records that—

"(A) pertain to any person as to whom the United States Government, in its sole discretion, has determined there exists reasonable grounds to believe that such person, during the period beginning on March 23, 1933, and ending on May 8, 1945, under the direction of, or in association with—

"(i) the Nazi government of Germany;

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

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

"(iv) any government which was an ally of the Nazi government of Germany, ordered, incited, assisted, or otherwise participated in the persecution of any person because of race, religion, national origin, or political opinion; or

"(B) pertain to any transaction as to which the United States Government, in its sole discretion, has determined there exists reasonable grounds to believe—

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

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

"(2)(A) Notwithstanding subsection (b), this subsection shall apply to Nazi war criminal records.

"(B) Subject to subparagraphs (C), (D), and (E), Nazi war criminal records that are responsive to a request for records made in accordance with subsection (a) shall be released in their entirety.

"(C) An agency head may exempt from release under subparagraph (B) specific information, the release of which should be expected to—

"(i) constitute a clearly unwarranted invasion of personal privacy;

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

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

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

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

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

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

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

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

"(x) violate a statute, treaty, or international agreement.

"(D) In applying exemptions (ii) through (x) of subparagraph (C), there shall be a presumption that the public interest in the release of Nazi war criminal records outweighs the damage to national security that might reasonably be expected to result from disclosure. The agency head, as an exercise of discretion, may rebut this presumption with respect to a Nazi war criminal record, or portion thereof, based on an exemption listed in subparagraph (C). The exercise of this discretion shall be promptly reported to the committees of Congress with appropriate jurisdiction.

"(E) This subsection shall not apply to records—

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

"(ii) in the possession, custody or control of that office.".

(b) INAPPLICABILITY OF NATIONAL SECURITY ACT OF 1947 EXEMPTION.—Section 701 of the National Security Act of 1947 (50 U.S.C. 431) is amended—

(1) by redesignating subsections (e) and (f) as subsections (f) and (g), respectively; and

(2) by inserting after subsection (d) the following:

"(e) Subsection (a) shall not apply to any operational file, or any portion of any operational file, that constitutes a Nazi war criminal record under section 552(h) of title 5, United States Code.".

SEC. 3. INTERAGENCY INVENTORY OF NAZI WAR CRIMINAL RECORDS.

(a) DEFINITIONS.—In this section the term—

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

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

(3) "Nazi war criminal records" has the meaning given such term under section 552(h)(1) of title 5, United States Code (as added by section 2(a)(2) of this Act); and

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

(b) ESTABLISHMENT OF INTERAGENCY GROUP.—

(1) IN GENERAL.—Not later than 30 days after the date of enactment of this Act, the President shall establish the Nazi War Criminal Records Interagency Working Group.

(2) MEMBERSHIP.—The President shall appoint to the Interagency Group the heads of agencies who the President determines will most completely and effectively carry out the functions of the Interagency Group within the time limitations provided in this section. The head of an agency appointed by the President may designate an appropriate officer to serve on the Interagency Group in lieu of the head of such agency.

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

(c) FUNCTIONS.—Not later than 1 year after the date of enactment of this Act, the Interagency Group shall, to the greatest extent possible consistent with section 552(h)(2) of title 5, United States Code (as added by section 2(a)(2) of this Act)—

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

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

(3) submit a report to Congress describing all such records, the disposition of such records, and the activities of the Interagency Group and agencies under this section.

SEC. 4. EXPEDITED PROCESSING OF REQUESTS FOR NAZI WAR CRIMINAL RECORDS.

(a) DEFINITIONS.—In this section, the term—

(1) "Nazi war criminal record" has the meaning given the term under section 552(h)(1) of title 5, United States Code (as added by section 2(a)(2) of this Act); and

(2) "requester" means any person who was persecuted in the manner described under section 552(h)(1)(A) of title 5, United States Code (as added by section 2(a)(2) of this Act), who requests a Nazi war criminal record.

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

SEC. 5. EFFECTIVE DATE.

The amendments made by this Act shall apply to requests under section 552 of title 5, United States Code (known as Freedom of Information Act requests) received by an agency after the expiration of the 90-day period beginning on the date of enactment of this Act.

○

Mr. HORN. Much of the United States Government's information on alleged Nazi war criminals has remained secret even though many researchers have filed Freedom of Information Act requests to secure copies of these files. Federal Government agencies have routinely denied these requests, citing exemptions for national defense, foreign relations, and intelligence reasons.

Perhaps the most compelling example of the consequences of keeping U.S. Government files hidden is the case of Kurt Waldheim, and some of you will recall the hearing we held on Mrs. Maloney's bill a year or so ago. For years, the Central Intelligence Agency kept secret its information on Waldheim. This occurred even as the Department of Justice placed Waldheim on the "watch list" of individuals forbidden to enter the United States. Had Waldheim's Nazi past become public, he almost certainly would not have been elected to the post of Secretary General of the United Nations.

Waldheim, unfortunately, is not alone. Thanks to the recent declassification of some CIA documents, it has been revealed that American intelligence agencies recruited other individuals associated with the Nazis. Klaus Barbie, the head of the German Secret Police in Lyons, France, who deported Jews to Nazi death camps, was protected by American intelligence. That is a shameful period in our history. Other documents reveal that Otto von Bolschwing, a former German SS captain, may have been recruited as an intelligence source for the United States.

A related bill, the U.S. Holocaust Assets Commission Act, was recently signed into law. This commission will determine whether assets such as bank accounts, insurance policies, real estate, art, and other possessions of persecuted Jewish families in Europe came into the hands of the United States Government after January 30, 1933. Declassifying secret documents regarding Nazi war crimes will not only assist in the prosecution of Nazi war criminals, but

it should provide this commission with an abundance of new materials.

More than a half century after the Second World War, it is time to end the sweeping exemptions that have shielded Nazi war crimes from full public disclosure.

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

DAN BURTON, INDIANA
CHAIRMAN
BENJAMIN A. GILMAN, NEW YORK
J. DENNIS HASTERT, ILLINOIS
CONSTANCE A. MORELLA, MARYLAND
CHRISTOPHER SHAYS, CONNECTICUT
STEVEN SCHIFF, NEW MEXICO
CHRISTOPHER COX, CALIFORNIA
ILEANA ROS-LEHTINEN, FLORIDA
JOHN M. McHUGH, NEW YORK
STEPHEN HORN, CALIFORNIA
JOHN L. MICA, FLORIDA
THOMAS M. DAVIS III, VIRGINIA
DAVID M. McINTOSH, INDIANA
MARK E. SOUDER, INDIANA
JOE SCARBOROUGH, FLORIDA
JOHN SHADEGG, ARIZONA
STEVE C. LaTOURETTE, OHIO
MARSHALL "MARK" SANFORD, SOUTH CAROLINA
JOHN E. SUNUNU, NEW HAMPSHIRE
PETE SESSIONS, TEXAS
MIKE PAPPAS, NEW JERSEY
VINCE SNOWBARGER, KANSAS
BOB BARR, GEORGIA
ROB PORTMAN, OHIO

ONE HUNDRED FIFTH CONGRESS

Congress of the United States
House of Representatives

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT
2157 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515–6143

MAJORITY (202) 225–5074
MINORITY (202) 225–5051
TTY (202) 225–8852

HENRY A. WAXMAN, CALIFORNIA
RANKING MINORITY MEMBER
TOM LANTOS, CALIFORNIA
BOB WISE, WEST VIRGINIA
MAJOR R. OWENS, NEW YORK
EDOLPHUS TOWNS, NEW YORK
PAUL E. KANJORSKI, PENNSYLVANIA
GARY A. CONDIT, CALIFORNIA
CAROLYN B. MALONEY, NEW YORK
THOMAS M. BARRETT, WISCONSIN
ELEANOR HOLMES NORTON,
DISTRICT OF COLUMBIA
CHAKA FATTAH, PENNSYLVANIA
ELIJAH E. CUMMINGS, MARYLAND
DENNIS KUCINICH, OHIO
ROD R. BLAGOJEVICH, ILLINOIS
DANNY K. DAVIS, ILLINOIS
JOHN F. TIERNEY, MASSACHUSETTS
JIM TURNER, TEXAS
THOMAS H. ALLEN, MAINE
HAROLD E. FORD, JR., TENNESSEE

BERNARD SANDERS, VERMONT
INDEPENDENT

H.R. 4007 the "Nazi War Crimes Disclosure Act"

July 14, 1998

OPENING STATEMENT
REPRESENTATIVE STEPHEN HORN (R-CA)

Chairman, Subcommittee on Government Management,
Information, and Technology

Over half a century after the Nazi era, the U.S. Government continues to keep secret much of the information it has on Nazi war criminals. It is imperative that this information receive full scrutiny by the public. Only through an informed understanding of the Nazi era and its aftermath can we guard against a repeat of one of the darkest moments in history.

H. R. 4007, the "Nazi War Crimes Disclosure Act," provides for the disclosure of Nazi war criminal records in the possession of the United States Government. It calls for the establishment of an Interagency Working Group to administer and facilitate the disclosure of Nazi war crimes records. The bill also provides for expedited processing of Freedom of Information Act (FOIA) requests of Holocaust survivors. S. 1379, which is identical to H.R. 4007, was introduced by Senator DeWine and passed the Senate by unanimous consent on June 19.

Much of the U.S. Government's information on alleged Nazi war criminals has remained secret even though many researchers have filed Freedom of Information Act (FOIA) requests to secure copies of these files. Federal Government agencies have routinely denied these requests, citing exemptions for national defense, foreign relations, and intelligence reasons.

Perhaps the most compelling example of the consequences of keeping U.S. Government files hidden is the case of Kurt Waldheim. For years, the Central Intelligence Agency kept secret its information on Waldheim. This occurred even as the Department of Justice placed Waldheim on the "watch list" of individuals forbidden to enter the United States. Had Waldheim's Nazi past become public, he almost certainly would not have been elected to the post of Secretary General of the United Nations.

Waldheim, unfortunately, is not alone. Thanks to the recent declassification of some CIA documents, it has been revealed that American intelligence agencies recruited other individuals associated with the Nazis. Klaus Barbie, the head of the German Secret Police in Lyons, France who deported Jews to Nazi death camps, was protected by American intelligence. Other documents revealed that Otto von Bolschwing, a former German SS captain, may have been recruited as an intelligence source for the United States.

A related bill, the U.S. Holocaust Assets Commission Act, was recently signed into law. This commission will determine whether assets such as bank accounts, insurance policies, real estate, art, and other possessions of persecuted Jewish families in Europe came into the hands of the U.S. Government after January 30, 1933. Declassifying secret documents regarding Nazi war crimes will not only assist in the prosecution of Nazi war criminals, but it should provide this commission with an abundance of new materials.

More than half a century after the Second World War, it is time to end the sweeping exemptions that have shielded Nazi war crimes from full public disclosure.

Mr. HORN. I now yield to Mrs. Maloney who is acting as the ranking member this morning, as Mr. Kucinich and I have another meeting to get to. And after that, Mr. Sessions, the vice chairman, will preside until we can return a little after 11:15 or so. Sorry for the mixup, but we don't set the schedules.

Mrs. MALONEY. I thank the chairman for his leadership in holding many, many hearings on this issue and his leadership, too, on the Y2K problem.

Senator DeWine is here and he has a vote coming up, and I would like to defer my opening statement until after his remarks. I would like to publicly thank him for the perseverance that he has shown along with Senator Leahy. He and his staff have worked on a bill that could pass the Senate and House and meet the questions raised by the CIA and others that questioned the need to keep secrecy.

I want to thank Senator DeWine for being here today and his strong leadership on this issue, and I defer my opening statement until after his comments. Thank you for coming, Senator, I know that you have been through several drafts and you have worked diligently on this and I can't thank you enough.

STATEMENT OF HON. MIKE DeWINE, A U.S. SENATOR FROM THE STATE OF OHIO

Senator DEWINE. It has been a pleasure to work with you and the chairman's staff. Let me thank you, the chairman, and members of the subcommittee for allowing me to appear today and for the work that we have been able to do together.

It really has been your bipartisan leadership over the last several years that brings us to this hearing today. You and the chairman have been the champions of this legislation through both the 104th and the 105th Congress. Without you and your very able staffs, this legislation would not be approaching enactment into law as it is today.

H.R. 4007 contains many refinements and improvements proposed by you and proposed by your staff that really improve upon the Senate bill as we reported it out of the Senate Judiciary Committee. H.R. 4007 is a comprehensive bill that is long overdue. The Nazi War Crimes Disclosure Act will lead to the release of United States Government-held records of Nazi war criminals, the Nazi Holocaust, and the trafficking of Nazi-held assets taken from the victims of the Nazi terror.

Mr. Chairman, the photos that I have brought with me today and I have on display are several aerial United States intelligence photographs taken in 1944 of Auschwitz, with prisoners being led to the gas chambers. These pictures were discovered, as you know, by photo analysts from the Central Intelligence Agency in 1978. They confirm what we had heard from the Polish underground that a death camp did in fact exist in that location. They also demonstrate that our Government had photographs of these camps as those atrocities were occurring. These pictures tell a horrible story, a grizzly story.

How much other information still exists in our Government files? Frankly we do not know, but with the legislation before us, we intend to try to answer that question. The Nazi War Crimes Disclo-

sure Act is designed to put the concerns expressed by the last Congress into law.

First, the bill will allow for expedited processing of FOIA requests of survivors of Nazi persecution. Second, the bill would establish the Nazi War Criminal Records Interagency Working Group. This working group 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. This means that all material would be required to be released in its entirety unless a Federal agency head concluded that the release of all or part of these records would compromise privacy or national security interests. The agency head would then have to notify Congress of any determination to not release the records.

Thus, we in the Congress representing the American people would be in a position to review the material being withheld to ensure that it was being done for valid reasons consistent with the intent of this legislation. The director of the Holocaust Museum, the Archivist of the United States and the Historian of the Department of State are specifically named in this bill to sit on the task force because of their unique expertise on this subject. The President is authorized to appoint the head of any other agency and up to three additional people with expertise on this subject who could assist with the identification and disclosure of relevant documents.

In summary, this bill will strike a clear balance between our Government's legitimate privacy and national security interests and the people's desire to know the truth about Nazi atrocities.

There is one provision that is particularly noteworthy that I would like to point out. Records held by the Office of Special Investigations, the OSI, of the Department of Justice are specifically exempted by this bill to ensure that we do not harm any ongoing investigations or prosecutions by OSI.

Nonetheless, because of the substantial expertise at OSI, it could reasonably be expected that the OSI would be asked to assist with the review of records held by other agencies. OSI is currently engaged in an effort to close ongoing investigations and prosecutions of alleged war criminals.

Thus, Mr. Chairman, and members of the committee, to ensure that the high priority investigations continue and that all relevant documents found during the search are quickly reviewed for declassification, my Senate colleagues and I requested that the Appropriations Committee provide a small increase of $2 million to OSI's budget to enable the staff to take on and complete both of these tasks.

I am happy to report that the Senate Appropriations Committee approved this request which is more than a 50-percent increase in OSI's budget. This was accomplished in a very tight budgetary environment where the 602(b) budget allocation for the Department of Justice barely increased this year.

Mr. Chairman, the life of the Interagency Group is extended under this bill from 1 to 3 years in recognition of the fact that there are extensive documents which must be reviewed. The bulk of this work we hope will be done in the first year. The 3-year life of the working group should not become an excuse to proceed slowly. Indeed, working with this subcommittee, I intend to hold an

oversight hearing next year to monitor progress of implementation of this legislation. As a member of the Senate Intelligence Committee, I also plan to ensure that any withholding of intelligence documents is appropriate and does not become an excuse to cover up the past.

This bill not only addresses the acts of Nazi war criminals, but also addresses those who transferred, sold, or otherwise disposed of assets involuntarily taken from persecuted persons by, under the direction of, or on behalf of or under the authority of the former Nazi government of Germany or any nation then allied with that government.

H.R. 4007 is a bipartisan effort to ensure the Federal Government has done all it can to ensure that Holocaust victims and their families can obtain the answers they need.

Mr. Chairman, the clock is running and time is running out for so many victims. They and history itself deserve to know as much as possible about this tragic chapter in the story of humanity.

In closing, I want to thank the World Jewish Congress for its invaluable assistance and contributions. Finally, I would like to thank you, Mr. Chairman. I would like to thank the chairman of the committee and Congresswoman Maloney for your leadership on this issue. We appreciate it very much.

[The prepared statement of Senator DeWine follows:]

Full Statement RECORD

STATEMENT OF SENATOR MIKE DEWINE
HEARING ON H.R. 4007, THE NAZI WAR CRIMES DISCLOSURE ACT
SUBCOMMITTEE ON GOVERNMENT MANAGEMENT, INFORMATION, AND TECHNOLOGY
JULY 14, 1998

Chairman Horn, Congresswoman Maloney, Members of the Subcommittee, I want to thank you for the opportunity to appear today to support H.R. 4007, The Nazi War Crimes Disclosure Act.

At the outset, Mr. Chairman and Congresswoman Maloney it has been your bipartisan leadership over the last two years that brings us to this hearing today. You have been the champions of this legislation through both the 104th and 105th Congresses. Without you and your very able staff, this legislation would not be approaching ennactment into law. H.R. 4007 contains many refinements proposed by your staff that improve upon the Senate Bill as it was reported out of the Senate Judiciary

Committee. H.R. 4007 is a comprehensive Bill that is long over due.

I again complement both you, Mr. Chairman, and Congresswomen Maloney for your leadership on this issue. The Nazi War Crimes Disclosure Act will lead to the release of U.S. government-held records of Nazi war criminals, the Nazi Holocaust, and the trafficking of Nazi-held assets taken from the victims of the Nazi terror.

Just three years ago, we celebrated the 50th anniversary of the end of the Second World War, and with it, the Nazis' death grip on an entire continent. After all these years, new shockingly detailed accounts of the Nazi Holocaust have recently come to our attention.

We have learned so much. Yet, if the last few years are any indication, we still have so much more to learn.

After the fall of communist rule, Russia and several former Soviet-bloc nations opened volumes of secret files on Nazi

war crimes. Argentina has cooperated in the public release of its files. British government records are being declassified and made available for public scrutiny. And over the course of last year, Swiss banks and the Swiss government have been under intense international pressure to make a full accounting of unclaimed funds belonging to Holocaust victims, as well as Nazi assets that may have once belonged to Holocaust victims.

Mr. Chairman, here at home, our own government has been gradually making records available about what it knew of Nazi-related activities and atrocities. Last year, a government-conducted study revealed new information about what the U.S. Government knew regarding the transfer and flow of funds held by Nazi officials. This report found that the U.S. government was aware that the Nazi mint took gold stolen from European central banks and melted it together with gold obtained in horrible fashion -- from tooth-fillings, wedding bands and other items seized from death-camp victims.

Mr. Chairman, the photos I have on display are several aerial U.S. intelligence photographs taken in 1944 of Auschwitz, with prisoners being led to the gas chambers. These pictures were discovered by photo analysts from the Central Intelligence Agency in 1978. They confirm what we had heard from the Polish underground that a "death camp" did in fact exist at Auschwitz. They also demonstrated that our government had photographs of these camps as these atrocities were occurring.

These pictures tell a grisly story. How many more exist? With the legislation before us, we intend to answer that question.

Both Congress and the President have taken action to promote the release of government-held records during this tragic era. On April 17, 1995, the President issued an executive order calling for the release of national security data and information older than 25 years. Late in the 104th Congress, thanks to the work of my friend from New York, Senator Moynihan and Congresswoman Maloney and you,

Mr. Chairman, we passed a sense of the Congress resolution, which stated that any U.S. Government agencies should make public any records in its possession about individuals who are alleged to have committed Nazi war crimes. The President agreed, noting that learning the remaining secrets about the Holocaust is in the clear public interest.

The Nazi War Crimes Disclosure Act is designed to put the concerns expressed by the last Congress into law. First, the bill would allow for expedited processing of FOIA requests of survivors of Nazi persecution. These individuals are growing older each day and the time to obtain answers to questions that have followed them will soon end. We owe to those who suffered and those who seek to prevent future genocides the disclosure of all the records in the United States on this issue.

Second, the bill would establish the Nazi War Criminal Records Interagency Working Group. This Working Group 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. This means that 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, we in the Congress would be a position to review the material being withheld to ensure that it was being done for valid reasons consistent with this legislation.

The Director of the Holocaust Museum, the Archivist of the United States, the Historian of the Department of State are specifically appointed to sit on the task force because of their unique expertise on this subject. Further, to help the interagency group complete its task, the President is authorized to appoint the head of any other Agency and up to three additional people with expertise on this subject who can assist with the identification and disclosure of relevant documents. This pro-active search is necessary

because a full government search and inventory has never been completed. For example, some documents that surfaced last year in connection with a search Coordinated by Stuart Eizenstat then Under Secretary of Commerce were found in holdings related to Southeast Asia.

Our bill is targeted toward two classes of Nazi-related materials: First, war crimes information regarding Nazi persecutions; and two, any information related to transactions involving assets of Holocaust and other Nazi victims.

In summary, this bill will strike a clear balance between our government's legitimate privacy and national security interests and the people's desire to know the truth about Nazi atrocities. These records, once released, will be held in a repository at the National Archives.

Let me enumerate several changes which we have made since the bill was unanimously reported out by the full Judiciary Committe last March. First, Mr. Chairman, these

changes came about because the staff on this Subcommittee worked collaboratively with the Judiciary Committee to improve the Committee bill. Further, representatives of the World Jewish Congress provided detailed suggestions for improvements in the Senate Bill which were incorporated prior to its final passage by the Senate.

There is one provision that is particularily noteworthy that I would like to raise. Records held by the Office of Special Investigations (0SI) of the Department of Jusitice are specifically exempted by this bill to ensure that we do not harm any ongoing investigations or prosecutions by OSI. Nonetheless, because of the substantial expertise at OSI, it can reasonably be expected that OSI will be asked to assist with the review of records held by other agencies. OSI is currently engaged in an effort to close ongoing investigations and prosecutions of alleged war criminals. Thus, to ensure that the high priority investigations continue and all relevant documents found during the search are quickly reviewed for disclassification, my Senate colleagues and lasked 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. I am happy to report that the Senate Appropriations Committee approved this request, which is a more than 50% increase in OSI's budget. This was accomplished in a very tight budgetary environment where the 602(b) budget allocations for the Department of Justice barely increased this year.

Section 2(b)(1) was revised to extend the life of the interagency group from one to three years in recognition of the fact that there are extensive document 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.

This bill not only addresses the acts of Nazi War Criminal, but also addresses those who transfered, sold or otherwise disposed of assets involuntarily taken from persecuted persons by, under the direction of, or on behalf of, or under

the authoritiy of the former Nazi Government of Germany or any nation then allied with that government.

This bill is a bipartisan effort to ensure the Federal Government has done all it can to ensure Holocaust victims and their families can obtain the answers they need.

The clock is running, and time is running out for so many victims of the Holocaust. They, and history itself, deserve to know as much as possible about this tragic chapter in the story of humanity.

Thank you for allowing me to appear.

Mr. SESSIONS [presiding]. Senator, thank you for your comments. I might also add that Senator Pat Leahy from Vermont is unable to be with us today. He has worked on this issue on the Senate side. His work along with yours is appreciated, and the Senator has requested and I will comply and order that his testimony be included in the record, just as if it were read, right behind yours.

[The prepared statement of Hon. Patrick Leahy follows:]

U.S. SENATOR PATRICK LEAHY

CONTACT: David Carle, 202-224-3693 VERMONT

STATEMENT OF SENATOR PATRICK LEAHY
RANKING MEMBER, SENATE JUDICIARY COMMITTEE
ON "THE NAZI WAR CRIMES DISCLOSURE ACT, S. 1379/H.R. 4007"
Hearing before the Subcommittee on Government Management, Information, and Technology
of the House Committee on Government Reform and Oversight
July 14, 1998

I want to thank Chairman Horn and Representatives Kucinich and Maloney for giving me the opportunity to testify about the "Nazi War Crimes Disclosure Act," S. 1379/H.R. 4007. This important piece of legislation passed the Senate unanimously on June 19, 1998, with the strong bipartisan backing of Senators DeWine, Moynihan, and others.

This bill would ***require*** the action that Congress merely ***encouraged*** in the last Congress, when we passed a resolution calling upon federal agencies to make public any records in their possession about individuals who are alleged to have committed Nazi war crimes. Specifically, the bill would require creation of an interagency working group to collect and release classified Nazi war crime records within one year, and give Nazi war crime victims expedited access to these records under the Freedom of Information Act (FOIA). These victims are growing older and we should ensure that if they are interested in seeing these records, their requests should be honored as speedily as possible.

I first became aware of this bill when I appeared before Chairman Horn in June 1996 at a hearing convened to examine the Electronic FOIA amendments and the Nazi War Crimes Disclosure Act, H.R. 1281, introduced by Representative Maloney. While my testimony at that hearing focused on the Electronic FOIA amendments -- which were enacted later that year with this Subcommittee's enormous help and support -- I learned then about the need for the Nazi War Crimes Disclosure Act.

Moving oral testimony and written statements were presented at that 1996 hearing about the need for full disclosure by federal agencies about what our government knew, and when, about Nazi atrocities and the criminals who committed those atrocities. Rabbi Marvin Hier (the Dean and Founder of the Simon Wiesenthal Center), the Jewish Community Relations Council, the Anti-Defamation League, the Orthodox Union, the American Jewish Committee, and others, committed to teaching the lessons of the Holocaust expressed their strong support for full disclosure of Nazi war crime records. *War Crimes Disclosure Act, Health Information Privacy Protection Act, and S. 1090, Electronic Freedom of Information Improvement Act of 1995: Hearing on H.R. 1281 and S. 1090 before the Subcomm. on Government Management, Information, and Technology of the House Comm. on Government Reform and Oversight*, 104th Cong., 2d Sess. 17-30 (1996).

[more]

senator_leahy@leahy.senate.gov
http://www.senate.gov/~leahy/

There is no question in my mind that, to the extent records pertaining to Nazi war criminals remain classified more than fifty years since the end of the war, we should take action to disclose those records. No Nazi war criminal should be protected by government secrecy rules. This is what happened with government records pertaining to Kurt Waldheim: the Central Intelligence Agency (CIA) withheld critical information from researchers about Waldheim's collaboration with the Nazis, even as other government agencies were placing him on the list of individuals forbidden to enter our country because of suspected war crimes. Moreover, an extensive Justice Department report on Waldheim completed in 1987 was then kept secret for six long years, before Attorney General Reno, in response to a FOIA lawsuit, released the document in 1994. The United States government should not help Nazi war criminals keep their past crimes secret. This bill is an important step to ensure our government does not.

The Waldheim case exemplifies why, "[t]he classification ... systems are no longer trusted by many inside and outside the Government." This is one of the conclusions of the bipartisan Report of the Commission on Protecting and Reducing Government Secrecy Classification issued in 1997 under the leadership of Senator Moynihan and Representative Combest. Government secrecy rules should not be used to shield from public view what our government knew about the past collaboration with the Nazis by any individual, including Kurt Waldheim. I fully agree with the Commission's Report that "by allowing for a fuller understanding of the past, [greater openness] provides opportunities to learn lessons from what has gone before -- making it easier to resolve issues concerning the Government's past actions and helping prepare for the future."

Senator DeWine and I worked closely on crafting the version of the bill that passed the Senate to address the legitimate concerns raised by the Department of Justice, our intelligence agencies, press associations and others who use the FOIA regularly, as well as those who have a personal stake and interest in full disclosure of Nazi War crime records.

The bill calls for the Nazi War Criminal Records Interagency Working Group to be created by the President shortly after enactment and authorizes this Group to operate for three years. The Working Group will include as members the Director of the Holocaust Museum, the Historian of the Department of State, the Archivist of the United States, and heads of agencies selected by the President. In addition, the President may select from the private sector up to three other persons whom he considers appropriate to assist in completely and effectively carrying out the functions of the Interagency Group.

The Interagency Group is tasked under the bill with locating, identifying, inventorying, recommending for declassification and making available to the public at the National Archives and Records Administration all classified Nazi War criminal records in the possession of federal agencies, and submit to Congress, including to the Senate Committee on the Judiciary and the House Committee on GRO, a report describing its activities.

[more]

[statement of Sen. Leahy/THE NAZI WAR CRIMES DISCLOSURE ACT/page 3]

While the bill requires that these tasks be completed within one year, the Interagency Group is authorized for a full three years in the event that certain of these tasks require additional time. The bill also authorizes the appropriation of any necessary funds.

The bill defines "Nazi war criminal records" subject to the Act as those classified records or portions of records pertaining to persons who, from March 23, 1933 through May 8, 1945, under the direction or in association with the Nazis ordered, incited, assisted or otherwise participated in the persecution of any person on account of their race, religion, national origin or political opinion, as well as to any transaction involving the assets of those persecuted persons when the transaction involved assets taken without their consent or the consent of their heirs.

The Interagency Group is required to release the classified Nazi war criminal records covered by the bill in their entirety, subject to ten enumerated exemptions. The first exemption is for records or parts thereof that "constitute a clearly unwarranted invasion of personal privacy." This standard is used in the Freedom of Information Act (FOIA, 5 U.S.C. 552(b)(6)), where the exemption serves to protect "intimate" or "personal" details in federal agency files. In practice, the balancing of interests at stake with this FOIA exemption has tilted in favor of disclosure.

Use of the same privacy-related phrase in the Nazi War Crimes Disclosure Act should result in the same balancing of interests and the same tilt in favor of disclosure.

Likewise, the other Nazi War Crimes Disclosure Act exemptions favor disclosure. Indeed, the bill states that, "there shall be a presumption that the public interest in the release of Nazi war criminal records will be served by disclosure and release of the records." The bill conditions exercise of all the exemptions, including the privacy exemption, on a determination that the disclosure and release would be harmful to a specific interest identified in the exemption. To facilitate oversight of this legislation, an agency head who makes this determination is required to report the application of the exemption promptly to the appropriate Committees of the Congress, including the Senate Committee on the Judiciary and the House Committee on GRO.

The bill makes clear that the enumerated exemptions shall constitute the only authority whereby an agency head may exempt records subject to this Act from release. Thus, the Act's enumerated exemptions take precedence over the protective provisions of other statutes, such as the Privacy Act, the National Security Act of 1947, the Central Intelligence Agency Act, and the operational file exemption contained in section 701 of the National Security Act of 1947. These waivers of other statutory protections and, most particularly those waivers of the National Security Act provisions, recognize the extraordinary and unique nature of the Nazi war criminal records. These records warrant this special treatment so that the United States may lead and fully participate in the growing international movement to open to public scrutiny official records on the conduct of particular governments and institutions during World War II.

[more]

In addition to the enumerated exemptions, the bill exempts from disclosure the records of the Office of Special Investigations (OSI) of the Department of Justice, which continues to investigate, prosecute and extradite suspected Nazi war criminals. Concerns about the impact of this bill on the work of OSI were raised by the Department of Justice, and others, at the original House hearing on this bill in 1996. This bill addresses those concerns and will do nothing to undermine the critical work of this section. Moreover, Senators DeWine and I, and others, have requested that funding for OSI be increased to ensure adequate personnel are available to handle any increased workload due to the passage of this legislation.

While the number of arrests of suspected Nazi war criminals may be dwindling, some are still on the loose, as we so dramatically witnessed by the arrest in Germany just a few short months ago, in March 1998, of a man identified in news reports as Alfons Goetzfried. This suspected Nazi war criminal was a former low-ranking Gestapo officer who apparently acknowledged in prior statements personally shooting to death 500 people, including women and children, at a death camp in Poland in November 1943. The work of the OSI continues to be of vital importance.

It has been a pleasure to work with Senator DeWine on this matter in the Judiciary Committee, and with other members of the House and Senate on reaching a consensus on this important bill. This legislation is long overdue, and I urge its prompt enactment.

#####

Mr. SESSIONS. Senator, do you have time for questions?

Senator DEWINE. Certainly.

Mr. SESSIONS. Mrs. Maloney, I will let you proceed with questions.

Mrs. MALONEY. I know the committee has been called for a meeting with the President and most of the Members are there, but I am glad you saw this as a priority, too.

Senator, I thank you for your leadership on this. My one question—and I commend you for your dedication for continuing to have public hearings on the progress—what happens if the interagency council recommends that certain information should be released to the public, and then the agencies just don't do it, like they have done in the past?

As Professor Herzstein can testify, he has tried for years to get information out of the agencies. What if they let the interagency task force just die after 3 years while they continue to stonewall and say this information is still important to national security, when it is hard to believe that anything from that era is important at this point in time given the fact that the cold war is over, and it has been well over 50 years since the war, what happens if they say we just can't release it? Maybe it is so embarrassing that they don't want to release it.

Senator DEWINE. I think that is an excellent question. It is going to be up to us in Congress to monitor this and have the necessary oversight hearings. It is clear that the intent of Congress, and I know it has been expressed by you and Chairman Horn and myself, Senator Leahy as you have mentioned, Senator Moynihan, that embarrassment should not be an impediment or excuse not to release information. Senator Moynihan said, "In a democracy an embarrassment is not an excuse for getting the facts out." We have a very good procedure set in here. We believe that we have worked out everything with the intelligence agencies to take care of any security issues. That is dealt with in this legislation. It has been over 50 years since the end of World War II. Whatever embarrassment there is; it is simply going to have to be disclosed, because the facts have to come out.

It is clear, in answer to your question, what the intent of Congress is: the bureaucracies should understand when this legislation is passed, and the legislation is very clear, and that is they have an affirmative obligation to get this information out. And I think it is incumbent upon you and myself and the chairman and others to make sure that this does in fact happen.

Mrs. MALONEY. Would you join the Members of the House in some clarifying intent language, message of intent, that we would read on the floor for the agencies?

Senator DEWINE. I am always very much in favor of speaking very clearly, particularly when we are dealing with the bureaucracy. As I have tried to explain when people have asked me about the legislation, "Why do you need the legislation, are people trying to hide things?" the answer is I don't think so. It is simply the normal inertia and the way that the bureaucracy works. The bureaucracy doesn't work unless you move it, and I think we should have some very clear language. We should create some very good legislative history, and if there is some clarifying language that you think

needs to be in this legislation which just spells out very, very clearly—if we can spell it out any clearer than we already have, I am in favor of it. It is clear what we are trying to do, and we don't want to be in a position where the bureaucracy sort of takes over and the intent of the legislation is lost.

Mrs. MALONEY. I believe you brought to this problem a unique perspective with your background and your understanding of the Intelligence Committee and your respect within that committee. That helped forge this compromise. It is a stronger bill than the one that we passed last year. Again, I add my words of congratulations to you. You took this bill and you have worked on it for 2 years now, and you have done a wonderful job and you have moved it to this point in a bipartisan cooperative spirit.

Senator DEWINE. I appreciate that. You and Chairman Horn and Senator Moynihan started this many years ago in the last Congress, and without your vision we would not be here today. I think we have a good bill. If there is anything that we can do to improve it, let's do it and then get it on to the President and get it signed.

Mrs. MALONEY. Thank you. I have no other questions.

Mr. SESSIONS. Thank you, Senator. I was not here for Chairman Horn's remarks, but I believe the importance of this legislation and the intent of what we are after is really—even if embarrassment does come out to face up to the things that have happened so we avoid that in the future. The Holocaust and the determinations of governments and the way that they interacted with each other for years before the Holocaust and before the war are a tragedy to the world, and I believe this will allow us a snapshot of looking back at what was there so we can avoid that. That is also I hope a lesson that will be learned.

Senator, I want to thank you for your time today, and if you have any final remarks——

Senator DEWINE. Mr. Chairman, I just want to thank you. I thank you for accommodating me and letting me go first today. We have a vote scheduled and we are right into the vote right now, and so I appreciate it. I look forward to continuing to work with you.

Mr. SESSIONS. Your presence is appreciated.

We are now going to move to the second panel. We are very fortunate to be joined by some very talented and able people, and I would ask if you would please rise as your name is called.

William Z. Slany, Historian of the Department of State; Lewis Bellardo, Deputy Archivist of the United States; Robert Herzstein, professor of history, University of South Carolina; Elizabeth Holtzman, former Member of Congress who has worked diligently on these issues for some time; Douglas Bloomfield, Washington representative of the World Jewish Congress. We thank all of those witnesses, and if they would please come forward to be sworn at this time.

Mrs. MALONEY. Mr. Chairman, after you swear in the witnesses, I had a brief opening statement that I deferred in order not to take up Senator DeWine's time.

Mr. SESSIONS. You are correct.

[Witnesses sworn.]

Mr. SESSIONS. Please let the record reflect that all five of our witnesses have answered in the affirmative.

I did know that Mrs. Maloney wanted to give an opening statement after the Senator had a chance to depart.

Mrs. MALONEY. Just very briefly, I want the record to clearly show my appreciation to you, Mr. Sessions and Mr. Horn, for holding this hearing. It has been a matter of years that I have been working on this issue and the more that I learn about Nazi war criminals, the more dedicated I become to exposure. My work spans several years, but that is very small compared to the work and the pain that Holocaust survivors have suffered in their search for the truth.

H.R. 4007, the Nazi War Crimes Disclosure Act, will help to reveal some of those truths. The bill sets up a process for the declassification of documents held by Federal agencies. World War II ended a half century ago. Our policies in dealing with many countries have changed a great deal since then. Our policies within the United States must also change. It is interesting to note that other countries like Russia, Argentina, Lithuania, are opening their war crimes files. We, the country with democratic roots, should not be the last to lift this wall of secrecy.

This bill establishes an Interagency Working Group to locate and sort out all Nazi war crime records. They will recommend certain records for declassification. The working group will also coordinate with those agencies which are withholding the documents to make sure that the information flows freely and properly to the public.

While the working group is charged with making information more available, it also has the task of selectively withholding those pieces of information which would pose a threat to our Nation's security. I am hoping that this discretion will alleviate concerns among members of the intelligence community regarding the reporting of damaging information to researchers, families, and the media. We must not allow those guilty of committing unspeakable crimes to hide behind our own country's secrecy. Secrecy and trust are important, but sometimes secrets are simply kept too long.

For years the CIA was keeping the information about Kurt Waldheim classified. A secret told in this instance would have surely eliminated a shameful chapter in the history of the United Nations. Some secrets reveal embarrassing histories. Evidence was recently discovered that the United States actively recruited Nazis and facilitated their entry into this country in order to pursue cold war objectives. We have also recently learned that millions of dollars in gold looted by the Nazis is currently sitting in the Federal Reserve Bank of New York. Again, sometimes a secret kept too long does more harm than good.

That is the essence of this bill before us. I know our witnesses, former Congresswoman Liz Holtzman who has fought to bring Nazis to justice for many years and is an outstanding former Congresswoman from the great State of New York, I thank her for her work on this bill and many other issues. Professor Robert Herzstein from the University of South Carolina; really it was his articles and research on the Waldheim case that first brought to national attention the need for this bill. The World Jewish Congress which has worked consistently toward the release of informa-

tion, and I must really credit the columnist, A.M. Rosenthal for a series of articles shedding light on the need for this legislation.

I am sure that all of you share these sentiments of the philosopher, George Santayana, who said, "Those who do not remember the past are condemned to repeat it."

I thank the witnesses for joining us today in our effort to present our own Government the proper tools for remembrance. Thank you very much for coming.

Mr. SESSIONS. Thank you, Mrs. Maloney. I appreciate the comments. I would like to add that I think everyone in this room understands that we are dealing with a very sensitive part of history, one that still touches many, many people in our world, one that is a very solemn subject, but one which somehow 50 years later we are able to talk about in a way that should be done with dignity toward those people who lost their lives, but also with a faith in the future that we will avoid any reoccurrence of this. It is with those expectations that I have in my own heart and my own mind that we are embarking today on what this bill has taken several years to culminate itself. But I would hope that we are able to remember with each of our words that we are dealing with people and lives and families and countries, and I am struck by each of you taking time to be with us today and I appreciate that very much.

I am going to begin with Dr. Slany and his opening statement.

STATEMENTS OF WILLIAM Z. SLANY, HISTORIAN OF THE DEPARTMENT OF STATE; LEWIS BELLARDO, DEPUTY ARCHIVIST OF THE U.S. NATIONAL ARCHIVES AND RECORDS ADMINISTRATION; ROBERT HERZSTEIN, PROFESSOR OF HISTORY, UNIVERSITY OF SOUTH CAROLINA; ELIZABETH HOLTZMAN, FORMER MEMBER OF CONGRESS; AND DOUGLAS BLOOMFIELD, WASHINGTON REPRESENTATIVE, WORLD JEWISH CONGRESS

Mr. SLANY. Thank you, Mr. Chairman. I appreciate the opportunity to be able to testify today and make these remarks, and I do request that my remarks be included in the record.

Mr. SESSIONS. Without objection.

Mr. SLANY. Over the past 2 years I have worked with the historians and experts of 11 other governmental agencies in preparing two historical studies, coordinated by Under Secretary of State Stuart Eizenstat, on United States and allied efforts to recover and restore gold and other assets stolen or hidden by Germany during World War II.

These two studies, the first of which was released to the public in May 1997, and the second of which was released on June 2, were based upon more than 15 million pages of declassified records at the National Archives and Records Administration. The records were mainly previously declassified documentation of the Department of State, the Department of Defense, the Treasury Department, and the Commerce Department, but also included records of the Justice Department and wartime agencies such as the Foreign Economic Administration and the OSS.

This documentation, including the decrypted diplomatic correspondence of wartime enemies and neutrals, had been previously

declassified and publicly available at the National Archives for some years. In connection with the preparation of the two Eizenstat reports, nearly 1 million additional pages of documentation, including papers from the Treasury Department, the CIA, and additional decrypted correspondence from the National Security Agency were newly declassified.

Dr. Bellardo, the Deputy Archivist of the United States, can report more accurately than I can about what the National Archives has available now on these issues, but I can say that I am proud of the efforts made around Washington to throw light on a vital but long neglected historical matter.

All of these records are described in a special inventory compiled by the National Archives and available on the internet. Under Secretary Eizenstat has insisted and we believe that we have achieved full declassification of all the known relevant Federal executive branch historical records on these assets issues, especially those for the wartime and early postwar period. My 40 years of government experience leads me to caution that there may remain as yet unidentified files of 30, 40, or even 50-year-old documents on these issues in agency files, and the search for them will go on.

The proposed Presidential Commission on Holocaust Era Assets will certainly press the search for executive branch records that bear upon the disposition of the assets of enemy nations and neutrals frozen by the U.S. authorities during the war. This ongoing investigation will no doubt produce new findings based on the additional documentation discovered, and such findings will be forthcoming in the course of 1999.

The declassification of and the public access to the full official United States historical record of the Holocaust era assets are essential for setting straight the awful events that befell the victims of Nazism a half a century ago.

Acknowledgment of the true past and justice of the survivors and their children must be the goal of this Government and the people of goodwill everywhere. The restitution of looted assets and the provision of some measure of justice to remaining victims in Eastern and Central Europe have been the focus of several years of difficult, sensitive diplomatic negotiations by the United States.

These negotiations are now at a critical stage. Premature disclosure of the details of the negotiations may jeopardize the hoped for settlements for thousands of victims and their families in Europe and in the United States. Any legislation aimed at a full opening of the historical record of Holocaust era assets is of course well-intentioned, but it should be tempered and applied in such a way that these ongoing diplomatic negotiations are not compromised by the untimely disclosure of sensitive information.

The focus of the two Eizenstat reports was on monetary gold and other assets stolen by the Nazi regime or moved or secured abroad during World War II. The second report did include a chapter on the fate of the treasury of the wartime Croatian Ustasha regime. Preparation of this chapter involved research into the movements of Ustasha war criminals and fugitives and the emergence of the "rat line" escape route allegedly used for the escape of Nazis and other Fascist criminals. Both reports also examined the theft by the Nazis of their victims' valuables to pay for the support of the

German war effort. The interagency research on the Holocaust era assets was, however, not expressly aimed at the identification and declassification of the full official United States record of Nazi war crimes.

I am not aware of any body of historical State Department records on Nazi war crimes that remains classified and inaccessible to scholars and other researchers, but I would not rule out the possibility, even the likelihood, that the State Department diplomatic records from 40 or 50 years ago contain the equities of intelligence agencies which have yet to be declassified.

Furthermore, there may be some current negotiations on such matters of which I am unaware that deserve security protection for the moment. My historian colleagues at the CIA, the Defense Department, and the Justice Department will have a better understanding of the remaining records about the Nazi war crimes and criminals in their files not yet accessioned by the National Archives.

There should be no doubt, however, that my many years of service in government as a historian has made me an advocate of any and all efforts to open the historical record of American foreign affairs. The principal product of my office in the State Department is the Foreign Relations of the U.S. documentary series, the statutory method for compiling and publishing the main official foreign policy historical record. I believe that our two reports on the fate of looted gold and other assets during and after World War II demonstrate clearly that important aspects and consequences of the war and the Nazi regime remain unacknowledged and unresolved 50 years after the end of the war. A full understanding of Nazi war crimes and the fate of Nazi war criminals is another of those horrible and ugly aspects of the wartime era that were overtaken and overshadowed by the postwar cold war. It is certainly time to set the record straight.

Even as I recognize the urgency of moving to complete the overdue disclosure of the record of Nazi war crimes, I must remind you of the concerns of my colleagues in the State Department and other agencies of the costs and consequences of assigning special legislative priority to the declassification of these records. The cold war has left Federal agencies the legacy of a huge backlog of classified records. President Clinton's Executive order of April 1995 directed us to liquidate this cold war backlog by the year 2000. Programs to achieve what the President mandated strained the resources of agency declassifiers and record managers all around Washington.

The State Department has taken the lead in opening for public review the agency's main foreign affairs records and should achieve the mandated 25-year disclosure goal by the end of this decade. State's success is the result of the commitment of its leadership and the assignment of the right resources and direction to get the job done.

Other agencies have not been so fortunate or successful in meeting the goals of the President's Executive order. Special declassification programs like that mandated by H.R. 4007 may have the effect of overwhelming agency records managers and declassifiers and threaten to disrupt the ongoing efforts to meet the President's important goals in an orderly and systematic fashion. The resource

issue is one that looms largest for my declassification and records management colleagues. At the very least, essential resources and, above all, enthusiastic leadership will be necessary to lay open for all to see the complete U.S. record of the darkest criminals and crimes of the 20th century.

Thank you.

[The prepared statement of Mr. Slany follows:]

TESTIMONY

Nazi War Crimes Disclosure Act—HR 4007

Subcommittee on Government Management, Information, and Technology

My name is William Slany, and I am the Historian of the Department of State.

I appreciate this opportunity to make a statement regarding the Nazi War Crimes Disclosure Act.

For the past two years I have worked with the historians and experts of eleven other government agencies in preparing two historical studies, coordinated by Under Secretary of State Stuart Eizenstat, on "U.S. and Allied Efforts To Recover and Restore Gold and Other Assets Stolen or Hidden by Germany During World War II." These two studies, the first of which was released to the public in May 1997 and the second of which was released on June 2, were based upon more than 15 million pages of declassified documentation in the National Archives and Records Administration. The records were mainly previously declassified documentation of the Department of State, the Department of Defense, the Treasury Department, and the Commerce Department, but also included records of the Justice Department and wartime agencies such as the Foreign Economic Administration and the OSS. This documentation, including the decrypted diplomatic correspondence of wartime enemies and neutrals, had been previously declassified and publicly available at the National Archives for some years.

In connection with the preparation of the two Eizenstat reports, nearly one million additional pages of documentation, including papers from the Treasury Department, the CIA, and additional decrypted correspondence from the National Security Agency, were newly declassified. Dr. Bellardo, the Deputy Archivist of the U.S., can report more accurately than I about what the National Archives has available now on these issues, but I can say that I am proud of the efforts made around Washington to throw light on a vital but long neglected historical matter. All of these records are described in a special inventory compiled by the National Archives and available on the Internet.

Under Secretary Eizenstat has insisted and we believe that we have achieved full declassification of all relevant federal executive branch historical records on these assets issues—especially those for the wartime and early postwar period. My 40 years of government experience leads me to caution that there may remain as-yet-unidentified files of 30, 40, and even 50-year old documents on these issues in agency files, and the search for them will go on. The proposed Presidential Commission on Holocaust Era Assets will certainly press the search for executive branch records that bear upon the disposition of the assets of enemy nations and neutrals frozen by U.S. authorities during the war. This ongoing investigation will no doubt produce new findings based on the additional documentation discovered, and such findings will be forthcoming in the course of 1999.

The declassification of and public access to the full official U.S. historical record of Holocaust era assets are essential for setting straight the awful events that befell the victims of Nazism a half century ago.

3

Acknowledgement of the true past and justice for the survivors and their children must be the goal of this government and people of good will everywhere. The restitution of looted assets and the provision of some measure of justice to remaining victims in Eastern and Central Europe have been the focus of several years of difficult, sensitive diplomatic negotiations by the U.S.

These negotiations are now at a critical stage. Premature disclosure of the details of the negotiations may jeopardize the hoped-for settlements for thousands of victims and their families in Europe and the U.S. Any legislation aimed at a full opening of the historical record of Holocaust era assets is, of course, well-intentioned. But it should be tempered and applied in such a way that these ongoing diplomatic negotiations are not compromised by the untimely disclosure of sensitive information.

The focus of the two Eizenstat reports was on monetary gold and other assets stolen by the Nazi regime or moved or secured abroad during World War II. The second report did include a chapter on the fate of the treasury of the wartime Croatian Ustasha regime. Preparation of this chapter involved research into the movements of Ustasha war criminals and fugitives and the emergence of the "rat line" escape route allegedly used for the escape of Nazis and other Fascist criminals. Both reports also examined the theft by the Nazis of their victims' valuables to pay for the support of the German war effort. The interagency research on Holocaust era assets was, however, not expressly aimed at the identification and declassification of the full official U.S. record of Nazi war crimes.

4

I am not aware of any body of historical State Department records on Nazi war crimes that remains classified and inaccessible to scholars and other researchers, but I would not rule out the possibility—even the likelihood—that State Department diplomatic records from 40 or 50 years ago contain the equities of intelligence agencies which have not yet been declassified. Furthermore, there may be some current negotiations on such matters of which I am unaware that deserve security protection for the moment. My historian colleagues at the CIA, the Defense Department, and the Justice Department will have a better understanding of the remaining records about Nazi war crimes and criminals in their files not yet accessioned by the National Archives.

There should be no doubt that my many years of service in government as a historian make me an advocate of any and all efforts to open the historical record of American foreign affairs. The principal product of my office in the State Department is the *Foreign Relations of the U.S.* documentary series—the statutory method for compiling and publishing the main official foreign policy historical record. I believe that our two reports on the fate of looted gold and other assets during and after World War II demonstrate clearly that important aspects and consequences of the war and the Nazi regime remained unacknowledged and unresolved 50 years after the end of the war. A full understanding of Nazi war crimes and the fate of Nazi war criminals is another of those horrible and ugly aspects of the wartime era that were overtaken and overshadowed by the postwar Cold War. It is certainly time to set the record straight.

5

Even as I recognize the urgency of moving to complete the overdue disclosure of the record of Nazi war crimes, I must remind you of the concerns of my colleagues in the State Department and other agencies of the costs and consequences of assigning special legislative priority to the declassification of these records. The Cold War has left federal agencies the legacy of a huge backlog of classified records. President Clinton's Executive Order of April 1995 directed us to liquidate this Cold War backlog by the year 2000. Programs to achieve what the President mandated strain the resources of agency declassifiers and records managers all around Washington. The Department of State has taken the lead in opening for public review the agency's main foreign affairs record and should achieve the mandated 25-year disclosure goal by the end of this decade. State's success is the result of the commitment of its leadership and the assignment of the right resources and direction to get the job done.

Other agencies have not been so fortunate or successful in meeting the goals of the President's executive order. Special declassification programs like that mandated by HR 4007 may have the effect of overwhelming agency records managers and declassifiers and threaten to disrupt the ongoing efforts to meet the President's important goals in an orderly, systematic fashion. The resource issue is one that looms largest for my declassification and records management colleagues. At the very least, essential resources and enthusiastic leadership will be necessary to lay open, for all to see, the complete U.S. record of the darkest criminals and crimes of the 20th Century.

William Slany
The Historian
Department of State

Mr. SESSIONS. I would like to refer to my colleague, Mrs. Maloney.

Mrs. MALONEY. Very briefly, Dr. Slany, you pointed out the need for resources to get the job done, and Senator DeWine added $2 million which has already passed the Senate to help you and others achieve this goal. We need to add that $2 million on the House side, Mr. Sessions and Mr. Horn, to make sure that it passes in a complete package. You pointed out an important need, and I wanted to point out that Senator DeWine has taken care of it, and we need to take care of it in the House.

Mr. SESSIONS. Thank you. We are going to go into general questions after the end of the complete panel. Thank you. Dr. Bellardo.

Mr. BELLARDO. Mr. Chairman, Mrs. Maloney, thank you for this opportunity to speak with you this morning. Before I proceed, I would like to recognize a member of our staff who is here, Dr. Greg Bradsher, who has become our resident expert in this whole issue of Nazi war crimes as well as looted assets.

Mr. SESSIONS. Dr. Bradsher, we are pleased that you are with us. Thank you.

Mr. BELLARDO. We have submitted our written testimony. I have some oral remarks, and in the interest of time I will try to cut them still further.

Mr. SESSIONS. We will be pleased to include anything that you would like to give as written testimony, and I will order that it be put in with the rest of your testimony. Thank you.

Mr. BELLARDO. Thank you.

I would like to recognize all of the members of the subcommittee who have taken an interest in this subject, as well as Carolyn Maloney, Congressman Jim Leach, Senator Mike DeWine, Senators Moynihan and Leahy, and Senator Alfonse D'Amato.

Because of the leadership of all of these people, many of the survivors of the Nazi and Holocaust persecution will receive long delayed justice and restitution. In addition, we are relearning a lesson that I know is quite familiar to you, Mr. Chairman, and that is that often the documentary record of our past is what opens the doors of justice. It is the essential evidence preserved at the National Archives and Records Administration that ultimately documents the rights and privileges of citizens. If I might add, one of the most important reasons for holding materials at the National Archives is truly to hold officials accountable for the actions that they have taken, if not today then at some other point.

We take the responsibility for these records very seriously. I would like to present an overview of the role that NARA has played in this important issue and then to discuss the possible impact of the bill as it relates to the records and to the agencies, including NARA, as it relates to resources.

The search for what became known as "Nazi Gold" records began in March 1996 when researchers from Senator D'Amato's office came to the National Archives at College Park looking for records relating to World War II dormant bank accounts. Within weeks the research expanded into issues surrounding looted Nazi gold and other assets. I will proceed through this quickly, but by mid-summer 1996, a steady stream of researchers, sometimes as many as 25 a day, were conducting research just in this one area. The

records, together comprising some 15 million pages of documentation, were like a magnet drawing increasing numbers of researchers as that summer progressed.

Then in the fall, we had the appointment of the Eizenstat group to prepare the report on U.S. and allied efforts to recover and restore gold. I won't go into that, since you know all about it. And the report that was issued in May 1997 included a 300-page appendix which in itself was 300 pages just describing the materials at the National Archives and Records Administration. Later, a revised and expanded finding aid of over 750 pages just describing the records that we have was placed on the U.S. Holocaust Memorial Museum's website in March 1998.

Growing demands on NARA's staff have been enormous. Not only were both government and non-government researchers making requests for records already at NARA, also other relevant records were accessioned from other government agencies and declassified under great pressure to make them available immediately. Examples of some of the agencies who sent us new materials include the Central Intelligence Agency, the National Security Agency, and Justice Department, among others. All of the records accessioned were immediately declassified as needed and made available to researchers.

An example I would like to give you is a collection of records transferred from the Department of Treasury. In there, NARA's staff uncovered records of the Reichsbank precious metals department. These records were discovered on April 1, 1997 and they consisted of 70 reels of poor condition microfilm. Despite their poor condition, NARA's staff copied the microfilm, and made it available to researchers 3 days later on April 4. That is the kind of service that we were trying to give on these records.

The stream of researchers increased. The boundaries of research widened to include questions related to looted securities, looted works of art, unclaimed and unpaid insurance policies, refugee policies, slave labor practices, and wartime trade between the neutrals and access powers. Researchers included groups as widely diverse as law firms, Jewish organizations, banking organizations, art restitution research teams, the media, and foreign researchers of various types. We have had dozens of researchers from many countries, including Austria, Israel, Sweden, the Netherlands, France, Great Britain, Germany, Switzerland, Spain, Portugal, and Argentina.

This legislation that we are now discussing, the Nazi War Crimes Disclosure Act, is the next step in ensuring that the true history of the war and the Holocaust is publicly told. Building on the research which exposed the true actions of countries that collaborated with the Nazis, this bill will expose the actions of individuals who committed heinous crimes against fellow human beings in the name of the Third Reich. We are pleased that the authors of the legislation have recognized the role of NARA by recommending the appointment of the archivist of the United States to be a member of the Nazi War Crimes Disclosure Working Group.

In terms of the holdings at NARA, we estimate that our holdings contain 15 million pages of records relevant to the activities of Nazi war criminals and their treatment of Holocaust victims. All of

NARA's holdings on World War II war crimes and on the Nazi gold issue have been reviewed for declassification and roughly 98 percent of these records have been declassified, but there are still 2 percent that have not been declassified, representing something like 400,000 pages.

I would like to say that the 1-year deadline in the legislation is rather tight. This could have a resource impact on the member agencies of the Interagency Working Group. Depending on the volume of the Nazi war crimes records uncovered, staff demands could be substantial. The Interagency Working Group and other member agencies will need funding in order to carry out this project within the deadlines set forth and so will NARA. This legislation will strain our declassification program which is already under extreme pressure to meet the requirements of the President's Executive order.

Once again, Mr. Chairman, I thank you for your leadership on this issue and for inviting me to testify here today. NARA applauds this effort and looks forward to receiving into our collection records of other agencies that we have not yet accessioned that document war crimes. This legislation can only serve to create a more honest and complete picture of the events of World War II. I am happy to answer any questions that you might have.

[The prepared statement of Mr. Bellardo follows:]

Testimony of Dr. Lewis Bellardo
Deputy Archivist of the United States
Before the Subcommittee on Government Management, Information, and Technology
Committee on Government Reform and Oversight
on the
Nazi War Crimes Disclosure Act
July 14, 1998

Mr. Chairman, Congressman Kucinich, and Members of the committee, I would like to thank you for the opportunity to appear before you today to present the views of the National Archives and Records Administration (NARA) on the Nazi War Crimes Disclosure Act. This legislation will continue the work that has been championed by you, Mr. Chairman, and your colleagues, Congresswoman Carolyn Maloney, Congressman Jim Leach, Senator Mike DeWine, Senator Patrick Moynihan, and, last but certainly not least, Senator Alfonse D'Amato. Because of your leadership on this issue, many survivors of the Holocaust and Nazi persecution will receive long-delayed justice and restitution. In addition, we are relearning a lesson that I know is quite familiar to you, Mr. Chairman. It is the lesson that it is often the documentary record of our past that opens the doors of justice; it is the essential evidence preserved by the National Archives and Records Administration that ultimately documents the rights and privileges of our citizens. We take responsibility for the preservation of and access to those records very seriously. I would like to present a very brief overview of the role that NARA has played in this important issue and then present information on the remaining records that would be impacted by the legislation being examined today.

Nazi Gold

The search for what has become known as "Nazi Gold" records began in March 1996, when researchers from Senator Alfonse D'Amato's office began coming to the National Archives at College Park, Maryland, looking for records relating to World War II-era dormant bank accounts of Jews in Swiss banks. Within weeks the research expanded into issues surrounding looted Nazi gold and other assets. By midsummer 1996, the research room at College Park was the host to at least 15 researchers daily—sometimes as many as 25—conducting research in "Nazi Gold" records. These records, contained within 30 record groups and comprising some 15 million pages of documentation, were like a magnet, drawing increasing numbers of researchers as the summer progressed.

In the early fall of 1996, President Clinton asked then Under Secretary of Commerce Stuart E. Eizenstat, who also serves as Special Envoy of the Department of State on Property Restitution in Central and Eastern Europe, to prepare a report that would "describe, to the fullest extent possible, U.S. and Allied efforts to recover and restore this gold [gold the Nazis had looted from the central banks of occupied Europe, as well as gold taken from individual victims of Nazi persecution] and other assets stolen by Nazi Germany." Eizenstat formed an 11-agency Interagency Group on Nazi Assets, including NARA, to do the research and produce the report, under the direction of William Z. Slany, Historian, Department of State. Slany formed his research team, consisting of researchers from the Departments of Defense, Treasury, Justice, and

State, the U.S. Holocaust Museum, the Central Intelligence Agency, and the Federal Reserve Board. They soon made the National Archives at College Park their home.

During the next five months the demands on NARA's staff were enormous. Not only were both government and non-government researchers making requests for records, often the same records at the same time, but also relevant records were accessioned from the Department of the Treasury in November 1996, and the Federal Reserve Board in March 1997, and declassified under great pressure to make them immediately available. In addition, the media discovered that NARA was a major part of this developing story and requests for information, interviews, and photo shoots mushroomed.

The First Eizenstat Report

On May 7, 1997, the Interagency Group on Nazi Assets, headed by Ambassador Eizenstat, issued its report entitled *U.S. and Allied Efforts To Recover and Restore Gold and Other Assets Stolen or Hidden by Germany During World War II: Preliminary Study*. The report was based primarily on NARA's holdings. As an appendix, NARA staff prepared a 300-page finding aid to the records at College Park and both the report and appendix were immediately made available at the Department of State's website. When the research widened to more countries and more subjects, NARA issued a 300-page supplemental finding aid in the fall of 1997. It was placed on the Department of State's website in November 1997. A revised and expanded finding aid, some 750 pages, was placed on the United States Holocaust Memorial Museum's website in March 1998 at **<www.ushmm.org/assets/nazigold.htm>**.

New Records

In 1996, the Clinton administration urged agencies to transfer relevant records to the National Archives. In 1997, the Central Intelligence Agency transferred Office of Strategic Services records, as well as biographical profile documentation on Thomas McKittrick, the wartime president of the Bank for International Settlements, and Emil Puhl, the Reichsbank vice-president. The National Security Agency, on the day before the report was released, transferred to NARA copies of Army Security Agency intercepts of communications between the Swiss delegation in Washington and the Swiss Foreign Ministry in Bern, Switzerland. Although their records are not federal records, the Federal Reserve Bank of New York sent to NARA two cubic feet of copies of pertinent materials. During the summer of 1997, the Department of Justice transferred to NARA a major body of Office of Alien Property Trading With the Enemy Act case files. All of the records accessioned were immediately declassified, if this had not already been done, and made available to researchers.

Reichsbank Records

Among the most significant bodies of records uncovered have been those of the Reichsbank's Precious Metals Department. These records were greatly sought after during the spring of 1997 by two Federal agencies and other researchers because it was believed these records would document conclusively how much of the looted German gold acquired by the Allies was composed of non-monetary gold; that is, gold that came from victims of Nazi persecution. The records, discovered on April 1, 1997, consisted of some 70 reels of microfilm contained in a small box within a recently accessioned Federal Record Center box of Treasury Department records. There was great excitement. The microfilm, which dated back to 1948 and was not accessioned by NARA until November 1996, was not in the best condition. However, NARA reproduced the microfilm and made it available to researchers on April 4, 1997. Interestingly, the story does not end at this point, because in 1948 the US Army did not microfilm all of the records. Within a month of the filming, all of the original paper records, both those filmed and not filmed, were turned over to the successor bank, and they have since disappeared. Thus, during the past year there has been a search throughout Europe to locate the original records.

More Researchers

In the wake of the Eizenstat report and increased accessions of pertinent records, more researchers found their way to the National Archives at College Park. Not only were the researchers, including claimants, continuing to seek information about looted Nazi gold and related topics, but the boundaries of research had widened to include questions relating to looted securities, looted works of art, unclaimed and unpaid insurance policies, refugee policies, slave labor practices, and wartime trade between the neutrals and the Axis powers.

Law firms and other research teams involved in class action litigation relating to dormant accounts in Swiss banks and unpaid insurance policies of victims of Nazi persecution have found NARA's holdings critical to their research. Jewish organizations, banking organizations, and art restitution research teams have also used NARA's holdings.

Foreign researchers have found NARA an important resource to supplement the information available in the archival records in their own countries. During the past year there have been dozens of private researchers from various countries, including Austria, Sweden, the Netherlands, France, Great Britain, Germany, and Switzerland. During the summer of 1997, six researchers from Sweden made their home at Archives II for several weeks, looking at records relating to their country. In February 1998, researchers representing commissions from Spain, Portugal, and Argentina began their research. Representatives of foreign banks and foreign archivists, including those from Israel and Sweden have also sought information.

NARA and the Inter Agency Group on Nazi Assets

Within days of issuing its first report, the Inter Agency Group on Nazi Assets was asked to prepare another report. Thus, in the summer of 1997, researchers from the Department of State, the Central Intelligence Agency, and the National Security Agency, representing the Interagency

Group on Nazi Assets, began to do their research again with NARA's assistance. On June 2, 1998, the Interagency Group published its second report entitled *U.S. and Allied Wartime and Postwar Relations and Negotiations with Argentina, Portugal, Spain, Sweden, and Turkey on looted Gold and German External Assets and U.S. Concerns About the Fate of the Wartime Ustasha Treasury.*

The Future

Interest in the Nazi Gold issue remains high throughout the world. Commissions have been appointed in Sweden, Portugal, Argentina, France, Belgium, Norway, the Netherlands, Switzerland, and half a dozen other countries to address issues relating to victims of Nazi persecution, postwar restitution efforts, and dormant bank accounts.

Secretary of State Madeleine K. Albright, speaking to the Swiss Parliament on November 15, 1997, said that doing all we can to discover the truth about the Holocaust and events related to it, and acting on what we learn, are among the vital unfinished tasks of this century.
This legislation, the Nazi War Crimes Disclosure Act, is the next step in ensuring that the true history of the War and the Holocaust is publicly told. Building on the research that has already been conducted at the National Archives and Records Administration, which exposed the true actions of countries that collaborated with the Nazi's, this bill will expose the actions of individuals who committed heinous crimes against fellow human beings in the name of the Third Reich.

War Crimes Disclosure Act

We are gratified that the authors of this legislation have recognized the role NARA has played in bringing these issues to light by recommending the appointment of the Archivist of the United States to be a member of the Nazi War Crimes Disclosure Working Group. Our staff are among the leading authorities on what records exist to document the actions of Nazi war criminals.

NARA holds over 5,000 cubic feet, or roughly 5 million pages of records and hundreds of rolls of microfilm containing information on World War II war crimes in Europe and Japan. These records come from several different sources, including the Records of the Judge Advocate General (Army); Records of U.S. Army Commands (1942 --); Records of Allied Operational and Occupational Headquarters, World War II; Records of the Judge Advocate General (Navy); and a collection of records entitled the National Archives Collection of World War II War Crimes Records, which contains a mix of material including records of the International Military Tribunal at Nuremberg and records captured from the Germans during and after the war. In addition to these sources, there are small groups of records scattered throughout our World War II-era holdings documenting the liberation of concentration camps and interviews with former prisoners of the camps, interrogations of captured Nazis on war crimes and intelligence matters, and even files on the First Army's investigation of the "Malmedy Massacre" of American POW's during the Battle of the Bulge, and other investigations of the mistreatment of Allied prisoners.

In addition, records that have been recently declassified in the search for information on the Nazi

gold issue will serve to create a wider view of the activities of Nazi war criminals and their treatment of Holocaust victims. As this investigation has progressed and widened, the body of records relating to "Nazi gold" has steadily grown, and now encompasses records from many areas including military records from the Records of the U.S. Joint Chiefs of Staff; Records of the Office of Strategic Services; Records of the Secretary of War; Records of the U.S. Occupation Headquarters, World War II; Records of the Office of the Chief of Naval Operations; and the National Archives Collection of Foreign Records Seized. Civilian agency records used in the Nazi gold search include: General Records of the Department of State; Records of the High Commissioner for Germany (HICOG); Records of the Department of the Treasury; General Records of the Department of Justice; Records of the Federal Bureau of Investigation; and Records of the Department of Commerce. Information was also located in several World War II-era agencies such as the Records of the Office of War Information and the Records of the Office of Censorship. In addition, information was drawn from the Records of the Central Intelligence Agency, the Records of the National Security Agency, and the Records of the Federal Reserve System. Non-record material donated to NARA by the Federal Reserve Bank of New York also contains much information on the spread of Nazi looted assets in the United States. We currently estimate that our holdings on this subject contain 15 million pages. All of NARA's holdings on World War II war crimes and on the Nazi gold issue have been reviewed for declassification, and roughly 98% of these records have been declassified.

I would like to say that the one year deadline in the legislation is rather tight. This could have a resource impact on the member-agencies of the Interagency Working Group. Depending upon the volume of Nazi war crimes records from agencies that will fall under the purview of this act, staff demands could be substantial. The Interagency Working Group, or the member agencies, will need funding in order to carry out this project within the deadline set forth in the bill.

This legislation will also have a resource impact on NARA as we re-review our classified holdings on Nazi war crimes, and as war crimes records from other agencies are transferred to us. This legislation will strain NARA's declassification program which is already under extreme pressure to meet the requirements of the President's executive order on declassification. This problem exists for all agencies government-wide.

Once again, Mr. Chairman, I thank you for your leadership on this issue and for inviting me to testify here today. I also would like to say a special "thank you" to the staff of the National Archives and Records Administration for their tireless efforts during these past months as this issue has grown in activity beyond all expectation. I would particularly like to recognize the work of one of our archivists, Dr. Greg Bradsher, who produced the 700 page finding aid for the Nazi gold records, which he wrote while continuing to work with sometimes overwhelming numbers of researchers on this issue. NARA applauds this effort and looks forward to receiving into our collection records of other agencies that we have not yet accessioned that document war crimes. This effort can only serve to create a more honest and complete picture of the events of the Second World War. I would be happy to answer any questions the committee might have.

National Archives and Records Administration

Lewis J. Bellardo

Dr. Lewis J. Bellardo is Deputy Archivist and Chief of Staff of the National Archives and Records Administration, an independent agency of the Federal Government with more than 2,900 employees and 33 facilities throughout the country. NARA is the nation's record keeper. Its mission is to ensure for the citizen and the public servant, for the President and the Congress and the Courts, ready access to essential evidence. NARA meets a wide range of information needs, ensuring access to records on which both the credibility of government and the accuracy of history depend.

Dr. Bellardo joined the staff of the National Archives and Records Administration in 1989 and has been Deputy Archivist since 1995. As such he assists the Archivist in the administration of the agency, acts on behalf of the Archivist in his absence, and carries out special assignments concerning major issues facing NARA. Special responsibilities have included overseeing the interagency Electronic Records Work Group and serving on the Information Technology Investment Review Team, the NARA Leadership Team, and the Council of Chief Information Officers of the Federal Government.

Previous posts in the National Archives and Records Administration were Deputy Assistant Archivist for the National Archives, acting head of the Office of Presidential Libraries, Director of the Preservation Policy and Services Division, and Director of the Center for Legislative Archives. In these capacities as well as in his current role as Deputy Archivist, Dr. Bellardo has represented NARA at national and international meetings and before congressional committees.

Before coming to NARA in 1989, Dr. Bellardo was Director of the Georgia Historical Society (1986–89) and Kentucky State Archivist and Records Administrator (1980–86).

Dr. Bellardo is a Fellow of the Society of American Archivists and a member of the National Association of Government Archives and Records Administrators (NAGARA). He is a past president of NAGARA and served on the Preservation Committee of the International Council on Archives. He received his bachelor of arts degree in history from Rutgers University and his master of arts and doctorate from the University of Kentucky.

Mr. SESSIONS. Mrs. Maloney would like to make a statement about a change of dates.

Mrs. MALONEY. You mentioned that the 1-year deadline is too strict, and we have made that change and expanded it to 3 years. Also on resources on the Senate side, we have the $2 million in the budget and we hope to get that in the House too.

Mr. SESSIONS. It is my understanding that this $2 million is designated for the Justice Department.

Mrs. MALONEY. Yes, it is for the interagency task force.

Mr. SESSIONS. OK, good. Thank you, Doctor.

Mr. SESSIONS. We will now continue with Dr. Herzstein.

Mr. HERZSTEIN. Thank you for inviting me to testify here today. I am here on my own behalf, but the many historians and researchers with whom I have discussed FOIA reform strongly support your initiative, H.R. 4007.

Our country is unique in having a Freedom of Information Act. We treasure it as a tribute to an open society, but it needs to be improved. Two years ago, I testified before this subcommittee in support of H.R. 1281. Eventually signed into law by the President, that legislation represented an improvement over its predecessors. At that time, the President in signing the bill said, "I believe that our democratic principles require that the American people be informed of the activities of their Government." He also said, "It is clearly in our public interest to learn any remaining secrets about the Holocaust."

But it is clear that despite the efforts of its bipartisan supporters, H.R. 1281 contained some of the same loopholes that had undermined prior laws governing researcher access under FOIA. I wish that the CIA had not opposed the elimination of those loopholes; but it did, and the agency prevailed. That legislation has failed to remedy some of the problems addressed by the far superior H.R. 4007.

Let me briefly mention the case that brings me here today. Although I am concerned with other matters, the Waldheim issue is the one that got me interested in FOIA reform. It was the World Jewish Congress that asked me to look into Kurt Waldheim's wartime career in 1986, and for the past 10 years I have been told that national security concerns prevent me and the public from learning more about the involvement of this Government in Waldheim's postwar career. But I can tell you this, for at least 46 years, individuals working for at least two agencies protected Waldheim and propagated false information about him, including false information provided to the House of Representatives. What national security interest justifies the protection of Kurt Waldheim five decades after his initial contacts with U.S. intelligence officials?

As a result of the research conducted by myself and others, Waldheim was placed on the "Watch List" in 1987. This decision was mandated by the Holtzman amendment, which provides for the listing of persons who committed or facilitated atrocities such as illegal deportations and other persecutions which were carried out by or on behalf of Nazi Germany or its allies.

Why did U.S. officials protect a man like Waldheim, especially when war crimes lists produced by and for the State Department in 1948 listed Waldheim as an accused war criminal?

The CIA, in one of the few documents it has released to me on this case, admits that Waldheim was "particularly effective in confidentially working out Austrian formulations acceptable to the United States." Had there been a tradeoff, silence about his activities during the war in return for cooperation? Until H.R. 4007 becomes law and is put to work, we will not know.

Under Title VII, section 701(b) of the CIA Information Act, operational files of the agency may be exempted from FOIA. The President's Executive order of 1996, which was a step in the right direction, nonetheless left these major exemptions in place, and at the CIA's insistence, H.R. 1281 failed to remedy the problem. Judicial review was nowhere to be found. But back to the Waldheim case.

The CIA's 1980 report to a Congressman who had inquired into Waldheim's biography cleared Waldheim, and I have a copy of that letter here. This letter contained inaccurate information which to my knowledge did not then or now exist in what the agency called "open source materials."

The CIA had collaborated with Waldheim in the production of parallel alibis. How do we obtain the full truth hidden somewhere in agency files?

As I read the bill before us, the proposed Nazi War Criminal Records Interagency Working Group will examine classified records relating to Nazi war criminals and other persons involved in acts of persecution, and will declassify them in a manner consonant with national security and privacy concerns.

Then the newly available records will be moved to Archives II in Maryland, where they will be completely open to researchers. It is my understanding that all records concerning, say, Kurt Waldheim, not just documents about him, will be declassified. In other words, postwar documents detailing U.S. Government dealings with suspect individuals will be among those released to the public through the Archives.

The language of H.R. 4007 wisely follows that of the Holtzman amendment.

Another strength of the bill is its reference to releasing documents involving assets stolen from persecuted persons. For example, documents concerning Swiss or other involvement in the despoliation of Holocaust victims.

A major advance in H.R. 4007 concerns accountability. The burden of denial is for the first time shifted from the researcher to the agency denying his or her request. In addition, the interagency task force is accountable to Congress, so a frustrated researcher can turn to his or her Congressperson. Moreover, the same researcher can request review of the denial under section 552(b) of Title V, U.S.C.

I do hope one change will be made in the proposed legislation. I strongly oppose the unreasonable exemption of any agency, however noble the intent. Inactive files, including those of OSI, must be open to the public. How ironic that under the current version of H.R. 4007, I may gain access to operational CIA files but may be denied access to inactive files stored in the cabinets of the Justice Department entity charged with investigating Nazis and Nazi accomplices who illegally gained access to the United States!

Except for this exemption, I strongly support the initiative undertaken by Representative Maloney and her bipartisan colleagues. If H.R. 4007 becomes law, we will not only learn a lot about suspect persons, but we will also discover how our Government used them, exposed them, or ignored them. Our history of the cold war will become that much more complete. If all goes well this legislation may mark the biggest breakthrough for researchers dealing with the Nazi era and the Holocaust since the Nuremberg trials themselves.

Scholars, historians, and journalists will all benefit, but the major beneficiary will be the American people. We all need to know the full story of individuals who helped the Nazis, and of officials who possibly colluded with these perpetrators after the war. We owe this to ourselves and to the memory of the victims of the Nazi killing machine.

Finally, Mr. Chairman, as a researcher I want to pay tribute to Representative Maloney, whose insistence upon righting past wrongs has brought much credit to her and to the institution of Congress. I would also like to thank Senator DeWine for his eloquent testimony on behalf of this legislation, and also once again commend Elizabeth Holtzman, without whose amendment probably nobody would be inquiring into this today. That was a tremendous advance and it led to the establishment of OSI and brought us a lot of knowledge about these terrible chapters in our past.

I too, Representative Maloney, wish to praise the work of A.M. Rosenthal, who, more than most journalists, has fought to amend FOIA so as to enable researchers to discover the whole historical truth. As a fellow academic, I want to thank Mr. Horn for convening this session and Mr. Sessions for presiding in his absence, and for your past support for measures intended to improve FOIA and help researchers.

I will be glad to answer any questions, Mr. Chairman.

[The prepared statement of Mr. Herzstein follows:]

Statement in support of H.R. 4007, by Professor Robert E. Herzstein, before the Subcommittee on Government Management, Information and Technology of the U.S. House of Representatives, July 14, 1998

Mr. Chairman, distinguished members of the Subcommittee:

Thank you for inviting me to testify here today. I have a statement which I would like to submit for the record.

I am here on my own behalf, but the many historians and researchers with whom I have discussed FOIA reform strongly support your initiative.

Our country is unique in having a Freedom of Information Act. We treasure it as a tribute to an open society. But it needs to be improved.

Two years ago, I testified before this subcommittee in support of H.R. 1281. Eventually signed into law by the President, that legislation represented an improvement over its predecessors. But it is clear that despite the efforts of its bipartisan supporters, H.R. 1281 contained some of the same loopholes that had undermined prior laws governing researcher access under the Freedom of Information Act. I wish that the CIA had not opposed the elimination of those loopholes, but the agency did, and it prevailed. So if I repeat some of the language I used in 1996, it is only because that legislation has failed to remedy some of the problems addressed by the far superior H.R. 4007.

Let me tell you about the case that brings me here today. For almost ten years, I have been told that national security concerns prevent me and the public from learning more about the involvement of this government in Kurt Waldheim's postwar career and cover-up. But I can tell you this: For at least twenty-eight years, individuals working for at least two agencies protected Waldheim and propagated false information about him.

What national security interest justifies the protection of Kurt Waldheim, five decades after his initial contacts with U.S. intelligence officials?

As a result of the research conducted by myself and others, Waldheim was in 1987 placed on the "Watch List." This decision was mandated by the Holtzman Amendment, which mandates the listing of persons who committed or facilitated atrocities, such as illegal deportations and other persecutions, which were carried out by or on behalf of Nazi Germany or its allies. Such persons are properly covered under the legislation you are considering in H.R. 4007.

The small amount of documentation I have obtained from State and CIA reveals a pattern of protection. But why did U.S. officials protect a man like Kurt Waldheim? Especially when war crimes lists produced by and for the Department in 1948 listed Waldheim as an accused war criminal?

The CIA, in one of the few documents it has released on this case, admits that Waldheim was "particularly effective in confidentially working out Austrian formulations acceptable to the United States." Had there been a tradeoff, silence about his activities during the war, in return for cooperation? Until H.R. 4007 becomes law and is put to work, we will not know.

Under Title VII, Section 701 (b) of the CIA Information Act (passed by the Congress in 1984, see 50 U.S.C. 431, "Protection of Operational Files of the Central Intelligence Agency"), "operational files" of the Agency may be exempted from the Freedom of Information Act. The President's executive order of 1996, which was a step in the right direction, nevertheless left these major exemptions in place. And at the CIA's assistance, H.R. 1281 failed to remedy the problem. Judicial review was nowhere to be found. But back to the Waldheim case.

The CIA's 1980 report to a Congressman who had inquired into Waldheim's biography, cleared Waldheim. Its letter contained inaccurate information which to my knowledge did not then or now exist in what the agency calls "open source materials." The CIA had collaborated with Waldheim in the production of parallel alibis. How do we obtain the full truth, hidden somewhere in agency files?

As I read the bill before us, the proposed Nazi War Criminal Records Interagency Working Group crafted by H.R. 4007 will examine classified records relating to Nazi war criminals and other persons involved in various acts of persecution, and will declassify them in a manner consonant with national security and legitimate intelligence concerns.

The newly available records will then be moved to Archives II in Maryland, where they will be completely open to researchers.

It is my understanding that all records concerning, say, Waldheim, not just documents about him, will be declassified. In other words, postwar documents detailing U.S. government dealings with suspect individuals will be among those released to the public through the Archives.

The language of H.R. 4007 wisely follows that of the Holtzman Amendment (Section 3, and see above).

Another strength of the bill is its reference to releasing documents involving assets robbed from persecuted persons, e.g., documents concerning Swiss or other involvement in the despoliation of Holocaust victims.

A major advance in H.R. 4007 concerns accountability.

The burden of denial is for the first time ever shifted from the researcher to the agency denying the request.

In addition, the Interagency Task Force is accountable to Congress (page 8), so a frustrated researcher can to turn to his/her Congressperson. In addition, that the same researcher can request a review of the denial under section 552 (b) of title 5, U.S.C.

I do hope one change will be made. I strongly oppose the unreasonable exemption of any agency (page 9, 4A), however noble the intent. Inactive files must be open to the public. How ironic that under the current version of H.R. 4007, I may gain access to operational CIA files on a Nazi accomplice, but may be denied access to inactive files stored in the cabinets of the Justice Department entity charged with investigating Nazis and Nazi accomplices from Eastern Europe who illegally gained access to the United States!

Except for this exemption, I strongly support the initiative undertaken by Representative Maloney and her bipartisan colleagues. If H.R. 4007 becomes law, we will not only learn a lot about suspect persons, but we will also discover how our government used them, exposed them, or ignored them. Our history of the Cold War will become that much more complete.

If all goes well, this legislation may mark the biggest breakthrough for researchers dealing with the Nazi era and the Holocaust since the Nuremberg trials themselves.

Reams of documents will be uncovered and revealed, but unlike the Nuremberg tribunal, the task force will also be responsible for declassifying materials dealing with postwar machinations conducted for reasons related to the Cold War.

Scholars, historians, and journalists will all benefit, but the major beneficiary will be the American people. We all need to know the full history of individuals who helped the Nazis, and of officials who possibly colluded with these perpetrators after the war. We owe this to ourselves, and to the memory of the victims of the Nazi killing machine.

Finally, as a researcher, I want to pay tribute to Representative Maloney, whose insistence upon righting past wrongs has brought much credit to her and to the institution of Congress. I also wish to praise the work of A.M. Rosenthal, who more than most journalists has fought to amend FOIA so as to enable researchers to discover the whole historical truth. And as a fellow academic, I wish to thank you, Mr. Chairman, for convening this session, for your past support for measures intended to improve FOIA and help researchers.

Mr. SESSIONS. Thank you very much. Our next panelist, Ms. Holtzman, your name has been mentioned prominently. It is obvious to me that, although I am a new Member of Congress, that it is very apparent that work many times takes years before you see the results. So I hope that this is almost a bittersweet day for you to know that Carolyn Maloney is carrying that torch that you ignited, and so it is with great admiration that I welcome you to our panel today, Ms. Holtzman.

Ms. HOLTZMAN. Thank you very much for your kind words, Mr. Sessions. I am very honored by them. I would ask that my testimony in its entirety be included in the record.

Mr. SESSIONS. Without objection, so ordered.

Ms. HOLTZMAN. Let me begin, Mr. Chairman, by thanking you and the other members of the subcommittee, and Chairman Horn.

As I said in my testimony, as a history professor, I know all too well how crucial truth is to democracy and to the advancement of human rights, and most of all I want to thank Representative Carolyn Maloney who has never given up.

I think any Member of Congress understands how much time it can take to get legislation through, no matter how worthy, and requires, most of all, just sheer bulldoggedness and never giving up. I want to congratulate her for her vision and stamina and all of the members of this subcommittee for not giving up either.

If I may say, Mr. Chairman and members of the subcommittee, the benefit of this legislation is not just the truth in the abstract, and not just to victims of the Holocaust and their families, it is also to the families of the Americans who fought and died in World War II, to understand what their Government did both during and after the war. They are entitled to know the truth. And it is also for the benefit of all American citizens who need to know that their Government can't keep secrets from them forever.

Mr. Chairman, in 1992, CIA promised me in a letter from the then-deputy director, that the Nazi war crimes files in its archives would be made public. It is now 6 years later and that has not happened. The President of the United States issued an Executive order calling for disclosure of materials that were no longer national security or secret, but that has not meant that the Nazi war crimes files have become public.

This legislation is a vital step forward in telling the American people—in fact, in fulfilling the compact of democracy with the American people that the truth will come out, no matter how embarrassing, no matter how ugly, and no matter how heroic; and certainly there were heroes in our Government and elsewhere who stood up for what was right.

Mr. Chairman and members of the subcommittee, I enthusiastically and wholeheartedly support this bill. I want to thank Senator DeWine, Senator Leahy, and other Members of the Senate who have supported it.

I do, however, have some suggestions that I would make with regard to drafting, and the reason for these suggestions is simply because, as I believe Chairman Horn and others have noted, sometimes the opposition to public disclosure has nothing to do with embarrassment, but simply inertia. In the past history would just have a culture of secrecy, and for that reason I believe it is crucial

to clarify some matters, and I have outlined them in my testimony and I would like to state them here.

I am very concerned about a 3-year deadline, or in fact any deadline. While the Interagency Group may recommend declassification, there is no deadline for the agencies to in fact declassify. I think it is going to be up to Congress to enforce it, but maybe there can be stricter language requiring agencies to respond.

In addition, it is unclear as to what happens after the Interagency Group vanishes in 3 years. There may still be classified materials in OSI files and other agencies that they may want to declassify. What is the procedure after this agency expires? I am very sympathetic to sunsets and I am also very sympathetic to a short timeframe for action, but that can also be a vehicle for frustrating the objective.

I am concerned that the definition of Nazi war crimes records may focus only on records dealing with individuals and not records dealing with policies. For example, if there was a government document, say, authorizing working with former SS officers, would that clearly be covered because no specific SS officer is mentioned? We need to clarify that point.

And I am also concerned about the exemptions from public release. Do we really care about the privacy of Nazi war criminals or are we more concerned about the privacy of third parties who may have legitimate privacy issues and interests?

Further, and most disturbing, is the exemption for sources of intelligence and methods. An intelligence source, to followup on what Dr. Herzstein said, might be Kurt Waldheim.

Therefore, the CIA, under the terms of this legislation, could exempt his records. Clearly, I would assume that this legislation does not mean to exempt intelligence sources where those sources are Nazis themselves or Nazi war criminals themselves. I would hope that that would be clarified.

In addition, with respect to funding issues, members of the committee, I would just simply suggest that the moneys not be taken from the Department of Justice's budget to fund OSI. I think that could create tremendous friction between DOJ and OSI. We need, given the passage of time, cooperation in terms of OSI being able to accomplish its mission.

Mr. Chairman, with the terrible specter of war crimes we still see among us, our Government cannot press for justice in those cases and continue to cloak in secrecy and silence its connections with Nazi war criminals. There can be no more secrets about Nazi war crimes and those who engage in them. There can be no more secrets about Nazi gold or the seizure of property from persons by the Nazis. The whole truth must come out. I urge the passage of this important bill with the strengthening provisions I have urged.

Thank you.

[The prepared statement of Ms. Holtzman follows:]

Let me begin by thanking the chair and members of the Subcommittee for the opportunity to appear before you to testify on H.R. 4007, the Nazi War Crimes Disclosure Act. I an honored to be here.

First of all, the distinguished Congresswoman from New York, Carolyn Maloney, the sponsor of H.R. 4007, deserves tremendous credit for introducing this bill. Opening US files on Nazi war criminals is a crucial objective. Rep. Maloney has been fighting for several years to make these files available to victims of the Holocaust, scholars, journalists and the public. Fortunately for us, she has never given up, despite all the obstacles put in her path. Everyone in this country who cares about finding out the whole story of Nazi war criminals--and our government's involvement with them--owes her an enormous debt of gratitude.

I also want to acknowledge the important role of the Chair of this Subcommittee, the Honorable Stephen Horn, who is a co-sponsor of this legislation. As a historian he knows the importance of truth to a free society. I congratulate him as well as the other members of this Subcommittee for their support of this legislation.

The genesis of my concern about this problem goes back many years to 1974, when as a member of Congress, I discovered that the US government had a list of more than fifty alleged Nazi war criminals living in the United States and was doing nothing about them. (Others later estimated that as many as ten thousand Nazi murderers came to our country.) I felt it was critical to put into place a mechanism to locate these Nazis, expel them, and bring them to justice. Our country could not be a haven for mass murderers. America fought Hitler in World War II. Tens of thousands of Americans gave their lives to defeat the Nazis; countless others were wounded in that effort. To have Hitler's henchmen living here in peace and enjoying the benefits of our society was an affront to the memory of those Americans and their families; it was also an affront to the victims of the Holocaust, and to all decent- minded Americans. How, too, could our government effectively fight for human rights if it tolerated the presence of these murderers on our shores? The message to the would-be mass murderers of the future was, in the end, the world just wouldn't care.

I spent the next seven years working to undo the situation. Our laws on deportation of Nazi war criminals were strengthened. A special unit, the Office of Special Investigations, was created and placed in the prestigious Criminal Division of the Department of Justice. OSI was charged with one mission--to track down Nazi murderers among us and see that they were brought to justice. Proper funding for OSI was put into place, at least at the outset. Under pressure from Congress, our government began to look for evidence in Nazi cases wherever it might be found, including the Soviet Union and Israel.

The results have been remarkable. Despite the fact that the murders took place so long ago and evidence is so difficult to collect, OSI has expelled more than 50 Nazi war criminals from our shores. And the "watch list" prevents others from entering. No Nazi murderer living in America today is safe.

In the 1970's we did not know how most of those Nazis got here or why they were permitted to remain. But finding the answers was a luxury we could not afford. Because of the age of these

Nazi war criminals, and because time was not on our side, the first priority was to get our government moving on the issue of investigating and deporting them. Then we could get the answers to what our government's role was with regard to them. That time has long since come. But we still don't have the answers.

Over the years, there have been many indications that our own government was working with Nazi war criminals. For example, a General Accounting Office report issued in the 1970's pointed out that some twenty Nazi war criminals had been employed by US government agencies which knew the allegations against them. But the report did not disclose the names of those Nazis, the work they did, why they were hired--and it was not complete. There were hints in other cases of intelligence agency involvement. But we could never get the the whole story.

In the 1980's, the issue came up again, this time in the case of Klaus Barbie, the so called "Butcher of Lyons." An SS officer responsible for the deaths of countless Jews and French resistance fighters, Barbie, according to a Justice Department report, had been employed by the US government after World War II. US government officials spirited Barbie out of Europe to South America in order to avoid having him captured by the French who wanted to try him for war crimes. US government officials were so eager to help Barbie that they committed US crimes to do so. How many other Klaus Barbies were there that US officials employed or helped escape justice? To this day we do not know the answer.

Another case involves Kurt Waldheim, former Secretary General of the United Nations. He has been barred from entry into the United States because of information that came to light (including information in the UN's own files) showing that Waldheim may have participated in war crimes in the Balkans and Greece. Given Waldheim's background, why did the US support his becoming Secretary General? If our government truly did not know about his background, what does that say about the quality of US intelligence?

The American people are entitled to the answers to these questions about our government's involvement with Nazi war criminals after World War II.

Amazingly, our executive branch on its own has not opened its files on Nazi war criminals. Here we are, fifty-three years after the end of World War II and our own government still wants to keep us in the dark about this sorry chapter in our country's history. Ironically, the former Soviet Union has opened it archives, Eastern European countries have done so, even Argentina has begun to open its files on Nazis. Why are ours still closed?

Even the Central Intelligence Agency conceded, in theory at least, that the files should be open. In 1992, in response to a letter from me, Admiral Studman, the deputy director of the CIA, promised that secret files on Nazi war criminals would be opened to historians' scrutiny. But six years have gone by and those files are still not open.

A little over two years ago, this Subcommittee considered the same issue. Representative Carolyn Maloney introduced H.R. 1281, the War Crimes Disclosure Act. The CIA blocked its passage.

Nazi war criminals, and because time was not on our side, the first priority was to get our government moving on the issue of investigating and deporting them. Then we could get the answers to what our government's role was with regard to them. That time has long since come. But we still don't have the answers.

Over the years, there have been many indications that our own government was working with Nazi war criminals. For example, a General Accounting Office report issued in the 1970's pointed out that some twenty Nazi war criminals had been employed by US government agencies which knew the allegations against them. But the report did not disclose the names of those Nazis, the work they did, why they were hired--and it was not complete. There were hints in other cases of intelligence agency involvement. But we could never get the the whole story.

In the 1980's, the issue came up again, this time in the case of Klaus Barbie, the so called "Butcher of Lyons." An SS officer responsible for the deaths of countless Jews and French resistance fighters, Barbie, according to a Justice Department report, had been employed by the US government after World War II. US government officials spirited Barbie out of Europe to South America in order to avoid having him captured by the French who wanted to try him for war crimes. US government officials were so eager to help Barbie that they committed US crimes to do so. How many other Klaus Barbies were there that US officials employed or helped escape justice? To this day we do not know the answer.

Another case involves Kurt Waldheim, former Secretary General of the United Nations. He has been barred from entry into the United States because of information that came to light (including information in the UN's own files) showing that Waldheim may have participated in war crimes in the Balkans and Greece. Given Waldheim's background, why did the US support his becoming Secretary General? If our government truly did not know about his background, what does that say about the quality of US intelligence?

The American people are entitled to the answers to these questions about our government's involvement with Nazi war criminals after World War II.

Amazingly, our executive branch on its own has not opened its files on Nazi war criminals. Here we are, fifty-three years after the end of World War II and our own government still wants to keep us in the dark about this sorry chapter in our country's history. Ironically, the former Soviet Union has opened it archives, Eastern European countries have done so, even Argentina has begun to open its files on Nazis. Why are ours still closed?

Even the Central Intelligence Agency conceded, in theory at least, that the files should be open. In 1992, in response to a letter from me, Admiral Studman, the deputy director of the CIA, promised that secret files on Nazi war criminals would be opened to historians' scrutiny. But six years have gone by and those files are still not open.

A little over two years ago, this Subcommittee considered the same issue. Representative Carolyn Maloney introduced H.R. 1281, the War Crimes Disclosure Act. The CIA blocked its passage.

We have all seen the extraordinary revelations about Nazi gold produced by the remarkable efforts of the Honorable Stuart Eizenstadt, Undersecretary of State. I believe that a similar story lurks in our government files about Nazi war criminals, but it will only be told if this bill is adopted--and the provisions are strengthened as I suggest below. Unfortunately, my experience in the past has been that too many government agencies want to hide any information that might be embarrassing or troublesome. That has certainly been the case in this area. That is why the executive branch and particularly the intelligence agencies must be compelled to act.

I would like to point out several drafting issues that could impede the bill's effectiveness. Let me note, as well, that I stand ready to assist the subcommittee in rectifying these technical points. Here are some of the problems:

1. Members of the Interagency Group. Sec. 2 (b) (2). There should be a provision for designating the chair of the Group. Further, it is not clear whether the President must pick the Historian of the State Department, the Director of the Holocaust Museum and the Archivist of the United States as members of the Group, or whether the President may choose none, one or two of them. It is also not entirely clear whether the other three members of the group must be government employees.

2. Deadlines for the Interagency Group. The Interagency Group is created for a three-year period only, Sec.2(b)(1), but the deadline may create some serious problems. I am sympathetic to the pressure the deadline places on the Interagency Group for action and to the idea of "sunsetting" a new bureaucratic entity. But, the deadline also creates a major incentive for delay on the part of any agency wishing not to disclose any Nazi record or records. In addition, it is not clear what happens when the three-year period expires. If there are records, for example, that OSI might not need any longer, or additional documents are discovered, how are they released to the public? Further, while the Interagency Group must take certain specific actions within one year, it does not have to meet for three months after the bill takes effect Sec. 2(b) (3). I would suggest that the three-month period be cut to 30 days at the maximum, especially if the present deadlines are kept. I would also suggest that the Interagency Group be required to report to Congress at least annually throughout its existence.

3. Absence of Deadlines for Government Agency Action. While the Interagency Group must identify and recommend declassification within one year, Sec. 2 (c), there is no deadline for the agency responsible for the declassification to act on the recommendation. A deadline for agency action should be imposed. A question is raised by the absence of such a deadline and the existence of the three-year deadline on the Interagency Group--what happens if the declassification recommendation is still not acted on after three years and the Interagency Group no longer exists?

4. Lack of Power of Interagency Group to Require Declassification. It seems that even if the Interagency Group believes that the agency's request for an exemption from

declassification is erroneous, it has no power to require the agency to declassify. It is not even clear that the Group will be able to see the basis for the agency's claim for an exemption. I believe that the Interagency Group should be fully apprised of the reasons and basis for any agency's exemption claim and should be empowered to challenge, and reject, the claim.

5. Nazi War Crimes Records. As drafted, Nazi war crime records include only those records naming a specific Nazi war criminal. The bill should not be limited in this way. The bill apparently would not cover, for example, any records containing government directives, policy memoranda or the like, dealing in general with former Nazi war criminals without mentioning any specific name(s). One small point, the word "classified" on p.3, line 23 should be deleted. It is confusing since Nazi war criminal records are already defined as being classified.

6. Exemptions from Public Release. Some of the exemptions are extremely broad and may provide an easy escape hatch for agencies reluctant to declassify Nazi information. This is particulary true for Sec. 3(b)(2)(G), which exempts information that would allegedly impair diplomatic interests of the United States. I would also suggest that the exemption for personal privacy, Sec.3(b)(2)(A), be available only when it applies to a third party who is not a Nazi war criminal. In addition, the exemption for intelligence sources and methods, Sec. 3(b)(2)(B), should apply only to US sources and methods, not Nazi sources and methods, or sources or methods of any other country, and only if the human source (1) is still living and disclosure would endanger his or her life, and (2) is not a Nazi war criminal. There should be a blanket exemption on methods used more than 25 years ago. As written, this exemption for intelligence sources could conceivably be used to ban disclosure of records on Klaus Barbie and Kurt Waldheim (if he had been given the US information). As such, it is an exception that could swallow up the rule.

7. The Asset Provisions. There are several issues in the drafting of Sec. 3(a)(2)(A), which pertains to assets of persecuted persons, as presently drafted. Thus, the phrase "by, under the direction of...or any nation then allied with that government" (p.5, lines 17-21) should be placed after the word "assets" on line 15. Unless that change is made, the current section might not cover assets of persecuted persons in the hands of so-called neutral countries. Furthermore, it is unclear why that phrase does not track the language of Sec. 3(a)(2) (A)-(D). Even if the foregoing changes are made, the language of the section should be closely examined to ensure that it covers assets taken from persecuted persons in the hands of neutral or non-Axis nations or institutions.

8. Funding. The Congressional Budget Office recently determined that it will cost between $2-3 million to carry out the provisions of H.R. 4007. This money must be appropriated and it should not be taken out of the Department of Justice's regular budget allocation, as I am informed is likely to be the case. If that happens, it will engender unnecessary friction between OSI and DOJ.

* * *

Two years ago, I testified as follows to the Subcommittee: "With the terrible spectre of war crimes in Bosnia and Rwanda--not to mention the genocide in Cambodia--how can our government press for justice in these cases and continue to cloak in secrecy and silence the story of its connection with Nazi war criminals? The sooner we get the government's dirty linen out in public the more Americans will have the moral authority to press other nations to stand up to genocide today." These words are just as relevant today.

There can be no more secrets about Nazi war crimes and those who engaged in them. There can be no more secrets about Nazi gold or the seizure of property from persons by the Nazis. The whole truth must come out.

I urge passage of this important bill, with the strengthening provisions I proposed.

Mr. SESSIONS. Thank you so much. The testimony thus far highlights to me something I have always thought, and that is the best disinfectant is the light of day. I think each of you could have said that same thing, but I have always believed that. Certainly something else is, let the chips fall where they may, which would highlight your testimony also.

Mrs. Maloney, do you have anything?

Mrs. MALONEY. I would like to thank my colleague from New York for the battle on this bill and the other battles and for her important work on it.

I would just like to comment that given the fact we are so into the session, if there is anything changed in it, the likelihood of passing it becomes minuscule. As you know, we have a huge hurdle ahead of us in securing $2 million on the House side. So even though it is not perfect, believe me, when Senator DeWine first started working on it, there were many objections and you were part of those objections.

But we have fashioned a bill that he secured the support, we have secured the support of the Intelligence Community, which is very important; and I would just suggest, even though it is not perfect, we had better move forward because we still have the $2 million hurdle ahead of us.

Hopefully, people such as yourselves, Ms. Holtzman and Dr. Herzstein, will be appointed by the President on this interagency council so that we can really watch and make sure, Mr. Bloomfield, that things are done right. But I am afraid if we change it at this point, even with the important strengthening proposals you put forth, it might mean it wouldn't be passed in this session, as you well know.

Ms. HOLTZMAN. Representative Maloney, something is better than nothing; and this is not just something, it is not even half a loaf. It really goes a long way to opening the process. I am just mindful that the burden is going to place on all of you on this committee to follow through and make sure that the agencies of government really open their files. It is critical to move forward.

And by the way, some of these points can be taken care of, I believe, in committee report language or potential language on the floor.

Mrs. MALONEY. We will certainly work very hard with Senator DeWine, who mentioned he would work on strong report language, and we will welcome your input, all of the panel's input into strengthening language. But at this point, I don't even want to change a comma, except for clarifying language; because to get us as far as we have from where we began is not enough, but a good strong journey, and I want us to continue on it, and certainly in our language and our oversight, continue with, as you said, bulldogged determination.

Mr. SESSIONS. Mr. Bloomfield, you have now heard a short discussion about how emotional this really is. I want to thank you for being here and to commend your organization. The World Jewish Congress is an organization that the Congress of the United States has admiration for, and we are pleased to hear your testimony today.

Mr. Bloomfield.

Mr. BLOOMFIELD. Thank you very much, Mr. Chairman. I request that the full testimony be entered into the record and I will try to summarize it.

Mr. SESSIONS. Without objection, so ordered.

Mr. BLOOMFIELD. I would like to thank you and this committee on behalf of Edgar Bronfman, the president of the World Jewish Congress, for this opportunity to testify on behalf of H.R. 4007, the Nazi War Crimes Disclosure Act. I hope it was an accident when you picked that number.

I want to commend this subcommittee and this committee, Chairman Horn and his staff in particular, for their crucial support and interest in exposing the truth about the perpetrators of Nazi crimes. Like my colleagues, I particularly wish to salute Representative Maloney for her outstanding leadership and, with her very able staff, for years of work in preparing and improving this legislation and fighting to shine the light of public disclosure on one of the worst crimes in the darkest eras in human history.

I also wish to pay tribute to Senator DeWine and his staff for their valuable leadership and the hard work in the Senate and the passage of companion legislation S. 1379 and, also, the Senator's commitment to continued oversight. We also wish to express our appreciation to Senators Pat Moynihan and Pat Leahy and to Congressman Tom Lantos, a senior member of this committee, and all the sponsors of both bills. I also wish to express on behalf of the World Jewish Congress our admiration and appreciation to the National Archives and its many wonderful, dedicated people who, without their work, and especially that of Dr. Greg Bradsher, so much of what we have learned would still be hidden away.

We enthusiastically share the goal of this legislation and of full disclosure. We are aware of the resistance you have encountered in some circles, particularly in the Intelligence Community, and we note with satisfaction provisions in the legislation for judicial review and ongoing congressional oversight to guarantee the viability of the process and the legislation and its intent.

For the survivors of the Holocaust, the clock has become the greatest enemy. They had to wait far too long, and we particularly commend provisions in this act to expedite their Freedom of Information Act requests in particular. Our concern, like yours, is that the process of disclosure must not impede the work of the Department of Justice's Office of Special Investigations, which also races against that same clock. OSI is already burdened with an enormous and obviously time-sensitive workload in its ongoing efforts to investigate and prosecute Nazi war criminals. No agency of our Federal Government has done more for the cause of righting historic wrongs than the OSI, and we want to be certain that they will be able to continue this vital work unimpeded. We are pleased that the subcommittee and the Senate sponsors share that view and have recognized in this bill the need for that work to continue.

With present resources in staffing, it would be overburdened by being required to review enormous quantities of documents, particularly those submitted by other agencies wishing to make sure their documents do not fall under the bill's exemption for OSI-related documents.

This job requires highly trained professionals, who are difficult to find, and would take away those on the OSI staff for the more urgent responsibility of prosecuting war criminals. If OSI researchers and prosecutors are diverted from their primary responsibility, the unintended impact of this legislation could be to let Nazi war criminals escape. Therefore, we consider it essential that adequate additional funds be appropriated for OSI and the other Federal agencies principally responsible for carrying out the mandate of this legislation, such as the FBI, the INS, State, Defense, the National Archives, and the CIA.

We note with satisfaction Senator DeWine's work with the Senate Appropriations Committee in having $2 million added to the budget of OSI. But it is not enough to shuffle existing funds while adding to the responsibilities of agencies. Many of these agencies have FOIA backlogs several years long. The FBI, I believe, has a 4-year backlog. The Congress should not be adding to their burden without providing realistic resources necessary to do that which you are asking them for.

On the subject of funding, the World Jewish Congress wishes to emphasize the importance of the Congress' demonstrating its commitment to this historic undertaking by allocating new funds to go along with new responsibilities, to make it possible to successfully complete this mission. Merely ordering agencies to make do by finding money in their existing budgets is not an acceptable approach, instead it is a prescription for further delay, if not failure.

If this project is worth doing—and, Mr. Chairman, we feel extremely strongly that it certainly is worth doing and is very commendable—then it is worth paying to have it done properly. We are looking forward to the release of important information from the Interagency Group, but in order to make that happen, the resources have to be made available.

Once again, Mr. Chairman, we in the World Jewish Congress wish to commend this subcommittee, Chairman Horn, Mrs. Maloney and members of the subcommittee and staff for your efforts to raise this issue and to improve the legislation to what it is today, and we stand ready to assist in any way possible.

Thank you.

[The prepared statement of Mr. Bloomfield follows:]

Testimony

Committee on Government Reform and Oversight
Subcommittee on Government Management Information and Technology

H.R. 4007, The Nazi War Crimes Disclosure Act

World Jewish Congress
Douglas M. Bloomfield
Washington Representative

July 14, 1998

Mr. Chairman, on behalf of Edgar M. Bronfman, the president of the World Jewish Congress, and Dr. Israel Singer, the Secretary General of the World Jewish Congress, I want to thank you for this opportunity to testify in support of H.R. 4007, the Nazi War Crimes Disclosure Act, and to commend you and your staff for your crucial support and your interest in pursuing the truth about the perpetrators of Nazi crimes. I particularly wish to salute Representative Carolyn Maloney for her outstanding leadership and, with her very able staff, for years of effort in preparing and improving this legislation and fighting to shine the light of public disclosure on one of the darkest eras in human history. I also wish to pay tribute to Sen. Mike DeWine for his invaluable leadership and hard work in the Senate in the passage of the S. 1379, the companion bill to H.R. 4007.

We also wish to express our appreciation to Senators Pat Moynihan and Pat Leahy, and Congressman Tom Lantos, and all the sponsors of both bills for their dedication to disclosure of Nazi war crimes records.

My name is Douglas Bloomfield, and I am the Washington Representative of the World Jewish Congress. The WJC is an international federation of Jewish communities and organizations representing 80 nations on six continents, and it serves as the multinational representative of world Jewry. Combatting the persecution of Jews around the world has been a key part of our mission for more than six decades. Before the world knew of the Holocaust that was brewing in Germany, we were fighting persecution and working to save Jewish lives. Today, we continue to devote much attention to the principles on which we were founded, strengthening the spiritual survival of dispersed Jewish communities in an era of emancipation.

Our landmark efforts, under the leadership of WJC President Edgar Bronfman, to unearth the full truth about the fate of gold and other assets looted by

the Nazis and their acolytes, evidences in a very dramatic fashion our abiding commitment to this quest for historical truth.

We have worked with many agencies of the United States Government during those decades to rescue the victims of the Holocaust, to protect and preserve their memory, to make certain reparations and restitution are made to them, and to help bring to justice those responsible for what we know as most likely the most diabolical crime in recorded history. We have long sought full and prompt public disclosure of the historic record. After waiting more than half a century, disclosure can no longer be called prompt, although we continue to be amazed by the delays and obstacles we continue to encounter, including right here in Washington, but hopefully this bill will be passed by this Congress and signed into law by the President so that we can move closer to full disclosure.

We are particularly impressed by the broad bipartisan support given to this cause by both Houses of the Congress and the excellent cooperation between the Legislative and Executive branches of our government.

No agency of our federal government has done more for the cause of righting historic wrongs than the Office of Special Investigations of the U.S. Department of Justice, and we want to be certain it will be able to continue its vital work. We are pleased that this subcommittee and the Senate sponsors of this legislation share that view and have recognized in this bill the need for that work to continue the vital work that it has done so effectively that it has become the only war crimes unit in the world to win awards from survivor groups and major Jewish organizations, and has been termed by the Washington Post "the world's most aggressive and effective Nazi-hunting operation" — one that, as USA Today has reported, "boasts a tremendous success record, [having[won more cases than any other Nazi-hunting operation in the world."

Mr. Chairman, I would like to take this opportunity also to express the World Jewish Congress' profound appreciation to Attorney General Janet Reno and Deputy Attorney General Eric Holder for the strong backing both have personally given to OSI and its mission.

We enthusiastically share the goals of this legislation, full disclosure. We are aware of the resistance you have encountered in some circles, particularly the intelligence community, and note with satisfaction provisions in the legislation for judicial review and ongoing Congressional oversight to guarantee the viability of this process and this legislation.

For the survivors of the Holocaust, the clock has become the greatest enemy. They have had to wait far too long, and we particularly commend provisions of this act to expedite their Freedom of Information Act requests in particular.

Our concern, like yours, is that the process of disclosure must not impede the work of OSI, which races against that same clock. OSI is already burdened with an enormous and obviously time-sensitive workload in its ongoing efforts to investigate and prosecute Nazi war criminals.

With present resources and staffing it would be overburdened by being required to review enormous quantities of documents, particularly those submitted by other agencies wishing to make sure documents do not fall under the bill's exemption for OSI-related documents. This job requires highly trained professionals, which are difficult to find and would take away those on the OSI staff from the more urgent responsibility of prosecuting war criminals.

If OSI researchers and prosecutors are diverted from their primary responsibility, the unintended impact of this legislation could be to let Nazi war criminals escape.

Therefore, we consider it essential that adequate *additional* funds, new money, be appropriated for OSI and the other federal agencies principally responsible for carrying out the mandate of this legislation, such as the FBI, the INS, the Department of State, the Department of Defense, the National Archives and the CIA. Many of them have FOIA backlogs of several years. The Congress should not be adding to their burden without providing the resources realistically necessary to do what you want them to do.

On the subject of funding, the WJC wishes to emphasize the importance of the Congress demonstrating its commitment to this historic undertaking by allocating separate funds to make its successful completion possible. Merely ordering agencies to make do by finding money in their existing budgets is *not* an acceptable approach; it is, instead, a prescription for further delay if not failure. If this project is worth doing — and, Mr. Chairman, the World Jewish Congress, feels strongly it is — then it is worth paying to have it done properly.

We are looking forward to the release of important information from the Interagency Group, but in order to make that happen the resources have to be made available.

It is also our hope that the legislative history of this bill will contain guidance from the Congress as to what search methodology the legislative branch would find acceptable. The identities of many if not most of the perpetrators of Holocaust crimes are not known and almost certainly never will be known; names often were not recorded, particularly in Eastern Europe, where most of the killing took place, and where records were kept, the documents were often destroyed. That is also the case for records regarding looted assets, where, for example, someone bought a work or art or other property that was stolen or sold in a coerced transaction.

Once again, Mr. Chairman, we at the World Jewish Congress wish to commend you, Mrs. Maloney and members of the subcommittee and staff for your efforts to raise this issue and improve the legislation to what it is today.

Thank you.

DOUGLAS M. BLOOMFIELD

Douglas M. Bloomfield has been the Washington Representative of the World Jewish Congress since 1993. The WJC is an international federation of Jewish communities and organizations representing 80 nations, and it serves as the multinational representative of world Jewry.

Mr. Bloomfield spent nine years as the legislative director and chief lobbyist for the American Israel Public Affairs Committee (AIPAC). He joined AIPAC after nine years as a senior legislative assistant to Congressman Benjamin S. Rosenthal of New York and a legislative assistant and speech writer for Senator Hubert H. Humphrey. Prior to that, he was on the staff of the Cleveland (Ohio) Plain Dealer and taught college journalism.

Mr. Bloomfield is also an independent consultant and newspaper columnist. He currently writes a syndicated column about the Washington scene for American Jewish publications across the country and for several Israeli and other foreign publications. He appears frequently on American, Israeli and other international radio and television broadcasts as a political analyst.

Mr. Bloomfield holds BA and MA degrees from Ohio State University, where he did doctoral study in legislative government. He was the recipient of several fellowships in political science and journalism. He is the president of the Greater Washington Jewish Community Council.

Mr. SESSIONS. Thank you so much, Mr. Bloomfield.

We will now begin questioning, and I will allow Mrs. Maloney to consume such time as she wishes.

Mrs. MALONEY. I would really like to ask Mr. Bellardo and Dr. Slany, as you know, the bill calls for the Interagency Group to recommend the declassification, and it will include the Archivist, the Historian of the State Department, the Director of the Holocaust Museum, and that the President would then appoint no more than three other people.

If you could appoint the other individuals to the Interagency Group, who would they be and why? I would like to ask the same question to Dr. Slany and Dr. Bellardo, since they are already going to be appointed by the President, then if anyone else on the panel would like to add their ideas of who the three people—additional people should be on the interagency group.

Mr. BELLARDO. Thank you. This is an area where there are others with far more expertise than I. I can only offer a general response at this point, although I would be very happy to get back with you with more specific information.

Certainly, representatives from those groups who have stood as victims in this whole process need to be very prominently represented on such a body, those with research expertise, also members of the historical community. But I would like to have an opportunity to think about that a bit and get back to you with some specific names, if that is possible.

Mrs. MALONEY. Dr. Slany.

Mr. SLANY. Like Dr. Bellardo, the names of specific individuals are not something that I even came here prepared to ponder, but the general category of expertise is clear. Victims themselves ought to be represented, and there needs to be on such a working group outside members from the public. Nothing is more urgent than to add to what Congresswoman Holtzman has referred to, the culture that one usually encounters in the bureaucracy, and I am a bureaucrat, so I know wherein I speak, that public members, two public members, are probably the essential component for any such working group.

Mrs. MALONEY. I would like to ask, obviously such an appointment is going to be very important, responsible, and require an incredible amount of time. Mr. Bloomfield, Ms. Holtzman, Dr. Herzstein, do you have any ideas or would you like to add who you think or what type of people should be appointed as the remaining three to the special task force?

Mr. BLOOMFIELD. I agree with Dr. Slany and Mr. Bellardo, it is very important that the representatives of the victims who have the most concern and the most impact be represented. I would like the opportunity to submit to you, if you are looking for specific names.

Mrs. MALONEY. Great. Thank you.

I would really—I believe it was your testimony, Dr. Bellardo, where you talked about opening up files for the Nazi gold issue, and you said you had declassified about 98 percent of the files, and you talked about the remaining 2 percent. Could you shed light on why the remaining 2 percent were not declassified after all? We are talking about events 50 years old. The cold war is over. Why did

we keep—I think you said 400,000 pages were not declassified. Could you shed some light on why they were not?

Mr. BELLARDO. Let me first mention, these 400,000 pages would only represent those materials that have not been declassified that are in our holdings. We really don't have a good handle on what remains outside in the various agencies. It could be a very large number; we are just not sure. But in terms of those that were withheld, it would be, for the most part, due to those standard exemptions that agencies apply.

I think you know, we do not have original declassification authority. We can only operate either under guidance, as in the case of the State Department, with whom we have a fine partnership, or in the case of many of the other agencies that really want to review the documents themselves in virtually every case. And so we refer these documents to each of the agencies that might have equities in them, and then each of them has an opportunity to withhold some of those materials.

I wouldn't want to speak for them, but there are a series of, you know, standard exemptions that are often applied, whether it's sources and methods or intelligence relating to allies and so on and so forth.

Mrs. MALONEY. In the bill, you know that you have become the place where all of this information will be deposited. Do you see any problem with implementing this provision?

Mr. BELLARDO. I think the resource issues for us are going to be in three areas. One will be the involvement in the working group itself, which we certainly are looking forward to; and it just depends on how much material is uncovered, where it leads us. We just really—don't really know what the resource issues will look like.

In terms of going through the process of attempting to declassify this remaining 2 percent of what we have, our estimate is that we are looking at about five FTEs that would be required, and so that would be over and above the $2 million that is being appropriated to OSI. That could get larger, significantly larger, if new materials are turned up, and if the agencies choose not to declassify them before they send them to us. If they just route the records to us and then require us to do the routing around the Government, that would involve a lot of work for our staff as we make the copies, as we route it to them, as we track the material, and then as we open it. That's an unknown because if the materials come to us declassified, it would be much easier.

The last area would relate to when the materials do come to us, assuming they are declassified, how much work would be involved in reboxing them, creating funding aids, and then making them available quickly to the public. Again, we don't have a good number there because we don't know how much will be uncovered. The number we feel comfortable about is what it would take to get the declassification process going and completed on these 2 percent, and that's, we are saying, approximately five FTEs.

Mrs. MALONEY. OK. Thank you.

Dr. Slany, I have more questions.

Mr. Chairman, do you have questions you would like to ask? I will defer to you because he is giving up being with the President

of the United States to be here and share this, and I appreciate that.

Mr. SESSIONS. Let's let the record reflect that I would sooner be with Mrs. Maloney today than with the President of the United States, and that is with great respect to both of those individuals.

Mrs. MALONEY. Well, thank you very much.

Dr. Slany, I know you played a central role in the so-called Eizenstat report, which described, as we all know, the United States and allied efforts to recover and restore gold and other assets looted by the Nazis. Based on your work, do you think there is a great deal more information in the files than our Nation's intelligence agencies about assets looted by the Nazis?

And, really, this legislation is far more sensitive than the Eizenstat report. It's always easier to look at someone way over there, across the seas. It is harder to look at ourselves and be critical of ourselves. So based on the research you have already done, what do you think is there?

Mr. SLANY. Well, I am sure there is more to the historical record. The experience that we had, working on the Nazi gold report, indicated that it isn't, first, a question of declassification; it's a question of identification. The United States accumulated an awful lot of records during and after the war, many of which the agencies themselves are not really aware of. The answer to the problem of Nazi gold was to find leadership on the part of the agencies and real effort on the part of historians and experts to try to identify the material.

What is needed, and I cannot understate this, is a leadership that comes from the heads of the agencies. If they say they want to have something done, it will be found, no matter what the rest of the middle bureaucracy may in the past have been used to responding.

Mrs. MALONEY. Thank you very much.

Dr. Herzstein, I would feel that your personal experiences might shed some insight for the record on your efforts to gain information on Mr. Waldheim, which was reported in some periodicals. But with regard to Waldheim, do you believe that the intelligence agencies still have information regarding his case that has not come to light?

Mr. HERZSTEIN. Yes, I do, Representative Maloney. Several years ago the CIA released to me some materials concerning reports about or contacts with Mr. Waldheim, reports which date back to the 1950's and 1960's and into the 1970's. These documents seemed to be, in a sense, the tip of the iceberg. They seemed to show extreme familiarity with his record and avoidance of aspects of his record which would be embarrassing or compromising either to him or to the U.S. Government, and specifically to the CIA.

The most tantalizing incident dates back not to 1945 but to 1980, and at that point, former Congressman Solarz from New York made an inquiry about Mr. Waldheim to the CIA, asking about his biography before 1945. And what the Congressman received back then was almost a Xerox of the kind of self-serving disinformation that Mr. Waldheim himself had put out. Mr. Solarz asked me, after I became involved for the World Jewish Congress in the Waldheim case—I believe this was about 1987 or 1988—to review the cor-

respondence with the agency and to draft my own suggested questions, which he then forwarded to CIA.

The response of the agency was not only not forthcoming, but if I can just read a sentence or so, since I thought the Waldheim matter might come up here, the CIA, in answering Mr. Solarz's question about open source materials that they allegedly used in preparing their exculpatory biography of Mr. Waldheim, the director of congressional affairs for the agency said in 1987, "Unfortunately, we are not able to identify open source materials the researcher may have used to prepare his 1980 response."

Now, all of this is extremely murky, the reports about Waldheim serving U.S. interests, the disinformation that was provided to Congress in the 1980's. In answer to your question, Mrs. Maloney, it leads me to believe that if this legislation is passed and is monitored and is carried out by able individuals in the task force, we may get answers to the questions that were raised in the 1980's.

Mrs. MALONEY. As you know, it was unusual, but 2 years ago when we had a similar hearing on this bill, it was practically the same day that Mr. Waldheim released his own book, in which he professed his innocence and blamed the World Jewish Congress for his banishment from the United States. And I would just like to know, Dr. Herzstein and Ms. Holtzman and Mr. Bloomfield, what do you think about those claims from Mr. Waldheim?

Dr. Herzstein, what do you think of his—I am sure you read his book. I couldn't believe it. It is the American Jewish community that is banishing me. I mean, what are your comments on his book?

Mr. HERZSTEIN. Very briefly, Representative Maloney, I translated part of that book in preparation for that hearing. I remember, we had a copy in your office and we were in a rush to try to prepare for this.

Mrs. MALONEY. We were getting it faxed from Europe. It had just come out.

Mr. HERZSTEIN. And Mr. Waldheim says he would have been more forthcoming, but this was politically motivated and he realizes now that perhaps he made a mistake. As you say, he blamed the World Jewish Congress and, in a sense, he is right. Had it not been for the energy and the determination to find something out, which was promoted by the World Jewish Congress and backed by them, we might know very little. We might know he was a second lieutenant in the reserves, wounded in Russia, who then studied law, which was his account of his past.

So he, in a sense, goes further than this—and I think people like him show no sense of remorse for having been involved in anything wrong. I speak here as one who has never accused him of being a war criminal. I never accused him of being a member of the Nazi party, but he was involved as a facilitator in deportations and other illegal actions, and he blames American Jews, American Jewish politicians, et cetera, for the fact that basically because he wanted to be evenhanded in his policy toward the Israelis and the Palestinians, that's why all this trouble arose; and if it had not been for his fairness and evenhandedness, he wouldn't have faced any dilemma in confronting his past.

That basically remains, as I understand it, his apology or apologia as it stands in 1998.

Ms. HOLTZMAN. Representative Maloney, one of the points that I think your question raises is, if we understand fully the CIA's relationship with Mr. Waldheim, we may discover that there was a major intelligence blunder, because it may well be that the Russians had exactly the same information about him and they were using it on the other side. And so there are very important questions that arise here, and that's one of the reasons that I have the concern that the agencies don't want to disclose it. Despite letters to me and statements in the past and so forth, that is why this bill is so critical.

How will we ever find out the truth—and the truth is important, as I said in my testimony, not just for the victims, but for all of us to understand how our Government operated, the mistakes it made, the mistakes it didn't make—and bring truth, finally, to this whole enterprise.

Mrs. MALONEY. Dr. Herzstein, in your prepared testimony you talked about reams of documents. Would you like to elaborate? What makes you think that there are reams of documents that have not been declassified?

Mr. HERZSTEIN. I think since that we are talking about several agencies and we are talking in a general sense about records that were accumulated over a period of decades, one can make the reasonable assumption, based upon documents that have been released, that there probably are an enormous number of documents that have not been released. I think—as my colleagues in the government have indicated, we can't be sure; we don't know if there will be a tremendous amount of material or a disappointingly small amount of material. We will never know until this task force finishes its assignment.

But it seems to me if, for example, in the case of the Department of State, which I might say has all along been more forthcoming, at least to me as a researcher in the Waldheim case, there are thousands of documents, maybe more, just dealing with Kurt Waldheim, just from one agency of government. Of course, he was a diplomat, so one can understand part of this. I am sure there are at least hundreds, possibly more, in the case of the Central Intelligence Agency in just this one individual instance.

Now, Waldheim became world famous. But if you consider the many other individuals, by the way, who are worse than him, committed far worse deeds, with whom various government individuals, agents and spies interacted, there may be an enormous amount of material. I think it would be very foolish to try to indicate, you know, how much there is. One more thing I think I share Ms. Holtzman's concern about, is putting a limit on the time involved, because suppose this turns out to be an even more massive task than we suspect it may be. If we put a 3-year limitation on it, I think there is a real concern that some agencies may say, well, if in some ways we can wait out the 3-year period, there will no longer be any pressure on us.

But you put your finger on the key point. Since we don't know the volume of the documentation to be declassified, it is very hard at this point to estimate either its value or its size.

Mrs. MALONEY. When you talk about the volume that may be out there in the agencies, which intelligence agencies do you believe have important information about Nazi war crimes? Obviously, the CIA is the prime candidate. You spoke about the cooperation of State, but there may be smaller agencies. I open it up for the whole panel, but since you have been a researcher in this area, I would just like to direct it to you.

What agencies have you gained information from? What agencies, including the CIA and others, do you think will have information that will need to be declassified?

Mr. HERZSTEIN. In the cases that I am most interested in, I would look at the Department of the Army Counterintelligence Corps, who had very important contacts with some of these individuals in the 1944 to 1946 period in particular.

You mentioned the Central Intelligence Agency. It should be noted, this is the successor agency in a sense to the Office of Strategic Services, so we are talking about a group of records that go back to the wartime period. I think INS had possible areas of interesting contact; National Security Council, which comes into being in the late 1940's and is very careful about releasing any records. This is just from my personal viewpoint, that these would be the agencies of the greatest interest; and I think I mentioned the Department of State.

Ms. HOLTZMAN. May I just add, the FBI, going back to work that was done in the 1970's, I mentioned in my testimony, the General Accounting Office did a preliminary examination and found that there were at least 20 alleged Nazi war criminals hired by United States Government agencies in the allegations against them, and the FBI was one of those agencies as well, so there will be information there.

Mrs. MALONEY. Would anybody else like to add?

Mr. BELLARDO. Among the agencies where we found materials so far, it included even Treasury.

Mrs. MALONEY. Treasury.

Mr. BELLARDO. So it's pretty widespread.

Mrs. MALONEY. I would like to ask the entire panel, and again Dr. Herzstein leading off, if any of you have knowledge of any effort to have an independent review of the United States intelligence agency's—of its contacts with Nazi war criminals or of records it might have in its files about such individuals? Has there ever been such an effort or independent review before done?

Mr. HERZSTEIN. Not to my knowledge, Representative Maloney.

Mr. SLANY. I know of no such group.

Ms. HOLTZMAN. I would say that some of us have been fighting on this for many, many years and that is why this legislation is so important.

If I might just add, you asked us at the beginning who we might suggest for sitting on this committee, and while I don't want to suggest any names, I do think it's going to require at least one or more persons who is prepared to stand up to one of these agencies when they say no, someone who will not be afraid of standing up to the CIA or the State Department or the FBI and say, look, disclosure is more important.

Mr. BLOOMFIELD. Mr. Chairman, you made the point about the value of sunshine as a disinfectant. This committee is the premier oversight committee of this body and the most effective method of making sure that this legislation is carried out is not just in the legislation, not just in the legislative intent and the record, but the continuing tenacity of this committee.

I think that Senator D'Amato has proven to be a great bulldog, and without his tenacity in the investigation of the Swiss banks, we would not be at the point in history where we are today. This committee has an important role to play, and only with that kind of tenacity and continued pressure, continued oversight, can any of this be accomplished, to help reinforce this panel that you are setting up, to make sure they do have the access and that they have the platform on which to stand up and to challenge agencies who are resisting their inquiries, their interests, and the public interest.

Mrs. MALONEY. Thank you for your statement.

I would like to ask Ms. Holtzman, who has worked so hard on empowering government to go after Nazi criminals, do you believe that this law will lead to the identification of new Nazi war criminals that are currently unknown?

Ms. HOLTZMAN. It may very well.

Mrs. MALONEY. Would anyone else like to comment? And then, I would really like to ask Mr. Bloomfield to lead——

Ms. HOLTZMAN. Let me add something else. It may also lead to additional evidence with respect to them, because we just mentioned a case, I put a statement in the Congressional Record about this in 1980, I believe, a case involving a man called Supsicaugh, where there was an odd appearance of information in a file that blocked a Federal—that blocked OSI, though some of this real evidence may come to light, too.

Mrs. MALONEY. Mr. Bloomfield, as you know, one of the items of the bill that we have is, any Holocaust survivor would have review of the Freedom of Information and access on an expedited basis, and do you think that there will be many cases of an expedited basis in your——

Mr. BLOOMFIELD. I would imagine so; I would hope that this will stimulate an interest, because they not only bring an interest, they also bring knowledge, and many of them, as they get to late in their lives, are reassessing their attitude. People who were silent about these things and about raising them earlier in their years are now looking for closure, and they may be able to bring information to supplement what we have and to stimulate and help look in areas where we have not looked before, because of their unique information.

Mrs. MALONEY. My final question really is on funding—and I would like all of our panelists, if they would like, to comment on it—as you know, Senator DeWine was successful in getting 2 million in the budget of the Office of Special Investigations at the Department of Justice, that the increase was $2 million. Funding is always ticklish in this Congress; it is hard to achieve. I am very pleased he has accomplished that, and we need to do the same thing on the House side.

I would just like any comments. Do you feel this is the appropriate place? Do you need more? Should it be other places? Any comments on the funding?

Mr. BLOOMFIELD. I would like to go back to what I said in our testimony, that it cannot be just a reshuffling of old funds that would create a competition or even a resentment between OSI and other agencies and other programs within the Department of Justice. This should be new money to do a new job, so that it does not detract from the essential job of searching out and prosecuting Nazi war criminals. Nor does it take away from the responsibilities of others. It is not enough just to reshuffle the deck, it has to be a larger deck.

Mrs. MALONEY. Well, thank you very much. Just in closing, I want to compliment my own staff, Ben Chevat, my AA; Mark Stephenson; Gail Ravnitzky; and my former assistant, Jeremy Rabinovitz, I see is here. This has been a joint effort by many in my office and in Congressman Horn's office and, certainly Senator DeWine's office, and I just want to compliment the staff that have worked very hard on this. I yield back to the chairman, and I again appreciate him being here instead of at the White House.

Mr. SESSIONS. Thank you, Mrs. Maloney. I have several comments to make and they will be very brief.

No. 1, I think it will be very important and will ask the chairman, as part of this subcommittee and committee, that we try and bring those members of the committee in at the—periodically, meaning if this legislation is approved and signed by the President, that we bring them in on a regular basis and hear from them.

Also, it is my hope and expectation that the organizations that are here before us today know that the Congress of the United States is intensely interested in the intent of this legislation taking place, and that is that the people that have been mentioned very prominently today, including myself and Carolyn Maloney, are intensely interested in the spirit being followed by the administration of full disclosure to the full limit that the bill provides.

Second, there was a comment that was made about changing the legislation, and Dr. Herzstein perhaps alluded to this first. I would echo what my colleague has said and I believe that we need to leave it in the form that it presently is in today, including the 3-year period that may appear as an addendum to what you may have.

It is interesting to me, but I do—I reserve any comment that would be negative in any manner, and I do not mean to extend this to the administration in any way, but I believe that a good balance has been struck, so to say, between this legislation and what the administration can accept and will be willing to work with; and so I appreciate two members of the administration being here, even though we had asked for other members of agencies—CIA, OMB, and the Justice Department—and they declined participation today. I will say that I am not disappointed with that. I wish they had been here, but I believe a good balance has been struck and that we should continue with the bill that we presently have. So let's just leave it at that.

I anticipate and will expect the administration would forthrightly comply in a timely manner, as was intended by the legislation and with the expectation of all that are gathered here today.

Last, let me say this to all those who are participants with us today—and I don't often address the participants—I normally address the panel members. But I would say to those people who have taken the time to be with us today, thank you. This is an important step not only for you, but for people whom you represent.

I hope that the story that can be told by you, as you leave here today, is one of hope and expectation, one of high expectations, but that you can go back to the people you represent and tell the story that what we are trying to do here today is worthy and is noble and is the right thing to do.

I appreciate your attendance today. This subcommittee is now adjourned.

[Whereupon, at 11:40 a.m., the subcommittee was adjourned.]

[The prepared statement of Hon. Dennis J. Kucinich, and additional information submitted for the hearing record follow:]

Rep. Dennis Kucinich -- Opening Statement
Hearing on H.R. 4007, the "Nazi War Crimes Disclosure Act"

July 14, 1998

Thank you Mr. Chairman. I also want to thank Rep. Maloney and Senator DeWine for their continuing efforts on this issue. And to welcome all of our distinguished witnesses here today. I look forward to your testimony on this important topic.

This bipartisan legislation requires the release of classified documents held by US intelligence agencies concerning Nazi war criminals, with certain limited exceptions, and establishes a process to achieve that end.

It is sad and somewhat shocking that this legislation is needed at all. More than fifty years after the end of World War II, I can think of almost no legitimate public policy purpose which would continue to require keeping these documents out of public view. Indeed, it makes even less sense when one considers that many of our former Cold War adversaries are opening their own files on Nazi war criminals.

This legislation was carefully drafted to protect the legitimate

privacy rights of individuals and to allow for whatever continuing national security interests need to be protected. It does this while clearly creating a preference for disclosure. The Senate version of this bill has already passed that body by unanimous consent. I would hope that the House could act with similar speed, and that this bill will become law before the end of this Congress.

Thank you Mr. Chairman.

Mr. Chairman and Members of the Subcommittee:

I am pleased to present the views of the Department of Justice on H.R. 4007, the Nazi War Crimes Disclosure Act, legislation that the Department believes offers the possibility of yielding significant disclosures about Nazi criminals, their crimes, and the fate of both perpetrators of Nazi crimes and proceeds of such crimes. Although many millions of documents on this subject have already been made public, U.S. Government files undoubtedly contain additional, important information that ought to see the light of day. The fact that time is taking its inevitable toll on the rapidly dwindling population of Holocaust survivors makes it imperative that the search for this information be expedited. However, the Department of Justice has serious reservations about the drafting of certain provisions and concerns regarding appropriations. We look forward to working with the Subcommittee in addressing those concerns.

Please permit me to preface my remarks by explaining that my responsibilities at the Department of Justice include overseeing the Office of Special Investigations (OSI), the component of the Criminal Division exclusively assigned the task of detecting, investigating, and instituting legal proceedings to denaturalize and/or remove from this country persons who were involved in Nazi- and other Axis-sponsored acts of persecution prior to and during World War II. OSI also bears responsibility for enforcing the statutory ban on the entry of such individuals into the

United States.

OSI's staff of 10 prosecutors, 8 historians, and 10 support personnel continues to pursue these cases vigorously. In the more than three postwar decades prior to the 1979 creation of OSI, the U.S. Government had succeeded in denaturalizing only one Nazi persecutor and it was able to remove just two such individuals from the United States. The few other Nazi cases brought by the Government ended in failure.

In establishing the Office of Special Investigations, the Justice Department sought to bring within a single law enforcement unit professionals from all of the disciplines needed to investigate and prosecute successfully these uniquely complex cases. In the absence of U.S. criminal jurisdiction to prosecute Nazi-era offenses that took place outside the United States, OSI was entrusted with responsibility for taking civil action against participants in Axis-sponsored acts of persecution. In cases in which suspects had gained naturalization as United States citizens, OSI was authorized to commence denaturalization actions in federal district courts to revoke their illegally and/or fraudulently procured naturalizations. OSI was also authorized to bring deportation cases before U.S. immigration judges to remove from this country individuals whom the unit succeeded in denaturalizing (as well as Nazi persecutors who had never been naturalized as U.S. citizens).

In the 19 years since it commenced operations, OSI has succeeded in denaturalizing 59 participants in Nazi acts of persecution and in removing 47 such individuals from this country. Working in conjunction with INS personnel, OSI has also blocked literally scores of suspected Axis persecutors -- both European and Japanese -- from entering the United States. Last year alone, 23 such persons were stopped at U.S. airports, questioned, and placed aboard the first available return flights to their points of origination.

OSI's small staff is responsible for what is easily the largest litigation docket of Nazi cases in the world -- fully twenty cases in federal courts around the country -- and OSI prosecutors have won more such cases in the past decade than have those of all the other governments in the world combined and quintupled. The unit is also responsible for the nearly 300 cases still under investigation. Unlike U.S. Attorneys' Offices and nearly all other prosecution units in this country (and counterpart Nazi war crimes units abroad), OSI conducts substantially all of its own investigative work, without relying on outside investigative agencies or personnel.

The collapse of the Soviet Union and the dissolution of communist rule throughout eastern and central Europe earlier in this decade have given OSI's staff historians direct access to archives that collectively house what is almost certainly the largest number of captured Nazi war documents extant. After its

defeat by Soviet troops in 1944, the retreating Axis forces left behind vast numbers of documents, including many that identify the perpetrators of Nazi war crimes and crimes against humanity. These abandoned documents were stored in the archives operated by the various communist governments, and have largely remained there to this day. On-site access to these eastern and central European archives was generally denied to western governments and researchers by the communist authorities. It is a development of historic significance that these crucial documents have suddenly become available to OSI at virtually the last moment that they can still be put to law enforcement use. OSI is racing against the so-called "biological solution" to these cases in order to exploit this treasure-trove of evidentiary riches as fast as it responsibly can.

During the past two years, OSI has devoted a substantial portion of its limited resources to the so-called Nazi Assets Project directed by Under Secretary of State Stuart E. Eizenstat. That project has resulted in the issuance of two landmark reports by the State Department's Office of Historian (both of which are available at the State Department's website). OSI performed key investigative work for the project, and the accomplishments of OSI's investigative staff include, most notably, the unearthing of proof that victim-origin gold was (1) transferred by Germany to Switzerland and elsewhere during the Second World War; and (2) included in gold that was shipped after the war to the Tripartite Gold Commission (TGC) by U.S. occupation authorities in Germany

for distribution to looted European central banks. OSI also discovered captured German documents revealing that the Nazis devised and implemented a covert program of shipping to Switzerland jewelry taken from Jews during World War II. This jewelry (explicitly identified in the documents as "Jewish jewelry") was sent by diplomatic pouch to the German legation in Berne, where it was retrieved by a German agent who then used it to purchase industrial diamonds essential to the German war effort. OSI's discoveries provided the evidentiary foundation for the joint U.S.-British appeal to the nations that have claims on the remaining gold in the TGC "gold pool" to relinquish those claims so that the gold can be sold and the proceeds applied for the benefit of Holocaust survivors. Happily, nearly all of the claimant nations have already assented to that request.

As is no doubt apparent from the foregoing thumbnail sketch of OSI's responsibilities and operations, the unit is swamped with work. For that reason, the Department of Justice is particularly appreciative for the efforts that the sponsors of this legislation -- and of the companion bill in the Senate -- have made to minimize the possibility that compliance with the legislation's terms will interfere with OSI's ability to carry out its important and obviously time-sensitive work. OSI's program can fairly be said to have had Congressional "parentage," in that it was launched twenty years ago largely at the insistence of then-Representative Elizabeth Holtzman and others in the Congress who recognized that the Government's response to

the postwar flight of many hundreds of Nazi criminals to this country was a national disgrace. OSI has consistently enjoyed, ever since that time, strong bipartisan support in the Congress, and I am pleased to see that this legislation reflects a continuation of that tradition.

The Department of Justice strongly supports the goal of informing the public about the horrors of the Holocaust and other Axis crimes against humanity. We believe that the disclosure of information about the atrocities that were committed by the Nazis and their acolytes is manifestly in the public interest and may help prevent the recurrence of such abominable crimes. Moreover, the Attorney General remains firmly devoted to the principle that any remaining perpetrators of such crimes must be brought to justice.

Over the past two decades, the United States Government has earned a reputation for world leadership in seeking and disseminating important information about the Nazi era and its aftermath. From the electrifying 1979 publication by the CIA of wartime aerial photographs of the Auschwitz death camp complex, to the 1993 opening of the United States Holocaust Memorial Museum, to the ongoing inter-agency efforts to reveal the truth about assets looted from Holocaust victims, the United States has demonstrated an arguably unparalleled commitment to uncovering the truth about the darkest hours of the twentieth century.

The Department of Justice has played an integral part in this long overdue confrontation with the past, not only by pursuing those who played a role in the realization of Hitler's ghastly designs, but also by acting decisively to expand access for scholars and other members of the public to information about Nazi crimes and their perpetrators. Indeed, the Department has undertaken major disclosure projects of its own, and on its own initiative -- a practice that is in keeping with the high priority that the Attorney General has consistently placed on improving public access to Justice Department records. For example, in a project commenced more than a decade ago, we have been depositing microfilmed copies of trial records of completed OSI prosecutions with the Yad Vashem Holocaust memorial and archive in Jerusalem. We will soon be adding the United States Holocaust Memorial Museum as a second depository institution.

The Department of Justice has disclosed World War II-related information even when such disclosures have cast the activities of U.S. intelligence agencies and other components of the Federal Government in a distinctly unfavorable light. For example, in 1983, OSI concluded its investigation of the postwar escape from Europe of Klaus Barbie, the infamous Gestapo chief of wartime Lyons, France. OSI's report confirmed that U.S. Army Counter Intelligence Corps (CIC) personnel had assisted Barbie in evading French justice and making his way to South America. We persuaded the various federal agencies possessing the pertinent documents to declassify them and to permit us to release both our report

and the underlying documents to the public. That release was accomplished in August 1983, and it was accompanied by the issuance of a formal apology by the U.S. Government to the families of Barbie's victims and the people of France. OSI then undertook a comprehensive inquiry into CIC utilization of Nazi collaborators and criminals. The Department of Justice persuaded all of the affected agencies to agree to the declassification of the resulting report -- which candidly described some very disturbing discoveries that OSI had made about CIC's conduct -- and that report too was released to the public, in June 1988. A report on OSI's later investigation into the fate of the notorious Auschwitz selector and experimenter Dr. Josef Mengele unflinchingly documented the failings of this and other governments that resulted in Mengele's escape from justice. That report too was released to the public, in October 1992.

Moreover, all of these reports, along with other important information and data gathered by OSI, will be made available later this year over the Internet via the Justice Department's website. Most recently, the State Department's aforementioned reports on the disposition of gold and other assets looted by the Nazis contained frank admissions of, and disclosures concerning, major shortcomings in the U.S. Government's postwar conduct with respect to the recovery and restitution of assets of Hitler's victims. In those reports, as in the others, the Government was prepared to shine the light of history on itself and to let the chips fall where they may. It was that willingness to do so that

evidently prompted the Washington Post's Jim Hoagland to write that the first "Nazi Gold" report "stands like a Matterhorn of integrity and truth-telling."

The foregoing efforts notwithstanding, it is clear that more needs to be done, as the introduction of H.R. 4007 recognizes. We are, however, very concerned about the absence in the legislation of a clear, fair and workable standard for the Executive Branch to employ in exercising its discretion to determine, pursuant to Section 3(a)(1), that it believes an individual was involved in Nazi-sponsored acts of persecution. The bill requires the government to release information about individuals based on such determinations. The legislation does not address what quantum of evidence justifies the Government in concluding "in its sole discretion" that there exist "grounds to believe" that an individual was involved in Nazi-sponsored acts of persecution. On its face, the grounds-to-believe test appears far less demanding than the standard of proof to which the courts hold the Department of Justice in denaturalization and deportation cases ("clear, unequivocal and convincing evidence that does not leave the issue in doubt"). Obviously, requiring a conviction or other judicial finding of complicity is too restrictive a standard, as some of the most senior and obviously incriminated Nazi officials were never tried (Adolf Hitler and Gestapo chief Heinrich Mueller among them). At the same time, it would be manifestly unfair to permit any basis for belief, however weak, to suffice. This legislation grants extraordinary

power to the Executive Branch, including the power to damage reputations, perhaps irreparably. Upon the release of records naming them, individuals will almost inevitably be deemed by the public to have been "found" by the United States Government complicit in Nazi crimes against humanity. Thus named, moreover, these people will have no forum in which to appeal such an inferential determination and thus no meaningful opportunity to clear their names. Problems of this nature may be exacerbated by the employment by different agencies of different standards in making these "grounds-to-believe" determinations. Nothing in the legislation as currently drafted will necessarily prevent such disparities. One possible solution would involve changing the bill's ambit to cover all classified records relating to Nazi-sponsored acts of persecution (rather than solely to persons involved in their perpetration). In any event, the Department of Justice would be happy to work with the Subcommittee in addressing this concern.

It must also be recognized that the task mandated by this legislation is an enormous one. The bill calls for a potentially unprecedented search-declassify-and-disclose operation. Hundreds of thousands -- if not millions -- of files must be located, retrieved, and examined. Since law enforcement agencies and many other federal agencies commonly file their records by name of suspect (or other personal name), it will be necessary at the start to compile a listing of suspected Nazi criminals. No such comprehensive listing exists anywhere in the world. (Indeed, the

names of most of the many tens of thousands of perpetrators of Nazi crimes are lost to history in part because of the Nazis' document destruction efforts in the closing months of the war.) Some idea of the magnitude of the work that lies ahead may be seen in the fact that the National Archives alone advises that it holds an estimated 300,000 pages of classified records on World War II war crimes and looted Nazi assets. It should also be borne in mind that records at all of the affected agencies will have to be reviewed individually and with great care in order to avoid unfairly compromising the privacy interests of surviving Holocaust victims and others in medical and other personal information. While the legislation requires that this enormous project be substantially completed within just one year, no funds have been appropriated for the Nazi records undertaking. The Congressional Budget Office has estimated that it will cost $1 million in FY99 just for OSI to review documents that other Government components propose for release in accordance with the terms of this legislation. If OSI were required to accomplish this review with its existing complement of personnel, the unit's investigative and prosecutorial capabilities would necessarily grind to a halt.

In sum, the Department of Justice enthusiastically endorses the goals of this legislation. However, the Department feels strongly that the legislation should address directly the crucial question of what standard may fairly be used in making the key determination that the bill delegates to the Executive Branch.

Mindful, moreover, of the immense scope of the undertaking that lies ahead of us -- and of the extremely short time-frame in which the work is required to be completed -- it is our hope that the resources necessary to accomplish these goals will be made available to our agency and to the other agencies that are to be entrusted with this important work.

Thank you, Mr. Chairman, for affording the Department of Justice the opportunity to comment on H.R. 4007.

July 14, 1998

OFFICERS OF THE NATIONAL COMMISSION
National Chair
HOWARD P. BERKOWITZ
National Director
ABRAHAM H. FOXMAN
Chair
National Executive Committee
GLEN A. TOBIAS
Chief Operating Officer
PETER T. WILLNER
Honorary Chairs
KENNETH I. BIALKIN
SEYMOUR GRAUBARD
MAXWELL E. GREENBERG
BURTON M. JOSEPH
BURTON S. LEVINSON
MELVIN SALBERG
DAVID H. STRASSLER
Vice-Chairs
MEYER EISENBERG
THOMAS HOMBURGER
JUDITH KRUPP
LESTER POLLACK
ALVIN J. ROCKOFF
ROBERT G. SUGARMAN
Honorary Vice-Chairs
LEONARD L. ABESS
DOROTHY BINSTOCK
RUDY BOSCHWITZ
EDGAR M. BRONFMAN
MAXWELL DANE
MAX FISHER
BRUCE I. HOCHMAN
SYDNEY P. JARKOW
CERI M. JOSEPH
NAT KAMENY
MAX M. KAMPELMAN
SAM KANE
PHILIP M. KLUTZNICK
PHILIP KRUPP
BERNARD MARCUS
SAMUEL H. MILLER
BERNARD D. MINTZ
MILTON MOLLEN
ROBERT R. NATHAN
ROWLAND SCHAEFER
IRVING SHAPIRO
JOEL SPRAYREGEN
WILLIAM VEPRIN
EUGENE WARNER
CARMEN WARSCHAW
SIDNEY R. YATES
Vice-Chair
National Executive Committee
GEORGE E. MOSS
Honorary Chair
National Executive Committee
RONALD B. SOBEL
Treasurer
ROBERT H. NAFTALY
Assistant Treasurer
MURRAY KOPPELMAN
Secretary
BARBARA B. BALSER
Assistant Secretary
I. BARRY MEHLER
•
President, B'nai B'rith
TOMMY P. BAER
Executive Vice President
B'nai B'rith
SIDNEY CLEARFIELD
•
Assistant National Director
Program & International Affairs
KENNETH JACOBSON
•
DIVISION DIRECTORS
Community Service
ANN TOURK
Education
CARYL STERN-LAROSA
Finance & Administration
BOBBIE ARESFELD
Leadership
Assistant to the National Director
MARK D. MEDIN
Marketing & Communications
MARK A. EDELMAN
•
Washington Representative
JESS N. HORDES
•
General Counsel
ARNOLD FORSTER

The Honorable Steve Horn
House Subcommittee on Government Management,
Information & Technology
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

We welcome the Subcommittee's consideration of the Nazi War Crimes Disclosure Act (H.R. 4007), which will uncover many of the yet unknown facts behind the horror story of the Holocaust.

With the Holocaust fading into the pages of history and the number of survivors dwindling by the day, it is critical that historians and investigators be able to take full advantage of existing government information to prosecute war crimes and trace looted assets. We commend Representative Carolyn Maloney for her leadership in originating this effort in the 104th Congress and her tenacity in shepherding it through the legislative process.

We support the bill's balancing of the interest in the release of records with national security. It includes safeguards and a judicial review of the disclosure process as well as exceptions for the most urgent national security and foreign policy interests.

The bill's creation of the Nazi War Criminal Records Interagency World Group is the kind of broad initiative necessary to locate, inventory and declassify the vast amount of information on this issue. In this regard, it is essential that this proactive, government-wide search be given adequate resources to be effective within the time frame recommended by the bill. Failure to allocate additional funds for this massive undertaking would render it ineffective and could hinder similarly time sensitive efforts such as the prosecution of Nazi war criminals.

The US has shown tremendous integrity and a commitment to tell the unvarnished truth about the role of all nations in the Holocaust -- including shortcomings in its own conduct regarding recovery of victim assets. We urge you to work with your colleagues to ensure that this commitment is backed up by the necessary funding.

The memory of those who suffered compels us to seek answers, to learn the lessons of this chapter in our history, and work to prevent genocide in the future.

Sincerely,

Howard P. Berkowitz
National Chairman

Abraham H. Foxman
National Director

cc: Jess N. Hordes, Washington Representative

Anti-Defamation League of B'nai B'rith, 823 United Nations Plaza, New York, NY 10017
(212) 490-2525/885-7700 FAX: (212) 867-0779 www.adl.org

CONGRESSIONAL BUDGET OFFICE
COST ESTIMATE

May 21, 1998

S. 1379
Nazi War Crimes Disclosure Act

As reported by the Senate Committee on the Judiciary on March 5, 1998

SUMMARY

S. 1379 would establish the Nazi War Criminal Records Interagency Working Group to locate, catalogue, recommend for declassification, and make publicly available most U.S. government records on Nazi war crimes. The bill would allow agencies to exempt certain records to protect personal privacy and national security. The working group would have one year from enactment to complete and report to the Congress on its work. Subject to appropriation of the necessary funds, CBO estimates that implementing S. 1379 would cost federal agencies about $3 million in fiscal year 1999. For future years, CBO estimates that the bill would increase costs to federal agencies to respond to requests from the public for information related to Nazi war crimes, but that such annual costs would probably not be significant.

Because agencies can charge fees under the Freedom of Information Act (FOIA) to cover some or all of the costs to process certain requests, pay-as-you-go procedures would apply to the bill. CBO estimates, however, that any increase in fees collected under the bill, which would decrease direct spending, would be negligible. S. 1379 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act of 1995 (UMRA) and would have no impact on the budgets of state, local, or tribal governments.

ESTIMATED COST TO THE FEDERAL GOVERNMENT

According to the National Archives and Records Administration (NARA), most records relating to Nazi war crimes are stored either at NARA or at the Office of Special Investigations (OSI) at the Department of Justice (DOJ). The bill would exempt records held by OSI from its provisions; however, OSI would still have to review classified records held by other agencies to ensure that their declassification and release would not affect any ongoing investigations of suspected Nazi war criminals.

Based on information from NARA, CBO estimates that the administration would need between 5 and 10 people working full time to locate, catalogue, and declassify relevant records archived with it within one year. According to NARA, it already has identified and catalogued most of the relevant records. Based on that information, CBO estimates that implementing the bill would cost NARA about $500,000 in fiscal year 1999, subject to appropriation of the necessary funds.

In addition, CBO estimates that OSI would need about 10 people working full time to review and clear agency records for declassification. Thus, implementing the bill would cost OSI as much as $1 million in fiscal year 1999. The estimate of required staff-years is based in part on the experience of NARA and DOJ over the last year and a half, working as part of the Interagency Group on Nazi Assets. According to the agencies we contacted, S. 1379 would require a somewhat comparable effort to locate, catalogue, declassify, and release relevant records.

Finally, other federal agencies, in particular the Federal Bureau of Investigation, the Central Intelligence Agency, the Department of Defense, and the Department of State, would incur some costs to locate, catalogue, and declassify records not held by NARA. CBO estimates that the costs for all other agencies would total between $1 million and $2 million in fiscal year 1999. That estimate assumes that each of the four agencies would require around five full-time employees to carry out its responsibilities under the bill. In addition, we estimate that the working group would incur some small costs to compile the report for the Congress, as required by S. 1379. In total, we estimate that implementing S. 1379 would cost federal agencies about $3 million in fiscal year 1999, subject to appropriation of the necessary funds.

In future years, implementing the bill would increase discretionary costs to federal agencies to respond to requests from the public for information related to Nazi war crimes, but CBO expects that such costs probably would not be significant. Under the bill, NARA would make the records publicly available, including posting the information on the Internet. In addition, we expect that most written requests for information would be submitted to NARA, which reports average processing costs that are far below the governmentwide average for FOIA requests. According to the agencies we spoke with, no noticeable increase in requests for information under FOIA has occurred as a result of the work of the Interagency Group on Nazi Assets.

PAY-AS-YOU-GO CONSIDERATIONS

The Balanced Budget and Emergency Deficit Control Act of 1985 specifies procedures for legislation affecting direct spending and receipts. Pay-as-you-go procedures would apply to

S. 1379 because it could result in agencies collecting additional fees to cover some or all of the costs to process certain requests for information under FOIA. CBO estimates that any increase in fees collected under the bill, which would decrease direct spending, would be negligible. (Based on information reported by federal agencies, CBO estimates that agencies currently collect around $10 million a year in FOIA fees.)

INTERGOVERNMENTAL AND PRIVATE-SECTOR IMPACT

S. 1379 contains no intergovernmental or private-sector mandates as defined in UMRA and would have no impact on the budgets of state, local, or tribal governments.

ESTIMATE PREPARED BY: John R. Righter (226-2860)

ESTIMATE APPROVED BY:

Robert A. Sunshine
Deputy Assistant Director for Budget Analysis

○