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## Echoes of the Holocaust

A half century after the Holocaust, the U.S. charges  
a 72-year-old Guilford man with participating in the extermination of Poland's Jews.

By SCOTT BREDE

**F**iling just over 100 suits since 1979 doesn't seem like a huge caseload for a government agency that currently employs 10 attorneys and had an annual budget of \$2.89 million in 1996.

But much of the success of the Office of Special Investigations lies in its single-minded focus.

A unit of the U.S. Department of

SEE A PAST ON PAGE 8

It can take five to seven years after filing the complaint 'before you'd actually get [a defendant accused of Nazi war crimes] out of the country,' says Jeffrey N. Mausner, right, a former trial attorney with the Office of Special Investigations. Mausner is shown here in Germany, where he was interviewing witnesses.



# A Past on Trial

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Justice's criminal division, OSI's mission is to hunt down those responsible for World War II atrocities who now reside on U.S. soil under false pretenses—and boot them out of the country.

In the 104 court battles it has waged in its 18 years of existence, OSI has had 60 defendants denaturalized and 48 of them removed from the U.S., says OSI Director Eli M. Rosenbaum.

Since June of 1996, the Washington, D.C.-based office has not lost a case in seven court battles, according to Rosenbaum. Four of those defendants had their U.S. citizenship revoked. The other three were given orders to leave the country.

During that same period, "The whole rest of the world went 0-2," in war crime prosecutions, he says.

Now, more than 50 years after the Holocaust, OSI is bringing that record to Connecticut in a showdown with a 72-year-old Guilford man, who, it claims in *U.S. v. Walter Berezowskyj*, participated in Operation Reinhard—the Nazi campaign to wipe out Poland's Jews.

The complaint, filed July 22 in U.S. District Court in New Haven, doesn't peg any specific murders or other crimes to Berezowskyj. But it alleges that the retired machinist served as an armed guard at two SS slave-labor camps in Nazi-occupied Poland during World War II. Berezowskyj, the government claims in the complaint, eventually ascended to the 10th Company of the Death's Head Battalion at the Gusen subcamp of the Mauthausen concentration camp, near Linz in German-annexed Austria. At Gusen, "[m]any prisoners were murdered outright by the guards," the complaint charges. "Others died of exhaustion, starvation and disease due directly to the conditions under which they were forcibly confined," the complaint alleges.

Berezowskyj's lawyer, Brian M. Gildea, of New Haven's Gildea & Stevens, says he represents a man who is not quite in touch with his past. (In response, Rosenbaum says, "We will disprove that at trial.")

In 1975, Berezowskyj, according to Gildea, underwent brain surgery at St. Raphael Hospital in New Haven after he fell from a tree. The injury has affected his ability to recall past events, and, where he does have memory gaps, Berezowskyj has a tendency to fill them in with wrong information, Gildea claims.

"I don't have any proof to establish that the claims of the government" are accurate

or inaccurate, Gildea says. Berezowskyj, the lawyer adds, "hasn't been able to tell me that any of these facts [listed in the recently filed complaint] are familiar to him."

Gildea says when he mentions the names of the Nazi camps where the government claims Berezowskyj was a guard, his client doesn't recognize them.

"At one point in time, [Berezowskyj] said [at Nazi orders] he was removing dead bodies from buildings," says Gildea. "... Where that was and at what specific time, I don't know."

His client, Gildea adds, generally denies the government's claims against him. Berezowskyj was forced into slave labor

Nov. 17, 1943, according to the government. At Gusen, the complaint alleges, guards had orders to shoot to kill any prisoner who attempted to escape.

After the war, the defendant, according to the complaint, entered the U.S. under the Displaced Persons Act of 1948, claiming to have worked on farms during the years the government now claims he served as a guard at the Nazi camps.

The Displaced Persons Act, which allowed more World War II refugees to enter the country than were allowed by immigration laws existing at the time, prohibited the issuance of a visa to people who either assisted in the persecution of any person because of race, religion, or

## DEFENSE COUNSEL BRIAN M. GILDEA ASSERTS THAT WHEN HE MENTIONS THE NAMES OF THE NAZI DEATH CAMPS TO HIS CLIENT, HE DOESN'T RECOGNIZE THEM.

by the Nazis, his attorney says. People in German-occupied territories during the war, he says, "had the choice of living or dying" when Nazis gave them instructions.

Berezowskyj, Gildea adds, considers himself Ukrainian. He was born in Onko, Poland, which is now Vikno, Ukraine. The former Soviet Union occupied the area in 1939, and less than two years later, it fell to German armies, according to the complaint.

The defendant, the government alleges, was recruited by German units and arrived at the Trawniki training camp on or about April 7, 1943. At Trawniki, men were trained to serve as guards and auxiliary police to assist in Operation Reinhard, under which nearly two million Polish Jews were murdered, according to the complaint.

Berezowskyj, it asserts, served as an armed guard at the SS Labor Camp Poniatowa and then was redesignated back to SS Training Camp Trawniki before being stationed at Gusen. Under "Operation Harvest Festival," Jewish prisoners at Poniatowa were murdered on Nov. 4, 1943, the complaint states. The defendant didn't return to Trawniki from Poniatowa until

national origin, or was involved in any movement hostile to the U.S., according to the complaint.

The government is attempting to revoke Berezowskyj's citizenship on the ground that he allegedly misrepresented himself by claiming that he did farm work during the war when he was issued an immigrant visa in 1949, and when he sought naturalization in 1981, the complaint states. Berezowskyj was granted citizenship in 1982.

Gildea says his client worked in a commissary in Europe after the war. When he came to the U.S., Berezowskyj, he adds, lived for about a year in Mississippi picking cotton. He then moved to Connecticut, where he worked in machine shops, according to Gildea. Now retired, he and his wife have five children and at least four grandchildren, the lawyer says.

### Mentally Competent?

Despite Gildea's claims of his client's memory problem, John K. Russell, a Justice Department spokesman, says the government has "medical information" that finds Berezowskyj mentally competent to

trial. Russell won't say what kind of medical information the government has.

Gildea, however, says his client was examined by a government psychiatrist in early July for about 45 minutes to an hour. Berezowskyj has "not yet been evaluated by my expert," the lawyer says. To make matters more complicated, the doctor who performed the brain surgery on his client has passed away, and there's been some difficulty in finding hospital records of the 1975 operation, Gildea says.

In May 1996, Berezowskyj, according to his lawyer, received a letter from the OSI requesting that he submit to an interview with government officials. Berezowskyj denied the request and retained counsel, says Gildea, who has represented defendants in other OSI cases, including Fedoreno and Anatas Bernotas.

Gildea unsuccessfully argued Fedorenko's appeal before the U.S. Supreme Court. Since then, he has been asked to assist other attorneys representing OSI defendants in their cases, Gildea says. In all, he has been lead defense counsel in six OSI cases, he says.

The suit against Bernotas was eventually settled, and, the last time Gildea checked, he was still living in Waterbury, the lawyer says. Attempts to reach Bernotas were unsuccessful.

Fedorenko, on the other hand, had his citizenship revoked, and was deported to the U.S.S.R., where he was tried and executed for treason, Gildea says. A guard at the Nazi death camp at Treblinka, where 800,000 Jews were put to death in gas chambers, Fedorenko claimed on his visa application that he was a farmer during the war according to former OSI trial attorney Jeffrey N. Mausner in a 1991 piece he wrote for *Nova Law Review*.

The complaint doesn't mention whether any country is seeking to extradite Berezowskyj so he can stand trial on war crimes charges, and Rosenbaum, OSI's director, won't comment specifically on the case.

But Gildea says that even if the complaint's assertions are correct, his client does not appear to be someone another country would be interested in bringing to trial. "You're talking about a man who has a seventh-grade education, if that . . . and was never in the position of any kind of authority," Gildea says.

The complaint alleges that, at Trawniki, Berezowskyj held the rank of "SS-Wach-

mann (SS guard private)."

According to the OSI, only three of the 48 people the office has successfully removed from the U.S. have been extradited to stand trial abroad.

### A Tough Civil Fight

Though a civil action, a denaturalization case, if "fought tooth and nail," can seem much like a criminal matter, says immigration law specialist James E. Swaine, of The Law Offices of James E. Swaine in New Haven, who is not involved in the case.

Defendants in denaturalization cases have opportunity for discovery, and, if foreign documents are involved, they can contest their validity. "If I were representing [Berezowskyj], that's how I'd go about it," says Swaine.

Daniel E. Marcus, past president of the Connecticut chapter of the American Immigration Lawyers' Association, says once citizenship is revoked, it's "pretty much a given that [a defendant in U.S. immigration court, where removal proceedings are heard, is] going to lose his residence." The doctrine of collateral estoppel does apply, and immigration judges tend to seek guidance from the findings of the federal court that granted the earlier bid for denaturalization, adds Marcus, of West Hartford's Globman Marcus & Chapple.

**A COMMON DEFENSE STRATEGY, SAYS A RESEARCHER AT THE SIMON WIESENTHAL CENTER, IS TO DRAG OUT THE PROCEEDINGS SO THAT 'MAYBE [THEIR CLIENT] WILL DIE AND WILL GET BIOLOGICAL AMNESTY.'**

But removal proceedings occur only once a defendant is stripped of his or her citizenship, and denaturalization cases can take two or three years, perhaps more, Marcus says.

Many cases that are investigated by the office are never brought to court, says Mausner, the former OSI attorney, who is now involved in intellectual property litigation at Los Angeles' Berman, Blanchard, Mausner & Resser.

"Sometimes, it's the wrong guy. Sometimes, it's probably the right guy, but

there's insufficient evidence," he says of OSI cases that don't make it to court.

When Mausner left the agency in 1986, probably fewer than one out of 10 cases investigated by OSI were ever brought to federal court, he says. But "probably now they're filing a higher percentage of cases," he adds.

There's "more direct evidence" now that World War II documents captured by the Soviets are more available to the U.S. since Communists there fell out of power.

Though Rosenbaum, OSI's director, won't comment on what kind of evidence his office has against Berezowskyj, or how that evidence was acquired, Russell, the Justice Department spokesman, says the case was aided by "unearthed documents that were not available to us prior to 1995."

### Questions Documents

But Gildea, Berezowskyj's attorney, says documents in OSI cases can't always be trusted. "All of these events occurred 50 years ago. . . . Why did these documents now surface? You have to have a great deal of suspicion about these things," he says.

Documents used by the OSI in their

investigations can be falsified by the foreign countries from which they are obtained, asserts Gildea, noting his claim that the identity card linking infamous war criminal defendant John Demjanjuk to the gas chamber at Treblinka is one instance of that.

Rosenbaum emphatically denies that claim about the Demjanjuk case, calling Gildea's assertion "outrageous."

Demjanjuk was extradited from the U.S. to Israel, where his conviction on war crime charges was overturned by the Israeli Supreme Court.

Besides documents, witnesses pegging OSI defendants as Nazi war criminals are the office's other main source of evidence. But they, too, aren't infallible, Gildea says.

In past cases where he's had to go to Russia to depose OSI witnesses, he found those witnesses to be "totally intimidated by the presence of the Soviets" who stood nearby, he says.

The possibility that witnesses are pressured into providing false statements is a real issue when foreign governments want an OSI defendant extradited to their country to stand trial, he adds.

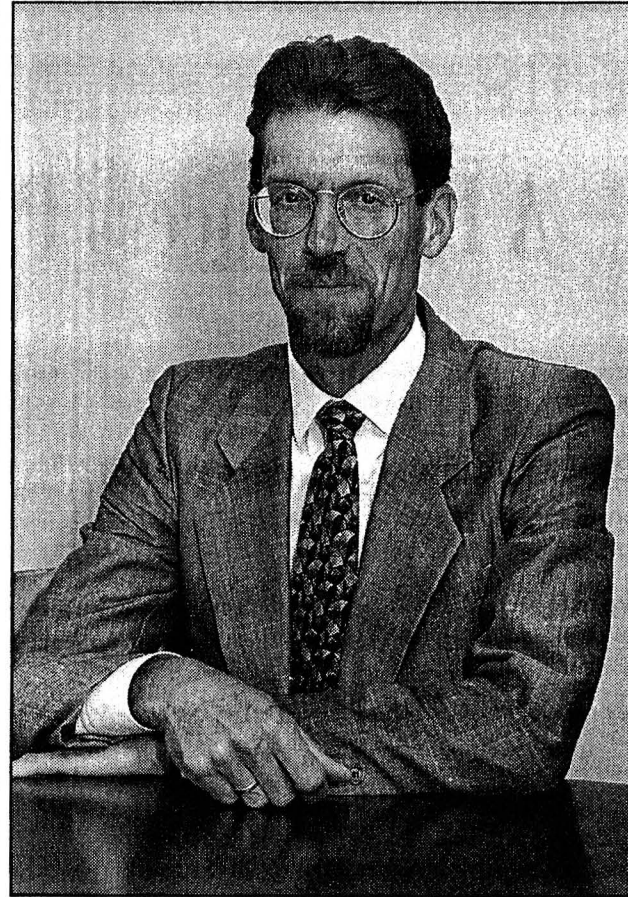
Rosenbaum says questioning the validity of documents is no longer as common a defense as it once was. "The defense bar knows that courts aren't going to just fall for that one," he adds, noting that the documents are tested by the "top experts in the world."

The OSI also has eight of the world's top World War II historians, whom it deploys throughout Europe in search of new information in its quest to uncover more Axis war criminals hiding out back home, Rosenbaum says.

Documents, according to Mausner, are probed for their authenticity by handwriting experts and chemists. Even Gildea notes that testing measures have improved. Experts take ink tests to determine if it was a type of ink used during World War II, he says. They also examine the type to verify if a typewriter from that era was used or not, Gildea says.

As for witnesses, Mausner says, in many cases, they are former war criminals who have already been prosecuted in the Soviet Union, and have served their time. "The witnesses from Israel are all [Holocaust] survivors," he says.

In a 1991 piece in the *Nova Law Review*, Mausner notes the difficulty of finding Holocaust survivors who are able to testify in OSI cases. "Even if the OSI is able to locate a survivor who witnessed a certain atrocity, it is often very difficult for that survivor to identify the individual who committed the atrocity



Though a civil action, a denaturalization case, if 'fought tooth and nail,' can seem much like a criminal matter, says immigration law specialist James E. Swaine, above.

more than 40 years ago," he writes.

Hence, the nature of the cases makes for a very long process, Mausner says. In some cases, it can take five to seven years after filing the initial complaint "before you'd actually get him out of the country," he says of OSI defendants.

"What most defense lawyers in these cases do seek to do is delay," says Rosenbaum.

Aaron Breitbart, a senior researcher at the Simon Wiesenthal Center in Los Angeles, puts defense tactics in a harsher light. (The Wiesenthal Center is a conservatory of information on the Holocaust.) A common strategy of the defendants' lawyers, he says, is to try to drag out the proceedings whenever possible with the mindset that, "maybe [their client] will die and will get biological amnesty."

Gildea denies that he's ever used such a tactic in any of the OSI cases that he's handled.

"These kinds of cases are perhaps the most difficult [cases that defense lawyers] handle," he says.

The OSI has resources to investigate matters, and often it has the cooperation of foreign governments, Gildea says. But "in these kinds of cases, [the defense has] nothing. You have nowhere to start except where the government has you start" when it lists its allegations, he says. "... It takes an inordinate amount of time to put together the facts."

Gildea, who has yet to file a motion in response to *U.S. v Berezowskyj*, says he's likely to seek out another lawyer to help him with the case. "It's going to be a very expensive defense," he predicts. Berezowskyj, however, has "very little in the way of assets," Gildea says.

OSI Senior Trial Attorney Susan Masling is handling the case for the government. Also on the government's team are Rosenbaum, OSI Principal Deputy Director Susan L. Siegal, OSI Trial Attorney Ellen L. Chubin, and John B. Hughes, a federal prosecutor in the U.S. attorney's office in New Haven, who will serve as co-counsel, according to Rosenbaum. ■

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