Soviet Proof Key in U.S. Nazi Cases

But Some Jurists Express Doubts on Witness Credibility

By ROBERT GILLETTE,
Times Staff Writer

WASHINGTON—In January, 1980, when the United States was angrily imposing economic and diplomatic sanctions on the Soviet Union for the invasion of Afghanistan, representatives of the U.S. Justice Department were quietly negotiating an unprecedented agreement for cooperation with their counterparts in Moscow.

In three days of amicable talks, the Justice Department reached an agreement with Alexander M. Rekunkov, now the Soviet Union's highest legal officer. The agreement called for Moscow to assist the United States in prosecuting Soviet refugees who had fled at the end of World War II and who were now, as naturalized Americans, suspected of murdering or persecuting civilians during the Nazi occupation.

Under terms set largely by the Soviet side, Soviet judicial authorities agreed to supply documents and eyewitness testimony to the Justice Department's newly created Office of Special Investigations. The office's mission was to ferret out suspected war criminals and

First of two parts.

persuade the courts to revoke their citizenship and deport them. But, to accomplish this, the bulk of evidence would have to come from the Soviet Union.

"Winning the cooperation of the Soviet Union was a critical step in our plans for OSI," its former director, Alan A. Ryan Jr., observed in his 1984 book, "Quiet Neighbors." Almost all the refugees now under suspicion of war crimes had come from the Soviet Union. Captured German documents bearing on their ties to the Nazi occupiers were held in Soviet

highest legal officer. The agreement called for Moscow to assist the United States in prosecuting Soviet refugees who had fled at the end of World War II and who were now, as naturalized Americans, suspected of murdering or persecuting civilians during the Nazi occupation.

Under terms set largely by the Soviet side, Soviet judicial authorities agreed to supply documents and eyewitness testimony to the Justice Department's newly created Office of Special Investigations. The office's mission was to ferret out suspected war criminals and

First of two parts.

persuade the courts to revoke their citizenship and deport them. But, to accomplish this, the bulk of evidence would have to come from the Soviet Union.

"Winning the cooperation of the Soviet Union was a critical step in our plans for OSI," its former director, Alan A. Ryan Jr., observed in his 1984 book, "Quiet Neighbors." Almost all the refugees now under suspicion of war crimes had come from the Soviet Union. Captured German documents bearing on their ties to the Nazi occupiers were held in Soviet archives.

"We also needed witnesses to atrocities: bystanders, colleagues, victims, neighbors," Ryan said. "Some of these, particularly victims, we might find in America or Israel or Canada or elsewhere in the world. But most of the neighbors and bystanders had never left home. . . . If we were to have their testimony, we needed the permission of their government."

Nothing in Writing

To ensure a proper atmosphere for the talks, the Justice Department representatives ignored a State Department request to register Washington's strong disapproval of the Afghan invasion. To the Justice Department's surprise, the Soviets asked nothing in return for supplying the evidence the Americans wanted. But there was to be no formal written agreement, only an oral understanding, making this a unique arrangement between the superpowers at a time when relations in every other field were rapidly deteriorating.

It was to be, as Ryan observed, a "wildly improbable marriage" between the judicial authorities of a democracy and those of a "totali-

Please see JUSTICE, Page 30

JUSTICE: Soviet Data, Key in U.S. Nazi Trials

Continued from Page 1

tarian regime," who evinced "no hint that they understood what we were talking about" when the Americans tried to explain the basic concepts of due process that Westerners consider essential to a fair trial.

Just how improbable the marriage—and how nettlesome the legal issues raised by the U.S.-Soviet agreement—has become clear since.

Six years later, the Office of Special Investigations has won broad public approval for its aggressive pursuit of alleged war criminals. According to the agency's figures, 19 naturalized Americans have been stripped of their citizenship and nine deported—one so far to the Soviet Union—while another 35 cases are currently in the courts and 300 investigations are under way.

Soviet evidence has played a major role in these cases, often with little corroborating evidence from other sources.

Bitter Protests

Ethnic organizations of Baltic and Ukrainian nationalities, joined by some conservative political groups, have bitterly protested the use of this evidence, condemning it as inherently untrustworthy.

The Office of Special Investigations, strongly supported by the American Jewish community, dismisses such criticism as reflexive anti-communism tinged with anti-Semitism and motivated by a thinly veiled desire to protect war criminals.

"No American judge has concluded that any documentary evidence obtained from the Soviet Union was fabricated," the Anti-Defamation League of B'nai B'rith said in a 40-page defense of the OSI published last June. "Nor has any witness made available by the Soviet Union been found to have lied in connection with his or her testimony."

Over the last three years, however, largely without public notice, a number of federal court jurists and defense lawyers have voiced serious misgivings about the use of Soviet evidence, especially witness testimony, in American courts.

Although in the majority of cases federal courts have accepted it as valid, there are at least four cases in which judges have rejected Soviet testimony entirely or in part as seemingly coerced or invented, or for other reasons "not worthy of belief," as one appellate opinion phrased it.

In addition, a committee of the American Bar Assn. has considered a recommendation to organize a formal study of the problems raised by the use of Soviet evidence but so far has taken no action on the proposal.

Reliability Question

As the critics in the legal community see it, the troubling feature of the OSI's war crimes cases is not only that they center on events distant in time and place, and deal with the highly emotional question of complicity in the Holocaust, but that they rest to a major degree on the acceptance by American courts of evidence compiled by the Soviet KGB security and intelligence agency and selectively supplied to the Justice Department.

They question whether the U.S. government, and, more important, the courts, can reasonably expect to use such evidence to tell the guilty from the innocent. As a memorandum circulated in recent months in the American Bar Assn.'s committee on law and national security said: "Is the evidence made available by the Soviet Union reliable, and does the getting and use of such evidence conform to due process standards?"

The American Bar Assn. memo drew no conclusions but recommended that a blue-ribbon panel be convened to study these and related questions.

Concerns expressed in a number of federal court opinions, and by individual lawyers in a series of interviews, are both political and procedural.

They note, for example, the Soviet Union's long history of bending justice and inventing evidence to suit its political aims, from the theatrical show trials of old Bolsheviks in the 1930s to the trials of the recently freed Anatoly Shcharansky and other human rights activists in the 1970s and 1980s.

In the case of accused war criminals living in the United States, the critics believe, the Soviet aim is not only to bring a small number of bona fide murderers to justice but to tar traditionally anti-communist emigre communities in the United States as broadly as possible with the same brush. The Soviets, the critics say, want to stir dissension among emigre groups and to blacken them in the eyes of Soviet citizens.

In a strongly worded dissenting opinion in the case of Serge Kowalchuk, 65, a Ukrainian-born emigre stripped of his citizenship for working as a clerk in a Nazi-controlled police unit during World War II, Chief Judge Ruggero J. Aldisert of the 3rd Circuit Court of Appeals wrote last September:

"The government's case is based on evidence procured by the KGB to effectuate its political ends. Congruence between that purpose and individual justice has yet to be established."

Few if any critics in the legal community suggest that all Soviet evidence is tainted. The problem, they say, is to distinguish between testimony that is genuine, embellished or simply invented, and to recognize when documents have been selected from the archives, omitting those that might exonerate a defendant or mitigate the charges against him.

Denial of Access

Under the terms of the 1980 agreement, this has not been an easy task. The Soviets have refused to give prosecutors or defense attorneys from the Office of Special Investigations access to wartime archives to search for other evidence that might bear on a defendant's guilt or innocence. Lawyers, and some federal courts, have objected that these restrictions make it almost impossible to guarantee a defendant's due process right to a meaningful defense.

In addition, the Soviets strictly control the Americans' access to witnesses.

Their testimony is videotaped for use in American courts. U.S. defense lawyers have the right to cross-examine the witnesses, and OSI will even pay the lawyers' travel expenses to the Soviet Union. But, in all cases, Soviet prosecutors supervise the taking of depositions, frequently seek to restrict cross-examinations and often urge the witnesses to adhere to written summaries or "protocols" of their earlier interrogations by the KGB.

Despite the OSI's initial hopes in 1980, no Soviet witness in a war crimes case has yet appeared in an American court, although some have traveled to West Germany to testify in other cases.

By contrast, Poland, where most of the Nazi extermination camps were located, has imposed no such restrictions on access to official archives or witnesses.

However, the OSI's cases have led the agency to depend far more heavily on Soviet evidence than on Polish. It has taken testimony, for instance, from fewer than half a dozen Polish witnesses since 1980, but in the same period has interviewed more than 100 Soviet witnesses.

In Canada, where a royal commission has spent more than a year determining whether, or how, to conduct its own investigation of suspected war criminals, misgivings about the use of Soviet evidence are shared by some members of Parliament.

"The American approach is totally inadequate," Andrew Witer, the chairman of a newly formed parliamentary committee on human rights, said in a recent interview. At a minimum, Witer said, Soviet witnesses should be interviewed in a "non-prejudicial" setting such as an embassy, out from under the gaze of a Soviet prosecutor.

Despite the procedural controls imposed by the Soviets, the Office of Special Investigations dismisses fears of false or distorted evidence, or an abrogation of due process, as illogical and unfounded.

"As a practical matter, it is difficult to conceive of even the KGB—or anyone else for that matter—fabricating document after document and suborning perjury from witness after witness in every one of OSI's cases," the agency's current director, Neil M. Sher, said.

Pending Appeal

The OSI put this viewpoint even more categorically in an appeal currently before the 3rd Circuit Court in the case of a naturalized Lithuanian named Juozas Kungys. A federal district court exonerated Kungys in 1983 of charges that he took part in killing Jews during the Nazi occupation, and rebuked the OSI for failing to ensure that Soviet witnesses in the case had not been coerced.

In its appeal, OSI accused U.S. District Judge Dickinson R. Debevoise of injecting "political bias" into his decision and went on to assert:

"While the Soviet Union may act with impunity in legal proceedings confined to its own borders, it cannot do so in cases under the scrutiny of foreign judges, lawyers and witnesses."

Successful fraud by the Soviet Union in these matters, the OSI argued in its appeal, "is beyond its capabilities" and in any case would be "inevitably doomed to exposure."

Asked in an interview whether this was not, in effect, an assertion of infallibility on the part of the American judicial system, Sher said it was not. "It is just an assertion of complete faith in the ability of our courts to ascertain the truth," Sher said.

Illogical Premise

He added that it would be illogical for the Soviets to risk destroying the credibility of all the evidence they supplied by tampering with some of it for propaganda purposes.

The agency's critics, on the other hand, argue that it fails to recognize the ease with which Soviet witnesses can be manipulated, perhaps because excessive zeal has clouded its judgment.

"The Soviets have everything they need—the motive, the experience, the control—to create staged cases," John Rogers Carroll, a Philadelphia trial lawyer, said in a recent interview. Carroll defended Kowalchuk, a Philadelphia tailor who now faces deportation to the Soviet Union.

While the role of eyewitness testimony varies among OSI's cases, it dominates the Kowalchuk case, where, as a district court noted, "there is . . . not one scrap of documentary evidence relating to the pertinent events."

Carroll said his experience in two evidentiary hearings in the Soviet Union in 1981 and 1983 convinced him that cross-examination of witnesses under Soviet control "has little effect on someone who knows that all he has to do is stick to his

Please see JUSTICE, Page 21

TICE: Evidence Raises Troubling Issues

...from Page 30

...he won't get into trou-

...witness) knows I can't go ...his story, investigate the de... Carroll said. "He won't be ...ted for perjury. He knows ...of the normal sanctions ...false or misleading testi... here."

...1983 and last year, at ...federal district and ap... courts have rejected such ...as seemingly coerced, as ...by the remarks of Soviet ...or for other reasons as ...thy. In other cases—notably Kowalchuk's—dissenting opinions have voiced grave concern that the use of unverifiable Soviet evidence jeopardizes a defendant's constitutional right to due process.

In May, 1984, a federal district court in New York cited concerns about coerced testimony in dismissing an OSI suit to revoke the citizenship of Elmars Sprogis, a former Latvian police officer the Soviets accused of having murdered and persecuted Jews during the German occupation. The accusation depended heavily on the videotaped testimony of two Soviet witnesses, whose behavior, according to Judge Frank X. Altimari, suggested coercion.

At one point, Altimari noted, a key witness, when offered an opportunity to rest during his testimony, inexplicably began to cry.

"Whether it be due to coercion, discomfort, fear, old age or other factors, (it) counsels in favor of cautious acceptance of his testimony," Altimari wrote in his decision.

In May, 1985, the 2nd Circuit Court of Appeals upheld the dismissal of the case, noting that Altimari had acted properly in rejecting the Soviet testimony as "potentially coerced" and "unworthy of belief."

Four months later, on Sept. 6, Sprogis, 70, narrowly escaped injury when a bomb exploded at his home in Brentwood, N.Y. The Federal Bureau of Investigation has said that this, and a similar bombing three weeks earlier in Paterson, N.J.—which killed a naturalized Ukrainian who had been cleared by the OSI—may have been carried out by the militant Jewish Defense League.

The similar case of Edgars Laipenieks, a former professor of physical education at the University of Denver, illustrates the important role a judge's subjective impressions and instinct play in gauging the credibility of Soviet witnesses from a videotape. In Laipenieks' case, these impressions varied greatly from one court to another.

A local police chief in Nazi-occupied Latvia, Laipenieks was accused not of complicity in the Holocaust but of beating Communist prisoners in his jail. In 1981, the OSI sought to deport him to the Soviet Union.

The government's case turned on the testimony of nine Soviet witnesses. An immigration court judge rejected it as untrustworthy, citing what he called an intimidating atmosphere highlighted by a Soviet prosecutor who curtailed cross-examination of the witnesses and repeatedly described Laipenieks in front of them as "the Nazi war criminal."

The Board of Immigration Appeals, however, found the testimony sufficiently valid to reverse the decision and order Laipenieks deported. Then in January, 1985, the 9th Circuit Court of Appeals reversed the appeals board's decision, saying it was troubled by the board's "tacit acceptance" of Soviet evidence that appeared untrustworthy.

Moreover, the court said, the Latvian police had valid reasons for jailing some of the Communists, who were suspected of having collaborated with the Soviet Union in its annexation of independent Latvia in 1940 under a treaty with Moscow's ally from 1939-41, Nazi Germany.

A key witness who claimed that

Please see JUSTICE, Page 32

JUSTICE: American Jurists Express Doubts on Soviet Evidence in U.S. Nazi Cases

Continued from Page 31

Laipenieks had beaten him, the court noted, had in fact been suspected in 1941 of helping Soviet occupation forces a year earlier draw up lists of thousands of Jews and other Latvian civilians for deportation to Siberia.

The sharpest rebuke the Office of Special Investigations has yet received from a federal court came in 1983 in the case of Juozas Kungys, the former Lithuanian policeman. In an acidly worded decision, Judge Debevoise dismissed the government's case with the observation that the Soviet authorities had a clear political interest in pinning the blame for wartime atrocities on American defendants—namely to discredit anti-Soviet emigre communities.

"If the government deputizes a totalitarian state to obtain for it evidence to be used in a United States court, the government must take whatever steps are necessary to ensure that the evidence was not coerced or otherwise tainted by improper pressures," Debevoise wrote, and added that the government had failed to fulfill its responsibilities in this case.

Not only did the witness testify in an intimidating atmosphere, the judge said, but OSI attorneys contributed to this atmosphere by what he called their "extreme deference" to the presiding Soviet prosecutor, "who was nothing more than their partner in the prosecution of this case."

Debevoise gave particular weight to testimony by a former Soviet prosecutor, now living in the United States, who explained how witnesses are commonly manipulated in Soviet courts.

The former prosecutor, Frederick Neznansky, acknowledged that many witnesses are truthful and that many investigations are honestly conducted. But he said that when the evidence fails to support the desired result, there is intense pressure from prosecutors and judges alike to remold it.

"The way it's explained to a witness is often very lofty," Neznansky said. "The accused is a criminal against the Communist Party, against the state, and is probably a parasite and an enemy of the people. So it is the civic duty of the witness to testify in the appropriate way."

Failing this, he said, "sometimes Not in a serious way, but people could be told they will be fired (from their jobs) if their testimony is not appropriate."

Similarly, a former officer in the Latvian KGB who defected to the United States in 1978, Imants Lesinskis, said he found that witnesses in war crimes cases with which he dealt as a propaganda officer were often totally compliant.

"They had been in Soviet (labor) camps for many years and they were afraid to go back. So if you asked them the right questions, they confirmed all," Lesinskis said.

While these cases focused mainly on the trustworthiness of Soviet evidence, a dissenting opinion in the widely publicized Kowalchuk case stressed the issue of a defendant's right to due process in the face of Soviet controls on access to evidence.

The OSI sought to revoke Kowalchuk's citizenship on the ground that he had concealed membership in a Nazi-controlled police force in the Ukraine that would have made him ineligible for a visa, and also that he took part in the murder of Jews in the town of Lubomyl.

A district court was skeptical of Soviet evidence that Kowalchuk took part in persecutions and atrocities, but ruled that his citizenship was nevertheless obtained by fraud and ordered it revoked.

A three-judge panel of the 3rd Circuit Court reversed this ruling on a vote of 2 to 1; then the full 3rd Circuit, on its own motion, reviewed the case again *en banc*.

Last Sept. 23, the full court decided 8 to 4 to revoke Kowalchuk's citizenship after all. This February, the Supreme Court turned down his request for review, opening the way to Kowalchuk's eventual deportation to the Soviet Union.

In rejecting Kowalchuk's argument that Soviet restrictions denied him access to archives and possible witnesses, the majority noted that "Soviet Russia also imposed the same limitations upon government counsel."

In any case, it said, whether or not Kowalchuk took part in persecutions, he had given "voluntary assistance to enemy forces" by working as a local police clerk and was therefore ineligible for U.S. citizenship.

In a sharply worded dissenting that, in fact, a "compelling" violation of Kowalchuk's right to due process lay at the heart of the case.

"For reasons I refuse to regard as altruistic, the Soviet KGB has singled out American citizen Serge Kowalchuk for immediate attention by our government, in a stream of extravagant accusations subsequently not proved in district court," Aldisert wrote in an opinion joined wholly or in part by three other judges.

Soviet restrictions, he said, effectively "denied Kowalchuk the opportunity to conduct even a primitive preparation of a defense, . . . the most basic of due process rights."

The Justice Department, he concluded, thus placed itself in the "uncomfortable position of arguing allegations which it has not had the opportunity to verify and which it, in all conscience, must view as suspect."

Entirely apart from questions of due process and the trustworthiness of Soviet evidence, a number of defense lawyers maintain that their clients are also disadvantaged by a fluke of American law that requires them to be tried in civil, not criminal, proceedings, even though the consequences—loss of citizenship and deportation—can be as severe as many criminal penalties.

Standards of evidence are less rigorous than in criminal cases. And because these are civil cases, the defendants do not qualify for public defenders. Most are blue-collar pensioners with modest savings, but defense costs have run as high as several hundred thousand dollars, which private law firms must absorb on a *pro bono* or charitable basis.

"You end up running these people right into the ground," said a Midwestern attorney who asked that his name not be used. Like several others, he said his law firm had received anonymous threats after it had defended an accused war criminal.

Moreover, federal civil procedures require defendants who lose in district court to find any exculpatory evidence and file an appeal within one year, even though the only conceivable source may be the Soviet Union.

"Unfortunately, what most of them do is turn to the neighborhood lawyer who may be a drunk, diately loses," said a Baltimore attorney who also asked not to be identified. "Then, at five minutes to midnight, before the appeal deadline, they change lawyers. By then it's too late."

A third factor is that in civil cases, the government is not required to give the defense any material in its possession that might be beneficial to its case; in criminal cases, this is required by the so-called Brady rule.

Most important, some defense lawyers believe, is the overpowering emotional context of the Holocaust that pervades these cases, regardless of how strong or weak the linkage may be between defendants and atrocities.

"We are, in a way, the victims of hydraulic pressures, of a wave of public sentiment that causes us to lose sight of certain realities," Carroll said, in a reference to special difficulties of verifying Soviet evidence.

"We tend to overlook this because we see that a terrible crime has been committed—the Holocaust—and we perceive that the OSI is finding the guilty and punishing them."

"The typical judge is just as impressed as anyone by the implications of this (Soviet) testimony," Carroll said. "But it occurs to me that our judicial procedures are not made for this kind of case."

Next: Do the Soviets manufacture evidence?

BERMAN & BLANCHARD
A LAW CORPORATION
1925 CENTURY PARK EAST, SUITE 1150
LOS ANGELES, CALIFORNIA 90067
(213) 556-3011

LAURENCE M. BERMAN
LONNIE C. BLANCHARD III
JEFFREY N. MAUSNER
MARTHA A.H. BERMAN

OF COUNSEL
RICHARD D. FARKAS
MAURICE LEVY, JR.

April 28, 1986

Letters to the Editor
Los Angeles Times
Times Mirror Square
Los Angeles, CA 90053

The article entitled "Soviet Proof Key in U.S. Nazi Cases" by Robert Gillette, which appeared on the front page on April 27, 1986, is biased, misleading, and extremely inaccurate. I served as a trial attorney in the Office of Special Investigations, U.S. Department of Justice (OSI) from 1979 to January 1986, and was the prosecutor in two of the cases discussed in the article, United States v. Kowalchuk and United States v. Sprogis. Despite the fact that I now live in Los Angeles, I was never consulted prior to the publication of the article.

The article indicates that the only evidence which the Justice Department receives from the Soviet Union is that which is inculpatory of the defendant. That is not true. In the vast majority of cases, when OSI requests information regarding an individual from the government of the Soviet Union, OSI receives a response that the Soviet Union has no information, or the information they supply is neither inculpatory nor exculpatory.

In some cases we have even received exculpatory evidence from the Soviet Union. In those cases, the Justice Department does not prosecute the individual.

The article makes no mention of the fact that OSI goes to great lengths to test the reliability of evidence supplied by the Soviet Union, as well as evidence supplied by any other country. The documents which OSI receives from the Soviet Union are actual World War II documents written by the Nazis, which have been kept in Soviet archives. All documents which OSI receives from the Soviet Union are examined by handwriting experts, chemists, and other scientists from the FBI, Immigration Service, or Treasury Department. Every document examined has been found to be authentic. Testimony of witnesses in the Soviet Union is corroborated by documents and witnesses living in other countries. Often, the defendant himself will end up admitting the truth of facts proven by documents and witnesses from the Soviet Union.

A case in point is the prosecution of Boleslavs Maikovskis. On his visa application to come to the United States, Maikovskis claimed that he had been a bookkeeper during World War II. We received documents from the government of the Soviet Union, purportedly signed by Maikovskis, stating that he had been the Nazi chief of police in a district in Latvia during the years 1941-1944. These documents also stated that Maikovskis had participated in the arrest of all the residents of the village of Audrini, Latvia, and the burning to the ground of the entire village. I went to Latvia to take the depositions of

witnesses there. These witnesses, who had been Nazi policemen in Latvia, testified that Maikovskis had served as chief of police and had given them orders to arrest of all of the inhabitants of the village of Audrini, to burn the village, and to murder all of the inhabitants. When we first questioned Maikovskis about this, he denied serving as police chief or taking part in the destruction of the village. He claimed that the documents were forged by the Soviet KGB and that all the witnesses were lying because they had been tortured by the KGB.

At the trial, a handwriting expert testified that Maikovskis had in fact signed the documents from the Soviet Union. At that point, Maikovskis admitted that he had lied, that he had been the chief of police, that he had written the documents which we had obtained from the Soviet Union, and that he had ordered his men to arrest all of the residents of Audrini and to burn the village. It was Maikovskis who had lied, not the Soviet documents or Soviet witnesses.

In regard to the Kowalchuk case, the Times article incorrectly states that Kowalchuk worked as "a clerk in the Nazi controlled police." In fact, we presented evidence that Kowalchuk served as the deputy commandant of the police, and both the United States District Court and the Court of Appeals majority, in banc, found that Kowalchuk occupied a responsible position in the police. It was only the dissenting judges in the Court of Appeals who took the position that Kowalchuk was a clerk. The article also claims that the only evidence which we presented of Kowalchuk's participation in persecution of Jews and other civilians came from the Soviet Union. That is not true.

Kowalchuk himself admitted at the trial that he had served in the Ukrainian Nazi police. He had earlier claimed that he was a tailor throughout World War II. Kowalchuk also admitted, under questioning by the government, that one of his duties in the police was to assign other policemen to guard and patrol the Jewish ghetto in the city of Lubomyl. Five thousand Jews were imprisoned in the ghetto, deprived of food and water, and regularly beaten by the Ukrainian police who patrolled there.

At Kowalchuk's trial, we also presented the testimony of three non-Soviet witnesses -- two from Israel and one from the United States -- who testified concerning specific atrocities they saw Kowalchuk take part in. In this case, as in other cases, the testimony of the witnesses in the Soviet Union concerning the activities of the defendant was very similar to the testimony of the witnesses from other countries, despite the fact that there was no way that these witnesses could have ever discussed the case. Once again, this demonstrates the reliability of Soviet evidence in these cases.

Mr. Gillette's article contains similar inaccuracies regarding the other cases he discussed. Mr. Gillette is also incorrect in several statements he made concerning these cases generally: the Brady rule, requiring the prosecution to turn over to the defense any exculpatory evidence, is applicable in these case, and the burden of proof placed upon the government is to prove its case by "clear, convincing, and unequovical evidence, which does not leave the issue in doubt," which has been held to be the same as in a criminal case. These are very

difficult cases to prove, and the defendants are given more due process and appeal rights than are defendants in criminal cases.

The arguments which Mr. Gillette presented in his article against the use of evidence from the Soviet Union have been presented to every court which has heard a case against a Nazi war criminal. The majority of courts have found evidence from the Soviet Union in these cases to be reliable. OSI has been very careful in its use of this evidence, subjecting it to rigorous testing prior to use. We have never found any indication of forgery or coercion of witnesses. In fact, in the cases in which I have taken depositions in the Soviet Union, I have found that the Soviet witnesses have not been prepared for their testimony at all by the Soviet prosecutors, something an American prosecutor would never allow. Until there is some concrete proof of tampering with evidence by Soviet authorities, the Justice Department must continue to utilize all sources of evidence, including evidence from the Soviet Union, in its efforts to bring these mass murderers and persecutors to justice.

Sincerely,

Jeffrey N. Mausner

Jeffrey N. Mausner
Law Firm of Berman & Blanchard
Los Angeles, California
Former Justice Department Trial Attorney

H-13