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CURRENT EVENTS: OSI COLLABORATES WITH KGB

America's vision is blurring as stripes and stars mingle with the sickle and hammer.

Focused groups, however, clearly see that the United States government is accepting highly questionable material from the Soviet Union's KGB in order to track down alleged Nazi war collaborators living in this country. Collaboration between these two governments is not only escalating; it is going out of bounds in the name of justice.

Almost 40 years ago, the world learned of the atrocities committed during World War II, but a renewed interest in finding war criminals has emerged during this past decade in the United States and abroad. However, the preponderance of fabricated evidence, especially that supplied by the Soviet Union's secret police, the KGB, has raised more than just one eyebrow.

"It's just appalling," said Paul Zumbakis, a Chicago attorney for five individuals accused of assisting Nazis. "This is as close to McCarthyism as you can get. Almost all of their investigations rely on KGB evidence and much of it is suspect."

These proceedings are conducted by the Justice Department's Office of Special Investigations (OSI), based in Washington D.C. Its investigations into the histories of about 700 alleged Nazi war criminals have become suspect to several Chicago defense attorneys, at least one member from the House of Representatives and has been the subject of letters between the U.S. Secretary of State and the American Embassy in Moscow.

All are worried that the OSI may be accusing innocent victims on the basis of what the KGB has to say.

The defense lawyers are concerned about a number of aspects involved in OSI/KGB collaboration. They wonder why the Soviet Union would assist the United States in any respect. They feel the information provided by the KGB is often false and is not carefully reviewed by the OSI. They are also against portions of the trial taking place within the Soviet Union and the questionable testimony elicited from witnesses provided by the KGB.

Bertram S. Feldbaum, one of four investigators for the OSI, frankly admitted that the agency does indeed get cooperation from the Soviet Union. "We are accused of being Soviet dupes, but we both have the same objective, which is to ferret out war criminals who are living in the United States."

Apparently the defense lawyers' startling accusations are based on most of the OSI proceedings. "The bulk if not all of the cases, tend to rely on KGB information," said David Springer, defense • attorney from Kirkland & Ellis, a firm in Chicago.

In fact, as revealed by a February 1983 Izvestia article, the Soviet Union is proud of its concerted effort in assisting the United States on the investigation of war criminals. After interviewing KGB agents, L. Korneshov wrote (as shown in an OSI translation), "In 1976-81 evidentiary materials on 140 war criminals was turned over to the organs of justice in the United States."

According to Zumbakis, many of the OSI accusations are directed against naturalized Americans of Byelorussian, Estonian, Latvian, Lithuanian and Ukrainian descent. This fact, he said, leads to the basic motive for the unprecedented OSI/KGB collaboration.

"The KGB is very eager to discredit Baltics who lived under Communist influence," Zumbakis said. "Their list of names usually points a finger at people who voice strong anti-communist opinions within their community."

In October 1983, New Jersey Federal District Judge Dickinson R. Bebevoise ruled for Juozas Kungys, 67, who was accused of assisting Germans in the arrest and execution of Communist Party leaders and confining 2,500 Jews. Kungys contended that the incriminating testimony was the product of a continuing effort of the Soviet Union to safeguard its hold upon the Baltic states by discrediting émigrés from those countries. Debevoise wrote, "The attempts by Soviet authorities

to stamp out these influences (nationalistic). . . are weakened by the presence abroad of large groups of émigrés who experienced personally the effects of Soviet occupation."

The OSI's investigative techniques have been questioned by Congressman Don Ritter, a member of the House of Representatives and the Congressional Helsinki Committee. In a letter dated Oct. 19, 1983, written to Peter W. Rodino, chairman of the U.S. House of Representatives Committee on the Judiciary, Ritter expressed concern about the methods invoked by the OSI in obtaining evidence through the KGB. He was worried about their methods of investigation "backfiring."

Ritter wrote, "Why should we expect them (the KGB) to act differently with the United States, especially when they see the chance to split the Ukrainian, Estonian, Latvian, Lithuanian and Jewish communities with their role in our seeking of justice?"

Felbaum and the defense attorneys disagree on the degree of importance this viewpoint has during the investigations.

"We've heard about those accusations from the Baltics, but we don't care about that," Felbaum said. "We just want to track down the Nazi war criminals."

When Investigator Felbaum explained how the OSI gets information from the Soviet Union, he said, "We're not as naive as we're told we are. It is claimed that the Soviet Union provides us with names of Baltics and that they (KGB) do everything to drum up false evidence so that the Baltic community would be discredited. The KGB does not have that much control."

Zumbakis strongly disagrees. "OSI is assuming that their (Soviet) system is fair when it is not, according to our standards," he said. "For example, in the depositions taken in Soviet Union it has been shown that the KGB linked procurators have full control over witnesses, interpreters, and proceedings. The cross examination allowed by Federal Rules of Procedures are not followed and thus the deposition process lacks the most basic safeguards."

Despite these damaging allegations, OSI's track record is almost 100 percent, said Bruce Einhorn, one of 17 attorneys for OSI. "We are careful that our cases are clear, convincing and unequivocal."

Although there is a great deal of evidence that contradicts Einhorn's statement, the defense attorney's position is difficult, not only according to the "scorecard" results, but also to the public. The Holocaust has justifiably elicited a highly charged emotional response.

Since the creation of OSI in 1979, the government has investigated the backgrounds of about 700 individuals and prosecuted about 40. Over 25 cases are still in court. About half of the cases still pending concern denaturalization and the other half involve deportation. (An American's citizenship must be stripped before he is deported).

One man agreed to leave rather than contest the charges and five have died, including Albert Deutscher of Brookfield, Ill. who was struck and killed by a train in Chicago on Dec. 18, 1981, one day after the OSI filed suit naming him as a participant in the executions of Jews in the Ukraine. Deutscher's death has been ruled a suicide. About 15 cases have been completed and the government has won almost all of them.

OSI's history dates back to 1975, when U.S. Rep. Elizabeth Holtzman (N.Y.) insisted on new legislation that would specifically apply to Nazis. Up until then, there was no specific provision in the 1952 Immigration and Naturalization Act that excluded Nazi war criminals. The amendment introduced legislation to exclude and deport any person, who under Nazi influence, "engaged or assisted in or incited or ordered any other person to engage or assist in the persecution of any person on account of such person's race, religion or national origin."

This act was signed by then-President Carter in October 1978 as an amendment to the 1952 Immigration and Naturalization Act. A few months later, the OSI was created with a staff of 35 and a budget of \$2 million. Today it has a staff of 50 and an annual budget of \$3.5 million.

An individual investigated by the OSI will not be denaturalized or deported for having been a Nazi war criminal per se, Einhorn explained. Instead, the accused will be denaturalized or deported for having lied on his immigration papers upon entry into this country.

These cases are tremendously complex, time-consuming and expensive, Zumbakis said. The accused usually has to go through two phases, denaturalization and then deportation. In order to revoke someone's citizenship (denaturalization), there must be a trial, appeal and certiorari to the U.S. Supreme Court. In order to deport someone, the case moves through a hearing, an appeal, the U.S. Court of Appeals and the Supreme Court. This adds up to seven separate steps and can cost up to \$1.5 million, Zumbakis said.

Because the denaturalization process is a civil matter, those brought before the bar do not have a right to government paid counsel. "A common crook has more rights than somebody accused of being a Nazi," Zumbakis said. "All of the odds have been stacked against the defense."

Robert A. Korenkiewicz, another Chicago defense attorney, said that some observers are referring to the OSI investigations as "witch-hunts."

"All of our cases are heard in front of an American judge who is informed by scholarly judgment," Einhorn said. "I'd like to see one specific example of a witch-hunt conducted by the OSI."

One might recall the testimony elicited from witnesses during Chicago Frank Walus' trial, which began in 1977 and was eventually dropped in 1980. Walus was accused by the U.S. government as "the notorious Gestapo trooper who was the beast of Kielce, Poland" between 1939-43.

Eleven government witnesses were flown from Israel to Chicago. Defense attorney Korenkiewicz said that most of these witnesses answered newspaper ads that were run in Israel by the United States government. The ads listed his name and town where he would have committed the atrocities. Chicago newspaper accounts of the court proceedings described the witnesses as "hissing" in Polish, "Here is the murderer," or "I will never forget that face".

During this time, Walus had become the subject of hatred and ridicule when the now-defunct Daily News headlined its story with "Nazi Jew Killer Living on SW Side?" In 1977, he was sprayed with Mace while walking out of the Dirksen Federal Building and photographs depict a man lying on the concrete with his terror filled eyes wide open.

Two years after his conviction in 1978, when deportation seemed imminent, a court of appeals ordered a new trial. Korenkiewicz had uncovered enough evidence to prove that Walus had been in Germany working on a farm, rather than in Poland, during the years in question.

The OSI agreed not to appeal the case because it no longer had sufficient evidence to prosecute. (In this victory — loss count, OSI does not comment the Walus case).

On the other hand, the OSI thought it did have enough evidence to prosecute Kungys. The suspicious nature of the testimony prompted Judge Debevoise to write extensively about the concerted endeavor between OSI and the KGB.

In his opinion, Debevoise wrote, "The prosecution of this case results from an unusual cooperative effort of the OSI and Soviet authorities. The Soviet authorities have provided documents from archives under their control and, more important, they have assembled, interrogated and produced for deposition the witnesses whose testimony is critical if the government's principal charges are to be sustained."

Most of the information against the accused is in Europe or the Soviet Union. Therefore, the logistics of gathering the evidence for or against the accused requires that the materials be examined across the Atlantic Ocean.

But the KGB refuses to provide travel services for the defense, although it will accommodate the OSI. A letter from the American Embassy in Moscow sent to the Secretary of State, dated April 1982, stated "The embassy will not. . . continue to convey defense attorneys traveling alone within the Soviet Union to and from internal airports. As defense attorneys represent private persons, such service represents an improper expenditure of government (Soviet) resources."

Felbaum said that international law requires that he must conduct the investigations under the other country's jurisdiction, not that of the United States.

"We conduct the investigations with the defense counsel present and with the Soviet procurator who is there to assure to the rights of the Soviet citizen," Felbaum said. "They don't drum up evidence. We assist them."

Once the trial moves into the Soviet domain, the American court style is thrown to the wayside by the KGB, Soviet procurators and the OSI if it is convenient. Within the Soviet Union, these cases are considered political and criminal, Zumbakis said. Within the United States, these are civil cases.

"They are different ball games altogether," Zumbakis said. "If we were following the rules of our courts, we would have the right to cross-examination. This is the only way you can get to the truth. For all practical purposes, procurators in the Soviet Union do not allow cross-examination."

It is virtually impossible to provide the usual safeguards present in the American court system. The Kungys file stated that where the original Soviet evidence does not support the desired results, there is intense pressure to remold it.

One lawyer, Frederick Neznansky, who worked in the Soviet Union for 25 years, said during the Kungys trial, "Witnesses are indeed trained to testify according to the wishes of the prosecution. Sometimes they are threatened, not in a serious way, but people could be told that they will be fired if their testimony was not appropriate. It can hardly be questioned that. . . the KGB was responsible for preparing the Lithuanian witnesses for OSI interrogation."

When an American loses his job, the situation is not as drastic as when a Soviet citizen becomes jobless, Zumbakis said. The KGB in effect "blackballs" the individual, who will most likely be forced to lead a life of a pauper, itself a crime in the USSR.

The OSI's technique in examining KGB provided documents also appears suspicious. This point was brought up during Chicagoan Liudas Kairys' trial, which began in 1980. Kairys was accused of concealing Nazi service as a guard of the SS forced labor camp in Treblinka, Poland, where thousands of Jewish civilian prisoners were murdered. Kairys is a leader of the independent Lithuanian community and was editor-in-chief of a Lithuanian cultural magazine which focused exclusively on preserving the memory of a Lithuania free from Soviet oppression.

One witness, Imarts Lesinskas, a defector from the KGB, testified during Kairys' trial, saying that the Soviets used forged and falsified documents to attack Baltic émigrés inimical to the Soviet regime as Nazi war criminals. He further testified that a man in Kairys' position would be a "prime target" of such a Soviet effort.

Kairys contended his job only involved digging holes for fence posts, fixing railroad tracks and building barracks. He also claimed that he worked on his father's farm in Lithuania during the years the OSI said he was guard for the Nazis.

The KGB provided the OSI with documents that were to prove Kairys was a Nazi. Their authenticity was hotly debated, but the voluminous amount of evidence provided by Kirkland & Ellis, the firm that is representing Kairys pro bono (without cost), showed that the material was false.

When OSI sent out its documents expert to Moscow, he came back and reported that there were no alterations. This same man also examined similar Soviet documents in five other cases for the OSI. He never found any alterations. When Kirkland & Ellis sent out its document expert, he came back and reported 15 erasures, unexplained pencil remnants and a torn-off picture. The OSI's expert later changed his testimony.

According to Kairys' post-trial briefs, he was born in Kaunas. The KGB documents gave five different spellings for his name none of which were correct, and the wrong birthplace.

The documents stated that he had a scar on his left hip, which he didn't, a tattoo under his left armpit, which he didn't. They stated his hair color as dark blond. His hair is black and has always been black. His eyes were described as gray, when in fact, they are blue.

The OSI's witness, Gerald Richards, a forensic photographer, questioned the integrity of the KGB provided photograph. Richards testified that in examining the picture, he noted an "alteration" and some "scarring." Two other OSI witnesses also testified that the original picture was probably removed.

If the OSI's witnesses cannot substantiate the government's point of view, who could? Another KGB provided witness in the Soviet Union admitted that he first saw the photograph in an article attacking Kairys as a "bourgeois nationalist war criminal," in "Tiesa," the local Communist Party newspaper.

The post-trial briefs state, "Such pre-identification exposure to the photograph and accompanying accusations fatally taints the . . . identification."

The restrictions on cross-examining KGB provided witnesses also prejudiced Kairys' trial. One witness admitted that Soviet officials had questioned him for two days before showing the photograph. When the defense asked who contacted him about testifying, the witness responded, "KGB, KGB." The Soviet procurator then began to interrupt with "a flurry of objections," according to the briefs. "The failure to translate this response and the Soviet Procurator's attempt to obscure the topic further erodes the reliability of (the witness') testimony."

Kungys' trial also had translators who were trained to respond in a "proper" fashion. Many wrong interpretations were found during portions of his trial held in the U.S.S.R. Judge Debevoise wrote, "The subtle shadings of meaning and omissions during translation are simply further indications of the interest of the Soviet authorities in the outcome of these proceedings."

In almost every case, the American courts have accepted the videotaped depositions and Soviet documents into evidence. Most of this evidence has passed through the American judicial system with an unquestionable appreciation for Soviet assistance.

Another letter from the Secretary of State to the American Embassy in Moscow dated February 1982, stated, "Allan Ryan (former director of OSI) and Neal Sher (former deputy director and now director of OSI) would like to meet with Procurator General Rekunkov as a courtesy call if he is available. Ryan feels that face to face meeting will be helpful to renew and refresh joint commitment to cooperation, and to assure Soviets that past efforts have not gone unappreciated. Such a meeting hopefully will provide lubrication for further dealings and assure the Soviets that their extensive efforts in taking protocols, arranging depositions and providing documents have contributed substantially to an unbroken string of OSI victories to U.S. courts to date."

The classic adversarial system used in the United States' judicial process may be at the root of the OSI's blinders when it comes to forged KGB evidence, Korenkiewicz said. "The OSI has a lot of true-believers, who are very zealous about the agency's mission. The defense's position is tough because nobody will sympathize with the accused." Zumbakis continued

Korenkiewicz's thought when he said, "In all of these cases, they (OSI) have never found any exculpatory documents. Now that's insane. They will simply not provide anything that will help the defense. Justice Department's duty is to seek justice not just victories."

Until recently, American judges have unquestioningly admitted evidence provided by the KGB into the trials. If this OSI and KGB hand holding continues, America's entire justice system could be at stake. The defense attorneys' contention that Soviet contrived evidence should be dismissed is finally being heard. Their greatest fear, however, is that the U.S. judges' blurred vision will only clear up after a string of injustices have been served on a KGB silver platter.

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