CASE NO. 14-56440

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MICHIKO SHIOTA GINGERY, an individual, KOICHI MERA, an individual, GAHT-US Corporation, a California non-profit corporation,
Plaintiffs and Appellants,
v.
CITY OF GLENDALE, a municipal corporation, SCOTT OCHOA, in his capacity
as Glendale City Manager,
Defendants and Appellees.

On Petition for Reconsideration after Appeal from the United States District Court for the Central District of California,
Case No. 2:14-cv-1291-PA-AJW
District Judge Hon. Percy Anderson

MOTION OF THE NIPPON TODAY'S RESEARCHERS SOCIETY (KINGEN) FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF IN SUPPORT OF PLAINTIFFS AND APPELLANTS PETITION FOR RECONSIDERATION *EN BANC*

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MOTION OF [PROPOSED] *AMICUS CURIAE* THE NIPPON TODAY RESEARCHER'S SOCIETY (KINGEN) FOR LEAVE TO FILE BRIEF IN SUPPORT OF PLAINTIFFS AND APPELLANTS PETITION FOR RECONSIDERATION *EN BANC*

Pursuant to Rule 29(b) of the Federal Rules of Appellate Procedure, and consistent with Circuit Rule 29-2 of the Ninth Circuit Rules, [Proposed] *Amicus Curiae* The Nippon Today's Researchers Society (KINGEN) respectfully requests leave to file the concurrently submitted *amicus curiae* brief in support of plaintiff-appellants MICHIKO SHIOTA GINGERY, an individual, KOICHI MERA, an individual, and GAHT-US Corporation, a California non-profit corporation.

The KINGEN offers the Court the perspective of a large, global society of researchers and scholars, who note with dismay the actions of the City of Glendale in accepting as factually true certain allegations against Japan that are disputed by the Government of Japan and many Japanese scholars and researchers. The KINGEN hopes that its (proposed) *amicus* brief will provide the Court with an international perspective on the historical events, disputes, and government-to-government discussions regarding "Comfort Women," as well as the global response to the demand by the City of Glendale (and/or the Korean interest groups that sponsored the "Comfort Women" monument) that Japan "take historical responsibility" for the "crime" of "enslavement."

In light of this historical perspective and the undeniably biased and disputed view promoted by Korean interest groups and adopted by Glendale, the panel erred in failing to consider that plaintiffs and appellants can properly state a claim, under the Supremacy Clause, as argued by Plaintiff-Appellants, as well as the Due Process and Privileges and Immunities clauses (as they have argued in California state court).

Finally, the panel misread the First Amendment jurisprudence of government expressive speech in a public forum.

The Interests of KINGEN.

The KINGEN is a private, not-for profit organization founded in Tokyo in 2009. It is made up of 70 members who have serious interest in the recent and contemporary history of Japan. The organization is not related to the Government of Japan, nor is receiving donation or contract from any organization related to any foreign government.

To date, the society of KINGEN have held over 120 lecture meetings on a variety of themes concerning modern historical events in Japan and developments from the 1900s to the present. The society is proud that a large number of its meetings have involved cutting-edge speakers with specialized knowledge and expertise on each meeting's theme. One of the themes on which KINGEN has had great interest is the controversial issue of the "Comfort Women." This issue has for some years been a source of great tension between South Korea, China, and Japan. More recently, the debate has spread to the United States, Australia, Canada, and Europe, including the disputes that have developed as a result of the City of Glendale monument dedicated to the memory of "Comfort Women."

The Attached Brief Will Be Helpful to the Court.

The KINGEN organization has collected a wide range of information and related documents on the subject of "Comfort Women" over the years, and KINGEN has a distinctly different view on the "Comfort Women" as compared to the views expressed in *amicus* briefs submitted to the Ninth Circuit Court of Appeals by the interest groups, Korean American Forum of California ("KAFC") and the Global Alliance for Preserving the History of WWII in Asia ("GAPH").

Because these groups submitted *amicus* briefs to this Court which present their view of the historical record, and because the Ninth Circuit panel accepted those briefs and presumably considered them in rendering its opinion, the KINGEN feel compelled to present our own findings to the Court in support of the plaintiff-appellants' motion for reconsideration *en banc*.

It is an honor for the KINGEN to make available to the Court the results of our past studies on this issue in the hopes of advising the Court on the Japanese perspective and modern understanding of the "Comfort Women."

In the *amicus* brief, KINGEN argues that the Ninth Circuit should grant the petition for reconsideration because the dismissal of Plaintiff's and Appellant's complaint with prejudice is reversible error. Plaintiffs and appellants could assert valid causes of action for violations of the Equal Protection and Due Process Clauses of the U.S. Constitution; and indeed, in the California state court, these plaintiffs have alleged additional violations of the United States Constitution based upon Glendale's treatment of its Japanese citizens as compared to its Korean citizens, which will not be advanced in the United States District Court because their case was dismissed without leave to amend.

In addition, Glendale decided to adopt the monument's language – which was provided and supported by a pro-Korean interest group—while ignoring the objecting views of its Japanese citizens. Glendale's Central Park is a public forum and the City has adopted and set in stone the views of one set of interests while denying the right of others. This is not a valid "time, place and manner" restriction on speech, nor is it "merely expressive speech." but rather an impermissible government subsidy of controversial, highly charged, and internationally relevant speech by adopting the views of a political activist group with anti-Japanese objectives. In so doing, the panel improperly expanded the scope of *Pleasant*

Grove City v. Summum, 555 U.S. 460, 470 (2009) – dealing with symbolic speech—and *Alameda Newspapers, Inc. v. City of Oakland*, 95 F.3d 1406, 1414 (9th Cir. 1996)—dealing with a (non-permanent) written resolution or proclamation. This is an entirely new statement of the law: that a city can adopt the foreign policy statement of an interest group, in bronze and stone, in a public park, that a foreign nation should be held accountable for war crimes over the objection of its citizens. The rule announced by the panel would permit cities to engage in all manner of viewpoint discriminatory speech in public fora under the guise of "*merely expressive*" proclamations.

Given California's troubled history of mistreating Japanese residents, this monument and its one-sided view of history can rightfully be seen as the first step on a slippery slope of government-sponsored anti-Japanese sentiment. If the monument and its incendiary narrative stand, nothing prevents Glendale from adding, as additional "expressive speech," any manner of divisive or exclusionary rhetoric.

For the reasons stated in this motion, KINGEN respectfully requests that this Court grant its motion to file the accompanying amicus brief in support of the Plaintiffs-Appellants.

DATED: September 26, 20166 Respectfully submitted,

DECLERCQ LAW GROUP, INC.

By:/s/ *William B. DeClercq, Esq.*
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NIPPON TODAY RESEARCHER'S SOCIETY (KINGEN)

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BRIEF OF *AMICUS CURIAE* THE NIPPON TODAY'S RESEARCHERS SOCIETY (KINGEN) IN SUPPORT OF PLAINTIFFS AND APPELLANTS PETITION FOR RECONSIDERATION *EN BANC*

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BRIEF OF *AMICUS CURIAE*

CORPORATE DISCLOSURE STATEMENT.

The Nippon Today's Researchers Society (KINGEN) is a not-for-profit, non-governmental organization based in Japan. KINGEN receives no financial assistance from any outside group, and is wholly funded by donations from its members. KINGEN has no corporate parent and no other organization has an ownership interest in KINGEN.

INTEREST OF *AMICUS*.

Interest of the amicus. KINGEN has great interest in understanding the controversial issue of the "Comfort Women," and has collected a wide range of information and related documents on the subject. KINGEN has a distinctly different view on the "Comfort Women" as compared to the views expressed in *amicus* briefs submitted to the Ninth Circuit Court of Appeals by the interest groups, Korean American Forum of California ("KAFC") and the Global Alliance for Preserving the History of WWII in Asia ("GAPH"). Because the Ninth Circuit panel accepted those briefs and presumably considered them in rendering its opinion, the KINGEN feel compelled to present our own findings to the Court in support of the plaintiff-appellants' motion for reconsideration *en banc*.

The members of KINGEN have studied Japanese history from various angles, and believe that the current controversy over the "Comfort Women" is driven by a pro-Korean political agenda, coordinated by pro-Korean organizations, with an objective to dishonor and shame the Government of Japan and the Japanese and thereby lower its international standing.

Japanese scholars take exception to the theory that the "Comfort Women" were sex slaves, and argue that the characterization is taken out of its proper historical context and that it is not based on sound historical evidence. In this *amicus* brief, KINGEN wishes to provide the Court with context and reliable sources of information which support the Japanese denial of the "sex-slave" theory, and explains the position of the Japanese government on the issue of "historical responsibility" on the accusation of war crimes by Glendale and pro-Korean groups.

STATEMENT OF AUTHORSHIP AND FUNDING.

Counsel for Plaintiff-Appellants had no involvement in the preparation of this brief or the accompanying motion. Counsel for KINGEN is not counsel for any party in this action. However, undersigned counsel discloses to the Court that he represented Plaintiff-Appellants for approximately four months in 2014, commencing *after* the motion to dismiss was fully briefed and ending in October 2014, *before* any briefing on the appeal commenced. Counsel further advises the Court that no confidential information of funds from any party was used in the preparation of this brief or the accompanying motion.

Neither any party nor any counsel for any party contributed any money that was intended to fund preparing or submitting the brief or the accompanying motion. No person - other than *Amicus*, its members, or its counsel - contributed money that was intended to fund the preparation or submission of this brief or the accompanying motion.

ARGUMENT

I. INTRODUCTION.

Glendale has installed a permanent monument in a public park – in stone and bronze – which sets forth a disputed and controversial view of history. Glendale espouses the point of view of Korean interest groups that over 200,000 "Comfort Women," were "sex slaves" during World War II, and demands that Japan "take historical responsibility" for alleged war crimes.

KINGEN respectfully submits that these statements are not appropriate nor supported by the historical record, and reflect a strongly pro-Korean interpretation of the issue, to the detriment of Japan, resulting in anti-Japanese discrimination in Glendale. Further, Glendale has violated the First Amendment by permanently endorsed one viewpoint while excluding others. In so doing, the panel improperly expanded the scope of *Pleasant Grove City v. Summum*, 555 U.S. 460, 470 (2009) – dealing with symbolic speech—and *Alameda Newspapers, Inc. v. City of Oakland*, 95 F.3d 1406, 1414 (9th Cir. 1996)—dealing with a (non-permanent) written resolution or proclamation. This is an entirely new statement of the law: that a city can adopt the foreign policy statement of an interest group, in bronze and stone, in a public park, that a foreign nation should be held accountable for war crimes over the objection of its citizens.

The new rule announced by the panel allows statements in favor of a controversial foreign policy agenda of an interest group to be set in stone in a public park. This invites municipalities to engage in all manner of viewpoint-discriminatory speech in public fora by conflating "*merely expressive*" monuments with proclamations.

II. JAPAN DENIES THAT THE "COMFORT WOMEN" WERE ENSLAVED.

A. The "Kono Statement" Was a Diplomatic Compromise.

In the spring of 2014, the government of Japan began aggressively denying the accusation that the "Comfort Women" were enslaved. The Kono Statement, announced on August 4, 1993, was interpreted as an admission to police and military coerced recruitment of the "Comfort Women." But the statement reveals no use of the words "abduct," "slave," nor an admission that these women were "enslaved by the Japanese Military." However, Kono Statements caused serious misunderstandings internationally, so a blue-ribbon panel of Japanese experts revisited the statement in Spring 2014.

On June 20, 2014, the commission concluded that the Kono statement was not a factual admission of abduction/enslavement of "Comfort Women," but rather a diplomatic concession to Republic of Korea ("ROK"), a formal apology but not an admission of fault, that was intended to bring an end to the dispute.

On February 20, 2014, a high-ranking Japanese official expressed disappointment at the reversal by the ROK. (*Appendix*, Exhibit A.) Japan felt compelled to support the fragile country of South Korea in its fight against communist threats, especially in the Korean War, during the cold war, and even into the 1990's, in order to maintain warm diplomatic relations with the ROK to keep Japan's good standing with the USA. (See *Id*.)

B. Japan Has Denied the Allegations on Four Separate Occasions.

Following the 2014 study, Japan addressed the issue of "Comfort Women" in great detail. Japan explicitly and specifically denied forcible recruitment (abduction or slave hunting), slavery, and the claim that "Comfort Women" numbered 200,000. Japan named ASAHI Newspaper as a propagandist and the main disseminator of alleged disinformation. Japan's official denial started with a statement before the UN Human Rights Committee (CCPR) on July 15, 2014, and Japan's denial has been repeated four times. (**Exhs. B, C, D, E & G [summary prepared by KINGEN]**.) Japan's position to the international community directly contradicts Glendale's accusations, as Japan maintains:

- These are one-sided claims which lack corroborative evidence;
- There is no documentation of state-sponsored abductions of women,
- The claim of "200,000 comfort women" is based upon confusing "Comfort Women" with women volunteer corps.

- The phrase expression “sex slaves” contradicts the facts and it is inappropriate to consider the comfort women system as "slavery" from the perspective of then-current international law.

- Japan objects to the allegation of historical revisionism and maintains it has fully addressed the issue “Comfort Women.”

III. JAPAN DISAPPROVES OF GLENDALE’S MONUMENT TO THE “COMFORT WOMEN.”

Glendale has disrupted the relationship between Japan and the USA. Japan has expressed support for this citizen lawsuit against the monument in Glendale, and expressed disapproval of another very similar statue in Seoul.

A. Japan Calls Glendale’s Monument “Incompatible” and “Regrettable.”

On February 21, 2014, the day after plaintiffs filed this action, Mr. Yoshihide Suga, Chief Cabinet Secretary of Japan, gave a press conference, stating: “This installation of a memorial statue by a municipal government in the U.S. is incompatible with the views of the Japanese Government,” and “extremely regrettable.” Mr. Suga expressed solidarity with the plaintiffs, Japanese, and Japanese-Americans. (Exhibit F)

B. Another Diplomatic Compromise on “Comfort Women”: Japan-Korea Agreement of 2015

On December 28, 2015, the Japan-Korea Agreement on “Comfort Women” was announced and the Foreign Minister of ROK, Mr. Yun, specifically addressed the “Comfort Woman” statue in Seoul, as follows:

> *The Government of the ROK acknowledges the fact that the Government of Japan is concerned about the statue built in front of the Embassy of Japan in Seoul from the viewpoint of preventing any disturbance of the peace of the mission or impairment of its dignity, and will strive to solve this issue in an appropriate manner through taking measures such as consulting with related organizations about possible ways of addressing this issue.* (Exh. H.)

Japan supports for the fragile government of the ROK, in the face of volatile situations in the South and East China Sea, to maintain its alliance with the U.S.A. Nevertheless, Japan requested removal of the statue in Seoul, and the ROK has acknowledged the problem. Similarly, the statue in the Glendale creates friction amongst ethnic groups, and its continued presence in Glendale threatens to destabilize the relationship between the USA and Japan. (Exh. I.)

IV. WHO WERE THE "COMFORT WOMEN"?

According to various reports, "Comfort Women" were recruited through advertisements in newspapers (Exh. 6), proprietors of brothels, employment agencies, panders, and other private individuals. As valuable employees, scholars argue, they were treated with respect. Furthermore, historians claim that as a result of the risk of their work near battlefronts, they received high remuneration. Documents submitted herewith reflect that one "Comfort Woman" deposited in her bank earnings then-equivalent to the purchase price for two houses in Tokyo, in only one year. (Exh. J.)

U.S. Military reports have supported this view of the historical facts. Indeed, the U.S. Government has previously investigated the allegations of atrocities against the "Comfort Women" by the Japanese military, at urging of *amicus* GAPH, without results.

A. U.S. Military Intelligence Report No. 49.

On October 1, 1944, the U.S. issued a report, Japanese Prisoners of War Interrogation on Prostitution Report No. 49, prepared by U.S. Office of War Information, Psychological Warfare Team which was attached to U.S. Army Forces India-Burma Theater, APO 689. (Exh. K.) It is based on interrogations of "Comfort Women" captured by the U.S. in Burma. The report concludes: "A 'comfort girl' is nothing more than a prostitute or 'professional camp followers' attached to the Japanese Army for the benefit of the soldiers." (*Id*., p.1) A summary of the major findings of this report follows:

- "Comfort Women" were recruited by Japanese private-sector agents in May 1942 in Korea for "comfort service," which was a contract wherein the women or their families were paid in advance
- The women's age ranged from 21 to 28.
- Each woman lived, slept and transacted business in a private room.
- The report opines that they lived fairly comfortably.
- The report characterizes the relationship between "Comfort

Women" and soldiers as generally amicable and social with numerous instances of marriage proposals and a few marriages.

- The report describes strict regulation to protect the health and safety of the women and their customers.
- The report states that women had time off and were able to refuse a customer if they wished.

(*Id.*) U.S. military interrogations of Japanese prisoners of war in south Asia and southern Pacific areas, held at the U.S. National Archives and Records Administration (NARA), mirror Report No. 49 in the depiction of "Comfort Women" in Manila, the Philippines and Rabaul, Papua New Guinea. (Exhibit L.)

B. Interagency Working Group Report of 2007

In response to the 1998 Nazi War Crimes Disclosure Act, Public Law 105-246, *amicus* GAPH, a Chinese-American organization, persuaded Congress to also authorize and investigation into war crimes by the Japanese resulting in the Japanese Imperial Government Disclosure Act, Public Law 106-567, (2000). The Interagency Working Group (IWG) – consisting of top U.S. government officials—began researching alleged war crimes by the Japanese. After reviewing over 8.5 million pages, little evidence was reported. (Exhibit P.) Acting Chair Steven Garfinkel acknowledged the disappointment of GAPH, who hoped to unearth massive troves of evidence of Japanese war crimes. (Exhibit Q.)

Despite the U.S. acknowledging a lack of documentation, *amicus curiae* GAPH insists on pressing the "enslavement" theory, seeking redress for "Japan's aggression, invasion, and occupation of mainland Asia and island nations of the Pacific." (Exh. M) But the U.S.A. has no policy regarding "Comfort Women" as a war crime since it was a then-acceptable and legal local practice. (Exh. L, p. 15) But Glendale, following *Amicus* GAPH, ignores the policy of the U.S.

C. Glendale Strains Relations with Japan in Favor of Korea.

Glendale's monument has alienated its first sister city, Higashi-Osaka. (Exh. U.) According to KINGEN's study, the mayor of Glendale has visited its relatively new Korean sister cities, Goseong and Gimpo, seven times in the last seven years, but not once stopped in Higashi-Osaka, a few hours from Seoul. By favoring Korea over Japan, Glendale has shunned Japan – an American ally and home of Glendale's sister city dating back to 1960.

D. About *Amicus* GAPH

GAPH was established by Chinese-Americans in northern California with the aim of alleging atrocities by the Japanese military during World War II. GAPH helped write The Rape of Nanjing, by Iris Chang, a controversial text that many Japanese scholars argue lacks credible evidence. GAPH lobbied Congress to create the IWG, which ultimately failed to unearth documentation of the Japanese military's alleged crimes.

Also, GAPH opposes U.S. diplomatic policy by, among other things, claiming that the San Francisco Peace Treaty of 1951 was controversial, and was invalidated in 1972 by a joint communique between Japan and PROC. (Exh. M.) GAPH hopes Glendale will generate "a formidable popular consensus (which) will compel [] Japan to honor its postwar responsibilities." (*Id.*) In short, GAPH is promoting the "Comfort Women" to lower Japan's standing.

E. Statements of the "Comfort Women"

Historical evidence of Glendale's narrative relies on narrative statements from self-proclaimed "Comfort Women." In The Comfort Women (University of Chicago Press, 2008), author Sarah Soh, Professor of Anthropology at San Francisco State University, has rigorously examined the evidence, concluding:

1. "Comfort Women" were not typically kidnapped. (p.3)
2. "Comfort Women" received advance payments when recruited. (p.9)
3. "Comfort Women" numbered 50,000 at most, not 200,000. (p.24)

Professor Park Yuha of Sejong University in South Korea has resisted the pressure to adopt the ROK version of history:

> "some well-known Korean ['Comfort Woman'] survivors (such as Kim Hak-sun, Pae Pong-gi, and most recently, Yi Yong-su) have given different version of testimonial narratives. …. In particular, the stories of some Korean survivors have varied regarding a crucial issue of the method of their recruitment. … In the case of Yi Yong-su, the published account states that she left home at dawn when her age-mate and neighborhood friend Pun-sun knocked on her window and whispered, 'Come out quietly.' Yi recalled: 'I

> tiptoed out and furtively followed Pun-sun to leave home…without letting her mother know.'" ("Comfort Women of the Empire" in 2013 [Korean], 2014 (Japanese, Asahi Newspaper)

But Yi recently revised her statements to allege she was "dragged away by the Japanese military during her sleep" dovetailing with the activists' paradigmatic discourse." (Exh. V.)

By contrast, Special Edition of Bulletin of Showa Kenkyujo collects 33 testimonials from military personnel and civilians, recounting conversations with "Comfort Women," along with Japanese military discipline and attitudes, detailing the strict regulation of soldiers' visits to "Comfort Stations," the mandate that natives of occupied territories be treated as equals, and denials of Hitler's theories of racial supremacy. (Exh. N.) This argues Japanese military was disciplined and that "Comfort Stations" decreased the incidence of rape and prevented disease. (Exhibit O). KINGEN finds these results consistent with prisoners' interrogation reports. Indeed, KINGEN has found no evidence of kidnapping, no evidence of 200,000 "Comfort Women," and no mention of sexual servitude. (Exh. W.)

Glendale, and its *amici*, rely almost exclusively on the narratives of self-identified "Comfort Women" to proclaim the Japanese "guilty" of "war crimes." There has been no tribunal, no sworn testimony, and no such verdict, but the language of the monument in Glendale's Central Park insists otherwise. Permitting a California municipality to act as judge, jury and executioner in a serious matter

of international import invites perjury, and insults the process of international criminal courts.

Ironically, Glendale's purported justification for the monument – freedom of expression – actually limits freedom of expression of opposing viewpoints by officially condemning the Japanese military as a criminal.

F. Argument Amongst Academic Historians

Historians are hotly debating the "enslavement" theory, but debate is dead in Glendale Central Park. Those who insist that "Comfort Women" were enslaved have not responded for almost a half year since 50 Japanese historians presented evidence denying enslavement. (Exhibit R).

V. WHAT IS THE REAL PURPOSE OF THE MONUMENT?

Glendale's monument purports to commemorate "200,000 Sex Slaves," but significant historical evidence suggests there were a quarter that many and that the "Comfort Women" were "***nothing more than prostitutes or professional camp followers***" (**Exh. K**.) Indeed, none of the Japanese "Comfort Women" – who as a group constituted the greatest number of these women – have made any accusation of enslavement against the military of Japan, nor have they demanded reparations.

This begs the question: why do the proponents of the monument fail to commemorate victims of sexual exploitation and/or alleged war crimes, at any other time, in any other place? Why does not Glendale commemorate prostitutes

who worked during the Korean War, Vietnam War, elsewhere? KINGEN respectfully submits that the "Comfort Women" theory espoused by Glendale's monument is a proxy for anti-Japanese sentiment and is part of a campaign to shame and demean the Japanese people, with a goal of Japan's standing as an ally of the U.S.A.

As evidence, KINGEN has has collected images of anti-Japanese demonstrations, rallies and signage around the monuments by Korean and Chinese activists. Although the monuments purport to promote peace, they have become a lightning rod of division. (Exh. S [KINGEN-assembled collage of anti-Japan demonstrations surrounding "Comfort Women" monument].) Therefore, KINGEN maintains that the "Comfort Women" issue is an international political issue, using a hypocritical double standard on women's rights, in order to marginalize Japan and the Japanese today. There have been many atrocities during wars in history and in the world. To single out Japan and to condemn Japanese persistently, in light of the broader context and the complicated history of this issue is tantamount to state-sponsored discrimination and prejudice against the Japanese people.

VI. PLAINTIFFS AND APPELLANTS CAN STATE A CLAIM.

The panel concluded that Plaintiffs' complaint should be dismissed without leva to amend; however, in California, plaintiffs have alleged claims under the California Constitution Equal Protection and Privileges and Immunities clauses.

Plaintiffs and Appellants should be permitted to amend their federal complaint in light of the analysis above as Glendale's pro-Korean position in light of the vigorous international dispute is a state-sponsored proxy for anti-Japanese-American sentiment in Glendale, California.

Plaintiffs Can State a Claim for Violations of their First Amendment Rights.

As alleged in Plaintiffs' complaint, Glendale decided to adopt the monument's language – which was provided and supported by a pro-Korean interest group—while ignoring the objecting views of its Japanese citizens. Glendale's Central Park is a public forum and the City has adopted and set in stone the views of one set of interests while denying the right of others to offer different views of the historical facts and to defend the "trial by monument" in Glendale.

Glendale's statement in the ***written*** plaque reads as an out-of-court indictment of Japan--a foreign power—and expresses subtle anti-Japanese animus. The narrative plaque is not a valid "time, place and manner" restriction on speech in a public forum, nor is it mere "expressive speech."

Rather, the written statement set in stone in Glendale's Central Park is an impermissible government subsidy of controversial, highly charged, and

internationally relevant speech that adopts the views of a political activist group with anti-Japanese objectives.

In permitting the language of the **plaque** (separately and distinct from the "expressive" monument of a sitting Korean woman) the panel improperly expanded the scope of *Pleasant Grove City v. Summum*, 555 U.S. 460, 470 (2009) – dealing with symbolic speech—and conflated it with the holding of this Court in *Alameda Newspapers, Inc. v. City of Oakland*, 95 F.3d 1406, 1414 (9th Cir. 1996)—dealing with a (non-permanent) written resolution or proclamation.

The result is an entirely new statement of the law: in reading the opinion, a city could adopt the foreign policy statement of any interest group, and cast it in bronze and stone, in a public park, arguing that a foreign nation should be held accountable for war crimes over the objection of its citizens. The rule announced by the panel would permit cities to engage in all manner of viewpoint discriminatory speech in public fora under the guise of "*merely expressive*" proclamations.

Given California's troubled history of mistreating Japanese residents, this monument and its one-sided view of history can rightfully be seen as the first step on a slippery slope of government-sponsored anti-Japanese sentiment. If the monument and its incendiary narrative stand, nothing prevents Glendale from

adding, as additional "expressive speech," any manner of divisive or exclusionary rhetoric.

VI. CONCLUSION

The "Comfort Women" monument was promoted, funded and created by Korean interest groups and erected three years ago by the City of Glendale, leading to international tensions and disenfranchisement of the plaintiffs, because Glendale accepted a pro-Korean, anti-Japanese view. Indeed, a very similar statue in Seoul has created diplomatic tensions between Japan and South Korea. Substantial historical evidence and academic scholars question the theory that "200,000 'Comfort Women' were 'sex slaves' of the Japanese military," but Glendale ignored the perspectives of the Japanese and embraced the views of pro-Korean groups. From a Japanese perspective, the monument does not preserve peace nor promote human rights, but rather defames and demeans Japan and the Japanese in the USA.

The Ninth Circuit should rehear the case *en banc* and reverse the ruling of the panel because a failure to act will cause the situation to worsen, resulting in more anti-Japanese monuments promoted by the Korean interest groups, threatening to weaken the U.S.-Japan Security Treaty. Performance of a bilateral security treaty is "greatly dependent on a mutual friendship," as stipulated in the first line of the first paragraph in the Security Treaty. (Exh. T)

The monument threatens the friendship of Japan and the U.S.A. From the perspective of the Japanese members of KINGEN, the "Comfort Women" monument in Glendale is not just a 20-ton bronze memorial; it is a sharp and subversive dagger aimed at the U.S.-Japan Security Treaty, a Trojan Horse that threatens the safety of the Japanese and Japanese-Americans in Glendale. The opinion of the panel suggests improperly that municipalities can intervene in a global diplomatic issue without regard to U.S. policy or the right of its citizens to have equal access to express their viewpoints in a public forum.

DATED: September 26, 20166

Respectfully submitted,

DECLERCQ LAW GROUP, INC.

By:/s/ *William B. DeClercq, Esq.*
WILLIAM B. DECLERCQ, ESQ.

Attorneys for (Proposed) *Amici Curiae*
NIPPON TODAY'S RESEARCHERS SOCIETY (KINGEN)

STATEMENT OF RELATED CASES

There are no related cases pending in this Court.

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief has been prepared using proportionally double-spaced 14 point Times New Roman typeface. According to the "Word Count" feature in my Microsoft Word for Windows software, this brief contains **3766** words up to and including the signature lines that follow the brief's conclusion. I declare under penalty of perjury that this Certificate of Compliance is true and correct and that this declaration was executed on September 26, 2016.

DATED: September 26, 20166 Respectfully submitted,

DECLERCQ LAW GROUP, INC.

By:/s/ *William B. DeClercq, Esq.*
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NIPPON TODAY'S RESEARCHERS SOCIETY (KINGEN)

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v.
CITY OF GLENDALE, a municipal corporation, SCOTT OCHOA, in his capacity
as Glendale City Manager,
Defendants and Appellees.

On Petition for Reconsideration after Appeal from the United States District Court for the Central District of California,
Case No. 2:14-cv-1291-PA-AJW
District Judge Hon. Percy Anderson

APPENDIX TO *AMICUS CURIAE* BRIEF IN SUPPORT OF PLAINTIFFS AND APPELLANTS PETITION FOR RECONSIDERATION *EN BANC*

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Exhibit	Description
A	"Details of Exchanges Between Japan and the Republic of Korea (ROK) Regarding the Comfort Women Issue ~ From the Drafting of the Kono Statement to the Asian Women's Fund ~issued on June 20, 2014, Sankei Newspaper Digital Version, February 20, 2014 Source: http://www.sankei.com/politics/print/140220/plt1402200006-c.html
B	"Korean Comfort Women agreement is a triumph for Japan and the US" *The Guardian* Dec. 28, 2015
C	United Nations *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 22 April 2015
D	Comments by the Government of Japan on the *Concluding Observations of the Human Rights Committee* (CCPRIC/JPN/CO/6)
E	United Nations *Convention on the Elimination of All Forms of Discrimination against Women*, 22 Feb 2016
F	"Press Conference by the Chief Cabinet Secretary" 21 Feb 2014
G	Chart prepared by KINGEN
H	"Japan-ROK Foreign Minister's Meeting" *Ministry of Foreign Affaris of Japan*. 28 Dec 2015
I	"Korean Comfort Women agreement is a triumph for Japan and the US" *The Guardian*, 28 Dec 2015
J	"Advertisement in Keijyo Nippo" 26 July 1944; "Passbook of Comfort Woman" 1944-1945
K	U.S. Office of War Information, Psychological Warfare Team, report dated 10 August 1944
L	Confidential Allied Translator and Interpreter Section, South West Pacific Area, report dated 16 Feb 1945
M	Global Alliance for Preserving the History of WW II in Asia, home page. (http://www.global-alliance.net/home.html, loaded 23 Sept 2016)
N	Ishikawa, "Summary of Testimonies: A Collection of 33 Soldiers of Imperial Japanese Army" May 2016
O	"Insights and Thoughts on Issues of Sex and the Military" History of Showa Era Research Center Report 10 Sept 2001
P	Nazi War Crimes & Japanese Imperial Government Records Interagency Working Group, *Final Report to the United States Congress*, April 2007. Source:https://www.archives.gov/iwg/reports/final-report-2007.html
Q	*Id*, excerpt of Preface.
R	Yamashita, "Challenging the '20 American historians'" *Japan Times*, 10 Mar 2016
S	Nippon Today's Researchers Society (KINGEN), "Anti-Japan Rallies Around the Statues."
T	United States – Japan Security Treaty
U	Noda, Yoshikazu "Letter from Higashi-Osaka City," 25 Jul 2013. http://www.city.higashiosaka.lg.jp/cmsfiles/contents/0000011/11653/25.7.25shokan-e.pdf
V	Fackler, "No Apology for Sex Slavery, Japan's Prime Minister Says," *New York Times,* 6 Mar 2007.
W	Hata, "No Organized or Forced Recruitment: Misconceptions about Comfort Women and the Japanese Military," *Society for Dissemination of Historical Fact*, 2007.

EXHIBIT A

(Provisional Translation)

Details of Exchanges Between Japan and the Republic of Korea (ROK) Regarding the Comfort Women Issue
~ From the Drafting of the Kono Statement to the Asian Women's Fund ~

June 20, 2014

Study Team on the Details Leading to the Drafting of the Kono Statement etc.

Keiichi Tadaki, lawyer (former Prosecutor-General) (Chair)

Hiroko Akizuki, Professor, Faculty of International Relations, Asia University

Makiko Arima, journalist, former Director of the Asian Women's Fund

Mariko Kawano, Professor, Faculty of Law, Waseda University

Ikuhiko Hata, modern historian

Secretariat (Cabinet Secretariat, Ministry of Foreign Affairs)

The Study Team on the Drafting Process of the Kono Statement etc.
-- Study Conducted at the Study Meetings --

1. Background to the Study

(1) At the House of Representatives Budget Committee hearing held on February 20, 2014, former Deputy Chief Cabinet Secretary Nobuo Ishihara testified with regards to the Kono Statement that (i) no post factum corroborating investigation was conducted on the result of the hearings of former comfort women that is said to have served as the basis of the Kono Statement; (ii) there is a possibility that in the drafting process of the Kono Statement, the language was compared and coordinated with the Republic of Korea (ROK) side; and (iii) as a result of announcing the Kono Statement, problems of the past between Japan and the ROK were once settled, but have recently been brought up again by the ROK government, and it is extremely regrettable that the good intentions of the Government of Japan at that time are not being recognized.

(2) Following the testimony, in response to a question in the Diet, Chief Cabinet Secretary Yoshihide Suga answered that the process leading to the drafting of the Kono Statement and understanding what actually occurred at that time should be clarified in an appropriate manner.

(3) Based on this background, the team undertook a study regarding the sequence of processes, centering on the exchanges with the ROK during the process leading to the drafting of the Kono Statement and extending to the Asian Women's Fund, which was a follow-up measure subsequent to the Statement. Accordingly, the Study Team did not undertake inquiries and studies aimed at grasping the historical facts of the comfort women issue itself.

2. Schedule of Meetings Held

Friday, April 25, 2014	Preparatory meeting
Wednesday, May 14	First meeting
Friday, May 30	Second meeting
Friday, June 6	Third meeting
Tuesday, June 10	Fourth meeting

3. The Study Team's Members

In order to ensure complete confidentiality, the members of the Study Team perused relevant documents after they were sworn in as part-time government officials.

Keiichi Tadaki, lawyer (former Prosecutor-General) (Chair)
Hiroko Akizuki, Professor, Faculty of International Relations, Asia University
Makiko Arima, journalist, former Director of the Asian Women's Fund
Mariko Kawano, Professor, Faculty of Law, Waseda University
Ikuhiko Hata, modern historian

4. Period Covered by the Study

The study covered the period from the early half of the 1990s, when the comfort women issue emerged as an outstanding issue between Japan and the ROK, up to the completion of the Asian Women's Fund's projects in the ROK.

5. Study Method

(1) The study covered a series of documents concerning the comfort women issue held by the Office of the Assistant Chief Cabinet Secretary, which took over the duties of the Cabinet Councilors' Office on External Affairs. At that time, the Cabinet Councilors' Office on External Affairs was carrying out the government inquiry that led up to the Kono Statement and the administrative duties leading to the announcement of the Kono Statement together with a series of documents on the comfort women issue that mainly includes exchanges between Japan and the ROK and a series of documents on the Asian Women's Fund as a follow-up measure, which are held by the Ministry of Foreign Affairs.

(2) On the condition of complete confidentiality, testimonies from hearings of the former comfort women, former military personnel and other relevant parties were also made available to members of the Study Team for their perusal. Additionally, during the process of the study, in order to supplement the documents-based study, the Cabinet Secretariat carried out hearings of government personnel who were in charge of the hearings of the former comfort women at that time.

(3) In undertaking the study, based on the abovementioned documents, testimonies and outcomes of hearings that the Cabinet Secretariat and the Ministry of Foreign Affairs made available to the Study Team for studying, the Team grasped the facts and objectively confirmed the series of processes.

6. Study Results by the Study Team

Under the instruction of the Study Team, based on relevant documents designated for their study, the administrative authorities of the government compiled a report of facts as attached. The Study Team concluded that the content of the report was valid, insofar as the documents that were made available during the study process.

June 20, 2014

Study Team on the Details Leading to the Drafting of the Kono Statement etc.

Keiichi Tadaki, lawyer (former Prosecutor-General) (Chair)
Hiroko Akizuki, Professor, Faculty of International Relations, Asia University
Makiko Arima, journalist, former Director of the Asian Women's Fund
Mariko Kawano, Professor, Faculty of Law, Waseda University
Ikuhiko Hata, modern historian

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Details of Exchanges Between Japan and the Republic of Korea (ROK)
Regarding the Comfort Women Issue
-- From the Drafting of the Kono Statement to the Asian Women's Fund --

June 20, 2014

I. Details of the Drafting of the Kono Statement

1. Exchanges Between Japan and the ROK up to Prime Minister Miyazawa's Visit to the ROK (up to January 1992)

(1) After the first former comfort woman came forward in the ROK on August 14, 1991, three former comfort women from the ROK filed a lawsuit in the Tokyo District Court on December 6 of the same year. Japanese Prime Minister Miyazawa was scheduled to visit the ROK in January 1992, but amid growing interest in the comfort women issue and mounting anti-Japanese criticism in the ROK, diplomatic authorities in Japan and the ROK became concerned that the issue would surface as an outstanding issue during the Prime Minister's visit to the ROK. On a number of occasions from December 1991, the ROK side conveyed its view that it would be desirable for the Japanese side to take some kind of action in advance so that the comfort women issue would not surface as an outstanding issue when Prime Minister Miyazawa visits the ROK. At the same time, the ROK sought a response to the issue prior to the Prime Minister's visit and requested that Japan take steps to ensure the issue did not create friction between the two countries, such as by having the Japanese side address the idea of expressing some kind of position perhaps in the form of a Cabinet Secretary statement, and demonstrating a stance of remorse, prior to the Prime Minister's ROK visit. As of December 1991, the Japanese side was already confidentially considering within their government that, "It would be appropriate if the Prime Minister could effectively accept the involvement of the Japanese military, and make an expression of remorse and regret," but also that, "There is a possibility that public opinion in the ROK will not be appeased simply with a verbal apology alone." One option that was being cited was to make a symbolic gesture in the form of erecting a memorial for the comfort women.

(2) In December 1991, under the coordination of the Cabinet Councilors' Office on External Affairs, the Japanese side launched a study involving all potentially relevant ministries and agencies. On January 7, 1992, it was reported that documents had been discovered at the National Institute for Defense Studies indicating the involvement of the military. Subsequently, as a result of a January 11, 1992 report on these documents by the Asahi Shimbun, anti-Japanese criticism inside the ROK heated up. At a regular press conference on January 13, 1992, Chief Cabinet Secretary Kato stated that, "At the present point in time, we are not at the stage of stating what degree of involvement took place and what form it took, but involvement by the military cannot be denied," and that "I would like to offer my heartfelt feelings of apology and remorse to those who underwent immeasurable and painful experiences as so-called wartime comfort women."

(3) At a Summit Meeting held during Prime Minister Miyazawa's visit to the ROK from January 16 to 18 1992, President Roh Tae-woo stated that he "appreciates the acknowledgement of the former Japanese military's involvement by Chief Cabinet Secretary Kato and his expression of apology and remorse. Going forward, I expect that Japan will take the necessary measures and strive to clarify the facts." Prime Minister Miyazawa stated that, "It has reached the point where I know of the undeniable fact that the former Japanese military had been involved in recruiting wartime comfort women, managing comfort stations and so forth. The Government of Japan has decided to acknowledge this publicly and make a heartfelt apology." Prime Minister Miyazawa added that he wanted to "express my heartfelt feelings of apology and remorse to those who underwent immeasurable and painful experiences as wartime comfort women," and that "an inquiry has been taking place at the relevant government ministries and agencies from the end of last year, and from here forward we also intend to continue to search for documents and clarify the facts wholeheartedly."

2. Exchanges between Japan and the ROK during the Period between Prime Minister Miyazawa's Visit to the ROK up to the Announcement by Chief Cabinet Secretary Kato (the Announcement of the Findings of the Inquiry) (From January 1992 to July 1992)

(1) Following Prime Minister Miyazawa's visit to the ROK, in January 1992 the ROK government announced a "government policy concerning the volunteer corps issue," in which it said it would "pursue thorough clarification of the facts and appropriate compensatory and other measures accompanying that, from the Government of Japan." On the Japanese side, in addition to an inquiry aimed at clarifying the facts, it

considered "holding discussions in order to exchange ideas with the ROK side regarding measures that the Government of Japan can take independently, from a humanitarian perspective, in regards to the so-called wartime comfort women issue, separate to the framework of the legal resolution of 1965," and ideas were sought confidentially from the ROK side.

(2) The inquiry into relevant documents at various ministries and agencies that the Japanese side launched in December 1991 continued until June 1992. Prior to the announcement of the results of that inquiry, the ROK side asked that the inquiry be of a level that is convincing to the government and citizens of the ROK, and proposed holding unofficial, advance discussions at the working level regarding the announcement of the inquiry findings.

Additionally, just prior to the announcement, various exchanges took place with the ROK side regarding the manner in which the inquiry results would be announced. This included a suggestion from the ROK side that in addition to the announcement of the inquiry results themselves, it should include an expression of the Government of Japan's views on the inquiry results as well as proposed post-inquiry measures.

Regarding the content of the inquiry results, the ROK side praised the Government of Japan's efforts in carrying out the inquiry in good faith, while pointing out that overall there was a major gap between the results and the expectations of the ROK side and that there was a possibility that this would aggravate sentiment and public opinion among the citizens of the ROK. Furthermore, the ROK requested that the facts continue to be clarified, including the issue of whether or not there was "coerciveness" involved at the time of recruitment, and that, "follow-up measures" (compensation and inclusion in textbooks) be taken, and stated that, "the course of public opinion on the ROK side was of concern given that the inquiry findings did not include any indication of clear evidence of forced mobilization which had been found in the testimonies etc. of the relevant individuals at the time." Incidentally, ahead of the announcement of the inquiry findings by the Government of Japan, in July 1992, the ROK government announced the progress of its own inquiry into and study about the comfort women issue among others, but also on that occasion, it sought comment from the Japanese side in advance. As a result, prior adjustments were made by the two countries.

(3) On July 6, 1992, Chief Cabinet Secretary Kato announced at a press conference the findings of the inquiry up to that point. The Chief Cabinet Secretary acknowledged that based on the inquiry that was carried out on documents at the ministries and agencies

that might hold such relevant materials, "the Government had been involved in the establishment of comfort stations, the control of those who recruited comfort women, the construction and reinforcement of comfort facilities, the management and surveillance of comfort stations, the hygiene maintenance in comfort stations and among comfort women, and the issuance of identification as well as other documents to those who were related to comfort stations." He stated that "the Government again would like to express its sincere apology and remorse to all those who have suffered indescribable hardship as so-called 'wartime comfort women,' and that "by listening to the opinions of people from various directions, I would like to consider sincerely in what way we can express our feelings to those who suffered such hardship." At the same time, in response to questions regarding the issue of whether any documents substantiating to forced or deceitful recruitment were discovered during the inquiry, he responded that such documents "have thus far not been discovered."

(4) Incidentally, it is evident that various deliberations took place within the ROK, on "compensation" and in connection with the Agreement on the Settlement of Problems Concerning Property and Claims and on Economic Cooperation Between Japan and the ROK. Issues pondered included whether a review would be needed to determine if the ROK's claim had already been settled legally, or at that point in time, it should not make a new request to the Japanese side for compensation.

3. Exchanges Between Japan and the ROK During the Period Between Chief Cabinet Secretary Kato's Announcement and Prior to the Statement by Chief Cabinet Secretary Kono (July 1992 to August 1993)

(1) Even following Chief Cabinet Secretary Kato's announcement, harsh views regarding the comfort women issue did not disappear from public opinion in the ROK. Under such circumstances, the Cabinet Councilors' Office on External Affairs and the Ministry of Foreign Affairs continued an examination of future measures regarding the comfort women issue. In a discussion that took place at the Ministry of Foreign Affairs in early October 1992, the need to resolve the issue during the term of the Roh Tae-woo Administration (the ROK held a presidential election in December 1992) was acknowledged. Also in early October, under Deputy Chief Cabinet Secretary Ishihara, officials from the Cabinet Councilors' Office on External Affairs and the Ministry of Foreign Affairs discussed future plans concerning the comfort women issue. In those discussions it was confirmed that the items to be considered in the future in relation to the comfort women issue were: (i) future initiatives concerning the clarification of facts;

(ii) measures of some sort towards the ROK; (iii) measures for countries and regions other than the ROK; (iv) an approach to the Japanese Red Cross Society (hereafter referred to as "the JRC") (namely, a request for cooperation in order to implement (ii)); and (v) the establishment of a bipartisan council of Diet members. Of these items, on the clarification of the facts, it was decided that although the scope of the document-based inquiry would be expanded, conducting interviews with former comfort women would be difficult. Additionally, on measures towards the ROK, it was envisaged that a fund would be set up within the JRC, and with the cooperation of the Korean Red Cross (hereafter referred to as "the KRC") it would implement welfare measures mainly covering former comfort women.

(2) Based on the abovementioned plans, at a mid-October 1992 exchange between working-level officials from Japan and the ROK, the Japanese side communicated -- as an unofficial position -- the idea of a package of two items comprising (i) establishing a fund at the JRC that would implement measures expressing Japan's feelings over the comfort women issue to the ROK and other countries; and (ii) implementing measures such as expanding the scope of the agencies and ministries covered in the clarification of the facts and gathering documents held by central and regional libraries. The ROK side's response to this package was that (i) what is important is clarifying the facts; (ii) from the ROK citizens' standpoint, an explanation that, it is not known whether or not force was involved because documents have not been found, makes it appear that the matter is being dismissed as a formality and that no genuine effort is being made; and (iii) it is important for victims and perpetrators to be interviewed and for the Government of Japan to admit that comfort women arose out of force.

(3) As a result of these reactions from the ROK side, the Japanese side again explored its response plans. In late October, based on the basic standpoint that in order to build a future-oriented Japan-ROK relationship, efforts should be made to try to settle this issue before the change in the ROK's administration, a plan was decided upon and was communicated to the ROK. This involved proposing to the ROK side that a resolution to the issue be pursued using a package comprising (i) clarification of the facts by adopting additional measures such as expanding the scope of the document-based inquiry, holding interviews with (several) representatives of former comfort women, and arriving at a conclusion. Although reaching a definite recognition would be difficult with regards to the issue of the involvement of "coerciveness," demonstrating a degree of recognition by stating that "it cannot be denied that some elements of coerciveness

also existed"); and (ii) "measures to express our feelings" (envisaged as an establishment of a fund within the JRC that would implement mainly welfare measures while cooperating with the KRC).

(4) However, because of the presidential election in December 1992, discussions with the ROK side were not progressing, and the ROK's response was that it wanted to discuss the matter in earnest after the presidential election. As a result, the Japanese side decided on a plan to coordinate with staff in the new ROK administration and try to settle the issue fully and promptly. In doing so, it was decided that responses going forward would include: (i) implementing measures in order to clarify the facts; (ii) making details of the follow-up measures as concrete as possible; and (iii) sounding out to the ROK side once again about presenting a degree of recognition, "in combination with follow-up measures and as an outcome of measures to clarify the facts" that "conceivably there were also some elements of 'coerciveness.'" In that regard, measures for clarifying the facts that were cited included: (i) expanding the scope of the inquiry; (ii) obtaining the findings of the ROK's inquiry; (iii) seeking the opinions of people concerned and experts on the Japanese side; and (iv) seeking the opinions of representatives of former comfort women. However, it was decided that seeking the opinions of representatives of former comfort women would be carried out "at the final stages, once there is a prospect of obtaining the ROK side's cooperation on the conclusion of the clarification of facts and the follow-up measures" and that this effort "be kept to a minimum."

(5) In December 1992, before and after the ROK presidential election, the Japanese side successively explained its basic standpoint to the ROK side.

On the clarification of facts, the Japanese side explained that (i) the Government of Japan had thus far been striving to clarify the facts, but reaching a 100% level of clarification is always impossible in the first place; (ii) the recruitment of comfort women probably involved "coerciveness" in some cases and not in others, but it would probably not be possible to determine that ratio; and (iii) at the final stages, Japanese government officials are thinking of possibly expressing in some manner that there were elements of "coerciveness" as an acknowledgement by the Government of Japan after meeting with and listening to representatives of comfort women, and also referring to the findings of the ROK government's inquiry. In response, the ROK side stated that (i) even if (the comfort women) theoretically went of their own free will, it is conceivable that the circumstances once they arrived were different to what they had been told; and

(ii) it is important to recognize that these women did not become comfort women voluntarily.

With regard to follow-up measures, the Japanese side explained that while legally such matters were settled, it did recognize that given the nature of the issue it was not simply a case of illegal activities and that it was a moral issue of how to display good faith. Japan explained that in implementing follow-up measures, it would listen carefully to the ROK side's opinions as a reference, but that basically the measures would be implemented by Japan voluntarily.

(6) In February 1993, President Kim Young-sam was appointed. Around February and March 1993, in considerations relating to the Japanese side's policies, the basic perspective adopted by Japan was that "the issue could be resolved in a package deal in which the ROK government will accept the implementation of measures of some sort in return for the Government of Japan's conclusions regarding the clarification of the facts," and "where the clarification of facts is concerned, the possibility of demonstrating our recognition through an expression of some sort that recruiting also took place in a way that partially involved the elements of "coerciveness" is being considered," and that "with regard to measures that can be taken, consideration has been given to setting up a fund and implementing welfare measures via a counterpart of a relevant country (or region)." Regarding the issue of "coerciveness," the plan that was presented called for "an approach to be made to the ROK government, that the Government of Japan is prepared to acknowledge, for example, that it is not possible to deny some involvement by the military and government authorities and that there were cases in which women became wartime comfort women 'in a manner that was against their own will'." Additionally, with regard to interviewing representatives of former comfort women, the plan mentioned that "Consideration will be given to implementing this as a ceremony, so to speak, and in the minimum necessary format at the final stages when there is a prospect of obtaining the ROK side's cooperation on the conclusion of the clarification of facts and the follow-up measures, while taking into account relations with other countries and regions" (details of the hearings are discussed below).

(7) Commenting on the comfort women issue on March 13, 1993, ROK President Kim Young-sam, who had been appointed in February, stated that "We do not plan to demand material compensation from the Government of Japan. Compensation will be undertaken using the budget of the ROK government from next year. Doing so will undoubtedly make it possible to pursue a new Japan-ROK relationship by claiming the

moral high-ground."

During working-level discussions between Japan and the ROK that took place in mid-March 1993, the Japanese side entered discussions with a working plan that centered on (i) resolving the comfort women issue promptly; (ii) requesting the ROK government to implement measures towards public opinion; and (iii) in light of the aforementioned statement by President Kim Young-sam, confirming the ROK government's plans and the ROK's position regarding measures to be undertaken by Japan. Within this working plan, the Japanese side decided to "concretely sound out the fact that the Government of Japan is prepared to demonstrate a degree of recognition with regard to the involvement of "coerciveness" issue, as an area of common ground in clarifying the facts. Additionally, (the Japanese government) will sound out the fact that it is prepared to hold an interview with a representative (or representatives) of former comfort women if it is able to obtain the intermediation of the ROK government, as one part of the package of measures relating to this issue." In the course of the working-level discussions, the ROK side stated that on the question of how the Japanese side makes its recognition, it believed that while it would not be possible to make an announcement that contradicted the facts for Japan, it should avoid employing a complicated "preface" (such as stating, for example, that "it was not possible to find documents showing the direct involvement of the military in the recruitment" before recognizing the involvement of "coerciveness" in some form).

At the Japan-ROK Foreign Ministers' Meeting on April 1, 1993, Foreign Minister Watanabe conveyed to Foreign Minister Han Sung-joo that on the issue of "coerciveness," "stating that there was involvement of force in all cases would be difficult," that "working-level staff are being instructed to explore expressions that demonstrate the Government of Japan's recognition to the greatest extent possible but in a way that does not bring lingering uneasiness to the hearts of citizens of either country" and that "we hope to consult the ROK side regarding how to present our recognition."

(8) At the same time, up to then the ROK side had adopted the position that it should not raise point-by-point questions about how to clarify the facts, and that the bottom line was that it wanted Japan to move the process ahead in good faith. However, from around the time of the Foreign Minsters' Meeting held on April 1, 1993, the ROK side began adopting a stance that it expected the Japanese side to move ahead with clarifying the facts in a way that would be convincing to comfort women-related groups within the ROK, and that the ROK government itself would not be able to exert pressure domestically in order to try to control the situation. Similarly, at a working-level

exchange of views between Japan and the ROK that took place in early April 1993, the ROK stated that, in response to the approach by the Japanese side, (i) the Japanese side needs to be visibly seen to have exhausted every effort to clarify the facts and there should be no unnecessary rush to resolve the issue hurriedly; (ii) it is unlikely to be acceptable to state that only some comfort women were forced; and (iii) it will not be possible for the ROK government to direct or otherwise shut out public opinion in the ROK to try to settle the issue with the Japanese side, and everything will come down to how the Government of Japan's stance is received by the citizens of the ROK.

Additionally, in exchanges between working-level staff in Japan and the ROK that took place in late April 1993, the ROK side stated that if the announcement by the Japanese side relied on measured expressions such as "there was involvement of coerciveness in some cases" it would likely trigger a furor. In response, the Japanese side replied that on the issue of "coerciveness", based also on the findings of the inquiry conducted domestically up to then, it would not be possible to arrive at a conclusion that would distort historical facts. Additionally, following the report on the outcome of this discussion, Deputy Chief Cabinet Secretary Ishihara stated that it would not be possible to say unconditionally that all comfort women were recruited with "coerciveness."

(9) When Foreign Minister Muto visited the ROK on June 29 and 30, 1993, the Foreign Minister said it would "announce our findings based on an objective judgment and demonstrate our recognition of this issue" and that "with regard to what sort of expressions will be used specifically, the Japanese side also intends to make the utmost effort to obtain the understanding of the citizens of the ROK, but in doing so, hopes to secure the understanding and cooperation of the ROK government from a broader perspective." Foreign Minister Han Sung-joo expressed gratitude for the abundantly sincere statement from the Japanese side, while stating that "the number one priority is to recognize force, number two is an utmost effort to clarify the overall picture, number three is an expression of commitment to continuing with the inquiry from here on as well, and number four is an expression of intention to learn the lessons of history. If these points are met then"…"the ROK government also"…"intends to strive to amicably resolve this issue." The ROK side also explained that it did not intend to seek monetary compensation from Japan.

4. Details of the Hearings of the Former Comfort Women

(1) Concerning the hearings of the former comfort women, the ROK side indicated continuously over the period from July to December 1992 the following (i) that there

should be hearings of the victims and the perpetrators; (ii) that the Japanese side, while it might not be able to listen to all of the comfort women, ought to listen to some of them to demonstrate its sincerity; (iii) the importance that the Government of Japan to communicate to the ROK people that it was doing its absolute best to address this issue; (iv) that not only the Government of Japan, but also local governments and foreign countries should conduct investigations and listen to the testimonies of relevant parties. Moreover, the ROK side indicated its view that hearings would be able to soften the feelings of the related parties and would also show Japan's sincerity to those who were insisting that it was not of their own will.

(2) Initially the view within the Japanese side was that once the hearing with the former comfort women began that it would not have control and that it needed to be cautiously considered. But by December 1992, based on the above-stated views of the ROK and that, "in the final stage, in which there is the prospect of receiving cooperation from the ROK on concluding the clarification of facts and follow-up measures," it decided on a policy of carrying out a hearing of the former comfort women "in the minimum necessary format." Subsequently, in communication between Japan and ROK officials in March 1993, the Japanese side sounded out the ROK side that, in accordance with its measures to respond to three of the aforementioned policies (see 3 (4) to (6)), if the Government of the ROK will be able to mediate, then as part of a package of measures for this issue, it was ready to hold interviews with a representative (or representatives) of the former comfort women. In response to this, the ROK side commented that it was a noteworthy idea and also stated that it might not be necessary to hear from all of the relevant parties, that it would be possible to request the attendance of "witnesses," and that the Government of the ROK would probably prefer not to witness it.

(3) From around April 1993, communications on the hearings with the former comfort women took place in earnest. At this time, the Government of the ROK began sounding out groups related to the comfort women issue, but it explained that the claims of the groups related to the comfort women issue were harsh against Japan, and that there were negative reactions that speeding up for a solution were perceived as taking the testimony of the comfort women but with the intention of avoiding the main issue. Also, the Government of the ROK stated that it was necessary to explain the status of the hearings, that the interviews with the persons in question were a method of last resort after every other method of clarifying the facts had been tried, and rather than taking a

sudden, unilateral decision to hold interviews, that it was necessary to take enough time in dealing with this. On top of this, the Government of the ROK discussed the issue with the Association of Pacific War Victims and Bereaved Families (hereinafter referred to as "the Association of the Bereaved." Formed in 1973, the objective of the activities of this incorporated body, which was mainly formed by members of the bereaved families of the Pacific War, is to investigate the actual conditions of the bereaved families, to hold mutual exchanges among others) and also the Korean Council for the Women Drafted for Military Sexual Slavery by Japan (hereinafter referred to as "the Korean Council."). Formed in 1990, it is comprised of several Christian women's groups, and its policies as a movement are particularly to deal with the comfort women issue, to certify the crimes of the Japanese army, and to demand legal compensation among others from the Japanese side). The Government of the ROK indicated that its view was that the Association of the Bereaved would agree to holding the hearings, but that the Korean Council had expressed its disapproval for any hearings, hence one proposal was to refer to the testimonies collected by the Korean Council. In the middle of May 1993, the Government of the ROK indicated that it did not think any new facts would emerge from the hearings, but it would respond to it if it were to be held as part of a process to resolve this issue. Also, in the communication between Japan and ROK officials that took place at the beginning of July, the ROK side indicated its views that conducting the hearings ultimately was up to the Japanese side and while it did not consider it to be indispensable, hearings would be one process that would strongly demonstrate the sincerity of the Japanese side, and that if it could be realized, it considered that it could be one effective process in order to receive a positive reaction from the relevant parties in the ROK when the results of the inquiries were announced.

(4) From the end of May to June 1993, the Japanese side successively made contact and held discussions with the Korean Council and the Association of the Bereaved toward holding hearings with the former comfort women.

As was previously stated in (3), the Korean Council had a harsh stance due to the distrust of the Government of Japan and the Government of the ROK suggested that in order to mitigate this, carrying out local investigation or having the attendance of civilians at the interviews were required. Based on the Government of the ROK's suggestions, in late May, the Japanese Embassy in the ROK began discussions with the Korean Council, but for it to agree to the hearings, it attached conditions that the findings of the additional inquiry conducted by the Government of Japan at that time should be presented in advance and that the "force" be recognized, and despite

communications with the Japanese side, it did not alter this stance. The Korean Council commented that if Japanese officials, and moreover male officials, suddenly arrived in the ROK, no one would open their hearts and talk, and it should be sufficient to refer to the collection of testimonies collected by the Korean Council for the testimony of the comfort women. Ultimately, hearings with the Korean Council were abandoned and instead, its collection of testimonies was referred to.

(5) On the other hand, the Japanese Embassy in the ROK began discussions with the Association of the Bereaved and over the course of negotiations with it that took place on several occasions, the Association agreed to the holding of hearings. For this, both agreed (i) that the hearings be held in a quiet environment and that the location be the office of the Association of the Bereaved; (ii) that when the hearings are held, one lawyer from the National Federation of Consultative Assemblies of Civil Liberties and one lawyer involved in the lawsuit would attend as observers from the Japanese side, while one relevant party from the Association of the Bereaved would attend as an observer from its side; (iii) that the hearings would take place with all the comfort women who wished to attend, recruited by the Association of the Bereaved; (iv) that no outside journalists enter the hearings and in addition, while video would be taken for use as internal record for the Association of the Bereaved, this video would not be released nor used in court of law; (v) that the Government of Japan as a defendant in the lawsuit regarding the comfort women, would not use the testimonies of the nine former comfort women who are appearing on the plaintiff side as reference in itself,, but agreed that these testimonies collected in a different format by the Association of the Bereaved could be used as reference materials. The time for prior coordination for the hearings was limited and also there was an attitude that for the Japanese side, the stories of the former comfort women would be difficult to listen to. Hence, as was previously stated, the hearings were held at a venue arranged by the Association of the Bereaved (the office of the Association), and the Japanese side would not be involved in the selection of the former comfort women who would attend the hearing. Furthermore, during the coordination of specific details between the Japanese side and the Association of the Bereaved for the holding of the hearings, facts that showed that the Government of the ROK participated or coordinated in some way in the selection of the former comfort women who would attend the hearing could not be confirmed.

(6) Finally, the hearings at the office of the Association of the Bereaved began on July 26, 1993. It was initially scheduled for two days until the following day on July 27, but

ultimately it was held until July 30 and hearings of a total of 16 people were held. On the Japanese side, five people attended the hearings from the Cabinet Councilors' Office on External Affairs and the Ministry of Foreign Affairs, stating at the beginning that the contents of the hearing were not to be publicized. Among the former comfort women, there were various cases; there were some who spoke indifferently and others whose memories had become confused. However, the Japanese side maintained from start to finish an attitude of listening sincerely to what the former comfort women had to say. From the Government of the ROK, only a member of the ROK's Ministry of Foreign Affairs attended as an observer at the start of the hearings on each day.

(7) Regarding the status of the hearings, rather than a clarification of the facts, the intention was to show the sincere attitude of the Government of Japan in clarifying the facts as a process based on the details of the events up to that point by holding the hearings of the comfort women, and stand by with the former comfort women to deeply understand their feelings, and hence the results of it were not compared to post-facto corroborating investigations or other testimonies. The relationship between the hearings and the Kono Statement that was released immediately after it was that, prior to the holding of the hearings, the relevant ministries had practically finished compiling the findings of the additional inquires and they had already prepared the original draft of the Kono Statement prior to the completion of the hearings (refer to 5 below).

5. Communication on the Wording of the Kono Statement

(1) After the announcement in July 1992 by Chief Secretary Kato, the Japanese side aimed to release some sort of announcements on its clarification of facts and follow-up measures, and held detailed discussions with the ROK side. In communication between Japan and ROK officials in March 1993, the ROK side stated that the Japanese announcement should not be treated as an outcome of discussions with the ROK, but ultimately treated as something independently released by the Japanese side, and that its impression was that it would prefer the content of the announcement to be as close as possible to the content that would satisfy the ROK. In communication between Japan and ROK officials in May 1993, the Japanese side stated it wanted to avoid a negative response by the Government of the ROK to its announcement. Hence, with regards to the recognition on the involvement of "coerciveness," the Japanese side stated that, while not word-for-word, it wanted to communicate with the ROK on this issue. In response to this, the ROK side stated it would cooperate in various ways and that it wanted to know the content of the announcement and be notified of the wording of it.

In the Japan-ROK Foreign Ministers' Meeting on July 28, 1993, Foreign Minister Muto stated, "we want to consult in advance with members of your Government on the wording of the announcement," and that "regarding this (comfort women) issue we want to basically put a full stop to it diplomatically. President Kim Yong-sam stated that if the Japanese side was completely sincere in its announcement, he considered that he would explain the announcement to the people of his country, and in this case, it was possible to obtain the understanding of the people of the ROK could be obtained. Based on this point, we would definitely want the President to explain the views of Japan." In response to this, Foreign Minister Han Sung-joo stated that, "we wish to appreciate the efforts and the sincerity of Japan regarding this issue. We hope that President Kim Yong-sam will be able to explain the findings of the inquiry by Japan to the people of the ROK in a form that will be able to satisfy them. In addition, we expect that through this, ROK-Japan relations will come to be future-oriented, which is an outcome that the ROK is also hoping for."

(2) Meanwhile on the Japanese side, even after the announcement by Chief Cabinet Secretary Kato, the relevant ministries and agencies continuously investigated related documents and additionally conducted search and investigation of documents in the United States National Archives and Records Administration and in other locations. With these documents that were obtained in this way as a basis, it also began to analyze hearings of military-related parties and those responsible for managing the comfort stations, as well as testimonies collected by the Korean Council, and was able to practically finish compiling the report on the study results. The recognition obtained through these series of studies was that it was not possible to confirm that women were "forcefully recruited."

(3) Subsequently, actual coordination on the wording of the statement began between Japan and the ROK in response to the above-mentioned Foreign Ministers' Meeting. By July 29, 1993, at the latest, which was before the end of the hearings of the comfort women (held July 26 to 30, 1993), the Government of Japan had already prepared the draft of the statement based on the results of the study of the relevant documents (refer to 4 (7) above).

The coordination on the wording of the statement took place up until August 3, the day before the statement was to be announced, between the Japanese Ministry of Foreign Affairs and the ROK Embassy in Japan, and the Japanese Embassy in the ROK and the ROK's Ministry of Foreign Affairs. They were conducted intensively and it was

confirmed that the initial comments from the ROK were received at the latest by July 31. In these comments, the ROK stated that while it considered that the content of the announcement should be independently decided on by the Government of Japan and that it did not in any way consider it to be an outcome of a negotiation, but in order to solve this issue, it must be appreciated by the people of the ROK and from this perspective, it hoped that a part of the statement be amended, and that if the Government of Japan released the statement without responding to this point, then the Government of the ROK would not be able to positively respond to it. Subsequently, on several occasions during the above-described period of coordination on the wording of the statement, the ROK side provided various comments, including on the issue of "coerciveness," on the establishment of the comfort stations, and on the recruitment of the comfort women. In response, on the Japanese side, the Cabinet Councilors' Office on External Affairs and the Ministry of Foreign Affairs continued to closely cooperate and share information, and within the limit of not distorting the relevant facts based on the study that had taken place up until that time, it coordinated with the Government of the ROK on the wording of the statement with a stance of accepting those intentions and requests of the Government of the ROK that it could accept, and rejecting those that it could not accept.

In the coordination with the ROK, the three main points of contention were as follows: (i) the involvement of the military in the establishment of the comfort stations; (ii) the involvement of the military in the recruitment of the comfort women; (iii) the "coerciveness" of the recruitment of the comfort women.

Regarding the involvement of the military in the establishment of the comfort stations, the expression that the Japanese side offered was that they were the "intention" of the military authorities, but the ROK requested this expression be changed to "instruction." However, the Japanese side could not accept this as it could not confirm that the military "instructed" the establishment of the comfort stations and proposed instead the expression of "requested."

Also, regarding the involvement of the military in the recruitment of the comfort women, the ROK requested wording that was equivalent to "the military or recruiters who were instructed by the military," or in other words, that the recruitment was carried out by the military or that the military instructed other recruiters to do so. But the Japanese side considered that the recruitment was not carried out by the military, but mainly by recruiters who had done so based on the "intentions" of the military, and hence could not accept that the military were the main party that carried out the recruitment. Also, as the Japan side could not confirm that the military "instructed" the

recruiters to carry out the recruitment, it proposed that the expression be changed to that the military "requested" the recruiters carry out the recruitment.

In response to this, the ROK wanted the expression "ordered" used for the involvement of the military in both the establishment of the comfort stations and the recruitment of the comfort women, but the Japanese side did not accept it. Ultimately, it was decided on the wording that the comfort stations were established and managed according to the military authorities' "request," and also the recruiters were "requested" to carry out the recruitment by the military.

Regarding an apology and feelings of remorse, the Japanese side presented a draft that included "(it) severely injured the honor and dignity of many women. The Government of Japan would like to take this opportunity once again to extend its sincere apologies." The ROK side requested the addition of "remorse" to the wording of this expression of "apology" to which the Japanese side agreed.

In this coordination process, the draft was consulted to as high as Prime Minister Miyazawa on the Japanese side and President Kim Yong-sam on the ROK side and acquired their final consent. But the question of how "coerciveness" of the recruitment of the comfort women would be expressed and worded in the statement constituted the main issue of contention in the communication with the ROK side.

Even at the stage of August 2, the ROK side stated that, with exceptions on some main points, the Japanese side made some proposals that could be acceptable for both sides in view of meeting the expectations of the ROK side, and the differences in the two sides' perceptions about the main points were not that large. However, it also added that there were limits that it could not go beyond, and that the people of the ROK would not accept any suggestion that some of women became comfort women voluntarily. Specifically, regarding the phrase in the Japanese side's draft of "in many cases they were recruited against their own will (by the recruiters), through coaxing, coercion, etc." the ROK side requested the removal of the phrase "in many cases," but the Japanese side refused as it was difficult for it to accept that the women were recruited against their will in every case. Also, coordination took place until the last moment on "coerciveness" to describe the recruitment of the comfort women on the Korean Peninsula. Communication continued until the evening of August 2, based on the point that "The Korean Peninsula was under Japanese rule in those days," if seen across the stages of their "recruitment, transfer, control, etc.," regardless of how they were recruited, the sense that this was conducted as a whole against the will of the individuals was finally coordinated as being expressed as "generally against their will, through coaxing, coercion, etc."

Finally, on the evening of August 3, the ROK Embassy in Japan notified the Japanese Ministry of Foreign Affairs that based on instructions by the home country, President Kim Yong-sam had appreciated the current (final) draft presented by the Japanese side and communicated to it that the Government of the ROK accepted the wording of the draft. At this point, a final agreement was reached on the wording of the Kono Statement.

(4) As can be referred above in (2), the Japanese side, under the recognition that the so called “forcefully taking away” of women could not be confirmed based on the studies including inquiry on relevant documents by relevant ministries and agencies, document searches at the US National Archives and Records Administration, as well as hearings of military parties and managers of comfort stations and analysis of testimonies collected by the Korean Council, dealt with the coordination on the wording of the Kono Statement with the Korean side with a stance that, within the limits of not distorting the facts based on the studies, it would accept those intentions and requests of the Government of the ROK that it could accept, and reject those that it could not accept.

Regarding such prior communication that was conducted between Japan and the ROK, on August 2, 1993, the Japanese side stated that it should not be disclosed to the media, and the ROK side agreed to this. In addition, the ROK side was to say that it had received the content of the statement by fax from the Japanese side only just before the announcement. Also, on the release of the statement on August 4, the response guidelines prepared by Japanese officials included the response line which read that there had been “no prior consultation” with the ROK side and that the result of the study was communicated immediately before.”

(5) With such background, on August 4, 1993, the Japanese side announced the summary of the findings of the study that had taken place up to that time through Chief Cabinet Secretary Kono, and also released a statement (the Kono Statement).

Statement by the Chief Cabinet Secretary Yohei Kono (4 August 1993)

The Government of Japan has been conducting a study on the issue of "wartime comfort women" since December 1991. I wish to announce the findings as a result of that study.

As a result of the study, which indicates that comfort stations were operated in extensive areas for long periods, it is apparent that there existed a great number of comfort women. Comfort stations were operated in response to the request of the military authorities of the day. The then

Japanese military was, directly or indirectly, involved in the establishment and management of the comfort stations and the transfer of comfort women. The recruitment of the comfort women was conducted mainly by private recruiters who acted in response to the request of the military. The Government study has revealed that in many cases they were recruited against their own will, through coaxing, coercion, etc., and that, at times, administrative/military personnel directly took part in the recruitment. They lived in misery at comfort stations under a coercive atmosphere.

As to the origin of those comfort women who were transferred to the war areas, excluding those from Japan, those from the Korean Peninsula accounted for a large part. The Korean Peninsula was under Japanese rule in those days, and their recruitment, transfer, control, etc., were conducted generally against their will, through coaxing, coercion, etc.

Undeniably, this was an act, with the involvement of the military authorities of the day, that severely injured the honor and dignity of many women. The Government of Japan would like to take this opportunity once again to extend its sincere apologies and remorse to all those, irrespective of place of origin, who suffered immeasurable pain and incurable physical and psychological wounds as comfort women.

It is incumbent upon us, the Government of Japan, to continue to consider seriously, while listening to the views of learned circles, how best we can express this sentiment.

We shall face squarely the historical facts as described above instead of evading them, and take them to heart as lessons of history. We hereby reiterate our firm determination never to repeat the same mistake by forever engraving such issues in our memories through the study and teaching of history.

As actions have been brought to court in Japan and interests have been shown in this issue outside Japan, the Government of Japan shall continue to pay full attention to this matter, including private researched related thereto.

(6) Regarding the recognition of the issue of “coerciveness,” at a press conference held by Chief Cabinet Secretary Kono on the same day, when questioned about whether Japan had recognized the fact that the women had been forcefully taken away, he stated that “we accept that to be the case.”

Also, when it was pointed out that the word “coercion” was not used in the context of the recruitment of the comfort women but in the description of their lives at the comfort stations, Chief Cabinet Secretary Kono stated, “the Statement states that “(they) were recruited by coaxing and coercion against their will.” One can understand the meaning of being recruited against their will.”

Further, when asked was there not any descriptions found in official documents that supported the notion that they were transported coercively, Chief Cabinet Secretary

Kono stated, “within the term “coercion,” there are physical coercion and psychological coercion”, and “many instances (of psychological coercion) would not have been recorded in administrative/military records,” but “there had been sufficient investigations on whether or not there were such cases or not,” including hearings or collection of testimonies of former wartime comfort women and hearing from former managers of comfort stations, and from these sources “it is clear after the studies that in many cases the women were transported against their will as stated here (in the Statement)” “and that they lived after being recruited in a condition where their wills were deprived.

(7) After the release of the Kono Statement, the ROK’s Ministry of Foreign Affairs released its assessment of the statement, stating that it appreciated that “the Government of Japan, through this announcement, recognizes the overall involvement of force in the recruitment, transportation, and administration of the comfort women for Japanese troops, and in addition to apologizing to the victims, and expressing its remorse for its actions, it expresses its resolve to view this squarely as a lesson of history.” At the same time the Japanese Embassy in the ROK pointed out to the Japanese Ministry of Foreign Affairs that the ROK press was reporting the facts without attachment, and there were a lot of rather positive responses of it, and that the ROK’s Ministry of Foreign Affairs had been actively cooperating. It also reported that the background to this was that, in addition to the sincerity of the Japanese side in terms of the result of its study and the statement, consultations had been frequently held with the Government of the ROK regarding the handling of this issue, and the Japanese side had frankly communicated its thoughts and also, to the greatest possible extent, had incorporated the comments of the ROK side.

(8) With the release of the Kono Statement, more detailed discussions were held between the two countries regarding the best way to implement “measures” for the former comfort women by the Japanese side, which was communicated in various ways with the ROK side (refer to the next section).

Ⅱ. Details of the activities of the "National Fund for Asian Peace and Women" (subsequently, "the Fund") in the ROK

1. Up to the Establishment of the Fund (1993 to 1994)

(1) As is described in the previous section, in the communication between the Governments of Japan and ROK on the comfort women issue, the clarifying of facts and follow-up measures were perceived to be a package. In the Kono Statement of August 4, 1993, Japan stated that "…while listening to the views of learned circles, how best we can express this sentiment (of apology and remorse). We shall face squarely the historical facts as described above instead of evading them, and take them to heart as lessons of history. We hereby reiterate our firm determination never to repeat the same mistake by forever engraving such issues in our memories through the study and teaching of history." Japan confirmed the views of the Government of the ROK on what sorts of "measures" it ought to take for the former comfort women, and the ROK side responded that its understanding was that as settlement had already been reached for the issue of the legal compensation from Japan to the ROK, therefore if some other measures were to be taken, rather than being legal compensation, they should officially be unilateral measures taken by the Japanese side, and that they should not be of a nature that the Korean side would meddle.

(2) Subsequently, the Governments of Japan and the ROK repeatedly communicated on the specific measures to be taken for the former comfort women, but whatever specific measures the Government of Japan implemented, the problems concerning properties and claims between the two countries and their nationals, which includes the comfort women issue, had in legal terms already been settled completely and finally. Therefore, it was confirmed to the ROK side that Japan expected that no measures would be carried out to compensate individuals among the former comfort women in the ROK. The ROK side considered this issue to be dealt by the Japanese side on its own as part of its coming into terms with its post-war issues, and also responded that it would not request any material compensation from the Government of Japan and that it would not be involved in measures taken by the Japanese side. Furthermore, during the summer of the following year of 1994, in the communication between officials of Japan and the ROK, the ROK side frankly explained that if felt that that within the ROK, there are views expressed by the victims and the related groups, and that while on the one hand is a popular opinion that demands compensation, while the other popular opinion is that whether it be comfort women issue are not, demands against the Government of Japan

should end sooner or later, and in terms of numbers, the latter opinion were probably in the majority.

(3) On December 7, 1994, the "First Report" was issued by the Subcommittee to Address the Wartime Comfort Women Issue, which was established under the "Ruling Parties' Project to Deal with Issues Fifty Years After the War set up by the three ruling parties (the Social Democratic Party, the Liberal Democratic Party, and New Party Sakigake). The report stated that, along with the establishment of a citizen-participation type fund and measures to be implemented for the former comfort women, in order that the mistakes of the past not be repeated, it would assist in activities that educate, prevent, and resolve current issues relating to the honor and dignity of women, such as violence against women and that the Government would cooperate to its full extent with the Fund, including through financial contribution.

(4) On June 13, 1995, the Government of Japan reported in advance to the ROK side on its decision to officially announce the Fund the following day, intended for those former comfort women in the ROK, Taiwan, Indonesia, the Philippines, and the Netherlands. The objective in establishing it and the basic characteristics of its operations were described in the "Statement by Chief Cabinet Secretary Kozo Igarashi on the Establishment of the Asian Fund for Women." The Government of the ROK stated that (i) as a general impression, even if it would not satisfy the relevant parties, the Government of the ROK felt that it could be positively appreciated on several points; (ii) President Kim Yong-sam has continued to address that compensation for the comfort women is not necessary, but also clearly indicated that there should be a far reaching fact-finding on this issue; (iii) the points that the ROK side had requested, that it include an official attribute of being implemented by the Government of Japan and that it express feelings of apology from the Government of Japan, where generally included in it, and hence the ROK could respond positively on these points. At the same time, it responded that the Government of the ROK wanted to cooperate as much as possible to explain Japan's efforts to the relevant groups. On the following day, June 14, Chief Cabinet Secretary Igarashi released the following statement.

Statement by Chief Cabinet Secretary Kozo Igarashi on the Establishment of the Asian Fund for Women (14 June 1995)

To follow up the statement made in August, 1994, by Prime Minister Tomiichi Murayama, and in accordance with discussions of the Ruling Parties' Project Team for 50th Anniversary Issues,

and after consideration within the Government, based on our remorse for the past on the occasion of the 50th anniversary of the end of the War, the projects of the "Asian Peace and Friendship Fund for Women" will be undertaken as follows.

1. The following activities will be conducted for the former wartime comfort women, through the cooperation of the Japanese People and the Government:
(a) The Fund will raise funds in the private sector as a means to enact the Japanese people's atonement for former wartime comfort women.
(b) The Fund will support those conducting medical and welfare projects and other similar projects which are of service to former wartime comfort women, through the use of government funding and other funds.
(c) When these projects are implemented, the Government will express the nation's feelings of sincere remorse and apology to the former wartime comfort women.
(d) In addition, the Government will collate historical documents on past wartime comfort women, to serve as a lesson of history.

2. As its project addressing issues related to the honor and dignity of women, including the projects mentioned in 1 (b) above, the Fund will, through the use of government funding and other funds, support those who undertake projects that address contemporary problems, such as violence against women.

3. The names of those who have given their support to date, acting as "proponents" calling on a broad range of Japanese people to cooperate with the projects of the "Asian Peace and Friendship Fund for Women," are listed separately.

Responding to the above, the ROK's Ministry of Foreign Affairs released the following Ministry of Foreign Affairs comment.

ROK Ministry of Foreign Affairs comment regarding the announcement by Chief Cabinet Secretary Kozo Igarashi (June, 1995)

1. The Government of the ROK considers that, regarding the follow-up to the wartime comfort women issue, fundamentally the outcome of the fact-finding investigation was a matter independently decide upon by the Government of Japan, but that in order to facilitate a resolution to the wartime comfort women issue, we have been pointing to the need to reflect the items required by the relevant parties to the greatest possible extent.
2. The current establishment of the Fund by the Government of Japan is tempered with an official

attribute of being partially funded from the Government's budget, and also when the Fund's operations are carried out in the future, on the points that it clearly includes an expression of sincere remorse and apology as a nation to the relevant parties, a fact-finding of the past, and that this problem be considered as a lesson to be learned from history, we appreciate it to be a sincere measure that to a certain extent reflects the requirements of the relevant parties up to this time.

3. The Government of the ROK hopes that going forward, with the opportunity provided by this establishment of the Fund by Japan, the historical facts within the various problems in our countries' pasts will be clarified and by striving positively in order to resolve them, the relations between our two neighboring countries will develop to be future-oriented, friendly relations based on the correct recognition of history.

2. The Initial Period after the Establishment of the Fund (1995 to 1996)

(1) Conversely, the victim support groups in the ROK labeled the Fund as "payment for services" from private-sector organizations, and criticized the approach of the Government of Japan and the Fund. Based on this response, although the Government of the ROK released a statement in July 1995 which the ROK's Ministry of Foreign Affairs expressed its appreciation on the announcement by the Chief Cabinet Secretary, it addressed its position that the victim support groups strongly opposed the ROK's Ministry of Foreign Affairs, which put the ROK side in a difficult position, making it hard to openly cooperate with the Japanese Government under the current circumstances but wanting to cooperate with the Japanese Government behind-the-scenes.

(2) In July 1996, the Fund decided to provide the former comfort women with "atonement money" and "a letter of apology" from the Prime Minister, and also to carry out medical and welfare projects. With regards to the "letter of apology" from the Prime Minister, the Government of the ROK pointed out while there was an apology from the Government of Japan to the Government of the ROK, but the reaction of the victims was that they felt it was not an apology to them individually. Therefore Japan decided it to be the form of a letter by the Prime Minister as expressing an apology. In order for the Government of Japan to explain this decision to the ROK side, it asked for talks with the Association of the Bereaved and the Korean Council via the Government of the ROK, but both organizations indicated their view that they were not able to accept the provision of the "private-sector funds."

(3) From the Government of the ROK side, it addressed its wishes that (i) whatever form the Japanese Government would take needs to satisfy the victims (ii) after Japan declares that it would be impossible to provide state compensation to the victims in legal terms, whether it could address its feelings of apology from the government, and in any way make it seem like as if it is a state compensation, and (iii) whether the Government of Japan could issue a message on the lines of, "We want to hold sincere discussions in the future with regards to our relationship with the ROK," and it expressed its intentions of hoping to take some time and discuss quietly with the Japanese side on what the subsequent, specific measures Japan will take.

(4) The Fund's projects began in the Philippines in August of the same year, and in the same month, the Fund, under a policy of implementing projects to the victims that had received the recognition from the Government of the ROK, sent a Team for Dialogue comprised of members of the Fund Advisory Committee to the ROK to meet with and explain the project to ten of the victims. Then in December of the same year, seven of the former comfort women announced that they would accept the efforts of the Fund and would be recipients of its project.

3. Implementing Projects for Seven Former Comfort Women (January 1997)

(1) On the implementation of projects for the seven women described above, on January 10, 1997 (the day prior to the launch of the project), the Government of Japan reported in advance to the ROK Embassy in Japan that the Fund seemed to have decided to implement the projects to the former comfort women who had expressed their willingness to receive it. The Government of the ROK responded that (i) there will be no solution unless the project was provided in a form that would satisfy both the related groups and the victims, and (ii) if the project was only implemented to some of the former comfort women, it is likely that the related groups will react harshly to it, and as it was immediately prior to the Japan-ROK Foreign Ministers' Meeting and Summit, it considered the timing to be bad.

(2) On the following day, January 11, a group representing the Fund visited the seven former comfort women in Seoul and delivered "a letter of apology" from the Prime Minister, clarifying to the ROK media the facts of the project, and also explaining the Fund itself.

Letter from the Prime Minister to the Former Comfort Women

Dear Madam,

On the occasion that the Asian Women's Fund, in cooperation with the Government and the people of Japan, offers atonement from the Japanese people to the former wartime comfort women, I wish to express my feelings as well.

The issue of comfort women, with an involvement of the Japanese military authorities at that time, was a grave affront to the honor and dignity of large numbers of women. As Prime Minister of Japan, I thus extend anew my most sincere apologies and remorse to all the women who underwent immeasurable and painful experiences and suffered incurable physical and psychological wounds as comfort women.

We must not evade the weight of the past, nor should we evade our responsibilities for the future. I believe that our country, painfully aware of its moral responsibilities, with feelings of apology and remorse, should face up squarely to its past history and accurately convey it to future generations. Furthermore, Japan also should take an active part in dealing with violence and other forms of injustice to the honor and dignity of women. Finally, I pray from the bottom of my heart that each of you will find peace for the rest of your lives.

Respectfully yours,

Prime Minister of Japan

(Prime Ministers who signed the letter are: Ryutaro Hashimoto, Keizo Obuchi, Yoshiro Mori and Junichiro Koizumi)

In response to this, the ROK media criticized the Fund's activities and the victim support groups began harassing the seven former comfort women, and also other comfort women seeking to newly apply for the Fund. The victim support group publically mentioned the real names of the seven former comfort women and in addition, telephoned them and criticized them for receiving money from a "private-sector fund," saying that by doing so, they voluntarily recognized themselves to be "prostitutes." Subsequently, parties related to the groups even visited the homes of the former comfort women who had newly declared that they would accept projects from the Fund in order to press them not to accept any "dirty money from Japan."

(3) Also, immediately afterwards, the Government of the ROK stated its regrets and added that it considered it natural that they should receive records from the Fund on to whom it was handing out the projects, and that the Japanese side perhaps were a little impatient in doing so, and that the ROK was really perplexed about the Fund's activities

in the ROK.

(4) The following week during the Foreign Ministers' Meeting of Japan and the ROK, ROK's Minister for Foreign Affairs Yoo Chong-ha commented that it was extremely regrettable that the Fund had started projects the previous weekend and that money was being given to the former comfort women, and demanded the withdrawal of the project and the temporary suspension of payments in the future. Also, during the courtesy call of Japan's Foreign Minister Ikeda to President Kim Yong-san, the President said that this was a sensitive issue when viewed from the perspective of the feelings of the ROK people, and that while it had been reported to him that this issue had been discussed at the Foreign Ministers' Meeting, he felt that the recent measures taken by the Fund has a strongly detrimental impact on public sentiment in the ROK which was regrettable, and that he hoped that the measures would not be taken again in the future.

4. The Temporary Suspension of the Fund (February 1997 to January 1998)

(1) Based on the fact that in the ROK, the seven former comfort women who had received the project from the Fund were being subject to continual harassment, the Fund decided to temporarily postpone the project and adopt a more cautious approach. On the other hand, some of the victim support groups reacted positively to coordinating with the former comfort women who wanted to receive the project from the Fund, and as the number of former comfort women who wanted to receive the project increased, the Fund investigated various ways in order to gain the understanding of the ROK in order to continue the projects; for example, it explored the possibility of placing newspaper advertisements in the ROK.

(2) Subsequently, between the summer and fall of 1997, discussions were held on several occasions between the Government of Japan and parties related to the Fund about placing advertisements in the ROK and on restarting the projects. The Government of Japan lobbied the Fund to postpone the restarting of the project because of the upcoming presidential election in the ROK, and also because of the fisheries negotiations taking place between Japan and the ROK, while the Fund itself, while not changing its standpoint that it was unconvinced by the Government's stance, did take into account the sensitive situation that existed between Japan and the ROK and within ROK, and agreed to postpone placing newspaper advertisements on several occasions.

(3) However, based on the extremely strong desire of the Fund to let as many Korean former comfort women be informed about the Fund's activities and its desire to gain their understanding, and as newspaper companies in the ROK had agreed to publish the advertisement, the Government of Japan judged that if it were done after the presidential election on December 18, 1998, and also if it were done in a quiet and discreet manner, then it had no choice but to agree that advertisements be placed; this decision was approved by Foreign Minister Obuchi.

5. The Fund Places Advertisements in Newspapers (January 1998)

(1) At the beginning of January 1998, in the communication between the officials of Japan and the ROK, the Japanese side explained in advance that the Fund intended to place newspaper advertisements (in four newspapers) with the objective of fostering understanding of the Fund's activities within the ROK. The Government of the ROK responded that unilateral measures taken by the Fund will not resolve the issue and suggested that a dialogue take place between the Korean Council and the Fund, and that it would need a little more time in order to bring together the various opinions within the Korean Council.

(2) On January 6, 1998, following the actual publication of the advertisements, the Government of the ROK responded that it would prefer that the Japanese side demonstrated flexibility, that it did not hurry, and deal with this issue in such a way that it would disappear gradually without being too conspicuous, and that it felt the recent newspaper advertisements were extremely provocative.

6. The Temporary Suspension of Payments of Atonement Money through the Fund (February 1998 to February 1999)

(1) In March 1998, the Kim Dae-jung administration was inaugurated and the Government of the ROK decided to provide "life-support fund" to the former comfort women instead of demanding state compensation from the Government of Japan. The Government of the ROK decided that the former comfort women who had already received money from the Fund would not be eligible for the life-support fund, but explained that such policy is not intended to openly object the Fund nor a measure to criticize its activities.

(2) Furthermore, during this period, the Government of the ROK stated that President Kim Dae-jung himself wanted any financial issues to be sorted out and was of the

opinion that it should not become an issue between the two governments. Furthermore, the ROK stated with feelings of sympathy towards the Fund, that it would be better for this issue of the Fund be put to an end so that it would not become an issue between the two governments.

7. Conversion to Medical and Welfare Projects by the Korean Red Cross (March 1999-July 1999)

(1) With the Fund's medical and welfare projects in the Netherlands commencing smoothly in July 1998, the Fund began to consider converting its provision of "atonement money" to medical and treatment projects instead. At the end of January 1999, the Fund decided to inquire to the KRC for its cooperation. In the communication between officials from Japan and the ROK, the ROK side shared the view to the fundamental changes to the Fund's activities, and indicated that it would be appropriate for the ROK government to positively encourage the KRC once the discussions between the Japanese side and the KRC makes progress.

(2) However, during the communication between officials of Japan and the ROK at the end of March 1999, the Government of the ROK suddenly changed its policy. It indicated that whatever effort was done or not done on this issue, there was going to be criticism and that a calmer approach was necessary, and because the KRC was considered to be affiliated with the Government of the ROK, strong opposition could be expected and hence it wanted to scrap this proposal. In response to this, the Japanese side protested that this proposal was made from the perspective that it would not have an adverse effect on the future-oriented Japan-ROK relationship that were cultivated by the visit of President Kim Dae-jung to Japan, and it obtained the Prime Minister's approval upon convincing the Fund that showed strong disapproval to end its original project, and therefore, it was difficult to understand the suggestions by the ROK. At the end, because it could not gain the understanding of the ROK side, the conversion of the project could not be realized.

8. The Suspension of the Fund with Difficulties of Converting the Project (July 1999 to May 2002)

(1) The Fund was unable to convert its project to medical and welfare projects and in July 1999, its activities were suspended. This state of suspension continued until February 2002, but on February 20, the Fund lifted suspension and decided to set a deadline for project applications within the ROK of May 1 of the same year.

(2) In communication between officials of Japan and the ROK in April 2002, the Government of the ROK once again expressed its opposition to the Fund's provision of "atonement money" and to its medical and welfare projects. On May 1, acceptance of project applications in the ROK ended and the Fund's activities in ROK that had started in January 1997 drew to a close.

9. The Results of the Fund's Activities in the ROK

(1) The Fund, which was established in 1995, raised funds of approximately 600 million yen, and by the end of March 2007 when the whole project ended with the completion of the projects in Indonesia, the Government of Japan provided approximately 4.8 billion yen either in the form of contributions or subsidies. In terms of the Fund's activities in the ROK, "atonement money" of 2 million yen, the source of which was donations from the private sector, and 3 million yen for medical and welfare projects, the source of which was government contributions (for a total of 5 million yen per person), were provided to a total of 61 former comfort women in the ROK up to the end of the Fund's activities, and in addition, all the comfort women that received "atonement money" also received a letter of apology signed by the Prime Minister at that time. The breakdown of those who received the Prime Minister's letter was 27 during the Hashimoto administration, 24 during the Obuchi administration, one during the Mori administration and nine during the Koizumi administration.

(2) The Fund projects in the Philippines, Indonesia, and the Netherlands were implemented with the understanding and positive reception by the government and related groups of the respective country. But in the ROK, it was greatly affected by the domestic situation within the ROK as well as the bilateral relationship between Japan and the ROK, and the Fund was not able to gain the understanding of the Government of the ROK or its people on its activities. However, from the former comfort women in ROK there were words of gratitude; one former comfort women said that she never thought that during her lifetime she would receive apologies from the Prime Minister and money, and that she came to fully understand the feelings of good will of the Japanese people and wanted to thank them very much.

(3) Furthermore, another person needed money in order to have medical operations and decided to accept the "atonement money" by the Fund. At first, she did not want to meet a Fund representative, but when the representative read the Prime Minister's letter

aloud to her, she raise her voice, broke down in tears, hugged the representative. In this way, the Fund believed that the apology and remorse expressed by the Japanese Government and people were accepted, and contrary to the situation within the ROK, the Fund came to be appreciated by the former comfort women.

(End)

EXHIBIT B

United Nations CCPR/C/SR.3082

International Covenant on Civil and Political Rights

Distr.: General
20 August 2014
English
Original: French

Human Rights Committee
111th session

Summary record (partial)* of the 3082nd meeting

Held at the Palais des Nations, Geneva, on Wednesday, 16 July 2014, at 3 p.m.

Chairperson: Sir Nigel Rodley

Contents

* No summary record was prepared for the rest of the meeting.

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The meeting was called to order at 3 p.m.

Consideration of reports submitted by States parties under article 40 of the Covenant (*continued*)

Sixth periodic report of Japan (continued) (CCPR/C/JPN/6, CCPR/C/JPN/Q/6, CCPR/C/JPN/Q/6/Add.1 and HRI/CORE/JPN/2012)

1. *At the invitation of the Chairperson, the delegation of Japan took places at the Committee table.*

2. **The Chairperson** invited the delegation of Japan to resume replying to the questions raised at the previous meeting.

3. **Mr. Yamanaka** (Japan) said that the Supreme Court was not the only court that took into consideration the provisions of the Covenant and other international instruments in its decisions; the lower courts also did so. Japan had not yet ratified the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, as it first had to ratify the Convention itself and the bill on ratification had not yet been approved by the Diet. On the issue of comfort women, it should be recalled that the agreement concluded between Japan and the Republic of Korea expressly stipulated that the disputes between the contracting parties and their nationals had been settled completely and finally. Furthermore, Japan had officially apologized to the victims on a number of occasions and had contributed considerably to compensation and rehabilitation by establishing the Asian Women's Fund, whose projects it continued to monitor despite the dissolution of the Fund. The Government did not intend to retract the Kono statement, in which it had acknowledged that the comfort women had, in most cases, been recruited against their will, but it did refute the description of the practice as sexual slavery.

4. **Mr. Mori** (Japan) said that steps were taken to promote the integration of children of foreign nationals in the public education system while enabling them to strengthen their knowledge of their language and culture of origin through extracurricular activities. Foreign students were eligible under the tuition-waiver programme for secondary school education. Corporal punishment at school was prohibited under the Education Act and any violation of that prohibition was subject to disciplinary sanctions. Students could report any problems in that regard to school counsellors or could call a special hotline. Corporal punishment in the family was also prohibited if it went beyond the reasonable exercise of discipline permitted under article 822 of the Civil Code. Any person who was aware of children being ill-treated was obliged to inform the competent authorities and children in need of protection could themselves request help from the Child Guidance Centres. The delegation denied that the majority of Japanese people were in favour of corporal punishment in the upbringing of their children.

5. **Mr. Teramura** (Japan) said that the guarantees provided for under employment legislation applied to apprentices and interns and that compliance by employers was actively monitored by the labour inspection services, which took the necessary steps to remedy violations, including, if applicable, through judicial means. Furthermore, a telephone helpline had been set up for apprentices and interns to report any problems regarding their working conditions.

6. **Ms. Genka** (Japan) said that measures taken to improve the protection of women victims of trafficking included the allocation of additional funds to the Women's Consulting Offices to allow them to establish psychological support units in the temporary shelters and make use of interpreters to provide better care for foreign victims.

7. **Ms. Hirobe** (Japan) said that the Government did not plan to make sexual harassment a criminal offence but acts of that nature could be prosecuted if they constituted other offences punishable by law, such as forcible indecency.

8. **The Chairperson** invited the members of the Committee to ask any further questions they might have, to which the delegation could reply in writing.

9. **Ms. Waterval** asked for clarification concerning the reason cited by the State party in its written replies to justify the exclusion of Korean schools from the tuition-waiver programme for secondary school education, which was considered by the students in those schools as a form of discrimination.

10. **Mr. Shany** drew the delegation's attention to the results of a survey conducted among the Japanese population, according to which 58 per cent of respondents considered corporal punishment a necessary component of a child's upbringing, and 65 per cent personally used corporal punishment. He would be interested to know what the State party thought of those figures indicating that public opinion was still largely in favour of corporal punishment, an assertion that the head of the delegation had refuted.

11. **Ms. Majodina**, responding to the objection by the head of the delegation to the use of the term "sexual slavery" to describe the activities the "comfort women" had been forced into, referred him to the 1926 Slavery Convention, which provided a comprehensive and widely recognized definition of slavery.

12. **The Chairperson** said that he was not sure he had understood the changes introduced by the new Act on State secrets as compared with the existing legislation in that area or why the State party had deemed it necessary to adopt the Act, given the numerous objections that had been raised to it.

13. **Mr. Yamanaka** (Japan) said that the Government had taken into consideration the definition of slavery provided in the 1926 Convention and it had thus been in full possession of the facts when it had concluded that the situation of the comfort women did not fall into that category. The delegation had endeavoured to reply to the Committee members' questions in good faith and had welcomed the opportunity provided during the dialogue to give an update on the situation of civil and political rights in Japan and the measures to be taken to continue to make progress in that area. The Government would pursue its efforts and, to that end, would endeavour to strengthen its cooperation with the international community.

14. **The Chairperson** thanked the Japanese delegation for its responses. However, the overwhelming impression was that, from one review to the next, the State party did not take account of the Committee's concerns and recommendations. The continued applicability of the system of substitute detention (*Daiyo Kangoku*), despite its flagrant incompatibility with the Covenant and repeated calls by the Committee and the international community for its abolition, was particularly telling in that regard. The argument that a lack of resources was the reason for maintaining the status quo was difficult to accept, coming from a country such as Japan. With regard to the so-called comfort women, the State party's position in asserting that the women had not been forcefully taken away while recognizing that, in most cases, the process had taken place against their will, was impenetrable, as were the reasons for which the Government had not set up an independent international inquiry to clarify the matter. The Committee recognized that Japan was, in many ways, a country that respected human rights, as demonstrated by the importance attached to the freedoms of expression, association and assembly, for example, but it remained concerned by the persistence of serious problems that adversely affected human rights. He reminded the delegation that it had 48 hours to provide the Committee with any additional information in response to the questions it had not had time to answer orally to be taken into account in the concluding observations.

15. *The delegation of Japan withdrew.*

The discussion covered in the summary record ended at 15.35 p.m.

EXHIBIT C

United Nations CAT/C/JPN/CO/2/Add.1

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.: General
22 April 2015

English only

Committee against Torture

Concluding observations on the second periodic report of Japan

Addendum

Information received from Japan on follow-up to the concluding observations*

[Date received: 13 March 2013]

1. In the concluding observations on the second periodic report of Japan, the Committee against Torture requested that the Government of Japan provide follow-up information regarding the recommendations contained in paragraphs 10, 11, 15 and 19 of the concluding observations. The responses by the Government of Japan to those recommendations are provided below. The Government of Japan wishes to reserve its right to explain in the future its position on other recommendations by the Committee. The Government of Japan would also like to express its desire to continue constructive dialogue with the Committee.

Paragraph 10

The Committee reiterates its previous recommendations (para. 15) that the State party:

(a) Take legislative and other measures to ensure, in practice, separation between the functions of investigation and detention;

2. Concerning complete separation between the functions of investigation and detention, the Act on Penal Detention Facilities and Treatment of Inmates and Detainees (hereinafter referred to as the "Penal and Detention Facilities Act") provides that detention officers shall not engage in criminal investigations of those detainees who are detained in the detention facilities supervised by such detention officers. Also, the National Public Safety Commission's Rules of Criminal Investigation prohibit investigators who are

* The present document is being issued without formal editing.

engaged in criminal investigations related to a detainee from being involved in the treatment of such detainee.

3. Japanese police have always treated detainees with consideration with regard to human rights. As part of such consideration, detainees are treated by those detention officers that belong to the general affairs (administration) division, which is not engaged in investigation, and investigators are prohibited from controlling the treatment of detainees in order to ensure separation between the functions of investigation and detention. In particular, the Penal and Detention Facilities Act, enforced in June 2007, clearly stipulates the principle of separating the functions of investigation and detention. The Act also establishes a system by which a Detention Facilities Visiting Committee, consisting of external third parties, visits detention facilities, interviews detainees, and presents its opinions to the detention services managers. The Act furthermore establishes complaint mechanisms and ensures that detainees are treated in the same manner as unsentenced inmates awaiting trial at penal institutions with respect to the serving of meals, the handover of money and goods by their visitors, the provision of medical care, visitation, the sending/receipt of letters, and other treatment, and that human rights education is given to detention officers.

4. Based on the facts described above, the substitute detention system in Japan, under which suspects are detained at police detention facilities instead of penal institutions controlled by the Ministry of Justice, does not raise the possibility of abusing the human rights of detainees. Thus, in Japan, adequate detention administration is ensured with due consideration of their human rights.

(b) Limit the maximum time detainees can be held in police custody;

5. In order to conduct investigation to fully reveal the true facts of cases while guaranteeing the human rights of suspects, the Code of Criminal Procedure of Japan requires, with regard to the detention of suspects prior to indictment, that strict judicial examinations be carried out at every stage of arrest, detention, and extended detention, and that the duration of custody be limited to a maximum of 23 days (see *Note* below). These provisions of the code are considered adequate and rational.

Note: In the cases of crimes related to insurrection, crimes related to foreign aggression, crimes related to foreign relations and crimes of disturbance, the detention period can be exceptionally extended for up to 15 days and as a result the maximum duration of custody is 28 days.

(c) Guarantee all fundamental legal safeguards for all suspects in pretrial detention, including the right of confidential access to a lawyer throughout the interrogation process, and to legal aid from the moment of arrest, and to all police records related to their case, as well as the right to receive independent medical assistance, and to contact relatives;

The right of confidential access to a lawyer

6. The accused or the suspect in custody is guaranteed the right to have an interview with counsel or prospective counsel upon the request of a person entitled to appoint counsel without any official being present (Article 39, paragraph (1) of the Code of Criminal Procedure).

The right to legal aid from the moment of arrest

7. The Code of Criminal Procedure guarantees every suspect the right to appoint counsel (Article 30, paragraph (1) of the Code of Criminal Procedure). In addition, there is

a system under which, if a suspect detained in connection with a case punishable by the death penalty, life imprisonment or imprisonment with or without work for a maximum period of more than three years is unable to appoint counsel because of indigence or other reasons, the court appoints counsel for the suspect (Article 37-2 of the Code of Criminal Procedure). An amendment that would expand cases eligible for the court-appointed counsel system to include all cases in which the suspect detained is planned to be submitted to the Diet.

Access to all police records related to their case

8. It is inappropriate to guarantee suspects the right to the disclosure of evidence in the investigation stage considering the possibility of concealment or destruction of evidence, and, therefore, the recommendation requiring that the suspect's right to the disclosure of evidence be guaranteed during pretrial detention is unacceptable. (We understand that the previous recommendation by the Committee against Torture differed from this recommendation in that it did not apply to pretrial detention but to the stage after indictment.)

Medical measures for detainees

9. With regard to medical measures for detainees, the Penal and Detention Facilities Act provides that doctors assigned by the detention services managers shall conduct health examinations at the frequency of about twice a month and that when detainees are injured or sick, necessary medical measures shall be taken including the prompt provision of medical treatment by a doctor at public expense. By conducting medical examinations of detainees about twice a month, it is possible to know the health conditions of detainees in detail and to ensure them an opportunity to receive medical treatment as necessary at an appropriate time. These provisions have been applied in actual cases.

The right to contact relatives

10. Suspects in detention are guaranteed the right to have an interview with, or to send or receive documents, including letters or articles from persons other than counsel, including their relatives (Article 80 and Article 207 of the Code of Criminal Procedure). However, when there is probable cause to assume that the suspect in detention may flee or conceal or destroy evidence, the court may prohibit the suspect from having an interview with persons other than his/her counsel (Article 81 of the Code of Criminal Procedure). The latter provision was introduced because it is inappropriate to allow a suspect to meet his/her relatives in cases where there is probable cause to assume that the suspect may flee or conceal or destroy evidence by having an interview with his/her relatives.

(d) Consider abolishing the Daiyo Kangoku system in order to bring the State party's legislation and practices fully into line with international standards.

11. In Japan, it is required that necessary investigations be completed and the decision whether to indict or release the suspect be made in as short period of time as possible after the suspect is arrested. The substitute detention system, in which suspects can be detained in detention facilities instead of penal institutions, is operated as a system indispensable to conducting criminal investigations in an appropriate and prompt manner and helpful for the convenience of suspects to have an interview with their counsel, family members, etc. Therefore, abolishing the substitute detention system is considered unrealistic at present.

12. In cases where suspects or the accused is detained in detention facilities, as stated in paragraphs 4 and 5 of the Reply by the Government of Japan to the list of issues adopted by the Committee against Torture concerning the second periodic report (CAT/C/JPN/2), they are treated in an appropriate manner with due consideration of their human rights.

Paragraph 11

The Committee reiterates its previous recommendations (para. 16) that the State party take all necessary steps to in practice ensure inadmissibility in court of confessions obtained under torture and ill-treatment in all cases in line with article 38(2) of the Constitution, article 319(1) of the Code of Criminal Procedure as well as article 15 of the Convention by, inter alia:

(a) Establishing rules concerning the length of interrogations, with appropriate sanctions for non-compliance;

13. The Japanese police have the following rules:

- Interrogation late at night or for long durations must be avoided except when there are inevitable reasons (in force since April 2008);
- Prior approval must be obtained from the Chief of Prefectural Police Headquarters, etc., when the interrogation of the suspect is to be carried out between the hours of 10 p.m. and 5 a.m. the next day or when the interrogation of the suspect is to be carried out over eight hours in a single day (in force since April 2009).

14. In the cases described in the latter rule, the Chief of Prefectural Police Headquarters, etc., who is asked for approval, determines the necessity, reasonableness and appropriateness of approval for each case, comprehensively taking into account the outline of the case, state of interrogation, state of deposition, prospect of the investigation and circumstances surrounding the suspect, etc. If the interrogation of the suspect has been carried out between the hours of 10 p.m. and 5 a.m. the next day or if the interrogation of the suspect has been carried out over eight hours in a single day without prior approval, the supervising division that is not involved in investigation takes certain steps, including the suspension of interrogation.

(b) Improving criminal investigation methods to end practices whereby confession is relied on as the primary and central element of proof in criminal prosecution;

15. In the recommendation, the Committee indicates that there exist “practices whereby confession is relied on as the primary and central element of proof in criminal prosecution.” However, this statement is not correct. Prior to criminal prosecution, the public prosecutor collects as much objective evidence as possible and properly evaluates the admissibility of such evidence. Also, the credibility of confessions is examined cautiously in light of the objective evidence. Following these precise investigations, the public prosecutor institutes prosecution only where there is a high probability of achieving a conviction.

16. Under the Code of Criminal Procedure of Japan, if a confession is the only evidence against the accused, the accused will not be convicted and therefore it is impossible for the court to convict the accused solely based on his/her confession. Further, it is impossible for the public prosecutor to institute prosecution solely based on a confession.

17. In May 2011, for the purpose of establishing a new criminal justice system in keeping with the times, the Minister of Justice called on the Legislative Council of the Ministry of Justice to deliberate on how to develop substantive criminal law and procedural law, including by reviewing the modality for investigation and trial that is excessively dependent on interrogations and statements of confession, and the introduction of an audiovisual recording system of interrogations of suspects. After the deliberation, the Council returned a report to the Minister in September 2014. The report requests, as a measure to “change the practice excessively dependent on interrogations and moderate and diversify evidence-gathering methods”, the introduction of the audiovisual recording

system of interrogations of suspects, a prosecutorial agreement system for cooperation in investigations and trials (see *Note* below), and a testimonial immunity system along with streamlining of wiretapping, et cetera. The Ministry of Justice plans to submit to the Diet a bill to develop legal systems based on the report.

18. The National Police Agency is also enhancing investigation methods including the effective operation of DNA profiling and the DNA database for criminal investigations and the expansion of interception of electronic communications in order to promote measures to properly deal with crimes that have become more sophisticated and complicated with the advancement of technology and to enable appropriate proof based on objective evidence.

Note: Under the prosecutorial agreement system for cooperation in investigations and trials, a public prosecutor may have a proffer session and enter into agreements with suspects and his/her defense counsels, when necessary for investigation or prosecution of another person, that the prosecutor will not prosecute the suspect for specific offences, recommend a specific punishment to the court, et cetera in return for the suspect or the accused providing testimony and other cooperation.

(c) Implementing safeguards such as electronic recordings of the entire interrogation process and ensuring that recordings are made available for use in trials;

19. The prosecutors' office is making positive efforts to make audiovisual recordings of the interrogation process to the furthest extent possible, including the recording of the entire process, in the cases listed below, in which the suspect is in custody, unless certain circumstances exist, such as that the demand for trial is not likely to be made.

- Cases subject to lay judge trials;
- Cases involving a suspect, etc., who has difficulty in communicating due to intellectual disability;
- Cases involving a suspect whose criminal competency is suspected of having been diminished or lost due to mental disability; etc.;
- Cases in which the public prosecutor initiated the investigation and arrested the suspect;
- In addition, based on past results, from October 1, 2014, the prosecutors' office has started a new trial of audiovisual recordings and made further positive efforts, in the cases in which it is considered necessary to use audiovisual recordings in the interrogation of suspects in custody for incidents such that the demand for trial is likely to be made, and in the cases in which it is considered necessary to use audiovisual recordings in the interrogation of the victims and witnesses to the incidents such as that the demand for trial is likely to be made.

20. The number of cases in which the audiovisual recording of interrogations has been implemented is as follows:

(a) *Trial implementation of audiovisual recording in cases subject to lay judge trials*

- Over one year from the year before last April until last March:
  - Recording implemented: 3,836 cases (implementation rate approximately 98.6%)
  - Recording not implemented: 56 cases

- Among those, the number of cases in which a demand for trial has been finally made on the charge subject to lay judge trials is as follows:
    - Recording implemented: 1,363 cases (implementation rate approximately 99.2%)
    - Recording not implemented: 11 cases

In 2,893 cases out of the total 3,836 cases for which recording has been implemented, an audiovisual recording of the entire process of interrogation by the public prosecutor has been made. (The recording rate of the entire process is 75.4%.)

(b) *Trial implementation of audiovisual recording in cases involving a suspect, etc. who has difficulty in communicating due to intellectual disability*

- Over one year from April of the year before last until last March:
    - Recording implemented: 1,082 cases (implementation rate approximately 98.6%)
    - Recording not implemented: 15 cases

In 685 cases out of the total 1,082 cases for which recording has been implemented, an audiovisual recording of the entire process of interrogation by the public prosecutor has been made. (The recording rate of the entire process is 63.3%.)

(c) *Trial implementation of audiovisual recording in cases in which the public prosecutor initiated the investigation and arrested the suspect*

- Over one year from April of the year before last until last March:
    - Recording implemented: 123 cases (implementation rate approximately 100%)
    - Recording not implemented: 0 cases

In 95 cases out of the total 123 cases for which recording has been implemented, an audiovisual recording of the entire process of interrogation by the public prosecutor has been made. (The recording rate of the entire process is 77.2%.)

(d) *Trial implementation of audiovisual recording in cases involving a suspect whose criminal competency is suspected of having been diminished or lost due to mental disability, etc.*

- Over one year from April of the year before last until last March:
    - Recording implemented: 2,759 cases (implementation rate approximately 98.1%)
    - Recording not implemented: 53 cases

In 1,349 cases out of the total 2,759 cases for which recording has been implemented, an audiovisual recording of the entire process of interrogation by the public prosecutor has been made. (The recording rate of the entire process is 48.9%.)

21. At the trial, the prosecutors' office requests the examination of the DVD, etc. of the audiovisual recording of interrogations as proof of the voluntary nature and credibility of the statement. In addition, if the defense counsel makes a request for the disclosure of a DVD, etc., of the audiovisual recording of interrogations as evidence, the prosecutors' office discloses such DVD, etc., as evidence to the defense counsel following the procedure prescribed by the law.

22. As noted in paragraph 17, the bill that obliges audiovisual recording of all processes of interrogation of suspects is planned to be submitted to the Diet.

23. The police have been implementing the audiovisual recording of interrogations on a trial basis since September 2008. In the five years and seven months since the start of trial implementation to March 2014, recordings were made for 7,651 cases subject to lay judge trials (the implementation rate for FY2013 was approximately 93.7%), and, in one year and eleven months from May 2012 to March 2013, recordings were made in 2,023 cases involving a suspect with an intellectual disability. (The implementation rate for FY2013 was approximately 98.0%.) (The number of cases from April 2014 to December 2014 is currently being calculated.)

(d) Informing the Committee of the number of confessions made under compulsion, torture or threat, or after prolonged arrest or detention, that were not admitted into evidence based on article 319(1) of the Code of Criminal Procedure.

24. There are no statistics available on "the number of confessions made under compulsion, torture or threat, or after prolonged arrest or detention that were not admitted into evidence."

25. Among the cases subject to lay judge trials (cases of crimes punishable by the death penalty or life imprisonment or imprisonment without work and cases of intentionally committed crimes resulting in the victim's death that are punishable by imprisonment with or without work for a minimum term of no less than one year), the number of cases in which the voluntary nature of the confession was disputed; the audiovisual recording medium of the interrogation of the accused was admitted into evidence; then, after the examination of that evidence, the request to examine the written statement of the accused as evidence was dismissed as its voluntary nature was questionable was: 0 in 2008; 2 in 2009; 0 in 2010; 0 in 2011; and 1 in 2012.

Paragraph 15

In light of the previous recommendations made by the Committee (para. 17), the Human Rights Committee (CCPR/C/GC/32, para. 38) as well as the communication sent by the Special Rapporteur on extrajudicial, summary or arbitrary executions (A/HRC/14/24/Add.1, paras. 515 ff), the Committee urges the State party to ensure that death row inmates are afforded all the legal safeguards and protections provided by the Convention, inter alia, by:

(a) Giving death row inmates and their family reasonable advance notice of the scheduled date and time of the execution;

26. Regarding notification on the execution of the death penalty, inmates sentenced to death are to be notified of their execution on the day it is to be performed. This is because, if inmates sentenced to death are notified of their execution before the day it will occur, their peace of mind may be negatively affected and the notification could inflict excessive pain on them, etc.

27. In addition, if the families, etc. of inmates sentenced to death are notified in advance of the execution, it would cause unnecessary psychological suffering to those who have received the notification. If the family, etc. of an inmate sentenced to death who has received such a notification visits the inmate and the inmate comes to know the schedule of his/her execution, similar harmful effects may occur. Therefore, we consider that the current method of addressing the situation is unavoidable.

28. After the execution of an inmate, the person who has been designated in advance by the inmate sentenced to death (it is possible to designate a family member or an attorney, etc.) is to be promptly notified pursuant to laws and regulations.

(b) Revising the rule of solitary confinement for death row inmates;

29. At penal institutions, it is necessary to secure the custody of inmates sentenced to death and to pay attention so as to ensure that inmates sentenced to death can maintain their peace of mind. Article 36 of the Penal and Detention Facilities Act provides that the treatment of an inmate sentenced to death shall be conducted in a single room throughout day and night, and also provides that no inmate sentenced to death shall, in principle, be permitted to make mutual contact even outside of the inmate's room.

30. However, Article 36 of the said act provides that an inmate sentenced to death may be permitted to make contact with another inmate sentenced to death if it is deemed instrumental to helping the inmate sentenced to death maintain peace of mind. Thus, we do not consider such handling an abuse of human rights.

31. Moreover, so as to save inmates sentenced to death from suffering from isolation, penal institutions have arranged opportunities such as counseling and religious teachings provided by nongovernmental volunteers, consultation by staff members, and, if necessary, watching television and video programs in order to help the inmates maintain peace of mind.

(c) Guaranteeing effective assistance by legal counsel for death row inmates at all stages of the proceedings, and the strict confidentiality of all meetings with their lawyers;

32. The Penal and Detention Facilities Act provides that a penal institution official shall, in principle, accompany visits to an inmate sentenced to death. However, measures such as the presence of an official are not taken for visits by a counsel to an inmate sentenced to death for whom the court's order of commencement of a retrial has become final and binding, since the provisions of the law on unsentenced persons (the accused, in criminal cases) apply mutatis mutandis thereto.

33. For visits to an inmate sentenced to death for whom an order of commencement of a retrial has yet to become final and binding by a lawyer who represents the inmate in the procedure for a retrial, an official shall not attend unless there is a special circumstance under which such visit is likely to cause a disruption of discipline and order in the penal institution or if there is a strong need for the official to accompany the visit in order to grasp the feelings of the inmate sentenced to death. The warden of each penal institution, therefore, makes determinations in an appropriate manner on specific individual cases.

34. With regard to the letters sent and received by an inmate sentenced to death, a penal institution official shall examine them. As for the letters sent and received between an inmate sentenced to death and a lawyer who is asked to represent such inmate in a civil lawsuit concerning the treatment that such inmate received, certain considerations are given, such as that letters are examined within the limit necessary for ascertaining that they are such letters as specified above unless there is a special circumstance under which it is deemed likely to cause the disruption of discipline and order in the penal institution.

35. With regard to the letters sent and received between a counsel and an inmate sentenced to death for whom the court's order of commencement of a retrial has become final and binding, the provisions of the law on unsentenced persons apply mutatis mutandis and certain considerations are given, such as that letters from a counsel, etc., are examined within the limit necessary for ascertaining that they are such letters as specified above.

(d) Making available the power of pardon, commutation and reprieve in practice for death row inmates;

36. Grounds for the suspension of an execution are insanity and pregnancy, and the execution is suspended in those cases.

37. An inmate sentenced to death may file an application for a pardon (special pardon, commutation of sentence, or remission of execution of sentence), at any time, with the warden of the penal institution to which he/she is committed. The warden of a penal institution who has received such an application has to file a petition for a pardon with the National Offenders Rehabilitation Commission, established in the Ministry of Justice, without fail. Thus, the inmates sentenced to death are provided with an opportunity for pardon in the same way as other inmates.

38. The procedure for filing a petition for examination of pardon is stipulated in the Pardon Act and the Ordinance for Enforcement of the Pardon Act. Therefore, the transparency of such procedures is ensured.

39. There has been no case in which an inmate sentenced to death was granted a pardon since 2007. During this period, however, several inmates sentenced to death filed applications for a pardon and each time the warden of the penal institution filed a petition for pardon. We understand that, in each case, the National Offenders Rehabilitation Commission carried out deliberate examination on whether giving a pardon was appropriate and made a proper conclusion.

(e) Introducing a mandatory system of review in capital cases, with suspensive effect following a death penalty conviction in first instance;

40. The right to appeal and the right to final appeal are guaranteed in all criminal cases in Japan, not limited to capital cases (Article 372 and Article 405 of the Code of Criminal Procedure).

41. In Japan:

(1) Based on the principle of warrant and strict evidence rules that are employed in court practice as well as the three-tiered judicial system, a conviction is confirmed through a carefully managed process throughout investigation and trials;

(2) For final and binding judgments, relief systems are in place including retrial and extraordinary appeal to the Supreme Court, which function effectively in preventing misjudgment; and

(3) An execution is carried out after careful examination regarding the presence of cause for retrial. In this way, capital punishment is carried out extremely carefully in Japan under a rigorous system and therefore there is no need for a mandatory appeal system.

(f) Ensuring an independent review of all cases when there is credible evidence that death row inmate is mentally ill. Furthermore, the State party should ensure that a detainee with mental illness is not executed in accordance with article 479(1) of the Code of Criminal Procedures;

42. Article 62, paragraph (1) of the Penal and Detention Facilities Act provides that in cases in which an inmate is injured or suffering from disease, the warden of the penal institution shall promptly provide him/her with medical treatment by a doctor who is on staff at the penal institution, along with other necessary medical measures. At penal institutions, due care and careful consideration are always given to the inmates sentenced to death; and efforts are made to determine the physical and mental conditions of inmates

sentenced to death, including regular medical examinations and the opportunity to receive medical treatment by a doctor outside the institution as necessary.

43. With respect to the death penalty, Article 479 of the Code of Criminal Procedure provides that "where the person who has been sentenced to death is in a state of insanity," the execution shall be suspended by order of the Minister of Justice, and appropriate procedure is taken in accordance with this provision.

44. We intend to continue our efforts to be fully aware of the health conditions of inmates sentenced to death, including their mental conditions, and to properly deal with each case.

(g) Providing data on death row inmates, disaggregated by sex, age, ethnicity and offence;

45. As of January 27, 2015, of the inmates sentenced to death by final and binding judgments, 123 are male and 6 are female.

46. The composition by age group is as follows.

Aged 80 or over:	6
Aged 70 or over and below 80:	14
Aged 60 or over and below 70:	34
Aged 50 or over and below 60:	34
Aged 40 or over and below 50:	24
Aged below 40:	17

47. Six inmates sentenced to death by final and binding judgments were foreign nationals. No statistics are available on composition by ethnicity.

48. Sixty-six such inmates committed homicide, and 63 inmates committed robbery-homicide. (Those who committed both homicide and robbery-homicide are counted among those that committed robbery-homicide for which a heavier statutory penalty is imposed.)

(h) Considering the possibility of abolishing the death penalty.

49. Whether to retain or abolish the death penalty is an important issue that affects the basis of the criminal justice system in Japan. It should be considered carefully from various viewpoints, such as the realization of justice in society, with sufficient attention given to public opinion.

50. The majority of citizens in Japan consider that the death penalty is unavoidable for extremely malicious/brutal crimes. In light of the current situation that shows no sign of decline in brutal crimes, it is unavoidable to impose the death penalty on persons who have committed extremely brutal crimes and bear heavy criminal responsibility, and therefore abolishing the death penalty is not appropriate.

Paragraph 19

Recalling its general comment No. 3 (2012), the Committee urges the State party to take immediate and effective legislative and administrative measures to find a victim-centred resolution for the issues of "comfort women", in particular, by:

(a) Publicly acknowledging legal responsibility for the crimes of sexual slavery, and prosecuting and punishing perpetrators with appropriate penalties;

(b) Refuting attempts to deny the facts by government authorities and public figures and to re-traumatize the victims through such repeated denials;

(c) Disclosing related materials, and investigating the facts thoroughly;

(d) Recognizing the victim's right to redress, and accordingly providing them full and effective redress and reparation, including compensation, satisfaction and the means for as full rehabilitation as possible;

(e) Educating the general public about the issue and include the events in all history textbooks, as a means of preventing further violations of the State party's obligations under the Convention.

51. The Government of Japan has no intention of denying or trivializing the comfort women issue. With regard to the comfort women issue, Prime Minister Abe, in the same manner as the Prime Ministers who proceeded him, is deeply pained to think of the comfort women who experienced immeasurable pain and suffering beyond description, which has been repeatedly expressed.

52. Recognizing that the comfort women issue was a grave affront to the honour and dignity of a large number of women, in fact, the Government of Japan, together with the people of Japan, seriously discussed what could be done to express their sincere apologies and remorse to the former comfort women. As a result, the people and the Government of Japan cooperated and together established the Asian Women's Fund (AWF) on July 19, 1995 to extend atonement from the Japanese people to the former comfort women. To be specific, the AWF provided "atonement money" (2 million yen per person) to former comfort women in the Republic of Korea, the Philippines and Taiwan who were identified by their governments/—authority and other bodies and wished to receive it. As a result, 285 former comfort women (211 persons in the Philippines, 61 persons in the Republic of Korea, 13 persons in Taiwan) received funds. Moreover, in addition to the "atonement money", the AWF provided funds for medical and welfare support in those countries/areas (3 million yen per person in the Republic of Korea and Taiwan, 1.2 million for the Philippines), financial support for building new elder care facilities in Indonesia, and financial support for a welfare project which helps to enhance the living conditions of those who suffered incurable physical and psychological wounds during World War II in the Netherlands. The Government of Japan provided a total of 4.8 billion yen for programs of the fund and offered the utmost cooperation to support programs for former comfort women, such as programs to offer medical care and welfare support (a total of 1.122 billion yen) and a program to offer "atonement money" from donations of the people of Japan. In terms of the Fund's activities in the ROK, "atonement money" of 2 million yen, donated from the private sector, and 3 million yen for medical and welfare projects, which was from government contributions (for a total of 5 million yen per person), were provided to a total of 61 former comfort women in the Republic of Korea up to the end of the Fund's activities. In addition, when the atonement money was provided, the then Prime Ministers (namely, PM Ryutaro Hashimoto, PM Keizo Obuchi, PM Yoshiro Mori and PM Junichiro Koizumi), on behalf of the Government, sent a signed letter expressing apologies and remorse directly to each former comfort woman (see the attachment). While the AWF was disbanded in March 2007 with the termination of the project in Indonesia, the Government of Japan has continued to implement follow-up activities of the fund.

53. As mentioned above, the Government of Japan would like to call attention again to the efforts of the "Asian Women's Fund (AWF)", on which the Government and the people of Japan cooperated together to establish so that their goodwill and sincere feelings could reach the former comfort women to the greatest extent possible, and as a result, our feelings were transmitted to many of them. With regard to the AWF, the former comfort women

who had received or wanted to receive benefit from the project from the AWF were subject to "harassment" by certain groups in the Republic of Korea. In addition, the former comfort women who had already received benefit from the project from the AWF would no longer be eligible for the "Life-Support Fund", which was established by the Government of the Republic of Korea with the aim to provide money to the former comfort women. We regret that not all of the former comfort women benefitted from the project from the AWF owing to these circumstances. (Among the approximately 200 former comfort women in the Republic of Korea who were identified by the Government of the Republic of Korea, ultimately only 61 received benefit from the AWF.) In this regard, we consider that the efforts of the "Asian Women's Fund" should be recognized appropriately. We call your attention to the fact that Japan started the support project to the former comfort women through the AWF ahead of that of the Republic of Korea.

54. The Government of Japan has sincerely dealt with issues of reparations, property and claims pertaining to the Second World War, including the comfort women issue, under the San Francisco Peace Treaty, which the Government of Japan concluded with 45 countries, including the United States, the United Kingdom and France, and through bilateral treaties, agreements and instruments. The issues of claims of individuals, including former comfort women, have been legally settled with the parties to these treaties, agreements and instruments. In particular, the Agreement on the Settlement of Problems Concerning Property and Claims and on Economic Co-operation between Japan and the Republic of Korea stipulates that "problems concerning property, rights and interests of the two Contracting Parties and their nationals (including juridical persons) and concerning claims between the Contracting Parties and their nationals, … have been settled completely and finally." (Article II, paragraph 1). In addition, on the basis of the Agreement, Japan provided 500 million US dollars to the Republic of Korea and more than 300 million dollars credit to the private sector. The amount of 500 million US dollars provided from the Government of Japan was 1.6 times as much as the State budget of the Republic of Korea at that time. The above-mentioned "Asian Women's Fund" was established as an effort of goodwill on the part of Japan, although this issue had been legally settled with the parties to the above-mentioned treaties, agreements and instruments.

55. On this occasion, it should also be pointed out that there are one-sided claims which lack any corroborative evidence in reports by United Nations Special Rapporteurs as well as in criticisms and recommendations from treaty bodies. For instance, such reports have referred to the testimony of Seiji Yoshida, as the "only witness" to the "forceful recruitment of comfort women", along with the figure of "200,000 comfort women." A major newspaper in Japan, which has proactively reported the issue of comfort women, retracted articles, in August 2014, based on "testimony judged to be a fabrication that was provided by the late Seiji Yoshida about forcibly deporting comfort women from Jeju Island, South Korea" and apologized for "publishing erroneous articles" related to him. It also admitted to its confusion between comfort women and women volunteer corps "that were mobilized to work at munitions factories and at other locations during the war" which seemed to be the basis of the figure of "200,000 comfort women".

56. Within the materials found during the investigations by the Government of Japan since the early 1990s, which were already published, no descriptions were found that directly indicated any so-called forceful deportation of women by the military or the Government of Japan. Nor was there any evidence of there being "200,000 comfort women." This figure spread due to the confusion, admitted by the Japanese newspaper, between comfort women and women volunteer corps, and lacks any corroborative evidence. It is very regrettable that this false information provides the essential basis for United Nations reports and recommendations.

57. The Government of Japan requests that Japan's efforts be correctly recognized by the international community, based on a correct awareness of the facts.

58. Throughout history, women's dignity and basic human rights have often been infringed upon during the many wars and conflicts of the past. The Government of Japan places paramount importance on and is committed to doing its utmost to ensure that the 21st century is free from further violations of women's dignity and basic human rights.

59. Lastly, the Government of Japan considers that it is not appropriate for this report to take up the comfort women issue in terms of the implementation of State Party's undertakings under the Convention as this Convention does not apply to any issues that occurred prior to Japan's conclusion thereof (1999). With regard to the expression "sexual slave" used in the Committee's concluding observations concerning Japan's report, the Government of Japan has considered the definition of "slavery" stipulated in Article 1 of the Slavery Convention, concluded in 1926, and finds that it is inappropriate to consider the comfort women system as "slavery" from the perspective of international law at the time.

Paragraph 23

The State party should explicitly prohibit corporal punishment and all forms of degrading treatment of children in all settings by law.

60. This is a factual error regarding this issue, as corporal punishment is prohibited under Article 11 of the School Education Act (see *Note* below).

Note: School Education Act

> Article 11 – The principal and teachers may discipline their pupils or students when deemed necessary for educational purposes and as specified by the Minister of Education, Culture, Sports, Science and Technology, provided, however, that corporal punishment is prohibited.

EXHIBIT D

MISSION PERMANENTE DU JAPON
AUPRÈS DES ORGANISATIONS INTERNATIONALES
GENÈVE-SUISSE

FY/UN/421

The Permanent Mission of Japan to the International Organizations in Geneva presents its compliments to the Office of the High Commissioner for Human Rights and has the honour to transmit herewith the comments from the Government of Japan on the Concluding Observations of the Human Rights Committee (CCPR/C/JPN/CO/6).

The Permanent Mission of Japan to International Organizations in Geneva avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights the assurances of its highest consideration.

Geneva, 27 July 2015

Enclosure mentioned

Comments by the Government of Japan on the Concluding Observations of the Human Rights Committee (CCPR/C/JPN/CO/6)

1. In the concluding observations of the Human Rights Committee on the Sixth Periodic Report submitted by Japan (CCPR/C/JPN/CO/6), the Committee requested relevant information on the implementation of specific recommendations (paragraphs 13, 14, 16 and 18). The present situation of the implementation of the concerned recommendations is as follows. The Government of Japan would like to continue constructive dialogue with the Committee.

Responses to recommendations made in paragraph 13 – Death penalty

Re: paragraph 13 (a)

2. Whether to retain or abolish the death penalty is an important issue that affects the foundation of the criminal justice system in Japan. It should be considered carefully from various viewpoints, such as the realization of justice in society, with sufficient attention given to public opinion.

3. The majority of citizens in Japan consider that the death penalty is unavoidable for extremely malicious/brutal crimes. In light of the current situation, which shows no sign of decline in brutal crimes, it is unavoidable to impose the death penalty on persons who have committed extremely brutal crimes and bear heavy criminal responsibility, and therefore abolishing the death penalty is not appropriate.

4. In Japan, crimes that include death penalty as an option among the statutory penalties are limited to 19 most serious crimes such as murder and murder at the scene of a robbery. Judgment on selecting the death penalty is made extremely strictly and carefully, based on the criteria shown in the judgment of the Supreme Court on July 8, 1983. As a result, the death penalty is imposed only on a person who has committed a heinous crime carrying great criminal responsibility that involves an act of killing victims intentionally.

Re: paragraph 13 (b)

5. Regarding the recommendations for the treatment of inmates sentenced to death, the Government of Japan has no intention of changing such treatment at this moment.

6. An inmate sentenced to death is notified him/herself of the execution of the death penalty on the day prior to the execution, out of consideration that an advance notice would disturb the inmate's peace of mind and might cause further suffering. Furthermore, an advance notice to family members, etc. would cause them to suffer useless pain, and if a family member who received an advance notice were to make a visit and the inmate to learn of the schedule of the execution of his/her death sentence, the same harmful effects would be expected. Therefore, the current procedures are unavoidable.

7. At penal institutions, it is necessary to detain inmates sentenced to death and at the same time to pay attention to enabling them to maintain peace of mind. Article 36 of *the Act on Penal Detention Facilities and Treatment of Inmates and Detainees* provides that treatment of an inmate sentenced to death shall be conducted in an inmate's room throughout the day and night, and that inmates sentenced to death shall not be permitted to make mutual contact even outside of their rooms, in principle, except when it may be permissible to allow them to make mutual contact in order to maintain peace of mind. Therefore, the Government of Japan does not consider that such treatment falls under abuse of human rights.

Re: paragraph 13 (c)

8. Under the current discovery framework, followed by the disclosure of the evidence case-in-chief, evidence falling into the prescribed categories necessary for evaluating the probative value of the evidence case-in-chief (so called "Categorized Evidence") and evidence deemed related to the allegations by the defendant (so called "Allegation-Related Evidence") is disclosed in a stepwise manner in the pre-trial proceeding. Through this disclosure process, all the evidence necessary for the preparation for the defense is properly disclosed.

9. In practice, the prosecutor discloses evidence in line with the intent of the current system for the disclosure of evidence and also voluntarily discloses a considerably wide range of evidence. Therefore, basically all the evidence necessary for the trial is disclosed under the existing circumstances.

10. Furthermore, in September 2014, the Legislative Council of the Minister of Justice, an advisory panel of the Minister of Justice, reported to the Minister that a new legal system disclosing a list containing the titles and other categories of information of all

the evidence kept by the prosecutor should be additionally introduced to the existing framework of discovery, and a reform bill to introduce this system was submitted to the Diet in March 2015.

11. Article 38, Paragraph 2 of the *Constitution of Japan* stipulates: "Confession made under compulsion, torture or threat, or after prolonged arrest or detention shall not be admitted in evidence." In accordance with this provision, Article 319, Paragraph 1 of the *Code of Criminal Procedure* stipulates: "Confession under compulsion, torture, threat, after unduly prolonged detention or when there is doubt about it being voluntary may not be admitted as evidence." Therefore, confession obtained under torture or as a result of unjust treatment can never be admitted as evidence.

Re: paragraph 13 (d)

12. In capital cases, counsel must be appointed in the proceedings before the judgment on the case is confirmed, and under the strict rules of evidence, the determination of fact and the decision to select the death penalty are made after careful proceedings. In addition, a three-tiered judicial system is ensured for the defendant before the judgment becomes final and conclusive. A death sentence that has been finalized after these strict and careful proceedings is rigorously executed, in principle.

13. On the other hand, if any execution order were suspended during requests for a retrial, etc., the execution of the death penalty would never be carried out as long as the inmate sentenced to death repeatedly files requests for a retrial, etc., making it impossible to achieve the outcome of a criminal trial.

14. In issuing an order for the execution of the death penalty, the Minister of Justice fully and carefully inspects the relevant records of each case and deliberately examines whether or not there are any grounds for commencing a retrial as stipulated in the *Code of Criminal Procedure*.

15. From these viewpoints, the Government of Japan considers that it is not appropriate to establish a system of suspending the execution of the death penalty without exception whenever a request for a retrial, etc., is filed.

16. As mentioned above, the right to appeal against a conviction or a sentence is widely respected under a three-tiered judicial system, and the counsel is also granted the right to appeal, with the result that many capital cases have been appealed against. In the light of these situations, the Government of Japan considers that there is no need to establish

a mandatory system of review in capital cases.

17. The *Act on Penal Detention Facilities and Treatment of Inmates and Detainees* provides that when an inmate sentenced to death receives a visit, an official of the penal institution is to be present at the scene, in principle. However, the provisions of laws concerning unsentenced persons (accused persons) apply to meetings between a lawyer and an inmate sentenced to death for whom the court's ruling shall be rendered to commence a retrial, and therefore, measures, such as the attendance of an official, are not taken in such cases. Also with regard to meetings between a lawyer and an inmate sentenced to death for whom the commencement of retrial has yet to been rendered, when a request for a meeting without the attendance of an official is filed, a meeting without the attendance of an official is permitted unless there are special circumstances, based on judgment by the warden of the penal institution on a case-by-case basis.

Re: paragraph 13 (e)

18. Article 62 of paragraph (1) of the *Act on Penal Detention Facilities and Treatment of Inmates and Detainees* provides that in such cases in which the inmate is injured or suffering from disease, the warden of the penal institution shall promptly give him/her medical treatment by a doctor on the staff of the penal institution and other necessary medical measures. At penal institutions, attention is always paid and due consideration is given also to inmates sentenced to death, by attempting to ascertain their physical and mental state by providing them with regular health checkups and medical treatment at an external medical institution, as necessary.

19. As a result of the measures described above, if an inmate sentenced to death is found to be "in a state of insanity" as provided in Article 479 of the *Code of Criminal Procedure*, the execution is suspended by order of the Minister of Justice pursuant to the provisions of the said article.

20. The Government of Japan intends to continue our efforts to be fully aware of the health conditions of inmates sentenced to death, including their mental conditions, and to properly deal with each case. In this way, it is possible to take proper measures, and therefore it considers that there is no need to establish an independent mechanism to monitor the mental health of inmates sentenced to death.

Re: paragraph 13 (f)

21. As mentioned in the response regarding on paragraph 13(a) above, the Government of Japan considers that it is inappropriate to abolish the death penalty, and with respect to the conclusion of the Second Optional Protocol to the Covenant, requires careful examination.

Responses to recommendations made in paragraph 14 – Issue of comfort women

22. The Government of Japan has no intention of denying or trivializing the comfort women issue. With regard to the comfort women issue, Prime Minister Abe, in the same manner as the Prime Ministers who proceeded him, is deeply pained to think of the comfort women who experienced immeasurable pain and suffering beyond description, which has been repeatedly expressed.

23. Recognizing that the comfort women issue was a grave affront to the honor and dignity of a large number of women, in fact, the Government of Japan, together with the people of Japan, seriously discussed what could be done to express their sincere apologies and remorse to the former comfort women. As a result, the people and the Government of Japan cooperated and together established the Asian Women's Fund (AWF) on July 19, 1995 to extend atonement from the Japanese people to the former comfort women. To be specific, the AWF provided "atonement money" (2 million yen per person) to former comfort women in the Republic of Korea, the Philippines and Taiwan who were identified by their governments/authority and other bodies and wished to receive it. As a result, 285 former comfort women (211 persons in the Philippines, 61 persons in the Republic of Korea, 13 persons in Taiwan) received funds. Moreover, in addition to the "atonement money," the AWF provided funds for medical and welfare support in those countries/areas (3 million yen per person in the Republic of Korea and Taiwan, 1.2 million yen for the Philippines), financial support for building new elder care facilities in Indonesia, and financial support for a welfare project which helps to enhance the living conditions of those who suffered incurable physical and psychological wounds during World War II in the Netherlands. The Government of Japan provided a total of 4.8 billion yen for programs of the fund and offered the utmost cooperation to support programs for former comfort women, such as programs to offer medical care and welfare support (a total of 1.122 billion yen) and a program to offer "atonement money" from donations of the people of Japan. In terms of the Fund's

activities in the ROK, "atonement money" of 2 million yen, donated from the private sector, and 3 million yen for medical and welfare projects, which was from government contributions (for a total of 5 million yen per person), were provided to a total of 61 former comfort women in the Republic of Korea up to the end of the Fund's activities. In addition, when the atonement money was provided, the then-Prime Ministers (namely, PM Ryutaro Hashimoto, PM Keizo Obuchi, PM Yoshiro Mori and PM Junichiro Koizumi), on behalf of the government, sent a signed letter expressing apologies and remorse directly to each former comfort woman (see the attachment). While the AWF was disbanded in March 2007 with the termination of the project in Indonesia, the Government of Japan has continued to implement follow-up activities of the Fund.

24. As mentioned above, the Government of Japan would like to call attention again to the efforts of the "Asian Women's Fund (AWF)," on which the Government and the people of Japan cooperated together to establish so that their goodwill and sincere feelings could reach the former comfort women to the greatest extent possible, and as a result, our feelings were transmitted to many of them. With regard to the AWF, the former comfort women who had received or wanted to receive benefit from the project from the AWF were subject to "harassment" by certain groups in the Republic of Korea. In addition, the former comfort women who had already received benefit from the project from the AWF would no longer be eligible for the "Life-Support Fund," which was established by the Government of the Republic of Korea with the aim to provide money to the former comfort women. We regret that not all of the former comfort women benefitted from the project from the AWF owing to these circumstances. (Among the approximately 200 former comfort women in the Republic of Korea who were identified by the Government of the Republic of Korea, ultimately only 61 received benefit from the AWF.) In this regard, we consider that the efforts of the "Asian Women's Fund" should be recognized appropriately. We call your attention to the fact that Japan started the support project to the former comfort women through the AWF ahead of that of the Republic of Korea.

25. The Government of Japan has sincerely dealt with issues of reparations, property and claims pertaining to the Second World War, including the comfort women issue, under the *San Francisco Peace Treaty*, which the Government of Japan concluded with 45 countries, including the United States, the United Kingdom and France, and through bilateral treaties, agreements and instruments. The issues of claims of individuals, including former comfort women, have been legally settled with the parties to these treaties, agreements and instruments. In particular, the *Agreement on the Settlement of*

Problems Concerning Property and Claims and on Economic Co-operation between Japan and the Republic of Korea stipulates that "problem concerning property, rights and interests of the two Contracting Parties and their nationals (including juridical persons) and concerning claims between the Contracting Parties and their nationals, … is settled completely and finally." In addition, on the basis of the Agreement, Japan provided 500 million U.S. dollars to the Republic of Korea and more than 300 million U.S. dollars credit to the private sector. The amount of 500 million U.S. dollars provided from the Government of Japan was 1.6 times as much as the state budget of the Republic of Korea at that time. The above-mentioned "Asian Women's Fund" was established as an effort of goodwill on the part of Japan, although this issue had been legally settled with the parties to the above-mentioned treaties, agreements and instruments.

26. On this occasion, it should also be pointed out that there are one-sided claims that lack any corroborative evidence in the reports by UN Special Rapporteurs as well as in criticisms and recommendations from treaty bodies. For instance, such reports have referred to the testimony of Mr. Seiji Yoshida, who is the only witness to the "forceful recruitment of comfort women," along with the figure of "200,000 comfort women." A major newspaper in Japan, which has proactively reported the issue of comfort women, retracted articles, in August 2014, based on testimony judged to be a fabrication that was provided by the late Mr. Seiji Yoshida and apologized for publishing erroneous articles related to him. It also admitted to its confusion between comfort women and the women volunteer corps that were mobilized to work at munitions factories and at other locations during the war which seemed to be the basis of the figure of "200,000 comfort women."

27. Within the materials found during the investigations by the Government of Japan since the early 1990s, which were already published, no descriptions were found that directly indicated any so-called forceful deportation of women by the military or the Government of Japan. Nor was there any evidence of there being "200,000 comfort women." This figure spread due to the confusion, admitted by the Japanese newspaper, between comfort women and the women volunteer corps, and lacks any corroborative evidence. It is very regrettable that this false information provides the essential basis for UN reports and recommendations.

28. The Government of Japan requests that Japan's efforts are correctly recognized by the international community, based on a correct awareness of the facts.

29. Throughout history, women's dignity and basic human rights have often been infringed upon during the many wars and conflicts of the past. The Government of Japan places paramount importance on and is committed to doing its utmost to ensure that the 21st century is free from further violations of women's dignity and basic human rights.

30. Lastly, the Government of Japan considers that it is not appropriate for this report to take up the comfort women issue in terms of the implementation of State Party's undertakings under the Covenant as this Covenant does not apply to any issues that occurred prior to Japan's conclusion thereof (1999). With regard to the expression "sexual slave" used in the Committee's concluding observations concerning Japan's report, the Government of Japan has considered the definition of "slavery" stipulated in Article 1 of the *Slavery Convention*, concluded in 1926, and finds that it is inappropriate to consider the comfort women system as "slavery" from the perspective of international law at the time.

31. With regard to education, it is required in the Guidelines for the Course of Study, which provides under the law, the standards for the design of school curriculum that students should be taught to understand that World War II caused tremendous suffering to humanity at large. What is to be described in textbooks based on the Guidelines for the Course of Study is left to the discretion of each textbook publisher, and some textbooks do mention comfort women.

Responses to the recommendations made in paragraph 16 - Technical Intern Training Program

32. Regarding the Technical Intern Training Program, bills related to the revision of the Program were submitted to the Diet on March 6 this year, taking into consideration the concerns that have been expressed domestically and abroad.

33. After the revision, the Technical Intern Training Program will have the following elements which would further improve the Program.

(1) Promoting the evaluation of skills acquired at each stage of training, through such measures as making it obligatory for technical intern trainees to take public skills evaluation exams at the completion of the "Technical Intern Training (ii)"[1];

[1] Technical Intern Training (ii) is activities undertaken in the second and third year after the entry into Japan, in order to become proficient in the skills that were acquired in the first year.

(2) Introducing a system under which (a) supervising organizations[2] are required to obtain a license in advance, (b) implementing organizations (organizations or individuals that implement technical intern training) are required to register with the after-mentioned Technical Intern Training Organizations, and (c) implementing organizations are required to obtain an approval for each technical intern training plan;

(3) Establishing the Technical Intern Training Organizations (an authorized corporation) whose role includes requiring supervising organizations to submit reports as well as itself conducting on-site inspections;

(4) Setting up a contact point where technical intern trainees can lodge reports on improper cases and enhancing the support for trainees who wish to change the training company;

(5) Establishing penalties for acts of human rights violations such as depriving trainees of their passports; and

(6) Eliminating improper sending organizations by way of having arrangements and cooperating with the governments of countries that intend to send technical intern trainees;

34. In order to prevent trafficking in persons for the purpose of labor exploitation, the Ministry of Health, Labor and Welfare (MHLW) pro-actively supervises and issues guidance to implementing organizations that may have committed violations of labor standards-related laws and regulations, including such cases as forced labor of technical intern trainees. If any violation of these laws and regulations is found, MHLW issues a guidance demanding rectification and ensures that it is observed. For example, if a case involving unpaid wages is found, MHLW sees to it that the unpaid wage is paid, thereby securing fair labor conditions for technical intern trainees, as well as their health and safety. In case of serious or malicious law violations, MHLW pursues such cases rigorously by, for example, prosecuting the offenders. In particular, even outside cases of forced labor, the Labor Standards Inspection Office and the Immigration Bureau are further enhancing cooperation by jointly conducting with MHLW supervision and investigation for cases in which human rights violations are suspected. These are cases that involve violence, threats or confinement of technical intern trainees, usurpation of wages as "penalties for breaking contracts", deprivation of bank books,

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[2] Non-profit organizations, such as chamber of commerce and industry or associations established by small-medium enterprises.

seals (chops used in lieu of signature) or passports.

35. In 2013, a total of 2,318 establishments (implementing organizations) became subject to supervision and guidance. In addition, 12 cases of serious or malicious violations of labor standards-related laws and regulations regarding technical intern trainees were sent to the prosecutors' office. The Ministry will continue placing priority on exercising supervision and guidance vis-à-vis implementing organizations.

36. In addition, the Ministry of Justice has been conducting on-site inspections at implementing and supervising organizations that are suspected to have been engaged in the improper acceptance of technical intern trainees, and taking strict measures against those that are determined to have committed misconduct, by prohibiting them from accepting technical intern trainees for a period of up to five years, depending on the type of misconduct. In 2014, a notice of misconduct was issued in 241 cases.

37. The Police are committed to properly dealing with crimes of human trafficking involving the Technical Intern Training Program. If detected, the Police investigate the case and provides protection and support for the victims in cooperation with the Labor Standards Inspection Office and the Immigration Bureau, etc.

Responses to recommendations made in paragraph 18 - Substitute detention system (*Daiyo Kangoku*) and forced confessions

38. Under the current situation in Japan, the number of penal institutions is smaller than that of detention facilities, and thus, and for other reasons, the substitute detention system is being used as an alternative that contributes to the prompt and proper performance of criminal investigations and is convenient for the lawyers and family members to visit and meet with the suspect. The Government of Japan considers it impractical to abolish the substitute detention system at the present moment.

39. In addition, the *Act on Penal Detention Facilities and Treatment of Inmates and Detainees* clearly stipulates: 1) the principle of the "separation of investigation and detention;" 2) the establishment of the Detention Facilities Visiting Committee, consisting of external third parties; 3) the development of a complaints mechanism with regard to the treatment of those detained in detention facilities; and so on. Thus, institutional improvement efforts are being made to ensure appropriate treatment of those detained in detention facilities.

Re: paragraph 18 (a)

40. In some countries, a suspect is in principle arrested and the arrest is not necessarily required for a preliminary judicial review if the investigator believes there is a reasonable suspicion. In other countries, pre-trial detention may be over several months. In contrast, in Japan, criminal investigations are, in principle, conducted without arrest, and a suspect is taken into custody only when there is a reasonable ground to suspect that the suspect will conceal or destroy evidence, or flee. Besides, strict time limits are applied to the custody as well as judicial reviews are carried out at each stage of the custody. Plus, remedial release systems of the rescindment of detention or the suspension of the execution of detention are fully furnished. Thus, few needs to introduce a pre-indictment bail system have been recognized.

41. Whether to introduce a pre-indictment bail system was deliberated by the Legislative Council of the Ministry of Justice and it has not been recommended to be instituted.

Re: paragraph 18 (b)

42. As a way to ensure the right to appoint counsel, the *Code of Criminal Procedure* stipulates that suspects must be informed of his/her right to appoint counsel when arrested (Article 203, Paragraph 1; Article 204, Paragraph 1). In September 2014, the Legislative Council of the Minister of Justice reported to the Minister that: 1) suspects should also be informed of the procedure on how to appoint counsel; and 2) state-appointed counsel should be available to all suspects in detention, and a bill to institute these obligations was submitted to the Diet in March 2015.

43. Whether to ensure the right to the presence of counsel during interrogations was on the discussion table of the Legislative Council of the Ministry of Justice. However, serious concerns were raised that there could be a significant risk to fundamentally alter the modality of interrogation or substantially hamper the function of the interrogation and it has not been recommended.

44. In practice, the prosecutor or the police officer who conducts each interrogation appropriately decides whether or not to allow the presence of counsel during the interrogations of suspects, taking into account such factors including the possibility that the functioning of interrogation may be hampered and that the reputation or privacy of persons concerned or the secrecy of investigations may be affected.

Re: paragraph 18 (c)

45. Under the current practice, prosecutors are making positive efforts to, unless certain circumstances exist, video record interrogations of suspects who are in custody, to the furthest extent possible, including the recording of the entire process, in the following cases such as that a suspect is not likely to be indicted: cases subject to lay judge trials; cases involving a suspect who has difficulty in communicating due to intellectual disability; cases involving a suspect whose criminal capacity is suspected of having been diminished or lost due to mental disability, etc.; and cases in which prosecutors initiate the investigation and arrest a suspect. The number of cases in which the video recording of interrogations was implemented (implementation rate) from April 2014 to March 2015 was 3,800 (99.0%) for the cases subject to lay judge trials, 925 (99.2%) for cases involving a suspect, etc. who has difficulty in communicating due to intellectual disability, 2,959 (99.3%) for the cases involving a suspect whose criminal capacity is suspected of having been diminished or lost due to mental disability, etc., and 53 (100%) for the cases in which the prosecutor initiated the investigation.

46. In addition, based on past results, since October 1, 2014, prosecutors have started a new pilot program of video recording and made further positive efforts, including the recording of the entire process of interrogation, for the cases in which a suspect who is in custody is likely to be indicted and video recording of interrogation of a suspect is considered necessary, and for the cases in which a suspect is likely to be indicted and video recording of a victim or witness is considered necessary. Among such cases as described above, from October 2014 to March 2015, the number of cases in which interrogations of suspects was video recorded was 14,499, while the number of cases in which the interrogation of victims or witnesses was recorded was 531.

47. The police have also been implementing the video recording of interrogations on a trial basis since September 2008. In six years and seven months since the start of this trial implementation to March 2015, recordings were made for 10,496 cases subject to lay judge trials (the implementation rate for FY2014 was approximately 85.2%), and, in two years and eleven months from May 2012 to March 2015, recordings were made in 3,140 cases involving a suspect with an intellectual disability (the implementation rate for FY2014 was approximately 99.3%.).

48. In September 2014, the Legislative Council of the Ministry of Justice reported to the Minister that, in certain cases, a legal duty to video record all of the interrogations of

suspects should be introduced, and a bill to establish the legal duty was submitted to the Diet in March 2015.

49. As for the prosecutors' office, the Supreme Public Prosecutors Office issued an order for further ensuring appropriate interrogation. The order directs, for example, that as part of further consideration in conducting interrogations, hours for sleeping and eating designated by the penal institution, etc., be observed and that interrogation in the middle of the night or for a long period of time be avoided. In addition, appropriate responses to complaints concerning interrogations and further consideration for interviews between suspects and their counsels are directed. Pursuant to these directions, prosecutors are making efforts to realize appropriate interrogations. The Inspection Guidance Division of the Supreme Public Prosecutors Office collects and analyses information about complaints concerning interrogations from both inside and outside of the prosecutors' offices and, if necessary, inspects cases and makes instructions.

50. Other measures are also being taken by the prosecutors offices pursuant to the order issued by the Supreme Public Prosecutors Office, such as documenting the interrogation process and conditions, and having suspects confirm the content of such documents and sign them with a fingerprint.

51. The police have the rules requiring that hours and time of interrogations be checked, in order not to place excessive burden on suspects. The rules prescribed that the police shall avoid conducting an interrogation of a suspect in the middle of the night or for a prolonged period of time, except when there are unavoidable reasons, and that prior approval must be obtained from the Chiefs of the Prefectural Police Headquarters or other appropriate officers including when an interrogation of a suspect is carried out for more than over eight hours in a single day. If an interrogation has been carried out without such prior approval, the interrogation may be stopped or appropriate measures may be taken by the department that is not involved in but supervises relevant interrogations.

52. In addition, the police are required by the rules to document the interrogation process and conditions, as well as to have suspects confirm the content of such documents and sign them with a fingerprint.

53. The rules prohibit the use of compulsion, torture, threat, or any other means during interrogation that may raise doubts about the voluntary nature of a statement. On that basis, the department that is not involved in but supervises relevant interrogations supervises an interrogation of a suspect by examining at any time how the interrogation

is conducted or any other appropriate measures, so that a police officer engaged in the interrogation shall not commit such acts as physical contact except when there are unavoidable reasons, or use of words or actions that will deliberately cause discomfort to the suspect, or make the suspect confused. If any of such acts found to have been committed, the interrogation may be stopped or appropriate measures may be taken.

54. Moreover, the implementation status of the supervision over the interrogations of suspects must be reported to the prefectural public safety commissions at least once a year. The prefectural public safety commissions are established as council organizations representing the common sense of residents to ensure the democratic operation of the prefectural police, and to supervise the prefectural police from an impartial perspective.

Re: paragraph 18 (d)

55. It is stipulated in the rules that a complaint regarding a police interrogation shall be reported for necessary investigation to the department that is not involved in but supervises relevant interrogations.

56. In addition, under Article 79 of the *Police Act*, any person who has a complaint about an interrogation may file the complaint to the prefectural public safety commission, and if a complaint is filed, the prefectural public safety commission shall in good faith handle it in accordance with the provisions of laws, regulations and ordinances, and shall notify in writing the complainant of the result of the handling.

57. The prefectural public safety commissions are established as council organizations representing the common sense of residents to ensure the democratic operation of the prefectural police and to supervise the prefectural police from an independent perspective. Their members are appointed by the prefectural governors with the consent of the prefectural assemblies from among those who are eligible for election to assemblies and have not served for either the police or the prosecution in the last five years. Therefore, as a matter of course, complaint reviews by the prefectural public safety commissions are carried out in an objective, fair, and impartial manner.

58. The procedure described above is a complaint system in the administrative process which provides simple and quick remedies. Needless to say, anyone whose rights are infringed upon illegally may bring the matter to the court.

EXHIBIT E

United Nations CEDAW/C/SR.1375

Convention on the Elimination of All Forms of Discrimination against Women

Distr.: General
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Committee on the Elimination of Discrimination against Women
Sixty-third session

Summary record of the 1375th meeting
Held at the Palais des Nations, Geneva, on Tuesday, 16 February 2016, at 10 a.m.

Chair: Ms. Gabr (Vice-Chair)

Contents

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The meeting was called to order at 10.05 a.m.

Consideration of reports submitted by States parties under article 18 of the Convention (*continued*)

Combined seventh and eighth periodic reports of Japan (CEDAW/C/JPN/7-8; CEDAW/C/JPN/Q/7-8 and Add.1)

1. *At the invitation of the Chair, the delegation of Japan took places at the Committee table.*

2. **Mr. Sugiyama** (Japan), introducing the State party's combined seventh and eighth periodic reports (CEDAW/C/JPN/7-8), said that the foundation for all gender equality measures adopted by the Government of Japan was the Basic Act for a Gender-Equal Society of 1999. The Act defined gender equality as the right of men and women to participate on equal terms in all fields of social, political, economic and cultural activity. It prohibited all forms of discriminatory treatment, including unintentional discrimination, set out the basic principles essential to the construction of a gender-equal society and established that the Government had a responsibility to formulate and implement policies, including affirmative action policies, that promoted gender equality. The content and direction of such policies and the specific measures for their implementation were set out in the Basic Plan for Gender Equality, the fourth version of which had been adopted in December 2015.

3. The Fourth Basic Plan was the fruit of broad civil society consultations, including public hearings at venues across the country and proactive discussions with experts in various fields. It had four key objectives: (i) to reform labour practices so as to move away from traditional male-oriented models and towards gender-sensitive, flexible arrangements that enabled women to contribute more actively and enjoy more fulfilling working lives; (ii) to facilitate the recruitment of women and their advancement to positions of responsibility and influence; (iii) to create a more supportive environment for women in difficult situations; and (iv) to strengthen measures for combating violence against women.

4. The implementation and efficacy of the Basic Plan would be monitored by the Council for Gender Equality using a set of 71 performance indicators that included highly ambitious numerical targets for women's participation in all areas of society. Affirmative action measures had already raised the female employment rate and the percentage of women occupying managerial positions in the public and private sectors. The enhanced training and work experience opportunities provided for under the Basic Plan were expected to expand the pool of talented female human resources and thus contribute to further improvements. A key aim was to overturn the workplace culture in which long hours and relocations were taken for granted. To that end, consideration was being given to developing a system whereby companies that sought to foster a better work-life balance for their employees would be given preferential treatment in public-sector tenders. Other family-friendly measures in place or in the pipeline included a parental leave system under which both parents could take up to six months of childcare leave on 80 per cent pay; the creation of an additional 500,000 childcare places by 2018; measures to prevent forced overtime and promote a more supportive environment for pregnancy and child-rearing; and pension system reforms that would exempt self-employed women from the payment of insurance premiums for a certain period before and after childbirth.

5. The Act on the Promotion of Women's Participation and Advancement in the Workplace, enacted in August 2015, would further enhance opportunities for women. Pursuant to the Act, companies were required to set numerical targets for the recruitment and promotion of women, to make such information publicly available and

to eliminate wage disparities. Briefing sessions had been organized to raise awareness of the Act's provisions and an informational website was due to be launched in the near future. Women's empowerment was also being promoted through the adoption of more gender-sensitive budgeting processes.

6. In the international arena, the Government of Japan had assumed a central role in promoting women's empowerment. Its financial contributions to the United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women) had risen dramatically over the past five years; at the sixty-eighth session of the General Assembly of the United Nations, Prime Minister Abe had expressed the intention to provide official development assistance (ODA) in excess of US$ 3 billion in order to build "a society in which women shine". Since 2014, Japan had been hosting the World Assembly for Women, which brought together leading figures from international organizations and countries around the world to discuss global issues related to women, and Japan would be turning the spotlight on gender mainstreaming when it hosted the Group of Seven (G7) summit in 2016. The Government of Japan was also actively involved in international efforts to promote women's participation in conflict prevention and post-conflict reconciliation and, in September 2015, had formulated a national action plan for the implementation of Security Council resolution 1325 (2000) on women, peace and security. Furthermore, Prime Minister Abe had recently been selected as one of the 10 male Heads of States championing the HeForShe IMPACT 10x10x10 initiatives being implemented by UN-Women.

7. In December 2015, the Governments of Japan and the Republic of Korea had reached an agreement that would finally resolve the long-standing issues surrounding what had been known as the "comfort women" system. The Government of Japan deeply regretted the severe harm done to so many women during wars in the twentieth century and aspired to lead the world in ensuring that such infringements of women's human rights were never repeated. However, since the infringements in question had occurred before Japan had ratified the Convention, which was not applicable retrospectively, it would not be appropriate to address the comfort women issue in terms of the implementation of the State party's duties regarding the Convention.

Articles 1 to 6

8. **Ms. Zou** Xiaoqiao said that it was regrettable that the State party had failed to fully incorporate the definition of discrimination against women set out in article 1 of the Convention into domestic legislation, as the Committee had urged it to do in its previous concluding observations (CEDAW/C/JPN/CO/6). She wished to know what obstacles were preventing it from doing so and whether the enactment of a general law containing a definition of discrimination in line with the Convention was envisaged. She would also like to know whether the State party had a clear timeline for reviewing existing laws to assess their compatibility with the Convention and the Committee's general recommendations and for repealing discriminatory provisions such as those included in the Civil Code and the Anti-Prostitution Act. She was concerned that the term "gender equality", which was used in the report and other official documents, appeared to correspond to a Japanese term for which the literal translation was "equal participation of men and women". That term was more commonly used in an economic growth context rather than in reference to human rights and was not consistent with the definition of gender equality established in the Convention. She invited the delegation to comment on that view and explain what was being done to ensure substantive gender equality in all areas covered by the Convention.

9. **Mr. Bruun** said that the lack of references to the Convention in Japanese case law, coupled with reports that the Supreme Court apparently did not regard the Convention's provisions as being directly applicable or self-executing, suggested that

the concerns raised by the Committee in its previous concluding observations about the Convention's status within the legal system had not yet been addressed. Since ratification of the Optional Protocol to the Convention would be a means of achieving fuller implementation of the Convention and of strengthening the role it played in court proceedings, he would like to know what progress had been made in that direction and what the Division for Implementation of Human Rights Treaties was doing to facilitate acceptance of the procedure provided for in the Protocol. He would also like to know what the State party was doing to establish an independent human rights institution in accordance with the Paris Principles which could then deal with sex discrimination and gender equality issues. Alternative sources indicated that the State party had also made little progress in increasing the Convention's visibility since 2009. Information on efforts to raise awareness of its provisions among legal professionals, in schools and among the general public would therefore be appreciated. He would also like to know whether the dialogue with the Committee and the resultant concluding observations would be discussed in the Diet; whether the new ODA programme incorporated a comprehensive gender perspective; whether the issue of sexual violence committed by foreign military forces based in Japan was addressed in the national action plan for the implementation of Security Council resolution 1325 (2000); and what was being done to ensure that gender was mainstreamed in all security policies.

10. **Ms. Halperin-Kaddari** said that she, too, was concerned by the State party's failure to rectify discriminatory provisions of the Civil Code, the Family Registration Act and other laws, including those relating to the mandatory waiting period prior to remarriage, which was longer for divorced women than for divorced men, the registration of "illegitimate" children and the different ages at which men and women were permitted to marry. She had been particularly concerned to learn that the country's highest court had apparently concluded that such provisions were not discriminatory. Its position on the requirement for married couples to adopt a unified family name was especially surprising and clearly in breach of the obligation to promote substantive equality. The State party's arguments that the provisions were consistent with its Constitution and that "a citizens' consensus was required to revise provisions of the Civil Code" were not acceptable, given the status of duly ratified treaties in domestic law, and urgent action was needed to rectify the situation. There was also an urgent need for legislation that protected sexual minorities against discrimination in employment, housing, health and other areas.

11. **Ms. Takegawa** (Japan) said that gender-based discrimination was expressly prohibited by the Constitution, which also provided that treaties duly ratified and promulgated by Japan had the same force as domestic law. In addition, the Basic Act for a Gender-Equal Society enshrined the principles of equal opportunity and equal respect for the dignity of men and women.

12. **Ms. Tsuchiya** (Japan) said that, since persons engaged in prostitution could be male or female, the Anti-Prostitution Act was not considered to be discriminatory. Moreover, it was generally the persons who engaged in procuring or soliciting acts of prostitution who would face criminal sanctions.

13. **Mr. Otsuka** (Japan) said that amending the Civil Code was a complicated undertaking, since its provisions related to traditional family relationships and culture in Japan. A clear public consensus was thus needed before such amendments could be introduced. The Government had, however, made progress in certain areas. While the distinction between children born in and out of wedlock persisted, there were no longer discriminatory provisions concerning their inheritance rights. The Government was also currently drafting a bill to reduce the waiting period before remarriage in the light of a recent decision by the Supreme Court. Public opinion remained divided on

issues such as harmonizing the ages at which men and women could marry and permitting married couples to use different surnames, and the Government would therefore continue to monitor the debate.

14. **Mr. Saita** (Japan) said that the Government was still exploring the best method for establishing an independent human rights institution. Regarding training for judges, prosecutors and other law enforcement officials, a wide range of courses for new recruits and for newly promoted personnel, as well as opportunities for continuing professional development, were available. Those courses included instruction on the content of international treaties and human-rights-related and gender-based issues, as well as training in ways of dealing with cases of domestic violence, stalking, harassment and sex crimes and of providing support to victims.

15. **Mr. Sugiyama** (Japan) said that, in the constitutional system of Japan, international undertakings to which it was a party were superior to domestic laws so long as the treaty in question was self-executing. Given the implications of article 18, in particular, of the Convention on the Elimination of All Forms of Discrimination against Women, however, it was non-self-executing and thus was not directly applicable in the courts. Since Japan was committed to fulfilling the Convention — and specific mention should be made to article 24 in that connection — it was working to adopt the domestic legislation required for its full implementation.

16. **Mr. Mizushima** (Japan), referring to the ODA charter and how it related to the Convention and to Security Council resolution 1325 (2000), said that ODA was based on the principle of human security, and particular emphasis was thus placed on gender equality and women's empowerment, which were pillars of the Initiative on Gender and Development. That initiative explicitly mentioned the necessity of gender-equal efforts based on the Convention and sought to improve the status of women in developing countries and to enhance women's participation in development programmes. As to the implementation of Security Council resolution 1325 (2000) on women, peace and security, the Government had recently developed a comprehensive national plan that would promote women's participation in both domestic and foreign initiatives mounted in response to a range of conflict and disaster situations. Japan was also one of the leading donors for efforts to tackle the problem of sexual violence in conflict situations. The issue of sexual violence committed by foreign military personnel in Japan was covered by a framework agreement on the subject, and there was thus no need for it to be addressed in an action plan.

17. **Mr. Komatsuzaki** (Japan), in response to a question on the protection of sexual minorities, said that it was imperative to provide a tailored response to children with gender identity disorders. A process had been established whereby school counsellors, teachers and school nursing staff worked with such children while taking into consideration their individual needs and the wishes of their parents or guardians.

18. **Ms. Takegawa** (Japan) said that one of the principles of the Basic Act for a Gender-Equal Society was to ensure that men and women in Japan had equal career opportunities. With 3 million women actively looking for work, the Government's goal was to build a society that enabled women to shine; gender equality was not viewed simply as a strategy for boosting economic growth.

19. **Ms. Halperin-Kaddari** said that conducting opinion polls to determine whether or not there was a public consensus as to the need to repeal the discriminatory provisions of the Civil Code was not an appropriate procedure. The Government urgently needed to repeal those provisions and abide by international standards and agreements. Information on the specific legislation in place to prohibit discrimination against sexual minorities would be appreciated.

20. **Ms. Schulz**, emphasizing that the Government should lead, rather than follow, society's views on issues such as putting an end to violations of the rights of various groups in the population, said that she was concerned at the fact that the information in the State party's report regarding the progress made in preventing discrimination against women with disabilities was at odds with the information received from numerous alternative sources. The limited availability of information on the country's overall legal, social and financial framework for the prevention of discrimination against women with disabilities hampered the development of appropriate public policies. She would like to know what plans the Government had to remedy that situation. She would be interested to learn what steps had been, or were to be, taken to guarantee that women with disabilities and low-income pensioners, many of whom were also women with disabilities, enjoyed the right to non-discrimination and substantive equality, particularly in view of the increasing privatization of or reduction in public services. Many women with disabilities were living on pensions that were insufficient to permit them to live with dignity. What measures had the Government put in place or envisaged to address that issue?

21. **Mr. Otsuka** (Japan) said that the adoption of a bill to amend discriminatory provisions in the Civil Code was subject to the agreement of the governing party. Thus, it was not solely a matter of garnering public approval; political parties and politicians were also divided on the course of action to be taken. The matter was therefore a subject of both public and political debate.

22. **Mr. Mizushima** (Japan) said that the Government was giving serious consideration to the ratification of the Optional Protocol to the Convention and was actively working to determine what kinds of institutional arrangements would be necessary to ensure that the communications procedure could be successfully implemented.

23. **Ms. Genka** (Japan) said that a range of measures had been put in place to promote the employment of women with disabilities, including job placement counselling and assistance tailored to the specific nature of the person's disability and the provision of training and support for reasonable accommodation. Special social welfare benefits and pensions were provided to persons with severe disabilities and persons on low incomes.

24. **Ms. Nadaraia** said that, while some information had been provided on the national machinery for the advancement of women in the replies to the list of issues (CEDAW/C/JPN/Q/7-8/Add.1), it remained unclear what measures the State party had taken to strengthen that machinery, particularly with regard to the specification of the mandate and responsibilities of its various components, such as the Minister of State for Gender Equality and Social Affairs, the Gender Equality Bureau and the Council for Gender Equality. Moreover, reports received by the Committee indicated that gender equality was only a small part of the administrative duties of the minister responsible for that area. Lastly, further information would be appreciated on the extent to which the Third Basic Plan for Gender Equality had been implemented and on any difficulties that had been encountered in that connection.

25. **Ms. Takegawa** (Japan) said that the Headquarters for the Promotion of Gender Equality was responsible for gender mainstreaming and for coordinating the implementation of gender equality policies. The Cabinet Office treated the dynamic and equal engagement of all citizens as a priority and recognized the importance of incorporating a gender perspective into public policies. The Gender Equality Bureau currently employed 72 staff members and had a budget of 800 million yen. One of the fundamental objectives of the Third Basic Plan for Gender Equality had been to promote affirmative action, which underpinned the recently adopted Act on the Promotion of Women's Participation and Advancement in the Workplace.

26. **Ms. Nwankwo** said that the Committee was concerned that the measures set out in the Third Basic Plan for Gender Equality were not binding and that the Government had not implemented gender quota systems with clearly defined sanctions for non-compliance. Consequently, the Third Basic Plan had failed to achieve significant results, and women's participation in the Diet, the judiciary, private companies and the higher echelons of the civil service remained very limited. With that in mind, she would like to know whether the State party would consider adopting temporary special measures to enable members of minority groups, including women, to enjoy substantive equality. She invited the delegation to clarify the claim made in paragraph 74 of the replies to the list of issues (CEDAW/C/JPN/Q/7-8/Add.1) that making the quota system mandatory might impose an excessive burden on the opposite sex. She also wished to know whether a mechanism was in place to monitor the implementation of the Fourth Basic Plan, whether the results of the Third Basic Plan had been evaluated and, if so, what the outcome had been.

27. **Ms. Takegawa** (Japan) said that, while binding measures might help to increase the number of women parliamentarians, the Government had a duty to respect the independence of the legislative branch. As part of its implementation of the Third Basic Plan, it had requested political parties to consider introducing quotas. Under the Act on the Promotion of Women's Participation and Advancement in the Workplace, private companies were encouraged to set numerical targets. The Government also planned to take steps to facilitate the comparison of companies' records in terms of their efforts to foster gender equality.

28. **Ms. Nwankwo**, noting that a bill was being drafted that would provide for legislated gender quotas, asked whether the relevant government ministry would be working to promote its adoption.

29. **Ms. Zou** Xiaoqiao said that she wished to know whether there were plans to convert the post of Minister of State for Gender Equality into a full-time position, what steps had been taken to institutionalize gender budgeting and whether the budget for the Fourth Basic Plan had already been drawn up. The delegation should also explain whether the Plan provided for targeted and time-bound measures to address the inequalities faced by migrant women, women with disabilities, indigenous women and other women belonging to minorities.

30. **Ms. Takegawa** (Japan) said that a bill providing for gender quotas in the legislature would be unlikely to receive backing from the executive branch because of the need to respect the separation of powers. Making the post of Minister of State for Gender Equality a full-time portfolio might not be feasible as there was a limit to the number of ministers who could be appointed to the Cabinet. The issues of gender equality, women's empowerment and the declining birth rate were closely linked; it thus made sense for them to form part of a single ministerial portfolio. For the fiscal year from 1 April 2015 to 31 March 2016, a gender perspective had been incorporated into the budgeting process. Efforts had been made to include provisions in the Fourth Basic Plan to protect the human rights of vulnerable groups of women.

31. **Ms. Gbedemah** said that she would welcome the delegation's comments on reports that the stereotype that women should be homemakers persisted and was perpetuated in school textbooks, that women were depicted as sex symbols and mother figures in advertising and the media, and that adult pornography featuring Japanese and foreign women was largely unregulated. She would like to know what effective measures, including legislation, were envisaged to protect the dignity and human rights of women employed in the pornography industry and whether cases of sexual violence against those women were investigated.

32. Since there appeared to be no legal provisions to prevent or sanction hate speech, she would like to know more about the status of the bill on the elimination of racial discrimination that had been submitted to the National Diet in May 2015. Did it deal with the issue of hate speech as well? She would also appreciate additional information on what had been done since the issuance of the previous concluding observations (CEDAW/C/JPN/CO/6) to ensure that public officials refrained from making sexist remarks. It would be helpful for the delegation to describe the efforts that had been made to crack down on stalking and to investigate the factors underlying violence against women and the reluctance of certain categories of victims to report violations of their rights.

33. **Ms. Halperin-Kaddari** said that there were a number of shortcomings in the State party's Criminal Code. Sexual crimes against children under 13 years of age were dealt with in the same article as rape and carried the same minimum punishment of three years' imprisonment. The article in question contained no mention of incest, an omission that had apparently not been discussed by the Ministry of Justice review committee referred to in paragraph 27 of the responses to the list of issues. Moreover, the definition of rape as interpreted by the courts was very narrow, covering only vaginal penetration by the penis, while other forms of penetration were classified merely as indecent acts. The definition thus fell short of international standards, notably those set forth in article 36 of the Istanbul Convention. She wished to know whether the Government was contemplating the possibility of amending the Criminal Code to address the fact that marital rape was not explicitly criminalized, which resulted in de facto impunity for perpetrators. Were steps being taken to expedite the processing of restraining orders and to facilitate the issuance of ex parte retraining orders? It would also be useful to know whether the Act on the Prevention of Spousal Violence and the Protection of Victims applied to same-sex couples.

34. **Ms. Hofmeister** asked whether steps would be taken to reform the Technical Intern Training Programme, through which women were effectively subjected to forced labour, and whether the Government planned to ratify the United Nations Convention against Transnational Organized Crime and the Palermo Protocol. She would also welcome information on measures to provide special assistance and shelters for trafficking victims; to investigate, prosecute, convict and punish the perpetrators of sex trafficking and forced labour; to suppress the demand for prostitution; and to tackle discrimination against prostitutes. As to the issue of comfort women, which the Committee was entitled to raise owing to the continued suffering of victims who had not received satisfaction, she would like to learn more about the legal status and implementation of the bilateral agreement between Japan and the Republic of Korea. She wished to know what the Government was doing to honour its obligations to foreign victims under international human rights law and to follow up on the issue raised in paragraph 38 of the previous concluding observations, in which the Committee had urged the State party to find a lasting solution to the situation of comfort women that would include the compensation of victims, the prosecution of perpetrators and the education of the public about those crimes. She invited the delegation to describe what steps were being taken to offer an apology and full redress to former comfort women and to the descendants of those who were deceased.

35. **Ms. Takegawa** (Japan) said that, in order to combat stereotypes, a month-long campaign was launched in June of each year to promote gender equality. With regard to hate speech, steps had been taken by the country's political parties to discourage public figures from making harmful statements. Thanks to the implementation of comprehensive measures, there had been a significant reduction in the number of human trafficking cases in Japan since 2005.

36. **Mr. Sugiyama** (Japan) said that the full-scale fact-finding study on the issue of "comfort women" conducted by the Government of Japan in the 1990s had not found confirmation of the widespread belief that such women had been forcibly removed from their country of origin by Japanese military personnel or Government agents. The testimony to that effect contained in the 1983 memoires of Japanese novelist Seiji Yoshida had been disputed and subsequently disproved by Japanese scholars. Moreover, in 2014, a leading Japanese newspaper had issued a corrigendum to several articles which had relied heavily on Yoshida's fabricated testimony and had issued an apology to its readers. There was no evidence to support the claim made by a leading Japanese newspaper that as many as 200,000 women had been recruited as comfort women during the Second World War, and that had subsequently been recognized by the newspaper itself. That figure could well be the result of a conflation of the number of women recruited as comfort women and the number recruited by the Women's Volunteer Labour Corps. The Government of Japan also rejected the unfounded claim that comfort women had been akin to sex slaves. Following a round of intensive consultations, the Foreign Ministers of Japan and the Republic of Korea had issued a joint announcement on the issue which had brought it to a close. The Government of Japan had taken a number of steps to provide redress to former comfort women, including through the creation of the Asian Women's Fund. Moreover, it had been decided that the Government of the Republic of Korea would set up a foundation to support former comfort women to which the Government of Japan would make a one-time donation. The two Governments would also conduct projects aimed at rehabilitating former comfort women. As to the issue of reparations and claims originating from events that occurred during the Second World War, the Government of Japan had acted in good faith, pursuant to the San Francisco Peace Treaty and other relevant agreements, and such claims had been legally settled with the parties to those instruments.

37. **Mr. Komatsuzaki** (Japan) said that a recent survey had revealed that, while entrenched stereotypes regarding the roles and responsibilities of women in Japanese society persisted, that was beginning to change. The Government was not aware of any textbooks that perpetuated negative stereotypes.

38. **Mr. Takano** (Japan) said that Japan had a law that required all adult entertainment to be approved by the National Public Safety Commission. That law regulated adult pornography and its distribution. Police officers were required to report the discovery of obscene material and, if its possession or distribution constituted an offence under the Japanese Criminal Code, to investigate the individuals involved and turn their cases over for prosecution.

39. **Ms. Tsuchiya** (Japan) said that article 175 of the Japanese Criminal Code prohibited the possession, distribution or display of obscene materials in public. The possession and display of child pornography were criminal offences. The Ministry of Justice had undertaken a review of the punishments imposed for crimes of a sexual nature to determine whether steps should be taken to amend the Criminal Code, and proposed amendments were currently being discussed by the Legislative Council, which was deliberating on issues such as whether to expand the current definition of sexual intercourse to include anal and oral intercourse and how incest should be legally defined and punished. Under article 177 of the Japanese Criminal Code, rape was punishable by a prison term with labour of not less than three years. Marital rape could be established as a separate offence under Japanese criminal law, and cases involving marital rape had been brought before the courts. Procuring and providing premises for prostitution constituted criminal offences under the Anti-Prostitution Act. The law under which activities relating to child prostitution and child pornography were punishable criminal offences also prohibited the solicitation of child prostitution and prescribed harsh penalties for that offence. The Government launched annual

campaigns to raise public awareness of the plight of victims of human trafficking and prostitution. Hate speech could be punished as a criminal offence if it amounted to defamation or verbal assault or was used to incite discrimination against minority groups or to intimidate them.

40. **Mr. Otsuka** (Japan) said that the Act on the Prevention of Spousal Violence and the Protection of Victims required the courts to expedite the hearing of cases in which the victim had requested a restraining order. The amount of time that it took to grant a restraining order ultimately depended on the specific set of circumstances involved, but in the case of spousal violence, such orders were issued promptly. While the law on spousal violence made no specific reference to same-sex couples, the courts had the power to determine whether it applied to such couples and to decide whether or not to issue a restraining order on a case-by-case basis. There had been instances in which a restraining order had been granted to a person in a same-sex relationship in the past.

41. **Mr. Saita** (Japan) said that victims of hate speech were eligible for compensation if the offence was prosecuted under the Civil Code. The Ministry of Justice was in the process of gathering information from local governments on the prevalence of hate speech in Japanese society with a view to stepping up the measures that were in place to combat it. Deliberations on the bill to prohibit racial discrimination were still ongoing within the Legislative Council. The National Police Agency investigated all suspected cases of human trafficking for the purposes of forced labour or sexual exploitation. Female victims of human trafficking could avail themselves of a special residence permit. The Technical Intern Training Programme was intended to promote the sharing of skills and expertise and human resource development. While that programme was widely viewed as a positive initiative, some employers considered technical interns to be a source of cheap labour and exploited them in violation of labour laws. A bill that would require employers wishing to participate in the programme to be vetted and licensed and that would establish their criminal liability for any human rights violations had been drafted and submitted for discussion.

42. **Ms. Genka** (Japan) said that older women and women with disabilities tended to be targets for violence and abuse, often at the hands of caregivers, and special laws had been adopted to protect and assist them. Training in the prevention and handling of cases involving violence against women had been dispensed to government officials. In urgent situations, emergency accommodations and care could be provided to the elderly.

43. **Mr. Mizushima** (Japan) said that the Palermo Protocol had not yet been ratified because deliberations on that subject were still under way.

44. **Ms. Gbedemah** asked how the various laws prohibiting the possession, distribution and display of obscene materials were enforced in practice; whether any individuals had been prosecuted for those offences; whether the upcoming bill on the prohibition of racial discrimination would expressly criminalize hate speech; and whether the measures taken by the State party to combat violence against women with disabilities and elderly women and to encourage women to report violations of their rights had yielded positive results.

45. **Ms. Zou** Xiaoqiao said that she found the position taken by the Government of Japan on the issue of comfort women to be contradictory, as the Government continued to deny that those women had been forcibly removed from their country of origin by Japanese military personnel or government agents while at the same time endorsing the joint announcement regarding comfort women issued by the Foreign Ministers of Japan and the Republic of Korea. She failed to understand why the Government of Japan had taken that position, especially in the light of the Kono

Statement of 1993, in which the Government of Japan had acknowledged that many comfort women had been recruited into "comfort stations" against their will at the request of the Japanese military. She wished to know whether, in addition to the apology already issued, the Government of Japan would consider sending a written apology to all surviving comfort women and whether it intended to acknowledge its legal responsibilities to those women by providing them with adequate redress and by taking the necessary steps to ensure that all those involved in their recruitment and exploitation were prosecuted and punished.

46. **Ms. Halperin-Kaddari** said that the Government's current approach to dealing with domestic violence betrayed a distinct lack of understanding of the phenomenon of gender-based violence in general and of the need to introduce special procedures for dealing with it. Since it could take up to 12 days for a restraining order to be granted, she would like to know whether the State party had considered introducing a system whereby emergency protection orders could be granted at a moment's notice if required. She wished to know whether perpetrators of domestic violence could be prosecuted without the victim filing a formal complaint; whether the Government intended to increase the minimum penalty for sexual offences against girls under the age of 13; and whether it planned to amend the Japanese Criminal Code to establish marital rape as a stand-alone offence and to extend the scope of the Act on the Prevention of Spousal Violence and the Protection of Victims to explicitly cover same-sex couples.

47. **Mr. Sugiyama** (Japan) said that the issuance of the joint announcement on comfort women by the Foreign Ministers of Japan and the Republic of Korea had brought the issue to a close and that the text of the announcement had been duly appended to his country's written replies to the list of issues (CEDAW/C/JPN/Q/7-8/Add.1). The contention that the Government of Japan sought to deny the past or that it was not taking steps to deal with the issue was clearly contradicted by the facts. The joint announcement acknowledged the involvement of Japanese military authorities and described the recruitment of comfort women as an affront to the honour and dignity of the women in question. The Government of Japan had acknowledged its responsibilities and issued a sincere apology. Both the Government of Japan and the Government of the Republic of Korea were making every effort to honour the terms of the agreement that they had reached.

48. **Ms. Takegawa** (Japan) said that it was unacceptable for public officials to make discriminatory statements or sexist remarks and that all such instances were dealt with accordingly. One of the steps taken to stem the distribution of child pornography was to block websites known to contain such material.

The meeting rose at 1.05 p.m.

EXHIBIT F

Press Conference by the Chief Cabinet Secretary

Friday, February 21, 2014 (PM)

[Provisional Translation]

Related Link

Video

Print

Press Conference by the Chief Cabinet Secretary (Excerpt)

Q&As

- The issue related to the statue of a comfort woman in the City of Glendale, the United States
- The issues related to the article of the Wall Street Journal regarding the comments of Special Advisor to the Cabinet Honda
- The issue related to Takeshima Day
- The issue related to vandalization of Anne Frank's Diary libraries in Tokyo

REPORTER: I would like to ask a question in relation to developments concerning the statue of a comfort woman in Glendale. Local Japanese-Americans filed a lawsuit against the City of Glendale over the statue. Could you share with us your thoughts on this?

CHIEF CABINET SECRETARY SUGA: Firstly, I am aware of this action through media reports. This installation of a memorial statue by a municipal government in the U.S. is incompatible with the views of the Japanese Government. We have therefore sought appropriate action from the Mayor of Glendale and the members of the Glendale City Council. However, the memorial statue was nevertheless installed in July last year and this is extremely regrettable. I assume that local Japanese-Americans share the same views as the Japanese Government on this matter and therefore made this decision to file a lawsuit. Furthermore, all municipal governments, including the City of Glendale, hope that residents of all backgrounds can live together in peace and harmony. Certain matters, such as the comfort women issue, split opinion among people, depending on their national background. Therefore, I do not consider it appropriate for such matters to be brought into the lives of the members of a community.

REPORTER: The recent developments could cause misunderstanding. It may make it seem like Japan forcibly took women against their will, despite the fact that there is no evidence that this actually occurred. How do you view the recent developments?

CHIEF CABINET SECRETARY SUGA: As I just said, I believe that the local Japanese-Americans share the same views as the Japanese Government on this matter and therefore we will keep a close eye on the developments of the lawsuit.

REPORTER: I have a question in relation to the verification of the comfort women issue, which you mentioned during yesterday's Diet session. The foreign affairs authorities of the Republic of Korea (ROK) immediately raised an objection. Could you share with us your thoughts on this?

CHIEF CABINET SECRETARY SUGA: Yesterday I said that the Government of Japan would seek to consider the request made by Mr. Yamada, while maintaining the confidentiality of the testimonies. In a sense, I believe it is natural.

REPORTER: Does that mean that the ROK has misunderstood your comments?

CHIEF CABINET SECRETARY SUGA: I am not sure that it was a misunderstanding. I only stated the view of the Japanese Government in response to a question asked during the Diet session.

REPORTER: In relation to the Kono Statement, Secretary General of New Komeito Inoue said during a press conference that the Kono Statement represents the official stance of the Government. He stated that current diplomatic relations are founded and built on the statement. Therefore, the Government should not consider making any changes. I understand that some believe that the verification of the testimonies of comfort women could ultimately lead to a revision of this statement. Does the Government have any intention of revising the statement?

CHIEF CABINET SECRETARY SUGA: During the first Abe administration's Cabinet decision on this matter, we clearly stated that there was no evidence to suggest coercion. Therefore, we will explore the possibility of

verifying the testimonies while maintaining confidentiality, as I pledged yesterday.

REPORTER: If the verification shows that there was little evidence to suggest coercion, is there any possibility that the Government will revise the Kono Statement?

CHIEF CABINET SECRETARY SUGA: We will consider the verification of the testimonies. That is what I stated during yesterday's Diet session. Nothing more is yet decided at this stage.

REPORTER: I would like to ask a question concerning Special Advisor to the Cabinet Etsuro Honda and the article in The Wall Street Journal. During the interview by the journalists' group this morning, he said that he does not intend to ask for corrections of the article any time soon. Mr. Honda also stated that while there was no third party present, he regrets that his remarks resulted in a situation where what he said was misconstrued and the truth cannot be clearly demonstrated. If Mr. Honda is not going to ask for a correction, then how will the Government deal with this issue?

CHIEF CABINET SECRETARY SUGA: The interview was not conducted via an official route, which would be through the Office of Global Communications of the Prime Minister's Office. Therefore, in a sense, the question of whether or not the Government should protest this or not is beside the point. I understand Special Advisor Honda said yesterday during a doorstep interview that he personally protested.

REPORTER: Mr. Honda said his comments were misconstrued. But even if that is the case, these are the kinds of comments that could take on a life of their own and result in diplomatic issues. What are your thoughts?

CHIEF CABINET SECRETARY SUGA: The interview was not conducted via an official route, which would be through the Office of Global Communications of the Prime Minister's Office. I think this is simply a matter between Special Advisor Honda and the journalist. As Mr. Honda said that the article is completely different from what he said during the interview, I believe he has already dealt with the matter.

REPORTER: Tomorrow is Takeshima Day, Could you once again share with us the Government's stance and its views on the significance of this ceremony?

CHIEF CABINET SECRETARY SUGA: Parliamentary Secretary Yoshitami Kameoka in charge of ocean policy and territorial issues will attend the Takeshima Day ceremony on behalf of the Government. In the light of historical facts and based upon international law, it is apparent that Takeshima is an inherent part of the territory of Japan. The Government has continually explored effective means of clarifying its stance over the territorial issues concerning Takeshima. As such, the Government decided to once again send a Parliamentary Secretary to the ceremony.

REPORTER: The Liberal Democratic Party says that it should be the Government that holds the Takeshima Day ceremony, while Shimane Prefecture indicated that they would like the Prime Minister to attend the ceremony. Could you share with us your thoughts on how the ceremony should be held in the future?

CHIEF CABINET SECRETARY SUGA: Last year, for the first time, the Government dispatched a Parliamentary Secretary to the Takeshima Day ceremony. In light of this, we decided to once again send a Parliamentary Secretary this year.

REPORTER: It has been discovered in a number of libraries throughout Tokyo that The Diary of Anne Frank and other related publications were ripped up. Jewish human rights organizations in the U.S. expressed concern over this. Could you inform us of the facts and share with us what the Government believes to be behind this series of incidents?

CHIEF CABINET SECRETARY SUGA: We do not at all know why the books were torn up. However, I understand that affected libraries reported the cases to the police and the police are now conducting an investigation. If these incidents are indeed occurring, it is something that we cannot tolerate. It is extremely regrettable and disgraceful. I trust that the police will conduct a thorough investigation.

(Abridged)

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List of Special Advisors to the Prime Minister

Archives

Cabinet Public Relations Office, Cabinet Secretariat, 1-6-1 Nagata-cho, Chiyoda-ku, Tokyo 100 - 8968, Japan

EXHIBIT G

Exhibit M-3

The Japanese Government's Official Refutation of "Sex Slavery of Comfort Women"

September 2016 KINGEN

Year	month/ day	International Occasion	Factors of "Sex-Slaved Comfort Women"				Subappendix No. / Name of Documents (Evidences)	Source Internet Archive URL
			Abduction	Enslave-ment	200k Hunting	Disseminated by Asahi		
2014	June 20	(Study report by Secretariat (Cabinet Secretariat, Ministry of Foreign Affairs)	(N/A)	(N/A)	(N/A)	(N/A)	M-1 Study report on the Details of Exchanges Between Japan and the Republic of Korea (ROK) Regarding the Comfort Women Issue ~From the Drafting of the Kono Statement to the Asian Women's Fund ~	http://www.mofa.go.jp/files/000042171.pdf
	July 15	at Meeting held by the Human Rights Committee (CCPR) of the UN (United Nations)	-	Denied	-	-	M-3(b) Summary Records CCPR/C/SR.3082 (Aug. 20, 2014) Page 3 (13)	http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fSR.3082&Lang=en
2015	March 13	Additional Information on the concluding observations to the Committee against Torture (CAT) of the UN	Denied	Denied	Denied	Δ (*1)	M-3(c) CAT/C/JPN/CO/2/Add.1 (Apr. 22, 2015) Paragraph 19: page 10-13	http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=JPN&Lang=EN
	Aug. 27	Comments by the Government of Japan on the Concluding Observations of the Human Rights Committee (CCPR) of UN	Denied	Denied	Denied	Δ (*1)	M-3(d) MISSION PERMANENTE DU JAPON FY/UN/421 (Aug. 27, 2015) Page 7-8 Item 26-31	http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fFCO%2fJPN%2f21588&Lang=en
2016	Feb. 16	at Meeting held by the Committee on the Elimination of Discrimination against Women (CEDAW) of the UN	Denied	Denied	Denied	Yes (*2)	M-3(e) Summary Records CEDAW/C/SR.1375 (Feb. 22, 2016) page 9/11	http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=JPN&Lang=EN

*1: Specified as "a leading Japanese newspaper", which means ASAHI Newspaper.

*2: In the meeting the head of the delegation Mr. Shinsuke SUGIYAMA explicitly referred to the ASAHI as the disseminator the UN Summary Record- the evidence CEDAW/C/SR.1375 records the disseminator as "a leading Japanese newspaper".

EXHIBIT H

Japan-Republic of Korea Relations

Japan-ROK Foreign Ministers' Meeting

December 28, 2015
Japanese
Korean

On December 28, commencing from around 2:00 p.m. to 3:20 p.m., Mr Fumio Kishida, Minister for Foreign Affairs of Japan, held a Japan-ROK Foreign Ministers' Meeting with Mr Yun Byung-se, Minister of Foreign Affairs of the Republic of Korea (ROK), and **announced** (English / Japanese / Korean (PDF)) about the issue of comfort women at the press occasion held after the Foreign Ministers' Meeting as follows.

1.
(1) Foreign Minister Kishida announced as follows.
The Government of Japan and the Government of the Republic of Korea (ROK) have intensively discussed the issue of comfort women between Japan and the ROK at bilateral meetings including the Director-General consultations. Based on the result of such discussions, I, on behalf of the Government of Japan, state the following:

(i) The issue of comfort women, with an involvement of the Japanese military authorities at that time, was a grave affront to the honor and dignity of large numbers of women, and the Government of Japan is painfully aware of responsibilities from this perspective. As Prime Minister of Japan, Prime Minister Abe expresses anew his most sincere apologies and remorse to all the women who underwent immeasurable and painful experiences and suffered incurable physical and psychological wounds as comfort women.

(ii) The Government of Japan has been sincerely dealing with this issue. Building on such experience, the Government of Japan will now take measures to heal psychological wounds of all former comfort women through its budget. To be more specific, it has been decided that the Government of the ROK establish a foundation for the purpose of providing support for the former comfort women, that its funds be contributed by the Government of Japan as a one-time contribution through its budget, and that projects for recovering the honor and dignity and healing the psychological wounds of all former comfort women be carried out under the cooperation between the Government of Japan and the Government of the ROK.

(iii) While stating the above, the Government of Japan confirms that this issue is resolved finally and irreversibly with this announcement, on the premise that the Government will steadily implement the measures specified in (ii) above. In addition, together with the Government of the ROK, the Government of Japan will refrain from accusing or criticizing each other regarding this issue in the international community, including at the United Nations.

(2) Foreign Minister Yun announced as follows.
The Government of the Republic of Korea (ROK) and the Government of Japan have intensively discussed the issue of comfort women between the ROK and Japan at bilateral meetings including the Director-General consultations. Based on the result of such discussions, I, on behalf of the Government of the ROK, state the following:

(i) The Government of the ROK values the GOJ's announcement and efforts made by the Government of Japan in the lead-up to the issuance of the announcement and confirms, together with the GOJ, that the issue is resolved finally and irreversibly with this announcement, on the premise that the Government of Japan will steadily implement the measures specified in 1. (1) (ii)above. The Government of the ROK will cooperate in the implementation of the Government of Japan's measures.

(ii) The Government of the ROK acknowledges the fact that the Government of Japan is concerned about the statue built in front of the Embassy of Japan in Seoul from the viewpoint of preventing any disturbance of the peace of the mission or impairment of its dignity, and will strive to solve this issue in an appropriate manner through taking measures such as consulting with related organizations about possible ways of addressing this issue.

(iii) The Government of the ROK, together with the Government of Japan, will refrain from accusing or criticizing each other regarding this issue in the international community, including at the United Nations, on the premise that the Government of Japan will steadily implement the measures it announced.

2. Furthermore, Foreign Minister Kishida announced that the amount of budget contributed to the foundation would be approximately one billion yen.

3. In addition, both sides exchanged views briefly about the Japan-ROK cooperation in the fields of security and other various issues between the two countries.

Related Link

Japan-ROK Summit Meeting (November 2, 2015)
Japan-ROK Foreign Ministers' Meeting (November 1, 2015)
Japan-Republic of Korea Relations

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EXHIBIT I

theguardian

Korean comfort women agreement is a triumph for Japan and the US

Shinzo Abe hails new era of bilateral relations but, mindful of China and nationalism in South Korea, Park Geun-hye's response is cooler

Simon Tisdall

Monday 28 December 2015 15.27 GMT

The landmark agreement between Japan and South Korea over the so-called comfort women dispute represents a significant success for Shinzo Abe, Japan's prime minister, and indirectly for the US, which has been urging its north-east Asian allies to bury the hatchet in the face of common threats supposedly emanating from China and North Korea.

But while Abe hailed what he called a new era in bilateral relations and his foreign minister described the deal as epoch-making, the response from South Korea's president, Park Geun-hye, was notably cooler. Park said only that she hoped the agreement would enable the two countries "to start building trust and open a new relationship".

After taking office in early 2013, Park repeatedly refused to meet Abe. Her reluctance was widely interpreted as a deliberate attempt to milk anti-Japan sentiment for domestic political purposes. When the two finally met last month at a much-delayed South Korea-Japan-China summit in Seoul, Park took the extraordinary step of excluding Abe from a state banquet with Chinese leaders.

As in China, public displays of hostility to Japan play well with conservatives and nationalists. Rightwing factions in South Korea work hard to ensure Tokyo's wartime depredations are not forgotten or forgiven.

Prejudice remains deep-seated. An opinion poll last year found Abe was more unpopular among South Koreans than even North Korea's murderous dictator, Kim Jong-un.

Park's animosity, genuine or calculated, has adversely affected South Korea's alliance with the US, which still maintains a substantial, post-Korean war military presence there. Park, flirting with a new strategic partnership with Beijing, was the only leader of a major democracy to attend communist China's second world war victory celebrations in September.

Abe's domestically controversial reinterpretation of Japan's post-war pacifist constitution to allow the deployment and possible engagement of Japanese armed forces abroad has been met with suspicion in Seoul, too. The refusal of South Korea to directly share military intelligence with Japan necessitated a convoluted arrangement last year whereby both countries sent sensitive information to Washington, which then passed it on.

Park's grudging shift on the comfort women issue appears to have followed key concessions from Tokyo, including the creation of a Japanese government-administered compensation fund and acknowledgement of the wartime military authorities' complicity in enslaving the women.

But the shift is also the result of persistent, sometimes crude pressure from the Obama administration, impatient over perceived South Korean recalcitrance. There has been growing frustration in Washington, shared in Tokyo, that previous agreements ostensibly settling the comfort women issue have been disregarded by successive South Korean leaders who have tried to “move the goalposts”.

Earlier this year, Wendy Sherman, US under-secretary of state for political affairs, publicly scolded Seoul for provocative political opportunism, although Park was not mentioned by name. Sherman said: “Of course, nationalist feelings can still be exploited, and it’s not hard for a political leader anywhere to earn cheap applause by vilifying a former enemy. But such provocations produce paralysis, not progress.”

South Korea’s ever more salient national security needs have also encouraged an expedient rapprochement with Japan after years of diplomatic deep-freeze.

Far from imploding after the death of Kim Jong-il in 2011, North Korea’s brutal regime has grown ever more threatening under the tutelage of Kim Jong-un, the late dictator’s unpredictable son. In a joint statement last month, the US and South Korean defence ministers, echoing Tokyo’s stance, expressed grave concern over North Korea’s ongoing development of nuclear weapons and long-range missiles.

And despite Park’s attempts to curry favour with China, and China’s obvious interest in exploiting divisions between the two US allies, Beijing’s assertive political and military behaviour across the Asian region has become increasingly difficult to ignore.

Since taking office in 2012, Abe has gone to enormous lengths to counter Chinese expansionism, energetically pursuing binding political, security and trade alliances with smaller Asian neighbours. Earlier this month, he cut a series of cooperative deals with India, a major regional player that Japan, like the US, views as an important partner in balancing China’s ambitions.

Now, by apparently resolving the comfort women dispute, Abe has gone some way towards bringing South Korea back in line.

More analysis

Topics

South Korea Japan Slavery Second world war China More...

EXHIBIT J

Exhibit M-6

a want Ad. for comfort woman by a newspaper

（Translation）

Advertisement in Keijyo Nippo

(Seoul Daily, Japanese language newspaper published in Keijo, the colonial capital of Korea,) , **July 26, 1944 edition**

Urgent! Comfort Women Wanted

Age limit: **17 or older but no older than 23**

Place and Type of Work:

Rear Regiment of ○○, Comfort Woman

Monthly Salary: **300 yen or more**

(Loan up to 3,000 yen available in advance)

Job Interview:

Applicant is required to appear 8:00 a.m. - 10:00 p.m.

IMAI Employment Agency (tel No. East 1613)

(Remark) 1944 average monthly income: around 50-60 yen/m

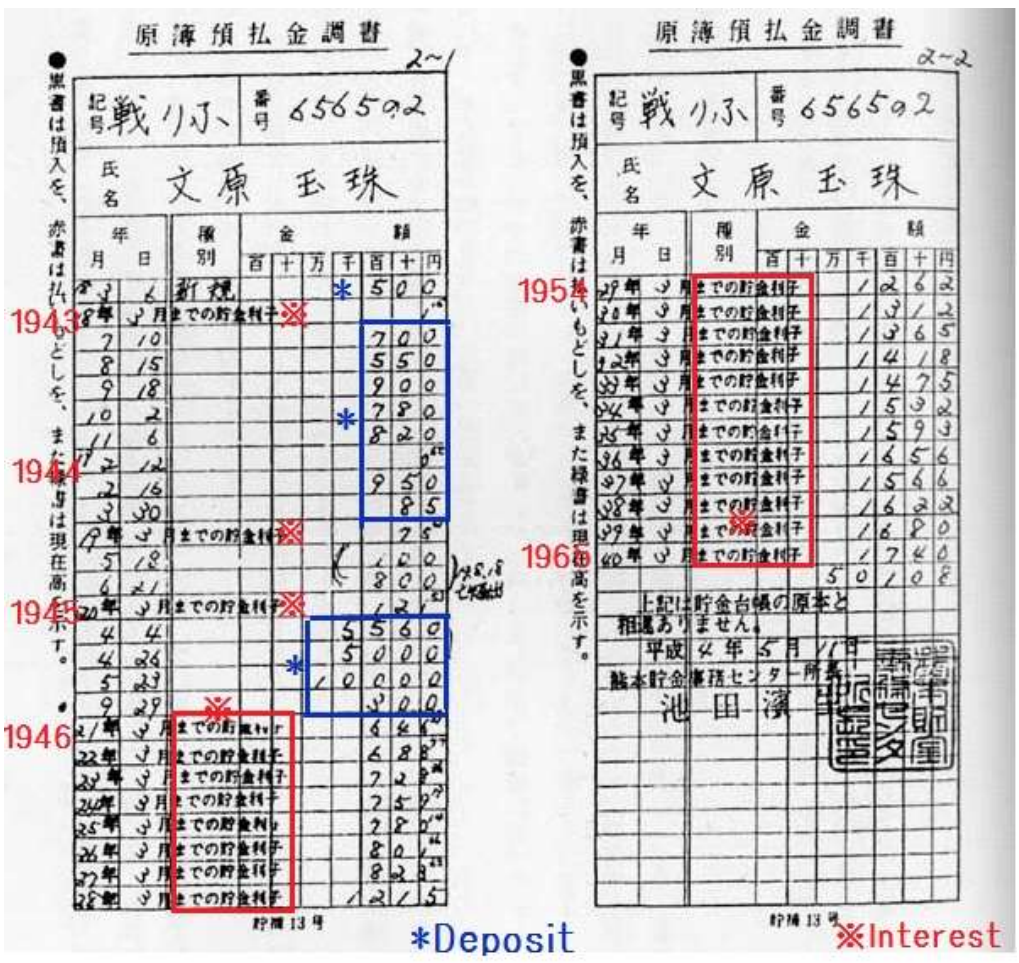
Exhibit M-7

Passbook of Comfort Woman

A Korean comfort woman Ms. Mun Oku-chu (Passbook Name-Japanese Name Tamae FUMIHARA) was one of the plaintiffs claiming compensation in a court in December 1991, was able to amass money as a comfort woman.

Her passbook shows details of her becoming rich. She deposited a total of 26,145 yen over a period of 2 years and 4 months from June, 1943 to September, 1945. Her income must have been more.

At that time a house could be purchased for 5,000 yen in Tokyo, which means **that:**



Passbook of a comfort woman Moon Ok-ju (then name Tamae FUMIHARA)

- Comfort Women's income was high enough to buy 5 houses in then Tokyo

- Loan in advance (for example 3,000 yen as max.) could be repaid within a year

EXHIBIT K

Classified

UNITED STATES OFFICE OF WAR INFORMATION
Psychological Warfare Team
Attached to U.S. Army Forces India-Burma Theater
APO 689

Japanese Prisoner of War Interrogation Report No. 49.	Place interrogated:	Ledo Stockade
	Date interrogated:	Aug. 20 - Sept.10, 1944
	Date of Report:	October 1, 1944
	By:	T/3 Alex Yorichi

Prisoners:	20 Korean Comfort Girls
Date of Capture:	August 10, 1944
Date of Arrival at Stockade:	August 15, 1944

SECRET

PREFACE:

This report is based on the information obtained from the interrogation of twenty Korean "comfort girls" and two Japanese civilians captured around the tenth of August, 1944 in the mopping up operations after the fall of Myitkyina in Burma.

The report shows how the Japanese recruited these Korean "comfort girls", the conditions under which they lived and worked, their relations with and reaction to the Japanese soldier, and their understanding of the military situation.

A "comfort girl" is nothing more than a prostitute or "professional camp follower" attached to the Japanese Army for the benefit of the soldiers. The word "comfort girl" is peculiar to the Japanese. Other reports show the "comfort girls" have been found wherever it was necessary for the Japanese Army to fight. This report however deals only with the Korean "comfort girls" recruited by the Japanese and attached to their Army in Burma. The Japanese are reported to have shipped some 703 of these girls to Burma in 1942.

RECRUITING:

Early in May of 1942 Japanese agents arrived in Korea for the purpose of enlisting Korean girls for "comfort service" in newly conquered Japanese territories in Southeast Asia. The nature of this "service" was not specified but it was assumed to be work connected with visiting the wounded in hospitals, rolling bandages, and generally making the soldiers happy. The inducement used by these agents was plenty of money, an opportunity to pay off the family debts, easy work, and the prospect of a new life in a new land - Singapore. On the basis of these false representations many girls enlisted for overseas duty and were rewarded with an advance of a few hundred yen.

The majority of the girls were ignorant and uneducated, although a few had been connected with "oldest profession on earth" before. The contract they signed bound them to Army regulations and to work for the "house master" for a period of from six months to a year depending on the family debt for which they were advanced.

SECRET

Approximately 800 of these girls were recruited in this manner and they landed with their Japanese "house master" at Rangoon around August 20th, 1942. They came in groups of from eight to twenty-two. From here they were distributed to various parts of Burma, usually to fair sized towns near Japanese Army camps. Eventually four of these units reached the Myitkyina vicinity. They were: Kyoei, Kinsui, Bakushinro, and Momoya. The Kyoei house was called the "Maruyama Club", but was changed when the girls reached Myitkyina as Col. Maruyama, commander of the garrison at Myitkyina, objected to the similarity to his name.

PERSONALITY:

The interrogations show the average Korean "comfort girl" to be about twenty five years old, uneducated, childish, whimsical, and selfish. She is not pretty either by Japanese or Caucasian standards. She is inclined to be egotistical and likes to talk about herself. Her attitude in front of strangers is quiet and demure, but she "knows the wiles of a woman." She claims to dislike her "profession" and would rather not talk either about it or her family. Because of the kind treatment she received as a prisoner from American soldiers at Myitkyina and Ledo, she feels that they are more emotional than Japanese soldiers. She is afraid of Chinese and Indian troops.

LIVING AND WORKING CONDITIONS:

In Myitkyina the girls were usually quartered in a large two story house (usually a school building) with a separate room for each girl. There each girl lived, slept, and transacted business. In Myitkyina their food was prepared by and purchased from the "house master" as they received no regular ration from the Japanese Army. They lived in near-luxury in Burma in comparison to other places. This was especially true of their second year in Burma. They lived well because their food and material was not heavily rationed and they had plenty of money with which to purchase desired articles. They were able to buy cloth, shoes, cigarettes, and cosmetics to supplement the many gifts given to them by soldiers who had received "comfort bags" from home.

While in Burma they amused themselves by participating in sports events with both officers and men; and attended picnics, entertainments, and social dinners. They had a phonograph; and in the towns they were allowed to go shopping.

PRICE SYSTEM:

The conditions under which they transacted business were regulated by the Army, and in congested areas regulations were strictly enforced. The Army found it necessary in congested areas to install a system of prices, priorities, and schedules for the various units operating in a particular area. According to interrogations the average system was as follows:

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1. Soldiers	10 AM	to 5 PM	1.50 yen	20 to 30 minutes
2. NCOs	5 PM	to 9 PM	3.00 yen	30 to 40 minutes
3. Officers	9 PM	to 12 PM	5.00 yen	30 to 40 minutes

These were average prices in Central Burma. Officers were allowed to stay overnight for twenty yen. In Myitkyina Col. Maruyama slashed the prices to almost one-half of the average price.

SCHEDULES:

The soldiers often complained about congestion in the houses. On many occasions they were not served and had to leave as the army was very strict about overstaying leave. In order to overcome this problem the Army set aside certain days for certain units. Usually two men from the unit for the day were stationed at the house to identify soldiers. A roving MP was also on hand to keep order. Following is the schedule used by the "Kyoei" house for the various units of the 18th Division while at Maymyo:

Sunday ---------- 18th Div. Hdqs. Staff
Monday ---------- Cavalry
Tuesday ---------- Engineers
Wednesday ---------- Day off and weekly physical exam.
Thursday ---------- Medics
Friday ---------- Mountain artillery
Saturday ---------- Transport

Officers were allowed to come seven nights a week. The girls complained that even with the schedule congestion was so great that they could not care for all guests, thus causing ill feeling among many of the soldiers.

Soldiers would come to the house, pay the price and get tickets of cardboard about two inches square with the price on the left side and the name of the house on the other side. Each soldier's identity or rank was then established after which he "took his turn in line". The girls were allowed the prerogative of refusing a customer. This was often done if the person were too drunk.

PAY AND LIVING CONDITIONS:

The "house master" received fifty to sixty per cent of the girls' gross earnings depending on how much of a debt each girl had incurred when she signed her contract. This meant that in an average month a girl would gross about fifteen hundred yen. She turned over seven hundred and fifty to the "master". Many "masters" made life very difficult for the girls by charging them high prices for food and other articles.

In the latter part of 1943 the Army issued orders that certain girls who had paid their debt could return home. Some of the girls were thus allowed to return to Korea.

The interrogations further show that the health of these girls was good. They were well supplied with all types of contraceptives, and often soldiers would bring their own which

had been supplied by the army. They were well trained in looking after both themselves and customers in the matter of hygiene. A regular Japanese Army doctor visited the houses once a week and any girl found diseased was given treatment, secluded, and eventually sent to a hospital. This same procedure was carried on within the ranks of the Army itself, but it is interesting to note that a soldier did not lose pay during the period he was confined.

REACTIONS TO JAPANESE SOLDIERS:

In their relations with the Japanese officers and men only two names of any consequence came out of interrogations. They were those of Col. Maruyama, commander of the garrison at Myitkyina, and Maj.Gen. Mizukami, who brought in reinforcements. The two were exact opposites. The former was hard, selfish and repulsive with no consideration for his men; the latter a good, kind man and a fine soldier, with the utmost consideration for those who worked under him. The Colonel was a constant habitue of the houses while the General was never known to have visited them. With the fall of Myitkyina, Col. Maruyama supposedly deserted while Gen. Mizukami committed suicide because he could not evacuate the men.

SOLDIERS' REACTIONS:

The average Japanese soldier is embarrassed about being seen in a "comfort house" according to one of the girls who said, "when the place is packed he is apt to be ashamed if he has to wait in line for his turn". However there were numerous instances of proposals of marriage and in certain cases marriages actually took place.

All the girls agreed that the worst officers and men who came to see them were those who were drunk and leaving for the front the following day. But all likewise agreed that even though very drunk the Japanese soldier never discussed military matters or secrets with them. Though the girls might start the conversation about some military matter the officer or enlisted man would not talk, but would in fact "scold us for discussing such un-lady like subjects. Even Col. Maruyama when drunk would never discuss such matters."

The soldiers would often express how much they enjoyed receiving magazines, letters and newspapers from home. They also mentioned the receipt of "comfort bags" filled with canned goods, magazines, soap, handkerchiefs, toothbrush, miniature doll, lipstick, and wooden clogs. The lipstick and clogs were definitely feminine and the girls couldn't understand why the people at home were sending such articles. They speculated that the sender could only have had themselves or the "native girls" in mind.

REACTION TO THE MILITARY SITUATION:

It appears that they know very little about the military situation around Myitkyina even up to and including the time of

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their retreat and capture. There is however some information worth noting:

* "In the initial attack on Myitkyina and the air strip about two hundred Japanese died in battle, leaving about two hundred to defend the town. Ammunition was very low.

"Col. Maruyama dispersed his men. During the following days the enemy were shooting haphazardly everywhere. It was a waste since they didn't seem to aim at any particular thing. The Japanese soldiers on the other hand had orders to fire one shot at a time and only when they were sure of a hit."

Before the enemy attacked on the west air strip, soldiers stationed around Myitkyina were dispatched elsewhere to stem the Allied attack in the North and West. About four hundred men were left behind, largely from the 114th Regiment. Evidently Col. Maruyama did not expect the town to be attacked. Later Maj. Gen. Mizukami of the 56th Division brought in reinforcements of more than two regiments but these were unable to hold the town.

It was the concensus among the girls that Allied bombings were intense and frightening and because of them they spent most of their last days in foxholes. One or two even carried on work there. The comfort houses were bombed and several of the girls were wounded and killed.

RETREAT AND CAPTURE:

The story of the retreat and final capture of the "comfort girls" is somewhat vague and confused in their own minds. From various reports it appears that the following occurred: on the night of July 31st a party of sixty three people including the "comfort girls" of three houses (Baku-shinro was merged with Kinsui), families, and helpers, started across the Irrawaddy River in small boats. They eventually landed somewhere near Waingmaw. They stayed there until August 4th, but never entered Waingmaw. From there they followed in thepath of a group of soldiers until August 7th when there was a skirmish with the enemy and the party split up. The girls were ordered to follow the soldiers after a three hour interval. They did this only to find themselves on the bank of a river with no sign of the soldiers or any means of crossing. They remained in a nearby house until August 10th when they were captured by Kachin soldiers led by an English officer. They were taken to Myitkyina and then to the Ledo stockade where the interrogations which form the basis of this report took place.

PROPAGANDA:

The girls knew practically nothing of any propaganda leaflets that had been used against the Japanese. They had seen a few leaflets in the hands of the soldiers but most of them were unable to understand them as they were in Japanese and the soldiers refused to discuss them with the girls. One girl

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remembered the leaflet about Col. Maruyama (apparently it was Myitkyina Troop Appeal), but she did not believe it. Others heard the soldiers discussing leaflets from time to time but no tangible remarks resulted from their eavesdropping. However it is interesting to note that one officer expressed the view that "Japan can't win this war".

REQUESTS:

None of the girls appeared to have heard the loudspeaker used at Myitkyina, but they did overhear the soldiers mention a "radio broadcast".

They asked that leaflets telling of the capture of the "Comfort girls" should not be used for it would endanger the lives of other girls if the army knew of their capture. They did think it would be a good idea to utilise the fact of their capture in any droppings planned for Korea.

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APPENDIX "A"

Following are the names of the twenty Korean "comfort girls" and the two Japanese civilians interrogated to obtain the information used in this report. The Korean names are phoneticized.

	NAME	AGE	ADDRESS
1.	Shin Jyun Nimi	21	Keishonando, Shinshu
2.	Kak Yonja	28	" Senzenpo, Yunnai
3.	Pon Yonja	26	" Shinshu
4.	Chinga Chunto	21	Keishohokudo, Taikyu
5.	Chun Yonja	27	Keishonando, Shinshu
6.	Kim Nenju	25	Keishohkudo, Taikyu
7.	Kim Yonja	19	" "
8.	Kim Kenja	25	Keishonando, Heisan
9.	Kim Senni	21	" Kumboku
10.	Kim Kun Sun	22	" Taikyu
11.	Kim Chongi	26	" Shinshu
12.	Pa Kija	27	" "
13.	Chun Punyi	21	" Keisen Gun, Koyanon Fuku
14.	Koko Sunyi	21	" Kenyo, Sekiboku Ko, Kyu Ruri
15.	Yon Muji	31	Heionnando, Keijo
16.	Opu Ni	20	" "
17.	Kin Tonhi	20	Keikido, Keijo
18.	Ha Tonyo	21	" "
19.	Oki Song	20	Keishohokudo, Taikyu
20.	Kim Guptogo	21	Zenranando, Koshu

Japanese Civilians:

1.	Kitamura, Tomiko	38	Keikido, Keijo
2.	" Eibun	41	" "

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Report No. 49: Japanese Prisoners of War Interrogation on Prostitution

UNITED STATES
OFFICE OF WAR INFORMATION
Psychological Warfare Team
Attached to
U.S. Army Forces
India-Burma Theater
APO 689

Japanese Prisoner of War Interrogation Report No. 49.

Place interrogated: Ledo Stockade
Date Interrogated: Aug. 20 - Sept. 10, 1944
Date of Report: October 1, 1944
By: T/3 Alex Yorichi

Prisoners: 20 Korean Comfort Girls
Date of Capture: August 10, 1944
Date of Arrival: August 15, 1944
at Stockade

PREFACE

This report is based on the information obtained from the interrogation of twenty Korean "comfort girls" and two Japanese civilians captured around the tenth of August, 1944 in the mopping up operations after the fall of Myitkyin a in Burma.

The report shows how the Japanese recruited these Korean "comfort girls", the conditions under which they lived and worked, their relations with and reaction to the Japanese soldier, and their understanding of the military situation.

A "comfort girl" is nothing more than a prostitute or "professional camp follower" attached to the Japanese Army for the benefit of the soldiers. The word "comfort girl" is peculiar to the Japanese. Other reports show the "comfort girls" have been found wherever it was necessary for the Japanese Army to fight. This report however deals only with the Korean "comfort girls" recruited by the Japanese and attached to their Army in Burma. The Japanese are reported to have shipped some 703 of these girls to Burma in 1942.

RECRUITING;

Early in May of 1942 Japanese agents arrived in Korea for the purpose of enlisting Korean girls for "comfort service" in newly conquered Japanese territories in Southeast Asia. The nature of this "service" was not specified but it was assumed to be work connected with visiting the wounded in hospitals, rolling bandages, and generally making the soldiers happy. The inducement used by these agents was plenty of money, an opportunity to pay off the family debts, easy work, and the prospect of a new life in a new land, Singapore. On the basis of these false

representations many girls enlisted for overseas duty and were rewarded with an advance of a few hundred yen.
The majority of the girls were ignorant and uneducated, although a few had been connected with "oldest profession on earth" before. The contract they signed bound them to Army regulations and to war for the "house master " for a period of from six months to a year depending on the family debt for which they were advanced ...
Approximately 800 of these girls were recruited in this manner and they landed with their Japanese "house master " at Rangoon around August 20th, 1942. They came in groups of from eight to twenty-two. From here they were distributed to various parts of Burma, usually to fair sized towns near Japanese Army camps. Eventually four of these units reached the Myitkyina. They were, Kyoei, Kinsui, Bakushinro, and Momoya. The Kyoei house was called the "Maruyama Club", but was changed when the girls reached Myitkyina as Col.Maruyama, commander of the garrison at Myitkyina, objected to the similarity to his name.

PERSONALITY;

The interrogations show the average Korean "comfort girl" to be about twenty-five years old, uneducated, childish, and selfish. She is not pretty either by Japanese of Caucasian standards. She is inclined to be egotistical and likes to talk about herself. Her attitude in front of strangers is quiet and demure, but she "knows the wiles of a woman." She claims to dislike her "profession" and would rather not talk either about it or her family. Because of the kind treatment she received as a prisoner from American soldiers at Myitkyina and Ledo, she feels that they are more emotional than Japanese soldiers. She is afraid of Chinese and Indian troops.

LIVING AND WORKING CONDITIONS;

In Myitkyina the girls were usually quartered in a large two story house (usually a school building) with a separate room for each girl. There each girl lived, slept, and transacted business. In Myitkina their food was prepared by and purchased from the "house master" as they received no regular ration from the Japanese Army. They lived in near-luxury in Burma in comparison to other places. This was especially true of their second year in Burma. They lived well because their food and material was not heavily rationed and they had plenty of money with which to purchase desired articles. They were able to buy cloth, shoes, cigarettes, and cosmetics to supplement the many gifts given to them by soldiers who had received "comfort bags" from home.
While in Burma they amused themselves by participating in sports events with both officers and men, and attended picnics, entertainments, and social dinners. They had a phonograph and in the towns they were allowed to go shopping.

PRIOR SYSTEM;

The conditions under which they transacted business were regulated by the Army, and in congested areas regulations were strictly enforced. The Army found it necessary in congested areas to install a system of prices, priorities, and

schedules for the various units operating in a particular areas. According to interrogations the average system was as follows:

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These were average prices in Central Burma. Officers were allowed to stay overnight for twenty yen. In Myitkyina Col. Maruyama slashed the prices to almost one-half of the average price.

SCHEDULES;

The soldiers often complained about congestion in the houses. In many situations they were not served and had to leave as the army was very strict about overstaying. In order to overcome this problem the Army set aside certain days for certain units. Usually two men from the unit for the day were stationed at the house to identify soldiers. A roving MP was also on hand to keep order. Following is the schedule used by the "Kyoei" house for the various units of the 18th Division while at Naymyo.

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Officers were allowed to come seven nights a week. The girls complained that even with the schedule congestion was so great that they could not care for all guests, thus causing ill feeling among many of the soldiers.

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In the latter part of 1943 the Army issued orders that certain girls who had paid their debt could return home. Some of the girls were thus allowed to return to Korea.

The interrogations further show that the health of these girls was good. They were well supplied with all types of contraceptives, and often soldiers would bring their own which had been supplied by the army. They were well trained in looking after both themselves and customers in the matter of hygiene. A regular Japanese Army doctor visited the houses once a week and any girl found diseased was given treatment, secluded, and eventually sent to a hospital. This same procedure was carried on within the ranks of the Army itself, but it is interesting to note that a soldier did not lose pay during the period he was confined.

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The average Japanese soldier is embarrassed about being seen in a "comfort house" according to one of the girls who said, "when the place is packed he is apt to be ashamed if he has to wait in line for his turn". However there were numerous instances of proposals of marriage and in certain cases marriages actually took place.

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MILITARY SITUATION;

"In the initial attack on Myitleyna and the airstrip about two hundred Japanese died in battle, leaving about two hundred to defend the town. Ammunition was very low.
"Col. Maruyama dispersed his men. During the following days the enemy were shooting haphazardly everywhere. It was a waste since they didn't seem to aim at any particular thing. The Japanese soldiers on the other hand had orders to fire one shot at a time and only when they were sure of a hit."
Before the enemy attacked on the west airstrip, soldiers stationed around Myitkyina were dispatched elsewhere, to storm the Allied attack in the North and West. About four hundred men were left behind, largely from the 114th Regiment. Evidently Col. Maruyama did not expect the town to be attacked. Later Maj. Gen. Mizukami of the 56th Division brought in reinforcements of more than two regiments but these were unable to hold the town.

It was the consensus among the girls that Allied bombings were intense and frightening and because of them they spent most of their last days in foxholes. One or two even carried on work there. The comfort houses were bombed and several of the girls were wounded and killed.

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The story of the retreat and final capture of the "comfort girls" is somewhat vague and confused in their own minds. From various reports it appears that the following occurred: on the night of July 31st a party of sixty three people including the "comfort girls" of three houses (Bakushinro was merged with Kinsui), families, and helpers, started across the Irrawaddy River in small boats. They eventually landed somewhere near Waingmaw, They stayed there until August 4th, but never entered Waingmaw. From there they followed in the path of a group of soldiers until August 7th when there was a skirmish with the enemy and the party split up. The girls were ordered to follow the soldiers after three-hour interval. They did this only to find themselves on the bank of a river with no sign of the soldiers or any mea ns of crossing. They remained in a nearby house until August 10th when they were captured by Kaahin soldiers led by an English officer. They were taken to Myitleyina and then to the Ledo stockade where the interrogation which form the basis of this report took place.

REQUESTS

None of the girls appeared to have heard the loudspeaker used at Myitkyina but very did overhear the soldiers mention a "radio broadcast."
They asked that leaflets telling of the capture of the "comfort girls" should not be used for it would endanger the lives of other girls if the Army knew of their capture. They did think it would be a good idea to utilize the fact of their capture in any droppings planned for Korea.

Bibliografía

Original de Oficina de Información de Guerra de Estados Unidos.

EXHIBIT L

CONFIDENTIAL

ALLIED TRANSLATOR AND INTERPRETER SECTION
SOUTH WEST PACIFIC AREA

RESEARCH REPORT

SUBJECT:	AMENITIES IN THE JAPANESE ARMED FORCES	I.O. No. 6310
DATE OF ISSUE	16 February, 1945	No. 120

SUMMARY:

1. This report covers information available at ATIS on amenities furnished by the Japanese to their armed forces.

2. There has been no attempt to establish the existence of rules regarding the availability for purchase or gratuitous issue of canteen stores, since there is a great variation, depending upon the type of troops and the area, in the handling of amenities.

3. Further information has been given as to the availability to the troops of such amusements as shows, movies, geisha entertainment and brothels.

4. References are quoted regarding the amount of war news passed on to troops by field newspapers, bulletins and radios.

SRE/CHR/IR/ER/14

DISTRIBUTION H

Marshall Wood, Col., S.C.
for SIDNEY F. MASHBIR,
COLONEL, S.C.,
CO-ORDINATOR

SOURCES: Captured Documents
Statements of Prisoners of War

(INFORMATION SHOULD BE ASSESSED ACCORDINGLY)

CONTENTS

GEISHA AND ENTERTAINMENT TROUPES

"The only form of amusement, for the soldiers in BURMA was supplied by Korean prostitutes. There are very few cinemas, no books, no talks or lectures. You came to BURMA to fight and to die, and but for an occasional visit to a brothel you are left to your own devices."
(Source available on request)

d. Prisoner of War YOSHIDA, Kazuo, Lance Corporal, member of 6 Field Artillery Regiment, captured TOROKINA Area, 23 March 1944, stated:
"He had seen movies on one occasion on BOUGAINVILLE."
(SOPAC Interrogation Report, Serial No 01459, page 36)

e. "Security. We don't take booking. A prisoner of war recently captured in a Pacific Area told interrogators he had been within the Allied perimeter several days previously. Questioned further, he said he had attended a cinema performance. The film, he contended, starred 'JINGA ROGARASU'. He was able to give sufficient details of the trials and difficulties of the beautiful Ginger on the previous Tuesday evening, that left no room for doubt that he had, in fact, seen the film."
(Australian Military Forces Summary, No 199, page 14)

8. GEISHA AND ENTERTAINMENT TROUPES

a. Homeland

(1) Extracts from diary dated March - May 1942, owner and unit unknown:
"29 March. The Young Girls' Club in UTAGAURA came to entertain us. They brought us rice, cake, oranges, SUSHI and sake. We deeply appreciated their kindness.
"5 April. Approximately 100 people came from SHIKA CHO to entertain us.
"16 April. 36 people came to entertain us."
(ATIS Bulletin No 245, page 1)

(2) Prisoner of War NAGAMA, Mitsuto, Second Class Petty Officer, captured NEW GEORGIA, 8 July 1943, stated:
"While at KISARAZU and various other airfields he saw a traveling unit, something similar to our USO shows. He stated the performers were all professionals and the girls were pretty. These units gave away cigarettes, writing paper and candy. He stated he has not seen GEISHA girls travelling and entertaining soldiers. He also stated that these units did not go out of the country as he has never seen anything like these units in RABAUL or heard of them being in foreign countries."
(SOPAC Interrogation Report, Serial No 02004, page 8)

b. PALAU

(1) Prisoner of War OHARA, Shosoku (JA 145346), Civilian Labor Overseer, member of Provisional Road Construction Unit, captured GIRUWA, stated:
"As there were no amusement facilities in PELELIU, with exception of one or two beer halls, prisoner of war spent his holidays mostly at KOROR where they had places of amusements, shops, cinemas, and brothels. He occasionally went to ARAKABESAN."
(ATIS Interrogation Report, Serial No 101, page 8)

c. South West Pacific Area

(1) Prisoner of War YOSHIDA, Kazuo, Lance Corporal, member of 6 Field Artillery Regiment, captured TOROKINA Area, 23 March 1944, stated:
"During the summer of 1943, several Japanese actresses arrived at RABAUL to entertain Japanese troops. Heard that same troupe came to entertain air corps personnel and some officers at ERVENTA. Names of actresses in troupe known to prisoner of war: TAKAMINE, Miyeko; YANAKI, Sakko. After staying 2-3 days at ERVENTA returned to JAPAN because of United States bombing."
(SOPAC Interrogation Report, Serial No 01459, page 36)

(2) Prisoner of War KISHIMOTO, Hachiro, Superior Private, member of 23 Infantry Regiment, captured BOUGAINVILLE, 6 April 1944, stated:
"In CHINA, the so-called Entertainment War Relief Groups (probably similar to American USO) organized by politicians, veterans of war, and other associations, were sent to various combat units. They usually brought GEISHA girls with them and held stage shows. Famous actors, actresses, singers, and comedians visited soldiers to entertain but they had not come as far as BOUGAINVILLE."
(SOPAC Interrogation Report, Serial No 01122, page 3)

9. BROTHELS

Prisoner of War KUMAGAE, Shigeshisa (JA 145077), First Class Private, member of 41 Infantry Regiment, captured GONA, 10 December 1942, stated:
"Whenever troops were stationed in a locality in numbers, brothels were immediately established by both the Army and Navy. Korean women and Chinese women were usually employed but occasionally suitable native women would be enrolled. Profits go to the services."
(ATIS Interrogation Report, Serial No 55, page 7)

a. BURMA

(1) Prisoner of War MITSUI, Juncheku, Superior Private, member of the 112 Infantry Regiment, captured LETWEDET, 10 February 1944. Although he vehemently maintains that he had never entered an IANSHO he seems well-informed about their organization, and gives the following information:
"Each division had five or six IANSHO attached. Korean women as well as Japanese women were to be found in them. The charges for an hour's entertainment were; officers 5 yen, noncommissioned officers 4 yen, and privates 3 yen. The use of preventatives was compulsory and the women were medically examined periodically."
(Source available on request)
(2) Prisoner of War TOMITA, Tomoaki, First Class Private, member of 112 Infantry Regiment, captured SINZWEYA, 12 February 1944, stated:
"On the subject of entertainment, there had been parties of entertainment (ENCNDAN), but they did not proceed further forward than RANGOON. There were Korean and Japanese prostitutes in AKYAB, and some had been brought up to HPARABYIN and even ALETHANGYAW, but they had been strictly reserved for officers, a fact that had greatly angered the troops."
(Source available on request)
(3) Prisoner of War ENANGURA, Masayuki, Corporal, member of 55 Mountain Regiment, captured KNAON Ridge, 7 February 1944, stated:
"Usually visited the brothel on Sundays which was his day off. Officers could visit brothels any time in the week, but usually there were separate institutions for them, and in these he believed there occasionally were Japanese girls. The staff of the soldiers brothel was normally of Korean women.
"No food or drink was served in the regulated brothels and each man received a preventative when he bought his ticket which cost 2 yen per hour. In addition troop headquarters issued preventatives on application.
"The women were medically examined once weekly but men could also obtain ointment (similar to that in American E.T. tubes) on application to troop headquarters."
(Source available on request)

b. SUMATRA

Prisoner of War ISHIGURO, Kiyoichi (JA 145044), First Class Private, member of 228 Infantry Regiment, captured near PAPAKI Bridge, 11 November 1942, stated:
"There was an official Army brothel in BELAWAN in which two native women from NARUMONDA and six Chinese woman served. Great precautions were taken against venereal disease."
(ATIS Interrogation Report, Serial No 42, page 10)

c. South West Pacific Area

(1) Prisoner of War MIYAJI, Chikara (JA 145045), First Class Private, member of 144 Infantry Regiment, captured GIRUWA, 29 November 1942, stated:
"There were two brothels to his knowledge in RABAUL. They contained a total of about 100 Korean and Japanese girls."
(ATIS Interrogation Report, Serial No 35, page 8)

(2) Prisoner of War KOJIMA, Masao (JA 100029), Sergeant, member of 50 Antiaircraft Regiment, captured T.OBAIANDS Island, 21 March 1943, stated:
"Although brothels were provided by the Army, there was only one woman to about 2000 troops, consequently only officers were accommodated."
(ATIS Interrogation Report, Serial No 175, page 10)

(3) Prisoner of War AOKI, Yoshio (JA 145427), Superior Private, member of 50 Independent Antiaircraft Battalion, captured off NEW GUINEA coast, 6 March 1943, stated:
"There were approximately 20 brothels in RABAUL, 5 in KOKOPO Area and the remainder in town. Inmates were all Japanese women. The brothels were mainly patronized by the officers; men could rarely gain admittance. Prices were officers 5 yen and men 1 yen."
(ATIS Interrogation Report, Serial no 99, page 15)

(4) Prisoner of War KASAHARA, Hiroshi (JA 145153), Sergeant, member of 41 Regiment, captured KUMUSI River, 7 January 1943, stated:
"There were brothels in MANILA and DAVAO, containing Korean women. Although these establishments were authorized by the Army, prisoner of war thought that profits went to the proprietors."
(ATIS Interrogation Report, Serial No 78, page 7)

(5) Extract from handwritten diary, dated 8 December 1941 - 6 January 1943, belonging to MIYOSHI, 7 Company, 124 Infantry Regiment:
"9 June 1942. We landed. The office of Yurukawa Colonization Company is very large, and there are many warehouses. For the first time since leaving southern CHINA, we saw Japanese girls clad in kimono and holding a parasol. Can there be more pleasure and amusement for us than this? These girls, as Army prostitutes, had landed here one step ahead of us. We entered the town of DALIAO. The town was countrified. There were many Japanese who welcomed us. It was like a greeting in JAPAN when one returns to a country town. Each platoon quartered in a different house and I stayed on the second floor of Osaka Bazaar. There were electric lights and running water. Next door was a bicycle shop. I spent the night in peace."
(ATIS Bulletin No 1483, page 20)

10. LEAVE

a. Prisoner of War TOMITA, Tomoaki, First Class Private, member of 112 Infantry Regiment, captured at SIRWEYA, 12 February 1944, stated:
"Absolutely no leave was granted while on active service and they were supposed to carry on until they dropped."
(Source available on request)

b. Prisoner of War TSURUTA, Masatoshi (JA(USA) 147102), Second Lieutenant (Medical Officer), member of 141 Infantry Regiment, captured TALASEA Area, stated:
"He knew of no provisions for rotation replacement of troops in South West Pacific Area. Occasionally, if men could be spared, some troops might be sent back to JAPAN with ashes of fallen comrades. While in JAPAN, they might be given a short leave, according to sailing schedule, before their return. There was no hope of leave once troops proceeded overseas."
(ATIS Interrogation Report, Serial No 453, page 12)

c. Prisoner of War SUZUKI, Yoshiichi (JA 145409), Superior Private, member of 102 Infantry Regiment, captured WAU, 16 February 1943, stated:
"A unit could pay a soldier before he went on leave. However, there was no leave from overseas and even in JAPAN leave was infrequent."
(ATIS Interrogation Report, Serial no 125, page 8)

d. Prisoner of War UCHIDABA, Shigenobu (JA(USA) 145581); Superior Petty Officer (Pilot), member of 751 Air Unit, captured at sea, HUON Gulf, 22 September 1943, stated:

"At TINIAN, leave was granted once a week or every four days for periods of about 4 hours from 1500 hours to 1900 hours. Prisoner of war went to township and drank and enjoyed himself."

"At RABAUL, squadron commander, determined number of men going on leave and issued a corresponding number of leave passes. Names of men on leave were posted on a board.

"Each man carried his pass and presented it to guard at gate on leaving and picked it up on returning. This was the practice as far as prisoner of war knew. Prisoner of war never went on leave to RABAUL Township."
(ATIS Interrogation Report, Serial No 359, page 12)

EXHIBIT M

Peace Treaties and Negotiations

"A Time for Peace and a Time for Justice...It is Now Time for a Just Peace"
-- 2001 Conference, *50 Years of Denial*

San Francisco Peace Treaty

On 4 September, 1951, fifty one countries sent delegates to San Francisco, California to negotiate a treaty with Japan to settle finally remaining WW II issues from the Pacific. The result became the "San Francisco Peace Treaty," or "SFPT," which was signed on 8 September 1951 by 48 countries of the 51 attending. Czechoslovakia, Poland and the Soviet Union took part, but did not sign. India and Burma did not participate at all.

Today, more than six decades since the treaty and seventy-five years after the Rape of Nanjing, lingering unanswered questions block any sense of true peace and brotherhood among nations of the Pacific. Instead, Japanese intransigence and stubborn refusal to acknowledge and rectify their war crimes prevails.

From the very start, SFPT was mired in controversy, and remains so today. Neither the Republic of China (Taiwan) nor the People's Republic of China (mainland China) were invited to the San Francisco Peace Conference, and neither state was ever party to SFPT. Neither North nor South Korea was invited. In other words the primary victims of the atrocities committed by Japanese Imperial Armed Forces had no place at the table and no voice in the treaty debate.

A Treaty with Taiwan and an Agreement with the Philippines

The Republic of China (Taiwan) concluded a separate Treaty of Peace with Japan in 1952, (known as the "Taipei Peace Treaty", TPT) without representation or participation by the People's Republic of China (mainland China). The Philippines, objecting to any firm promise of war reparation from Japan, ratified the San Francisco Treaty on July 16, 1956, after the signing a separate agreement with Japan in May of that year. Indonesia signed but did not ratify the San Francisco Peace Treaty. Instead, a Phillipines-Japan bilateral reparations agreement and peace treaty was executed 20 January 1958.

Japan had annexed and occupied Formosa (Taiwan) since 1895 by the terms of a treaty ending the first China-Japan war. In 1910 Japan invaded, annexed, and occupied Korea. During the Pacific War, 1931-45, Japan had conscripted native Formosans to serve in the Japanese Imperial Army, much to their disgust. Japan went so far as to move the bodies and artifacts of Formosans killed in the war to Japan, where they were placed in the infamous Japanese military shrine at Yasukuni. Native Formosans have ever since demanded return of their remains, demonstrating loudly at Yasukuni, "We are not Japanese."

A joint statement by Chinese and Japanese governments

The 1952 TPT, and the 1972 Joint Communique (JC) between China and Japan that restored diplomatic relations between the two countries, explicitly recognizing the Peoples Republic of China as representing all of China, are in conflict. Since the 1972 JC is the later agreement, the 1952 TPT became invalid after 1972. In any case, at the time TPT was signed it had limited application. As defined in an official exchange document attached to the Treaty, TPT could only apply to territory actually controlled by the Republic of China then and in the future. Therefore TPT has established itself as not applicable to the People's Republic of China. Arguing that TPT speaks for the whole of the Chinese people is factually incorrect.

Japan's hesitancy to embrace the truth of history is amply demonstrated in textbook controversies of the 1980s and 1990s. Japan has yet to come to grips with an honest account of its role in perpetrating the greatest human catastrophe of the twentieth century, and has instead certified history textbooks for Japanese schools that inaccurately report the Pacific War.

Japan's Prime Minister Morihiro Hosokawa (leader of the first non LDP government of Japan since 1955) is famous for

Japan's Prime Minister Morihiro Hosokawa (leader of the first non-LDP government of Japan since 1955) is famous for his "apology" of 1993, in which he publicly acknowledged that WW II was a "war of aggression, a mistaken war," and expressed sincere condolences to "the war victims and survivors, in Japan, its Asian neighbors, and the rest of the world." Mr. Hosokawa did not last long in government. He was ousted in 1995, and went on to become a founder of the DPJ, the party that wrested government control finally from the LDP.

The Marco Polo Bridge Statement and Aftereffects

In 1995, at a ceremony in Beijing at the Marco Polo Bridge (scene of the Japanese Army attack in China in 1936), Japanese Prime Minister Tomiichi Murayama expressed publicly his personal feelings of remorse and apology to victims of Japan's aggressive war. However, Murayama's apology was only a personal one, not shared by the majority of his colleagues in the Japanese government. He failed to make a formal and official apology in the so-called "No War Resolution." In the Japanese Diet, only 26% of the members supported the Resolution and 47% were opposed.

A Japanese national campaign against the "No War Resolution" began by ex-education minister Seisuke Okuno collected 4.5 million signatures. Indeed, Murayama's personal statement cannot extend to the government of Japan or Japan's Imperial Armed Forces because the Diet rejected the Murayama statement upon his return to Japan.

This brings up the "apologies" of Junichiro Koizumi and of Emperor Akihito. After his expression of personal sorrow over Japan's WW II aggression in 2005, Koizumi conducted yet another state visit to Yasukuni to worship the memory of 14 convicted and executed Class A Japanese war criminals, nullifying any good will that might have accrued to Japan. Emperor Akihito chose a different style. Noting that Asians "suffered horribly" during the Pacific War, he, Akihito, expressed his personal sorrow over their plight, sidestepping responsibility for either himself or his country.

Rights of Individuals and Individual Claims for Repayment from Japan

Even if SFPT, TPT, and JC sought to absolve Japan of war reparations to other countries, nothing yet has either waived or extinguished individual rights to claims against Japanese citizens, corporations, or governments. But Japan has never accepted the "burdens" of reparations, but has resisted them vigorously through the courts.

The 1972 JC remains effective. In JC the Chinese government did not abandon the right to claim of Chinese citizens on their behalf or of the right of Chinese citizens to a right to a claim against Japan themselves. Former slaves of Japanese Corporations and their bereaved families began suing the Japanese Nishimatsu Corporation in the 1990s for unpaid wages. Allied POWs who became slaves to corporations in Japan during the war have similarly brought lawsuits in Japan and elsewhere, and waged a steady campaign for public opinion. Nishimatsu and other Japanese corporations pocketed huge profits during the war from the blood and lives of Chinese slaves. These same corporations have steadfastly maintained they owe nothing.

But with the understanding in JC, the first and second instance rulings by District Courts or High Courts in Tokyo, Fukuoka, Niigata, Hiroshima in the Nishimatsu case did not support the Japanese government's position of "the abandonment of the Chinese victims' right to a claim." (The only exception was the ruling of the Tokyo High Court on March 18, 2005, which supported for the first time the Japanese government's position of "abandonment of Chinese victims' right to claim" in the so-called "comfort women" cases. This verdict itself by the Tokyo High Court violated legal precedent and was a provocative aberration, which led to widespread public protest and demonstrations.)

In the Chinese view, JC did not give up the Chinese nationals' individual rights to a claim for compensation from Japan. Chinese Foreign Minister Qian Qichen in 1995 clearly stated, "The Joint Communique abandoned the right to claim of the state, but the right to claim of the individual has not been abandoned."

In 1972 when China and Japan restored diplomatic relations, a precondition was that the Japanese government agreed there was only one China. Only under this precondition were diplomatic relations of the two countries restored and JC signed. Article 2 of JC states, "The Government of Japan recognizes the Government of the People's Republic of China as the only legitimate Government of China." Using TPT as an argument in any issue of claim by Chinese citizens, or indeed any individual seeking redress, violates Japan's own position defined in JC.

(Waffling about the slave labor issue and lying about its history ultimately destroyed the LDP Japanese government reign of Prime Minister Taro Aso, scion of the Aso family and their extensive mining operations supported by slave labor during the war.)

In 2007, Rep. Michael Honda, a Japanese-American representing a district in Northern California, introduced HR 121 that demanded an apology from the Japanese government for the forced sex slavery of Korean, Chinese, Filipino, and Indonesian girls and young women. After much debate, the measure was passed by the US House of Representatives. The government of Japan lobbied vigorously against HR 121, in a bald-faced attempt to justify sex slavery and to stifle debate on human rights. In this way does the Japanese government express remorse.

The world still awaits honest and forthright clarification from Japan.

正 义 for Justice

和 平 for Peace

EXHIBIT N

Summary of Testimonies

A Collection of 33 Soldiers of Imperial Japanese Army

May 2016

by Naomichi ISHIKAWA and Japanese Women for Justice and Peace (NADESHIKO Action)

Summary of:

A collection of 33 testimonies of returned military persons and civilians published in each bulletin of a Japanese think tank, "Showashi Kenkyujo" from 1996 to 2007 and compiled in a book titled "Special Edition of Bulletin of Showa Kenkyujo" published in 2006 (Page number 51-115)

(The Collection with its legal status has been succeeded by a general incorporated body, "The Institution of Research of Policy of Media and Broadcasting", at 2-16-5 Hirakawacho Chiyoda-ku Tokyo 102-0093 Japan)

1) Title
2) Page number
3) Name
4) Age
5) Profession, Social position
6) Place
7) Year
8) Address in Japan
9) Summary of Testimony
10) Caption of photograph if attached

1.

1) **"Administration of Korea, Comfort women"**
2) P 51
3) Tuneyasu Taishido
4) Born in 1917
5) Administrative official of Governor-General of Korea
9) (Mr. Taishido does not mention about comfort women in this collection of testimonies as of 1993. He stated about the situation of Japanese administration in Korea. But later in 1999, he published a book titled "There was no coercion or taking-away of comfort women by the Japanese Military".)

2.

1) **"Administration of Korea, Comfort women"**
2) P 51
3) Mototoshi Abe
4) Born in 1917
5) Army civilian employee
6) Malaysia
8) Tokyo as of 1998
9) I was in Kuala Lumpur as an army civilian employee in 1942. There were comfort stations where women were always waiting customers with smile. The rooms were clean and wide. It is a lie that comfort women had misery life. Just one time I had a compassion on poor prostitutes employed by Chinese mafia. But the brothel had nothing with the Japanese Military.

3.

1) **"Administration of Korea, Comfort women"**
2) P 51
3) Susumu Kawakami with his wife
4) The both were born in 1926 in Korea
5) Army soldier officer, school teacher (Mrs. Kawakami)
6) Korea

8) Chiba prefecture as of 1998
9) -Mr. Kawakami graduated from Imperial Japanese Army Academy in Tokyo.-
I had a Korean colleague in the academy, who was completely equal. I had never seen or heard coercion or taking-away of comfort women. Women's volunteer corps was a system of mobilization of women for factories. Koreans knew as well that Women's volunteer corps was not Comfort Women System.

4.
1) **"Korean comfort women who told me that they were happy"**
2) P 52
3) Toshihumi Hirose
4) 69 as of 1997
5) Student of junior high school
8) Yokohama city as of 1997
9) In 1942 I was in the third year of Japanese junior high school in North China. As I was too young to be a soldier, I worked as personnel of military secret service and went to the border between China and French Indochina. Though I was a school boy, I had many occasions to see and hear comfort stations and to chat with owners and comfort women. One day in a train, two Korean comfort women in front of me spoke to me gaily. "How old are you?" "I am 16 years old." "How young you are! The sergeant you have seen just now is my lover" Looking each other, two women said, "We are happy." I asked them to repeat what they have said, saying "Are you happy?" The one said, "Yes, of course. I was content to come abroad from Korea. I can send money to my family. The work is not so hard."

5.
1) **"Establishment of comfort station as follows"**
2) P 54-63
3) S.G. (anonymous by request)
4) 79 as of 1998
5) Army soldier
6) Middle China
8) Osaka city as of 1998
9) In 1940, I was assigned to establish a comfort station. As the troop had known nothing about it, I was dispatched to Hankou (漢口) of Wuhan City (武漢) to get information and to meet a presented Korean broker of Japanese name. I was guided to see brothels in the suburbs of Wuhan. Brothels were established in one area. The houses of brothels were poor barracks which looked like slums from a Japanese standard. The owners of brothels and the comfort women there were all Koreans. To my experience, Japanese owners had never employed Korean comfort women.

One of the owners explained me about the rate and the life cost. Comfort women pay to the owners 20 yens a month for room, board and electricity. They earn from 150 yens to 230 yens a month. (monthly income of colonel was 310 yens at the time) They send a large amount of money to their family.

I was surprised by their high income and also by strict regulation displayed at the entrance such as; No one but soldiers of Japanese Imperial Army is allowed to enter. "Open hour; From 10 to 20:00. Rate; soldier 1.50 yens, petty officers 2 yens, army civilian employee 5 yens. Condom is indispensable. Boisterous or loud singing or any such other action unbecoming a soldier is forbidden. Any person drunken is ordered to leave right away without refund."

Meanwhile, many soldiers who had returned last night from battle fronts came. We decided to see and hear in secret. A woman requested a soldier to get off his pant and do as quickly as possible. She asked tips in a practiced manner, saying "Yours is so big, it was painful, but I did my best for you." Then he handed tips without any word. The scene seemed very dry and the soldier seemed to be a dupe.

A group of comfort station led by that Korean owner arrived noisily in a track at our troop. When they crossed a tiny thrilling bridge over a river of about 100 meters long, they were so noisy that many interested soldiers on both banks gave also noisy voice to the group. Both of them were gaily noisy. The manager asked me to do the group a favor sometimes. I said, "The army does not touch the management of comfort station. He said, "We have no food now." I arranged some food for this night and next morning.

At the beginning, the comfort station had many customers (soldiers). But little by little, soldiers began to give a negative appreciation to the station. It was too commercial and there was no service that soldiers wished. Customers (soldiers) had already begun to decrease very much after two months from the opening. As a matter of fact, the group of comfort station earned too much by unreasonable methods and without heart.

Thus comfort women were well-paid prostitutes.

There were many women who wished voluntarily to work as a comfort woman.

Why did the authorities need to coerce or to take away women?

6.

1) **"It was Koreans who recruited comfort women"**

2) P 64

3) Masao Ibano

5) Army soldier

6) China

8) Hokkaido as of 1998

9) In 1939, one month after our troop was stationed, one Korean man came to the camp and said, "We will open a comfort station. We rent a private house near here".

I remember that the price was 1.50 yens per hour. It was too expensive to soldiers.

Anyway although the name of this brothel was "Comfort Station", it had nothing with the Military. This was a private brothel house.

To say the truth, the Korean owner sold indecent photos to Chinese in secret and opium also. One time I confiscated opium and burned it.

But as for 7 comfort women, they were cooperative to the troop. They helped the troop at the banquet of the troop and the like. Soldiers treated them kindly.

In the city, there were many brothels. Houses run by Koreans were the most numerous. I saw one time a Korean female owner shouting and demanding a Japanese soldier to leave right away or to pay twice after one minute overtime.

7.

1) **"Korean women worked just for money"**

2) P 64

3) Masahiko Katsumata

5) Army soldier

6) Hailar, Mongol

9) I was assigned to establish a comfort station. I asked the reason why a comfort station would be established. My superior answered that it was for preventing venereal disease and ordering comfort women to refrain from receiving customers when they are infected. I asked also if these Korean comfort women were mobilized by the Military. He said, "No. They were recruited by Korean brokers. They were prostitutes for money."

In Hailar, the price was; 1.10 yens per hour by Korean prostitutes, 0.50 yens per one time by Manchurian prostitutes, 1.10 yes per one time by Russian prostitutes, and 1.50 yens for Japanese prostitutes. I participated in patrolling in order to prevent any trouble or incident while many Japanese soldiers waited for one's turn, or to let his troop know when some soldier did not pay.

I testify that the Japanese Military did nothing unjust to native women or Korean women in Manchuria. I can firmly testify as I took actually charge of comfort station.

8.

1) **"Japanese comfort women were offered to Chinese soldiers. At the prisoner camp of Jinzhou, Liaoning province"**

2) P 65

3) Hisaya Morishige

5) Civilian

6) In the prisoner camp of Jinzhou, Liaoning province (寮西省錦州) in China

7) From 1945 to 1946
9) A new section called public relation was created in this organization (in the prisoner camp of Jinzhou, Liaoning province) after I came here. The mission of the section was the most unreasonable for me. I was chief and only one staff as well. My role was offering Japanese comfort women to men of Chinese Chiang Chung-Cheng Military, in charge of railway. Every Japanese wished to return to Japan as soon as possible. So when the train stopped in any reason, women were sent to the men in charge of railway for asking them to get rid of obstacles. These Japanese comfort women were voluntary without payment. Many of them were war widows. They accepted this detestable role for other Japanese. I talked with them till midnight wiping my tears.

9.
1) **"Comfort women in Singapore"**
2) P 66-67, 69-70
3) Matsuo Tsunoda]
4) Born in 1924
5) Army civilian employee
6) Singapore, Manila
8) Yamaguchi prefecture as of 1998
9) I was second clerk in charge of wireless communication of a ship chartered by the army. The ship arrived in Singapore when I was 18 years old in 1942. When I walked in the town, a beautiful girl approached me and held my hand. I followed her. She was prostitute as I had guessed. I paid money as much as she demanded. It was not expensive. She was 21 years old. She sold her service to British before. According her, they were arrogant. She said that she liked Japanese. The girl showed me a paper. It was a list of women who would work in Japanese comfort stations. She said, "I don't have to work stealthily. I can receive soldiers and sailors without anxiety and get much money." As for the Japanese Military, the aim of comfort station would be prevention of venereal disease.

In 1948 the ship arrived in Manila. I went to a comfort house. At that time there were no Japanese women but Filipino, Taiwanese and Korean women. The Japanese troops had moved to the South. Women's business seemed to be dull. I was guided to a room by a Filipino woman. The woman had sold her service to American soldiers before. She was completely in an American way. She demanded me various sexual technique. After all it was me who pleased her. She said, "Korean comfort women calling themselves to be Japanese are very arrogant and look us down."

Raping has always been accompanied by wars. US soldiers raped many Japanese women at Okinawa Battle. The Soviet Military raped tremendous Japanese women at the aggression of Manchuria. The Japanese comfort women system had taken role to prevent local women from being raped. Therefore it's out of the question that the Japanese Military raped local women. As I testified, local comfort women had enjoyed their work without any duty of repayment of debt. The allegations of women calling themselves ex-comfort women that they were coerced into prostitution by the Japanese Military were all lies. I add that brokers of Korean comfort women were Koreans and brokers of Japanese comfort women were Japanese. There was no mixed group.

10.
1) **"Quarrel about the price between a Korean comfort woman and a Japanese soldier. Pay twice for two sexes."**
2) P 68
3) Shoich Motona
5) Military policeman
6) Sumatra
8) Sendai city as of 1998
9) One day in Autumn in 1944 a military policeman on patrol brought two persons to the military police station to interrogate them. One Japanese soldier and one Korean prostitute had a big quarrel in a street. She claimed to pay her twice because the soldier did two times. He paid just one-time fee although I insisted. This incident is a proof that comfort women were individual commercial prostitutes.

11.
1) **"I had never heard forcible taking-away"**
2) P68
3) Kazuo Aida
4) 69 as of 1998
5) Student
6) Korea
8) Yokohama city as of 1998
9) I was born in Korea in 1929. I was resident till 1945 in present North Korea. As for administration, there were many Korean government employees and public employees. There were many Korean policemen as well. There would have been Korean judges and prosecutors. In such a social environment how could the military take away women? If there had been coercion, people could have heard the rumor at least. Mere child that I was, I knew that Koreans lie frequently.

12.
1) **"My experience as an officer on patrol of the Army. Comfort women were state-regulated prostitutes"**
2) P 69
3) Mitsutoshi Kanayama
4) 73 as of 1996
5) Officer on patrol of the Army
6) Manchuria, China
7) From 1943 to 1944
8) Kochi city as of 1996
9) I was an officer on patrol near the border of Manchuria from 1943 to the first beginning of 1944. My role was to prevent quarrels and violence of soldiers in movie theaters, bars for soldiers, two comfort houses and a few of private brothels. Comfort houses were humble. Though I was not sure, the rate would have been 1.50 or 2.00 yens. Korean comfort women and private prostitutes were the largest in number. But there were many Japanese women as well. I had occasions to listen to some Japanese ex-comfort women. None of them was taken away by the Military. Brokers recruited them. Brokers called "Zegen" were in every country and place.

13.
1) **"Ex-army civilian employee required for pacification work publicizes the reality.**
No forcible taking-away "
2) P71-74
3) Toshio Hasui
4) 87 as of 1998
5) Army civilian employee required for pacification work
6) North China
8) Osaka as of 1998

I was in China for three and a half years from 1938 to 1942 as an army civilian employee for pacification work. Residential districts were inside walls. Japanese military, Japanese civilians and Koreans (Japanese citizenship) were there with Chinese. There were two Korean comfort houses and one Japanese comfort house. The Korean ones were gorgeous houses. The rate was 1 yen for soldiers, 3 yens for petty officers and 5 yens for officers, army civilian employees and general Japanese. Even if the half of revenue were taken by owners, the income of comfort women was very high. Korean comfort women lived cheerfully and were popular among Japanese soldiers.

Why did they become comfort women? I doubt if they wished. In Japan there had been brokers called "ZEGEN" since long time ago. Comfort women were sold to brokers for their families or for some other reason or because of the egoism of their parents like beasts. In Korea as well, "ZEGEN" existed during the wartime at least. ZEGEN would have recruited by means of intimidation or coaxing, etc. And there would have been military policemen or policemen who became unconsciously agents of ZEGEN. But it was the women who agreed finally. Japanese Government acknowledged the involvement of the Military. As

comfort stations were located in battle fronts, it was necessary that the Military was involved in recruitment and establishment. But the Military had never touched the management.
One Korean comfort woman said to me, "I want to have a restaurant in Japan after full payment in 5 or 6 years."

10)

- Mr. Toshio Hasui (Page 71)

The activity of pacification corps and Korean comfort women (Page 74)
(Photographs offered by Mr. Haui)
From left to right

- Mr. Hasui is giving medical care to a wounded Chinese. The pacification corps was also engaged in medical treatment.
- Right: Korean comfort woman Left: Japanese woman
- A Korean comfort woman enjoyed "Hanami" (admiration of blossoms) with a Japanese soldier in April 1941
- A Korean comfort woman came to the corps to read newspapers when she had free time.

14.

1) **"It was Korean or Chinese brokers who took forcibly away.**
A Korean comfort woman confesses the reality. Zegen and Hongpang"
2) P 75-78
3) Tomokichi Sumida
4) 84 as of 1999
5) Engineer soldier
6) China, Wuchang of Wuhan City
8) Kumamoto prefecture as of 1999
9) My troop was stationed near Wuhan (武漢)University. In December 1938 a notice that comfort station would be established was circulated. The price was 2.00 yens for petty officers. As I had known nothing about comfort station, I thought it necessary to get information about it. When I went to Hankou for a public mission of the troop, I entered in a Japanese restaurant. The female owner who seemed to be a Japanese woman was in good manner and spoke good Japanese. I started a conversation by asking "Where are you from in Japan?" She answered, "I am not Japanese but Korean." Then I said, "A comfort station run by Koreans has been established for my troop. Do you know anything about comfort station?" She started to talk by saying "I have nothing to be sealed."

"I was born in extreme Northern Korea, near the Soviet border. As it is too cold in winter to do agriculture, families had no way to live but to sell their daughters. The broker was called "Zegen" who had a network all over the Korea. Zegen looks for Korean families suffering from poverty in every nock and corner and buy girls by money. In October 1931, I was sold for 380 yens when I was 18 years old. I was brought to Korean brothels in Shanghai with other 15 Korean girls. Since the first Shanghai Incident had broken out, there had been many customers of Japanese Army and Navy. The comfort house was always full. I got married with a Korean and moved to Hankou in 1938. We started a restaurant here. According some Chinese close customers, in China also, there is a network or a secret agency of brokers called "Hongpang" (紅幇). The network is composed of gamblers, local rebels, workers, tramps and etc. Zegen and Hongpang pay money and take away girls. They add all costs such as travels from home to destination, food, meals in comfort stations and etc., to the sum of the debt of women. They treat women dryly and have no compassion on women. We spent every day in a frozen heart. We received from 25 to 30 customers a day without holyday. Meals were very poor and infected with bad disease. There was a girl who suicided because of disease.

As for Korean comfort women, It is only Zegen who take women to stations. Nobody knows what will happen to him if someone does business of broker without Zegen. The reason why many comfort women are from northern Korea is because it is too cold in winter to work and get money. So there is no way but sell daughters."
She gave me her testimonies in detail.

Finally I visited the comfort station for our troop. I asked a Korean comfort woman under a Japanese

name about health examination. She said, "Here, we don't have any examination." Then I had only conversation with her and I left.

In 1946 I was at the Soviet border in Manchuria as a frontier guard. I went twice a month to Harbin for public mission. I visited a white Russian Emigrant comfort house. A white Russian woman received me and served me a Russian cake. She spoke Japanese fluently and had a good manner. She talked to me. "Here in Harbin, there is no white Russian emigrant who cooperates for Stalin. I can say upon my oath that there is no Russian who get unjust money by trafficking compatriots."

A Japanese woman who worked as personnel in a Russian comfort house gave me information about the health examination. As for Russian women, they have periodic examination twice a week.

10)

- Author in 1937 (Page 75, 77)

15.

1) **"I interviewed many Korean comfort women. There was not a single case of taking-away."**
2) P 79
3) Takeichi Uno
4) 83 as of 1999
5) Civilian, Manchuria Railway
6) Xuzhou(徐州), Manchuria, China
8) Yamaguchi prefecture as of 1999
9) I was temporarily transferred to the Japanese Office of Councilor of Xuzhou at the end of 1941. I worked for the Division of Economy of the Secret Military Agency of Xuzhou. The Director of the Agency was Colonel Eda. There were comfort women in Xuzhou also. There were two groups. The one was composed of only Chinese to whom Japanese army surgeon did medical examination . The other was so called camp-follower managed by Korean Zegen. However they didn't have tool to send money to their families. So they brought baskets full of bills to the General Section of the Agency at the beginning of every month. The Colonel happened to see. I remember that he said, "Well, they earned several times more than my monthly salary." Their monthly revenue was more than 1,000.00 yens. I was in charge of translation for three months when Japanese army surgeon examined Chinese comfort women. I had interviews with 36 Korean comfort women who came to the Agency at the beginning of every month. Their age was between 18 and 28. Their income was 1,500 yens at least and 3,000 yens at most.

I think that the comfort women system was a necessary evil. Prostitution has existed since ancient times. General MacArthur demanded prostitutes as soon as they occupied Japan. Japanese Government which offered 200 million yens for comfort houses for US Military held an inaugural meeting of comfort women in front of the Imperial Palace. I asked 36 Korean women the reason why they became comfort women. Most of them answered, "Because of death of father or poverty, or for saving their families in illness." There was no one who was forced into comfort women by Japanese Military or Police. They were led by coaxing of Zegen.

10)

- Author in April 1942 in Xuzhou (Page 79)

16.

1) **"The reality of comfort women in Southern Pacific"**
2) P 80-83
3) Minoru Shigemura
5) First lieutenant of Navy
6) Southern Pacific
9) There was a term, "Tokuyoin" (Special service employees, comfort women for the Navy). This was "Joshigun" (娘子軍), namely, camp-followers.

The women of Tokuyoin went to battle fronts to get high revenue to pay off the debt of 4 or 5 thousand yens under the contract of working one year or so. There were women who paid off only in 3 months. Generally the debt was paid off in about 6 months. Their saving was tremendous. Everybody was surprised hearing that there were women who saved 30 thousand yens. Generally they saved from 6

thousand to 10 thousand yens.

For the Military, "Tokuyoin" system prevents natives from being raped and soldiers from being infected them with venereal disease. So the system was welcome for good discipline and good hygiene.

But in Southern Pacific, US aggressions were much earlier than expected. As there was no convenient ship, even after having paid off and finished the contracts comfort women could not return to Japan or to their countries till the end of The War, exposed to aerial bombing.

When the war situation is aggravated, women and girls including comfort women are ordered to leave for safety places or return to Japan in advance. The Navy treated kindly and carefully comfort women as compatriots at the departure from Japan and the return to Japan as well. But it was not so easy in Pacific islands. There were many victims. Some of them were killed by aerial bombing of USA. Anyway most of them could safely return to Japan led by navy responsible employees.

17.

1) **"Comfort houses in Korea. There was not any forcible taken-away by the Military."**
2) P 84-85
3) Minoru Nakajima
4) 80 as of 1999
5) Army police officer
6) Korea
8) Tokyo as of 1999
9) The comfort women system was a legal state-regulated prostitution which existed in many countries in those days as a necessary evil to prevent sexual crimes. As the authority of permission belonged to each prefectural governor, it was impossible that the Military recruited forcibly comfort women or forced them into prostitution. Many comfort women took this work against their will, but to save their family from poverty. In my town there were only two hundred comfort women for more than ten thousand young military men. So they had to receive 20 to 30 soldiers a day especially on Sundays and National holidays. As the rate was 2 yens for soldiers, they got 50 or 60 yens a day. My monthly salary was 60 yens. They earned much, but most of revenue was handed to the owners under repayment of their debt. They had to accept ill-fated circumstances that they could not escape from the debt throughout their life. But this was the matter of commercial relation between women and owners. On the other hand, it was needless to say that the Military was involved in prevention of venereal disease. Army surgeons assisted by military police officers and the owners conducted periodically medical examinations. And we, army police officers dressed in civilian clothes patrolled in the brothels under the permission of the owners in order to prevent quarrels, violent incidents among soldiers and etc. Thus the aim of involvement of army surgeon or army police officer in periodic medical examination and some indications such as using condoms or refraining from working because of some disease was not to use forcible authority but to prevent venereal disease.

18.

1) **"Korean comfort women in Manchuria. They sent money to home and built a house. I interviewed women. There was no forcible taking-away. They took the profession for money. A ex-police officer testifies."**
2) P 88-91
3) Takeo Suzuki
4) 87 as of 1998
5) Police officer
6) Manchuria, China
8) Shizuoka prefecture as of 1998
9) I became police officer of Manchuria in August 1943 and began to work for the division of economy and security of police of Mederi hoton hiya(海城県) of Mnchuria in February 1944. Twice a month I, with my inferior Manchurian ethnic police officer, assisted at medical examination for comfort women conducted by Chinese surgeon and Japanese nurse in a public hospital. There were two hundreds comfort women, tops. People think it was too strict, but prostitution at the time was state-regulated. Women infected were not permitted to work. We had lists of Japanese and Korean comfort women. We called the name each time at the examination to confirm whether she was there. The manager had to submit the form on comfort

women to get permission for business. Without it, business was not permitted. A copy of her family register, medical certificate, paper of parent's consent and her photo had to be attached. Furthermore we held interview with herself to confirm that she was not abducted or forced into prostitution. If she answers, "No", then business is permitted. Therefore forcible taking-away and the like are out of the question.

Most of comfort women were Koreans under Japanese name. They wore Japanese cloths. I asked them why they came to a far place such as Manchuria. They said, "For money". One Korean comfort woman named "Oshoku" said, "I earned 300 yens per month." At the time the monthly salary of graduates of Japanese imperial university was 70 yens.

There was an area of Chinese brothels which were really unclean. There were Japanese customers. But they were civilians. Japanese soldiers could not visit that area as army policemen watched.

Korean comfort women were the largest in number. Japanese comfort women got 5 yens and Koreans got 2 yens. As for the division of revenue, the above-mentioned "Oshoku" said, "40 % is for me, 60 % for the owner." I asked the reason why she returned to Korea as she got so much money. She said, "If women pay off the debt, they return to home and owners can't go on the business. So they insist us to buy kimono and the like to hold us. Then the sum of debt doesn't decrease." Therefore police officer or military police inspected the owners of comfort station rather than comfort women in order not to let owners do such unjust acts. Anyway far from being crushed, they lived merrily singing songs. As far as I checked personal histories of Korean women, all comfort women were ex-prostitutes.

19.

1) **"There was no forcible taking-away. Shandong (山東省)-Plunder and rape was strictly prohibited."**

2) P 92-93

3) Takashi Morishima

4) 81 as of 2000

5) Soldier

6) North China

8) Gunma prefecture as of 2000

9) I was in a troop in charge of maintaining the public order and pacification in Shandong (山東省), North China in 1940. The number of punitive expedition was not so many. The average was 7.3 times, 89 days per year for officers. As for soldiers, the average was lower, from 10 to 30 days per year. Plunder and rape was strictly prohibited. Chinese people in those days were at the bottom of poverty and fatigue. There would have been actually nothing to be plundered.

As soldiers could go out only during daytime on Sundays, they rushed to comfort stations with permission and condom. As soldiers had not so much money, they used comfort stations for the army. Chinese comfort women were mainly for soldiers, Korean for petty officers and Japanese for officers. Medical corpsmen conducted medical examination to prevent venereal disease. There was neither taken-away by the army nor involvement of the army such as restraint of freedom of comfort women, at least in Shandong. As there was no comfort station in small towns, a few soldiers running a risk used Chinese prostitution through broker held in the houses of women in secret. They did because of poverty.

20.

1) **" [Comfort women in Taiyuan, Shanxi (山西省太原)]**
I had never seen misery. Japanese imperial soldiers expressed gratitude."

2) P 94

3) Yukio Kojima

4) 78 as of 2000

5) Soldier

6) Shanxi (山西省), North China

7) From 1942 to 1944

8) Shiga prefecture as of 2000

9) My troop was stationed far away from towns. Around in summer in 1942, it was my pleasure to go to Taiyuan City, Shanxi in a track for a public mission and to be permitted two hours going out and to visit a comfort station. The short time (about 30 minutes) rate was 1.20 yens by Korean comfort women and 0.80

yens by Chinese comfort women. Japanese comfort women were only for officers.

Soldiers had to pay in advance. Some of them gave comfort women some gifts such as towels and soaps besides money. Though soldiers did not visit frequently, they got acquainted of some women. Soldiers treated them kindly with gratitude. As far as I knew, there was no one who did not pay. If a soldier did not pay, comfort women would let army police officers know the nonpayment, then he would be put into heavy imprisonment about 1 week or so. Comfort women seemed not to live with tears but cheerfully singing songs.

21.

1) **"Ex-officer who experienced many battles talks about comfort women issue. Military and sex should be considered."**

2) P 95-100

3) Hayashi Inoue

4) 86 as of 1992

5) Captain

6) Manchuria, China, Malaysia, Singapore, Burma

8) Kawasaki city as of 1992

9) I was born in Seoul in 1916. I had been in Korea till the age of 23. In 1938, I joined the army and was sent to northern Manchuria. Then I was sent to Guangzhou (広州) of Canton province 広東州) and Fujian (福建省). I was sent to Malaysia and Singapore after the breakout of The Greater East Asian War (The Pacific War). Then to Burma.

As for the issue of comfort women, it was not preferable but the prostitution was legal before The War. It had a social role even with a very dark side. The Issue began with allegations of Korean ex-comfort women that they were atrociously treated. But now the Issue does not concern individual treatment anymore but the comfort women system itself. Then I think that it is led after all to the big theme, "War and Sex". To my experience the problem of sexual desire of the military in battle-fronts was really pressing. Everyone knows the outrages committed by the Soviet Army in Manchuria around the end of The War. It is said that US Army occupied Japan in a smart way. But it was not the case. There were many incidents and problems between the Army and Japanese women. The other day I read an article of a newspaper written that there are tens of thousands of thrown children born by US soldiers and native women. There were many Chinese brothels in Guangzhou. But brothels had also problems. The problem of hygiene at first, then the problem of espionage and the problem of anti-Japanese feeling of Chines young men induced by the reality that Japanese soldier bought Chinese girls. Raping native women in occupied territories was a serious problem. If it happens, the dignity of the military is lost all at once and efforts of pacification come to naught.

Considering such things, brothel business was impossible without protection of the army. Because the stations were located in dangerous battle-fronts. The help of the army was needed for provision of food and daily goods. It was necessary to accept some control of the army accompanied by regulations. However, the profit of business was big in exchange of danger. It was impossible for the army to recruit directly women and do business. After all I have been sure now yet that the comfort women system was the most rational and effective way for these problems.

I was born in Korea and intended to die there. So I am proud of understanding Korea better than other people. There was an article in a newspaper about a allegation of ex-comfort woman, written as "One day I was abducted by Japanese army and police with 20 other girls when I was 12 years old." I think that it was impossible and absolutely a fiction.

I was in charge of comfort stations. One day I got to know the ratio of division of revenue between owners and comfort women. 60 or 70 % were taken by owners. As I was young and had a strong sense of justice, I ordered owners to reverse the ratio. I didn't know exactly if the ratio was changed. I hope it was improved.

Taking an example about the sexual desire of human being, when all corps was retreated to a jungle with 7 comfort women, some soldiers became customers of comfort women at night. I was surprised by strength of sexual desire.

When the war situation was not going to the favor, the sick and wounded soldiers and the comfort women were quickly retreated. Thus the comfort women were treated kindly by everyone.

Because of the necessity related to security, hygiene, counterespionage, army discipline and the like, the army took some controls. I don't think that only Korean comfort women were exception. In the closing stage of the war, forcible measures were taken as a whole in Japan. For example not only Koreans but Japanese themselves were drafted into labor.

There were many Chinese comfort women to whom Japan was a hostile country. If the Japanese military had abused them, China could have protested on comfort women issue first of all when Japan lost the war. According media, the number of comfort women was 20 to 30 thousands. This is ridiculous. Soldiers at battle-fronts could not visit comfort houses in the first place.

The first thing that I want to say is that it must be seriously discussed on sexual problems of young soldiers. If the Japanese comfort women system is taken as an issue in the human rights committees of the United Nations, it's indispensable to discuss on the problem of "Military and women" of every country as well.

10)

- Mr. Inoue at that time of the Hukawng Operation in 1943 in Burma (Page 95)
- Mr. Inoue (page 98)
- The next morning after the fall of Singapore, Feb.16, 1942. The building is a hospital of the hostile army. Mr. Inoue is smoking a cigarette out of a trench. (Page 96)
- Yesterday's enemy is today's friend. Mr. Inoue gave a chair to an aged Major and stands backward, at the end of February 1942. With British prisoners of war before entering the camp of prisoner of Changi, Singapore. (Page 99)

22.

1) **"The town of sacred prostitution. Korean comfort women in Shanxi.**
Give a salute to the beauty of battle field."

2) P 101-103

3) Shigeo Tomita

4) 80 as of 2002

5) First Lieutenant

6) Shanxi province, China

8) Fukushima prefecture as of 2002

9) I was wounded and sent to a field hospital, then to the army hospital in Yuncheng (運城), Shanxi (山西省) in June 1944. It was a big city. I was revived by Japanese gentle nurses in the hospital. One day three Korean comfort women came to us. They came every day to offer some service such as fanning me in a hot and humid room in summer. It might have been for a kind of advertisement of their business. The members were sometimes changed except for one girl named Mitsuko. She was my favorite. One night when I left the hospital, I went to a place to serve beer for the army men. On the way to return to the quarters, I saw two shadows quarrel each other in a street. They were a Japanese soldier and a girl. He was very drunk. She screamed for help. To my surprise, the girl was Mitsuko. I rushed to protect her. He draw a gun on me. Then we heard rushing footsteps of several men and shouts that they were officers on patrol. He turned around and escaped. To my surprise once again, the officer on a horse was Second Lieutenant Asai who had been next to my bed in the hospital.

Next day I went to the Yuncheng Station to take a train to go back to my corps. Because of a downpour, the train didn't depart. I was in a hurry to go back to the hospital. Because I knew that an event of some performance would be held in the hospital that day. I looked for Mitsuko and found her. She thanked me. I asked her to come with me. She answered, "Yes, take me with you." Then I could not continue the conversation. How could I pay off such a big sum of her debt to her owner? I left without a word. I feel even now an illusion as if I could hear her sorrowful songs.

In 1945 the war situation was so aggravated that soldiers were frequently ordered to move from one to another corps. I had an occasion to be in charge of guiding and protection of comfort women. We took a train to go to the destination. The train was not so crowded for us to get seats. The train at that time reminds me of US officers of occupation of Japan. They used specialized trains of which each car was occupied by only several US military men while Japanese used trains which were in a hell of crush. When the train was crowded, Japanese military men, even officers did not take a seat in China. I could have

bought ice-cream for them if we had been in Japan.

Korean comfort women went to work as we wished. If they had been captured by Chinese communist troops, they would have been killed with us. Nevertheless, for money or by professional mind, they didn't reject our request.

I left for Japan for a decisive battle in June 1945. A farewell party was held. I remember that they, dressed in Japanese kimono, wept tears for unwillingness to part from me.

There is a book titled "Sacred prostitution". Sacred prostitutes existed in the societies of ancient times such as in Babylonia. I am sure that it was them who must have been sacred prostitutes.

At the end, I quote from a book written by a writer of war history, Mr. Keiichi Ito.

"What were comfort women in battle-fronts? I feel that only a part related to comfort women in battle-fronts was the beauty in the complete defeat of the Japanese Imperial Army. I cannot help but giving a salute to them from the bottom of my heart. "

10)

- Author, the then Second Lieutenant, posed at the troop in Temple of Heaven (石仏寺) ,Shanxi (山西省) (Page 101),
- Korean comfort women at the comfort station in Wutai(五台), Shanxi (山西省) (Page 103)

23.

1) **"There was no forcible taking-away"**
2) P 112
3) Fumio Yastu
4) 74 as of 1997
5) Northern China
6) Civilian (Northern China Railway Company)
7) From 1940 to 1944
8) Kumamoto City as of 1997
9) There was neither taken-away nor abuse. Comfort women including Korean ethnics who wore Japanese Kimono were content to work.

24.

1) **"There was no forcible taking-away"**
2) P 112
3) Munehiro Kikuta
8) Kumamoto City as of 1997
9) I happened to see my colleague of primary school after a long time at the beginning of 1943. He was a broker to recruit women. He said, "As there are many families in poverty, it's not difficult at all to recruit by payment in advance." I lived in Kitakyusyu where there were many brothels with many Korean women. They went abroad voluntarily for good salary.

25.

1) **"There was no forcible taking-away"**
2) P 113
3) Kastuharu Kajimura
4) 78 as of 1997
5) Army soldier
6) Middle China, Solomon Islands
8) Kumamoto City as of 1997
9) I testify that neither army nor authorities took away women to force them into prostitution. I had never seen any scene of taking- away nor heard any rumor.

26.

1) **"There was no forcible taking-away"**
2) P 113
3) Sotaro Hirashima
5) Army surgeon

6) RABAUL
7) From 1944 to 1946
8) Kumamoto City as of 1997
9) I was in RABAUL from 1944 to 1946. I had never seen any scene of taking- away nor heard any rumor.

27.
1) **"There was no forcible taking-away"**
2) P 113
3) Nohan Naraki
4) 79 as of 1994
5) Army soldier
6) Taiwan, Timor
8) Kumamoto Cityas of 1997
9) It was brokers who were involved in recruitment of women. Brokers asked chiefs of the occupied territories to recruit women. Chiefs were paid for recruitment and women were paid for work. I had never seen any scene of taking- away nor heard any rumor.

28.
1) **"There was no forcible taking-away"**
2) P 113
3) Manao Okimatsu
4) 79 as of 1997
5) Army soldier
6) South China, Philippine, Java, Timor
8) Miyazaki prefecture as of 1997
9) I had never seen any scene of taking- away nor heard any rumor.

29.
1) **"There was no forcible taking-away"**
2) P 113
3) Masami Kubota
4) 77 as of 1997
5) Army soldier
6) South China, Bougainville Island
8) Miyazaki prefecture as of 1997
9) Many women told me that they were happy to have been able to pay off the debt of their parents.

30.
1) **"There was no forcible taking-away"**
2) P 113
3) Masaharu Ono
4) 78 as of 1997
5) Army civilian employee
6) From Middle China to Bougainville Island
8) Miyazaki prefecture as of 1997
9) I worked for the account section of the army. So I was concerned in procurement of materials and the like with traders and brokers. Comfort stations were run by brokers and comfort women were not forced into prostitution.

31.
1) **"There was no forcible taking-away"**
2) P 113
3) Takanori Sotoi
4) 77 as of 1997
5) Navy
6) Track, Palau

8) Kumamoto Prefecture as of 1997
9) I stopped and resided in Track and Palau. I had never heard comfort women taking-away and the like.

32.
1) **"There was no forcible taking-away"**
2) P 113
3) Fumio Mizumoto
4) 76 as of 1997
5) Flying corps of Navy
6) Track Islands
8) Kumamoto Prefecture as of 1997
9) I stopped at Track. My colleague told me that there were Japanese women in comfort stations. Although I had never been there, I had never seen any scene of taking- away nor heard any rumor.

33.
1) **"There was no forcible taking-away"**
2) P 113
3) Kazuo Motomatsu
4) 75 as of 1997
5) Flying corps of Navy
6) Throughout the South Seas (Philippine, Indonesia and etc.)
7) From 1940 to 1945
8) Kumamoto Prefecture as of 1997
9) Around June 1943, a broker came to the seashore of Kendari, Indonesia with about 40 Japanese and Korean comfort women. They were undoubtedly a commercial group. We paid and understood that comfort women were commercial prostitutes. I understood that comfort women of natives in Java and Philippine were undoubtedly voluntary. There were many Japanese comfort women. Why didn't they claim to have been taken away by the army for sex slaves?

End

EXHIBIT O

History of Showa Era Research Center Report Sept./10/2001

Testimony and Diary Comfort Women Problem

Officer involved in historical battles Testifies

on the Comfort Women Issue **(Section 1)**

"Insights and Thoughts on Issues of Sex and the Military"

1943, at the time Inoue was involved in Fukong Offensive in Burma

Former Imperial Military,

Major Infantry Division

Hayashi Inoue

The Koreans are mounting a very aggressive and relentless attacks against Japan regarding the Comfort Women and Comfort Stations during the war. The response from the Japanese is vague and passive allowing the barrage of attacks to continue unopposed and letting the issue remain unresolved. Furthermore, in Japan, the proliferation of self-loathing publications and media information has inflamed the tabloid mass media escalating emotions without addressing just what has happened and why. Although extreme various reports and events thus far according to these current reports can be summarized as follows: During the war (WWII) Japan and the Japanese Military by contract or organizationally, suddenly attacked and captured young Korean women, then transported them to the war fronts; It was abduction and sexual slavery on the part of Japanese soldiers, who committed inhumane acts forbidden by heaven and earth. In the post- war period there has been no formal apology from Japan, and no-financial reparation. Simply put, this is the essence of the matter.

The Tainted legacy will remain if we leave it as it is

If these allegations are unchallenged and accepted by the both Korean and Japanese youth, who do not know the realities of war, ever greater hatred will be instilled – amongst the Korean youth towards the Japanese, and amongst the young Japanese towards Japan and the Japanese military. They may succumb to a feeling of shame for this tainted episode in the history of Japan. As a person who was present at the heart of the matter I feel most shameful and regretful about this. Reading recent newspaper reports of the issue, leaves me with a deep sense of frustration.

Though dwindling in numbers, some of the people who actually experienced the war and have some knowledge of the comfort women stations, still remain. I am extremely annoyed with those people within the government who have power and visibility, not just regular citizens like myself, who do not speak out on this issue so detrimental to image of the Japanese race. Understandably, speaking out about this kind of problem may be awkward, and may cause some embarrassment to themselves. Perhaps this is why they choose to remain silent. However, I cannot help feeling a great anguish over this act of negligence. Thus, I have decided, though I am an insignificant small voice, to record my personal memories with hopes of shedding light on what exactly happened.

The Battle moves from Manchuria to the Southern territories

I would like to tell my story without using an alias as doing so would lack openness and honesty; even some embarrassing aspects of this issue will be brought forth.

I was born in the 4th year of Taisho Era (1916) in Seoul, Korea. At the time of the Korean Annexation my father was a

subordinate government official to Hirobumi Ito and lived in various parts of Korea. My siblings were all born in Korea. I lived in Korea until I was 23, thus my entire education was received in Korea. In l938, immediately after completing my education at the age of 23, I was drafted into the military. I received basic military training from the divisions stationed on the eastern border region of Northern Manchuria, then was accepted into the officer training school in Mukden. Upon graduation I was assigned to the Southern China Occupation Force near Guangzhou, China. I was engaged in regional battles there, as well as in Fukien Province. With the start of the Greater East Asia War I was sent to the Malay Peninsula, crossed the Peninsula and participated in the Battle of Singapore. After the battle I entered Burma and remained there until the end of the war. After about one year of detention I returned to Japan. I was an infantry soldier, so I was always at the front line of the battle. Initially, I was a platoon commander, then a regiment leader, followed by positions related to reconnaissance and pacification, and at times brigade leader to manage the comfort stations. This was in Manchuria, South China regions, and in Fukien Province. From that point on, the Greater East Pacific War evolved into Malaysia, Singapore, and Burma, thus I have a working knowledge of the front lines and behind the lines. During the war, due to battle inflicted injuries and illness I received the services of field hospitals, military hospitals, and army hospitals.

Military and Citizens were united

I have some knowledge of the 'behind the lines' support bases in large towns-e.g. Rangoon, Singapore, Bangkok, Saigon, etc., and the conditions of the cities and comfort stations. Because I have this kind of back- ground, I believe I am qualified to speak about the issues related to the comfort stations. Furthermore, I feel people like myself, who know the truth about the subject, have the responsibilities to speak out about it.

Let me explain. Before I discuss the issue of the comfort stations, it is important to acknowledge that we should not judge the past with today's standards. Although Japan is a nation that lost the war, and there always is an argument for both sides of wars or conflicts, once a nation loses a war, all vilification is directed against the loser. In post-war Japan, if one spoke negatively about Japan or the Japanese military, he was applauded. Previously, if you had a healthy mind and body you would have fulfilled your military duties for the honor of the family and nation. There was a united support and appreciation from the public as they sacrificed and fought for the country. For these men the nation expressed gratitude and respect and provided support behind the battle lines. Such unity prevailed. There are now so called "cultured intellectuals" who speak proudly about dodging the military draft, but it was unthinkable then.

Now is February and February 15th is the date of the fall of Singapore. At the time I was on the front line of the attack force to capture Singapore, and preparing for the final night assault. When we landed on the Malay Peninsula there were about 200 men in our battalion, but by February I was the only remaining officer with about 40 soldiers. As we were readying for the final assault the enemy surrendered with their hands raised. As I recall that evening, everyone jumped up, hugged each other and cried. Within Japan there were lantern-lit parades, I heard. Such was the people's behavior of the time. The prevailing national public sentiment towards the military was completely different.

The morning after the fall of Singapore (February 16, l941)The front photo is of Inoue smoking cigarette at the enemy hospital, behind the battle lines.

Prostitution was publicly accepted (legal)

Before the war, prostitution, though socially not desirable, took place legally in brothels. Despite its dark side, it served a social function. Common people and military people frequented these institutions regularly. Such was the culture of the time. In some nations these business still remain in one form or another, but it was a legally accepted business in Japan at the time. Such facts may have been forgotten in modern day Japan. Listening to the recent outcries of the Koreans, it seems as though the Japanese treated the foreign nationals horribly. But they forget in those days the Koreans were Japanese citizens, as were the Taiwanese. In those days it was regarded as an issue within the same nationality. As they were colonies in those days, there was some discrimination by the citizens of the mainland Japan against those in the colonies. A look at colonies around the globe tells us that the assimilation of the colonial population to the home country requires a long period of human frictions and development. In the case of Japan, the post war treaty should have resolved the issues that resulted from discrimination and colonization, and brought them to rest. The revival of the comfort women issue brought a new dimension to the problem.

Let's proceed with this basic premise in mind. The issue started with the accusation that Korean comfort women received horrific treatment from the Japanese, but gradually the scope expanded to the accusation that atrocities were committed by the military and the government of Japan; the crimes were not accidental, or isolated; the organizational and premeditated involvement by the military became the core issue. As we pursue the issue of comfort stations we arrive at the larger thematic issue of 'war and sex'.

Sexual desire is human nature

History can be sometimes seen as nothing more than 'history of wars'. When one speaks of 'war' we picture aggression and violence. The sexual desires of men in wars is a dark but serious human issue. I will talk about my personal experience in the war, but let me first relate a story I once heard as a child. During the Russo-Japanese war, while struggling to attack Hill 203, General Mogi in an effort to raise the fighting spirit of the soldiers ordered many women from the brothels in the homeland to be sent over. As a child I heard this sort of real life story circulating from the adult world. When I was stationed at a small village near the border of Northern Manchuria and Russia, on the return path from training I saw huts with red pillows hanging, meaning they were brothels. Being a young soldier, I did not think much of it.

When I was appointed to be became a training officer for the South China regiment, I recall my commander making the following statement: "Since you (the trainees) are young, don't go near (the brothels). However, we (the commanding officers) are regular visitors (implying to me that they were frequently satisfying their sex needs there). You should not get close to these (brothels)." His comments surprised me at the time.

Afterwards I proceeded further into the battle zone. There was one Senior Commander of the Brigade who had recently arrived from the homeland. I recall hearing him reprimanding the veteran officers who fought through the Bay of Guangzhou and the Bias Bay "The Imperial Military officers should not be frequenting such filthy establishments".

As the veteran officers of battles dispersed I overheard one of them say "what is with that 'upstart' officer from the homeland? What is he saying, mouthing these condescending comments?" Several years afterwards, I became the deputy officer under the Senior Commander who came from the mainland. I seemed to have been favored by him , to my surprise he had a surprisingly large number of issues with women, despite his squeaky clean image; I recall painfully acknowledging how 'war' changes human beings.

I once saw a cute Japanese girl on a Guangzhou street corner while walking in the city. The officer who was with me jokingly said to me "Don't make a pass at that girl. She belongs to the Senior Commander'. I do not know whether this was true, but it could have been. In reality, repressed sexual desires posed realistic issues for all, from lower ranking soldiers, platoon commanders, regiment commanders, senior brigade commanders, to top military commanders.

Tragedy of absent comfort stations

To those who believe "comfort stations are unsanitary", or who condemn them outright, I would like to state a counter argument. When you have a young, healthy man fighting on the front line for an extended period of time, how should his natural sexual desires be controlled or sublimated? I would like to counter argue against those statements vilifying the existence of sexual desires, and advocating their sublimation. Once one acknowledges that sexual desires are natural, and these conflicts arising from them are inevitable, one can begin to properly resolve the issues. I sincerely believe that the military does not face up to the problem but they should think seriously about it.

In dealing with these situations at first, orders will be given to impose super-human self-discipline. This is quite noble, but in reality it just means the military or the government is doing nothing.

Everyone knows about the sexual rampage by the Soviet soldiers in Manchuria just before the end of the war. Also, although the US Occupation of Japan appears to have taken place very smoothly, there were many problems with the Japanese women. Furthermore, during the Vietnam War, there were tens of thousands of illegitimate orphans born to Vietnamese women as a result of unregulated sexual relations with the US soldiers, as previously mentioned. Something must be done about these problems, I believe.

In China, in those days, there were many brothels. In Guangzhou it was common practice to use these brothels, though they posed many problems of health, hygiene as well as espionage as often military secrets were leaked from these women. Also, it was unacceptable from the Chinese man's perspective to see their women servicing Japanese men. That is totally understandable from the counter perspective; there were some terror incidents-bombs being thrown into the brothels- resulting from this type of anger.

These problems exist. Furthermore, if a soldier rapes women of an occupied territory, it will bring the military control into question. Once I was involved in the pacification operation (public relation), but there was a case of rape perpetrated by one soldier; the wellbeing of public trust disappeared instantly.

Testimony and Diary Comfort Women Problem

Officer involved in historical battles Testifies

on the Comfort Women Issue **(Section 2)**

A recent photo of Mr. Inoue

Former Imperial Military,

Major Infantry Division

Hayashi Inoue

"Comfort women were treated well"

In retrospect, taking legally employed prostitutes and related workers from the mainland Japan to the towns near the battle front in foreign countries required extension of services and care. This meant military managed security and protection from dangers had to be provided to the personnel: provision of food, health and life necessities; some organization and control of the brothel business. Without these organizational and management support from the military the brothel business could not have been run. Furthermore, the business entailed a lot of risk, but offered big returns. This is due to the arrival of various military related commerce and businessmen who provisioned the advancing military troops. So, the brothels advanced side-by-side along with other businesses. However, there was never a case where women were gathered by the military, managed by the military ~~and~~ nor where the brothel business was run by the military. A civilian owner, or a ring leader of the brothel business group usually existed, who worked closely with the military, and managed the day to day business of the brothels. In hind sight there was nothing illegal or illicit about this structure. I still believe it is the most rational method.

Thus, I believe there should be more thought given to the problem and issues related to sex in the front lines. To think that soldiers do not have sexual appetite is, in itself, unnatural and makes the problem perverse. This is an episode I heard from a close comrade who was a vice commander of the regiment in Burma Offensive. When the post-battle cleanup security operation began, he was called by the senior commander. He was a serious and righteous person, and was asked how to treat the soldiers. To this question he responded "we should immediately try to check and maintain the health of the soldiers, uphold the military code strictly, and prepare them for the next battle". This is an exemplary response, I thought. But, to this response he was apparently scolded by the senior commander, "What are you saying. I am not referring to those things. Go and secure some women for them" by. This is not just a superficial statement but a statement that could come only from someone who has actually fought and survived the rigors of a major battle. Such was the true nature of the military comfort station.

Abductions could never have occurred

Recently there was a newspaper article which contained a testimony by a Korean comfort woman: "(She) lived in a village in North Korea, but suddenly Japanese police and military came, surrounded the village and abducted about 20 women. Then the women were placed in single rooms with Japanese soldiers on watch. Then women were eventually shipped to the front lines". This is a total fiction written with underlying malicious intent. I lived in Korea until I was 23 years old, and still maintain very close relationship with many of my childhood friends. Because I was born in Korea and

intend to have my remains buried in Korea after I die, I regard myself as someone who has deep knowledge of Korea; it is my absolute belief that such abduction never took place. After the Manchurian Incident the policies of appeasement and harmonizing with the Koreans were the highest priority of the Japanese Provisional Government in Korea. The Japanese Provisional Government wanted nothing more than building harmony and unifying Korea, and such an incident of abduction of women would have been unthinkable.

As mentioned in the beginning, my father also worked for the Japanese Provisional Government in various regions of Korea, responsible for what is now called cities and villages-where almost all of the mayors, high officials, and police officials were Koreans. Such kidnapping and abductions could never have occurred. Furthermore, the Central Office of the Japanese Provisional Government could never have condoned such acts. I cannot but feel some vindictive and conspiratorial intent in the events in recent times. I believe there were many cases of brothel owners and prostitution ring leaders abducting women. This refers not only to the Korean brothel operators but also the mainland Japanese brothel operators. There were many dark aspects to this kind of trade. However, now every transgression and violent abduction is blamed on the Japanese military, but the true nature of the problems lies with the brothel and prostitution ring operators, and not the military.

Koreans treated the Taiwanese condescendingly

As far as I could observe, the comfort women in the area near the battle front were treated with kindness. There were some who were hired near these towns close to the battle front. The business relationship was established between the military leaders and the chief of the local prostitution ring leader. The relationship I maintained was with a Korean prostitution ring leader who usually brought 7-8 prostitutes at a time. They were probably the remnant prostitutes from the regiments above ours. Usually during rest periods after a battle these allocations were brought to us. All of the soldiers were happy, treated the prostitutes like important guests, built homes for them, provided food and security for them. The Koreans, in those days, were legally considered Japanese, so it is possible that they may have taken advantage of their status and treated the Taiwanese with arrogant condescension. However, I have never personally heard or seen any complaints levied by the local staff of the comfort stations and comfort women about being treated arrogantly, violently, or unfairly by the soldiers. I can honestly attest to the fact they were treated with kindness.

For the prostitution ring leaders the business involved high degree of risks as well as returns. I was a vice commander in charge of managing the organization and managing of the comfort station relationship, with two military medical staff under my command who watched after health and sanitary aspects of the comfort stations. Once there was this incident.

In those days I was still young with a high sense of ethics and justice. I investigated the profit share of the ring leader

"Yesterday's enemy is today's friend", photo of Inoue standing behind an elderly British major offering a seat, early February 1942, with the British war prisoners)

and prostitutes and it turned out to be 60/40, 70/30, larger share taken by the ring leader. It may have been the '*modus operandi*' at the time, but it was very surprising to me, and I recall ordering the ring leader to reverse the profit ratio so as to make it more favorable to the prostitutes. I do not recall what subsequently happened, but I think the ratio was improved considerably.

Comfort station operation during the escape

This is another episode, but at the time near the end of the war our entire regiment decided to escape into the jungle and hide. During this escape a group of 7-8 comfort women who serviced us came to join the escape with us, without the ring leader. One prostitute whom I knew came and pleaded to be taken along, so we escaped into the jungle for a while without any sense of binding enforcement upon them. But in the evenings, in the hilly jungle, they serviced the soldiers out of their own will. At the time I was shocked to see the strength of human sexual vitality. Many of us were so fatigued but they continued to service the soldiers and escape with us, carrying large bundles of military currency, which eventually became worthless after the war. Recently I saw a photo of some comfort women who were captured by the enemy and miserably treated, with an excuse that they were captured along with escaping soldiers. I recall during major offensives, when the fighting became intense, the comfort women were brought to safe and protected areas at an earliest opportunity, far away from the battle lines along with the sick and injured. The soldiers wanted the comfort women well cared for.

Enforcement was nationwide

Besides the discrimination issues at the comfort station, there is an intense focus on the allegations of 'forceful abduction'. The comfort women were not 'forcefully abducted' but were gathered by ring leaders and came to us to take part in the prostitution business. In response the military provided security, health services, espionage prevention, enforcement of military code of conduct, and managed the operation. I absolutely do not think they singled out Korean women, violently abducted or mistreated them. About the time close to the end the war the prevailing government conditions within Japan became more and more dire and strict, with respect to for example, the military draft; however, the treatment was equal and the same for all the Japanese and Koreans, regardless of whether they came from ~~in~~ the mainland or Korea. In Taiwan there were the Takasago Troops, and in Okinawa, students fought in the front line. Within Japan all Japanese women and men were forced to work in military factories and mines, not just Koreans. The military induction drafts were the most severe enforcements, but the Koreans were granted pardons at the initial stages of implementations. So, in that sense there may have been reverse discriminations against the Japanese. Now the focus of the accusations is placed on the 'forcible' aspects, specifically with respect to the Koreans, but the severity of the force was upon all of Japan and its people; if it was a problem to the Korean comfort women then it was the same to the Japanese comfort women. The same can be said for the Chinese, who were the enemy to our country; there were many Chinese comfort women and they could have made the same allegations regarding the issues as by the Korean women. But, they did not. It is only recently that similar 'me too' accusations from the Philippines and other nations have begun to emerge, but their allegations lack scale and force. On the other hand, I think the Koreans are over-zealous in their allegations.

Evidence of several tens of thousands of comfort women

To complicate the issue further, the Japanese side has been timid and apologetic in response to the accusation. The former Prime Minister of Japan (Kiichi Miyazawa-editorial department remarked) ~~has~~ stated in his published conversations "I would like to apologize for the unbearable pain and suffering beyond expression that were inflicted" (to the Korean people). However, I believe such a gesture was unwarranted; after all, it was ~~a~~ business; I do not believe it was unbearable and to continuously apologize, according to a diplomatic protocol, giving into their demands for apologies, is actually a very dangerous act. In essence, only apologies are made in response to the demands, with no expression of counter arguments to explain our side of the debate. Consequently, if it is mishandled and left unchallenged, I fear the history of our nation will be forever tarnished. Accordingly, it is indeed gut-wrenching to see the people with media visibility and political clout- like the National Diet members-not stand up and speak out against these issues that could permanently taint the image of our nation. Also, I strongly feel there is a subversive element within our Japanese society who blindly sympathizes with the foreigners, agitating our society and the media. There should be more serious analysis and examination done of these issues for example, by a large respectable newspaper publisher.

The mass media, in recent times, have begun to quote the number of comfort women involved to be 200 to 300 thousands, but where do such colossal numbers come from? I recall one army corps is comprised of about 20 to 30 thousand soldiers, so the number of 200 to 300 thousands means it is equivalent to 10 army corps. These comfort women were supposedly servicing the Japanese soldiers, but there were no comfort women on the front line battle field. If one assumes only the soldiers who returned to the back lines to rest were being serviced, then just how were these hundreds of thousands of comfort women being employed?

Need to address seriously the issue of 'sex and the military'

What I would like to elucidate and emphasize with respect to the comfort women problem is that there is a serious lack of focus by the government and military on what to do about sexual appetite of healthy young men who are sacrificing their body and soul to serve the national interest. The same lack of focus applies to the general public. Because the American military had abundance of military funding and number of soldiers, they could rotate front line assignments frequently. As often depicted in the movies, the soldiers on their furloughs enjoyed a very relaxing life. There was no such luxury for the Japanese soldiers. My apologies for continuously mentioning my personal experiences, but from l938 when I entered the military service to 1946 when I returned from the war I never experienced a day of rest or furlough. There were periods when I returned to the back lines to receive training, but almost all the time was spent on the front lines. There were times when I had to spend 10 months straight in the jungles. That is an extremely long time. There were many like me. I ask, has the military ever addressed the issue of sexual needs of these soldiers?

I try to be disciplined and keep my emotional composure, as much as possible, but inevitably, from time to time, I cannot help feeling like exploding with anger. In a recent media report a question was raised whether the issue of Japanese comfort women had been raised by the United Nations Human Rights Committee. To this I must say, if the issues with Japanese comfort women are raised there should also be an issue raised from a global and historical perspective about the atrocities and sexual crimes against women committed by the soldiers of the rest of the world. I

find it odd that in a country like Japan, where 'free sex' slogan is embraced and sex related industries are allowed to thrive freely, the issue of 'sexual appetite' amongst those who are involved in the wars are never addressed. It is not too late for the Japanese government to deal with this issue with courage, head on. Of course I believe with 120% conviction that it is only proper to apologize where apology is due, but to apologize to all accusations without examination is wrong now and will be in the future. Concomitantly, I would like to request the Koreans to demonstrate more emotional composure regarding this subject.

EXHIBIT P

Nazi War Crimes & Japanese Imperial Government Records Interagency Working Group

Final Report to the United States Congress
April 2007

Nazi War Crimes and Japanese Imperial Government Records Interagency Working Group
Final Report to the United States Congress

Published April 2007

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"In a world of conflict, a world of victims and executioners, it is the job of thinking people not to be on the side of the executioners."

— Albert Camus

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Director of the Federal Bureau of Investigation

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Washington, DC 20408

April 2007

I am pleased to present to Congress, the Administration, and the American people the Final Report of the Nazi War Crimes and Japanese Imperial Government Records Interagency Working Group (IWG).

The IWG has now successfully completed the work mandated by the Nazi War Crimes Disclosure Act (P.L. 105-246) and the Japanese Imperial Government Disclosure Act (P.L. 106-567). Over 8.5 million pages of records related to Japanese and Nazi war crimes have been identified among Federal Government records and opened to the public, including certain types of records never before released, such as CIA operational files. The groundbreaking release of these records in no way threatens the nation's security. Rather, it has enhanced public confidence in government transparency.

In order to avoid further delay of the release of this report, members of the IWG did not seek unanimous agreement on a single "official" version of their declassification effort. Instead, this report presents the larger issues that arose while affording participants an opportunity to present personal or institutional perspectives on issues important to them and to those whom they represent. These appear in a separate chapter at the end of the report.

It is my sincere hope that this report will produce in Congress, the Administration, and the public a greater appreciation of the enormous human and financial resources required to declassify important U.S. Government records and make them publicly available in a timely manner. Moreover, I have no doubt that in the years ahead these records—and this report—will be used to the fullest capacity by researchers throughout the world.

ALLEN WEINSTEIN
Archivist of the United States

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Preface

As acting chair of the Nazi War Crimes and Japanese Imperial Government Records Interagency Working Group (IWG) for more than five years, and from the perspective of someone who spent more than 30 years inside the Federal Government promoting the declassification of records of permanent historical value—frequently without a positive outcome—I can vouch that the IWG has been tremendously successful.

The IWG leaves two legacies. First, the IWG has ensured that the public finally has access to the entirety of the operational files of the Office of Strategic Services (OSS), totaling 1.2 million pages; over 114,200 pages of CIA materials; over 435,000 pages from FBI files; 20,000 pages from Army Counterintelligence Corps files; and over 7 million additional pages of records. Historians, political scientists, journalists, novelists, students, and other researchers will use the records the IWG has brought to light for many decades to come.

As researchers pore over this extraordinary collection of important and interesting documents, will they rewrite the history of World War II, the Holocaust, or the Cold War? Probably not. But as the IWG historians have already shown in *U.S. Intelligence and the Nazis*, the details of major and lesser-known events will now be far richer, and as nuances of these events comes to light, historians will reinterpret and revise our previously accepted narratives.

The IWG's second legacy may ultimately be more important than its first: it has demonstrated that disaster does not befall America when intelligence agencies declassify old intelligence operations records. Before the Nazi War Crimes Disclosure Act (NWCDA), intelligence agencies, supported by the President, the Congress, and the Federal courts, routinely and consistently exempted files containing intelligence sources and methods from declassification, regardless of the age or actual sensitivity of the information.

One of the intelligence methods that remained protected is the fact that U.S. intelligence agencies have relationships with the intelligence agencies of allied or even non-allied nations. That intelligence agencies may cooperate across national borders is so obvious and well documented that merely stating it sounds sophomoric. However, U.S. intelligence agencies have routinely and consistently denied access to records that disclosed such a relationship, claiming that revealing such relationships will threaten or damage our ability to cooperate with foreign governments in the future.

The NWCDA pointedly disavowed such categorical exemptions, insisting instead that continued classification is justified only with evidence that the release of particular information would harm our national security today. This principle resulted in the release of a vast quantity of records. For example, for at least a quarter of a century, the National Archives and Records Administration (NARA) had sought to persuade the CIA to declassify and send to NARA the operational files of the OSS, which has been defunct since 1945. Over the years, the CIA delayed declassifying these records, largely on the grounds that disclosing these records could harm our intelligence relationship with foreign governments. The OSS records indeed reveal the vast interrelationship between British intelligence and the OSS: they contains tens of thousands of pages of intelligence first gathered by the British and shared with us, and the records document

the disagreements that are inevitable in such a close relationship. Nevertheless, it is preposterous to suggest that releasing OSS records under the NWCDA is a threat to our current working relationship with the United Kingdom. All OSS records could have been safely released decades ago.[1]

In this second legacy lies the balance of the IWG's work. Having worked in this arena for many years, I see as clearly as anyone does the significance of the single individual to the declassification process. Whether a request for declassification is answered with a yes or a no is essentially determined by whoever happens to make the disclosure or non-disclosure decisions. All of the laws and orders and regulations, all of the classification and declassification guides and guidance can be cited to support either answer this person cares to give. The individual in charge makes the call based on his or her experiences, biases, proclivities, knowledge, or ignorance, and for many years thereafter, all of us may be stuck with it.

For that reason, I hope that those individuals who sit in decision-making positions in the CIA, FBI, NSA, the Departments of State, Defense, Army, Navy, Air Force, or elsewhere recognize through the example of the IWG that government secrets, even intelligence secrets, are finite. To that end, I hope that those individuals recognize and take credit for the extraordinary contribution both to history and public accountability that their agencies have made through their work with the IWG. They have enhanced the public's knowledge without jeopardizing the national security of the United States or the ability of U.S. agencies to perform their important functions on behalf of our national security.

Let me be clear. The declassification lessons learned during the implementation of the Disclosure Acts *can* and *should* be applied to other intelligence records of similar age, and may even be applied to records of somewhat more recent vintage, no matter how sensitive the information within these records once was.

Whatever our successes, any enterprise as ambitious and untested as the one undertaken by the IWG is certain to have its disappointments. Among the disappointed will be those who had hoped for a voluminous release of U.S. records relating to Japanese war crimes. My understanding of the depth of feeling surrounding this issue changed dramatically in 2001, when I spoke to a meeting of the Global Alliance for Preserving the History of World War II in Asia. The Global Alliance is a federation of organizations and individuals from many different countries who share a single goal: to tell the world about the horrors that took place in Asia in conjunction with the occupation forces of the Japanese Imperial Government. Until my conversations during that meeting with many committed individuals from the United States, Canada, China, Korea, the Philippines, Japan, and elsewhere, I did not fully appreciate the concern of millions of survivors and their families, friends, and associates that this story is virtually untold. Many people around the world had hoped that the IWG would unearth records that would help them document Japanese atrocities.

To these people, I state unequivocally that the IWG was diligent and thorough in its search for relevant records about war crimes in Asia. The IWG uncovered and released few Asian theatre records because few such U.S. records remained classified. Unclassified records were not under IWG jurisdiction. To address any concerns that may arise relating to the dearth of documents released under the JIGDA, we refer readers to publications that document the capture, exploitation, and return of Japanese records from World War II.[2]

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1. Although the vast bulk of OSS records had already been released by the CIA to the National Archives, under the Disclosure Acts, it released 1.2 million pages of its most sensitive records, making virtually all OSS records available for researchers.

2. See, for example, Greg Bradsher, *World War II Japanese Records: History of their Capture, Exploitation, and Disposition* (forthcoming).

NARA archivists attest that the real problem with Japanese documents from World War II is not that they are few in number, but that they are largely underused by researchers. To encourage the full review of these records, the IWG published *Researching Japanese War Crimes: Introductory Essays*.[3] With this volume, we hope to expose the interested public to the breadth of previously declassified or unclassified records within the National Archives that bear on these subjects and that remain to be fully exploited by scholars, journalists, and other researchers. Further, *Researching Japanese War Crimes* outlines the current level and nature of English and Japanese language scholarship that pertains to the subject of Japanese Imperial Government war crimes. Finally, it discusses the reasons why the volume and specificity of records about Asian war crimes is much smaller than records of Nazi war crimes. The book is accompanied by a searchable CD-ROM of a 1,700-page finding aid to these NARA records, as well as a smaller finding aid to select Japanese War Crimes records. We are confident that records exist that will present in time a very clear picture of the scope and horrors of war crimes in Asia before and during World War II. We very much hope that *Researching Japanese War Crimes* will spur the research and scholarship necessary to achieve this end.

"The declassification lessons learned during the implementation of the Disclosure Acts ***can*** and ***should*** be applied to other intelligence records of similar age, and may even be applied to records of somewhat more recent vintage, no matter how sensitive the information within these records once was."

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The IWG leaves a vast product and several important legacies. These came about only because of our extreme good fortune in bringing together the talent, hard work, and commitment of so many individuals, many of whose names are not even specifically revealed in these pages. Each of those mentioned or unmentioned was a *sine qua non* to the accomplishments of the IWG.

First, we must recognize the extraordinary personal and professional contribution and commitment of Senator Mike DeWine and Member of Congress Carolyn Maloney. They were our congressional champions from day one and throughout our entire existence. They and their most competent and committed staff members were always there for the IWG. On behalf of the American people, we thank you.

What can I say about our three public members, Elizabeth Holtzman, Tom Baer, and Richard Ben-Veniste? Their commitment, their refusal to relent, their forthrightness are unlike anything I have ever experienced elsewhere. I can only hope that in their continuing pursuits they take a moment to step back and take pleasure in the fruits of their labor. Unlike IWG government members, who implemented the acts as an additional part of their regular duties, the three public members selflessly devoted hour upon hour of their lives to understanding the nuances of

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3. Edward Drea, et al., *Researching Japanese War Crimes: Introductory Essays* (Washington, DC: GPO) 2006.

these particular laws and striving to get each agency to implement the law fully. They consulted with various experts to obtain the information necessary to assist the agencies in implementing the laws, and lobbied the Hill to extend the life of the IWG so that agencies had every opportunity to comply with the Disclosure Acts. Their unwillingness to settle for anything less than our best effort shows a rare and inspiring leadership, and their tenacity is the reason IWG can claim its success.

None of the IWG's accomplishments would have been realized without the unwavering commitment within the government itself to a fundamental belief in the public's right to know shown by the government members of the IWG. This began with the leadership of the IWG's first chair, Michael Kurtz of the National Archives and Records Administration. By the time I came to the IWG, Dr. Kurtz had already assured through his devotion and hard work that the IWG would be successful. Dr. Kurtz and then-United States Archivist John Carlin extended their generosity throughout the life of the IWG. Archivist of the United States Allen Weinstein stepped in at a critical time and through his exemplary management ushered the IWG to its successful conclusion.

NARA's contributions to the success of the declassification effort are too numerous to name in detail. It must suffice to say that NARA devoted an inordinate amount of financial, human, and intellectual resources to the declassification effort. David Van Tassel, William Cunliffe, and the other IWG staff at NARA put their archival, records-management, and history expertise to work, and the American people have been vastly better served because of it. Among their myriad other duties, NARA staff makes the millions of pages of documents declassified by the IWG accessible to the public, and their work in this regard will continue long after other members of the IWG have turned their attention elsewhere.

The independent historians employed by the IWG, Richard Breitman, Norman Goda, Timothy Naftali, Robert Wolfe, and Daqing Yang, became *ex officio* members of the IWG, and their contributions pervade every aspect of our work. Their volume, *U.S. Intelligence and the Nazis*, published by the IWG, brilliantly exploits and exposes the records declassified and disclosed in the IWG's work and adds greatly to our public exposure.

The IWG's work and publications benefited immeasurably from the input of the IWG's Historical Advisory Panel, chaired by the extraordinary and irrepressible Gerhard Weinberg, Professor Emeritus of History at the University of North Carolina, Chapel Hill. The expertise in World War II history of these historians and authors, their experience with the records under and related to the IWG's jurisdiction, and their understanding of the agencies that hold these records made them invaluable to the IWG's declassification effort.

Eli M. Rosenbaum and his top aides at the Department of Justice/Office of Special Investigations also served the IWG far beyond their official responsibilities. OSI contributed resources, information, and ideas that became essential to agency declassification efforts.

As competing responsibilities at times overwhelmed my schedule, IWG Executive Director Larry Taylor became my alter ego. With so much talent and commitment invested in the IWG, Larry and I were simply the traffic cops. Larry's intelligence, patience, cool-headedness, steadfastness, and ability to work well with all types of personalities served this role perfectly and speaks volumes about the training and experience he received during his prior career in the Foreign Service. I am most indebted to him.

Kris Rusch brilliantly edited and managed the publication of the two IWG historical volumes and this report. Her forbearance with the demands of so many contributors is truly amazing. She was a great addition to our resources.

Science Applications International Corporation (SAIC) expertly managed the contract that supported the historians and numerous other contractors.

Finally, I ask the reader to turn to appendices 1 and 4 for the names of some of the others who enabled the IWG to successfully implement the

largest congressionally mandated declassification effort in history. I am immensely proud of the record we have achieved, and I thank most sincerely those who worked in the spotlight and those who worked behind the scenes to make it possible.

Steven Garfinkel
Acting Chair, January 2001–September 2006
Washington, April 2007

Abbreviations and Acronyms

ADA	Army Declassification Activity
CIA	Central Intelligence Agency
CIC	U.S. Army Counterintelligence Corps
CROWCASS	Central Registry of War Criminals and Security Suspects
DCI	Director of Central Intelligence
DOD	Department of Defense
DOJ	Department of Justice
DOJ/OSI	Department of Justice/Office of Special Investigations
FBI	Federal Bureau of Investigation
FOIA	Freedom of Information Act
FRB	Federal Reserve Board
GAO	Government Accounting Office (now Government Accountability Office)
HAP	Historical Advisory Panel
HERU	Historical and Executive Review Unit (FBI)
IMT	International Military Tribunal
INA	Immigration and Nationality Act of 1952
INS	Immigration and Naturalization Service
INSCOM	Intelligence and Security Command (Army)
IPS	Office of Information Programs and Services (State)
IRR	Investigative Records Repository (Army)
IWG	Nazi War Crimes and Japanese Imperial Government Records Interagency Working Group
JCS	Joint Chiefs of Staff
JIGDA	Japanese Imperial Government Disclosure Act of 2000
JIOA	Joint Intelligence Objectives Agency (Pentagon)
NARA	National Archives and Records Administration
NASA	National Aeronautics and Space Administration
NCIS	Naval Criminal Investigation Service
NSC	National Security Council
NSA	National Security Agency
NWCDA	Nazi War Crimes Disclosure Act of 1998
OGC	Office of General Counsel (CIA)
OMGUS	Office of Military Government–United States
OSS	Office of Strategic Services
PERSCOM	U.S. Army Total Personnel Command
PIDB	Public Interest Declassification Board
SAS	State Archiving System (State)
SCAP	Supreme Commander of the Allied Powers
TGC	Tripartite Gold Commission
UNWCC	United Nations War Crimes Commission
USCIS	U.S. Citizenship and Immigration Services

1. Introduction

From the 1960s through the 1990s, the U.S. Government declassified the majority of its security-classified records relating to World War II, providing scholars and researchers a vast trove of information on the war and its aftermath. Yet, nearly 60 years after the war, millions of pages of wartime and postwar records remained classified. Many of these records contained information related to war crimes and war criminals, information that had been sought over the years by Congress, government prosecutors, historians, and victims of war crimes. In 1998, the Nazi War Crimes and Japanese Imperial Government Records Interagency Working Group (IWG), at the behest of Congress, launched what became the largest congressionally mandated, single-subject declassification effort in history. As a result of this landmark effort, over 8.5 million pages of records have been opened to the public under the Nazi War Crimes Disclosure Act and the Japanese Imperial Government Disclosure Act.[4] While these newly released records do not command a dramatic revision of the history of World War II and the postwar period, they do provide important historical detail that will help us to better understand the Holocaust and other war crimes as well as the U.S. Government's involvement with war criminals during the Cold War.

In October 1998, President Clinton signed into law the Nazi War Crimes Disclosure Act (NWCDA), which required the U.S. Government to locate, declassify, and release in their entirety, with few exceptions, remaining classified records about war crimes committed by Nazi Germany and its allies. The act required the President to establish an Interagency Working Group to oversee its implementation. The IWG consists of high-level officials of seven key Executive Branch agencies (who designated representatives), and three public members appointed by the President (see figure 1). The act charged the IWG to "take such actions as necessary to expedite the release of such records to the public" and to report the outcome to Congress. Although the NWCDA covered records related to all of Germany's allies, the Japanese Imperial Government Disclosure Act of 2000 (JIGDA) made explicit the Government's responsibility to open its remaining classified records on Japanese

Figure 1. IWG Participants

Chair

Allen Weinstein, Archivist of the United States

Public Members

Thomas H. Baer, Los Angeles, New York, 1999-2007
Richard Ben-Veniste, Washington, DC, 1999-2007
Elizabeth Holtzman, New York, 1999-2007

Agency Participants

Stewart Aly, Office of the Secretary of Defense
John Collingwood, Federal Bureau of Investigation
David Holmes, Central Intelligence Agency
William Leary, National Security Council
David Marwell, U.S. Holocaust Memorial Museum
Eli Rosenbaum, Department of Justice, Office of Special Investigations
William Slany, Department of State

4. See appendix 2 for the full text of the NWCDA (P.L. 105-246), and appendix 3 for the full text of the JIGDA (P.L. 106-567).

war crimes. The JIGDA provided for a fourth public member, who was not appointed.

In January 2004, Congress extended the JIGDA for one year to provide additional time for the CIA to comply with the law with respect to both Japanese and Nazi war crimes records. In February 2005, the Congress again extended the act until 2007 at the urging of the IWG public members, who viewed the task as yet unfinished primarily because of the reluctance of the CIA to release all its records on suspect individuals used as intelligence assets during the Cold War.

Congressional sponsors of the NWCDA explicitly stated their desire to strike a balance among several fundamental public interests affected by the law, including the public's right to know, an individual's right to privacy, and the Government's responsibility to protect national security. The members of the IWG represented this diversity of interests, and naturally, on occasion, these interests conflicted. For example, citing the NWCDA's "presumption that the public interest … will be served by the disclosure and release of the records," the IWG strove for the release of pertinent records that were not demonstrably covered by national security exemptions.[5] In some cases, this interpretation of the act conflicted with certain agency positions, such as when an intelligence agency felt that declassification would jeopardize its sources and methods. Similarly, the NWCDA excluded records pertaining to the investigations and prosecutions of Nazi criminals by the Department of Justice/Office of Special Investigations (DOJ/OSI) in order to protect OSI's ongoing work. Some IWG members argued that a rigid application of this provision was unduly restrictive. These and other challenges faced by the IWG are discussed in this report.

No agency received appropriated funds to implement the acts. The DOJ/OSI voluntarily transferred $400,000 to the National Archives and Records Administration (NARA) to assist the IWG with startup costs, and later gave an additional $30,000 for other expenditures. The IWG received no independent funding for its work, which was supported by NARA at the cost of approximately $12 million. IWG public members were not compensated for their participation. In all, the IWG estimates that the implementation of the two Disclosure Acts cost taxpayers $30 million.[6]

This report details how, despite a lack of funding, a shortage of personnel, the events of 9/11, and challenges inherent in the Disclosure Acts themselves, the efforts of the IWG resulted in a significant achievement: the declassification and release to the public of over 8.5 million pages of World War II and postwar records. Chapter 2 describes the nature of U.S. war crimes records and explains why there was a call for further disclosure. Chapter 3 surveys the political context that supported passage of the acts. Chapter 4 introduces the roles of the IWG, its staff, and its consultants, and describes the steps the IWG took to implement the Disclosure Acts. We also cover the oversight process here. Chapter 5 describes each major agency's course of action in complying with the statutes, the numbers of pages each declassified, and the associated costs. In chapter 6, we discuss public policy issues and offer recommendations to Congress. The final chapter presents individual perspectives of IWG members regarding this unprecedented declassification process.

This report is concerned with the process of implementing the Disclosure Acts and with the effectiveness of the acts, including the extent to which the acts resulted in the release of relevant records, the extent to which records were not released, and why. The report does not attempt to assess the historical value of the documentation covered by the acts; nor does it describe or present historical analyses or interpretations of declassified documentation. These interpretive tasks are appropriately left to historians and others with the expertise to study the raw sources made

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5. P.L. 105-246 Sec 3(b)(3)(A), 112 stat 1859.

6. IWG's costs are discussed in chapter 4. For individual agency costs, see chapter 5.

available by the Disclosure Acts, a task that was only begun with respect to the records related to Germany with the release of several reports by independent historians employed by the IWG, and by the IWG's 2004 publication of the book *U.S. Intelligence and the Nazis*.[7] The records related to Japanese war crimes required a different sort of interpretive task to account for the relative paucity of records remaining classified and yet to show that a wealth of documentation exists relating to the subject. To address these issues, the IWG published *Researching Japanese War Crimes: Introductory Essays*.[8] This book was accompanied by a CD containing two finding aids to these records: *Japanese War Crimes and Related Topics* and *Select Documents on Japanese War Crimes*.[9]

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7. Richard Breitman et al., *U.S. Intelligence and the Nazis* (Washington, DC: National Archives Trust Fund Board for the Nazi War Crimes and Japanese Imperial Government Records Interagency Working Group, 2004).
8. Edward Drea, et al., *Researching Japanese War Crimes: Introductory Essays* (Washington, DC: National Archives for the Nazi War Crimes and Japanese Imperial Government Records Interagency Working Group, 2006).
9. Greg Bradsher, *Japanese War Crimes and Related Topics: A Guide to Records in the National Archives* (Washington, DC: National Archives and Records Administration, 2006), compact disc; and William H. Cunliffe, *Select Documents on Japanese War Crimes and Japanese Biological Warfare, 1934-2006* (Washington, DC: National Archives and Records Administration, 2006), compact disc.

2. The Nature of War Crimes Records

As World War II drew to a close, the United States Government faced an array of unprecedented global responsibilities, including replacing the former political structures of Germany and Japan and rebuilding the economies of Europe and Asia while administering occupied areas and sorting out diplomatic ties with Allies, former enemies, and new adversaries. Amid this confusion and turmoil, the United States and its Allies sought to identify, apprehend, and prosecute war criminals. At the same time that the United States was helping to prosecute war criminals at Nuremberg, in Tokyo, and elsewhere, U.S. intelligence agencies protected and employed some Nazis and collaborators for their purported knowledge of the Soviet Union and other Communist states. In the name of securing a staunch ally against Communism in Asia and in return for information on biological warfare, the United States was lenient with important Japanese war criminals. Some features of U.S. relationships with war criminals during this period have remained murky for almost 60 years.

The U.S. Government generated enormous quantities of records in its wartime and postwar activities. Many of these records were never classified or were declassified in the decades after the war. Yet millions of pages of records relevant to war criminals or containing war crimes information, principally intelligence records, remained security classified, scattered among the vast quantities of files stored in the National Archives and individual Federal agencies.

Previously Available War Crimes Records

The bulk of U.S. Government records directly related to war crimes are those that were created during the process of apprehending, investigating, and prosecuting suspected war criminals. The National Archives houses several major record groups related to the war crimes prosecutions of Nazis, Japanese, and Axis allies (see figure 2). The core records alone constitute 7,500 cubic feet of war crimes documentation, or just under 19 million pages. In addition, the National Archives holds microfilm of captured German records and related items that amount to 6,000 cubic feet (over 65 million images) of records, which are a primary source for evidence of war crimes and personnel records of war criminals. Though these records have long been open to the public, because of their sheer volume they have not yet been fully exploited by researchers. The following sections offer a few examples of the war crimes-related records that U.S. Government agencies created, collected, and maintained.

Nazi War Crimes Records

In 1943, the Allies established the United Nations War Crimes Commission (UNWCC) to investigate war crimes committed by the Axis powers and to advise the Allied governments on the legal processes for bringing war criminals to justice. To assist the UNWCC and Allied governments in finding suspected war criminals in Europe, the Supreme Headquarters Allied Expeditionary Force established a Central Registry of War Criminals and Security Suspects (CROWCASS) in the spring of 1945. CROWCASS collected information on individuals wanted on war crimes charges, and it published lists of suspects for use by the UNWCC and Allied countries. In its three years of operation, CROWCASS issued or processed over 200,000 reports on suspects

Figure 2. Major record series of previously opened war-crimes-related documents

Record Group	Record Series Title	Approximate number of pages	Approximate number of motion pictures, photos, and artifacts
153	Records of the War Crimes Branch of the Office of the Judge Advocate General (Army), Records relating to World War II war crimes	2,782,500	799
220	Records of the Clemency and Parole Board for War Criminals	42,500	
242	National Archives Collection of Foreign Records Seized	65,000,000	395,000
260	Records of the U.S. Occupation Headquarters, World War II, Records of OMGUS Organizations Concerned with War Crimes Trials 1945-49	162,500	
238	National Archives Collection of World War II War Crimes Records, including Records of the Office of the United States Commissioner, United Nations War Crimes Commission	8,745,000	22,378
331	Records of Allied Operational and Occupation Headquarters, World War II, Records of the SCAP Legal Section 1945-52, records of other general and special staff sections, Records of the SCAP International Prosecution Section	5,647,500	
466	Records of the U.S. High Commissioner for Germany, Records of the U.S. Element of the Extradition Board 1945-55	237,500	
549	Records of American participation in war crimes proceedings in Europe, and Records of the War Crimes Branch, U.S. Army, Europe, 1942-57	1,017,500	
	Total	83,635,000	418,177

NOTE: A complete list of National Archives record groups that contain previously opened war crimes related documents is found in appendix 5. The National Archives estimates that it holds 120 million previously declassified pages on the subject.

for use by investigators, and it published voluminous lists of people sought for crimes against humanity.[10]

The U.S. Army Counterintelligence Corps (CIC) bore the greatest responsibility for identifying and apprehending these suspects in the U.S. occupation zones. The Army CIC captured some 120,000 Germans listed for automatic arrest, including SS, Gestapo, and Nazi Party leaders.[11]

Immediately at the end of World War II in Germany, the Allies established the International Military Tribunal (IMT) at Nuremberg, which rendered its judgment on 21 top officials and six organizations of the Third Reich on October 1, 1946. The United States later tried 177 major criminals in subsequent proceedings at Nuremberg. In addition, the four-power Control Council for Germany authorized each of the Allied powers to hold trials in its zone of occupation. The United States tried 1,700 German and other Axis nationals at Dachau for concentration camp crimes, and it extradited numerous suspects to

10. United Nations War Crimes Commission, *History of the UNWCC and the Development of the Laws of War* (London: His Majesty's Stationery Office, 1948), 379. UNWCC records are held by the United Nations in New York and are not subject to the Disclosure Acts, but Commission records appear throughout U.S. holdings of war crimes and diplomatic records. The United Nations opened its UNWCC files to researchers in 1987 in the wake of disclosure that one UNWCC file pertained to former UN Secretary Kurt Waldheim.

11. Ian Sayer and Douglass Botting, *America's Secret Army* (London: Grafton Books, 1989), 294.

other countries to stand trial.[12] These proceedings created voluminous records.

The Allies were assisted in the prosecution of war criminals by the availability of a large body of captured records, which included records of the Nazi party and the SS.[13] Most of these records were microfilmed before the originals were returned to Germany and Italy in the 1950s and 1960s. The availability of the microfilm at the National Archives aided the IWG in developing information on individual war criminals.

Japanese War Crimes Records

As with the Nazi trials, each of the Japanese war crimes trials occasioned the collection and preparation of large bodies of records. Prosecutors combed captured and American records, secured affidavits and statements, and produced court submissions and background materials that resulted in a significant and voluminous war crimes archive.

The International Military Tribunal for the Far East (known as the Tokyo War Crimes Tribunal) began in May 1946. There were 28 Class A defendants from a cross-section of senior Japanese officials, including generals, admirals, career diplomats, and bureaucrats. Most prominent among them were Hideki Tojo, Prime Minister of Japan through most of the war, and wartime foreign ministers Koki Hirota (a former premier), Mamoru Shigemitsu, and Shigenori Togo. Class A defendants were charged with three categories of offenses: conspiracy to commit aggression, aggression, and conventional war crimes. The prosecution produced more than 400 witnesses, almost 800 witness affidavits, and more than 4,000 other documents.[14] Additional tribunals that sat outside of Tokyo judged over 5,500 individuals in more than 2,200 trials. These Class B and C war criminals were charged with committing atrocities during battle, during occupation, or against prisoners of war. Some of these trials were held in Yokohama and others were convened throughout the former theater of war.[15]

General MacArthur's hastily organized trials in Manila, the first war crimes trials in the Far East, found Japanese generals Tomoyuki Yamashita and Masaharu Homma guilty, and both were executed. In Shanghai, American tribunals were also held for Japanese soldiers who participated in the trial and execution of American pilots under the "Enemy Airmen's Act," promulgated by the Japanese after the Doolittle raid on Japan in April 1942, as well as for personnel at POW camps in China who abused prisoners. The U.S. Navy held trials for war crimes committed in the Pacific. Many of these proceedings involved close cooperation with British, Australian, and Dutch authorities. Once the trial records had served their administrative and legal purposes, they were transferred to the National Archives.[16]

The records of other nations' war crimes trials are not subject to the Disclosure Acts because they were never in the possession of the U.S. Government. For instance, the Nationalist Chinese Government's trials

12. Report of the Deputy Judge Advocate for War Crimes, June 1955–July 1948, National Archives, RG 549, Records of the U.S. Army Europe, Judge Advocate Division, War Crimes Branch General Administrative Records, 1942-1947, Box 13, 290/59/17/3.

13. Consistent with U.S. military usage, the term "captured" includes confiscated, seized, or otherwise acquired records, whether taken into U.S. custody as a direct result of battle or during peace.

14. Solis, Horwitz, "The Tokyo Trial," *International Conciliation*, no. 465 (Nov. 1950): 542.

15. Philip R. Piccigallo, *The Japanese on Trial: Allied War Crimes Operations in the East, 1945-1951* (Austin: University of Texas Press, 1979), xiv.

16. These records may be found primarily in Record Group 125, Records of the Office of the Judge Advocate General (Navy); Record Group 238, National Archives Collection of World War II War Crimes Records; and Record Group 331, Records of Allied Operational and Occupation Headquarters, World War II.

of Japanese war criminals held in Nanjing did not result in American records despite the heinousness and notoriety of the war crimes committed there by the Japanese.

In its canvass of records possibly useful for war crimes information, the IWG looked closely at the history and disposition of a large body of captured Japanese records. The IWG was concerned that valuable war crimes information may have been lost with the return of the records to Japan in the late 1950s and early 1960s.

Many captured Japanese records were used in court exhibits and otherwise integrated into the war crimes records in the United States. Army Judge Advocate General records relating to the Far East trials consist of more than 400,000 pages. Most of these records were never security classified, and those that were had been declassified by 1982. Supreme Commander of the Allied Powers (SCAP) Legal Section records involving war crimes trials throughout the Pacific region comprise some 1.5 million pages of documentation and include many captured Japanese records. Most of these records were also never security classified, and the rest were declassified by 1982. In addition, the military had collected and shipped to the United States for intelligence exploitation over 7,000 cubic feet of captured records that eventually came under the control of the CIA. After the CIA and other interested agencies finished exploiting these records, they were returned to Japan beginning in 1958. The return was consistent with international practice and carried out in the name of normalization of diplomatic relations. The IWG staff inquired closely into the matter to determine whether war crimes records had indeed been returned. The staff found no evidence that the records were war-crimes related; instead, they consisted largely of diplomatic records from the 1920s and earlier, technical records related to military matters, and naval oceanographic records.

The National Archives staff produced three documents concerning declassified Japanese war crimes documents. The first is a 1,700-page archival guide, or finding aid, to Japanese World War II war crimes records in NARA holdings, including newly released records. The second is a finding aid focused on Japanese biological warfare. The third, *Researching Japanese War Crimes: Introductory Essays*, is a book undertaken in response to concern about the alleged loss of war crimes information and the underuse of available documentation. It addresses starting points for engaging in war crimes research and also contains the first full explanation of how captured documents were thoroughly exploited for military and intelligence uses as well as their use for war crimes investigations.[17]

Intelligence Records and Foreign Government Information

By 1998, when the first Disclosure Act was enacted, the majority of war crimes records that still remained classified were related to intelligence. For the most part, U.S. intelligence agencies did not create records in order to document war crimes. Though intelligence records may have been used in war crimes prosecutions, their primary purpose was to help win the war and, afterward, to fight the Cold War. By 1946, U.S. intelligence organizations had begun to focus more on the Soviet Union and other Communist regimes, in some cases using former Nazis who claimed to be experts on numerous subjects, none of which were associated with war criminality. In the years since then, the CIA and other intelligence agencies have been reluctant to release many files from this period for fear of endangering the sources named in them, compromising methods, or hindering the recruitment of new sources.

Some still-classified information originated with foreign governments, who shared it with the United States. Protective of longstanding cooperative relationships with British intelligence agencies, U.S. in-

17. Edward Drea, et al., 2006.

telligence agencies often automatically retained classification of information that was received through that relationship or that revealed information about the nature of that relationship. In fact, as declassification efforts proceeded from the end of the war through the late 1990s, the CIA (successor to the OSS), and to some extent the Army, automatically withheld from release, without substantive review, most information of British origin, and in lesser volume, some information of French, Canadian, and other foreign origin. Until the Disclosure Acts were implemented, there was not sufficient motivation for these agencies to engage in substantive declassification review of these records rather than reflexively closing them under sources and methods or foreign government information restrictions.

Compared with the number of remaining classified records related to Germany, there were far fewer still-classified records about Japan for two reasons. First, the U.S. military—not the OSS—had greater control of most of the Pacific Theater records and could release these documents to the public with more ease than the OSS, which had to consider relationships with foreign governments and intelligence agency policies. As a result, most of these Japan-related records, including wartime intelligence records, were routinely declassified in the 1970s and 1980s by the Army, Navy, and other Department of Defense entities in the course of their regular review programs. Second, there were few still-classified postwar records relating to Japanese war criminals because there was not a continuing hunt for Japanese perpetrators as there was for Nazis, so the CIC, CIA, and FBI did not create dossiers on large numbers of Japanese individuals as possible intelligence assets, suspected spies, or as prospective immigrants. Therefore, by the time the IWG began its work, there were relatively few postwar records related to Japanese war criminals that remained classified. This leaves aside the cases of former Japanese war criminals who, after being convicted and serving their sentences, went on to become high government officials. Releasing these files was problematic for the intelligence agencies, but, finally, was a notable success for the IWG.

3. Background of the Acts

One of the IWG's aims was to uncover documentation that would shed light on the extent to which the U.S. Government had knowingly used and protected war criminals for intelligence purposes. Increasing public concern over the U.S. Government's involvement with WWII Nazi war criminals, combined with growing interest in several related issues such as looted assets, Japanese war crimes, and Nazi war criminals who had become U.S. citizens, reached critical mass in the late 1990s, resulting in passage of the Disclosure Acts. These issues are discussed briefly below.

U.S. Government Use of Axis Criminals and their Collaborators

In May 1945, the Joint Chiefs of Staff (JCS) issued a directive to General Dwight Eisenhower, commander of U.S. forces in Europe, to arrest and hold all war criminals—with some exceptions. The JCS asked Eisenhower to use his "discretion" to exempt war criminals who could be used "for intelligence and other military reasons" (see figure 3).[18]

As early as the summer of 1945, U.S. intelligence agencies in occupied Germany and Austria began using Germans and individuals from other Axis nations as sources of information. Initially, the United States employed these individuals, including former German military and intelligence personnel, to search for people subject to automatic arrest or to counter suspected Nazi resistance movements against the Allied occupation. The Army CIC and the OSS were both active in these early postwar intelligence operations.

With tensions mounting between East and West, each side soon began to use former enemy personnel to learn more about the other. The U.S. Army, for example, extensively interrogated German military personnel who had served on the eastern front. The Army's intelligence component, G-2, sought information about Soviet military organization, equipment, tactics, and combat effectiveness. Eventually, the Army provided financing to General Reinhard Gehlen, the former chief of the Fremde Heere Ost (Foreign Armies–East), the German Army Staff responsible for intelligence on the USSR during World War II. To fulfill his responsibilities, Gehlen employed former German officers and others who had operated in Eastern Europe to form a large German intelligence service known as the Gehlen Organization, the predecessor of the Bundesnachrichtendienst (BND), the Federal (West German) Intelligence Service.[19]

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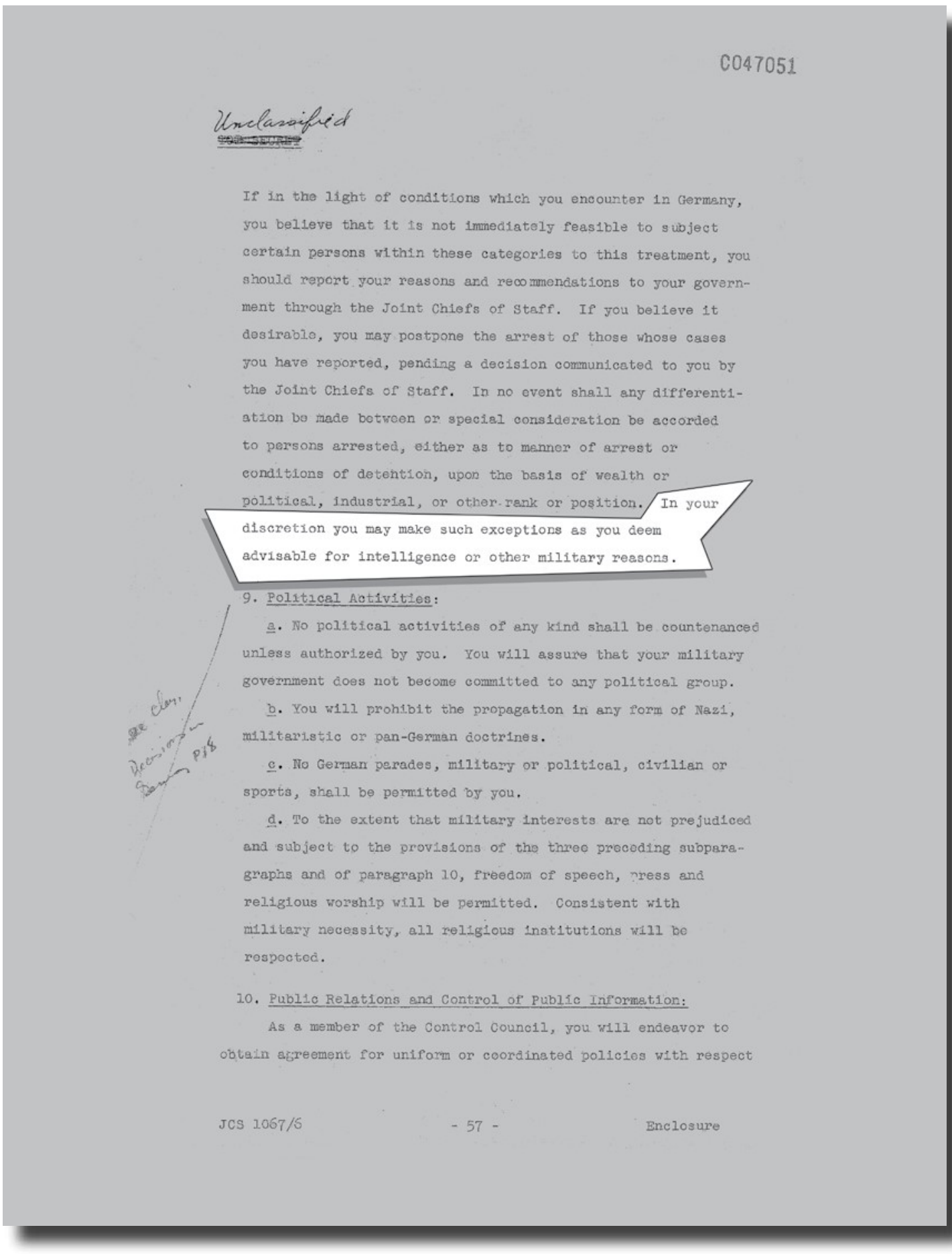
18. Direction to the Commander-in-Chief of the United States Forces of Occupation Regarding the Military Government of Germany, May 10, 1945, reprinted in United States Department of State, *Documents on Germany*, Department of State Publication 9446 (Washington, DC: n.d.), 21.

19. Information on the CIA's release of files related to members of the Gehlen organization is treated in the CIA section of chapter 5. See also Timothy J. Naftali, "Reinhard Gehlen and the United States," *U.S. Intelligence and the Nazis* (Washington, DC: National Archives Trust Fund for the Nazi War Crimes and Japanese Imperial Government Records Interagency Working Group, 2004).

Figure 3. JCS directives to General Dwight Eisenhower



C047051

Unclassified

If in the light of conditions which you encounter in Germany, you believe that it is not immediately feasible to subject certain persons within these categories to this treatment, you should report your reasons and recommendations to your government through the Joint Chiefs of Staff. If you believe it desirable, you may postpone the arrest of those whose cases you have reported, pending a decision communicated to you by the Joint Chiefs of Staff. In no event shall any differentiation be made between or special consideration be accorded to persons arrested, either as to manner of arrest or conditions of detention, upon the basis of wealth or political, industrial, or other rank or position. In your discretion you may make such exceptions as you deem advisable for intelligence or other military reasons.

9. Political Activities:

a. No political activities of any kind shall be countenanced unless authorized by you. You will assure that your military government does not become committed to any political group.

b. You will prohibit the propagation in any form of Nazi, militaristic or pan-German doctrines.

c. No German parades, military or political, civilian or sports, shall be permitted by you.

d. To the extent that military interests are not prejudiced and subject to the provisions of the three preceding subparagraphs and of paragraph 10, freedom of speech, press and religious worship will be permitted. Consistent with military necessity, all religious institutions will be respected.

10. Public Relations and Control of Public Information:

As a member of the Control Council, you will endeavor to obtain agreement for uniform or coordinated policies with respect

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Source: RG 218, Entry 2, Box 71, Folder "CCS 383.21 Germany (2-22-44) sec. 7," Direction to the Commander-in-Chief of the United States Forces of Occupation Regarding the Military Government of Germany, May 10, 1945.

By the late 1940s, the Army CIC had established many agent networks within the occupation zones and extending into Eastern Europe. These networks employed numerous agents, some of whom had tainted wartime backgrounds. The Army CIC in Germany, for example, recruited and sheltered Klaus Barbie, "The Butcher of Lyon," an SS officer later convicted for his role in rounding up Jews in France and for brutally suppressing the French Resistance. The U.S. Army smuggled Barbie out of Europe through a "ratline" of secret escape routes, enabling him to escape justice for more than 30 years in his South American hideouts.[20] As the facts in the Barbie case became known in the 1980s, the question naturally arose as to whether the United States gave others the same protective treatment and whether there was evidence of such protection in U.S. Government records.

The CIA, created in September 1947, inherited intelligence operations—which later included the Gehlen Organization—and agents in Europe from the U.S. Army and the organizations that had succeeded the OSS after it was disbanded in October 1945. The demands of American policymakers for intelligence on the Soviet Union, coupled with a significant expansion of the CIA's worldwide missions, led to rapid acceleration of agent recruitment after 1948. The late 1940s and early 1950s, particularly after the outbreak of the Korean War, saw a major expansion of CIA intelligence projects targeting the Soviet Union. These projects used a number of people in Europe who had been Nazis or who had collaborated with them only a few years earlier.

In the act establishing the CIA, Congress authorized the Director of Central Intelligence, with agreement from the Attorney General and the Commissioner of Immigration, to allow up to a hundred people a year to enter the United States if their entry was determined to be in "the interest of national security or essential to the furtherance of the national security mission."[21] This so-called Hundred Persons Act was used primarily to resettle defectors into the United States to save them from kidnapping or even murder at the hands of the Soviet intelligence service. Many of these people could not be admitted through regular immigration procedures because immigration quotas were limited or because U.S. immigration laws prohibited the entry of aliens who were, or had been, Communist party members or Nazis. However, under the Hundred Persons Act, some people were enabled to enter the United States "without regard to their inadmissibility under immigration or any other laws or regulations."

While the OSS and its successors used former Nazis and their collaborators for intelligence purposes, the War Department began a major effort to bring German scientists and engineers to the United States. This effort served two purposes: to obtain the benefits of German scientific research and technological advances, and to deny those benefits to the Soviets, who were likewise seeking to procure the services of German scientists and engineers. In July 1945, the Joint Chiefs of Staff specifically authorized an effort to exploit "chosen rare minds whose continuing intellectual productivity we wish to use" under the top-secret project code named Overcast.[22] The JCS directed that up to 350 specialists, mainly from Germany and Austria, should be brought immediately to the United States.[23] The first such specialist arrived in the United

20. See *Klaus Barbie and the United States Government: A Report to the Attorney General of the United States* (Washington, DC: GPO, August 1983). Available at www.usdoj.gov/criminal/publicdocs/11-1prior/crm15.pdf.
21. Central Intelligence Agency Act of 1949 Section 8, (63 Stat. 208), June 20, 1949.
22. Memorandum for the Commanding General, Army Ground Forces, 6 July 1945, NA, RG 319, NM-3, Entry 47B, 400.112 (Research) 14 May 1945, Folder–Implem. Gen. Policy, Tab 1 (pages 16-18), Exploitation of German Specialists in Science and Technology in the United States, n.d., 270/05/04/01, Box 991.
23. Clarence Lasby, *Project Paperclip* (New York: Atheneum, 1975) 89, citing cable, G-2, War Department to Commanding General U.S. Forces European Theater, July 25, 1945.

States in 1945, while the war with Japan was still being waged.

By 1946, the Pentagon's Joint Intelligence Objectives Agency (JIOA) had begun pushing for a revised and larger program of recruiting German and Austrian scientists and technicians. The JIOA wanted 1,000 former enemy scientists, and it sought authority to grant them American citizenship. The JIOA needed Presidential authority because many of the German scientists and technicians had been members of Nazi organizations; missile expert Wernher von Braun, for instance, had been an SS officer. President Truman authorized the JIOA's plan in September 1946, but insisted that only "nominal participants" in the Nazi Party, not "active supporters," be permitted to participate in the program, which took the code name Project Paperclip. However, Truman advised that specialists who were awarded "position or honors" by the Nazi regime for "scientific or technical ability" should not be automatically disqualified from the program.[24] It was left to a panel consisting of representatives of the Departments of Justice and State to rule on each specialist whom the JIOA wanted to bring to the United States. In early 1947, this panel began reviewing dossiers prepared in Germany by the Office of Military Government—United States (OMGUS). The dossiers were based on Army CIC investigations. If the candidate had been classified as an actual or potential threat to the security of the United States, there was little chance of the specialist's receiving permission to immigrate to the United States. Some of the scientists were identified as such on the basis of Nazi pasts, and the review panel accordingly rejected the Pentagon's request that those individuals be permitted to immigrate. Consequently, the JIOA director wired the director of intelligence at the U.S. European Command and requested that the Army CIC revise some security reports so that certain scientists could participate in Project Paperclip (figure 4).

Between 1945 and 1955, 765 scientists, engineers, and technicians were brought to the United States under Overcast, Paperclip, and similar programs. Author Clarence Lasby estimates that up to 80 percent of the immigrant specialists were former Nazi Party members. By the late-1980s, three of them had left the country for various reasons relating to their wartime activities.[25] The most well known of these was Arthur Rudolph. During World War II, Rudolph served as one of the chief production engineers for the German V-2 missile project. Rudolph went to work for the War Department, where he was ultimately placed in charge of building the Pershing missile. He transferred to NASA after its creation in 1958, serving as the project director of the Saturn V rocket program. He left the United States in 1984 and surrendered his U.S. citizenship following OSI's discovery of his role at Mittelwerk, the underground V-2 missile factory in Nordhausen, where numerous concentration camp inmates brought in to perform slave labor were worked to death or killed outright.[26]

Searching for Axis Criminals in the United States

While a few war criminals and collaborators entered the United States with the assistance of the United States Government, many more are known to have come to this country without formal intercession. The Displaced Persons Act of 1948 authorized the im-

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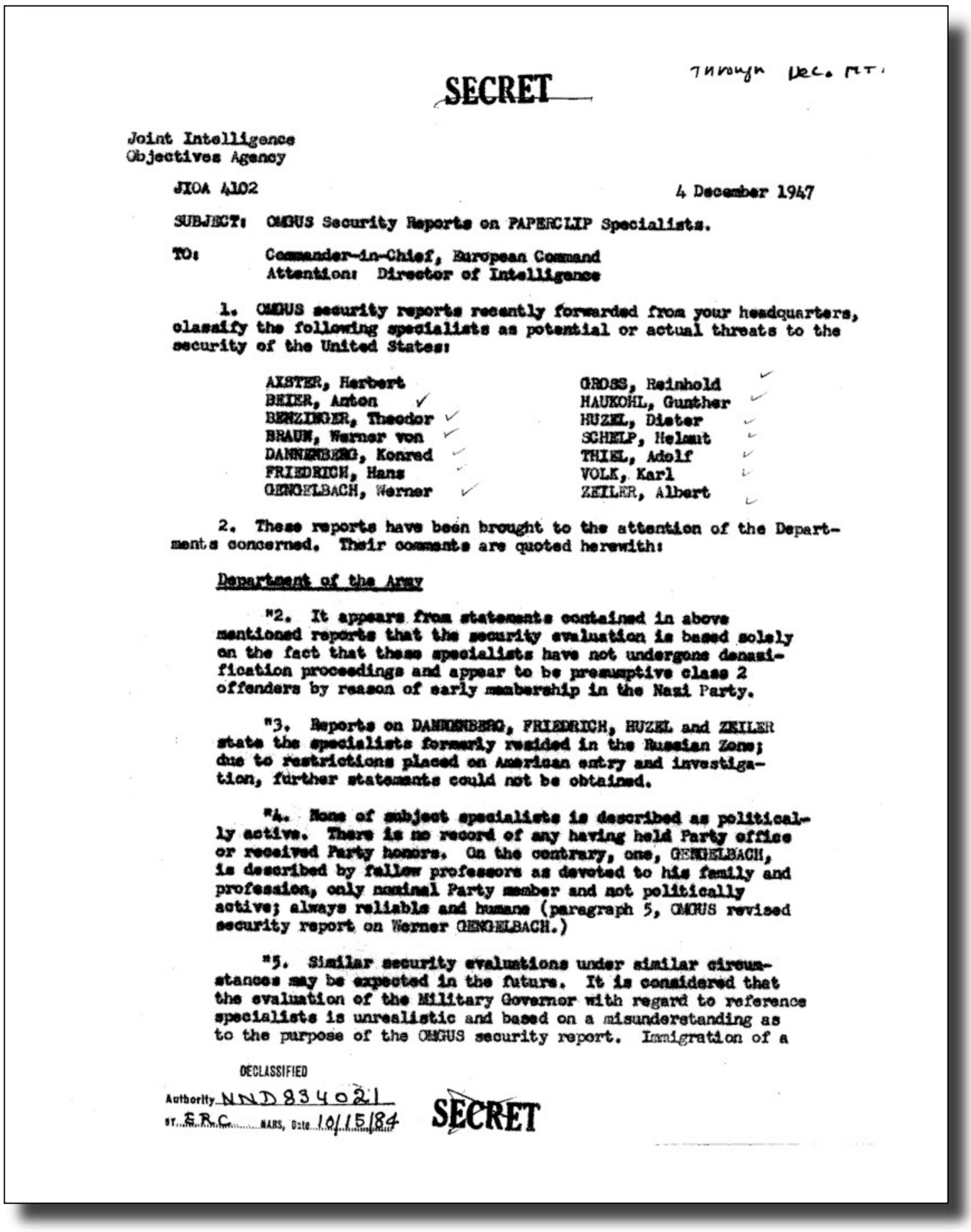
24. GPO, "Interim Exploitation of German and Austrian Specialists Under Project Paperclip," *Foreign Relations of the United States 1946*, 5 (1969):690. See also Linda Hunt, *Secret Agenda: The United States Government, Nazi Scientists, and Project Paperclip, 1945-1990* (New York: St. Martin's Press, 1991).

25. Lasby, *Project Paperclip*; Tom Bower, *The Paperclip Conspiracy: The Hunt for Nazi Scientists* (Boston: Little, Brown, & Co., 1987); Hunt, *Secret Agenda*.

26. On conditions at Mittelwerk and Rudolph's role in slave labor operations, see Michael J. Neufeld, *The Rocket and the Reich: Peenemünde and the Coming of the Ballistic Missile Era* (New York: The Free Press, 1995), 184-189, 200-213, 227-229.

Figure 4. JIOA memorandum on Project Paperclip, 4 December 1947



SECRET

through Dec. 47

Joint Intelligence
Objectives Agency

JIOA 4102 4 December 1947

SUBJECT: OMGUS Security Reports on PAPERCLIP Specialists.

TO: Commander-in-Chief, European Command
Attention: Director of Intelligence

1. OMGUS security reports recently forwarded from your headquarters, classify the following specialists as potential or actual threats to the security of the United States:

AISTER, Herbert	GROSS, Reinhold ✓
BEIER, Anton ✓	HAUKOHL, Gunther ✓
BENZINGER, Theodor ✓	HUZEL, Dieter ✓
BRAUN, Werner von ✓	SCHELP, Helmut ✓
DANNENBERG, Konrad ✓	THIEL, Adolf ✓
FRIEDRICH, Hans ✓	VOLK, Karl ✓
GENGELBACH, Werner ✓	ZEILER, Albert ✓

2. These reports have been brought to the attention of the Departments concerned. Their comments are quoted herewith:

Department of the Army

"2. It appears from statements contained in above mentioned reports that the security evaluation is based solely on the fact that these specialists have not undergone denazification proceedings and appear to be presumptive class 2 offenders by reason of early membership in the Nazi Party.

"3. Reports on DANNENBERG, FRIEDRICH, HUZEL and ZEILER state the specialists formerly resided in the Russian Zone; due to restrictions placed on American entry and investigation, further statements could not be obtained.

"4. None of subject specialists is described as politically active. There is no record of any having held Party office or received Party honors. On the contrary, one, GENGELBACH, is described by fellow professors as devoted to his family and profession, only nominal Party member and not politically active; always reliable and humane (paragraph 5, OMGUS revised security report on Werner GENGELBACH.)

"5. Similar security evaluations under similar circumstances may be expected in the future. It is considered that the evaluation of the Military Governor with regard to reference specialists is unrealistic and based on a misunderstanding as to the purpose of the OMGUS security report. Immigration of a

DECLASSIFIED
Authority NND 834021
BY E.R.C. NARS, Date 10/15/84

SECRET

Source: Cable JIOA 4102, OMGUS Security Reports on PAPERCLIP Specialists, Bosquet N. Web to Director of Intelligence, European Command, 4 December 1947, (page 1 of 3) in RG 330, Records of the Office of the Secretary of Defense, Office of Research and Engineering, JIOA, General Correspondence 1946-1952, Entry 1A, Box 9, Folder "Theater Correspondence (Misc.) from Jan.-Dec. 1947.

migration of over 400,000 Europeans to the United States over a four-year period. The law specifically denied eligibility to people who assisted Nazi Germany in persecuting civilians.[27] The Army CIC screened all applicants who wished to come to the United States under the 1948 Displaced Persons Act and many of those who later sought entry under the 1953 Refugee Relief Act. U.S. authorities rejected thousands of visa applicants for their suspected wartime activities; however, the Army could not collect sufficient information on all applicants because the majority came from Communist Eastern European countries that were not cooperating with U.S. authorities. War criminals succeeded in evading identification by simply not telling American officials about their activities between 1933 and 1945 or by lying about their pasts and promoting themselves as "anti-communist."[28]

The United States had other programs that admitted foreigners in the years after 1945. The Lodge Act of 1950 as amended, for example, authorized the U.S. Army to recruit 12,000 alien nationals outside the United States, granting citizenship after five years of service. The Immigration and Nationality Act (INA) of 1952 did not explicitly prohibit Nazi war criminals and collaborators from entering the United States. Prior to increased congressional concern in the mid-1970s, the Immigration and Naturalization Service, which had the responsibility to investigate allegations about aliens who might be subject to deportation, pursued few deportation cases against alleged Nazis and collaborators, only one of whom was successfully prosecuted to actual deportation.[29] One other Nazi criminal, Hermine Braunsteiner-Ryan, was removed from the United States in 1973 pursuant to an extradition request from the West German Government, which sentenced her to life imprisonment for crimes committed at Majdanek Concentration Camp. According to a 1978 GAO report, INS investigations of most cases before 1973 "were deficient or perfunctory," and in some cases "no investigation was conducted." [30] Indeed, IWG member and then-Member of Congress Elizabeth Holtzman recalled her dismay upon reviewing INS investigation files in 1974: "I opened the first file. It contained information from several sources, each claiming that the person had been a Nazi police officer in Latvia and had killed many Jews. The Immigration Service, in response, merely visited the man and inquired about his health."[31]

In 1978, the Holtzman Amendment to the Immigration and Nationality Act declared ineligible for entry into the United States any alien who "ordered, incited, assisted, or otherwise participated in the persecution of any person because of race, religion, national origin, or political opinion" between March 23, 1933, and May 8, 1945. A related provision of the amendment allowed the deportation of perpetrators already in the country. The Holtzman Amendment is the direct antecedent of the Disclosure Acts, which use the same language to define war criminality.

Attention from the public and from Congress resulted in increased INS efforts after 1974. By April 1978, the agency had collected a list of 252 allegations, and cases pursued before 1973 were re-evaluated and sometimes reopened. In addition, the Government

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27. Alan J. Ryan Jr., *Quiet Neighbors: Prosecuting Nazi War Criminals in America* (New York: Harcourt, Brace, Jovanovich, 1984), 5.
28. Comptroller General of the United States, *Nazi and Axis Collaborators Were Used to Further U.S. Anti-Communist Objectives in Europe—Some Immigrated to the United States*, GAO Report GGD-85-66 (Washington, DC: GAO, 1985), 11-12.
29. Ryan, *Quiet Neighbors*, 42-45.
30. Comptroller General of the United States, *Widespread Conspiracy To Obstruct Probes of Alleged Nazi War Criminals Not Supported By Available Evidence—Controversy May Continue*, GAO Report GGD-78-73 (Washington, DC: GAO, 1978).
31. Elizabeth Holtzman with Cynthia L. Cooper, *Who Said it Would be Easy? One Woman's Life in the Political Arena* (New York: Arcade, 1996), 92.

instituted legal proceedings against 13 people.[32] The attention also led to the formation of a Special Litigation Unit at the INS in 1977. In September 1979, "Nazi hunting" in the United States was initiated on a comprehensive basis with the creation of the Office of Special Investigations within the Criminal Division of the Department of Justice. OSI's mission is to identify, denaturalize, and deport individuals who participated in Nazi- and other Axis-sponsored acts of persecution. To date, OSI has won legal victories against 104 defendants who assisted in Nazi crimes and has blocked more than 175 suspected Axis criminals from entering the United States. At this writing, the small unit has 16 civil prosecutions against Nazi criminals underway in Federal courts across the country.

OSI has also investigated several allegations that the United States employed Nazi war criminals as intelligence informants. OSI's 1983 report on its Klaus Barbie investigation publicly documented the role played by the Army CIC in Barbie's evasion of justice for more than 30 years and prompted the United States to issue a formal apology to France. A June 1988 OSI report revealed that at least 14 suspected Nazi war criminals, a number of whom likely were involved in the murder of Jews in occupied Europe, had been employed as intelligence informants by the Army CIC in Austria.[33]

On May 17, 1982, the Chair of the House Committee on the Judiciary, following allegations made on the television program *60 Minutes* that Federal agencies made a conscious effort to bring Nazi war criminals into this country and protect them once they were admitted, asked the GAO to reopen its 1978 investigation to determine whether there were any U.S. Government programs to help Nazi war criminals and Axis collaborators immigrate to the United States and conceal their backgrounds. The Committee also asked the GAO to investigate whether U.S. agencies worked with and protected Klaus Barbie, in particular.

The GAO informed Congress in June 1985 that it had found no evidence of any U.S. agency program designed specifically to help Nazis or Axis collaborators immigrate to the United States. However, it did identify five Nazis or Axis collaborators with undesirable or questionable backgrounds who received some individual assistance in entering the country. Two of them, the GAO noted, were subsequently protected from investigation. Although the GAO did not name the individuals, they appear to have been Mykola Lebed and Otto von Bolschwing.[34] The CIA supported Lebed's immigration under the Displaced Persons Act, and the immigration of von Bolschwing under the regular German quota. Lebed was a Ukrainian nationalist who collaborated with the Nazis when convenient. Bolschwing had authored a Nazi policy document on "the Jewish problem," had been involved in the notorious Jewish Affairs Department, and had been liaison to the Romanian Iron Guard, among his other anti-Semitic activities. The GAO reported that it did not find any discrepancies between its investigation and OSI's 1983 public report that confirmed that Klaus Barbie had been employed and protected by the Army CIC. In addition, the GAO was not certain "that it obtained all relevant information" from U.S. intelligence agencies or "identified all Nazi and Axis collaborators whom U.S. agencies helped immigrate,"

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32. GAO, *Nazi War Criminals Not Supported by Available Evidence*, ii.

33. See http://www.usdoj.gov/criminal/publicdocs/11-1prior/crm22.pdf for the Verbelen report and http://www.usdoj.gov/criminal/publicdocs/11-1prior/crm15.pdf for the Barbie report.

34. Bolschwing was successfully prosecuted by OSI and is discussed in Timothy Naftali, "The CIA and Eichmann's Associates," *U.S. Intelligence and the Nazis* (Washington, DC: National Archives Trust Fund Board for the Nazi War Crimes and Japanese Imperial Government Records Interagency Working Group, 2004). The IWG received declassified files from the CIA on all 12 of the individuals reported on in the GAO study.

and it declined to speculate on the actual number of individuals who were assisted into the country.[35] Such uncertainty, engendered by the reluctance of intelligence agencies to produce documentary evidence, strengthened calls for legislation mandating full disclosure by the agencies.

Amid this questioning of the U.S. intelligence relationships with Nazis, the matter of Kurt Waldheim (UN Secretary-General 1972-81) arose as the proximate cause of disclosure legislation. In the mid-1980s, the World Jewish Congress and the OSI each investigated Waldheim's wartime service in the German Army in the Balkans. These investigations revealed Waldheim's association, in some capacity, with the reprisal killing of hostages, the transportation of victims to concentration and death camps, slave labor, and mistreatment and execution of prisoners of war in Yugoslavia and Greece.[36] Assertions by Professor Robert E. Herzstein that the CIA had employed Waldheim after the war as an intelligence asset or agent led to calls by members of Congress and other public figures, including Elizabeth Holtzman, for the CIA to share with Congress or to release to the public the information that it had collected on Waldheim.[37] The agency was not forthcoming, and withheld these records purportedly to protect "foreign government information" and "sources and methods." The agency generally treated Congressional requests on this matter, as one CIA staff historian phrased it, with "a cavalier attitude."[38] The CIA's unresponsiveness led to suspicion that the agency was covering up an intelligence relationship with Waldheim or that it had certain evidence of his war criminality.

In April 1987, acting on OSI's recommendation, the Attorney General placed Waldheim's name on the border control watch list, permanently barring him from the United States under the Holtzman Amendment.

The CIA remained uncooperative through the 1980s and most of the 1990s, giving bureaucratic responses to Congressional requests for documentation, at one point even telling Congressman Steve Solarz to file a Freedom of Information Act (FOIA) request to obtain the information on Waldheim he requested.[39]

Much of the Waldheim file was released under the NWCDA in 2001. As it turned out, the CIA had not done much research on Waldheim's wartime activities.

Tracing Stolen Assets

Additional pressure to declassify Nazi-related documents came from renewed interest in tracing and recovering looted assets and obtaining redress from institutions that had profited from Nazi theft. Research in Europe by the World Jewish Congress in 1995 resulted in important discoveries about the holdings of Swiss banks, which in turn inspired a campaign to learn the full truth about the disposition of bank accounts, gold, and other assets of victims of Nazi persecution.

The search for information in U.S. Government records on looted assets began in March 1996, when researchers from the World Jewish Congress visited

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35. GAO, *Nazis and Axis Collaborators Were Used to Further U.S. Anti-Communist Objectives*.
36. Neal M. Sher, *In the Matter of Kurt Waldheim*, (Washington, DC: Office of Special Investigations, Criminal Division, 1987), 5.
37. Robert E. Herzstein, *Waldheim: The Missing Years* (London: Grafton, 1988). See also Robert E. Herzstein, testimony before the Subcommittee on Government Management, Information, and Technology of the U.S. House of Representatives, July 14, 1998; and Elizabeth Holtzman, testimony before the Subcommittee on Government Management, Information, and Technology of the U.S. House of Representatives, July 14, 1998. Transcripts of both are available at http://www.fas.org/sgp/congress/hr071498/index.html.
38. Kevin C. Ruffner, "Kurt Waldheim and the Central Intelligence Agency," 52.
39. Ruffner, "Kurt Waldheim and the Central Intelligence Agency," 56.

the National Archives to search for records regarding World War II–era dormant Swiss bank accounts belonging to Jews. Their research expanded into issues surrounding looted gold, art, and other stolen assets. By midsummer 1996, there were scores of researchers looking into "Nazi Gold" records at the National Archives, as well as at other archives around the world.[40]

Citing a desire to "bring whatever measure of justice might be possible to Holocaust survivors, their families, and the heirs of those who have perished," in the fall of 1996, President Clinton asked then-Under Secretary of Commerce Stuart E. Eizenstat, who also served as Special Envoy of the Department of State on Property Restitution in Central and Eastern Europe, to chair an interagency group charged with preparing a report that would fully describe efforts to recover and restore gold the Nazis had taken from the central banks of occupied Europe, as well as gold and other assets stolen from individuals.[41]

The Eizenstat group eventually issued two reports.[42] Recognizing that "the U.S. Government had in its possession a tremendous amount of information bearing on looted assets, including the emotionally charged but little understood issue of 'Nazi Gold,'" the reports were based primarily on the records of the State Department, the Treasury, the Army, and the OSS, agencies involved with assets questions during the war and postwar period. The reports presented the first proof, discovered by OSI historians working with National Archives personnel, that gold stolen from Nazi victims had been transferred during the war by the German Reichsbank to the Swiss National Bank, and that other victim-origin gold had been transferred by the United States from the Reichsbank into the gold stocks of the Tripartite Gold Commission (TGC). As a result of this evidence, millions of dollars worth of TGC gold was sold, and the proceeds from the sale were used to benefit victims of Nazi persecution.

In June 1998, lingering questions about Holocaust-era assets that may have come under the control of the United States Government led Congress to create a Presidential Advisory Commission on Holocaust Assets in the United States. The IWG worked closely with the Assets Commission. The Commission issued a report in December 2000, finding that, although the U.S. Government's effort to restore assets to rightful owners was "exemplary," it nonetheless fell short.[43]

The documentary evidence about looted assets increased the expectation that classified government records would hold answers to many lingering questions beyond those specifically regarding assets, including questions about war criminals and U.S. Government relationships with them.

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40. Relevant records at the National Archives, most of which had been publicly available for some time, are contained within thirty record groups and comprise some 15 million pages of documents.

41. Office of the Press Secretary, "Remarks by President on Signing of Holocaust Victims Redress Act," Presidential Remark, 13 February 1998. Available at http://www.clintonpresidentialcenter.org/legacy/021398-remarks-by-president-on-signing-of-holocaust-victims-redress-act.htm.

42. U.S. Department of State, *U.S. and Allied Efforts to Recover and Restore Gold and Other Assets Stolen or Hidden by Germany During World War II: Preliminary Study*, Report S 1.2:G 56/Prelim (Washington, DC: GPO, 1997); and *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*, Report S 1.2:G 56/SUPP (Washington, DC: GPO, 1998).

43. *Plunder And Restitution: Findings and Recommendations of the Presidential Advisory Commission on Holocaust Assets in the United States and Staff Report* (Washington, DC: GPO 2000). Available at http://www.holocaustassets.gov/PlunderRestitution.html/html/Home_Contents.html.

Japan Under Scrutiny

Public interest in Japanese war crimes arose intermittently in the postwar period as the stories of victims received public notice as a result of historical and popular studies and media attention. Books such as the late Sheldon Harris' 1994 *Factories of Death: Japanese Biological Warfare 1932-1945 and the American Cover-up* and the late Iris Chang's 1997 best seller, *The Rape of Nanking*, helped give the subject visibility.[44] The earliest groups to receive attention were American POWs and civilian internees who made claims under the War Claims Act after its passage in 1948. However, mistreated POWs, sex slaves (the so-called "comfort women"), civilian internees, and forced laborers remained dissatisfied with the extent of compensation—if any—for their suffering. Even more of an irritant to these groups, however, has been the failure of the Japanese Government to apologize fully for its wartime behavior with regard to acts of cruelty such as harsh forced labor, conditions aboard the POW transports known as "hell ships," and the criminal brutality of the Bataan Death March. Victims have repeatedly called for redress, citing as precedent settlements in the late 1990s between victims of Nazi looting and the German Government and Swiss banks.

In the 1990s, no fewer than 16 measures dealing with Japanese war crimes were introduced in the Congress in attempts to secure some sort of redress for victims.[45] For instance, in 1997 a joint resolution was introduced in Congress that expressed a number of groups' frustration with the stance of the United States and Japanese governments with respect to Japanese accountability for war crimes committed by Imperial Japan. House Concurrent Resolution 126 sought to express the sense of Congress concerning war crimes committed by the Japanese military during World War II. After listing particular offenses, characterized as "atrocious crimes against humanity," the resolution called on Japan to

> (1) formally issue a clear and unambiguous apology for the atrocious war crimes committed by the Japanese military during World War II; and (2) immediately pay reparations to the victims of those crimes, including United States military and civilian prisoners of war, people of Guam who were subjected to violence and imprisonment, survivors of the "Rape of Nanjing" from December, 1937, until February, 1938, and the women who were forced into sexual slavery and known by the Japanese military as "comfort women."[46]

Although not passed, the resolution recognized the longstanding frustration of victims and registered dissatisfaction with the Government's position that American lawsuits against Japan and Japanese companies over war crimes were precluded by the 1951 Peace Treaty between the United States and Japan, despite side agreements providing Americans with treatment comparable to that of compensated victims in other countries. The movement to call Japan to account stemmed in part from dissatisfaction with perceived postwar leniency toward Japan and Japanese war criminals, a leniency that was part of the effort to get that country firmly in the American camp during the Cold War.

By February 2000, more than a dozen class-

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44. Sheldon H. Harris, *Factories of Death: Japanese Secret Biological Warfare, 1932-45, and the American Coverup*, Rev. ed. (New York: Routledge, 2002); Iris Chang, *The Rape of Nanking: The Forgotten Holocaust of World War II* (New York: Basic Books, 1997).

45. Report by Jaryk Reynolds, "U.S. Prisoners of War and Civilian Citizens Captured and Interned by Japan in World War II: The Issue of Compensation by Japan" (Washington, DC: Congressional Research Service, July 7, 2001).

46. House Concurrent Resolution 126 "Expressing the Sense of Congress Concerning War Crimes Committed By the Japanese Military During WWII," 105th Congress. Available online at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=105_cong_bills&docid=f:hc126ih.txt.

action lawsuits had been filed in the United States against Japanese corporations by former Allied prisoners of war, civilian internees, and Asian slave laborers. Additional suits were filed and in preparation for Japanese courts seeking redress for "comfort women," slave laborers, and other victims of Japanese crimes, all of whom demanded a Japanese apology and compensation from Japanese courts. The Simon Wiesenthal Center lobbied Attorney General Janet Reno and the Pentagon for the release of U.S. documents concerning amnesties granted to Japanese war criminals, including amnesties granted to supervisors of Japan's biological and chemical warfare program in exchange for the data obtained from experiments conducted on humans in the infamous Unit 731, Japan's biological warfare unit.

Passage of the Statutes

In 1992, with the unresponsiveness of the CIA over the Waldheim affair in the background, former Congresswoman and U.S. Senate candidate Elizabeth Holtzman wrote to the Director of Central Intelligence requesting the release of files on Nazi war criminals, charging that "[i]n the process of employing these people and bringing them to safe haven in the United States and elsewhere, laws were broken, lies were told, and the President, Congress, other government agencies and the public were deceived. But we still don't know the whole story." In response, the Acting DCI, Adm. William O. Studeman, made a commitment to Holtzman that the files would be reviewed and transferred to the National Archives.[47] The promise was not fulfilled.[48]

A year and a half later, A. M. Rosenthal, citing the Waldheim case, and aware of the CIA's nonresponsiveness, editorialized in the *New York Times* that it was time for the Congress to pass legislation "preventing government agencies from denying information about World War II war crimes."[49] Taking up the cause of full disclosure, and asserting that "the CIA withheld critical information about Kurt Waldheim's Nazi past," Representative Carolyn Maloney (D-NY) introduced "The War Crimes Disclosure Act" in August 1994. The bill expressed the sense of Congress that "United States Government agencies in possession of records about individuals who are alleged to have committed Nazi war crimes should make these records public." The CIA opposed the measure on grounds that it would compromise CIA officers and the protection of sources and methods.[50] Although the Congress took no final action that year, Ms. Maloney reintroduced the bill in March 1995 with numerous sponsors and greater attention by the media, principally the *New York Times*.[51] The act passed in September 1996, with Maloney noting that while many nations were making their Nazi war criminal files public, some U.S. agencies had "routinely denied Freedom of Information Act requests for information about individuals who committed Nazi war crimes," and that the disclosure of such records posed no threat to U.S. national interests.[52] The Senate concurred and President Clinton signed the act into law on October

47. Elizabeth Holtzman to DCI Robert Gates, 26 March 1992, and Adm. William O. Studeman to Holtzman, 10 August 1992. Copies of the letters are in the CIA Lebed Name Files quoted by Kevin C. Ruffner, "Intelligence Missteps: Kurt Waldheim and the Central Intelligence Agency," *Studies in Intelligence* (2003), 60. Ruffner, a CIA staff historian, describes the CIA's response to the Waldheim revelations and congressional interest in this account. The account was declassified and released under the Nazi War Crimes Disclosure Act.
48. Ruffner, "Kurt Waldheim and the Central Intelligence Agency," 61.
49. A. M. Rosenthal, "The Waldheim File," *New York Times*, 24 May 1994, A19.
50. Kevin C. Ruffner, "Kurt Waldheim and the Central Intelligence Agency," *Studies in Intelligence* (2003), 61.
51. A. M. Rosenthal, "Ms. Maloney and Mr. Waldheim," *New York Times*, 25 June 1996, A21.
52. H.R. 1281 104th Congress, 2nd session. Congressional Record, (September 24, 1996).

19, 1996. However, advocates of greater openness recognized that it would take more than urging by Congress for agencies to reverse longstanding policies of protecting intelligence records.

In November 1997, Senator Mike DeWine (R-Ohio) introduced the Nazi War Crimes Disclosure Act (S. 1379), a bill based on the language and presumptions of the earlier act but providing additional direction to the Executive Branch and an Interagency Working Group as a mechanism for implementation. The Senate adopted the bill in June 1998. At that time, Senator DeWine noted that "this pro-active search is necessary because a full government search and inventory has never been completed." He continued, "[W]hat we are trying to do with this bill is strike a clear balance among our government's legitimate national security interests, the legitimate privacy interests of individuals, and the people's desire to know the truth about Nazi atrocities." Senator Daniel Patrick Moynihan (D-NY) added,

> Researchers seeking information on Nazi war criminals and the assets of their victims will have unprecedented access to relevant materials in the possession of the United States Government, which until now have remained classified. It is my view that these documents have been held for far too long. Well beyond the time when their disclosure might have posed a threat to national security—if indeed such disclosure ever did.[53]

In June 1998, Representative Maloney introduced The Nazi War Crimes Disclosure Act in the House where it was passed in August 1998. President Clinton signed the act into law on October 8.

The inclusion of Japanese war crimes records under this act was confirmed formally on several occasions. Section 3(a)(1)(D) of the act covers records relating to "any government which was an ally of the Nazi Government of Germany." After deliberating over the intent of the act, the IWG concluded that the inescapable meaning of the act's language encompassed not only war crimes records relating to Nazi Germany and its European allies, but also to Japan. Further, in hearings before the Senate Select Committee on Intelligence on September 16, 1999, and the House Subcommittee on Government Management, Information and Technology on June 27, 2000, the principal House and Senate sponsors of the legislation supported the inclusion of Japanese-related records. Finally, the inclusion of Japanese-related records within the ambit of the Nazi War Crimes Disclosure Act was confirmed by the Executive Branch in the December 2000 tasking memorandum to major Executive Branch agencies from Samuel Berger, the Assistant to the President for National Security Affairs.[54]

Pressure for an act specifically directed at Japanese war crimes nonetheless gained momentum. In December 2000, as part of the Intelligence Authorization Act, Congress passed the Japanese Imperial Government Disclosure Act to make explicit the requirement to include Japanese war crimes among the records to be identified and declassified.

This act specifically added declassification and release of records related to Japanese war crimes before and during World War II to the IWG's responsibilities. Upon its passage, the act required some clarification because the title and definitions in the act could have been construed to mean that the object of the legislation was the release of records in the possession of the Japanese government. In December 2000, in a colloquy on the floor of the Senate held to explain the terms of the act, the act's principal sponsor, Senator Dianne Feinstein (D-CA), clearly defined that the records covered by the act were records in U.S. Government possession.

Upon signing the Intelligence Authorization Act,

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53. Nazi War Crimes Disclosure Act, *Congressional Record*, 105th Congress, 2d session, (June 19, 1998) S6727.

54. See Berger Memorandum, "Phase Two Implementation of the Nazi War Crimes Disclosure Act: Identification and Disclosure of Japanese War Crimes Records" in appendix 6.

on December 27, 2000, President Clinton provided his understanding that Japanese war crimes-related records already being processed for disclosure under the Nazi War Crimes Disclosure Act would continue to be processed under that act:

> Title VIII of the Act sets forth requirements governing the declassification and disclosure of Japanese Imperial Army records, as defined by the Act. The Executive Branch has previously been declassifying United States Government records related to Japanese war crimes under the provisions of the Nazi War Crimes Disclosure Act, Public Law 105-246; consequently, I understand that title VIII does not apply to records undergoing declassification pursuant to the Nazi War Crimes Disclosure Act.[55]

Because of the paucity of remaining classified Japanese war crimes records and the fact that Japanese war crimes-related classified records were already being processed under the NWCDA, the IWG recognized no difference in the treatment of records under the combined acts.

In January 2004, Congress extended the Japanese Imperial Government Disclosure Act for one year, until March 2005, and again in February 2005 until March 2007. Both extensions were urged by the IWG public members, who determined that the CIA needed additional time to comply with the law with respect to both Japanese and Nazi war crimes records. The JIGDA was extended, rather than the NWCDA, because the Nazi War Crimes Act had expired in 2002 and all subsequent search and declassification activities, for both the Pacific and European Theaters, were being carried out under the JIGDA.

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55. Signing statement on H.R. 5630. the "Intelligence Authorization Act for Fiscal Year 2001, Statement by the President," the White House, Office of the Press Secretary, December 27, 2000.

4. Overview of the IWG and its Functions

From January 1999 to March 2007, the full IWG met 38 times. An informal subcommittee (discussed below) met many more times to deal with implementation issues in detail.

The IWG kept the public informed of its progress in a number of ways. First, IWG meetings were open to the public, except for the portions in which classified information was discussed. In addition, the IWG held open forums in New York, Los Angeles, and Cleveland to report progress to the public and to solicit information to assist in the search for records. The IWG also periodically published a newsletter, *Disclosure*. The IWG released to Congress its interim report on the Nazi War Crimes Disclosure Act in October 1999, and its interim report on the Japanese Imperial Government Disclosure Act in March 2002. It issued press releases and responded to media inquiries. Further, the IWG held public openings of particularly significant collections of material. For instance, the IWG held media briefings on four occasions on the opening of CIA name files and significant FBI files. The IWG's Web site, maintained by the National Archives, carries an abundance of information about the IWG's work, including copies of *Disclosure*, meeting minutes, IWG's guidance to agencies, press releases, and news updates. Most important, the Web site includes lists of newly declassified files, which provide researchers immediate notice of availability.[56] Finally, as an important contribution to scholarship as well as an illustration of how the newly opened documentation can contribute to understanding our national past, the IWG published *U.S. Intelligence and the Nazis*, a volume of independent historical studies by IWG historians; *Researching Japanese War Crimes: Introductory Essays*, a set of descriptive essays about Japanese war crimes records and approaches to using them; and two electronic finding aids.

IWG Personnel

While agency members of the IWG were primarily concerned with locating and declassifiying records in possession of their agencies, general oversight responsibilities were handled by an IWG subcommittee consisting of the IWG Acting Chair, its public members, the executive director, the staff director, the OSI director, IWG auditors, NARA archivists, IWG historians, and various advisors, depending on the topic at hand. The subcommittee met repeatedly to review agency compliance with the Disclosure Acts and to troubleshoot various declassification issues, including helping agencies locate potential documents, suggesting improvements in agency search strategies, providing guidance and parameters for agency searches, and encouraging agencies to declassify as much material as possible, thereby complying fully with the laws. The Acting Chair, assisted by the IWG Staff Director and IWG Executive Director, also managed IWG consultants.

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56. www.archives.gov/iwg/.

Staff

National Archives and Records Administration archivists supervised and conducted the daily work of the IWG, acting as principal liaisons with the agencies, providing guidance and expertise in records and archives management, maintaining records of agency compliance, reviewing certain records for declassification, preparing declassified materials for public access, providing research assistance to the historians, developing finding aids for the newly declassified material, and providing reference service to researchers and the media. NARA also provided and funded all administrative services necessary to support the operations of the IWG, including budgetary, financial, and contracting services; travel and other logistical arrangements for the IWG and the Historical Advisory Panel; and secretarial and computer services.[57]

Historians

Early in the project, the IWG recognized a need for historical expertise to assist in the search for relevant classified records, place them in historical context, and determine their historical value. These tasks were undertaken by independent historians, who worked closely with IWG staff archivists.

Initially, the historians worked with the IWG staff to guide the agencies in their preliminary records searches. The historians contributed key words for electronic searches, provided leads to records based on their experience with similar agency records, and posed questions (such as, "What did the U.S. Government know about the Holocaust as it was being perpetrated?"), which helped to hone search strategies. The historians helped the IWG demonstrate to agencies the relevance of certain documents, enabling their release under the acts. As newly released records suggested the presence of records still undiscovered, the historians questioned the agencies regarding the existence of additional records, which led to the declassification and opening of other important materials. The historians' second and more publicly visible task was to illustrate to the Congress and the public how newly declassified documents expand and refine the existing body knowledge about war crimes and war criminals. This task was embodied in the historical and archival works mentioned above.

The Historical Advisory Panel

To garner broader historical advice about its policies and search strategies, the IWG enlisted the aid of distinguished scholars in the field. This unpaid Historical Advisory Panel (HAP) recommended measures to improve the effectiveness of the IWG and the federal agencies in implementing the Disclosure Acts. The panel, chaired by Professor Gerhard L. Weinberg, met several times each year to formulate advice to the IWG based on collective experience in historical research and analysis. The HAP also reviewed and offered valuable advice on this report and on the IWG's two books on the declassified records.

IWG Audit Team

To ensure that the agencies complied with the search and declassification requirements, the IWG contracted for the services of two principal auditors, who possessed substantial declassification and legal experience, as well as experience in the intelligence community and with intelligence records. The auditors were cleared at the Top Secret SCI level. As described in more detail below, the auditors pushed for consistency and strove to assure that agencies practiced maximum disclosure. In addition, they ensured the process as a whole was conducted in a lawful and transparent manner.

Statutory Functions of the IWG

The Disclosure Acts required the IWG to locate classified Nazi and Japanese war criminal and war-crimes related records held by the United States, recommend the declassification of these records, and make them

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57. See appendix 1 for a list of IWG staff and consultants.

available to the public (with specific exceptions). The following sections detail the IWG's approach to implementing the acts (illustrated by figure 3).[58]

Locating Records

On February 22, 1999, Samuel Berger, Assistant to the President for National Security Affairs, directed agencies to begin implementing the Nazi War Crimes Disclosure Act.[59] He ordered agencies to undertake a preliminary survey of their records, directing them to "take an expansive view of the act in making this survey and in subsequent identification of records and declassification review." He attached to his memorandum the IWG's initial guidance to the agencies, clarifying the types and topics of records considered relevant and reiterating the open spirit of the law. "To the extent permitted by law," he stated, "such guidance should be considered authoritative." He issued a similar directive on December 5, 2000, to initiate the search for Japanese war crimes related records.[60]

IWG Guidance on Preliminary Surveys

The IWG directed agencies to include in their preliminary surveys any records that were *likely* to contain information on war crimes, war criminals, acts of persecution, and looting of assets. Although the Nazi War Crimes Disclosure Act targeted records of crimes committed 1933–45 in particular geographic locations, relevant records could be dated up to the present, and they could be located among Government records relating to any country in the world.

In his December 5, 2000, memorandum, Berger directed agencies to locate records held by the U.S. Government relating to war crimes committed by agents of the Government of Japan during the period 1931–45, although the records themselves could have been created later. The IWG advised agencies to give particular attention to locating any records related to topics of great interest to the public and to historians, particularly materials related to

- Japanese treatment of prisoners of war and civilian internees, including any materials related to forced or slave labor;
- persecution of and atrocities against civilian populations;
- development and use of chemical and biological warfare agents, especially the work of General Ishii, medical experimentation on humans, and Unit 731;
- the so-called "comfort women" program—the Japanese systematic enslavement of women of subject populations for sexual purposes; and
- the U.S. Government decision after the war not to prosecute the Emperor and certain war criminals.

The IWG enjoined agencies to conduct their surveys with the intention of discovering and eventually declassifying *as many documents as possible*, not merely those that were indisputably required by a narrow interpretation of the law.

Search Tools

To help agencies fulfill their responsibility to declassify war crimes records, the IWG first had to help the agencies find relevant records among the millions of records relating to all other aspects of World War II and the immediate postwar period. Conducting a successful preliminary survey was an enormous challenge to agencies for several reasons. The primary reason was that agencies simply did not file or maintain their records according to categories that were obviously meaningful to the Disclosure Acts. Most

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58. Chapter 5 provides details of each agency's implementation process.

59. These agencies were the departments of Commerce, Defense, Energy, Justice, State, Treasury, CIA, FBI, NARA, FRB, NASA, and USIA.

60. The Berger directives are found in appendix 6.

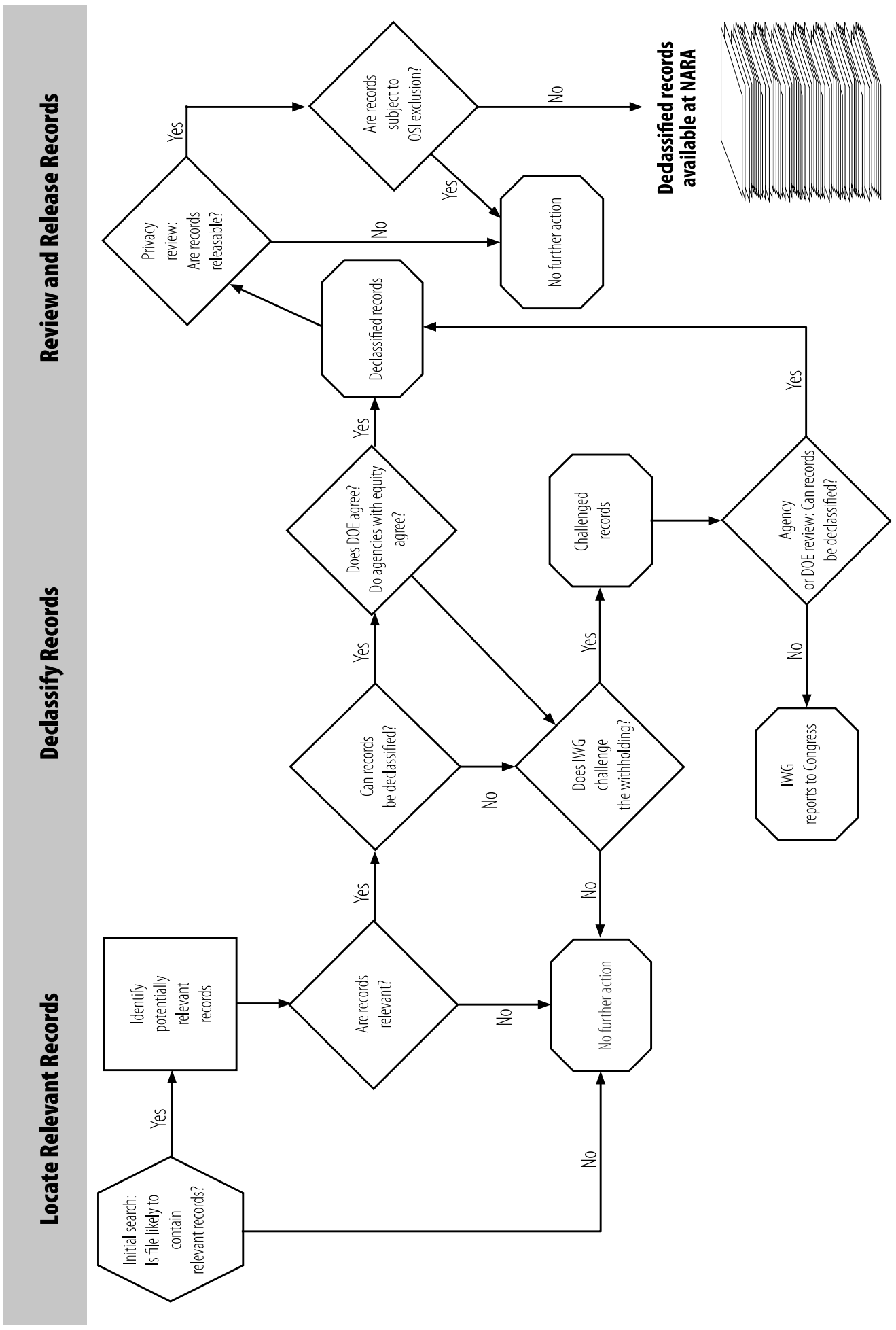

Figure 5. IWG declassification process

agencies filed records by names of individuals or programs. These names could be searched, but which of these millions of names might be relevant? Agency personnel were not expected to be experts on World War II. Agency files also varied by medium. Some agencies began keeping at least part of their files in electronic form as early as the 1970s. Others kept records in paper or microform, but indexed them electronically. In many cases, a full text search of some files was possible, while in others only indices could be searched by key words. All agencies also maintained paper files. In some cases, paper files had been copied to microfilm and the originals destroyed. At most agencies, the sheer volume of files that needed to be searched for possible declassification presented no small challenge. The IWG therefore took an active role in helping agencies search their records, developing a variety of search tools to enhance agency surveys, including:

- initial and supplemental guidance to agencies for implementing the acts;
- a so-called "60,000 Names List," actually a database developed by OSI that contains the names of SS officers, individuals charged by the UN War Crimes Commission, individuals convicted of Nazi war crimes, individuals extradited by the U.S. military government to stand trial for Nazi crimes, and individuals generally regarded by historians as having been major perpetrators of Nazi crimes;
- a list of terms, code names, operations, and other terminology compiled by the IWG staff and supplemented by OSI, the historians and the HAP;
- a 66-page key-word list of approximately 2,000 subjects, organizations, and individuals associated with war crimes in East Asia and the Pacific;
- leads for information that IWG historians, the HAP, and staff suggested would likely be found in agency files; and
- additional lists of names and topics provided by IWG members, historians, the HAP, and National Archives staff as related subjects emerged from the records.

The IWG frequently consulted with historians and, based on recommendations from the scholars, frequently sent agencies updated lists of operational terms, biographical details, and other very specific information to assist their key-word searches.

Offering search strategies and guidance to agencies was very important because the personnel actually searching agency records were unlikely to have the subject-matter expertise necessary to conduct a thorough search. Name lists were the IWG's most straightforward search tool, so most agencies seized on the name search as their primary—sometimes only—approach. As a result, agencies found predominately case files and dossiers, to the possible neglect of policy files and other files that were not organized by name. The IWG strove throughout to supplement lists and encourage wider searches, but for all agencies except the National Archives and the State Department, the name search remained the basic approach.

Most agencies were fully engaged in searching for Nazi war crimes materials when the directive to begin the Japan-related search was issued before the passage of the Japanese Imperial Government Disclosure Act. Every agency except the National Archives chose to conclude its Nazi search before beginning a new search for relevant Japanese materials.

Preliminary Survey Results

Preliminary surveys were substantially completed by July 30, 1999, for the Nazi-related records and by January 27, 2002, for the Japan-related records. Agencies had submitted status reports and implementation plans to the IWG, which described and quantified their efforts and results to that point and set forth a schedule for complying with the law.

Agency surveys identified more than 620 million pages that contained material *potentially* relevant to the acts. These pages were then surveyed in more depth to identify records that were *actually* responsive to the

acts and in fact subject to declassification review.

As expected, searches for classified Japanese materials did not produce a large quantity of documents. These searches appeared to be as rigorous as those for Nazi-related material, but there was much less remaining classified material related to Japan.

Reviewing Records for Relevance

After preliminary surveys located bodies of records likely to contain Nazi and Japanese war criminal documents, agencies examined them to determine which files or documents from among the larger bodies of material were relevant to the acts and therefore subject to declassification review. The IWG recommended that all records identified as potentially relating to Nazi and Japanese war crimes be reviewed for declassification, no matter what the subject or circumstance of their creation.[61] While the IWG unanimously agreed in principle to a broad interpretation of the acts, in practice, certain member agencies disagreed, sometimes adamantly, about which documents were in fact relevant.

Which Files are Relevant?

Disagreement arose over interpretation of section 3(a)(1) of the NWCDA, which identified as relevant those records that "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 …"

The IWG sought the disclosure of *all* records related to Nazi war crimes or criminals, even later records of suspected criminals, asserting that only this broader understanding fulfilled the spirit of the law and served the purpose of full disclosure in the historical and archival context. In a paper dated July 26, 2001, the IWG emphasized that "reviewers making decisions regarding relevancy of materials are reminded that files are relevant if they shed light on any Nazi/Japanese war crime or persecution even though the file in question, whether for an individual, organization, or operation, does not contain direct evidence of or information about specific war crimes."[62]

Generally, disagreements over relevance revolved around questions of whether any record that related to an individual of interest was relevant, even if the record itself had no relation to war crimes. Especially at issue were documents related to the activities during the 1950s and 1960s, and even later, of individuals guilty of or suspected of war crimes. For example, the question was pertinent to records of former SS members, untried for war crimes, who later worked for the Gehlen Organization in support of U.S. intelligence operations. It was also pertinent to the relevance of Cold War era intelligence records about Japanese war criminals who, having served their sentences, became officials of the Japanese Government.[63]

Consistency

Differing definitions of relevance produced some inconsistent results among agencies, or even within a single agency. For example, the Army and the FBI interpreted the laws broadly, agreeing that files produced from searches using the 60,000 Names List and other IWG-provided search terms were presumptively relevant. In contrast, for the first six years of the project, CIA considered a postwar file on an individual to be relevant only if (1) the subject was a convicted war criminal, (2) the individual's file contained information on specific war crimes, or (3) there was sufficient information indicating there were grounds to believe that the subject was involved in war crimes or acts of persecution.[64]

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61. Agency-specific guidance is described in chapter 5.
62. See appendix 7 for the 26 July 2001 memorandum.
63. Instances of these challenges are reported in the individual agency accounts in chapter 5.
64. The CIA's review of OSS files was an exception in that the CIA opted for wholesale release of these records.

Dissatisfaction with the CIA's interpretation of the law, particularly on the part of the public members, led to two extensions of the acts. In 2004, the acts were extended for one year, and 2005, the acts were extended again for two years. The IWG public members felt, and interested members of Congress agreed, that the CIA needed to broaden its definition of what was relevant under the act to be compatible with the intent of Congress. In February 2005, the CIA agreed to re-review previously withheld information and to make additional searches under a broadened definition of relevance. This new approach produced a quantity of additional material, including information previously redacted (see figure 6). The Agency's renewed effort was groundbreaking in the nature of material it produced, as described in the CIA section chapter 5.

Agencies using a broad standard of relevance also helped to preserve the integrity of declassified files because a greater number of documents in each file could be declassified and kept together. On the other hand, a broad interpretation of the law increased an agency's workload and costs. After the attacks of September 11, 2001, law enforcement, intelligence, foreign affairs, and military agencies shifted resources to the war on terrorism and away from implementation of the Disclosure Acts.

From the universe of 620 million pages, agencies identified a total of 113 million pages that merited screening for possible relevance. From these, more than 8.5 million pages were identified as containing relevant material and warranting declassification review under the acts. A very large majority was related to Nazi war crimes or war crimes in Europe; only 142,000 pages were related to Japanese war crimes.

The process of identifying relevant documents was entirely separate from the process of reviewing documents for declassification. As discussed below, documents identified as relevant may nonetheless be withheld for reasons of national security at a later stage, or they may be declassified yet be exempt or excluded from release under the provisions of the Disclosure Acts.

Declassifying Relevant Records

The IWG consistently maintained that there were no sufficient *a priori* reasons for continuing security classification of relevant records; that is, there were no *types* of records that could be withheld automatically, and any relevant record must undergo a thorough declassification review by appropriate authorities. The Disclosure Acts exempted records from declassification for ten specified reasons, including U.S. foreign relations and diplomatic activities, intelligence sources and methods, and certain military matters. Accordingly, IWG guidance to agencies specified that no document could be withheld or redacted unless it was covered explicitly by one of these exemptions. "Even then," IWG guidance continued, "specific damage to U.S. national security interests must be demonstrated to justify withholding or redacting relevant information."[65]

The agency that created a document was responsible for its declassification review and for notifying any other agency that may have had equity (interest) in the document. Each organization with equity in a document was entitled to conduct its own review of the document. In some cases, a document declassified by one agency was withheld by another.

Agencies declassified documents in whole or in part. When an agency deemed that some information in a document must be withheld because it contained some sensitive information (for example, the name of a recent intelligence source), the IWG insisted that the agency redact portions rather than withhold an entire document. While redaction required a time-consuming line-by-line review, much more information was released as a result (see figure 7). Some agencies offered substitute or explanatory language where portions were withheld, making the redacted document more useful (figure 8).

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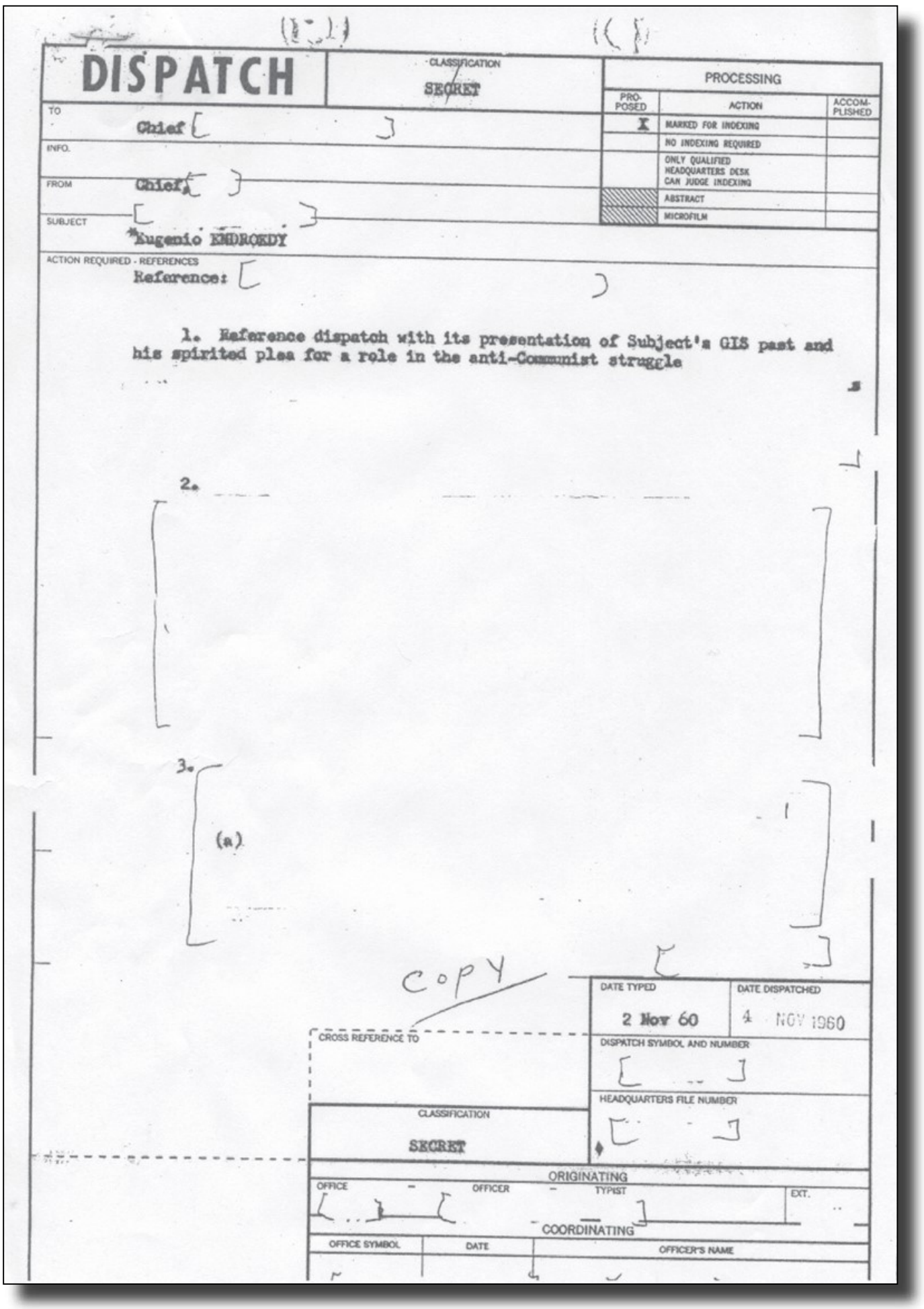
65. Appendix 7, Memorandum on Relevancy, 26 July 2001, attachment, p. 2.

Figure 6. Sample of first and second release of CIA document



DISPATCH

CLASSIFICATION: SECRET

PROCESSING

PROPOSED	ACTION	ACCOMPLISHED
X	MARKED FOR INDEXING	
	NO INDEXING REQUIRED	
	ONLY QUALIFIED HEADQUARTERS DESK CAN JUDGE INDEXING	
	ABSTRACT	
	MICROFILM	

TO: Chief

INFO.

FROM: Chief,

SUBJECT: *Eugenio ENDROEDY

ACTION REQUIRED - REFERENCES: Reference:

1. Reference dispatch with its presentation of Subject's GIS past and his spirited plea for a role in the anti-Communist struggle

2.

3.

(a)

COPY

DATE TYPED: 2 Nov 60

DATE DISPATCHED: 4 NOV 1960

CROSS REFERENCE TO

DISPATCH SYMBOL AND NUMBER

HEADQUARTERS FILE NUMBER

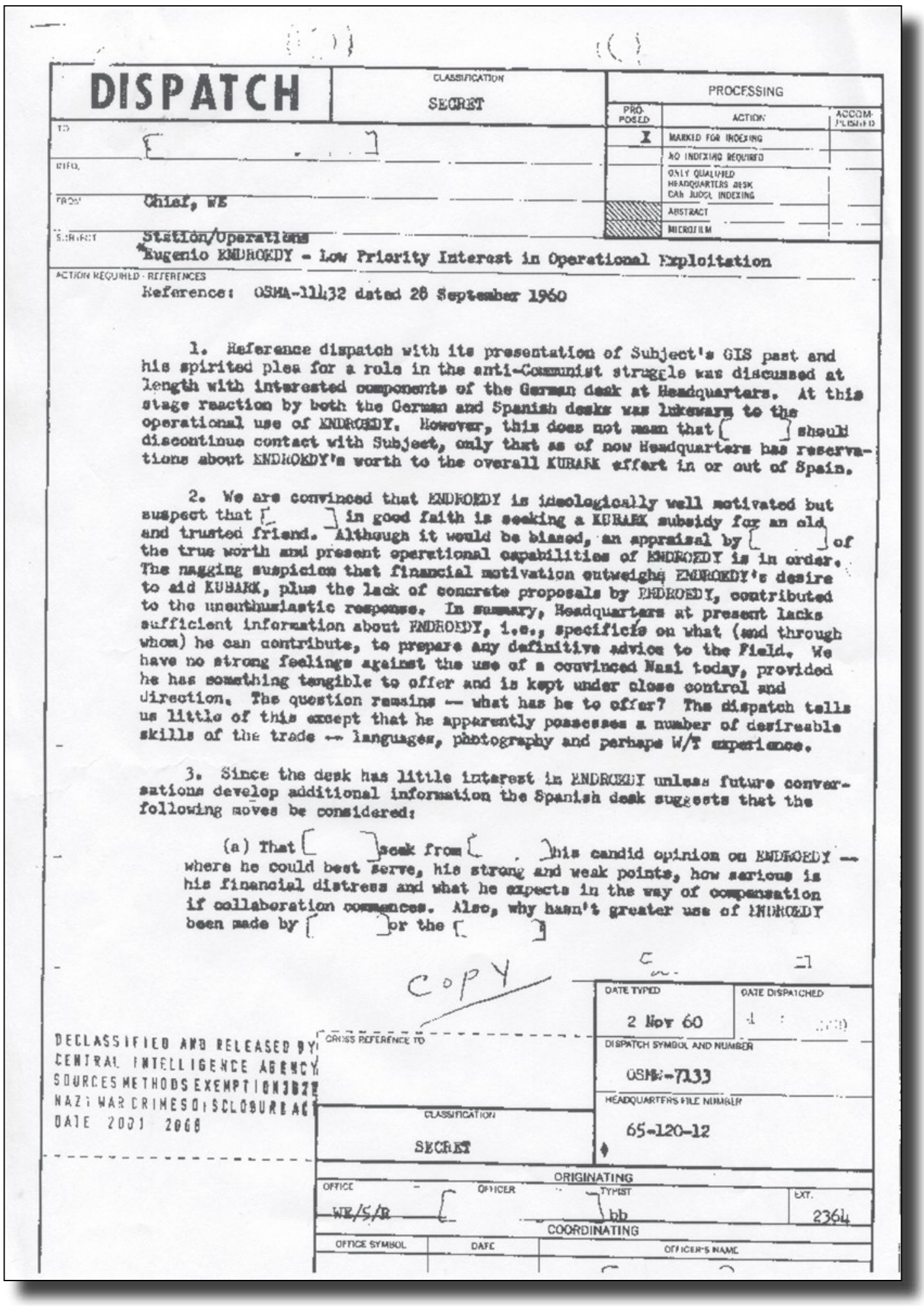
CLASSIFICATION: SECRET

ORIGINATING OFFICE – OFFICER – TYPIST – EXT.

COORDINATING

OFFICE SYMBOL | DATE | OFFICER'S NAME

Source: RG 263, CIA Name Files, first release, file: Endroedy, Eugenio.



DISPATCH

CLASSIFICATION: SECRET

PROCESSING

PROPOSED	ACTION	ACCOMPLISHED
X	MARKED FOR INDEXING	
	NO INDEXING REQUIRED	
	ONLY QUALIFIED HEADQUARTERS DESK CAN JUDGE INDEXING	
	ABSTRACT	
	MICROFILM	

TO: [redacted]

INFO.

FROM: Chief, WE

SUBJECT: Station/Operations
Eugenio ENDROEDY - Low Priority Interest in Operational Exploitation

ACTION REQUIRED · REFERENCES
Reference: OSHA-11432 dated 28 September 1960

1. Reference dispatch with its presentation of Subject's GIS past and his spirited plea for a role in the anti-Communist struggle was discussed at length with interested components of the German desk at Headquarters. At this stage reaction by both the German and Spanish desks was lukewarm to the operational use of ENDROEDY. However, this does not mean that [redacted] should discontinue contact with Subject, only that as of now Headquarters has reservations about ENDROEDY's worth to the overall KUBARK effort in or out of Spain.

2. We are convinced that ENDROEDY is ideologically well motivated but suspect that [redacted] in good faith is seeking a KUBARK subsidy for an old and trusted friend. Although it would be biased, an appraisal by [redacted] of the true worth and present operational capabilities of ENDROEDY is in order. The nagging suspicion that financial motivation outweighs ENDROEDY's desire to aid KUBARK, plus the lack of concrete proposals by ENDROEDY, contributed to the unenthusiastic response. In summary, Headquarters at present lacks sufficient information about ENDROEDY, i.e., specifics on what (and through whom) he can contribute, to prepare any definitive advice to the Field. We have no strong feelings against the use of a convinced Nazi today, provided he has something tangible to offer and is kept under close control and direction. The question remains -- what has he to offer? The dispatch tells us little of this except that he apparently possesses a number of desireable skills of the trade -- languages, photography and perhaps W/T experience.

3. Since the desk has little interest in ENDROEDY unless future conversations develop additional information the Spanish desk suggests that the following moves be considered:

(a) That [redacted] seek from [redacted] his candid opinion on ENDROEDY -- where he could best serve, his strong and weak points, how serious is his financial distress and what he expects in the way of compensation if collaboration commences. Also, why hasn't greater use of ENDROEDY been made by [redacted] or the [redacted]

COPY

DECLASSIFIED AND RELEASED BY THE CENTRAL INTELLIGENCE AGENCY SOURCES METHODS EXEMPTION 3B27 NAZI WAR CRIMES DISCLOSURE ACT DATE 2001 2008

CROSS REFERENCE TO

DATE TYPED: 2 Nov 60

DATE DISPATCHED: [illegible]

DISPATCH SYMBOL AND NUMBER: OSHA-7133

HEADQUARTERS FILE NUMBER: 65-120-12

CLASSIFICATION: SECRET

ORIGINATING

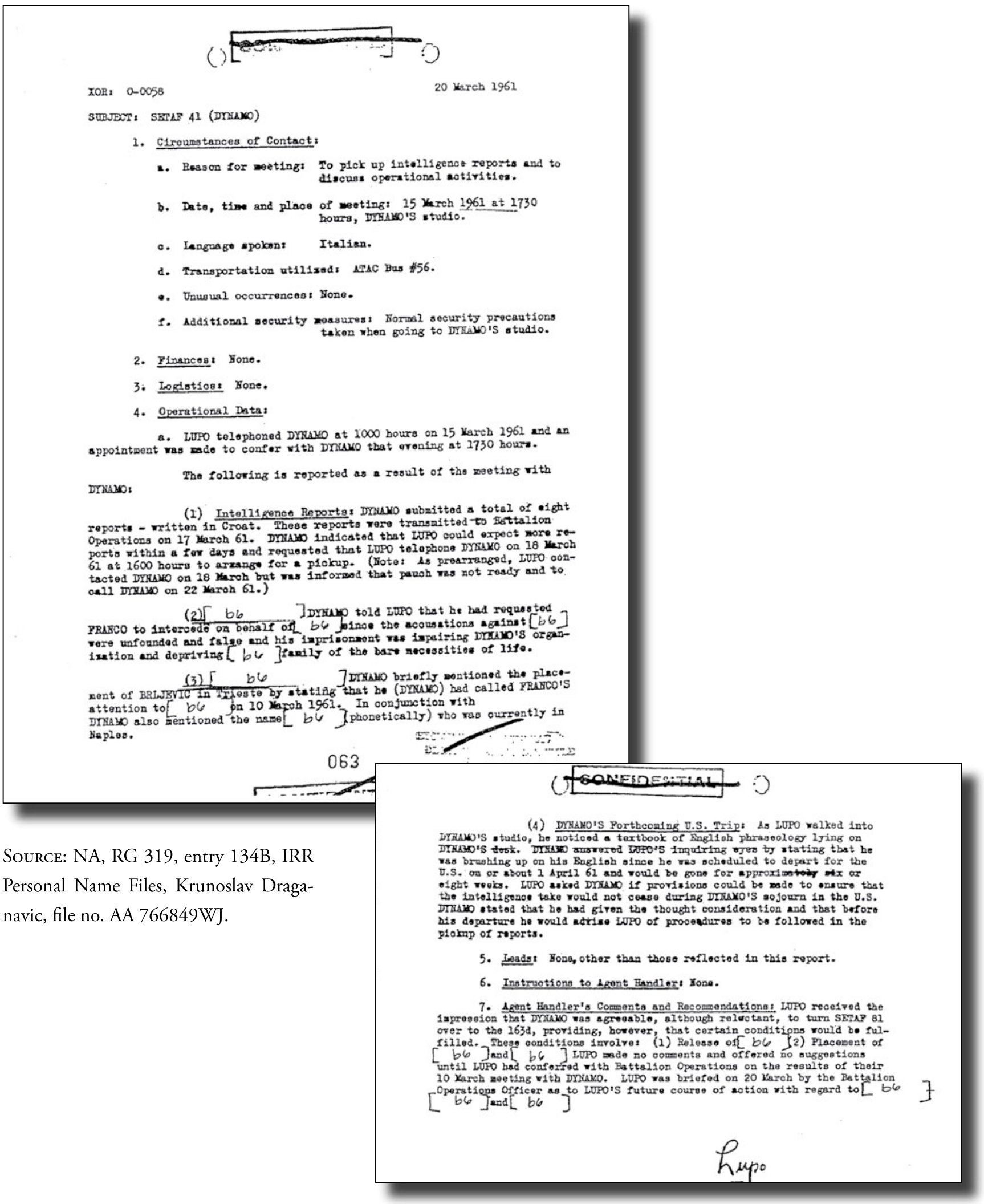
OFFICE	OFFICER	TYPIST	EXT.
WE/S/R	[redacted]	bb	2364

COORDINATING

OFFICE SYMBOL	DATE	OFFICER'S NAME

Source: RG 263, CIA Name Files, second release, file: Endroedy, Eugenio.

Figure 7. Sample of documents released with redactions



XOR: 0-0058 20 March 1961

SUBJECT: SETAF 41 (DYNAMO)

1. Circumstances of Contact:

a. Reason for meeting: To pick up intelligence reports and to discuss operational activities.

b. Date, time and place of meeting: 15 March 1961 at 1730 hours, DYNAMO'S studio.

c. Language spoken: Italian.

d. Transportation utilized: ATAC Bus #56.

e. Unusual occurrences: None.

f. Additional security measures: Normal security precautions taken when going to DYNAMO'S studio.

2. Finances: None.

3. Logistics: None.

4. Operational Data:

a. LUPO telephoned DYNAMO at 1000 hours on 15 March 1961 and an appointment was made to confer with DYNAMO that evening at 1730 hours.

The following is reported as a result of the meeting with DYNAMO:

(1) Intelligence Reports: DYNAMO submitted a total of eight reports - written in Croat. These reports were transmitted to Battalion Operations on 17 March 61. DYNAMO indicated that LUPO could expect more reports within a few days and requested that LUPO telephone DYNAMO on 18 March 61 at 1600 hours to arrange for a pickup. (Note: As prearranged, LUPO contacted DYNAMO on 18 March but was informed that pauch was not ready and to call DYNAMO on 22 March 61.)

(2) [b6] DYNAMO told LUPO that he had requested FRANCO to intercede on behalf of [b6] since the accusations against [b6] were unfounded and false and his imprisonment was impairing DYNAMO'S organization and depriving [b6] family of the bare necessities of life.

(3) [b6] DYNAMO briefly mentioned the placement of BRLJEVIC in Trieste by stating that he (DYNAMO) had called FRANCO'S attention to [b6] on 10 March 1961. In conjunction with DYNAMO also mentioned the name [b6] phonetically) who was currently in Naples.

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CONFIDENTIAL

(4) DYNAMO'S Forthcoming U.S. Trip: As LUPO walked into DYNAMO'S studio, he noticed a textbook of English phraseology lying on DYNAMO'S desk. DYNAMO answered LUPO'S inquiring eyes by stating that he was brushing up on his English since he was scheduled to depart for the U.S. on or about 1 April 61 and would be gone for approximately six or eight weeks. LUPO asked DYNAMO if provisions could be made to ensure that the intelligence take would not cease during DYNAMO'S sojourn in the U.S. DYNAMO stated that he had given the thought consideration and that before his departure he would advise LUPO of procedures to be followed in the pickup of reports.

5. Leads: None, other than those reflected in this report.

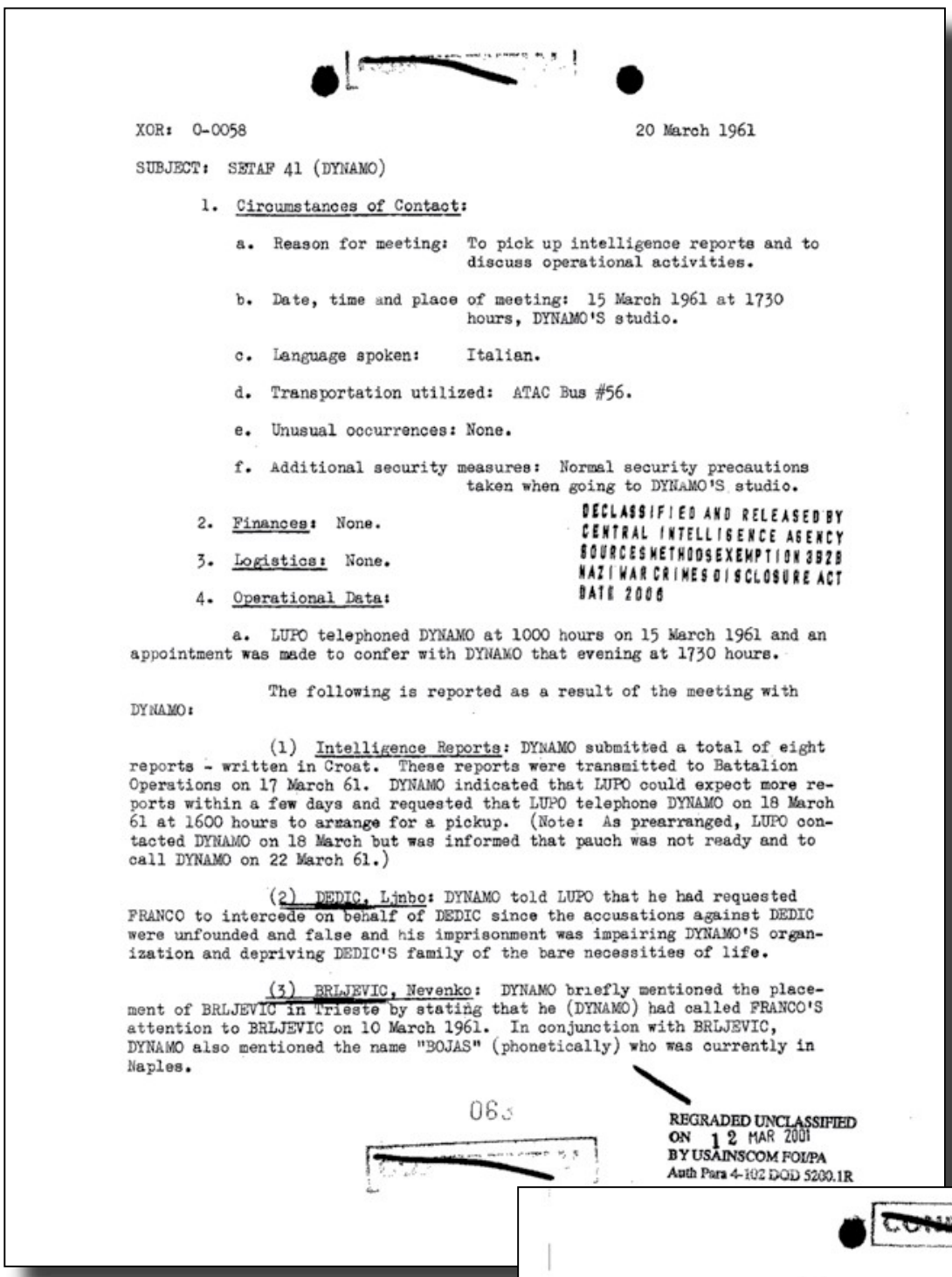
6. Instructions to Agent Handler: None.

7. Agent Handler's Comments and Recommendations: LUPO received the impression that DYNAMO was agreeable, although reluctant, to turn SETAF 81 over to the 163d, providing, however, that certain conditions would be fulfilled. These conditions involve: (1) Release of [b6] (2) Placement of [b6] and [b6] LUPO made no comments and offered no suggestions until LUPO had conferred with Battalion Operations on the results of their 10 March meeting with DYNAMO. LUPO was briefed on 20 March by the Battalion Operations Officer as to LUPO'S future course of action with regard to [b6] [b6] and [b6]

Lupo

Source: NA, RG 319, entry 134B, IRR Personal Name Files, Krunoslav Draganavic, file no. AA 766849WJ.

These same document released with information restored.



XOR: O-0058 20 March 1961

SUBJECT: SETAF 41 (DYNAMO)

1. Circumstances of Contact:

a. Reason for meeting: To pick up intelligence reports and to discuss operational activities.

b. Date, time and place of meeting: 15 March 1961 at 1730 hours, DYNAMO'S studio.

c. Language spoken: Italian.

d. Transportation utilized: ATAC Bus #56.

e. Unusual occurrences: None.

f. Additional security measures: Normal security precautions taken when going to DYNAMO'S studio.

2. Finances: None.

3. Logistics: None.

4. Operational Data:

DECLASSIFIED AND RELEASED BY CENTRAL INTELLIGENCE AGENCY SOURCES METHODS EXEMPTION 3B2B NAZI WAR CRIMES DISCLOSURE ACT DATE 2006

a. LUPO telephoned DYNAMO at 1000 hours on 15 March 1961 and an appointment was made to confer with DYNAMO that evening at 1730 hours.

The following is reported as a result of the meeting with DYNAMO:

(1) Intelligence Reports: DYNAMO submitted a total of eight reports - written in Croat. These reports were transmitted to Battalion Operations on 17 March 61. DYNAMO indicated that LUPO could expect more reports within a few days and requested that LUPO telephone DYNAMO on 18 March 61 at 1600 hours to arrange for a pickup. (Note: As prearranged, LUPO contacted DYNAMO on 18 March but was informed that pauch was not ready and to call DYNAMO on 22 March 61.)

(2) DEDIC, Ljubo: DYNAMO told LUPO that he had requested FRANCO to intercede on behalf of DEDIC since the accusations against DEDIC were unfounded and false and his imprisonment was impairing DYNAMO'S organization and depriving DEDIC'S family of the bare necessities of life.

(3) BRLJEVIC, Nevenko: DYNAMO briefly mentioned the placement of BRLJEVIC in Trieste by stating that he (DYNAMO) had called FRANCO'S attention to BRLJEVIC on 10 March 1961. In conjunction with BRLJEVIC, DYNAMO also mentioned the name "BOJAS" (phonetically) who was currently in Naples.

06

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CONFIDENTIAL

(4) DYNAMO'S Forthcoming U.S. Trip: As LUPO walked into DYNAMO'S studio, he noticed a textbook of English phraseology lying on DYNAMO'S desk. DYNAMO answered LUPO'S inquiring eyes by stating that he was brushing up on his English since he was scheduled to depart for the U.S. on or about 1 April 61 and would be gone for approximately six or eight weeks. LUPO asked DYNAMO if provisions could be made to ensure that the intelligence take would not cease during DYNAMO'S sojourn in the U.S. DYNAMO stated that he had given the thought consideration and that before his departure he would advise LUPO of procedures to be followed in the pickup of reports.

5. Leads: None, other than those reflected in this report.

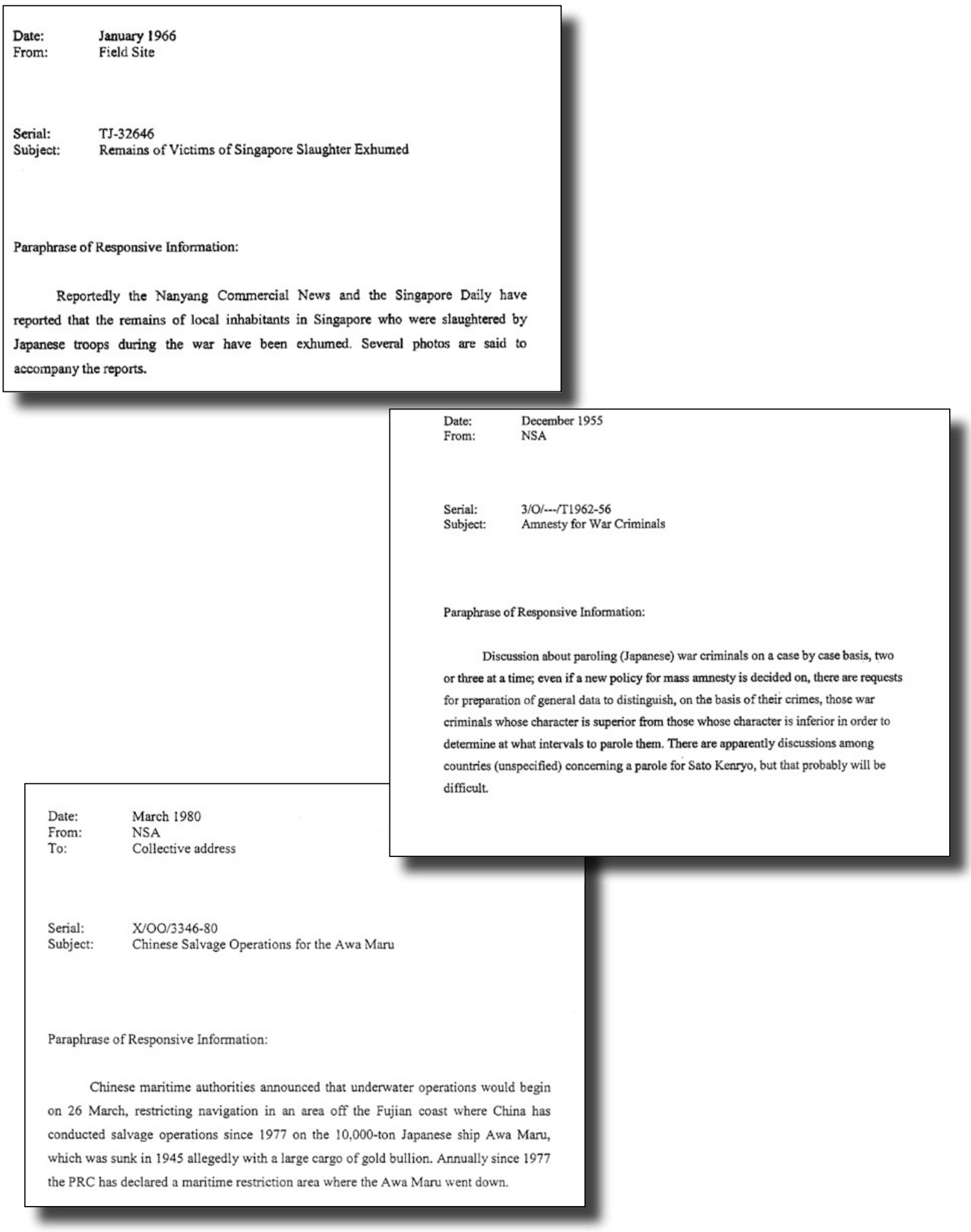
6. Instructions to Agent Handler: None.

7. Agent Handler's Comments and Recommendations: LUPO received the impression that DYNAMO was agreeable, although reluctant, to turn SETAF 81 over to the 163d, providing, however, that certain conditions would be fulfilled. These conditions involve: (1) Release of DEDIC; (2) Placement of BRLJEVIC and "BOJAS". LUPO made no comments and offered no suggestions until LUPO had conferred with Battalion Operations on the results of their 10 March meeting with DYNAMO. LUPO was briefed on 20 March by the Battalion Operations Officer as to LUPO'S future course of action with regard to DEDIC, BRLJEVIC and "BOJAS".

Lupo

Source: NA, RG 319, entry 134B, IRR Personal Name Files, Krunoslav Draganavic, file no. AA 766849WJ.

Figure 8. Sample of documents released with explanatory language



Date: January 1966
From: Field Site

Serial: TJ-32646
Subject: Remains of Victims of Singapore Slaughter Exhumed

Paraphrase of Responsive Information:

Reportedly the Nanyang Commercial News and the Singapore Daily have reported that the remains of local inhabitants in Singapore who were slaughtered by Japanese troops during the war have been exhumed. Several photos are said to accompany the reports.

Date: December 1955
From: NSA

Serial: 3/O/---/T1962-56
Subject: Amnesty for War Criminals

Paraphrase of Responsive Information:

Discussion about paroling (Japanese) war criminals on a case by case basis, two or three at a time; even if a new policy for mass amnesty is decided on, there are requests for preparation of general data to distinguish, on the basis of their crimes, those war criminals whose character is superior from those whose character is inferior in order to determine at what intervals to parole them. There are apparently discussions among countries (unspecified) concerning a parole for Sato Kenryo, but that probably will be difficult.

Date: March 1980
From: NSA
To: Collective address

Serial: X/OO/3346-80
Subject: Chinese Salvage Operations for the Awa Maru

Paraphrase of Responsive Information:

Chinese maritime authorities announced that underwater operations would begin on 26 March, restricting navigation in an area off the Fujian coast where China has conducted salvage operations since 1977 on the 10,000-ton Japanese ship Awa Maru, which was sunk in 1945 allegedly with a large cargo of gold bullion. Annually since 1977 the PRC has declared a maritime restriction area where the Awa Maru went down.

SOURCE: RG 457, Select Documents released under NWCDA, Box 1, Paraphrases, 1937-1980, Entry ZZ10.

Date: February 1992
From: NSA
To: CIA, STATE/RCI, SSO DIA, CIA field offices, TREAS DEPT WHITE HOUSE, NCR DEF

Serial: Y-3/OO/6358-92
Subject: Numerous Sources Confirm Brunner in Syria, Despite Syrian Denials

Paraphrase of Responsive Information:

Despite Syrian denials that Nazi war criminal Alois Brunner is in Syria, numerous sources have confirmed that Brunner is there. Both France and Germany have requested extradition so that Brunner can stand trial for the crimes attributed to him.

Date: October 1991
From: NSA
To: NSA Liaison units, SSO JSOC, SEAL TEAM 6, CIA, STATE/RCI, FBI, SSO SOIC, SSO MLDNHL, COGARD ICC, CMC, JOINT STAFF, NAVOPINTCEN, SSO ITAC, SSO USAF, CNO, SSO DA, SECSER, SSO DIA, NISCOM, TREAS DEPT, WHITE HOUSE, CIA offices, SSO CINCCENT, SSO USEUCOM, SSO USAREUR, CINCUSNAVEUR, SSO USAFE, CINCLANTFLT, CINPACFLT, COMIDEASTFOR, COMSEVENFLT, COMSIXFLT, SSO USARPAC, SSO PACAF, USCINCLANT, USCINCPAC, JICPAC, FOSIF ROTA, SSO 16 AF, CUSTOMS

Serial: 3/OO/40816-91
Subject: Alleged Syrian Expulsion of Nazis, Including Alois Brunner

Paraphrase of Responsive Information:

According to third hand information, the Syrian government reportedly has expelled the international terrorist "Carlos", taking the same measures that it had against former Nazis hiding in Syria, including the celebrated Nazi war criminal Alois Brunner.

Date: March 1994
From: NSA
To: AFOSI, CIA, CIA office in Europe, FBI, SSO DIA, SSO ITAC, SSO MEADE, SSO NCIS, SSO USEUCOM, STATE/RCI, SUSLOL, NCR DEF, WHITE HOUSE, NSA liaison units, NSA field sites

Serial: Z-3/OO/8612-94 .
Subject: Waldheim Continues to Seek Removal from U.S. Watch List

Summary of Responsive Information:

Kurt Waldheim, former UN Secretary General and President of Austria, is continuing his attempts to gain his removal from the U.S. Department of Justice Watch List. Waldheim apparently is trying to get permission to travel to New York next year for the 50th anniversary celebration of the founding of the United Nations. He continues to claim that the Justice Department document justifying his inclusion on the watch list misrepresented his military service and merely repeated unsubstantiated accusations against him.

SOURCE: RG 457, Select Documents released under JIGDA, Box 1, Paraphrases, 1937-1980, Entry ZZ10.

Agencies seeking to continue classification of any document bore the burden of justifying continued withholding. The agency head was required by law to report the applicable exemption to appropriate committees of Congress. The IWG informed the agencies that in the absence of legitimate justification for continued classification, it would challenge such decisions and report agency decisions to retain classification in the face of such challenges to Congress.[66]

National Security Interests

National security exemptions allowed under the Disclosure Acts were identical to the exemptions allowed for 25-year-old material under the 1995 Executive Order 12958, which governs the treatment, classification, and declassification of U.S. Government information generally (as amended by Bush Executive Order 13292 in March 2003). The IWG encouraged agencies to implement the Disclosure Acts and Executive Order 12958 in concert. Despite this similarity, the NWCDA theoretically demanded greater release than Executive Order 12958 because the NWCDA expressly did *not* allow *types* of information (such as intelligence sources) to be withheld wholesale under the National Security Act of 1947.[67] For example, information on intelligence sources could be withheld under the NWCDA, but in each case the agency intending to keep the information classified would be obligated to justify why its release would threaten national security.

Some relevant material required review by the Department of Energy under the Kyl and Lott Amendments to assure that it did not contain sensitive nuclear information. National Archives staff also reexamined records previously declassified to ensure they did not violate any restrictions implemented in response to the September 11 terrorist attacks. These restrictions were intended to withhold information that might be of use to terrorists, such as chemical formulas.

Foreign Government Information

Documents frequently contained information that was provided by a foreign government or that described another government's intelligence activities (other than Axis governments). Questions about how to handle such material arose in the implementation of the Disclosure Acts. Before Executive Order 12958, such information was usually automatically withheld unless the foreign government explicitly allowed its release, even though most of the wartime and immediate postwar intelligence information of foreign origin had long lost its sensitivity. However, foreign government information was not an exempt category under EO 12958 or the Disclosure Acts. Agencies were reminded of this in a May 10, 2001, memo from the Chair.[68] The IWG encouraged agencies to negotiate general agreements with their foreign counterparts to allow the agencies to release certain classes of information in very old records without consultation in each instance. The FBI and CIA used this approach and saved much time and effort in the review process.

Overseeing Agency Implementation of the Disclosure Acts

As the day-to-day IWG liaison to the agencies, the audit team monitored progress on site, assessed agency adherence to IWG guidance, and measured productivity. Auditors provided the IWG detailed reports on agency search strategies; frequent statistical reports on records located, declassified, and transferred to the National Archives; and regular status reports on agency progress and problems. These reports gave the IWG a basis for deciding whether closer oversight was needed and whether it was advisable to take up any problems with high-ranking agency officials.

The IWG audit team examined documents that

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66. Instances of these challenges are reported in the individual agency accounts in chapter 5.

67. The National Security Act allows a blanket withholding of information related to intelligence sources and methods.

68. The 10 May 2001 memorandum is available in appendix 8.

were identified as relevant under the Disclosure Acts but were not yet declassified by the agencies. In materials intended for release with redactions, the audit team reviewed the information being redacted to ensure that the redaction was legally justified under the Disclosure Acts. The audit team also inspected withheld documents to determine whether the reasons given for continued classification were justified under the acts.

When the audit team believed that record searches were too narrow in scope or that declassification review was inadequate, the auditors alerted the IWG to these problems early enough in the process for adjustments to be made.[69]

As the need arose, the IWG contracted with several retired officials from agencies to assist the auditors. All of those involved in the audit process were cleared at the Top Secret SCI level.

Releasing Declassified Records to the Public

Once materials were declassified by the agencies, copies or originals were physically transferred to the National Archives. Agencies varied in their means of declassifying their documents and transferring them to the National Archives. Three different models emerged.

1. Transferring original files. An agency located original relevant documents, declassified them, and transferred entire files containing original responsive documents to the National Archives. If a file contained relevant documents, the whole file was kept intact and processed for release, even though it also contained documents that were not relevant. The FBI, the National Archives, and, to some extent, the Army Investigative Records Repository used this method. The Department of State used this method on one of its largest files.

2. Transferring copies of documents. Agencies using this method made copies of relevant documents, declassified those copies, and transferred the declassified copies to the National Archives. This approach was used primarily by the CIA and the Department of State. The Army used a version of this approach with microfilm files, electronically imaging the bulk of its relevant files and marking the sensitive passages before transferring them to the National Archives for final processing and release. Later in the course of the project, the Army agreed to transfer all 13,000 reels of its microfilm as well as all of the digital scans of that film to the National Archives.

3. Transferring paraphrased documents. NSA, the only agency to use this method, paraphrased sensitive documents and transferred the paraphrase to the National Archives. Paraphrasing protected the agency's intelligence collection techniques while still resulting in a coherent document, whereas documents redacted to protect that information would have been so altered as to be meaningless without the paraphrasing.[70]

Once these declassified files reached the National Archives, its staff reviewed the records for privacy considerations as well as for potential relevance to the statutes' OSI exclusion.

Privacy Review

Reviewing records to protect the privacy rights of U.S. citizens is a normal activity of the National Archives with respect to all accessioned records; thus, the agencies were advised that the National Archives would assume responsibility for reviewing records released under the Disclosure Acts. In accordance with the acts, privacy considerations were taken into account before a declassified document was released to ensure that its release would not "constitute a clearly unwarranted invasion of personal privacy." Legal constraints that protect privacy rights were weighed against the public interest served by disclosure. At the request of the IWG, the Office of the General Counsel at the National Archives prepared guidance for use in ex-

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69. See, for example, the State Department section in chapter 5.

70. Historians are accustomed to seeing the notation that a document has been paraphrased in the Foreign Relations of the United States series.

empting documents from disclosure based on privacy grounds.[71] This privacy review was based on the same considerations as those taken into account in FOIA reviews, including the fact that, like the FOIA, the NWCDA and the JIGDA are disclosure statutes under which not all privacy interests require mandatory exemption. All releases under the Disclosure Acts were accompanied by a disclaimer meant to guard against unfairly characterizing as war criminals innocent individuals mentioned in the records.

Review by the Office of Special Investigations

Reviewing documents for potential relevance to DOJ/OSI investigations was the final step in determining whether particular declassified materials would be made available to the public immediately or released at a later date. Records identified by OSI as relating to its investigations were excluded from release under the acts in order to protect its ongoing investigations and prosecutions of Axis criminals in the United States or seeking entrance into this country (this subject is covered in more detail in the DOJ section of chapter 5).

Making Documents Publicly Accessible

Preparing millions of pages of documents for public use was an extraordinarily time-consuming and labor-intensive process. Archivists first examined all files for preservation and stabilization. Old, fragile, often-crumbling wartime paper was first placed in Mylar and then placed in acid free folders. Files were then arranged according to the original schema, if possible, to make them retrievable by date, file number, alphabet, or by some other orderly arrangement. Record series were then described in some manner, from minimal identification such as type of record and origin to detailed databases listing and describing individual documents in the files. NARA staff then formally withdrew all still-classified or otherwise restricted documents, placing public notices in the files in place of the withdrawn documents. Where documents were withheld in part, the staff prepared redacted versions for the files.

While libraries arrange their books according to subject and author, archives arrange their holdings by origin, or provenance, of a record. A document's provenance refers not necessarily to the person who created or even signed it, but to the agency that filed it. Under the Disclosure Acts, it was not uncommon for several U.S. Government agencies to declassify files on the same subject or individual. In accordance with standard archival practice, this information, though related by subject matter, remains in its original file as created or received by the agency.

Archivists create finding aids to help researchers locate specific information. These finding aids include enough information to place the documents in organizational context and to illuminate why the records were kept and how they were collected; they do not explain the meaning or significance of documents or attempt to present a historical interpretation. The primary finding aid that was developed as a result of the JIGDA, which covers both newly declassified and previously open Japanese war crimes records, is 1,700 pages, yet it cannot be considered exhaustive: no guide to voluminous archival records can be considered to have identified all information on a subject. Another finding aid that focuses on records relating to Japanese biological warfare was also created. Numerous lists, guides, databases, and other finding aids exist for the German-related records, and these will be further supplemented to help locate records among the more than 8 million pages declassified under the NWCDA.

The process of creating finding aids for materials released under the Disclosure Acts is complicated. Normally, finding aids identify a body of records that has been accessioned and transferred in its entirety from the agency of origin, and the body of records is filed in an archive as it was created at the agency. That is, all records in any particular agency file will remain

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71. Privacy guidance is found in appendix 9.

together in files at the National Archives. Under the Disclosure Acts, however, many records, particularly those from the CIA, State, and NSA, were pulled from larger bodies of records that were not declassified.[72] Further, a number of records from the CIA and other agencies were released only in part. The resulting collections of these records at the National Archives require additional descriptive work to attempt to set them in their institutional, archival, and historical context.

As of March 2007, much of this work is yet to be done. The Archivist of the United States will continue to work with other executive branch agencies to ensure ongoing disclosure of records relevant to the issues of this report. In some cases, processing cannot be done adequately with the information currently available. For example, the files released by the CIA were compiled solely to comply with the Disclosure Acts. These files are not intact, original files, but instead comprise pages gathered from various CIA files. The CIA removed all file numbers on the released pages, rendering it difficult to ascertain the location of the original file at the agency.[73]

Costs

Direct costs for the IWG totaled over $12 million for its lifetime (see table 1). Individual agency costs, estimated to be $17 million, are discussed in chapter 4.

Table 1. Interagency Working Group direct support costs, Jan. 1999–Mar. 2007

Item/Year	FY1999	FY2000	FY2001	FY2002	FY2003	FY2004	FY2005	FY2006	FY2007*
Contracts Historians, Auditors, Consultants, Database Support, Media Relations, Editor, Space	154,528	421,591	685,259	1,236,717	1,034,785	740,024	435,959	469,157	270,000
Staff Costs NARA	357,791	620,434	829,190	826,252	801,644	662,514	625,980	727,345	762,375
Other Costs									
Supplies/Equip	1,233	43,796	1,200	1,200	1,200	1,200	1,200	1,200	1,200
Meeting space, clearances		4,597	8,500	10,500	7,383	10,000	5,000	3,000	
Travel	22,678	30,263	70,000	65,700	40,236	24,000	24,000	24,000	15,000
Printing								15,000	20,000
TOTAL	536,230	1,120,681	1,594,149	2,140,369	1,885,248	1,437,738	1,092,139	1,239,702	1,068,575
GRAND TOTAL									**$12,114,831**

*Full year support staff costs included for necessary follow up work

. . .

72. This issue is discussed in the CIA section of chapter 5.

73. See CIA section in chapter 5 for more on this topic.

5. Agency Implementation of the Acts

From a universe of 620 million pages, U.S. Government agencies screened over 100 million pages for relevance under the Nazi War Crimes Disclosure Act and screened over 17 million pages under the Japanese Imperial Government Disclosure Act. Only a small percentage of these screened pages were found to be responsive to the Disclosure Acts: nearly 8.5 million pages of documents were relevant to the NWCDA, and over 142,000 pages were relevant to the JIGDA. While the vast majority of relevant pages were subsequently declassified and released to the public, some were not (see figures 9 and 10, next page).

It is important to note here that of the 8.5 million pages released as containing records relevant to the Disclosure Acts, only a small portion relate directly to war crimes. These relevant war crimes records are often found among large groups of non-relevant records kept in the same files. In most cases, the files have been kept together and opened under the Disclosure Acts to preserve their integrity.

Agencies spent an estimated $17 million to implement the acts (see table 2).

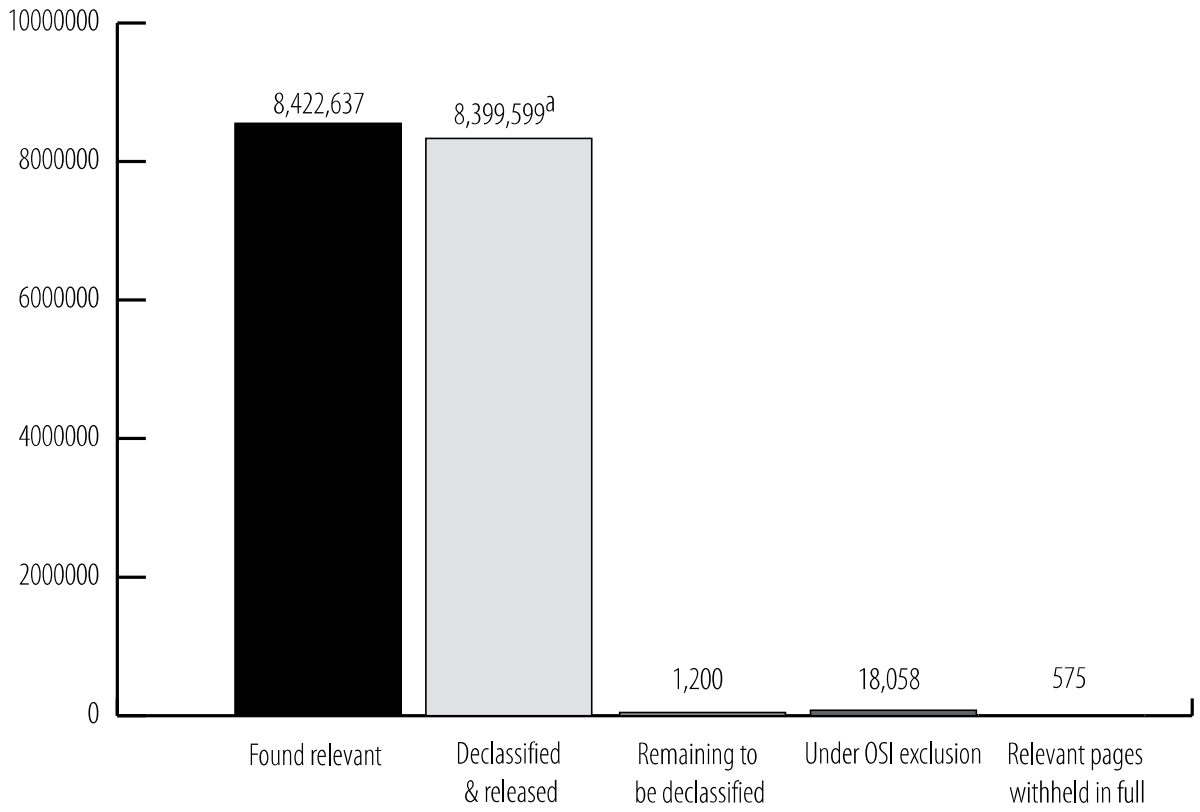
The remainder of this chapter looks at each agency's effort to comply with the Disclosure Acts.

Table 2. Cost of implementing NWCDA and JIGDA, by agency

Agency	Cost
CIA	$3,100,000*
Army	$1,886,000
Navy	$100,000
Air Force	$60,000
JCS	$18,000
NSA	$2,103,000
DIA	$51,000
DOJ (Civil, Criminal, incl. OSI and INS)	$1,650,575
Pardon Attorney	$1,000
FED	$5,000
FBI	$5,800,000
NARA	$1,452,000
NSC	$3,000
State	$939,000
Treasury	$24,000
TOTAL	**$17,192,575**

*estimate based on personnel hours

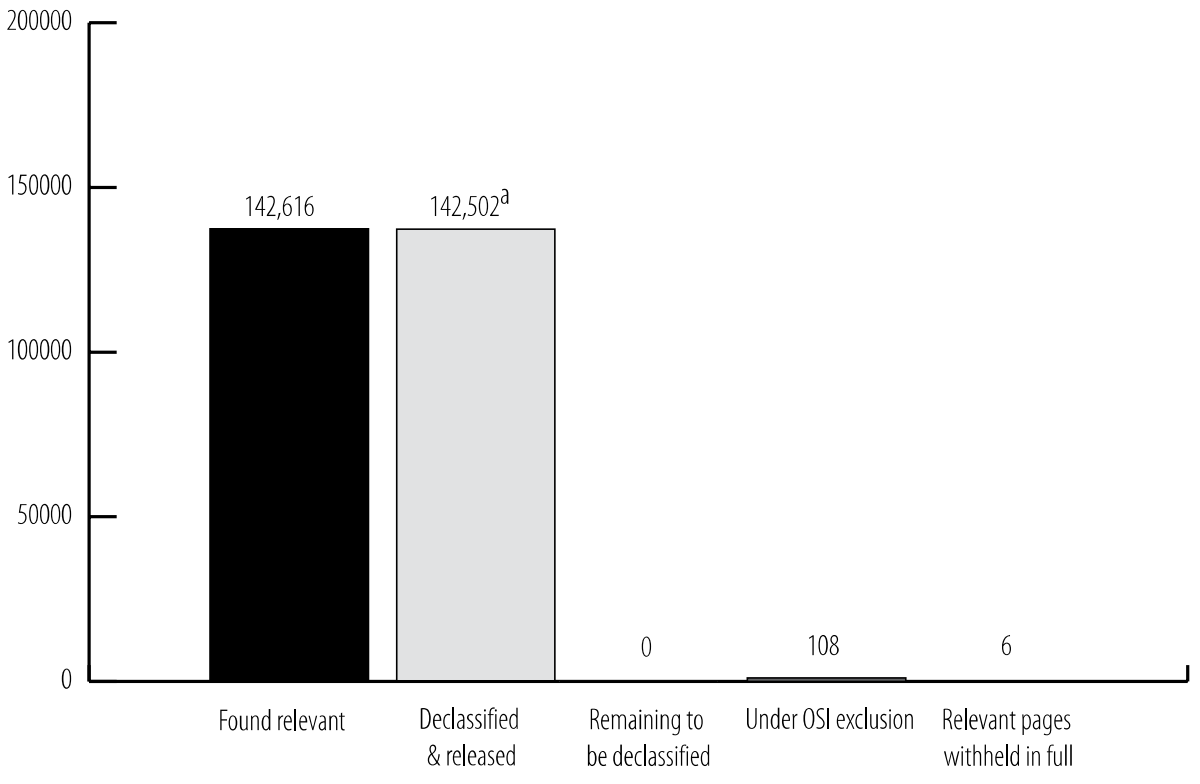
Figure 9. NWCDA summary, March 2007



SOURCE: March 2007 IWG statistical report.

[a]Figure includes pages in files that were released in full to preserve file integrity. Only a small number of pages in these files contains relevant war crimes documentation.

Figure 10. JIGDA summary, March 2007



SOURCE: March 2007 IWG statistical report.

[a]Figure includes pages in files that were released in full to preserve file integrity. Only a small number of pages in these files contains relevant war crimes documentation.

Central Intelligence Agency

Table 3. CIA declassification summary (number of pages)

	Screened	Found relevant	Declassified & released	Withheld in full	Under OSI exclusion
NWCDA (CIA-era)	2,950,000	114,465	109,200	265	1795
NWCDA (OSS-era)	1,200,000	1,200,000	1,200,000	0	0
JIGDA	50,000	5,000	5,000	0	0

SOURCE: March 2007 IWG statistical report.

Search Strategies

The CIA's declassification effort encompassed records from two different periods: its OSS-era (wartime and the immediate postwar period), and its CIA-era (post-1947). The agency searched, reviewed, and released its OSS-era holdings differently from its CIA-era records, with dramatically different results. Ultimately, the IWG convinced the CIA to be forthcoming to an unprecedented extent in releasing information on CIA-era sources, methods, and operations. Given the agency's longstanding policy of withholding such information, its release of Cold War-era materials related to U.S. contacts with war criminals was significant both historically and as a matter of public policy. Major issues regarding the CIA's implementation of the acts are discussed below.

OSS Records

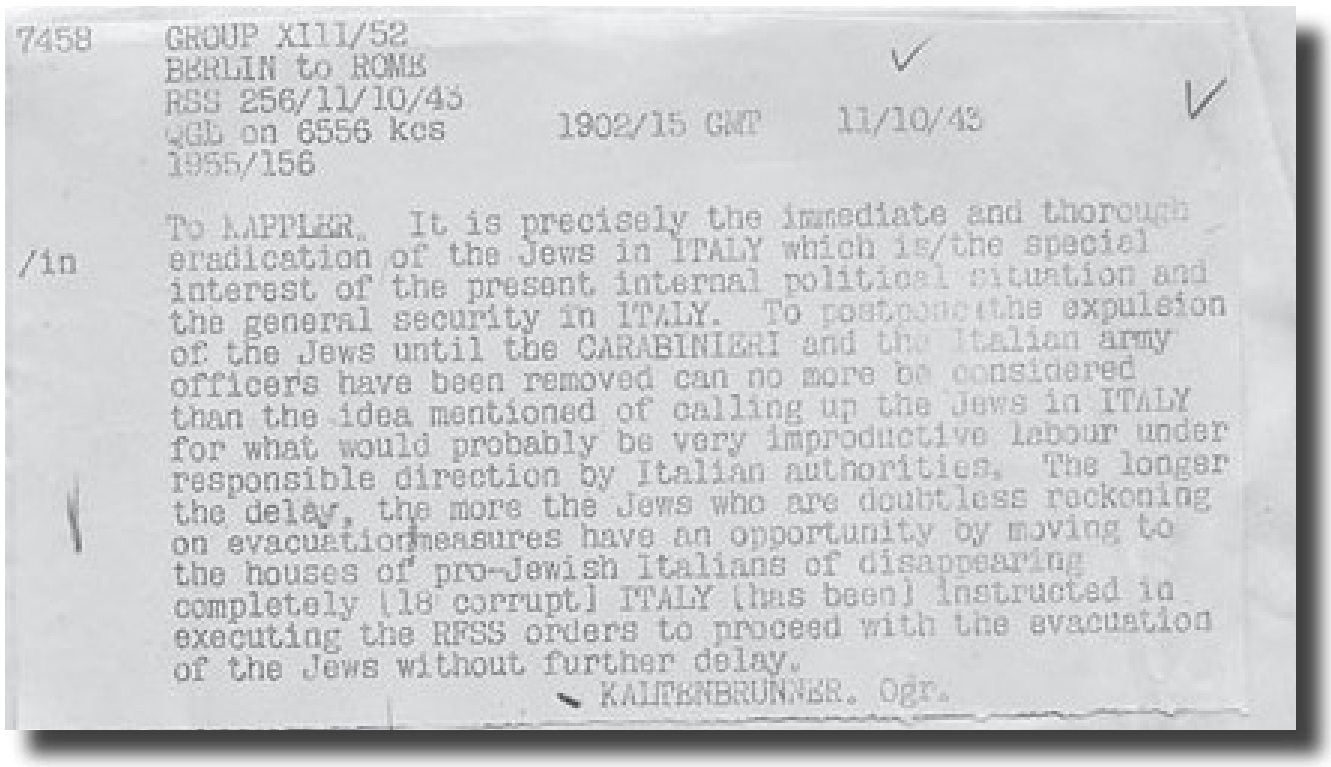
A five-person CIA team conducted a page-by-page review of 1.2 million pages of OSS records that had been previously accessioned into the National Archives but had remained classified. Initially, the CIA considered about 10,000 of these pages to be relevant, but the IWG persuaded the agency to expand its definition of relevancy regarding these records. The agency opened its OSS records in their entirety, retaining the integrity of the files as they had been created by the OSS and administered by the agency. The CIA consulted with foreign governments as needed to clarify the sensitivity of foreign government information, suspending its usual practice of automatically closing materials that related to, were received from, or contained references to foreign intelligence services. As a result, the CIA opened a vast archive of OSS records related to all aspects of intelligence operations during the war, including some important new information on the Holocaust, such as the intercepted and decoded message in figure 12.

CIA-era Records

The agency initially used the 60,000 Names List and the IWG Term List to search electronic and manual indices for records likely to contain responsive material. Historians and staff from the CIA and from the IWG provided additional names and search terms, and other names and terms were identified through interviews with former CIA and OSS personnel who were actively involved with U.S. intelligence operations during and immediately after World War II. Other than the OSS records (discussed below), the records of the Directorate of Operations, the Directorate of Intelligence, and the CIA History Staff contained the most significant relevant documentation.

Based on the results of these searches, the CIA copied all documents in the full original files on the named individuals (name files) or the subjects (subject files). Any other documents related to these individuals or subjects that were located were added to these files. The agency then executed a line-by-line declassification review of these files. Some of these files contained information that the agency considered directly responsive to the Disclosure Acts. Other files contained information that the agency considered

Figure 11. British share decrypts with OSS



7458 GROUP XIII/52
BERLIN to ROME
RSS 256/11/10/43
QGB on 6556 kcs 1902/15 GMT 11/10/43
1955/156

/in To KAPPLER. It is precisely the immediate and thorough eradication of the Jews in ITALY which is/the special interest of the present internal political situation and the general security in ITALY. To postpone the expulsion of the Jews until the CARABINIERI and the Italian army officers have been removed can no more be considered than the idea mentioned of calling up the Jews in ITALY for what would probably be very improductive labour under responsible direction by Italian authorities. The longer the delay, the more the Jews who are doubtless reckoning on evacuation measures have an opportunity by moving to the houses of pro-Jewish Italians of disappearing completely [is corrupt] ITALY [has been] instructed in executing the RFSS orders to proceed with the evacuation of the Jews without further delay.
KALTENBRUNNER. Ogr.

SOURCE: Records of the Office of Strategic Services, RG 226, Entry 122, Misc. X-2 files, Box 1, Folder 5–Italian Decodes.

not responsive to, but related to, the acts, and which it reviewed for release because they were historically significant, specifying that any release was a matter of discretion not statutory obligation.

The CIA conducted additional searches throughout the life of the project based on leads from the material that they were reviewing and in response to specific requests from IWG staff and historians.

Japanese Records

Since the U.S. military services were the primary agent in the Pacific and Asia during and immediately after the war, OSS and CIA documentation on Japanese war crimes is relatively small. The CIA conducted its searches for Japanese materials in 2001 initially using the 66-page IWG keyword list. It screened approximately 300,000 pages. The CIA declassified and released four Japanese name files and three Japanese subject files, totaling 782 pages.

While the IWG had never expected any agency's search to yield as many Japanese-related files as German ones, it nevertheless expected the CIA's search to produce files on individuals of particular interest, who were prominent in the postwar era. The IWG therefore asked the agency to search for documents related to 45 individuals likely to be in its files. These requests concerned individuals who were suspects or convicted war criminals and who later became important leaders in Japanese government, politics, and industry.

The IWG assumed that while such postwar files would likely not contain specific war crimes information, they would report on any activities of these former war criminals with U.S. government officials in Japan. The CIA requested that the IWG provide available biographic information (e.g., date-of-birth) on the 45 named individuals to assist in searching their record systems and identifying documents. The IWG staff provided this information in 2003 and the CIA conducted the requisite searches. The CIA delivered an additional seventeen files on prominent Japanese war criminals and suspects in 2005. The files, which are not voluminous and contain notable time gaps between documents, reflect the information available for collection at the time. The CIA has assured the IWG that if any additional material is located, it will be declassified and released to NARA.

CIA Compliance with the Acts

As the agency whose reluctance to release materials on U.S. Government postwar relationships with Nazis had occasioned the Disclosure Acts, the CIA received the IWG's most intense attention, particularly from the IWG public members. That attention resulted in frequent exchanges with the agency and several meetings with the Director of Central Intelligence in which the IWG set forth its position that the Disclosure Acts required greater disclosure than the agency was prone to provide. As a result of arduous negotiations between the CIA and the IWG public members, staff, and historians, and the involvement of Members of Congress, the CIA was persuaded, particularly after the final two-year extension of the acts in February 2005, to be forthcoming to an unprecedented extent in release of information on sources, methods, and operations.

In implementing the Disclosure Acts, the CIA was challenged to balance the statutes' call for unprecedented openness with the agency's statutory obligation to protect intelligence sources and methods. The Disclosure Acts required the agency to declassify types of information that it had historically been allowed to protect (see figure 12). The IWG pressed the CIA—as it pressed all agencies—to implement the act fully.

From early in the project, the CIA worked closely with IWG historians and staff to identify names and topics that might yield files relevant to the Disclosure Acts. The CIA gave appropriately cleared members of the IWG staff, the audit team, and the historians access to all materials selected and copied as potentially relevant. But beginning in the spring of 2001, the CIA grew less likely to accept the historians' definition of what information was relevant. Disagreements between the IWG and the agency over exactly what the CIA was obligated to disclose under the acts centered on three issues: (1) what constituted a relevant file, (2) whether postwar materials that touched on sources and methods were to be released, and (3) whether the acts required the transfer to the National Archives of original, intact files. These issues are discussed below.

Establishing Relevancy Criteria

Until early 2005, the CIA searched and reviewed its own records using one of the narrowest definitions of relevancy applied by any agency. The CIA reported to the IWG in September 2002, "No challenge has been greater for CIA throughout this effort than to establish relevancy guidelines that comply with the statute and with the broader IWG interpretation on the one hand and that appropriately protect agency equities on the other."[74] At the beginning, the CIA Office of General Counsel (OGC) played a major role in developing relevancy guidelines pursuant to the acts. However, some members of the IWG pressed the CIA for a more expansive view of materials covered by the Disclosure Acts, a view more compatible with initial IWG and NSC guidance to the agencies. The CIA disagreed with the IWG's interpretation of the statutes, and continued to follow the guidance of their Office of General Counsel. The IWG subcommittee and staff objected and discussed the issue of relevancy with the CIA several times during this declassification effort.

Until February 2005, the CIA maintained that files were subject to the acts only if they contained either direct information about war crimes or information suggesting that there were grounds to believe that the subject was involved in war crimes, acts of persecution, or looting. OGC granted that information from files not meeting this standard of relevance to the acts could nevertheless be released "as a matter of discretion." When a file was being released pursuant to the acts, most information it contained about an individual's postwar operational activities would not be released because the Director of Central In-

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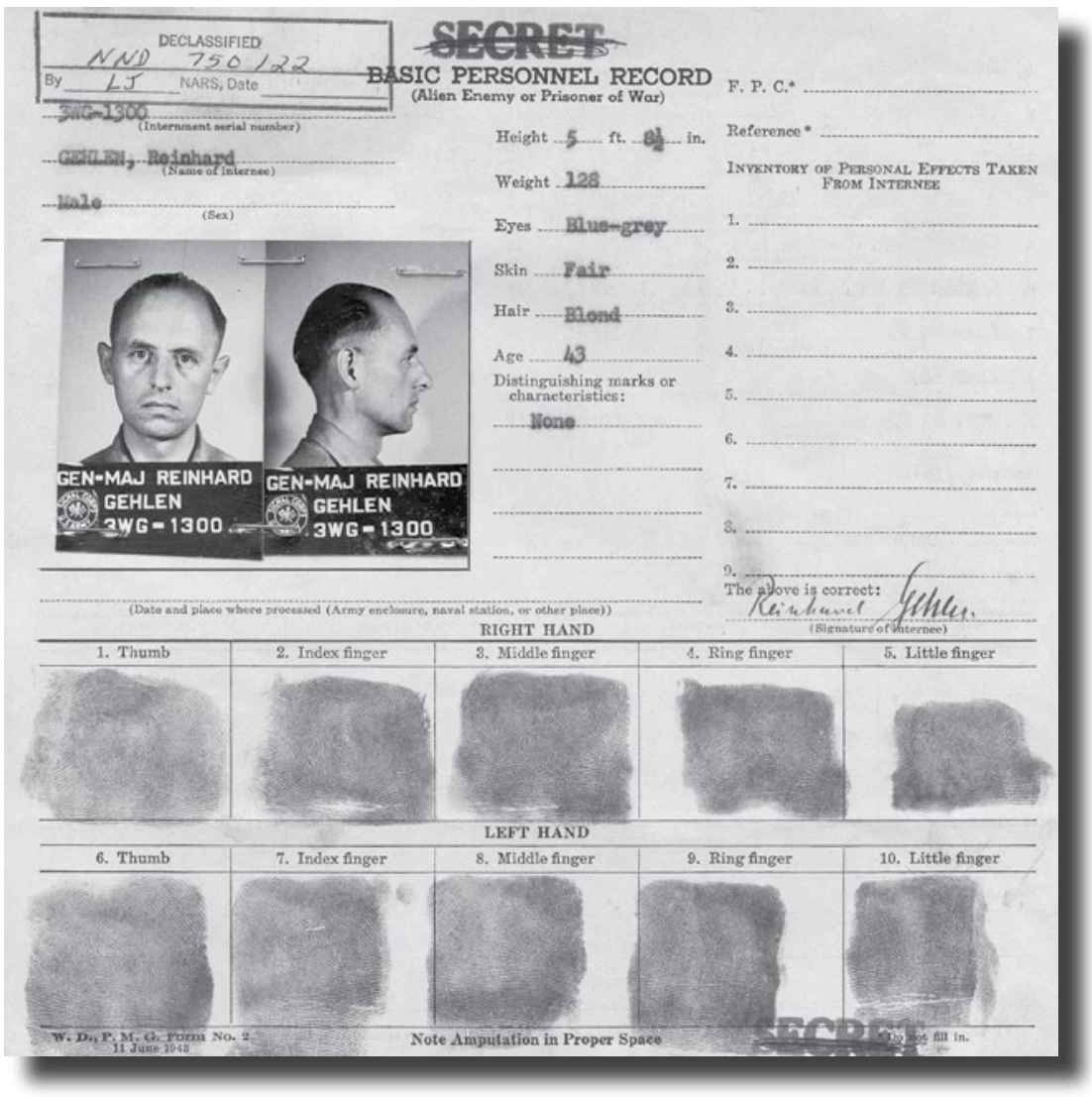
74. See appendix 10, David P. Holmes to Steven Garfinkel, "CIA response to IWG report questions," memorandum, September 20, 2002.

Figure 12. The Gehlen files

In an October 2000 court filing in the Freedom of Information Act case *Oglesby v. Army*, the CIA acknowledged that it had maintained an intelligence relationship with, and held records related to, former German General Reinhard Gehlen. While these files had been exempted from release under FOIA (complying with the Director of Central Intelligence's obligation to protect intelligence sources and methods), the CIA pledged to acknowledge the intelligence relationship with General Gehlen in records processed for release under the Disclosure Act. The CIA's announcement marked its first acknowledgment that it had any relationship with Gehlen.

Although Gehlen is not considered a Nazi war criminal, he had served as Hitler's senior military intelligence officer on the Eastern Front. After the war, he became a U.S. intelligence resource, initially for the Army, and later for the CIA. His extensive network, known as the Gehlen Organization, included operatives and agents with Nazi, collaborationist, and war criminal backgrounds. The Organization was the foundation of the West German intelligence service, the BND. Gehlen's network purportedly received millions in U.S. funding.


DECLASSIFIED
NND 750122
By LJ NARS, Date

SECRET

BASIC PERSONNEL RECORD
(Alien Enemy or Prisoner of War)

3WG-1300
(Internment serial number)

GEHLEN, Reinhard
(Name of internee)

Male
(Sex)

Height 5 ft. 8½ in.
Weight 128
Eyes Blue-grey
Skin Fair
Hair Blond
Age 43
Distinguishing marks or characteristics:
None

F. P. C.* .....
Reference* .....
INVENTORY OF PERSONAL EFFECTS TAKEN FROM INTERNEE
1. .....
2. .....
3. .....
4. .....
5. .....
6. .....
7. .....
8. .....
9. .....
The above is correct:
Reinhard Gehlen
(Signature of internee)

GEN-MAJ REINHARD GEHLEN 3WG-1300
GEN-MAJ REINHARD GEHLEN 3WG-1300

(Date and place where processed (Army enclosure, naval station, or other place))

RIGHT HAND

1. Thumb	2. Index finger	3. Middle finger	4. Ring finger	5. Little finger

LEFT HAND

6. Thumb	7. Index finger	8. Middle finger	9. Ring finger	10. Little finger

W. D., P. M. G. Form No. 2
11 June 1943
Note Amputation in Proper Space
SECRET
Do not fill in.

Reinhard Gehlen's Personnel Record, created when he was interrogated by the U.S. Army as a POW in August 1945 (NA, RG 238, Entry 160, Interrogation Records, microfilm publication M 1270, Roll 24, Gehlen, Reinhard, Box 26.)

The CIA approved the release of the 2,100-page Army Gehlen file, and in addition released nearly 2,100 pages of materials relating to Gehlen from its own files as well as files on many of Gehlen's personnel and agents—including the operational information in all of these files. For more on Gehlen, see Timothy Naftali, "Reinhard Gehlen and the United States," Richard Breitman et al., *U.S. Intelligence and the Nazis* (Washington, DC: National Archives Trust Fund for the Nazi War Crimes and Japanese Imperial Government Records Interagency Working Group, 2004).

telligence invoked the Disclosure Acts' sources and methods exemption. When a file was being released as a matter of discretion, such nonspecific war crimes information was not released because it was considered not relevant to the acts.

Nevertheless, in accordance with these restrictive guidelines, the CIA declassified and released approximately 50,000 pages of CIA documents in 775 name files and 36 subject files. According to the CIA, more than half of these files did not contain information about war crimes but were declassified and released as a matter of discretion. By late 2004, the CIA contended that it was virtually finished and that no information on war crimes and no relevant information on war criminals had been withheld from release.

The CIA indicated that the documents withheld from release in these files pursuant to the sources and methods exemption in the NWCDA would be addressed in a classified memorandum to the IWG and appropriate Congressional committees.

Included in the 775 name files declassified and released was a group of 214 files on SS officers that the CIA was initially reluctant to release at all because these files contained no explicit information about war crimes. However, the IWG contended that even though no specific war crimes were mentioned in the files, individuals named in the files had been members of organizations (most often the SS) declared to be criminal by the International Military Tribunal at Nuremberg. After a protracted dispute, the agency informed the IWG that it would review all 214 files and would release all information that did not jeopardize intelligence sources and methods, and that it would acknowledge intelligence relationships (if such relationships existed) only after the IWG provided evidence of the individual's specific culpability for war crimes, beyond membership in a criminal organization. This requirement forced OSI, the IWG staff, and IWG historians to comb the microfilmed German SS personnel files and CIC records held by the National Archives and the records of other agencies for persuasive evidence on the criminality of each individual.

Protection of Sources and Methods

During the CIA's first year of implementing the Nazi War Crimes Disclosure Act, the IWG and the agency struggled to agree on what type of information could be legitimately withheld under the act. The CIA's initial approach was to use standards that it normally applied to Freedom of Information Act requests, which is to say the agency did not adjust its review process to meet the more liberal requirements of the Disclosure Acts. The IWG objected to the CIA's approach as too restrictive. The resulting uncertainty about what could be legitimately withheld under the act delayed the first release of files, those on 22 of the most notorious Nazis.

The IWG devoted its April 11, 2000, meeting to reaching agreement with the CIA on declassification review standards. The IWG cited the NWCDA statutory prohibition against invoking the blanket protection of operational files under the National Security Act. The IWG and the agency reached an agreement, largely pertaining to the use of substitute language for redacted information, which was codified in an April 14, 2000, guidance memorandum.[75]

However, in its September 2002 progress report to the IWG, the agency asserted the following:

> The CIA has a statutory obligation to protect sources and methods. This obligation underlies all decisions made with respect to the release of documents. Moreover, the need to protect sources and methods is not only a statutory obligation, but is also a principle central to the successful conduct of CIA's business. Most importantly, the need to maintain such protection is not attenuated by time. It is for this reason that we have been so careful in our release decisions.[76]

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75. See appendix 11 for the full text of the April 14, 2000, memorandum.
76. Appendix 10.

Before February 2005, the CIA's practice of withholding specific information about sources, methods, and intelligence relationships, no matter how old the information, was mitigated somewhat by its agreement to release very general information about operational matters when a file contained information about known war criminals. In some instances, the CIA was willing to provide substitute language for withheld information. The agency also consulted with foreign governments to negotiate the release of information concerning wartime relationships and shared intelligence, which was particularly fruitful concerning information released by the CIA on Reinhard Gehlen and the German Secret Service (Bundesnachrichtendienst). The locations of most CIA stations abroad, operational information, and the names of suspect, but unproven, war criminal assets were not released.

Transferring Records to NARA

The CIA transferred no "original" (that is, record copy) CIA-era files to NARA under the Disclosure Acts. (The general transfer of all historically valuable non-current CIA records to NARA under the Federal Records Act is a matter of ongoing negotiation between the agencies.) To make records publicly available, CIA reviewed copies of the name and subject files. Each of these files consists of copies of all documents in the full original file. Any other documents related to these individuals or subjects that were located were added to these files. If the documents were determined to be relevant or were to be released as a matter of discretion, CIA analysts then reviewed them for declassification. Only after the name and subject files were declassified did the CIA transfer copies of the documents to the National Archives. By releasing files in this manner, the CIA protected information about the nature and structure of its filing system.

February 2005: A Turning Point

The Disclosure Acts were extended twice, primarily to persuade the CIA to follow a release policy more aligned with IWG guidance and the implementation practices of other major agencies. In January 2004, Congress extended JIGDA for one year, but the results of that extension were not entirely satisfactory to the IWG. Therefore, at the behest of the IWG public members and with the assistance of the Congressional sponsors of the legislation, Senator Mike DeWine and Representative Carolyn Maloney, in February 2005 Congress extended JIGDA for two more years with the understanding that the CIA would revisit and revise its positions on relevance and declassification.

The CIA's renewed declassification effort resulted in much broader releases, with far fewer redactions in partially released documents, and with no documents remaining wholly classified. More specifically in February 2005, CIA agreed to:

- Re-review previously released files and declassify more material
- Declassify and release information on individuals connected to the Nazis whether war criminals or not
- Declassify and release operational project files where Nazis were involved
- Undertake additional searches that the IWG historians or CIA thought necessary

The CIA response was prodigious and dramatic. Updated versions of the previous 811 released files restored redacted information in the 47,400 pages and added 21,800 previously unreleased pages. Further, the CIA responded to the broadened searches including operational files of 1,000 new names and subjects, to produce 276 new files covering some 45,000 pages. In addition, the agency produced a lexicon/research aid containing the cryptonyms and terms in declassified agency files to assist scholars using the files.

Department of Defense – Air Force

Table 6. Air Force declassification summary (number of pages)

	Screened	Found relevant	Declassified & released	Withheld in full	Under OSI exclusion
NWCDA	6,700	0	0	0	0
JIGDA	2,300,000	1,000	1,000	0	0

SOURCE: March 2007 IWG statistical report.

Search Strategy

The Air Force initially reported that thousands of pages housed in the Federal Records Center in St. Louis, Missouri, were related to Operation Paperclip and relevant under the NWCDA. Subsequently, the Air Force and the Federal Records Center determined that these records had been mistakenly identified in the Records Center control system and, in fact, were not pertinent to the IWG effort. The Air Force discovered 32 pages relevant to the NWCDA among National Archives holdings, and these are accounted for in NARA's totals.

The Air Force did locate among its holdings at the Air Force Historical Research Agency, Maxwell Air Force Base, Alabama, a large file with references to Japanese war crimes in the Pacific Islands. This thousand-page file was declassified in full.

Department of Defense – Army

Table 4. Army declassification summary (number of pages)

	Screened	Found relevant	Declassified & released	Withheld in full	Under OSI exclusion
NWCDA	12,000,000	274,952	268,135	0	6,817
JIGDA	1,500,000	20	20	0	0

SOURCE: March 2007 IWG statistical report.

Search Strategy

The U.S. Army Total Personnel Command (PERSCOM) tasked all Army commands to respond to the acts; however, it was clear that the majority of Army records related to Nazi and Japanese war crimes was already in the National Archives. Over many years, the Army had transferred to NARA much of its World War II combat and operational documentation. Most of the documents that were classified when they arrived at the National Archives were declassified after their transfer. The majority of responsive records remaining in Army custody were classified intelligence and counterintelligence records at the Intelligence and Security Command (INSCOM) Investigative Records Repository (IRR) at Fort Meade, Maryland. Consequently, the Army focused its efforts on the holdings of the IRR. NARA reviewed, declassified, and processed Army records already in its holdings.[77]

Investigative Records Repository

IRR files generally concerned three topics: (1) foreign personnel and organizations, which were the majority of responsive records; (2) intelligence and counterintelligence sources; and (3) counterintelligence security investigations. Most IRR dossiers originated with Army Counterintelligence Corps (CIC) units, especially those in Germany and Austria following the war. The Army CIC created records containing detailed intelligence and counterintelligence information gathered during missions to support Allied efforts to apprehend war criminals and to counter Soviet espionage as the Cold War began. It also conducted background investigations of individuals who applied to immigrate to the United States under the Displaced Persons or Refugee Relief Acts. In later years, the OSI used IRR dossiers in its Nazi-hunting investigations.[78]

Among the IRR's holdings, the greatest number of records potentially relevant to the Disclosure Acts were those stored on more than 13,000 reels of 35mm microfilm, which contained nearly 1.3 million files originally filmed by the Army CIC in Europe after World War II, as well as in some 460,000 individual paper files. All these records had to be searched to identify those that met IWG criteria. The sheer volume of the Army CIC dossiers, combined with the very poor quality of the microfilm—the only surviving record of a majority of the dossiers—made this a complex and challenging undertaking.

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77. For information on the Army's special activities and intelligence records at the National Archives that remained classified at the time of the passage of the acts see the NARA section of this chapter.

78. More than 8,000 of these dossiers were already in the custody of the National Archives at the time the IWG came into being. Some of these files were declassified under the FOIA, and many still classified became subject to review under the Disclosure Acts. For more background on the Army CIC, see chapter 2.

Army Files at the National Archives

To respond to the 1995 Executive Order 12958, the Army created the Army Declassification Activity (ADA) to review the 270 million pages subject to automatic declassification on December 31, 2006. The ADA also began to implement the Disclosure Acts, even though at a December 1999 meeting of the IWG, the Army said that it could not simultaneously comply with both the Executive Order and the Disclosure Acts without additional funding.[79] A related concern for the IWG was that ADA's initial approach to declassification, though allowed under the Executive Order, was incompatible with IWG standards. Under the Executive Order, the ADA could withhold an entire file if it contained a single classified item. The IWG, in contrast, determined that including as much material as possible by redacting sensitive information on a line-by-line basis was most responsive to the law.

To resolve this impasse, the IWG approached the Assistant Secretary of the Army to work out a solution. As result, in the spring of 2000 the IWG and the DOD agreed that National Archives staff would review Army records held by the National Archives. The DOD gave the National Archives the authority to review potentially relevant files of the armed forces, as well as armed forces equities in other agency files, to determine their relevance and, if relevant, to review them for declassification under the broad release authority of the NWCDA.

The large volume of Army classified archival records at NARA meant that this task continued throughout most of the remaining life of the IWG. Information concerning the nature and content of these archival records is found in the NARA section of this chapter.

Japanese Documents

The few Army files responsive to the JIGDA were among those that had already been transferred to the National Archives and declassified. The search and review of remaining records took only two weeks.

However, a major item of Congressional inquiry remains outstanding and only partially answered by the Army and the Department of Defense. When Senator Dianne Feinstein introduced the act in the Senate, she included in the record portions of a correspondence from Professor Sheldon Harris, the author of *Factories of Death*, the well-regarded account of Japan's development and use of biological warfare agents, including human experimentation.[80] In his letter, Professor Harris recounted his frustration in attempting to gain access to materials at Dugway Proving Grounds, Utah, and Fort Detrick, Maryland, related to medical war crimes. He alleged that at least some of the documentation was subsequently moved or destroyed. The IWG asked the Army and DOD on several occasions to respond to Professor Harris's charges by producing the records in question or by giving an account of their disposition for inclusion in this record. Despite repeated requests between 2001-2006, the IWG was not provided contact with Army's records managers for Ft. Detrick, nor did Army provide the IWG with a detailed accounting of the transfer, disposal, or destruction of its Japanese biological warfare records sent to Ft. Detrick during the two decades following World War II. The Army did notify the IWG that reference files maintained by its Public Affairs office had been disposed of after Harris' visit and that other open files had been returned to Dugway Proving Grounds.

The IWG has received a statement by the Army that it "…did perform several informal inquiries into

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79. Ultimately, Army provided ADA $900,000 to assist in declassification review in support of the Disclosure Acts.

80. The letter is in appendix 12.

the matter and found no corroboration of Professor Harris' allegations." Following renewed requests for additional searches, the Army notified the IWG that their searches "uncovered no evidence in support of the charge that documents related to Japanese biological warfare experiments were destroyed at Ft. Detrick. The Army concluded that all permanent records related to Japanese biological warfare experiments were transferred to NARA." (The IWG had to make a formal request to Dugway for electronic copies for its records, as the originals had been sent to the Library of Congress.)

Army Compliance with the Acts

Initially, the IRR estimated that manually identifying the relevant files among the microfilm and indices would require 181 years of staff time, which did not include the time required to conduct a thorough declassification review of the files once they were found. Naturally, the IWG became concerned about IRR's ability to fulfill its obligations under the law. INSCOM commander Maj. Gen. Robert Noonan addressed the IWG's concerns at an October 1999 IWG meeting and committed INSCOM to completing declassification work on relevant IRR files within one year.

To meet Noonan's goal, the Army scanned the microfilm to create digitized images of the files, which it then searched electronically for relevant files using the 60,000 Names List. The Army then reviewed and declassified the files identified as relevant and turned them over to the National Archives as digitized images. Simultaneously, IRR staff conducted a manual review of the files that the Army still maintained in paper form.

In September 2000, the Army delivered to the National Archives a stand-alone computer server holding in excess of 15,700 digitized files. The next summer the Army delivered several thousand more digitized files and additional paper files for a total of nearly 20,000 files found in response to searches for individuals on the 60,000 Names List. While the vast majority of the files were declassified in full, the Army had redacted limited portions, primarily foreign government information or intelligence sources and methods. IWG staff arranged for agencies with equities in the Army files to review the records. After it finished digitizing its files, IRR staff undertook further searches as the IWG staff, IWG historians, and other participating agencies identified additional relevant names, projects, and operations that came to their attention during the course of their work. The IRR retained the full file of images that were scanned from the 13,000 reels of microfilm but transferred the original microfilm to the National Archives in 2002. As it became clear that additional scanned files were relevant to the war crimes disclosure acts, technical and administrative consultations between the IRR and the National Archives were initiated to accomplish the transfer of the full set of image files, consisting of 1.3 million files. These arrangements took nearly three years but were finally accomplished in October 2005, when NARA accepted full responsibility for administering the files both technically and for reference purposes. Because this very large set of records was the source file for all of the IRR's information on war criminals, IWG staff and NARA successors will continue for many years to mine the file for relevant records. Figure 13 (next page) contains an example of an Army file released under the NWCDA.

Figure 13. IWG obtains release of document withheld in FOIA request

Freedom of Information Act/Privacy Act
Deleted Page(s) Information Sheet

Indicated below are one or more statements which provide a brief rationale for the deletion of this page.

☐ Information has been withheld in its entirety in accordance with the following exemption(s):

It is not reasonable to segregate meaningful portions of the record for release.

☐ Information pertains solely to another individual with no reference to you and/or the subject of your request.

☒ Information originated with another government agency. It has been referred to them for review and direct response to you.
- CIA responded directly to requester on 2/28/01
- withheld by CIA (b)(1) + (b)(3).

☐ Information originated with one or more government agencies We are coordinating to determine the releasability of the information under their purview. Upon completion of our coordination, we will advise you of their decision.

DELETED PAGE(S)
NO DUPLICATION FEE
FOR THIS PAGE.

Page(s) 007

This Freedom of Information Act/Privacy Act Deleted Page Information Sheet shows that the CIA, which held equities in the Army document to the right, withheld the page in its entirety. In *Levy v. CIA* (1995), the court upheld CIA's action.

This June 19, 1961, memorandum to Col. Breen, 163rd MI Battalion, concerned Ljubomir Dedic. The memo reveals that Army Intelligence was interested in Father Draganovic and warned that Draganovic and other Dedic associates were highly compromised.

The paragraph was redacted because it concerns a source of information obtained from a foreign government organization relating to the activities of refugees and émigrés associated with Dedic. The redacted text contained no information on war criminals.

Father Krunoslav Draganovic was a Franciscan priest who actively served the Nazi satellite regime in Croatia, which was responsible for the deaths of 330,000–390,000 Orthodox Serbs and about 32,000 Jews. Following the war, Draganovic facilitated the escape of numerous Croatian war criminals to South America via the College of Saint Jerome in Rome. From 1959 to 1962, Father Draganovic worked as a spy for U.S. Army Intelligence against the Yugoslav regime. The CIA also kept a file on Draganovic.

The IWG asked the CIA to review the document again in light of the Nazi War Crimes Disclosure Act, which resulted in the release of the redacted memorandum.

To [redacted]
163rd MI Battalion, Verona 19 June 196

Fm: [262]

Subject: Ljubomir DEDIC, born 1 January 1923

1. The following information is classified SECRET-NOFORN, and is to be restricted to American officials only:

2-[262]

3. Specifically, Subject has received letters from one fnu KUSAN in London, who indicates he (Kusan) is in written contact with colleagues in the AFL/CIO. Subject also received and sent letters to Luzia RUKAVINA, secretary of SOHDE, and received letters from SOHDE (or UHNJ) President Andrija ILIC. A letter was received by Subject from Branko ORLOVIC, living in Eislinger, West Germany, specifically telling Subject to refrain from mentioning true names in his correspondence. Letters were received by Subject from Father DRAGANOVIC. In one letter written by Subject he accused the Austrian authorities of not giving Yugoslav refugees proper treatment. Subject received a letter from one Delov PANCE, living in Salzburg, Ignaz Harrerstrasse 2, in which PANCE specifically offered to collect intelligence on Yugoslavia for Subject. All of the above letters were dated within the last six months.

4. We are sending you this information because you have at one time or another had an interest in one or more of the people mentioned above. The degree of compromise which is now known to exist not only in Subject but in his circle of correspondents, would dictate extreme caution, if not outright cessation, of any contact by your organization with these people. Naturally we leave specific action in this regard to you.

5. Unfortunately [262] the letters could not be retained [262] only had an opportunity to read them on the spot. [262] The correspondence contained no allegation that any of the correspondents have or had connection with American intelligence. However the subversive nature of the political activity engaged in by Subject and his confreres is a sensitive subject to [262], who will probably continue to monitor this activity closely for an indefinite period.

[redacted]

007 [262]

5/2429/61

[redacted] NOFORN

Declassified and Approved for Release
by the Central Intelligence Agency
Date: 2002

Department of Defense – National Security Agency

Table 7. NSA declassification summary (number of pages)

	Screened	Found relevant	Declassified & released	Withheld in full	Under OSI exclusion
NWCDA	5,996,000	4,574	4,537	36	1
JIGDA	3,174,949	2,799	2,799	0	0

SOURCE: March 2007 IWG statistical report.

Search Strategy

The NSA was created in 1952 to consolidate the communications intelligence activities of the various U.S. Armed Services. During World War II, one of the Allies' most potent skills proved to be intercepting messages and breaking enemy codes. After the war, the collection, translation, and analysis of worldwide communications produced significant NSA holdings of classified intelligence records. In an unprecedented effort, NSA undertook a full examination of these records in response to the Disclosure Acts.

The primary record holdings in NSA custody consist of message files on paper, microfilm, and, more recently, in electronic format. NSA reviewed record indices and finding aids to locate files that potentially contained information on war crimes and war criminals. In addition, NSA holds collateral intelligence information, generally received from other agencies, which it also searched. NSA searched its German-related information before turning to its Japanese-related records. The entire process took over three years.

Initially, NSA's search strategy focused on running the 60,000 Names List, IWG search terms, and several hundred added names and subjects against some 30 million electronic communications records dating from 1967–1998. When an apparent match was made with one of the search terms, a copy of the document was printed, and an NSA analyst examined the communication to determine if it held information that was relevant under the acts.

Following its search of electronic records, NSA reviewed some 20 million pages of paper copies of intercepted messages and communications. Of these, over 3 million pages covering many different message series were identified as being potentially relevant. These records, whose dates ranged from 1930–1992, were searched page-by-page twice to identify possibly relevant messages. As with NSA's electronic files, each potentially relevant intercept was printed, and an NSA analyst examined the document to determine its relevancy.

NSA also searched 2,724,000 pages of microfilm-based records dating from 1930–1960, and 432,000 pages of microfiche-based records dating from 1960–1970. Again, each image was examined on a page-by-page basis and potentially relevant messages were printed. An NSA analyst then made a relevancy determination.

NSA Compliance with the Acts

Most of NSA's printed selections were eliminated when the match to a search term or name was discovered to be not about a war criminal or war crime. For example, the search may have uncovered a person with the same name as a war criminal.

After responsive documents were identified, NSA determined what kinds of information in an intercepted message could be declassified and what remained sensitive. Initial attempts to create redacted releases proved unsatisfactory both to NSA and to the IWG because the redaction of sensitive information left the messages incomprehensible. By agreement, paraphrases provided a means to extract the relevant information while allowing the agency to protect cryptographic details. The NSA analysts and the IWG audit team worked closely to assure that the proposed paraphrases provided an accurate but unclassified ren-

dition of the intercepts.

In one instance, the DOJ/OSI member and public members objected that a proposed NSA paraphrase was insufficiently informative and could be misleading. NSA declined to make any changes, and as a result, neither the document in question nor any paraphrase of it was released.

Department of Defense – Navy

Table 5. Navy declassification summary (number of pages)

	Screened	Found relevant	Declassified & released	Withheld in full	Under OSI exclusion
NWCDA	95,000	0	0	0	0
JIGDA	1,201,096	1,096	1,096	0	0

SOURCE: March 2007 IWG statistical report.

Search Strategy

The Navy's Declassification Office, using IWG keywords and names, queried the Department of the Navy Declassification Database and other Navy databases to identify relevant records among its classified records. These databases include records of the Chief of Naval Operations, Secretary of the Navy, Naval Criminal Investigative Service, Office of Naval Intelligence, and many other programs and components.

The Navy's Declassification Office of the Naval Criminal Investigation Service (NCIS) reported that it possessed 287,000 pages that were potentially relevant to the NWCDA. Ultimately, however, NCIS determined that none of these records was responsive. (The files related to communists in the early postwar period rather than to Nazis.)

To locate records potentially relevant to the JIGDA, the Navy used lists of terms supplied by the IWG to search its holdings in Navy offices, holding areas, the Naval Historical Center in the Washington Navy Yard, Federal Records Center, and the National Archives. Navy searches of other repositories and the Federal Records Center failed to yield previously undiscovered relevant records. Some of these searches, however, turned up duplicate copies of Allied Translator and Interpreter Section reports and other such documents long ago declassified and available at the National Archives. Some relevant Naval documentation in the custody of the National Archives was declassified under the DOD declassification authority given to the National Archives for the IWG effort.

A small amount of classified, relevant material was located among records that the Navy had already transferred to the National Archives. These documents are reported in the National Archives section of this chapter.

Department of Justice – Criminal and Civil Divisions

Table 8. DOJ Criminal and Civil Divisions declassification summary (number of pages)

	Screened	Found relevant	Declassified & released	Withheld in full	Under OSI exclusion
NWCDA					
Civil	207,000	10,000	10,000	0	0
Criminal	1,641,300	20,000	20,000	0	0
JIGDA	1,641,300	N/A	N/A	N/A	N/A

SOURCE: March 2007 IWG statistical report.

Search Strategy

DOJ Criminal and Civil Divisions both used the 60,000 Names Lists and the list of IWG furnished terms, operation names, and code words to search records stored in the Washington National Records Center and in their offices. The results produced records related to the Hundred Persons Act as well as subject files on investigative topics. The vast majority of Hundred Persons Act files related to Eastern Europeans suspected of having been communists. DOJ transferred these files under the acts; however, they contain very few records related to former Nazis. Totals in table 8 overstate the war crimes content.

Department of Justice – Immigration and Naturalization Service (U.S. Citizenship and Immigration Services)

Table 9. INS declassification summary (number of pages)

	Screened	Found relevant	Declassified & released	Withheld in full	Under OSI exclusion
NWCDA	4,281,000	3,000	18,000 [a]	0	. . . [a]
JIGDA	N/A	N/A	N/A	N/A	N/A

SOURCE: March 2007 IWG statistical report.

[a]Processing and review by OSI to be completed.

Search Strategy

In 1999, the INS began to search its extensive holdings housed throughout the country using the 60,000 Names List. Because the INS does not have original classification authority, it projected that its search would produce a very small volume of documents. Its relevant files would include classified documents received by the Service from other agencies, as well as INS documents that contained derivative classifications. After searching for nearly two years, INS had located no relevant classified files.

The IWG remained interested in the search for INS files after the INS was moved from DOJ into the Department of Homeland Security and renamed the U.S. Citizenship and Immigration Services (USCIS). OSI identified 36 classified INS files on individuals whom it had investigated over the years. Some of the files were still being used by OSI, and, with the information provided by OSI, USCIS was able to locate all but one of the rest. As OSI had a photocopy of the missing file in its records, it was able to supply a copy to USCIS. OSI returned the borrowed files to USCIS as it ceased to have a need for them. Ultimately, all of the files were declassified and transferred to the National Archives in accordance with the acts, although many remain closed because they relate to OSI cases.

Department of Justice – OSI

Among all U.S. Government agencies, the Office of Special Investigations is the only one whose records pertain almost exclusively to Nazi criminals and their crimes. However, because of the nature of OSI's mission, the Disclosure Acts expressly excluded OSI's records. Records of other agencies in which OSI has an interest were also excluded from release under the acts in order to protect OSI's ongoing investigations and prosecutions.

The laws state that the provisions for release of declassified records "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."[81]

Although Provision B in the NWCDA clearly fenced off from IWG attention all records held by OSI, the DOJ/OSI member of the IWG nevertheless invited IWG historians to examine OSI's records, and such reviews did take place. OSI also discovered that it possessed the only complete existing record of the original Army and Air Force files of Arthur Rudolph and provided copies of those files to NARA for release. Similarly, after the Department of Homeland Security was unable to locate the immigration records of Tscherim Soobzokov, OSI located a photocopy of those records in its files and provided a copy.

Provision A, however, became a point of contention. The OSI took the exclusion provision to be clear in its intent, noting that while other agencies were granted *exemptions* for certain types of information, the OSI *exclusion* was the only provision of its kind in the Disclosure Acts, and that, by its express terms, it covered both active and inactive files. According to OSI's understanding, the laws meant that the IWG was not at liberty to release such records related to subjects of investigation regardless of the document's age, the agency of origin, the status of the case to which it pertained, or whether the subject of the record was living or dead.

Several IWG members, staff, and historians, and the public members in particular, objected that there were several classes of now-declassified documents whose release could not affect current OSI cases. Namely, these were documents relating to closed cases, deceased war criminals or suspects, or individuals who had never entered the United States, none of which records mentioned or was any way concerned with OSI's investigative activities. OSI countered that much of the documentation was interconnected, so that sources of information revealed in one case could be sources in other cases, for example, and that information in seemingly unrelated files could indeed affect current cases in a number of subtle but important ways. For these reasons, OSI argued, the statute expressly exclude material related to any OSI cases.

OSI interpreted the exclusion to apply to records that were from, to, or about the office or that related to individuals who were the subject of an OSI investigation, and not to records that were only nominally related to OSI investigations in that they pertained to units, events, institutions and organizations that had been part of OSI's cases. In order to insure that the exclusion did not prevent the release of records of significant public interest, the OSI Director informed the IWG early in the project that he was willing to review a limited number of statutorily excluded files with a view to waiving the exclusion. As it turned out, however, this review effort far exceeded his expectations. Of the pages that OSI identified as falling under the exclusion, the OSI Director waived 23,660. 18,125 pages remain excluded.

Before OSI could review any files for possible

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81. See section 3(b)(4) of the Nazi War Crimes Disclosure Act and Section 803(d) of the Japanese Imperial Government Disclosure Act, found in appendices 2 and 3, respectively.

waiver, it was necessary to identify which documents among the millions of pages declassified by the agencies were excluded from release. To avoid overburdening the Office by directing *all* declassified materials to OSI for review, agencies were initially instructed to mark any records that had potential OSI interest prior to transferring the records to the National Archives.[82] Unfortunately, this was not done in every case, so many potentially excludable records remained unmarked, resulting in an additional review burden for IWG, NARA, and OSI staff. OSI assigned its longest-serving historian to screen the flagged records as well as unmarked records considered likely to hold information subject to the OSI exclusion and to prepare detailed notes on them. National Archives staff treated all documents marked by the OSI historian as presumptively excluded until specifically waived, at which point they were processed for public release. The OSI Director and the OSI Chief Historian then examined the reviewing historian's notes and, in many instances, the documents themselves, to determine which records fell under the statutory exclusion and also to identify records that the Director should personally review for possible waiver.

The OSI Director principally used the following criteria to identify those records that he would consider waiving: (1) relevance to issues concerning U.S. Government and foreign government use of suspected Nazi criminals; (2) materials requested by the IWG's historians; and (3) materials containing significant new information about the Holocaust.[83]

Some IWG members and staff would have liked *all* excluded files reviewed for potential waiver, but the very large number of files, and the fact that the OSI Director felt that he alone had the experience and authority to make final decisions, rendered a general review impossible. Citing ethical requirements, the OSI Director also declined to review for waiver excluded records that pertained to: (1) defendants who prevailed in litigation brought by the DOJ, in which it was established that they did *not* participate in Nazi-sponsored crimes, (2) subjects of OSI investigations in which OSI determined that the allegations were clearly untrue; and (3) subjects of OSI investigations in which OSI was unable to find any evidence to support a reasonable suspicion that the allegation might be true.[84]

The types of materials that have been excluded varied considerably by agency. Much of the excluded material from the State Department, for example, involved cable traffic between Washington and the field that the State Department sent on OSI's behalf. The excluded State Department material often pertains to OSI's investigations and prosecutions of individual subjects. The majority of excluded FBI and Army records (many of which originated in the late 1940s and 1950s) pertain to past or present OSI subjects but not to OSI's investigation of them. The OSI maintains that such records can be particularly important to OSI's immigration and naturalization fraud prosecutions insofar as they document the extent of the U.S. Government's knowledge about a subject's wartime activities at the time of immigration or naturalization. Examples of waived files include those of well-known cases, such as Klaus Barbie, Otto von Bolschwing, and Kurt Waldheim.

According to an agreement reached between DOJ/OSI and the IWG, all documents currently being withheld because they fall under the OSI exclusion will be released once details of their release have been coordinated between the National Archives and the Department of Justice.

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82. See appendix 13 for this 12 May 2000 memorandum.

83. Memorandum, "Statutory Exclusion of OSI-Related Records Under the Two Disclosure Acts," Eli M. Rosenbaum to Steven Garfinkel, February 7, 2003, IWG Administrative Files.

84. *Ibid*.

Department of Justice – U.S. Pardon Attorney

Search Strategy

In response to the IWG, the Office of the Pardon Attorney released approximately four cubic feet (about 10,000 pages) of war crimes–related records to the National Archives. Included within this accession are a number documents pertaining to efforts to gain clemency for Tomoya Kawakita, a Japanese-American dual citizen found guilty of treason in 1948 for mistreating American POWs while he was employed as a civilian interpreter at a prison labor camp in wartime Japan. Also included in the accession is the pardon application of Iva Ikuko Toguri D'Aquino (aka Tokyo Rose), a Japanese American convicted in 1949 of treason for broadcasting Japanese propaganda during the Pacific War.

Department of State

Table 10. Department of State declassification summary (number of pages)

	Screened	Found relevant	Declassified & released	Withheld in full	Under OSI exclusion
NWCDA	6,502,500	48,889	41,317	269	7303
JIGDA	5,205,000	3,716	3,602	6	108

SOURCE: March 2007 IWG statistical report.

Search Strategy

The Department of State searched all records still in its custody likely to hold relevant documentation. The Executive Secretary of the Department sent a total of four formal tasking memoranda to all major offices and bureaus of the Department, and to embassies and other overseas posts and missions, calling first for the identification of relevant documents, and then for the actual production of documents. The tasking memoranda provided extensive written guidance and required the submission of detailed written reports on document search results. Each bureau or office was required to task its subordinate offices and overseas posts under its jurisdiction. There was extensive follow-up by telephone, written correspondence, e-mail, and telegrams to overseas posts.

The IWG and the HAP questioned the completeness of the Department's search for JIGDA documents because the tasking order requiring the search was dated only one day before the search was to be concluded. Investigating further, the IWG staff determined that State's patently impossible schedule was the result of bureaucratic delays in issuing the formal tasking. The Foreign Service posts had actually received the tasking informally several weeks prior, in time to conduct an adequate search by the due date.

The State Department also searched its State Archiving System (SAS), which contains about 25 million records, and its retired paper records. Primarily, the Department searched records dated after 1973, so the volume of records collected for initial evaluation and finally determined to be relevant under the acts was relatively small.[85] Since 1973, the SAS has served largely as an electronic repository for cable traffic between headquarters and its posts.

The State Department began its electronic records search of the SAS using broad terms such as "Nazi," "crime," and "war criminal," which it assumed would be sufficient to identify all potentially relevant records. Relevant records from among this batch were printed and processed for declassification. However, this method was discovered to be inadequate when the State Department's search of its paper records began to produce items that should have been identified in the electronic search. The State Department then decided to search its electronic files again using a test list of the names of 20 Nazis. This test revealed several hundred additional documents that were potentially relevant to the acts. Five of the individuals on the test list were selected for further analysis. This focused search on the five subjects turned up 762 documents, of which 407 were deemed relevant by the State Department's document analysts. Before this test, the Department had found only 78 of these 407 documents.

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85. In accordance with Executive Order 12958 and its predecessors, the State Department had already systematically reviewed for declassification and transferred to the National Archives most of its retired files dated before 1973. In recent years the Department of State had been more aggressive than any other Cabinet-level agency in reviewing its records and transferring them to the National Archives.

The State Department considered reexamining its electronic files using the 60,000 Names List, but because the list was created from names with wartime and immediate postwar relevance, the agency decided it would not be productive to manually enter these names in order to search a database of records created nearly three decades after the war. Instead, with the consent of the IWG staff, the Department used a list of notorious Nazis and a list of 2,300 suspected war criminals known to have had encounters with the U.S. Government (principally concerning immigration and visa issues), which were considered more likely than the 60,000 Names List to yield relevant documents from among the Department's post-1972 records. This search produced approximately 20,000 potentially relevant documents. A large number of the names produced no documents, and many documents were found to be about individuals who merely had the same name as someone on the search list. The State Department eliminated the non-relevant and duplicate documents, then declassified the remaining materials and processed them for transfer to the National Archives.

The information contained in relevant files related primarily to more recent issues, such as the search for Nazi gold, the extradition and deportation of Nazi war criminals resulting from OSI cases, and worldwide investigations to verify reported sightings of Nazi war criminals. For example, the Department of State records collected and reviewed included information related to the cases of Klaus Barbie, Josef Mengele, Walter Rauff, Viorel Trifa, John Demjanjuk, Karl Linnas, and Andrija Artukovic.

State Department Compliance with the Acts

Given the relatively small volume of potentially relevant records remaining in the custody of the State Department that would need to be examined under the NWCDA and JIGDA, the IWG expected that the Department would be able to complete its work quickly. Regrettably, that was not the case.

Part of the problem lay in the statute itself. The NWCDA specifically designated the Historian of the Department of State as the Department's IWG representative. In contrast, agency heads were statutory members for all other agencies.[86] The Historian had no direct administrative or operational control over the departmental components actually managing and administering the State Department's records declassification program. Although the Historian's Office is not the Department's records management and declassification authority, it has broad expertise on historical issues, and its responsibilities include advising the Department on issues relating to the declassification, maintenance, and preservation of important historical records. The Office of the Historian was thus extensively involved in the overall discussions of how the Department of State would carry out its NWCDA responsibilities.

However, it was another element of State, the Office of Information Programs and Services (IPS), under the Assistant Secretary for Administration, that actually carried forward the records search and declassification effort. IPS, using its experienced declassification and FOIA reviewers, managed and implemented the search for relevant documents. Several State officers with extensive experience in German affairs and knowledge of the Nazi era reviewed the documents for relevancy and undertook their declassification.

Initially, this disjunction between Office of the Historian and State's declassification authority resulted in lengthy delays and confusion over the course of the Department's efforts to satisfy requirements of the acts. For example, on several occasions, the IWG and the HAP sought clarifications on matters that were not under the jurisdiction of the Historian's office but instead required the direct involvement of officials from other areas of the Department. Ultimately, this problem was overcome and the Department worked

86. The statutory members in turn named their representatives to IWG.

effectively during the latter years of the IWG effort.

Also at the beginning of the Department's declassification effort, copies of documents that State Department analysts deemed non-relevant to the Disclosure Acts were destroyed without a record. After the IWG audit team learned of this procedure, the State Department changed its practice and saved copies of documents deemed non-relevant for audit team review.

As the document search proceeded, the Department worked closely with the IWG staff, and particularly with the IWG audit team, to assure a smooth administrative effort and to enlarge and expand the substantive parameters of the document search. Extensive personal follow-up with Department of State officials, and with embassies and other overseas posts and missions, produced many relevant records that might otherwise have been overlooked. In cases in which the auditors disagreed with the State Department's determination of relevancy, or with the preliminary decision to withhold declassification of a document or a significant segment thereof, the IWG urged the Department to re-review the previously classified material and to be less restrictive in exempting further records from declassification. The Department of State was fully responsive to this request, concurred with the IWG's interpretation of the declassification standards, and re-examined previously withheld records. As a result, additional information was declassified. Some of the records that were subsequently declassified included reports of U.S. discussions with European government officials regarding compensation for Holocaust victims. Others concerned gold acquired by the Nazis that they had transferred to other countries.

Department of the Treasury

Table 11. Department of Treasury declassification summary (number of pages)

	Screened	Found relevant	Declassified & released	Withheld in full	Under OSI exclusion
NWCDA	1,400,000	430	430	0	0
JIGDA	N/A	N/A	N/A	N/A	N/A

SOURCE: March 2007 IWG statistical report.

NOTE: Treasury files possibly relevant under JIGDA are in the custody of the National Archives and are included in the Archives' figures (see table 13).

Search Strategy

The Treasury Department made a detailed search of its holdings and found that the majority of its relevant records related to compensation for stolen assets or Nazi gold. Some files related to GAO inquiries on Nazi war criminals who may have entered the United States. The Treasury Department searched for records under JIGDA, but found none that were classified.

Federal Bureau of Investigation

Table 12. FBI declassification summary (number of pages)

	Screened	Found relevant	Declassified & released	Withheld in full	Under OSI exclusion
NWCDA	3,250,186	364,919	363,015	5	1,899
JIGDA	127,085	71,485	71,485	0	0

SOURCE: March 2007 IWG statistical report.

Search Strategy

The FBI's Historical and Executive Review Unit (HERU), Records Management Division, was tasked with ensuring that the FBI complied with the Disclosure Acts. HERU's structure and organization were well suited to the task of locating relevant records in the elaborately cross-indexed FBI filing system.

In general, FBI records relate to criminal and national security investigations conducted by the Bureau. The Bureau organizes its records into numbered classifications corresponding to specific violations of law or activities, such as classification 100 (domestic security), 065 (espionage), and 105 (foreign counterintelligence).

The Bureau used its traditional investigative file search process to locate records relevant under the acts. First, in cooperation with an IWG staff archivist who had extensive experience with FBI records, HERU analysts began by reviewing classifications that promised to hold war crimes information, such as Foreign Counterintelligence, Foreign Police Matters, Foreign Military and Naval Matters, and Foreign Funds. Those classifications likely to contain relevant files were examined on a file-by-file basis to identify pages that were responsive to the acts. HERU also searched less obvious classifications, such as those with possible relevance to stolen assets.

Using the FBI's Automated Case Support System and its 65 million–card manual indices, HERU searched the selected classifications for files naming individuals in the 60,000 Names List, as well as organizations and terms specified in the Japanese keyword list, and the IWG term lists. HERU reviewed files that were created as early as 1920 and as recently as 1998. The FBI also canvassed former employees who were likely to have knowledge of FBI operations during World War II. HERU then interviewed several former Special Agents who were intimately involved in FBI wartime and postwar operations. These interviews yielded additional strategies for exploring the files. Lastly, IWG historians briefed HERU on World War II and war crimes topics. Additional IWG staff visits helped the FBI to keep its analysts fully informed on issues related to the acts and war crimes. IWG historians, using the files of other agencies, turned up some references to FBI activities, which yielded further leads.

In addition to the above strategies, HERU conducted independent research based on its initial findings. These efforts led HERU to closely examine its Project Paperclip files, which resulted in over 600 additional files being released under the individual names of German scientists.

During World War II and afterwards, most files concerning war matters were initiated at FBI Headquarters. Nevertheless, HERU canvassed FBI field offices for files relevant to the Disclosure Acts and incorporated findings from field offices into its headquarters filing system. In nearly all instances, the original FBI file was later transferred to the National Archives along with the FBI index cards for the file.

FBI Compliance with the Acts

Once the searches were completed and the files located, all files were retrieved by the FBI's Central Records System. Next, HERU staff reviewed the files for relevancy. As the primary files were being reviewed, the

FBI continued to search its holdings using additional subjects or terms.

The FBI reviewed its files using a broad definition of relevancy. If the materials in a file related even generally to German or Japanese prosecution of the war (for example, if they contained information about the German wartime economy), the file was deemed relevant under the acts. As a result, the FBI declassified hundreds of thousands of pages. Further, if an FBI file contained some relevant information, HERU attempted to declassify the entire file in order to preserve the integrity of the record.

Before declassifying a document, the FBI reviewed it twice: the initial review was subsequently confirmed by a more experienced classification expert. To protect sensitive information, HERU redacted classified text rather than withholding an entire document that contained some classified information. Pages containing sensitive information were also reviewed twice.

Before any of these files were transferred to NARA, the program manager reviewed all redacted information to determine whether any redacted material could in fact be released. IWG auditors compared all redactions and withheld documents with the originals, identifying any questionable withholdings for further review.

Of the 436,000 pages identified by HERU as relevant under the Disclosure Acts, only five full pages required continued classification. Approximately 1.5 percent of the transferred pages (6,044 relating to Nazis and 388 relating to Japan) required redaction of classified information. Over 98 percent of all redactions concerned (1) information about a confidential source or (2) information, which, if released, would impair relations between the United States and a foreign government. None of the withheld names identified a war criminal or a war crimes suspect. Other statutory bases for redactions included information related to grand jury investigations, Federal income tax data, and individual social security numbers.

The FBI initially determined that information from several foreign governments required continued protection. At the IWG's request, the FBI contacted those governments and reached agreements that allowed virtually all its foreign government information to be declassified. Only a few redactions of names or information relating to individuals associated with those governments remain.

A total of 116 pages from 24 files were deemed not relevant. These were placed in an envelope marked non-relevant and transferred to NARA with the original files in order to keep the original files intact.

Over a period of two years, the FBI made 32 shipments of relevant records to the National Archives. See figure 14 for an example of a declassified FBI record.

Figure 14. Fake passport

After the war, Walter Schellenberg, head of SD Foreign Intelligence, attempted to downplay his wartime activities. However, newly released documents help historians draw a more accurate picture. Given one year by Himmler to create an effective agency, Schellenberg overhauled and restaffed SS Foreign Intelligence—in part with former Gestapo members—and by 1943 it had a staff of 2,000. Under Schellenberg's reign, SD Foreign Intelligence figured prominently in both the formation and implementation of Nazi policy.

Newly released FBI records include the passports pictured below as well as voluminous files related to Schellenberg's intelligence and counterintelligence activities, especially interrogations on the personnel and structure of the Nazi intelligence services. Schellenberg was captured in Sweden after the war attempting to escape under a false identity, and sentenced to a six-year term for war crimes.

Presumably stolen original U.S. passport (above) used to make a forgery for Schellenberg (right). Classification 65, Serial 47826 EBF.

National Archives And Records Administration

Table 13. NARA declassification summary (number of pages)

	Screened	Found relevant	Declassified & released	Withheld in full	Under OSI exclusion
NWCDA	57,665,700[a]	7,581,408[b]	7,581,165	0	243
JIGDA	2,037,500[a]	57,500[b]	57,500	0	0

SOURCE: March 2007 IWG statistical report.

[a]Figure includes classified records that were transferred to the National Archives before the Disclosure Acts. The National Archives searched its holdings for German- and Japanese-related documents at the same time; the number of documents screened under each act is therefore an estimate.

[b]Number represents whole files, released to preserve file integrity. Only a small portion of these files includes relevant war crimes documentation.

Under the Disclosure Acts, the National Archives released whole archival file series rather than selected documents, which had a major impact on the quantity of records searched and the large number of pages declassified. It is important to understand that most of the National Archives holdings processed under the acts do not, in fact, directly touch on war crimes. However, the release of entire files that include war crimes information eliminates any question of whether relevance may have been defined too narrowly.

Search Strategy

Like every Executive Branch agency holding classified records, the National Archives was required to examine all classified records in its custody in order to identify relevant war crimes documents for declassification review and release. However, unlike other agencies, the NARA's search did not focus on its own operational records. As the legal repository for the permanently valuable records of the U.S. Government, the National Archives made a preliminary survey using lists and indices of over 300 million pages of archival records created by other agencies. These surveys focused on two bodies of records: accessioned records that had not gone through systematic declassification review, known as "unprocessed records," and classified documents that had been withheld from previously declassified record series, known as "withdrawn records." The surveys identified over 57 million pages of records requiring further examination for relevancy under the acts. The massive volume of records was then divided into three general groups, which were ranked to reflect their likelihood of containing relevant war crimes information. Processing focused on those records with the highest probabilities of containing classified war crimes information.

Unprocessed Records

As the custodian of records transferred from many different agencies, the National Archives is the heir to many types of record keeping systems. The billions of pages of individual documents held by the National Archives are generally organized just as they were created and maintained at originating agencies. As a result, the National Archives had to employ multiple approaches to search for and identify potentially relevant unprocessed records. The National Archives searched both its formal descriptive information about the records and its archival processing files. Electronic searches on unprocessed records identified the principal materials requiring further examination. Accession dossiers of recent acquisitions and discussions with archivists provided further leads on new records holdings or materials soon to be transferred. Finally, the National Archives examined guides, inventories, and finding aids to refine its search for potentially relevant sources. In general, files were deemed likely to be relevant based on subject, geographic location,

time period, and governmental units involved. Given the fact that most of the records so identified had been created before 1960, NARA either declassified them or urged their declassification by reviewing agencies because, even if they were only remotely relevant, release would correct previous negligent declassification and assure the opening of the full historical record of the period. This approach was taken in the belief that a full record will yield information and insights in the future study of war crimes that may not be immediately evident.

Withdrawn Records

The National Archives identified potentially relevant withdrawn records by searching electronic databases of classified record holdings, reviewing paper-based dossiers of all past declassification projects, and reviewing printouts that provided brief descriptions of all withdrawn documents. When withdrawn records were in any way related to war criminals, based on the known attributes of the open records from which the withdrawals had been made, and then on actual review, they were declassified. Thus, for instance, all records previously withdrawn from State Department files related to Spandau Prison (where high level Nazi war criminals were incarcerated) were automatically considered relevant and were either referred by NARA to State Department reviewers for release or were declassified by NARA using existing State Department guidelines. While all identification of withdrawn records was not as obvious as the Spandau files, as with unprocessed records, NARA attempted to err on the side of inclusion when any question of relevance was posed.

Presidential Libraries

The National Archives holds and administers all Presidential papers since the Hoover administration. Each of the Presidential Libraries conducted a search of the documents in its collections for relevant material. Libraries searched their records by subject or governmental organizations. Libraries able to conduct electronic searches (such as the Reagan Library) used likely key words as suggested by events and issues of the particular administration. For example, the Truman Library and Eisenhower Library searched for any material related to the decision not to prosecute the Emperor of Japan and other prominent Japanese officials. The Truman, Eisenhower, Kennedy, Ford, and Reagan Libraries located responsive materials.

NARA Compliance with the Acts

During its search for records, the National Archives expanded its definition of what information was relevant under the Disclosure Acts. Initially, it concentrated on records known to have direct reference to war criminals, such as Army Counterintelligence Corps files on German detainees. As the process advanced, archivists moved to include all of the OSS files, for instance, because the miscellaneous nature of such files meant they contained a wide variety of information, which often unexpectedly related to aspects of war crimes. Even general records on, say, wartime finances in Switzerland, without any reference to war crimes, could lead to details about looted Nazi assets or Nazi counterfeiting operations that supported criminal activity. Such discoveries early in the process led the National Archives to define relevancy as broadly as possible.

The National Archives approached declassification in the same expansive manner as its determination of relevancy. The declassification staff worked to release entire files and record series to maintain the archival context and file integrity of the newly released war crimes information. That is, the declassification authority derived from the Disclosure Acts was applied at the broadest level, to whole integral records series among which responsive files were discovered, rather than limiting review to individual war crimes documents. NARA urged agency declassifiers to resist the tendency to withhold intelligence information simply because certain kinds of information had traditionally been withheld. This effort produced a broad release of World War II intelligence and investigative information, which went beyond specific war crimes and war criminal documents to provide a fuller his-

torical backdrop to those narrower topics.

Declassification of records in the National Archives usually requires coordination with, and advice and assistance from, federal agencies with equities in the classified information in the documents, regardless of who created the documents. Indeed, the National Archives faced some of its most complex work in coordinating reviews of records that had multiple-agency equities. All agencies responded diligently to IWG requests for assistance with reviewing these records.

The National Archives staff also coped with the problems of releasing information that identified victims as well as perpetrators of war crimes. Some potentially sensitive personal information was contained in very recent records. NARA's General Counsel provided advice on information that could require withholding for reasons of privacy. The National Archives assumed responsibility for the privacy review of both records in its custody and of records transferred to the Archives under the Disclosure Acts.

In addition, all of the materials to be released under the Disclosure Acts had to be separately screened in whole or part for four special interests. First, NARA staff gave the immediate review priority to records of interest to the Holocaust Assets Commission, which was completing its legal mandate. Second, under specific provisions in the Disclosure Acts, the National Archives oversaw review by the DOJ/OSI of all records, deferring release of some 18,000 pages of statutorily excluded records while processing for immediate release more than 23,000 pages pursuant to waivers of the exclusion given by the DOJ/OSI member. Third, under the Kyl and Lott Amendments, the Department of Energy had to review all records to be released. Following the DOE review, the National Archives tabbed and withdrew several hundred pages from the files before public release to guard against dissemination of technical nuclear information. Finally, in compliance with the Records of Concern program instituted after the September 11 attacks, the National Archives reviewed all records touching on Japanese, German, and Allied chemical and biological warfare to prevent release of technical information on weapons of mass destruction.

Other Agencies

The **Defense Intelligence Agency, Department of Energy, Department of Commerce, United States Information Agency, Federal Reserve Board, Joint Chiefs of Staff**, and **National Aeronautics and Space Administration** were asked to examine their holdings for records that were potentially relevant under the Disclosure Acts.[87] Each of these agencies informed the IWG that it found no relevant classified records in their searches. The **National Security Council** also searched its records and found a single responsive document.

The staff of the **Federal Reserve Board** executed a thorough search of its records using the 60,000 Names List. While the Board does not have original classification authority, it occasionally receives classified documents from other agencies. The FRB reviewed over 10,000 pages in its custody, and assisted in initiating a review of records in the custody of the Federal Reserve Bank in New York. While this review produced no relevant classified records, it did result in the identification of some 3,000 pages of unclassified documents, which related to World War II-era seized assets, copies of which were transferred to the National Archives.

NASA determined early in the declassification effort that it held no relevant records in any of its office space, records holding areas, or in the Federal Records Center. A NASA official briefed the IWG in August 1999 on the agency's response to the acts and formally notified the IWG and the Archivist of the United States that any relevant classified records in the custody of the National Archives containing NASA equities were to be reviewed and declassified by NARA.

The **National Security Council** made a thorough search of its holdings using the 60,000 Names List and located only one document that was responsive to the acts. Following its declassification review, the NSC transferred to the National Archives a copy of this document, which contained minutes from an NSC meeting containing references to the Klaus Barbie affair. Since the minutes contained information on a number of non-war crimes related topics still requiring national security protection, the NSC declassified that portion of the minutes relating to Barbie and redacted the remainder. The National Archives accepted this redacted copy and released it as part of the IWG Reference Collection. Responsive classified materials created or received by the NSC that are no longer in NSC custody are among the holdings of the National Archives and its Presidential libraries, and were handled by the Archives in response to the acts.

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87. NARA reviewed Joint Chiefs of Staff records in its custody.

6. Findings and Policy Recommendations

The Disclosure Acts cost the American people approximately $30 million, or about $3.50 per page, to locate, declassify, and open government records that were largely over 50 years old.[88] Was it worth it? In other words, are single-subject, targeted, locate-and-declassify projects worth the extraordinary level of effort required of government agencies and the high costs required of the American taxpayer? The IWG was deeply concerned about whether the openness that has been achieved through the release of records under the Disclosure Acts could have been reached more completely and more efficiently by another mechanism.

Openness itself is not in question. As seen in chapter 3 of this report, lack of openness was a major impetus behind the Disclosure Acts. Congressional dissatisfaction with the responsiveness of U.S. intelligence agencies to questions about their use of Nazi war criminals in postwar intelligence work, and public dissatisfaction with the lack of aggressiveness in prosecuting Japanese war criminals and holding Japan accountable roused suspicion that government cannot be trusted to tell the truth even about events well over a half century past. Some even charge that there is a concerted cover-up in progress. The IWG believes that openness to the maximum extent consistent with national security will ameliorate such suspicions. The following findings, analyses, and recommendations are offered in that spirit.

Finding 1: The opening of documentation related to war crimes required a targeted, legislatively mandated effort. The 8 million pages of largely intelligence-related material released under the Disclosure Acts had very little prospect of being released in a timely manner through routine declassification mechanisms. In fact, many of the documents released under the Disclosure Acts that are most historically valuable, particularly records of the Army Counterintelligence Corps and the Office of Strategic Services, had recently undergone systematic review under Executive Order 12958 and were not released. These documents, reviewed under Executive Order 12958 (amended by Executive Order 13292), were withheld simply because they belonged to a *category* of information normally withheld, not because their content was still sensitive or would harm national security if released. In other cases, documents were set aside for review by another agency because the agency with declassification authority was reluctant to make a decision without consultation. Similarly, FBI records released under the Disclosure Acts would not have been released as a body without the Acts because they were not subject to any regular review. They would have been released only piecemeal under scattered Freedom of Information Act requests.

Keeping records classified is the path of least resistance for agencies, and too often a rote response. Superficial declassification review often results when

88. These costs are estimates because the activities involved are not often susceptible to strict accounting and because agencies did not all report fully. CIA withheld cost information in adherence to the policy that intelligence budget information is security classified.

agencies, in panic at approaching automatic declassification deadlines, hire contractors to quickly review large bodies of materials. Those contractors find it more expeditious—not to mention beneficial for their continuing contract—to continue classification. The IWG found that systematic declassification reviews conducted by contractors generally yielded inadequate results.

The IWG concluded that the overwhelming majority of materials released under the Disclosure Acts should have been released earlier under Executive Order 12958. Had the declassification mechanisms already in place been working properly, the Disclosure Acts would not have been necessary. In an effective system, documentation 50 and 60 years old would be reviewed for declassification with the presumption that it is releasable unless its release would *demonstrably* injure the security of the nation.

Recommendation 1: Congress should enable the Executive Branch to enforce the declassification system currently in place. Agencies should insist, and Congress should provide oversight to assure, that agency reviewers engage in substantive review of classified material, even though that material may contain information related to intelligence sources and methods. Congress should provide the necessary resources to support enough personnel devoted to declassification review and to assure that those personnel are adequately trained to be able to make sound declassification decisions.

Finding 2: Targeted, subject-specific search and declassify efforts are an expensive and inefficient way to address overdue declassification. The $3.50 per page cost of finding, declassifying, and releasing war crimes records far exceeded typical spending on declassification activities. According to the Information Security Oversight Office, which monitors the nation's classification system, the cost per page of material declassified through systematic review in 2003 was $1.26.[89] In 1997, the Moynihan Commission reported several instances of mass declassification projects that brought the cost down to pennies, or even less, per page.[90]

Records released under the Disclosure Acts could have been released earlier at a fraction of the cost. The OSS records reviewed under the Disclosure Acts, for instance, could easily have been reviewed with a method less intensive and tedious than a line-by-line review, and the same result would have been reached.

The establishment of an automatic declassification date for all materials would provide additional reassurance that the public would eventually get information that could not be released during normally scheduled review, perhaps lessening the pressure for special reviews.

Recommendation 2: An absolute declassification date should be established for exempt records. In addition to enforcing the current declassification system, a time period should be established, preferably through law, beyond which materials may not remain withheld from public access. This may be a very long period, perhaps 75 years. The IWG recognizes that there may be information that will require protection for a very long period in order to protect the Nation's security, for instance, to prevent the dissemination of chemical, biological, and nuclear weaponry information. However, as the experience of the Disclosure Act demonstrates, there is a point at which protection is no longer cost-effective or wise for information that has lost its sensitivity, such as sources who are long dead and technologies that are widely known.

Finding 3: The Disclosure Acts are unsuitable as a model for the release of materials overdue for declas-

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89. http://www.archives.gov/isoo/reports/2003_annual_report.html#11/.

90. Report of the Commission on Protecting and Reducing Government Secrecy 1997, Senate Document 105-2, Pursuant to Public Law 236, 103rd Congress (Washington: Government Printing Office, 1997).

sification. Although the Disclosure Acts addressed a failure of the current declassification system, single-subject declassification efforts have several inherent problems. One problem is that files transferred under this model can distort the historical record. Because CIA documents released under the Acts lack their original file identifiers and place in the file, the meaning derived from file context and surrounding documentation is, to some degree, compromised.

The State Department also released individual documents because its files were electronic and not arranged in categories meaningful to the acts. The State Department is transferring its electronic files in full to the National Archives in the normal course of disposition (its electronic files from 1973-1975 are already available at the National Archives). The lack of arrangement of these files presages a problem that will be encountered with future electronic files that are randomly compiled. National Security Agency files also presented this problem, with additional security complications.

Another problem with single-subject declassification efforts is agency difficulty with searches. Agency personnel who actually conduct searches under laws such as these cannot be counted on to be subject-area experts. Searching for Nazi and Japanese war crimes records was possible only because there was already a large historical record to use as a source for search terms and definitions, there was a full body of scholarship on the subject, and there was a basic public understanding of, and continuing interest in war crimes records. Even with widely available information on the subject of war criminals, it was necessary for the IWG to provide historical expertise and to constantly monitor the quality of agency searches.

Nearly all of the personnel devoted to implementing the Disclosure Acts, whose work totaled some 172 full-time staff years, were already reviewing records under systematic declassification mechanisms (such as Executive Order 12958) or responding to citizens' Freedom of Information Act requests. Staff had to put these responsibilities aside while they implemented the Disclosure Acts.

Finally, the IWG had great success in part because the acts pertained to Nazis, the Holocaust, and Japanese mistreatment of American POWs. The Disclosure Acts, (like the President John F. Kennedy Assassination Records Collection Act), touched on topics that spur significant public activism, which agencies do not want turned against them.

Recommendation 3: Targeted declassification projects should be limited to subjects of exceptional public interest that have not been adequately addressed by the declassification system. Implementing the Disclosure Acts showed us that subject-specific declassification projects are effective when the subject is well defined and relatively narrow. Targeted records search-and-declassification efforts might be appropriate to answer public questions that have some degree of urgency, such as the searches for records on POWs and MIAs or the search for materials related to Gulf War illness, which involve the fates and current well being of American soldiers. Outside of such conditions, it would not seem useful or efficient to adopt the Disclosure Acts experience as a model to address the problems of overdue declassification generally.

Finding 4: Greater precision in the definition of the intent of the Disclosure Acts and of the role and authority of the Interagency Working Group would have spared time, money, and contention. At the beginning of the implementation period, there was some uncertainty about the scope of the Nazi War Crimes Disclosure Act and, later, about the object of the Japanese Imperial Government Disclosure Act that impeded progress.

However, a greater hindrance to full implementation of the Acts was uncertainty about the IWG's role and authority. The IWG was given authority only to recommend records for declassification and release. As discussed in chapter 4, the Disclosure Acts gave respective agency heads the decision-making authority over the declassification and release of relevant documents, which led to great inconsistency among agency approaches to implementation. The law provided no

mechanism to adjudicate differences of opinion about a document's relevance or sensitivity.

Without authority to impose standards of relevance and declassification, and without a statutory resolution process to follow (such as that prescribed by the Kennedy Assassination Records Collection Act), often the IWG's only course was to address historical and moral arguments to high agency officials. Although the IWG's public members used this course at times to telling effect, meaningful compliance with the law remained, at base, voluntary.

Recommendation 4: Legislation mandating targeted declassification projects should be clear in its intent and clear in the authority given to any body established to provide oversight. Clear statutory definition and intent, coupled with an organized and authoritative oversight establishment, would have resulted in more consistent search and declassification review across the Executive Branch.

The recent establishment of the Public Interest Declassification Board (PIDB), as required by the Public Interest Declassification Act of 2000, appears to satisfy this recommendation in respect to its call for a more formal oversight establishment. The IWG commends the PIDB to the attention of Congress as a partial solution to declassification review of material related to subjects of high public interest. The IWG also notes however, that such a body is not a solution to the more general problem of the accumulation of classified records and the inadequate declassification of those records as they age.

Finding 5: The public must be involved in oversight of the search and declassification process. Left to the government records and declassification establishment alone, the implementation of the Disclosure Acts would not have yielded nearly the amount or quality of information that it eventually produced. The inclusion of committed, knowledgeable, and insistent public members serving the IWG saved the declassification effort from being routine and perfunctory. Those members, together with a Historical Advisory Panel, the holding of public forums, and a general practice of openness, kept the entire IWG accountable to several important constituencies, resulting in the release of more information.

Recommendation 5: Appoint Public Members to Oversight Boards. Because outside oversight was crucial to the success of this declassification effort, the failure to appoint a fourth public member, as required under the Japanese Imperial Government Disclosure Act, may have harmed the credibility of the implementation of the acts, and this error should not be repeated in future efforts. Oversight bodies that include public representation are more likely to be skeptical of routine declassification decisions, more likely to remain independent, and less subject to Government agency pressures. Together with a clear and open decision-making process and an informative public information program, public representation will foster acceptance of Government declassification efforts.

Finding 6: As unfunded mandates, the Disclosure Acts adversely affected systematic declassification review programs and other access programs at some agencies. The costs for implementation of the Disclosure Acts were borne entirely out of regular agency budgets. This meant that resources normally allocated to systematic review programs and Freedom of Information Act processing were at least partially diverted to meet the demands of the acts. Although most agencies were able to continue both activities, both activities suffered from lack of resources because normal declassification and other information access activities are traditionally under funded. For a small agency such as the National Archives, the $12 million cost of implementing the Disclosure Acts and providing all administrative support for the IWG required the curtailment of other access-related activities, resulting in slower public access to materials often equally as important as those covered by the Disclosure Acts.

Recommendation 6: Access and declassification legislation should include adequate funding.

7. Perspectives

Thomas H. Baer

IWG Public Member

The honor of public service has played a major role in my life. My service as a reservist in the Army and the Navy, as a federal prosecutor, and as a lawyer investigating fraud and abuse in the State of New York has convinced me that public service is a public trust. The public trust requires a total adherence to the interests of the citizenry, the ultimate beneficiary of public service.

It was from this background that I approached my appointment by President Clinton as a public member of the IWG. With my profoundly skilled colleagues, Richard Ben-Veniste and Elizabeth Holtzman, I surveyed the legislation and the task ahead.

It soon became apparent that the legislation creating the IWG was fulsome and comprehensive in mandating our disclosure task but silent or defective in directing the concrete steps needed to accomplish it. While the Congress and the President had ordered massive government-wide disclosure of long-secret Nazi and Imperial Japanese war crimes documents, no money was appropriated and no professional staff was afforded. We were on our own in implementing the legislation. As detailed in this report, the money came from the government agencies themselves and from NARA.

The public members early decided that the IWG needed historians to guide the search, to set standards of relevance and to argue for disclosure on the occasions when the IWG might be faced with agency resistance. Hiring a cadre of leading historians working for the IWG (and a stellar Historical Advisory Panel to provide further guidance) was initially resisted by some of the agency representatives serving on the IWG and, curiously, by some at NARA.

"While the Congress and the President had ordered massive government-wide disclosure of long-secret Nazi and Imperial Japanese war crimes documents, no money was appropriated and no professional staff was afforded. We were on our own in implementing the legislation."

Resistance to hiring historians was based upon the four corners of the legislation that made no explicit provision for them and by the philosophical argument that we were but to "disclose," an alleged rote task supposedly not requiring analysis. That resistance faded when the public members insisted that we needed advice of experts to effectively satisfy our public trust both when we needed to require disclosure and when the public interest mandated no disclosure or disclosure in redacted or summary form. Reliance on our guesswork would not do when experts had the answers. The historians became crucial partners with us.

Our historian partners guided us when the disclosure of relevant materials would damage the current interests of the United States. In most instances when agencies requested redactions or summaries, the public members agreed. While the events we were reviewing took place many years ago, certain classified Government documents collected more recently had no business being made public. The public members

knew that intelligence gathering is part of our safety as Americans and we resisted any disclosures that would be harmful.

While each of the agencies had IWG representatives, with the exception of the Department of Justice they limited themselves to disclosures made by their own agencies. I was disappointed that these representatives did not work the common weal. I had envisioned IWG agency members working and strategizing to effectuate disclosures throughout the government. But that never happened.

I was deeply impressed with the NARA staff members assigned to us, but I was not impressed by the first Archivist of the United States with whom we dealt, John Carlin. Actually, I saw him once in five years. It appeared to me that his appetite for the disclosures we were to make was not very robust, although he did supply funds from NARA's budget. But his legislative representative curiously resisted the IWG appropriation we had negotiated with the Congress at the time of our most recent two-year extension. His successor, Archivist of the United States Dr. Allen Weinstein, now our IWG Chair, has been a dedicated collaborator in our task and I am glad I served with him.

After September 11, 2001, the CIA began resisting disclosure. The public members developed a strategy of seeking incremental disclosures, hoping to make a record justifying fuller disclosure. This procedure was demeaning, time-consuming, and ineffective.

For example, notwithstanding an executive order requiring "an expansive view of the act" and a statutory presumption favoring disclosure, the CIA insisted that its records pertaining to the SS men it had employed during the Cold War could not be revealed unless IWG demonstrated precisely what each SS operatives had done to persecute and destroy European Jewry. That the entire SS was declared a "criminal organization" at Nuremberg made no impression on the CIA. The CIA knew that our job was not to initiate a court of inquiry into the behavior of its SS associates, thus remitting us to a no-man's-land where we had to tell the CIA facts that they knew without the CIA letting us know them. The unsatisfactory incremental approach got us a list of the names of those who had files at the CIA, nothing more.

The dispute got to the point that on December 23, 2002, the then-General Counsel of the CIA refused to meet with the public members "in order to discuss CIA's position" that the public members contended was in violation of law.

Thereafter, due to the forceful and courageous actions of former Senator Mike DeWine (ably abetted by Congresswoman Carolyn Maloney), the CIA reversed its position and steered a course of cooperation that included the CIA's consent to a two-year extension of the existence of the IWG by the Congress and President Bush. But there is and was a duty to comply in the first instance.

Had the public members been unwilling or unable to insist that our public service was a public trust, no such result would have obtained and the disclosures ultimately made by the CIA would never have happened.

Looking to the future, any declassification mandated by Congress should provide independent funding to the agency charged with oversight of the process and should explicitly direct the retention of experts to guide it.

I am grateful to all who served so ably to successfully complete this enormous job. All of their names appear elsewhere in this report. I am honored by my appointment by President Clinton and its continuation by President Bush.

And I am proud that I had a chance to serve the public once again. They are the citizen beneficiaries of the public trust.

Richard Ben-Veniste

IWG Public Member

"There is far too much secrecy in government. Secrecy often acts as the handmaiden of complacency, arrogance, and incompetence … In a democratic society, openness should be the rule; the right to know should trump the impulse to withhold, except in truly justifiable circumstances."

Unprecedented best characterizes the eight-year work of the Nazi War Crimes and Japanese Imperial Government Records Interagency Working Group (IWG). The laws and the persistent effort to locate, identify, declassify, and provide access to more than 8 million pages of government documentation dated from 1933 through 1998 from among a universe of over 100 million pages are unique. There are several keys to the success of this effort. The law (PL 105-246)—which precluded agencies from automatically invoking Section 701(a) of the 1947 National Security Act (50 USC 431) and thereby excluding from review classified operational intelligence records—provided the statutory framework for the IWG's results. Contributing to the positive outcome was the commitment by the Clinton Administration evidenced in the executive order and the NSC tasker to the agencies, which urged them to "take an expansive view of the act …"

After signing the War Crimes Disclosure Act, Mr. Clinton expressed his hope that this Act and the IWG would at last open all U.S. records on war crimes, war criminals, and the involvement of the United States Government. Another key to the IWG's accomplishments was its decision to act upon the public members' recommendation and obtain the services of expert historians in the fields of WWII, the Holocaust, and the U.S. intelligence establishment. These five historians (Richard Breitman, Norman Goda, Tim Naftali, Robert Wolfe, and Marlene Mayo) provided essential guidance in searching the various agencies' records and offered an informed and independent analysis of the declassified and released material, enhancing public understanding of the significance of these materials in historical context. The volume they have produced is indeed a major contribution to the scholarship on WWII, war criminals, the Holocaust, and our government's knowledge about and association with individuals marked with the stain of acts of persecution and genocide.

The Disclosure Act empowered the IWG to recommend the declassification of all relevant Federal Agency records. Responsibility for accomplishing the actual review as set forth in the legislation rested with the agencies, not the IWG. The Working Group provided guidance by specifying the kinds of records and the kinds of information deemed relevant under the Act's definition of war crimes, war criminals, and war criminal records. The IWG coordinated with the agencies' staffs and monitored agency activities to ensure compliance, particularly in terms of the "expansive" view and "public interest" in disclosure of all relevant records.

There are several cases that highlight the successes

resulting from the IWG effort. Two in particular are exemplary: the responsiveness of the U.S. Army's Intelligence and Security Command (INSCOM), and the laudatory efforts of the Federal Bureau of Investigation (FBI). Early on in the implementation process, it was clear that the important and extensive volume of relevant files at INSCOM's Investigative Records Repository (IRR) constituted one of the most important sources for relevant war crimes records. The problem was the sheer massiveness of the collection, its archaic access system, often-illegible microfilm copies of paper records no longer in existence, and a host of other issues that could jeopardize releasing the information to the public. After others assigned to this project by the Army threw up their hands in defeat, Maj. General Robert Noonan, the commander of INSCOM, took charge. In October 1999, Gen. Noonan pledged that the IRR would digitize its microfilm holdings, declassify the war criminal records based upon IWG guidance, and transfer digitized copies of the National Archives by September 30, 2000—one year later. General Noonan committed the units responsible for the IRR, the 902 Military Intelligence Group and the 310th Military Intelligence Battalion, to the task. Their success was a superb accomplishment.

Likewise, the efforts of the FBI reflect the positive commitment of Directors Freeh and Mueller to the letter and spirit of the Disclosure Act. Director Freeh met with the public members early on in the process. His commitment to the disclosure, and the leadership he exerted provided the touchstone of the Bureau's response. His leadership extended to directing his staff to work with representatives of other governments to foster the opening of relevant foreign government information found in the FBI files.

The Bureau made a Herculean effort in reviewing its holdings, both paper and electronic. More than 65 million index cards had to be reviewed. The exceptional outcome of this effort, which involved actually screening in excess of 3 million pages, is reflected in the 200 cubic feet of original Bureau files (more than 10 percent of the pages examined for relevancy), which the FBI transferred to the National Archives with minimal redactions taken in accord with the Act's exemptions. The impact of the FBI's work in support of the Act is visible in the important information these records impart on topics and individuals connected with Nazi and Japanese war crimes. The IWG historians have found the FBI documentation of great significance in illuminating a range of war crimes and related topics including persecution, Nazi asset confiscation schemes, exploitation of German scientific personnel (Operation Paperclip), espionage, and counterespionage.

Unfortunately, the response of the CIA to implementation of the Act was more convoluted and required the application of maximum pressure to achieve acceptable compliance.

Initially, the Agency performed commendably in dealing with classified OSS records, which it had transferred to the National Archives prior to the establishment of the IWG. These records, nearly a million pages, along with a body of OSS records still in Agency custody, which came to be transferred to the National Archives as a result of the IWG effort, were examined and declassified by the Agency (directed by personnel at NARA's College Park facility). The work was done expeditiously and, with the assistance of NARA staff who provided substantive historical and contextual guidance, in a highly professional manner. These pre-CIA records, dating up to October 19, 1946, are fascinating in content, and are key to enriching our understanding of war criminality during and immediately after WWII. The minimum number and non-substantive sources and methods redactions taken in these records reflect an unequivocal response to the Act's requirements.

By contrast, all CIA records and those of its immediate predecessor, the Central Intelligence Group (CIG) dated after October 19, 1946, which were potentially relevant and covered by the Disclosure Act, remained in CIA's possession. After its initial promising response, the CIA retreated into a defensive posture regarding these records. This approach reflected an entrenched reluctance by certain factions within the Agency to declassify information and abide

by the "expansive" and openness called for in the Act and executive orders. Despite repeated assurances by Director Tenet that CIA would abide by the spirit and the letter of law, other forces within the Agency launched a program of obstruction and delay. CIA chose to reinvent the definition of "relevancy" in place of the guidance provided by the IWG, which had been theretofore accepted by CIA as well as all the other government agencies covered by the Act. CIA chose to "compartment" some files and then imposed a long and convoluted process of reviewing those files in response to continued pressure by the IWG's public members. Despite personal assurances from the DCI to the IWG public members, the Agency parsed, parried, and thwarted the goal of opening all CIA war crimes related records.

Significant time and effort was expended (requiring extension of the Act by Congress) while negotiations dragged on. Finally, the impasse was broken when the public members invited the original congressional sponsors of the Act, Sen. Mike DeWine and Rep. Carolyn Maloney, to attend a meeting with CIA representatives, at which DeWine and Maloney could hear firsthand the CIA's rationale for withholding the disputed records. Sen. DeWine and Rep. Maloney rejected CIA's interpretation of its obligations under the Act and suggested that the CIA representatives convey their view directly to DCI Porter Goss. Within 48 hours, CIA informed the IWG that it would drop its reinterpretation and comply fully with the letter and spirit of the Act. Thereafter, under the very able stewardship of retired CIA official Stan Moscowitz, CIA became a "model citizen" of the IWG, working cooperatively with us to make its relevant records available. Tragically, Stan Moscowitz died suddenly in 2006, a terrible institutional and personal loss to all of us who had come to know him.

The 2005 extension of the Nazi War Crimes Disclosure Act and the subsequent order of Director Goss requiring compliance led to the CIA's delivery of substantial new materials and more complete files on many subjects of interest previously identified. No single file or series of files were found where CIA discussed or set forth a clear policy regarding the use of former Nazi war criminals (or suspected war criminals) as agents or sources. Instead, the IWG historians accumulated evidence from specific files of individuals investigated or used by CIA to try to discern a pattern upon which broader conclusions might be drawn.

For example, in November 1960 a CIA official wrote: "We have no strong feelings against the use of a convicted Nazi today, provided he has something tangible to offer and is kept under close control and direction. The question remains—what has he to offer?" Later, in the same document, headquarters adds, "Regarding your request in paragraph five for a general comment on the present usefulness of former German intelligence personnel now in Spain, both the German desk and this desk agree that each case must be reviewed on its individual merits and that no blanket Headquarters comment is possible." These comments appear in a file on a man named Eugenio Endroedy, which was declassified in September 2006, but they were not included in an earlier version of the Endroedy file that was declassified in 2001.

CIA also located and declassified files on additional subjects of potential interest supplied by the IWG historians. For example, a significant new file on Haj Amin al-Husseini, the Grand Mufti of Jerusalem, provided details of his involvement in the planning of wartime operations directed against Palestine and Iraq, including parachuting Germans and Arab agents to foment attacks against the Jews in Palestine. Haj Amin al-Husseini also played an important role in raising Muslim troops for the Waffen-SS in the Balkans.

According to reliable information received by the Strategic Services Unit, a predecessor of the CIA, the French government originally planned to prosecute Haj Amin al-Husseini at the end of the war, but the British objected—and even threatened to foment Arab uprisings against the French in their North African colonies if the French went ahead with their plan. As a result, the French not only released Haj Amin al-Husseini in Paris, but let him fly to Syria, where, ironically, he soon began to cause problems for the

British in Palestine, while claiming that the Jews had forged all evidence of his collaboration with Nazi Germany. CIA closely followed Haj Amin al-Husseini's activities, but shunned any relationship with him. His file, which also contains a wealth of information about Arab politics up to 1963 and some evidence of his sponsorship of terrorism, was declassified in December 2006.

If I were to identify an area of disappointment, albeit in the context of an overall impressive and successful effort, it is that the individual agencies—with one exception—did not work collaboratively to ensure that all agencies produced the most expansive production of records possible. In the face of this general "stovepiping" by each agency, limiting its concern to its own issues, only DOJ representatives Eli Rosenbaum and Dr. Elizabeth White of the Office of Special Investigations (OSI) contributed their impressive knowledge of the subject toward the collective IWG effort. I believe the IWG could have done a better, more efficient job had the other agencies followed the example of OSI, allowing us to harness the synergies of a cooperative cross-agency effort.

As with so many projects with which I have been associated over the years, the qualities and capabilities of the individuals involved have proved to be every bit as important as the laws and regulations under which they operate. The IWG had the advantage of having an extraordinary and dedicated staff at NARA who worked tirelessly and with great professionalism to overcome obstacles and to review and release the documents in a user-friendly format, complete with finding guides. It has been my privilege to work with Michael Kurtz, Steve Hamilton, Bill Cunliffe, Dick Meyers, David van Tassel, and with the recently appointed Archivist of the United States, Allen Weinstein, who provided important leadership and commitment to ensure completion of the project. It is worth repeating that our outside historian consultants provided invaluable assistance. Their contribution, along with that of a distinguished board of historians led by Gerhard Weinberg, provided essential guidance, context and independent credibility to our effort. Our first chairman, Mike Kurtz, got us off to a great start; Steve Garfinkel, assisted by Larry Taylor, continued stewardship of the IWG, and Allen Weinstein took over the reins to lead us to a strong finish. Kris Rusch performed admirably in putting the report together.

I am not a professional historian, nor did I possess any particular expertise in Holocaust studies when President Clinton appointed me as one of three IWG public members in 1998. My contribution to this effort was in facilitating the process: identifying issues, mediating disputes, reviewing materials, and utilizing the expertise of our outside historians and committed NARA personnel to encourage the most robust search for and declassification of relevant documents. I could not have had two more dedicated, insightful, and indefatigable colleagues than Elizabeth Holtzman and Thomas Baer. Liz and Tom gave unsparingly of their time, putting in countless pro bono hours. The ultimate success of the IWG is directly attributable to the efforts of these two outstanding public servants.

There is far too much secrecy in government. Secrecy often acts as the handmaiden of complacency, arrogance, and incompetence. It is far too easy to use the classification pen to keep the information flow of government from public view. There is no question that documents containing legitimate national security material must be protected. But far too often documents are classified to avoid embarrassment, or, more often still, simply because it is easy to do so without accountability. In a democratic society, openness should be the rule; the right to know should trump the impulse to withhold, except in truly justifiable circumstances.

In the end, there was really no good reason why these documents—reflecting information about our government's action, or inaction, during the most horrific period of the last century and its aftermath—were kept secret for so long. As the late Daniel Patrick Moynahan, revered champion of openness in government, observed, ". . . Secrecy in the political realm is always ambiguous. Some things should never be made secret. Some things should be made secret, but then

released as soon as the immediate need has passed. Some things should be made secret and remain that way. The problem is that organizations within a culture of secrecy will opt for classifying as much as possible, and for as long as possible."

Hopefully, the work of the IWG will stand as a milestone on the road to greater openness in government—a noble and achievable aim of our great democracy, if our political leaders demonstrate the leadership and will make it so.

Elizabeth Holtzman

IWG Public Member

As a member of the Interagency Working Group, I am pleased to join in the report to Congress about our work in overseeing the declassification of the U.S. Government's secret files on Nazi and Japanese war criminals.

I think we can safely say that all government agencies ultimately complied with the law, and more than 8.5 million pages, mostly related to intelligence activities, were declassified. The IWG did its job as completely as possible, given the constraints of U.S. Government filing systems.

Our biggest obstacle was the absence of a magic button that could be pushed to release all relevant documents. Because most documents are filed under an individual's name, without the name, the document cannot be found, as a general matter. The IWG did not have the names of all the war criminals, particularly those Nazi collaborators who lived in Eastern Europe and parts of the former Soviet Union, such as Ukraine and the Baltic countries. So, even though we employed various search strategies to obtain these documents, there are undoubtedly huge gaps in our work. (We did provide the agencies with a 60,000 name list compiled by the Office of Special Investigations in the Justice Department. That list was supplemented by other names uncovered in the course of our work.)

That is why only bulk declassification can assure that all documents dealing with Nazi and Japanese war criminals in U.S. Government files are made public. Based on the documents we saw, there is no reason that full declassification of documents from World War II and the immediate postwar years (say through 1965) cannot take place. Of the 8.5 million pages declassified, virtually none (except a couple of pages of a much more recent vintage) should have remained classified for as long as they were.

> "It is not clear that Nazis provided us with any useful intelligence, and we know that in some cases at least they were a serious detriment to us. Given the intelligence failures of the Iraq war, it might be important for U.S. policymakers to understand that using very bad people for intelligence activities does not automatically get us very good results and, instead, may get us very bad results."

Not only should all the documents from that period be declassified, but there needs to be an ongoing periodic declassification of intelligence documents in the future. It goes without saying, of course, that documents dealing with weapons of mass destruction, poisons, and the like should not be disclosed.

What We Learned

The documents declassified by the IWG make two large points. First they show the U.S. Government

knew earlier than was thought about the horrors being inflicted on European Jewry. This knowledge seems to have prompted no response on the part of our government. In another example of indifference, we found that the United States and Great Britain learned that the Nazis were about to round up of the Jews of Rome within a matter of days and exterminate them. We could find nothing to show that any effort was made to prevent the pending tragedy.

Second, the documents fill out the story, the outlines of which have been known for some time, about the U.S. Government's collaboration with and protection of Nazi war criminals after World War II.

One example uncovered in our project involved former top Nazi, Hans Globke, who became national security advisor to Chancellor Konrad Adenauer of West Germany. Globke, the author of racial classification laws used against Jews, was going to be linked to Adolf Eichmann, one of the architects of the Final Solution, in a Life magazine story to be published around the time of Eichmann's trial. Terrified that the linkage could cause greater scrutiny of Globke and his Nazi past, the West German government asked CIA Director Allen Dulles to squelch the reference to Globke in the story. Dulles obliged and the mention of Globke was deleted from the Eichmann story.

Moreover, when Eichmann was still unapprehended, the CIA became aware of an alias for Eichmann—not the actual alias but a name very close to it. Nonetheless, the CIA did not use the information to see Eichmann brought to justice, either through furnishing it to the Israelis or otherwise.

We now know as a result of the declassification that the use of Nazi war criminals was harmful, in other than moral ways, to the United States. For example, the Soviets, it turns out, were targeting and hoping to "turn" Nazi war criminals being hired in droves by our spy network in West Germany headed by former Hitler general Reinhard Gehlen. The Russians understood the vulnerability to blackmail of Nazi murderers who had blood on their hands. But Americans appear not to have understood the risk, nor did they appear to care about the moral issues. The CIA learned about the Soviet's targeting effort only after discovering that a top spy in our West German network, a former SS officer, Hans Felfe, was a Soviet double agent. There were few if any U.S. or NATO secrets he withheld from the Soviets.

It is also likely that Nazis created another problem for us. Since they were being hired by the United States to inform on the Soviet threat, their jobs and their lives may well have depended on ensuring that the United States believed the threat was real and serious. The Nazis may have had an agenda: to emphasize, if not exaggerate, the Soviet threat. I hope scholars will explore the documents carefully to determine whether and the extent to which U.S. use of Nazi war criminals tainted our foreign policy after World War II.

Lessons for Today

It is not clear that Nazis provided us with any useful intelligence, and we know that in some cases at least they were a serious detriment to us. Given the intelligence failures of the Iraq war, it might be important for U.S. policymakers to understand that using very bad people for intelligence activities does not automatically get us very good results and, instead, may get us very bad results. Using morality as a yardstick is not necessarily naïve, but may be the smartest way to approach intelligence-gathering activities.

Reasons for IWG's Success

Congressional Leadership

Without the extraordinary leadership of Senator Mike DeWine (R-Ohio) and Representative Carolyn Maloney (D-NY), who won passage of the legislation, this declassification effort would never have been undertaken. Senator Feinstein also is responsible for adding to the disclosure statute the explicit focus on Japanese war criminals, an extremely important contribution. This was a bi-partisan, or perhaps more accurately, a non-partisan effort.

The Congressional staffs also deserve enormous credit, including in particular Pete Levitas, Ben Chevat, and Orly Isaacson. Louis Dupart, former aide to Senator DeWine, is the unsung hero of this project,

having guided the original statute to passage and offering us the benefit of his wise counsel throughout.

Most important, the sponsors of the legislation took an active interest in our progress. Without their ongoing support, the process might have fallen flat, as will be explained later in the section on the CIA.

Hiring Historians

The public members of the IWG made an early decision to employ eminent historians who could analyze the documents being declassified and report to Congress and the American people on what was new and significant about them. One result of their important work was the book *U.S. Intelligence and the Nazis*, which analyzed 250,000 of the 8.5 million pages declassified.

The historians also played an important role in educating agencies on the relevance of certain documents and the harmfulness of proposed redactions. Their usefulness cannot be overstated. Thanks go to Professors Richard Breitman, Norman Goda, and Timothy Naftali, all distinguished academics, and Robert Wolf, a retired government archivist with substantial experience in the area.

We also formed a historical advisory council, chaired by the noted historian Gerhard Weinberg, which also gave us invaluable guidance throughout. We appreciate the assistance of the members of the advisory council greatly.

Public Members

The declassification project worked as well as it did because Congress added three non-governmental members to the Interagency Working Group, which was comprised of the heads of key federal agencies including the Department of Defense and the Department of State. I want to salute my two public member colleagues, Thomas Baer and Richard Ben-Veniste, for their extraordinary dedication, their refusal to accept bureaucratic temporizing, and their intelligence and good strategic sense in winning agency compliance. It was an honor and a privilege to serve with them.

In particular I want to thank Thomas Baer for working with me on securing the CIA's written agreement to comply with the disclosure act. That agreement was critical to our efforts.

Agency Compliance—and Noncompliance

Initially, the Department of Defense and the FBI balked at the task, but ultimately—after much persuasion, including a meeting with FBI Director Louis Freeh and letters to the Secretary of Defense—agreed to comply. Director Freeh, in particular, offered the full help of his agency, even going so far as to seek the aid of retired agents with relevant information.

The State Department adopted a unique approach to examining its files, one that after repeated explanations and testing won only grudging acceptance from our historians and the historical advisory panel.

The CIA was the only agency that steadfastly refused to declassify certain documents, acting in violation of the statute. At the outset, the Agency was cooperative and Director George Tenet assured us of his personal support on several occasions. Nonetheless, shortly before 9/11 the CIA shifted gears. It advised us that while it would disclose an agency relationship with people on our search list, it would not disclose what they had done for the CIA unless we could prove the persons had actually engaged in persecution. Being a "mere member of the SS," in the CIA's phrase, was not sufficient to require declassification under the law, even though the SS was declared a criminal organization at Nuremberg. The CIA's position was totally unacceptable—and the three public members completely agreed on this. Its position differed from that adopted by all the other agencies and from the position it initially took.

The CIA's hostility reached a boiling point, and it decided to "compartmentalize" many Nazi war crimes files, meaning that additional hurdles were placed in the way of seeing agency documents, even though all of the public members and a number of our historians had full security clearance. The compartmentalization was later removed.

Congress granted us a one-year extension to see if we could work out our differences with the CIA. We could not. Just before the extension expired, Senator DeWine called a meeting with the public members of the IWG and representatives of the CIA. Representative Maloney was present, as was the staff of Senator Feinstein. The CIA was asked to justify its position, but when it pointed to a certain aspect of the statute, Senator DeWine advised the CIA that he had written the statute and its interpretation was flatly wrong. He said he would hold public hearings on the matter. The New York Times wrote an article about the CIA's position.

The CIA backed down. It is now in full compliance with the law and is giving us all the material we believe is relevant under the act. For this, thanks go to Director Porter Goss. Tragically, Stan Moscowitz, a former CIA employee who was retained by the CIA to oversee its new policy of compliance, died before the task was finished, but fortunately not before he could see how much progress had been made. Major kudos, too, go to Mary Walsh, who has worked indefatigably and painstakingly on getting documents to the IWG from the inception of our project.

Plainly, even the most recalcitrant agency will do the right thing if Congress has the will to make it do so and the press is available to expose the problem.

Unfortunately, the time wasted by the CIA in fighting disclosure has hampered our work to the extent that we may not be able to provide the public with the kind of analysis of the newly released that we have with other documents in the past. Still, we will try to make as much sense of the material for the public as we can before we go out of business.

The National Archives

The assistance given our project by the Archives has been enormous and important. This project could not have been accomplished without their assistance and their expertise. Thanks go to Michael Kurtz and his successor Steve Garfinkel, NARA representatives who chaired the IWG. Thanks go as well to Alan Weinstein for his wholehearted support of the project.

Conclusion

My involvement in issues of Nazi war criminal has a long history. In 1974, as a new member of Congress, I uncovered the presence of Nazi war criminals in the United States, thanks to a whistleblower, and began the long process of forcing our government to bring them to justice. It is only after establishing a proper administrative and legal structure—creating a special Nazi hunting unit, the Office of Special Investigations in the Justice Department, and strengthening the law authorizing the deportation of Nazi war criminals and barring them from our shores—that I could turn to discovered why Nazis were in the United States and what their relationship was to our government. By that time, 1981, however, I had given up my seat in Congress.

The task remained undone for twenty-sever years afterwards—even though I tried, unsuccessfully, in the early 1990s to get the CIA to declassify its Nazi war crimes files. It actually promised to do so in a letter to me, but then reneged.

Finding the truth about our government's secret dealings with Nazi war criminals is not just a musty historical exercise. Using mass murderers secretly as an instrument of American policy raises serious and troubling issues. More than 50,000 Americans gave their lives and more than 100,000 Americans were wounded in the effort to defeat Hitler and his Japanese allies. Employing Hitler's henchmen and protecting them from accountability made a mockery of our troops' sacrifice. The Nazis and their collaborators slaughtered six million Jews and millions of non-Jews. America's use of these killers desecrated the suffering and deaths of their victims. Our government's hiding its use of Nazi murderers from the American people and Congress degraded and undermined American democracy. And, by adopting the principle that the end justifies the means, our government betrayed its deepest values.

The work of declassification, of finding and telling the truth, even these many years later, begins in a small way to repair the damage of our government's indifference to the crimes of the Nazis.

It is also a tribute to our democracy that the files

can be released and public debate can be had on what in my opinion, at least, was the sordid and immoral use of Nazi war criminals—mass murderers or accomplices in mass murder—by the U.S. Government.

I hope that the work of the IWG will encourage all other governments with documents relating to Nazi and Japanese war criminals, including in particular Great Britain, France, and Russia, to open their files on this period, as well.

Eli M. Rosenbaum

DOJ Office of Special Investigations

The conclusion of the IWG's eight-year effort to locate, declassify, and disclose, at long last, classified records in U.S. government possession relating to Axis criminals brings to an end the largest search-declassify-and-disclose project in world history.

From the start, participating in this long overdue effort seemed to those of us at the Justice Department's Office of Special Investigations (OSI) to be a natural follow-on to the work that OSI has been doing for more than 25 years to secure not just juridical justice on behalf of the victims of monstrous Axis crimes, but historical justice as well. In addition to locating, investigating, and taking legal action against Nazi and other Axis criminals, OSI had produced and secured the public release of landmark studies that confirmed the postwar employment by U.S. intelligence agencies of Klaus Barbie and other former Nazis; traced the fate of the infamous Auschwitz selector and experimenter Dr. Josef Mengele; proved that gold taken from Holocaust victims was traded by the Third Reich to the Swiss National Bank during the war and was placed after the war in the so-called "Gold Pool" by the U.S. government; and established that Nazi-looted artwork made its way to the collection of the venerable National Gallery of Art, in Washington. Consequently, although OSI is a small office (employing a staff of 24 at present, with an annual budget of less than $6 million) and although OSI is the only U.S. government component whose records were specifically *excluded* from release by the terms of the Disclosure Acts, OSI devoted major resources (over 10,000 person-hours and some $1.5 million) to helping to ensure the successful implementation of the two statutes' provisions.

> "The documents found and released include many important, and sometimes disturbing, materials. As the present report indicates, while these materials do not compel any dramatic revision of mainstream scholarship on the war and its aftermath, they do enhance our understanding of those events and add some hitherto unreported events to the chronology."

Even before the compliance effort formally began in 1999, OSI put its two decades of experience in investigating and prosecuting Nazi persecutors to use for the benefit of the government's soon-to-be-launched effort to identify classified records in its possession pertaining to Axis crimes. In late 1998, shortly after the first Disclosure Act became law, I presented a detailed OSI-prepared draft implementation plan at the first meeting held, at the White House, to discuss how the daunting mission assigned to the government by the legislation might be carried out. After the IWG was formally constituted the next year, the implementation plan that it ultimately adopted retained

many of the key strategies that had been proposed in that early OSI draft. Most notably, the Justice Department proposal—made initially in discussions on Capitol Hill even before the legislation was enacted—that independent historians be engaged to evaluate and publicly appraise the voluminous materials that would undoubtedly be found received strong support from the public members and then-Chair Michael Kurtz, and it was eventually adopted by the IWG.

Among the significant challenges that OSI predicted the government would face was that many of the records most likely to include relevant information are contained in files that are traceable only by the names of the indivduals who are the subjects of those files, rather than by searches based on keywords (such as "Nazi"). OSI therefore volunteered to develop a list of individuals who met the statutory definition of "Nazi war criminal" – a list that federal agencies could use in searching for and identifying relevant records. OSI's proposal was accepted by the IWG at its first meeting. In creating the list, OSI faced an immediate problem: a significant percentage of the perpetrators of Nazi and other Axis crimes are unknown and will never be known. In addition, the desire to include as many suspected Nazi war criminals as possible had to be balanced against considerations of fairness; while the vast majority of persons who merited inclusion on such a list would never have been convicted by a court of law (as prosecutions were mounted after the war against only a minority of the perpetrators), the release of their files under the Acts would logically brand them publicly as suspected Nazi war criminals. At the same time, the list had to be produced quickly, so that federal agencies could employ it within the short time-frame for compliance provided in the original statute. By engaging the services of a contractor and devoting hundreds of hours of work by OSI's small staff of historians, we were able, within only a few months, to deliver to the IWG a database containing the names of 59,742 suspected Axis criminals. This "60,000-name list," as it would come to be called, became the principal tool employed by key federal agencies in their compliance efforts, and its use resulted in the discovery, declassification and—following Privacy Act review by National Archives personnel—release of an enormous amount of documentation.

OSI personnel devoted many thousands of hours to assisting the IWG in a variety of other ways as well, including: contributing to the keyword lists used to identify relevant records; identifying for the Department of Homeland Security classified immigration records in its possession pertaining to suspected Nazi criminals; supplying evidence of criminality on the part of individual SS officers in order to persuade a U.S. intelligence agency to release records pertaining to those persons; and providing historical/investigative assistance to IWG historians as they conducted their research. OSI also coordinated the compliance efforts of the Justice Department's offices, boards and divisions. An OSI senior historian spent thousands of hours reviewing and taking detailed notes on tens of thousands of pages of records to help expedite the compliance effort.

I am deeply grateful to have been afforded the opportunity by three Attorneys General to serve as the representative of the Justice Department's divisions, boards, and offices. I am abidingly indebted to OSI Deputy Director and Chief Historian Dr. Elizabeth B. White and OSI Senior Historian Dr. Steven B. Rogers for the outstanding work they performed in order to facilitate and expedite disclosure of important documents. Their dedication helped make it possible for OSI to play a key role in the eight-year compliance effort while simultaneously winning court cases against nearly thirty Nazi criminals. I am grateful as well for the Criminal Division's generosity in approving my proposal for a voluntary allocation of more than $400,000 in Department of Justice funds to support the operational needs of the IWG. Other than the (much larger) contribution of funds made by the National Archives, these were the only monies contributed to the operation of the IWG by any agency of the U.S. government.

In further pursuit of the Disclosure Acts' goals, the Justice Department volunteered near the start of the project to, in effect, waive any objection to the

release of some documents that were covered by the statutory exclusion of OSI-related records. We hoped that by volunteering such waivers, the Department could help to ensure that important categories of disclosures were not blocked because of the Congress' understandable insistence that OSI's increasingly time-sensitive law enforcement efforts be given priority over a history project, even one so important as this. When these discretionary waivers were initially volunteered, however, I emphasized that they could be given only in a modest number of cases, as OSI's small staff could easily be overwhelmed if more than a limited number of waiver candidates was processed. I stated then that OSI personnel would be able to review perhaps 15 to 20 key files for possible waiver, presumably totaling some hundreds of pages. It was never imagined that we would end up providing waivers on more than *twenty-five thousand pages* of Nazi-related documents, principally found in FBI, CIA, Defense Department, State Department, and NSA files. In the end, the Justice Department waived objection to release of the vast majority of documents determined to be covered by the statutory exclusion of OSI-related records, with the result that just two hundredths of one percent of the documents found and processed in the IWG effort will have been excluded from release because of that provision of federal law. In deciding which statutorily excluded documents should be considered for waivers, the Justice Department gave top priority to documents evidencing relationships between suspected Nazi persecutors and agencies of the U.S., Soviet and other governments. We also gave priority to documents that the independent historians engaged by the IWG asked us to consider for waiver in light of their possible historical significance. In a number of instances, moreover, we took the initiative to provide waivers, even without any request therefor having been made

I would be remiss in discharging my responsibilities if I did not address the very disappointing manner in which some media reported on the documents found and released by the IWG. This was particularly true in the cases of two of the most notorious of all Nazi criminals—Heinrich Mueller, wartime chief of the Gestapo, and Adolf Eichmann, the SS official in charge of organizing the deportation and mass murder of Europe's Jews. Mueller disappeared after the war and his fate has never been conclusively determined. Eichmann was apprehended in Argentina in 1960 by Israeli agents, who took him to Israel, where he was tried, convicted, and executed. The CIA's records on Mueller were released by the IWG in 2001, along with a report by four eminent independent historians concluding that (1) the documents disprove suspicions voiced by some that Mueller was employed by U.S. intelligence after the war, (2) an individual held in a U.S. internment camp in Germany in 1945 by the name of Heinrich Mueller was a different person who possessed the same (common) name as the Gestapo chief, and (3) in all likelihood, Mueller died as Germany fell to Allied forces in May 1945. However, the History Channel continues to broadcast (and sell videotapes of) a film it commissioned called "Escape from Hitler's Bunker," the narration of which asserts that "secret documents released in 2001 by the National Archives" in Washington "finally solve the mystery"of Mueller's disappearance. Those documents, the narrator continues, reveal that he was held by the U.S. in an internment camp in Germany in 1945 and that he was thereafter "employed by American intelligence as an undercover agent during the Cold War" to "combat the Soviets in eastern Europe." Similarly incorrect, but reported last year by major media throughout the world, is the claim that the CIA was opposed to efforts to bring Eichmann to justice and knew, but withheld from Israeli authorities, facts that would have enabled the Israelis to locate Eichmann months earlier than they did. In fact, the CIA documents released by the IWG reveal that the Central Intelligence Agency attempted, without success, to locate him in the 1950s so that he could be brought to trial and that, after his 1960 capture by Israeli agents, the CIA made extraordinary, important, and previously undisclosed efforts to assist the Israelis in gathering evidence to use in court.

The wisdom of the statutory requirement that public members serve on the IWG was manifest

throughout the implementation effort, especially on the numerous occasions on which some agencies refused to release various documents that were covered by the acts. The other agencies represented on the IWG declined to participate in the initiatives that were launched by the IWG to overcome these obstacles to disclosure, and in the end, the IWG chairs, the three public members, and the Justice Department representative were the only IWG members who were willing to participate in these arduous efforts. Other agency representatives were, perhaps not surprisingly, reluctant to take positions that were at odds with those asserted by agencies with which they regularly deal on a broad array of issues. (Similarly, the IWG chairmen, the three public members, and the Justice Department representative, joined in the concluding period of the implementation effort by the CIA representative, were the only members willing to serve on the IWG's executive committee.) In any event, without the indefatigable efforts of the public members—who labored under no such inhibiting conditions—to pursue disclosure of documents that agencies sought to withhold, large amounts of important documentation would undoubtedly have remained undisclosed.

With the completion of the implementation effort, the most important question is, of course, this one: Were *all* of the classified Axis-related documents in federal possession actually found and released? This question must be answered in the negative, and not merely because agencies withheld a small percentage of documents from release for national security, statutory exclusion, and other reasons. As a principal combatant in the largest and deadliest military conflict in human history and as a major postwar investigator and prosecutor of war criminals in postwar Europe and Japan, the U.S. government created, captured, and otherwise acquired vast quantities of WWII-related documents. These were held by numerous military and civilian components of the government at countless locations in the United States and abroad, and frequently they were not archived in a manner that would facilitate their retrieval, decades later, on the basis of a possible nexus to Axis crimes and criminals. Thus, locating "all" of the documents was a virtual impossibility. I do, however, believe that the overwhelming bulk of the documents covered by the two disclosure acts has, in fact, been located and reviewed by the IWG for release and that what has been found and released is broadly reflective and representative of the contents of the full corpus of material. Although the IWG's final report and recommendations, prepared by IWG staff at the direction of the group's Chair, were not submitted to a vote of the IWG's members, the report fairly summarizes the complex compliance effort that was devised and implemented by the interagency group.

The documents found and released over the past eight years include many important, and sometimes disturbing, materials. As the present report indicates, while these materials do not compel any dramatic revision of mainstream scholarship on the war and its aftermath, they do enhance our understanding of those events and add some hitherto unreported events to the chronology. Although no materials surfaced that identified instances that were previously unknown to OSI of suspected Nazi or Japanese war criminals having immigrated to the United States, it is to be hoped that this result reflects the thoroughness of the efforts that have been made during more than two decades of OSI operations to identify and investigate such persons and that it also speaks well of the cooperation that OSI has received over the years from other U.S. government agencies.

CIA

The Central Intelligence Agency's (CIA's) release of information in this important endeavor—the Nazi War Crimes Disclosure Act (NWCDA) and the Japanese Imperial Government Disclosure Act (JIGDA)—is unprecedented.

Volume Declassified and Released: CIA has released approximately 114,200 pages of CIA documents and 1.2 million pages of OSS information. The CIA documents are the results of searches related to NWCDA and JIGDA. The OSS documents had previously been transferred to the National Archives and were reviewed there for declassification by a CIA team.

Resources: CIA's search, review, and declassification effort was accomplished by the participation of some 100 current and former CIA employees and contractors (about 35 person years) during 1999-2007.

CIA takes very seriously its response to NWCDA and JIGDA and, hence, its responsibility to declassify and release all documents covered by the Disclosure Acts to the fullest extent possible.

For some 30 years, CIA has been struggling with the nettlesome problem of how to balance the public's interest in the historical record of CIA's connections to Nazis, and an intelligence Agency's need, for ethical and utilitarian reasons, to protect the identities of sources. The passage of time has shifted the balance, as time frequently does.

Prior to January 2005, CIA declassified and released approximately 50,000 pages in more than 800 files in connection with these Disclosure Acts. The documents in these declassified files contained significant redactions based on the Acts' sources and methods exemption. After the IWG expressed serious concern to Congress about CIA's use of this exemption, Senator DeWine, Congresswoman Maloney, and IWG representatives met with senior Agency personnel in early February 2005. As a result, the Director of CIA decided that all of this old material should be declassified and released and that any use of the Acts' sources and methods exemption would be extremely rare.

In Feb. 2005, CIA agreed to:

- Re-review material that had been released/redacted.
- Declassify information on all Nazis.
- Declassify operational files associated with those Nazis.
- Undertake additional searches that the IWG historians or the Agency thought necessary.

CIA has followed through on these agreements and has completed all of the work it agreed to do.

"For some 30 years, CIA has been struggling with the nettlesome problem of how to balance the public's interest in the historical record of CIA's connections to Nazis, and an intelligence Agency's need, for ethical and utilitarian reasons, to protect the identities of sources. The passage of time has shifted the balance, as time frequently does."

Since February 2005, CIA has declassified and released to NARA approximately 114,200 pages in 1,087 files, which include 5,000 pages of Japanese material, and consist of:

- New files: 45,000 pages in 276 files.
- Re-Reviewed files: 69,200 pages in 811 files, including 47,400 pages released with minimal redactions, and 21,800 pages previously withheld and now released.

Much of this material is new. It deals with previously released files now re-reviewed on such individuals as Heinz Felfe, Hans Globke, Mykola Lebed, and Theo Saevecke. It includes operational files on Plan IVY, which was the OSS plan to prevent German sabotage in northern Italy, and the KIBITZ and SATURN staybehind programs.

CIA has researched close to 1,000 new names in the last two years, about half identified by CIA itself. The Agency has also produced a lexicon/research aid to assist scholars.

At the conclusion of these Disclosure Acts on 31 March 2007, CIA has completed its work related to these Acts: 114,200 pages in 1087 files.

All 811 files released prior to January 2005 have been re-reviewed and declassified and re-released with fewer redactions. All of the pages in these files are released, except for 265 pages that have been withheld in full. The IWG concurs with CIA withholding this information.

Two hundred seventy six (276) new files (not released prior to January 2005) have been declassified and released with minimal redactions and no documents withheld in full. These files consist of:

- 75 files (from the searches of 500 names submitted by the IWG historians).
- 151 name/personality files (identified by CIA).
- 50 operational project files (identified by CIA).

The documents in these declassified files have minimal redactions and, as noted above, only 265 pages in all of these files have been withheld in full. CIA has withheld nothing of substance.

CIA hopes that the documents released by this Agency under these Disclosure Acts will serve to illuminate, at least to a small degree, the historical record of a most horrific period in world history.

Marc J. Susser

The Historian, U.S. Department of State

"The process underscored the importance of achieving a balance among legitimate national security issues, legitimate privacy interests of individuals, and the people's desire to know the truth about the atrocities committed by Nazi and Japanese war criminals."

At the outset of its work in early 1999, it would have been hard for most observers to imagine how successful and productive the IWG ultimately would be. As things turned out, after much hard work and coordination, the IWG totally fulfilled its mission to identify and declassify an unknown but obviously massive quantity of critically important and heretofore unreleased government records on Nazi and Japanese war criminals. The IWG continuously expanded its scope and pushed forward with a clear vision of what it could accomplish. During its more than seven years of existence, the IWG made an enormous contribution, set records for constructive activity, and established important precedents for future government declassification efforts.

I was pleased to serve as a member of the IWG for much of its seven-year effort. During this time, the leadership of the Department of State fully supported the IWG's work and in fact took it very seriously. All of our components, from the offices of the most senior Department officials to the smallest bureau or overseas post, were asked to contribute to the search for documents, and all responded carefully and fully, in spite of the often crushing burden of other responsibilities. The Office of the Historian worked closely with the records management and declassification authorities of the Department. We provided historical background and context, helped to identify experts (including current and retired Foreign Service Officers), and consulted extensively with our embassies and other overseas posts and missions.

I and my staff worked closely with IWG members and staff on questions of policy and approach, and the development and refinement of guidance to the agencies. I applaud the leadership, energy, and creativity that IWG Chairs Michael Kurtz, Steven Garfinkel, and Allen Weinstein provided, as well as the outstanding work of their staffs. They fostered a team effort and a spirit of cooperation among representatives of many agencies and staffs working together for an important common end.

The Office of the Historian had some earlier experience on related issues, including the records of the United Nations War Crimes Commission (UNWCC) and the question of Holocaust Era Assets (Nazi Gold). We prepared two major historical studies for then-Under Secretary of Commerce Stuart E. Eizenstat, who also served as Special Envoy of the Department of State on Property Restitution in Central and Eastern Europe. These reports described efforts to recover and restore gold that the Nazis had taken from the central banks of occupied Europe, as well as gold and other assets stolen from individuals.

I periodically reported on the progress of the IWG's work to the Department of State's Advisory

Committee on Historical Diplomatic Documentation, a group of distinguished scholars from outside the U.S. Government that meets four times a year to review progress and make recommendations concerning the Department's official historical series, Foreign Relations of the United States. This series began in 1861 and now comprises over 400 individual volumes. More recent volumes contain declassified documents of the White House and all the foreign affairs agencies. Department of State records management and declassification officials join me in these quarterly meetings of the Advisory Committee. While the work of the IWG was not directly a part of our Advisory Committee's mandate, members were interested, strongly supported the effort, and recognized that it was a useful model and precedent for current and future declassification efforts in other areas.

In the course of our review of Department of State records, an interesting question arose concerning substantively significant "unclassified" documents that may have been buried in previously unreviewed or unreleased files and not marked with any classification. Should these documents be included among the final group of declassified and released records? I argued that they should be included—they were, after all, buried or hidden within predominantly classified files, and the IWG would be performing a useful service by producing them. The Acts, of course, quite literally covered only classified documents, not unclassified ones, presumably on the theory that classified documents were the most important. In the end, significant unclassifed records were included or noted in the final production of records.

In retrospect, the legislation and the IWG process were significant in many ways. The IWG process reflected a renewed recognition by the Federal Government of the importance of history, and of the importance of paying attention to vital records long overdue for declassification and release. The legislation proved to be highly effective. The IWG provided a practical and useful mechanism for the full, honest, and constructive discussion of issues relating to document search, declassification, and substantive historical questions

The declassification work was in keeping with forward-looking thinking on secrecy: declassify as much as possible consistent with national security. The process underscored the importance of achieving a balance among legitimate national security issues, legitimate privacy interests of individuals, and the people's desire to know the truth about the atrocities committed by Nazi and Japanese war criminals.

I believe that the Department of State's overall record of declassifying documents has provided a useful lesson and example—and perhaps a stimulus—to other agencies, by demonstrating that most issues once considered secret no longer need be classified. The process also benefited the Department of State by serving as a reminder to officers in the Department and the Foreign Service about the importance of preserving and declassifying the historical record.

New technology also played a role, both in the development of databases to track and review older paper records, and in the production of stored digital images from paper and microform records. The Department of State made use of the largest electronic database of foreign policy records, the State Archiving System (SAS), which includes the fully searchable texts of 35 million telegrams dating from the year 1975. However, it was also clear that, at times, the necessary technology was not available, and that the technology that was on hand could not perform at the level we might have desired. For example, the earlier portion of the Department of State's electronic system is actually a patchwork of earlier-generation technologies. Unfortunately, it could not perform feats of wonder, like the advanced systems of other agencies. To the surprise of many on the IWG, the Department's system did not operate in the same manner—or nearly as efficiently—as Google.

Critics of the IWG process have suggested that the resources expended should have been applied to the general declassification of all records of the period, not just records on a narrow subject such as Nazi and Japanese war criminals. However, the IWG effort, because of its concentrated focus, produced results that

would not otherwise have been achieved. Moreover, it helped identify in much more detail the challenges, actual requirements, and true costs of such a document identification and declassification operation. I believe that the IWG effort unquestionably enhanced, catalyzed, and intensified the overall long-term declassification efforts of the U.S. Government.

It has been a privilege to serve as a member of the IWG, to participate in the overall effort, and to work collegially and share information with colleagues from many other parts of the government, from the academic world, and from the public.

Gerhard L. Weinberg

Chair, IWG Historical Advisory Panel

At the suggestion of Dr. Michael Kurtz, the first chair of the IWG, a Historical Advisory Panel (HAP) was organized to assist the IWG in its work. Dr. Kurtz asked me to chair the panel and to discuss with him the possible membership. The HAP has met numerous times over the past seven years, and, in addition, I have frequently been asked to attend meetings of the IWG as well as meetings of the IWG's staff with the IWG public members. The HAP has regularly reported to the IWG after its meetings. It has also reviewed and discussed with the historians employed by the IWG the drafts of their reports. In looking back over the meetings and the reports received by the IWG and the HAP, certain impressions stick out as of special significance and interest.

The concept of dividing the reports of the IWG to the Congress and to the public into two separate types of works originated with the HAP. It has been clear to us as that individual historians have to take the responsibility for their work; when they put their name to it, that's what they do. In the field of the IWG's responsibility, there cannot possibly be a requirement for the IWG as an institution or group of individuals to take responsibility for what any one historian sees as important among the newly released documents and how that information should be interpreted or should revise the hitherto accepted interpretation. There are innumerable publications by agencies of the U.S. Government that contain a disclaimer to make it clear that the views expressed by the various contributors are those of the individual authors and not of the sponsoring or publishing agency. Having myself repeatedly seen pieces I had written published in such a fashion, I am most pleased that the IWG accepted the recommendation of the HAP that part of the final report deal with the experiences, accomplishments, and recommendations of the IWG, while all other publications contain the individually signed reports of the professional historians. These reports with their references to specific newly released documents will surely be of great help to future historians who work with the records that the IWG has succeeded in having declassified. Obviously, the reports can deal with only a small fraction of the masses of newly opened archives, but they will stimulate interest in those not covered by calling attention to the richness and potential of what has been produced by the work of the IWG.

> "The discovery that there are vast quantities of relevant records that have long been declassified but hardly ever consulted has brought and will now bring more attention to them."

It has been possible for the HAP as a group and myself as an individual to point out to the IWG certain issues that require careful scrutiny lest they be overlooked. One of these that has proved very fruitful is the relationship of various U.S. Government agencies to the Gehlen organization and to the often-dubious backgrounds of many recruited or hoping to be recruited by that organization. Although some relevant materials have had to be redacted or kept closed, the whole story of American involvement with this intelligence operation that was financed for years by American taxpayers but largely run from Moscow will now be much clearer, as will the screening out of many potential members by more alert American

government employees. In the process of declassifying records pertaining to the Far East, is has become evident that a somewhat similar situation—an intelligence network financed by the US but largely run from Moscow—also existed in the postwar era there.

It has also been useful to stress the importance of the OSS records still held by the CIA in addition to those the agency had already transferred to NARA. There were also some instances in which OSS records had been incorporated into CIA files. The review process in regard to all these materials has produced a major harvest of important declassified records. It has been a pleasant surprise for the HAP to see such substantial material opened to research by the FBI and also to note the many instances where in response to specific requests it has been possible for the Office of Special Investigations of the Department of Justice to waive its exemption from the terms of the Disclosure Act.

An area where the HAP has not been able to assist the IWG as much as we had hoped was in regard to Japanese war crimes. It was not only that the State Department had failed to insist on clauses assuring future access to shipments of archives returned to the Japanese without their having been filmed beforehand. There has also been a general sense in the HAP that the State Department has been reluctant to be as forthcoming as we think appropriate when it comes to the wartime and postwar records pertaining to Japanese industrialists and to individuals who attained high office in postwar Japan. It has been difficult for the HAP to understand the Department's very much greater sensitivity when documents affect Japan than when they affect Germany. The double standard that appears to be applied simply makes no sense to HAP members. The possible inference that Japan is so much more valuable as an ally than Germany and must therefore be treated with exceptional consideration for its sensitivities is not consistent with the purpose of the Disclosure Acts and potentially harmful rather than helpful.

Like the members of the IWG, we have become aware of the great discrepancy in the quantity of records newly declassified pertaining to German war crimes as contrasted with those of Japan. It is, however, something of a consolation to us that the discovery that there are vast quantities of relevant records that have long been declassified but hardly ever consulted has brought and will now bring more attention to them. It is fortunate that new reference tools for such records as the National Archives is either producing or plans to produce will assist scholars in utilizing very substantial quantities of archives that have simply been overlooked for years.

In view of the general prior experience of historians with the reluctance to open records in the United Kingdom, we have all been surprised and delighted by the extent to which the British have agreed to the release of Foreign Government Information that they had provided to the United States, primarily during and right after World War II. A substantial portion of such records was located among the OSS files, and it will be of enormous interest to scholars to have these opened for research.

The fact that such a high proportion of the newly opened records is due to the review of materials that had hitherto been exempted from systematic review for declassification because they related to intelligence sources and methods or because they contained Foreign Government Information opens an obvious question. Much of this material would probably have been opened years ago if it had been reviewed earlier. Two examples, one from each category: the OSS material concerning the provision of important secret German documents by Fritz Kolbe to the wartime office of the OSS in Switzerland, and the interrogation of Otto Ohlendorf by the British when they arrested him in 1945. The former material certainly pertains to intelligence sources and methods, but the outlines of the story have been known for years, and there could hardly be anything in this file of current security concern. But it is of enormous interest to historians of modern Germany, of the war, and of American intelligence in the war. The British gave the United States copies of Ohlendorf's interrogations when they turned him over to the United States late in

1945 to be first a witness and then a defendant at the Nuremberg trials. After his trial by the United States Military Tribunal in Case 9, he was hanged in 1951. His interrogations immediately after the capture are of great importance; they could have been declassified with British agreement had they been reviewed many years ago.

I am certain on the basis of the IWG-HAP experience that rather than having a blanket exemption from systematic review, the two categories of intelligence sources and methods and Foreign Government Information need a separate date, perhaps 35 or 40 years, for review, with the Foreign Government Information checked with the government that provided it as has been done by the IWG. A two-tiered system of 25 years for the bulk and a longer period for special categories makes much more sense than the present one. Now the government has to stretch its security resources over vast quantities of records that could have been released but which, because they remain classified, make the truly sensitive ones all the more vulnerable to penetration. The fewer secrets that have to be protected, the more likely it is that they can be guarded with the protection resources available.

What will long stay in my memory are the dedicated efforts of the IWG members and the declassification monitors they employed; the seemingly endless and patient work of the National Archives staff assigned to the IWG program; and the congenial association with fellow members of the HAP.

Appendix 1. IWG Members, Staff, and Consultants

IWG Members

Allen Weinstein (Chair, 2006-2007)
Steven Garfinkel (Chair, 2000-2006), NARA
Michael Kurtz (Chair, 1999-2000), NARA
Stewart Aly, Department of Defense
Thomas Baer, Steinhardt Baer Pictures Company
Richard Ben-Veniste, Mayer, Brown, Rowe, and Maw
Christina Bromwell, Department of Defense
John E. Collingwood, FBI
David Holmes, CIA
Elizabeth Holtzman, Herrick, Feinstein, LLP
William Hooton, FBI
Harold J. Kwalwasser, Department of Defense
William Leary, National Security Council
David Marwell, United States Holocaust Memorial Museum
David Patterson, Department of State
Eli Rosenbaum, Department of Justice
Paul Shapiro, United States Holocaust Memorial Museum
William Slany, Department of State
Marc Susser, Department of State

IWG Agency Representatives

Edward Arnold, Department of the Army
Susan Arnold, National Security Agency
Steve Baker, FBI
Elizabeth B. White, Department of Justice
Paul Claussen, Department of State
Richard Corriveau, National Security Agency
Brian Downing, Department of State
Wayne Dunaway, National Security Agency
Eleni Kalisch, FBI
Carol Keeley, FBI
Michael Leahy, Citizenship and Immigration Services
Shelly Lopez-Potter, Department of the Navy
Steven Raho, Department of the Army
Steven Rogers, Department of Justice
Elaine Rogic, Department of the Army
Lisa Scalatine, Department of the Navy
Andrew Swicegood, Department of the Army
(CIA members names withheld)

IWG Staff at NARA

David Van Tassel (Staff Director)
William Cunliffe (Senior Archivist)
Greg Bradsher (Senior Archivist)
Paul Brown (Researcher)
Steven Hamilton (Archives Specialist)
Miriam Kleiman (Researcher)
Sean Morris (Researcher)
Richard Myers (Senior Archivist)
Whitney Noland (Researcher)
Michael Petersen (Researcher)
Jack Saunders (Contract Specialist)
Robert Skwirot (Researcher)
Eric Van Slander (Researcher)

Historical Staff

Richard Breitman, American University
Edward Drea, Center of Military History (retired)
Norman Goda, Ohio University
James Lide, History Associates Incorporated
Marlene Mayo, University of Maryland, College Park
Timothy Naftali, University of Virginia
Robert Wolfe, NARA
Daqing Yang, George Washington University

Consultants

Larry Taylor (Executive Director)
Patricia Bogen (Administrative Assistant)
Giuliana Bullard (Public Relations)
John Pereira (Auditor)
J. Edwin Dietel (Auditor)
Kris Rusch (Editor)
Raymond Schmidt (Reviewer)
Kirk Lubbes (Contract Management)

Historical Advisory Panel

Gerhard Weinberg (Chair), University of North Carolina, Chapel Hill
Rebecca Boehling, University of Maryland, Baltimore County
James Critchfield, Central Intelligence Agency (deceased)
Carol Gluck, Columbia University
Robert Hanyok, National Security Agency
Peter Hayes, Northwestern University
Linda Goetz Holmes, Independent Scholar
Christopher Simpson, American University
Ronald Zweig, New York University

Appendix 2. Nazi War Crimes Disclosure Act (P.L. 105-246)

Nazi War Crimes Disclosure Act

Public Law 105-246

Section 1. Short Title

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

Section 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 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.

Section 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 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).

(4) Limitation of title 5 -- 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 an operational file, that constitutes a Nazi war criminal record under section 3 of this Act.

Section 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.

Section 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.

Approved October 8, 1998.

Appendix 3. Japanese Imperial Government Disclosure Act (P.L. 106-567)

Japanese Imperial Government Disclosure Act of 2000
December 6, 2000

SEC. 801. SHORT TITLE.

This title may be cited as the "Japanese Imperial Government Disclosure Act of 2000".

SEC. 802. DESIGNATION.

1. DEFINITIONS- In this section:

1. AGENCY- The term `agency' has the meaning given such term under section 551 of title 5, United States Code.

2. INTERAGENCY GROUP- The term `Interagency Group' means the Nazi War Crimes and Japanese Imperial Government Records Interagency Working Group established under subsection (b).

3. JAPANESE IMPERIAL GOVERNMENT RECORDS- The term `Japanese Imperial Government records' means classified records or portions of records that 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 experimentation on, and persecution of, any person because of race, religion, national origin, or political opinion, during the period beginning September 18, 1931, and ending on December 31, 1948, under the direction of, or in association with--

1. the Japanese Imperial Government;

2. any government in any area occupied by the military forces of the Japanese Imperial Government;

3. any government established with the assistance or cooperation of the Japanese Imperial Government; or

4. any government which was an ally of the Japanese Imperial Government.

4. RECORD- The term `record' means a Japanese Imperial Government record.

2. ESTABLISHMENT OF INTERAGENCY GROUP-

1. IN GENERAL- Not later than 60 days after the date of the enactment of this Act, the President shall designate the Working Group established under the Nazi War Crimes Disclosure Act (Public Law 105-246; 5 U.S.C. 552 note) to also carry out the purposes of this title with respect to Japanese Imperial Government records, and that Working Group shall remain in existence for 3 years after the date on which this title takes effect. Such Working Group is redesignated as the `Nazi War Crimes and Japanese Imperial Government Records Interagency Working Group'.

2. MEMBERSHIP- Section 2(b)(2) of such Act is amended by striking `3 other persons' and inserting `4 other persons who shall be members of the public, of whom 3 shall be persons appointed under the provisions of this Act in effect on October 8, 1998.'

1. FUNCTIONS- Not later than 1 year after the date of the enactment of this Act, the Interagency Group shall, to the greatest extent possible consistent with section 803--

2. locate, identify, inventory, recommend for declassification, and make available to the public at the National Archives and Records Administration, all classified Japanese Imperial Government records of the

United States;

3. coordinate with agencies and take such actions as necessary to expedite the release of such records to the public; and

4. submit a report to Congress, including the Committee on Government Reform and the Permanent Select Committee on Intelligence of the House of Representatives, and the Committee on the Judiciary and the Select Committee on Intelligence of the Senate, describing all such records, the disposition of such records, and the activities of the Interagency Group and agencies under this section.

3. FUNDING- There is authorized to be appropriated such sums as may be necessary to carry out the provisions of this title.

SEC. 803. REQUIREMENT OF DISCLOSURE OF RECORDS.

1. RELEASE OF RECORDS- Subject to subsections (b), (c), and (d), the Japanese Imperial Government Records Interagency Working Group shall release in their entirety Japanese Imperial Government records.

2. EXEMPTIONS- An agency head may exempt from release under subsection (a) specific information, that would--

1. constitute an unwarranted invasion of personal privacy;

2. reveal the identity of a confidential human source, or reveal information about an intelligence source or method when the unauthorized disclosure of that source or method would damage the national security interests of the United States;

3. reveal information that would assist in the development or use of weapons of mass destruction;

4. reveal information that would impair United States cryptologic systems or activities;

5. reveal information that would impair the application of state-of-the-art technology within a United States weapon system;

6. reveal United States military war plans that remain in effect;

7. reveal information that would impair relations between the United States and a foreign government, or undermine ongoing diplomatic activities of the United States;

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

9. reveal information that would impair current national security emergency preparedness plans; or

10. violate a treaty or other international agreement.

3. APPLICATIONS OF EXEMPTIONS-

1. IN GENERAL- In applying the exemptions provided in paragraphs (2) through (10) of subsection (b), there shall be a presumption that the public interest will be served by disclosure and release of the records of the Japanese Imperial Government. The exemption may be asserted only when the head of the agency that maintains the records 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 and the Select Committee on Intelligence of the Senate and the Committee on Government Reform and the Permanent Select Committee on Intelligence of the House of Representatives.

2. APPLICATION OF TITLE 5- A determination by an agency head to apply an exemption provided in

paragraphs (2) through (9) of subsection (b) shall be subject to the same standard of review that applies in the case of records withheld under section 552(b)(1) of title 5, United States Code.

4. RECORDS RELATED TO INVESTIGATIONS OR PROSECUTIONS- This section shall not apply to records--

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

2. solely in the possession, custody, or control of the Office of Special Investigations.

SEC. 804. EXPEDITED PROCESSING OF REQUESTS FOR JAPANESE IMPERIAL GOVERNMENT RECORDS.

For purposes of expedited processing under section 552(a)(6)(E) of title 5, United States Code, any person who was persecuted in the manner described in section 802(a)(3) and who requests a Japanese Imperial Government record shall be deemed to have a compelling need for such record.

SEC. 805. EFFECTIVE DATE.

The provisions of this title shall take effect on the date that is 90 days after the date of the enactment of this Act.

Speaker of the House of Representatives.
Vice President of the United States and President of the Senate.

Appendix 4. Honoring the Life of Stan Moskowitz

HONORING THE LIFE OF STAN MOSKOWITZ

HON. CAROLYN B. MALONEY

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

CONGRESSIONAL RECORD, Thursday, July 27, 2006

Mrs. MALONEY. Mr. Speaker, I rise to express deep and profound sadness at the passing of Stan Moskowitz, CIA Director of Congressional Affairs and integral partner to the Interagency Working Group on Nazi War Crimes, IWG. Mr. Moskowitz passed away suddenly, after playing tennis, on June 29, 2006. It was a great shock to many who were privileged and fortunate to work with him.

Mr. Moskowitz played an integral role in ensuring the disclosure of documents related to Nazi war crimes. When the Nazi War Crimes Disclosure Act was extended for 2 years in February 2005, then Director of Central Intelligence Porter Goss asked Mr. Moskowitz, who at the time was retiring as CIA's Director of Congressional Affairs, to help him guide the Agency toward a full disclosure of the historical record as captured in CIA files. Based on Porter Goss's commitment, Mr. Moskowitz promised the IWG that CIA would do the following: Declassify information on all Nazis; Declassify operational files associated with those Nazis: Re-review material that had been redacted; undertake such additional searches that historians or CIA thought necessary as the work progressed.

Under the leadership of Mr. Moskowitz, the CIA has made good on each of these promises. He played a key role in ensuring the success of CIA's work during the 2-year extension and made a quick, sensitive, and good humored shift from all of his prior responsibilities to an entirely new, important and difficult role.

I first learned of Mr. Moskowitz's death from those of us working with the IWG in an effort to release U.S. Government records related to crimes committed by the Nazi and Japanese Governments during World War II. The response to the news was immediate and heartfelt. Since his colleagues conveyed Stan Moskowitz's remarkable character and important contribution he made to history, I would like to share with you some of their thoughts. One person wrote: "Stan was a man whose broad experience, character and personality drew you in a few have the ability to do. He just radiated intelligence, understanding, empathy, insight, and yes, wit. I will miss Stan." Another wrote: "Stan was a major reason for our success. He may not have always agreed with our conclusions, but he wanted to be sure that the historical record was as complete as possible." Finally: "What terrible, shocking news. Stan was a wonderful person who was unswervingly dedicated to pursuing truth, and he performed great service to his country in a long and distinguished career. He will be greatly missed."

Mr. Speaker, these are just a few of the statements from those who knew and worked with Mr. Moskowitz. I think they speak volumes of this man who contributed significantly to our Nation's history. Most recently, I met Stan Moskowitz at the IWG press conference on June 6. As usual, his comments were informative and insightful. He truly was a national treasure.

I would like to note that Mr. Moskowitz earned many high honors including two Presidential Distinguished Officer Awards, the Director's Medal, the Distinguished Career Intelligence Medal, the Distinguished Intelligence Medal, and the Intelligence Community Medal of Merit. Mr. Speaker, Stan Moskowitz served his Agency, his government, and the people of the United States loyally and with honor. I would like to offer Mr. Moskowitz's family my deepest condolences. He will truly be missed.

Appendix 5. Previously Opened War Crimes Related Documents

Record Group	Record Group Title
038	Records of the Office of the Chief of Naval Operations
043	Records Relating to the Far East Commission
056	Records of the Department of the Treasury
059	General Records of the Department of State
060	Records of the Department of Justice
065	Records of the Federal Bureau of Investigation
080	General Records of the Department of the Navy, 1798-1947
082	Records of the Federal Reserve System
084	Records of the Foreign Service Posts of the Department of State
107	Records of the Secretary of War
125	Records of the Office of the Judge Advocate General (Navy
127	Records of the U.S. Marine Corps
131	Records of the Office of Alien Property
153	Records of the Office of the Judge Advocate General (Army)
165	Records of the War Department General and Special Staffs
200	National Archives Gift Collection
208	Records of the Office of War Information
218	Records of the US Joint Chiefs of Staff
226	Records of the Office of Strategic Services
238	National Archives Collection of World War II War Crimes Records
242	National Archives Collection of Foreign Records Seized
243	Record of the United States Strategic Bombing Survey
256	Records of Foreign Assets Control
260	Records of US Occupation Records, World War II
262	Records of the Foreign Broadcast Intelligence Service
263	Records of the Central Intelligence Agency
299	Records of the Foreign Claims Settlement Commission
319	Records of the Army Staff
330	Records of the Office of the Secretary of Defense
331	Records of Allied Operational and Occupation Headquarters
353	Records of Interdepartmental and Intradepartmental Committees (State)
389	Records of the Office of the Provost Marshal General
407	Records of the Adjutant General's Office
457	Records of the National Security Agency
466	Records of the High Commissioner for Germany
492	Records of Mediterranean Theater of Operations, United States Army
493	Records of the U.S. Forces in the China-Burma-India Theater of Operations
494	Records of the U.S. Army Forces in the Middle Pacific (World War II)
495	Records of HQ, U.S. Army Forces, Western Pacific (World War II)
496	Records of GHQ, Southwest Pacific Area and U.S. Army Forces, Pacific (World War II)
549	Records of United States Army, Europe
554	Records of GHQ, Far East Command, SCAP, and United Nations Command

Appendix 6. The Tasking Orders

February 1999 Memorandum

1158

THE WHITE HOUSE
WASHINGTON
February 22, 1999

MEMORANDUM FOR THE SECRETARY OF STATE
THE SECRETARY OF THE TREASURY
THE SECRETARY OF DEFENSE
THE ATTORNEY GENERAL
THE SECRETARY OF COMMERCE
THE SECRETARY OF ENERGY
DIRECTOR OF CENTRAL INTELLIGENCE
DIRECTOR OF THE FEDERAL BUREAU OF INVESTIGATION
THE ARCHIVIST OF THE UNITED STATES
THE CHAIRMAN OF THE FEDERAL RESERVE BOARD
THE ADMINISTRATOR OF THE NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
THE DIRECTOR OF THE UNITED STATES INFORMATION AGENCY

SUBJECT: Implementation of the Nazi War Crimes Disclosure Act

The President signed the Nazi War Crimes Disclosure Act, Public Law 105-246, on October 8, 1998. In accordance with the Act, by Executive Order 13110, the President has established the Nazi War Criminal Records Interagency Working Group to locate, inventory, recommend for declassification, and make available to the public all classified Nazi war criminal records, subject to certain specified exceptions. The Executive Order directs the Working Group to "coordinate with agencies and take such actions as necessary to expedite the release of such records to the public." The law requires that the working group complete its work "to the greatest extent possible" and report to Congress within one year.

The President joins the Congress in viewing this legislation as an extremely important step in bringing to light the full story of Nazi crimes against persons and their property, and Nazi criminals and the U. S. Government's knowledge about them. In order to comply with the deadline specified in the law, each agency head should take the following actions:

- If the agency is not represented on the Working Group, the agency head should provide the Chair of the Working Group with the name of an agency official designated as responsible for the program. This individual will act as the agency's liaison with the Working Group. Attached is a list of the individuals

named to the Working Group by the President or by the agency heads appointed by the President.

- As a step toward implementing the first phase of compliance with the law, that of locating relevant documents, each agency should undertake a preliminary survey of classified records in the agency's legal custody to locate bodies of records that can reasonably be believed to contain information that (1) pertains to any individual who the U.S. Government 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 of Nazi rule in Germany (1933-45); or (2) involves assets taken, whether or not under color of law, during that period from persons persecuted by the Nazi regime or governments associated with it.

For purposes of this preliminary survey, agencies should include any bodies of records that are likely to contain information on war crimes, war criminals, acts of persecution, or assets taken by, under the direction of, or in association with the Nazi government of Germany or any government of a European country allied with, occupied by, or established with the assistance or cooperation of Nazi Germany.

Agencies should take an expansive view of the act in making this survey and in subsequent identification of records and declassification review. Special efforts should be made to locate records that may shed light on U.S. Government knowledge about, policies toward, and treatment of Nazi war criminals, especially during the Cold War years.

The Working Group has prepared the attached initial guidance on the scope of this project, including the basic requirements for the preliminary survey of records. Please report the results of the preliminary survey to the Chair of the Working Group, together with an estimate of the personnel and budget resources and the time necessary to comply with the Act, by March 31, 1999.

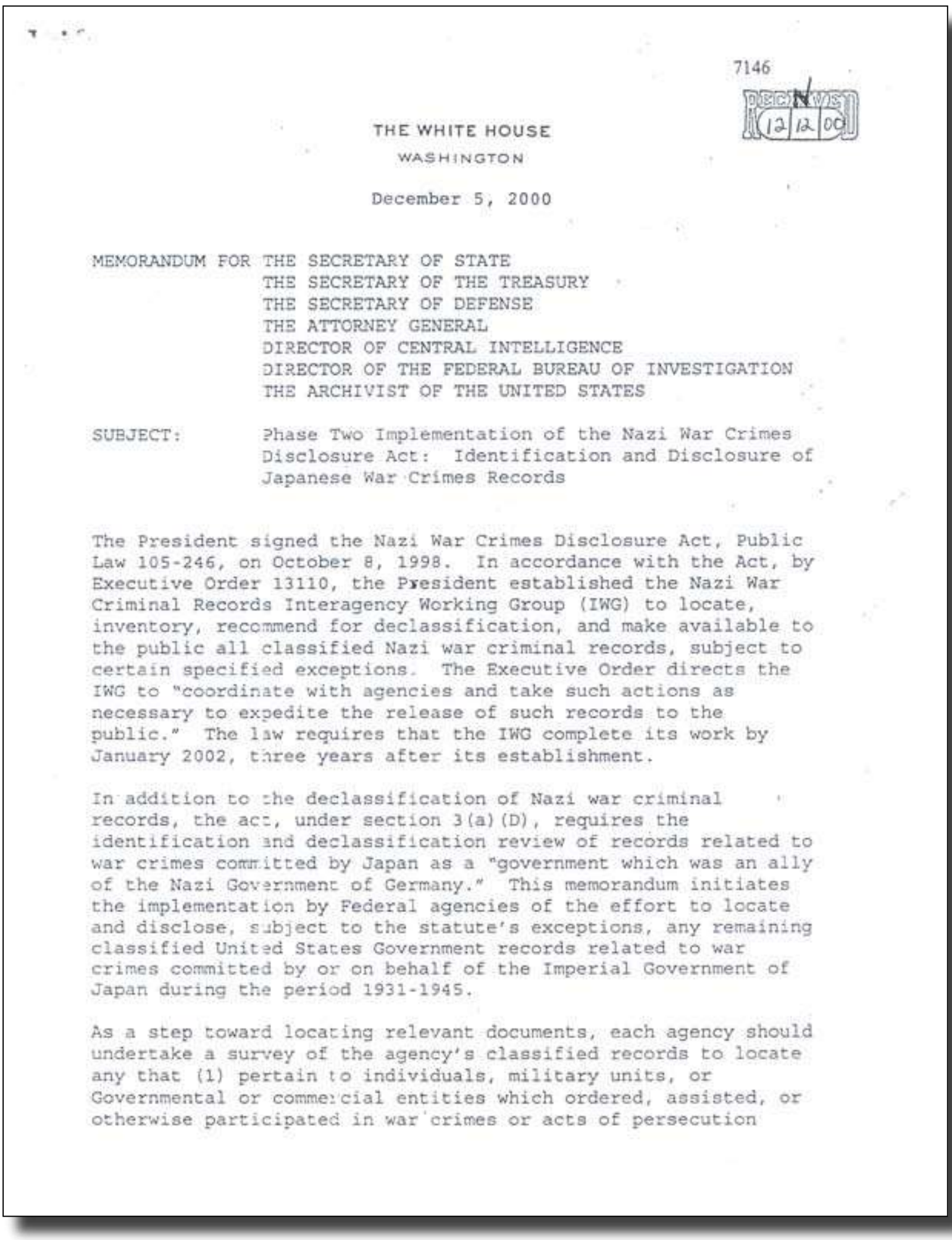
The Interagency Working Group will monitor agency activity and provide guidance to assist agencies in expeditiously completing the initial survey and each of the subsequent phases of compliance with the legislation. To the extent permitted by law, such guidance should be considered authoritative.

Dr. Michael Kurtz, Assistant Archivist for Records Services, National Archives and Records Administration, will chair the Working Group.

Samuel R. Berger
Assistant to the President
for National Security Affairs

Attachments

December 2000 Memorandum



7146

PRESIDENTIAL RECORDS 12/12/00

THE WHITE HOUSE
WASHINGTON

December 5, 2000

MEMORANDUM FOR THE SECRETARY OF STATE
THE SECRETARY OF THE TREASURY
THE SECRETARY OF DEFENSE
THE ATTORNEY GENERAL
DIRECTOR OF CENTRAL INTELLIGENCE
DIRECTOR OF THE FEDERAL BUREAU OF INVESTIGATION
THE ARCHIVIST OF THE UNITED STATES

SUBJECT: Phase Two Implementation of the Nazi War Crimes Disclosure Act: Identification and Disclosure of Japanese War Crimes Records

The President signed the Nazi War Crimes Disclosure Act, Public Law 105-246, on October 8, 1998. In accordance with the Act, by Executive Order 13110, the President established the Nazi War Criminal Records Interagency Working Group (IWG) to locate, inventory, recommend for declassification, and make available to the public all classified Nazi war criminal records, subject to certain specified exceptions. The Executive Order directs the IWG to "coordinate with agencies and take such actions as necessary to expedite the release of such records to the public." The law requires that the IWG complete its work by January 2002, three years after its establishment.

In addition to the declassification of Nazi war criminal records, the act, under section 3(a)(D), requires the identification and declassification review of records related to war crimes committed by Japan as a "government which was an ally of the Nazi Government of Germany." This memorandum initiates the implementation by Federal agencies of the effort to locate and disclose, subject to the statute's exceptions, any remaining classified United States Government records related to war crimes committed by or on behalf of the Imperial Government of Japan during the period 1931-1945.

As a step toward locating relevant documents, each agency should undertake a survey of the agency's classified records to locate any that (1) pertain to individuals, military units, or Governmental or commercial entities which ordered, assisted, or otherwise participated in war crimes or acts of persecution

during the period of Japanese aggression prior to and during World War II; or (2) involve assets taken during that period from persons persecuted by the Imperial Japanese regime or its allies. For purposes of this survey, agencies should include any records that are likely to contain information, or lead to information, on war crimes, war criminals, or looted assets regarding Japan, or countries allied with, occupied by, or established with the assistance or cooperation of the Imperial Japanese Government, or in the Pacific Theater during World War II.

Agencies should report the results of this survey by January 26, 2001, to the IWG through channels already established during the initial implementation of the Nazi War Crimes Disclosure Act. The Nazi War Criminal Records Interagency Working Group will monitor agency activity and provide guidance to assist agencies in expeditiously completing the initial survey and each of the subsequent phases of compliance with the legislation. To the extent permitted by law, such guidance is to be considered authoritative.

Samuel R. Berger
Assistant to the President
for National Security Affairs

Appendix 7. Memorandum on Relevancy, 26 July 2001

IWG

Nazi War Crimes and Japanese Imperial Government Records Interagency Working Group

July 26, 2001

MEMORANDUM FOR: Members, Nazi War Crimes and Japanese Imperial Government Records Interagency Working Group (IWG)

FROM: Steven Garfinkel
Chair

SUBJECT: Relevancy standards

In recent weeks, we have confronted several specific situations in which the question of relevancy of particular records to the scope of our task has been raised. To help resolve this issue, I requested the IWG staff, in coordination with our expert historians, to prepare a guidance paper on this subject that reiterates prior agreements among IWG members. I attach the resulting guidance for your application in your review of records, and have instructed our auditing team to rely on this guidance in the scope of their review of your work. In addition to our historians, this guidance has also received the concurrence of our representative from the National Security Council, confirming its consistence with the taskings that have gone out from the NSC pursuant to both pertinent statutes.

It is particularly important to emphasize that the statutes under which we are working call for the application of standards based on a historical analysis of war crimes and war criminals in determining relevancy, and not the far narrower standards that might apply for judicial/prosecutorial purposes. I call your attention to my public comments before the release of the CIA "name files" in April:

> [T]he members of the IWG view their mandate as one requiring a historical and archival perspective of relevant records. From this perspective, it is critical to provide scholars and other researchers the most extensive group of records that may directly or indirectly bear on the issue of war crimes or war criminals. . . . . To this end, the IWG has purposely instructed agencies to use a wider, not a narrower brush in searching for and declassifying relevant records. The IWG fully accepts responsibility to the extent that this broader approach may lead to the mention of, or information about an individual who is not a war criminal.

This final comment may be particularly important to some agencies. It is the IWG, not the reviewing agency, that assumes ultimate responsibility for the breadth of the product that is declassified and opened to the public.

IWG

Finally, I draw your attention once again to language from the statute that pertains to the application of exemptions. I believe that the spirit and intent of this language is just as pertinent to the issue of relevancy as it is to the issue of exemptions.

> In applying the exemptions . . . 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 an exemption shall promptly report it to the committees of Congress with appropriate jurisdiction . . ..
> [Section 3(b)(3)(A) of the Act]

I thank you once again for your extraordinary cooperation and diligence, which are contributing so significantly to the public record.

Attachment

IWG

Nazi War Crimes and Japanese Imperial Government Records Interagency Working Group

July 26, 2001

Guidance for Agency Search, Review, and Release of Documents Subject to the Nazi War Crimes Disclosure Act and the Japanese Imperial Government Disclosure Act

Agencies should apply the following criteria in searching for and reviewing for release records subject to the Nazi War Crimes Disclosure Act and the Japanese Imperial Government Disclosure Act. In applying the criteria, agencies should refer to the Acts, guidance issued by the Assistant to the President for National Security Affairs dated 22 February 1999 and 5 December 2000, and the name and keyword lists distributed by the Department of Justice Office of Special Investigations (OSI) and the Nazi War Crimes and Japanese Imperial Government Records Interagency Working Group (IWG).

It should be kept in mind that the object of the Disclosure Acts is not the prosecution of individuals but the bringing to light of evidence to aid in historical understanding. The following guidance is based on deliberations and decisions of the IWG arrived at by consensus in meetings attended by all member agencies. It reflects the injunction of the Congress, as evident in the legislative history, that the release of information be as broad as possible subject to limited, specified exemptions consistent with the protection of national security.

Definition of Relevant Documents:

- All documents directly or indirectly related to activities of the Nazi government of Germany, its members, its collaborators, countries occupied and members of governments of such countries, and its allies during the period 1933 to 1945 and those of the Imperial Government of Japan during the period 1931 to 1945 that pertain to war crimes, war criminals, persecution, or looting. Reviewers making decisions regarding relevancy of materials are reminded that files are relevant if they shed light on any Nazi/Japanese war crime or persecution even though the file in question, whether for an individual, organization, or operation, does not contain direct evidence of or information about specific war crimes.

- All documents directly or indirectly related to any individual on the OSI search lists, including the list of SS officers' names and names from the United Nations War Crimes Charge Files, or other individuals suspected of war crimes. This includes all documents about activities anytime during the period 1933-1998 of Nazis whose names appear on the OSI lists and activities from 1931-1998 of suspected Japanese war criminals whose names appear on the OSI lists. Files of former members of the Gestapo, the SS, and other Nazi or collaborationist organizations are relevant to the Nazi War Crimes Disclosure Act even though individuals named in the files may not have been charged with specific war crimes.

IWG

These records are relevant because information on the operations of those organizations, which were judged criminal in postwar prosecutions, sheds light on war crimes and persecution generally. Members of criminal organizations meet the requirement of Section 3(a) of the law in that records relating to them "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. . . ."

As research on this project continues, additional search criteria and supplemental lists (including individual names, operation names, names of governmental entities, and geographic locations) may be developed and distributed by the IWG for use in identifying relevant records.

Declassification Review and Release:

- The declassification decision-making process is entirely separate from the process of identifying relevant documents. Relevant records may not be withheld for any reason other than the exemptions specified in the Acts.

- No document may be withheld or redacted unless the withholding is authorized by the agency head and covered by a specific exemption under the Act. Even then, specific damage to U.S. national security interests must be demonstrated to justify withholding or redacting relevant information. An agency head may exercise discretion to declassify documents that are arguably exempt.

- There should be no automatic withholding of intelligence sources or other categories of information. A specific justification and analysis must be made in each case where there is a redaction or withholding of information. Individual names, cryptonyms, pseudonyms, etc., of Nazis on the OSI search lists and others suspected of war crimes may not be redacted even if the person was a source, informant, contact, etc., unless the revelation of the information would, in the language of the law, "clearly and demonstrably damage the national security interests of the United States." Always, in the case of information related to war crimes, war criminals, persecution, or looting, "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 standards of the Acts must be applied consistently across Government. Part of the IWG's mission is to assure this consistency through oversight.

IWG

- If information from a document or file is withheld because it is not relevant to the Act this should be indicated in the released file, together with the number of pages withheld and the reason for withholding. Information that is not covered by the Act that must be withheld will be marked "Redacted information not relevant to the [cite Act]."

- Normally, file segments should be treated as integral units so as to retain the context of included files and documents. Normally, single documents should be treated as not segregable. When selected documents and files are alienated from their original file structure, a note on provenance should accompany the released documents in order to provide context.

- Where it is important to the meaning of the document, substitute language should be used to describe what has been withheld in the interest of national security as nearly as possible without compromising the information.

Appendix 8. Guidance to Agencies on Foreign Government Information

The Nazi War Crimes and Japanese Imperial Government Records Interagency Working Group

May 10, 2001

MEMORANDUM FOR: Members, Nazi War Crimes and Japanese Imperial Government Records Interagency Working Group (IWG)

FROM: Steven Garfinkel, Chair

SUBJECT: Foreign Government Information

At our last meeting, the representatives of two agencies raised the issue of exempting foreign government information. The purpose of this memorandum is to remind the member agencies that "foreign government information" is not an exemption category per se under Executive Order 12958, "Classified National Security Information," for historical material over 25 years old. The applicable exemptions under the Nazi War Crimes Disclosure Act, which mimic the national security exemptions in E.O. 12958, also do not include a specific exemption for foreign government information. Therefore, in order to exempt information that originated from a foreign government, the responsible agency head, not the foreign government, must determine that the information clearly falls within another exemption to disclosure under the Act.

Some background information on this subject may be informative. Under the predecessor classification systems to E.O. 12958, foreign government information was a specific exemption category for information whatever its age. However, under these systems, many agencies had experienced situations in which older records of historical value, which otherwise were no longer sensitive, remained classified because the foreign government refused to authorize declassification. Often these decisions were made by liaisons from the comparable agency of the foreign government without any input from a higher authority. In some notable situations, these actions resulted in ludicrous decisions for continued classification that brought public ridicule to the entire security classification system, and made the protection of truly sensitive information more difficult.

As a result, with the development of E.O. 12958, the White House made a purposeful decision not to include foreign government information as a specific exemption category for historical records over 25 years old. Instead, in accordance with the Order's implementing directive (32 CFR § 2001.51(g)), the responsible agency or the Department of State is encouraged to consult with the foreign government, but the ultimate decision rests with an authorized official of the agency (the agency head under the Nazi War Crimes Disclosure Act).

With respect to records subject to the exemption standards of the Nazi War Crimes Disclosure Act, agencies must exercise this responsibility with particular care. The onus for relevant records, even records that may include foreign government information, clearly leans toward declassification and disclosure.

In applying the exemptions… 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 an exemption shall promptly report it to the committees of Congress with appropriate jurisdiction…

[Section 3(b)(3)(A) of the Act]

Appendix 9. Guidance on Privacy

NARA preliminary analysis of privacy issues

I. The exemption from disclosure on privacy grounds

A. The Nazi War Crimes Disclosure Act amends the Freedom of Information Act (FOIA) to require disclosure of classified "Nazi war criminal records," with certain exceptions:

* Section 3(b)(2)(A) of the Act allows an agency head to exempt from release "specific information, that would . . . constitute a clearly unwarranted invasion of personal privacy." In keeping with the fact that the Nazi War Crimes Disclosure Act, like the FOIA itself, is a disclosure statute, not a withholding statute, the exemptions are not mandatory.

* The term "clearly unwarranted invasion of personal privacy" is also used in the Freedom of Information Act Exemption 6, 5 U.S.C. § 552(b)(6). We can look to FOIA's extensive case law for an interpretation of what the term means and how to apply it to "specific information" in Nazi war criminal records.

B. Elements of FOIA Exemption 6 (personal privacy):

* Even to be considered for potential withholding, the information must be identifiable with a specific individual, not a large group of individuals or an organization.

* Once that threshold requirement is met, the question is whether the disclosure of the information "would constitute a clearly unwarranted invasion of personal privacy." That answer depends upon the outcome of a balancing of the public's right to disclosure against the individual's right to privacy.

* First, is there a privacy interest to be protected? If there is no identifiable privacy interest to begin with, then no further analysis is needed: the information is disclosed.

* In what circumstances might there be no privacy interest? Although there are almost always exceptions, the general rules are: no privacy interest in information in the public domain; no privacy for dead people or for organizations, companies or corporations; no privacy expectation for federal employees in information regarding their employment status or duties.

* If a privacy interest exists, then you must identify the public interest, if any, in disclosure and weigh it against the privacy interest. If there is no public interest in disclosure, or if the privacy interest outweighs the public interest, then the invasion of privacy would be unwarranted and the information should be withheld.

* If the public interest outweighs the privacy interest, then the invasion of privacy would be warranted and the information should be disclosed.

* What constitutes "public interest"? For purposes of FOIA, the public's interest is in information that sheds light on an agency's performance of its statutory duties--i.e., it shows "what the government is up to." To be considered in the balancing test, the information asserted to be in the public interest must reveal something about the operations and activities of the federal government.

C. "Public interest" considerations raised by the Nazi War Crimes Disclosure Act:

* The Act expressly provides that in applying the other exemptions from release--those relating to national

security concerns [Sec. 3(b)(2)(B)-(J)]--there is a "presumption that the public interest in the release of Nazi war criminal records will be served by disclosure and release of the records." Sec. 3(b)(3)(A). Assertion of the national security exemptions also requires an agency head to make the determination that release of the exempted information "would be harmful to a specific interest identified in the exemption." Sec. 3(b)(3)(A).

* Although this presumption is not expressly applicable to the privacy exemption, such a presumption is implicit in the FOIA itself and the privacy exemption's balancing test requires that the public interest be factored into any determination to apply the exemption. Moreover, in conducting the balancing test, the courts have instructed that the "clearly unwarranted" language in the exemption weights the scales in favor of disclosure.

* The Supreme Court has emphasized that a core public interest embodied in the FOIA itself is "to hold the governors accountable to the governed," to inform the public of violations of the public trust. The legislative history of the Nazi War Crimes Disclosure Act and the National Security Advisor's tasking memorandum of February 22, 1999, make clear that this core purpose is integral to implementation of the Act. For example, Senator Leahy noted in his statement in support of the Act 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."

Finally, it is important to remember that even if a privacy interest in withholding is found to outweigh a public interest in disclosure, FOIA requires release of all reasonably segregable non-exempt information in a record.

As processing of records proceeds, NARA will provide agencies with examples of records that will help in making these privacy determinations.

II. List to be provided by Office of Special Investigations, DOJ – privacy issues

* The Justice Department's Office of Special Investigations (OSI) will be providing agencies with a list of approximately 60,000 names that can be used to search for responsive records. The bases for the list will be (1) the names of SS officers and (2) individuals named by the United Nations War Crimes Commission. Although both of these lists are open and available to the public, the OSI-compiled list will likely be supplemented by names of individuals who may not have been publicly associated with criminal activity but whose names could help lead to records encompassed by the Act.

* Accordingly, the OSI-compiled list should be characterized in a way that avoids having the government unfairly stigmatize persons who have never been charged with or publicly accused of a crime. One approach would be to designate the list as a "key word list for conducting searches" or similar title that avoids an implication of wrongdoing on the part of each and every individual who is on the list.

III. Potential Privacy Act issues

NARA has identified at least two areas in which implementation of the Nazi War Crimes Disclosure Act could be impacted by the provisions of the Privacy Act:

(1) The Office of Special Investigations has asked that agencies, once they have located responsive records, pass the records to OSI for its review and determination whether the records fit within the Nazi War Crimes Disclosure Act's exclusion from disclosure for records "related to or supporting any active or inactive investigation, inquiry, or prosecution" by OSI. In anticipation that at least some responsive records may be located in

Privacy Act systems of records, agencies should check their Privacy Act routine uses to see whether a disclosure of those records to OSI would fit within an existing published routine use. Another way to deal with such a disclosure would be for OSI to make a written request to the agencies that comports with the requirements of the Privacy Act's subsection (b)(7) (allowing an agency to disclose Privacy Act-protected records for a specified law enforcement purpose). Yet another approach could be for agencies to publish a specialized routine use for purposes of implementing the Nazi War Crimes Disclosure Act, as discussed immediately below.

(2) Agencies that wish to withhold information in responsive records under one of the exemptions in the Nazi War Crimes Disclosure Act at Section 3(b)(2) will need concurrence by the Interagency Working Group before an exemption is invoked and information is withheld. In order to get the IWG's concurrence, agencies will need to provide those records to the IWG for its review. It is likely that at least some of these records will come from Privacy Act systems of records. It is unlikely, however, that agencies have an already-published routine use that would allow such a disclosure from the agencies to the IWG. Therefore, agencies should consider publishing a new routine use to cover such a disclosure. Such a new routine use could also be written in such a way to permit the disclosure discussed above in point (1).

Agencies are strongly advised to consult with their General Counsel's Offices, and with the Office of Management and Budget and the Department of Justice, on strategies to deal with the potential Privacy Act problems noted in the foregoing two points.

Finally, agencies will be turning over their declassified records to NARA to be made available to the public under the Nazi War Crimes Disclosure Act. NARA believes that disclosure of such records to NARA by the agencies is permitted under subsection (b)(6) of the Privacy Act.

Office of General Counsel May 1999
National Archives at College Park

Appendix 10. CIA Response to IWG Report Questions

CIA Response to IWG Report Questions
September 2002

Addendum to CIA Response to IWG Questions

CIA Relevancy Guidelines:

No challenge has been greater for CIA throughout this effort than to establish relevancy guidelines that comply with the statute and with the broader IWG interpretation on the one hand and that appropriately protect Agency equities on the other. It should be emphasized that the CIA is the only Intelligence Community agency that is releasing its documents (rather than summaries of documents) while seeking to provide as much information as possible. The CIA has a statutory obligation to protect sources and methods. This obligation underlies all decisions made with respect to the release of documents. Moreover, the need to protect sources and methods is not only a statutory obligation, but is also a principle central to the successful conduct of CIA's business. Most importantly, the need to maintain such protection is not attenuated by time. It is for this reason that we have been so careful in making our release decisions. Finally, the fact that other non-intelligence USG agencies have provided extensive releases under this Act that may or may not contain information about war crimes as described in the statute cannot detract from our need to carefully consider our decisions. It is based on our unique requirements that the guidelines set forth below were established.

CIA's guidelines for determining the relevancy of documents to the Nazi War Crimes Disclosure Act were based on guidance from the Agency's Office of General Counsel (OGC).

- A document relevant or responsive to the Act is about a person or a transaction, where:
  - The person committed any of the specified war crimes set out in the statute.
  - The transaction involved assets taken from the persecuted without their consent, as described in the statute.
- A person is considered to have committed war crimes if the individual is among the 3,000 (on DOJ's watchlist of 60,000 names) who were actually "convicted" of war crimes, or if information about the person's war crimes is contained either in CIA documents or in documents provided by another USG agency.

CIA Response to IWG Report Questions
September 2002

- If the person was not convicted of war crimes and there is no information in CIA documents or evidence from another USG agency that the person committed war crimes as defined under the Act, then any documents on that person are deemed "outside the scope of the Act."

- However, the CIA has reviewed and released on a discretionary basis numerous documents on individuals who were suspected of war crimes as indicated by the person's name being on the DOJ watchlist of 60,000 names and also listed on the United Nations War Crimes Commission Charge List, listed as "extradited," or listed as "notorious." In addition, the CIA has also reviewed and released discretionarily many World War II era documents which are of historical value and do not contain war crimes information. Approximately 65 percent of the 35,000 pages released to NARA by CIA have been released discretionarily.

Appendix 11. Consensus Decisions and Guidance from IWG Arising from IWG Meeting, April 11, 2000

Nazi War Criminal Records Interagency Working Group

IWG Memo

To: CIA

From: IWG Staff

Date: 04/14/00

Re: Consensus decisions and guidance from IWG arising from IWG meeting, April 11, 2000

OSS Records

1. OSS records not selected as relevant by CIA from among the withdrawn records at NARA will be screened to identify additional relevant material This re-review will be done cooperatively by CIA, IWG Staff, the historians, and the Declassification Review Team.

2. The IWG has no objection to redactions of names and identification numbers requested by the British provided reviewers are alert to the need to identify and release the names of war criminals.

3. Names of CIA employees. CIA will attempt if at all possible to determine if a name can be released when release is necessary to understanding.

201 Files

1. Identification of sources
- Decisions on sources proposed for redaction will be held in abeyance for further research when it is unclear whether the source may have been involved in war crimes.
- If a source is connected to war crimes, this will be acknowledged and discussed with the IWG members and staff if CIA proposes redaction.
- Substitute language will be used for redacted source descriptions where important to meaning. Substitute language for source deletions should be used in the six high priority 201 files Substitute language should be as specific as possible in order to afford the researcher as much context and indication of reliability as possible.

2. Identification of CIA officials
- Where redaction is necessary to protect national security, substitute language should be used as necessary to give context and meaning.
- Job descriptions should not be routinely redacted

3. Identification/ location of stations.
- Locations of stations and bases in Germany through 1955 will be released.
- Domestic sites. The city name will be deleted, but not the office designation.
- Substitute language giving a general geographic area should be used lieu of the station location when it is important to the meaning of the document.

4. Cryptonyms. Substitute language to be used when important to context and meaning.

5. Organizational designations.
- Header information (distribution and routing) to be redacted in all but "notorious" files. An explanation will be inserted about what was redacted.
- Header information will be edited and redacted in detail in "notorious" files.
- Organization designation will be released at the division level and above.

7. 201 file numbers and other file numbers will be redacted except for the files of "notorious 6" and other high priority files.

8. Foreign government information. Continue coordination with foreign governments.

9. Waldheim file.
- Current "non-relevant" materials are to be withheld in full for now for reasons of national security.
- If new information warrants, the decision to withhold the material will be revisited.

10. Phone numbers. No objection to redaction.

11. Barbie 201 file to be re-reviewed.

12. CIA should proceed with searching the records of the DI and other CIA components.

Appendix 12. Feinstein Statement on Bill S1902

Statements on Bill S1902

Introduced by Senator Mrs. Feinstein of CA

Mr. President,

I rise today to introduce the Japanese Imperial Army Disclosure Act of 1999.

This legislation will require the disclosure under the Freedom of Information Act classified records and documents in the possession of the U.S. Government regarding chemical and biological experiments carried out by Japan during the course of the Second World War.

Let me preface my statement by making clear that none of the remarks that I will make in discussing this legislation should be considered anti-Japanese. I was proud to serve as the President of the Japan Society of Northern California, and I have done everything I can to foster, promote, and develop positive relations between Japan, the United States, China, and other states of the region. The legislation I introduce today is eagerly sought by a large number of Californians who believe that there is an effort to keep information about possible atrocities and experiments with poisonous gas and germ warfare from the pubic record.

One of my most important goals in the Senate is to see the development of a Pacific Rim community that is peaceful and stable. I have worked towards this end for over twenty years. I introduce this legislation to try to heal wounds that still remain, particularly in California's Chinese-American community.

This legislation is needed because although the Second World War ended over fifty years ago--and with it Japan's chemical and biological weapons experimentation programs--many of the records and documents regarding Japan's wartime activities remain classified and hidden in U.S. Government archives and repositories. Even worse, according to some scholars, some of these records are now being inadvertently destroyed.

For the many U.S. Army veteran's who were subject to these experiments in POW camps, as well as the many Chinese and other Asian civilians who were subjected to these experiments, the time has long since passed for the full truth to come out.

According to information which was revealed at the International Military Tribunal for the Far East, starting in 1931, when the so-called `Mukden incident' provided Japan the pretext for the occupation of Manchuria, the Japanese Imperial Army conducted numerous biological and chemical warfare tests on Chinese civilians, Allied POWs, and possibly Japanese civilians as well.

Perhaps the most notorious of these experiments were carried out under General Ishii Shiro, a Japanese Army surgeon, who, by the late 1930's had built a large installation in China with germ

breeding facilities, testing grounds, prisons to hold the human test subjects, facilities to make germ weapons, and a crematorium for the final disposal of the human test victims. General Ishii's main factory operated under the code name Unit 731.

Based on the evidence revealed at the War Crimes trials, as well as subsequent work by numerous scholars, there is little doubt that Japan conducted these chemical and biological warfare experiments, and that the Japanese Imperial Army attempted to use chemical and biological weapons during the course of the war, included reports of use of plague on the cities of Ningbo and Changde.

And, as a 1980 article by John Powell in the Bulletin of Concerned Asia Scholars found,

[Page: S14542] GPO's PDF

Once the fact had been established that Ishii had used Chinese and others as laboratory tests subjects, it seemed a fair assumption that he also might have used American prisoners, possibly British, and perhaps even Japanese.

Some of the records of these activities were revealed during the Tokyo War Crimes trials, and others have since come to light under Freedom of Information Act requests, but many other documents, which were transferred to the U.S. military during the occupation of Japan, have remained hidden for the past fifty years.

And it is precisely for this reason that this legislation is needed: The world is entitled to a full and compel record of what did transpire.

Sheldon Harris, Professor of History Emeritus at California State university Northridge wrote to me on October 7 of this year that:

1. **In 1991, the Librarian at Dugway Proving Grounds, Dugway, Utah, denied me access to the archives at the facility. It was only through the intervention of then U.S. Representative Wayne Owens, Dem., Utah, that I was given permission to visit the facility. I was not shown all the holdings relating to Japanese medical experiments, but the little I was permitted to examine revealed a great deal of information about medical war crimes. Sometimes after my visit, a person with intimate knowledge of Dugway's operations, informed me that `sensitive' documents were destroyed there as a direct result of my research in their library.**

2. **I conducted much of my American research at Fort Detrick in Frederick, Md. The Public Information Officer there was extremely helpful to me. Two weeks ago I telephoned Detrick, was informed that the PIO had retired last May. I spoke with the new PIO, who told me that Detrick no longer would discuss past research activities, but would disclose information only on current projects. Later that day I telephoned the retired PIO at his home. He informed me that upon retiring he was told to `get rid of that stuff', meaning incriminating documents relating to Japanese medical war crimes. Detrick no longer is a viable research center for historians.**

3. **Within the past 2 weeks, I was informed that the Pentagon, for `space reasons', decided to rid itself of all biological warfare documents in its holdings prior to 1949. The date is important, because all war crimes trials against accused Japanese war criminals were terminated by 1949. Thus, current Pentagon materials could not implicate alleged Japanese war criminals. Fortunately, a private research facility in Washington volunteered to retrieve the documents in question. This research facility now holds the documents, is currently cataloguing them (estimated completion time, at least twelve months), and is guarding the documents under `tight security.'**

Your proposed legislation must be acted upon promptly. Many of the victims of Japanese war crimes are elderly. Some of the victims pass away daily. Their suffering should receive recognition and some compensation. Moreover, History is being cheated. As documents disappear, the story of war crimes committed in the War In The Pacific becomes increasingly difficult to describe. The end result will be a distorted picture of reality. As an Historian, I cannot accept this inevitability without vigorous protest.

Please excuse the length of this letter. However, I do hope that some of the arguments I made in comments above will be of some assistance to you as you press for passage of the proposed legislation. I will be happy to be of any additional assistance to you, should you wish to call upon me for further information or documentation.

Sincerely yours,
SHELDON H. HARRIS,

Professor of History emeritus,
California State University, Northridge.

Appendix 13. 12 May 2000 Memorandum

NAZI WAR CRIMINAL RECORDS INTERAGENCY WORKING GROUP
8601 Adelphi Road, College Park, Maryland 20740

May 12, 2000

MEMORANDUM FOR IWG Members and Liaisons for FBI, CIA, State, Army, NARA

SUBJECT: Clarification of Responsibility for Identifying Materials Pertaining to OSI Subjects

As you are aware, Section 3(b)(4) of the Nazi War Crimes Disclosure Act specifies that 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" are exempt from the requirement for release and may not be released without explicit authorization from the Office of Special Investigations (OSI).

As you are also aware, the IWG process for implementing this provision is to assure a second review, after declassification but prior to release. This review for OSI interest will be accomplished by representatives of that office after they are notified by the IWG staff that materials have been declassified, but before any public notice of release for public access at the National Archives.

In order to assist with the identification and notification process, certain agencies are now asked to flag records that fall under the OSI exemption because they pertain directly to OSI investigations and/or the subjects of those investigations, prior to transferring those documents to the National Archives. These would be documents that pertain to individuals named on the list of ca. 2200 OSI subjects that was made available to your agency in the fall of 1999. Although the identification of documents of possible OSI "interest" has been an implicit part of the process and is required during the completion of the database submission that describes the records, we are emphasizing that the identification and flagging of documents pertaining to individuals who are or have been OSI subjects should be an additional part of the process of transferring records to the National Archives for those agencies that have been given access to the list of OSI subjects. *Flagging the documents consists of marking them with tabs and providing a description or list of the documents and the boxes in which they are located.*

Michael J. Kurtz

MICHAEL J. KURTZ
Chair, Interagency Working Group

EXHIBIT Q

Exhibit M-11

Nazi War Crimes & Japanese Imperial Government Records Interagency Working Group

Final Report to the United States Congress

April 2007

Excerption from Preface

by **Steven Garfinkel**
, Acting Chair, January 2001–September 2006 Washington, April 2007

(red color marked not by an editor of this excerption)

Whatever our successes, any enterprise as ambitious and untested as the one undertaken by the IWG is certain to have its disappointments. **Among the disappointed will be those who had hoped for a voluminous release of U.S. records relating to Japanese war crimes. My understanding of the depth of feeling surrounding this issue changed dramatically in 2001, when I spoke to a meeting of the Global Alliance for Preserving the History of World War II in Asia.** The Global Alliance is a federation of organizations and individuals from many different countries who share a single goal: to tell the world about the horrors that took place in Asia in conjunction with the occupation forces of the Japanese Imperial Government. Until my conversations during that meeting with many committed individuals from the United States, Canada, China, Korea, the Philippines, Japan, and elsewhere, I did not fully appreciate the concern of millions of survivors and their families, friends, and associates that this story is virtually untold. **Many people around the world had hoped that the IWG would unearth records that would help them document Japanese atrocities**.

To these people, I state unequivocally that the IWG was diligent and thorough in its search for relevant records about war crimes in Asia. The IWG uncovered and released few Asian theatre records because few such U.S. records remained classified. Unclassified records were not under IWG jurisdiction.
To address any concerns that may arise relating to the dearth of documents released under the JIGDA, we refer readers to publications that document the capture, exploitation, and return of Japanese records from World War II.[1]

NARA archivists attest that the real problem with Japanese documents from World War II is not that they are few in number, but that they are largely underused by researchers. To encourage the full review of these records, the IWG published Researching Japanese War Crimes: Introductory Essays.[2] With this volume, we hope to expose the interested public to the breadth of previously declassified or unclassified records within the National Archives that bear on these subjects and that remain to be fully exploited by scholars, journalists, and other researchers. Further, *Researching Japanese War Crimes* outlines the current level and nature of English and Japanese language scholarship that pertains to the subject of Japanese Imperial Government war crimes. Finally, it discusses the reasons why the volume and specificity of records about Asian war crimes is much smaller than records of Nazi war crimes. The book is accompanied by a searchable CD-ROM of a 1,700-page finding aid to these NARA records, as well as a smaller finding aid to select Japanese War Crimes records. We are confident that records exist that will present in time a very clear picture of the scope and horrors of war crimes in Asia before and during World War II. We very much hope that *Researching Japanese War Crimes* will spur the research and scholarship necessary to achieve this end.

(copy of the original attached hereto)

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[1] See, for example, Greg Bradsher, World War II Japanese Records: History of their Capture, Exploitation, and Disposition (forthcoming).
[2] Edward Drea, et al., Researching Japanese War Crimes: Introductory Essays (Washington, DC: GPO) 2006.

Nazi War Crimes & Japanese Imperial Government Records Interagency Working Group

Final Report to the United States Congress
April 2007

Nazi War Crimes and Japanese Imperial Government Records Interagency Working Group
Final Report to the United States Congress

Published April 2007

1-880875-30-6

"In a world of conflict, a world of victims and executioners, it is the job of thinking people not to be on the side of the executioners."

— Albert Camus

IWG Membership

Allen Weinstein, Archivist of the United States, Chair

Thomas H. Baer, Public Member

Richard Ben-Veniste, Public Member

Elizabeth Holtzman, Public Member

Historian of the Department of State

The Secretary of Defense

The Attorney General

Director of the Central Intelligence Agency

Director of the Federal Bureau of Investigation

National Security Council

Director of the U.S. Holocaust Memorial Museum

National Archives

Archivist of the United States

Washington, DC 20408

April 2007

I am pleased to present to Congress, the Administration, and the American people the Final Report of the Nazi War Crimes and Japanese Imperial Government Records Interagency Working Group (IWG).

The IWG has now successfully completed the work mandated by the Nazi War Crimes Disclosure Act (P.L. 105-246) and the Japanese Imperial Government Disclosure Act (P.L. 106-567). Over 8.5 million pages of records related to Japanese and Nazi war crimes have been identified among Federal Government records and opened to the public, including certain types of records never before released, such as CIA operational files. The groundbreaking release of these records in no way threatens the nation's security. Rather, it has enhanced public confidence in government transparency.

In order to avoid further delay of the release of this report, members of the IWG did not seek unanimous agreement on a single "official" version of their declassification effort. Instead, this report presents the larger issues that arose while affording participants an opportunity to present personal or institutional perspectives on issues important to them and to those whom they represent. These appear in a separate chapter at the end of the report.

It is my sincere hope that this report will produce in Congress, the Administration, and the public a greater appreciation of the enormous human and financial resources required to declassify important U.S. Government records and make them publicly available in a timely manner. Moreover, I have no doubt that in the years ahead these records—and this report—will be used to the fullest capacity by researchers throughout the world.

ALLEN WEINSTEIN
Archivist of the United States

IWG

Allen Weinstein (Chair, 2006-2007)
Stewart Aly, Department of Defense
Edward Arnold, Department of the Army
Susan Arnold, National Security Agency
Thomas Baer, Public Member
Steve Baker, FBI
Richard Ben-Veniste, Public Member
Christina Bromwell, Department of Defense
Paul Claussen, Department of State
John E. Collingwood, FBI
Richard Corriveau, National Security Agency
Brian Downing, Department of State
Wayne Dunaway, National Security Agency
Steven Garfinkel (Acting Chair, 2000-2006), NARA
David Holmes, CIA
Elizabeth Holtzman, Public Member
William Hooton, FBI
Eleni Kalisch, FBI
Carol Keeley, FBI
Michael Kurtz (Acting Chair, 1999-2000), NARA
Harold J. Kwalwasser, Department of Defense
Michael Leahy, Citizenship and Immigration Services
William Leary, National Security Council
Shelly Lopez-Potter, Department of the Navy
David Marwell, United States Holocaust Memorial Museum
David Patterson, Department of State
Steven Raho, Department of the Army
Steven Rogers, Department of Justice
Elaine Rogic, Department of the Army
Eli Rosenbaum, Department of Justice
Lisa Scalatine, Department of the Navy
Paul Shapiro, United States Holocaust Memorial Museum
William Slany, Department of State
Marc Susser, Department of State
Andrew Swicegood, Department of the Army
Elizabeth B. White, Department of Justice
(CIA members names withheld)

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Steven Hamilton (Archives Specialist)
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Sean Morris (Researcher)
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Larry Taylor (Executive Director)

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Carol Gluck, Columbia University
Robert Hanyok, National Security Agency
Peter Hayes, Northwestern University
Linda Goetz Holmes, Independent Scholar
Christopher Simpson, American University
Ronald Zweig, New York University

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Preface

As acting chair of the Nazi War Crimes and Japanese Imperial Government Records Interagency Working Group (IWG) for more than five years, and from the perspective of someone who spent more than 30 years inside the Federal Government promoting the declassification of records of permanent historical value—frequently without a positive outcome—I can vouch that the IWG has been tremendously successful.

The IWG leaves two legacies. First, the IWG has ensured that the public finally has access to the entirety of the operational files of the Office of Strategic Services (OSS), totaling 1.2 million pages; over 114,200 pages of CIA materials; over 435,000 pages from FBI files; 20,000 pages from Army Counterintelligence Corps files; and over 7 million additional pages of records. Historians, political scientists, journalists, novelists, students, and other researchers will use the records the IWG has brought to light for many decades to come.

As researchers pore over this extraordinary collection of important and interesting documents, will they rewrite the history of World War II, the Holocaust, or the Cold War? Probably not. But as the IWG historians have already shown in *U.S. Intelligence and the Nazis*, the details of major and lesser-known events will now be far richer, and as nuances of these events comes to light, historians will reinterpret and revise our previously accepted narratives.

The IWG's second legacy may ultimately be more important than its first: it has demonstrated that disaster does not befall America when intelligence agencies declassify old intelligence operations records. Before the Nazi War Crimes Disclosure Act (NWCDA), intelligence agencies, supported by the President, the Congress, and the Federal courts, routinely and consistently exempted files containing intelligence sources and methods from declassification, regardless of the age or actual sensitivity of the information.

One of the intelligence methods that remained protected is the fact that U.S. intelligence agencies have relationships with the intelligence agencies of allied or even non-allied nations. That intelligence agencies may cooperate across national borders is so obvious and well documented that merely stating it sounds sophomoric. However, U.S. intelligence agencies have routinely and consistently denied access to records that disclosed such a relationship, claiming that revealing such relationships will threaten or damage our ability to cooperate with foreign governments in the future.

The NWCDA pointedly disavowed such categorical exemptions, insisting instead that continued classification is justified only with evidence that the release of particular information would harm our national security today. This principle resulted in the release of a vast quantity of records. For example, for at least a quarter of a century, the National Archives and Records Administration (NARA) had sought to persuade the CIA to declassify and send to NARA the operational files of the OSS, which has been defunct since 1945. Over the years, the CIA delayed declassifying these records, largely on the grounds that disclosing these records could harm our intelligence relationship with foreign governments. The OSS records indeed reveal the vast interrelationship between British intelligence and the OSS: they contains tens of thousands of pages of intelligence first gathered by the British and shared with us, and the records document

the disagreements that are inevitable in such a close relationship. Nevertheless, it is preposterous to suggest that releasing OSS records under the NWCDA is a threat to our current working relationship with the United Kingdom. All OSS records could have been safely released decades ago.[1]

In this second legacy lies the balance of the IWG's work. Having worked in this arena for many years, I see as clearly as anyone does the significance of the single individual to the declassification process. Whether a request for declassification is answered with a yes or a no is essentially determined by whoever happens to make the disclosure or non-disclosure decisions. All of the laws and orders and regulations, all of the classification and declassification guides and guidance can be cited to support either answer this person cares to give. The individual in charge makes the call based on his or her experiences, biases, proclivities, knowledge, or ignorance, and for many years thereafter, all of us may be stuck with it.

For that reason, I hope that those individuals who sit in decision-making positions in the CIA, FBI, NSA, the Departments of State, Defense, Army, Navy, Air Force, or elsewhere recognize through the example of the IWG that government secrets, even intelligence secrets, are finite. To that end, I hope that those individuals recognize and take credit for the extraordinary contribution both to history and public accountability that their agencies have made through their work with the IWG. They have enhanced the public's knowledge without jeopardizing the national security of the United States or the ability of U.S. agencies to perform their important functions on behalf of our national security.

Let me be clear. The declassification lessons learned during the implementation of the Disclosure Acts *can* and *should* be applied to other intelligence records of similar age, and may even be applied to records of somewhat more recent vintage, no matter how sensitive the information within these records once was.

Whatever our successes, any enterprise as ambitious and untested as the one undertaken by the IWG is certain to have its disappointments. Among the disappointed will be those who had hoped for a voluminous release of U.S. records relating to Japanese war crimes. My understanding of the depth of feeling surrounding this issue changed dramatically in 2001, when I spoke to a meeting of the Global Alliance for Preserving the History of World War II in Asia. The Global Alliance is a federation of organizations and individuals from many different countries who share a single goal: to tell the world about the horrors that took place in Asia in conjunction with the occupation forces of the Japanese Imperial Government. Until my conversations during that meeting with many committed individuals from the United States, Canada, China, Korea, the Philippines, Japan, and elsewhere, I did not fully appreciate the concern of millions of survivors and their families, friends, and associates that this story is virtually untold. Many people around the world had hoped that the IWG would unearth records that would help them document Japanese atrocities.

To these people, I state unequivocally that the IWG was diligent and thorough in its search for relevant records about war crimes in Asia. The IWG uncovered and released few Asian theatre records because few such U.S. records remained classified. Unclassified records were not under IWG jurisdiction. To address any concerns that may arise relating to the dearth of documents released under the JIGDA, we refer readers to publications that document the capture, exploitation, and return of Japanese records from World War II.[2]

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1. Although the vast bulk of OSS records had already been released by the CIA to the National Archives, under the Disclosure Acts, it released 1.2 million pages of its most sensitive records, making virtually all OSS records available for researchers.

2. See, for example, Greg Bradsher, *World War II Japanese Records: History of their Capture, Exploitation, and Disposition* (forthcoming).

NARA archivists attest that the real problem with Japanese documents from World War II is not that they are few in number, but that they are largely underused by researchers. To encourage the full review of these records, the IWG published *Researching Japanese War Crimes: Introductory Essays*.[3] With this volume, we hope to expose the interested public to the breadth of previously declassified or unclassified records within the National Archives that bear on these subjects and that remain to be fully exploited by scholars, journalists, and other researchers. Further, *Researching Japanese War Crimes* outlines the current level and nature of English and Japanese language scholarship that pertains to the subject of Japanese Imperial Government war crimes. Finally, it discusses the reasons why the volume and specificity of records about Asian war crimes is much smaller than records of Nazi war crimes. The book is accompanied by a searchable CD-ROM of a 1,700-page finding aid to these NARA records, as well as a smaller finding aid to select Japanese War Crimes records. We are confident that records exist that will present in time a very clear picture of the scope and horrors of war crimes in Asia before and during World War II. We very much hope that *Researching Japanese War Crimes* will spur the research and scholarship necessary to achieve this end.

"The declassification lessons learned during the implementation of the Disclosure Acts ***can*** and ***should*** be applied to other intelligence records of similar age, and may even be applied to records of somewhat more recent vintage, no matter how sensitive the information within these records once was."

***

The IWG leaves a vast product and several important legacies. These came about only because of our extreme good fortune in bringing together the talent, hard work, and commitment of so many individuals, many of whose names are not even specifically revealed in these pages. Each of those mentioned or unmentioned was a *sine qua non* to the accomplishments of the IWG.

First, we must recognize the extraordinary personal and professional contribution and commitment of Senator Mike DeWine and Member of Congress Carolyn Maloney. They were our congressional champions from day one and throughout our entire existence. They and their most competent and committed staff members were always there for the IWG. On behalf of the American people, we thank you.

What can I say about our three public members, Elizabeth Holtzman, Tom Baer, and Richard Ben-Veniste? Their commitment, their refusal to relent, their forthrightness are unlike anything I have ever experienced elsewhere. I can only hope that in their continuing pursuits they take a moment to step back and take pleasure in the fruits of their labor. Unlike IWG government members, who implemented the acts as an additional part of their regular duties, the three public members selflessly devoted hour upon hour of their lives to understanding the nuances of

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3. Edward Drea, et al., *Researching Japanese War Crimes: Introductory Essays* (Washington, DC: GPO) 2006.

these particular laws and striving to get each agency to implement the law fully. They consulted with various experts to obtain the information necessary to assist the agencies in implementing the laws, and lobbied the Hill to extend the life of the IWG so that agencies had every opportunity to comply with the Disclosure Acts. Their unwillingness to settle for anything less than our best effort shows a rare and inspiring leadership, and their tenacity is the reason IWG can claim its success.

None of the IWG's accomplishments would have been realized without the unwavering commitment within the government itself to a fundamental belief in the public's right to know shown by the government members of the IWG. This began with the leadership of the IWG's first chair, Michael Kurtz of the National Archives and Records Administration. By the time I came to the IWG, Dr. Kurtz had already assured through his devotion and hard work that the IWG would be successful. Dr. Kurtz and then-United States Archivist John Carlin extended their generosity throughout the life of the IWG. Archivist of the United States Allen Weinstein stepped in at a critical time and through his exemplary management ushered the IWG to its successful conclusion.

NARA's contributions to the success of the declassification effort are too numerous to name in detail. It must suffice to say that NARA devoted an inordinate amount of financial, human, and intellectual resources to the declassification effort. David Van Tassel, William Cunliffe, and the other IWG staff at NARA put their archival, records-management, and history expertise to work, and the American people have been vastly better served because of it. Among their myriad other duties, NARA staff makes the millions of pages of documents declassified by the IWG accessible to the public, and their work in this regard will continue long after other members of the IWG have turned their attention elsewhere.

The independent historians employed by the IWG, Richard Breitman, Norman Goda, Timothy Naftali, Robert Wolfe, and Daqing Yang, became *ex officio* members of the IWG, and their contributions pervade every aspect of our work. Their volume, *U.S. Intelligence and the Nazis*, published by the IWG, brilliantly exploits and exposes the records declassified and disclosed in the IWG's work and adds greatly to our public exposure.

The IWG's work and publications benefited immeasurably from the input of the IWG's Historical Advisory Panel, chaired by the extraordinary and irrepressible Gerhard Weinberg, Professor Emeritus of History at the University of North Carolina, Chapel Hill. The expertise in World War II history of these historians and authors, their experience with the records under and related to the IWG's jurisdiction, and their understanding of the agencies that hold these records made them invaluable to the IWG's declassification effort.

Eli M. Rosenbaum and his top aides at the Department of Justice/Office of Special Investigations also served the IWG far beyond their official responsibilities. OSI contributed resources, information, and ideas that became essential to agency declassification efforts.

As competing responsibilities at times overwhelmed my schedule, IWG Executive Director Larry Taylor became my alter ego. With so much talent and commitment invested in the IWG, Larry and I were simply the traffic cops. Larry's intelligence, patience, cool-headedness, steadfastness, and ability to work well with all types of personalities served this role perfectly and speaks volumes about the training and experience he received during his prior career in the Foreign Service. I am most indebted to him.

Kris Rusch brilliantly edited and managed the publication of the two IWG historical volumes and this report. Her forbearance with the demands of so many contributors is truly amazing. She was a great addition to our resources.

Science Applications International Corporation (SAIC) expertly managed the contract that supported the historians and numerous other contractors.

Finally, I ask the reader to turn to appendices 1 and 4 for the names of some of the others who enabled the IWG to successfully implement the

largest congressionally mandated declassification effort in history. I am immensely proud of the record we have achieved, and I thank most sincerely those who worked in the spotlight and those who worked behind the scenes to make it possible.

Steven Garfinkel
Acting Chair, January 2001–September 2006
Washington, April 2007

EXHIBIT R

THE JAPAN TIMES THURSDAY, MARCH 10, 2016
p. 7, "Opinion Pages"

Challenging the '20 American historians'

Eiji Yamashita

I organized "the 50 Japanese academics' rebuttal of the 20 American historians' statement," which was announced last September and published in the December issue of Perspectives on History of the American Historical Association (AHA). This is the same periodical that published the 20 American historians' statement last March. Our rebuttal was reported on in the Dec. 10 edition of The Japan Times and the December issue of Inside Higher Ed, an e-magazine on education based in Washington. I would like to take this opportunity to clarify the main aim of our rebuttal.

We said the 20 American historians would never find a single Japanese academician with whom they could stand, even though the title of their statement was "Standing with historians of Japan," because there are at least eight factual mistakes in 26 lines about "comfort women" in the McGraw-Hill textbook at issue. Furthermore, we questioned their fairness since their statement had no reference to the report by the Interagency Working Group in the United States in 2007.

However, a more important reason for why we wrote the rebuttal is that we were concerned about the 20 American historians' basic stance as scholars and educators, beyond the immediate comfort women issue. We were confident that our arguments could lead to better education for American youths, and hence were inherently beneficial to the U.S. as well as to the rest of the world in the longer perspective.

I think our concern was right. Several scholars, such as professor Alexis Dudden (University of Connecticut), professor Andrew Gordon (Harvard University) and others out of the 20 American historians were interviewed by The Japan Times or Inside Higher Ed, but none of them seemed to be worried about the education of young Americans. Moreover, it seems to me that American historians are still refusing to address the major factual errors in the McGraw-Hill history textbook.

Many English-language media outlets, including The Japan Times, refer to the comfort women as "sex slaves." But such terminology is factually incorrect and runs counter to the Japanese government's position. I hereby introduce the latest two examples. On Jan. 18, Prime Minister Shinzo Abe replied to a question raised by Upper House member Kyoko Nakayama in the Upper House Budget Committee that the phrases "sex slaves" and "200,000 comfort women" run counter to the facts. Moreover, on Feb. 16 Deputy Foreign Minister Shinsuke Sugiyama replied to a question raised by the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in Geneva that there was no evidence proving the forcible removal of comfort women from their homes by the Japanese military and government authorities.

There is a widespread misunderstanding among the Western world that the Abe administration is somehow suppressing the media. It seems to us that the situation is precisely the opposite. In fact, the reach of the Abe administration's efforts is rather limited by both the domestic and foreign media. Japan is among the highest ranked countries in the world in terms of freedom of speech. On the contrary, freedom of speech in the U.S. is obviously lower than that of Western European countries or Japan, because there are so many social taboos there. To take just one prominent example out of many, the U.S. government actively oppresses denunciations by former governmental staff members. Given all this, it would seem that Americans are not in a position to lecture other mature democracies on the finer points of freedom of speech. Instead, the 20 American historians should be more concerned about the free speech situation within their own country.

These Americans who have striven to fashion a consensus regardless of where the evidence leads them are quick to call us revisionists.

Upon its commencement in October 1998, the research objective of the IWG Report was limited to Nazi war crimes. Thereafter, though, Japanese Imperial government records were added to the objectives of the IWG Report in December 2000 in response to a request from the Global Alliance for Preserving the History of World War II in Asia, a group led by people of Chinese descent based in San Francisco. After very extensive research lasting seven years, the IWG could not find any documentation to show that the Japanese government committed war crimes with respect to the comfort women. In the IWG Final Report to the U.S. Congress, a document stretching 155 pages, there is no language clearly indicating that any record of Japanese war crimes vis-a-vis comfort women had been uncovered. Instead, the report contains reams of unimportant passages, presumably with the aim of camouflaging an inconvenient truth.

But despite no evidence of war crimes by the Japanese government in the IWG Report to the U.S. Congress, on July 30, 2007, the U.S. Congress still passed House Resolution 121 on the comfort women, demanding that the Japanese government apologize for "crimes" for which no evidence had been produced. The whole process in the U.S. Congress at that time was extremely unfair — or worse — to Japan.

Today, American fairness is in serious question almost everywhere in the world, although most Americans may not know this or do not wish to know. This broad lack of trust in American fairness is one of the major factors in the failure of American foreign policy on so many fronts in the past decades. Under such circumstances, is it wise for the U.S. to show apparent unfairness to the Japanese public, too, especially given that Japan is one of the closest American allies in the world? If the U.S. wishes to see its foreign policy succeed, it should begin with a reassessment of its fundamental fairness. The safety of Americans and of the rest of the world depends on it.

It is often said that we cannot acquire a clear picture of any given era of history until at least a century has elapsed. Since we are now 71 years past the end of World War II, it is natural that new evidence or interpretations will emerge in the years to come. Not only newly found historical facts but also new historical interpretations should be respected and subjected to academic discussion and debate. Incidentally, this year marks the 102nd anniversary of the outbreak of World War I, but we still lack a coherent historical evaluation of even that conflict.

And yet, these same Americans who have striven to fashion a consensus regardless of where the evidence leads them are quick to call us revisionists. But isn't it always important for open-minded scholars to seek revisions when they are appropriate? Those who cry "revisionism" are unscientific; they do not behave like intellectuals. Perhaps it is time for us to return the favor and label them the "bigoted old guard."

On this note, it is also important for us to begin to discuss the meaning of the latest world war, the Cold War, particularly in connection with World War II. It is indispensable to correctly recognize why the Cold War began soon after the end of World War II in order to clarify the characteristics of the "hot war." It is also very important to review how we in the free world won the Cold War.

Finally, to return to our original point, McGraw-Hill Education in New York should sincerely address the major factual defects in its history textbook for the future generation of the U.S. and the rest of the world as well.

Eiji Yamashita is a professor emeritus at Osaka City University.

EXHIBIT S

Anti-Japan Rallies Around the Statues

1. Around the Glendale Statue in USA (1/2)

As of Sept 2016, there are two statues and seven monuments in US. Chinese and Korean groups are planning to erect more statues, and are now deploying anti-Japan activities.

These are the photos of their anti-Japan activities related to around the statue of Glendale city..

Prime Minister Shinzo Abe addressed a Joint Congressional Meeting of the US Congress on April 29, 2015 titled "Toward an Alliance of Hope".
He emphasized especially an enhancement of US-Japan security. The speech was applauded by the members with standing ovations.

(Photo:
Cabinet Public Relations Office)

During the speech protests took place on the Capitol Hill by Koreans and its descents in US.

The Korea Times April 29, 2015
Abe addresses Congress without apology as protests continue
By Tae Hong, Korean Times US
http://www.koreatimesus.com/abe-addresses-congress-without-apology-as-protests-continue/

Photos taken at the opening ceremony of the statue (July 30, 2013)

Chinanews July 30th, 2013.
Glendale, the opening ceremony of comfort girl statue
http://www.chinanews.com/gj/2013/08-01/5111201.shtml

https://youtu.be/MwcpgXzeWiA

1. Around the Glendale Statue in USA (2/2)

Before and after PM Abe's speech in the Congress Chinese and Korean Americans jointly and separately protested in the US. Some held signs "COMFORT WOMEN WERE SEX SLAVES NO COVER UP OF WAR CRIMES!", and some "COMFORT WOMEN DESERVE SINCERE APOLOGY!

No matter what PM Abe says in his speech, they just do accusations against any Japan.

"WAR CRIME DENIER NOT WELCOME!"

*Lotus Gan, left, and Yize Chen yell with other **Chinese American and Korean American protesters** as they hold up a photo of Japanese Prime Minister Shinzo Abe during a rally outside of the Japanese Consulate in San Francisco, Tuesday, April 28, 2015. (AP Photo/Jeff Chiu)*

"COMFORT WOMEN WERE SEX SLAVES"

NO COVER UP OF WAR CRIMES!"

Hundreds protest Japanese leader ahead of California visit
By JANIE HAR April 28, 2015 6:53 PM
https://www.yahoo.com/news/hundreds-protest-japanese-leader-ahead-california-visit-211500694.html?ref=gs

"COMFORT WOMEN DESERVE SINCERE APOLOGY!"

***Chinese American and Korean American protesters** hold up signs and yell as they rally outside of Japanese Consulate in San Francisco, Tuesday, April 28, 2015. Hundreds of people protested outside the Japanese Consulate Tuesday, calling on Prime Minister Shinzo Abe to apologize for his country's atrocities toward other Asian countries during World War II. The protest came as Abe met with President Barack Obama in Washington, D.C., ahead of the prime minister's three-day visit to California this week. (AP Photo/Jeff Chiu)*

Just after the speech in the Congress

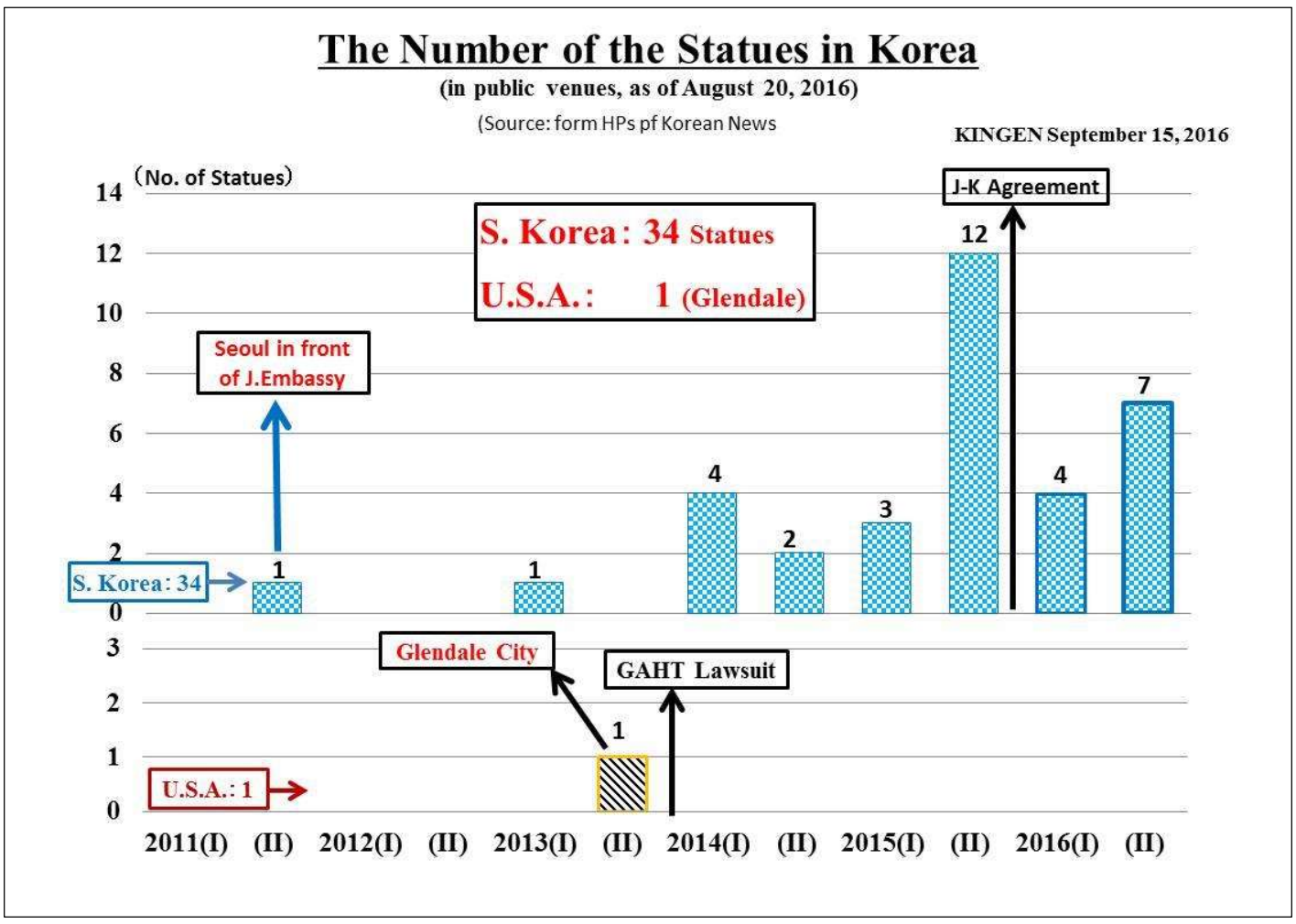
"WAR CRIME DENIER NOT WELCOME!"

*Demonstrators gather outside the Millennium Biltmore hotel in downtown Los Angeles during a visit by Japanese Prime Minister Shinzo Abe during a **Japan-U.S. Economic Forum** on Friday, May 1, 2015. About a hundred people chanted and held signs demanding "justice" for the sexual slaves kept by the Japanese during World War. The protesters, many of Korean or Chinese descent, shouted "Abe, liar!" and held signs reading "Mr. Abe, official apology." Japan maintains that it has already apologized for the sex slaves known as "comfort women" held by its imperial army. (AP Photo/Richard Vogel)*

2. Around the Statues - "Enslaved Comfort Woman" in South Korea (1/4)

How Contradictory They are!

1. Claiming Justice by the Illegal Statue!
2. Radical/Violent Rallies around the "Peace Monument"



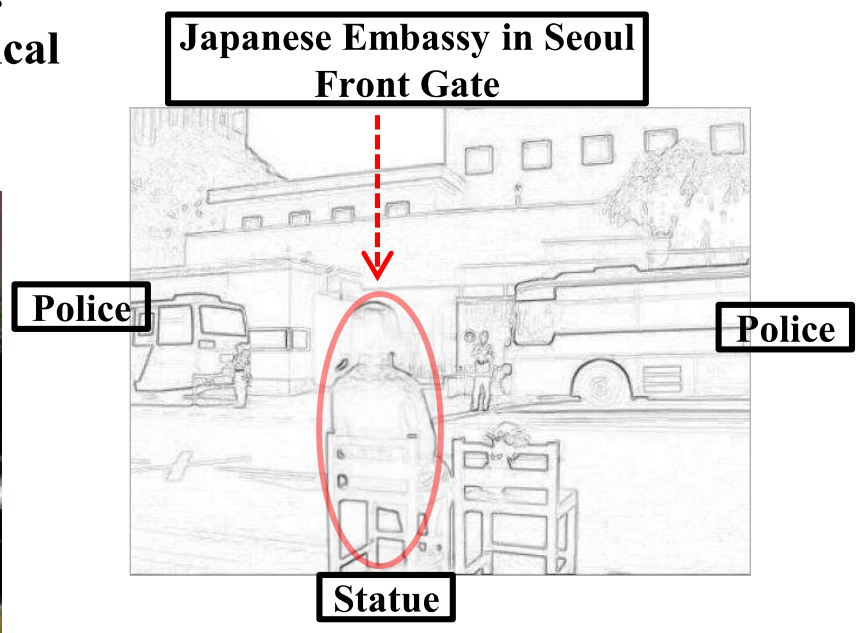
Now 34 statues have been erected all over the South Korea. The first statue was installed in front of the Japanese Embassy in Seoul in December 2011.

Even after the Japan-S.Korea Agreement, so far only with 9 months, 11 statues were erected in public venues by private organizations.

The agreement stipulates refrainment from accusations in international societies, however the Koreans seemingly understand that they could do anything freely in their homeland.

On December 14, 2011, the first slaved comfort girl statue was erected in front of the Japanese Embassy in Seoul.
The statue is called "Peace Monument" in South Korea.
Since then anti-Japan protesters rally and perform radical anti-Japan activities around the statue.

Source:
https://justiceforcomfortwomen.org/category/uncategorized/



The statue faces the front gate of the Embassy.

The idea seems to be her angry staring at Japan and Japanese, who never apologize for "their alleged atrocities".

2. Around the Statues - "Enslaved Comfort Woman" in South Korea (2/4)

Sino-Korea Alliance against whom?

Two months before the Japan-Korea Agreement, a paired statue of Korean and Chinese girls was unveiled on October 28, 2015.

Cooperation between China and Korea was materialized like this.

According to this article "*A representative of the South Korean group said*
***similar statues will be set up in Shanghai and San Francisco*."**

Statues honoring Korean, Chinese 'comfort women' erected in Seoul (Japan Times Oct. 29, 2015
http://www.japantimes.co.jp/news/2015/10/29/national/politics-diplomacy/statues-honoring-korean-chinese-comfort-women-erected-in-seoul/#.V-I2qSiLTIU

Radical Rallies against the PM of Japan
Are these expressions of their Opinions?

Around the statue rallies were performed by anti-Japan activists, who insult the Prime Minister and deface the national flag of Japan.
The statue is the symbolic icon of the anti-Japan campaign.

The Himalayan Times August 15, 2015 Protests in South Korea
http://thehimalayantimes.com/multimedia/photo-gallery/protests-in-south-korea/
REUTERS

2. Around the Statues – "Enslaved Comfort Woman" in South Korea (3/4)

Do they claim "Peace"?

The rallies' main claim is for an official Apology. Does that mean once the government apologized, these campaigns would cease? Does the Government of South Korea keep the promises? So far it has not.
So far the government of Japan, based on the agreements made with the South Korean government, announced 3 times that the issue was settled, as "all claims is settled completely and finally"(in 1965), "all settlement by unclear Kono statements", and thirdly J-K Agreement of Dec. 2015 as "final and irrevocable resolution".
The first two were broken by South Korea without any apologies so far.

The Government of South Korea promised to work for removal of the statue, but Japanese still wait and see how the situations develop.

Protesters defame PM Abe under names of:

"Human Rights"
"Freedom of Expressions"
"Peaceful Societies"

and put his face photos under their feet.

Do they claim "Peace"?

Peace monument" for former "comfort women" during an anti-Japan rally outside the Japanese embassy in Seoul on April 1, 2015 | By: Jung Yeon Je | Getty Images
http://en.koreaportal.com/articles/3292/20151030/south-korea-japan-comfort-women-statues.htm

A man (left) wearing a mask of Japanese Prime Minister Shinzo Abe kneels down in a mock apology next to the statue (right) of a teenage girl symbolizing former "comfort women," in Seoul on August 15, 2016 (AFP Photo/Jung Yeon-Je)

Rejecting a deal announced by the South Korean and Japanese governments, people protest on Dec. 30 at a statue symbolizing "comfort women" in front of the Japanese Embassy in Seoul. PHOTO: REUTERS

2. Aroused the Statues "Enslaved Comfort Woman" in South Korea (4/4)

"Oppose the Alliance between U.S. and Japan and Japan's Wartime atrocities."

(AP)

Former comfort women Kil Un-ock, boom, and Kim Bock-dong who were forced to serve for the Japanese troops as a sexual slave during World War II, shout slogans during a rally against a visit by Japanese Prime Minster Shinzo Abe to the United States, in front of the Japanese Embassy in Seoul, South Korea, Wednesday, April 29, 2015.

Abe has sidestepped a question on whether he would apologize for the sexual enslavement of women by Japan's army during World War II.

The letters at cards read ***" Oppose the alliance between U.S. and Japan and Japan's wartime atrocities."***
(AP Photo/Ahn Young-joon) April 29, 2015

Source: AP April 29, 2015
http://www.apimages.com/metadata/Index/South-Korea-US-Japan-Comfort-Women/14f28419b25a4d1a979eb05d13cad00f/312/0

"A protester chops an effigy of Japanese Prime Minister Shinzo Abe with an axe" (REUTERS)

A protester chops an effigy of Japanese Prime Minister Shinzo Abe with an axe during an anti-Japan rally on the occasion of the 70th anniversary of liberation from Japan's 1910-45 colonial rule, on Liberation Day in Seoul, South Korea, August 15, 2015.
http://thehimalayantimes.com/multimedia/photo-gallery/protests-in-south-korea/

Belfast Telegraph
(AP Photo/Yonhap, Kim Ju-Sung)
http://www.belfasttelegraph.co.uk/news/world-news/korean-activist-launches-knife-attack-on-us-ambassador-mark-lippert-in-seoul-leaving-him-with-nerve-damage-and-80-stitches-31042768.html

3. The Statue of Glendale in Australia

is Used for accusing Japan and generating ethnical frictions, not for peace

The Korean Committee of United Austral Korean-Chinese Alliance Against Japanese War Crimes (UAKCA)“, one of main driving organizations for erecting the statue in Australia, uses in the head of HP (http://designbank.wixsite.com/korean-and-Chinese) a snap shot of the statue of Glendale City for promoting the first similar statue in Australia at a public venue.

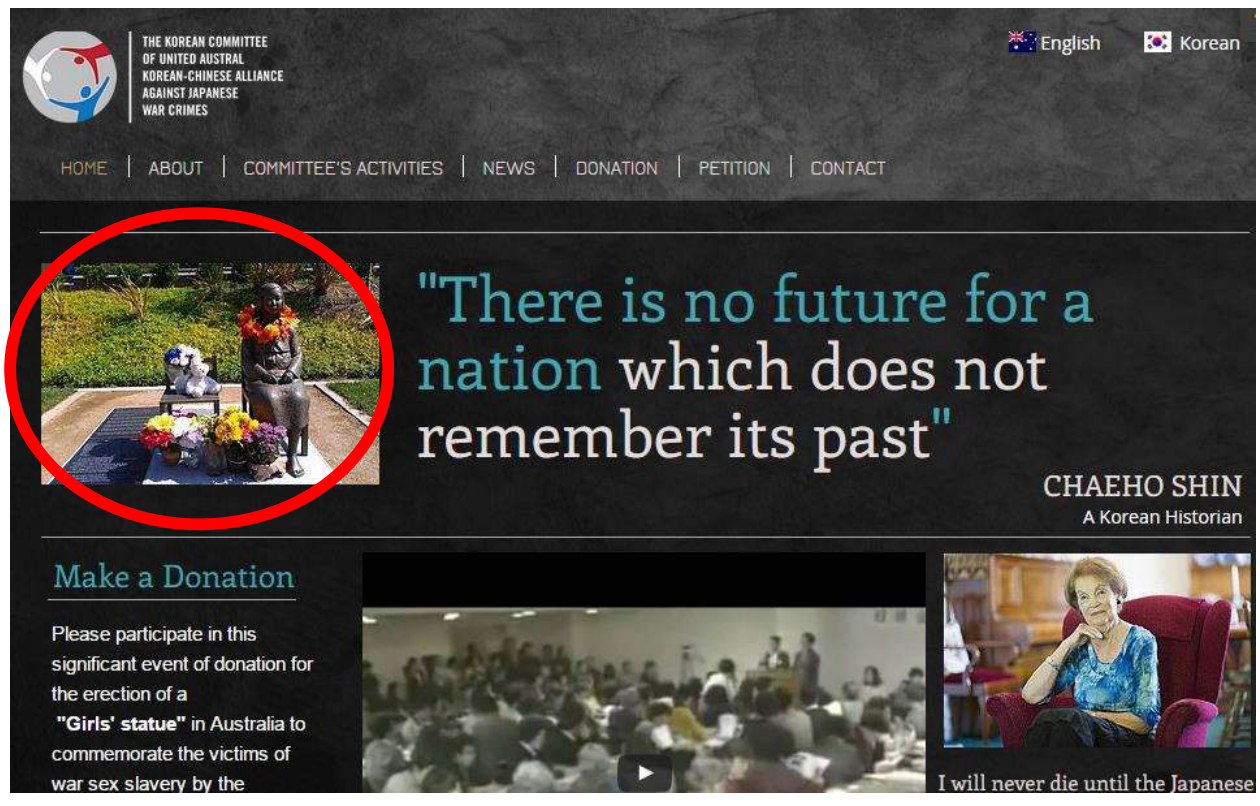
According to statements of the HP: **UAKCA is determined to have the statue built.**
*“Increase public awareness about the **Japanese government’s hidden policy** of neo-militarism, distortion of **war history and war crimes, including the use of sex slaves and the Nanjing Massacre.***

***Erect a girls’ statue that represents those who were forced to work as sex slaves, commonly known as ‘comfort women’.** The purpose of this statue is to inform growing second generations of Korean and Chinese in Australia and Australian citizens of the brutality and atrocity suffered by hundreds of thousands of women during the Second World War. We would like to further educate the generations to learn the lessons from history so that we can prevent this dark past from happening again in the future.”*

————————————————————

UAKCA declares that by erecting statues (like one of Glendale), he will educate younger generation about Japanese military’s “brutality and atrocity”.
The statue does not represent a peaceful world, instead generate frictions among ethnics.

Photo:
Statue in Glendale City



Head page of UAKCA HP
(printed at 11:00am (JST) on September 11, 2016)

4. the Mayors of the Glendale City (1/3)

Mayor Frank Quintero studied the comfort women in Seoul on April 14, 2013

Ex-Mayor Frank Quintero visits the statue located just in front of the Japanese Embassy in Seoul. 04.14.2013 / News 1

Mayor Frank Quintero with a well-known pro-Communist group-

"The Korean Council for the Women Drafted for Military Sexual Slavery by Japan"
(Chong Dae Hyup)

Mayor Frank Quintero was taken a photo with a representative of "The Korean Council for the Women Drafted for Military Sexual Slavery by Japan"(Chong Dae Hyup), a famous organization very close to North Korea, formed by the South Korean communists. It is said that Chong Dae Hyup was confining surviving women in a nursing home called "House of Nanumu".

Some of Chong Dae Hyup's members were arrested as North Korean spies. The issue of comfort women was used by them for its political purpose - to drive a wedge into U.S.-Japan-South Korea security alliances.

Frank Quintero with the Statue and Pro-Communist in front of the Japanese Embassy in Seoul. 04.14.2013 / News 1

4. the Mayors of the Glendale City (2/3)

In merely three and a half months from the study, the statue was erected.

Both the Statue and the ceremony followed a well prepared template at an amazing speed and efficiency.

Unveiling Ceremony on July 30, 2013 4 of 5 City Council Members attended
Back row from left:
- Zareh Sinanyan
- Ara Najarian (Ex-Major)
- Frank Quintero (Former Mayor)
- Laura Friedman (Former Mayor)

(Source: http://ironna.jp/article/3855)

Four of all five Council members had visited South Korea before this ceremony, and three of them attended the unveiling ceremony. None of them had visited Japan.

The three studied only one-side of the issue.
The three were the all Ex Mayors :
-Frank Quintero
-Ara Najarian
and
- Laura Friedman.

Source: http://ironna.jp/article/3855

4. the Mayors of the Glendale City (3/3)

Other Mayors' visits to South Korea after 2009
Nothing to Japan, the first sister city- Higashi-Osaka

Ex-Mayor Dave Weaver visits Goseong City on January 15, 2009
Source:http://www.koreadaily.com/news/read.asp?art_id=772034

Then Mayor Frank Quintero visits Goseong City for the first time on September 13-14, 2009

Then Mayor Ara Najarian visits Goseong City on August 26, 2010
Source: http://www.newsty.net/news/articleView.html?idxno=2442

Ex-Mayor Frank Quintero with the statue in Seoul on April 14, 2013/ News 1

After the erection in the Glendale City

Then Mayor Zareh Sinanyan on November 17, 2014.
photp@newsis.com 2014-11-17

The present Mayor Paula Devine on July 2-4, 2016
http://www.gndomin.com/news/articleView.html?idxno=114626

EXHIBIT T

Japan-U.S. Security Treaty

TREATY OF MUTUAL COOPERATION AND SECURITY BETWEEN JAPAN AND THE UNITED STATES OF AMERICA

Japan and the United States of America,
Desiring to strengthen the bonds of peace and friendship traditionally existing between them, and to uphold the principles of democracy, individual liberty, and the rule of law,
Desiring further to encourage closer economic cooperation between them and to promote conditions of economic stability and well-being in their countries,
Reaffirming their faith in the purposes and principles of the Charter of the United Nations, and their desire to live in peace with all peoples and all governments,
Recognizing that they have the inherent right of individual or collective self-defense as affirmed in the Charter of the United Nations,
Considering that they have a common concern in the maintenance of international peace and security in the Far East,
Having resolved to conclude a treaty of mutual cooperation and security,
Therefore agree as follows:

ARTICLE I

The Parties undertake, as set forth in the Charter of the United Nations, to settle any international disputes in which they may be involved by peaceful means in such a manner that international peace and security and justice are not endangered and to refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations. The Parties will endeavor in concert with other peace-loving countries to strengthen the United Nations so that its mission of maintaining international peace and security may be discharged more effectively.

ARTICLE II

The Parties will contribute toward the further development of peaceful and friendly international relations by strengthening their free institutions, by bringing about a better understanding of the principles upon which these institutions are founded, and by promoting conditions of stability and well-being. They will seek to eliminate conflict in their international economic policies and will encourage economic collaboration between them.

ARTICLE III

The Parties, individually and in cooperation with each other, by means of continuous and effective self-help and mutual aid will maintain and develop, subject to their constitutional provisions, their capacities to resist armed attack.

ARTICLE IV

The Parties will consult together from time to time regarding the implementation of this Treaty, and, at the request of either Party, whenever the security of Japan or international peace and security in the Far East is threatened.

ARTICLE V

Each Party recognizes that an armed attack against either Party in the territories under the administration of Japan would be dangerous to its own peace and safety and declares that it would act to meet the common danger in accordance with its constitutional provisions and processes. Any such armed attack and all measures taken as a result thereof shall be immediately reported to the Security Council of the United Nations in accordance with the provisions of Article 51 of the Charter. Such measures shall be terminated when the Security Council has taken the measures necessary to restore and maintain international peace and security.

ARTICLE VI

For the purpose of contributing to the security of Japan and the maintenance of international peace and security in the Far East, the United States of America is granted the use by its land, air and naval forces of facilities and areas in Japan. The use of these facilities and areas as well as the status of United States armed forces in Japan shall be governed by a separate agreement, replacing the Administrative Agreement under Article III of the Security Treaty between Japan and the United States of America, signed at Tokyo on February 28, 1952, as amended, and by such other arrangements as may be agreed upon.

ARTICLE VII

This Treaty does not affect and shall not be interpreted as affecting in any way the rights and obligations of the Parties under the Charter of the United Nations or the responsibility of the United Nations for the maintenance of international peace and security.

ARTICLE VIII

This Treaty shall be ratified by Japan and the United States of America in accordance with their respective constitutional processes and will enter into force on the date on which the instruments of ratification thereof have been exchanged by them in Tokyo.

ARTICLE IX

The Security Treaty between Japan and the United States of America signed at the city of San Francisco on September 8, 1951 shall expire upon the entering into force of this Treaty.

ARTICLE X

This Treaty shall remain in force until in the opinion of the Governments of Japan and the United States of America there shall have come into force such United Nations arrangements as will satisfactorily provide for the maintenance of international peace and security in the Japan area. However, after the Treaty has been in force for ten years, either Party may give notice to the other Party of its intention to terminate the Treaty, in which case the Treaty shall terminate one year after such notice has been given.

IN WITNESS WHEREOF the undersigned Plenipotentiaries have signed this Treaty.

DONE in duplicate at Washington in the Japanese and English languages, both equally authentic, this 19th day of January, 1960.

FOR JAPAN:

Nobusuke Kishi

Aiichiro Fujiyama

Mitsujiro Ishii

Tadashi Adachi

Koichiro Asakai

FOR THE UNITED STATES OF AMERICA:

Christian A. Herter

Douglas MacArthur 2nd

J. Graham Parsons

Back to Index

EXHIBIT U

Higashiosaka City
1-1-1 Aramoto kita
Higashiosaka, Osaka

July 25, 2013

The honorable Mayor of the City of Glendale
Mr. Dave Weaver

Dear Mayor,

Subject: Request for correction of the description on the Glendale's website

It is my great pleasure that we have been maintaining our friendly relationship for a long time including youth exchange programs started in 1979 since the sister city agreement between Glendale and former Hiraoka City in 1960.

A description that Higashiosaka City is not in agreement was found in an article posted on July 9, 2013 on your city's website. Within the article describing the installation of a so-called "Comfort Woman" monument in the area adjacent to the Adult Recreation Center at Central Park, there is a statement that "Each of our six sister cities has expressed an interest in developing a monument or memorial within the sister city park space in the near future." Higashiosaka City Government has never expressed such idea to the city of Glendale.

Also concerning the statement that "A maintenance fund will be established to....." and "This fund will ensure that all maintenance costs related to sister cities monuments/memorials are covered by our sister city partners," I have never been informed of any establishment of such fund, as a consequence, Higashiosaka City has not given any consent to share the expenses on establishment of the fund as a sister city.

Therefore, I here strongly protest against the description of the issues that Higashiosaka City Government never revealed and request for correction of the said statements.

With respect to the so-called comfort woman issues, I recognize that there exist national level concerns. I would like you to confirm that Higashiosaka City has never expressed any thoughts regarding this matter. While incorrect and untrue information are found, I find it an extremely deplorable situation and the people of Higashiosaka are hurt at a decision made by your city to install a comfort woman monument.

I hereby request for your correct understandings about Higashiosaka based on our friendly relationship and provision of information also based on true facts.

Most sincerely,

Yoshikazu Noda

Yoshikazu Noda
Mayor of Higashiosaka City
Osaka, Japan

EXHIBIT V

The New York Times

ASIA PACIFIC

No Apology for Sex Slavery, Japan's Prime Minister Says

By MARTIN FACKLER MARCH 6, 2007

TOKYO, March 5 — Prime Minister Shinzo Abe said Monday that Japan would refuse to comply if the United States Congress demanded an apology for his nation's use of foreign women as sexual slaves during World War II.

Japan has already lobbied against a resolution, under consideration in the House of Representatives, that would call on Tokyo to take clearer responsibility for its enslavement of some 200,000 mostly Korean and Chinese women known euphemistically here as "comfort women."

Japan has apologized before and issued a major report in 1993. But there are widespread concerns that Mr. Abe and other conservative Japanese lawmakers may try to water down or reverse such admissions of guilt as part of a broader push to revise their nation's wartime history.

Speaking in Parliament, Mr. Abe reiterated the position of conservative scholars here that Japanese officials and soldiers did not have a hand in forcing women into brothels, instead blaming any coercion on contractors used by Japan's military.

Mr. Abe rejected testimony before a House committee by surviving victims, who said they had been kidnapped by Japanese soldiers to serve in military brothels. He said "testimony to the effect that there had been a hunt for comfort women is a complete fabrication."

He also criticized the proposed House resolution, which blames Japanese authorities for the coercion, saying it "was not based in objective fact, and does

not consider the Japanese government's measures so far."

Political analysts said ignoring the House resolution, which is nonbinding, was not likely to drive a wedge between Tokyo and Washington, its most important ally. The fear among Japanese diplomats is that Mr. Abe or other Japanese politicians will overreact and make claims that reinforce the perception in the United States and elsewhere that Japan remains unrepentant for its wartime aggression, analysts said.

"It just looks bad for the prime minister to be getting involved in these sorts of historical details," said Minoru Morita, a political analyst who runs an independent research institute in Tokyo. "Plus, his argument isn't going to sway world opinion anyway. Even if the military wasn't pointing guns at the women, they still could have been coerced."

Apparently in a nod to such concerns, Mr. Abe appeared to pull back from a comment last week denying that the women had been forced at all to work in brothels. On Monday, he told Parliament he supported the 1993 government statement, which acknowledged that the military had at least an indirect role in forcing the women into sexual slavery.

That government had also apologized to the women and set up a fund to pay them compensation, which is set to expire this month.

"There probably was not anyone who followed that path because they wanted to follow it," Mr. Abe said, speaking of the women's entry into military brothels. "In the broad sense, there was coercion."

With that limited concession, Mr. Abe appeared to be trying to defuse a growing diplomatic row with Asian neighbors over last week's denial, which outraged officials and women's groups across the region.

As opinion polls show his approval falling among Japanese voters, Mr. Abe can ill afford to be seen as provoking China and South Korea, much less undermining ties with the United States, political analysts and opposition lawmakers said.

"If Japan doesn't apologize and repent for its past violations of human rights, won't it lose international trust?" a lawmaker from the opposition Democratic

Party, Toshio Ogawa, asked Mr. Abe during Monday's parliamentary debate.

Mr. Morita and others said that vowing to ignore the possible House resolution appeared to be an attempt by Mr. Abe to appease his conservative base even as he supported the 1993 statement.

But Mr. Abe's claims that Japan had no official role in its military brothels carried another potential public relations risk, they said: in making such denials, he was in effect dismissing as liars the aging women now coming forward with tearful testimony of their ordeals.

One was Lee Yong-soo, 78, from South Korea, who testified in the House last month that she had been kidnapped by Japanese soldiers at age 16 and raped repeatedly at an army brothel. In a news conference last week in Tokyo, she said Japanese soldiers had dragged her from her home, covering her mouth so she could not call to her mother.

"I want Japan and the Japanese prime minister to apologize," she said. "As a victim who was forcibly taken, as someone who lived through those events, I'm a living witness."

A version of this article appears in print on , on page A10 of the National edition with the headline: No Apology for Sex Slavery, Japan's Prime Minister Says.

EXHIBIT W

NO ORGANIZED OR FORCED RECRUITMENT: MISCONCEPTIONS ABOUT COMFORT WOMEN AND THE JAPANESE MILITARY

Hata Ikuhiko
Professor Emeritus, Nihon University

Society for the Dissemination of Historical Fact
Shin Sakuma Bldg. 3F, 2-13-14, Nishi-Shimbashi
Minato-ku, Tokyo 105-0003, JAPAN
Tel 03-3519-4366 Fax 03-3519-4367
http://www.sdh-fact.com

NO ORGANIZED OR FORCED RECRUITMENT: MISCONCEPTIONS ABOUT COMFORT WOMEN AND THE JAPANESE MILITARY

Hata Ikuhiko
Professor Emeritus, Nihon University

Revival of the comfort women circus

The March 6 and 7, 2007 editions of *Akahata* (Red Flag), the JCP (Japanese Communist Party) house organ, included several articles under the screaming headline "The World Condemns Prime Minister Abe's Statement on Comfort Women." Among them were "Admit the Truth: Chinese Foreign Minister Demands 'Appropriate Action,'" "*New York Times* Editorial Exposes Japan's Misrepresentation of the Facts," and "Six Korean Newspapers Carry Editorials Critical of Japan." Accompanying them was JCP Secretariat Head Ichida Tadayoshi's denunciation of Prime Minister Abe entitled "Coercion Proven."

In anticipation of Mr. Abe's visit to the U.S. in late April, members of the U.S. House of Representatives have submitted a resolution (H. Res. 121) censuring Japan in connection with the comfort women. Given the current political climate, that legislation is likely to pass.

Since mid-February, there has been a frenzy of newspaper coverage of the issue, both in Japan and overseas. We singled out *Akahata*, the most abundant source, but other leading domestic newspapers are not far behind.

The *Yomiuri* and *Sankei* newspapers have not devoted a great deal of space to the comfort women. However, on March 8, the *Mainichi Shimbun* published an editorial entitled "Kono Statement Must Stand." On March 6, *Asahi Shimbun* ran an editorial entitled "Refrain from Comments That Invite Misunderstandings," whose content was similar to that of the *Mainichi* piece. But another editorial in the March 10 edition of the *Asahi Shimbun* actually echoed North Korean national broadcasts, implying that the alleged sexual enslavement of women by the Japanese and the abduction of Japanese nationals by North Koreans essentially cancel each other out: "Japan has been trying to win international support to its criticism of North Korea's abductions of Japanese citizens as a serious human rights violation. But Japan's appeal cannot arouse the sympathy of the international community if it closes its eyes to its own human rights abuses."

Nevertheless, the *Mainichi* seems to be hoping that the H. Res. 121 will be rejected. However, the newspaper did little more than offer a rather lukewarm comment to the effect that the Japanese have been issuing apologies over the years in connection with the comfort women, and that the government should offer a thorough explanation of its position. Perhaps the newspaper's staff is incapable of generating ideas that would serve to prevent the passage of the resolution. At this rate, we are reverting to the days of the ABCD (American, British, Chinese, Dutch) Encirclement against Japan prior to the outbreak of war in 1941 between Japan and the U.S.

The U.S. House of Representatives has no legally binding authority over Japan. Therefore, here at home some believe the best way to deal with such charges is to ignore them, while others are in favor of issuing apology upon apology. But because the issue has escalated so dramatically, neither of these tactics is likely to be effective. I would like to propose a strategy that promises expeditious results. But first, an analysis of the situation at home and abroad will be necessary.

The comfort women issue is a political problem raised by forces (both domestic and foreign) with multiple, diverse agendas. If we were to describe it in Clausewitz's terms, we would call it the "continuation of politics by other means." For that very reason, the absence of bloodshed notwithstanding, the facts have been shoved aside. Instead, what we have is political power games that employ just about every known devious tactic, from cajoling and coercion to deception and trickery.

The comfort women issue is like a volcano. Serious eruptions occurred between 1991 and mid-1993. They seemed to subside after the Kono Statement (1993) and an infusion of "atonement money" by the Asian Women's Fund. But the dormant volcano spewed magma once again in 2000, when the Women's International War Crimes Tribunal, which pronounced Emperor Showa guilty, took place; and in 2005, a year marked by the mud-slinging contest between media giants NHK and *Asahi Shimbun* over the content of a television program covering the tribunal. The eruptions have continued intermittently since then.

The most recent one was H. Res. 121. The volcanic fumes began rising in California and Washington, D.C. several years ago. In fact, H. Res. 121 is the fifth (some say eighth) of its kind to see the light of day. All such resolutions had been rejected, but the one submitted in April 2006 (introduced by Rep. Lane Evans of Illinois) even passed the Committee on International Relations. However, Congress adjourned before it ever got to a plenary session. Rumor has it that lobbyists hired by the Japanese Embassy, alarmed when the resolution passed the House Committee on International Relations, deserve credit for the resolution's fate.

Rep. Mike Honda (a third-generation Japanese American), took up the cause after Rep. Evans retired. Honda submitted another resolution with essentially the same content to the House Committee on Foreign Relations on January 31, 2007. On February 15, the House Subcommittee on Asia, the Pacific, and the Global Environment held a hearing at which three former comfort women were present.

The Japanese Embassy must have smelled danger in Rep. Honda's enthusiasm. In a letter to the House of Representatives, Ambassador Kato Ryozo voiced his objections to the resolution. The letter states that Prime Minister Abe has affirmed that the Japanese government will stand by the Kono Statement, and asks congresspersons to acknowledge the numerous apologies made by Japan's prime ministers. Given its humble tone, which made it seem more like an entreaty than a protest, it had little effect. The ranks of supporters of the resolution swelled from an initial six congresspersons to 25 in late February, 42 (32 Democrats, 10 Republicans) in mid-March, and 77 as of April 3.

Some of the additional support can be attributed to the midterm election that took place last autumn, which resulted in the assignment of Democrat liberals and human rights activists as heads of the Committee on Foreign Affairs and its subcommittees. It is entirely possible that the resolution will pass this time. What sort of person is Mike Honda, its chief standard-bearer? What are his objectives? Due to his abrupt entrance onto the stage, I knew very little about him. I decided to embark on an Internet search. It seems that many others had the same idea, judging from the number of discussions I encountered among people wondering, “Who is Honda?”

What really stands out is the incongruity of it all: Why is this Japanese-American congressman spearheading an anti-Japanese campaign? Some of the explanations (really conjectures) broached in cyberspace are: “He’s just pretending to be Japanese American,” “I think he’s of Korean descent,” “He’s an ethnic Chinese from Vietnam” and “He’s a shadowy figure of unknown origin.” But I kept searching, confident that in a nation that more than any other champions the disclosure of information, there could be no congressman without a background. I found Honda’s own website, which tells us that he is indeed Japanese American. Biographical information and career history are provided in a section entitled “About Mike.”

Who is Mike Honda?

Honda was born in June 1941 in Walnut Grove, near San Francisco, California. His parents ran a grocery store there. When war broke out between Japan and the United States six months later, the family was shipped off to an internment camp in Colorado. His family returned to California in 1953, becoming strawberry sharecroppers in San Jose. Mike graduated from a local high school and San Jose State University, where he began preparations for a teaching career, earning a master’s degree in Education in 1974. He interrupted his undergraduate studies to serve in the Peace Corps for two years in El Salvador. Honda’s career in education included service as a school principal and school board member. In 1996, he was elected to the California State Assembly, where he was instrumental in getting the Hayden Act passed in 1999.

The Hayden Act is a California state law that enables anyone to sue a Japanese corporation doing business in the U.S. for “war crimes.” It is an evil law, whose passage resulted in litigation seeking −120 trillion (US $1 trillion) in damages. Legal battles were fought all the way up to the U.S. Supreme Court, which ruled the Hayden Act unconstitutional. The war crimes cited included the torture of prisoners of war, the alleged Nanking Massacre, and the enslavement of the comfort women. For Honda, elected to the House of Representatives in 2000, H. Res. 121 may very well represent goals that he has been yearning to achieve for some time.

Mike Honda may also have been influenced by the situation in his electoral district (the 15th congressional district of California), which embraces Silicon Valley and its hub, San Jose. Many of its residents are of Hispanic, Chinese, Korean or Vietnamese extraction. It has the highest concentration of Asians of any congressional district in the U.S. (29%).

Here it's important to consider the anti-Japanese psychology of Japanese Americans. An American scholar of European descent once asked me the following question: "Every Asian American gets angry when the nation of his forebears is insulted. Except for the Japanese Americans. They don't seem to mind at all; they even get involved in anti-Japanese activities. Why?"

I was at a loss for an answer, and simply dodged the question, saying, "There are plenty of Japanese in Japan who participate in such activities." But some scholars have noted that recently the Japanese-American identity is disappearing, swallowed up by the broader "Asian-American" category. And perhaps it is that category of voters that provides Rep. Honda with his support base.

Since Honda is a politician, a good many of his utterances are, of course, words he thinks people want to hear. For instance, on his website he mentions that the attainment of justice will be beneficial to Japan; that while the Asian community in California is growing, memories of the war are an obstacle to a true sense of unity within it; and that to foster a peaceful international community, his generation must achieve a reconciliation that resolves the problems of the past. But the message these words convey is that Honda is in fact bashing Japan to get his Asian-American voter base united behind him.

And his actions have not gone without notice, judging from the following citation from *Chosun Ilbo* (Korean Daily News), one of South Korea's leading dailies: "Extremely popular in China, [Honda] and his activities have won the support and cooperation of many Korean residents of the U.S."

One of the chief supporters of H. Res. 121, who has worked with Rep. Honda to move it forward is a Korean woman named Soh Ok-cha. Dr. Soh, president of the Washington, D.C.-based Washington Coalition for Comfort Women Issues, gave her support to 15 former comfort women who instituted suit in the Washington, D.C. District Court.

An examination of the records of the aforementioned February 15 hearing reveals that though the testimony of the three former comfort women may have been the highlight, Soh may have turned in the best performance of the day (her closing oration). It is my guess that she was the author of the resolution text (see below), given its content.

H. Res. 121

Whereas the "comfort women" system of forced military prostitution by the Government of Japan, considered unprecedented in its cruelty and magnitude, included gang rape, forced abortions, humiliation, and sexual violence resulting in mutilation, death, or eventual suicide in one of the largest cases of human trafficking in the 20th century;

Whereas some new textbooks used in Japanese schools seek to downplay the "comfort women" tragedy and other Japanese war crimes during World War II;

> Whereas Japanese public and private officials have recently expressed a desire to dilute or rescind the 1993 statement by Chief Cabinet Secretary Yohei Kono on the "comfort women", which expressed the Government's sincere apologies and remorse for their ordeal;
>
> (...)
>
> Now, therefore, be it
>
> Resolved, That it is the sense of the House of Representatives that the Government of Japan
>
> (1) should formally acknowledge, apologize, and accept historical responsibility in a clear and unequivocal manner for its Imperial Armed Force's coercion of young women into sexual slavery, known to the world as "comfort women", during its colonial and wartime occupation of Asia and the Pacific Islands from the 1930s through the duration of World War II;
>
> (2) should have this official apology given as a public statement presented by the Prime Minister of Japan in his official capacity;
>
> (3) should clearly and publicly refute any claims that the sexual enslavement and trafficking of the "comfort women" for the Japanese Imperial Armed Forces never occurred; and
>
> (4) should educate current and future generations about this horrible crime while following the recommendations of the international community with respect to the "comfort women".

Reading the text of the resolution, I felt the same nauseating sensation that comes over me whenever I hear state-owned North Korean television announcers snarl invective at Japan. Perhaps (2) is innuendo directed toward the Japanese Embassy because of its emphasis on apologies offered by past prime ministers. In any case, the authors of the resolution insist that the apology be "presented by the Prime Minister of Japan in his official capacity." However, even if such an apology were forthcoming, we can only expect such demands to escalate. Witness comments made by Eni Faleomavaega (delegate to the U.S. House of Representatives from American Samoa) to the effect that previous apologies made by the government of Japan are "not enough" and "the emperor could now go one step further and offer a more forceful apology for all crimes committed in his family's name" in an editorial in the *Los Angeles Times*.[1]

The language in (3) implies that the Japanese government is in the same revisionist category as the Holocaust deniers, and suggests that Japan follow the German example (in Germany it is legally possible to punish Holocaust deniers). Apparently those who wish to dilute the Kono Statement would also be punishable.

(4) seems to allude to the complaint about Japanese textbooks in the Preamble, and might be interpreted as meaning that mention of the comfort women in textbooks should be mandatory.

Lee Yong-soo's "disappearance"

In any case, the demands stated in H. Res. 121 make it the epitome of foreign interference in another nation's domestic affairs. The aforementioned Rep. Faleomavaega (Democrat), chairman of the Subcommittee on Asia, the Pacific, and the Global Environment, told *Akahata* reporter Kamazuka (with reference to Prime Minister Abe's having said that there is no evidence proving that the comfort women were coerced into prostitution by Japanese authorities) that he had read the Kono Statement carefully. He wondered whether Mr. Abe distrusted the research done by the Japanese government, which became the basis of the statement. Faleomavaega added that the meaning of the resolution could be found in the testimony of the former comfort women at the February 15 hearing.[2]

It would seem, then, that the Kono Statement and the testimony of the former comfort women at the hearing form the basis of H. Res. 121. Leaving the problems posed by the former aside for the moment, let us analyze the latter.

According to House records, the hearing took place on February 15, 2007 in Room 2172 of the Rayburn House Office Building, under the auspices of the Subcommittee on Asia, the Pacific, and the Global Environment. The theme was "Protecting the Human Rights of Comfort Women."

First came greetings from the Subcommittee chair, followed by Panel I, a speech by Rep. Honda. Panel II consisted of the testimony of former comfort women Lee Yong-soo, Kim Koon-ja and Jan Ruff O'Herne (a woman of Dutch extraction, now residing in Australia). Panel III consisted of statements from Mindy Kotler, director of Asia Policy Point, and Soh Ok-cha.

According to her statement, Ms. O'Herne was taken forcibly from a Japanese internment camp in Semarang, Java in 1944 by Japanese soldiers to a "comfort station." Two months later, she was freed when the brothel came to the attention of a high-ranking officer, who shut it down. In connection with this incident, 11 persons were tried after the war ended in a Dutch military court, and sentences were handed down (one person was executed). Therefore, legally at least, it was settled more than 60 years ago. Moreover, the very fact that the brothel in question was closed as soon as its existence came to light is proof that Japanese military authorities did not tolerate such unlawful behavior.

The other two witnesses are Korean women. Here we will focus on the testimony of Lee Yong-soo, who lives in Seoul at Nanum House, a home for former comfort women. Ms. Lee has visited Japan several times to tell her story. Here are some excerpts from her testimony at the hearing.

> I was born in 1928 in the Korean city of Taegu. My family was poor and nine of us lived in a single, small house: my parents, my grandmother, my five brothers, and myself. I only had one year of formal education and spent most of my childhood caring for my younger

brothers and doing household chores so my father and mother could work outside our home to support the family.

At the age of 13, I also began working in a factory and tried to return to school, but the heavy burden of work prevented me from focusing on my studies.

(...)

In the autumn of 1944, when I was *16 years old*, my friend, Kim Punsun, and I were collecting shellfish at the riverside when we noticed an elderly man and a Japanese man looking down at us form the hillside. The older man pointed at us with his finger, and the Japanese man started to walk towards us. The older man disappeared, and the Japanese beckoned to us to follow him. I was scared and ran away, not caring about what happened to my friend. A few days later, Punsun knocked on my window early in the morning, and whispered to me to follow her quietly. I tip-toed out of the house after her. I lift [sic] *without telling my mother.* I was wearing a dark skirt, a long cotton blouse buttoned up at the front and slippers on my feet. I followed my friend until we met the same man who had tried to approach us on the riverbank. He looked as if he was in his late thirties and he wore a sort of *People's Army uniform* with a combat cap. Altogether, there were five girls with him, including myself. [Italics supplied.]

(...)

The young women are then taken by train to Dalian via Pyongyang. Lee Yong-soo weeps and begs her captors to let her go home, but they refuse.

> We boarded a ship [at Dalian] and were told that a convoy of eleven boats would be sailing together. They were big ships. We were taken into the last one ... New Year's Day 1945 was spent on board. The ships stopped in Shanghai, and some of the sailors landed for a short break on shore.
>
> (...)

Her ship is hit by a bomb, but manages to keep going. Amid the chaos that ensues, Lee Yong-soo is *raped by a Japanese soldier.* This is her first sexual experience. The ship does not sink as many had feared it would, and eventually arrives in Taiwan.

> The man who had accompanied us from Taegu turned out to be the proprietor of the comfort station we were taken to [in Sinzhu]. We called him Oyaji.

The proprietor (who has a Japanese wife) often beats Lee Yong-soo, who is given the name Toshiko. She services four or five men a day, and eventually contracts a venereal disease. A suicide pilot (and client) befriends her.

> He gave me his photo and the toiletries he had been using. He had come to me twice before and said he had got venereal disease from me. He said he would take the disease to his grave as my present to him.

The war ends and Lee returns to Korea with three other young women. She can *never bring herself to tell her parents* where she has been or what she has been doing.

> I worked in a drinking house which also sold fishballs, and I ran a small shop on the beach in Ulsan. For some time I ran a small market stall selling string. Then I worked as a saleswoman for an insurance company.

Since Lee Yong-soo was brought to the hearing to testify, I was certain I was going to be reading a tale of relentless suffering. I was amazed to discover that her story is not one of unmitigated sorrow. But my genuine reaction was: this is a melodrama of the sort that a television network would pounce upon. Her testimony and that of the other former comfort women call to mind other heartwarming stories, which are not uncommon, like *Nomugi Pass*, a film about the trials and tribulations of a poor young girl working in a silk factory in the early 20th century (with a happy ending).

Former comfort woman Mun Ok-chu (now deceased) published her vicissitude-filled story. Active in Burma, she was known for her cleverness, sunny disposition and solicitude. She was immensely popular among the Japanese soldiers, from the rank-and-file soldiers to generals. In less than three years, she managed to save up ￥26,000,[3] and sent ￥5,000 home to her family. At that time, the average salary of a Japanese Army sergeant was ¥30 per month.

How about the other woman, Kim Koon-ja? According to her testimony, her foster father (a Korean police officer) told her to go out and earn some money at the age of 16. Kim met a Korean man who told her he had a good job for her. She was then taken away in a freight car. Ms. Kim was either deceived by a broker or told to go with him by the foster father (perhaps sold to him to pay off a loan). What is noteworthy is that no Japanese was involved in Kim's case.

Since there is no evidence of kidnapping by a government authority, we must assume that the young women were deceived by Koreans — their compatriots. The fact that no Japanese living on the Korean peninsula had sufficient command of the Korean language to deceive a Korean woman lends even more credence to this assumption.

I have read dozens of testimonies of former comfort women. Most of them are quite similar to those offered by Lee Yong-soo and Kim Koon-ja. However, perhaps because their support groups have emended the testimonies, one often encounters several different versions of the same woman's story. Someone may have realized that it would be inadvisable to have discrepancies in the portions of testimonies related to the circumstances of the kidnappings. For whatever reason, the subjects of sentences in descriptions of kidnappings in the section of the report issued by the Women's International War Crimes Tribunal entitled "Biographies of Participating Victims"(2000) have been removed. But there are several versions of the circumstances of Lee Yong-soo's kidnapping (see Table 1).

TABLE 1: DIFFERING VERSIONS OF LEE YONG-SOO'S ACCOUNT OF HER KIDNAPPING

	Date of testimony	Circumstances of kidnapping
(1) Report submitted to Korean Council for Women Drafted for Sexual Slavery by Japan[4]	1992	Delighted to receive a red dress and leather shoes from a man wearing clothing resembling a uniform. Went along with him right away (otherwise, same as (6)).
(2) Women's International War Crimes Tribunal on Japan's Military Sexual Slavery	December 2000	Deceived by Japanese man (comfort station proprietor)
(3) *Akahata* article	26 June 2002	Kidnapped at bayonet point at the age of 14.
(4) Speech at Kyoto University	12 April 2004	Kidnapped by a man wearing clothing resembling a People's Army uniform.
(5) Koshigaya (Saitama Prefecture) community meeting	08 March 2005	Kidnapped by a man wearing clothing resembling a military uniform and brandishing a rifle.
(6) Hearing at U.S. House of Representatives	15 February 2007	(See excerpt.)
(7) *Japan Times* article[5]	22 February 2007	"On an evening in 1944, Japanese soldiers forced their way into 14-year-old Lee's home and dragged her out by the neck."
(8) FCCJ (Foreign Correspondents' Club of Japan)[6]	02 March 2007	A soldier and a woman entered her house between 2:00 and 3:00 a.m. on a bright moonlit night. [The soldier] pointed a sword at her, covered her mouth and removed her from her house. The three later met up with another soldier accompanied by three women; Lee was then put on a train.
(9) *New York Times* article[7]	06 March 2007	"Japanese soldiers had dragged her from her home, covering her mouth so she could not call to her mother."

I will leave discrepancies in the name of the man who kidnapped her, the clothes he was wearing, and her age at the time aside for now. We must still determine whether she left her home voluntarily ((1) and (6)), or was kidnapped. In any case, she was deceived. If I were asked which of these diametrically opposite circumstances is closer to the truth, I would be inclined to answer that she left home voluntarily. The circumstances in (6) are substantially the same as those in (1) (testimony given shortly after Lee began telling her story), with the exception that the reference to the red dress and leather shoes is missing.

There are two reasons for my conviction that Lee said she was kidnapped to make her story more appealing to support groups and the media: (1) there are too many inconsistencies, and (2) the stories she tells only six days after a hearing at the Upper House of Japan's Diet, and again two weeks later at the FCCJ, are diametrically opposite on that point.

Was she coerced into adjusting her testimony? It is more likely that when she met with members of Japan's Upper House who are attempting to pass legislation relating to the comfort women (Fukushima Mizuho, Okazaki Tomiko, Tsuchiya Koken, Madoka Yoriko and others), she changed her story so they wouldn't lose face.

This former comfort woman seems to believe that the Japanese government denies the very existence of comfort women and comfort stations. Therefore, she perceives their mission to be serving as a living witness, and doesn't much care whether her omission of her captors' names or tales of being raped on a sinking ship make her accounts less credible.

There are apparently 114 surviving comfort women in South Korea alone. Therefore, I find it impossible to understand why Rep. Honda and the other congresspersons attempting to pass H. Res. 121 have chosen women who do not fit into the category of "sex slaves" to testify at their hearing. Moreover, by choosing these women, they court the risk of objections from those who claim the comfort stations were no different from the brothels established for the U.S. military during the Korean and Vietnam wars.

Preconceived notions resembling religious fervor are terrifying. The number of people who believe that Lee and Kim were kidnapped is probably astronomical. Even J. Thomas Schieffer, U.S. ambassador to Japan, referred to them as "credible witnesses" in a *New York Times* article.[8]

Learning from Susan Brownmiller

Let us now turn our attention to sexual activity in battle zones where forces other than Japanese troops fought. For details, I refer readers to my book *The Comfort Women and Sex in the Battle Zone*.[9] Here I will focus on the sexual behavior of American military personnel during the U.S. occupation of Japan, and during the Korean and Vietnam wars.

There is no dearth of reference material describing the American military's use of Japanese

women as comfort women during the Occupation: *Gifts from the Vanquished* by Masayo Duus,[10] *Comfort Stations of the Occupation Forces* by Inoue Setsuko,[11] and police records kept by every prefecture in Japan, to name just a few sources. Suffice it to say that the RAA (Recreation and Amusement Association), under whose auspices prostitution facilities intended to protect young women from good families from rape were established, was organized (by the Home Ministry) only three days after the Pacific War ended. The association's Japanese name, which translates as "Special Comfort Facility Association," is less euphemistic.

The first RAA brothel opened on August 27, 1945 in Komachien, Omori, Tokyo. More than 1,000 Japanese women responded to advertisements in *Asahi Shimbun* and other newspapers that read as follows: "Urgent notice: Seeking special female workers, good pay; clothing, food and housing provided; salary advances possible." At first the women were required to service a minimum of 15 to a maximum of 60 American GIs per day. But when applications reached a peak (70,000 women), quotas were reduced. The women considered most successful rose to "only" status, meaning that they serviced only one GI.

The RAA brothels notwithstanding, rapes of Japanese women by American troops were interminable. But Japanese newspapers, forbidden to print anything about crimes committed by GIs, vented their frustration with descriptions like "the perpetrator was a tall man."

When the Korean War broke out in 1950, the bulk of the troops stationed in Japan were mobilized to the Korean peninsula. Three years later, there was a ceasefire. But ever since then, American troops have been stationed in South Korea, and the South Korean government has been obliging them with prostitutes who congregate near American bases. The women are compelled to undergo medical checks and must carry a card that states they are free of venereal disease. Some of the American commanders in chief have curbed prostitution, but in at least one case, a mutual aid society (an union-like organization formed by the prostitutes) went on strike, forcing the U.S. military to back down.

According to South Korean government reports, there were 330,000 prostitutes in that nation in 2002. Income from prostitution totaled US $20 billion, or 4.1% of GDP.[12] The contribution of the U.S. military to this still flourishing "industry" has certainly not been a trivial one.

The South Korean military has its own prostitutes, of course. Women's studies scholar Kim Ki-ok presented a report at an international symposium held at Ritsumeikan University (Kyoto) in February 2002. According to Yamashita Eiai, a member of the university's faculty, Kim's report had a considerable impact on Japanese feminists involved with the comfort women problem.[13]

In 1996, Kim tracked down houses of prostitution operated by the South Korean military. However, she did not disclose her discovery at that time, fearing exploitation by Japanese rightists. Her report states that according to *History of the Korean War behind the Front Line*, compiled by South Korean Army Headquarters in 1956, military units were provided with stationary brothels that housed special prostitutes, who were referred to as "Type 5 supplies."

Until March 1954, 89 comfort women worked in four of these brothels, servicing 245,160 soldiers per year.

Other Koreans have written exposés of South Korea. Yi Myong-suk pointed out that Korean soldiers, who were so fearless during the Vietnam War, earned an unenviable reputation in Vietnam as murderers of Vietnamese civilians and procurers of women. South Korea has yet to atone for its sins in Vietnam.[14] Dealing with the 5,000-30,000 (depending on which report one reads) half-Korean, half-Vietnamese children left behind by its soldiers, has reportedly been a major headache for the South Korean government.

But the major players in the Vietnam War were the American troops. Sexual services offered by Vietnamese women were immensely popular in Saigon (today Ho Chi Minh City). Only the rare American account of the war or U.S. newspaper article offers anything but superficial coverage of this topic.

Fortunately for us, in her book *Against Our Will*, Susan Brownmiller describes what she learned in an interview with journalist Peter Arnett (winner of a Pulitzer Prize) about a brothel used by the 1st Division, 3rd Brigade, stationed in Lai Khe, Vietnam.

By 1966, official military brothels had been established within each division's camp. Each one was a two-building "recreation area" where 60 Vietnamese women lived and worked. The prostitutes decorated their cubicles with nude photographs from *Playboy* magazine and had silicone injected into their breasts to make the American soldiers feel more at home. Sex in the brothels was "quick, straight and routine." The women serviced eight to 10 men per day at 500 piastres (about US $2.00) a trick. They received 200 piastres, the remainder going into the proprietors' coffers.

The women were recruited by province chiefs. Some of the money found its way to the mayor of Lai Khe. This system made it possible for the Americans to receive sex services at what they called "Disneylands" without dirtying their hands in the business aspect of the enterprise. Brigade commanders supervised the brothels; both Army Chief of Staff Gen. William C. Westmoreland and the Pentagon gave tacit approval to them.

The prostitutes underwent weekly medical examinations by Army medics. Signs hung in front of the brothels claiming they were safe, but according to 1969 statistics, 200 of every 1,000 soldiers contracted venereal disease.[15]

The information in *Against Our Will* is important because its descriptions of the brothels in Vietnam mirror those patronized by Japanese soldiers. Therefore, reading it is more likely to convince the American congresspersons that they are wrong better than anything I could write. However, the women who serviced Japanese military personnel were better paid (by more than 50%). And silicone injections were not available to them. Toward the end of the Vietnam War, there were 300,000-500,000 prostitutes, according to Cynthia Enloe.[16]

It occurred to me that having compared the various sources, it might be useful to distribute a few pages from Brownmiller's book to the supporters of H. Res. 121. Then we can question Mike Honda and his colleagues about the wisdom of their resolution and ask them to withdraw it. Or we could have them replace "the Japanese government" with the "Japanese and U.S. governments."

Yes, I'm aware that my plan doesn't stand much chance of success. But this is not about success or failure. I will be happy if it serves only to break postwar Japanese of the habit, acquired over decades, of apologizing or shrugging when criticized, and instills in them the nerve to issue a rejoinder to an unjust accusation.

Revising the Kono Statement

Efforts made to combat Honda and his cronies will provide little more than symptomatic relief. For the long term, we will need to retract or revise the Kono statement. Movements to do just that have been active since soon after the statement was issued. Recently, the Subcommittee on the Comfort Women Problem of the Diet Representatives' Association for the Consideration of Japan's Future and History Education (chairman, Nakayama Nariaki), a group of conservative LDP (Liberal Democratic Party) legislators, began reexamining the Kono Statement at the request of the Prime Minister's Office. By March 1 they had formulated a plan. But there was so much contention between the proactive and passive factions in the committee that its members were able to do no more than promise Prime Minister Abe on March 8 that they would continue their research and analysis.

A promise is a promise. However, committee members have not been given access to records of interviews with 16 former comfort women conducted by a government investigative team (appointed by the Cabinet Councillors' Office on External Affairs). We can certainly empathize with the anger of one member, who commented that "they sent us up to the second floor, then took the ladder away."

But judging from Mr. Abe's vacillation, observed from the very moment he took office, the subcommittee may have been given an impossible assignment. Suppose we review what the prime minister and his aides have said about the Kono Statement: On October 5, 2006, at a Lower House Budget Committee meeting, Abe said the following to Kan Naoto, acting president of the Democratic Party of Japan: "The government, and I include myself, stands by [the Kono Statement]. (...) This will not change during my administration." When Kan pressed Abe, asking him, "In 1997, didn't you respond to a question by saying you were having second thoughts about the Kono Statement?" Abe replied, "the debate has shifted from whether there was coercion in the strict sense (we don't believe there was) to whether there was coercion in the broader sense." Most of the newspapers didn't print this part of Abe's reply, perhaps because it was unclear, carrying only the first part about standing by the statement.

On October 27, at a meeting of the Diet Foreign Affairs Committee, Shimomura Hakubun

(deputy chief Cabinet secretary) reiterated the gist of Abe's comments, adding, "The Kono Statement was issued in accordance with a Cabinet decision." The prime minister confirmed this, making it clear that amending the statement would not be a simple matter. The Kono Statement was not, in fact, backed by a Cabinet decision. However, the belief that it was and the weight of Kono's position (speaker of the Lower House) may have caused Abe to waver.

The debate heated up once again when H. Res. 121 came to the fore in mid-February of this year. At a Budget Committee meeting on February 19, Rep. Inada Tomomi (LDP) asked whether the administration intended to retract the Kono Statement. Shiozaki Yasuhisa, chief Cabinet secretary, responded, "the government's position is that we will stand by the Kono Statement."[17]

The prime minister did not mention standing by the Kono Statement at a press conference on March 1. What he did say was that "there is no evidence to prove there was coercion," and that further discussions should be premised on a change in the definition of "coercion" from the narrow sense to the broad sense.

The reaction from the *New York Times*, the *Washington Post* and most other leading American newspapers was swift. Their March 2 editions reported that Abe had categorically rejected the Kono Statement, and labeled him an ultranationalist and revisionist. *Sankei Shimbun*'s analysis of the situation was: "[The prime minister] is worried about the Kono Statement's being used as an excuse for an anti-Japanese campaign. He seems to feel that work on revising the statement should begin." Therefore, it is not surprising that the foreign press misunderstood Abe. Apparently, his obfuscation strategy is coming back to haunt him.

Perhaps the prime minister panicked in the face of the harsh international reaction. But in any case, when questioned in the Diet on March 6, he said, "Basically, we will stand by the Kono Statement." But perhaps because he was attempting to clarify the difference between "coercion in the strict sense" and "coercion in the broad sense," he cited examples: "Coercion in the strict sense means that Japanese military authorities broke into their homes and took them away. Coercion in the broad sense means that brokers (middlemen) deceived or sometimes threatened the women." His attempt to clarify backfired.

I myself was not sure what Mr. Abe really meant to say, but I was afraid that his remarks would invite misunderstanding or perversion. And sure enough, a look at the resulting commentary in the press told me that my fears had been realized.

Mainichi Shimbun came out with the following: "By setting distinctions between two meanings of coercion (the strict sense and the broad sense) as the word is used to refer to the comfort women, [the prime minister] has opted for a strategy of maintaining consistency between his recent remarks and those made in the past. However, the nuances of his speech were lost on the foreign press. By being vague, he created the impression that he was denying *any* connection between Japanese military personnel and the comfort women."[18]

And in a *Newsweek* article, MIT Prof. Richard J. Samuels wrote that Prime Minister Abe's

handling of the comfort women problem seems incomprehensible to Americans. If the Japanese believe that the Kono Statement is based on a mistaken perception of history, why don't they officially retract it? They cannot expect Americans to understand when the Japanese government attempts to explain the strict sense and the broader sense of the word "coercion."[19]

Since they know that whatever they say will come under attack, why do our government officials resort to abstruse semantics? Wouldn't a better media strategy be to simply say that no Japanese authorities ever coerced women into prostitution? Most ironic is the fact that Abe's semantic dichotomy has made bedfellows of Kono Yohei (whom Mike Honda described as having "issued an encouraging statement regarding Japan's comfort women,"[20] and *Asahi Shimbun* praised for his gracious attitude) and Yoshimi Yoshiaki (a Chuo University professor whose claim to fame is having dropped a bombshell in 1991, claiming that the military had been involved in recruiting comfort women).

By way of explanation, according to *Asahi Shimbun*, in a 1997 interview, Kono Yohei said there were no documents showing the government took measures to recruit the women with violence. But it was clear there were numerous cases of coercion [here in the broader sense], defined as their being recruited against their will.[21] It is safe to assume that Kono had already completed his own revision of the statement.

Yoshimi started out as a supporter of the recruitment-by-coercion theory. However, by the mid-1990s, he had made the transition to the coercion-in-the-broader-sense argument, declaring that the comfort women's freedom was restricted in the brothels.

If one gives any thought to the coercion-in-the-broader-sense argument, one comes to the realization that it is totally futile. Suppose we categorize young women whose parents sold them to brokers as victims of coercion. Aren't professional baseball players who are paid advances and then traded to another team whether they like it or not also victims of coercion?

To avoid muddying the waters further, I will now proceed to present my suggestions for the modification of the Kono Statement. I will limit myself to altering, from a pragmatic perspective, the portion that involves coercion in the strict sense. Other portions of the statement need revision as well, but I will not address them at this time.

Here is that portion of the statement that I wish to revise as it stands now.

> The then Japanese military was, directly or indirectly, involved in the establishment and management of the comfort stations and the transfer of comfort women. The recruitment of the comfort women was conducted mainly by private recruiters *who acted in response to the request of the military.* The Government study has revealed that in many cases they were recruited against their own will, through coaxing, *coercion*, etc., and that, at times, administrative/military personnel *directly took part in the recruitments*.[22] [Italics supplied.]

First, I would excise *who acted in response to the request of the military*. Then I would change

coercion to *intimidation*. Finally, I would replace *directly took part in the recruitments* with *failed to exercise proper control over the recruitments*. I wish to excise *who acted in response to the request of the military* because the relationship between the military and the brokers should be construed not as one-way, but reciprocal, like all business relationships.

Take the newspaper advertisements reproduced as per attached Figure 1, for instance. We can be sure that the recruiters in both cases were private individuals or businesses, and that the place of employment referred to was military comfort stations. But we cannot assume that the advertisements were placed *in response to the request of the military*. Even if they were, it is highly unlikely that the military would have covered salary advances. One could speculate that salary advances were sales pitches invented by the brokers, but speculation is, after all, pointless.

What surprised me is that such advertisements even appeared in the *Keijo Nippo*, a newspaper on a par with the *Washington Post*, and the largest Korean daily during that era. Once they did, however, the advertisers probably needed to do little more but sit and wait, since many young women must have been tempted by wages three times the starting salaries commanded by graduates of Keijo Imperial University. And what better evidence is there for the case against coercion than these advertisements, which prove that there was no need to resort to risky tactics like kidnapping?

My reason for changing *coercion* to *intimidation* is this: brokers (recruiters) may have told the young women they were obligated to go with them because their parents had received advance payment, which they would have to work off. In that case, *intimidation* is the appropriate word.

The phrase *directly took part in the recruitments* is, of course, at the crux of the debate on the comfort women problem. Countless scholars and journalists spent more than a decade frantically searching for evidence that military authorities were indeed directly involved in the procurement of comfort women. They did not find a shred of proof that would justify the admission that military authorities *directly took part in the recruitments*. Therefore, we should state, and assertively so, that Japanese military authorities were not directly involved in the procurement of comfort women. But since I anticipate vehement protests against the removal of this phrase, I have suggested replacing it with *neglected to exercise proper control over the recruitments*. An appropriate analogy would be blaming the police for not preventing every single crime.

On March 16 and 17, Japan's dailies reported that the government would stand by the Kono Statement, but that the Statement would not be reclassified as a Cabinet decision. They cited a Cabinet statement delivered on March 16: "The government found no evidence in documents examined prior to the issuance of the [Kono] Statement that proves there was coercive recruitment by any military or government authority."[23]

I am presuming that this is the Japanese government's final position statement on the comfort women issue. Unfortunately, it is rife with the usual circumlocutions, and therefore unlikely to put this issue to rest. Perhaps the administration has decided that nothing can be done to stop H. Res. 121, and is simply attempting to delay its passage until after Prime Minister Abe's visit to

the U.S. in late April.

In any case, what needs to be done, and without delay, is the following: Disseminate all convincing data concerning basic facts that have been misrepresented or misunderstood. Need I add that said data should be translated into English?

Foreign historians and legal scholars have an abysmally poor grasp of the facts relating to the comfort women issue. For instance, George Washington University Professor Dinah L. Shelton, wrote the following in the *Los Angeles Times*: "[M]ost historians estimate the number [of comfort women] at between 100,000 and 200,000. Most were Korean and Chinese, though they also included other Asians and Europeans from Japanese-occupied areas. Many were kidnapped and raped, others were tricked or defrauded; some were sold by their families."[24]

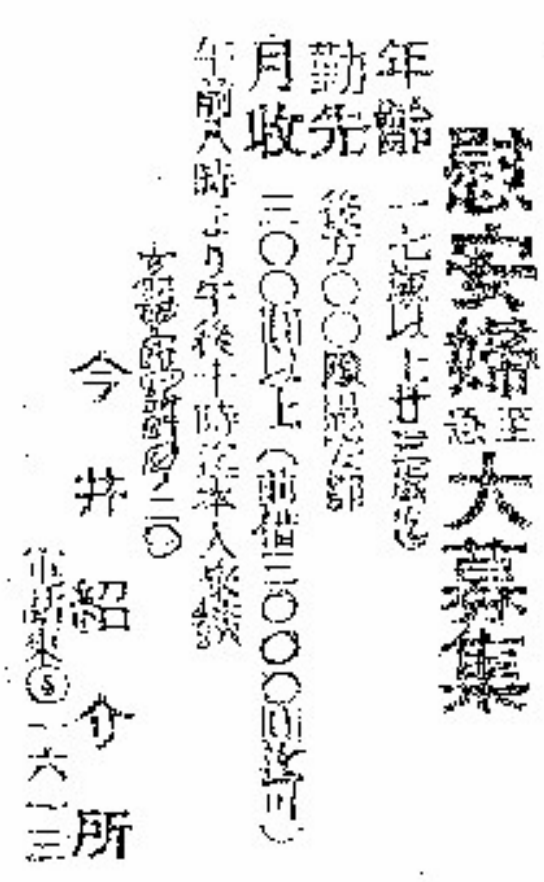
I would revise Shelton's error-riddled pronouncements as follows: "There were at most 20,000 comfort women. None of them was forcibly recruited. Forty percent of them were from Japan, the most heavily represented nation. Many were sold to brokers by their parents. Some responded willingly to brokers' offers; others were deceived." I would add that, on the average, living conditions in the comfort stations were practically identical to those in brothels set up for American troops during the Vietnam War.[25]

In closing, I encourage human rights activists in Japan and all over the world to invest their energy in the eradication of *contemporary* sex crimes. According to the *China Daily*, over a six-month period, more than 110,000 victims of kidnapping or human trafficking (most of them forced into prostitution) were rescued in China alone.[26]

Addendum

On April 3, 2007, the U.S. Congressional Research Service published a 23-page memorandum entitled "Japanese Military's 'Comfort Women' System." The author is Larry Niksch, who writes on p. 21 that "[t]he military may not have directly carried out the majority of recruitment, especially in Korea.

FIGURE 1



URGENT RECRUITMENT DRIVE FOR COMFORT WOMEN

Age requirements: Must be between the ages of 17 and 20

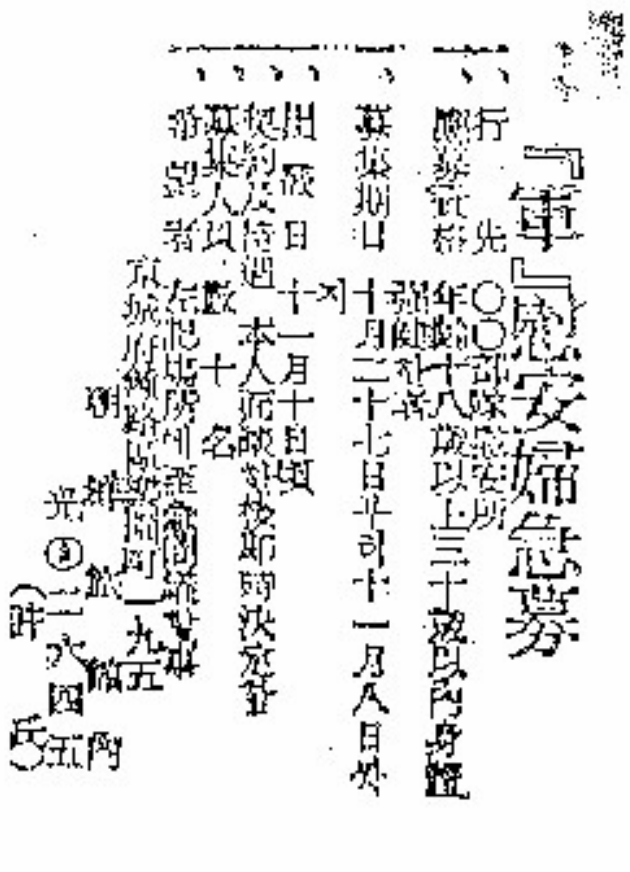
Place of employment: Behind-the-lines comfort station attached to military unit YY.

Monthly pay: ¥300 (may authorize advance pay of up to ¥3,000)

Working hours: 8:00 a.m. - 10:00 p.m., subject to consultation

Apply to: Imai Agency
4-20 Shin-machi, Keijo City
Telephone: East (3) 1613

Advertisement in *Keijo Nippo* (or Seoul Daily, a Japanese-language newspaper published in Keijyo, the colonial capital of Korea), 26 July 1944 edition.



URGENTLY SEEKING MILITARY COMFORT WOMEN

1. Place of employment: Comfort station attached to military unit XX.
2. Qualifications: Must be between the ages of 18 and 30, and in good health
3. Application dates: October 27 - November 8
4. Estimated departure date: November 10
5. Contract and working conditions: To be determined at interview
6. Number of persons to be hired: 40-50
7. Interested parties are to inquire immediately at location listed below:

Apply to: Chosen Inn
195 Paradise Street, Sinmo
Keijo City
Telephone: Hikari (3) 2645
(Ask for Mr. Ho.)

Advertisement in *Mainichi Shinpo* (Japanese and Korean-language newspaper published in Korea), 27 October 1944 edition.

1. *Los Angeles Times*, 07 March 2007.
2. *Akahata* (Red Flag), 09 March 2007.
3. Savings records kept by the Shimonoseki Post Office confirm this figure.
4. Akashi Shoten, ed., *Shogen: kyosei renko sareta Chosenjin gun ianfutachi* (Testimonies of forcibly recruited Korean comfort women) (Tokyo: Akashi Shoten, 1993), pp. 131-143.
5. Testimony given at House of Councillors' Building on February 21, 2007.
6 Lee's testimony and a taped question-and-answer session.
7. Based on testimony given by Lee at the U.S. House of Representatives on February 15, 2007.
8. *New York Times*, 16 March 2007.
9. Hata Ikuhiko, *Ianfu to senjo no sei* (The comfort women and sex in the battle zone) (Tokyo: Shinchosha, 1999).
10. Masayo Duus, *Haisha no okurimono* (Gifts from the vanquished) (Tokyo: Kodansha, 1995).
11. Inoue Setsuko, *Senryogun ianjo* (Comfort stations of the Occupation forces) (Tokyo: Shinhyoron, 1995.
12. *Tokyo Shimbun*, 07 February 2003.
13. *Shukan Kinyobi* (Friday weekly magazine), 09 August 2002.
14. *Sekai*, April 1997.
15. Susan Brownmiller, *Against Our Will: Men, Women and Rape* (New York: Simon & Schuster, 1975), pp. 94-95.
16. Cynthia Enloe, Does Khaki Become You? The Militarization of Women's Lives (London: Pluto Press, 1983), pp. 33-34.
17. *Sankei Shimbun*, February 20, 2007 edition.
18. *Mainichi Shimbun*, 06 March 2007.
19. *Newsweek Japan*, 21 March 2007.
20. Mike Honda, "Rep. Honda Statement for the Congressional Record Regarding Comfort Women Resolution": 31 January 2007
<http://www.house.gov/apps/list/press/ca15_honda/COMFORTWOMEN.html>.
21. *Asahi Shimbun*, 05 March 2007.
22. "Statement by the Chief Cabinet Secretary Yohei Kono on the result of the study on the issue of 'comfort women,'" August 4, 1993, http://www.mofa.go.jp/policy/women/fund/state9308.html.
23. *Asahi Shimbun*, 31 March 1997 and 16 March 2007, evening edition.
24. *Los Angeles Times*, 06 March 2007 (reprinted in the *Japan Times*, 11 March 2007 edition).
25 Hata, *op. cit.*, Chapter 12; "The Flawed U.N. Report on Comfort Women" in *Japan Echo*, Autumn 1996, p.p. 66-72.
26. *China Daily*, 16 September 2000.

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