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The Denaturalization and Deportation of Nazi Criminals: Is It Constitutional

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The Denaturalization and Deportation of Nazi Criminals: Is It Constitutional?

I. INTRODUCTION

On June 22, 1941, Adolf Hitler launched an invasion of the Soviet Union. Under the plan for this attack, known as Operation Barbarossa, Russia was to become an eastern annex of the German Reich, helping to consolidate Hitler’s plan of a master Aryan race. Consequently, Operation Barbarossa had two objectives, the military conquest of the Soviet Union and the extermination of Soviet Jews. The group whose responsibility it was to effectuate the elimination of the Jews in Russia were mobile killing units of SS troops called Einsatzgruppen.

In carrying out Operation Barbarossa, Hitler and his army set out to conquer the Baltic countries of Latvia, Lithuania, and Estonia. In Latvia, the Einsatzgruppen formed the locals into the Arjs Kommando whose only purpose was to kill all the Jews of Latvia. In 1942, an Einsatzgruppe A report to Berlin stated, "The number of Jews in Latvia in 1935 was 93,479—4.79 percent of the entire population. At the present time there are only a few Jews in the ghettos who are doing specialized work. Aside from these Jews, Latvia has become free of Jews in the meantime." In Lithuania, the locals killed 500 Jews a day. In January, 1942, another Einsatzgruppe report stated, "In Lithuania, the country and the smaller towns

2. Id. at 9.
3. Id. In regards to the military conquest of the Soviet Union, the Baltic capitals of Riga and Kaunas fell to the Nazis within ten days of the German invasion. The Nazi troops then advanced to the Ukraine, reaching Kiev just twenty days after they entered Russia. Finally, by the end of that summer, the Nazis had cut off Leningrad and moved forward to conquer Moscow. Id.
4. Id.
5. Id. at 11.
6. Id.
7. Id. (quoting Document 3943-PS, IMT, June 17, 1942).
8. Id. at 11.
[had] been completely purged of Jews." While in Estonia, the Einsatzgruppen enlisted the help of the local auxiliary to eliminate the Jews. One report in 1942 stated, "[t]oday there are no more Jews in Estonia."

Perhaps the most pro-German group in the Soviet Union were the Ukrainians. The people of the Ukraine were a nationalistic people who did not like being ruled by the Soviets and they saw the Nazis as their liberators from communism. Moreover, many Ukrainians were "Volksdeutsche", descendents of seventeenth century German settlers. They were proud of their German culture and considered the Nazis as their kinsmen. Due to these circumstances, many Ukrainians assisted the Nazis in killing the Jews by forming auxiliary police that led the Einsatzgruppen to the Jewish quarters. The number of Jews massacred in the Ukraine made it the biggest action of its kind to take place in the Soviet Union.

By 1944, one million Jews had been killed in Latvia, Lithuania, Estonia, and the Ukraine by the Nazis and their Baltic and Ukrainian collaborators. Also in that year, the Soviet Army began to push Hitler's troops back to Germany. Thousands of Balts and Ukrainians fled to Germany. When Germany fell to the Allies, these people became refugees or "displaced persons" (DPs) along with the millions of others with whom the Allied forces had to deal. The Allies set up displaced person camps in Europe to handle the influx of refugees.

9. Id. at 12 (quoting Document 3876-PS, January 1-31, 1942). The Germans were so impressed that they sent a battalion of Lithuanians to neighboring Byelorussia to continue the job of killing the Jewish population. Id.
10. Id.
11. Id.
12. Id. at 9.
13. See id.
14. Id.
15. Id.
16. Id.
17. Id. at 10. Not all of the Ukrainians were pro-Nazi. Many of the people disliked the Nazis as much as they disliked the Communists. For the Jews in the Ukraine, however, this really did not matter because there were enough pro-Nazi Ukrainians to assist the Einsatzgruppen eliminate the Jews. Id. at 9.
18. Id. at 10.
19. Id. at 12.
20. Id.
21. Id.
22. Id. Among those in the DP camps were Eastern Europeans who were workers in Germany during the war; those whose property was destroyed during the war; and Jews who had either hid from the Nazis or survived the concentration camps. Id. at 8.
23. Id. at 12-13.
Eventually, the problem of the DPs became so grave that the Allies, including the United States, had to expand their immigration quotas in order to give them a place to live.\textsuperscript{24}

The Allies also signed treaties promising to deliver Nazi war criminals for punishment.\textsuperscript{25} In the spirit of these agreements, United States immigration law excluded the entry of war criminals into the United States as displaced persons.\textsuperscript{26} Despite this safeguard, a surprising number of war criminals successfully immigrated into this country, and lead peaceful lives as model citizens.\textsuperscript{27} Although the government was aware that these alleged war criminals entered the United States as displaced persons, the Immigration and Naturalization Service (INS) did little to find and bring them to justice.\textsuperscript{28}

In response to Congressional pressure, however, the Attorney General established an Office of Special Investigation (OSI), a unit in the Criminal Division of the Department of Justice, to take over the investigation of suspected war criminals from the INS.\textsuperscript{29} The OSI has the responsibility of investigating these suspected war criminals in order to eventually bring denaturalization and deportation proceedings against them.\textsuperscript{30}

This Comment will address the constitutionality of the denaturalization and deportation of suspected Nazi war criminals residing in the United States. It will address whether the denaturalization and deportation proceedings instituted against alleged Nazi war criminals who became United States citizens violate their constitutional rights protected by prohibitions against bills of attainder and ex post facto laws, and the sixth, seventh, and fifth amendments.

\section*{II. Historical Background}

\begin{subsubsection}{A. Post War Agreements}

One of the first post war agreements signed by the Allies to deal

\begin{itemize}
\item \textsuperscript{24} Id. at 12-15. Before the United States enacted the Displaced Persons Act, discussed in Part II B infra, the quota for Eastern Europeans allowed to enter the United States was 13,000 people. This was fewer than two percent of those living in the DP camps. Id. at 15.
\item \textsuperscript{25} Comment, Denaturalization of Nazi War Criminals: Is There Sufficient Justice For Those Who Would Not Dispense Justice?, 40 MD. L. REV. 39, 40 (1981) [hereinafter Denaturalization of Nazi War Criminals].
\item \textsuperscript{26} Id. at 40-41.
\item \textsuperscript{27} Id. at 41-42.
\item \textsuperscript{28} Gelfand, Nazi War Criminals in the United States: It's Never Too Late For Justice, 19 VAND. J. TRANSNAT'L. L. 855, 864-65 (1986) [hereinafter Gelfand].
\item \textsuperscript{29} Id. at 871.
\item \textsuperscript{30} See generally, Gelfand, supra note 28, at 871.
\end{itemize}
with Nazi war criminals was the Moscow Declaration.\textsuperscript{31} The Moscow Declaration provided that minor war criminals be returned to the states where they committed their crimes in order to be judged by that state’s municipal laws.\textsuperscript{32} Yet the fate of major war criminals, whose offenses had no particular geographic location, would be decided at a later date.\textsuperscript{33}

The Allies determined the disposition of these major war criminals in the London Agreement.\textsuperscript{34} This treaty established the International Military Tribunal (Tribunal)\textsuperscript{35} whose responsibility it was to justly and promptly punish the major war criminals of Europe.\textsuperscript{36} The charter gave the Tribunal power to adjudicate crimes against peace, war crimes, and crimes against humanity.\textsuperscript{37} Moreover, the jurisdiction of the Tribunal was extended to the trial of major war criminals whose crimes had no specific geographic location.\textsuperscript{38}

\begin{itemize}
\item 32. \textit{Id}.
\item 33. \textit{Id}.
\item 35. \textit{Id}.
\item 37. \textit{Id}.
\end{itemize}

These crimes are defined as:

\begin{itemize}
\item **CRIMES AGAINST PEACE:** namely, planning, preparation, initiation or waging of a war of aggression, or a war in violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing;
\item **WAR CRIMES:** namely, violations of the laws or customs of war. Such violations shall include, but not be limited to, murder, ill-treatment or deportation to slave labor or any other purpose of civilian labor of or in occupied territory, murder or ill-treatment of prisoners of war or persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns or villages, or devastation not justified by military necessity;
\item **CRIMES AGAINST HUMANITY:** namely, murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war; [footnote omitted] or persecutions on political, racial or religious grounds in the execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated. \textit{Id}.
\end{itemize}

These are generally recognized as the contemporary meanings of these crimes. Moeller, \textit{United States Treatment of Alleged Nazi War Criminals: International Law, Immigration Law, and the Need For International Cooperation}, 25 VA. J. INT’L L. 793, 798 (1985) [hereinafter Moeller].

38. London Agreement, \textit{supra} note 34, art. 1.
The London Agreement provisions were implemented at the Nuremberg trials of 1945, where the Tribunal tried twenty-two suspected war criminals over ten months. These trials resulted in nineteen convictions; twelve received a death sentence, three received life in prison, and four received periods of imprisonment ranging from ten to twenty years. However, despite the Nuremberg trials, the Allies' commitment to the just punishment of these criminals was not successful. Many of the convicted war criminals did not serve full sentences. Moreover, the majority of Nazi war criminals completely avoided prosecution, some by entering the United States under the Displaced Persons Act (DPA).

B. Displaced Persons Act—The Entry of Nazi War Criminals Into the United States

The DPA adopted the definition of "displaced person" given in the Constitution of the International Refugee Organization (IRO). The Constitution defined a displaced person as one who, because of the actions of the Nazi powers, and others defined in the Constitution, "has been deported from, or has been obliged to leave his country of nationality or of former habitual residence, such as persons who were compelled to undertake forced labour or who were deported for racial, religious or political reasons."

Under section 2(b) of the DPA, a displaced person was specified as an individual defined under the IRO Constitution as a concern of that organization. The DPA allowed, with some conditions, the ad-

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40. Id.
41. Id. at 860.
42. Id.
43. A. Ryan, supra note 1, at 26.
46. IRO Constitution, supra note 45, Annex I, pt. I, § B.
47. DPA § 2(b). The IRO excluded the following people, among others, from its concern who consequently were not considered as displaced persons under the DPA: "a. [Persons shown] to have assisted the enemy in persecuting civil populations of countries, Members of the United Nations; b. [Persons shown] to have voluntarily assisted the enemy forces since the outbreak of the second world war in their operations against the United Nations [footnote omitted]." IRO Constitution, supra note 45, Annex I, pt. II.
mission into the United States of certain displaced persons without regard to immigration quotas, for a period of two years.\textsuperscript{48} There were, however, two provisions that limited the provisions of the DPA. Under section 10, any person who willfully made a misrepresentation in order to gain entry into the United States as an eligible displaced person could not be admitted.\textsuperscript{49} In addition, the provisions of section 13 provided that no visa be issued to any person who voluntarily persecuted people because of race, religion, or national origin, or to any person who was involved in an organization hostile to the United States.\textsuperscript{50}

In reality, however, the DPA had a discriminatory effect, since it was written to exclude many concentration camp survivors and to include Balts, Ukrainians, and German Volksdeutsche.\textsuperscript{51} The first discriminatory provision of the DPA stated that only those refugees who had arrived at displaced person camps by December, 1945, were eligible.\textsuperscript{52} As a consequence of this provision, only about 10,000 Jews were eligible to enter the United States as displaced persons.\textsuperscript{53} Moreover, the DPA required that 40\% of the immigrants be from countries that had been "de facto annexed by a foreign power," another way of referring to Latvia, Lithuania, and Estonia which had been taken over by the Soviet Union.\textsuperscript{54} The DPA also held open 30\% of the spaces for farmers,\textsuperscript{55} which proved a big advantage to the Ukrainians and a disadvantage to the Jews since fewer than 4\% of Jews qualified for entry into the United States under this category.\textsuperscript{56} Finally, Congress gave special preference to the Volksdeutsche if they arrived in Germany during or after the war.\textsuperscript{57} Consequently, although many Balts and Ukrainians were Nazi collaborators,\textsuperscript{58} the DPA made it easy for them to gain entrance into the United States as displaced persons.

Many proponents of the DPA claimed that its provisions would

\textsuperscript{48} DPA § 3(a).
\textsuperscript{49} Id. § 10.
\textsuperscript{50} Id. § 13.
\textsuperscript{51} A. RYAN, supra note 1, at 16.
\textsuperscript{52} DPA § 2(c). see also, A. RYAN, supra note 1, at 16.
\textsuperscript{53} A. RYAN, supra note 1, at 16. This date cut off the eligibility of more than 100,000 Jews who had fled from Poland to the DP camps in 1946. Id.
\textsuperscript{54} DPA § 3(a) (unamended); see also, A. RYAN, supra note 1, at 17.
\textsuperscript{55} See A. RYAN, supra note 1, at 17.
\textsuperscript{56} DPA § 6(a) (unamended).
\textsuperscript{57} Id. § 2(c); see also, A. RYAN, supra note 1, at 17.
\textsuperscript{58} See supra text accompanying notes 6-18.
Denaturalization and Deportation

exclude Nazi collaborators through a two-step screening process.\(^59\) Step one was an investigation by the IRO, who would refuse to certify a refugee as a displaced person if he had been a Nazi collaborator who had assisted in persecution.\(^60\) However, many saw these investigations as superficial and corrupt.\(^61\) Since in the eyes of the IRO, the Volksdeutsche had left their countries voluntarily to assist the Nazis, they were not considered displaced persons and, therefore, were not covered by the IRO Constitution. Consequently, they were not screened for evidence of Nazi collaboration.\(^62\)

The second step was the establishment of the Displaced Persons Commission by Congress.\(^63\) The Commission’s responsibility was to investigate the refugee applicants to ensure they did not fall under the DPA section 13 exception.\(^64\) However, it was almost impossible for the commission to identify Nazis.\(^65\) The commission had a million DPs to investigate and could not extensively check into each background.\(^66\) The application and screening process was unorganized and haphazard, with most of the emphasis placed on the application filled out by the refugee himself.\(^67\)

Approximately 400,000 persons entered the United States under the DPA before it expired in 1952.\(^68\) An estimated 10,000 of this number are suspected Nazi war criminals.\(^69\) And although the DPA expired over thirty years ago,\(^70\) its provisions govern the denaturalization proceedings in those cases involving refugees admitted into the United States in 1948 - 1952.\(^71\)

III. INVESTIGATION/DEPORTATION OF ALLEGED NAZI WAR CRIMINALS

In its efforts to meet its obligations to prosecute alleged Nazi war
criminals,\textsuperscript{72} the United States has sought the deportation of these criminals. The deportation of a war criminal by the United States under its immigration laws differs in several ways from the extradition of a criminal to stand trial in a requesting state for war crimes. Only aliens may be deportable,\textsuperscript{73} while United States citizens are extraditable. Consequently, naturalized United States citizens must have their citizenship taken away before they can be deported.\textsuperscript{74}

Deportation merely expels undesirable aliens,\textsuperscript{75} while extradition returns individuals to requesting states specifically to stand trial for their crimes. Consequently, an alien subject to deportation may choose the state to which he will be sent.\textsuperscript{76} In recent years, the United States government has sought to rid this country of alleged Nazi war criminals through denaturalization and deportation proceedings.\textsuperscript{77}

In order to investigate and process the deportation of suspected war criminals in the United States, the Attorney General established the Office of Special Investigations (OSI).\textsuperscript{78} From 1978 until July 1984, the OSI filed forty-eight cases regarding suspected Nazi war criminals.\textsuperscript{79} Within these forty-eight cases, thirty were denaturalization cases and eighteen were deportation cases.\textsuperscript{80} There have been a total of twenty-four verdicts handed down in these cases filed by the OSI, twenty-one in its favor.\textsuperscript{81}

Deportation occurs under section 340 of the Immigration and Nationality Act (INA).\textsuperscript{82} Under this provision, a naturalized citizen's certificate of naturalization can be revoked if it was procured by either concealment of a material fact or by willful misrepresentation.\textsuperscript{83} Moreover, in 1978, Congress amended the classes of deportable aliens. This provision, known as the Holtzman Amendment,\textsuperscript{84} was specifi-

\begin{itemize}
\item \textsuperscript{72} See supra text accompanying notes 31-38.
\item \textsuperscript{73} 8 U.S.C. § 1251(a) (1982); see also, Moeller, supra note 37, at 813-14.
\item \textsuperscript{74} 8 U.S.C. §§ 1251-1260 (1982); see also, Moeller, supra note 37, at 814.
\item \textsuperscript{75} 8 U.S.C. § 1253(a) (1982).
\item \textsuperscript{76} Id.
\item \textsuperscript{77} Moeller, supra note 37, at 814.
\item \textsuperscript{78} See supra text accompanying notes 29-30.
\item \textsuperscript{79} A. Ryan, supra note 1, at 258.
\item \textsuperscript{80} Id.
\item \textsuperscript{81} Id. at 259.
\item \textsuperscript{83} Id. § 340, 8 U.S.C. § 1451 (1982). This provision is similar to the limitation on the entry of displaced persons into the United States under section 10 of the DPA. See supra note 49 and accompanying text.
\item \textsuperscript{84} 8 U.S.C. § 1251(a)(19) (Supp. 1987) [hereinafter Holtzman Amendment].
\end{itemize}
cally designed to allow for the deportation of any alien who ordered the prosecution of any person because of race, religion or national origin under the Nazi government or in any government in any area occupied by the military of the Nazi government. It is through these two statutes that the United States initiates deportation proceedings against suspected Nazi war criminals.

IV. CONSTITUTIONALITY OF THE DEPORTATION OF SUSPECTED NAZI WAR CRIMINALS

The only United States Supreme Court case to address the deportation of suspected Nazi war criminals is *Fedorenko v. United States.* Fedorenko, a Ukrainian, was drafted into the Soviet army in 1941 and subsequently captured by the Germans. After training as a concentration camp guard, he served as a guard at Treblinka in Poland from 1942 to 1943. Treblinka was a concentration camp at which hundreds of thousands of Jews were murdered. Between 1945 and 1949, Fedorenko discarded his army uniform and worked in Germany as a laborer.

In 1949, Fedorenko applied for entry into the United States as a displaced person. He lied about his wartime activities claiming to have been a farmer in Poland from 1934-42, at which time he had been deported to Germany and been forced to work in a factory. The United States admitted Fedorenko for permanent residence and he subsequently used the same false story to gain his United States

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85. *Id.* Specifically, the Holtzman Amendment provides for the deportation of any alien who:

1. 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, ordered, incited, assisted or otherwise participated in the persecution of any person because of race, religion, national origin, or political opinion.

87. *Id.* at 494.
88. *Id.*
89. *Id.*
90. *Id.* at 496.
91. *Id.*
citizenship in 1970.92 The United States brought a denaturalization action against Fedorenko alleging he was ineligible for his DPA visa because he committed war crimes at Treblinka and that he procured his naturalization certificate illegally or by willfully misrepresenting material facts.93

Several common threads run through all of the Nazi war criminal cases such as the Fedorenko case. First, all the defendants either participated in the persecution of people because of race, religion or national origin, or were involved in movements that were hostile to the United States during World War II. Second, they all gained entry into the United States by willful misrepresentations on their visa applications. This made them ineligible to enter the United States as DPs.94 Consequently, they are subject to deportation under the provisions of the Holtzman Amendment.95 Moreover, since these men also illegally procured their certificate of naturalization by concealment of a material fact or by willful misrepresentation, their naturalized citizenship must be revoked.96

A denaturalization proceeding is a suit in equity,97 governed by the Federal Rules of Civil Procedure,98 with no right to a jury trial.99 At the same time, there are elements of criminal proceedings present in denaturalization suits. The primary example is that the government's proof of a violation of immigration law by a Nazi war criminal must include proof of his criminal past and its subsequent concealment in order to gain entry into the United States.100 The government, in effect, must prove that the defendant concealed his wartime activities and by proving that the defendant lied, the government must prove that he committed the crimes for which he lied.101

Moreover, denaturalization is itself a civil penalty for a violation of immigration law. However, the loss of liberty that may accompany this penalty, especially before deportation, may be as significant as

92. Id. at 497.
93. Id. at 497-98.
94. See supra notes 49-50 and accompanying text.
96. 8 U.S.C. § 1251-60(j) (1980) and supra text accompanying note 74.
98. United States v. Minerich, 250 F.2d 721, 726 (7th Cir. 1975).
100. Denaturalization of Nazi War Criminals, supra note 25, at 46.
101. Id.
that which accompanies a criminal penalty. Consequently, the cases against suspected Nazi war criminals raise constitutional issues regarding the prohibition against bills of attainder and ex post facto laws, the sixth amendment, the seventh amendment, and the procedural safeguards of the due process clause of the fifth amendment.

A. Bills of Attainder

A bill of attainder has been defined as a "legislative act which inflicts punishment without a judicial trial." In many of the denaturalization cases against suspected Nazi war criminals (hereinafter defendants), the defendant argues that the Holtzman Amendment "is a legislative enactment directed at a small group of individuals, Nazi war criminals, for the purpose of punishing those individuals without a judicial trial." Consequently, the Holtzman Amendment constitutes a prohibited bill of attainder. Two examples of defendants who contend the Holtzman Amendment is a prohibited bill of attainer are Conrad Schellong and Reinhold Kulle.

In 1934, Schellong joined the Special Commando unit of the branch of the Nazi Party known as the Storm Troopers (SS). The members of this unit were assigned to guard duties at Sachsenburg concentration camp in Germany. Early in 1936, Schellong was assigned to the "Death's Head" guard unit of the SS at Dachau concentration camp. He remained at Dachau until 1939 where his duties

102. Moeller, supra note 37, at 819.
103. The United States Constitution states, "No bill of attainder or ex post facto law shall be passed." U.S. CONST. art. I, § 9, cl. 3.
104. The sixth amendment provides for the rights to a speedy trial, a jury trial, and legal counsel. U.S. CONST. amend. VI.
105. The seventh amendment preserves the right to a jury trial in suits at common law. U.S. CONST. amend. VII.
106. The fifth amendment states that, "[n]o person shall... be deprived of life, liberty, or property, without due process of law ...." U.S. CONST. amend. V.
110. Schellong, 805 F.2d at 662.
111. Kulle, 825 F.2d at 1191.
112. Schellong, 805 F.2d at 656.
113. Id. at 656.
114. Id. at 656-67.
included supervising and teaching new SS recruits on how to handle victims. Subsequently, Schellong transferred to the military arm of the SS, known as the Waffen SS, where he served for the remainder of the war.

When applying for a visa to enter the United States, Schellong failed to mention his concentration camp background. Instead, he claimed that he had joined the Waffen SS in 1934 and served in the military until the end of the war. Schellong gave the same account of his wartime activities when applying for United States citizenship. There was one major discrepancy to Schellong's story that went past the visa and naturalization examiners. The Waffen SS was not formed until 1939, so Schellong could not have joined it in 1934. This discrepancy went unnoticed and Schellong became a United States citizen in 1962.

The story of Reinhold Kulle is very similar. Kulle was a member of the SS from 1940-45. In 1942, Kulle was assigned to the Death's Head Battalion at Gross-Rosen concentration camp where he worked as a guard and a training leader. During Kulle's time at Gross-Rosen, the German's persecuted those deemed enemies of the Third Reich for reasons of race, religion, national origin or political opinion. Kulle is also accused of taking part in the forced evacuation of prisoners from Gross-Rosen to the Mauthausen concentration camp in Austria. Kulle entered the United States fraudulently by not disclosing his activities at Gross-Rosen on his immigration papers. He was admitted into the United States for permanent residence in 1957.

In deciding whether the Holtzman Amendment is a bill of attainder, the courts concede that it is a legislative act, so the focus of the inquiry becomes whether the Act constitutes punishment. To do so

115. A. Ryan, supra note 1, at 265.
116. Schellong, 805 F.2d at 657; A. Ryan, supra note 1, at 265.
117. Id.
118. Id.
119. Id.
120. Schellong v. INS, 805 F.2d 655, 659 (7th Cir. 1986), cert. denied, 107 S. Ct. 1624 (1987); A. Ryan, supra note 1, at 265.
121. Schellong, 805 F.2d at 657; A. Ryan, supra note 1, at 265.
123. Id.
124. Id.
125. Id.
126. Id.
127. Id.
the court considers the following three factors: "(1) whether the challenged statute falls within the historical meaning of legislative punishment; (2) whether the statute, viewed in terms of the type and severity of burdens imposed reasonably can be said to further non-punitive legislative purposes; and (3) whether the legislative record evinces a congressional intent to punish.'"

With regard to the first criteria, exclusion of a United States citizen has sometimes been thought to constitute punishment that is an equivalent to banishment. Therefore, defendants believe that the Holtzman Amendment fits within this meaning of punishment because deportation is the equivalent of banishment. However, the Supreme Court has held that the sanction of denaturalization does not constitute punishment. The Court emphasized that denaturalization "simply deprives him [defendant] of his ill-gotten privileges. . . . [I]t makes nothing fraudulent or unlawful that was honest and lawful when it was done. It imposes no new penalty upon the wrongdoer."

The courts have reasoned that although deportation is often severely burdensome, it is not punishment. The exclusion of individuals such as Schellong and Kulle from entering this country would not be considered punishment. To say that their deportation is punishment by virtue of their fraudulent presence in the United States would grant defendants more protection under the law as a result of their willful misrepresentations than they would have had prior to any misrepresentations. Therefore, the courts have held that the Holtzman Amendment does not constitute a legislative punishment.

In order to consider whether the Holtzman Amendment constitutes a bill of attainder under the second factor, courts look at the type and severity of the burdens imposed. Courts have recognized that deportation generally imposes severe burdens on the deportee,

129. Linnas, 790 F.2d at 1029.
130. Id.
132. Id.
134. Id.
136. Linnas, 790 F.2d at 1030.
but conclude that severity itself does not turn a burden into punishment.\textsuperscript{137} The courts have recognized that deportation furthers the non-punitive legislative goal of protecting United States citizens from harmful persons.\textsuperscript{138} The courts believe it is reasonable for United States citizens, through their elected representatives in Washington, to pass a bill which would deport Nazi war criminals, thus eliminating the possibility of having to share their communities with suspected murderers.\textsuperscript{139} Moreover, it is also reasonable for the United States not to wish to be known as a haven for Nazi war criminals.\textsuperscript{140}

The courts, however, may not consider the type and severity of the burdens imposed in these proceedings. The case of Karl Linnas is a prime example. Evidence showed that Linnas, born in Estonia, was chief of the Tartu concentration camp during the war, a time when Linnas claimed to have been a university student.\textsuperscript{141} Upon deportation, an alien can choose the country to which he will be sent.\textsuperscript{142} But for many suspected Nazi war criminals there is no real choice. Linnas, for example, designated the "free and independent Republic of Estonia" as his final destination.\textsuperscript{143} The Soviet Union annexed the independent Republic of Estonia after World War II, so Linnas apparently meant an office building in New York which currently houses representatives of the independent Republic of Estonia.\textsuperscript{144} The immigration judge interpreted this designation to mean the geographic location of Estonia in the Soviet Union.\textsuperscript{145} Linnas had previously been tried, convicted and sentenced to death in absentia by the Soviet Union.\textsuperscript{146}

The fury and controversy that surrounded Linnas' eventual deportation to the Soviet Union in 1987,\textsuperscript{147} suggests that the court did not consider the true severity of the burdens of this case. Linnas, a sixty-seven year old man, was sent to face certain imprisonment and

\begin{itemize}
\item \textsuperscript{137} \textit{Id.} (citing Mahler v. Eby, 264 U.S. 32, 39 (1924)).
\item \textsuperscript{138} \textit{Id.}
\item \textsuperscript{139} \textit{Id.}
\item \textsuperscript{140} \textit{Id.} This was in fact one of Congress' purposes in passing the Holtzman Amendment. See infra, note 159 and accompanying text.
\item \textsuperscript{141} Linnas v. INS, 790 F.2d 1024, 1026 (2d Cir.), \textit{cert. denied}, 107 S. Ct. 600 (1986).
\item \textsuperscript{142} 8 U.S.C.\textsuperscript{§} 1253(a) (1982); see also supra text accompanying note 76.
\item \textsuperscript{143} \textit{Linnas}, 790 F.2d at 1027.
\item \textsuperscript{144} \textit{Id.}
\item \textsuperscript{145} \textit{Id.}
\item \textsuperscript{146} \textit{Id.}
\item \textsuperscript{147} Cooper, \textit{The Linnas Case: Was Justice Done?} NEWSWEEK, May 4, 1987, at 33 [hereinafter Cooper].
\end{itemize}
possible execution without the benefit of due process.\textsuperscript{148} A possible repercussion of this decision has the United States indirectly sanctioning a totalitarian form of justice in the Soviet Union. The courts must strike more of a balance between the legislative goals of the Holtzman Amendment to keep Nazi war criminals out of the United States, and the specific burdens imposed on the deportees.

In assessing the third bill of attainder requirement, the courts have looked at the legislative history of the Holtzman Amendment. Congress became interested in the issue of Nazi war criminals due to the efforts of Representatives Joshua Eilberg of Pennsylvaniva and Elizabeth Holtzman of Brooklyn.\textsuperscript{149} Prior to 1973, the INS filed nine cases against alleged Nazi collaborators with less than successful results.\textsuperscript{150} Three were lost at trial and were not appealed by the government.\textsuperscript{151} Of the six that eventually resulted in deportation orders, three were reversed.\textsuperscript{152}

These results prompted a General Accounting Office (GAO) inspection of INS records concerning its investigation of suspected Nazi war criminals.\textsuperscript{153} Holtzman and Eilberg ordered this investigation based in part on an apprehension that the INS was conspiring to obstruct investigations of suspected Nazi war criminals or to stop them altogether.\textsuperscript{154} While the GAO investigation (and a subsequent FBI investigation) revealed no conspiracy, it did indicate that INS did an inadequate job in two of three cases which the GAO investigated.\textsuperscript{155}

Further investigation and pressure on the Departments of State and Justice by Eilberg and Holtzman (both were Chairman of the House Judiciary Committee’s subcommittee on immigration) led to two important developments in the Nazi war criminal investigations. One was the establishment of the OSI.\textsuperscript{156} The other was passage of the Holtzman Amendment.\textsuperscript{157} According to the bill’s legislative history, the purpose of the bill is “to exclude from admission into the

\textsuperscript{148} Linnas’ conviction was announced by a Soviet Journal three weeks before his trial. Soviet Firing Squad Awaits, U.S. News & World Report, April 13, 1987, at 14 [hereinafter Soviet Firing Squad Awaits].

\textsuperscript{149} See generally, A. Ryan, supra note 1, at 53-61.

\textsuperscript{150} Id. at 42.

\textsuperscript{151} Id.

\textsuperscript{152} Id.

\textsuperscript{153} Id. at 44.

\textsuperscript{154} Id.

\textsuperscript{155} Id.

\textsuperscript{156} See supra text accompanying notes 78-85.

\textsuperscript{157} Id.
United States aliens who have persecuted any person on the basis of race, religion, national origin, or political opinion, and to facilitate the deportation of such aliens who have been admitted into the United States."\(^\text{158}\)

Moreover, Congress' goals in passing the amendment were the need to "put our government squarely on record as denying a sanctuary in the United States to Nazi war criminals" and to serve as a clear reaffirmation of this country's commitment to the most basic of human rights.\(^\text{159}\)

The courts, therefore, have found no evidence of Congressional intent to use the Holtzman Amendment to punish.\(^\text{160}\)

**B. Ex Post Facto Laws**

In a related argument, defendants, like Bohdan Koziy, claim that the Holtzman Amendment operates as an ex post facto law in violation of the Constitution.\(^\text{161}\)

Koziy was a member of the Ukrainian Auxiliary under Nazi rule from 1940-44.\(^\text{162}\)

Upon entering the United States under the DPA, Koziy failed to disclose his wartime participation, claiming to have spent the war as a tailor and farmer.\(^\text{163}\)

He became a United States citizen in 1956.\(^\text{164}\)

An ex post facto law is defined as a law "that makes certain actions or behaviors unlawful after the fact."\(^\text{165}\)

The Holtzman Amendment, passed in 1978, requires the deportation of persons who participated in Nazi persecution from 1933 to 1939 to be deported.\(^\text{166}\)

Consequently, defendants contend that the statute is unconstitutional because it applies to persons who became naturalized before its enactment.

The Supreme Court answered defendant's contention many years earlier in *Johannessen v. United States*.\(^\text{167}\)

In that case, the Court held that the prohibition against ex post facto laws relates only to those

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163. *Id.* at 262.
164. *Id.*
165. *Schellong*, 805 F.2d at 662.
166. *Id.*
statutes imposing punishment.\textsuperscript{168} Since the court has already decided that deportation is not a form of punishment,\textsuperscript{169} the Holtzman Amendment could not be considered an ex post facto law since it is not a form of legislative punishment. The court in \textit{Koziy} stated, "'[t]he act imposes no punishment upon an alien who has previously procured a certificate of citizenship by fraud or other illegal conduct. It simply deprives him of his ill-gotten privileges.'"\textsuperscript{170}

\section*{C. Bill of Rights}

1. Sixth Amendment

Many of the defendants in these cases also assert violations of their rights secured by the Bill of Rights.\textsuperscript{171} One such claim brought by Frank Walus is that the proceedings against these defendants are in violation of their sixth amendment right to a speedy trial.\textsuperscript{172} Walus was a member of the German Gestapo and SS.\textsuperscript{173} Between 1939-43 he was accused of committing atrocities against the Jews living in Polish Ghettos.\textsuperscript{174} Walus concealed his membership in these groups and his alleged wartime activities in obtaining his United States citizenship.\textsuperscript{175} The United States sought to deport Walus and the other defendants based on crimes that had occurred forty to fifty years ago and the defendants consequently claimed that this violated their right to a speedy trial.\textsuperscript{176}

However, the courts have held that the sixth amendment applies only to criminal prosecutions and does not apply to denaturalization and deportation proceedings.\textsuperscript{177} Thus the excessive delay which oc-

\begin{itemize}
  \item \textsuperscript{168} Id.
  \item \textsuperscript{169} See supra notes 128-35 and accompanying text.
  \item \textsuperscript{170} United States v. Koziy, 728 F.2d 1314, 1320 (11th Cir.), \textit{cert. denied}, 469 U.S. 835 (1984) (quoting \textit{Johannessen}, 225 U.S. at 242-43). After Koziy's deportation order was upheld, he left his home in Florida and fled to Costa Rica, where he and his wife had secured resident visas. E. Barnes, \textit{Accused}, \textit{LIFE}, May 1987, at 54.
  \item \textsuperscript{171} E.g., Koziy, 728 F.2d at 1320; United States v. Walus, 453 F. Supp. 699, 716 (N.D. Ill. 1978), \textit{rev'd on other grounds}, 616 F.2d 283 (7th Cir. 1980); Linnas v. INS, 790 F.2d 1024, 1030-32 (2d Cir.), \textit{cert. denied}, 107 S. Ct. 600 (1986).
  \item \textsuperscript{172} \textit{Walus}, 453 F. Supp. at 716.
  \item \textsuperscript{173} Id.
  \item \textsuperscript{174} Id.
  \item \textsuperscript{175} Id.
  \item \textsuperscript{176} Id.
  \item \textsuperscript{177} Id. The sixth amendment by its terms is limited to only criminal cases:
    \begin{itemize}
      \item In all \textit{criminal prosecutions}, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the wit-
curs in denaturalization proceedings is ignored. Moreover, the determination by the courts that denaturalization and deportation suits are not forms of punishment has thus prevented the application of the sixth amendment rights to later denaturalization and deportation suits. These cases demonstrate that constitutional procedural protections are only available to defendants who face punishment in violation of a criminal statute per se.

Even if the courts did pay attention to the long period of time it has taken to institute these proceedings, forty to fifty years of inaction does not justify more inaction. Courts have held that these defendants entered the United States illegally, yet have been allowed to live peaceful lives as United States citizens. The denaturalization and deportation proceedings only seek to correct mistakes that were made forty to fifty years ago when the defendants were granted entrance into the United States.

2. Seventh Amendment

Walus also claims a violation of his seventh amendment right to a trial by jury. Traditionally, defendants have not been given a right to a jury trial in civil denaturalization suits. Walus, however, argues that there are common law issues presented in the cases of Nazi war criminals because of the criminal allegations that the government must prove. The courts do not accept this argument. In Luria v. United States, the Supreme Court held that a denaturalization suit is an equitable proceeding and not a suit at common law. Subsequent courts have stated that a denaturalization suit is a civil

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U.S. CONST. amend. VI (emphasis added).

178. See supra notes 128-33 and accompanying text.

179. See e.g., United States v. Walus, 453 F. Supp. 699, 716 (N.D. Ill. 1978), rev'd on other grounds, 616 F.2d 283 (7th Cir. 1980) (denial of sixth amendment right to a speedy trial).


185. Id. at 27-28.
Denaturalization and Deportation

proceeding in equity that only considers whether the defendant’s certificate of naturalization should be revoked and his citizenship canceled. Consequently, courts hearing Nazi war criminal cases have applied *Luria* by not allowing a jury trial in these denaturalization suits.

3. Fifth Amendment

Finally, defendants argue that the denaturalization and deportation suits violate their fifth amendment due process rights. This contention is especially relevant in Karl Linnas’ case. As already noted, Linnas was denaturalized and deported to the Soviet Union where he had been previously convicted and sentenced to death in absentia. Linnas claimed that deportation under these circumstances will deprive him of his life without due process of law.  

First, Linnas claims that since he is being sent to the Soviet Union where he has already been tried and convicted, he is effectively being extradited in the absence of an extradition treaty. The court in *Linnas*, however, ruled that the government’s action did not constitute extradition. It based its holding on the fact that extradition must be initiated by a foreign state and that while the Soviet Union does have an interest in the trial of Nazi war criminals, the force behind the denaturalization and deportation of Linnas is the United States government. The court stated “[r]uling this procedure to be an extradition would greatly reduce the ability of this nation to deport those who have committed crimes of moral turpitude in their own countries.”  

Linnas also argues he is denied his due process rights under the Soviet justice system. Linnas claims that the outcome of his 1962 Soviet trial was predetermined since a Soviet journal announced a guilty

187. *Id.*
189. See *Linnas*, 790 F.2d at 1027; Cooper, supra note 147; see also supra text accompanying notes 146-48.
190. *Linnas*, 790 F.2d at 1031.
191. *Id.*
192. *Id.*
193. *Id.*
194. *Id.*
verdict three weeks before the trial even began. Moreover, Linnas' supporters claim that the government will be "turning over a citizen to the Soviets, whose system of justice is a mockery." The court, however, addressed Linnas' contention by stating that its jurisdiction does not extend past the United States borders and that Linnas' due process rights have been upheld in the denaturalization and deportation proceedings against him.

Linnas' supporters also point out that many of the witnesses who testified in this and other Nazi war criminal cases, were questioned in the U.S.S.R. by OSI investigators. These witnesses testified under Soviet rules and the defendants' attorneys did not have a chance to adequately challenge their testimony. The supporters raise the ethical and legal question of whether the United States Government is wrong in using Soviet supplied evidence in its prosecution of Linnas and other suspected Nazi war criminals.

While it is true that these circumstances might have denied Linnas of a defense he could have received had he been tried in the United States, Linnas' case has received eight years of judicial review. Despite Linnas' claims to the contrary, many judges have concluded on the basis of clear, unequivocal and convincing evidence that Linnas concealed his war crimes from United States authorities in obtaining his United States citizenship. Moreover, even if Linnas were to be tried for war crimes in the United States, the prosecutor would probably have to seek Soviet assistance. The court in Linnas pointed out that it was Linnas' due process rights that allowed him to remain in the United States until 1987, even though the denaturalization proceedings against him began in 1979.

Finally, Linnas appealed to the court's sense of "decency" and "compassion". The court refused to consider such a plea from

195. See supra note 148.
196. Cooper, supra note 147, at 33 (quoting former White House Communications Chief Patrick Buchanan).
197. Linnas, 790 F.2d at 1031.
199. Id.
200. Id.
202. Lacayo, supra note 198, at 60.
203. Linnas, 790 F.2d at 1031.
204. Id. at 1032.
someone who had ordered the killing of innocent men, women and children, and thus rejected his argument that these proceedings violated his right to due process of law. The court concluded that there is no substantive due process right not to be deported.

The Linnas case, however, may be an isolated case. An order of deportation is useless unless the United States can find a country that will accept the deportee. Until such a country is found, the deportee stays in the United States and because he has committed no crime in this country, is free to do as he pleases. All that is left then is someone who has been stripped of his United States citizenship. This is only a symbolic gesture because the daily life of an ex-citizen changes little. An ex-citizen is still entitled to welfare benefits and will not lose his home, income or freedom. In other words, for most of these defendants, their denaturalization and deportation orders allow them to carry on their lives in the United States as best they can. The courts, therefore, should balance in each case the burdens placed on defendants in granting deportation. In extreme situations, as in the case of Karl Linnas, they should be more reluctant to issue a deportation order. If not so extreme, as in many of the other cases, the deportation order should be granted.

The courts have held that a denaturalization proceeding is a suit in equity. However, defendants may be afforded more protection if these proceedings were treated as being quasi-criminal in nature. The burden of proof in denaturalization proceedings is that the government must prove its case by clear, unequivocal and convincing evidence. Raising the standard to beyond a reasonable doubt as in criminal cases might institute more protection for these defendants. A second possibility would be for the court to utilize criminal procedures instead of the Federal Rules of Civil Procedure.

205. Id.
206. Id. at 1031.
207. A. Ryan, supra note 1, at 260.
208. Id.
209. Id. at 342.
210. Id.
211. But see, E. Barnes, Accused, LIFE, May 1987, at 54. (Suspected war criminal Bohdan Koziy fled to Costa Rica when his deportation order was upheld).
D. Non-constitutional Arguments

There are other non-constitutioanlly based arguments by these defendants against their denaturalization and deportation. First, they argue that the government's thirty to forty year delay in prosecuting them is prejudicial. However, the courts have held that there is no statute of limitations in denaturalization suits. Moreover, the defense of laches is not available in a deportation proceeding. There is also no international statute of limitations barring the trial of defendants on the charge of war crimes. Consequently, these defendants are not only subject to denaturalization and deportation proceedings in the United States, but also to war crime trials in other countries for as long as they live.

Second, there is a need to control the emotional level at trial. These immigration cases are viewed by many as a continuation of the Nuremberg task of punishing war criminals. Moreover, the factor of emotion will be difficult for the judge to control. Testimony by concentration camp victims in the United States courtroom has caused "shocking testimony" and "emotional outbursts". As a result of this problem, some judges have attempted to exclude the public from attending certain immigration cases, but with no success. Consequently, the danger is that the misplaced objective of vindicating the atrocities of the Nazis will be confused with the only objectives in these cases, which is to strip the war criminal of his ill-gotten citizenship.

V. International Cooperation

A. International Criminal Jurisdiction

One way of ensuring that defendants are protected is through international cooperation. International law recognizes five types of criminal jurisdiction. One basis is the territorial principle which

214. Denaturalization of Nazi War Criminals, supra note 25, at 73.
216. Denaturalization of Nazi War Criminals, supra note 25, at 73.
217. Id. at 74.
218. See supra notes 39-40 and accompanying text.
219. Denaturalization of Nazi War Criminals, supra note 25, at 76.
221. II M. BAssIouNI, INTERNATIONAL CRIMINAL LAW 4-5 (1986).
permits jurisdiction by the state wherein the crime occurred. This is the most widely recognized form of the five types of jurisdiction. The second basis is nationality jurisdiction which is based on the nationality of the defendant. Third is the protective principle of jurisdiction which asserts jurisdiction over a crime outside of a state’s territory which is deemed to be harmful to the forum state. Under the fourth principle, passive personality, jurisdiction is based on the nationality of the victim. Finally, the fifth principle of universality jurisdiction, allows for the jurisdiction over certain crimes that are thought to be harmful to the international community in general.

Under the territorality principle, the Federal Republic of Germany (West Germany) would have jurisdiction over Nazi war criminals because the war crimes were committed within its territorial boundaries. However, the West German government has made it clear that it will only accept those Nazi war criminals who are German citizens. However, most of the Nazi war criminals who entered this country under the DPA came in through loopholes created in the Act for Balts, Ukrainians and Volksdeutsche. Consequently, West Germany will not try these defendants because they were not German citizens.

Another important principle for exercising jurisdiction over Nazi war criminals is universality jurisdiction. This principle allows for the extra-territorial exercise of jurisdiction by any country as long as the crime has been defined by the laws of nations. Although such crimes are defined by the laws of nations, the actual prosecution of them must take place in municipal state courts under municipal state laws.

222. Moeller, supra note 37, at 850-51.
223. Id.
224. Id. at 851.
225. Id. at 852.
226. Id. at 851.
227. Id. at 852.
228. Id.
229. See supra text accompanying notes 51-58.
231. Moeller, supra note 37, at 852. War crimes are included in the list of crimes defined by the laws of nations. Id. at 853.
232. Id.
It was on this basis that Israel enacted the Nazi and Nazi Collaborators (Punishment) Law. Israeli law criminalizes certain acts including "crimes against the Jewish people," "crimes against humanity," and "war crimes committed during the Nazi period." This was the statute under which Israel charged John Demjanjuk who was extradited to Israel from the United States. Although Demjanjuk challenged Israel's jurisdiction over him, the Court of Appeals recognized Israel's extra-territorial jurisdiction over Demjanjuk based on the universality principle.

Consequently, since the United States recognizes the criminal jurisdiction of both West Germany and Israel in these cases, more cooperation between our government and the governments of these two nations in bringing Nazi war criminals to trial would help ensure that these defendants receive a full and fair criminal trial on the merits.

B. International Criminal Court

The first International Penal Court was implemented by the Allies after World War II. The Allies established the International Military Tribunal which was responsible "for the just and prompt trial and punishment of the major war criminals of the European Axis." This court's first cases were the Nuremburg Trials. As these trials of major Nazi war criminals ended, the Allies considered the need for other trials against Nazi war criminals.

The Soviets and French seemed to be in favor of further trials which were contemplated by the Charter of the Tribunal. The British, however, were not so eager. They wanted the trials to take place only in British military courts. A compromise allowed each country within its zone of occupation in Germany to set up appropriate...
ate tribunals to bring war criminals to trial.\textsuperscript{243} And thus the first international criminal court, the Nuremburg Tribunal, was dissolved.\textsuperscript{244}

Nuremburg gave the world hope that in the future major crimes against humanity would not go unpunished. However, after World War II, the nations that formed the Anti-Hitler bloc during the war and early post-war years turned against each other as the cold war manifested itself in international relations, including the establishment of an international criminal court.\textsuperscript{245}

Some thirty years later the First International Criminal Law Conference convened in 1971 to work on the establishment of an international criminal court.\textsuperscript{246} This convention proposed a draft convention on international crimes\textsuperscript{247} and a draft statute for an international criminal court.\textsuperscript{248} The first thing the draft convention set out to do is define what crimes individuals could be punished for under the convention. The provisions significant to the cases of Nazi war criminals are:

1. Crimes against peace as they are defined in Article 6(a) of the Charter of the International Military Tribunal for the Trial of the Major War Criminals of 8 August 1945.\textsuperscript{249}

2. War crimes as they are defined in Article 1(a) of the Convention on the Non-Application of Statutory Limitations to War Criminals and Crimes Against Humanity of 26 November 1968.\textsuperscript{250}

3. Genocide and other crimes against humanity as they are defined in Article 1(b) of the Convention on the Non-Applicability of Statutory Limitation to War Crimes and Crimes Against Human-

\textsuperscript{243} Id.

\textsuperscript{244} Id. at 90.

\textsuperscript{245} 2 B. Ferencz, An International Criminal Court: A Step Toward World Peace 29 (1980) [hereinafter 2 B. Ferencz]. The Soviet Union, for example, was opposed to an international criminal court because it was seen as an infringement of a states' sovereignty. Id. at 28. On the other hand, many other countries including France, Israel and the Netherlands lent their support to an international criminal court. Id. at 37.

\textsuperscript{246} Foundation for the Establishment of an International Criminal Court, The First International Criminal Law Conference (1971) [hereinafter International Criminal Law Conference].

\textsuperscript{247} Id. at 8-12.

\textsuperscript{248} Id. at 13-23.

\textsuperscript{249} Id. at 9. These are crimes against peace including planning, preparation and waging a war of aggression or a war in violation of international treaties or participating in a conspiracy for the accomplishment of any of the foregoing. Charter of the International Military Tribunal, Aug. 8, 1945, 59 Stat. 1546, E.A.S. 472, art. 6(a).

\textsuperscript{250} International Criminal Law Conference, supra note 246 at 9. These crimes include murder, ill-treatment or deportation to slave labor or for any other purpose of civilian population of or in occupied territory and wanton destruction of cities, towns or villages not justified by military necessity. Id. at 23.

The draft convention then gave each party to it three choices with respect to how to deal with suspected violators of these crimes. They could try and punish any person within the country’s jurisdiction who was accused of committing one of these international crimes. They could extradite the suspect to a state that had jurisdiction to try him. Or, they could surrender the individual to the international criminal court. The establishment of an international criminal court similar to the one proposed by this conference could answer many of the constitutional questions raised by these defendants. For example, their cases could be tried on the merits, before a jury, with the proper burden of proof. The creation of such a court, while it does not solve all the constitutional problems raised in prior cases, would be an important step toward a full and fair trial on the merits for these suspected war criminals.

VI. CONCLUSION

The courts have unequivocally concluded that the denaturalization and deportation cases against suspected Nazi war criminals are not in violation of their constitutional rights. In evaluating these cases, however, courts in the future need to pay more attention to the burdens imposed on these defendants, especially after deportation. This controversy presents an enormous legal and moral dilemma. On one side are the Nazi war criminals who are deported to a country where they will face certain punishment, maybe even death. On the other side, these defendants have defended themselves through the United States court system where the government’s proof must be one of clear, unequivocal and convincing evidence that they illegally obtained their United States citizenship.

The absence of a more appropriate United States response is in-
evitably caused by the unavailability of either an international tribunal to administer international law or a greater degree of international cooperation in this area. Since the United States does not have criminal jurisdiction over Nazi war criminals, the best it can do is denaturalize and deport them for immigration violations. Consequently, there is a greater need for international cooperation and extradition of these suspected war criminals by countries that do have the jurisdiction to try them, such as the Federal Republic of Germany.

Moreover, the 1980's have brought about a defrosting of the cold war between the super-powers, as evidenced by the recent nuclear arms treaty signed by the United States and the Soviet Union. The time may be ripe now to consider ratifying the drafts for an international criminal court proposed in 1971. It is this type of international cooperation which can most faithfully serve the ends of justice.

Norine M. Winicki