

Operation Paperclip of World War II

The Allied Control Council, Arthur Rudolph, and the Great Brain Drain

By Lukas Moller
Albany Law School
International Law of War and Crime Seminar
Professor Vincent Bonventre

The United States Department of State typically required a multi-step process for a person to become a United States citizen, unless they were brought to America under the veil of Paperclip.¹ After WWII, Germans seeking to flee war-torn Germany for America were subject to an extensive denazification process for the U.S. to understand their role in Nazi Germany and denounce the Fascist ideology in favor of democracy.² Under Paperclip, the scientists emigrated under the guise of military custody. The Assistant Secretary of State for American Republic Affairs, Spurrille Braden, feared military immigration in lieu of the denazification policy could have violated post war international law between the Allied powers. Specifically, allowing German scientists to study in America violated various Allied Control Council laws in which the U.S. agreed to follow after the war.³

The United States, France, the Soviet Union and England formed the Allied Control Council to govern occupied Germany and transfer populations throughout Europe that were displaced during the war.⁴ The ACC, while tasked with the immigration issues from the war, explicitly prohibited former Nazi leaders and high-ranking sympathizers to slip through the cracks and flee Europe.⁵ ACC law No. 24 prohibited former Nazi leaders to hold leadership positions in public office including government and education.⁶ In conjunction with law No. 24, The ACC issued Directive No.24 to screen any official seeking “public or semi-public office,”

¹ Ori Soltz, *Cultural Plunder and Restitution and Human Identity*, 15 J. MARSHALL REV. INTELL. PROP. L. 459, 466 (2015).

² John Gimbel, *German Scientists, United States Denazification Policy, and the “Paperclip Conspiracy”*, THE INTERNATIONAL HISTORY REVIEW, Vol 12, No.3 441-465 (Aug. 1990).

³ Alan Beyerchen, *German Scientists and Research Institutions in Allied Occupation Policy* HISTORY OF EDUCATION QUARTERLY, CAMBRIDGE UNIVERSITY PRESS, Vol. 22, No. 3, Special Issue: Education Policy and Reform in Modern Germany 289–99 (Fall 1982).

⁴ *Allied Control Council for Germany*, INTERNATIONAL ORGANIZATIONS, UNIVERSITY OF WISCONSIN PRESS, Vol. 3 No.3 557–61 (Aug. 1949).

⁵ *Allied Control Council and Commissions*, INTERNATIONAL ORGANIZATIONS, UNIVERSITY OF WISCONSIN PRESS, Vol. 1 No.1 162-70 (Feb. 1947).

⁶ *Library of Congress, Enactments and Approved Papers of the Control Council and Coordinating Committee*, ALLIED CONTROL AUTHORITY, GERMANY (1945-1948) Vol. 2, https://www.loc.gov/item/61035888_Volume-III/

including “Education, whether as teacher or as policy-maker utilized or controlled by the military” that was or may be hostile to Allied forces to be removed and banned from holding such positions.⁷ Scholars have doubted as to whether the Law and Directive allowed for the “removal” to mean replace in a country where such positions may legally be held by a former Nazi official.⁸

Many of the Nazi scientists, like Werner Von Braun, lost their positions at military or government facilities and prestigious universities in Germany upon the formation of the ACC.⁹ ACC law No.25 Art. II prohibited “any scientific matter wholly or primarily military in nature,” and any scientific work that may resemble military value needed to be approved by an Allied commander in the zone that the research would take place.¹⁰ The ACC required scientific research facilities to register with the zone commander, and a list of researchers was provided before a license could be issued for the facility.¹¹ The list of researchers proved to benefit the United States in two respects. First, it furthered the policy of denazification by cross-referencing with Nazi documents to determine who served as a higher ranking official during the Nazi regime¹² Second, the list provided the U.S. military with an opportunity to hand-pick scientists to send to the U.S. without raising suspicion by removing them from the list under the excuse of their ties to the Nazi government.¹³ Therefore, under ACC laws governing occupied Germany, Nazi scientists who contributed to the Nazi military were banned from research and development in fields such as rocket science. That is, they were banned from such activities in Germany.

⁷ *Id.*

⁸ *Supra* note 4, at 443.

⁹ *Supra* note 5, at 29.

¹⁰ *Enactments and Approved Papers of the Control Council and Coordinating Committee, ALLIED CONTROL AUTHORITY, GERMANY (1945-1948): Vol.3*, <https://www.loc.gov/item/61035888Volume-III/>.

¹¹ *Id.*

¹² David Cassady, *Controlling German Science, I: U.S. and Allied Forces in Germany, 1945-1947*, HISTORICAL STUDIES IN THE PHYSICAL AND BIOLOGICAL SCIENCES, UNIVERSITY OF CALIFORNIA PRESS, Vol. 24, No. 2, 197–235 (1994).

¹³ *Id.*

The Allied powers disagreed upon the implementation and scope of ACC Law No. 25, which allowed for further exploitation by the United States to import scientists with a lower risk of violating international law. In a public statement after a meeting of the ACC nations, an English committee member said the law would “prevent warlike or dangerous research” but that the law was not strong enough to deter a “dishonest” German scientist from developing military research.¹⁴ France sided with England, stating Law No.25 would help deter remilitarization in Germany but did not go far enough to prevent a German from developing their research elsewhere.¹⁵ The Soviet Union, unlike England and France, exploited German scientists within their occupation zone much like the United States. Unlike with the United States where the Germans were given the option to abandon their scientific expertise and undergo denazification or to relocate to the United States, The Soviets forcibly removed the Germans to develop their rocket and space programs.¹⁶ The Soviets also decided to forgo the denazification process outlined in ACC Law No.24 for scientists in their zone, but they generally did not give scientists the option to stay in Germany or transfer to the Soviet Union for research purposes.¹⁷ Differing interpretations of Law No.25 allowed the United States and the USSR to otherwise violate international law with no repercussions.

The Soviet Union’s relocation program, known as Operation Osoaviakhim, transferred approximately 7,500 Germans to various Soviet research facilities from 1946 through 1951.¹⁸ Joseph Stalin signed a top-level Soviet decree in mid-1946 to create the necessary infrastructure to support the incoming German scientists.¹⁹ The plans to revamp the Soviet rocket program was

¹⁴ *Id.* at 231.

¹⁵ *Allied Control Councils and Commissions*, INTERNATIONAL ORGANIZATIONS, UNIVERSITY OF WISCONSIN PRESS, Vol. 1 No.1, 162–70 (Feb. 1947).

¹⁶ *Supra* note 5, at 297.

¹⁷ Asif Siddiqi, *Germans in Russia: Cold War, Technology Transfer and National Identity*, OSIRIS, Vol. 24 No.1 120–43 (2009).

¹⁸ *Id.* at 121.

¹⁹ *Supra* note 14, at 224.

known throughout the Kremlin, but the knowledge failed to get past the Iron Curtain in Eastern Europe. The British were acutely aware of the American plans to utilize German science for military gain, but not the relocation of German scientists since the U.S. feared the British could either create hurdles in the implementation of the program or inadvertently alert the Soviets to the plan. Osoaviakhim provided valuable information to the Soviet space program and played a pivotal role in the early development of the Sputnik satellite, but the Soviets largely abandoned the program as the Stalinist era came to an end.²⁰ Russia and the U.S. both publicly supported the various ACC laws to restrict German scientists from further developing research, but privately violated the laws to exploit the scientists in the earliest stages of the Space Race and the Cold War.

A gray area in the immigration of Nazi scientist to the U.S. during Allied occupation in the latter half of the 1940s was whether the terms of U.S. occupation, and the secret relocation of German scientists, violated the Hague Conventions of 1907.²¹ The Convention governed the occupation of defeated governments and the treatment of civilians by the occupying military, but left the conditions imposed by a created sovereignty (like the parties in the ACC) under no specific obligations.²² Charles Fahy, the former Solicitor General (1941-1945), acted as the legal advisor for the Office of Military Government in Germany after the war. Fahy established 4 legal branches within the Office of Military Government in Germany, most notably the legal advice and war crimes branches, and the former tasked with how to interpret and apply international law to the United States and the ACC.²³ Fahy used the Legal Advice branch to exploit the military advancements of German scientists while attempting to bend, but not break, existing

²⁰ *Supra* note 19, at 135.

²¹ Charles Fahy, *Legal Problems of German Occupation*, *Mich. L. Rev.*, Vol. 47, Iss. 1, 11–22 (1947), <https://repository.law.umich.edu/cgi/viewcontent.cgi?article=7858&context=mlr>

²² *Id.* at 12.

²³ *Supra* note 6, at 558.

international law in the wake of WWII.²⁴ The U.S. used the Hague Convention as a guide rather than an authority to justify allowing scientists to continue developing their research to strengthen the military in the victorious country and not break international law.

The balance of maintaining the denazification policy issued by the ACC and importing German scientists were bound to conflict. The goal of denazification was to weed-out former Nazi leaders and remove them from a position of power and to restrict them from escaping prosecution or to take their skills elsewhere.²⁵ Through bypassing denazification, the consequences were entirely as the United States predicted absent the policy. After the war, German leaders were tried at the Nuremberg Trials for the crimes they committed during Nazi rule. The trials commenced on November 20, 1945, and much like the ACC, the four Allied powers worked in conjunction to conduct the trials.²⁶ The four charges at the trials were crimes against humanity, war crimes, crimes against the peace, and conspiracy to commit those crimes.²⁷ While the Allies made an example of Nazi officials at Nuremberg, other Nazis that may have otherwise been prosecuted for war crimes came to the United States under Paperclip.

Arthur Rudolph, a Nazi scientist who worked beside Wernher Von Braun both in Germany on the V2 Rocket during the war and in the U.S. on the space program from Paperclip, lived in the U.S. for almost forty years under false pretenses. Rudolph immigrated to the U.S. under military custody in 1946, and in 1947 the Army moved to grant Rudolph U.S. citizenship to both further exploit his scientific abilities and prevent his return to Germany.²⁸ Arthur Rudolph became the project director for the Saturn V rocket in which he received the NASA Exceptional Service Medal and the NASA Distinguished Service Medal after Apollo 11 successfully

²⁴ *Supra* note 23, at 14–16.

²⁵ *Supra* note 4, at 441.

²⁶ Telford Taylor, *The Nuremberg Trials*, COL. L. REV., Vol. 55 No.4, (Apr. 1955) 488-525, 491.

²⁷ *Id.* at 490.

²⁸ Kristina Rutledge, *Giving the Devil His Due: The Pursuit and Capture of Nazi War Criminals-- A Call for Retributive Justice in International Criminal Law*, 3 REGENT J. INTL. L. 27, 29 (2005).

launched the first men to land on the moon.²⁹ But the accolades and praise were short lived when Rudolph came under investigation in 1979 by the Department of Justice for possible war crimes during WWII.³⁰

The DOJ Office of Special Investigations (OSI) formed a branch to investigate and prosecute Nazi war criminals who were granted U.S. citizenship after the war.³¹ The OSI filed numerous reports about former Nazi leaders whose records were either concealed from U.S. officials or were purposely ignored for the benefit that the man could bring to America. Arthur Rudolph gained U.S. citizenship because the U.S. Army ignored his otherwise tainted record from his involvement with the Nordhausen concentration camp during the war. The ACC established jurisdiction for zone commanders to try war criminals that could not have been tried in a court with a magnitude of the Nuremberg Trials.³² In *U.S. Army v. Kurt Andrae et. al.*, the United States zone commander prosecuted leaders of the Nordhausen concentration camp system.³³ A variety of charges were brought against 19 defendants at the Andrae trial including the use of slave labor to build and maintain the camp as well as work in factories for a variety of purposes, and the callous disregard for medical treatment for the prisoners at the camps.³⁴ One defendant was sentenced to death, four were acquitted and the remaining defendants were sentenced to prison terms in the range of 5 years to life.³⁵ While Rudolph was never a defendant in the proceeding, evidence admitted against multiple defendants provided clear proof that

²⁹ *Id.* at 36.

³⁰ Linda Hunt, *U.S. Coverup of Nazi Scientists*, BULLETIN OF THE ATOMIC SCIENCES 16-24 (Apr 1985), https://epizodsspace.airbase.ru/bibl/inostr-yazyki/bulletin-of-the-atomic/1985/hunt_us_coverup_of_nazi_scientists-no_04.pdf

³¹ *Id.*

³² United States Army Investigation and Trial Records of War Criminals, *United States of America v. Kurt Andrae et al*, 1945-1958, at 1.

³³ *Id.*

³⁴ *Id.* at 2.

³⁵ *Id.* at 3.

Rudolph played a leading role in the use of slave labor at the camp and the Army turned a blind eye in favor of his relocation to America under Paperclip.

The very reason that the U.S. found interest in Rudolph was for his role in the development of the V2 Rocket. At a factory in the Dora concentration camp (within the Nordhausen camp system) V2 rockets were built from 1943-1945 through the use of slave labor.³⁶ Rudolph was one of three leaders in command of the rocket factory, and records of Rudolph's time leading the factory were admitted against other defendants to prove war crimes.³⁷ Specifically, the evidence admitted involving Rudolph was used against George Rickhey, the general director of the factory complex at Dora who also emigrated to the United States under Paperclip but was extradited upon the finding of guilt at the Andrae trial.³⁸ Rickhey continued to work in the United States pending his investigation and trial for war crimes in the Air Force alongside Rudolph. The United States indicted Rickhey in 1947 for war crimes and sent him back to West Germany for trial, but Rudolph stayed behind. By 1948, shortly after the trial in which the implicating evidence against Rudolph was admitted, the U.S. Army investigated Rudolph and came to the opposite conclusion as with Rickhey. The 1948 report that the Army sent to the Department of State to verify the ACC denazification process under ACC laws 24 and 25 was satisfied. Despite the evidence admitted at the Andrae trial tying Rudolph to the V2 rocket factory and his early Nazi ties, the Army report stated "nothing in his records indicating that he was a war criminal, an ardent Nazi or otherwise objectional."³⁹ Rudolph lived in the United States for almost 30 years before the Department of Justice revealed his true identity.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.* at 4.

³⁹ *Supra* note 14, at 227.

The Department of Justice formed the Office of Special Investigation (OSI) in 1979 largely due to pressure from the public to investigate former Germans who helped the Nazis target and persecute civilians.⁴⁰ The OSI had trouble investigating many of the cases since the war ended over three decades prior, the lack of technology for widespread research, and much of the information needed regarding many of the Nazis was either destroyed or was kept behind the Iron Curtain during the Cold War.⁴¹ The formulation of the OSI was bound to conflict with Paperclip since the U.S. government investigated the very same people they helped bring to the U.S. through either conscious ignorance or acceptance of a checkered past. The OSI was ultimately responsible for assessing whether the interest of national security truly outweighed the risk of harboring war criminals. Rudolph was an early target for OSI's investigations due to his work with NASA and his ties to Paperclip, and in 1985 the findings on Rudolph were published.

The OSI's report about Rudolph, and many of the other Nazis under investigation, faced charges for war crimes. The report exposed Rudolph's past at the Dora factory using slave labor to build V2 rockets, and the OSI alerted Rudolph that he was facing charges for war crimes and "targeted persecution against unarmed civilians based on race, religion, national identity or public opinion."⁴² The United States then proposed an agreement with Rudolph where he would immediately leave the United States and renounce his citizenship to dodge the impending charges.⁴³ The two parties also agreed that no announcement of the charges would be made until Rudolph left the country, in which he fled to Canada, and Rudolph would not contest that while at the Dora camp he persecuted unarmed civilians through the use of slave labor to support the Nazi war effort.⁴⁴ The DOJ planned to use Rudolph as an example for other Nazis with hidden

⁴⁰ *Supra* note 32, at 18.

⁴¹ *Id.* at 19.

⁴² Judy Feigin, *Striving for Accountability in the Aftermath of the Holocaust*, OFFICE OF SPECIAL INVESTIGATION, UNITED STATES DEPARTMENT OF JUSTICE, at 4 (2008).

⁴³ *Supra* note 30, at 31.

⁴⁴ *Supra* note 44, at 6.

pasts to show that a highly accomplished scientist surrendered to the government without a fight, and others may have been more inclined to leave the country or turn themselves in with hopes of leniency.⁴⁵

Ironically, ten years later, Rudolph filed an action for declaratory relief and rescission of the agreement in which he renounced his United States citizenship. In *Rudolph v. United States Dep't. of Justice*, 1995 U.S. Dist. LEXIS 8061 (N.D. Cal., 1995), Rudolph claimed he fully disclosed his former Nazi ties before he was granted U.S. citizenship, which included his time at the Dora concentration camp. Rudolph further claimed that OSI's investigative techniques, including conflicting testimony by the government's chief eyewitness, should have invalidated the agreement and allowed for his reentry into the United States. The DOJ filed for summary judgement under F.R.C.P 12(b)(1) claiming that Rudolph did not have a case against the DOJ for lack of subject matter jurisdiction and sovereign immunity. The court granted the 12(b)(1) motion in favor of the DOJ for both lack of jurisdiction and sovereign immunity, as well as stating that the United States "has no room for war criminals." Rudolph died one year later in Germany, where he was granted citizenship upon his departure from the United States.⁴⁶

The OSI determined that national security interests did not outweigh the harboring of war criminals, and hundreds of prosecutions have been brought since Rudolph renounced his citizenship in 1985. In *United States v. Wittje*, 422 F.3d 479 (7th Cir., 2005), Joseph Wittje gained United States citizenship in 1950 after completing the denazification process in Germany under ACC Law No. 24.⁴⁷ U.S. officials believed Wittje was a foot soldier who did not hold a leadership position within the Nazi government. After the fall of the Soviet Union and

⁴⁵ *Id.* at 335

⁴⁶ *Id.* at 337.

⁴⁷ *United States v. Wittje*, 422 F.3d 479, 480 (7th Cir. 2005).

widespread access to Soviet archives, the OSI found Wittje to be a member of the Waffen-SS.⁴⁸ During the invasion of Russia, he was tasked with rounding up Jews in Russia and Ukraine and sending them to concentration camps for slave labor and experimentations.⁴⁹ Wittje also worked as a guard at the Sachsenhausen camp in which he subjected prisoners to inhumane treatment and slave labor projects much like the slave labor used to build V2 rockets in Dora. The court found that Wittje's position in the Waffen-SS rendered him ineligible for immigration to the U.S. and threatened to imprison him if he did not leave the country.⁵⁰

The most recent prosecution of a Nazi war criminal was in 2021 when the DOJ deported 95-year-old Friedrich Karl Berger from the United States.⁵¹ The DOJ compiled evidence from the Nuremberg Trials, the Andrae trial, and archives in Germany to show that Berger worked as a concentration camp guard at Neuengamme where many prisoners were worked or froze to death in 1944 and 1945. The DOJ stated that OSI's job was to "ensure that the United States is not a safe haven for ... Nazi crimes against humanity."⁵² The DOJ further stated that "the many decades since the Nuremberg Trials" would not dissuade the prosecution of Nazi war criminals that emigrated to the U.S. under programs like Paperclip.⁵³ The United States chose national security interests over harboring war criminals during the Cold War and the Space Race, and has spent the last 40 years trying to untangle the mess that ensued after the war.

The United States tried to balance exploiting the military advantage of using German scientists to bolster the American space program under Operation Paperclip with the violation of international laws drafted before and after the war as well as harboring possible war criminals.

⁴⁸ *Id.* at 481.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ United States Department of Justice, *WWII Nazi Concentration Camp Guard Removed to Germany* (Feb. 20, 2021).

⁵² *Id.*

⁵³ *Id.*

Allied Control Council Law No. 24 and 25 governed the denazification process and prohibited scientists from holding leadership positions, both of which were bypassed by Paperclip. Legal interpretations allowed for justification under the Hague Convention to grant former Nazis with checkered or unknown pasts citizenship to the United States. The conscious disregard for Arthur Rudolph's past, which was discovered immediately after the war during the Andrae trial but was overlooked due to his scientific abilities in which he was brought to America. The formation of the OSI and Rudolph's subsequent deportation in the mid 1980s marked the turning point in which the interests of national security no longer outweighed the harboring of criminals, and over 100 cases have been brought to attempt to correct the decades-long violation of various post-war laws. In the end, the progeny of Operation Paperclip is no longer treated as "to the victor goes the spoils," but the interest in correcting the wrongs from the tainted immigration procedure was only after the military advantage of the scientists was largely exhausted.