

DELAYED JUSTICE

The end of an era for Nazi hunters?

The deportation of Friedrich Karl Berger could be one of the final legal victories for American Nazi hunters

By Matthew Kassel February 23, 2021



Friedrich Karl Berger

In recent years, Nazi criminal cases have grown increasingly rare as the remaining perpetrators die out or prove incompetent to stand trial. But on

Saturday, the Department of Justice prevailed in its hard-fought effort to deport Friedrich Karl Berger, a 95-year-old former Nazi camp guard and Tennessee resident who had been living in the United States for six decades before being caught. Berger, a German citizen, served in a Neuengamme subcamp near Meppen at the end of the war, where prisoners were held in “atrocious” conditions and worked “to the point of exhaustion and death,” according to one judge.

Still, for Eli Rosenbaum, a veteran Nazi hunter who prosecuted the case, Berger’s deportation represents something of a Pyrrhic victory. Though Berger has been sent back to his home country, where he may be tried by the German government, it is possible that he could still return to the U.S. because his appeal has not yet been denied — only the stay of removal that would have allowed him to remain stateside as he challenged the deportation order. “Theoretically, if he were to prevail on the appeal, he would have to be allowed to return to the United States,” Rosenbaum, 65, told *Jewish Insider* in an interview on Monday. “So it’s not over yet.”

The larger project of finding and deporting Nazis, though, may soon come to an end. Berger’s deportation symbolizes a possible capstone to a long and estimable string of cases against former Nazis living in the U.S. Rosenbaum, a director in the Justice Department’s human rights and special prosecutions section, confirmed that his unit currently has no remaining Nazi cases in court. “Can’t be sure what the future will hold,” he said. “But at the moment, we’re still doing investigative work in this field.”

Only one case is now in litigation in the Western Hemisphere, according to Rosenbaum, referring to a Canadian effort to deport Helmut Oberlander, who served in a killing squad of the infamous Einsatzgruppen before settling in Waterloo, Ontario. Earlier this month, a federal court delayed Oberlander’s deportation hearing until at least mid-March — another postponement among

many in a winding, protracted case. “Just to show you how complicated these cases can be and how they don’t always go the way you might hope,” Rosenbaum said, “the Canadians brought that case in 1995.”

“What’s that, 26 years?” he said, making little effort to hide his exasperation. Rosenbaum knows from experience how long these cases can last, despite that Berger’s trial — for which the most consequential piece of evidence hinged on an index card featuring his name and service details recovered after the war from a sunken German ship in the Baltic Sea — was relatively swift.

“I can give you one example that better encapsulates my frustration, perhaps, than any other,” he said, citing an early case involving Hans Lipschis, an SS guard at Auschwitz. “We found him living in the Chicago area, and he was not a U.S. citizen, so like Berger, we could go directly to deportation prosecution, and we did,” Rosenbaum recalled. “The judge issued a deportation order, directing his deportation to Germany, and Germany admitted him.”

But the process hit a snag when the German law enforcement authority handling Nazi cases announced that the evidence provided to them wasn’t sufficient. “That was 1983. OK? In 2013, 30 years later, using our evidence, they arrested Lipschis,” Rosenbaum said. “So somehow, the evidence that was insufficient in 1983, when it was too late, was sufficient in 2013.” By then, it really was too late, as a judge ruled that Lipschis was no longer fit to stand trial.

“I probably spent more time trying to get Germany and other European governments to take these Nazis back against whom we had won orders of removal, orders of deportation, than any other single thing I worked on,” Rosenbaum said. “This was a constant.”

“These prosecutions are intrinsically difficult,” said Richard Breitman, a Holocaust historian and professor emeritus at American University. “The Justice Department’s special investigative and prosecution unit, for much of that time under Eli Rosenbaum, brought about some measure of belated justice for these persecutors,” he added. “This record will stand the test of time even after the last of these people have died.”



Eli Rosenbaum (Courtesy)

Recently, German prosecutors have demonstrated something of a belated renewal of commitment to try aging collaborators, just this month bringing charges against a 94-year-old woman and a 100-year-old man for Nazi war crimes. These cases have been easier to pursue since 2011, when a judge convicted John Demjanjuk, a Sobibor camp guard, as an accessory to the murder of 28,000 people — establishing a looser standard of proof than was previously required.

The thaw, for Rosenbaum, also suggests a change of another sort. “I think it’s a new generation of prosecutors who don’t have psychological baggage that some of their predecessors have,” he said. “They didn’t have fathers who may have been involved in misdeeds during the Nazi era.”

But in many ways, the attitudinal shift isn’t sufficient given years of neglect. “This newfound commitment to pursuing justice comes at a very late date,” Rosenbaum lamented, “and the vast majority of the most heavily implicated Nazi perpetrators went unpunished.”

Günther Jikeli, a professor in the Institute for the Study of Contemporary Antisemitism at Indiana University in Bloomington, agreed with that assessment. “It’s very late and in many cases too late,” Jikeli told JI. “But it’s important, of course, for the victims and descendants of victims that there is some kind of justice.”

Rosenbaum said he feels some measure of relief that Berger has been deported, even if the appeal still stands. “A substantial measure of justice has been obtained in this case, and I only wish that we could share this information with some of the survivors of Meppen — and alas, we can’t,” he said. “What’s tragic is the witnesses, survivors passing on,” he added. “I think about that a lot now. In this case, of course, we couldn’t find any survivors who could testify.”

Sara Bloomfield, director of the United States Holocaust Memorial Museum, told JI that the Berger case “illustrates a central lesson from the Holocaust — that implementing the Nazis’ genocide against the Jews required the participation of countless individuals, from camp commandants to clerical workers and everything in between.” She added: “As the number of eyewitnesses to this watershed event in human history diminish, it is up to us to ensure that future generations learn about this history and the critical

lessons about complicity and collaboration it holds for us. As the perpetrators die, the pursuit of justice will soon come to an end, but the relevance of the Holocaust never will.”

Efraim Zuroff, chief Nazi hunter at the Simon Wiesenthal Center, expressed some measure of astonishment that cases against former Nazis continue to be brought. “It’s amazing that we’re still doing this 80 years after the beginning of the implementation of the Final Solution,” he said. “We’re approaching the finale, that’s clear.”

Still, prognosticators have been speculating about the last of the Nazis since the 1980s, he said, and yet dogged investigators keep finding them. “We started keeping figures in 2001,” he told JI. “Do you know how many people who have been convicted in legal proceedings since then? Over 100.” “Never say ‘the last Nazi,’ OK?” Zuroff said. “I’m telling you.”

Rosenbaum isn’t ruling out the possibility of another case, either, but as he reflected on Monday after the deportation of Berger, he seemed somewhat at ease.

“The perpetrators will all die out,” he said. “We’re not far from that now, and that’s OK. They’ll answer to another authority.”