
The Demjanjuk Case

DOJ commits fraud upon the court and attempted murder by decree

by Jeffrey Steinberg

On Nov. 17, 1993, a 17-year ordeal ended for John Demjanjuk. The U.S. Sixth Circuit Court of Appeals in Cincinnati, Ohio issued an 83-page decision overturning his denaturalization, and extradition and deportation to Israel on the grounds that the U.S. Justice Department's Office of Special Investigations (OSI), the so-called "Nazi-hunting" unit, had committed prosecutorial misconduct and fraud upon the court. The Sixth Circuit ruling blasted the Anti-Defamation League of B'nai B'rith (ADL) by name for political interference in the functioning of the Department of Justice.

The Ukrainian-American retired autoworker from Cleveland, Ohio and his entire family were drawn for 17 years into a pitched battle against the combined forces of the OSI, the ADL, and the majority of the American mass media.

Had Demjanjuk, his family, and friends not persevered, and had the Israeli Supreme Court and the U.S. Appeals Court for the Sixth Circuit not acted forcefully in the name of justice, Demjanjuk would have been hung in Israel, a country he had never previously visited, for crimes he had never committed. He would have gone down in infamy as the Nazi mass-murderer "Ivan the Terrible," of the Treblinka, Poland concentration camp.

The Demjanjuk case is an appropriate starting point for this probe of systemic corruption inside the U.S. Department of Justice, particularly within the permanent bureaucracy. Over the 17-year period between the initial allegations against Demjanjuk and his eventual exoneration, there have been five U.S. Presidents and eight U.S. Attorneys General. The Justice Department's OSI, which prosecuted Demjanjuk and orchestrated his extradition to Israel, did not yet even exist when the accusations against Demjanjuk were first published in a Soviet propaganda organ. Yet, most of the key players in the Justice Department permanent bureaucracy who would carry out the Demjanjuk travesty—including Deputy Assistant Attorney General Mark Richard and Chief of the Office of International Affairs Michael Abbell—were already long established inside the department, and many of them remain in place to this day.

This is a story of "continuity of corruption" and "govern-

ment by arrogance and brutality," which began before Bill Clinton was elected to his first term as governor of Arkansas. It is also a story that is still awaiting its final chapter. The OSI still exists, continuing its corrupt collusion with the ADL, and it is still targeting some of America's most vulnerable citizens.

Kissinger launches the 'Nazi hunt'

Although the OSI was established on March 28, 1979 by then-Attorney General Griffin Bell, the impetus for the Nazi-hunt came in the early 1970s from Henry Kissinger. In 1971, Kissinger, Richard Nixon's national security adviser, dispatched a team of lawyers to Moscow to establish liaison with the Office of the Soviet Procurator General. Among the Kissinger representatives in the early Moscow talks was Walter Rockler, one of Kissinger's personal attorneys, and the man who would be appointed the first director of the OSI, eight years later.

Kissinger's efforts were coordinated with both the ADL apparatus and the Communist Party U.S.A. (and came at the same time that the FBI, under Operation Cointelpro, was colluding with the Communist Party leadership in soliciting the murder of Lyndon LaRouche—see article, p. 20). When ADL-backed Elizabeth Holtzman (D-N.Y.) was elected to the U.S. Congress in November 1972, her first move was to put forward a list of 59 alleged Nazi war criminals living in the United States. The list was provided by Dr. Otto Karbach, president of the World Jewish Congress (WJC), but had been prepared by Charles Allen, a Communist Party U.S.A. propagandist who had been spewing out Soviet hate literature about "a Nazi takeover of America," and the building of "secret concentration camps" since the 1950s. Allen's source on the "Nazis in America"? Julius Mader, a propagandist for the the East German State Security Service (the Stasi) and KGB writer Ernst Henry.

Two weeks after Richard Nixon's resignation, Kissinger, by now both the secretary of state and national security adviser to Gerald Ford, obtained permission from the President to open up formal collaboration with the Soviet Procurator to

prosecute Nazi war criminals living in America.

The agreement that Kissinger wrangled out of President Ford set a dangerous precedent. For the first time ever, Soviet "evidence" would be used by the Department of Justice and admitted into American courts, with no questions asked. Kissinger promptly passed on the WJC's list of 59 names to Soviet Foreign Minister Andrei Gromyko, and soon, the DOJ and its Immigration and Naturalization Service (INS) were being flooded with Soviet "documentation" of the "Nazi backgrounds" of the targets.

In October 1975, the Soviets provided U.S. Senators Jacob Javits (R-N.Y.) and Abraham Ribicoff (D-Conn.) with a list of 70 Ukrainians allegedly guilty of war crimes. Ribicoff was, at the time, an honorary vice chairman of the ADL, and Javits was a longtime ADL official. The list was conducted to the senators by Michael Hanusiak, editor of the English-language *Ukrainian Daily News* and a well-known Soviet propagandist who had been recruited by the Russians in 1969. John Demjanjuk's name was included on the Hanusiak list.

Within a month of the issue of the Javits-Ribicoff Made-in-Moscow target list, the INS was in contact with "Jewish organizations" in the Cleveland area, as well as in Israel, seeking evidence and potential witnesses against Demjanjuk. In Israel, the government took out advertisements in newspapers soliciting information about Demjanjuk and a second accused war criminal, Fedor Fedorenko. At this point, Demjanjuk was being accused of having worked at the Nazi concentration camp at Sobibor—not at Treblinka.

On Aug. 26, 1976, the Soviet government turned up the heat, publishing an article in a Ukrainian weekly magazine referencing an identity card from the Trawniki SS training camp, in the name Demjanjuk. The article claimed that testimony had been given by a former guard at Sobibor identifying Demjanjuk; however, the accuser had been tried, convicted, and executed for war crimes back in the 1950s, so Demjanjuk would have no opportunity to confront the man. Later, the so-called ID card would be exposed as a Stasi forgery.

Despite the flimsy nature of the charges against him, Demjanjuk was ordered to appear at the INS office in Cleveland on Oct. 19, 1976 to be interrogated by U.S. Attorneys.

A bizarre shift

On Aug. 25, 1977, in the midst of a propaganda barrage against so-called "Nazis in America," fueled by *New York Times* scribbler Howard Blum's recently released book on the subject, Demjanjuk was formally charged by the U.S. government with lying on his immigration application, by failing to report his alleged Nazi concentration camp duties. The charges against Demjanjuk did not tie him to the camp at Sobibor. He was suddenly accused of being "Ivan the Terrible," the Nazi concentration camp motorman at Treblinka

charged with the extermination of 800,000 prisoners, mostly Jews. In response to the advertisements published in the Israeli newspapers, several Treblinka survivors had come forward claiming, 35 years later, that they recognized Demjanjuk from his postwar photograph as "Ivan."

The decision to proceed with the Demjanjuk case was pure politics. The prospect of bagging a "big fish" like Ivan the Terrible was too much for the ADL and its corrupt henchmen inside the Justice Department to resist. The flimsiness of the evidence became even more obvious in May 1978, when the DOJ's case against Fedor Fedorenko fell apart because the Israeli "victim-witnesses" failed to provide clear testimony. Later in the year, the Special Litigation Unit (SLU), the precursor to OSI which was responsible for the prosecution of the "Nazi" cases, lost another high-visibility denaturalization case against Frank Wallis on the same grounds.

Following the Fedorenko defeat, panic set in among the DOJ Nazi-hunters. A July 28, 1978 memo from SLU attorney Donald Convillon to INS General Counsel David Crossland warned that a repeat of the Fedorenko fiasco could bring an end to the entire Nazi-hunting effort. He added that the

Fraud by the OSI: the Arthur Rudolph case

In 1982, the U.S. Department of Justice's Office of Special Investigations (OSI) told former rocket engineer Arthur Rudolph that it could prove that he was responsible for crimes against humanity while working on the German V-2 rocket program during World War II. Insisting that he was innocent, but acknowledging that he was 77 years of age, in poor health, and without the financial resources to engage legal counsel for a trial, he accepted an "offer" by the Justice Department to leave the United States and surrender the citizenship he had held here since the mid-1950s, to avoid possibly losing his family's only income—his government pension. Rudolph had worked for the U.S. Army for 15 years after coming here in 1946, and then managed the Saturn V rocket program to take astronauts to the Moon, retiring from NASA in 1969.

He arrived in Germany in March 1984, and after surrendering his U.S. citizenship two months later, Rudolph applied for West German citizenship. The Bonn government requested the evidence against Rudolph from the OSI. Evidence was slow in coming. In January 1985, the Attorney General of the Central Office of State Judicial Administration in Ludwigsburg, in a letter to Prof. F.

SLU-INS needed a “big win” to revive the credibility of the eyewitnesses. A few weeks later, SLU head Martin Mendelsohn traveled to Israel to solicit the help of Israeli authorities in going ahead with the Demjanjuk case. After his return, he wrote a memo to Crosland calling the Demjanjuk prosecution “critical.”

Innocent beyond a doubt

On Oct. 13, 1978, the SLU received copies of 19 interrogations of 11 Soviet citizens that proved in no uncertain terms that Demjanjuk was not “Ivan.” The documents, sent by the Soviet government, had been originally requested for use in the Fedorenko case. For that reason, they came to be known as the “Fedorenko protocols.” Included were interviews with two Treblinka guards, Pavel Leleko and Nicholay Malagon, who were interrogated by the Soviets shortly after World War II. They provided detailed accounts of the internal workings of Treblinka and stated unequivocally that, during the 1942-43 period when the U.S. government claimed Demjanjuk was “Ivan the Terrible,” there were only two motormen at Treblinka, “Marchenko and Nicholay.”

In 1991, following the collapse of the Soviet Union,

investigators for Demjanjuk would get their hands on other Soviet documents that were never transmitted to the United States, including the confession of Nicholay Shalayeve, who admitted that he had been one of the two motormen at Treblinka. Shalayeve identified Ivan Marchenko as the second motorman. The file included photographs and biographical data on Marchenko making it absolutely clear that he was not John Demjanjuk.

Even without the benefit of the complete Soviet file, however, the “Fedorenko protocols” already constituted sufficient evidence to exonerate Demjanjuk—nearly three years before Demjanjuk’s first denaturalization hearing.

It gets worse. On Aug. 31, 1979, the Justice Department received another series of documents, these from the Polish Main Commission, the Polish government’s war archive, including a list of all the known concentration camp guards at Treblinka. Demjanjuk’s name did not appear on the list—but the name “Ivan Marchenko” did. In short, by no later than August 1979, the DOJ had incontrovertible proof that Demjanjuk was the wrong man.

Despite this, plans accelerated to bring Demjanjuk to trial. In March 1979, the SLU had been upgraded to the

Winterberg at Konstanz University, complained that “the documents which I had requested several months ago from the [OSI] have not yet arrived.” But, he stated, “in the central office there is no incriminating evidence against Mr. Rudolph. I may add, that because of the Nazi crimes at Dora-Mittelbau—in particular, because of the hanging of prisoners in the underground factories—intensive investigations have been conducted. The name *Rudolph* never came up.”

In March 1987, Hamburg District Attorney Harald Duhn told the press that after a more than two-year investigation, Rudolph had been cleared of all charges. UPI quoted Duhn that “none of about 100 witnesses brought in from the United States, Australia, and Israel were able to establish Rudolph’s guilt.” A colleague of Rudolph’s revealed in 1988, when Rudolph was finally granted West German citizenship, that all nine of the witnesses whose names were forwarded by the Justice Department to the German authorities were invalid; most of them did not even know Arthur Rudolph.

It should not have been a surprise to anyone that the OSI’s case was a bluff. When the public first learned that Rudolph had been accused of war crimes, an American who was a member of the U.S. legal staff that participated in war crimes trials concerning the V-2 project wrote a letter to the *Baltimore Sun*. Milton Crook states in his letter, published on Nov. 17, 1984, that in 1947 there

were trials held at Dachau to prosecute defendants for war crimes at the SS-run underground rocket factory at Nordhausen. Investigations began in 1945, after the Dora concentration camp, which supplied slave labor for the underground factory, was liberated. Upon completion of the investigations, “some of the scientists so recruited by us and working in the U.S. installations were formally accused for such crimes and returned to Germany for trial at Dachau. Likewise accused were various camp officials, guards and other personnel.”

“After a long, thorough trial,” Crook continued, “the war crimes court considered the evidence and testimony introduced by the parties and adjudged the scientists not guilty of all charges. The other defendants were all found guilty as charged and duly sentenced.” Arthur Rudolph was not accused in the 1947 trial. “In view of the recent developments in the Rudolph incident,” Crook wrote, “and his earlier association with his fellow scientists, long since tried and acquitted, the allegation of similar charges against him almost 40 years after the fact gives rise to certain questions: In the interim where was the evidence of Rudolph’s complicity? And where were the persons knowledgeable of such evidence? Why did they not speak up during the 1947 trial or since then?”

It is past time that Arthur Rudolph be exonerated and allowed to return to his home of 40 years in the United States.—*Marsha Freeman*

Office of Special Investigations, commanding a \$2.3 million startup budget and a staff of 50. By this date, the original World Jewish Congress-launched KGB list of alleged "Nazis in America" had swelled to over 200 names. The OSI was placed in the Criminal Division chain of command directly under Mark Richard, the Deputy Assistant Attorney General in charge of international liaison and national security. OSI would also forge close working relations with another senior DOJ careerist, Michael Abbell. By 1980, Abbell was in the Office of International Affairs, responsible for extradition matters.

A lot was riding on the Demjanjuk case. But not everyone inside the OSI was anxious to jump on board. On Feb. 28, 1980, George Parker, an OSI attorney assigned to the Demjanjuk case, wrote a memo to OSI director Alan Ryan, headlined "Demjanjuk: A Reappraisal." The memo raised "ethical" and "evidentiary" concerns about the Demjanjuk case. Parker had read the case file, and was disturbed that there were glaring contradictions between the information contained in the original allegations about Demjanjuk being a guard at Sobibor and the later charges that Demjanjuk had been "Ivan" of Treblinka. Parker pointed out that the Soviet-produced ID card was "dubious" at best, and that the investigation of both the Sobibor and Treblinka charges was "fraught with problems." He concluded: "We have little admissible evidence that defendant was at Sobibor, yet there are serious doubts as to whether he was at Treblinka."

Parker followed up with a meeting in March 1980 with Ryan, Walter Rockler, and Norman Moscowitz to discuss his reservations about proceeding with the Demjanjuk prosecution. When he got no satisfactory response from the OSI hierarchy, he left the OSI altogether.

All of this did little good for Demjanjuk. It would be years before his attorneys would pry loose any information about the internal turmoil at OSI, or the "Fedorenko protocols," or the Polish Main Commission files.

The wheels of injustice rolled forward. On Aug. 11, 1980, OSI head Ryan wrote to Abbell informing him that the OSI would seek to extradite alleged war criminals to their country of origin to stand criminal trial. This was the first formal move by the OSI to have their targets booted out of the country. A year later, on July 10, 1981, OSI attorney Bruce Einhorn, an ADL official from Los Angeles, wrote to the new OSI boss, Neal Sher, urging the extradition of OSI targets to Israel—a country that did not even exist at the time the alleged war crimes took place. Five months later, Sher traveled to Israel to meet with National Police officials and arrange for Israel to "request" the extradition of Demjanjuk to stand trial for war crimes.

In February-March 1981, Demjanjuk had been tried in the District Court in Cleveland before Judge Batisti. It was ostensibly a civil proceeding dealing with his naturalization status. In fact, it was life or death for Demjanjuk, who was

found guilty of lying on his immigration application and on his naturalization papers. Judge Batisti's ruling included gratuitous findings that the Trawniki ID card was authentic (even though the Soviets had only provided a copy of the document), and that all of the witnesses who had placed Demjanjuk at Treblinka through "photo lineup" identification were credible. The Sixth Circuit initially upheld the lower court's ruling, despite protests from Demjanjuk's attorneys that they had been denied access to exculpatory evidence. On Oct. 26, 1983, Demjanjuk's attorneys filed amended papers charging that the government had committed "fraud upon the court." How right they were!

Following the Sixth Circuit's initial findings, the U.S. Supreme Court refused to consider the case.

On Nov. 18, 1983, the U.S. Attorney in Cleveland filed an extradition request for Demjanjuk on behalf of the Israeli government.

On May 23, 1984, an Immigration Court judge ruled that Demjanjuk was deportable.

On Feb. 27, 1986, John Demjanjuk was extradited to Israel to stand trial as "Ivan the Terrible." It was slated to be the biggest show trial in Israel since the prosecution of *genuine* Nazi mass murderer Adolf Eichmann in the early 1960s. A whole new generation of Israelis was to be educated about the Holocaust—and Demjanjuk was to be the human sacrifice.

The Demjanjuk trial began on Feb. 16, 1987 and continued until Feb. 18, 1988. The entire proceeding was broadcast on Israeli national television.

On April 18, 1988, Demjanjuk was found guilty of being "Ivan the Terrible." The judge took ten hours to read the verdict.

One week later, on April 25, Demjanjuk was sentenced to death by hanging. It was the second time in Israel's history that the death penalty had been invoked. The last incident was in 1962: Adolf Eichmann.

Fighting for innocence—and winning

As the Demjanjuk nightmare proceeded, Demjanjuk's son-in-law Ed Nishnic was drawn into the fray, eventually giving up his job and working round-the-clock, with other family members and friends, to prove his father-in-law's innocence. Beginning in 1986, Nishnic received a series of anonymous packages of documents, all internal OSI memos showing that the office was withholding exculpatory evidence from the Demjanjuk defense team, detailing secret collusion between the U.S. and Israeli prosecutors, and spelling out a coverup of that collusion.

Nishnic took advantage of the road-map those documents afforded him, filing a lawsuit under the Freedom of Information Act, and, finally, in September 1987, U.S. District Court Judge for the District of Columbia Oberdorfer ordered the OSI to release copies of the "Fedorenko protocols" to Nish-

nic. Pursuing other leads, he eventually won the backing of Rep. James Traficant (D-Ohio).

In 1990, as the Demjanjuk case was being taken up on appeal by the Israeli Supreme Court, Nishnic, along with the Israeli attorney defending his father-in-law, traveled to Ukraine in pursuit of fresh evidence. Despite desperate efforts by the Israeli prosecutor and some KGB elements to block access to the crucial Soviet files, Nishnic did eventually obtain some evidence about the existence of Ivan Marchenko. It was enough of a wedge to prompt the Israeli Supreme Court to order prosecutor Michael Shaked to turn over the files *he* had squirreled away from the KGB. They included the Nicholay Shalayev debriefing that provided the identity of the real "Ivan the Terrible of Treblinka."

During arguments before the Israeli Supreme Court on Dec. 18, 1991, Demjanjuk's attorney Yoram Sheftel presented testimony from 21 Treblinka guards who identified Ivan Marchenko as "Ivan." He told the court: "You have a complete frameup. The documents speak for themselves."

The perseverance of Demjanjuk's family and friends scored another victory in early 1992. The Demjanjuk revelations at the Israeli Supreme Court had reverberated back to the United States. The *New York Times* published accounts of the "new revelations," suggesting Demjanjuk's innocence (among the major news publications in the United States, for years, only *EIR* had been regularly covering the Demjanjuk case from the standpoint of exposing the systemic OSI and ADL corruption). In response to that publicity, the Chief Judge of the Sixth Circuit Court of Appeals in Cincinnati, Judge Gilbert Merritt, ordered his clerk to write a letter to Robert Mueller, the head of the Criminal Division, requesting all new evidence obtained by the DOJ regarding the Demjanjuk case. The DOJ never even acknowledged receipt of the clerk's letter.

On June 3, 1992, after a second letter from Green to Mueller went unanswered, the Sixth Circuit announced that it was inviting Demjanjuk's lawyers to request a review of the *habeas corpus* petition that authorized Demjanjuk's extradition to Israel. After a hearing in early August, the three-judge Sixth Circuit panel headed by Judge Merritt announced the appointment of a Special Master, Judge Thomas Wiseman, to determine whether OSI and other government attorneys had committed "fraud upon the court."

In June 1993, after extensive depositions of government attorneys and other witnesses, Judge Wiseman completed his investigation and submitted a report to the Sixth Circuit panel. Although the report ultimately concluded that there was no evidence of governmental fraud upon the court, the report amounted to a damning indictment of the OSI's conduct, and included important evidence of ADL political interference.

From there, things moved very quickly. On July 29, 1993, the Israeli Supreme Court, after an agonizing delay

of over one year, issued a 500-page decision overturning the conviction of Demjanjuk and finding that, under the terms of the U.S.-Israeli extradition treaty, Demjanjuk could not be retried—as some ADL assets in Israel and the United States had argued—on any other charges.

On Aug. 3, 1993, the Sixth Circuit lifted the ban on Demjanjuk's return to the United States, providing him with temporary permission to come home, pending a hearing on the Special Master's findings scheduled for Sept. 3, 1993.

Justice, at last

On Nov. 17, 1993, the Sixth Circuit issued its ruling, finding that "the OSI attorneys acted with reckless disregard for the truth and for the government's obligation to take no steps that prevent an adversary from presenting his case fully and fairly. This was fraud on the court in the circumstances of this case where, by recklessly assuming Demjanjuk's guilt, they failed to observe their obligation to produce exculpatory materials requested by Demjanjuk. . . .

"For the reasons set out herein we vacate the judgment of the district court and the judgment of this court in the extradition proceedings on the ground that the judgments were wrongly procured as a result of prosecutorial misconduct that constituted fraud on the court."

The Sixth Circuit ruling went to great lengths to praise the actions of the Israeli prosecutor and the Israeli Supreme Court, juxtaposing their honorable behavior with that of the OSI and groups like the ADL. "The 'win at any cost' attitude displayed by [OSI] contrasts sharply with the attitude and actions of the Israeli prosecutors, who were under domestic political pressure themselves. But for the actions of the Israeli prosecutors, the death sentence against Demjanjuk probably would have been carried out by now. He would have been executed on a charge for which he has now been acquitted."

The Sixth Circuit ruling singled out ex-OSI chief Alan Ryan's 1986 "lecture tour" of Israel, sponsored by the ADL, as a particularly egregious instance of the "win at any cost" attitude. "It is obvious from the record that the prevailing mindset at OSI was that the office must try to please and maintain very close relationships with various interest groups because their continued existence depended upon it."

But the court's action was targeted at a concert of forces, both inside and outside the Department of Justice. Between the Special Master's report and the final ruling of the Sixth Circuit (which the U.S. Supreme Court refused to revisit), scores of Department of Justice bureaucrats were identified as complicit in the "fraud"—from Mark Richard, the senior DOJ manager who oversaw the office, to every director of OSI from the day it opened its doors up to the day of the ruling, to Criminal Division chief Robert Mueller, whose arrogance sparked the Circuit Court's review of the case in the first place.