

# Demjanjuk frameup broke all the rules

by Jeffrey Steinberg

A forensic expert who testified at the John Demjanjuk trial in Israel has charged that the U.S. Department of Justice and Israeli prosecutors broke all rules of evidence in their zeal to frame up the retired Cleveland auto worker on phony war crimes charges. Demjanjuk was accused of having been "Ivan the Terrible," a mass murderer at the Treblinka concentration camp; illegally extradited from the United States to Israel, he was convicted and sentenced to death. The case is now before the Israeli Supreme Court.

Willem Wagenaar, a noted Dutch psychologist who testified at the 1987-88 Jerusalem trial of Demjanjuk, was apparently so angered by the manipulation of so-called eyewitness testimony by the American and Israeli prosecutors, that he wrote a book-length exposé of the fraud in the hope that no one else would ever fall victim to such gross manipulation.

Wagenaar's book, *Identifying Ivan*, which was first published by Harvard University Press in 1988, has been reissued recently in response to the revived interest in the Demjanjuk case, due to appellate actions in both Israel and the United States and widespread publicity of the charges of government misconduct.

The Anti-Defamation League (ADL) and other private agencies that have been implicated in the Demjanjuk frameup and similar criminal actions by officials of the Department of Justice (DOJ), are desperately attempting to fend off the exposure, which could lead to the dismantling of the Office of Special Investigations, the DOJ's so-called "Nazi-hunting" unit. The OSI has been a pipeline for Israeli Mossad and KGB disinformation into the American judicial system. Several members of Congress have called for a congressional probe of the OSI.

On June 5, 1992, the U.S. Sixth Circuit Court of Appeals in Cincinnati, Ohio took the extraordinary step of reopening the Demjanjuk extradition case on its own initiative, after Department of Justice officials refused to answer repeated requests by Clerk of the Court Leonard Green for information on the department's internal probe of misconduct by Demjanjuk's prosecutors. In a series of letters from Green to Assistant Attorney General Robert Mueller in January and May of this year, the clerk complained bitterly that he had gotten more information from the *New York Times* than he had from repeated calls to the DOJ headquarters in Washington. The *Times* had reported that the OSI had withheld reams of exculpatory documents from the defense attorneys, including

statements from 21 Treblinka concentration camp guards who had identified another man as "Ivan the Terrible."

On July 15, in response to the Sixth Circuit order, DOJ attorneys filed a brief, accompanied by 700 pages of documents. As *EIR* reported last week, the Justice Department filing failed to comply with the court's order. The Sixth Circuit had ordered the DOJ to provide the court with the exculpatory evidence withheld from the Demjanjuk defense team and the details of when and how the department obtained the evidence.

On July 27, attorneys for Demjanjuk filed the first of several briefs, blasting the government for ignoring the court's order, and charging that the government's brief "devotes most of 64 pages to a discussion of evidence in the Department of Justice's possession which obscures, and is irrelevant to, a showing of the exculpatory evidence known to United States government officials during the denaturalization, extradition, and *habeas corpus* proceedings. To the extent the respondents' brief includes this broad range of 'inculpatory' evidence it is not responsive to the court's order."

In contrast to the government's stonewalling, Demjanjuk's attorneys listed 23 separate pieces of exculpatory evidence in the possession of the OSI that proved that another man, Ivan Marchenko, was the actual Treblinka guard who carried out the mass murders for which Demjanjuk was unjustly convicted and sentenced to death. Among the evidence provided in the Demjanjuk brief was proof that Marchenko's co-worker at the gas chambers at Treblinka had identified him by name as "Ivan" and had produced a photograph of the two men together at the camp. That man, Nikolay Shalayev, was executed by the Soviets in 1951 for his war crimes at Treblinka. He had nothing to gain or lose by identifying his cohort.

## Cavalier incompetence

The Demjanjuk brief's attack on the government's so-called eyewitness evidence dovetails with the case presented by Dr. Wagenaar.

A professor of experimental psychology at the University of Leyden in The Netherlands, Dr. Wagenaar was allowed to testify as an expert witness for the Demjanjuk defense at the trial in Israel. In that testimony, and in *Identifying Ivan*, Wagenaar showed that both the OSI officials and the Israeli prosecutors had been grossly negligent and "cavalier" in their handling of the photographic identification of Demjanjuk. He accused them of leading witnesses, misreporting the contents of the interview sessions, concealing cases where eyewitnesses did not identify Demjanjuk, among other instances of misconduct. Whereas careful procedures have been developed and codified for eyewitness identifications, only 5 of these 50 procedural safeguards were applied in the Demjanjuk case, according to Wagenaar. The *only* evidence against Demjanjuk was from these witnesses.