

Evidence reveals OSI knew Demjanjuk was innocent

by Jeffrey Steinberg

Piece by piece, the evidence is falling into place proving that top officials of the Department of Justice Office of Special Investigations (OSI), the so-called Nazi-hunting unit, knowingly shipped an innocent man off to a show trial and certain death in Israel. But for the fact that John Demjanjuk, a Ukrainian-born retired Cleveland, Ohio auto worker, had a loyal group of family and friends who were committed to piercing the Justice Department's veil of secrecy and battling the non-stop black propaganda campaign of the Anti-Defamation League of B'nai B'rith (ADL) and the Soviet KGB, he would be dead today.

Instead, the Demjanjuk case is providing a bird's eye view of a level of corruption inside the American justice system that is reminiscent of the worst judicial atrocities of the Nazis.

On Nov. 12-13, U.S. District Court Judge Thomas Wiseman, in his capacity as Special Master for the Sixth Circuit Court of Appeals, presided over interrogations of two former OSI officials in Nashville, Tennessee, who each revealed new pieces of the scandal that ought to send senior Department of Justice (DOJ) officials to jail for their role in what amounts to a premeditated murder plot against Demjanjuk.

On Nov. 12, attorneys for Demjanjuk questioned George Parker, a former OSI attorney who quit the department in disgust when his superiors refused to heed his warnings that Demjanjuk was not the Treblinka concentration camp guard and mass murderer known as "Ivan the Terrible." In February 1980, Parker, whose OSI responsibilities included the Demjanjuk denaturalization case, wrote a five-page memo to then-OSI director Walter Rockler and his case officer Alan Ryan, expressing strong doubts about the evidence against Demjanjuk. The memo cited contradictions in eyewitness testimony and a lack of any documentation in the Soviet or Polish

government files placing Demjanjuk at the Treblinka camp during the period in question. Even the handful of witnesses (mostly death camp escapees) who identified Demjanjuk's picture as that of Ivan, described the gas chamber operator as a short man. Demjanjuk is well over six feet tall.

Evidence dismissed out of hand

Parker's compelling memo was dismissed by his superiors in a 25-minute conference. Shortly after that meeting, Parker quit the department on the grounds that he could not send an apparently innocent man to trial in Israel just because it was "tactically shrewd."

At the time, the loss of a series of high-profile cases had upset leading Zionists, such as Rep. Joshua Eilberg (D-Pa.), the sponsor of the legislation creating the OSI, and the Israeli government. OSI and DOJ officials were facing a full-scale Zionist pressure campaign to come up with a new "Nazis in America" case that could conjure up scare headlines and provide the Israeli government with a new symbol of Nazi atrocities—even if the symbol was an innocent man.

According to Michael Mendelssohn, another top OSI attorney who testified in Nashville on Nov. 13, it was this congressional Zionist lobby and Israeli government pressure that may have compelled the OSI top brass to ignore Parker and other doubts, and to proceed with the Demjanjuk denaturalization, extradition, and deportation.

Over 1987-88, Demjanjuk was tried before an Israeli court. The entire proceeding was aired on national television. It was the biggest show trial in Israel since the Adolph Eichmann case—but the difference was that Demjanjuk was innocent. The stakes in the Demjanjuk show trial were high. When a respected Israeli defense lawyer stepped in to represent the OSI victim, he suddenly dropped dead—the victim of an apparent poisoning. In a climate fueled by horrifying

propaganda about wartime Nazi atrocities, the jury convicted Demjanjuk in early 1988 and he was sentenced to death by hanging.

Parker and other OSI officials knew that Demjanjuk was not Ivan the Terrible years before his extradition and trial. Ultimately, evidence turned up by Demjanjuk's relatives and friends, including evidence gotten from the garbage cans outside of DOJ headquarters in Washington, D.C., showed that the government had strongly contradictory information in its files. The revelations of this evidence prompted the Israeli Supreme Court to take up the issue on appeal. Last spring, the Israeli court heard the evidence, and is now considering whether to set Demjanjuk free.

Even as the Israeli Supreme Court was hearing evidence that another man, Ivan Marchenko, was the real Ivan the Terrible, the Sixth Circuit Court of Appeals in Cincinnati, Ohio—the court that upheld the Demjanjuk extradition to Israel to stand trial on a capital offense—was getting a run-around from the DOJ. In response to repeated requests for DOJ files on the Demjanjuk case, Criminal Division chief Robert Mueller sat on his thumbs for six months, refusing even to return letters or phone calls from the chief clerk of the Sixth Circuit. Eventually, the Appeals Court reopened the case on its own initiative. In August, a three-judge panel appointed Judge Wiseman as a Special Master charged with gathering evidence on whether the DOJ committed a “fraud on the court” by withholding key evidence of Demjanjuk’s innocence.

Parker was the first witness to be called for questioning by Demjanjuk’s attorneys before Judge Wiseman. At the hearing, Parker’s December 1980 memo was revealed for the first time from the OSI archive. The Parker memo spoke of “gnawing doubts” about Demjanjuk’s presence at Treblinka (Soviet-provided “documents”—themselves of dubious authenticity—placed Demjanjuk at another Polish concentration camp during the years in question). “When I left the department, I did not think [Demjanjuk] was Ivan the Terrible,” Parker told the court.

Parker described efforts by Norman Moskowitz, his co-prosecutor in the Demjanjuk case, to reconcile contradictions in the evidence. Ultimately, the papers drafted by the OSI for Demjanjuk’s denaturalization presented contradictory charges. Demjanjuk was accused of having been in two places at the same time, and of having committed major war crimes in both locations. Demjanjuk has forcefully insisted that he was not at either camp and committed no war crimes.

One of Demjanjuk’s attorneys, civil libertarian and legal scholar Michael Tigar, criticized Parker for his failure to provide the Demjanjuk defense team with evidence that might have averted his denaturalization and subsequent nightmare in Israel. In some instances, it took Demjanjuk’s lawyers seven years to obtain evidence that was in the DOJ’s files as early as 1978—years before the denaturalization hearing took place.

Heavy burden of proof

Even though preliminary evidence-gathering under Judge Wiseman’s direction has turned up important proof of Demjanjuk’s innocence, that proof may not be enough to set the Ukrainian-American free and allow him to return home to his family in the United States.

The Sixth Circuit, in its August ruling appointing Judge Wiseman as Special Master, specified that it was necessary to establish that the DOJ had committed “fraud upon the court” in order to reverse the extradition-deportation. If the OSI failed to turn over exculpatory evidence to the Demjanjuk defense team, but did so out of carelessness or bureaucratic incompetence, the court may not ask Israel to send Demjanjuk home. The defense must prove that there was fraud, not just carelessness.

For that reason, Mendelssohn’s testimony about heavy-handed congressional and Israeli government pressure on then-Attorney General Griffin Bell to offset the loss of a recent denaturalization case against another alleged Treblinka guard, F.D. Fedorenko, by coming up with “Ivan,” was also critical new information.

Even the *Washington Post* referred to the OSI’s handling of the Demjanjuk affair as “genuinely dreadful.” A Nov. 15 editorial read: “The extradition hearing [of Demjanjuk] was not a criminal trial per se—and the rules for evidence in civil proceedings are less stringently drawn—but of course its function was to make possible the prosecution of a man on criminal, indeed capital, charges. The notion of withholding or overlooking materials that suggest even faintly that an innocent man might be hanged is authentically monstrous. If Justice Department prosecutors turn out to have done anything of the sort, the penalties should be heavy.”

Probe Israeli, Soviet collusion

Indeed, the penalties against the relevant OSI and DOJ officials should be heavy. Others should come under scrutiny as well, and the full consequences of the OSI’s Nazi-hunting mandate should be tallied before any more human lives or taxpayers’ dollars are expended.

Friends and associates of Demjanjuk and other victims of the OSI have charged that the OSI provided a vehicle for fraudulent Soviet and Israeli-manufactured evidence to be introduced into the American judicial process. Like the espionage escapades of convicted Israeli spy Jonathan Jay Pollard, whose booty was passed from Israel to the KGB as part of the deal for the exodus of Soviet Jews to Israel, the full consequences of the OSI collusion with Moscow and Tel Aviv is still not known. A thorough probe, by the Congress or even by an independent counsel, would be an important step to clean the American judicial system of special interest corruption, domestic and foreign.

At the moment, justice must be served in the case of Demjanjuk. On Dec. 21-22, other witnesses will be questioned about their role in the railroad of Demjanjuk.