

Supreme Court rebuffs OSI on Demjanjuk case

by Jeffrey Steinberg

On Oct. 3, the U.S. Supreme Court delivered what may prove to be a death blow to the Justice Department's self-described "Nazi-hunting" Office of Special Investigations (OSI) and its allies and collaborators in the Anti-Defamation League of B'nai B'rith (ADL). Without written comment, the court refused to take up an appeal by the Department of Justice of a U.S. Sixth Circuit Court of Appeals finding that the OSI and other DOJ officials had committed "fraud upon the court" in its frameup of John Demjanjuk on Nazi war crimes charges. Demjanjuk now stands exonerated.

The Supreme Court decision is the culmination of a 17-year ordeal in which Demjanjuk, a retired Cleveland, Ohio auto worker of Ukrainian background, was unjustly accused of being the Treblinka concentration camp gas chamber operator "Ivan the Terrible," who murdered tens of thousands of Jews.

Demjanjuk was subjected to denaturalization, deportation, and extradition proceedings by the OSI, and was then tried and convicted of the "Ivan" charges by an Israeli jury. Demjanjuk was sentenced to death by hanging, but, in 1993, the Israeli Supreme Court overturned the conviction on the basis that there was "reasonable doubt" about his guilt. The Israeli Supreme Court decision was based largely on new evidence produced by Demjanjuk's family and defense attorneys showing that the U.S. Justice Department had suppressed evidence showing that eyewitnesses had identified another man, Ivan Marchenko, as the actual Treblinka mass murderer. Additional new evidence proving Demjanjuk's innocence was obtained from Ukrainian officials following the fall of the Soviet regime and the unlocking of other buried KGB and Soviet Interior Ministry files.

The frameup of Demjanjuk was one of the most flagrant instances in which U.S. Justice Department officials collaborated with Soviet bloc secret police agencies to frame up an

innocent man. One of the crucial pieces of "evidence" used to link Demjanjuk to the mass murders at Treblinka was an identification card purportedly issued by the Nazis to Red Army prisoners who had been trained at Trawniki to serve as guards at the concentration camps. West German officials familiar with the sophisticated forgery techniques of the East German secret police (Stasi) did extensive studies of the identification card, and concluded that the papers were cleverly crafted forgeries, using a photo of Demjanjuk that was not taken until the postwar period. Despite this discrediting, and despite a dozen other instances of eyewitness accounts proving that Demjanjuk was the wrong man, the OSI went ahead with the case.

Sixth Circuit acts decisively

In September 1993, after a several month-delay, during which time the ADL and some of their extremist friends in Israel attempted to block his release from prison, Demjanjuk was returned to the United States. Two months after Demjanjuk's return to Cleveland, the Sixth Circuit Court of Appeals in Cincinnati, Ohio ruled that the DOJ had committed "fraud" by burying exculpatory evidence that would have proven Demjanjuk's innocence. Some of that evidence was in the hands of OSI attorneys by no later than 1978, and almost all of the suppressed evidence had been obtained prior to Demjanjuk's extradition to Israel.

The Sixth Circuit decision not only blasted the OSI for corruption and for caving in to outside political pressure, but it cited the ADL by name as one of the outside groups that intervened repeatedly to contaminate the environment in both the United States and Israel, foreclosing the possibility of a fair trial.

The Sixth Circuit ruling came at a bad time for the ADL.

For a year prior to the Sixth Circuit decision, the ADL had been under criminal investigation in San Francisco, Chicago, Los Angeles, and several other cities for running a massive illegal spy apparatus, gathering classified police and other government data on tens of thousands of American citizens, and in some instances selling that information to the intelligence services of South Africa, Israel, and the Soviet Union.

Since it was established in 1979, the OSI had been a bastion of ADL contamination inside the Department of Justice, often providing the ADL with a "government cover" for collusion with Israeli and Soviet bloc intelligence services. For example, a senior ADL officer, Bruce Einhorn, while an OSI attorney in the early 1980s, wrote the decisive memorandum that led to the decision to extradite Demjanjuk to Israel, despite the fact that Demjanjuk had never set foot on Israeli soil.

To the great credit of the Israeli Supreme Court, the justices refused to bend to the climate of hate orchestrated by the ADL and by radical Israeli networks associated with the Temple Mount Faithful and the circles of Gen. Ariel Sharon, who demanded that Demjanjuk be kept in an Israeli prison even if he was proven not to have been at Treblinka. The ADL logic was that if Demjanjuk was not "Ivan the Terrible," he must have nevertheless committed some other, undocumented war crimes and, therefore, he should rot in jail.

Similarly, the Sixth Circuit court faced an uphill battle against the permanent bureaucracy at the Department of Justice that refused to even respond to repeated queries by the Clerk of the Court in Cincinnati after the *New York Times* and other news media reported on the OSI's suppression of crucial evidence. After Robert Mueller, the head of the Criminal Division at DOJ during the George Bush administration, stalled for six months in early 1992 in complying with Sixth Circuit demands for the new evidence suggesting Demjanjuk's innocence, the court took it upon itself to reopen the case. After preliminary hearings, the Sixth Circuit appointed a Special Master to conduct a six-month, de novo investigation of the Demjanjuk case to determine whether the DOJ officials had committed willful fraud. Although the Special Master, Judge Thomas Wiseman, recommended that the court take no further action, a three-judge panel of the court decided that justice had been so badly poisoned by the OSI that the case had to be overturned.

Solicitor General Drew Day, under enormous pressure from both the ADL and from the OSI apparatus inside the Justice Department, filed papers earlier this year arguing that the Sixth Circuit had erred by applying an "inconsistent" standard in judging the OSI's "fraud."

The Supreme Court sided with the Sixth Circuit and, as a result, the entire corrupt ADL-contaminated network inside the DOJ now stands exposed and vulnerable.

Last-minute evidence more damning

In September 1994, as the Supreme Court was in the process of final review of the Demjanjuk case, Solicitor Gen-

eral Day informed the court that one of his assistants, Kent L. Jones, Jr., had come to him with new evidence of the OSI's criminal mishandling of the case. Jones recalled a conversation that he had had with OSI Director Alan Ryan in early 1980, in which Ryan admitted that there was contradictory evidence in the case but that the government would not make the potentially exculpatory information available to Demjanjuk's lawyers. Ryan denied the Jones revelations, which would prove, if corroborated, that Ryan lied to the Sixth Circuit when he told Special Master Wiseman that the OSI had maintained a policy of always providing defendants with any exculpatory evidence, even though the OSI's immigration proceedings do not fall within the general rules of criminal discovery.

Last gasp effort

In spite of the Supreme Court decision backing the Sixth Circuit's damning findings against the OSI, the Justice Department has announced that it still plans to go forward with its effort to have Demjanjuk deported back to Ukraine.

At the same time that the Solicitor General was filing his brief with the Supreme Court, the DOJ filed papers with the Federal District Court in Cleveland, asking Judge Frank Batisti, the original trial judge in the Demjanjuk case, to revoke Demjanjuk's citizenship on the basis of his original 1981 denaturalization ruling. The DOJ, while acknowledging in its Supreme Court brief that a rejection of *cert* by the Supreme Court might irreversibly jeopardize Demjanjuk's deportation, said, even after the Supreme Court decision was announced, that they plan to move forward aggressively with the effort to expel Demjanjuk back to Ukraine.

Judge Batisti had held off ruling on the DOJ deportation petition until after the Supreme Court ruled.

Clean up time!

Now that the Supreme Court has backed up the Sixth Circuit's indictment of OSI, the next step, long overdue, should be for Attorney General Janet Reno to formally shut down the OSI and launch a serious internal DOJ inquiry into the contamination of the department as the result of the activities of the OSI and its ADL friends. The ability of the crime-infested ADL to operate openly inside the nation's justice apparatus is a grave problem that can be largely traced to the presence of a deeply entrenched bureaucracy at DOJ, which has done the ADL's bidding for decades. Senior career DOJ officials such as Mark Richard, who oversaw the OSI throughout its existence, ought to be the subjects of serious scrutiny.

Whereas the Bush administration relished the idea of a Justice Department dedicated to the imposition of political police state rule over the United States and the Western Hemisphere, President Clinton has rejected that approach to government. The Supreme Court decision not to take up the Demjanjuk case ought to be seen as a green light for a thorough housecleaning at the DOJ.