

## ADL unit gets a drubbing at hearing on Demjanjuk frameup

by Jeffrey Steinberg

The nightmare may not be over yet for John Demjanjuk, the man falsely accused of being the World War II Treblinka concentration camp guard and mass murderer "Ivan the Terrible." But the Aug. 11 hearing before the Sixth Circuit Court of Appeals in Cincinnati, Ohio at least gave Demjanjuk, who sits in an Israeli prison awaiting the outcome of an Israeli Supreme Court review of his conviction and death sentence, the first opportunity in 15 years to have his case publicly aired before an apparently unbiased and serious American judicial panel.

The outcome of that hearing could not only mean freedom and a return to the United States for John Demjanjuk, who is now 75 years old. It could spell the beginning of the end for the Justice Department's self-styled Nazi hunting unit, the Office of Special Investigations (OSI), and its private controller, the Anti-Defamation League of B'nai B'rith (ADL). If the revelations of widespread corruption and fraud aired at the hearing form the basis of the court's ruling and succeed in fueling anticipated congressional hearings this autumn, the ADL and other Zionist outfits that have run the OSI as their private secret police force from its inception could find themselves stripped of one of their most important points of corrupting penetration into the U.S. government.

One of the clearest signs of the growing panic within the Zionist lobby was the last-minute filing of an *amicus curiae* brief by the American branch of the International Association of Jewish Lawyers and Jurists (IAJLJ), requesting permission to intervene into the appellate deliberation on the side of the OSI and the Israeli prosecutors. That brief, written by Nathan Lewin, one of the attorneys representing convicted Israeli-Soviet spy Jonathan Jay Pollard, concluded with the following tell-tale warning:

"Over the past 15 years, the Department of Justice has

proceeded vigorously with great fairness against Nazi war criminals in the United States. Some public figures, including even candidates for the nation's highest office, have vociferously fought this national policy and sought to derail it. They doubtless see this case, and its present posture in this court, as an opportunity to disparage what has been accomplished and bring the commendable effort to a halt. We urge the court to deny the petitioner's motions and thereby forestall this unfortunate consequence."

Independent presidential candidate Lyndon LaRouche is the only candidate currently running who fits Lewin's description.

Ironically, while leading American Zionists like Lewin have gone into a state of panic over the unraveling exposé of OSI corruption in the Demjanjuk case, leading Israeli jurists, led by the former vice president of the Israeli Supreme Court, Chaim Cohen (the founder of the IAJLJ, according to the Lewin brief), have publicly branded the Demjanjuk prosecution "a spectacle for the people [in which] . . . any connection between the proceedings and justice is totally coincidental."

### Government withheld exculpatory evidence

The Aug. 11 hearing, which took place before a standing-room-only crowd of reporters and Demjanjuk supporters, came as the result of a Sixth Circuit decision to reopen the Demjanjuk deportation and extradition matter in June. As Chief Judge Gilbert Merritt explained at the outset of the two-hour hearing, the court reopened the case out of concern that it had "mistakenly affirmed" the lower court's extradition order on the basis of "Department of Justice prosecutorial misconduct and fraud on the court." "This is the bedrock question," Merritt stated. Merritt and the two other appellate

justices hearing the arguments, Pierce Lively and Damon Keith, frequently interrupted both the Demjanjuk and OSI attorneys with probative questions about the facts and the legal issues in the case.

Edward Marek, one of the Demjanjuk attorneys, began the hearing by reviewing crucial “markers” of exculpatory evidence in the possession of the OSI that were withheld from both the defense and the court.

Among the most damning exculpatory documents were transcripts of interrogations of two Treblinka guards, Pavel Leleko and Nikolai Malagon, who both identified Ivan Marchenko and a second man named “Nikolai” (Shalayev) as the two motor-men who ran the gas chambers during the period when Demjanjuk was allegedly working in that job and allegedly earned the name “Ivan the Terrible.” Expert witnesses had established that during the period of 1942-43, when “Ivan the Terrible” committed the mass murders for which John Demjanjuk was convicted and sentenced to death in Israel, there were only two motor-men at Treblinka.

Furthermore, a report prepared by the Polish Main Commission, a body assigned to investigate the war crimes at Treblinka and the other Nazi concentration camps in Poland, listed 43 known Treblinka guards who had been assigned to the camp during the time period in question. Ivan Marchenko’s name appeared on that list, but there was no record in the Polish files of any John Demjanjuk having been at Treblinka, according to a letter sent from the Polish commission to the OSI in August 1979.

Not only did the Justice Department have all of these documents in their possession prior to the first court hearing in the Demjanjuk case; they were well aware of the fact that the identification of Ivan Marchenko as the “Ivan the Terrible of Treblinka” posed a serious problem for their case against John Demjanjuk.

On Jan. 24, 1980, Norman Moskowitz, the OSI trial attorney then in charge of the Demjanjuk case, wrote a memorandum to OSI Deputy Director Alan Ryan asking Ryan to request additional documents from the Soviet government. “Please ask the Soviets to check the written statements of the interrogations conducted in relation to the investigation of F.D. Fedorenko and others who were guards at Treblinka for the name of Ivan Marchenko or the Ivan who worked at the gas chambers.” Moskowitz then asked Ryan to “ask them about the purported completeness of the guard list they sent us and the camp to which it relates (Trawniki, Treblinka, or other?). . . . Demjanjuk’s name is not listed.”

The same Norman Moskowitz, in March 1981, wrote to the court and to the Demjanjuk defense team that the “discovery record is complete.” This letter was written despite the fact that the Leleko, Malagon, and Polish Main Commission documents—among many other exculpatory records—had not been provided.

OSI attorney Patty Stemler, under intense questioning by Justice Lively, admitted that it would have been “prudent”

for the government to have provided the documents. But she insisted that the government’s only obligation in an extradition case was to provide the court with evidence that the government’s eyewitnesses had committed perjury. No such evidence existed, she claimed, although she was forced to admit under interrogation from all three judges that a former OSI official who had worked on the Demjanjuk investigation had expressed serious reservations about the photo identification techniques used by the Israeli authorities. That official, George Parker, according to Demjanjuk attorney Michael Tigar, had gone to Israel shortly after several Treblinka survivors had picked out Demjanjuk’s photo, and had returned to the United States worried that the Israelis had manipulated the witnesses into picking out the Demjanjuk photo.

Chief Justice Merrick reminded Stemler that in another famous OSI prosecution (the Walus case), a dozen witnesses had positively identified the accused through photo ID techniques, and they had all been proven “completely in error.”

“We are dealing here with Nuremburg retroactive law, involving capital punishment. This is more than just some bank robbery case. This is a most serious matter,” Judge Merrick admonished the OSI attorney. Judge Lively, who wrote the original opinion for the Sixth Circuit upholding the extradition and deportation, further chastised the OSI for having lied to the court by giving the false impression that the judges had been provided with the complete file on the case—including all exculpatory documentation.

### **The government ‘forgot’**

When Stemler asserted that the OSI may have “forgotten” to provide certain exculpatory documents but had not committed fraud on the court, Justice Keith weighed in: “It is striking to think of the power the government possesses when they go after someone. The government has a greater obligation to ensure equal justice under the law.”

At the close of his presentation, attorney Michael Tigar offered a “modest proposal” to the court. Tigar asked the court to issue an order granting Demjanjuk permission to return to the United States on parole pending the full decision of the Sixth Circuit. Tigar reasoned that if the Israeli court freed the retired Cleveland auto worker, he would still be unable to return home, given the still-active denaturalization order. Chief Justice Merritt asked OSI attorney Stemler if she would consent to such an order. She immediately declined, forcing the court to order briefs to be prepared.

The issue of John Demjanjuk’s American citizenship may soon be the most time-sensitive issue before the court. According to statements by Tigar and by John Demjanjuk, Jr. following the Aug. 11 hearing, the Israeli Supreme Court is expected to rule within the next few weeks on the Demjanjuk appeal, and both men are now optimistic that the conviction will be reversed and that the court will not allow Demjanjuk to be tried for charges unrelated to the “Ivan the Terrible” Treblinka allegations.