

AMERICANS FOR HUMAN RIGHTS IN UKRAINE

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THE STRANGE CASE OF JOHN DEMJANJUK

(Combatting The Defamation Of Ukrainians)

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COMBATting THE DEFAMATION OF UKRAINIANS

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CASE BACKGROUND

The Soviet government started a smear campaign against naturalized U.S. citizen John Demjanjuk of Cleveland, Ohio in 1977 alleging that he had been an anti-Soviet Ukrainian nationalist who violated Soviet law by serving as a "fascist Hitlerite henchman." Similar charges have been made against other Ukrainians who, like Demjanjuk, served in the military units formed in Ukraine during the war to fight Soviet occupation and oppression.

Based on the Soviet charges made against John Demjanjuk the Office of Special Investigations (OSI) of the United States Justice Department filed charges against him in federal court alleging that he concealed his wartime activities on his visa application for entry into the United States.

OSI CASE AGAINST DEMJANJUK

Since falsification of information on an entry visa is not considered a criminal case it is handled by civil court procedures. This broad "falsification provision" of the U.S. immigration law, which has been designed to deal with people entering the U.S. under false pretenses, should not apply to the post-World War II Soviet refugees in Europe because of the unusual circumstances these refugees were facing. They were facing "forced repatriation to the Soviet Union" which was carried out with the help of the Allied forces. The Soviet government demanded to have these people back because it considered them to be traitors. In an attempt to save their lives some refugees falsified information on their entry visas to the United States in

order to avoid forced repatriation — an act tantamount to death. John Demjanjuk was caught in a "Catch 22" situation — damned either way.

John Demjanjuk's case is based on the "falsification of information" provision of the U.S. immigration law. If he were a common criminal he would have been entitled to protection by criminal law. Instead, by being charged with the infraction of the immigration law, Demjanjuk has not been receiving full protection of the criminal law and must face:

- a) the burden of all costs of defense
- b) denial of trial by jury
- c) a revocation of his citizenship by the decision of a single judge
- d) the denial of being allowed to examine Soviet archives by defense attorneys, or equal access to evidence
- e) the impossibility of searching for defense witnesses in the USSR and to find witnesses who would be unafraid to testify for the defense independently of the Soviet totalitarian regime.

The evidence presented against Demjanjuk would not stand up a regular or criminal U.S. court with its system of trial by jury. The Office of Special Investigations, in its prosecution of the Demjanjuk case, presented evidence of a witness with credibility problems and a questionable Soviet-supplied identification card — both of which were crucial in the judge's decision.

The initial identification of Demjanjuk was made by an Israeli citizen, Elijah Rosenberg, based on a photograph taken of Demjanjuk in the 1950's. Rosenberg swore that the 1950's photograph of Demjanjuk was that of "Ivan Grozny," the man who Rosenberg said murdered 900,000 Jewish inmates at the Treblinka death camp in Nazi-occupied Poland. After an extensive search other surviving witnesses were found much later in Israel who were willing to back up

the story of Rosenberg. However, in Vienna, Austria in 1947 Mr. Rosenberg made a statement in total contradiction to his present stand. At that time he stated that Treblinka's "Ivan" was killed in 1943.

The "I.D. Card" issue originally surfaced in a Soviet government-controlled newspaper in 1977 in a headline which read: PUNISHMENT WILL COME. Over the copy of the "I.D. Card" were the following words: "These Nazi documents exposing the war criminal never appeared in the press before."

Based mainly on this evidence Federal Judge Frank Battisti revoked Demjanjuk's citizenship and, since he was the assignment judge, he assigned Demjanjuk's case to himself.

THE I.D. CARD

Several years after the abovementioned newspaper article, OSI investigators toured Europe and Israel, spending vast sums of taxpayers' money in a desperate effort to authenticate the Soviet-made copies of the "I.D. Card." When none of the identification cards even faintly resembling the Soviet document could be found among all the I.D. cards on file in the archives throughout the world, eyewitnesses were sought by OSI.

Gideon Epstein, the U.S. government's document expert, originally testified that Demjanjuk's "I.D. Card" was completely unaltered and authentic in every respect. Later, he admitted to committing perjury. By his own admission he stated that he had neglected to disclose to the Court that he had discovered alterations in the "I.D. Card."

The "I.D. Card" supplied by the Soviet KGB against John Demjanjuk was examined by two leading independent certified document and handwriting experts: Mrs. Edna W. Robinson, M.A., and Mr. Fabian J. Tasson. They unequivocally declared that the "I.D. Card" was a

fraud! The card had its contents altered as well as the photograph attached to it. A second "Nazi I.D. Card" exhibit was later found in the courthouse basement where Chief Justice Battisti presided which had been altered in a manner different from the first.

TESTIMONIES OF WITNESSES

CHAIM SZTAJER - a Treblinka (Nazi death camp in Poland) survivor, was found by OSI in Australia where he lived since the end of World War II. He swore that the "Ivan" he knew from Treblinka was not the same man whose picture appeared in a Melbourne newspaper. The man he remembered well was not John Demjanjuk. Sztajer's name and testimony were withheld from the defense by the OSI until after the trial.

HEINRICH SHAEFER - the only OSI witness who could give firsthand testimony regarding the authenticity of the alleged card stated on September 13, 1983 that the so-called "I.D. Card" could never have been issued at Trawniki (training camp for death camp guards in Poland) because its form and substance were totally incorrect. He asserted that the card was not authentic.

OTTO HORN - the OSI witness who was responsible for the disposal of bodies in Treblinka. He admitted that he could not identify the Ukrainian guard named "Ivan" whose picture was on the Soviet-altered "I.D. Card."

EUGENIA SAMUEL - who now resides near the site of Treblinka, was a witness at the Treblinka trials conducted by the Soviets in 1960 at Krasnodar in the U.S.S.R. A survivor of Treblinka, she swore that the "Ivan" of Treblinka in no way resembled the photo on the "I.D. Card."

STANISLAW SWISTEK - conscripted by the Germans to work at Treblinka lost both of his brothers

at the Auschwitz concentration camp. Swistek recalled that the brutal guard "Ivan" spoke fluent German. John Demjanjuk, in fact, spoke no German during World War II. Mr. Swistek testified that he never saw "Ivan" after a revolt in Treblinka camp and was told that "Ivan" had been killed by inmates in the uprising.

Three witnesses, now living in Poland, were scheduled to testify at Demjanjuk's deportation hearing. However, upon learning about these three witnesses receiving visas and being scheduled to come to Cleveland, Ohio for a hearing, representatives of OSI intervened to cause the visas of the Polish witnesses to be revoked and their passports seized by the Polish government which is controlled by the Soviet Union. An official protest was filed by John Demjanjuk's defense attorney and the Deportation Court was notified of OSI's unethical conduct in the matter.

ISRAEL'S REQUEST FOR EXTRADITION

The Israeli government, which has an inherent interest in bringing Nazi war criminals to justice, requested extradition of Demjanjuk to Israel in 1983 to stand trial for his "war crimes." Israel did not produce any new evidence of its own but based its request solely on the evidence used against John Demjanjuk during his denaturalization trial. As stated above, that evidence was not conclusive. Demjanjuk had his U.S. citizenship revoked after admitting that he falsified information on his entry visa to the United States due to fear of forced repatriation to the Soviet Union. The "forced repatriation" of Soviet citizens in Europe was carried out by the Allied troops after World War II.

PIVOTAL CASE

John Demjanjuk's case has developed into a "cause celebre" in the United States judicial history. The

impact that this pivotal precedent-setting case will have on preserving our constitutional and inherent rights affecting all Americans is manifold and manifest. This case will profoundly affect the course of United States jurisprudence history and determine to what extent the United States judicial system is ready to support the protection of across-the-board citizens' rights guaranteed by the U.S. constitution.

On June 28, 1985 a three-judge panel of the Sixth Circuit Court rejected the appeal to reverse Judge Battisti's decision to deport Demjanjuk to the Soviet Union. Demjanjuk's attorney is presently preparing a motion to request the full Sixth Circuit Court (nine judges) to review this case.

STRANGE VISIT TO SOVIET EMBASSY

Mark O'Connor, John Demjanjuk's defense attorney, came to the Soviet Embassy in Washington, D.C. and demanded to see the ambassador or a high ranking Soviet official concerning the Demjanjuk case. Valeriy G. Kubanov, First Secretary and Consul, agreed to discuss the case with him in the Soviet Embassy. Speaking with authority and precision, the legal consul of the U.S.S.R. admitted that the identification evidence produced by the Soviets and used against United States citizen John Demjanjuk had been intentionally altered by the Soviet government. The reason given for the fraud was merely that it was a "matter of the internal affairs of the Soviet Union, involving confidentiality."

Immediately after this audience Mark O'Connor informed the FBI of the Soviet admission of the fraud as well as the cover-up of this fraud by the U.S. Justice Department's OSI.

Sometime later Mr. O'Connor received a telephone call from the Soviet Embassy in Washington, D.C. at his office during which First Secretary Kubanov informed

O'Connor that "Justice Department officials" were pressuring him concerning his previous statements about the Demjanjuk case.

CONCLUSION

What you have just read is but a small part of the ample evidence attesting that John Demjanjuk is not the "Ivan" of Treblinka.

Realizing the precedent this and similar cases can set by the use of unreliable evidence supplied by the USSR and others in U.S. courts, the Veterans of Foreign Wars (VFW) and the Ukrainian American Veterans (UAV) passed resolutions at their national conventions calling for Congressional hearings and a Presidential inquiry into the questionable practices of the Office of Special Investigations (OSI) and its dangerous unilateral dealings with hostile foreign powers of the Communist bloc countries.

We, the citizens of the United States, must react and protest the unchecked activities of OSI and prosecution of John Demjanjuk based on trumped-up charges and evidence provided by the Soviet government.

Please join us in our combat against the defamation of Ukrainians. Send your contributions and write to:

AHRU Legal Fund
Americans for Human Rights in Ukraine
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