

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF OHIO
3 EASTERN DIVISION

3 UNITED STATES OF AMERICA, Case No. 1:99CV1193
4 Plaintiff, Cleveland, Ohio
5 Wednesday, June 6, 2001
6 9:00 a.m.

7 vs.

8 JOHN DEMJANJUK,
9 a/k/a IWAN DEMJANJUK,

10 Defendant.

11 TRANSCRIPT OF PROCEEDINGS
12 BEFORE THE HONORABLE PAUL R. MATIA
13 UNITED STATES CHIEF DISTRICT JUDGE

14 BENCH TRIAL
15 VOLUME 6

16 APPEARANCES:

17 For the Plaintiff: Edward A. Stutman, Esq.
18 Jonathan Drimmer, Esq.
19 Michelle Heyer, Esq.
20 Michael Anne Johnson, Esq.
21 Susan Siegal, Esq.

22 For the Defendant: Michael E. Tigar, Esq.
23 John H. Broadley, Esq.

24 Court Reporter: Bruce A. Matthews, RDR-CRR
25 United States District Courthouse
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Cleveland, Ohio 44114
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1 MORNING SESSION, WEDNESDAY, JUNE 6, 2001 9:10 A.M.

2 MR. TIGAR: Good morning, Your Honor.

3 THE COURT: Good morning.

4 MR. TIGAR: I have an application and an
5 announcement. The government has the depositions of a
6 Mr. Henrikson and a Mr. Segat which were taken in prior
7 litigation, quite some time ago. I think the Segat
8 deposition is video. Your Honor has discretion as to how
9 those are published, but we respectfully suggest that they
10 be published by handing them to Your Honor rather than in
11 one case putting an employee of the government on the stand
12 and having it read back and forth.

13 In legal systems that do not have the hearsay
14 rule, and that commends itself to Your Honor, they never
15 read the so-called proces-verbaux. They just put them in
16 the dossier and the judges have them. So I know that they
17 have -- Your Honor has discretion about that. I ask to
18 have it done the way we have suggested because that will
19 shorten the trial time. Both Mr. Nishnic and Mr. Demjanjuk
20 have to take off work to be here, and anything they can do
21 will be helpful.

22 MS. JOHNSON: Your Honor, if I may address
23 that, both the trial depositions of Mr. Henrikson and
24 Mr. Segat were read, relevant portions were read into the
25 record in the prior proceedings. We have shortened it down

1 considerably and anticipate it will only take a few minutes
2 for both of the relevant portions of these depositions.

3 As far as the videotape, the reader will be
4 prepared to read the whole thing if the Court does not want
5 to hear the seven minutes of videotape, and we can just
6 offer that into evidence. But we think really it will aid
7 the Court in its consideration of the matter to have these
8 shortened portions of the relevant testimony read into the
9 record.

10 THE COURT: If the videotape is only seven
11 minutes -- is that what you said?

12 MS. JOHNSON: Well, what we did --

13 THE COURT: Mr. Drimmer is shaking his head
14 "no."

15 MS. JOHNSON: What we anticipated doing was
16 have a reader doing do the first part, and because
17 Mr. Segat speaks very slowly, just have the videotape
18 that's the key point viewed, which is seven minutes. So
19 it's longer than that, as far as Mr. Segat I'd say no
20 longer than 15 minutes.

21 MR. DRIMMER: The reason I was shaking my
22 head, the entire videotape is several hours.

23 THE COURT: But you are only talking about 15
24 minutes altogether?

25 MS. JOHNSON: 15 minutes for Mr. Segat, and I

1 would say no more than ten minutes for Mr. Henrikson.

2 THE COURT: All right. Those are relatively
3 short periods of time, so we will do it that way. It will
4 make the trial flow better that way.

5 MR. TIGAR: Thank you, Your Honor. Our
6 announcement is that I asked Mr. Nishnic and Mr. Demjanjuk
7 last night after that dispute about the card, the Ivan
8 Andreevich card --

9 THE COURT: What dispute?

10 MR. TIGAR: Cross-examination. It wasn't a
11 dispute, but we were discussing the significance of it. I
12 asked them to look for other examples of such cards in the
13 100,000 or so pages of discovery we have received, and we
14 found one, and I have marked it as GG, and it's for Jacob
15 Reimer. I know that the witness will be talking about it,
16 but I would tender that to the Court.

17 THE COURT: All right.

18 MR. TIGAR: And there will no doubt be more
19 testimony about it.

20 MR. DRIMMER: Your Honor, I would like to
21 note for the record that this wasn't on the exhibit list
22 that was given to us before trial. Mr. Tigar just gave
23 that to me this morning, about maybe ten minutes ago, and I
24 haven't had much of a chance to look through it closely.
25 And that's where that stands. I will certainly note we can

1 certainly talk about how some of the dates named are
2 inconsistent, and he's in two places at once in a few
3 places, but we can talk about that.

4 THE COURT: Was this part of the
5 documentation that was turned over to Mr. Tigar toward the
6 end of the proceedings?

7 MR. DRIMMER: No, Your Honor, it was turned
8 over substantially before that.

9 MR. TIGAR: It's just that we didn't have any
10 occasion to be searching for Reimer documents, Your Honor,
11 or for cards until last night, and I would also point out
12 in terms of a fairness aspect, Dr. Sydnor was an expert
13 witness in the Reimer case, Your Honor.

14 MR. DRIMMER: Your Honor, they certainly had
15 opportunity to be looking for file cards before yesterday
16 in that the file card they had as an exhibit is -- we spent
17 a lot of time on yesterday, so obviously it's something
18 they consider significant.

19 THE COURT: I don't think this is terribly
20 prejudicial, I don't think it's unfairly prejudicial to the
21 government's case, so after you've had a chance to look at
22 it I will allow you to use it.

23 MR. DRIMMER: Your Honor, I would just ask if
24 it does come up in the portion of redirect I be given a
25 little leeway of talking to Dr. Sydnor about it since I

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1 haven't had that opportunity.

2 THE COURT: All right. Did you have anything
3 else?

4 MR. TIGAR: No, Your Honor. Counsel said he
5 hadn't had the opportunity to talk to Dr. Sydnor about it,
6 I think he showed it to him.

7 MR. DRIMMER: I should be more clear. I did
8 show it to him. I haven't had the opportunity to talk
9 about the substance of what it is, that's what I meant.
10 I'm sorry.

11 THE COURT: Okay.

12 CHARLES W. SYDNOR, JR., of lawful age, a witness
13 called by the Government, being previously duly sworn, was
14 examined and testified as follows:

15 REDIRECT EXAMINATION OF CHARLES W. SYDNOR, JR. (Resumed)

16 BY MR. DRIMMER:

17 Q. Dr. Sydnor, we were working on your redirect when we
18 broke yesterday.

19 A. Yes, sir.

20 Q. And in your cross-examination you were shown
21 Government's Exhibit 101, which is the Ukrainian letter,
22 and you were asked about the identification of military
23 records. Do you have 101 up there?

24 A. I don't know which volume it's in.

25 Q. It's in Volume 10, Dr. Sydnor.

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1 A. Yes, sir, I have it.

2 Q. Now, I believe we have talked before about the second
3 paragraph regarding the lack of call-up or mobilization
4 records regarding Ivan Andreevich. Would you please take a
5 look at the third paragraph, though, and read the first
6 sentence there?

7 MR. TIGAR: Your Honor, I'm going to object
8 to use of this witness to publish documents that are in
9 evidence. The letter speaks for itself, and he's only
10 reading from the translation anyway.

11 THE COURT: Well, I think he has to establish
12 that Dr. Sydnor knows what this is and has seen it before
13 and reviewed it. In other words, if he's not familiar with
14 it, he can't testify about it.

15 MR. DRIMMER: You mean the document itself or
16 the underlying materials?

17 THE COURT: Exhibit 101.

18 MR. DRIMMER: I think the record will reflect
19 that he has talked about this document a significant amount
20 before this point.

21 THE COURT: All right. If that's the case,
22 he may --

23 MR. DRIMMER: I mean this is something we can
24 certainly sort out through briefing regarding the
25 transcript.

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1 THE COURT: All right. You may inquire.

2 BY MR. DRIMMER:

3 Q. Would you please read the first sentence of the third
4 paragraph?

5 A. I'm not sure which -- if this is the paragraph
6 beginning, "According" --

7 Q. The one beginning "At the same time," page two, third
8 paragraph.

9 A. I'm sorry, I was on page 1. The third paragraph of
10 the English translation of the document, the third
11 paragraph, "At the same time though in the archive of the
12 Directorate of the Security Service in Vinnitsa Oblast,
13 there is some information about an Ivan Mykolayovych
14 Demjanjuk, born on April 3rd, 1920, a native of the village
15 of Dubovye Macharenzi, Kozyatyn Rayon, Vinnitsa Oblast, who
16 was called up to serve in the ranks of the Red Army in
17 1940."

18 Q. Thank you, Dr. Sydnor. Now, yesterday, to change
19 topics and try to move fairly quickly, you talked a little
20 bit about a case called Reimer in which you testified.

21 A. Yes, sir.

22 Q. And the defense asked you to read part of a statement
23 from that case, and I would like for the sake of
24 completeness to read one more very brief paragraph from
25 that testimony, if that's okay, Your Honor.

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1 THE COURT: All right.

2 Q. Could you identify the statement that you are reading
3 from?

4 A. Yes, sir. This is a transcription headed
5 "Sydnor-Cross" at the top, it's page 396, beginning at line
6 10, "Upon arrival in Trawniki we were held in a two-week
7 quarantine. We were then photographed. After that they
8 began to summon us one at a time to the camp staff
9 headquarters, where forms were completed on us at the
10 table."

11 Q. And Dr. Sydnor, do you know who the speaker is who is
12 providing that underlying information?

13 A. I believe the speaker was a Trawniki guard recruit
14 named Lysij, and it's L Y S I J, I believe.

15 Q. Yesterday, Dr. Sydnor, you were asked about Defense
16 Exhibit F 6, which is an INS report (handing). On page 14,
17 you were asked some questions there. I think it says
18 "Freiburg," F R E I B U R G, "doesn't recall Demjanjuk's
19 name, but his picture looks familiar."

20 And you said that this might have been
21 relevant to your inquiry. Would that statement made by
22 Freiburg that Demjanjuk's picture looks familiar but he
23 can't recall his name have caused you to change your
24 conclusion in any way that Demjanjuk, identification number
25 1393, served at Sobibor?

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1 A. Can you repeat the question?

2 Q. Sure. Would Freiburg's statement that he does not
3 recall the name Demjanjuk, but a picture shown to him looks
4 familiar, seemed familiar, would that statement have caused
5 you to change your conclusion in any way that Demjanjuk, ID
6 number 1393, served at Sobibor?

7 A. No, I don't think that would have had a bearing. I
8 was dealing with the issue in question in relation to the
9 service identity pass number 1393, and I had no way of
10 knowing whether Mr. Freiburg's memory of the facial
11 features of the guard or his ability to remember a guard
12 was accurate or not or reliable or not.

13 Q. Now, Dr. Sydnor, yesterday we also talked a little
14 bit about tatoos.

15 A. Yes, sir.

16 Q. And you were asked whether you recalled any
17 statements by men who talked about getting, receiving
18 tatoos at Flossenburg and Trawniki, men received SS tatoos?

19 A. Yes, sir.

20 Q. Do you recall any of the statements of men who did,
21 in fact, discuss receiving tatoos?

22 A. Yes, sir. I think there's a paragraph or maybe two
23 paragraphs in the report that deals with this issue near
24 the very end of the document. And the conclusions --

25 MR. TIGAR: Excuse me, Your Honor, I don't

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1 know what document he's talking about.

2 A. I'm sorry. The expert witness report that I was
3 asked about, that I've been asked about a number of times
4 here.

5 THE COURT: Is that your report to the
6 government?

7 THE WITNESS: Yes, sir, my report.

8 A. There are two paragraphs in the document and there
9 are, I think, a couple of footnotes that deal with various
10 interrogation protocols over the years in which the
11 subjects of the interrogations were asked about being
12 tattooed with the blood group tattoo that was commonly
13 given on the left arm underneath the bicep or on the bicep
14 under the left arm above the elbow, and that was the basis
15 for part of my conclusion that tattooing was, in fact, a
16 practice in the cases of Trawniki-trained guards who were
17 transferred into the concentration camp guard units after
18 the summer of 1943. And the evidence that's available that
19 I've seen until now concerns statements from men who served
20 in the mainline concentration camps that included
21 Auschwitz, Stutthof, S T U T T H O F, Buchenwald, Gusen and
22 Flossenburg, and also Grossrosen, which is a concentration
23 camp in Silesia, S I L E S I A.

24 Q. Okay. To move to the next topic, Dr. Sydnor, do you
25 have government binder 1 which has Government's Exhibit 4

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1 in it?

2 A. Yes, sir.

3 Q. Turn to Government's Exhibit 4, please.

4 A. Yes, sir.

5 Q. Now, you received some questions yesterday on cross
6 about whether the person who wrote this document had any
7 personal knowledge of its contents. Dr. Sydnor, who signed
8 this document?

9 A. The document is signed by a man whose signature is
10 Erlinger, E R L I N G E R. His first name is Hermann,
11 H E R M A N N. Hermann Erlinger, who was an SS technical
12 sergeant in January of 1943.

13 Q. How many times did Erlinger sign Government's Exhibit
14 4?

15 A. Well, he signed it two times. He signed the report
16 and then he signed it a second time annotating the
17 statement, "25 blows administered with a stick on January
18 the 21st, 1943."

19 Q. In your opinion, Dr. Sydnor, would Erlinger have had
20 personal knowledge that the four men named on this document
21 were punished?

22 A. Yes, sir.

23 Q. What is the basis of that conclusion?

24 A. Well, he's signifying that 25 blows had been
25 administered with a stick. He is the -- other

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1 documentation establishes that he is the equivalent of what
2 in the SS was called a Spiess, S P I E S S, or a top
3 sergeant. He's responsible for the two companies of
4 Trawniki-trained guards that are serving at this
5 concentration camp at this time.

6 Q. Okay, Dr. Sydnor. On Government's Exhibit 3, can you
7 turn and take a look at the Sobibor annotation?

8 A. Yes, sir.

9 Q. In your opinion, would the person who made that
10 annotation on this card have had personal knowledge that
11 Demjanjuk, 1393, this service pass, was in fact at Sobibor?

12 A. Yes, sir, I believe so.

13 Q. What is the basis for that?

14 A. The transfer authorization document is dated the 26th
15 of March, 1943. The service identity pass is dated the
16 27th of March, 1943. You compare this with the other two
17 service identity passes that we have for Mr. Danilchenko
18 and Mr. Kabirov, I believe, and they are annotated for
19 Sobibor in the same way that this card is annotated, that
20 is with the date of March the 27th, 1943.

21 Based on the documentation, it's my opinion
22 that the transfer authorization, which is dated the 26th of
23 March, 1943, and the four personnel sheets which are also
24 dated for Sobibor the 26th of March, 1943, those documents
25 were annotated in Trawniki. I believe that the service

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1 identity cards were annotated when the contingent of men in
2 question arrived at Sobibor and the service identity passes
3 were then distributed.

4 Q. Dr. Sydnor, turning to Government's Exhibit 5, I
5 think that you testified before that four names are crossed
6 out on this document?

7 A. Yes, sir.

8 Q. And I think you also said it meant that these four
9 people weren't actually sent. Is that your testimony?

10 A. That's what the annotation on the first page of the
11 document is in German, that they remained behind and were
12 not exchanged.

13 Q. Would the person who was crossing out this
14 information, crossing out the four names, have had personal
15 knowledge about the people who didn't go to Sobibor on this
16 list?

17 A. Yes, sir, he would have known that the people who
18 were annotated as not going were not going.

19 Q. Now, Dr. Sydnor, a general question. In creating
20 German wartime transfer authorizations, was it important,
21 did the Germans consider it important that the rosters
22 correctly identify the men who were being transferred?

23 A. Yes, sir.

24 Q. Does the fact that you can't identify some of the
25 specific people who created these transfer authorizations

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1 cause you to doubt the accuracy of these documents?

2 A. No, sir.

3 Q. In your opinion, do Government's Exhibits 3 through 9
4 corroborate each other?

5 A. Yes, sir, I believe they do.

6 Q. And is their authenticity and reliability
7 corroborated by other German wartime documents and post-war
8 statements as well?

9 A. Yes, I believe so.

10 Q. Now, we talked a lot, you talked a lot, I didn't do
11 much talking, about Danilchenko's statement, which is
12 Defense C 1.

13 A. Yes, sir.

14 Q. I'm going to hand you a copy of that.

15 Now, in response to the question from
16 Mr. Tigar on Friday as to whether this statement, the 1979
17 Danilchenko statement, was important in reaching your
18 conclusions, you said that it was interesting and important
19 in a secondary sense. What did you mean by that?

20 A. Well, it's extremely interesting and it's important
21 in a secondary sense in that when you compare this
22 statement with other post-war statements made by men who
23 were the subjects of investigations and/or legal -- not
24 legal proceedings, but trials in the Soviet Union, and you
25 try to compare what's in the statements, and you begin to

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1 notice that when asked certain questions about certain
2 features of camps or what went on in camps, what I call the
3 overlapping cohort of information starts to develop, and
4 there's a kind of an agreement on details and generalities.

5 And then if you have contemporaneous wartime
6 documents and other historical material from the time
7 against which you can measure those narrative features to
8 try to get some better idea if they are generally reliable,
9 majorly reliable or absolutely reliable, the statements can
10 be a way to fill in details and to add color and to
11 complete features in the mosaic you are trying to
12 reconstruct from the time.

13 And in this particular case, if you just
14 simply go through the document, there are a number of
15 things that Mr. Danilchenko is recalling that you can be
16 confident that he's recalling accurately because there are
17 not only other statements that would tend to corroborate
18 what he's saying, there are other things in the historical
19 documentary record that corroborate that.

20 There are places where the chronological
21 reconstruction in his memory is not accurate because he's
22 talking about leaving Sobibor and going to Flossenburg, for
23 example, in the spring of 1944. Well, he's got the
24 movement right, but he's got the chronological time wrong
25 for that. So to me, that doesn't necessarily discount or

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1 nullify Mr. Danilchenko's credibility at all. It's simply
2 an attempt to be careful in being certain that you
3 distinguish between the things that he is remembering
4 correctly and the things that he is not remembering
5 correctly.

6 Q. Well, let's talk about one of the details of his
7 statement, and you talked about this on Friday. I think
8 you said that the Demjanjuk he remembers -- or Demjanjuk
9 wouldn't have been wearing the black uniform of the SS with
10 SS runes. Do you recall talking about that?

11 A. Yes, sir.

12 Q. Would Demjanjuk 1393, in your opinion, have worn the
13 uniform of the Trawniki Wachmann?

14 A. The answer is yes, but again, there is -- the whole
15 issue of uniforms is something about which there is a good
16 bit of general knowledge, but an inability to say
17 specifically things about color and the distribution of
18 uniforms at particular times.

19 There's information that indicates, of
20 course, that the Trawniki-trained guards were issued
21 surplus materials that the Germans had captured from the
22 armies of the enemies that they had already defeated in
23 1941 and 1942. The weapons and ammunition in Trawniki,
24 according to the best evidence available, was captured
25 Soviet issue equipment. At different times, there were

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1 Belgian uniforms that were issued to the men, there was
2 captured French material, so it's difficult to say --

3 MR. TIGAR: If Your Honor please, we are
4 hearing opinions about uniforms that I do not recall
5 hearing up to this time. And if the witness would be asked
6 to tell us the source in the documents that we have for
7 these opinions.

8 THE COURT: Okay. All right. Would you do
9 that, Dr. Sydnor?

10 A. Yes, sir. I'm trying to recall general
11 information -- first of all, I have not been asked a
12 question about uniforms, I don't think, except this one
13 question until today, and I'm simply trying to be as
14 complete as possible in the answer.

15 The information about uniforms comes from
16 testimony in post-war Soviet interrogation protocols and
17 information that was put in the records in the German
18 post-war legal proceedings by men who served in the SS
19 administration at Trawniki.

20 MR. TIGAR: I object to him giving the
21 testimony unless it's accompanied with the names of the
22 particular protocols so that I can cross-examine, Your
23 Honor.

24 THE COURT: Well, it wasn't gone into on
25 direct examination anyway, so I don't know why we are doing

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1 it on redirect.

2 MR. DRIMMER: I just have one more question
3 in this vein. I think this may help clarify things a
4 little bit.

5 Q. Have you seen photographs of Trawniki Wachmanner
6 wearing black uniforms?

7 A. Well, again, it's difficult to answer that question.
8 I've seen black and white photographs.

9 MR. TIGAR: I'm going to object to all of
10 this, and I ask that it all be stricken, Your Honor.

11 THE COURT: Objection sustained.

12 MR. DRIMMER: I will withdraw the question.

13 Q. Now, Danilchenko in this statement in front of you,
14 C 1, I believe that you testified on Friday that it says
15 the Demjanjuk he knew was from the Vinnitsa Oblast -- it's
16 in the middle of the page -- from conversations with --

17 A. I'm sorry, which page?

18 Q. 882 Bates page.

19 A. Yes, sir.

20 Q. Third page. Are you aware whether Dobovye Macharenzi
21 is in Vinnitsa Oblast?

22 A. Yes, sir, I believe it is or was.

23 Q. Now, do you see on C 1, I think it's the very next
24 sentence, where Danilchenko says that the Demjanjuk he
25 remembers "was roughly two to three years older than I"?

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- 1 A. Yes, sir.
- 2 Q. On the first page of this C 1, does it list a birth
3 year for Danilchenko?
- 4 A. Yes, sir.
- 5 Q. What is that?
- 6 A. On the first page of the Exhibit C 1, the date of
7 birth for Mr. Danilchenko is listed as 1923.
- 8 Q. Now, Dr. Sydnor, do you recall the birth year that's
9 listed on Government's Exhibit 3, the service identity
10 pass?
- 11 A. Yes, sir.
- 12 Q. What is that birth year?
- 13 A. The birth year is 1920.
- 14 Q. Now, you were asked a lot of questions about the
15 height recollection.
- 16 A. Yes, sir.
- 17 Q. Now, this statement was given in 1979, which
18 yesterday we agreed was 34 years after the war.
- 19 A. Yes, sir.
- 20 Q. Now, in looking at Danilchenko's estimate for his own
21 height, it's about the middle of the page, do you see where
22 it says, "At that time I was 184 centimeters tall"?
- 23 A. Yes, sir. Yes, sir. That sentence is in the middle
24 of the page. "At that time I was 184 centimeters tall."
- 25 Q. And what does he estimate Demjanjuk's height to be?

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1 A. Reading down again, "Was heavy set, had gray eyes,
2 and was slightly taller than I, roughly 186 to 187
3 centimeters tall."

4 Q. So that's about a two to three-centimeter difference,
5 which I think we said was about an inch. According to what
6 Mr. Tigar says, an inch and centimeter are --

7 A. I don't want to get into metric estimation again. I
8 can't convert inches to meters well.

9 Q. Okay. Turning to Government's Exhibit 45.7 for just
10 a second, do you have that up there, 45.7, 3, Volume 3?

11 A. Yes, sir.

12 Q. We've talked about this document before, it's a
13 service pass for Danilchenko.

14 A. Yes, sir. I have the document. It's in Volume 3.

15 Q. What is the height listed on this document for
16 Danilchenko?

17 A. The height listed on the service identity pass for
18 Mr. Danilchenko is 177 centimeters.

19 Q. So there's a seven-centimeter difference between his
20 1979 estimate and the number on this card, is that right?

21 A. Yes, sir, there would be a nine to ten-centimeter
22 difference between the height that's recorded on the
23 Trawniki card and Mr. Danilchenko's estimate in 1979.

24 Q. Would you turn to Government's Exhibit 3 and see what
25 the height listed there is?

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- 1 A. Government's Exhibit 3?
- 2 Q. Yes.
- 3 A. The height listed for Trawniki service identity pass
4 number 1393 for Iwan Demjanjuk is 175 centimeters.
- 5 Q. So then comparing the Danilchenko service pass and
6 the Demjanjuk service pass, there's also a two-centimeter
7 difference; is that right?
- 8 A. The height recorded on Mr. Danilchenko's service
9 identity pass was 177 centimeters. The height recorded on
10 the service pass for Mr. Demjanjuk is 175 centimeters.
- 11 Q. You can put some of those off to the side. Move back
12 to C 1, if you don't mind.
- 13 A. Yes, sir.
- 14 Q. Now, about two-thirds of the way down the page,
15 there's a sentence that starts, "I remember." Do you see
16 that?
- 17 A. I'm sorry. Which page are we on?
- 18 Q. Bates 82, which I think is the third page.
- 19 A. I'm sorry, give me the --
- 20 Q. "I remember," about two-thirds of the way down.
- 21 A. Yes, sir.
- 22 Q. Would you read that sentence?
- 23 A. That's the sentence beginning "I remember" that
24 starts at the left-hand margin of the page, correct?
- 25 Q. Correct.

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1 A. "I remember" -- it reads as follows, "I remember
2 Demjanjuk's appearance well, and I could possibly identify
3 him."

4 Q. Now, the date of this document is November 21st,
5 1979. I'm going to hand you Government's Exhibit C 2,
6 which is November 22nd, 1979. Now, on page 2 of this
7 document, we have talked about this before, we have
8 identified this for the record previously?

9 A. Yes, sir.

10 Q. Does Danilchenko, in fact, recognize the appearance
11 of the Demjanjuk he's talking about?

12 A. May I have just a minute to look at this again,
13 please?

14 Q. Yes. (Pause.)

15 A. Yes, sir, on page 2, beginning near the top of the
16 page where it says, "The identification began at 3:00
17 p.m.," there's an -- the indication on the document is
18 Mr. Danilchenko examined nine photographs and that on the
19 sheet of photographs number 2, he identified Iwan Demjanjuk
20 in photograph number 2. On the sheet of photographs number
21 3, he identified Iwan Demjanjuk from general facial
22 features in photograph number 3.

23 And I'm sorry, I skipped over the top
24 paragraph, the first paragraph. On a sheet of photographs
25 number 1, he recognized Iwan Demjanjuk from facial

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1 features.

2 MR. DRIMMER: And again, Your Honor, the
3 pictures are at the back.

4 THE COURT: Yes.

5 Q. Now, Dr. Sydnor, looking at the photograph on the
6 third to the last page, which is Bates 894, the middle
7 picture.

8 A. Yes, sir.

9 Q. Is it your opinion that that is the same picture
10 that's on the service identity pass?

11 A. Well, based on this copy, yes, sir, it appears to be
12 the same photograph that's on the service identity pass.

13 Q. Would you take another look at the service identity
14 pass, Government's Exhibit 3? I think we are --

15 MR. TIGAR: I object, Your Honor. The
16 photographs show what they show. He's not shown to be an
17 expert on photogrammetry.

18 THE COURT: Right. The Court can look at the
19 photographs, also.

20 Q. Government's Exhibit 3, the service identity pass.

21 THE COURT: What are you doing now? I
22 thought we sustained the objection.

23 MR. DRIMMER: I'm moving. I am not picking
24 up. I'm moving on.

25 THE COURT: All right.

Sydnor - Redirect

1 Q. Government's Exhibit 3.

2 A. Government's Exhibit 3, yes, sir.

3 Q. Now, on Government's Exhibit 3, does this document
4 say that the bearer had black hair, as the defendant has
5 said Cousin Ivan Andreevich had?

6 A. No, sir. I think I already testified that the
7 indication on the document for hair color is dark blond.

8 Q. Does Government's Exhibit 3 say the bearer was born
9 February 21st, as we saw Cousin Ivan Andreevich was from
10 his birth record?

11 A. No, sir. The date of birth is April the 3rd, 1920.

12 Q. Does Government's Exhibit 3 say that the father of
13 the bearer was named Andrei, like Cousin Ivan's father?

14 MR. TIGAR: Objection to repetition, Your
15 Honor.

16 THE COURT: Objection sustained. I really
17 don't think we need this.

18 Q. I just have one more question for you, Dr. Sydnor.
19 In your expert historical opinion, do you have any doubt
20 that Government's Exhibits 3 through 9, the seven naming
21 documents, are German wartime records?

22 A. No, sir.

23 MR. DRIMMER: I pass the witness.

24 THE COURT: All right.

25 - - - - -

Sydnor - Recross

1 REXCROSS EXAMINATION OF CHARLES W. SYDNOR, JR.

2 BY MR. TIGAR:

3 Q. Very briefly, Doctor, how tall do you think that
4 fellow Danilchenko was, based on your reading of these
5 documents?

6 A. I don't have any exact idea how tall Mr. Danilchenko
7 really was. And the basis of that opinion really is two
8 things. First, it's difficult for me because I am a
9 mathematically challenged person who has difficulty
10 converting feet and inches into meters and centimeters, and
11 secondly, because there is a difference, of course, on
12 Mr. Danilchenko's service identity pass in the height given
13 there and then the estimate that he gives in the statement
14 in 1979. And there's a difference in the height recorded
15 on Mr. Demjanjuk's service pass, and I believe the height
16 that you indicated to me is the correct height as of today,
17 as of now.

18 Q. And a difference between the Demjanjuk on the 1393
19 service pass, Government 3, and what Danilchenko says about
20 Demjanjuk, correct?

21 A. Correct. Yes, sir.

22 Q. All right. Now, who do you think, speaking as a
23 historian, has a better chance to know how tall
24 Mr. Danilchenko is, Mr. Danilchenko or some German clerk
25 whose name you don't know?

Sydnor - Recross

1 A. I would think Mr. Danilchenko would better know how
2 tall he is or was.

3 Q. Now, you were asked a lot of questions about teeth,
4 do you remember?

5 A. Yes, sir.

6 Q. Do you know what the Russian word is for dental work?

7 A. No, sir, I don't.

8 Q. So you have no idea whether the statement in the
9 English translation "false teeth" refers to fillings or
10 false teeth, or what it talks about, right? All you have
11 is the translation?

12 A. Or bridges or crowns, yes, sir. I'm relying on the
13 translation.

14 Q. But you have been to Russia and you've met a lot of
15 Russians, right?

16 A. Yes, sir.

17 Q. And it's the fashion in Russia for people to have
18 visible dental work, have you observed that?

19 A. Yes, sir.

20 Q. And as far as vodka is concerned, do you as a
21 historian credit the legendary capacity of Russians for
22 that substance?

23 A. I have direct knowledge of that as both witness and
24 participant, yes, sir.

25 Q. We will bring down the curtain on that one. Now, you

Sydnor - Recross

1 were shown Defense Exhibit GG this morning, and I just want
2 to ask you, have you ever seen it before today?

3 A. GG?

4 Q. GG. That's that Reimer card, Dr. Sydnor. I'll place
5 it in front of you, sir (handing).

6 A. Mr. Tigar, I'm going to say that I don't specifically
7 recall seeing this, but if it comes out of the Jacob Reimer
8 trial, I'm certain it was in the huge pile of documents
9 that I reviewed and worked on for that trial, yes, sir. I
10 mean, I have to have seen this before.

11 Q. Now, throughout your redirect examination, you used
12 the term "personal knowledge," correct?

13 A. Yes, sir.

14 Q. What did you mean by that?

15 A. If you are referring to the questions I was asked
16 this morning --

17 Q. Asked by Mr. Drimmer.

18 A. That is in the case of, in the case of the person at
19 Sobibor whom I believe made the annotation in the service
20 identity pass, that person either had the individual guard
21 in front of him in a line and he was annotating the passes
22 or --

23 Q. Do you have any piece of paper that says that that
24 was how it was done?

25 A. No, sir, I don't.

Sydnor - Recross

1 Q. All right. And then you said "or." What's your
2 "or"?

3 A. Or the passes were simply annotated or filled in in
4 batches by the clerk or whoever annotated them.

5 Q. So by "personal knowledge," that in your use of the
6 term could include secondhand knowledge, where A told B and
7 then B knows it; is that right?

8 A. That's possible, yes, sir.

9 Q. Now, I want to go through this blood-type tattoo
10 thing very briefly.

11 A. Yes, sir.

12 Q. In 1980, David Marwell called you, correct?

13 A. Yes, sir, he did.

14 Q. You know him?

15 A. Yes, sir.

16 Q. He's your friend?

17 A. Yes, sir.

18 Q. And you told him that it was unlikely that Ukrainian
19 SS militiamen or guards should have received these tatoos
20 as a result of their SS association, correct?

21 A. Yes, sir.

22 Q. Later -- and do you know that Dr. Scheffler had
23 looked at that question and testified about it before Judge
24 Battisti?

25 A. I don't recall whether I knew that in 1980, no, sir.

Sydnor - Recross

- 1 Q. Have you read Judge Battisti's opinion from 1981?
- 2 A. Yes, sir, but it was a long time ago.
- 3 Q. So whatever it was that Dr. Scheffler said, you don't
- 4 remember, correct?
- 5 A. No, I don't remember what Dr. Scheffler said.
- 6 Q. Now, you talked on redirect examination about your
- 7 report and the information upon which you based your
- 8 testimony about blood groups, and you were talking, were
- 9 you not, about this page 96 and 97. Here, I'll start you
- 10 off, is that what you were talking about?
- 11 A. Yes, sir, beginning at the bottom of 96 and then
- 12 going over to the paragraph, this sentence that ends right
- 13 here, with footnote 314.
- 14 Q. Let's look at those footnotes.
- 15 A. It's 313 and 314, I believe.
- 16 Q. And here is footnote 313, we start right off with
- 17 Danilchenko of 1949, correct?
- 18 A. Yes, sir.
- 19 Q. And we start off with Danilchenko of '79, right?
- 20 A. That's correct, yes, sir.
- 21 Q. Now, did Mr. Marwell tell you back in 1980 when he
- 22 called you, in words or substance, "Look, I've got a
- 23 protocol from some fellow named Danilchenko that
- 24 contradicts your expert opinion," did he say that?
- 25 A. No, sir, he didn't.

Sydnor - Recross

1 Q. But if he had that Danilchenko protocol at that time,
2 this very same one, would you have expected that your
3 friend would tell you about it?

4 A. Yes, sir.

5 Q. Because you as an expert can't make conclusions
6 unless you get the right materials, correct?

7 A. If I had known in 1980 that there were statements in
8 the record by someone who had served as an armed guard at
9 Flossenburg that the men who served there who were not
10 German members of the SS had received blood group tatoos,
11 yes, sir, I would not have ventured an opinion in 1980 that
12 it was unlikely that Ukrainian guard auxiliaries did not
13 receive blood group tatoos.

14 Q. But you don't know whether Mr. Marwell and the
15 government had that Danilchenko statement back then?

16 A. I don't know that --

17 THE COURT: Excuse me, let me interrupt for
18 just a minute. Did you intend that double negative, Dr.
19 Sydnor, "I would not have ventured and opinion in 1980 that
20 it was unlikely that Ukrainian guard auxiliaries did not
21 receive blood group tatoos"?

22 THE WITNESS: Thank you. I did not intend a
23 double negative.

24 A. What I was intending to say to Mr. Tigar was I would
25 not have gone on the record saying that Ukrainian guard

Sydnor - Recross

1 auxiliaries didn't get blood group tatoos, and I certainly
2 would have asked for additional information.

3 Q. Now, you were asked on redirect about this fellow
4 Wolfe, correct?

5 A. Yes, sir, Robert Wolfe.

6 Q. Now, I'm not going to debate with you about it. You
7 respect him, don't you?

8 A. Yes, sir.

9 Q. You might disagree with him, but he is known as the
10 Godfather of the OSI, isn't he?

11 A. Well, that's what he says, yes, sir.

12 Q. Well, is he entitled to that self-description?

13 A. Well, again, as in the case of the question you asked
14 me about Professor Ellis's new book on Thomas Jefferson,
15 The American Sphinx, Mr. Wolfe has been a sort of favored
16 intellectual uncle of mine for almost 40 years.

17 Q. Yes, but you are under oath. Go ahead.

18 A. I know, sir. But I'm not sure. His contributions to
19 the preservation of captured German records, his assistance
20 to now two generations of historians, not just in the
21 United States and Canada, but in Europe and in Australia,
22 and his influence on the German and American extent of
23 collaboration on documentation, certainly entitle him to be
24 a major figure that everyone, I think, respects in this
25 regard.

Sydnor - Recross

1 He has been honored both by the United States
2 and by the Federal Republic of Germany for his
3 contributions as an archivist to the preservation of the
4 records of both the Nuremberg war crimes trials, the
5 agencies and ministries of the Third Reich, and the history
6 of the Holocaust.

7 MR. TIGAR: May I have just a moment, Your
8 Honor?

9 (Pause.)

10 MR. TIGAR: I have nothing further, Your
11 Honor.

12 THE COURT: All right. Thank you. With
13 that, Dr. Sydnor, I think you may step down.

14 THE WITNESS: Thank you, Your Honor.

15 MR. DRIMMER: Actually, Your Honor, before we
16 dismiss him too quickly, I don't have anything on
17 re-redirect but the authentication piece.

18 THE COURT: I don't know of a re-redirect.

19 MR. DRIMMER: And I'm not going to try to
20 invent that term here today. I was waiting until we were
21 through with the substance. We weren't able to agree on
22 stipulations for the authentication piece. It's very
23 quick, I just need to put it on the record. We are going
24 to do it in groups and not go by individual documents.

25 THE COURT: Okay.

Sydnor - Fur her Redirect

1 MR. TIGAR: I think you'll find, Your Honor,
2 that I've already covered this ground on cross. I was
3 trying to use terms that would make our record, so I'll
4 certainly have no objection to this, and I'll try not to
5 waste Your Honor's time.

6 THE COURT: All right. That's all right.

7 MR. DRIMMER: And Your Honor, to expedite
8 matters, we have actually marked, we have two lists, and we
9 will provide copies to the defense of these lists.

10 THE WITNESS: I need to return this to
11 Mr. Tigar.

12 MR. TIGAR: Thank you.

13 FURTHER REDIRECT EXAMINATION OF CHARLES W. SYDNOR, JR.

14 BY MR. DRIMMER:

15 Q. These are marked 104 and 105. Dr. Sydnor, have you
16 reviewed the documents listed on what has been marked as
17 Plaintiff's Exhibit 104?

18 A. If you will give me a minute to review the inventory,
19 please.

20 MR. TIGAR: May I have a copy?

21 MR. DRIMMER: (Handing.)

22 (Pause.)

23 A. Mr. Drimmer, I have reviewed the documents on Exhibit
24 104, beginning with Exhibit Number 3 on page 1 and
25 continuing through Exhibit Number 84 on page 4 of the

Sydnor - Fur her Redirect

1 document.

2 Q. Did you also look at 103, which is right after 84?

3 A. There is no 103 there showing on my copy of this
4 inventory.

5 Q. I'll identify it for the record. That was the
6 Litvinenko January 1st -- 1/19/68 protocol we talked about
7 yesterday.

8 MR. TIGAR: In light of the importance of
9 this, Your Honor, may we be sure we are all reading off the
10 same document?

11 THE COURT: Sure.

12 MR. TIGAR: I'm going to tender to the
13 government 104, what they have marked 104.

14 MR. DRIMMER: You have the same one I do.

15 MR. TIGAR: Mr. Drimmer and I appear to have
16 the same one.

17 THE COURT: Okay.

18 MR. TIGAR: However, it would be nice if all
19 of us in the court had the same one.

20 THE COURT: I have one that has 103, 104 and
21 105, and 104 and 105 were crossed off.

22 MR. DRIMMER: We thought we were going to use
23 those this morning, Your Honor, and we didn't.

24 THE COURT: All right.

25 MR. TIGAR: Dr. Sydnor has one that ends at

Sydnor - Fur her Redirect

1 84.

2 MR. DRIMMER: I just gave him an updated
3 version. We thought we were going to use two more exhibits
4 this morning and we didn't. I apologize for the confusion.

5 THE COURT: All right.

6 BY MR. DRIMMER:

7 Q. Do you see 103?

8 A. Yes, sir, I have reviewed 103.

9 Q. Have all of the documents on 104, Plaintiff's Exhibit
10 104, been in existence for at least 20 years?

11 A. Yes, sir.

12 Q. Were they all found in places that are indicated on
13 the list?

14 A. Yes, sir.

15 Q. Are those places where, if authentic, they would
16 likely be?

17 A. Yes, sir.

18 Q. Are any of them in a condition that raises for you a
19 suspicion as to their authenticity?

20 A. No, sir.

21 Q. Do all of the documents on this list bear
22 characteristics distinctive to the types of materials that
23 they purport to be?

24 A. Yes, sir.

25 Q. Do those characteristics taken in conjunction with

Sydnor - Fur her Redirect

1 the circumstances under which the documents were created
2 and used and discovered establish for you that the
3 documents are what they purport to be?

4 A. Yes, sir.

5 MR. DRIMMER: And Your Honor, I'm going to
6 offer 104 into evidence.

7 THE COURT: Exhibit 104, is that right?

8 MR. DRIMMER: That's right, which is the
9 list.

10 THE COURT: Okay.

11 MR. TIGAR: We have no objection to the
12 limited purpose of telling what the witness is talking
13 about.

14 THE COURT: Okay. All right.

15 BY MR. DRIMMER:

16 Q. Now, would you take a look at 105? And these are the
17 underlying materials for the summary exhibits we offered,
18 Your Honor.

19 A. Yes, sir. May I have a moment, please, to review
20 this?

21 Q. Sure.

22 (Pause.)

23 THE COURT: Do you have a copy of 105,
24 Mr. Tigar?

25 MR. TIGAR: Yes, I do, Your Honor, and I

Sydnor - Fur her Redirect

1 think it's the same one. Yes, it ends with number 80.

2 THE COURT: Yes.

3 MR. TIGAR: Thank you, Your Honor.

4 A. Yes, sir, I have reviewed these documents.

5 Q. Have all of these documents been in existence for at
6 least 20 years?

7 A. Yes, sir.

8 Q. Were they found in places where, if authentic, they
9 would likely be?

10 A. Yes, sir.

11 Q. Are any of them in a condition that raises a
12 suspicion for you as to their authenticity?

13 A. No, sir.

14 Q. Do all of the documents on this list bear
15 characteristics distinctive to the types of materials they
16 purport to be?

17 A. Yes, sir.

18 Q. Do those characteristics taken in conjunction with
19 the circumstances under which the documents were created
20 and used and discovered, does that establish for you that
21 the documents are what they purport to be?

22 A. Yes, sir.

23 MR. DRIMMER: Your Honor, I'll offer
24 Government 105, which is this list.

25 MR. TIGAR: No objection for the limited

Sydnor - Fur her Recross

1 purpose, Your Honor.

2 THE COURT: Okay. Fine. Thank you.

3 MR. DRIMMER: And with that, I have no
4 re-re-redirect.

5 THE COURT: All right. You may step down.

6 MR. TIGAR: No, Your Honor, I do need to ask
7 him, I've never seen those before. May I ask just about
8 those documents, 104 and 105.

9 THE COURT: Yes.

10 FURTHER RE-CROSS-EXAMINATION OF CHARLES W. SYDNOR, JR.

11 BY MR. TIGAR:

12 Q. On these two documents, wherever it says Israel, that
13 means the document came to Israel from the former Soviet
14 Union, correct?

15 A. Yes, sir, and have come into this proceeding or my
16 review from Israel.

17 Q. And wherever it says Lithuanian or Russian or
18 Ukraine, those are documents that were from archives of the
19 former Soviet Union, correct?

20 A. Yes, sir.

21 Q. We've talked about that?

22 A. Yes, sir.

23 Q. And those are documents handled by the crude and
24 vandalous archivists, correct?

25 A. Of the KGB, yes, sir.

1 Q. Now, wherever it says German, those are documents
2 restituted to the Bundesarchiv or archive by the United
3 States, correct?

4 A. Yes, sir. Where it says German Federal Archives,
5 those are documents as I described yesterday that were
6 restituted the Federal Republic in the 1960s.

7 Q. By the United States?

8 A. Yes, sir.

9 Q. And is there any document that you've listed here
10 that was found in the possession of its author, to your
11 knowledge?

12 A. No, sir.

13 Q. Is there any document here that was found in the
14 possession of its bearer, the authorized bearer?

15 A. No, sir.

16 Q. Is there any document here as to which you as a
17 historian can be certain that it was prepared by a person
18 having firsthand knowledge of what it contained, of the
19 information in it?

20 A. No, sir.

21 MR. TIGAR: No further questions.

22 THE COURT: All right. You may step down.

23 THE WITNESS: Thank you.

24 (Witness excused.)

25 MS. JOHNSON: Your Honor, for the next

Curry - Direct

1 witness, the government would like to call Leo B. Curry,
2 Jr. I wonder if we could have a five-minute break to set
3 up for Mr. Curry's testimony.

4 THE COURT: Sure, we could do that. We will
5 take a five or ten-minute break.

6 (Recess had.)

7 THE COURT: Miss Johnson?

8 MR. MATTHEWS: Just a second, I'm sorry. Has
9 the witness been sworn?

10 THE CLERK: No.

11 LEO B. CURRY, JR., of lawful age, a witness
12 called by the Government, being first duly sworn, was
13 examined and testified as follows:

14 DIRECT EXAMINATION OF LEO B. CURRY, JR.

15 BY MS. JOHNSON:

16 Q. Mr. Curry, could you tell us your full name and spell
17 your last name?

18 A. Yes. I'm Leo, middle initial B., Curry, C U R R Y,
19 Jr.

20 Q. Mr. Curry, what is your occupation?

21 A. I am an operator of a janitorial supply business.

22 Q. Did you serve in the United States Army during World
23 War II?

24 A. Yes, sir, I did.

25 Q. Could you describe your service in the army?

Curry - Direct

1 A. I was drafted into the army in the spring of 1943,
2 served in various training camps in the U. S., was shipped
3 overseas to Oran, to Tunisia, December, 1943, was there
4 less than a month. Sailed to South Hampton, England,
5 remained in England for approximately six months, the
6 latter part of December, '43 to June, 1944.

7 In '44, I landed on the beaches in France and
8 served through five campaigns.

9 Q. Sir, were you part of the Normandy invasion?

10 A. Yes. I landed on Utah Beach, June 6.

11 Q. What was your rank in the army?

12 A. Private first class.

13 Q. And did you receive any service awards in connection
14 with your service during World War II?

15 A. None that I'd care to mention particularly. I
16 didn't receive any medals for any -- the French government
17 I think presented medals, and I received campaign medals,
18 but that's about the extent.

19 Q. You received the Bronze Star for your service on
20 D-Day, is that correct?

21 A. Yes, I did.

22 Q. I want to ask you a little bit about your post-war
23 activities. Immediately following the war, what did you
24 do?

25 A. I did little or nothing for the first few months.

Curry - Direct

1 Q. Did you become involved with the U. S. war crimes
2 trial?

3 A. Yes, I did. I think it was in about mid, spring or
4 midsummer of 1946 that I gained employment with the war
5 crimes trials, U.S. Army war crimes trials in Manila,
6 Philippines.

7 Q. What did you do there?

8 A. I was an investigator for the trials, for the defense
9 team of attorneys.

10 Q. The defense team of attorneys represented whom?

11 A. Represented the Japanese who allegedly committed war
12 crimes.

13 Q. After your service with the U.S. war crimes trial,
14 did you become involved with the U.S. Army Claims Service?

15 A. Yes, I did.

16 Q. And what were your duties with the claims service?

17 A. Also in the capacity of investigator.

18 Q. What did you investigate?

19 A. I investigated alleged war damage reparations being
20 claimed by Filipino citizens for wartime damage to their
21 crops, their homes, their business, et cetera.

22 Q. At some point in time you became associated with the
23 Displaced Persons Commission, is that correct?

24 A. Yes, a short time after the dissolution of the U.S.
25 Army Claims Service, I returned back to the States and

Curry - Direct

1 gained employment with the Displaced Persons Commission in,
2 I think, late October or November of 1948.

3 Q. And is that shortened to DPC typically, is that an
4 abbreviation?

5 A. DPC, abbreviation, correct.

6 Q. And how long were you with the DPC?

7 A. From the latter part of '48 until separation in
8 February of '52, 1952.

9 Q. Mr. Curry, could you briefly describe what the DPC is
10 or was?

11 A. Well, it was formed to alleviate the refugee
12 displaced person situation in Europe by allotting, I think,
13 a total of about 360,000 visas for those wishing to
14 immigrate to the United States, and that was the basic
15 operation of the DPC, to alleviate the refugee situation.

16 Q. Was the DPC a creation of Congress?

17 A. Yes, it was.

18 Q. And what was the statute that created it?

19 A. I'm sorry, I can't tell you that. I don't know.

20 Q. Was it the Displaced Persons Act of 1948?

21 A. Yes, the Displaced Persons Act of 1948, and later
22 amended.

23 Q. As an official with the DPC, were there regulations
24 and manuals that you followed in carrying out your duties?

25 A. Yes, indeed.

Curry - Direct

1 Q. Could you briefly identify the positions that you had
2 with the DPC?

3 A. Yes. I held initially a position as selector, and a
4 short time after my arrival with the DPC I acted as a case
5 analyst.

6 Q. What is a selector?

7 A. A selector does -- makes the preliminary
8 determination of an applicant's eligibility for immigration
9 under the DPC Act.

10 Q. How about your duties as a case analyst, what were
11 those?

12 A. Those duties consisted of making the final
13 determination of eligibility.

14 Q. And you held that position for the majority of your
15 time with the DPC, is that correct?

16 A. Yes, I did.

17 Q. Where were you assigned in Europe during -- as
18 connected with the DPC?

19 A. Initially in Ludwigsburg, Germany.

20 Q. And how long were you there?

21 A. Perhaps a year.

22 Q. And where did you go next?

23 A. I went to Salzburg, Austria very briefly. I say
24 briefly, less than a month. From there to Vienna, Austria,
25 where I stayed until I left the commission.

Curry - Direct

1 Q. Have you testified in any other denaturalization
2 proceedings concerning your association with the DPC?

3 A. Yes, I have.

4 Q. Could you describe which ones?

5 A. Well, I was here, I don't know if it was this
6 courtroom, but I was here 20 years ago in the initial
7 Demjanjuk trial. And there have been three other cases,
8 Reimer, the other two names do not come to mind, but this
9 is my second appearance here, would be my fifth appearance
10 in this type of trial.

11 Q. Mr. Curry, I'd like to ask you a few questions about
12 the International Relief Organization. What is the
13 International Relief Organization?

14 A. It's an international organization formed to provide
15 housing, food, relief in many forms to the refugees,
16 displaced persons who were wandering about western Europe.

17 Q. What was the relationship between the International
18 Relief Organization and the DPC?

19 A. The difference?

20 Q. The relationship.

21 A. Oh, the relationship. Well, it was a very close
22 relationship, because the DPC relied very heavily upon the
23 International Refugee Organization to supply them with the
24 applicants who wished to immigrate, and they cooperated in
25 providing dossiers that contained all of the information

Curry - Direct

1 that the Displaced Persons Commission would require to
2 determine eligibility for entrance into the United States.
3 We were in very close touch with them at all times.

4 Q. Is the International Relief Organization also
5 referred to familiarly as the IRO?

6 A. Much more so to me, yes.

7 Q. Okay. We'll use that. I'll try not to slip into the
8 long version. It's previously been admitted in this case,
9 and I'm referring to transcript 559, to be eligible for IRO
10 services, a person had to be of concern to the IRO.

11 A. Yes. That's the correct terminology.

12 Q. What does it mean to be of concern to the IRO?

13 A. The applicant had to be within a specific
14 geographical area, within specific time periods. He had to
15 be homeless, fearful of returning to his original home for
16 fear of political persecution.

17 Q. What persons were not of concern to the IRO?

18 A. Persons who, of course, did not meet the requirements
19 that I just mentioned, plus persons who were known to have
20 political persuasions or perhaps military experience that
21 was prejudicial to the IRO's wishes; not wishes, but to
22 their program, to the way they defined to their definition
23 of a refugee or a displaced person.

24 Q. How did the IRO determine if a person was of concern
25 to the IRO?

Curry - Direct

1 A. By gathering all the data available as concerning the
2 history of the principal applicant, who he is, where he's
3 from, how he came to be in his present circumstances at the
4 time.

5 Q. In compiling the history, did the applicant complete
6 a personal history questionnaire for the IRO?

7 A. Yes, he did.

8 Q. Does that have a German name?

9 A. I think it was commonly referred to as a fragebogen.

10 Q. That's F R A G E B O G --

11 A. -- B O G E N.

12 Q. Okay. If I may, I'm going to refer to it as the IRO
13 personal questionnaire. Is that fair?

14 A. Questionnaire, dossier, yes.

15 Q. Who actually filled out the IRO personal history
16 questionnaire?

17 A. IRO personnel, based upon the information given
18 directly to them by the displaced person.

19 Q. Okay. In the event that the displaced person or the
20 applicant did not speak the same language as the IRO person
21 who was completing the form, was there a translator
22 available?

23 A. Always.

24 Q. If an individual was determined not to be of concern
25 to the IRO, what would happen?

Curry - Direct

1 A. Well, of they were not of concern to the IRO, we
2 would not have any knowledge of him.

3 Q. Okay. If an individual had assisted the Nazis in
4 persecution of civilians, would they be of concern to the
5 IRO?

6 A. No.

7 Q. Now, if a person was determined to be of concern to
8 the IRO, what would be the next step as far as the
9 Displaced Persons Commission is concerned?

10 A. If he were to be determined to be of concern to the
11 IRO, his case file would be forwarded to the DP Commission
12 in the area nearest the IRO camp.

13 Q. And then what would happen with that application?

14 A. Well, it would be delivered to the desk of the senior
15 officer of the displaced persons area, which I think
16 Ludwigsburg was area number 7, but at any rate, the senior
17 officer would distribute these cases to the selectors, and
18 then the case would follow from the selector to the case
19 analyst for finalization, and then back to the senior
20 officer's desk.

21 Q. Focusing on what the selector did, did the selector
22 make any kind of initial determination as to eligibility?

23 A. Yes.

24 Q. What were the issues that the selector considered in
25 making the initial determination?

Curry - Direct

1 A. Well, he considered, first of all, whether the
2 applicant met the date, the location requirements. There
3 was just a preliminary investigation. He perused the
4 documentations, the place of birth, school record, marriage
5 certificates, birth certificates of children to make sure
6 that everybody's family was, in fact, a family, and that
7 was about the extent of the selector's responsibility.

8 Q. Did the selector make any determination as to where
9 the applicant was residing at that present time? Did the
10 applicant have to be in a specific zone, Allied zone at
11 that particular time?

12 A. Yes. The selectors were aware of those requirements.

13 Q. In the file that comes from the IRO, is there
14 necessarily an official documentation of the whereabouts of
15 the applicant during World War II?

16 A. Yes.

17 Q. Okay. After the IRO file comes to the DPC, is there
18 further investigation conducted as to his whereabouts and
19 his activities during World War II?

20 A. Yes.

21 Q. By what organization is that investigation conducted?

22 A. Generally it's conducted by the army, military CIC,
23 CID, provost marshal.

24 Q. What does the CIC refer to?

25 A. Counter Intelligence Corps.

Curry - Direct

1 Q. Is that the primary investigative arm?

2 A. Yes, it is.

3 Q. And does the CIC conduct an investigation for every
4 applicant for displaced person's status?

5 A. Each and every applicant.

6 Q. What is the purpose of that investigation?

7 A. To determine if at all possible that the applicant is
8 or is not of good character, to determine if he had any
9 political persuasions or held any political offices that
10 were in conflict with the United States.

11 The CID, investigation there was primarily
12 for criminal acts that may be uncovered during the
13 investigation.

14 Q. Does the CIC investigator interview the applicant?

15 A. Oh, yes, yes.

16 Q. Does the CIC investigator have the services of a
17 translator available if need be?

18 A. Yes.

19 Q. Does the CIC prepare a report after the conclusion of
20 the investigation?

21 A. Yes.

22 Q. And where is that report sent?

23 A. The report is sent to the Displaced Persons
24 Commission, the office where it originated, where the case
25 originated.

Curry - Direct

1 Q. At that point in time, which official with the DPC
2 has the file from the IRO, including the CIC report?

3 A. It would at that time be on the desk or under the
4 control of the case analyst.

5 Q. And that was the position that you held for the
6 majority of the time?

7 A. Yes.

8 Q. Did you after receiving the CIC investigation
9 routinely conduct interviews of the applicants?

10 A. No.

11 Q. When did you conduct interviews?

12 A. Where there appeared to be a question or a conflict
13 of eligibility in any phase of the application.

14 Q. What percentage of the applications would you say
15 that you conducted interviews for?

16 A. Repeat, please.

17 Q. What percentage of the applications that came across
18 your desk did you decide to conduct interviews on?

19 A. Oh, interviews.

20 Q. Yes.

21 A. Very few. Perhaps less than 5 percent, 2 or 3
22 percent.

23 Q. Did you rely on the CIC's interviews and those of the
24 IRO?

25 A. Yes.

Curry - Direct

1 Q. Upon what information would you make a determination
2 that the applicant was eligible or ineligible for the DP
3 status?

4 A. If the investigative reports, CIC and other agencies
5 came back giving him a clean bill of health, he would be
6 considered eligible. On the other hand, if there was
7 derogatory information, which to the DPC commission's or
8 more specifically to my eyes or the case analyst's eyes, if
9 it was of a derogatory nature that would prohibit him from
10 being eligible under the act, then the case was closed, he
11 was declared ineligible or rejected for immigration.

12 Q. In making that determination, did you on occasion ask
13 that further investigations be undertaken?

14 A. Yes.

15 Q. Would a final report be prepared?

16 A. A final report?

17 Q. Yes.

18 A. Would be prepared.

19 Q. Okay. Who would supply the information that actually
20 went on the final DPC report?

21 A. The final DPC report consisted of all the information
22 available to the case analyst, beginning with the
23 fragebogen, all the information available from the IRO, and
24 as I said, from all of the investigating agencies, and then
25 the determination would be made by the case analyst.

Curry - Direct

1 Q. So you made the actual final determination?

2 A. I made, as the case analyst, the final determination.

3 Q. Was there any right of appeal or was it a final
4 decision?

5 A. Yes, there was the right of appeal.

6 Q. Could you describe the appeal procedure?

7 A. Yes, the appeal procedure was generally filed on
8 behalf of the applicant by the sponsoring agency, and if it
9 was so formally filed, the case was sent back to our
10 headquarters in Frankfurt, Germany, and reviewed there by
11 the legal section, by the security section.

12 They either upheld the case analyst's report
13 or, in some rare instances, they disagreed with the case
14 analyst's report and returned it with approval.

15 Q. If you approved a final determination, made the final
16 determination, what would be the next step with the
17 application?

18 A. It would go from the DPC to the U.S. Vice Consul's
19 office.

20 Q. You stated that you did not often interview
21 applicants. Who on a routine basis during the process,
22 from entering the camp until the applicant went to the
23 United States, would conduct an interview of the applicant,
24 if you can recall?

25 A. You say who would?

Curry - Direct

1 Q. Yes. Which agencies would conduct interviews?

2 A. Well, the DPC would occasionally conduct an
3 interview, but certainly the vice consul would personally
4 interview each and every applicant.

5 Q. Would the Immigration and Naturalization --

6 A. And following the vice consul, there was personal
7 interrogation by the INS, the Immigration and
8 Naturalization Service, yes.

9 Q. Mr. Curry, there's an exhibit book in front of you.
10 In front of you is Plaintiff's Exhibit 2.1, and I wonder if
11 you could identify that document.

12 A. I recognize the format. The document is the first
13 page of the final DPC report.

14 Q. And for whom -- who is the principal applicant on
15 this report?

16 A. Demjanjuk.

17 Q. And I note that he is the principal applicant, and
18 there are two other individuals that are listed there as
19 well. Could you describe that relationship?

20 A. I know -- first of all, well, you know, the Court
21 perhaps does not know, that my eyesight is depleted
22 substantially to the point where I cannot read fine print,
23 but I can see several names here, which have to be the
24 applicant's spouse and such children as he had. How many,
25 I do not know. Looks like perhaps two or so here.

Curry - Direct

1 Q. So the application was filled out on behalf of one
2 individual and his family members, as well?

3 A. Yes.

4 Q. Was the investigation conducted of the principal
5 applicant primarily?

6 A. Primarily, but also his spouse, certainly not minor
7 children.

8 Q. I note on this application, I mean this final
9 determination, at Bates number 8, a history section, this
10 information on the history section of the final
11 determination for --

12 MR. TIGAR: Excuse me, Your Honor, I'm having
13 trouble finding the exhibit.

14 THE COURT: It's Exhibit 2.

15 MS. JOHNSON: 2.1. The certification is in
16 the beginning. The last three pages are the actual final
17 determination. It has Bates numbers 7, 8 and 9 on it.

18 A. This information was contained in the documentation
19 we received from IRO.

20 Q. Based upon the information received from the IRO,
21 this history section was compiled then?

22 A. Yes.

23 Q. Okay. Reading from the history section, the fifth
24 clause indicates that the principal applicant from 1936 to
25 September, 1943 was an independent farmer at Sobibor,

Curry - Direct

1 Poland. If it came to your attention that this principal
2 applicant had misrepresented that fact, would that have in
3 any way affected your decision on his application?

4 A. Misrepresented?

5 Q. Right. Misrepresented.

6 A. Yes. Yes, it would.

7 Q. How would it have affected your decision?

8 A. Any person or any applicant who makes a willful
9 misrepresentation for the purpose of gaining admission to
10 the United States under the provisions of the Displaced
11 Persons Act is ineligible.

12 Q. Is there a provision of the Displaced Persons Act
13 that refers specifically to misrepresentations and
14 disqualification for misrepresentations?

15 A. Yes. That information is contained in Section 10 of
16 the Displaced Persons Act.

17 Q. Reading again from the history section, the sixth
18 clause indicates that "From September, 1943 to May, 1944,
19 he," referring to the principal applicant, "was employed as
20 a worker at the Harbor of Danzig."

21 If it had come to your attention while you
22 were considering the application that the principal
23 applicant had misrepresented his employment as a worker at
24 the Harbor of Danzig, would that have had any affect on
25 your decision on his application?

Curry - Direct

1 A. If he was in a similar occupation or someplace nearby
2 performing the same type of work, quite likely it would not
3 have any effect on his eligibility.

4 Q. But if he hadn't been performing that activity at
5 all, would that have impacted on your decision?

6 A. Well, if he -- if it appeared that he was elsewhere,
7 involved in some occupation other than that which he
8 originally stated, then that would certainly be willful
9 misrepresentation and, as such, he would not be eligible.

10 Q. Okay. Referring to the seventh clause on the history
11 section, it states that "In May, 1944, he entered into
12 Germany," again "he" referring to the principal applicant,
13 Mr. Demjanjuk -- "arriving at Munich, where he was employed
14 as a railway worker until May, 1946."

15 If it had come to your attention that the
16 principal applicant was not engaged in this activity, that
17 he was not employed as a railroad worker in Munich, would
18 that have affected your decision?

19 A. He was not a railroad worker and he was not in
20 Munich?

21 Q. Right.

22 A. That would have affected the determination, yes.

23 Q. How so?

24 A. Ineligible on the basis of willful misrepresentation.

25 Q. I want to make a slight reference for a moment to the

Curry - Direct

1 question of forced repatriations. In October of 1950, when
2 this final determination indicates that you approved the
3 application, were there any forced repatriations, and I'm
4 referring specifically to October, 1950?

5 A. To my knowledge, certainly not.

6 Q. Do you have any knowledge about whether there had
7 been forced repatriations?

8 A. Yes, I do.

9 Q. Had they occurred?

10 A. They had occurred.

11 Q. When did they cease, if they ceased?

12 A. They occurred in earlier years, 1945. I don't know
13 how long after 1946 they may have occurred, but I doubt
14 that they occurred after 1945. I left the area in the
15 latter part of 1945, so therefore, I would have no
16 firsthand knowledge.

17 Q. If a principal applicant --

18 MR. TIGAR: Excuse me, Your Honor. He's just
19 said he left a certain area after 1945, "I would have no
20 firsthand" -- I would move to strike the last questions and
21 answer on the grounds of lack of personal knowledge, Rule
22 602.

23 THE COURT: Well, he said they occurred in
24 earlier years, 1945.

25 THE WITNESS: I would be happy to explain

Curry - Direct

1 what I was doing in 1945.

2 THE COURT: And then he said, "I don't know
3 how long after 1946 they may have occurred," so I don't
4 think any damage has been done here. Anything else he says
5 is pure speculation, and we can disregard that.

6 MR. TIGAR: Thank you, Your Honor. I agree
7 with the Court. My position is clear. Thank you.

8 BY MS. JOHNSON:

9 Q. Mr. Curry, if a principal applicant in 1950 had
10 misrepresented his wartime whereabouts out of fear of
11 repatriation, would that misrepresentation affect his
12 eligibility?

13 A. Yes, it would.

14 Q. How so?

15 A. I would give no credence to such a statement.

16 Q. Referring again to Plaintiff's Exhibit 2.1, the first
17 page, which has Bates number 7, which discusses the
18 investigation of character of the principal applicant and
19 his family and makes a finding at paragraph 5 that he has
20 not advocated or assisted in the persecution of any person
21 because of race, religion or national origin. Is such a
22 finding a prerequisite to eligibility under the Displaced
23 Persons Act?

24 A. It is.

25 Q. What section of the Act, sir?

Curry - Direct

1 A. Section 13.

2 Q. Mr. Curry, if a Soviet soldier had been taken
3 prisoner by the Germans and was a prisoner of war during
4 the duration of World War II, how would that affect his
5 eligibility?

6 A. It would not affect his eligibility.

7 Q. If that same soldier subsequently served as a guard
8 in a German concentration camp guarding civilians held on
9 account of race, religion or national origin, how would
10 that guard service affect his eligibility?

11 A. It would be reason for a declaration of
12 ineligibility. He would be ineligible.

13 Q. Would you personally have found him ineligible?

14 A. Yes, I would.

15 Q. If that same Soviet soldier also served as a guard in
16 a German forced labor camp where civilians were forced to
17 work on account of their race, religion or national origin,
18 would that guard service affect his eligibility?

19 A. Yes, it would.

20 Q. How would it affect his eligibility?

21 A. It would affect his eligibility in that the Act does
22 state specifically that no person, no visa may be issued to
23 any person who has aided or assisted in the persecution of
24 civilians because of race, religion or national origin.
25 That would be reason for a determination, ineligible.

Curry - Direct

1 Q. Would you have personally made that determination as
2 the case analyst?

3 A. I would.

4 Q. If that same Soviet soldier also served as a guard at
5 a German extermination camp where civilians on account of
6 their race, religion or national origin were put to death
7 in gas chambers, would that affect his eligibility?

8 A. Yes, it would.

9 Q. Would the same reasons apply, sir?

10 A. Well, yes, and the fact that he would have
11 participated being a guard, he would have participated in a
12 movement hostile to the United States and the form of
13 government of the United States.

14 Q. Did you ever deny applications based upon those
15 grounds, of assistance in the persecution of civilians on
16 account of race, religion or national origin?

17 A. Yes.

18 Q. Returning to these character findings on page 1 of
19 Plaintiff's Exhibit 2.1, it states at number 4 that the
20 principal applicant is not and has never been a member or
21 participated in any movement which is or has been hostile
22 to the United States or the form of government of the
23 United States. Is this finding a prerequisite to
24 eligibility under the Displaced Persons Act?

25 A. Yes, it is.

Curry - Direct

1 Q. What section of the Act?

2 A. That's Section 13.

3 Q. Same section as you previously testified about,
4 right?

5 A. Yes, yes, it is identical.

6 Q. If it came to your attention that an applicant served
7 in the Guard Forces of the SS and Police Leader in Lublin
8 District during World War II, would that have affected his
9 eligibility?

10 A. Yes, it would.

11 Q. Why so?

12 A. Because of his participation in a movement hostile to
13 the United States and its form of government.

14 Q. If it came to your attention that an applicant served
15 in the SS Death's Head Battalion at Flossenburg
16 concentration camp, would that have affected his
17 eligibility?

18 A. Yes.

19 Q. The grounds?

20 A. Well, the grounds, the Death's Head Battalion was
21 designated to guard these concentration camps wherein the
22 inmates of the concentration camp were denied their human
23 rights, they were persecuted, and the guard -- of course,
24 as a case analyst of DPC, would determine that he did
25 participate in the persecution of these civilian people

Curry - Direct

1 because of their race, because of their religion, because
2 of their national origin.

3 A great many of them -- I don't want to get
4 into percentages, but most of them were Jewish, but there
5 were those other political persuasions that didn't agree
6 with the Nazi regime that were also inmates of these camps.
7 So in answer to your question, such a person engaged in
8 such activity would be ineligible.

9 Q. Would they be ineligible for being a member or
10 participant in a hostile movement, movement hostile to the
11 United States?

12 A. Yes.

13 Q. Have you ever denied applications during your tenure
14 as a case analyst based upon the grounds of participation
15 in a movement hostile?

16 A. Yes, I have.

17 Q. Sir, you've testified as to three grounds that you as
18 a case analyst could find an applicant ineligible for a
19 displaced persons status under the Displaced Persons Act,
20 willfully making misrepresentations, persecution of
21 civilians, and participation in a hostile movement, just
22 generally speaking.

23 Would a finding that an applicant has done
24 any of those things disqualify him for eligibility for
25 displaced persons status and admission into the United

Curry Cross

1 States?

2 A. Well, yes. As you've stated, we have discussed three
3 situations, any one of which would be sufficient to
4 determine the applicant ineligible, any one of the three in
5 itself is sufficient for rejection of the case.

6 MS. JOHNSON: Your Honor, I have no further
7 questions of Mr. Curry at this time, but I wondered, would
8 you like to take a break now, are you doing okay?

9 THE WITNESS: Are you speaking to me?

10 MS. JOHNSON: Yes, Mr. Curry.

11 THE WITNESS: I'm all right. Thank you.

12 MS. JOHNSON: Okay.

13 THE COURT: All right. Good.

14 THE WITNESS: Thank you, Judge.

15 CROSS-EXAMINATION OF LEO B. CURRY, JR.

16 BY MR. TIGAR:

17 Q. Good morning, Mr. Curry.

18 A. Good morning to you, sir.

19 Q. My name is Michael Tigar. And I'm a lawyer, along
20 with Mr. Broadley here, for Mr. Demjanjuk, and he's not
21 here today, but his son is. You've been with this case one
22 way and another for a long time, haven't you, sir?

23 A. Yes, apparently so.

24 Q. Now, how many case analysts were there working under
25 the Displaced Persons Act in Europe?

Curry Cross

1 A. I can't say with any great degree of accuracy. There
2 were seven, eight or nine, possibly, offices, and I cannot
3 speak for offices other than those in which I served, but
4 I'm thinking there were perhaps three to four case analysts
5 in each office, in each area office.

6 Q. How many cases in this 1950 period, how many cases a
7 month would you be resolve or deciding?

8 A. Well, on a basis of eight to ten a day, you can do
9 the math on it, how many I would do in a month.

10 Q. And at that time the United States had already
11 decided as a matter of policy, hadn't it, that the Soviet
12 Union had some hostile intentions towards us?

13 A. Yes. I don't think anyone in America was too happy
14 with the Soviet Union in that time.

15 Q. And did you, sir, have a perception that some of
16 these people you were seeing were fearful about returning
17 back behind what Winston Churchill later called the Iron
18 Curtain?

19 A. They may have. It was no concern of mine. I didn't
20 delve into their fears particularly.

21 Q. From your experience, was the IRO involved in dealing
22 with the personal fears that people had and trying to
23 reassure them?

24 A. Well, it was an organization devoted to their care,
25 and I can make no statement further than that.

Curry Cross

1 Q. Now, were you given any instructions about the
2 question of fear of repatriation to the Soviet Union?

3 A. No.

4 Q. Do you remember any conversations with any DPC
5 officials about people who had been born in the Soviet
6 Union, then being fearful of going back to the USSR?

7 A. Yes, there was discussion as concerning those fears.

8 Q. Now, in your testimony, you talked about this
9 question of the obligation of people before you to tell the
10 truth, right?

11 A. Yes.

12 Q. And you were worried about what you regarded as
13 material falsehoods, is that right?

14 A. Material falsehoods, yes.

15 Q. And you wouldn't necessarily disqualify somebody for
16 an immaterial falsehood, correct?

17 A. If it was not material to eligibility -- did you say
18 falsehood?

19 Q. Yes, falsehood.

20 A. Well, we didn't accept falsehoods under any
21 circumstances.

22 Q. Well, I'm trying to understand what your standard
23 was. I thought you said a moment ago, for instance, that
24 if a fellow said he was a farmer in place A, but in fact he
25 had been a farmer in place B down the road, that didn't

Segat - Examinat on by deposition

1 matter very much.

2 A. Yes, but in there I was not referring specifically
3 that the applicant knowingly made a false statement, but it
4 is possible that he can misplace time and events going back
5 a few years purely by mistake, a lapse of memory. Well, I
6 wasn't discussing intentional falsehood at that point, I
7 don't think.

8 Q. And materiality, however, you said deals with this
9 question of whether or not it relates to eligibility,
10 correct?

11 A. The material facts, yes, do relate to eligibility.

12 MR. TIGAR: Thank you very much, Mr. Curry.
13 I have nothing further.

14 MS. JOHNSON: No questions, Your Honor.

15 THE COURT: All right. You may step down,
16 Mr. Curry.

17 THE WITNESS: Thank you, Your Honor.

18 (Witness excused.)

19 MS. JOHNSON: Your Honor, the next witness
20 will be Daniel Segat, who will be testifying by deposition,
21 and William Kopp will take the role of Mr. Segat. As
22 indicated previously, we will be doing excerpts, and I will
23 direct the Court's attention to the excerpts. The
24 deposition of Daniel Segat is found at Plaintiff's Exhibit
25 90, and the videotape transcript of his deposition is in

Segat - Examination by deposition

1 the machine now and is designated as 90 A, at page 4, line
2 9.

3 EXAMINATION OF DANIEL SEGAT (by deposition)

4 BY MS. JOHNSON:

5 "Q. Mr. Segat, would you state your complete name,
6 please?

7 "A. Daniel Segat."

8 MS. JOHNSON: Mr. Kopp, could you state your
9 full name, please?

10 MR. KOPP: My name is William J. Kopp,
11 K O P P.

12 MS. JOHNSON: Turn to page 6, line 20.

13 "Q. Did there come a time" --

14 MR. TIGAR: May the record reflect it's
15 another false name.

16 (Laughter.)

17 THE COURT: Just a misplaced name.

18 (Laughter.)

19 "Q. Did there come a time when you were employed by the
20 International Relief Organization, that is, the IRO?

21 "A. That's correct. In 1948 I was hired by IRO.

22 "Q. This was following your completion of work with the
23 defense department?

24 "A. That's correct.

25 "Q. Would you describe what the IRO was?

Segat - Examinat on by deposition

1 "A. The IRO, the International Refugee Organization, was
2 a specialized agency of the United Nations created to
3 assist refugees and displaced persons, that is, victims of
4 the Nazi and facist persecutions, victims of the Spanish,
5 Falangist regime, and finally the prewar refugees, Nansen
6 refugees.

7 "Q. Most of these refugees though were refugees created
8 by the Second World War?

9 "A. Correct.

10 "Q. What kind of assistance did the IRO render to these
11 refugees?

12 "A. First of all, IRO gave these people maintenance,
13 shelter, in other words. Then if they were declared
14 eligible, they were resettled in various countries, in
15 various receiving countries; the United States, Brazil,
16 Australia, Canada.

17 "Q. IRO assisted them in resettling in these countries?

18 "A. That's correct.

19 "Q. What were the nationalities of these refugees?

20 "A. The nationalities were many. They were Poles,
21 Russians, Latvians, Lithuanians, many, many.

22 "Q. Now, at the time that IRO dealt with them where were
23 these refugees living?

24 "A. Mostly in refugee camps which were provided -- which
25 had been organized or built by the occupation authorities

Segat - Examinat on by deposition

1 and later taken over by IRO.

2 "Q. In which countries were these camps located?

3 "A. Primarily in Germany and Austria.

4 "Q. Who ran the camps?

5 "A. IRO ran the camps.

6 "Q. How long in total were you employed by the IRO?

7 "A. From 1948 to '52, about three and a half years, I
8 would say.

9 "Q. When you began employment with the IRO in March,
10 1948, what was your position?

11 "A. I was field eligibility officer in Linz, Austria."

12 MS. JOHNSON: Turning to page 9, line 9.

13 "Q. Would you briefly describe what your duties were as
14 field eligibility officer?

15 "A. My duties were -- well, my major duty was to
16 determine the eligibility of all applicants for IRO
17 assistance in my area, which was the Linz area.

18 "Q. What were the consequences to an applicant of a
19 determination that he was eligible for IRO assistance?

20 "A. They were twofold. He acquired a legal document
21 which entitled him to -- it's like a passport almost, and
22 to all services that IRO was able to render, including care
23 and maintenance and immigration.

24 "Q. What were the consequences to an applicant if he were
25 found ineligible for IRO assistance?

Segat - Examinat on by deposition

1 "A. He was deprived of all the things that I mentioned
2 before. He was deprived of care and maintenance and
3 deprived of the possibility to emigrate."

4 MS. JOHNSON: Jumping down still on page 10
5 to line 17.

6 "Q. Approximately how many cases did you process of
7 refugees while you were eligibility officer at Linz?

8 "A. Many thousands of cases."

9 MS. JOHNSON: Turning to page 15, line 17.

10 "Q. Now, regarding the eligibility process itself, the
11 determination of eligibility, what factors, if any, were
12 used in deciding whether an applicant for IRO assistance
13 was eligible to receive it?

14 "A. Well, whether -- the first factor is whether the
15 applicants have complied with the definition of a bona fide
16 refugee on the positive side. On the negative side,
17 whether or not he at any time collaborated with the enemy
18 forces, served in enemy -- in units that fought the Allies.

19 "Q. How would the fact of such collaboration affect
20 eligibility?

21 "A. It would make the applicant ineligible.

22 "Q. Ineligible for assistance?

23 "A. Right. Ineligible for IRO assistance.

24 "Q. During the time that you were at IRO, were there such
25 applicants who were found ineligible -- strike that. Were

Segat - Examinat on by deposition

1 there applicants who were found to have collaborated with
2 the enemy or assisted them?

3 "A. Yes.

4 "Q. Did you yourself review such cases where applicants
5 were found to have been involved in collaboration or
6 assistance to the enemy?

7 "A. Yes.

8 "Q. What decision, if any, was made on the applications
9 of applicants who were found to have been involved in
10 collaboration or assistance of the enemy?

11 "A. They were declared ineligible.

12 "Q. For IRO assistance?

13 "A. For IRO assistance.

14 "Q. What was the consequence to these individuals of a
15 finding of ineligibility?"

16 MS. JOHNSON: And jumping down to line 7.

17 "A. The consequences were that they were no longer
18 entitled to care and maintenance, if they received such
19 care and maintenance before, and they could not emigrate
20 under IRO auspices.

21 "Q. How would that affect their chances of immigrating to
22 the United States?

23 "A. It would preclude their immigration to the United
24 States.

25 Q. The principles or the standards for eligibility for

Segat - Examinat on by deposition

1 IRO assistance which you have just previously outlined,
2 were they enunciated in a particular document?

3 "A. They were enunciated in the IRO Constitution, which
4 was quoted and elaborated on in the IRO Eligibility
5 Manual."

6 MS. JOHNSON: Okay. Turning to page 20, line
7 14.

8 "Q. Mr. Segat, I am going to hand you what has been
9 marked Government Exhibit Number 1. Would you please look
10 through it and tell me if you can identify it?

11 "A. Yes, I can identify this as the IRO Eligibility
12 Manual.

13 "Q. Of which you had a copy?

14 "A. Of which I had a copy, yes.

15 "Q. Now, you stated that these criteria for eligibility
16 and exclusion from eligibility were stated in the annex to
17 the Constitution which is in the manual. Would you please
18 find the annex and read from it those particular criteria
19 for eligibility?

20 "A. That's right. This is annex 1 to the IRO
21 Constitution. Excuse me, part 2 --

22 "Q. What page is part 2 on?

23 "A. 151. Part 2: Persons who will not be the concern
24 of the organization. Quislings and traitors."

25 THE COURT: I notice there's an insert there.

Segat - Examinat on by deposition

1 Is that to be read?

2 MS. JOHNSON: We can pass this. These
3 exhibits are found as part of the deposition transcript and
4 are found following the transcript.

5 THE COURT: Okay. What I meant was, there's
6 an addition that indicates that the answer is, "War
7 criminals, quislings, and traitors."

8 MR. TIGAR: That's correct. I think that's
9 in Mr. Segat's hand, because that would be a correct
10 reading of the material at page 151 of Exhibit 90 A.

11 THE COURT: Okay.

12 MS. JOHNSON: I didn't have that on my copy,
13 so you have Mr. Segat's original.

14 THE COURT: Okay. So the answer according to
15 this is, "War criminals, quislings, and traitors."

16 MR. TIGAR: And that is what Your Honor has
17 in the exhibit that's in the Court's custody?

18 THE COURT: Yes.

19 MR. TIGAR: That's what we have, as well.

20 MR. KOPP: I have not completed the answer,
21 if you want me to continue, Ms. Johnson.

22 MS. JOHNSON: Go ahead.

23 "A. Number 2, any other persons who can be shown to have
24 assisted the enemy in persecuting civilian populations of
25 countries, members of the United Nations; or B, to have

Segat - Examinat on by deposition

1 voluntarily assisted the enemy forces since the outbreak of
2 the Second World War in their operations against the United
3 Nations.

4 "Q. Thank you."

5 MS. JOHNSON: Now referring to page 23, line
6 6.

7 "Q. Mr. Segat, I am going to show you what has been
8 marked as Government's Exhibit 2, a four-page document
9 which has been certified by the Archives of the
10 International Tracing Service and the consulate of the
11 United States in Frankfurt, and ask if you can identify
12 this document, if you have ever seen any documents like
13 this.

14 "A. This is a typical application for eligibility for IRO
15 assistance.

16 "Q. And typically by whom would such an application form
17 have been filled out?

18 "A. In most cases by the interviewer who was asking, of
19 course, the refugee, the applicant to supply the
20 information.

21 "Q. Now, aside from filling out of the application forms,
22 were there also further interviews which the refugee would
23 go through?

24 "A. Yes.

25 "Q. By whom would such interviews generally be conducted?

Segat - Examinat on by deposition

1 "A. By the eligibility officer.

2 "Q. Was there a focus to such interviewers? Did they
3 tend to focus on certain sorts of interviews or questions?

4 "A. Yes. The focus was on the war years, on the history
5 of the applicant during the war years.

6 "Q. Did you yourself conduct such interviews?

7 "A. Yes, many.

8 "Q. Can you estimate approximately how many such
9 interviews you conducted?

10 "A. In the thousands.

11 "Q. What was the primary source of information regarding
12 an applicant's background?

13 "A. This very information.

14 "Q. Information supplied by the applicant himself?

15 "A. By the applicant himself.

16 "Q. If, following the supplying of such information, the
17 IRO discovered that an applicant had lied or made
18 misrepresentations in supplying the information about
19 himself, did that have any effect on the processing of his
20 application?

21 "A. Yes. It had a negative effect.

22 "Q. In what sense?

23 "A. If an applicant was found to give conflicting
24 stories, the obvious suspicions arose that he was hiding
25 something. I also recall something to that effect in the

Segat - Examinat on by deposition

1 eligibility manual, stating that if an applicant presented
2 conflicting stories and did not want to reveal the truth,
3 that he would be prima facie ineligible.

4 "Q. To the best of your knowledge, did you or any members
5 or employees of the IRO ever encourage or instruct an
6 applicant to give incorrect information to the IRO for
7 putting down on the forms?

8 "A. Incorrect?

9 "Q. Yes, sir.

10 "A. Well, to the contrary, our job was to elicit the
11 truth rather than to encourage them to lie."

12 MS. JOHNSON: Turning to page 30, the last
13 line, this is the portion of the transcript with respect to
14 which we would like to hear Mr. Segat in person. And this
15 was a trial deposition that was taken back in January of
16 1981.

17 (Excerpts of videotape deposition played, as
18 follows:)

19 Q. Taking another situation now, if an applicant for IRO
20 assistance were a Soviet soldier taken prisoner by the
21 Germans during the war, and at some later point after being
22 taken prisoner served in a German military unit for
23 nonGermans, would those facts have a bearing or impact on
24 the applicant's eligibility for IRO assistance?

25 A VOICE: Objection.

Segat - Direct (By v deotape deposition)

1 A. The fact of serving in the German unit would
2 definitely have a bearing on the eligibility.

3 Q. What bearing would that have?

4 A. It would make him prima facie ineligible.

5 Q. And he would be ineligible under which standard or
6 criterion?

7 A. The one that I read before in the part 2, paragraph
8 2.

9 Q. Which states what, sir?

10 A. Which states that members of German -- of enemy
11 forces who assisted in -- who assisted the enemy forces in
12 persecuting civilian populations.

13 Q. Well, let me focus. What if the facts were only that
14 he served in a German military unit, not one involved in
15 persecution of civilians?

16 A. The presumption of ineligibility will exist, too.

17 Q. And that would be under which standard?

18 A. Having served in the enemy forces.

19 Q. Now, what if -- another situation -- an applicant
20 were a former Soviet soldier taken prisoner by the Germans,
21 who was later trained by the Germans at a training camp for
22 concentration camp guards. What impact, if any, would that
23 have on that applicant's eligibility?

24 A VOICE: Objection.

25 A. He would be prima facie -- he would be declared prima

Segat - Direct (By v deotape deposition)

1 facie ineligible.

2 Q. And again, could you specify under which standard he
3 would be so declared?

4 A. Under paragraph 2 of annex 2 to the Constitution.

5 A VOICE: "Annex" --

6 A. 2 to the constitution.

7 Q. Mr. Segat, a moment ago you indicated that an
8 applicant who had served in a German military unit, there
9 would be a presumption of his ineligibility. When you say
10 a presumption of ineligibility, do you mean that he would
11 be prima facie ineligible the way you indicated?

12 A. That's correct.

13 Q. Now, another case: If an applicant were a Soviet
14 soldier taken prisoner by the Germans who served as a guard
15 in a Nazi concentration camp or death camp, extermination
16 camp, what impact, if any, would that have on that
17 applicant's eligibility for IRO assistance?

18 A VOICE: Objection.

19 A. He would be declared ineligible.

20 Q. And declared ineligible under what criteria?

21 A. Again, under the annex -- part 2 of annex 2 to the
22 Constitution.

23 Q. Would you state, just summarize generally, what that
24 particular criteria is?

25 A. Assisting the enemy in persecuting civilian

Segat - Direct (By v deotape deposition)

1 population.

2 Q. Now, in these cases which we have just discussed
3 where you indicated that such an applicant would be -- such
4 an applicant would be declared prima facie ineligible, once
5 declared prima facie ineligible, what would then happen in
6 terms of that case?

7 A. He had the right to appeal. In some cases if he was
8 able to produce witnesses or documentary proof, even some
9 appeals were permitted in the field level, but normally he
10 would appeal to the Geneva Review Board.

11 Q. And on whom was the burden of proof to establish
12 eligibility at that point?

13 A. On the applicant.

14 Q. Based on your experience with the IRO, did any
15 applicants who were found to serve the Germans as
16 concentration camp guards, were they ever found eligible
17 for IRO assistance?

18 A VOICE: Objection.

19 A. No.

20 Q. They were not?

21 A. They were not.

22 Q. And these above cases which you've just described of
23 service to the Germans, if such an applicant were found
24 ineligible for IRO assistance, would he have remained
25 eligible to immigrate to the United States?

Segat - Direct (By v deotape deposition)

1 A VOICE: Objection.

2 A. He would not be eligible to immigrate to the United
3 States.

4 Q. Why not?

5 A VOICE: Objection.

6 A. The U.S. authorities required an eligibility status,
7 a positive eligibility status before they would consider
8 him for immigration.

9 Q. Positive eligibility status by the IRO?

10 A. Correct.

11 Q. And when you referring to the U.S. authorities, is
12 there a particular agency which you are referring to?

13 A. The U.S. DP Commission or Refugee Commission. I
14 think DP Commission it was called.

15 A VOICE: Can I have your answer again, sir?

16 THE WITNESS: Pardon me?

17 A VOICE: Can I have your answer again?

18 A. The U.S. DP Commission or Refugee Commission. I'm
19 not sure. I'm not exactly sure of the name. I think DP
20 Commission.

21 Q. We have no further questions. We would like to take
22 a brief recess.

23 (Videotape stopped.)

24 MS. JOHNSON: That's the relevant portion of
25 Mr. Segat's testimony, and now we would like to do

Henrikson - Examination by trial testimony

1 Mr. Harold Henrikson's.

2 THE COURT: All right. What exhibit is this?

3 MS. JOHNSON: This is found at Plaintiff's
4 Exhibit 91. And the exhibit referred to is Plaintiff's
5 Exhibit 91 A.

6 THE COURT: All right. This is not a
7 deposition. This is his testimony --

8 MS. JOHNSON: This is actual trial testimony
9 at the first proceeding, United States versus Demjanjuk,
10 Case Number 77-923.

11 THE COURT: Okay.

12 EXAMINATION OF HAROLD LEE HENRIKSON

13 BY MS. JOHNSON:

14 "Q. Would you state your full name and spell the last?

15 "A. Harold Lee Henrikson, H E N R I K S O N.

16 Q. Turning to page 841, line 6, "Mr. Henrikson, did
17 there come a time when you entered the Foreign Service of
18 the United States?

19 "A. Yes, sir.

20 "Q. When was that?

21 "A. 1950.

22 "Q. Where were you stationed?

23 "A. I was stationed in Germany.

24 "Q. Where in Germany?

25 "A. Originally in Ausburg and later in Ludwigsburg.

Henrikson - Examination by trial testimony

1 "Q. What year were you in Ludwigsburg?

2 "A. I was in Ludwigsburg from about the 1st of July, 1951
3 until December 31st, 1951.

4 "Q. And what were your duties there, please?

5 "A. I was a visa issuing officer.

6 "Q. Did you have a title?

7 "A. I was a vice consul."

8 Q. Turning to page 842, line 18, "As a vice consul in
9 Ludwigsburg, did any of your duties involve the Displaced
10 Persons Act?

11 "A. That was my entire duty.

12 "Q. What would you -- would you describe the nature of
13 the duty as vice consul -- would you describe the nature of
14 that duty as vice consul?

15 "A. Well, the vice consul considered the applications of
16 people who want to receive visas and either grants or
17 denies the visas.

18 "Q. Under the provisions of the Displaced Persons Act?

19 "A. Yes, sir.

20 "Q. At that time how familiar were with you the Displaced
21 Persons Act?

22 "A. Well, I had administered the Displaced Persons Act in
23 this program from approximately the 1st of August, 1950 up
24 until the end of the program on December 31st, 1951.

25 "Q. Mr. Henrikson, would you please describe the visa

Henrikson - Examination by trial testimony

1 process?

2 "A. Well, I will describe the visa process with reference
3 to Ludwigsburg and with reference only to the Displaced
4 Persons Act. The office was staffed -- the office was
5 stacked by three vice counsels."

6 MR. TIGAR: We have accept staffed, Your
7 Honor. Otherwise it gets to be very unPC.

8 (Laughter.)

9 "A. The office was staffed by three vice consuls, two
10 American girls and approximately 15 to 20 local clerk
11 typists and interpreters. The 15 or 20 local employees
12 spoke English, German, and then additional languages so
13 that among the 15 or 20 local employees we had people who
14 could speak almost all the languages of Eastern Europe.
15 Now at the time we would receive an application, the
16 applicant would already have been considered by the
17 International Refugee Organization and by the Displaced
18 Persons Commission and have met the criterias which they
19 established. The visa applicants would appear at the
20 consular office. They would be sorted out to match up with
21 the interpreter-typist who could converse with them in
22 their language. The interpreter-typist would interview
23 them, would type up the visa application.

24 "The applicants would be fingerprinted. The
25 applicants would undergo a health examination and a medical

Henrikson - Examination by trial testimony

1 report would be made by local doctors employed by the
2 United States Public Health Service.

3 "The applicant would provide photographs and
4 such documents as birth certificates, marriage
5 certificates, police certificates, as pertinent to a
6 particular situation.

7 "When all of these things had been
8 accomplished and the visa applications had been typed out,
9 the visa application and the certification of the Displaced
10 Persons Commission and the IRO documents, the fingerprints,
11 and all these things would be taken by the local clerk
12 typist to the consular officer.

13 "The consular officer would -- I say the
14 consular officer would. I should say I would, because I'm
15 speaking of my own experiences.

16 "I would examine the documents to see if
17 there were any obvious errors in typing or if there were
18 any discrepancies or gaps that needed to be filled, if
19 there was anything that jumped out of the case that seemed
20 to call for further attention; and if satisfied
21 preliminarily about the paperwork, I would then ask the
22 clerk-typist-interpreter to bring the applicant or
23 applicants into my office.

24 "The applicant and the interpreter would
25 appear in my office. The applicant would be sworn that his

Henrikson - Examination by trial testimony

1 answers in the visa application were true and that he would
2 tell the truth to the consular officer.

3 "He was then questioned. If he spoke
4 English, the examination would be in English. If he spoke
5 German and we could understand each other and there didn't
6 seem to be any problem, why, we would speak German. If it
7 were a case in which the applicant was unable to
8 communicate with me or I with him in German, or if he just
9 didn't speak any German, if he spoke Polish or Russian
10 only, then an interpreter would interpret. I would ask the
11 questions in English, the interpreter would translate to
12 the native language, he would then answer in the native
13 language, and the interpreter would relay the answer to me.

14 "When this process was completed, if I were
15 satisfied that he met the standards of the Displaced
16 Persons Act and of the immigration laws in general, then I
17 would make a decision to issue him a visa.

18 "Now, there is a point at which my memory
19 becomes a little bit unclear. I am not clear whether I
20 signed the visa before it was finally assembled or whether
21 it was finally assembled and then I signed it.

22 "But the visa, the application form, which
23 was a two-part foldover form, it would be taken back by the
24 interpreter-typist, and the two American girls who were
25 employed there would supervise the affixing of the

Henrikson - Examination by trial testimony

1 photograph, the affixing of the seal, the assigning of a
2 visa number, and then if I had not originally signed it
3 before it was assembled, then it would come back to me and
4 I would sign my name to it.

5 "Q. What was the purpose of the interview with the
6 applicant?

7 "A. The purpose of the interview with the applicant was
8 to ascertain whether or not he met the requirements of the
9 Displaced Persons Act.

10 "Q. And what questions would be asked of the applicant
11 during the course of this interview?

12 "A. Well, as a minimum, he would be asked questions
13 covering all of the entries which have been made upon the
14 visa application. That's as a minimum. That would cover
15 his place of birth, his date of birth, his nationality, his
16 quota nationality, his marital status, the names and ages
17 and birth place of his children, his places of residence
18 from the time he was 14 years of age, things of that kind.
19 That would be a minimum.

20 "Then in addition, he would be asked about
21 membership in Nazi and communist organizations and military
22 service and a whole category of other matters that are, I
23 think, lumped under the heading of security.

24 "Q. So then your inquiry would include questions
25 concerning his whereabouts and activities during the war,

Henrikson - Examination by trial testimony

1 is that correct?

2 "A. If he were of an age where he were an adult
3 individual during that period of time."

4 Q. Jumping down to line 17. "I think prior to the
5 interview with the applicant, you said you had reviewed the
6 documents. These would include the IRO application?"

7 "A. Yes.

8 "Q. His displaced persons application?"

9 "A. Yes.

10 "Q. And various other documents. What would have
11 happened if a discrepancy developed in these various
12 documents?"

13 "A. Well, everything would come to a stop. If a
14 discrepancy seemed to be a typographical error or omission,
15 I think I would have gone back to the place where it seemed
16 to have occurred and asked, 'Can you explain this?'

17 "Or if -- well, I can actually recall a case
18 where there was a discrepancy in the history, there was a
19 gap, a hiatus in the history the IRO supplied, and I took
20 it back to the IRO and said, 'Can you fill in this gap?
21 Where was this person during this period of time?' And
22 eventually the IRO told me no, they couldn't, that
23 apparently he wasn't an eligible displaced person.

24 "Q. What would have happened if it was determined during
25 the course of your interview that the applicant had lied

Henrikson - Examination by trial testimony

1 either during the IRO process, the displaced persons
2 process or the application for visa?

3 "A. Would you repeat the question?

4 "Q. What would have happened if it had been determined
5 that the applicant had lied either during the IRO process
6 on his IRO application, during the displaced persons
7 process or on his visa application?

8 "A. Well, I don't think I would have had much concern
9 about whether he had lied on the IRO application or he had
10 lied on the displaced persons application, but I would have
11 been concerned if he had lied on the visa application; and
12 since these documents were checked back and forth against
13 each other for consistency, I would find it hard to
14 conceive of the case where he was lying to the IRO and
15 lying to the Displaced Persons Commission but somehow
16 telling me the truth. There would be a discrepancy there
17 and no visa would be issued.

18 "Q. After the interview, if you were satisfied with the
19 applicant, what, if anything, would happen?

20 "A. As I said earlier, I would decide to issue the visa
21 and the visa would be assembled and given a number and
22 signed."

23 Q. Referring to page 851, line 2, "Showing you what has
24 been marked for purposes of identification as Government's
25 Exhibit 21, would you look at that, please. Can you

Henrikson - Examination by trial testimony

1 identify that?

2 "A. Well, it appears to be a copy of a visa.

3 "Q. Is the title of this document, 'Application for
4 immigration visa and alien registration'?

5 "A. Yes.

6 "Q. Whose is it? Does it indicate there?

7 "A. It indicates Iwan Demjanjuk.

8 "Q. Would you turn to the last page, I believe -- the
9 second page, excuse me. Do you see a signature there?

10 "A. I see a signature of Iwan Demjanjuk, and I see a
11 signature of Harold L. Henrikson.

12 "Q. Does that appear to be your signature?

13 "A. It does.

14 "Q. The interview and your questioning and the execution
15 of this document were done under oath, is that correct?

16 "A. Yes."

17 Q. Okay. Turning ahead to transcript page 854, line 12,

18 "If an applicant stated during an interview that he was
19 formerly a Soviet soldier, captured by the Germans, taken
20 to a prisoner of war camp and thereafter recruited and
21 trained at a training camp run by the Nazi SS for the
22 purpose of training guards for duties at extermination
23 camps and for use in other operations against the Jewish
24 population, what effect, if any, would this have had --
25 would this have on his eligibility to obtain a visa?

Henrikson - Examination by trial testimony

1 "A. I would deny the visa.

2 "Q. Upon what do you base this opinion?

3 "A. Well, my general recollection of the Displaced
4 Persons Program and of the Displaced Persons Act is that it
5 was not intended to benefit those who had aided, abetted
6 and helped the Germans in their subjugation of Europe and
7 their persecution of civilian population, and I would think
8 that anybody who was connected with the SS in any way would
9 be, in my opinion, ineligible for a visa.

10 "Q. Given the same facts except this time the individual
11 stated to you that he worked under the SS in an
12 extermination camp.

13 "A. That would be a stronger case.

14 "Q. What would have happened?

15 "A. He would have been denied a visa.

16 "Q. If an individual told you during the interview that
17 he was a former Soviet soldier captured by the Germans,
18 taken to a prisoner of war camp and thereafter served in
19 the military unit for Ukrainians organized by the Germans
20 for the purpose of fighting the Russians, what effect would
21 this have had on his eligibility for a visa?

22 A. He would be denied the visa.

23 "Q. And upon what do you base that conclusion, sir?

24 "A. Well, there was a provision in the Displaced Persons
25 Act that voluntary military service against any of the

Henrikson - Examination by trial testimony

1 United Nations nations was disqualifying.

2 "Q. Thank you. No further questions at this time, Your
3 Honor."

4 MS. JOHNSON: That is the end of the
5 testimony of Mr. Henrikson.

6 THE COURT: All right. Very good.

7 MR. TIGAR: I have no questions of this
8 witness.

9 (Laughter.)

10 THE COURT: All right. I think at this time
11 we will take the lunch break because I have another
12 proceeding I have to be involved in. How long would you
13 like for lunch? Am I giving you long enough or do you need
14 longer?

15 MR. TIGAR: It's fine with us, Your Honor.
16 We just go over to the food court. May we leave our papers
17 here though?

18 THE COURT: Yes. This is in chambers. Then
19 at 1:15 we will reconvene.

20 (Whereupon, at 11:56 a.m., the luncheon
21 recess was had, to reconvene at 1:15 p.m., the same day.)

22
23
24
25

Menning Direct

1 AFTERNOON SESSION, WEDNESDAY, JUNE 6, 2001 1:20 P.M.

2 MR. DRIMMER: Your Honor, the government's
3 next witness is Dr. Bruce Menning.

4 THE COURT: Okay.

5 BRUCE MENNING, of lawful age, a witness called
6 by the Government, being first duly sworn, was examined and
7 testified as follows:

8 DIRECT EXAMINATION OF BRUCE WILLIAM MENNING

9 BY MR. DRIMMER:

10 Q. Good afternoon, Dr. Menning.

11 A. Good afternoon, sir.

12 Q. Would you please state your name for the record and
13 spell your last name, please.

14 A. Yes. My name is Bruce William Menning, last name
15 spelled M E N N I N G.

16 Q. And where do you currently live, Dr. Menning?

17 A. I'm a resident of Lawrence, Kansas.

18 Q. Where are you currently employed?

19 A. I'm a professor of strategy in the Department of
20 Joint and Multinational Operations, U.S. Army Command and
21 General Staff College, Fort Leavenworth, Kansas.

22 Q. How long have you been employed at Leavenworth?

23 A. At Leavenworth I've been employed continuously since
24 1986; in other words, 16 years now.

25 Q. You are a professional historian, is that right?

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1 A. By base discipline and by most of my professional
2 practice, yes, I am a professional military historian.

3 Q. You said military historian?

4 A. Professional military historian, yes. I'm sorry.

5 Q. Within the field of military history do you have a
6 particular specialty?

7 A. Yes. My specialty is Russian and Soviet military
8 history.

9 Q. Is part of your emphasis on Soviet and German war
10 planning, strategy and operations on the Eastern Front in
11 World War II?

12 A. Yes. I've been interested in those subjects through
13 most of my professional career, with greater or lesser
14 degrees of emphasis, but particularly in the last 10 to 12
15 years, they have been increasingly the subject of my main
16 focus.

17 Q. I'm using the term Eastern Front in World War II.
18 Would you describe what that means?

19 A. That zone of combat operations extending roughly from
20 the Arctic down to the Black Sea, Central Eurasian
21 continent, let's put it that way, from Berlin in the west
22 to Moscow in the east.

23 Q. And when you talked about war planning strategy and
24 operations, what does that refer to?

25 A. War planning strategy and operations means, well,

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1 essentially that aggregate of actions including
2 preparation, conduct and support and planning and support
3 of active military operations.

4 Q. In the course of your work, have you also gained
5 familiarity with the German prisoner of war camps which
6 held Soviet POWs captured on the Eastern Front?

7 A. Yes.

8 Q. Do you have a binder of exhibits up there that I'm
9 not seeing?

10 MS. HEYER: It's right here.

11 Q. Would you turn to number 11, Exhibit 11. Are you
12 able to identify that document?

13 A. Yes. That's a recent copy of my curriculum vitae.

14 Q. Did you prepare this document?

15 A. Yes, I did.

16 Q. Dr. Menning, I'd like to talk about your educational
17 background. Where did you do your undergraduate work?

18 A. I did my undergraduate work between 1961 and 1965 at
19 St. John's University in Minnesota.

20 Q. And did you have a major at St. John's?

21 A. Yes. I majored in history.

22 Q. And did you have any principal areas of focus as a
23 history major?

24 A. Yes. The principal areas of focus were European
25 history and Russian history secondarily, and then in

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1 addition to that I wrote my honors thesis on War Minister
2 Kerensky, K E R E N S K Y, in 1971.

3 Q. And according to your CV, you have a master's degree
4 and a Ph.D. from Duke University, is that right?

5 A. Yes. I received -- I studied at Duke University from
6 the fall of 1965 until actually almost the fall of 1971.

7 Q. In what fields did you receive your master's and
8 Ph.D.?

9 A. Master's degree was in Russian history. Ph.D. degree
10 was in modern Russian history first, with a secondary in
11 military history, and a tertiary in modern European
12 history, and a fourth field required for Ph.D. degree in
13 East European area studies.

14 Q. Did part of your course work in receiving these
15 advanced degrees, did these cover Soviet and German war
16 planning, strategy and operations on the Eastern Front in
17 World War II?

18 A. Yes. A part of the course work of necessity included
19 that, because essentially when I was taking the burden of
20 my graduate course work was actually in Soviet history with
21 an emphasis on Soviet military history, and then in
22 addition to that I had a secondary field with Professor Ted
23 Ropp in military history, R O P P, in military history, and
24 I was often the only Russian specialist in there, so of
25 necessity I was doing primarily Russian or I was covering

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1 primarily Russian subject matter in that seminar.

2 Q. And in addition to the position you currently have,
3 have you held any prior teaching positions?

4 A. Yes. From the fall of 1971, immediately after I
5 finished my Ph.D. examination, I taught from the fall of
6 1971 until the fall of 1983 continuously at Miami
7 University in Oxford, Ohio. I taught Western Civilization
8 and Russian and Soviet history, and in addition to that,
9 courses, select courses in military history.

10 Q. In the course of your teaching career, have you
11 taught classes that covered Soviet and German war planning,
12 strategy and operations on the Eastern Front in World War
13 II?

14 A. Yes. Very specifically, I left with -- I returned to
15 Miami after taking a leave of absence in the fall of 1983.
16 I left temporarily to take the command in general staff
17 officer course in residence at Fort Leavenworth. I was a
18 reserve officer. Subsequently, I spent an additional year
19 as a John F. Morrison professor of military history at Fort
20 Leavenworth at the Staff College.

21 And during that time, essentially I was
22 responsible for the coverage of Soviet military history,
23 and what that essentially focused on was ground operations
24 on the Eastern Front in World War II.

25 Q. Now, you spoke a little bit about reserve military

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1 assignments. Are you, in fact, in the military?

2 A. I am no longer in the military. I served 31 years in
3 the army reserve from the time of commissioning in 1965
4 until I was forced to retire because of age in 1996.

5 Q. And what rank did you hold at your retirement?

6 A. I was a colonel.

7 Q. Has your military service impacted your research
8 focus in some way?

9 A. Oh, very much so. Not only my background from both
10 undergraduate and graduate days, but also the time I spent
11 teaching especially Soviet history at Miami, and then
12 subsequently serving as John F. Morrison professor at the
13 Staff College. All of that involved extensive preparation
14 in the field of, well, Russian and Soviet military history.

15 And then in addition to that, now getting
16 into specifically the reserve career, for ten years,
17 between 1972 and 1982, I was in a mobilization billet,
18 so-called, at the U.S. Army Center of Military History.
19 And during that time, I served initially as what was called
20 a plans training officer and then a military historian.

21 And as military historian, essentially I was
22 seconded, to use the military term, regularly to the
23 primary staff historian who was writing the volume, the
24 initial volume on The Eastern Front in World War II. His
25 name was Charles Fanutdichow, and he didn't know Russian.

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1 In those days, one covered the Eastern Front
2 from the German side, and when they found out I knew
3 Russian, essentially he and I did research collaboration on
4 the initial -- well, it's more than initial campaigns. It
5 was operation Barbarossa and subsequent operations into
6 early 1942.

7 And then beyond that I became gradually
8 enmeshed because of my association with the Center of
9 Military History, U.S. Army Center of Military History, I
10 became enmeshed in academic exchanges with our Soviet
11 counterparts, and their primary focus was Eastern Front
12 World War II. So I was inexorably drawn, whether I wanted
13 to or not, I was inexorably drawn into Eastern Front
14 operations in World War II.

15 Q. I want to talk a little bit about your historical
16 research. Have you performed historical research in
17 archives?

18 A. Yes, sir, I have.

19 Q. What archives have you conducted research in?

20 A. I have conducted research in all of the primary
21 military archives of first the Soviet Union, and now the
22 Russian Federation. And in addition to that, I have
23 conducted research in the Bakhmeteev, B A K H M E T E E V,
24 Archive at Columbia University and the archives at Hoover
25 Institution, Stanford, California.

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1 In addition, I've forgotten, the Military
2 Archives of Finland, the Military Archives of Great
3 Britain.

4 Q. What kinds of topics were you researching in these
5 archives?

6 A. Well, through my professional life I've really made
7 two primary evolutions in my own personal research focus.
8 When I went to Duke University as a graduate student, I was
9 intensely interested in, you know, we were in post Sputnik
10 era, I was intensely interested in Soviet history,
11 particularly Soviet military history.

12 But what happened was, about that same time
13 we opened cultural exchanges with the Soviets, and it
14 became possible to go over to the Soviet Union for extended
15 periods of time to do research in the Soviet archives. And
16 one of the first things you found out in those days was if
17 you were working on a Soviet topic, it was no go.

18 So what I did was, I was interested
19 originally in the Cossacks in the Civil War, believe it or
20 not. I found out that wasn't even a starter in those days
21 for research topics, so I went back and did Cossacks in the
22 18th and 19th century as a dissertation topic. And then
23 really I stayed in prerevolutionary Russian history as a
24 primary research focus while I was carrying all of this
25 other baggage from the Center of Military History with me

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1 from the modern period.

2 And then I went through a second evolution in
3 the late '80s and early '90s during the period of Gorbachev
4 and Perestroika, and the archives were suddenly coming open
5 to topics that we never dreamed we would be able to look at
6 in the old days.

7 So I started actively in 1989, 1990, changing
8 the focus of my research really to the 20th century, and
9 more particularly to the interwar period, and especially
10 the early period of World War II on the Eastern Front.

11 Q. Now, Dr. Menning, you have performed research in
12 archives in the former Soviet Union. How reliable are
13 World War II era documents held in those archives?

14 A. The documents themselves, I've put in more than four
15 years of research in the military archives, in mostly the
16 military archives of the Soviet Union and Russia, and the
17 archival materials that I have used have always been
18 extremely reliable.

19 Q. In conducting your archival research did you ever
20 come upon a document forged by the Soviet Union to frame an
21 American citizen for Nazi-related acts of persecution?

22 A. No.

23 Q. I'd like to talk to you a little bit about
24 methodologies. I want you to give us a little
25 historiographer lesson. Are you familiar with the terms

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1 primary and secondary source evidence?

2 A. Yes, I am familiar with those terms.

3 Q. Would you please describe what those terms mean as
4 they are used by the professional historians?

5 A. When you talk about primary materials, you talk about
6 those materials that come from the originator of an action
7 or the first recorder of an action or event. When you talk
8 about secondary materials, essentially you are concerned
9 with those materials which are really based on what came
10 out of primary testimony or primary recording. In other
11 words, they have been passed through the filter of an
12 intermediate.

13 Q. Do professional historians typically rely on both
14 primary and secondary sources in reaching historical
15 conclusions?

16 A. Yes, almost inevitably you wind up using a
17 combination of primary and secondary materials.

18 Q. When is it appropriate for a professional historian
19 to rely on secondary sources?

20 A. When you've looked through that secondary source and
21 you've seen that it is very well-documented, that the
22 internal logic of the argument stands up to close scrutiny,
23 and that it accords with most of what is known; or if it
24 challenges what is known, if it does so on sound academic
25 or sound scholarly grounds.

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1 Q. Is that a methodology that you, yourself, apply?

2 A. Yes. I think probably haltingly since I was an
3 undergraduate, but then as one becomes professional, all
4 the time.

5 Q. Regarding primary source evidence, how do
6 professional historians determine that documents and
7 statements are authentic and reliable, such as they can be
8 used to form the bases of reliable historical conclusions?

9 A. Essentially, you know, going way back to courses in
10 historical methodology, and so on, essentially, we apply to
11 materials what we call the criteria of internal and
12 external criticism.

13 Q. And what does that mean?

14 A. When you're operating in accordance with internal
15 criticism, you are looking at the document itself: Does it
16 appear to be authentic? What does it say? Does what it
17 says have internal logic? Does it make sense in itself?
18 Does it have a significance for you as the historian going
19 through this?

20 And then, of course, when you are using
21 external criticism, what you're doing is you are looking at
22 that document amidst a lot of other documents to see how it
23 fits the flow, does it make sense in that flow, does it fit
24 into the pattern? If it's anomalous, why is it anomalous?
25 And if it fits into the pattern, how well does it fit into

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1 the pattern?

2 In other words, really we are explaining
3 consistency and inconsistency.

4 Q. Is this also methodology that you followed in your
5 own work?

6 A. Invariably. I think what happens to most historians
7 is that it becomes virtually second nature for you.

8 Q. And in following an acceptable methodology, the
9 methodology you described, can an experienced historian
10 reach reliable conclusions regarding historical events?

11 A. Yes, you can. I mean, we talk -- really if you read
12 any of the textbooks on research, Jacques Barzun, for
13 example, a modern research, what he will say is if you are
14 a historian you are not dealing with the possible.
15 Sometimes you may be dealing with the plausible, but
16 essentially you are dealing with the probable, and through
17 the use of the methodologies, and so on, what you are
18 arriving at is a state of the probable.

19 Q. I'd like to turn to your scholarship. The
20 scholarship you have written in the course of your career,
21 have you published any books, book chapters, or articles?

22 A. Yes. I've published one major book on the Imperial
23 Russian Army in 1992. It's been reprinted in 2000, Indiana
24 University Press.

25 In addition to that, I have been responsible

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1 for a separate number of studies in Russian history I was
2 the primary editor for. And that was a special edition of
3 that journal having to do with Stalin and the high command
4 on the threshold of combat essentially in 1941.

5 And then in addition to that -- I haven't
6 even kept count. I have like by now, not even all listed
7 because they are just coming out now, maybe 24, 25
8 published articles, papers, chapters, which cover really a
9 spectrum of Russian and Soviet military history from the
10 time of Peter the Great to the Berlin crisis of 1961.

11 Q. In publishing these books and articles and chapters,
12 did you use the methodology that you described earlier for
13 evaluating historical evidence?

14 A. Certainly.

15 Q. Were these publications or some of these publications
16 subjected to a peer review?

17 A. In one way or another, virtually everything that I
18 have written has been subject to peer review, sometimes
19 more strictly, sometimes less strictly. But I used to have
20 one of my colleagues at Miami University who basically
21 wrote articles rather than books, and one time I asked him,
22 I said, "Well, what does that do for you in terms of peer
23 review?" He says, "It means I've have three or four or
24 five times more peer review than any of my colleagues who
25 just published several volumes of several books."

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1 In addition to that, I must say that teaching
2 at the Staff College involves interaction with a different
3 kind of student. I teach majors and lieutenant colonels,
4 they are mid-career officers, and they bring to the
5 classroom a different kind of attitude toward the
6 instructor and a different kind of expertise. Many of them
7 are military historians in their own right, for example,
8 I've taught officers who have been history professors at
9 West Point, and every day in essence when you are in the
10 seminar with those officers, that is a kind of peer review:
11 They are not very kind if you don't do well.

12 Q. In addition to publications, have you also presented
13 papers and other scholarly works at professional
14 conferences and meetings?

15 A. Yes. Many over the years. What I tried to do in my
16 more mature career, essentially what I tried to do was to
17 settle down to a rhythm in which I would be doing probably
18 one or two original papers per year, and then the following
19 year I tried to publish them, you know, add to them, deepen
20 them, try to publish them. And so, you know, I'm a
21 regularly-engaged professional in my field.

22 Q. Are some of the papers that you present subjected to
23 peer review and critique?

24 A. All the papers that one presents are, unless -- well,
25 I don't want to make anybody look bad, but unless you are

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1 before a very amateur organization, but most of them are
2 either in front of invited conferences, for example, I
3 participated in a conference in Tel Aviv in Israel in May
4 of 1999, if my memory serves me right, and the very reason
5 why I was invited there was because the organizer of the
6 conference, who is a specialist on Stalin and World War II,
7 recognized me as an authority on initial operations, war
8 planning, and so on, for 1941, and they are going to
9 publish the proceedings of that conference.

10 Yes, it's peer reviewed.

11 Q. Have any of the papers you have presented covered
12 Soviet and German war planning, strategy and operations on
13 the Eastern Front in World War II?

14 A. Yes. Essentially, if you'd peel away all the layers
15 of expertise, essentially where my research is state of the
16 art, is cutting edge, issues of war planning, conduct of
17 operations, and troop mobilization and rail transit in
18 service of military operations.

19 Q. As a professional historian, are you also asked to
20 review draft manuscripts of books and publications?

21 A. Yes, increasingly too often.

22 Q. What are the criteria that are used to select
23 manuscript reviewers?

24 A. You have to be recognized as an authority in your
25 field.

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1 Q. Have any of the manuscripts that you have been asked
2 to review covered Soviet and German war planning, strategy
3 and operations on the Eastern Front in World War II?

4 A. Yes. I have just got through about two months ago
5 reviewing one, well, it was a proposal for a manuscript for
6 a major university press, but in addition to that one, when
7 I was working back at the Center of Military History as a
8 reserve officer, I was one of the primary reviewers for one
9 of the volumes on -- I'll leave it at that -- one of the
10 volumes on the Eastern Front in World War II.

11 Q. Have you also served on any editorial boards?

12 A. I've served on -- I haven't counted them -- three or
13 four, ranging from, I was both on the editorial board and
14 chairman of the editorial board for the journal, it's
15 called Military History, it's for the -- it's the
16 official -- or the journal of the Society of Military
17 History, number one. And then I served as chairman of that
18 board.

19 I served as member of the editorial board for
20 Military Review, which is the primary journal of the Staff
21 College, and then in addition to that, more recently, I am
22 serving as a member of the editorial advisory board for the
23 Encyclopedia of Russian and Soviet History. It's a
24 publication sponsored by MacMillan Company of Gale Group,
25 and I was selected for the editorial advisory board because

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1 they wanted someone to represent the subfield of Russian
2 and Soviet military history, and they selected me to be
3 that person.

4 Q. Have you ever testified as an expert before the
5 United States Congress?

6 A. Yes.

7 Q. During the course of your work, have you taught
8 classes, conducted research, or written scholarship that
9 covered the Battle of Kerch?

10 A. Yes. Let me explain that, because it was an earlier
11 part of my testimony that slipped my mind, is that while I
12 was both Morrison Professor, while I was Morrison Professor
13 at the Staff College in 1984-85, I was responsible
14 primarily for Russian and Soviet military subjects, and
15 when I began my current tenure at the Staff College in the
16 summer of 1991, I held primary responsibility for being
17 what we call the course author for a major part of a course
18 on military operations on the Eastern Front.

19 Specifically, I was the primary author for
20 Belorussian Operation, summer, early fall, 1944. In
21 addition to that, every year I taught Operation Barbarossa
22 and Operation Blau. Barbarossa was '41 and Blau was '42,
23 the summer operation, summer combat operations Eastern
24 Front, 1942.

25 Q. In the course of your work, have you taught classes,

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1 conducted research or written scholarship that covered
2 Shandruk's army?

3 A. Yes.

4 Q. S H A N D R U K.

5 A. Yes. During the course of various researches, I
6 can't remember back when, but more recently just in
7 preparation for this case, I've done a good bit of work in
8 this case for Shandruk and Shandruk's army.

9 Q. In the course of your work have you taught classes,
10 conducted research and written scholarship that covered
11 Vlasov's army?

12 A. Yes. That extends way back actually. At the time of
13 my graduate work was my first acquaintance with the Vlasov
14 movement, and more recently again as I have refreshed my
15 mind in preparation for this case.

16 MR. DRIMMER: I tender Dr. Menning as an
17 expert in the field of Soviet and German military history
18 pertaining to World War II on the Eastern Front and on
19 German prisoner of war camps for Soviet POWs.

20 MR. TIGAR: May I inquire briefly, Your
21 Honor?

22 VOIR DIRE EXAMINATION OF BRUCE WILLIAM MANNING
23 BY MR. TIGAR:

24 Q. Dr. Menning, my name is Michael Tigar, and I
25 represent John Demjanjuk. This is your first expert

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1 appearance in the Federal Court?

2 A. Yes, sir.

3 Q. Well, I get to ask some questions now about
4 qualifications, and then they -- assuming you are
5 qualified, which I'm sure you will be -- then they come
6 back, and then I come on cross. So that's what we are
7 doing.

8 Doctor, you are an expert on Vlasov's army,
9 would you say that?

10 A. I'm a specialist on Vlasov's army, yes. Expert, I
11 know it has a legal implication.

12 Q. I know, but I won't ask you to do that. You are a
13 specialist on Vlasov's army?

14 A. Yes, sir.

15 Q. And for you, history has been a full time profession
16 ever since you got your Ph.D., hasn't it?

17 A. In greater or lesser degrees, yes.

18 Q. It has been your full-time occupation for the last
19 ten years at least, correct?

20 A. Yes. Well, I teach strategy, and essentially
21 military history is the disciplinary base that I use for
22 the development of teaching on strategy.

23 Q. And in the last ten years, since 1991, in the
24 particular areas of which you are concerned, there has been
25 a development in the availability of archival records; is

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1 that right?

2 A. That's right.

3 Q. And that is something that you've documented in your
4 recent article, correct?

5 A. Yes, sir.

6 Q. And you have kept track, as you said, of those
7 archival documents extensively; is that correct?

8 A. Yes, sir. I was in actually direct contact with
9 those developments actually from 1989 up to the present,
10 although there was a slight break, I don't like to say to
11 get into personal things, but I had the death of my wife
12 intervene.

13 Q. I read that in your resume, sir. I'm sorry.

14 A. And so I did nothing but really teach for about two
15 and a half years. That was all I could do during that
16 period.

17 Q. I understand. In looking at these archives that have
18 become available with the disappearance of the political
19 entity known as the Soviet Union, have you nonetheless
20 encountered difficulties such as decaying collections,
21 closed reading rooms, and problematic support for
22 duplications?

23 A. Oh, yes, sir.

24 Q. And have you personally encountered that some
25 historians benefit from the politics of personal

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1 relationships in getting access to documents not available
2 to all?

3 A. Yes, sir.

4 Q. Now, despite those problems, those are problems in
5 the former Soviet Union?

6 A. Yes, sir, and we say "former Soviet Union," I would
7 say the "Russian Federation," because I have not done
8 research lately in Ukraine or Kazakhstan, or anyplace else
9 in the FSU.

10 Q. Now, the Ukraine or Kazakhstan archives, that
11 wouldn't have anything to do with what you want to talk
12 about today, would they?

13 A. The Ukrainian archives certainly would have a good
14 possibility, yes.

15 Q. Have you looked at those personally?

16 A. No.

17 Q. And does any part of the opinion you come prepared to
18 give rest upon material from those archives?

19 A. I have relied in my expert witness report on
20 materials that come from those archives, yes.

21 Q. Well, that brings me to the question, have you been
22 assisted in preparing to testify today by OSI historians?

23 A. Certainly.

24 Q. And that would be who?

25 A. Directly, Mr. Steven Coe, primary. Secondarily --

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1 Mr. or Dr. Steven Coe, excuse me, and Dr. Todd Huebner.

2 Q. Has anybody else from OSI helped you to get ready?

3 A. Well, only in the sense that we have sat down and
4 looked through the case and so on, and tried to figure out
5 war game, how the testimony would go, usual kind of
6 preparation.

7 Q. All right. Now, Doctor, in your report, you quote
8 some fellow called Lewis Namier or Namier?

9 A. Namier.

10 Q. And you say that history is an intuitive
11 understanding of how things do not happen, correct?

12 A. In quoting Namier, yes, how things do not happen.

13 Q. You today are prepared to testify about what you can
14 show us from the archives. You are not going to give us
15 your intuition, are you?

16 A. No, but there's nothing -- again, let's separate what
17 is legal and what is historical. As a historian, I have
18 not the least problem with saying that one can come to an
19 intuitive understanding of how things occur or don't occur.
20 I would leave it up to the legal folks to determine how
21 they would use that word, but I have not the least
22 professional problem. I don't think there's a good
23 practicing historian around that won't tell you that
24 intuition doesn't play a large role.

25 Q. Well, I appreciate your candor, but you are able to

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1 help us by differentiating between the contents of archives
2 you have seen and intuitions that you have developed based
3 on your career, aren't you?

4 A. Yes, I think that's a fair surmise. I would have to
5 think about it, but off the top of my head, that's probably
6 making a fair surmise.

7 Q. Now, in your preparation for today, you have read a
8 number of prior statements that have been attributed to
9 Mr. Demjanjuk, correct?

10 A. Yes, certainly. I went over past court proceedings.

11 Q. Now, you have never met him, right?

12 A. No, no.

13 Q. So you are not here to give us an opinion about
14 whether he's a believable person or not a believable
15 person, or anything else, anything about him personally,
16 correct?

17 A. I would leave that up to the Court essentially.

18 MR. TIGAR: Well, at this point, Your Honor,
19 we will concede that Dr. Menning is an expert on Soviet and
20 German military history. The reason for my question is
21 that he did include a lot of things about Mr. Demjanjuk's
22 depositions and what this one said and what that one said.
23 Nobody can be helpful to Your Honor with respect to that
24 within the meaning of the rule.

25 THE COURT: And certainly, you know, if

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1 there's any part of his testimony that you challenge with
2 respect to his expertise, you can do that at the time.

3 MR. TIGAR: Yes, Your Honor. My thought is
4 that in order to not interrupt unduly, that it looks like I
5 could reserve most of my questions for cross because they
6 will go to weight.

7 THE COURT: Okay. That's fine.

8 MR. TIGAR: Thank you.

9 MR. DRIMMER: Your Honor, to expedite
10 matters, I have the exhibits that we are going to be
11 showing Dr. Menning in one binder so you don't have to flip
12 back and forth.

13 THE COURT: That will certainly make things
14 easier.

15 MR. DRIMMER: A lunch hour well spent.

16 THE COURT: Did you provide one of these
17 handy binders to Mr. Tigar also?

18 MR. DRIMMER: Alas, we did not do that. I'm
19 sorry.

20 THE COURT: All right.

21 MR. TIGAR: Another problem here with the
22 government use of documents, Your Honor. It's another one
23 of these archival things we have been talking about. We'll
24 work with it.

25 THE COURT: We will make sure you have time

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1 to locate it, Mr. Tigar.

2 MR. TIGAR: Thank you.

3 THE COURT: Do you want to have this back?

4 It looks like a delicate piece of history. I don't want to
5 mess it up.

6 DIRECT EXAMINATION OF BRUCE WILLIAM MENNING (Resumed)

7 BY MR. DRIMMER:

8 Q. Dr. Menning, in your voir dire you were asked if you
9 reviewed various statements and testimonies given by the
10 defendant, is that right?

11 A. Yes, sir, that is correct.

12 Q. So based on your review of these materials, are you
13 then generally familiar with Defendant's various accounts
14 of his residences and employments during World War II?

15 A. Yes, sir.

16 Q. I would like to read to you the Defendant's answers
17 to interrogatories from 1979, and then ask you if his
18 answer roughly corresponds to the places he claims he
19 resided during World War II. And this is page 13, letter
20 E, starting with the number 8. Krem, K R E M,
21 parentheses --

22 THE COURT: What exhibit would this be?

23 MR. DRIMMER: This is not an exhibit. This
24 is an answer to an interrogatory.

25 THE COURT: Oh, all right.

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1 Q. Krem, K R E M, parentheses, POW Soviet Union; Rorno,
2 R O R N O, parentheses, POW-Poland; Chelm, C H E L M,
3 parentheses, POW-Poland; Graz, G R A Z, Germany. Oieberg,
4 O I E B E R G-Austria?

5 THE COURT: Is that R O R N O or R O V N O?

6 MR. DRIMMER: The interrogatory has an R, but
7 I think Dr. Menning is going to say, I hope Dr. Menning is
8 going to say it's a V. If not, I'm going to need to
9 consult an atlas.

10 Q. Is the list generally consistent with the Defendant's
11 testimony about where he was between May, 1942 and 1945?

12 A. Yes, sir. And if I may add an aside with reference
13 to His Honor's query, the problem is which country you are
14 from. If you're Russian, it's Rovno, with a V, and if
15 you're Polish, it's R O W N O, and they pronounce that V,
16 too.

17 Q. Now, in reaching your conclusions in this case,
18 Dr. Menning, have you compared the Defendant's claimed
19 whereabouts and activities between May, 1942 and May, 1945
20 on the one hand, against the relevant primary and secondary
21 source historical evidence on the other hand?

22 A. Yes, sir.

23 Q. Let's turn to the results of that. I want to start
24 with the answer "Krem, POW, Soviet," K R E M. Dr. Menning,
25 are you familiar with a military battle in Crimea commonly

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1 referred to as the Battle of Kerch?

2 A. Yes, I am. The reference is to Kerch operation.

3 It's a German offensive operation between 8 May and 20 May
4 1942.

5 Q. I'm going to put up -- we have a map, Exhibit 21. Can
6 you identify what this map is?

7 A. Yes. This is a map of the area of almost the entire
8 Eastern Front. I say almost because it's cut off here up
9 opposite Lake Lodoga, and it extends actually the whole
10 Eastern Front, extends up to northern Finland through the
11 course of the war, but essentially if you look at these two
12 lines, you have the line originally of the international
13 boundary in 1941 at the time of the initiation of operation
14 Barbarossa, and here you have essentially the line of what
15 the combat line between opposing forces looked like in the
16 spring of '42, and then down here you have the Crimean
17 Peninsula, and I'm not sure if His Honor can quite see down
18 to the bottom of that.

19 THE COURT: Yes.

20 A. And then over here as part of the Crimean Peninsula
21 the Kerch Peninsula, and it is here that the Kerch
22 Peninsula took place between 8 and 20 May, 1942.

23 MR. DRIMMER: Let the record reflect
24 Dr. Menning is pointing to the bottom center of Exhibit 21,
25 the map.

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1 Q. So Dr. Menning, where was the Eastern Front in May,
2 1942?

3 A. Essentially it was almost at -- along the top
4 two-thirds of the front. It was at about its farthest
5 reach that it ever got during the entire war, but what had
6 happened was in the previous fall and winter, in the
7 previous winter and early spring, the Soviets had
8 counterattacked and had thrown parts of the line back, and
9 then what happened later on in 1942 with Operation Blau is
10 you get a big extension of the German penetration all the
11 way from the Central Black Earth provinces down to the
12 foothills of the Caucasus.

13 Q. So were the Germans doing pretty well in mid 1942?

14 A. Yes, they were. It wasn't conclusive which way the
15 victory would go yet.

16 Q. Now, you gave dates before for the Battle of Kerch.
17 Were Russian prisoners of war captured by the Germans
18 during the Battle of Kerch?

19 A. Yes, yes. Depending upon which set of figures one
20 wants to put the highest degree of accuracy or which one
21 wants to as describe the highest degree of accuracy, we
22 have roughly between about 120,000 prisoners, and if you
23 count altogether the prisoners taken over operations that
24 preceded Kerch, then somewhere in the range of 160,000.

25 Q. When were those men captured?

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1 A. They were captured before May 20th.

2 Q. And were some of these POWs sent to a POW camp in
3 Rovno?

4 A. Yes, they were.

5 Q. When was the last transport from Crimea to Rovno?

6 A. If we look at the war diary of the German 11th army,
7 security section, the last transit to Rovno camp was in 6
8 June 1942.

9 Q. What is the basis for that conclusion?

10 A. The war diary, Tagesbuch so-called, of the German
11 11th Army, which was essentially controlling all operations
12 not only in Kerch, but at that time for the siege of
13 Sevastopol.

14 Q. Would you please turn in your binders to Exhibits 49
15 to 53? Do you have it?

16 A. Yes, sir.

17 Q. Can you identify these documents, 49 to 53?

18 A. Yes, sir. They are reports from the war diary of
19 quartermaster 2, which is the security of the 11th Army,
20 11th German Army operating in Crimea.

21 Q. Are these the war diaries you were just referring to?

22 A. Yes.

23 Q. Are you familiar with these documents?

24 A. Yes, I am.

25 Q. Where are these war diaries currently held?

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1 A. Well, in at least one of two places, if not in copies
2 and private hands, depending on who is doing research on
3 the area. The original copies now reside in the German
4 Military Archives in Freiburg, and all of these -- not all
5 of them, but the documents we are looking at here were part
6 of the captured documents, documents captured by the United
7 States Army at the end of World War II.

8 As Dr. Sydnor noted before, until the '60s,
9 and to a certain degree into the '70s, we retained those
10 documents and then microfilmed them, and then returned the
11 originals back to Freiburg. The microfilm copies reside in
12 our National Archives.

13 Q. Is Freiburg a place where you would expect to find
14 these diaries?

15 A. It sure is, the originals.

16 Q. Is there anything about these war diaries that causes
17 you to question their authenticity?

18 A. Not at all. I've seen a lot of war diaries and the
19 unit war diaries, and these are very typical.

20 Q. Who created these war diaries?

21 A. Well, in this case they were created by Security
22 Section Headquarters, 11th Army.

23 Q. Would the headquarters have knowledge of the events
24 described in the --

25 A. I don't know if I would say the headquarters would,

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1 but the officers would have to put his name on the blame
2 line, and in this case, Captain Schmidt sure would know
3 about those activities.

4 Q. Would these diaries have been created close in time
5 to the events they describe?

6 A. Yes, because what you will see is if you look at the
7 materials, they are month by month compilation of diary
8 entries.

9 Q. Would members of the German government maintain and
10 rely on such diaries?

11 A. Yes, they would, especially the German High Command.

12 Q. Why were these diaries created?

13 A. Essentially, and I don't think many military
14 historians would argue with me, the Germans invented
15 military history, at least modern military history, not
16 getting back to Tacitus and the Romans, and so on, but
17 essentially for several different purposes, one for history
18 as a management tool.

19 In other words, the actual use of accurate
20 historical record to maintain an accounting for the
21 activities of a unit so that it could be, it had a record
22 according to which it was actually responsible during a
23 given period of time, first of all; and secondly, more
24 broadly and militarily for the opportunity, especially if
25 you are talking about a combat unit, to generate a living

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1 record that then passes into or can be transformed and
2 without all kinds of philosophical explanations into
3 lessons learned so that you build up an institutional
4 database to avoid what an old Russian proverb says, you
5 know that a fool learns -- or a wise man learns by other
6 people's mistake. A fool learns on his own.

7 Q. What do these documents, Government's Exhibits 49 to
8 53, what do they show about the transports of prisoners of
9 war from Kerch to Rovno?

10 A. Well, they are extraordinarily accurate, almost
11 clerical accounts of the dispatch of contingents of
12 prisoners of war as they mop up during and after the Kerch
13 offensive operation, actually the Germans called it
14 Operation Bustard Hunt, and how both property and prisoners
15 were disposed of during and following that operation.

16 Q. I think you testified before that the last transport
17 to Rovno from the Crimea was June 6?

18 A. Yes, that's right.

19 Q. Have you seen any evidence that Kerch POWs were being
20 transferred from the Crimea to Rovno after June 6?

21 A. No. In fact, what I did was I requested, to satisfy
22 my own doubts about that, I requested a search through the
23 pertinent war diaries for the months following, and we
24 couldn't find any.

25 MR. DRIMMER: Your Honor, for the record, I'd

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1 like to state that there is testimony on this point from
2 the Israeli proceedings.

3 We are not going to read it, Dr. Menning,
4 now. We have submitted a brief on the admissibility of the
5 1987 testimony, but I will not get into it in this direct.

6 THE COURT: All right.

7 Q. Dr. Menning, I want to now talk a little bit about
8 Rovno. What is Rovno?

9 A. In the spring of 1942, among other things, it is the
10 location of a POW transit camp.

11 Q. I'm going to show you now Government's Exhibit 23.
12 Dr. Menning, what does this map depict?

13 A. This map in general depicts about two-thirds of the
14 theater of operations for the Eastern Front over the whole
15 course of the war, but more particularly, it depicts an
16 overlay showing the rail net that would have served the
17 Eastern Front during the period between 1941 and 1945.

18 Q. Now, talk a little bit about the camp at Rovno. Can
19 you point that out on the map?

20 A. Yes, it's located here. You know, it depends upon
21 when the border is drawn, what part of the 20th century.
22 During most of the Soviet period after 1945, Rovno is in
23 Western Ukraine. During the part of the 20th century up
24 until that time, it's in Eastern Poland. It's a major rail
25 junction and one of the reasons why I'm basically familiar

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1 with it. I've spent more time than I want to admit looking
2 at strategic troop deployment by rail during the whole 20th
3 century, and Rovno always figures into those.

4 Q. Dr. Menning, would you just circle it with this
5 highlighter so we can preserve your pointing for the
6 record?

7 A. Does this come off?

8 Q. No.

9 A. Only (drawing).

10 MR. TIGAR: Are these charts for
11 demonstrative purposes or are they in evidence as a part of
12 the record?

13 THE COURT: Well, nothing has been admitted
14 into evidence.

15 MR. TIGAR: I understand, but I don't know if
16 they intend to make this part of the record.

17 THE COURT: I don't know either.

18 MR. TIGAR: Well, if they are going to take
19 these home and leave Your Honor's notebook with you, then I
20 would have no objection to the witness marking in Your
21 Honor's notebook, which will become part of the permanent
22 record if this happens again, and that way, we don't risk
23 losing the correlation between what the court reporter has
24 done and what the witness is doing.

25 THE COURT: You want the Court to have the

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1 marked exhibits, is that it?

2 MR. TIGAR: I do want the Court to have them.

3 THE COURT: Then I will just keep those.

4 MR. TIGAR: Thank you, Your Honor. Your
5 Honor --

6 MR. DRIMMER: I don't think we will have much
7 need for them.

8 THE COURT: Okay. We can easily keep them
9 for purposes of the --

10 MR. TIGAR: The court reporter is taking down
11 and he's making a circle, and we don't know what it is.

12 MR. DRIMMER: I think that's a good
13 resolution.

14 BY MR. DRIMMER:

15 Q. Dr. Menning, let me read to you what the defendant
16 has said about how long he was in Rovno and then ask you
17 about it.

18 MR. DRIMMER: And this is Exhibit 92, Your
19 Honor, which is his 1981 testimony. I'm going to be at
20 page 1068, and I'm on line 18.

21 A. Sir, would you repeat that page number?

22 THE COURT: 1068.

23 Q. 1068.

24 A. Thank you.

25 Q. Line 18:

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1 "And sir, do you recall approximately how
2 long you were at Rovno?

3 "Answer: We weren't very long in Rovno,
4 perhaps a few weeks."

5 Dr. Menning, were at least some of the Rovno
6 prisoners from the Battle of Kerch transferred out within a
7 few weeks after their arrival?

8 A. Yes. If you look at both the secondary and the
9 primary accounts for the period, what you will see is there
10 is a very high degree of emphasis put on getting these
11 people flushed through the transit system.

12 Q. I'd like to move on to the next camp, which is going
13 to be Government's Exhibit 85, which is the Defendant's
14 deposition from 1978. That will be at page 27, line 9.

15 "Question: Let me ask, did you ever live in
16 Poland?

17 "Answer: In Poland?

18 "Question: Yes.

19 "Answer: Yes. I was in prison over there.

20 "Question: Where were you in prison over
21 there?

22 "Answer: Runowo prison camp," and then in
23 parentheses it says "phonetic." Runowo prison camp?

24 "Answer: Yes."

25 And then line 19: "What other camp did you

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1 serve at or were you put into?" And then there's an
2 objection, "If you know."

3 "Question: If you know, what other camp?

4 "Answer: Another camp was -- wait a minute.
5 First Runowo. I was only in two camps over there. I
6 forget now, can't tell you now."

7 And for the record, I'll point out on page
8 46, he again can't remember the name of the second camp.

9 Dr. Menning, does the defendant later
10 remember the name of this second camp?

11 A. Yes, he does.

12 Q. Which camp is it?

13 A. Well, I'll -- no, I won't confuse the camp. I'll say
14 at least the anglicized version of the Polish is Chelm, the
15 Russian is K H O L M, and the Polish version in English
16 would be C H E L M.

17 Q. And then the testimonies that you have reviewed, how
18 long does the defendant claim he was in Chelm?

19 A. For varying periods of time, depends upon which set
20 of testimonies you are looking at.

21 Q. Can you give us a rough ballpark?

22 A. Well, in some he says he's out as early -- and this
23 is without looking at notes or memory -- he's out as early
24 as the summer of '43. In other instances it's the summer
25 or fall of '44. There is a long range, a period of about

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1 14 months there that has not been exactly accounted for.

2 Q. Now, Dr. Menning, is Chelm on that map up there?

3 A. Should be. Let me --

4 Q. Can you circle it?

5 A. Yes (drawing).

6 Q. Dr. Menning, was there a prisoner of war camp in
7 Chelm during World War II?

8 A. Yes, there was. The German official records and
9 various documents relate to the existence -- to a
10 description of the German prisoner of war camp there.

11 Q. Now, is that also on railroad lines?

12 A. Yes, it is. Again, every Polish and Russian staff
13 officer would know exactly, it would be branded in their
14 minds where Chelm and Rovno are.

15 Q. Why is that?

16 A. Because they are extraordinarily important for plans
17 for strategic deployment and rail transit for mobilization.

18 Q. You mentioned before that Rovno's placement near the
19 railway camps was in part so they could move prisoners in
20 and out. Did that also exist for Chelm?

21 A. Sure, exactly, because again, you are not -- when you
22 are sending supply trains to the front, you are not sending
23 them back empty. You are sending back either foodstuffs
24 and raw materials and prisoners, and prisoners actually
25 become during this period probably more valuable than food

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1 or raw materials.

2 Q. Was the prisoner population at Chelm relatively
3 stable or did it fluctuate?

4 A. No, it was characterized by a high degree of
5 fluctuation.

6 Q. What's the basis of your conclusion?

7 A. Well, the documentary evidence that is presented in
8 various documents that I cited in my expert witness report.
9 Number one, that's direct evidence of the high fluctuation
10 or the rate of high fluctuation of prisoner population
11 there, and another, how should I say, a sense of that, more
12 than an intuition, but a sense of that, an understanding of
13 it comes from looking at the requirements for manpower that
14 Germany was beginning to experience by that time of the
15 war.

16 Q. Would you please turn to Government's Exhibit 48. Do
17 you have it?

18 A. Yes, sir, I do.

19 Q. Are you familiar with these documents?

20 A. Yes, sir, I am familiar with these documents.

21 Q. Can you state what they are?

22 A. They are summaries that relate to the population of
23 the prisoner of war camp. I want to make sure I have this
24 correct. This one is an overall compilation for the
25 population of various prisoner of war camps by location and

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1 then a breakdown by nationality, and then I have to take a
2 look at that last column.

3 I believe, you know, it's not clear to me,
4 but yeah, it's those that are fit for work.

5 Q. Where are the originals of these documents currently
6 held?

7 A. These are currently held in the archives in Freiburg.

8 Q. Is that where you would expect to find them?

9 A. Sure is.

10 Q. And why is that?

11 A. Because they are part of those official records that
12 we returned -- well, not only because of our returning
13 them, but also because that is the main repository for
14 official records for the Germans.

15 Q. Is there anything about these documents that causes
16 you to question their authenticity?

17 A. No. I don't think in anybody's wildest imaginations
18 you could try to june up something as complex as this.

19 Q. Dr. Menning, have you prepared a chart summarizing
20 the information in these prisoner of war tables as it
21 relates to Chelm?

22 A. Yes, I have.

23 Q. This is Summary Exhibit Number 40. Would this chart
24 assist your testimony regarding the fluctuation of
25 prisoners in Chelm?

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1 A. Yes, it does. It takes a great deal of raw data and
2 gets it down to its bare bones.

3 Q. Now, in looking at this chart, can you discuss the
4 composition and stability of the prisoner population at
5 Chelm?

6 A. Yes. What the chart does is it reflects that over a
7 period of roughly two and one-half years, actually three
8 years, that the prisoner population underwent a great deal
9 of fluctuation, from roughly a high of somewhat in excess
10 of 20,000 down to a low in the spring of 1944 of 464.

11 Q. What are the reasons for the fluctuation of prisoners
12 to this degree?

13 A. One reason is that there was a high death rate in
14 these camps. By 1942, not as great as in 1941, but
15 essentially what was happening is the prisoners of war were
16 being crowded into small areas. They were given inadequate
17 medical attention, and they were dying like flies from
18 typhus, typhoid and dysentery. And so one of the reasons
19 why the prisoner of war population was fluctuating so much
20 is that a bunch of them were dying off, unfortunately.

21 A second reason is because beginning with
22 November of 1941, the Germans reached the realization that
23 this war was not going to be over quickly, and they had
24 based all their estimates for mobilization of industry, for
25 mobilization of labor to serve industry, on a short war, or

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1 on the belief or understanding that the war would be short.
2 When it wasn't short, then suddenly they were coming up
3 short in terms of labor, and desperately short, and so
4 suddenly, they had to reverse their policies over how they
5 would try to take care of prisoners of war, number one, and
6 it didn't work very well; but number two, the high emphasis
7 on getting those folks through the system as quickly as
8 possible because you needed them as workers in mines,
9 agricultural enterprises, simple manufacturing enterprises,
10 and so on, or else the economy was going to crash.

11 So there's a high degree of fluctuation
12 there, because they are just pushing people through very
13 rapidly, and those that aren't being pushed through are
14 those cited unfit for labor, and that means they are sick
15 and they are not being taken care of and they will die.

16 Q. Now, Dr. Menning, in your expert opinion, what is the
17 likelihood that a prisoner of war would have lived and
18 worked in the Chelm prisoner of war camp for more than a
19 year?

20 MR. TIGAR: Your Honor, to that specific
21 conclusion we object. The idea that from probability
22 evidence you can infer that a particular person did or did
23 not stay there is as a matter of inference precluded by
24 402, 403.

25 MR. DRIMMER: Your Honor, I think he can

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1 testify to what the historical evidence shows regarding the
2 movement of men and regarding the likelihood that any
3 particular person would remain in the camp for such a long
4 period of time.

5 MR. TIGAR: He can certainly testify as to
6 the numbers and to the conditions in the camp. That we
7 have agreed. It's the historical leap. I don't know if
8 Your Honor remembers from the old evidence course that was
9 around, about the two people of different races in the
10 convertible that they taught us about in law school. I
11 wish I could remember. I believe it's People versus
12 Collins, it's an old case, but at any rate, the inference
13 that they seek to draw is, A, beyond his expertise, and as
14 I say, this form of statistical evidence is simply
15 unreliable. We object to it.

16 THE COURT: Repeat your question,
17 Mr. Drimmer.

18 Q. In your expert opinion, what would be the likelihood
19 that a prisoner of war, in fact, lived and worked in the
20 Chelm prisoner of war camp for 14 to 20 months or more than
21 a year?

22 THE COURT: All right. I'm going to overrule
23 the objection.

24 A. I will be as direct as I can and as honest as I can.
25 I would just say it's unlikely.

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1 Q. Let's talk about the closing of the Chelm camp. When
2 did the Germans close the camp at Chelm?

3 A. The camp was closed in the spring of 1944. Actually,
4 May the -- the order -- not the order, but the record that
5 shows that it was closing and moved to Skierniewice is
6 dated, I believe, May 15th, 1944. Skierniewice, it's a
7 Polish spelling that runs a little beyond me.

8 MR. DRIMMER: S K I E R N I E W I C E. Just
9 like it sounds.

10 THE COURT: Just like it sounds.

11 MR. DRIMMER: An attempt at humor.

12 THE COURT: I come from a Polish background,
13 and I don't think they look like they sound at all.

14 MR. DRIMMER: And I'm not going to try to
15 pronounce it, Your Honor.

16 BY MR. DRIMMER:

17 Q. Is the Eastern Front, is there a line drawn for the
18 Eastern Front at roughly the time -- strike that.

19 Can you describe the circumstances under
20 which the Chelm camp did close?

21 A. Yes. The Chelm camp was closed in anticipation of
22 the fact that if they didn't close it down, I think first
23 the Belorussian Front of General Rokossovsky would close it
24 down for them. Actually the summer offensive of 1944
25 overruns that area.

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1 Q. Now, you mentioned before a document showing the
2 movement of prisoners. Actually, let's stick with Exhibit
3 40, the fluctuation chart. For April on Exhibit 40 it says
4 "464 prisoners." Do you see that?

5 A. Yes.

6 Q. Now, where did those 464 prisoners go?

7 A. Well, the order that initiates this states that
8 Stalag 319 is moved from Chelm to Skierniewice.

9 Q. Would you turn to Government Exhibit 66? Do you have
10 66?

11 A. Yes, sir.

12 Q. Have you seen this document before?

13 A. Yes, sir. It's part of the documentation and
14 documentary basis for my expert witness report.

15 Q. And where is the original of this document housed?

16 A. This is again in the archives in Freiburg.

17 Q. Is that a place where you would expect to find such a
18 document?

19 A. Yes, it is.

20 Q. Do you have any doubts that this document is
21 authentic?

22 A. None whatsoever.

23 Q. Can you tell us what this document is and what it
24 shows regarding the movement of the final 464 men out of
25 Chelm?

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1 A. Yes. What happens is this movement, or the document
2 is created within the context of many different relocations
3 which are occurring because the Germans are being pushed
4 back on all fronts.

5 Q. And so somewhere in this document does this indicate
6 when the 464 men are sent from Chelm?

7 A. Yes, it does. It is the origin of part of the
8 summary document which says that those 455 by May 15th have
9 been transferred from Chelm to Skierniewice, and I can't
10 fumble through the pages right now. I was hoping would you
11 give me --

12 Q. Why don't you fumble to page 8 of the translation,
13 which is also 5 of the original. I was fumbling, too. I
14 was hoping you would tell me. Looking at page 8, do you
15 see the reference to Stalag 319?

16 A. Yes, Stalag 319, about half a dozen or nine lines
17 from the top, commandant tour that's the headquarters from
18 Chelm to Kiecle, and from there to Skierniewice.

19 Q. Now, have you seen any historical evidence that the
20 Chelm prisoner of war camp remained open after May, 1944?

21 A. No, not at all, and again, it's less than likely. As
22 I said, you are about five, six weeks away from being
23 overrun.

24 MR. DRIMMER: Now, the next thing I want to
25 do, Your Honor, is read from the Defendant's 1981

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1 testimony, Exhibit 92, 92. It talks about the date on he
2 left Chelm, and we arrived at it by working backwards. I'm
3 on line 18 on page 1097.

4 Q. "Question: How long were you at Oelberg?

5 "Answer: From 1944 until the end of the war.

6 "Question: If we said the end of the war
7 was in May, and for our purposes that it was in May of
8 1945, how long were you at Oelberg? Was it months?

9 "Answer: After we were brought from Graz we
10 were at Oelberg the whole time.

11 "Question: And how long was that?

12 "Answer: I don't know whether it was the
13 whole time, but it was like four or five or six months,
14 something like that."

15 Now, moving down to line 22, "And you were in
16 Graz for four weeks, is that correct?

17 "Answer: I was in Graz first, that's
18 correct."

19 Next page, "And you were there for four
20 weeks, is that correct?

21 "Answer: Yes."

22 So Dr. Menning, he gets to Freiburg four to
23 six months before the end of the war, and before that spent
24 four weeks in Graz. Now, when did World War II end in
25 Germany?

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1 A. For the Western Allies, 8 May 1945; for the Soviet
2 Union, 9 May 1945.

3 Q. Now, working backwards, if the defendant is in Graz
4 five to seven months before May, 1945, approximately when
5 does he arrive in Graz?

6 A. Five to seven months, sometime in November, December.

7 Q. Now, let's take, just to complete this, let's look
8 about how long he says it takes to get to Graz, and this is
9 still in 1981 testimony, and we are at Exhibit 92, page
10 1112, line 17. Line 17, they are talking about the trip
11 from Chelm to Graz. Line 23. "It was no more than a week,
12 was it?

13 "Answer: No."

14 So Dr. Menning, you said, I believe,
15 November, December?

16 A. Somewhere in that time frame, if we are coming back,
17 five to seven, perhaps even earlier, October even.

18 Q. Does the historical evidence permit you to state
19 whether it was possible Defendant left the Chelm camp in
20 November, December, 1944?

21 A. Not unless he was wandering around in the rear area
22 of the Soviet army before he made it back over, because
23 that would have been long overrun by then.

24 Q. Where was the Eastern Front of the war between
25 October and December, 1944?

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1 A. End of the Belorussian operation, and I'll point to
2 it in a minute, essentially that and accompanying
3 operations had taken the Soviet army actually to a line of
4 the Vistula River and farther in the south, and that, of
5 course, puts Chelm in the Soviet rear area by then.

6 Q. Let's talk about 1984, the next set of testimony.
7 This is Exhibit 93.2. And I'm going to be reading on page
8 66, and I'm at line 8.

9 "Question: Do you remember the year that
10 you left Graz?

11 "Answer: It was in 1943. They took us to
12 Oelberg, O E L B E R G."

13 And then the Judge asked for the spelling.
14 And then the defendant continues. "It would have been at
15 the very end of '43 or at the very beginning of '44."

16 So if you recall, Dr. Menning, a few minutes
17 ago the defendant said he was in Graz for about four weeks.
18 Were German POWs being transferred out of Chelm in the fall
19 or early winter, 1943?

20 A. Sure. The documents say that.

21 Q. Let's move on to Graz. Is Graz on that map?

22 A. No. It would be on the next one.

23 Q. Can you identify this map?

24 A. Yes. This is a map that shows the movements of the
25 first and second divisions of the KONR, the Committee for

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1 the Liberation of the Peoples of Russia Army, and then in
2 addition to that, it's secondarily or complementarily
3 showing the march route for SS Galician Division, 14th
4 Galician Division in Zilina in Slovakia, in Graz, Austria,
5 which is located not far from the border between Austria
6 and that which is now Slovakia. Then it was the Slovenian
7 province of Yugoslavia.

8 MR. DRIMMER: For the record, Your Honor,
9 this is Exhibit 24.

10 Q. Now, Dr. Menning, at some point during the war did
11 the Germans organize a Ukrainian army division in Graz to
12 fight against the Soviets?

13 A. Yes, they did.

14 Q. Is that part of the larger efforts by the Germans to
15 use former Soviet citizens to fight against the Soviet
16 Union on the Eastern Front?

17 A. Yes, it was. Actually, it was a cooperative effort
18 between disaffected peoples from various parts of the
19 Soviet Union and the German military and high civil
20 military authorities to undertake cooperative action.

21 Q. Now, focusing on former Soviet citizens of Russian
22 and Ukrainian nationalities, when did independent national
23 units with these men form?

24 A. Independent national units with these men did not
25 form until nearly -- well, the very end of 1944 and the

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1 first few months of 1945.

2 Q. So coming back to Graz, could you describe the
3 Ukrainian army that formed there in World War II?

4 A. Yes. The Ukrainian army or part of the Ukrainian
5 army, there were actually several parts, but one is not
6 referred to here, there's an attempt to organize a brigade
7 which ultimately becomes a division, and that's not
8 relevant to us. But down here, what you have down here is
9 the old 14th SS Galician Division, which was hammered at
10 Brody in those operations for southern and central Poland
11 that I talked about earlier. And its remnants, not even a
12 brigade was left anymore, were sent to Slovakia to regroup
13 and refit in the late summer and early fall of 1944, and
14 they remained in this area until the beginning of 1945
15 refitting, reforming, and conducting anti-partisan
16 operations in what is now Slovakia.

17 And then roughly about mid January, 1945,
18 they received marching orders to march mostly on foot to
19 Styria, this province located around and south of Graz, to
20 conduct, to assist local authorities in conducting
21 anti-partisan operations against both the -- well, against
22 the Yugoslav party partisans, so they marched from January
23 15th, mostly on foot.

24 They sent what they could of their heavy
25 equipment and auto transport by rail, and they were ordered

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1 to stay off the main roads because those were used for
2 military traffic going the other way. And so they made
3 their way, marching around both sides of Vienna, avoiding
4 it, and made their way all the way down to Styria, where
5 they took up positions and conducted anti-partisan
6 operations.

7 And really they couldn't have gotten there
8 like earlier than late February, early March. The chief of
9 staff had very good memoir account, and they wind up in
10 March and April down there conducting partisan operations
11 and having the great misfortune of turning eastward to
12 advance the Soviet Union first Ukrainian front.

13 Q. When did this group, the Galician Division, actually
14 get to Graz?

15 A. They got to Graz in March, 1945.

16 Q. Who did the leading of this army, this Ukrainian
17 division?

18 A. Well, this Ukrainian division, nominally,
19 figuratively, it was supposed to be Shandruk, Pavlo
20 Shandruk, who was the Ukrainian nationalist leader who was
21 busy at work trying to coordinate against various political
22 and military political factions among the Ukrainian emigres
23 to create some kind of viable nationalist organization to
24 enable all of these displaced people, it would give them a
25 focus, a center around which they could coalesce and

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1 possibly go over and surrender to the Western Allies rather
2 than having to face the Soviets.

3 Q. Dr. Menning, I'd like to read to you a little bit
4 again from the Defendant's testimony about when he gets to
5 Graz. And this is starting with 1981, the 1981 trial
6 testimony, which is Exhibit 92, and I'm going to be at page
7 1097 to start.

8 Now, we talked about before from 1981, this
9 page and the next, that the defendant is saying he got to
10 Graz in I think we said November, December, 1944. The
11 previous page, 1096, he talks about his activities in Graz.
12 And I am at line 8.

13 The question was, "Were you in this German
14 military unit for Russians in Graz? Is that correct?"

15 "Answer: Graz was not a military unit of
16 Russians.

17 "Question: What was Graz?"

18 "Answer: It was the Ukrainian National Army.

19 "Question: And who was the commander of the
20 Ukrainian National Army?"

21 "Answer: Shandruk."

22 Dr. Menning, was Shandruk's army being formed
23 in Graz in autumn, winter, 1944?

24 A. Not at all.

25 Q. Where was Pavlo Shandruk in the fall of 1944?

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1 A. Actually, what had happened was -- this is ironic in
2 view of the spelling difficulties. The clerks are going to
3 be angry with me. He was running a motion picture theater,
4 actually running the projector in a motion picture theater
5 in Skierniewice. It's an R and R, a rest and recuperation
6 place for troops, and they had not yet been overrun.

7 And essentially Shandruk was trying to keep a
8 very low profile because he had been a high-ranking
9 officer, not a general, but he had been a lieutenant
10 colonel or a colonel, and he had general staff training in
11 the Polish army before 1939, and it was known he was of
12 Ukrainian origin.

13 And what was happening was by 1944, when
14 Shandruk is running this projector in a motion picture
15 theater in Skierniewice, the Germans are starting to round
16 up all Ukrainian leaders, and the idea is that now their
17 homeland has been overrun, so their loyalty is suspect, so
18 they were rounding them all up and throwing them in prison
19 to keep an eye on them. And so Shandruk is maintaining a
20 very low profile, and this extends into the autumn.

21 Actually, I think he starts getting in touch
22 with the Ukrainian National Committee first, or it starts
23 out as Ukrainian Central Committee and then Ukrainian
24 National Committee only toward the end of the year,
25 November, December, and they were after him, trying to

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1 convince him to be the likely commander of a Ukrainian --
2 an army of Ukrainian liberation that would be the
3 counterpart for the then-just-appearing Vlasov Army of
4 Liberation.

5 Q. Sticking with the committee, did this committee, this
6 committee you are describing, did it elect or appoint
7 Shandruk to be the head of the Ukrainian committee?

8 A. Actually not per se. Actually he was selected to be
9 the head of the Ukrainian Army of Liberation.

10 Q. And did the committee select him?

11 A. Oh, yes.

12 Q. When was that committee created?

13 A. You know, I'd have to go back. It's sometime in the
14 fall. My memory is starting to fail me on this, but
15 sometime in the fall of 1944.

16 Q. Where was the Galician Division in the fall of '44?

17 A. It was in Slovakia conducting anti-partisan
18 operations.

19 Q. Would you turn to Government Exhibit 70? Have you
20 seen this document before?

21 A. Yes, sir.

22 Q. Would you identify it for the record?

23 A. Yes. It is a letter from the main command office of
24 the SS, to essentially the 14th SS Galician Division. And
25 what it does is, it instructs the division to proceed from

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1 its current area of deployment after -- around -- of mid
2 January, 1945 and proceed to Styria, south of Graz,
3 Austria, to arrive not later than, if my memory serves, 28
4 January, but I'd like to -- yes, "Will arrive" -- 28
5 February, "Will arrive at its new post no later than 28
6 February."

7 Q. Do you know where the original of this document is
8 housed?

9 A. Yes. It's in the Freiburg archive.

10 Q. Is that a place where you would expect to find such a
11 document?

12 A. Yes, it is.

13 Q. Is there anything about this document that causes you
14 to question it's authenticity?

15 A. No, none whatsoever.

16 Q. I'd like to move to Defendant's 1984 testimony,
17 Exhibit 93.2, which we were looking at earlier, starting
18 with page 65, line 12.

19 "Question: When you got to Graz, what did
20 they do with you, the Germans?

21 "Answer: They wanted to have us fight
22 against the Soviet Union."

23 Next page, page 66, line 8.

24 "Do you remember the year that you left Graz?

25 "Answer: It was in 1943, they took us to

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1 Oelberg," O E L B E R G. "It would be at the very end of
2 '43 or at the very beginning of '44."

3 And again, where was Shandruk at the very end
4 of '43 or the beginning of '44?

5 A. He was running his little motion picture operation in
6 Skierniewice.

7 Q. Where was the Galician Division, the corps of men who
8 formed Shandruk's army?

9 A. Let me think. They weren't even formed yet, I don't
10 think, because what had happened was, this was kind of an
11 experimental formation coming from recruits from western
12 Ukraine, especially Volyhia, V O L Y H I A.

13 Q. So Dr. Menning, in light of the historical evidence,
14 when is the earliest that a prisoner of war would have been
15 sent to Graz to join any kind of Ukrainian unit?

16 A. The earliest, they have a lot later than 28 February,
17 1945 report date, so it's going to be, let's be charitable,
18 sometime on or about, as the military would say, 1 March
19 1945.

20 Q. If the POWs arrive in Graz on 1 March 1945, could
21 they have come directly from the Chelm prisoner of war
22 camp?

23 A. No, because that would have been overrun already, let
24 me see, seven months or more than that, about seven months
25 previously.

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1 Q. I want to turn next to Heuberg, H E U B E R G. Is
2 Heuberg on that map up there, Government 24?

3 A. Yes. It's about 60 kilometers southwest of
4 Stuttgart.

5 Q. Was there a military site located at Heuberg during
6 World War II?

7 A. Yes, actually there had been a military site located
8 there I think since 1912.

9 Q. What was this site used for during World War II?

10 A. It was a transit and training camp.

11 Q. Was there a Russian army of some sort organized in
12 Heuberg in World War II?

13 A. Yes.

14 Q. Can you describe what this army was?

15 A. In Heuberg, the Second Division of General Vlasov's
16 army operating with the Committee for the Liberation of the
17 Peoples of Russia was formed at Heuberg. It was formed mid
18 January, 1945. It was begun to be formed.

19 Q. Did this unit have a general German army designation?

20 A. Yes, Second Division was 650th German Division.

21 Q. And who was Vlasov?

22 A. Vlasov was a former Soviet general who had commanded
23 the second shock army on the Volkhov front, V O L K K H O
24 V, in the winter and spring of -- actually spring of 1942,
25 and when the Germans counterattacked in the late spring,

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1 his second shock army was cut off, surrounded, and he was
2 eventually forced to surrender, becoming a prisoner of war
3 of the Germans in -- well, it depends on which account you
4 trust, but spring, summer, 1942.

5 Q. Who organized the creation of Vlasov's army, the
6 650 --

7 A. Actually Heinrich Himmler was the executive agent who
8 authorized the creation of an army for so-called Committee
9 for the Liberation of the People of Russia.

10 Q. And when?

11 A. And the exact date of that organization is 16
12 September 1944.

13 Q. Why was it so late in the war, Dr. Menning?

14 A. A long and complicated story that had to do on the
15 one hand with diverse German ideas on the utilization of
16 defectors and captured -- and prisoners of war from the
17 Eastern Front, and then that diversity of ideas ranged from
18 the command, Hitler, who had an eastern policy, Ostpolitik,
19 and that was essentially that he was going to enslave the
20 eastern countries, reduce them in population by 31 million,
21 and then govern them as satrapees.

22 And then on the other hand, you had many
23 Germans, lower ranking Germans, who especially when the war
24 became more difficult as the Soviets dug in their heels,
25 fall, early winter of 1941 and then 1942, saying, "Hey, we

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1 are not being very smart about this, we need that manpower,
2 we shouldn't kill it off, and indeed we should actually
3 recruit them to serve in the ranks of the German army."
4 And to be sure, from July, 1941 on, Hitler would permit the
5 German High Command to recruit nonSlavic people for service
6 in the German army or auxiliary units in the German army.
7 And it wasn't finally until they grew so -- so the views of
8 these people who wanted to more widely utilize Slavic
9 peoples were either sidetracked or only taken into account
10 imperfectly until finally nearly when the last dog is hung,
11 September 16th, 1944, Hitler turns to Vlasov and says,
12 "Yes, General Vlasov, you now have permission to begin
13 recruiting divisions for the" -- it's not called -- they
14 are always shorthand versions, either Vlasov army or the
15 Russian Liberation Army, but it's actually the Divisions
16 for the Army under the Committee for the Liberation of the
17 Peoples of Russia.

18 So that's the first instance when they get
19 to -- when Slavs get to field formations, with one
20 exception, larger than battalion size under command of
21 their own officers. Yes, there were a huge number of
22 so-called Osttruppen, who were primarily Ukrainians, to a
23 lesser extent, other nationalities. There's something like
24 70, 80 battalions or more of them at any one given time
25 serving in various auxiliary capacities on the Eastern

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1 Front, and at one time or another, the local generals, the
2 army group leaders would authorize the development of a
3 unit larger.

4 For instance, there's a famous Kominsky
5 brigade, but then Kominsky was thought to be a traitor
6 about the time of the Warsaw uprising, September, 1944, so
7 he was assassinated, and they broke up the brigade. It was
8 sent off to do other things. And so the idea was we will
9 never have large formations of Slavs under independent
10 national command, and that's held from the top on down
11 until 16 September 1944.

12 Q. What was the relationship, if any, between Shandruk's
13 army and Vlasov's army?

14 A. The relationship was bad.

15 Q. Why do you say that?

16 A. Because there was national contentiousness at work.
17 If you look at the Committee for the Liberation of the
18 Peoples of Russia, even though the Russia that is being
19 used is Rossiia --

20 MR. TIGAR: I'm having trouble knowing what
21 the relationship is between this account and the dates on
22 which particular things happened.

23 THE COURT: We are getting a little bit far
24 afield here talking about the relationship between Vlasov's
25 army and Shandruk's army, aren't we? It's very

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1 interesting, but I'm not sure it's relevant to the case.

2 MR. DRIMMER: Well, let me ask this question.

3 Q. Was there a time when Vlasov and Shandruk talked
4 about joining together?

5 A. Yes, there was, one day, 30 January 1945.

6 Q. What happened?

7 A. They argued and sulked off. In fact, it was over
8 cooperation and strategy, and when Shandruk, a Ukrainian,
9 asked Vlasov what his plans for future operations were,
10 Vlasov said, "Well, I want to gather five or six divisions
11 together, and then we are going to march into Ukraine as a
12 springboard for conquering Russia, and Shandruk became
13 incensed and walked off.

14 THE COURT: Not much has changed in 60 years,
15 has it?

16 THE WITNESS: I won't say anything, Your
17 Honor.

18 Q. In reaching your conclusions on this point, have you
19 relied on a book called Soviet Opposition to Stalin by
20 George Fisher?

21 A. Oh, yes. It's one of the great classics.

22 Q. So then do you consider this to be a reliable
23 authority about the failed attempt of Shandruk and Vlasov
24 to join forces?

25 A. Extremely reliable.

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1 Q. I'm going to show you page 90 and ask you if you
2 would read the highlighted portion.

3 A. "Despite numerous negotiations, the Vlasov movement
4 was unable to gain the support of the Separatists National
5 Committees, notably that of the Ukrainian National
6 Committee and its Ukrainian National Army, both formally
7 established under Lieutenant General Pavlo," with an O,
8 "Shandruk, only on March 17th, 1945 as a last-minute
9 counterpart," dash, "and counterbalance," dash, "to Vlasov
10 and his KONR." That's on the map there, it's for the
11 Russian Committee for the Liberation of the Peoples of
12 Russia.

13 Q. Now, talking about Vlasov's army, how many divisions
14 did the army have?

15 A. Vlasov's army actually ended up with two divisions,
16 the 600th, that's the German number, 600th Panzier
17 Grenadier, although there are precious few Panziers or
18 grenadiers, but it had that title, and then the 650th
19 Infantry Division.

20 Q. Where were these divisions assembled?

21 A. The 600th Division, or where it comes to be called
22 the 1st Russian Division, was assembled in Munsingen,
23 Germany, which is about 30 kilometers east, northeast of
24 Heuberg. And the organization of the 1st Russian Division
25 started about mid November, 1944.

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1 Q. What about the 2nd Division, when and where did that
2 form?

3 A. The 2nd Division was formed at Heuberg, H E U B E R
4 G, beginning about mid January, 1945.

5 Q. Now, reaching your conclusions on the assembly of the
6 divisions of Vlasov's army, have you also relied on the
7 George Fisher book, Soviet Opposition to Stalin?

8 A. Oh, yes.

9 Q. Do you consider this to be a reliable authority on
10 this point?

11 A. Yes, it has been extraordinary. It's held up
12 extremely well over the years.

13 Q. Would you please read the first full paragraph on
14 page 97?

15 THE WITNESS: And I'll be better. Before I
16 forgot you guys were taking it down.

17 A. "The activation of the 1st Russian Division began in
18 November, 1944, and was completed by the next January. It
19 was only then that work on the 2nd Division really started.
20 Therefore, it was never as fully activated as the first.
21 But a number of ostbataillone, formerly in Norway, were
22 assigned to it as well as Soviet prisoners of war of recent
23 vintage."

24 Q. So when Fisher says "POWs of recent vintage," were
25 the Germans assigning prisoners of war to Heuberg, say in

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1 the summer of 1944, to be in Vlasov's army?

2 A. If you look at the stream of documentary accounts,
3 that would have been too early. No one -- really not until
4 Himmler gave the order on 16 September was there any idea
5 that they were going to form separate divisions of an army
6 of KONR. In fact, KONR didn't even exist as such until
7 November of 1944.

8 Q. Will you turn to Government's Exhibit 69?

9 THE COURT: In five minutes or so we are
10 going to take a break.

11 MR. DRIMMER: That's fine, Your Honor. Let
12 me do this document.

13 Q. Have you seen this document before?

14 A. Yes, I have.

15 Q. Do you know where the original of this document is
16 located?

17 A. Like the other documents, the original of this
18 document would be in Freiburg, and I've neglected to say
19 all along that most of the World War II-related
20 documentations are also on microfilm in our National
21 Archives.

22 Q. Is Freiburg a place you would expect to find such a
23 document?

24 A. Yes, it is.

25 Q. Do you have any doubts as to this document's

Menning Direct

1 authenticity?

2 A. No, sir, none whatsoever.

3 Q. Would you describe what this document is to the
4 Court?

5 A. This is a document that governs the formation of
6 Russian divisions to serve in the German army, and
7 specifically what it does is, it calls for the organization
8 of the 650th Infantry Division, in parens, Russian.

9 Q. Does this document indicate when the 2nd Division in
10 Heuberg was formed?

11 A. What it means is, since the document is dated 17
12 January 1945, it means that -- I'm coming to look at
13 when -- ah, yes. I'm looking to see if they have what the
14 military calls a drop dead date on it, because I've
15 forgotten, but the order expects that organization to go
16 beyond the 1st of February, because it says they want a
17 status report by Saturday, every 14 days, beginning on --
18 whoops, I'm sorry, I missed it up above.

19 End of formation, I'm sorry, end of formation
20 is 15 April. So begin date for formation of 2nd Russian
21 Division is 15 January, end date, 15 April, 1945.

22 Q. And to close out this line, have you seen any
23 evidence that the Germans began forming a division of
24 Vlasov's army in Heuberg before January of '45?

25 A. No.

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1 MR. DRIMMER: Your Honor, I'm done with this
2 document.

3 THE COURT: Okay. All right. Then I think
4 this is an appropriate place to take a break, and we will
5 take about a 20-minute break.

6 (Recess had.)

7 Q. You were talking about Vlasov's army before we broke,
8 and I want to start right now by reading again from the
9 1981 trial, which is Exhibit 92, and looking at page 1071,
10 line 19. Mr. Demjanjuk --

11 THE COURT: I'm sorry, what exhibit?

12 MR. DRIMMER: 92.

13 THE COURT: Thanks. Okay.

14 MR. DRIMMER: Page 1071.

15 THE COURT: All right.

16 Q. And we saw on 1097 the defendant says that he arrives
17 in Heuberg four to six months before the end of the war,
18 which we said was December, January or so, '44, '45.

19 Line 19: "Mr. Demjanjuk, when you arrived at
20 Oelberg, O E L B E R G, what was there?

21 "Answer: A Russian army had been organized
22 there."

23 Dr. Menning, when did Vlasov's 2nd Division
24 start to organize at Heuberg?

25 A. If I could relate back to one of the previous

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1 documents cited, not earlier than 17 January 1945.

2 THE COURT: May I inquire? First of all, are
3 Heuberg and Oelberg the same thing?

4 THE WITNESS: Yes, Your Honor.

5 MR. DRIMMER: Your Honor, if I can give you a
6 little case history, Oelberg was O E L B E R G for the
7 first, I think through the denaturalization and deportation
8 proceedings, and then I don't think anyone quite knew what
9 it was, and then Heuberg, it turned out, was what was being
10 said, so it was never correctly spelled from the beginning.

11 THE COURT: Okay. You mean it's never been
12 Oelberg?

13 MR. DRIMMER: Pardon me?

14 THE COURT: You mean it's never been Oelberg?

15 MR. DRIMMER: Not to my knowledge, I don't
16 think so.

17 MR. TIGAR: In his initial depositions, Your
18 Honor, Mr. Demjanjuk remembered being at a place, and he
19 pronounced it "Oelberg." He didn't know how it was
20 spelled. That spelling got picked up, and at first the
21 government denied any such place existed, and then they
22 found Heuberg, and now we are on the 30th replication of
23 this.

24 THE COURT: All right. That clears it up.

25 MR. DRIMMER: I'm sorry, Your Honor.

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1 BY MR. DRIMMER:

2 Q. Now, Dr. Menning, if the defendant arrived in Heuberg
3 in December, '44, January, '45, could he have come directly
4 from the Ukrainian National Army in Graz?

5 A. No, because those formations, which would eventually
6 go into the Ukrainian National Army, were still up in,
7 until the middle of January, they were up here in Slovakia.

8 Q. I'd like to read from the 1984 testimony, which is
9 Exhibit 93.2. And just to remind you of the time line, we
10 saw that on page 66, line 8, he says he was in Graz for
11 four weeks, and then leaves for Heuberg at the end of 1943
12 or the beginning of 1944. And now I'm in Exhibit 93.2,
13 page 141, line 3.

14 "Do you remember testifying today that you
15 were ultimately taken to a town Oelberg?" O E L B E R G.
16 "And by the way, Your Honor, it is spelled O E L B E R G.

17 "Answer: Yes.

18 "Question: Do you remember testifying that
19 you were taken there to be made part of the Ukrainian
20 Division?

21 "Answer: No" --

22 "Answer: It's not true. They were
23 organizing the unit of Vlasov's army. The Ukrainian
24 Division was supposed to be in Graz."

25 Now, Dr. Menning, were the Germans organizing

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1 Vlasov's army at the end of 1943 or the beginning of 1944?

2 A. No, not in any case.

3 Q. Now, Dr. Menning, having examined Defendant's claims
4 about where he was and what he was doing from May, 1942 to
5 May, 1945, what conclusions do you reach in light of known
6 history?

7 A. Well, in the light of the historical record, as I
8 pointed out in my expert witness report, you have
9 essentially a three-part explanation or attempt to explain
10 activities and whereabouts from 1940, roughly 1939 on till
11 the spring of 1945. And you have a span between 1939 and,
12 let's say, 20 May, possibly, or for sure 6 June 1942 when
13 you have a good idea of what is occurring, what were his
14 whereabouts. And then essentially the record becomes so
15 contradictory and incomplete that --

16 MR. TIGAR: Objection, Your Honor. He's now
17 characterizing deposition testimony.

18 THE COURT: Yes. Objection sustained.

19 Q. Limiting it to what you know in light of known
20 history, Dr. Menning, what conclusions do you reach about
21 the stories defendant tells about where he was and what he
22 was doing from May, 1942 to May, 1945?

23 A. It is very difficult to draw correlations between
24 what we know from the historical record and what we've been
25 given in the written evidence.

Menning - Cross

1 MR. DRIMMER: Thank you, Your Honor. No more
2 questions at this time.

3 THE COURT: All right.

4 MR. TIGAR: I wonder if I might have that
5 book that was being used for purposes of my examination.

6 MR. DRIMMER: (Handing.)

7 MR. TIGAR: Thank you.

8 CROSS-EXAMINATION OF BRUCE WILLIAM MENNING

9 BY MR. TIGAR:

10 Q. As promised, Doctor, here I am again. The Fisher
11 book upon which you rely was copyrighted in 1952, was it
12 not?

13 A. Yes, sir.

14 Q. And the edition shown to you was simply a reprinting
15 of the 1952 edition, correct?

16 A. Yes, sir.

17 Q. Now, at the time the Fisher book on Soviet Opposition
18 to Stalin was written, this great access to archival
19 documents that began around 1990 or '91 obviously had not
20 taken place; is that right?

21 A. If you talk about the flow of conventional access to
22 archives, it had not, but you must for works like Fisher,
23 you must take into account that there was a huge amount of
24 primary material available to scholars like Fisher because
25 they were materials that had come into western hands

Menning - Cross

1 because they had either been captured from the Germans
2 directly or had been overrun by the Germans during the
3 course of their invasion of the Soviet Union and then
4 fallen into our hands.

5 So we had, comparatively speaking, a very
6 rich but narrow window of materials from those various
7 acquired materials thanks to -- well, I shouldn't say
8 thanks to, but because of the turbulence of World War II.

9 Q. In the wake of the Second World War, the Soviets were
10 interested to find out as much as they could about Vlasov's
11 army, weren't they?

12 A. That's right.

13 Q. And they were very interested to find out about
14 Shandruk, weren't they?

15 A. That's right.

16 Q. So they would have had a motive to assemble archival
17 materials in support of knowledge about those two things,
18 correct?

19 A. They would have a motive to assemble materials in
20 support of investigations. Now, what the disposition of
21 that is, you know, not having been there, I couldn't say.

22 Q. You have never gone back to the Russian archives,
23 former Soviet archives, to see if there's additional
24 information that goes beyond what Mr. Fisher had for his
25 1952 book; is that right?

Menning - Cross

1 A. That's right. I have not gone back to the Russian
2 archives on that particular subject matter.

3 Q. I want to start then by talking about sources. You
4 say a primary source is the first recorder of an event,
5 correct?

6 A. First witness, and subsequently finding its way into
7 records.

8 Q. You said first recorder, did you not?

9 A. Uh-huh.

10 Q. For example, you testified about a document that was
11 a printed summary with respect to the relocation and
12 abandonment of certain camps. Do you remember that?

13 A. Yes, sir.

14 Q. Now, that printed summary was not prepared, so far as
15 you can tell, by someone with firsthand knowledge of what
16 happened at Chelm, correct?

17 A. It is a compilation of materials based on the reports
18 that are received firsthand from Chelm.

19 Q. But that qualifies as a primary source, correct?

20 A. Sure does.

21 Q. So a primary source can be something that is two or
22 more steps removed from firsthand knowledge of the event,
23 correct?

24 A. In many cases, it must be. For example, if you take
25 a diary from a wartime, you know, 11th Army, one of those

Menning - Cross

1 that we have entered into the exhibits, that's a primary
2 source, but it is a compilation of a series of entries that
3 have been made into that unit diary and the compilation
4 materials on the POW camps is of the same nature.

5 Q. Have you in the process of studying the Second World
6 War period looked at post-war accounts of their experiences
7 by people who either served in the war or were prisoners of
8 war?

9 A. Yes, sir.

10 Q. Some of those people had a hard war, didn't they?

11 A. Yes, sir.

12 Q. Would you be surprised if someone was unable to
13 recall details, such as dates and the details of what
14 happened at particular places?

15 A. No, sir, I would not be surprised. I would, again,
16 if you talk about pattern and anomaly, generally my
17 experience in talking with veterans of World War II is that
18 for the most part, many of them very clearly, you know,
19 these events are so stark, they are very clear in their
20 mind, and actually I'm more impressed by the degree of
21 precision with the way war vets remember dates than by
22 those who don't.

23 Q. Well, you know in a prior part of this case six
24 people who had a hard war were very wrong about something
25 that happened, weren't they?

Menning - Cross

1 A. I'm not quite sure what you are referring to. If
2 it's eyewitnesses, yes.

3 Q. There were witnesses who said that Mr. Demjanjuk was
4 at Treblinka, correct?

5 A. Yes.

6 Q. And have you concluded they were mistaken?

7 A. What I did was, I read the verdict, and the judges
8 concluded that they were mistaken.

9 Q. But certainly no one -- well, not you, you, as a
10 historian, would not attack those people as being liars or
11 willful falsifiers, would you?

12 A. No, sir.

13 Q. They had a hard war, didn't they?

14 A. They all had a hard war.

15 Q. And they are entitled, are they not, to a, shall we
16 say, magnificent judgment for any errors they made;
17 wouldn't you say that?

18 A. As a historian, you have to understand the fact that
19 there are going to be memory gaps and slips of memory, yes.

20 Q. Now, when you look at archival sources, are you alert
21 to the possibility that the person making the archival
22 notation could simply be mistaken?

23 A. On occasion, yes, that happens.

24 Q. And could a person who is making out a military
25 situation report have a motive to falsify?

Menning - Cross

1 A. That's more difficult to say. It depends upon whose
2 system it's in and under what circumstances.

3 Q. Let's take in your army career, did you exercise a
4 command?

5 A. Yes, I did.

6 Q. Did you find that some people under your command were
7 more ready to report compliance with your directions than
8 they were to acknowledge noncompliance with them?

9 A. I would say a normal human response would be that one
10 is more happy to inform the commander that his or her
11 orders have been implemented fully rather than saying that,
12 no, we couldn't do it for one reason or another, or it
13 didn't get done, in the passive voice.

14 Q. Mistakes were made?

15 A. Mistakes were made.

16 Q. In fact, dating to the World War II period, there
17 were two acronyms, snafu and tarfu, to reflect that. Do
18 you know those?

19 A. I know snafu, but tarfu --

20 Q. "Things are really" --

21 A. Okay.

22 Q. Well, snafu, does the World War II coinage "snafu,"
23 and the smile that we got when I said it, inform your use
24 of military archives to make conclusions?

25 A. Certainly. You're always -- again, you are

Menning - Cross

1 looking -- the most -- I really think the most important
2 thing that you look for is pattern and anomaly. It's
3 almost always pattern and anomaly. And that sounds simple,
4 but really in implementation for the researcher, it's often
5 very difficult.

6 Q. And in the German army, would a person who was
7 reporting up the chain of command have more of a motive to
8 report compliance with the orders that had come from on
9 high than in, let us say, the American army?

10 A. Probably a slightly higher order of reporting of
11 compliance, especially given the view or given the fact
12 that at least at this particular point the Germans are
13 involved in an extraordinarily intense combat situation.

14 Q. Well, looking at this period of time, first there was
15 this combat situation, correct?

16 A. Yes, sir.

17 Q. And in a combat situation, there's more likelihood of
18 error than in a noncombat situation simply because things
19 are happening so fast?

20 A. Yes, sir.

21 Q. And also, and I didn't serve in that conflict, but
22 from your reading, was the German army more Prussian than
23 the American army?

24 A. Certainly was.

25 Q. And did people serving in that army fear more the

Menning - Cross

1 consequences of being found not to have fulfilled their
2 quota or done their duty?

3 A. I think what you need to do is to extend that from
4 just mere reporting of compliance to actual implementation,
5 because if you take issues like these documents related to
6 rail transit, all you've got to do is check the reports
7 from the next highest headquarters or go back to the rail
8 transit office of the general staff and its records, and
9 immediately you can tell there's a double cross-check on
10 them. So that's one I won't monkey with.

11 Plus then you also have inspector generals
12 just for that very purpose whose sole function in life is
13 to walk around checking on compliance.

14 Q. Well, let's walk through these documents then and
15 look at them, because I'm going to start by saying at the
16 end of the day, I don't think we are going to disagree a
17 lot, but I would like to go through them.

18 You said that 120,000 POWs, or so, were
19 captured at this Battle of Kerch; is that right?

20 A. Well, it's actually -- yes, the Battle of Kerch --

21 MR. TIGAR: May I put the map up here, Your
22 Honor? Because I'm going to pronounce it wrong.

23 THE COURT: Yes.

24 MR. TIGAR: This is the map.

25 Q. There's this Battle of Kerch, which is out on this

Menning - Cross

1 peninsula, correct?

2 A. Yes, sir.

3 Q. And the pending question was, there were 120,000
4 people who were captured there, correct?

5 A. Yes, sir, at least.

6 Q. At least. And you told us that their transport was
7 reflected in Government's Exhibits 49 through 53. Do you
8 remember that?

9 A. Yes, sir.

10 Q. Let me get those, if I may. As I look through those
11 records, Doctor, I don't see the names of prisoners. Is
12 that right? I mean, am I reading them correctly?

13 A. That's correct, sir.

14 Q. So the reports of the transit have to do with the
15 number of people who were transported, correct?

16 A. Yes, sir.

17 Q. Did the Germans attempt at that time to inventory the
18 people they had and get all their names, the 120,000?

19 A. Not immediately.

20 Q. They did it thereafter?

21 A. Eventually.

22 Q. With respect to these transit reports, where were
23 they captured, 49 through 53?

24 A. They were captured, as part of the German army
25 archives, when the U.S. overran them in Germany in 1945.

Menning - Cross

1 Q. Where?

2 A. I'd have to look and see where the 11th army
3 headquarters or the military archives were, either/or.

4 Q. As you sit there today, sir, you don't remember
5 exactly where they were kept?

6 A. It's not I don't remember. I don't know.

7 Q. I'm sorry. My question is not designed to insult
8 you, sir. I'm just asking. So you don't -- do you know
9 where they were first taken after being captured?

10 A. No, I don't.

11 Q. Now, did the Germans attempt, confronted with the
12 inevitability that the war was ending, to destroy certain
13 of their records?

14 A. You know, I have to go back into deep memory on that.
15 I will say yes, but it's way far out on the borderline for
16 me, and not so much military records. It's really there's
17 not so much in the military record -- oh, there is some,
18 but I mean the military record isn't like the record of the
19 SS or the Gestapo, or something like that.

20 Q. Did the Germans observe the Geneva Convention with
21 respect to prisoners of war?

22 A. They said they did, but they did not, at least in the
23 case of the Eastern Front.

24 Q. These records show the movement of prisoners of war,
25 don't they?

Menning - Cross

1 A. Yes, they do.

2 Q. Now please let us look at Government's Exhibit 48.

3 Government's Exhibits 48. This is a big exhibit. Where
4 does this come from or what does it refer to?

5 A. It's a compilation -- I have to get the title of it
6 here. It is a compilation of reports on the location --
7 yes, on the location of prisoner of war camps, the numbers
8 of prisoners that are located in them, and then down to the
9 end, to what the working status is.

10 Q. And does a part of this relate to Chelm?

11 A. One part of it does. I'd have to page through it and
12 find it again. It's been a while since I've looked at this
13 document.

14 Yes, page 49.

15 Q. I'm going to look for Government 40.

16 A. Stalag 319, Chelm.

17 Q. That's on page 49, sir?

18 A. Page 49. It's page 49, upper right-hand corner; page
19 7, lower right-hand corner. And there are other, no doubt,
20 other references, but this is one that gives you --

21 Q. I'll look on yours. Chelm, it says 6245 and 1978,
22 and the 1978 is the number who are working?

23 A. "Fit to work."

24 Q. "Fit to work." Now, let's look then at Government's
25 Exhibit 40, because that's a summary statement, right?

Menning - Cross

1 Now, the basis for your conclusion that it was unlikely
2 that somebody was there for more than a year is that the
3 conditions were horrible and that the Germans were
4 transferring people in and out, correct?

5 A. That's right. The condition, if you are not fit to
6 work, that means you're sick. If you're sick, you've got a
7 more -- the chances of mortality are very great because
8 there's dysentery, there's typhus, there's typhoid.

9 Q. And they are Germans, after all, who are less likely
10 to care about you if you are not fit to work?

11 A. Well, what happens is they have to do a crude kind of
12 calculation, and actually what they actually did was
13 decided for those people who were marginally ill, you could
14 shovel them down the pipeline -- I'm mixing metaphors --
15 you could push them down the pipeline and hopefully get
16 them into agricultural work, where the German term is
17 fattening up, to go ahead and fatten them up.

18 However, the problem was, that usually did
19 not occur, I mean in the sense of they usually went from
20 bad to worse.

21 Q. So you are not saying it was impossible to be there
22 all that time. It just would take a hearty soul who
23 survived the transfer process, correct?

24 A. I would say no, I'm not going to say it's going to be
25 impossible. One can never say that something is really

Menning - Cross

1 impossible.

2 Q. We have read the stories, have we not, of people who
3 survived POW and concentration camps under incredible
4 conditions of privation, correct?

5 A. Yes, sir.

6 Q. And if we simply looked at the objective conditions,
7 we might say to ourselves, how in the world could that
8 happen, correct?

9 A. That's right.

10 Q. But people did. Now, did the government in the
11 process of preparing you to testify show you any statements
12 by Mr. Demjanjuk about the deterioration of his condition
13 while in captivity?

14 A. Actually, I only saw, and this is deep memory working
15 for me, so in other words, with some qualification, perhaps
16 the Dubovec testimony in which he said that when he first
17 became acquainted with Demjanjuk, that he was in good
18 shape, and this is January, 1945.

19 Q. My question, sir, is did the government ever show you
20 any statement by Mr. Demjanjuk directly relating to his
21 condition as a result of his captivity?

22 A. I simply cannot recall.

23 Q. Do you ever remember hearing or having brought to
24 your attention testimony to the effect, "I can't say
25 exactly, because when we were brought there, we were in

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1 such a state that we didn't know the day of the week." Do
2 you remember hearing that?

3 A. Somewhere in the testimony that sounds familiar, yes,
4 but I mean not knowing the day of the week is a function of
5 a number of different dysfunctions, not necessarily health.

6 Q. You're not an expert on what somebody means by saying
7 not knowing what day of the week, right?

8 A. I wouldn't say I'm an expert, but there's a few times
9 when I haven't known what day of the week it is, and it
10 wasn't necessarily because I was in ill health.

11 Q. Well, welcome to the club.

12 A. That's sort of a general thing. I didn't think I was
13 getting too far beyond the limits there.

14 Q. All right. In connection with your work on that
15 Vlasov's army issue, did the government -- did you read the
16 judgment of the Israel Supreme Court?

17 A. Yes, I did.

18 Q. And did you read the discussion in that judgment of
19 the testimony of a Dolle, D O L L E?

20 A. Yes, I did.

21 Q. And I'll just ask you, what do you make of it?

22 A. Well, curious kind of testimony that really shows
23 nothing conclusive.

24 Q. Well, Ms. Dolle gave a statement that in June or July
25 of '44, there arrived a first group of Soviet soldiers, and

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1 then in mid September a second larger group of Soviet
2 soldiers arrived. Do you remember that?

3 A. Yes, sir.

4 Q. And then she goes on to talk about this, and the
5 Israeli Supreme Court made a conclusion about it, correct?

6 A. Yes, sir.

7 Q. They had before them all of the testimony and
8 evidence that had been presented in the lower court,
9 correct?

10 A. Yes, sir.

11 Q. And without saying whether they were right or wrong,
12 their decision represents some kind of archival evidence,
13 correct?

14 A. Yes, sir.

15 Q. And you read their conclusion?

16 A. Yes, sir.

17 Q. And what effect, if any, did that conclusion have on
18 you as you were reaching your conclusion about the Vlasov's
19 army?

20 A. I looked at that in conjunction with a review of the
21 materials related to the organization of the Vlasov army
22 and decided that the testimony really had marginal, if any,
23 bearing on the actual formation of Vlasov's army.

24 Q. So you disagreed with the analysis of the Israel
25 court?

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1 A. Yes, to an extent, I did. I mean it's not -- it's a
2 very fine point. I mean the fine point is based on the
3 fact that it's only on September 16th that finally they are
4 able to wring out of Hitler -- or Himmler permission to
5 begin the creation of an army or divisions of an army for
6 KONR, and it's really only after the Prague declaration on
7 November 14 that the actual decision is made to begin
8 organization.

9 And so if you want to believe the Dolle
10 testimony you've got to believe that somebody was running
11 around out there during the summer of 1944 who could read
12 Heinrich Himmler's mind in advance and decide and
13 understand what Himmler is going to say in mid September,
14 and then the organizing work that's going to occur in
15 November. That is why I took a look at the Dolle testimony
16 and decided that I really didn't consider it seriously.

17 Q. In your report, you attempt to figure out
18 Mr. Demjanjuk's date of birth, correct?

19 A. Yes, sir.

20 Q. And you're not able to do so, are you?

21 A. Can't get it by one day.

22 Q. Well, even with your calculations. Now, the birth
23 certificate on which you rely, where was that -- who did
24 that?

25 A. It comes out of a record from, as I recall, the

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1 Orthodox Church in or near the village of Dubovye
2 Macharenzi.

3 Q. What Oblast is that in?

4 A. Vinnitsa, or if you want to say it properly,
5 Vinnitskaia. Vinnitsa is the first one, and then
6 Vinnitskaia.

7 Q. Now, in your report you cite the records of the
8 Kazatkin Rayon Military Commissariat, correct?

9 A. Kazatkin Raion Voenkomat, is the correct appellation.
10 K A Z A T K I N, R A I O N, V O E N K O M A T. It means
11 the district military commissariat.

12 Q. Is that R A I O N?

13 A. Rayon means district.

14 Q. But do you spell it R A I O N?

15 A. It spells it R A Y. It depends on which system of
16 transliteration you use.

17 Q. In your report it is Y?

18 A. Sometimes the military system -- we have two
19 different systems, and as a historian, I tend to use the
20 Library of Congress system, which would make the short E
21 into an I in English. And if you use the military system
22 or the -- it's the Department of Geodesy's system, it
23 renders that I as a Y. It's no real bother. You don't
24 even pay any attention to it after a while.

25 Q. And in the preparation of your report, you had the

Menning - Cross

- 1 assistance of Dr. Coe, you testified?
- 2 A. Yes, sir.
- 3 Q. And who else?
- 4 A. Dr. Huebner.
- 5 Q. And who contacted you first to do your work in this
6 case?
- 7 A. Representative, Department of Justice, Dr. David
8 Rich.
- 9 Q. And you know him to be a historian, correct?
- 10 A. I sure do.
- 11 Q. You have cited his work with approval in your work,
12 correct?
- 13 A. Rich, I don't -- yes, I would say.
- 14 Q. And you are critical of him at times?
- 15 A. I was.
- 16 Q. What did he ask you to do? What were the terms of
17 your engagement?
- 18 A. What he wanted to do, he said, "We have a case now up
19 before us, and we need somebody who has a specialization in
20 Russian and Soviet military history," and he ran a real
21 generalized idea across without mentioning specifics, and
22 he said, "Think about it, think about whether you consider
23 yourself qualified and whether you would have the time to
24 devote to this."
- 25 Q. When was that?

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1 A. Sometime about a little bit more than a year ago,
2 like April, May, 2000.

3 Q. And did the people you've mentioned assist you then
4 in gathering the materials for preparing your report?

5 A. They sure did. I couldn't do it alone.

6 Q. Where did the archival materials about the Chelm camp
7 come from?

8 A. They came from Germany. Well, no, I take that back.
9 They came from the records that we hold, the German we hold
10 in the National Archives.

11 Q. Did you find those records yourself?

12 A. No, sir, I did not.

13 Q. Who did?

14 A. One of the historians working for the Department of
15 Justice.

16 Q. Of all of the records upon which your report relies,
17 and your initial report contains 57 footnotes, what
18 proportion of the primary sources as you have used that
19 term did you go to archives and find yourself?

20 A. Did I go myself? I did not. My assistants or my
21 collaborators, let's put it that way, the Department of
22 Justice found the majority of those materials.

23 Q. And I need you to be precise as possible. Did all of
24 the archival materials cited in your footnotes come to you
25 through the intermediaries of the Department of Justice?

Menning - Cross

1 A. They sure did.

2 Q. And did you do anything to go to any archives
3 yourself to check and see that they got it all?

4 A. Yes, sir.

5 Q. Which archives did you go to to check to see if they
6 got it all?

7 A. Last month I went to the Archive of the Ministry of
8 Defense of the Russian Federation to do a double-check.

9 Q. Is that the only one?

10 A. Yes, sir.

11 Q. And your report was filed in October of 2000,
12 correct?

13 A. Yes, sir.

14 Q. So your visit to the Russian archive was after your
15 report was --

16 A. Yes, sir, because it's like any research project for
17 me, it cooks all the time, even after I've got a draft or
18 even what I think is a final draft in.

19 Q. What were you checking in the Russian archives?

20 A. I wanted to check -- there are new materials there
21 that they have not fully developed on prisoners of war, and
22 I wanted a more complete understanding of what were the
23 contents of those materials and how far along the road they
24 had been toward processing them.

25 Q. Did you find anything there that caused you to want

Menning - Cross

1 to change any of the conclusions in your report?

2 A. Not at all. What I actually found, and I spent more
3 than -- we are talking about archives. I spent a lot more
4 time going back and looking through the new printed
5 documentary material, number one, and number two, because I
6 was there during the May 9th Victory holiday, I was able to
7 get around and talk to a number of Soviet war veterans, and
8 especially -- not especially, but among them, POWs to find
9 out the circumstances of capture, treatment, and so on.

10 Essentially what I was doing was going back
11 on the one hand and making sure that I had -- that I really
12 was as satisfied as I could be before I came to court with
13 the materials that bear my signature, number one; and
14 number two, now this is something that's taking on its own
15 life. I mean I've become very -- in fact, the interviews
16 with the war veterans I found so fascinating that if I
17 weren't tied up with a book manuscript, I would nearly dump
18 what I'm doing and go off and interview those guys before
19 they are passed on.

20 Q. Do you think it's important to get an accurate
21 picture of what happened during the Second World War to get
22 out and talk to all the people that are still alive that
23 were there?

24 A. I sure do.

25 Q. Of all the kinds of things you do to do your history,

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1 do you think that's the most important?

2 A. No.

3 Q. Where does it rank in your --

4 A. If you want the human face of war -- and this is the
5 problem with teaching strategy and military history, is
6 usually you are engaged at such a high level that you begin
7 to not lose the sense of, but you begin not incorporating
8 that full sense of what the sociology of war is, if you
9 want to call it that, and what the reading of the memoir
10 material does, the interviews with veterans, and I started
11 interviewing veterans 30 years ago.

12 What that does is, it makes sure you have one
13 foot back in a certain kind of reality. That's important.

14 Q. War is a human event?

15 A. It sure is.

16 Q. Now, in your archival look there a month ago, did you
17 encounter some of the problems that we talked about when I
18 was doing your qualifications, the archives are not as well
19 kept as they might be and so on?

20 A. Oh, I'll tell you the problem is, and this has been
21 the case since I've worked, the main archive of the
22 Ministry of Defense is out of Podolsky, about 20 miles
23 southeast of Moscow, and it's not easy to get out there if
24 you don't have a car, in the first place, but in the second
25 place, you'll find out they are working short-handed.

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1 However, it's like everything else, if you
2 have a really important intergovernmental requests, yes,
3 they are going to move to develop that. And indeed,
4 without getting to a long story, I'm one of the few
5 foreigners who have ever been in the card catalog, who have
6 ever gone to the stacks to see how they go through the
7 process and assemble archival materials just as a kind of
8 by-product of some earlier research expeditions, so I know
9 the people out there pretty well.

10 Q. The place where they bind them, is that called the
11 magazine?

12 A. No, sir. That's the German term. The Russians call
13 it Sklad. It's the same thing.

14 Q. It's the same thing?

15 A. Yes, or Kharnilishche is a better Russian word. I'm
16 sorry. K H A R N I L I S H C H E.

17 Q. So is it your testimony that it is possible for
18 scholars who have a certain relationship to get inside what
19 the Germans would call the magazine?

20 A. Oh, it's more incidental to whatever function you are
21 fulfilling. It can be personal. I won't rule that out.
22 But it's incidental usually to an official function, and I
23 got into the actual storage area, looked at these various
24 card catalogs, looked at the process of putting together
25 the archival files physically.

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1 I got into that about 1995 or '6 because at
2 that time the Department of Defense had an initiative going
3 on, which we were wanting to begin working on a documentary
4 history from both sides of the Cold War. And we went out
5 as part of an official delegation to the archive and talked
6 about the project and how we would try to fund it and how
7 it would benefit the archival system in general.

8 Q. I'm going to ask --

9 A. Anyway, as a result of that, I was able to do those
10 things.

11 Q. Okay.

12 A. So I wasn't out there currying personal favor.

13 Q. I didn't say you were.

14 A. But that always lurks around the edges.

15 Q. Doctor, did you look for any records about a prisoner
16 named Demjanjuk?

17 A. This last time?

18 Q. Yes.

19 A. Yes, I sure did.

20 Q. Did you find any?

21 A. Not yet.

22 Q. Do you think they will be there?

23 A. Yes. The ones that have been found out thus far or
24 the lack of them, you know, they will report out the
25 confirmational information. In other words, if I go -- I'm

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1 switching venues here for a moment, but if I would go down
2 to the Vinnitskaia or the Kazatkin Raion Voenkomat, I would
3 find those materials related to the call up and so on of
4 Mr. Demjanjuk. If I go to the Kazatkin district military
5 commissary, I would find those there, too.

6 What's more problematic is Moscow, because
7 what happens is the district authorities -- I have to think
8 carefully about the terminology. The provincial
9 authorities did not always send by-name records to the
10 center; by-name records, personnel records.

11 Q. That makes it harder. Let me ask you then, sir, did
12 you know by the time you were doing your report something
13 of the history of this particular litigation?

14 A. Oh, yes, I did, because I had -- part of the
15 requirements for doing the report was I had to read through
16 like two lineal feet of litigation.

17 Q. Did you read the decision of the United States Court
18 of Appeals for the Sixth Circuit with respect to the
19 subject they called fraud on the court?

20 A. No, I didn't. I don't recall that. I mean maybe I
21 saw it, but maybe I didn't.

22 Q. Did you read Judge Wiseman's opinion?

23 A. No, I didn't. I don't recall that.

24 Q. Were you aware as a result of your review of the two
25 lineal feet of methodological problems in the earlier case,

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1 historical methodological problems?

2 A. Sure, I was.

3 Q. Did you come to a conclusion as a result of reading
4 that two lineal feet that some of those problems had been
5 caused by the failure of Department of Justice employees to
6 hand over things that should have been handed over?

7 A. That I don't recall. What loomed larger in my mind
8 was the fact that the Department of Justice had not availed
9 itself of historical assistance to the degree that they
10 might have, and I think that that would have facilitated
11 the -- better facilitated the development of the case.

12 MR. TIGAR: Your Honor, may I have a moment?

13 THE COURT: Yes.

14 (Pause.)

15 Q. I'm going to show you now, sir, what I marked as
16 Defendant's Exhibit D 11, and ask you if you've seen that
17 before?

18 A. Yes, sir, I've seen this document before.

19 Q. And does that refer to the recruitment of prisoners
20 of war?

21 A. Yes, sir, it certainly does.

22 Q. And does it -- I'm having terminological trouble.
23 Does it refer to the ROA?

24 A. It refers to something called the ROA.

25 Q. And what was the ROA?

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1 A. The ROA at that time was nothing.

2 Q. Now --

3 A. Or let's put it this way: I think Hitler called it a
4 phantom.

5 Q. And when did Hitler call it a phantom?

6 A. March, 1943; March 26th.

7 Q. And does this document come from, so far as you can
8 tell, from German Military Archives?

9 A. Yes, sir. It looks like it's through Israeli if I
10 look at the stamp on the side.

11 Q. Have you ever seen it before today?

12 A. Yes, sir, I've seen it.

13 MR. TIGAR: I have nothing further, Your
14 Honor.

15 THE COURT: Okay.

16 MR. DRIMMER: Your Honor, I will have some
17 redirect, but given the late hour, maybe we should break.

18 THE COURT: We can, if the witness is
19 prepared to stay another day.

20 MR. TIGAR: Well, if Your Honor please, if
21 that's the case, may I also have until tomorrow morning
22 just in case there's one or two more questions?

23 THE COURT: Sure.

24 MR. TIGAR: In that case may he be
25 admonished?

1 MR. DRIMMER: Your Honor, he did give up the
2 witness. He's welcome to come back after I do my redirect.

3 THE COURT: I understand he gave up the
4 witness, but there's no harm in allowing him until tomorrow
5 morning to see if he has something there that he forgot
6 because we are going to go tomorrow morning anyway. We
7 will have to reconvene tomorrow at 9:30 because I have some
8 things in the morning that I have to do.

9 MR. DRIMMER: Let me make sure, you are here
10 through tomorrow?

11 THE WITNESS: Yes, sir.

12 MR. DRIMMER: I'm sorry, Your Honor.

13 THE COURT: That's fine. So if you would
14 please not discuss your testimony with the government
15 overnight, we would appreciate that.

16 THE WITNESS: Yes, sir.

17 THE COURT: All right.

18 (Trial adjourned at 4:34 p.m.)
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C E R T I F I C A T E

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Bruce A. Matthews, RDR-CRR Date

1	REDIRECT EXAMINATION OF CHARLES W. SYDNOR, JR. (Resumed)	
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