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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

UNITED STATES OF AMERICA,           Case No. 1:99CV1193  
  Cleveland, Ohio  
  Plaintiff,            Thursday, June 7, 2001  
  9:30 a.m.

vs.

JOHN DEMJANJUK,  
a/k/a IWAN DEMJANJUK,  
  
Defendant.

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

BENCH TRIAL  
VOLUME 7

APPEARANCES:

For the Plaintiff:                   Edward A. Stutman, Esq.  
  Jonathan Drimmer, Esq.  
  Michelle Heyer, Esq.  
  Michael Anne Johnson, Esq.  
  Susan Siegal, Esq.

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

Court Reporter:                   Bruce A. Matthews, RDR-CRR  
  United States District Courthouse  
  201 Superior Avenue  
  Cleveland, Ohio 44114  
  (216) 685-9949

Proceedings recorded by mechanical stenography, transcript  
produced by computer-aided transcription.

## Menning - Cross

1 MORNING SESSION, THURSDAY, JUNE 7, 2001 9:40 A.M.

2 THE COURT: Let me see counsel.

3 (At side bar off the record.)

4 (End of discussion at side bar.)

5 THE COURT: Mr. Tigar, I think we left off --

6 MR. TIGAR: Yes, Your Honor. Overnight we  
7 had a chance to look through particularly some of the  
8 documents we got late in the process.

9 BRUCE WILLIAM MENNING, of lawful age, a witness  
10 called by the Government, being previously duly sworn, was  
11 examined and testified as follows:

12 CROSS-EXAMINATION OF BRUCE WILLIAM MENNING (Resumed)

13 BY MR. TIGAR:

14 Q. Dr. Menning, military bureaucracies make errors, do  
15 they not, about the service of people that are connected to  
16 them?

17 A. Yes, sir.

18 Q. In fact, there is a body called the Board for  
19 Correction of Military Records, is there not?

20 A. Somewhere in my distant memory says that is true.

21 Q. Have you ever done any research in their files?

22 A. Not in their files, no. Well, I can't tell you that  
23 for sure, because while I served at the Center of Military  
24 History, we had to track down a number of issues that  
25 related to that, but I mean it's lost from what I recall,

Menning - Cross

1 random access.

2 Q. Yes. When I say my memory is as good as it ever was,  
3 but I don't give same-day service anymore. Is that about  
4 where we are?

5 (Laughter.)

6 Q. Yesterday we were talking about this Ms. Dolle, D O L  
7 L A, the statement of whom was in evidence in Israel. Do  
8 you remember that?

9 A. Yes, sir.

10 Q. Do you have any question based on your review that  
11 she was in Heuberg?

12 A. Not at all.

13 Q. Now, in addition, in your review of the Israeli  
14 materials, did you come upon the testimony of a  
15 Dr. Spektor?

16 A. I no doubt did, but I don't recall it.

17 Q. Do you remember what, if anything, Dr. Spektor had to  
18 say about the Vlasovites?

19 A. No, sir. I would have to be reminded.

20 Q. Well, let me show you what I represent to be an  
21 English translation of the Hebrew version of the Israeli  
22 proceedings. So we have trouble vouching, but I'm  
23 directing your attention to what looks like page 6267,  
24 beginning at line 23, when he talks about these battalions,  
25 the ostbataillones. Does that refresh your recollection as

## Menning - Cross

1 to whether or not you've ever seen what Dr. Spektor had to  
2 say?

3 A. Yes, sir, that refreshes my recollection.

4 Q. And with your recollection refreshed in that way, do  
5 you remember him saying that they did use the name, for  
6 example, such a name with the ostbataillones, the Russian  
7 ostbataillones, they called them Vlasovsky, although  
8 Vlasovsky was not their commander during that period?

9 A. That's the way I understand his testimony, yes, sir.

10 Q. And is it your statement that you disagree with his  
11 interpretation of matters?

12 A. What I would do, I wouldn't say I would disagree. I  
13 would say the discussion needs to be extended somewhat to  
14 consider it in its full context.

15 Q. Now, Doctor, did you receive any report from an OSI  
16 historian's visit to the Columbia University archives,  
17 about which you testified yesterday, in or about February  
18 of 2001?

19 A. Yes, sir, I did.

20 Q. And I'm going to show you now what we have marked as  
21 Defendant's Exhibit D 21, which begins at Bates 57719, and  
22 ask you if that is a portion of a report that you remember  
23 seeing based on that archivist's visit to the Columbia  
24 archives?

25 A. Yes, sir, I've finished a quick read.

## Menning - Cross

1 Q. And does that -- turn, would you, to the top of  
2 numbered page 4, Bates page 57722. Now, does that refer to  
3 a report from a survivor of the war? You might have to  
4 look at the previous page.

5 Now, is he talking about the year 1944, that  
6 person, whoever they are talking about here?

7 A. Yes, sir.

8 Q. And do you understand this archival record to say  
9 that on 10 July, a Captain F-something from the Vlasov army  
10 was ordered to visit this person's battalion?

11 A. That's what I read there, sir, yes.

12 Q. And did you consider this fragment from the archival  
13 record in reaching the conclusions about which you  
14 testified yesterday?

15 A. Certainly did, sir.

16 Q. And do you see then in the second full paragraph,  
17 beginning with the words "the following section," a  
18 reference to a battalion in full strength on December 13th,  
19 1944? Is that what you understand that paragraph to say?

20 A. I'm not sure which paragraph we are referring to.

21 Q. Yes, sir. The following section, the second full  
22 paragraph, sir.

23 A. Yes, sir, I see that.

24 Q. Now, do you know the identity of the name of the OSI  
25 historian who found this archival information?

## Menning - Cross

1 A. I believe this is Dr. Steven Coe, C O E.

2 Q. Did you discuss the two references that I pointed out  
3 to you with Dr. Coe?

4 A. I do not recall that.

5 Q. Did you ever ask Dr. Coe to show you the original  
6 archival documents from which he took this information?

7 A. No, sir, I did not.

8 Q. And you did not visit the archive to see them  
9 yourself; is that right?

10 A. Not at this particular time, no, sir.

11 Q. You didn't visit the Columbia archive at any time in  
12 connection with the report that you filed in this case; is  
13 that right?

14 A. No, sir, I did not.

15 Q. Now, Doctor, were you ever asked to look at the  
16 material in this case relating to a blood group tattoo?

17 A. Yes, sir.

18 MR. TIGAR: And Your Honor, last night we  
19 found at Bates page 58210, the April produced documents --

20 THE COURT: Okay.

21 MR. TIGAR: That document that I want to show  
22 the witness. I'm not going to ask him about it anything  
23 other than does it appear to be authentic. I represent we  
24 received it from the government. I'm not going to ask him  
25 to comment on it.

## Menning - Cross

1 Q. Doctor, I'm going to show you what I've marked as  
2 Defendant's Exhibit HH and ask you if you've ever seen that  
3 before.

4 A. Yes, sir, I've seen it.

5 Q. Have you seen it in connection with your testimony in  
6 this case?

7 A. Actually, I saw this as what I would call background  
8 information that really, it doesn't relate to issues of  
9 chronology and what was going on in the east, and among the  
10 various Russian and Osttruppen units, no. I looked at it  
11 mostly as a matter of historical curiosity.

12 Q. When did you see it, sir?

13 A. I can't tell you that.

14 Q. Was it more than three months ago?

15 A. I couldn't even say that. Understand, I've seen so  
16 much material that it's becoming a blur, and it's very  
17 difficult for me to say exactly when I saw a piece of  
18 material.

19 Q. Do you have any doubt, sir, that this is an authentic  
20 report on interrogation from the files of the United States  
21 Government?

22 A. If it was authenticated previously and it has been  
23 introduced by the government, I would say yes, I would have  
24 to accept their acceptance of it as an authentic document.

25 Q. Do you remember who showed it to you?

## Menning - Redirect

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

2 Q. Do you remember any discussion that you had about it  
3 with anyone?

4 A. Not really.

5 MR. TIGAR: If Your Honor please, the only  
6 matter that we are going to be interested in is at number  
7 3, which is tattooing of personnel other than SS, which is  
8 at the bottom of the first page.

9 THE COURT: Yes.

10 MR. TIGAR: And goes on, and then on the very  
11 last page, there's the names of two non-SS people who were  
12 tattooed. That's Bates 58215. As I said, since the  
13 witness did not rely on it, I'm not going to ask him any  
14 further about it.

15 THE COURT: Okay. All right.

16 MR. TIGAR: Dr. Menning, thank you very much,  
17 and this time, Your Honor, I am finished.

18 THE COURT: All right.

19 REDIRECT EXAMINATION OF BRUCE WILLIAM MENNING

20 BY MR. DRIMMER:

21 MR. DRIMMER: Good morning, Your Honor.

22 THE COURT: Good morning.

23 Q. Dr. Menning.

24 A. Good morning, sir.

25 MR. DRIMMER: Before I start I wanted to very



## Menning - Redirect

1 quickly correct the record, on the record in the transcript  
2 last night how Oelberg, O E L B E R G, was first introduced  
3 into this case. That term, I think Mr. Tigar represented  
4 it was the Defendant's initial depositions and the  
5 government picked up the spelling. Actually it wasn't  
6 mentioned in the Defendant's initial deposition. It first  
7 appears in the Defendant's first answers to interrogatories  
8 after that deposition with the spelling O E L B E R G.

9 THE COURT: Okay.

10 MR. DRIMMER: Just so the record is clear.

11 THE COURT: It doesn't change the essence of  
12 it.

13 MR. DRIMMER: I know.

14 MR. TIGAR: If I said deposition instead of  
15 interrogatory, Your Honor, I ask to be excused.

16 THE COURT: That's why I said it doesn't  
17 change the essence of it.

18 MR. DRIMMER: I feel bad bringing it up. I  
19 just wanted to --

20 THE COURT: All right.

21 BY MR. DRIMMER:

22 Q. You were asked about the Columbia archive,  
23 Dr. Menning. Have you been to this archive at Columbia?

24 A. Yes, sir, but not recently.

25 Q. Now, yesterday you were shown Defense Exhibit D 11,

## Menning - Redirect

1       which I am putting in front of you. Now, this mentions the  
2       ROA. What does ROA stand for?

3       A.     In English, the Russian Liberation Army.

4       Q.     And was this ever a real army?

5       A.     As such, if you look at ROA, no. Even Vlasov's army,  
6       so-called, was the army of the KONR.

7       Q.     And in 1943, in what form did ROA exist?

8       A.     In the minds of a number of officers in the  
9       propaganda section of OKW, that is the German armed forces  
10      high command, and among the propagandists who were  
11      circulating among the prisoner of war camps and trying to  
12      recruit crossovers for German service.

13      Q.     In 1943 and then after the war, was the ROA sometimes  
14      mistakenly referred to as being part of Vlasov's army?

15      A.     Yes, as such.

16      Q.     Reaching that conclusion, did you rely at all on the  
17      Fischer book, Opposition to Stalin, Soviet Opposition to  
18      Stalin, that we talked about yesterday?

19      A.     I not only relied on Fischer, I relied on a number of  
20      primary and secondary materials.

21      Q.     And do you believe that Fischer was reliable on this  
22      point?

23      A.     Exactly.

24      Q.     Do you mind reading the two paragraphs that I have  
25      indicated in the Fischer book on page 53?

## Menning - Redirect

1 A. We start on 52 and then go over to -- well --

2 Q. No. Yes, I'm sorry. The bottom of 52, and it  
3 begins, the last couple lines of 52. It begins, "When  
4 German and Vlasovite propaganda spoke of ROA, it was no  
5 more than a combination of hopes and promises. ROA was to  
6 be created by placing the hundreds of thousands of Soviet  
7 nationals in the Osttruppen," two T's, two P's, "under the  
8 unified command of a native ex-Soviet general. This was  
9 the dream, the blueprint. Until this date the survivors'  
10 references to ROA, to the," in quotes, "Vlasov army," end  
11 quote, "are in terms of this blueprint, rather than what  
12 actually happened."

13 Next paragraph. "It was at the fateful  
14 Hitler conference of June 8, 1943 that the aspirations of  
15 ROA, like those of the Russian National Committee, were  
16 relegated forever to the dust heap. Here was revealed just  
17 how deep and unremitting was Hitler's opposition to arming  
18 nonGerman troops, or in any way relying upon them.  
19 Throughout, he made it clear that he was willing both to  
20 use ROA for propaganda directed behind Soviet lines and to  
21 maintain most, if not all, of the Osttruppen already in  
22 existence. But to place the Osttruppen under a unified,  
23 ex-Soviet command was, to Hitler, totally out of the  
24 question."

25 And this is a quote now from Hitler. Quote,

Menning - Redirect

1 "I can only say this: We will never build up a Russian  
2 army, that's a phantom of the first order." End quote.  
3 Next paragraph.

4 "That is what the ROA, the Vlasov army," in  
5 quotes, "was in fact -- a phantom. To speak of ROA as  
6 anything else, and particularly as an actual formation  
7 under Vlasov's command, is wholly erroneous. Yet the  
8 practice persists, not only among outsiders, but even among  
9 surviving Soviet defectors themselves."

10 Q. Now, I think you were asked a question on this latest  
11 cross this morning on ostbaittliones?

12 A. Yes.

13 Q. What is an ostbaittlione. Do you want to spell it?

14 A. O S T B A I T T L I O N E. Those are in the  
15 aggregate. They are referred to as Osttruppen, two T's,  
16 two P's. These are battalion-size formations which  
17 constitute auxiliary military forces for the Germans, and  
18 usually they are recruited from among prisoners of war who  
19 have elected to go into German service, never really in  
20 size much beyond a detachment numbering 2 to 300 in  
21 strength. In fact, it was Hitler -- Himmler thoroughly  
22 discouraged any large sized units.

23 THE COURT: The term Osttruppen coming from  
24 the word "ost" meaning east.

25 THE WITNESS: Yes, Your Honor, east troops,

## Menning - Redirect

1 in other words, and that is why when yesterday, when  
2 defense showed me this document, and it actually originates  
3 with propaganda section OKW, and they are referring to an  
4 ROA in there or Russian Liberation Army because that's  
5 their agenda. They are pressing for it. These are the  
6 folks that want auxiliary help.

7 And then the dead giveaway in the rest of the  
8 document is from here on down, next three or four  
9 paragraphs. Each time it's referred to, it's Osttruppen,  
10 Osttruppen, Osttruppen.

11 Q. The record should reflect that Dr. Menning is talking  
12 about D 11. Was Vlasov's army, was that an ostbaittlione  
13 or Osttruppen?

14 A. Those units which come to be called Vlasov's army  
15 after the Prague declaration of November 14th, 1944, many  
16 of the troops that fall into those units, indeed, many of  
17 the troops that will fall into Shandruk's army come from  
18 Osttruppen units.

19 Q. Was Vlasov's army itself an ostbaittlione?

20 A. No, not as such, although the numbers -- well, it's  
21 better not to get into details.

22 Q. One more question, and this goes to the Dolle  
23 statement. If so, does the historical evidence permit you  
24 to say if a Russian soldier had been assigned to Heuberg in  
25 the summer of 1944, would that person have been assigned

1           there to be in Vlasov's army, the Vlasov's army division  
2           that would form in Heuberg?

3           A.     No, sir, because again, I will refer back to  
4           testimony yesterday. It would require somebody to read  
5           Himmler's mind since Himmler hadn't made up his mind, or at  
6           least had not stated that his mind was made up, until 16  
7           September, when he authorized General Vlasov to begin  
8           organizing the army of the KONR.

9                         MR. DRIMMER: I have no further questions,  
10           Your Honor.

11                        THE COURT: All right.

12                        MR. TIGAR: Nothing, Your Honor.

13                        THE COURT: All right. You may step down,  
14           Doctor.

15                        (Witness excused.)

16                        MR. DRIMMER: Your Honor, the United States  
17           rests.

18                        THE COURT: All right.

19                        MR. DRIMMER: Your Honor, we are going to  
20           give a list of exhibits, we are not going to waste court  
21           time by giving a list of exhibits that we are moving, and  
22           we will do it by paper.

23                        THE COURT: All right. Fine. Why don't we  
24           do that. Why don't you prepare a list of exhibits that you  
25           wish to have admitted, and then the defense can indicate to

1 the Court which of those exhibits it has no problem with  
2 and then the ones that it does have a problem with, and we  
3 will deal with them.

4 MR. DRIMMER: Thank you, Your Honor.

5 MR. TIGAR: Your Honor, at this time we move  
6 under Federal Rule of civil Procedure 50 for judgment as a  
7 matter of law. It is rare indeed in civil cases for these  
8 motions to be granted, but I hope the Court will indulge  
9 me, because I think it gives us an opportunity to say where  
10 we are --

11 THE COURT: All right.

12 MR. TIGAR: -- in the case. Now, a judgment  
13 as a matter of law is to be judged by the same standard in  
14 a way that the Court would use on summary judgment. That's  
15 what Justice Rehnquist said in the Celotex case and then in  
16 the other case in that trilogy, Anderson v. Liberty Lobby,  
17 that's the trilogy, the Court said, "Where a heightened  
18 standard of proof governs the Plaintiff's case, that  
19 heightened standard of proof must also be applied at the  
20 summary judgment or Rule 50 phase."

21 Here, of course, the standard of proof is  
22 almost up to beyond a reasonable doubt because as the  
23 Supreme Court said, to seek to denaturalize someone is to  
24 take away all that makes life worth living.

25 The issues in the case were defined initially

1 in the other case before Judge Battisti. Then Your Honor  
2 had the case and set aside that judgment, and by dismissing  
3 without prejudice indicated the seriousness of the matter  
4 and the desire to have the government come forward if it  
5 could. Then, of course, the complaint in this case was  
6 filed.

7 Now, the keystone of the government's case  
8 is, as it was at an earlier time, this Government's Exhibit  
9 Number 3. And I respectfully suggest that the more we know  
10 about Government's Exhibit 3 and the other documents, the  
11 less credible the whole enterprise begins to look.

12 There are two paths. One path begins at  
13 Kerch, the Battle of Kerch, where unquestionably it's  
14 common ground, Mr. Demjanjuk was captured along with  
15 120,000 other Soviets.

16 Another path could be said to begin in  
17 Dubovye Macharenzi, where there are a couple of Ivan  
18 Demjanjuks, but what we know about this World War II  
19 process is that in this huge battle identity cards, a lot  
20 of soldiers are captured without them, the question of  
21 identity is not something that can be verified, and  
22 ultimately, without Government's Exhibit 3, the government  
23 doesn't have a case at all.

24 Looking at Government's Exhibit 3, I  
25 respectfully suggest the question is, does it make a



1 picture? When a plaintiff has a burden of proof, I would  
2 analogize it to putting together a puzzle on the card  
3 table, which in the days before television sometimes we  
4 used to do. And if your burden of proof is only a  
5 preponderance, then you don't need all of the pieces  
6 particularly, you can supply the missing pieces by  
7 inference. But as the burden of proof goes up, the  
8 plaintiff is required to put more and more and more pieces  
9 in because it doesn't become more probable than not, it  
10 becomes this very much higher standard.

11 And also, of course, to continue this  
12 analogy, if there are pieces in the box that simply don't  
13 fit, then of course you can't make the puzzle.

14 What do we have here in this bureaucratic  
15 jumble? We have a card made out, and the government's  
16 historian admits based on information by people who may  
17 have a motive to lie, who do have a motive to lie; in fact,  
18 the evidence is, although we don't have a personnel pass to  
19 go with this card, that people would have to lie by denying  
20 they had ever been members of the communist party, by  
21 denying they ever had any Jewish ancestors, and so on.  
22 That is to say it originates in falsehood. It originates  
23 in treason by the person who joins up, and it originates in  
24 a situation where, as Dr. Sydnor said, there was total  
25 chaos as of mid 1943. And he has no evidence to show when

1 the total chaos was undone.

2 Moreover, we have 35 out of 9,000 of these  
3 cards. We have no personnel pass that relates to it. We  
4 have no pay book. We have no card file. In short, we have  
5 none of the corroborating matters that might help to link  
6 this particular one together.

7 What we do have is an error as to height.  
8 Unquestionably, the Mr. Demjanjuk who is here is not 175  
9 centimeters tall. He's certainly not the Mr. Demjanjuk  
10 that Danilchenko knew, who is 187 centimeters tall. The  
11 Mr. Demjanjuk who is here, and there's an exhibit in  
12 evidence, the government once asked for his dental records,  
13 doesn't have the teeth described by Litvinenko, whether you  
14 take those as bridgework or false teeth, or whatever, never  
15 did.

16 There's a conflict as to time. Danilchenko  
17 says there was a Demjanjuk, but he was already there when I  
18 got there. Engelhard, who I confronted Dr. Sydnor with,  
19 another error as to time. Razgonyayev doesn't recognize  
20 him. Then, of course, we have the KGB card file on Ivan  
21 Andreevich Demjanjuk which is similar in form to the KGB  
22 card with respect to this Jacob Reimer fellow. And on this  
23 KGB card it shows that there's an investigation going on  
24 with respect to Trawniki and these other places, but with  
25 respect to this other Iwan Demjanjuk, a fact that then ties

1 back to Danilchenko, for example, not remembering the  
2 patronymic.

3 So in short, no corroboration of Government's  
4 Exhibit 3. And you know, the Sixth Circuit in the case we  
5 cite, that Kalamazoo case, which is the 228 F.3d 648,  
6 discusses at great length the circumstances under which an  
7 ancient document can be admitted and the weight that may  
8 properly be given to it. I'm not going to read at length  
9 from the opinion. I think it's really a very scholarly and  
10 organized discussion.

11 And of course, if Government 3 isn't  
12 admissible in evidence because it doesn't meet the ancient  
13 document rule or if it does, it just gets a skosh over the  
14 line, so it can't possibly sustain their burden, then the  
15 whole case collapses. Why? Because if 3 doesn't refer to  
16 the man on trial, none of the other six documents do, and  
17 Dr. Sydnor admitted that to be the case.

18 But in addition to what is here, there is  
19 what is not, the lost opportunities. In 1981 -- let me  
20 preface, the government has often said in this case to us,  
21 you could have gone and taken discovery in the Ukraine, you  
22 could have done this, you could have done that. Well, I'm  
23 not going to answer that, but let's look at what they could  
24 have done.

25 Mr. Treifa, the Romanian Arch Bishop, when

1       this card was first in the United States custody in 1980  
2       and before it started being handled, they could have  
3       subjected it to fingerprint analysis of some kind. They  
4       would have had to negotiate with the Soviets to do it, but  
5       even in 1982-83 when it was in Israel, Mr. Epstein said the  
6       technology was there to do that. And of course, the Dr.  
7       Sydnor said since these fellows had sweaty clothes, there  
8       may very well have been the possibility of DNA. If we are  
9       going to do cases like this, all of this technology, all of  
10      this technology is available and they are not using it.

11               Our Exhibit B 7 reports that they even asked  
12      the FBI to do a photogrammetry kind of analysis which did  
13      not turn up anything that they wanted to use. And then  
14      finally, of course, signature comparison doesn't yield  
15      evidence of a match.

16               For that purpose, I would note that we have  
17      not offered Dr. Grant as satisfying modern Daubert  
18      standards. We have offered his testimony, which recites  
19      his qualifications, contrary to what others said, simply as  
20      something that should be considered in determining whether  
21      or not it's authentic; that is under Rule 104 Your Honor  
22      could consider it, whether it's admissible under 702 or  
23      not, and also as something that should have been considered  
24      by Dr. Epstein and Dr. Sydnor or Mr. Epstein and Dr. Sydnor  
25      under 702, 703, because they can rely on things of a kind

1       relied on by experts whether or not those are admissible in  
2       evidence.

3                   The government's case really rests largely  
4       upon the shoulders of Dr. Sydnor. Dr. Sydnor has publicly  
5       proclaimed that he was Ivan and should be hanged, now under  
6       oath says he is not Ivan and need not be. He has also  
7       proclaimed that his having a tattoo is of no significance,  
8       and now under oath -- that was in the report I read him --  
9       and now under oath saying his having a tattoo, it does.

10                   In baseball you can bat .500 and still lead  
11       the league, but I respectfully submit in a case of this  
12       kind, again, this bears on these admissibility questions  
13       with which the government has attacked us. It is important  
14       to note also why did Dr. Sydnor make a mistake in 1980  
15       about the tattoo? He says, well, if I'd had the  
16       Danilchenko protocol, I wouldn't have said that.

17                   Your Honor, this case, it's like Marley's  
18       ghost. Every time it comes in, Your Honor, it drags a  
19       chain behind it of past misdeeds. The Danilchenko protocol  
20       was the very one that was withheld from the defense at that  
21       point, and they were withholding it from their own expert,  
22       which he says caused him to make an unreliable  
23       determination.

24                   And, of course, the evidence that the  
25       government presents, again going to this admissibility

1 question, Dr. Menning says the archives are kept in a  
2 sloppy way, "crude and vandalous" is what Dr. Sydnor says.  
3 And yet, Dr. Menning says, contradicting Dr. Sydnor --  
4 Dr. Menning is a real historian, Your Honor. We might  
5 disagree about interpretation; this is a man who knows  
6 archives, and he says he can get into the archives. "Did  
7 you find anything about Demjanjuk?" "Not yet," he says in  
8 his expert opinion.

9 Well, if they had a man who could do it and  
10 who seems to say that he would be able to find more, then  
11 why in the world would they put him on the stand and have  
12 him testify about a universe of documents selected by OSI  
13 historians? He did no relevant archival research of his  
14 own in this case. He was invited to say grace over a meal  
15 that he had not cooked, and he did so. I don't question  
16 his honesty and I don't question his expertise, but I do  
17 question this technique, because not having him read the  
18 Sixth Circuit opinion, not having Dr. Sydnor read the Sixth  
19 Circuit opinion -- you know, one of the things we are  
20 supposed to learn in life, Your Honor, is to profit from  
21 our mistakes, and one of the things that experts are  
22 supposed to learn is how critiques of their past  
23 methodology could help them to better results in the  
24 future.

25 Now, I finish, Your Honor, where the

1 government finished, Your Honor. Dr. Menning's testimony  
2 consists of nothing more than this: The government attacks  
3 Mr. Demjanjuk for inconsistency. Well, I questioned  
4 Dr. Menning about that. The government attacks  
5 Mr. Demjanjuk for inconsistency? The government that got  
6 him almost hanged for being Ivan the Terrible attacks us  
7 for inconsistency?

8 Well, all right. Your Honor, at times we  
9 take a prior statement made by somebody on trial and we  
10 say, "Look, you gave a false alibi or a false exculpatory  
11 statement." Well, it's only false, Your Honor, if you  
12 believe the first part of their evidence that he was in  
13 Nazi service. Otherwise, it doesn't amount to anything. Is  
14 it inconsistent at different times? Does he get dates  
15 wrong? Does he get things mixed up? Yes. Do people who  
16 had a hard war make mistakes? They surely do, Your Honor,  
17 and six of them did the last time in front of Judge  
18 Battisti.

19 Would I attack those people as ill motivated,  
20 those people who survived that privation, that savagery?  
21 Of course I wouldn't. I wouldn't dare to, Your Honor.

22 Moreover, historical evidence, such as when  
23 did Himmler order this, when did this army do this, when  
24 was General Vlasov authorized, you know, before General  
25 Vlasov was authorized, the evidence is that people showed

1 up in these camps and started talking about trying to get  
2 this done. As early as 1943 they were talking about it and  
3 people were thinking about it and people were getting  
4 together about it. In short, historical documents of this  
5 kind record the ends of processes and not what led up to  
6 them.

7 At any rate, Your Honor, it is their burden.  
8 It is at most some circumstantial evidence, the validity of  
9 which depends on them having proved it at the front end.  
10 And I'm with Sir Arthur Conan Doyle. Sherlock Holmes said  
11 to Watson, "Circumstantial evidence, Dr. Watson, is like a  
12 stick on the ground. It points indisputably in one  
13 direction until you walk around and stand on the other  
14 side, and it points just as indisputably in the other  
15 direction."

16 If the Court please, I know I have a heavy  
17 burden at this moment. And if we go on with this case, we  
18 don't have much more that we would put in and the Court  
19 would consider it again, but I want at this moment to quote  
20 Bertrand de Jouvenel, the eminent conservative French  
21 philosopher, who said, "At times in our desire to see a  
22 particular result, we forget our most cherished convictions  
23 over who is competent to reach it and how it must be  
24 reached."

25 There are no live witnesses in this case.



1       There's not a single live witness who says, "I took this  
2       down, I saw this." We don't have any admissions, and I've  
3       not been able to find any other denaturalization case in  
4       which that was so, not a single one. There was at least  
5       some corroboration that the person had worked on this farm  
6       at a certain time, or admitted participation, and so on.

7                 Dr. Menning thinks that sort of survivor  
8       testimony is very reliable, disagreeing with Dr. Sydnor.  
9       But the end, Your Honor, as we look back on World War II,  
10      all of us who served in the uniform of our country have or  
11      should have asked ourselves what were we fighting for and  
12      what were we fighting against? One of the things we were  
13      fighting against is the power of a bureaucratic state to  
14      inflict harm on citizens based upon reports that came out  
15      of the writings of bureaucrats, and for that reason, Your  
16      Honor, I think this is a case about the kind of society  
17      that we want. I hesitate to say that. I don't know if the  
18      Court disagrees, but we respectfully request that the Court  
19      enter judgment as a matter of law.

20                THE COURT: All right. Thank you. Just a  
21      minute, Mr. Drimmer.

22                         (Pause.)

23                THE COURT: Okay. Mr. Drimmer, I'm sorry.  
24      The matter of technology is only as good as the plug-in.

25                MR. DRIMMER: Your Honor, I'll be very brief.

1 I'm not going to talk about French philosophy, but I will  
2 talk a little bit about baseball, which is something I know  
3 a little bit about.

4 Picking up on the metaphor, the Government  
5 Exhibit 3, the Trawniki service card is batting a thousand,  
6 Your Honor. Eight former judges in eight former  
7 proceedings it's been disputed, and it's found to be  
8 authentic and belonging to this defendant in all eight.

9 There are six other documents that have been  
10 presented in this case, wartime documents that have a name  
11 similar to the Defendant's. These documents are linked  
12 together by identification numbers, birth dates, by birth  
13 places, by photograph, by the name of Defendant's father,  
14 and by the clear sign of the scar on his back.

15 These documents are offered as a package,  
16 Your Honor, and they show that from 1942 until late 1944,  
17 the Defendant was, in fact, a collaborator with the Nazis  
18 at several sites of persecution. Our burden is established  
19 by these documents.

20 Beyond that, we have photo identifications,  
21 one of which was a defense in this case, the Ivchenko  
22 exhibit, and Danilchenko does quite clearly pick out the  
23 Defendant's photograph from three separate photo spreads.  
24 At no point has the defense talked about the 1949  
25 Danilchenko statement where he also remembers Iwan

1 Demjanjuk having a tattoo on his arm and serving with him  
2 at Sobibor and Flossenburg.

3 All of this evidence is also tied together by  
4 the Defendant's own post-war statements, on his immigration  
5 forms, to the IRO in 1948 he said that he lived in Sobibor,  
6 Chelm, Poland during the war, just as two of the  
7 government's wartime documents show and as Mr. Danilchenko  
8 remembers.

9 He reiterated that in his visa application, a  
10 sworn document which he gave while under oath, of course,  
11 and that also says that he lived in Sobibor during the war.

12 We talked about the authenticity of these  
13 documents, and we have presented evidence that they are  
14 ancient documents, that they satisfy various portions of  
15 the rules, 901 and 902. And beyond that, we have had these  
16 things forensically tested, and we have had heard the  
17 testimony of three forensic experts. They talked about the  
18 signatures, they talked about the stamps, they talked about  
19 the inks, they talked about the papers, they talked about  
20 the photograph. And the photograph, according to two of  
21 the experts, has been on that card since the beginning.  
22 The stamps were put on the card with that photograph on it,  
23 and, as Mr. Epstein and Mr. Stewart testified, those stamps  
24 do have recognizable defects that can be traced to Trawniki  
25 stamps.

1                   To turn to the Defendant's story, I'd like to  
2                   clear up a little bit of a misimpression. We are not just  
3                   attacking the inconsistency of the Defendant's story,  
4                   although we do submit it is an inconsistent story about his  
5                   wartime activities. We claim, and this is the essence of  
6                   Dr. Menning's testimony, that portions of his story are  
7                   simply impossible. He could not have been in Graz  
8                   before -- he could not have gone from Chelm to Shandruk's  
9                   army. The Chelm camp closed in May of 1944. Shandruk's  
10                  army doesn't begin to form until March of '45.

11                  He couldn't have been in Vlasov's army before  
12                  January of 1945, and he, of course, puts himself there  
13                  substantially before that time in his '84 testimony. So  
14                  it's not just a question of remembering dates, getting  
15                  dates mixed up. It's a question of impossible chronology.  
16                  He cannot be in some of the places that he claims.

17                  As far as the Chelm camp itself, when he was  
18                  first questioned about it under oath in 1978, as we saw, he  
19                  couldn't remember. He couldn't remember where he was. He  
20                  couldn't remember the name of the camp. And now he says he  
21                  was there for 18 months, certainly more than a year,  
22                  depending on the version.

23                  And this isn't a question of attacking  
24                  anybody personally. This is a question of trying to  
25                  reconstruct what a person says regarding or in light of the

1 historical evidence, and what he says just doesn't add up.  
2 It cannot add up under any of the scenarios that he  
3 constructs.

4 So Your Honor, in short, to close out, the  
5 government's documents, they have been shown to be  
6 authentic, they have been shown to be reliable. The other  
7 evidence we showed regarding the men admit being in the  
8 places where these documents place them, they have shown to  
9 refer to this defendant. Defendant's story is simply not  
10 plausible at times, impossible at other times. Our burden  
11 is more than satisfied as it regards this case.

12 I would like to make one final note, and this  
13 is something we can certainly submit a bench brief for Your  
14 Honor, but this is, I think, the second time now that  
15 defense counsel has said there's no other case in which  
16 it's only been documents or there haven't been eyewitnesses  
17 or an admission, and that is simply untrue. And sitting  
18 over there while Your Honor was having computer  
19 difficulties, I just off the top of my head wrote down four  
20 names, and I could probably over the course of the evening  
21 find substantial amount more.

22 But just so our record is clear, the Hammer  
23 case, H A M M E R, which of course was a Sixth Circuit case  
24 which was affirmed by the Sixth Circuit not very long ago;  
25 the Hajda, H A J D A, is another one; the Szehinskyj case

1       which Dr. Sydnor talked about, S Z E H I N S K I J, is yet  
2       another one; and I think in the Kairys, K A I R Y S, as  
3       well, there was no live witness to come testify that he was  
4       at the camp, although I'm not sure of that, but we can  
5       submit a bench brief on that certainly.

6                     In short, our comments are authentic and  
7       reliable. They refer to this defendant, and our burden is  
8       certainly satisfied for the purposes of the JMOL motion.  
9       Thank you.

10                    THE COURT: All right.

11                    MR. TIGAR: Very briefly replying, Your  
12       Honor, I was surprised to hear counsel speak about eight  
13       other courts having looked at this card. We have been  
14       restrained about referring to what happened in those other  
15       proceedings. Your Honor tried that matter and reached a  
16       decision with respect to it, and I won't say anything else  
17       except to note that with respect both to the card and that  
18       Sobibor business, having said Sobibor, the last time in  
19       front of Judge Battisti they used that to create an  
20       inference he was Ivan the Terrible at Treblinka, now they  
21       just want to turn it around. It's that same stick, which  
22       is the trouble with inferences.

23                    I note with respect to that that on  
24       Defendant's Exhibit F 5, which is the ABFDP registration  
25       record for Mr. Demjanjuk, which goes back to the immediate

1 post-war period, he gave his last permanent residence as  
2 Chelm. It is at a time when it was all fresh in his  
3 memory. That's where he said "That's where I was for a  
4 long period of time or the longest period of time as to be  
5 my residence." So that, I think, is a part of this mix as  
6 to what we make of these statements.

7 THE COURT: All right.

8 MR. DRIMMER: One statement, Your Honor?  
9 Apparently -- I was passed a note about the Kairys case, I  
10 want to correct the record. And I apparently misspoke on  
11 the Kairys case, but the other three cases --

12 THE COURT: All right. At this stage in the  
13 proceedings, I'm going to overrule the motion for judgment.  
14 I believe that the government has presented sufficient  
15 evidence to be able to deflect a motion at this point. And  
16 therefore, I will overrule the motion.

17 MR. TIGAR: Your Honor, may we be heard at  
18 side-bar very briefly and off the record with respect to a  
19 scheduling matter?

20 THE COURT: Certainly.

21 (At side bar off the record.)

22 (End of discussion at side bar.)

23 THE COURT: Do you want to take a short break  
24 right now?

25 MR. TIGAR: Yes, Your Honor.

Demjanjuk, r. - Direct

1 THE COURT: All right. We will take a  
2 ten-minute recess right now.

3 (Recess had.)

4 THE COURT: Okay, Mr. Tigar.

5 MR. TIGAR: Thank you, Your Honor. As we  
6 discussed at the side-bar conference off the record, we  
7 will, with the Court's approval, present a revised exhibit  
8 list which will contain the exhibits that we wish to  
9 withdraw and a brief explanation of any that we wish to  
10 have the Court look at that we haven't already identified.

11 I can tell the Court, there isn't anything in  
12 that latter group that isn't part of the government's  
13 discovery to us, that is, it's pretty obvious from the face  
14 of each one of those what it is.

15 Call John, Jr., John Demjanjuk, Jr.

16 JOHN DEMJANJUK, JR., of lawful age, a witness  
17 called by the Defendant, being first duly sworn, was  
18 examined and testified as follows:

19 DIRECT EXAMINATION OF JOHN DEMJANJUK, JR.

20 BY MR. TIGAR:

21 Q. Mr. Demjanjuk, would you tell us your full name and  
22 spell your last name for the court reporter, please?

23 A. My name is John Demjanjuk, Jr., last name is spelled  
24 D E M, like Mary, J A N, like Nancy, J U K.

25 Q. Are you the son of the John Demjanjuk who is on trial



Demjanjuk, r. - Direct

1 here?

2 A. I am.

3 Q. How old are you, sir?

4 A. I'm 36 years old.

5 Q. How old were you in 1977 when the earlier parts of  
6 this case began?

7 A. I was 11 years old.

8 Q. And during the succeeding years, the 24 years, have  
9 you helped out with the work on the case to the extent you  
10 could?

11 A. I definitely have. First when I was 11 I was part of  
12 it as a family member, but then when it came to the point  
13 of extradition, it was clear that there was a lot more help  
14 necessary, and I was old enough and met up with my  
15 brother-in-law, and we decided we needed to do something to  
16 help clear him and save him.

17 Q. What do you do for work?

18 A. Professionally, myself?

19 Q. Yes, sir.

20 A. I'm an executive recruiter.

21 Q. Now, between the time 1977 down to this date, how  
22 many times would you say you've talked to your dad about  
23 this case?

24 A. Countless. I couldn't put a number on it. Countless  
25 times, I would say. I just couldn't say. Not tens, you

Demjanjuk, r. - Cross

1 know, well over a hundred, I'm sure.

2 Q. And in 1977 were you living at home?

3 A. I was.

4 Q. And how long did you stay living at home with your  
5 mom and dad?

6 A. Until I was married in 1990.

7 Q. And how old were you then?

8 A. I would have been 25 years old.

9 Q. Are you and your dad pretty close?

10 A. Very close.

11 Q. Has he ever told you in words or substance that he  
12 helped the Nazis during the Second World War?

13 A. Never.

14 MR. TIGAR: Pass the witness.

15 THE WITNESS: I'd like to correct, I'm in my  
16 36th year, I'm not 36 yet.

17 CROSS-EXAMINATION OF JOHN DEMJANJUK, JR.

18 BY MS. JOHNSON:

19 Q. Good morning, Mr. Demjanjuk.

20 A. Good morning.

21 Q. You've been here for the entire trial, is that  
22 correct?

23 A. I have.

24 Q. And you've heard that there have been numerous,  
25 various pronunciations of your last name?

Demjanjuk, r. - Cross

1 A. Yes.

2 Q. And there have been various spellings of your last  
3 name in the documents that have been offered in evidence,  
4 is that correct?

5 MR. TIGAR: I object to that, Your Honor.  
6 There has not been various spellings of his last name in  
7 the documents.

8 THE COURT: Yeah. Well, of the last name.

9 Q. Of the last name, the name Demjanjuk. Has the name  
10 Demjanjuk also been -- what are the other pronunciations of  
11 the name? Is there a "dim-min-nuk," is that a  
12 pronunciation of your name, the family name?

13 A. Well, in English, when I was in school, I made it  
14 easy for the teachers and told them to pronounce it as it's  
15 spelled, so it was typically Demjanjuk. And in Ukrainian  
16 it's "dim-on-yuk." And you know, I typically don't correct  
17 people when they misstate it in their own pronunciation,  
18 because unless you have a Ukrainian tongue, you probably  
19 wouldn't say it right.

20 THE COURT: I know exactly what you mean

21 (Laughter.)

22 A. Or you are a prosecutor that's been working on this  
23 case for many years.

24 Q. Mr. Demjanjuk, could you, there's Volume 1 of the  
25 government's exhibits right to your left. Could you direct

Demjanjuk, r. - Cross

1 your attention to Exhibit 1? I know that you've been  
2 working on this case for a while. I wonder if you can  
3 identify what those parts of Exhibit 1 are.

4 A. Which part are you referring to?

5 Q. Start with 1.1.

6 A. I see in the index that it says it's form 7, dated --  
7 the exhibit list of the government says it's form 7, dated  
8 4/22/1947, under the heading "Excerpts from International  
9 Tracing Service records for Iwan Demjanjuk."

10 Q. Have you seen those exhibits before?

11 A. I think these exhibits I've seen only since the  
12 government produced the volumes at the start of this trial  
13 here in court.

14 Q. Are they exhibits that relate to the IRO process that  
15 your father was a part of?

16 MR. TIGAR: Objection, Your Honor. He's not  
17 shown to be knowledgeable about the IRO process. He's  
18 already testified he saw them first when they were produced  
19 in discovery in this case.

20 Object, outside the scope, lack of personal  
21 knowledge, 602.

22 A. I must say --

23 THE COURT: Wait, wait a minute.

24 THE WITNESS: I'm sorry.

25 THE COURT: His only testimony here is that

Demjanjuk, r. - Cross

1 he saw them for the first time when they were bound up for  
2 this presentation, so I don't know what he could testify to  
3 with respect to them.

4 BY MS. JOHNSON:

5 Q. Would it be fair to say that those are -- just one  
6 further question on this, Your Honor, if I may have your  
7 indulgence -- that those are documents that do relate to  
8 your father, John Demjanjuk, to your knowledge?

9 A. I honestly don't know.

10 MR. TIGAR: Objection, Your Honor, lack of  
11 personal knowledge.

12 THE COURT: All he would be doing would be  
13 reading the document, which he said he has not seen before.

14 MS. JOHNSON: I'll move on.

15 Q. Mr. Demjanjuk, you've testified that you've had a  
16 role in the investigation, the defense investigation in  
17 this case, for many years; is that correct?

18 A. That's correct.

19 Q. And your role goes back approximately 20 years?

20 A. No. I would say my active involvement would have  
21 started sometime at the time of extradition, which would  
22 have been, I believe, in 1985.

23 Q. In your role as an investigator, have you interviewed  
24 witnesses in Europe?

25 A. Well, I wouldn't refer to myself as an investigator,

Demjanjuk, r. - Cross

1 because I've never had any kind of professional training of  
2 any sort for being an investigator.

3 Did I travel to Europe? I did travel to the  
4 Ukraine, and I was in Israel, visited Yad Vashem, not for  
5 archival purposes but just as a visit to the Holocaust  
6 memorial, did travel to Washington, D.C.

7 Q. And besides English, you also speak Ukrainian; is  
8 that correct?

9 A. I do, yes.

10 Q. And you have an understanding of Russian, as well; is  
11 that correct?

12 A. No, that's incorrect.

13 Q. That's not correct?

14 A. No.

15 Q. You can --

16 A. I wouldn't say that I'm fluent in Ukrainian either.  
17 I do speak Ukrainian at a conversational level. My  
18 Ukrainian was much better when I lived at home over ten  
19 years ago. I married a nonUkrainian, so it's not spoken in  
20 my home today, and my understanding of it is a bit better  
21 than my ability to speak it. I haven't -- but when it  
22 comes to Russian, I've never studied Russian.

23 I could probably sit and read broken Russian  
24 because the Cyrillic letters are similar, but there are  
25 some letters in the Russian language that don't exist in

Demjanjuk, r. - Cross

1 the Ukrainian language, or vice versa, so I wouldn't  
2 understand what I was reading.

3 Q. Okay. In your role as working on the defense in this  
4 case, have you ever used tape recorders to transcribe the  
5 interviews with witnesses?

6 A. No.

7 Q. How about taking notes, have you taken notes?

8 A. I may have taken notes.

9 Q. But you haven't taken notes on a regular basis during  
10 the course of your interviews?

11 A. No.

12 Q. There's been quite a bit of testimony about an  
13 individual named Danilchenko in this proceeding, who was  
14 described as a Trawniki-trained guard at Sobibor and  
15 Flossenburg. The defense has known about the existence of  
16 Mr. Danilchenko since 1979; isn't that correct?

17 A. I understand from the discovery --

18 MR. TIGAR: Again, Your Honor, lack of  
19 personal knowledge. He's now being asked about discovery  
20 production in 1979 when he was 13.

21 MS. JOHNSON: Your Honor, Mr. Demjanjuk has  
22 sat in on the interrogatories -- I mean on the depositions  
23 of Mr. Nishnic, adopted them as his own, and I'm going to  
24 go into evidence that was presented in the first trial in  
25 1981, and we will elicit whether or not he attended that

Demjanjuk, r. - Cross

1 trial and has any knowledge of that.

2 THE COURT: Your questions will have to be  
3 based on his personal knowledge.

4 MS. JOHNSON: That's right.

5 MR. TIGAR: Your Honor, I would note that  
6 both Mr. Demjanjuk, Jr. and Mr. Nishnic, I believe, were on  
7 the government's exhibit list at least at one time. They  
8 could have called them. They took their depositions.

9 THE COURT: You mean the witness list?

10 MR. TIGAR: Witnesses list, excuse me. They  
11 took their depositions, they could have offered them, but  
12 I'll take it question by question, Your Honor.

13 BY MS. JOHNSON:

14 Q. Going back and correcting my question, the defense  
15 has known about the existence of Mr. Danilchenko since  
16 1977; isn't that correct?

17 MR. TIGAR: Objection, lack of personal  
18 knowledge.

19 THE COURT: You have to ask if he knows that.

20 THE WITNESS: Are you asking me, Your Honor?

21 THE COURT: No, I'm asking her to ask you.

22 (Laughter.)

23 Q. Do you know that?

24 A. I know that from having read the interrogatory  
25 responses from the government that mentioned the name



Demjanjuk, r. - Cross

1 Danilchenko.

2 Q. And Mr. Danilchenko --

3 A. But not the testimony. It was just the name.

4 Q. -- was on the list of possible people, persons with  
5 knowledge in connection with this case; is that correct?

6 MR. TIGAR: Objection, Your Honor, unless  
7 there's a foundation. Lack of personal knowledge.

8 Q. Mr. Demjanjuk, you assisted your father in preparing  
9 the answers to the interrogatories that he signed in  
10 connection with this case; is that correct?

11 A. In connection with the current action.

12 Q. Yes.

13 A. Yes, that's correct.

14 Q. So you are familiar with the answers to the  
15 interrogatories because you helped your father prepare  
16 them; is that a fair statement?

17 A. "Familiar" is fair. I don't remember them verbatim.  
18 I would have to be looking at them to give you any specific  
19 answer regarding them. That was a lot of documents ago.

20 Q. I understand. But you are familiar with the name  
21 Mr. Danilchenko?

22 A. I am.

23 Q. Okay. And when did Mr. Danilchenko's name first come  
24 to your attention? Maybe that's the easiest way to get to  
25 that.

Demjanjuk, r. - Cross

1 A. I would say it would have been sometime during the  
2 Nishnic versus Department of Justice FOIA action in  
3 Washington before Judge Oberdorfer, where my brother-in-law  
4 put an action to the government to force them to release  
5 the Danilchenko protocol.

6 Q. So you never knew about Mr. Danilchenko prior to the  
7 late '80s? Is that your testimony?

8 A. Yes. I mean I certainly didn't know of him when that  
9 answer was given in 1979. I mean I wasn't reading the  
10 government's responses.

11 Q. And you are not aware of anything about  
12 Mr. Danilchenko, and articles referring to Mr. Danilchenko  
13 were offered into evidence in the first trial, United  
14 States versus John Demjanjuk?

15 A. I'm aware of that now. I was not aware of that at  
16 that time. I was not that involved. I was a family member  
17 that attended court. I was not even at every session of  
18 the court, and I'm not certain today as to whether I was  
19 there when that actually happened before Judge Battisti.

20 You are referring to when the Soviet way  
21 article that referred to Danilchenko was submitted to Judge  
22 Battisti and the government objected to it on hearsay  
23 grounds?

24 Q. Right. You had seen that exhibit, right?

25 A. Yes, I have seen that exhibit.

Demjanjuk, r. - Cross

1 Q. And you are aware that it was offered in the 1981  
2 trial?

3 A. I'm aware that I believe John Martin offered it as  
4 evidence, and the government objected to it. I think it  
5 was accepted, and then the government objected to it and  
6 successfully kept it out of that proceeding while they had  
7 the Danilchenko protocol itself, not disclosed to us, until  
8 Judge Oberdorfer ruled that it was to be disclosed, and it  
9 was given to us at that time, in the mid '80s.

10 Q. Showing you what has been marked as Plaintiff's  
11 Exhibit 106, is that the document that was offered by the  
12 defense in the 1981 trial?

13 A. I believe it is, yes, or some version of this. I'm  
14 not certain that this is exactly the one, but something --  
15 this or a version of this. I wouldn't think that the one  
16 that was offered was much different, if at all.

17 Q. And in this article, this individual,  
18 Mr. Danilchenko, placed Iwan Demjanjuk at Sobibor and  
19 Flossenburg, is that correct?

20 A. According to this article, that's correct. I don't  
21 know if that's the reason why Mr. Martin -- that may be the  
22 reason why Mr. Martin was trying to submit it, to show the  
23 conflict with the Treblinka evidence. I don't recall right  
24 now.

25 Q. Did the defense team ever seek to interview

Demjanjuk, r. - Cross

1 Mr. Danilchenko any time between that trial and his death,  
2 which on the record is 1985?

3 A. I don't know if Mr. Martin made any effort to contact  
4 Mr. Danilchenko when he was still alive.

5 Q. You didn't make any attempt to contact him?

6 A. I did not personally, no.

7 Q. To your knowledge, did your brother-in-law, Ed  
8 Nishnic, make any attempt?

9 A. I don't believe so. In the time that we've been  
10 working together on this, because it was the evidence of  
11 the Treblinka survivors that we were focused on and the  
12 allegation that my father was Ivan the Terrible, it was our  
13 mission from the beginning to find Ivan because we knew  
14 that my father was not Ivan the Terrible. And Danilchenko,  
15 I don't think, led us in that direction at all, so I don't  
16 think my brother-in-law made any effort to contact him.

17 Q. So whether or not your father was the Iwan Demjanjuk  
18 that was at Sobibor or Flossenburg at that point in time is  
19 not relevant to you?

20 A. At which point in time?

21 Q. Between the trial, when you sought to introduce this  
22 article, and 1985, when you could no longer interview him?

23 A. Well, I believe I testified that it was only in 1985  
24 that I became involved in the defense, and prior to that I  
25 was just, I mean I was a family member that attended some

Demjanjuk, r. - Cross

1 of the proceedings.

2 Q. Okay. I want to direct your attention to 1990. I  
3 understand that the defense had an interview with Nickolai  
4 Malagon. Mr. Malagon was a former guard in the German  
5 service who served --

6 MR. TIGAR: Excuse me, Your Honor.

7 Q. -- who served at Trawniki during at least a  
8 period --

9 MR. TIGAR: This is testimony, Your Honor,  
10 it's not a question. I object to it.

11 Q. Is it true, Mr. Demjanjuk, that Mr. Malagon was a  
12 former guard in the German service who was allegedly at  
13 Trawniki during at least a period of time that the  
14 defendant allegedly was there?

15 MR. TIGAR: Objection.

16 Q. Is that your understanding?

17 MR. TIGAR: Objection. Lacks personal  
18 knowledge, Your Honor.

19 THE COURT: Well, if he has no personal  
20 knowledge, he can answer "I don't know."

21 A. I can only recall what I had read of the Malagon  
22 interview report that we received from the Justice  
23 Department, and I recall that he was in Treblinka, and I  
24 don't recall what he had said about Trawniki, though.

25 Q. Okay. In August of 1990, you, Mr. Sheftel, who was

Demjanjuk, r. - Cross

1 one of your father's attorneys in Israel, and a Jaroslau

2 D O B R O W O L S K Y J --

3 THE COURT: Dobrowolskyj.

4 A. Yes.

5 Q. Yes -- traveled to the Ukraine to interview

6 Mr. Malagon, is that correct?

7 A. That's correct.

8 Q. Who was the last individual? Was he also an attorney

9 for your father?

10 A. Mr. Dobowolskyj?

11 Q. Yes.

12 A. Yes, the late Mr. Dobowolskyj. He passed away since

13 then. He was not an attorney of record. He was somebody

14 who was assisting us from the Ukrainian community.

15 Q. So the three of you went to Mr. Malagon's home to

16 interview him, is that right, in August of 1990?

17 A. Yes.

18 Q. And you did interview him, right? The team did

19 interview him?

20 MR. TIGAR: Objection, Your Honor, relevance.

21 THE COURT: Overruled at this point.

22 A. He was interviewed, and I'm certain he was

23 interviewed by Mr. Sheftel and that Mr. Dobrowolskyj was

24 present. I don't recall today, nor did I when I was asked

25 about this in the previous deposition, whether I was

Demjanjuk, r. - Cross

1 actually present during that interview. I recall being at  
2 his residence with Mr. Sheftel and Mr. Dobrowolskyj, but  
3 who actually did the interviewing, I would assume that that  
4 was Mr. Sheftel.

5 Q. This interview was important to you, right?

6 A. It was important, yes.

7 Q. And you traveled to the Ukraine as part of this team  
8 to undertake that interview, didn't you?

9 A. Yes. I was assisting Mr. Dobrowolskyj and  
10 Mr. Sheftel.

11 Q. But to your recollection, you didn't even participate  
12 in the interview?

13 A. No, I don't recall having any participation in the  
14 interview at all.

15 Q. You didn't -- you've never seen any notes of that  
16 interview, have you?

17 A. No, I don't believe I have.

18 Q. And you didn't ask what Mr. Malagon said, did you?

19 A. Oh, I'm sure I would have asked what Mr. Malagon had  
20 said. It was of interest. That's why we went there. And  
21 the only thing that I recall of anything being said --

22 MR. TIGAR: Excuse me, Your Honor. We have  
23 on the record argued back and forth this question of  
24 privilege, and if the witness is about to recount a  
25 conversation that he had with Mr. Sheftel, he,

Demjanjuk, r. - Cross

1 Mr. Demjanjuk, being an agent of the Mr. Demjanjuk who was  
2 in jail in Israel, then it would be covered by the  
3 lawyer-client privilege under any interpretation, he being  
4 a person whose presence was necessary for the provision of  
5 professional legal services.

6 MS. JOHNSON: Well, Your Honor, I don't  
7 believe that this witness is going to testify to the  
8 substance of any conversations. My line of questioning  
9 actually is to show the absence of conversation.

10 THE COURT: All right.

11 MR. TIGAR: Your Honor, I have no objection  
12 to taking it subject to a motion to strike, if that's  
13 understood not to be a waiver.

14 THE COURT: Right. All right.

15 MR. TIGAR: If that's acceptable to the  
16 Court, I'll stop interrupting.

17 THE COURT: That's fine. We will do it that  
18 way, and I'll try to stop the witness if he gets into areas  
19 that are privileged.

20 MR. TIGAR: Thank you.

21 THE WITNESS: Can I have the question again,  
22 please?

23 MS. JOHNSON: Could the court reporter read  
24 back the last question?

25 THE COURT: Actually, I think there wasn't a



Demjanjuk, r. - Cross

1 question at the moment. You had answered it and then you  
2 went on, so ask another question.

3 MS. JOHNSON: Okay.

4 BY MS. JOHNSON:

5 Q. You have never seen a report of the substance of that  
6 interview as well, have you?

7 A. No, I don't have any knowledge that one was ever  
8 made.

9 Q. Now, you became aware at a later time that  
10 Mr. Dobrowolskyj had made a tape of that interview, is that  
11 correct?

12 A. Yes.

13 Q. And that tape has never been provided to the  
14 government, has it?

15 A. Not to my knowledge. I didn't know of its existence  
16 myself.

17 Q. The government has requested that the defendant turn  
18 over any documents or other evidence relating to those  
19 interviews with Malagon or other interviews at that time,  
20 and nothing has been produced, has it?

21 A. No, I believe we've produced everything that we've  
22 had, and in what we have there were no reports, to my  
23 knowledge, ever created, not created by me or anybody else  
24 that I've ever seen, regarding the Malagon interview.  
25 There were discussions, discussions that took place

Demjanjuk, r. - Cross

1 immediately afterwards with Mr. Sheftel, and to my  
2 knowledge and recall, that's all that there ever was.

3 Q. So you went to the Ukraine to do this important  
4 interview and never memorialized it?

5 A. I recall we were hoping for much more than what was  
6 received, and as far as my recollection goes, he was senile  
7 and did not --

8 Q. I'm not asking about that.

9 MR. TIGAR: Excuse me, Your Honor. She's  
10 interrupting him.

11 A. He was senile and --

12 THE COURT: He may be getting into the  
13 substance of conversation. I don't think you want that.

14 MR. TIGAR: Well, Your Honor, I think what  
15 he's saying is based on his personal observation. If not,  
16 then of course I withdraw my objection.

17 Q. You were there, it was important to you, there were  
18 never provided any notes to you, is that correct?

19 A. That's correct.

20 Q. There was a tape that was made, you have not heard  
21 the tape, is that correct?

22 A. That's correct.

23 Q. And the tape is no longer in existence, to your  
24 knowledge, is that correct?

25 A. I don't have any knowledge of it one way or the

Demjanjuk, r. - Cross

1 other.

2 Q. And you never heard the tape?

3 A. We have certainly never had it in our possession, nor  
4 known of it.

5 Q. So therefore, you have not heard the tape?

6 A. No. The only thing I know of the tape is what  
7 Mr. Dobowolskyj said about it in his deposition before he  
8 died.

9 Q. Mr. Demjanjuk, you have visited relatives of your  
10 father in the Ukraine, is that true?

11 A. That is true. Of my -- yes, that's true.

12 Q. And could you describe who those relatives are that  
13 you have visited?

14 A. I visited with the, I'm not sure if it's the second  
15 cousin or third cousin. It was one of the women that was  
16 questioned by Soviet authorities that now lives in the  
17 Crimea. I think her name --

18 Q. Maria? Is that her name?

19 A. I think it was the one that was -- I don't remember.  
20 If you give me a last name I probably would be able to  
21 recall.

22 Q. How about Leda Ganevich?

23 A. That's the one I'm thinking of. Leda Ganevich.  
24 She's the one that lives near the Crimea.

25 Q. Did you also talk to Maria Demjanjuk?

Demjanjuk, r. - Cross

1 A. I did for probably about five minutes. That was a  
2 visit, it wasn't the purpose of the trip, but it was a  
3 visit to see what Dubovye Macharenzi was like during my  
4 visit to the Ukraine.

5 Q. And you have said that there was nothing that she  
6 knew about the facts of the case that were relevant,  
7 correct?

8 MR. TIGAR: Object to the hearsay, Your  
9 Honor.

10 THE COURT: What?

11 MR. TIGAR: That is to say, he is being asked  
12 to say what he said on a prior occasion about what someone  
13 said to him.

14 THE COURT: Well, she wasn't asking about  
15 what someone said to him. She was asking about what he  
16 said.

17 A. That's true, but I don't remember exactly what I said  
18 in the past about it.

19 Q. Okay. I am showing you a copy of your deposition  
20 that was taken on February the 17th, 2000, and I'd like to  
21 direct your attention to -- may I approach the witness,  
22 Your Honor?

23 THE COURT: Yes.

24 Q. -- to page 59.

25 THE COURT: Is there an exhibit?

Demjanjuk, r. - Cross

1 MS. JOHNSON: No, this is not an exhibit.

2 A. Yes.

3 Q. Does that refresh your recollection?

4 A. Yes.

5 Q. Okay. Thank you. What was it you said -- your  
6 recollection having been refreshed, what was it that you  
7 testified to as to their knowledge of the facts in the  
8 case?

9 A. I said in that deposition that it was a personal  
10 meeting to visit for the first time a relative from  
11 Ukraine, and I didn't think she had any personal knowledge  
12 about the events at all, and we spoke about her -- I wasn't  
13 asked anything further in that deposition. If I was, I  
14 would like to see it.

15 Q. You said they certainly had nothing that they could  
16 know about the relevant facts of this case. Isn't that  
17 what you just said?

18 A. Yes, that was my opinion.

19 Q. And that's how your recollection was refreshed?

20 A. Yes, that was my opinion, yes.

21 Q. Cousin Maria, she is a cousin of your father's,  
22 right?

23 A. Yes.

24 Q. She wrote letters to your father while he was in  
25 Israel?

Demjanjuk, r. - Cross

1 A. I've heard that, yes.

2 Q. Since this lawsuit, this case was filed, you have not  
3 spoken to those individuals in the Ukraine or Crimea since  
4 the filing of this lawsuit, have you?

5 A. No.

6 Q. The government made some initial disclosures in this  
7 lawsuit which listed individuals that the United States  
8 thought were possibly persons with knowledge. Have you  
9 seen those?

10 A. I can't say right now if I saw them or not. If you  
11 showed them to me now, I may have a recall of it.

12 Q. Have you --

13 A. Please, I mean, as you know, we have been given over  
14 60,000 pages of documents and 12 CDs totaling probably  
15 another 75,000 pages, and while I've had these things in my  
16 possession from one time or another, I could certainly not  
17 sit here and say I've seen every single one of them.

18 Q. I certainly understand that. Let me simplify it a  
19 little bit. Since the filing of this lawsuit have you  
20 interviewed anyone that was on the list provided by the  
21 government?

22 MR. TIGAR: Objection. The question assumes  
23 a fact not evidence. He says he doesn't remember what's on  
24 that list.

25 MS. JOHNSON: I'm trying to simplify it in an

Demjanjuk, r. - Cross

1 across-the-board question as to any investigations in  
2 response to information that has been provided by the  
3 government.

4 A. To be accurate, I would have to see the list and then  
5 be able to give an accurate response as to whether -- I  
6 don't think so, but I'd be happy to review the list and be  
7 certain of it.

8 Q. Okay. Well, you know the investigations that you've  
9 undertaken, is that correct?

10 A. Yes.

11 Q. And have you gone to Europe to or the Ukraine or the  
12 Crimea to undertake any investigations since the filing of  
13 this lawsuit?

14 A. No.

15 Q. Your father claims that he was a prisoner in a  
16 prisoner of war camp in Chelm, Poland, after his capture by  
17 the Germans. Is that a fair statement?

18 A. Yes.

19 Q. You have never interviewed any person who stated that  
20 he was at Chelm during the time that he claimed he was,  
21 have you?

22 A. An eyewitness that would have been there with him?

23 Q. Right.

24 A. No. No, we've never found one.

25 Q. During your involvement in this case, have you ever

Demjanjuk, r. - Cross

1 discovered any statement by any person other than your  
2 father that he was at a prisoner of war camp in Chelm at  
3 any time during the war?

4 A. No, we have never found a witness or statement of a  
5 witness that said he was with my father. Of all the things  
6 I've read, I've not seen anything like that.

7 Q. And you haven't seen any documents indicating that he  
8 was at Chelm?

9 A. Yes, I have seen documents. Mr. Tigar referred to  
10 one of them today. It was a DP application that I believe  
11 was signed in '47 that listed his residence as Chelm.

12 MR. TIGAR: If Your Honor please, I object  
13 under 403. This is a memory contest about a body of  
14 documents that runs into some 200,000 pages, and I just  
15 don't think that whatever this witness's recall about what  
16 is or isn't in that document base is helpful to the Court,  
17 so I object to it under 403.

18 MS. JOHNSON: I'm really not talking about  
19 the document base. I'll narrow the question a little bit,  
20 Your Honor.

21 THE COURT: All right.

22 Q. Have you seen any German wartime documents indicating  
23 that your father was at Chelm at any time during the war?

24 A. No.

25 Q. Now, it's your father's position that the Germans



Demjanjuk, r. - Cross

1 took him to Graz, where he spent some time, and you've not  
2 interviewed anyone who was at Graz during the time that  
3 your father claims he was there, have you?

4 A. No, I don't believe we've identified anybody that was  
5 there or interviewed anybody.

6 Q. And over your course of involvement with this  
7 lawsuit, or previous lawsuits, the defense generally, you  
8 haven't come across any German wartime documents that would  
9 have indicated that your father was at Graz either, have  
10 you?

11 A. No.

12 Q. Turning now to Heuberg, Germany, H E U B E R G, which  
13 has been referred to, your father claims that he joined  
14 Vlasov's army at Heuberg, Germany. Is that a fair  
15 statement?

16 A. Could you repeat that?

17 Q. Your father claims that he joined Vlasov's army in  
18 Heuberg, Germany. Is that correct, is that his position?

19 A. Yes, I think it is, yeah. I think the word "joined,"  
20 I'm not sure that he actually voluntarily did anything at  
21 any time, but I believe he's testified to that.

22 Q. Okay. You have not interviewed anyone that was in  
23 Heuberg during the time that your father claims he was  
24 there, have you?

25 A. No.

Demjanjuk, r. - Cross

1 Q. You have not come across a statement of any person  
2 other than your father who stated that your father was at  
3 Heuberg during the war, have you?

4 A. That's incorrect. In the documents that were  
5 provided by the government, there was a statement of a man  
6 named Dubovetz who stated that he did see my father in  
7 Heuberg.

8 Q. You have not come across any witnesses or statements  
9 showing that your father arrived before January, 1945, have  
10 you?

11 A. I'm not --

12 MR. TIGAR: I object to that, Your Honor.  
13 The whole question of when people arrived was the Dolle  
14 statement, which is all the cross-examination of  
15 Dr. Menning. We are asking the witness to characterize the  
16 witness evidence. The form of the question was "that show  
17 that your father arrived." If by "show" we mean the normal  
18 thing, basis for an inference, then the question is simply  
19 argumentative.

20 MS. JOHNSON: I'm not trying to be  
21 argumentative. I'm just trying to elicit whether or not he  
22 is aware of any witnesses or statements showing his  
23 father's arrival before January, 1945.

24 THE COURT: All right. The objection is  
25 overruled.

Demjanjuk, r. - Cross

1 A. I believe that's incorrect, also. If memory serves  
2 me right, that witness who said that my father was in  
3 Heuberg arrived there in January, '45 and said that my  
4 father was already there, which would be an indication to  
5 me that he would have been there prior to January, '45.

6 Q. Mr. Dubovec says he himself arrived in January, 1945,  
7 is that correct?

8 MR. TIGAR: If Your Honor please, I object,  
9 and our respectful submission, it's inappropriate. The  
10 lawyer is arguing with the witness about documents that are  
11 either in evidence or they are not.

12 MS. JOHNSON: Okay.

13 THE COURT: Yeah, this is not a proper  
14 question.

15 MS. JOHNSON: I understand, Your Honor.

16 Q. Okay. I may go back to this, but I want to follow up  
17 on another line here. Mr. Demjanjuk, you were interviewed  
18 by Vanity Fair magazine back in 1992, is that correct?

19 A. That sounds correct. I recall that.

20 Q. And you were interviewed rather extensively and  
21 quoted rather extensively, is that true?

22 A. I think we spent a day with a reporter.

23 Q. And during the course of that interview, you were  
24 posed a hypothetical. Many hypotheticals have been posed  
25 today, so I feel comfortable referring to the hypothetical

Demjanjuk, r. - Cross

1 that you were posed. You were asked, "If my father were to  
2 stand up today and say that I lied, I was a guard  
3 someplace," you indicated that his service as a guard would  
4 be no more culpable than a Jew that had made the decision  
5 to live and spend 12 months pulling gold out of the mouths  
6 of a corpse; is that correct?

7 A. I remember making a similar statement. If I could  
8 read the article, I could tell you certainly, but I did  
9 make a similar statement to that.

10 MR. TIGAR: Your Honor, I object to the last  
11 statement and ask that it be stricken.

12 A. I --

13 THE COURT: Just wait. Objection sustained.  
14 I'll grant the motion to strike.

15 MS. JOHNSON: Excuse me, Your Honor, I didn't  
16 hear the objection. I was conferring with counsel.

17 THE COURT: The objection was to the last  
18 statement, and I sustained the objection and ruled that it  
19 be stricken.

20 MS. JOHNSON: What were --

21 THE COURT: What he thinks about the moral  
22 culpability is irrelevant to the issues in this case.

23 Q. Mr. Demjanjuk, you have not asked your father for any  
24 sweat samples in order to do a DNA test, have you?

25 A. No.

1 Q. You have not obtained any fingerprints from him in  
2 order to match fingerprints on any exhibits, have you?

3 MR. TIGAR: Your Honor, objection, Your  
4 Honor. She already showed him an exhibit this morning that  
5 had his thumbprints on it. It's in the 1 series.

6 THE COURT: I don't think he's talking about  
7 those kind of fingerprints.

8 A. No. I know there is --

9 THE COURT: Wait.

10 MR. TIGAR: No question pending.

11 MS. JOHNSON: That's all, Your Honor.

12 THE COURT: All right.

13 MR. TIGAR: No redirect, Your Honor.

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

15 (Witness excused.)

16 THE COURT: Did you want to take a break at  
17 this time?

18 MR. TIGAR: Yes, Your Honor. We would ask  
19 that the Court take the luncheon recess at this time.

20 THE COURT: All right. We will do that. We  
21 will recess for lunch at this time, and we will reconvene  
22 at 1:00 o'clock.

23 (Whereupon, at 11:40 a.m., the luncheon  
24 recess was had, to reconvene at 1:00 p.m. the same day.)

25

1 AFTERNOON SESSION, THURSDAY, JUNE 7, 2001 1:05 P.M.

2 MR. TIGAR: Good afternoon, Your Honor.

3 THE COURT: Mr. Tigar.

4 MR. TIGAR: I spent the lunch hour with the  
5 Demjanjuk family reviewing the evidence, and in light of  
6 that evidence and the events of this morning, and in light  
7 of Government's Exhibit 100, which is Mr. Demjanjuk's July,  
8 2000 deposition, the defense rests.

9 THE COURT: All right.

10 MR. DRIMMER: Your Honor, we are not going to  
11 put on any rebuttal witnesses. We have some rebuttal  
12 exhibits that we will put in, I don't think they are going  
13 to be anything that is too shocking.

14 We will put in the deposition of  
15 Mr. Demjanjuk, Jr. and the deposition of Mr. Nishnic and  
16 the deposition of Mr. Dobrowolsky, who was referred to, and  
17 there may be two others, but it's not anything shocking,  
18 and I don't think it's going to be anything that the  
19 defense is too surprised about.

20 THE COURT: Okay.

21 MR. TIGAR: I was present at most of those  
22 depositions, Your Honor. I don't think there will be a big  
23 problem with it. There may be some relevance questions.  
24 We can raise those.

25 THE COURT: How do you want to do evidence

1 matters on this? Do you want to exchange your witness  
2 lists and then come back for one day in court with respect  
3 to arguments or do you want to do it all by paper?

4 MR. DRIMMER: We would suggest doing it all  
5 by paper. That would be the government's request, Your  
6 Honor.

7 MR. TIGAR: I don't have any problem doing it  
8 with paper, Your Honor. As I said, most of our exhibits  
9 are things that have long ago been in this litigation. I  
10 think we are all pretty well familiar with it, and I can't  
11 imagine there's anything they would want to offer that we  
12 would have any objection to that couldn't be ruled on on  
13 paper.

14 THE COURT: Okay. Then what I will do is, I  
15 will defer any consideration of the case until I have had  
16 your lists of exhibits that you wish to offer and I have  
17 had a chance to rule on any objections or issues that you  
18 raise with respect to those exhibits.

19 MR. TIGAR: May we have then -- I'm at Your  
20 Honor's disposition with respect to schedule. If we could  
21 have seven days to exchange them, which would be a week  
22 from today.

23 THE COURT: Okay.

24 MR. TIGAR: That's a Thursday -- wait a  
25 minute, what day of the week is it?

1 THE COURT: This is Thursday.

2 MR. DRIMMER: It's still Thursday.

3 MR. TIGAR: I've lost track. If we could  
4 then have until the following Tuesday to submit the results  
5 of that mutual exchange, that is our mutual comments --

6 THE COURT: You can do that. I'll let do you  
7 that. Just keep in mind that I'm no different than anyone  
8 else, and the longer one gets away from something, the  
9 harder it is to recall, even though I have the record.

10 MR. TIGAR: Would Your Honor prefer a  
11 speedier schedule? I think we could exchange lists --

12 MR. DRIMMER: Tomorrow. We would be fine  
13 doing it tomorrow.

14 THE COURT: Inasmuch as this is a heavily  
15 documentary matter, it probably won't make too much  
16 difference if you take the amount of time you originally  
17 asked for.

18 MR. TIGAR: Thank you, Your Honor.

19 THE COURT: Okay.

20 MR. DRIMMER: What is Your Honor's preference  
21 on post-trial briefs, as well as a revised findings of  
22 fact, conclusions of law in light of the evidence and the  
23 transcripts?

24 THE COURT: Well, I think having revised  
25 proposed findings of fact and conclusions of law would make



1 sense based on the evidence, because your original ones had  
2 to be submitted without the benefit of the evidence, but I  
3 would hope that you would be able to do that within a short  
4 period of time as possible.

5 MR. TIGAR: As to that, Your Honor, what  
6 would the Court prefer, because we've had daily copy thanks  
7 to Your Honor's order.

8 THE COURT: Do you want to have the exhibits  
9 finalized before you do that or do you want to be working  
10 on that at the same time you are working on the exhibit  
11 list?

12 MR. DRIMMER: We are ready to do them both  
13 and plug away.

14 MR. TIGAR: So are we, Your Honor.

15 THE COURT: All right. Fine. Then do you  
16 want the same amount of time or do you want a longer period  
17 of time to file those?

18 MR. TIGAR: If we could have for the filing  
19 of our post-trial submissions a week from next Tuesday, we  
20 would be able to meet that on our side, Your Honor.

21 THE COURT: Okay.

22 MR. DRIMMER: And that's for the findings of  
23 fact and conclusions of law.

24 MR. TIGAR: Yes.

25 THE COURT: Okay.

1                   MR. DRIMMER: That would be fine, Your Honor.  
2                   In terms of post-trial briefs, what is Your Honor's  
3                   preference? It would be the government's position we would  
4                   like -- we usually request post-trial briefing and tend to  
5                   do post-trial briefing in more cases than not, but as with  
6                   Mr. Tigar, we are at Your Honor's disposition.

7                   THE COURT: I certainly wouldn't tell you you  
8                   can't submit post-trial briefs if you wish to. On the  
9                   other hand, no one is obligated to do so. Mr. Tigar, if  
10                  you want to read their brief first and then decide whether  
11                  you feel you need to respond to the brief, you may do that.

12                  MR. TIGAR: Thank you, Your Honor. Our  
13                  proposed findings and conclusions will be our brief. That  
14                  is to say we will address these issues as they have  
15                  developed during the trial, and we hadn't thought to do any  
16                  more paper than that.

17                  THE COURT: That's fine. That's perfectly  
18                  acceptable.

19                  MR. TIGAR: And if there is something,  
20                  neither of us has been very bashful about replying to the  
21                  other's submissions, Your Honor.

22                  THE COURT: That's fine. We can do it that  
23                  way.

24                  MR. DRIMMER: We will get something in as  
25                  quickly as we possibly can.

1 THE COURT: As I said, I will postpone any  
2 consideration until I know exactly what exhibits have been  
3 agreed upon or have been ruled upon by the Court as being  
4 admissible so that I do my consideration only based upon  
5 the exhibits that are finally admitted.

6 MR. TIGAR: Thank you, Your Honor.

7 MR. DRIMMER: Thank you, Your Honor.

8 THE COURT: I want to thank all of the  
9 counsel in this case for a very efficient presentation of  
10 the evidence and a very kind consideration of time and the  
11 Court's necessities. I appreciate that very much.

12 MR. TIGAR: Well, Your Honor, I've never  
13 tried a case to the conclusion in Cleveland, and we  
14 appreciate the hospitality -- I'm not going to say of Your  
15 Honor, I don't think that's right, but the Court staff has  
16 been uniformly helpful to us, and I appreciate that.

17 THE COURT: That's good. I apologize for the  
18 weather. I can't do much about that.

19 MR. TIGAR: Beautiful today, Your Honor.  
20 That's why we rested. We need to get out.

21 THE COURT: I think everybody needs to get  
22 out.

23 MR. DRIMMER: Thank you, Your Honor, and we  
24 thank Your Honor as well as your Court staff.

25 THE COURT: Thank you very much.

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(Trial concluded at 1:10 p.m.)

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 CROSS-EXAMINATION OF BRUCE WILLIAM MENNING (Resumed)  
2 BY MR. TIGAR..... 1052:12  
3 REDIRECT EXAMINATION OF BRUCE WILLIAM MENNING  
4 BY MR. DRIMMER..... 1058:19  
5 DIRECT EXAMINATION OF JOHN DEMJANJUK, JR.  
6 BY MR. TIGAR..... 1082:19  
7 CROSS-EXAMINATION OF JOHN DEMJANJUK, JR.  
8 BY MS. JOHNSON..... 1084:17  
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