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UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION

JOHN DEMJANJUK,

Petitioner-Appellant,  
vs.

JOSEPH PETROVSKY, ET AL,

Respondents-Appellees.  
.....

Case # 85-3435  
January 29, 1993  
9:00 a.m.  
(HELD IN BOSTON, MA)

ORIGINAL

TRANSCRIPT OF HEARING  
BEFORE THE HONORABLE THOMAS A. WISEMAN, JR.

APPEARANCES:

For the Petitioner-Appellant Edward F. Marek, Esq.,  
Michael G. Dane, Esq. &  
Michael E. Tigar, Esq.,  
Attorneys at Law

For the Respondents-Appellees Dana Biehl, Esq.,  
Patty M. Stemler, Esq. &  
Joseph D. Wilson, Esq.,  
Attorneys at Law

Official Court Reporter: John W. Tummel, RPR  
801 Broadway, Rm. A-839  
Nashville, Tn. 37203

1 THE COURT: All right. A few clean up  
2 matters.

3 In our memo to counsel we made an error.  
4 The hearing in Los Angeles is February 5, not the 4th.  
5 We goofed.

6 Mr. Ryan has some exhibits that he wants  
7 to include.

8 Anything else?

9 MR. TIGAR: No, Your Honor. Our exhibits  
10 with Mr. Ryan are in the red volume and Mr. Ryan's  
11 counsel has a series of exhibits beginning at one.

12 MR. GLOVSKY: Yes, Your Honor.

13 THE COURT: Is there anything else of any  
14 nature?

15 MR. GLOVSKY: No, Your Honor.

16 THE COURT: All right, Mr. Tigar, you may  
17 call your witness.

18 MR. TIGAR: Mr. Ryan.

19 THE MARSHAL: You people won't be able to  
20 be in the jury box unless the Clerk says so or the Judge.

21 THE COURT: Yes, we will probably need all  
22 the chairs available. Thank you very much.

23 THE MARSHAL: Whatever you say, Your  
24 Honor.

25 THE COURT: We will do this rather

1 informally.

2 If anybody needs a seat come around and  
3 take it in the jury box if you would like.

4 THE COURT: Mr. Ryan, if you will, please,  
5 come around.

6 (Witness was duly sworn.)

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1 EXAMINATION OF ALLAN A. RYAN, JR.

2 BY MR. TIGAR:

3 Q. Do you want to get some water before we start,  
4 sir?

5 A. I would. Thank you.

6 Q. Mr. Ryan, would you turn, please, to volume two of  
7 the exhibits in front of you, in my copy it is a black  
8 volume, Exhibit Number 72. That is a memorandum from Mr.  
9 Parker to Mr. Rockler and Mr. Ryan.

10 I ask you, sir, if you have ever seen that  
11 before today?

12 A. I saw this for the first time in October of this  
13 past year. This memo was not delivered to me at any time  
14 while I was at the Office of Special Investigations.

15 Q. Sir, October of 1992 you mean is the first time  
16 you say you saw it?

17 A. Yes, sir.

18 Q. Did you have a meeting with Mr. Rockler, Mr.  
19 Parker and Mr. Moscovitz in March, 1980 to discuss  
20 ethical concerns about the Demjanjuk case?

21 A. Not that I remember. In my appointment book for  
22 March, '80 that I turned over to you I believe shows no  
23 such meeting.

24 Q. Your answer is you do not remember having such a  
25 meeting, is that correct?

1 A. That's correct.

2 Q. When you say that the first time you saw Exhibit  
3 72 was in October of '92, that is not a question that you  
4 don't recall seeing it.

5 Your unequivocal testimony is that you  
6 never saw it, is that right?

7 A. My testimony, Mr. Tigar, is not that I don't  
8 remember seeing this or not. My testimony is that had I  
9 seen this at the time or about the time it was written it  
10 would have made a very strong impression on me from a  
11 number of different perspectives and I would have done  
12 something about it.

13 Q. Is that a yes?

14 A. I am trying to explain my answer. That is why I  
15 can say with, I think a reasonable degree of certainty, I  
16 did not see this memo.

17 We are talking about things that happened  
18 13 years ago. This memo -- of all the paper in this  
19 case, this memo makes an impression on me that leads me  
20 to my conclusion with more than simply saying I don't  
21 remember.

22 Q. In fact, however, the decision -- strike however.

23 The decision to go ahead with the  
24 Demjanjuk prosecution was your decision finally, was it  
25 not?

1 A. It was. It was a continuous decision.

2 Q. You made that decision in 1980 after review of all  
3 the evidence, didn't you, sir?

4 A. I made that decision throughout 1980 and up until  
5 the time of trial in the sense it was always my  
6 prerogative in this case as well as others to withdraw or  
7 not go forward. By --

8 Q. Your answer is you made it in '80 and the rest is  
9 your explanation, right?

10 A. If by that was there a meeting which a yes or no  
11 decision was put on the table and made, I don't recall a  
12 meeting like that.

13 What I am saying is, yes, I made the  
14 decision in the sense that at every point up to and  
15 including trial I felt it was the right thing to do to go  
16 forward. I could have changed that and I did not.

17 Q. You were interviewed on a program called Viewpoint  
18 '90, is that correct?

19 A. I don't remember. It is very possible.

20 Q. On that program do you remember seeing the  
21 videotape furnished to counsel?

22 A. I have seen portions of it; not all.

23 Q. Have you seen parts where you talk?

24 A. Parts where I talk?

25 Q. Do you remember, the decision to go ahead with the

1 prosecution was my decision finally; that decision was  
2 made in 1980 after review of all the evidence and in fact  
3 we went to trial in February, 1981? Do you remember  
4 saying that?

5 A. I don't remember but I certainly would have said  
6 that. That is what I just told you, I believe.

7 MR. GLOVSKY May we come around to watch  
8 this?

9 THE COURT: Certainly.

10 (playing of tape.)

11 Q. Well, Mr. Ryan, I am sorry. We are having  
12 technical difficulties here. I will play it later in the  
13 hearing. Sorry, Your Honor. This was delivered to the  
14 courtroom a few minutes ago. We will do our best.

15 THE COURT: That is all right.

16 Q. Turn in volume two to Exhibit Number 69 a?

17 A. Excuse me. The pages are coming out here. Which  
18 volume?

19 Q. 69 a, sir. The memorandum to you from Norman  
20 Moscowitz.

21 When is the first time you saw that?

22 A. First time I can say for sure I saw this was last  
23 summer in the course of this proceeding.

24 Q. Take the red book and turn to Exhibit 221?

25 A. Yes.

1 Q. That is a copy of the same memorandum is it not,  
2 sir?

3 A. Appears to be, yes.

4 Q. On the lower right-hand corner is a notation  
5 received from Norman Moscovitz and a date. Do you see  
6 that?

7 A. I do.

8 Q. Is that your handwriting?

9 A. The one on the bottom is not. The much fainter  
10 one on top is mine. I did not receive this from Norman  
11 Moscovitz. I received it a few days later apparently  
12 from the Justice Department.

13 Q. So the receipt from Norman Moscovitz is not your  
14 writing and received from above, that is yours?

15 A. Yes. I think it doesn't come across clearly. I  
16 think it says received from OSI or Department of Justice  
17 in some date in July of '92.

18 I don't recall this memo at the time it  
19 was written. I do recall the circumstances which it  
20 would have been written in January --

21 Q. In January, '80, you were in the Soviet Union,  
22 were you not?

23 A. Part of January I was, yes.

24 Q. And you were during that trip to the Soviet Union  
25 meeting with Soviet officials concerning your duties as

1 deputy director of OSI, is that correct?

2 A. That's correct.

3 Q. Those are the meetings you chronicled in your book  
4 Quiet Neighbors?

5 A. I did.

6 Q. The chapter of your book Quiet Neighbors that  
7 deals with the meetings in the USSR is taken from your  
8 contemporaneous notes, is it not, sir?

9 A. Well, it is taken from that and other sources as  
10 well.

11 Q. Would it refresh your recollection if I showed you  
12 page 367 of your book?

13 THE COURT: Yes, sir.

14 Q. You note at chapter three the account is taken  
15 from my contemporaneous notes.

16 Do you see that, sir?

17 A. I do.

18 Q. Does it refresh your recollection?

19 A. About what?

20 Q. Your chapter is based on your contemporaneous  
21 notes?

22 A. I did use my notes and other sources as well,  
23 documents and memos, et cetera, about the meetings.

24 Q. Where are your notes?

25 A. Whatever notes I have have been turned over. I

1 was not able to find any notes from the January meetings  
2 and I believe I disposed of those along with a lot of  
3 paperwork when I moved from Boston to Washington in '85.

4 I wish I hadn't but I think I did.

5 Q. It is your testimony the contemporaneous notes  
6 referred to here in your discussion with the Soviet Union  
7 in January, '80 no longer exists as far as you are aware?

8 A. That is my testimony, yes.

9 Q. Before you went to the Soviet Union, you reviewed  
10 summaries of witnesses' statements that the Soviets had  
11 sent, correct?

12 A. Yes. To some extent I did, yes.

13 Q. In fact you told the Soviets the summary of  
14 witnesses' statements you had reviewed before going to  
15 the Soviet Union were helpful, correct?

16 A. Yes.

17 Q. You wrote that in your book, correct?

18 A. I assume I did, yes.

19 Q. And in addition to telling them that the summaries  
20 of witnesses' statements that the Soviets sent were  
21 helpful, you emphasized that you had used those  
22 statements in identifying which cases should be pursued  
23 by OSI, correct?

24 A. Yes, I did. Although to be strictly accurate  
25 since I only had been at OSI at that point for less than

1 a month, I think I was speaking in the collective we  
2 rather than personally.

3 Q. Let's talk about the statements you reviewed  
4 yourself before going to the Soviet Union.

5 Had you seen before going to the USSR in  
6 January, '80, a statement by Mr. Leleko?

7 A. No.

8 Q. Had you seen a statement by Mr. Malagon?

9 A. No.

10 Q. Had you seen a statement by Mr. Danylchenko?

11 A. No. To the best of my recollection -- and I have  
12 given it a great deal of thought -- the answer to all  
13 those questions is no.

14 Q. You did regard statements from the USSR however as  
15 a valuable source of information for you?

16 A. Certainly did.

17 Q. That is one reason for your trip?

18 A. Correct. So we could follow-up on those  
19 statements with depositions that would lead to admissible  
20 evidence in American proceedings.

21 Q. Now, of course, the questions of what is and is  
22 not going to be admissible in a court case is not ours to  
23 decide today, correct, sir?

24 A. I am sorry?

25 Q. The question of what is admissible evidence His

1 Honor is going to say?

2 A. I am referring to the prosecutions, the  
3 denaturalization cases we were bringing in federal court,  
4 the statements, protocols as we called them I believe  
5 were not admissible because they were hearsay out of  
6 court statements.

7 What we wanted to do is take depositions  
8 with defense counsel present and do it on videotape so  
9 that testimony of the witness would be admissible as  
10 evidence in the cases we were proceeding with.

11 Q. And you were seeking evidence that could be  
12 admitted by the government by way of deposition in the  
13 cases you had, right?

14 A. Admitted by the Court. Presented by the  
15 government and admitted by the Court.

16 Q. Will you turn please to volume 4 of the white  
17 volume, Exhibit Number 163?

18 A. Do I need both these microphones? There is not  
19 much room here.

20 THE COURT: I don't know if any of them  
21 are working.

22 Q. I think one is picking up your voice. May I tap  
23 them?

24 THE COURT: Yes.

25 Q. They are both working.

1 MR. TIGAR: Do you mind if I turn this  
2 off?

3 THE COURT: Fine.

4 Q. That Exhibit 163 is a memo to Walter Rockler from  
5 Norman Moscovitz and George Parker, correct, sir?

6 A. If you will give me a minute to find it.

7 Q. 163. Do you remember ever seeing that before  
8 today?

9 A. I don't remember seeing it before. In the  
10 relatively recent period when I began to review documents  
11 in preparation for my testimony today -- but it is  
12 entirely possible I would have seen it at or about the  
13 time it was written even though it is not addressed to me  
14 directly.

15 Q. Return to 165.

16 A. Yes.

17 Q. And that is a confirming message about the same  
18 subject, the Trawniki card, correct, sir?

19 A. Well, on the copy I have -- I see. Excuse me a  
20 minute. Let me read it.

21 Well, this appears to be a memo from  
22 Arthur Sinai who was the deputy director of OSI to the  
23 State Department contact that handled our travel back and  
24 forth that stated at the time I was in Moscow and asking  
25 that Charles Wyman the State Department contact at that

1 time if he would send a message to the United States  
2 embassy in Moscow for my attention and Walter Rockler's  
3 attention.

4 Q. Turn to number 168. I want to ask you about the  
5 group of documents which I just inquired about. Before  
6 coming here today --

7 A. Excuse me. If I could just read it.

8 Q. Of course. Tell me when you are finished.

9 A. All right.

10 Q. Before coming here today, have you ever seen  
11 168?

12 A. I can say for sure that I saw it last summer when  
13 I was reviewing, I don't know whether your or the  
14 government exhibits in the Court of Appeals. I saw this  
15 then.

16 Whether I saw it at the time, I really  
17 don't know. I might have or -- actually on February 1st  
18 when it was sent, I think I was in route to Israel.  
19 Whether I saw it when I came back, I don't know.

20 It is sort of a routine cable. I don't  
21 know if I would see it then. I have no doubt what it  
22 says is true.

23 Q. So, you did ask the Soviets for information about  
24 the Trawniki card, correct?

25 A. I did.

1 Q. And as you sit there today, do you remember asking  
2 them about the Trawniki card?

3 A. I do, sir. I will be happy to explain it if you  
4 would like?

5 Q. No, I wanted to know if you remember asking about  
6 that?

7 A. I do. It was not only about the Trawniki card but  
8 other matters that had to do with Treblinka as well.

9 Q. Do you remember asking the Soviets about the guard  
10 list that they had sent?

11 A. Not specifically, no. I would be happy to tell  
12 you what I said to the Soviets.

13 Q. Do you remember asking the Soviets about Ivan  
14 Marczenko?

15 A. Not by name. I will tell you if you want me to  
16 tell you what I told the Soviets. I will be happy to  
17 tell you.

18 THE COURT: Go ahead, Mr. Ryan.

19 A. When we went over to the Soviet Union the  
20 Demjanjuk case was not a case that we intended  
21 particularly to raise on the subject of depositions  
22 because it was not a case which there were, to my  
23 knowledge, at least depositions to be taken there.

24 When we were in Moscow in meeting with the  
25 Soviets which was the last two or three days in January,

1 a message did come from OSI and it is essentially this  
2 cable saying please ask the Soviets if they can provide  
3 information on the origins of the Trawniki ID card, where  
4 it had been the last 38 years.

5                   That message was conveyed to me by the  
6 embassy person who was our liaison. I said to the  
7 representatives of the procuracy we were meeting we would  
8 be interested in any information on this Trawniki ID card  
9 and indeed very interested on any information you had  
10 about Treblinka at all.

11                   Because I was conscious at that time  
12 trying to learn as much as I could about the history of  
13 this; that there were no original documents from  
14 Treblinka knowing to exist and today that is still my  
15 understanding.

16                   My thought was even if we could come  
17 across a sketch or a document that would have something  
18 to do with Treblinka, even though it might not be  
19 immediately germane to the issues in the case it might be  
20 something to use to test the memory of a witness or  
21 refresh somebody's recollection or something.

22                   It would seem to me documentary evidence  
23 from Treblinka was in such short supply anything they  
24 had, any witnesses' statements, protocols or information  
25 that is what we were interested in.

1                   That is the request that I conveyed to  
2 them at that meeting and they acknowledged it and said  
3 fine and we went on.

4 Q.       You knew, sir, that you testified that the  
5 Demjanjuk case was not one which you thought then  
6 depositions would be taken?

7 A.       In the Soviet Union, correct.

8 Q.       You knew Demjanjuk was charged in a complaint in  
9 Cleveland of being Ivan the Terrible?

10 A.       I knew of it.

11 Q.       You knew he also was charged under the name Ivan  
12 Grozny, correct?

13 A.       I knew that that was apparently one of the names  
14 that the workers at Treblinka called him.

15                   When I saw the name on the complaint I  
16 think that registered on me, yes.

17 Q.       Ivan the Terrible or Ivan Grozny as far as you  
18 were concerned in January, '80, was an infamous person,  
19 correct?

20 A.       No, I wouldn't say I considered him an infamous  
21 person.

22 Q.       Whoever it was, Ivan Grozny if it was possible for  
23 your office to secure a denaturalization that is  
24 something you wanted to do, correct?

25 A.       Yes.

1 Q. The sources of evidence you would have to prove  
2 that case with, first you would have Jewish survivors,  
3 correct?

4 A. I am not sure I understand your question.

5 Q. A moment ago you said you did not anticipate  
6 depositions from the Soviet Union in the Demjanjuk case.  
7 Do you recall that?

8 A. Yes.

9 Q. I am going to ask you what evidence you thought  
10 would be used in the Demjanjuk case?

11 A. As of January 1980?

12 Q. That's right. You thought you would use testimony  
13 of Jewish survivors?

14 A. Survivors of Treblinka, yes.

15 Q. You knew there could be problems with eyewitness  
16 testimony?

17 A. There is always problems with eyewitness  
18 testimony.

19 Q. You had been in private practice, had you not?

20 A. I had been.

21 Q. You were in Williams and Connolly --

22 A. We were there together.

23 Q. What years?

24 A. '74 to '77.

25 Q. That is before you went to the SG's office?

1 A. Right.

2 Q. Right after the Marine Corp or after the  
3 clerkship?

4 A. Just after my Marine Corps -- just after my  
5 clerkship.

6 Q. Were you editor in chief in Minnesota?

7 A. Yes, sir.

8 Q. What year?

9 A. '69 to '70.

10 Q. You clerked for Justice White in the '70 term?

11 A. I did.

12 Q. You went to OSI what year?

13 A. I was in the Solicitor General's Office January,  
14 '77 to January, '80. I went to OSI in January, '80 as  
15 deputy director and took over as director a few months  
16 afterwards. I don't recall the exact date.

17 Q. Spring of '80?

18 A. Yes.

19 Q. With respect to the eyewitness testimony, you read  
20 the book by Patrick Wall on eyewitness identification?

21 A. I don't believe so.

22 Q. Was he of counsel with Mr. Williams, Connolly and  
23 Califano?

24 A. I believe so.

25 Q. Does the name Sol Lackman (phonetic) mean anything

1 to you?

2 A. I heard the name recently. I must say it did not  
3 mean anything to me if I look back at my years at OSI. I  
4 heard it in preparing today.

5 Q. You don't know whether or not Sol Lackman  
6 (phonetic) was a survivor at Treblinka?

7 A. Not of my personal knowledge.

8 Q. Do you know whether the name Sol Lackman  
9 (phonetic) was turned over to the Demjanjuk defense?

10 A. I can tell you what I have been told recently  
11 about that.

12 Q. I am not interested in what you were told. I am  
13 asking you to look back on your memory of this time.

14 Do you remember whether or not it was?

15 A. I had no involvement at that level of discovery at  
16 all. I would not have known whether it was or not at the  
17 time I was at OSI.

18 Q. In addition to Jewish survivors, from January,  
19 '80, did you know there were guards and officials who had  
20 been at Treblinka who would be or were witnesses that  
21 could identify people who also worked there?

22 A. In January, '80, if you are talking about the  
23 latter part of that month after I had been there a few  
24 weeks and on my way to Moscow, yes.

25 I am sure I knew that Otto Horn was at

1 least a potential witness who seemed to have useful  
2 information.

3 Q. Had Mr. Moscowitz told you about Otto Horn?

4 A. I believe it was Mr. Moscowitz, Mr. Horrigan, Mr.  
5 Parker or some combination of the three when I first  
6 arrived at OSI.

7 Q. Now, you were aware, are you not, sir, of the  
8 memoranda that were made at the time Mr. Horn was  
9 interviewed, correct?

10 A. I am sorry. Would you repeat that.

11 Q. You are aware, are you not, sir, of the memoranda  
12 that were made by investigators at the time Mr. Horn was  
13 interviewed?

14 A. Are you asking whether I am aware now or then?

15 Q. Now?

16 A. I am aware now there were memoranda made when he  
17 was interviewed, yes.

18 Q. Were you aware of that in 1980?

19 A. No, I don't believe so.

20 Q. In addition to Otto Horn, as of January '80 had  
21 you heard the name Kurt Franz?

22 A. I don't remember whether I had heard the name Kurt  
23 Franz in January, '80 or not.

24 Q. Do you remember hearing the name any time in '80?

25 A. I don't remember whether I heard it in 1980 or

1 when.

2 Q. Do you recall anyone ever saying --

3 A. The reason --

4 Q. Of course, by all means.

5 A. Kurt Franz was, I believe, the deputy XO in  
6 command at Treblinka, if I am not mistaken. I had been  
7 reading in 1980 as much as I could in the history books  
8 to educate myself. I may well have come across his name  
9 in that context.

10 And whether I came across it in OSI's own  
11 investigations, I don't remember.

12 Q. Do you recall ever suggesting to anyone that they  
13 try to get a statement from Kurt Franz?

14 A. I don't recall suggesting to anyone that.

15 Q. Do you recall that subject ever being discussed  
16 during your time at OSI, whether or not a statement  
17 should be obtained from Kurt Franz?

18 A. I don't have any recollection of that now, no,  
19 sir.

20 Q. Does the name Suchomel mean anything to you as you  
21 sit there today?

22 A. I have come across that name recently in reading  
23 documents in this case.

24 I don't think I was aware of that name in  
25 1980, although again I can't say with certainty.

1 Q. I have asked you now, sir, about Jewish survivors  
2 and asked about some guards.

3 In addition in '80 you were aware, were  
4 you not, the Polish Main Commission had done research  
5 into Treblinka?

6 A. I am not sure I was aware of that, no. I don't  
7 think -- again if you are talking about January, 1980 --

8 Q. Did you ever become aware that the Polish Main  
9 Commission had done research into Treblinka?

10 A. Sure.

11 Q. About when did you first become aware of that,  
12 sir?

13 A. Well, I visited with the director of the Polish  
14 Main Commission in November, I think, or October of '80  
15 and I am sure that by that time I knew and probably knew  
16 before I went there.

17 But just when along that course of that  
18 year I first became aware of it, I don't know.

19 Q. Now, after you met with the Polish Main Commission  
20 people then later in 1980, was it your view that the  
21 Polish Main Commission had evidence that your office  
22 could use?

23 A. In some respect. Let me not call it evidence but  
24 information that would be helpful in many of our  
25 investigations and in other areas they did not.

1 Q. And when you say information as opposed to  
2 evidence, you were looking, as director of OSI, for  
3 information as well as evidence, correct?

4 A. We were looking for all information. Some of that  
5 information could become evidence and some could not.  
6 That was a decision.

7 We didn't go to the Polish Main Commission  
8 and say, do you have any evidence on this? Do you have  
9 information. We will decide, or Court will, or defense  
10 will decide if it is evidence.

11 Q. You have been a trial lawyer for a fair amount of  
12 time, sir?

13 A. I never called myself a trial lawyer. I think  
14 that connotes more trial experience than I can  
15 legitimately lay claim to.

16 Q. You know from your experience that information  
17 that a lawyer receives can lead to evidence, right?

18 A. Certainly.

19 Q. And information in the hands of a skilled advocate  
20 means more than it would in the hands of someone who is  
21 not a skilled advocate?

22 A. Well, a skilled advocate can do with evidence what  
23 someone without skills can do.

24 I am not sure I follow your question  
25 correctly.

1 Q. You do agree with me that information can lead to  
2 admissible evidence? Right?

3 A. That information can lead to admissible evidence?

4 Q. Yes.

5 A. Yes.

6 Q. I would like you to turn to Exhibit 149 k in  
7 volume 4 of the white volume.

8 Do you have it, sir?

9 When is the first time you remember seeing  
10 that, the Leleko statement?

11 THE COURT: 149 what?

12 MR. TIGAR: K.

13 A. I saw this some time after the middle of July of  
14 1992. I will say late July or perhaps early August of  
15 '92.

16 I have no memory of seeing it before then.

17 Q. Will you turn to 149 f and I will ask you the same  
18 question.

19 When is first time you remember seeing  
20 that, Malagon?

21 To shorten this, I will ask you about the  
22 same question about 149 g, the same volume.

23 A. Well, my answer to the Malagon statement is the  
24 same. Those -- I saw both the Malagon statement and  
25 Leleko statement at the same time this summer, I believe.

1 Q. The summer of '92?

2 A. Yes. As I look at Exhibit 149 f, the Malagon  
3 statement, I am not sure that the two pages at the end,  
4 the sketch is part of the copy I got.

5 What was the other one?

6 Q. G.

7 A. G is Malagon and photo spread?

8 Q. Yes.

9 A. First time I can say for sure I saw this was a few  
10 days ago. But it may have come to me in the same package  
11 the other two did. I don't know.

12 Q. With respect to the Leleko and Malagon statements  
13 I just asked you about, there is no question in your  
14 mind, sir, that they are statements taken by Soviet  
15 authorities?

16 A. Well, they purport to be.

17 Q. But it is your understanding that is what they  
18 are, is that right?

19 A. I have no reason to think otherwise.

20 Q. And it is your testimony, sir, you didn't read  
21 those at any time that you were in OSI, correct?

22 A. To the best of my recollection, that is correct.

23 Q. Do you have any memory at all of hearing the name  
24 Leleko at any time that you were at OSI?

25 A. I do not.

1 Q. Do you have any recollection of hearing the name  
2 Malagon while at OSI?

3 A. I do not.

4 Q. Do you have any recollection of hearing the name  
5 Danylchenko any time at OSI?

6 A. I do not.

7 MR. GLOVSKY: Your Honor, I apologize for  
8 interpreting. I can't see my client.

9 MR. TIGAR: I am sorry. We are bringing  
10 in a new T.V. because the other didn't work. I certainly  
11 have no objection to counsel moving wherever he desires.

12 THE COURT: Well, move it up here. I  
13 assume I will be the one looking at it anyhow.

14 MR. TIGAR: I have some Dallas Cowboys'  
15 wind sprints on here for a little bit, Your Honor.

16 THE COURT: All right.

17 Q. Mr. Ryan, do you remember talking to Norman  
18 Moscovitz about statements that had been taken by the  
19 Soviets relating to the Treblinka death camp?

20 A. Are you referring to my particular time period?

21 Q. Do you remember talking to Norman Moscovitz about  
22 statements taken by the Soviets about the Treblinka death  
23 camp in the spring of 1981?

24 A. In the spring of 1981?

25 Q. Yes.

1 A. You mean after the trial?

2 Q. After the Demjanjuk trial?

3 A. No.

4 Q. Do you remember talking to Mr. Moscovitz about a  
5 proceeding on a new trial motion in front of Judge  
6 Battisti after the Demjanjuk trial?

7 A. Do I recall talking it over with Norman?

8 Q. Yes.

9 A. I don't recall now. I may well have talked it  
10 over with him. I don't have any memory of it now.

11 Q. Did Mr. Moscovitz show you a file in which he kept  
12 statements by Soviet -- collected by Soviet authorities  
13 relating to the Treblinka death camp, in the spring  
14 1980?

15 A. I am sorry. Spring of 1980 or '81?

16 Q. Excuse me. '81.

17 A. In either event I don't have any recollection of  
18 Norman doing that. I wasn't aware he had such a file.

19 If he did have such a file and it wasn't  
20 the sort of level of detail that I would have expected to  
21 talk to Norman about in these cases. He was the trial  
22 attorney and I was not.

23 But the answer to your question is I have  
24 no recollection of looking at such a file.

25 Q. Was there a discovery policy in the office of OSI

1 during 1980 and 1981?

2 A. A discovery policy?

3 Q. Yes.

4 A. You mean over and above or different than the

5 Federal Rules?

6 Obviously the policy was to follow the  
7 Federal Rules fully. In addition to that, there were a  
8 number of beliefs I had about what was proper in  
9 discovery in these cases. Whether I would go as far as  
10 to call it a policy, I am not sure.

11 Q. Let's start with the Federal Rules.

12 By the Federal Rules, do you mean the  
13 Federal Rules of Civil Procedure?

14 A. Yes, sir.

15 Q. Did you understand that the Federal Rules of Civil  
16 Procedure applied to denaturalization cases?

17 A. Yes, I did.

18 Q. You also understood, sir, where you were  
19 denaturalizing someone based upon committing murder there  
20 could be other consequences beyond the denaturalization?

21 A. There could be deportation, yes.

22 Q. There could be extradition, could there not?

23 A. There could be but extradition would not depend  
24 upon denaturalization.

25 Q. Where the evidence in the case was evidence that

1 someone committed murder, you knew that there could be  
2 extradition, correct?

3 A. Yes.

4 Q. Now, the Federal Rules of Civil Procedure as you  
5 understood it required the production of matters  
6 calculated to lead to discovery of admissible evidence,  
7 right?

8 A. Well, yes. If you are referring to I believe Rule  
9 26, I assume you are quoting it accurately.

10 Q. I don't pretend to be doing that. I am asking if  
11 you understood that the rule required that?

12 A. Which rule is that?

13 Q. Whether the Federal Rules of Civil Procedure  
14 desired matters calculated to lead to admissible  
15 evidence?

16 A. If you would like my understanding, I will give it  
17 to you.

18 Q. Please do.

19 A. Any understanding then and now of the definition  
20 which is discoverable under the Federal Rules is that it  
21 is material that is relevant, essentially relevant to the  
22 subject matter and the fact that it is not by itself  
23 admissible as evidence does not mean it is not  
24 discoverable as long as it appears -- I am not sure I can  
25 quote Rule 26 exactly -- but the effect is so long as it

1 appears calculated to lead to evidence or words to that  
2 effect and on top of that, obviously, has to be asked for  
3 by the other side under the rules of civil procedure.

4 Q. Now --

5 A. That may not last for long but that was the state  
6 of law back then.

7 Q. Let's pause about the first part. If a lawyer  
8 that worked for you came to you and said in 1980, Allen,  
9 I am not going to turn this over because it's not  
10 admissible in evidence and the federal rules don't  
11 require me to turn over things not admissible in  
12 evidence, would you have told that lawyer that he or she  
13 was wrong?

14 A. I would have said whether it is admissible in  
15 evidence is not the determination for otherwise if it is  
16 discoverable.

17 Q. Now, in addition to the Federal Rules of Civil  
18 Procedure we have discussed, was there another set of  
19 policies at work in the office?

20 A. You mean as discovery?

21 Q. Yes.

22 A. Another set of policies?

23 Q. Yes.

24 A. I am not sure I know what you mean by set of  
25 policies. There was no other set of rules.

1                   As I said a moment ago, I had some views  
2 how discovery ought to be conducted. Whether that would  
3 be called a policy or not, I don't know.

4 Q.           Did you make those views known to the lawyers in  
5 your office?

6 A.           Mr. Tigar, to give you the honest answer, I have  
7 been under the impression for the last 13 years I did,  
8 yes, sir.

9                   Recently in thinking back over these  
10 events and in going through my mind and various  
11 documents, I must say I am unable to recall if, when, how  
12 I communicated those views to the rest of the office. I  
13 always thought I did.

14                  But I have to be as honest as I can be  
15 here and say I don't recall precisely how I did that or  
16 even generally how I did that.

17 Q.           That is what I would like to ask you about, sir.  
18 I would like to explore the answer you just gave us.

19                  Over the last number of years you have  
20 been interviewed many times by the media about your  
21 discovery policy, right?

22 A.           Well, I have been interviewed many times and the  
23 question has come up several times and I have said  
24 several times that it was my policy that it was the  
25 office's policy it was the practice to turn over

1 exculpatory evidence even though it may not have  
2 literally been requested.

3                   That is, I have said that many times and I  
4 believe that to be true and I said it because I believed  
5 it to be true.

6 Q.       You spoke to Mr. Rosenbaum on the 19th of  
7 December, 1991, is that right?

8 A.       I may well have, yes. I don't recall the exact  
9 date.

10 Q.       You told him when you came in you operated by the  
11 criminal rules, if it is important give it up, not that  
12 if they don't ask you don't get it?

13                   Do you recall telling that to Mr.  
14 Rosenbaum?

15 A.       I don't recall my exact words. That sounds more  
16 stronger than I would have said to Ely who was well aware  
17 of my views on the subject.

18 Q.       I am not asking you to compare your testimony with  
19 what he said.

20 A.       I am saying I don't think I used words quite along  
21 those lines. I don't think I did.

22 Q.       Do you remember what you said to Mr. Rosenbaum  
23 about your discovery views as existed in '80 and '81?

24 A.       In December, 1991, (sic) I would have said to him  
25 what I said to everybody else, namely that the practice

1 or policy in the office was that if there was exculpatory  
2 material that had for some reason not been otherwise  
3 requested through discovery that it should be turned  
4 over.

5 Q. And in addition to that, sir, you also said that  
6 you made everything you had available to the defense; it  
7 was the rule in the office never to be violated, that any  
8 statements of witnesses we had were made available to the  
9 defense, period?

10 A. Where is that, sir?

11 Q. Go ahead.

12 THE COURT: Would you like me to see it?

13 MR. TIGAR: Yes, Your Honor, I was going  
14 to turn it around here.

15 (playing of tape)

16 Q. That is you on the television?

17 A. That is me. I am not sure what question I was  
18 answering at the time. I don't recall which interview it  
19 was.

20 If they were asking me about exculpatory  
21 evidence that would have been my answer. If they were  
22 asking me about any evidence, any statements, any pieces  
23 of paper, I doubt -- and I can't say this for sure -- I  
24 doubt I would have said we turn over every piece of  
25 paper.

1                   As you know there is a lot of paper that  
2 just isn't relevant. The point about exculpatory  
3 evidence, as I said, I have been firmly under the  
4 impression for the last 13 years that was the policy and  
5 practice at OSI.

6 Q.       So all I am going to ask you about now is  
7 exculpatory evidence. I don't wish my questions to be  
8 talking about every little bit of paper.

9 A.       All right.

10 Q.       Have you been able to find any documents or notes  
11 or memorandum that reflects a policy of turning over all  
12 the exculpatory evidence? By documents, something  
13 written back in '80, '81?

14 A.       I haven't seen it in any papers produced here and  
15 I don't remember ever putting it on paper. It may well  
16 be that if I communicated it I did not put it on paper.

17 Q.       Do you remember telling Mr. Moscovitz that that  
18 was the policy?

19 A.       I don't remember telling him or anyone that was  
20 the policy, no.

21 Q.       You said a few minutes ago words to the effect you  
22 had been under the impression that was the policy?

23 A.       Yes.

24 Q.       Has your impression changed?

25 A.       I have had reason the last few months to question

1 whether my impression was accurate because I have not  
2 seen any extrinsic -- if you want to put it that way --  
3 any indication that that policy was in fact promulgated  
4 to the office. The reason I say --

5 Q. Let me stop you just a minute, sir.

6 What I would like you to do is give us  
7 your explanation how you came to a different view than  
8 the one you used to hold and what you now understand to  
9 have been the way things were. In other words, I want to  
10 open this up and let you make the answer without the  
11 constraints of my question, if I can do that, Your  
12 Honor?

13 THE COURT: Yes, sir.

14 A. I won't say I came to a different impression. I  
15 have simply had a great deal -- I have had occasion to  
16 think back and try to recreate events.

17 I will put it this way, Mr. Tigar. When I  
18 became deputy director and shortly thereafter director of  
19 the Office of Special Investigations and I learned what  
20 was out there and I learned how these cases were being  
21 investigated and I saw what the relative strengths and  
22 weaknesses of the parties were, it became very clear to  
23 me that the government had superior access to  
24 information.

25 We had much more resources than the

1 defendants had because we had historians, investigators,  
2 travel budgets and also we were the government. We could  
3 make contact with other governments that private citizens  
4 were unable to make.

5                   And in a number of ways it became clear to  
6 me that it would be fundamentally unfair for the  
7 government to try to win these cases or gain some  
8 tactical advantage because of our superior access to  
9 information. And that belief translated itself at OSI at  
10 my direction into a number of practices.

11                   I think the most significant -- and this  
12 leads to my thoughts on exculpatory evidence -- the most  
13 significant was that I told all defense counsel -- I am  
14 sorry -- I told OSI attorneys to tell their counterparts  
15 as defense counsel that when we took depositions in the  
16 Soviet Union that upon request by defense counsel we, the  
17 government, OSI would pay the travel and subsistence  
18 expenses the same as we paid our own attorney expenses.

19                   It seemed to me although we could fulfill  
20 the rules of evidence to give notice to defense counsel  
21 when and where the depositions would be held, if they  
22 didn't show it up it would still be admissible evidence  
23 and I didn't think that was fair. I didn't think the  
24 defenses had resources to do it.

25                   I didn't want to win the cases because the

1 defendants couldn't go to the Soviet Union to take  
2 depositions. So I paid expenses for the defense. If we  
3 sent one lawyer, we would pay the defense one lawyer. If  
4 we sent two, they would be paid for two. They stayed at  
5 hotels and got the same per diem as my staff did.

6 Another aspect which this was my belief  
7 was translated into action I believe on my part was to  
8 say to defense counsel through trial attorneys in my  
9 office, if there were witnesses that the defense wished  
10 to call to be deposed in the Soviet Union that they could  
11 give those names to us and we would transmit them to the  
12 Soviet Union along with our own names with no distinction  
13 at all so as far as the Soviet government was concerned  
14 they would be official requests of the United States  
15 Government like any other.

16 Obviously we couldn't require defense  
17 counsel to proceed that way but I thought it would be  
18 much more productive if they did and I thought it was  
19 appropriate we do that.

20 So from that belief on my part also came a  
21 belief that if we had exculpatory evidence that had not  
22 been requested for whatever reason through the normal  
23 course of civil discovery that we ought to turn that over  
24 and not rest solely on the fact it had not been asked  
25 for.

1                    Now, the rules of civil discovery as you  
2 know are very broad and very complete and it seemed to me  
3 this was more of a question in principles than it ever  
4 would be as a practical matter.

5                    Nonetheless, I believed if there ever was  
6 a situation where civil discovery had not brought some  
7 piece of paper forward, we should produce it if it could  
8 fairly be considered exculpatory.

9                    Now, when you asked me in what way did I  
10 communicate that last belief on my part to the rest of  
11 the office, I have to say I simply do not recall and I  
12 can't testify absolutely that I know it was conveyed.

13                    It is possible that for one reason or  
14 another that it was not conveyed to the attorneys, or to  
15 all of the attorneys. I just at this point do not know.

16 Q.            You say also that there has been a change in your  
17 view?

18 A.            I am sorry. You may have misunderstood. The  
19 Federal Rules as you know are about to change.

20 Q.            No. My understanding is that a few moments ago  
21 you said to us that your understanding of what the office  
22 policy was is different now than it was some time ago?

23 A.            I didn't mean to convey that. I meant to convey  
24 what I just told you.

25                    I had always believed that that view was

1 on exculpatory evidence, particularly had been conveyed  
2 to the rest of the office.

3 Now that I have given some thought these  
4 last few weeks or months to that and other things, I must  
5 say I don't recall or how or if it was.

6 I can no longer state here with certainty  
7 I have been stating in interviews for the last 13 years  
8 that indeed it was the policy.

9 If it never got beyond my mind, I can  
10 hardly call it the policy. I don't know whether it was  
11 communicated or to whom it was communicated 13 years  
12 later.

13 I have to look back and say maybe my  
14 impression has been wrong. In any event, I can't  
15 substantiate it now. That is what I meant to say.

16 Q. You had been in the Solicitor General's Office,  
17 correct?

18 A. I had.

19 Q. You knew that the Solicitor General from time to  
20 time confessed error in the Supreme Court of United  
21 States, right?

22 A. I knew that, yes.

23 Q. You knew that even when a case is pending on  
24 certiorari if there is evidence that a government witness  
25 has committed perjury the Solicitor General will come to

1 the Supreme Court and ask that the case be remanded  
2 either for hearing or a new trial, right?

3 A. In an appropriate case I believe the Solicitor  
4 General should do that, yes, sir.

5 Q. And can you think of any cases with which you were  
6 familiar at the time you were in the SG's office where  
7 the SG had confessed error based upon the government's  
8 withholding material evidence?

9 A. When I was in the Solicitor General's office or  
10 office of --

11 Q. SG's office?

12 A. I don't recall if the SG did it while I was there.  
13 It was an example I tried to follow when I was at OSI.

14 Q. When you were in private practice at Williams and  
15 Connolly, do you remember any discussions in the office  
16 in cases which the SG confessed errors based upon  
17 withholding of exculpatory evidence that had occurred?

18 A. I am sorry. I think the standards for defense  
19 counsel are different than government lawyers. I don't  
20 recall any discussion about confessing errors at Williams  
21 and Connolly at all.

22 Q. I mean any cases which the government confessed  
23 error where that firm was counsel?

24 A. No.

25 Q. Will you turn, please, to Exhibit Number 202 in

1 the white book, volume 5.

2 That is a memorandum to you?

3 A. Excuse me. What number is it?

4 Q. Number 202 in volume 5 -- excuse me, volume 4 of  
5 the white volume?

6 A. Yes, sir.

7 Q. Do you remember receiving that memorandum from Mr.  
8 Einhorn?

9 A. This is dated November 2, 1982. Do I have the  
10 right one? Yes, sir. Mr. Tigar --

11 Q. Yes.

12 A. November 2, '82?

13 Q. Yes.

14 A. Do I have a memory of receiving this memo?

15 Q. Yes.

16 A. I don't.

17 Q. Turn to tab 38 in volume 1 of the black volume.

18 A. Which number?

19 Q. 38.

20 A. I don't have a 38 in mine. I am sorry. There is  
21 another one.

22 Q. Your volume 1 is a white volume. I am sorry. Tab  
23 38, sir.

24 Do you have it, sir?

25 A. I do.

1 Q. Do you remember receiving that letter from Mr.  
2 Martin?

3 A. I don't remember receiving it and I am reasonably  
4 sure I did not receive it. I was on vacation that week  
5 and the reply to this letter evidently was written by Mr.  
6 Moscovitz, since it concerned the Demjanjuk case.

7 Q. That is the tab 39, correct, Mr. Moscovitz wrote  
8 back on August 17, enclosing copies of the reports  
9 referenced in Dr. Pilichowski's letters?

10 A. That is what the letter says, yes.

11 Q. Turn to document 40 in the same volume.

12 A. Yes.

13 Q. Did you receive that letter?

14 A. I did.

15 Q. Now, that letter was copied to Judge Battisti, was  
16 it not?

17 A. Well, it says at the bottom it is, yes.

18 Q. Would you turn to 41, please.

19 That is a letter signed by Mr. Einhorn,  
20 correct?

21 A. That is Mr. Einhorn's signature, yes, sir.

22 Q. That is also copied to Judge Battisti, is it not?

23 A. Again it says cc, Honorable Frank Battisti, yes.

24 Q. He was the trial judge in the Demjanjuk case?

25 A. Yes, he was.

1 Q. Where was the Demjanjuk case in '82 when --

2 A. I believe affirmed by the Sixth Circuit and on  
3 petition for writ of certiorari to the Supreme Court.  
4 That is what I was told recently.

5 Q. What was on petition for certiorari in the Supreme  
6 Court the Solicitor General could still go to the Court  
7 and say there is exculpatory evidence that requires the  
8 Court to remand the case, correct?

9 A. Yes.

10 Q. Are you familiar with the case of the Communist  
11 Party versus the Subversive Activist Control Board?

12 A. I am not.

13 Mr. Tigar, the Solicitor General wouldn't  
14 have had to go to the Supreme Court if that was the  
15 situation. I would have done that.

16 Q. Did you review the November 4 letter, Exhibit 41,  
17 before it went out?

18 A. I don't remember.

19 Q. In that letter it says we have undertaken no  
20 inquiry to determine whether the documents you asked for  
21 have already been provided to you.

22 Correct?

23 A. That is what it says, yes.

24 Q. And the reason given is that the case is before  
25 the Supreme Court and so no further discovery is

1 necessary, correct?

2 A. The letter -- I am not sure that is a fair reading  
3 of the letter. It might be.

4 Q. Please don't accept my characterization.

5 Let me ask you again whether you remember  
6 reviewing that letter before it went out?

7 A. No, I don't remember reviewing that letter before  
8 it went out. The question is if this was pending in the  
9 Supreme Court would it preclude me from doing anything I  
10 otherwise would have thought proper, the answer is no.

11 In reviewing these letters recently, what  
12 it seems to me is that Mr. Martin having lost the case at  
13 trial and on appeal is now saying in a general way in the  
14 letter he wrote to me oh, if only I had this document  
15 from Poland it would have changed everything I did about  
16 this case and please open discovery and give me  
17 everything you have about the holocaust.

18 I didn't think that was appropriate.

19 Q. Have you talked to Mr. Martin about what was in  
20 his mind when he wrote the letter?

21 A. I never have talked to Mr. Martin.

22 Q. You are clear, however, sir, that you as the  
23 director of the OSI had an obligation of candor to the  
24 Supreme Court of the United States and that obligation  
25 existed in '82, correct?

1 A. It existed to every Court at all times, Mr. Tigar.

2 Q. Will you turn, please, to tab 42.

3 A. Yes.

4 Q. And that is a further letter to Mr. Martin again  
5 signed by Mr. Einhorn and again copied to Judge Battisti,  
6 correct?

7 A. That is what it seems to be, yes.

8 Q. Did you remember seeing that letter at or about  
9 the time it went out?

10 A. I don't. In looking at these documents recently,  
11 I must say that it seems that Mr. Einhorn -- if both  
12 these letters were in fact sent out they were sent out  
13 both saying about the same thing about a week apart. I  
14 don't know whether that in fact happened or whether -- it  
15 seems curious they both say essentially the same thing  
16 and were mailed -- if that is what happened -- a week  
17 apart. Maybe one wasn't mailed. I don't know.

18 Q. You don't know?

19 A. I don't remember.

20 Q. You do remember who Dr. Pilichowski is?

21 A. Yes, I do.

22 Q. Who is that?

23 A. The late Pilichowski.

24 Q. Pilichowski?

25 A. Pilichowski is the way it is pronounced.

1 Chairman or Chief of the Polish Main  
2 Commission for the investigation of Nazi crimes.

3 Q. Now, you had used information based on the Polish  
4 Main Commission in the Kairys' case -- K-a-i-r-y-s --  
5 correct?

6 A. I don't recall if we used evidence from Poland in  
7 the Kairys' case. It is possible we did.

8 Q. Did you rely on the Polish Main Commission  
9 materials in the Walus case? W-a-l-u-s.

10 A. Well, I remember very well the Walus case is one  
11 of the cases where I confessed errors in the Courts of  
12 the United States in 1980 and 1981. I did so in the  
13 Walus case because although that case was tried and  
14 appealed it seemed to me that there was further work that  
15 needed to be done and that investigation led our office  
16 to Poland, among other places, and to the Polish Main  
17 Commission and as a result of the entire investigation  
18 and inquiry as it was reported back to me, I came to the  
19 conclusion that the judgment against Mr. Walus was an  
20 erroneous judgment and that Mr. Walus was not in fact who  
21 the district court said he was. He was not a member of  
22 Gestapo in Poland and I directed that the charges against  
23 Mr. Walus be withdrawn and dismissed and a statement be  
24 issued to that effect.

25 Q. And at tab 228 that is in the red book -- I am

1 sorry. Tab 225 in the red book there is a copy of your  
2 statement, correct, issued on the occasion of your  
3 terminating the case again Mr. Walus? W-a-l-u-s.

4 A. That is my statement.

5 Q. You and Tom Sullivan issued that statement,  
6 right?

7 A. I wrote it and discussed it with Tom Sullivan and  
8 it went out over both our names.

9 Q. At page five there you talk about the Polish Main  
10 Commission, correct, in your meetings with them?

11 A. I think that is right.

12 Q. Take a look.

13 A. Yes, that is right.

14 Q. Do you see the sentence about ten lines down on  
15 page five, these results were negative?

16 A. Yes.

17 Q. So you understood as of the time you wrote this  
18 statement on November 26, 1980, that a negative as a  
19 result from the Polish Main Commission was significant,  
20 correct?

21 A. It was significant when the question was the  
22 records of the Gestapo in Kielce and Czestochowa that was  
23 the question in the Walus case.

24 It might be quite insignificant because  
25 the Polish Main Commission would have no records one way

1 or the other of that aspect of it.

2 Q. You regard it as significant in the Walus case?

3 A. I did.

4 Q. In fact it was the dog that didn't bark, right?

5 A. Yes.

6 Q. Do you remember saying that?

7 A. In my book?

8 Q. At any time do you remember referring to that

9 absence as the dog that didn't bark?

10 A. I may well have, yes, sir.

11 Q. That is from Conan and Doyle?

12 A. Yes.

13 Q. Turn to page 156 in the white book.

14 A. I am sorry. I have a lot of books and not much

15 room to move around.

16 Q. Volume 4. You have your hand on the book.

17 A. 156?

18 Q. Yes, sir. The top sheet of that is a letter

19 signed by Dr. Pilichowski?

20 A. No, sir. On my copy there is no signature.

21 Q. I am sorry. It has his name typed at the bottom,

22 correct?

23 A. Yes.

24 Q. It says addressed to Mr. Martin Mendelsohn,

25 correct?

1 A. It is.

2 Q. And dated August 31, 1979?

3 A. It is.

4 Q. It says that we do not have any data concerning  
5 Ivan Demjanjuk, correct?

6 A. Yes, among other things it says that.

7 Q. Now, do you know whether this was turned over to  
8 the defense in the Demjanjuk case during Mr. Demjanjuk's  
9 trial?

10 A. I don't know.

11 Q. This is the document, document at tab 156 referred  
12 to in the correspondence between Mr. Einhorn and Martin  
13 we just discussed, correct, sir?

14 A. I don't know.

15 Q. Will you look, please, at tab 38 in volume 1 of  
16 the black book.

17 I am sorry. The one we gave you is  
18 white.

19 This is my fault. I am supposed to be  
20 doing this correctly and I am not.

21 That is 38?

22 A. I am sorry. There is no 38 in this one either.

23 Q. I will give you my copy so we can move on.

24 Do you have it? That letter to you refers  
25 to correspondence from Doctor Pilichowski dated August

1 31, 1979, correct?

2 A. That is what it says, yes, sir.

3 Q. Does that refresh your recollection that the  
4 material at -- material at tab 156 is the subject of the  
5 correspondence between Mr. Martin and your office?

6 A. No, it doesn't refresh my recollection because I  
7 never saw this letter. It came in my absence and was  
8 answered by somebody else. It references to something  
9 dated August 31, '79. That is the letter dated August  
10 31, '79, from Dr. Pilichowski. That is all I can tell  
11 you.

12 I don't know what Mr. Martin was referring  
13 to otherwise.

14 Q. Did you discuss with Mr. Einhorn the  
15 correspondence from Mr. Martin, any of the correspondence  
16 from Mr. Martin in the August to November, 1982 time  
17 period?

18 A. I don't remember whether I did or not.

19 Q. Was the certiorari opposition in the Demjanjuk a  
20 responsibility of your office or SG's office?

21 A. It is always the responsibility of SG's office.

22 Q. I understand the SG has to sign it.

23 Who was the Solicitor General at the  
24 time?

25 A. I believe Wade McGee.

1 Q. Do you remember who granted the cert in Demjanjuk?

2 A. I don't know.

3 Q. Your office would have a hand in that?

4 A. That was our practice to review it.

5 Q. What was the standard practice about which lawyers  
6 in your office would have had the responsibility to  
7 inform the Solicitor General as to the relevant facts and  
8 law in the case?

9 A. Well, I suppose it would depend.

10 Q. Asking about the Demjanjuk case?

11 A. If the SG, whoever in the SG office was preparing  
12 it, whichever assistant was drafting the opposition for  
13 petition for certiorari, if that assistant needed to know  
14 anything about the record or transcript or anything like  
15 that, I suppose the person most able to answer that would  
16 be the trial attorney in the case.

17 Q. That would be Mr. Moscowitz in the Demjanjuk case?

18 A. Well, Mr. Moscowitz was the trial attorney along  
19 with Mr. Horrigan when the case was tried. Whether he  
20 was still in the office then, I don't know.

21 If you are talking about a communication  
22 to the Solicitor General on some extraordinary matter,  
23 that would be something I would have done.

24 Q. So you just don't remember specifically how it  
25 happened there?

1 A. What happened?

2 Q. How the certiorari opposition was prepared in the  
3 Demjanjuk case?

4 A. I don't have any independent recollection now, no,  
5 sir.

6 Q. Now, you were in the Solicitor General's Office --  
7 strike that.

8 Did you have a role in the Fedorenko  
9 case?

10 A. Yes.

11 Q. Were you in the case in the Eleventh Circuit, or  
12 Fifth Circuit as it was then?

13 A. Yes.

14 Q. Did you argue the case?

15 A. I argued it on appeal to the Fifth Circuit, yes.

16 Q. In connection with that, did you review the record  
17 in the Fedorenko case?

18 A. Yes.

19 Q. In connection with reviewing the record in the  
20 Fedorenko case, did you come across information relating  
21 to Ivan the Terrible?

22 A. Not that I recall.

23 In the district -- I don't recall anything  
24 in the district court record that referred to that. It  
25 may have. That was 1978, I believe.

1 Q. Did you review protocols from the Soviet Union?

2 Do you remember seeing any protocols from  
3 the Soviet Union in connection with your review of the  
4 record in the Fedorenko case?

5 A. No. Because what I reviewed was the record in the  
6 district court, the appellate record. To my recollection  
7 there were no protocols from the Soviet Union in the  
8 district court record.

9 Q. When you say you reviewed the district court  
10 record, did you review all the evidence that had been  
11 introduced in the district court?

12 A. I don't know if I reviewed it all. I certainly  
13 would have paid more attention to some things than  
14 others.

15 Fedorenko admitted he was at Treblinka.  
16 Despite that the judge, district judge in the Fedorenko  
17 case found that his citizenship was not subject to  
18 invalidation because he had committed no atrocities  
19 there, according to the district judge.

20 The basis for the appeal was that the fact  
21 that he admitted he was at Treblinka was in and of itself  
22 sufficient to cause his citizenship to be revoked and it  
23 did not matter whether there was also beyond that  
24 evidence of specific atrocities he may or may not have  
25 committed.

1                   So the primary position in the Fifth  
2 Circuit was the fact that Fedorenko admitted he was at  
3 Treblinka, was itself sufficient to reverse the judgment  
4 below.

5 Q.       So it is your testimony today, sir, that you --  
6 excuse me. Strike that.

7                   Do you remember in connection with your  
8 review of the record of the Fedorenko case argued to the  
9 Fifth Circuit that you saw a list from the USSR of terms  
10 with respect to the Nazi war criminal Fedorenko?

11 A.       I am sorry. Could you repeat that.

12 Q.       Do you remember reviewing in the record of the  
13 Fedorenko case materials sent to the United States by the  
14 USSR government relating to quote the Nazi war criminal  
15 Fedorenko?

16 A.       No, sir, I don't.

17 Q.       After the Fifth Circuit proceedings in Fedorenko,  
18 did you continue to have any role in that case?

19 A.       Yes. Although it was a quite different role.

20 Q.       What was that role, sir?

21 A.       Well, the decision from the Fifth Circuit  
22 reversing the Fedorenko judgment came down, as I recall,  
23 in June of 1979 or thereabouts. And at that time I was  
24 in the SG's office still at that time. I took -- I sent  
25 the judgment of the Court of Appeals opinion down to Phil

1 Hyman, Assistant AG for the Criminal Division at the time  
2 and also to Walter Rockler who had just been brought in  
3 to put the Office of Special Investigations together.

4 I said in effect I found this case very  
5 interesting, if there is anything I can do to assist you  
6 in your work, please doesn't hesitate to call, or words  
7 to that effect. Then I began --

8 Q. Let me --

9 A. I am sorry. I was going to answer your question  
10 about the role in the Fedorenko case.

11 That led to a number of discussions over  
12 the course of the summer and fall of 1979 that led  
13 eventually to my appointment as deputy director and then  
14 director of OSI in early 1980.

15 In the meantime Fedorenko petitioned for  
16 certiorari in the Supreme Court, granted that writ and  
17 the case was set for argument for some time, as I recall,  
18 in February or March of 1980. And the case was argued by  
19 then Attorney General Ben Civiletti.

20 I found myself in the role of working with  
21 the Attorney General and the Solicitor General in writing  
22 the brief and preparing for argument but no longer as a  
23 member of the Solicitor General's Office but head of the  
24 office which the case concerned.

25 Q. Sir, is it your testimony that you don't remember

1 receiving in 1978 any review snippets and short summaries  
2 of statements of Treblinka guards that contained  
3 reference to Ivan the Terrible?

4 A. It is my testimony I don't remember it and it is  
5 further my testimony that I am quite sure that I did not.

6 If I can anticipate you a bit, if you are  
7 looking at the Boston Globe article --

8 Q. I was going to refresh your recollection with the  
9 Boston Globe article that is at tab -- in that one it is  
10 stated the person at the gas chamber was Marczenko  
11 Nicholay.

12 I am asking if you will look at that and  
13 refresh your recollection and if you saw snippets and  
14 short summaries of guards' statements in 1978?

15 It is the red book, sir.

16 A. Do you want me to tell you exactly what happened,  
17 Mr. Tigar?

18 Q. I will in a minute. I want to focus on this 1978  
19 business.

20 Do you remember receiving it?

21 I don't care what the Boston Globe article  
22 says. It is not in evidence.

23 Does it refresh your recollection about  
24 whether you received these things in '78?

25 A. No, it doesn't refresh my recollection. I have no

1 recollection receiving them and in fact I am quite sure I  
2 did not receive them in 1978. There would be no reason  
3 for me to and I did not.

4 Q. Will you turn, please, sir, in the red book to  
5 Exhibit 223.

6 It is a memorandum of August 11, 1980,  
7 from you to Michael A. Bell, correct?

8 A. Yes, sir.

9 Q. What does the number at the top under the date  
10 mean?

11 A. What does that mean?

12 Q. Yes.

13 A. It is a filing number of some kind. I really  
14 don't know.

15 Q. That is some file number that your office used,  
16 correct?

17 A. I think that is something only the secretaries  
18 understood.

19 Q. The subject of this memorandum is extradition,  
20 correct?

21 A. Correct.

22 Q. In the second paragraph you say that extradition  
23 offers a number of advantages carrying out the  
24 congressional and Attorney General's mandates to take  
25 appropriate legal action against Nazi war criminals and

1 chief among these is the opportunity of avoiding the  
2 protracted legal proceedings involved in denaturalization  
3 and deportation actions.

4                   What kind of protracted legal proceedings  
5 were you seeking to avoid, sir?

6 A.           Well, in a denaturalization action the complaint  
7 is filed in the United States District Court which then  
8 holds a full trial which the government bears the burden  
9 of proof to determine whether the citizenship should be  
10 revoked because it was fraudulently or illegally  
11 procured.

12                   That judgment is subject to review on  
13 appeal by the Court of Appeals and that judgment in turn  
14 is subject to review by the Supreme Court of the United  
15 States on certiorari.

16                   When that process is finished and it may  
17 take several years then a separate proceeding in --  
18 separate deportation proceeding has to be initiated and  
19 that begins by a hearing in front of an immigration  
20 judge, administrative judge.

21                   That judge's decision is then subject to  
22 review by the Board of Immigration Appeals. The appeals  
23 judgment is then subject to further review by the United  
24 States Court of Appeals and that judgment in turn can be  
25 reviewed by the Supreme Court on a writ of certiorari.

1                   That is seven separate levels of hearings  
2 and appeals that can take many years starting from the  
3 time of trial let alone when the complaint was filed.

4                   Extradition on the other hand is a more  
5 summary procedure in which a hearing is held, the judge  
6 or magistrate makes a decision, that decision is subject  
7 to review but only on habeas corpus and then if the  
8 decision is that the defendant is expeditable the  
9 Secretary of State makes an appropriate determination  
10 whether or not to carry out that decree.

11                   The mandate of the Office of the Special  
12 Investigations was to take appropriate legal action  
13 against, I will use the shorthand, Nazi war criminals in  
14 the United States.

15                   It seemed to me particularly in '80 as I  
16 was becoming more and more experienced with what we were  
17 doing that extradition offered, as I said in this memo, a  
18 number of advantages that were not present in the  
19 protracted legal proceedings of denaturalization and  
20 deportation.

21 Q.            You wanted to speed the process up, correct, sir?

22 A.            I wanted to take the speedier of the two processes  
23 that the law allowed, yes, sir.

24 Q.            In June of 1981 you went to Jerusalem, correct?

25 A.            Yes.

1 Q. At tab 140 of the red book we have some of your  
2 notes of that, correct? Turn to the page of the notes  
3 that says 19th of June dash Friday. 140.

4 A. Yes, I have it.

5 MR. TIGAR: Does everybody have 140?

6 MR. GLOVSKY: We don't have 140.

7 MR. TIGAR: These were notes we received  
8 January 25, and didn't have them.

9 Does Your Honor have them?

10 MR. GLOVSKY: We don't have them either.

11 MR. TIGAR: For counsels' information they  
12 are the notes we have been given.

13 Q. Do you have those notes?

14 A. I do.

15 Q. Now, they reflect a discussion at the Ministry of  
16 Justice about extradition, correct?

17 A. Correct.

18 Q. And you were talking about extraditing someone for  
19 murder, correct?

20 A. I wasn't talking about a particular person, no.

21 Q. I understand.

22 You were talking about extradition in  
23 cases involving murder, correct?

24 A. I was discussing the question of whether  
25 extradition could be had between the United States and

1 Israel for Nazi war crimes.

2                   There were a number of question in my mind  
3 generally, and that is Israel wasn't a state at the time  
4 the crimes were committed and committed on Israeli soil.  
5 There was no international law I was aware of that  
6 clearly answered those questions.

7                   One of the things, main thing I wanted to  
8 raise with the Israelis is whether in their view those  
9 legal obstacles or whether in their view those were legal  
10 obstacles could affect or preclude extradition that might  
11 otherwise be allowed by law.

12                   My note here on murder says questions  
13 raised, does the Nazi law in Israel include murder as  
14 provided in the treaty; a minor problem since the treaty  
15 says murder, not murder under section X and murder charge  
16 would probably be drafted under the Israeli Nazi law.  
17 Statute of limitations on murder generally in Israel is  
18 generally 20 years.

19                   I think what I was doing there was to just  
20 find out what the Israeli Nazi law, punishment law  
21 provided substantively about murder.

22 Q.           You also had a discussion about the death penalty,  
23 correct?

24 A.           Apparently so, yes.

25 Q.           And you were -- that was a concern in the context

1 of extradition?

2 A. It was a relevant point. I am trying to think who  
3 between the two of us raised it, whether me or Dennis  
4 Goldman and the Justice Ministry.

5 I was aware -- I tried to learn something  
6 about extradition law, too.

7 I was aware there was cases in which  
8 certain offenses are expeditable unless they are  
9 punishable in the receiving country by capital punishment  
10 but not the surrendering country. In the cases the  
11 surrendering country would be able to comply with what I  
12 think is called the doctrine of specialty. That may not  
13 be it.

14 I am trying to reconstruct what I knew  
15 then. The point was --

16 Q. The ne bis in idem? Is that the principle?

17 A. I don't know.

18 Q. Go ahead.

19 A. The point is that if that became the issue in a  
20 case, if extradition would be proper except for the fact  
21 that Israel subjects Nazi criminals to the death penalty,  
22 would the Ministry of Justice be willing to waive the  
23 death penalty or give assurances that the death penalty  
24 would not be imposed in order to carry out the  
25 extradition.

1 I think that is the question I was  
2 raising, and the answer as I wrote it in my notes is that  
3 the Ministry of Justice may be able to give the requisite  
4 assurances here if necessary. This is defendant's  
5 argument to raise.

6 Q. Is it fair to say, sir, in June of 1981, you knew  
7 that at least some of the cases you had in OSI could end  
8 with the defendant being extradited to Israel, tried for  
9 murder and subjected to the death penalty?

10 A. I am sorry. Is your question whether I knew  
11 that --

12 Q. Yes, in '81 you understood at least some of the  
13 cases you had at OSI involved defendants who could be  
14 extradited to Israel, tried for murder and subjected to  
15 the death penalty?

16 A. I certainly recognized that was a possibility,  
17 yes.

18 We weren't at the level of discussing  
19 specific cases at this point.

20 Q. I understand. In June, '81, how many OSI  
21 defendants were alleged to have committed acts amounting  
22 to the unlawful killing of another?

23 A. Pretty much all of them I think, Mr. Tigar, except  
24 for two.

25 Q. Was John Demjanjuk among those?

1 A. He was.

2 Q. If --

3 MS. STEMLER: Let the witness answer  
4 please.

5 A. I believe we had in June, '81, we had in  
6 litigation or close to litigation something I think  
7 probably on the order of 20 cases. I can recall two of  
8 those cases which did not involve the killing of other  
9 people. Those two cases were both propaganda. I think  
10 every other case was.

11 Q. Are you finished?

12 A. Yes.

13 Q. How many cases did you have of OSI defendant's  
14 culpably involved by your view in the unlawful killing of  
15 more than 10,000 people?

16 A. We didn't keep that score, sir.

17 Q. Did you understand, sir, that Mr. Demjanjuk was  
18 alleged to have been culpably involved in the killing of  
19 more than 10,000 people?

20 A. I certainly did.

21 Q. So you did understand that. You understood that  
22 in June of '81, correct, sir?

23 A. Yes, I did.

24 Q. Did you have any understanding about a number of  
25 persons over 10,000, as what you just testified as Mr.

1 Demjanjuk for any other defendant?

2 A. Well, as I said, we didn't keep score by the  
3 number of victims. We prosecuted cases where there were  
4 only one or two victims.

5 Q. I didn't ask you about scores. I just asked if  
6 you had an understanding?

7 A. Understanding about how many defendants OSI -- I  
8 don't have an understanding of that.

9 I have no hesitation in saying that cases  
10 we prosecuted were prosecuted vigorously without regard  
11 to the number of victims.

12 Q. Will you please turn, sir, to Exhibit Number 73 a  
13 which is in volume two -- which is, I believe, a white  
14 volume in your books, sir. It is right there.

15 Do you see tab 73 a?

16 A. No, sir.

17 Q. All right. I am furnishing you a copy of 73 a.

18 A. I don't need one more book up here, Mr. Tigar. I  
19 will use it, whatever you want.

20 Q. Do you remember having received that memorandum  
21 from Mr. Rosenbaum?

22 A. Could I look at it?

23 Q. Have you had a chance to look at it?

24 A. No, I haven't.

25 Q. I understand it is lengthy. Tell me when you

1 have -- as you sit there, I will ask you a couple  
2 questions.

3                   The first will be, do you remember seeing  
4 it at or about the time it was written?

5 A.       I don't remember but I would say I probably did  
6 receive it and read it at the time it was written. I  
7 just don't remember it now.

8 Q.       Turn to page two, sir, second full paragraph the  
9 last sentence.

10                   Will you read that out loud.

11 A.       All right. Could I just read the paragraph so I  
12 can see what I am reading here?

13 Q.       Of course. I understand.

14 A.       The last sentence says N. M. S., which is Neal  
15 Sher --

16 Q.       I am talking about the second full paragraph.

17 A.       I am sorry. The second full paragraph?

18 Q.       Yes. Later in the meeting.

19 A.       Let me read that paragraph then.

20                   You want me to read the last sentence in  
21 that paragraph?

22 Q.       Yes.

23 A.       Quote, later in the meeting Goldman asked Colonel  
24 Russek whether he could suggest a suitable subject for an  
25 Israeli extradition request and Russek thereupon stated

1 his preference for John Demjanjuk as quote a proper case,  
2 end quote.

3 I would like to read the preceding two  
4 sentences to put in context because I think it is a  
5 little misleading reading it by itself.

6 THE COURT: Yes, you may.

7 Q. Please.

8 A. This refers to a meeting between Neal Sher, deputy  
9 director of OSI and others from -- meeting with Israeli  
10 officials and Goldman is the same official I had met with  
11 18 months earlier. I am sorry. Eight months earlier.

12 Goldman's memo says, Goldman then asked  
13 Neal Sher whether he was prepared to suggest an initial  
14 candidate for Israeli extradition request.

15 And Neal Sher replied he was not in  
16 position to do so at this time. He pointed out in any  
17 event it is the State Department which makes the first  
18 decision as to whether an extradition request from a  
19 foreign state will be honored, and later in the meeting  
20 Goldman asked Colonel Russek.

21 Russek I know was the police officer who  
22 was in charge of the Israeli police detail that dealt  
23 with witness matters in Nazi cases and Colonel Russek  
24 indicated to Goldman in his view Demjanjuk would be a  
25 proper case.

1 Q. Now, the request to extradite John Demjanjuk to  
2 the state of Israel for trial would have to come from  
3 Israel, right?

4 A. Yes, sir.

5 Q. They would make the initial decision who to ask  
6 for, correct?

7 A. Yes.

8 Q. Later on on page four at the bottom of the first  
9 full paragraph, N. M. S. and Goldman agreed it would be  
10 best for the Israeli authorities to make the initial  
11 selection in conjunction with OSI and assistance of  
12 Colonel Russek, correct, sir?

13 A. What? Where are you?

14 Q. Page four, first full paragraph.

15 A. Yes, that is what the last sentence says.

16 Again, I feel read alone it is taken a bit  
17 out of context, what is being discussed there.

18 Q. Well, the memo, as I understand, speaks for itself  
19 and the context His Honor has.

20 If there is anything else you would like  
21 to read under the rules, if you will, please, do so and I  
22 will move on to something else.

23 A. Since you asked to read the last sentence, you  
24 make the point what this paragraph is discussing is  
25 conversations between Neal Sher and Mr. Goldman from the

1 Israeli Ministry which they dwell on the fact that it is  
2 a long way from where they are now to actually affecting  
3 any particular extradition and that the matter would have  
4 to be taken up with the State Department, that it would  
5 take a long time, that it might have to go to the  
6 secretary and Israeli -- Mr. Goldman from the Israeli  
7 Justice Ministry asks Neal to tell the State Department  
8 as they think about these matters that Israel will select  
9 cases carefully and responsibly, they wouldn't flood the  
10 United States with extradition requests and then Neal and  
11 Goldman agree it would be best for the Israelis to decide  
12 in conjunction with OSI what would be the best initial  
13 steps to take.

14 Q. And that was in 1982, correct, that memo?

15 A. January of '82, yes, sir.

16 Q. Eventually the state of Israel did request someone  
17 to be extradited, didn't they?

18 A. Yes.

19 Q. Requested Mr. Demjanjuk, correct?

20 A. Correct.

21 Q. Anybody else out of OSI?

22 A. I don't know. I left OSI in March, '83. The  
23 Israeli request for extradition came in, as I understand,  
24 in November, '83. If there were other requests after I  
25 left, I don't know them.

1 Q. You don't remember if there were?

2 A. No. It is not a question of remembering. I know  
3 there was no request for extradition while I was at OSI.  
4 I know the Israelis, as we all know, requested Mr.  
5 Demjanjuk afterwards and if there were others, I don't  
6 know.

7 Q. He was the first, correct?

8 A. My understanding, yes.

9 Q. He was tried in Israel?

10 A. Yes.

11 Q. Convicted and sentenced to death?

12 A. He was.

13 Q. Did you actually personally participate in trial  
14 preparation in the Demjanjuk denaturalization case?

15 A. No. If your question -- if I can interpret your  
16 question, did I participate like a trial attorney would,  
17 the answer is no.

18 I did meet with Mr. Moscowitz and Mr.  
19 Horrigan for a period of time, I think also with Mr.  
20 Parker as they were preparing for trial and kept me  
21 apprised.

22 Q. Did you meet with Mr. Horrigan, Mr. Parker, Mr.  
23 Moscowitz late at night in the privacy of your office and  
24 wonder if something, anything might arise to cast doubt  
25 on the case?

1 A. I did meet with them as I did with all trial  
2 attorneys at various times including late at night and  
3 the question of casting doubt on a case is a constant  
4 matter in all our cases.

5 Q. So throughout -- let me read this paragraph from  
6 your book, page 108, and ask if you agree with it today.

7 Throughout our preparation we were alert  
8 as we were in every case to the possibility that  
9 something, anything, a POW record, a discrepancy in photo  
10 identification, a fact that jarred -- might arise and  
11 cast doubt on our case to cause us to wonder in the  
12 privacy of our offices late at night when everyone else  
13 had gone home if we had the right man. But it didn't  
14 happen. The more we found out, the stronger the case  
15 became. And when we investigated Demjanjuk's POW alibi,  
16 we knew we had nailed him. Demjanjuk was lying again and  
17 we could prove it in court.

18 Did you write that, sir?

19 A. Those are my words, yes, sir.

20 Q. Spoke to Rosenbaum in December, '91, correct, sir?

21 A. Yes.

22 Q. He is now the deputy director of OSI?

23 A. I think so, yes.

24 Q. He sent you some government documents, did he not,  
25 sir?

1 A. He did.

2 Q. Where did he get them?

3 A. I don't know.

4 Q. Are you an employee of the government?

5 A. I am not.

6 Q. Other than Mr. Rosenbaum, did you have more than

7 one conversation with him in the 1991/'92 period about

8 the Demjanjuk case?

9 A. Yes, I did. In December, 1991, I had several  
10 calls with Mr. Rosenbaum because that was the period of  
11 time in which the stories were being reported in the news  
12 that there were 28 statements from the Soviet Union  
13 identifying Marczenko as the man, as Ivan the Terrible.

14 And December, '91, that Mr. Sheftel made  
15 the charge against me that I personally had the  
16 statements and personally suppressed these statements  
17 knowing that the government was going after an innocent  
18 man and I did that in order to procure the conviction of  
19 an innocent man. That was December, '91, and I was on  
20 the phone several times.

21 Q. You deny that, don't you?

22 A. You bet I deny it, Mr. Tigar.

23 Q. You do not as you sit there today remember seeing  
24 the Leleko statement, correct?

25 A. That's correct.

1 Q. We are talking about prior to your preparation for  
2 testimony here?

3 A. Yes. I want to make clear, because I think the  
4 distinction is important in what I understood. Mr.  
5 Sheftel was making that slanderous charge against me.

6 Q. I am not here to try Mr. Sheftel. I am here to  
7 give you an opportunity to clarify.

8 A. Mr. Sheftel --

9 Q. I will in just a moment. I already asked about a  
10 list of things you did or not.

11 I am not trying to --

12 THE COURT: Mr. Tigar, allow the witness  
13 to answer the question and leave your own explanations  
14 for later, please. The argument is not necessary at this  
15 time.

16 Continue.

17 A. Thank you.

18 Mr. Sheftel who is Mr. Demjanjuk's lawyer  
19 in Israel made the charge and he made it on national  
20 television in this country that the 28 exculpatory  
21 statements, 28 statements or however many that were  
22 ostensibly naming Marczenko were in OSI's possession in  
23 '78 and I knew of it and I personally directed they be  
24 suppressed and withheld in order to procure the  
25 conviction of an innocent man. That is Mr. Sheftel's

1 charge.

2 I say for the record that has never been  
3 your charge, Mr. Tigar, or Mr. Marek's charge, I  
4 understand that.

5 My state of mind in December, '91, is that  
6 that is what Mr. Sheftel was charging. And the press  
7 understandably was very much interested in that charge.

8 I called Ely and I also spoke to Norman in  
9 December, 1991. I said, I certainly don't remember  
10 anything like this. Please tell me it couldn't possibly  
11 be true.

12 Ely said to me -- and I may be telescoping  
13 more than one conversation -- but Ely said to me in  
14 effect there was no such thing in the file, absolutely  
15 nothing like that in the file.

16 The only thing in the file was in the  
17 Fedorenko file and it contained fragments of two  
18 statements, not 23, and those two statements are quite --  
19 I don't recall his exact words. They were quite  
20 innocuous or un-illuminating on one reference to Nicholay  
21 Marczenko.

22 And so that was my state of knowledge at  
23 that point, that the charge had been made and I had  
24 ascertained it was without basis.

25 That occasioned a number of phone calls

1 between Ely and myself. I also, because I was being  
2 interviewed by at least two networks that I recall and  
3 showing me documents and pieces of paper and I was  
4 passing those on to the Justice Department saying, look,  
5 this is what NBC gave me today or this is what NBC is  
6 asking me now.

7 I was trying to keep him informed and  
8 urging him at the same time to have somebody in the  
9 Justice Department come forward and give a full account  
10 of what Ely had told me.

11 Because I said we are getting killed out  
12 here with these allegations and no one from the Justice  
13 Department is coming forward to explain to the press what  
14 you have just explained to me.

15 I have to carry the water on this thing  
16 but I am not the Justice Department any more.

17 Q. That is what I wanted to do, is give you an  
18 opportunity to explain.

19 THE COURT: Now, he had it. Get to  
20 another question.

21 Q. Mr. Rosenbaum told you there were two things that  
22 were involved, not some larger number, correct? ..

23 A. He told me that there were two pieces, two  
24 excerpts or fragments or whatever the words he used that  
25 had come to the Special Litigation Unit in the

1 Immigration Service in 1978 in connection with the  
2 Fedorenko case.

3                   Those statements he described to me at the  
4 time. One referred to a Nicholay Marczenko and the other  
5 referred to a Marczenko at the gas chambers.

6                   I remember thinking at the time a number  
7 of thoughts at the time but one was, first of all, I knew  
8 Norman Moscowitz was too good a lawyer to have ignored  
9 the Fedorenko file in the course of preparing for the  
10 Demjanjuk case.

11                   And the thought occurred to me that  
12 someone looking at a statement about Nicholay Marczenko  
13 and second statement about Marczenko, no first name,  
14 might come to the conclusion that Marczenko's first name  
15 was Nicholay. That in a sense I cauterized that problem.  
16 I said that is that development.

17                   As far as what Sheftel was charging at  
18 that time, there was certainly no basis whatever for that  
19 in fact.

20 Q.           The Sheftel statement is not in issue here. I  
21 want to focus on what Mr. Rosenbaum told you.

22                   Did he tell you the name Leleko?

23 A.           I don't recall whether he put names on the  
24 statements or not.

25 Q.           Did he tell you the name Malagon?

1 A. I don't recall.

2 Q. Did he tell you there was a Danylchenko statement?

3 A. In these?

4 Q. In these conversations to tell you the nature of  
5 the problem?

6 A. I don't recall if Danylchenko's name came up or  
7 not.

8 Q. Did he tell you there was a Polish Main Commission  
9 report that was a problem?

10 A. He didn't tell me anything about the Polish Main  
11 Commission report and based on the letter you showed me  
12 earlier today, I wouldn't consider that a problem.

13 Q. Did he tell you about Sol Lackman (phonetic)?

14 A. Sol Lackman (phonetic)?

15 Q. Sol Lackman (phonetic). Did he say anything about  
16 him?

17 A. No, sir.

18 Q. Did he say anything about Kurt Franz?

19 A. Kurt Franz?

20 Q. Yes.

21 A. I don't believe so.

22 Q. Did he say anything about Mr. Suchomel?

23 A. No.

24 Q. Just those two statements, right?

25 A. I am sorry?

1 Q. Just those two statements. Just the Marczenko  
2 statements you told us about?

3 A. We talked about those statements in the context of  
4 the allegations being made in the Demjanjuk case and the  
5 Fedorenko case and what information had come to  
6 Washington and when.

7 Q. And during that period of time, December of '91  
8 and January, February, '92, did you talk to Mr.  
9 Moscowitz?

10 A. I talked to Norman -- I visited with Norman once  
11 in December of 1991, when my wife and I were in Florida  
12 and Norman and his wife invited us over to brunch. That  
13 was about the same time period.

14 I don't recall whether I spoke to him at  
15 or about the same time by telephone. I have not spoken  
16 with Norman since December of 1991.

17 Q. When you spoke to him, did you talk to him about  
18 this case?

19 A. For a few minutes, yes.

20 Q. Did you talk to Mr. Parker? Have you spoken to  
21 Mr. Parker in '91 or '92?

22 A. I spoke to Mr. Parker once in 1992. It was in  
23 the -- I think February or March, thereabouts, of 1992.  
24 That is the only time I have spoken to him since he left  
25 OSI that I can recall.

1 MR. TIGAR: Your Honor, if I may have a  
2 morning comfort break I will be able to conclude any  
3 examination in relatively short order.

4 THE COURT: All right. We will be in  
5 recess.

6 (Whereupon, the hearing was in recess.)

7 THE COURT: You may continue.

8 BY MR. TIGAR: (continuing)

9 Q. Turn to page 221 in the red book. I already asked  
10 you about that. I want the record to be very clear.

11 Can you remember ever seeing that  
12 memorandum prior to the middle of 1992?

13 A. Well, as I say, Mr. Tigar, I can not. I do recall  
14 the circumstances under which it would have been written.

15 Q. Do you recall Mr. Moscovitz ever saying to you,  
16 Ivan Marczenko or the Ivan who worked at the gas chambers  
17 or words to that effect?

18 A. Well, I am sure Norman said Ivan at the gas  
19 chambers a number of occasions when we were discussing  
20 the case over the months.

21 If your question is Ivan Marczenko or  
22 whether there was somebody at the gas chambers named  
23 Marczenko, I recall no such conversation, no, sir.

24 Q. Do you remember ever having a conversation with  
25 anybody before the middle of 1992 in which Ivan Marczenko

1 of the gas chambers of Treblinka was discussed?

2 A. Well, perhaps in December of 1991. If you mean  
3 before even December --

4 Q. Before December, 1991?

5 A. Would you repeat the question, sir?

6 Q. Do you ever, before December, 1991, remember  
7 having a conversation with anyone which the name Ivan  
8 Marczenko was discussed?

9 A. Well, Marczenko was the name that Mr. Demjanjuk  
10 put down on his application for a visa to come to this  
11 country, as I recall correctly, as being his mother's  
12 maiden name. It may be that Marczenko was discussed in  
13 that context.

14 But if your question is, was there any  
15 discussion that the person at the gas chamber at  
16 Treblinka might have been a person named Ivan Marczenko,  
17 my testimony is that I recall no such conversations.

18 Q. Do you recall a conversation any time before  
19 December of 1991 about the possibility that Marczenko was  
20 an alias of John Demjanjuk?

21 A. No.

22 Q. As of 1990, sir, did you have any knowledge as to  
23 whether or not the Danylchenko affidavit had been turned  
24 over to the Demjanjuk defense?

25 MS. STEMLER: Objection. I don't know if

1 that affidavit is the correct term there.

2 Q. As of -- I will rephrase the question.

3 As of 1990, did you have any recollection  
4 as to whether the Danylchenko statement had been turned  
5 over to the defense?

6 A. It is hard to go back to a point in time like 1990  
7 and answer that question. I know that I did not know the  
8 Danylchenko statement or protocol was until about 1990,  
9 as best I recall now.

10 The question of when or whether it was  
11 turned over to the defense, I just don't know. My  
12 personal knowledge, I don't know.

13 Q. Would it refresh your recollection if I played  
14 this for you, sir?

15 (playing of tape)

16 Q. I am sorry. We will strike that last.

17 You have no recollection as to whether the  
18 Danylchenko statement was turned over to the defense,  
19 right?

20 A. Well, as I testified a moment ago of my personal  
21 knowledge, I could not. I don't know what interview that  
22 was exactly.

23 What I was doing there, as I do in many  
24 interviews, I try to convey information as accurately as  
25 I can. I sometimes rely on what other people have told

1 me and I may have been doing so in that case.

2                   If you are asking me of my personal  
3 knowledge, I was not involved as far as I can recall in  
4 the turning over of the Danylchenko statement.

5 Q.           There were some discussions in your office, were  
6 there not, about whether Mr. Demjanjuk had been at  
7 Sobibor?

8 A.           Yes.

9 Q.           Those discussions were in 1980, were they not?

10 A.          I am sure there were some in 1980. I don't recall  
11 specifically but I am sure they must have been.

12 Q.          There were discussions with the lawyers working on  
13 the case, correct?

14 A.          Do you mean discussions in which I was involved or  
15 discussions --

16 Q.          Yes, discussions you were involved about whether  
17 Mr. Demjanjuk had been in Sobibor that you now recall?

18 A.          That subject did come up. It is hard for me to  
19 recall specific conversations. But the issue of whether  
20 he was at Sobibor, the state of his evidence at that  
21 point or his defense of mistaken identity generally was a  
22 matter talked about in 1980, yes, sir.

23 Q.          In fact you believed that the Sobibor question was  
24 always one of the most tantalizing and frustrating in  
25 this prosecution, correct?

1 A. I did.

2 Q. However, you did not feel based on the evidence  
3 that you had that you could responsibly charge Mr.  
4 Demjanjuk with crimes there, isn't that correct?

5 A. That is not correct because the complaint was  
6 amended based on the evidence that we had prior to trial  
7 to make that amendment. I very well may have forgotten  
8 that fact at some later point when I was talking to an  
9 interviewer. As --

10 Q. Turn to tab 38.

11 MS. STEMLER: Could you let him answer the  
12 question.

13 Q. I am sorry. I thought you finished.

14 A. If you will permit me to finish.

15 As time went by and as I was interviewed  
16 by various news reporters, et cetera, about this case, I  
17 naturally tended to focus the Treblinka allegations more  
18 so than the Sobibor allegations because we had no  
19 eyewitness evidence that he was at Sobibor.

20 And it may be since we did not charge him  
21 with having actually committed crimes at Sobibor but  
22 merely being present there, I may well have said to a  
23 reporter that we didn't have a Sobibor case or words to  
24 that effect.

25 Q. To a reporter.

1 Will you turn, please, to tab 238 of the  
2 red book.

3 A. Yes.

4 Q. That is a report that you made to the  
5 Antidefamation League, correct?

6 A. Well, this is a draft of which the first part is a  
7 draft of what later was printed in an ADL publication on  
8 my report of the trial, correct.

9 Q. About three pages from the back or four pages from  
10 the book there is something that starts, insert for  
11 Demjanjuk.

12 Do you see that?

13 A. Yes, I do.

14 Q. Will you turn one page past where it says insert  
15 for Demjanjuk and tell me if you see seven lines from the  
16 bottom the statement, I did not feel on the basis of the  
17 evidence that we had that we could responsibly charge him  
18 with crimes there.

19 Do you see that?

20 A. Yes.

21 Q. You are referring to Sobibor?

22 A. Yes. Although I should point out what you are  
23 looking at now is a different document, not part of the  
24 document or draft of my ADL report. Since this subpoena  
25 I received, I construed it quite broadly. This is notes

1 that I made prior to giving a speech -- I don't remember  
2 where -- last spring.

3 I say, yes, I did not feel we could  
4 responsibly charge him with crimes there, which in fact  
5 we did not.

6 Q. And at the time you did write this, correct?

7 A. I did.

8 Q. You believed it?

9 A. And I believed it.

10 Q. Yes, you believed what you wrote was true,  
11 correct?

12 A. Correct.

13 Q. Now, 1980, sir, if you will turn to tab 6 in the  
14 volume your counsel prepared, the Ryan exhibits.

15 Do you have that? It is a white notebook.

16 That is a report of September 11, 1980, is  
17 it not?

18 A. Excuse me just a minute.

19 THE COURT: What number?

20 MR. TIGAR: Number six in that book, Your  
21 Honor.

22 Q. That is a report to Phil Hyman, Assistant AG,  
23 correct?

24 A. That's correct.

25 Could I take a minute and review it, if

1 you're going to ask me about it?

2 Q. Of course. I am going to ask you about the  
3 response to question number one and that is it.

4 A. Okay.

5 Q. In answer to that question, you list 11 most  
6 significant accomplishments, correct?

7 A. The question would have been the most significant  
8 accomplishments of your section slash office in the past  
9 six months.

10 Q. Yes?

11 A. I said recognizing that the following  
12 accomplishments cannot be strictly ranked in precise  
13 order of -- and then I list 11 things that the office had  
14 done.

15 Q. At page three you say, I believe the  
16 accomplishments in paragraphs five dash 11 supra are most  
17 directly the result of my initiatives as office director,  
18 correct?

19 A. I am sorry. Where is that?

20 Q. On page three right after the 11th item?

21 A. Yes. The question said, highlight in particular  
22 those accomplishments that are most directly the result  
23 of your initiatives as section chief or office director  
24 and I said at the end I believe the accomplishments of  
25 paragraphs five through 11 supra are most directly the

1 result of my initiative as office director.

2 Q. Will you read, please, number six.

3 A. In consolidating the initiative begun in January,  
4 1980, to secure support in Congress, Jewish community  
5 organizations, public at large for OSI -- press coverage  
6 has been substantially favorable and support from Jewish  
7 organizations is now secure. Recognizing that this  
8 support can't be taken for granted and must be reinforced  
9 at every opportunity --

10 Q. You believed that press support for your efforts  
11 was important, correct?

12 A. Well, I did but given the context in which the  
13 office was functioning in 1980, the reason I included  
14 that is because the office, when I took over in March of  
15 1980, and particularly when I came over as deputy  
16 director in January, '80, there had been a lot of  
17 criticism of the office, lot of criticism to hire me and  
18 let somebody else go.

19 There was a lot of unhappiness in both the  
20 Jewish community and on the Hill and one of the things  
21 that I considered most important was to reach out not  
22 only to the Jewish community but to the immigrant  
23 communities and Ukrainian and Baltic communities and try  
24 to explain what OSI was doing for all those communities,  
25 to impress upon them that we were going to be serious and

1 professional and to solicit their support in any way that  
2 they could provide it but particularly in helping us  
3 locate avenues of information or documents or other  
4 things that would shed light upon what we were doing.

5                   Unfortunately with the exception of the  
6 Polish community the immigrate communities in this  
7 country were not -- the Eastern European communities were  
8 not receptive to my request so I wasn't able to pursue  
9 that further with them as I was able to do with the  
10 Jewish community.

11 Q.       The word immigrants doesn't appear in paragraph 6?

12 A.       That's correct, because I don't figure I made  
13 sufficient advances with the immigrants to list as an  
14 accomplishment.

15                   I listed it as a failure, if I could not  
16 persuade them they ought to come forward and work with  
17 us.

18 Q.       You have since left government and continued to be  
19 interviewed in the media and to make addresses and to  
20 write things about the Demjanjuk case, correct?

21 A.       I have.

22 Q.       And you have continued to make statements about  
23 what you understood to be the discovery policy in the  
24 office, correct?

25 A.       Yes.

1 Q. You attended Mr. Demjanjuk's trial or parts of Mr.  
2 Demjanjuk's trial in Israel, correct?

3 A. Correct. I attended that part of the trial where  
4 he, himself, testified.

5 Q. And before his trial, you also went to Israel and  
6 talked to the prosecutors there about their case,  
7 correct?

8 A. In 1986, which was the year before the trial, as I  
9 recall, I went to Israel for about 10 days on a lecture  
10 tour that was sponsored by the Antidefamation League and  
11 met with a number of people in and out of the government  
12 in Israel, and one of the people I met was Yonah Blattman  
13 who was the states attorney and the attorney responsible  
14 for prosecuting the Demjanjuk case in Israel.

15 I believe I also met at that time with his  
16 assistant, Mickey Shak-Ed. I don't recall specifically.

17 Q. In that May of 1986 trip you were still employed  
18 by the government at that time?

19 A. No.

20 Q. In your May, 1986 trip the Israeli prosecutors  
21 told you that they have problems with their case, didn't  
22 they?

23 A. Yes.

24 Q. They told you that some witnesses have retreated,  
25 others have died or have inconsistencies in their

1 testimony, correct?

2 A. As I recall, that is the substance of what Yonah  
3 Blattman said, yes, sir.

4 Q. In fact you made a note that Monday, May 19th, at  
5 your diary at tab 240?

6 A. Did I? I probably did.

7 Which volume?

8 Q. The red volume, tab 240. Pages are not numbered  
9 but the entry labeled at the top, Monday, M-o-n, May 19.  
10 Do you see that page?

11 A. Monday, May 19?

12 Q. Yes. Do you have it there?

13 A. Yes. Could I look at it a minute?

14 Q. Yes.

15 A. Yes, I see that.

16 Q. The top line there I can't read. It says meet  
17 with Yonah --

18 A. It says Yonah Goldblack. That is wrong. It is  
19 Blattman.

20 Q. It is easy to get someone's name wrong?

21 A. When I was introduced to all these people, I think  
22 I put down one name when I was writing in any notebook  
23 here. It turns out his name is Blattman.

24 Q. Now, in that conversation you agreed to write to  
25 the Soviet Union, correct?

1 A. Yes, I did.

2 Q. And you wrote a letter to Mr. Rekunkov, is that  
3 right?

4 A. Yes.

5 Q. One of the things that Mr. Blattman was concerned  
6 about in the case was that the Israeli prosecutors as of  
7 1986 did not have the Trawniki ID card which was an  
8 important piece of evidence. We had returned the  
9 original as required to the Soviet Union after the trial  
10 in Cleveland.

11 So he told me at that time that the  
12 initiatives that had been undertaken had not been  
13 productive so far, they had not been able to get any  
14 response from the Soviet Union as to whether they would  
15 allow the card to be brought to Israel for trial and Mr.  
16 Blattman asked if I would be willing to write to the  
17 procurator general whom I had met with some years before  
18 and make a request that the card be made available.

19 I said if you think that would be helpful,  
20 I am happy to write him a letter and see if it does any  
21 good.

22 He said, I would appreciate it if you  
23 would do that, and I did it.

24 Q. You agreed to be a go-between with the USSR, is  
25 that correct?

1 A. In a sense of writing a letter to the Soviets,  
2 yes.

3 Q. You wrote that?

4 A. Yes.

5 Q. You knew Mr. Rekunkov from the time you were in  
6 the government service?

7 A. Yes. Rekunkov had been the deputy procurator  
8 general when I went to Moscow in January, '80, and by  
9 '86, I understood he had become the procurator general.

10 So, I thought if I wrote to him I could  
11 remind him we met in January, '80, and if that would do  
12 any good to appeal to the Soviet self-interests and tell  
13 them what an important case it was in Israel and how it  
14 was part of the fight against factious war criminals and  
15 all the other things that Soviets like to hear.

16 Bottom line, it would be a piece of  
17 evidence that would be forthcoming. I thought that would  
18 be good.

19 Q. Did you know Mr. Fedorenko was being prosecuted at  
20 that time?

21 A. I don't believe I did, no.

22 Was he in fact being prosecuted at that  
23 time?

24 Q. I am asking you to turn to page 230, your letter,  
25 and the last paragraph you say you are perhaps aware the

1 Ukrainian criminal Fedorenko has already been deported to  
2 the Soviet Union.

3 What caused you to write that?

4 A. Well, I knew that Fedorenko was deported. What  
5 was going on in the Soviet Union, apparently I didn't  
6 know at the time. I just don't remember what I knew  
7 about the Fedorenko case on May 30, 1986.

8 I knew he was apparently deported to the  
9 Soviet Union. Whether there was a prosecution, I don't  
10 recall.

11 Q. You say on page two of your letter, last  
12 paragraph, I fear acquittal of Demjanjuk could arouse  
13 public sentiment in the United States to discount the  
14 trials against factious criminals there and could  
15 jeopardize deportation to the Soviet Union of those  
16 criminals who have been found guilty and whose appeals  
17 are nearing a conclusion.

18 You wrote that?

19 A. I did.

20 Q. Did you believe it?

21 A. Well, yes, I believed it but I have to say it is a  
22 bit -- I look at it now and I say it is a bit of a part  
23 of my appeal to Mr. Rekunkov to appeal to the Soviet  
24 self-interest.

25 Q. What was the Soviet self-interest you were trying

1 to appeal?

2 A. The Soviet self-interest I was trying to appeal  
3 was the overall question of Nazi war criminals.

4 Q. And the Soviet self-interest was that the  
5 particular criminal named Demjanjuk not be acquitted,  
6 isn't that right, sir?

7 A. Well, no, I don't think I looked at it quite in  
8 those terms. I was trying to get the original piece of  
9 evidence out of the Soviet Union and into Israel so it  
10 would be available to the Court.

11 Q. You wanted Demjanjuk convicted, didn't you,  
12 because it would be a sign to the world that Hitler-like  
13 crimes can't be forgotten?

14 A. I did write that to Mr. Rekunkov, yes.

15 Q. Did you want it?

16 A. I am sorry?

17 Q. Were those reasons reasons that you have, that you  
18 believed?

19 A. I believed that the evidence showed beyond a  
20 reasonable doubt that Mr. Demjanjuk was guilty of the  
21 crimes as charged in Israel. I thought that a conviction  
22 in that trial would be a just result, yes, sir.

23 Q. Did you believe that it would be -- did you  
24 believe that the acquittal of Demjanjuk would be a  
25 victory for Hitler-like criminals?

1 A. No.

2 Q. Did you write that in the last paragraph of your  
3 letter?

4 A. No.

5 Q. What did you write?

6 A. Let me read.

7 Q. Please read aloud the last paragraph of your  
8 letter and any other parts you wish to read.

9 A. I did not say in that last -- what I said in the  
10 last paragraph was that a victory for Hitler-like  
11 criminals is a defeat for those who oppose fascism. I  
12 wasn't -- I am sorry.

13 What is your question?

14 Q. Well, I asked you if you wanted to read out the  
15 whole paragraph which that is a part?

16 A. I will if you ask me to.

17 Q. Will you.

18 A. I trust you will agree when I suggest to you that  
19 any victory for Hitlerite criminals, anywhere in the  
20 world is a defeat for those who oppose fascism. Demjanjuk  
21 is only one man, but he has come to symbolize the  
22 Hitlerite criminals to justice. Those efforts continue  
23 today between the United States and the Soviet Union in  
24 the spirit that you and General Rudenko expressed so  
25 eloquently to me in 1980, but we are not the only ones

1 who have attempted to do justice. I respectfully appeal  
2 to you to extend the same hand of cooperation to our  
3 colleagues anywhere in the world who share our concerns.  
4 Today the greatest need for that cooperation is in the  
5 trial of Demjanjuk.

6 Q. Who were the colleagues whom you referred in that  
7 letter?

8 A. To those people who were prosecuting Nazi war  
9 criminal cases.

10 Q. Did you ever write to Mr. Rekunkov and say, by the  
11 way, if you have any protocols or other evidence that  
12 might exculpate Mr. Demjanjuk, be sure to send those  
13 along at the same time?

14 A. I said that to Mr. Rekunkov in 1980 when I was  
15 there.

16 Q. Did you say it in the letter that we have here?

17 A. In 1986 I was writing to Rekunkov at the request  
18 of Mr. Blattman to see if the Soviets would release the  
19 Trawniki identification card, the original, so it could  
20 be brought to the Court and seen by everyone as done in  
21 '81 in the trial we had.

22 Q. Do you know of any letter that you ever wrote to  
23 Mr. Rekunkov or Rudenko which you said in words or  
24 substance, send us exculpatory evidence that might show  
25 that John Demjanjuk is not Ivan the Terrible?

1 A. As I said this morning, when I met with the Soviet  
2 procurators in January, 1980, I said we want anything  
3 that you have on Treblinka, anything at all, please let  
4 us have it. That is what I said to them.

5 Q. Your notes of that that you made at the time are  
6 no longer in existence?

7 A. I don't know whether I made any notes of that  
8 particular part or not, Mr. Tigar.

9 Q. In answer to my question, sir, you don't remember  
10 ever writing a letter that expressed that sentiment, send  
11 us the exculpatory material, right?

12 A. Writing a letter to --

13 Q. Mr. Rekunkov about sending exculpatory material?

14 A. I didn't write a letter asking for  
15 exculpatory/inculpatory material.

16 MR. TIGAR: Pass the witness.

17 THE COURT: Ms. Stemler.

18 MS. STEMLER: Judge Wiseman, it will take  
19 us a few minutes to set up the books.

20 Would you like to take a lunch break now  
21 and have me cut back or proceed?

22 THE COURT: I want you to go forward now.

23 MR. TIGAR: Could I move the podium  
24 over?

25 THE COURT: Yes, you may.

1 MS. STEMLER: Judge, may I proceed?

2 THE COURT: Yes, you may.

3

4 EXAMINATION OF ALLAN A. RYAN, JR.

5 BY MS. STEMLER:

6 Q. Mr. Ryan, I know this morning you gave or already  
7 have given your past employment history.

8 Could you give us a brief description of  
9 your background beginning with college and up through the  
10 present?

11 A. I graduated from Dartmouth College in 1966. I  
12 graduated from the University of Minnesota magna cum  
13 laude in 1970.

14 From 1970 to 1971, I was a law clerk for  
15 Justice White of the Supreme Court of the United States.

16 From 1971 to '74, I was an officer in the  
17 United States Marine Corp leaving in 1974, at the rank of  
18 captain.

19 From 1974 to '77, I was an associate with  
20 the firm of Williams, Connolly and Califano in  
21 Washington, D.C.

22 From 1977 until January 8, 1980, I was  
23 assistant to the Solicitor General in the Justice  
24 Department.

25 From January, 1980, until March, I believe

1 of 1983, I was deputy director for a month or two and  
2 then director of the Office of Special Investigations.

3 In March, 1983, I was appointed special  
4 assistant to the Assistant Attorney General, Criminal  
5 Division to carry out the investigation of Klaus Barbie  
6 and his ties with American intelligence in the post World  
7 War II years.

8 I left the Justice Department in August of  
9 1983 when my report to the Attorney General on that  
10 subject was released.

11 And since March of 1985, I have been  
12 university attorney for Harvard University, and since  
13 1989, I also have been a lecturer at Boston College Law  
14 School where I teach a course in international human  
15 rights law.

16 Q. Now, before you came to OSI you worked in the  
17 Solicitor General's Office correct?

18 A. Yes.

19 Q. While there did you work on the Fedorenko case?

20 A. I did.

21 Q. How did that come about? Were you assigned to the  
22 Fedorenko case?

23 A. I was assigned to it.

24 Q. When you first did the appeal recommendation?

25 A. Well, in 1978, I was one of 15 attorneys, I

1 believe, in the Solicitor General's Office and one of the  
2 responsibilities of the office -- one of the  
3 responsibilities of the Solicitor General is to authorize  
4 the appeal that the government may take of a decision  
5 that it has lost at trial in a civil case.

6                   The government loses a case at trial it  
7 needs the Solicitor General's permission to appeal. One  
8 of the functions to being an assistant to the Solicitor  
9 General is review the appeal recommendations and make my  
10 own recommendations to the Solicitor General.

11                   In 1978 the appeal recommendation from the  
12 Immigration Service in the case of INS versus Fedorenko  
13 was assigned to me purely on a random basis. It was just  
14 put in my box in the mail room.

15                   I read the case and I first recommended to  
16 the SG there be no appeal based upon what I -- on the  
17 judge's opinion but I read the transcript of the trial  
18 itself and I sent quite a long memo to the Solicitor  
19 General analyzing the evidence and saying that an appeal  
20 could be one and recommending that there be a appeal.

21                   And the Solicitor General did authorize  
22 the appeal.

23                   The Immigration Service asked me and then  
24 the Solicitor General whether I would be willing to write  
25 the brief and argue the case. I said, yes, and the

1 Solicitor General authorized that.

2                   So, I wrote the brief and then argued the  
3 case in the Fifth Circuit and as I recall the case was  
4 decided by the Fifth Circuit in the spring of 1978,  
5 reversing, as we had urged -- the government had urged  
6 reversing the judgment below.

7 Q.           Were the protocols from the Soviet Union what are  
8 referred to in this case the Fedorenko protocols, were  
9 they part of the record on appeal in that case?

10 A.           I don't recall any protocols being part of the  
11 record on appeal in that case.

12 Q.           You were the attorney of record in the appeal,  
13 correct, for the government?

14 A.           Yes.

15 Q.           Your name would be probably in the Federal  
16 Reporter reporting the decision?

17 A.           I believe so.

18 Q.           Did John Martin ever ask you if he could have  
19 copies of any material from the Soviet Union that the  
20 Department may have received in the Fedorenko case?

21 A.           I never have had any communication with Mr. Martin  
22 other than he wrote me those two letters in the file that  
23 were answered by other people.

24 Q.           In 1982 -- prior to that he never came to you and  
25 said can you give me what you might have received on

1 Treblinka from the Soviet Union if you received anything?

2 A. I had no contact at all with Mr. Martin at any  
3 time.

4 Q. How did you come to work at OSI?

5 A. As I mentioned earlier, when the decision from the  
6 Fifth Circuit came down reversing the district court's  
7 judgment in the Fedorenko case, the case held that  
8 service at the death camp Treblinka was sufficient to  
9 establish that citizenship was procured illegally or  
10 fraudulently and it was the first appellate decision, I  
11 think, on any aspect of denaturalization in 30 years or  
12 more and it did involve a Nazi criminal in a case that  
13 was prosecuted by the Immigration Service.

14 By that time, spring of 1979, the Office  
15 of Special Investigations was being formed in the  
16 Criminal Division to supersede -- I guess is the word --  
17 the former Special Litigation Unit of the Immigration  
18 Service.

19 So when the decision came down, since it  
20 was a subject that had interested me, I went to see Phil  
21 Hyman who was -- he wasn't at that time -- he was  
22 assistant AG in charge of the Criminal Division. It was  
23 the Criminal Division of OSI being put together. I said  
24 to him I had enjoyed working on the appeal and if he  
25 would find anything I could do to be useful to him or OSI

1 as it was being put together, I would be happy to do what  
2 I could.

3 I think by the fall of that year, I don't  
4 remember the exact sequence of events, but by the fall of  
5 the year he had asked me if I would become the director  
6 of the office -- because Walter Rockler who was the  
7 director in the summer of '79 was sort of an interim  
8 person -- to put the office together and it was known he  
9 was going back to private practice.

10 Phil asked me if I would be the director  
11 of the office. I thought it over and eventually I said  
12 yes.

13 Q. When you first arrived at OSI, can you describe  
14 the number of cases that were currently in litigation?

15 A. I arrived at OSI in January of 19 -- January 7,  
16 1980, and my recollection is that there were about at  
17 that time four -- I am sorry, I think there were four  
18 cases that had been filed by INS prior to June of '79 or  
19 so and then four cases that Walter had filed since taking  
20 over in June of '79.

21 And there were very vigorous efforts being  
22 made to see if there were other cases.

23 The difference is when the Special  
24 Litigation Unit was in the Immigration Unit there were  
25 four attorneys. My impression was a fairly bare bones

1 staff.

2                   When it was set up in the Criminal  
3 Division in '79 there was a full-time staff of 50 people  
4 including 20 attorneys, investigators, historians,  
5 paralegals. It was quite a marked change from what the  
6 Immigration Service had done.

7                   One of the things that Walter had done in  
8 his first months as sort of the temporary director was to  
9 hire these people.

10                   When I got there in January, 1980, the  
11 office was pretty well staffed at about 50 and the  
12 priorities at that time as I came to understand them were  
13 several, but one was to determine what cases, what files,  
14 if you will, were cases that could be brought to  
15 prosecution. In other words, which ones could it be said  
16 that there is or might be clear and convincing evidence  
17 that the subject had taken part in persecution of  
18 innocent people based upon race, religion or national  
19 origin.

20 Q.           In making those determinations, did any member of  
21 Congress pressure you in bringing a particular case or  
22 taking a particular action while at OSI?

23 A.           Positively not.

24 Q.           Would it be true also of the Demjanjuk case,  
25 specifically.

1                   Did you receive any pressure from Congress  
2 that would have influenced your actions in the Demjanjuk  
3 case?

4 A.           In no respect of my duties as, responsibilities as  
5 the director of the Office of Special Investigations did  
6 I receive any pressure from any member of Congress. That  
7 was one of the understandings when I took over and it was  
8 honored.

9 Q.           Were you free to dismiss cases when you felt the  
10 evidence warranted it?

11 A.           I was and did.

12 Q.           Can you tell us about some of the cases you did  
13 dismiss?

14 A.           To my recollection there were three. One was the  
15 Walus case mentioned earlier.

16                   Second was the case involving a man named  
17 Soobzokov and the third was involving a man named  
18 Kowalchuk.

19                   In each of those cases I reached the  
20 conclusion that the evidence was not sufficient to  
21 warrant prosecution or further prosecution and I directed  
22 that they be -- complaints be dismissed or withdrawn.

23 Q.           Were these some of the first actions that you  
24 took?

25                   Was this early in your tenure at OSI?

1 A. Yes. I was dismissing cases before I was winning  
2 them, yes.

3 Q. While at OSI did you institute any policy to  
4 insure that OSI subjects would be treated fairly?

5 I believe this morning you had discussed  
6 the depositions, paying for subjects going to  
7 depositions.

8 Can you expand on that a little bit?

9 A. To see that subjects of investigations were  
10 treated fairly?

11 Q. And subjects of prosecutions?

12 A. Let me try to answer it this way. When I came to  
13 OSI and as I got my bearings so to speak in the first few  
14 weeks and months, et cetera, there were a number of  
15 things I saw that I thought could be done differently and  
16 better.

17 I was also aware of photo spread  
18 improvements because of my exposure in the Fedorenko  
19 case.

20 I looked around and as I listened to those  
21 that were in the office, it just seemed to me there were  
22 a number of ways big and small in which improvements  
23 could be made. It was my view that those changes should  
24 be made. Some of them were the way the office operated,  
25 some were legal positions we took in our public filings

1 with the Court. So there were a number of different  
2 things.

3 Q. When you say that improvements with respect to  
4 photo spreads prompted in part by the Fedorenko case, did  
5 you -- or what do you mean by that?

6 A. Well, as I was getting -- when I was in the  
7 Solicitor General's Office writing a brief in the  
8 Fedorenko case the primary argument the government was  
9 making, I was making in a sense to the Sixth Circuit,  
10 that is Fedorenko admitted he was at Treblinka and,  
11 therefore, that was sufficient to established he should  
12 be denaturalized.

13 As a fall-back argument if the Fifth  
14 Circuit wasn't persuaded by that argument, I made the  
15 argument that the district court was in error in  
16 disregarding eyewitness testimony of atrocities, as  
17 having been influenced by a photo spread.

18 So in the course of writing that  
19 particular part of the brief, I became familiar with the  
20 photo spread that had been shown to the witnesses in  
21 Israel and one of the difficulties was it was very  
22 difficult to recreate exactly what the witnesses were  
23 shown because there was no permanent record what photos  
24 they were shown or what pages out of a particular spread  
25 they were shown. That made it hard to write a convincing

1 brief on the point.

2                   One of the things I got to do is say,  
3 look, let's shape up, let's have a procedure where the  
4 photographs are non-suggestive, where they are kept in a  
5 permanent record, where they are signed by a witness  
6 after he or she sees them regardless whether or not an  
7 identification is made. So if the question ever arises  
8 at a point what photo spread did X witness see and who  
9 was there, you can go to the file and know exactly what  
10 photos the witnesses had seen. That is one example.

11                   I felt that it was important that when  
12 subjects, potential defendants were interviewed in the  
13 final stages of an investigation that they be given the  
14 equivalent of a Miranda warning, that is that they be  
15 warned by our investigators that they need not speak to  
16 us and what they said to us could be held against them at  
17 a later time and that they had a right to have counsel  
18 present if they wished.

19                   I was not able to say we will appoint  
20 counsel for you. I didn't have that authority.

21                   I thought the subjects should be told.  
22 Because the only time that we talked to them generally  
23 was in the latter stages of the investigation when we had  
24 very strong evidence to justify prosecution. So that was  
25 another change.

1 Q. Just to clarify. Did you think that the Fedorenko  
2 photo spread was suggestive or was the problem simply you  
3 couldn't tell how many pages in the album a particular  
4 witnesses had seen?

5 A. No, I didn't think it was suggestive. The problem  
6 was that in order to make the argument in the appellate  
7 brief that the district judge had been in error in  
8 finding it was suggestive, it was difficult to be unable  
9 to say with precision just what pages the witness saw.

10 In my view none of the pages was  
11 suggestive but since there were many pages it just didn't  
12 seem to be professional to be unable to say which pages  
13 they had seen. That is why I said to change that.

14 Q. With respect to the policy of paying for  
15 defendants to attend depositions in the Soviet Union,  
16 when did that policy come into effect?

17 A. It would have been after January of 1980, because  
18 that is when the Soviets first said we could take  
19 depositions. I think probably before the first  
20 depositions were actually taken which, as I recall, was  
21 sometime in the spring of 1980.

22 Q. Would this have applied also if a defendant wanted  
23 to take depositions in the Soviet Union of a particular  
24 witness?

25 A. Well, my belief was that if we, OSI, sent over two

1 lawyers we would pay the expenses for two people on the  
2 defense side, whether a lawyer and defendant himself or  
3 lawyer and translator. That was up to them. And if the  
4 defense wished to take depositions on its own, if it  
5 wanted to call witnesses that they believed could have  
6 information relevant to the defense, that if defense  
7 counsel would tell us the names of the people we would  
8 pass it on to the Soviet Union as part of an official  
9 United States Government request and it would probably  
10 get better results from the Soviet Union than a private  
11 request would.

12 Q. As director of OSI did you personally review all  
13 the discovery pleadings filed?

14 A. No, ma'am, I did not.

15 Q. Why not?

16 A. Well, there were several reasons. Let me say this  
17 in no particular order of importance. First of all, I  
18 couldn't review all the discovery pleadings and still  
19 have time to do the other things I was required and  
20 obliged to do as director of the office.

21 Secondly, I believed very firmly that the  
22 way to attract and keep good trial lawyers was to let  
23 them try cases. I was the director of the office. I was  
24 responsible for what happened in that office. If  
25 something happened on my watch, I was answerable and I

1 wanted these cases tried by the best lawyers that were  
2 available to me.

3 I did not believe and do not believe now a  
4 supervisor can sit on an attorney's shoulder all through  
5 pretrial and say do it this way and do it that way and  
6 when the trial comes stand back and say you are on your  
7 own, go try the case.

8 If an attorney was going to try the case  
9 that attorney had to be able to prepare the case and  
10 shape the case and be with it and make decisions all the  
11 way through it.

12 In this case particularly Norman Moscovitz  
13 was experienced, conscientious, honest, diligent lawyer  
14 and I felt confident leaving the handling of discovery in  
15 his hands and those of John Horrigan with whom he was  
16 working.

17 In addition to all that, unlike  
18 substantive briefs, I thought it would do -- there would  
19 be very little point in my going through discovery  
20 pleadings because there would be no way to determine  
21 whether the pleadings or responses were accurate or  
22 truthful or fully responsive without knowing the file  
23 itself.

24 I mean, an interrogatory says list of  
25 witness who have seen a photo spread and not made an

1 identification of the defendant and then there are 14  
2 names listed in response to that interrogatory and I read  
3 the draft, there is no way for me to know whether it is  
4 13 or 15 or 14 or 140. I have to rely on the attorney  
5 for that.

6                   It just didn't seem to me that reading  
7 discovery pleadings was a good use of my time or helpful  
8 to the trial preparation of the trial attorneys.

9                   Finally, particularly in this case, when I  
10 came to OSI as I have been looking back these last few  
11 weeks, when I came to OSI what was being drafted was the  
12 government's fifth supplemental answers to  
13 interrogatories.

14                   So, discovery was quite well advanced in  
15 this case. Even if it hadn't been, I would have done  
16 what I did in other cases which is to leave discovery to  
17 the trial attorneys, trusting they would bring to my  
18 attention anything in that respect or any other respect  
19 they felt needed my attention.

20 Q.           When precisely did you start at OSI? What was the  
21 starting date?

22 A.           January 7, 1980.

23 Q.           You turn now to petitioner's Exhibit 221 which is  
24 in the red volume.

25 A.           Yes.

1 Q. For the record this is the the memorandum written  
2 by Norman Moscowitz and addressed to you and dated  
3 January 24, and the full date isn't there. I assume it  
4 is 1980?

5 A. It is 1980.

6 Q. Can you tell us what were the circumstances that  
7 probably generated this memorandum?

8 A. When I arrived at OSI on January 7, 1980, Walter  
9 Rockler had been working quite diligently for some weeks  
10 to get the Soviets' permission for us to go and meet with  
11 the procurator general to discuss the question of  
12 depositions and whether the Soviets would allow us to  
13 take videotape depositions in the Soviet Union.

14 We did not know until a few days before we  
15 actually left that we could go to there. The Soviets  
16 didn't give us an answer until the last minute.

17 At the middle of January after being there  
18 a week or 10 days, I sent a memo around to the attorneys  
19 and I may have sent it to the investigators as well -- I  
20 don't recall -- saying, look, I may be going to Moscow  
21 next week to meet with Soviet officials. If you have  
22 anything you would like me to raise or any pending  
23 business or anything else you think I should bring to the  
24 attention of the Soviets while I am there, please let me  
25 know and I will do what I can.

1                   And over the course of the next week I  
2 received an enormous amount of material from trial  
3 attorneys in the office saying, look, we have sent this  
4 request over in October and we have no answer or could  
5 you check and see what -- if they have anything more  
6 about protocol of Mr. X, can you find out if there is any  
7 more information on what happened in the Village of  
8 Raviruska (phonetic) in December, 1941, or why haven't  
9 they answered our cable of May whatever of last year.

10                   As I looked through all this stuff that is  
11 coming into my office, I have a number of reactions, one  
12 of which I had no idea until then the communications  
13 between OSI and the Soviet Union were as extensive as  
14 they had been.

15                   Secondly, it became clear to me that this  
16 was a level of detail I could not possibly master and  
17 present to the Soviets in the week or whatever time was  
18 left before I went over.

19                   Third, that I was concerned if I raised a  
20 matter, what do you know happened in the village of X in  
21 '41 with a cabinet official in the Soviet Union it might  
22 not get down to the level of the archivist or whoever it  
23 was that had access to that information.

24                   I sent back or walked back these packages  
25 to the various attorneys that sent them to me and I said

1 I am sorry, I just had no idea we were involved in this  
2 level of detail. This is not something I think I should  
3 raise safely with the Soviets. Just pursue it on your  
4 own.

5                   Instead, I focused on the seven or eight  
6 cases where we wanted deposition testimony in the Soviet  
7 Union. That is what we were hoping for.

8                   And so when I look at a memo dated January  
9 24th saying attached is a copy of our request to the  
10 Soviets in August, '79, which is what this exhibit says,  
11 please ask Soviets to check with the statements, copies  
12 of interrogations, ask them about a list, had I seen this  
13 at that time, I don't recall specifically whether I did  
14 or not.

15                   I would have treated it as I treated all  
16 other requests similar in nature in that week or 10 day  
17 period. Had I the opportunity, I would give it back to  
18 Norman and said this is too detailed and I just can't do  
19 it on this trip.

20                   The one thing about this memo, I look at  
21 the date of January 24th. That is in fact the date I  
22 left for Moscow. I left Washington on January 24, and I  
23 don't know whether I saw this on the 24th or whether  
24 having seen it I had an opportunity to speak with Norman  
25 about it then or later.

1                   That is why I say I don't remember this  
2 memo.

3                   That is the context in which it would have  
4 been written at the time.

5 Q.       While you were in Moscow, did you receive a cable  
6 from or generated by or initiated by Norman?

7 A.       Yes, ma'am, I did.

8 Q.       Can you turn to petitioner's Exhibit 164 which  
9 should be in the white volume of their exhibit book?

10 A.       164?

11 Q.       Yes. Would this be the cable?

12 A.       Yes. This cable is dated the 29th of January,  
13 1980, and apparently I did receive this cable or was  
14 informed of its contents while in the discussions with  
15 the Soviet officials.

16 Q.       Did you make a request for further information on  
17 the Trawniki card?

18 A.       As I said this morning, I did. I made in the  
19 context of saying we wanted any information that might be  
20 there on Treblinka. The card had just arrived. The card  
21 from the Soviet Union had just arrived in our offices,  
22 apparently, as I was leaving and this cable was a request  
23 for some more official information on that.

24                   I put that question to the procurator  
25 general's staff with whom I was meeting and said we

1 wanted that specifically but in a general sense we wanted  
2 any information they might have on Treblinka or any  
3 aspect of it.

4 Q. Any information would include inculpatory or  
5 exculpatory?

6 A. Any information at all.

7 Q. When you made the request to the Soviet Union, did  
8 you always get what you asked for?

9 A. No.

10 Q. Have you ever refused to pursue any line of  
11 inquiry on any case because you were afraid it might lead  
12 to inculpatory evidence?

13 A. No. That would be a corruption of my office.

14 Q. In the Demjanjuk case when the case went to trial  
15 in February, '81, did you believe that the charges were  
16 supported by clear and convincing evidence?

17 A. Yes, I did.

18 Q. What was the evidence that you felt proved those  
19 charges?

20 A. Well, the evidence as to Treblinka consisted of  
21 the identification, Trawniki I.D. card that showed he had  
22 been trained as an SS Guard at Trawniki which was the  
23 training place for guards for Sobibor and Treblinka.

24 The card was quite complete in identifying  
25 him with birth date and photograph, et cetera.

1                   We had by -- every indication we had at  
2 that time was the card was legitimate and authentic and  
3 was what it purported to be. We also had the eyewitness  
4 testimony of I believe six people, five of whom, if I  
5 recall correctly, were survivors of Treblinka who had  
6 seen photo spreads and in most cases I believe two  
7 different photo spreads and who had made what Norman and  
8 Jack believed to be credible and truthful  
9 identifications.

10                   There was also the similar testimony of a  
11 man named Otto Horn who had been a German at Treblinka  
12 and who had also made an identification and there was the  
13 alibi testimony of Demjanjuk himself, the defendant  
14 claiming he was a prisoner of war which by the time of  
15 trial because of the research that had been done, we were  
16 confident we could affirmatively disprove and show his  
17 alibi was not truthful.

18                   There were other things, too, but I think  
19 those were the highlights. The fact he had a blood group  
20 tattoo on his arm and that he testified at deposition he  
21 had removed -- that was one of the things that the SS did  
22 with regards at Trawniki and Treblinka and Sobibor.

23                   So he also admitted he lied on the visa,  
24 put the word Sobibor as being a farmer and there were  
25 other things.

1                   It was primarily the Trawniki I.D. card,  
2 eyewitness testimony and the falsity of his own accounts  
3 that to my mind made the evidence.

4                   That indeed was the evidence that the  
5 Court relied on when the federal court issued its order  
6 revoking his naturalization. They found that evidence to  
7 be clear and convincing evidence.

8 Q.           Did Demjanjuk ever offer any eyewitnesses to  
9 substantiate his alibi or any documentary proof to  
10 substantiate his alibi?

11 A.           Not anything of which I was ever aware, as best I  
12 recall.

13 Q.           Did this contrast with the Walus case, the case  
14 you dismissed?

15                   Was there substantiation in that case of  
16 the alibi?

17 A.           There was. When the question -- Walus case had  
18 been tried in 1977 or -- I am sorry -- tried in '78 or  
19 '79, before OSI was created and the judge in that case  
20 ordered Walus denaturalized because it found -- the judge  
21 found clear and convincing evidence he was in the Gestapo  
22 in Poland.

23                   That case was appealed to the Seventh  
24 Circuit. The Seventh Circuit handed down its decision in  
25 February of 1980 which was a few weeks after I arrived at

1 OSI. When I saw that Court of Appeals' opinion that was  
2 really the first real introduction I had to the Walus  
3 case.

4                   What the Court of Appeals said was that  
5 newly discovered evidence offered by the defense of  
6 Social Security records from Germany in effect should  
7 have been allowed. There should have been a new trial to  
8 consider this newly discovered evidence and, therefore,  
9 the Court of Appeals vacated and remanded the case to the  
10 district court for a new trial.

11                   When I read that opinion doing so -- I am  
12 sorry. When I read the Court of Appeals' opinion which  
13 it ordered that, I came to the conclusion that if Mr.  
14 Walus was guilty as charged that the evidence was  
15 insufficient as we knew it at that time and if he were  
16 not the person he was charged being, obviously there was  
17 no business prosecuting him.

18                   In any event, we needed more information.  
19 What I did when the Court of Appeals' opinion came down,  
20 I said we are not going forward with a new trial right  
21 now. We will reinvestigate the case as thoroughly as  
22 possible and make a decision based upon all the evidence  
23 that we have been able to locate whether we should or  
24 should not go forward with a new trial.

25                   I sent my deputy director for

1 investigations to Germany and said find out everything  
2 you can about this man's alibi which was he was a farmer  
3 in Germany during the war and not a member of the Gestapo  
4 in Poland. Go to Poland, do whatever you have to do in  
5 this case and tell me what you find out.

6                                 Six or eight or 10 weeks later, whenever  
7 it was when that was completed, he came back and pointed  
8 out to me a number of things, some of which had not been  
9 known before his investigation began that the original  
10 German records tending to show he was a farmer seemed to  
11 be legitimate and authentic, that he had gone around --  
12 my investigator had gone around to people in the town  
13 where this guy claimed to be and showed them photo  
14 spreads and received many -- not many but some number of  
15 positive IDs of saying that man was in our town here  
16 during the war.

17                                 And my investigator went to Poland and  
18 found there was no information in the Gestapo records  
19 about this man that would have been if he had been there.

20                                 That was the dog that didn't bark that  
21 Mr. Tigar asked about this morning.

22                                 There were other things as well. I should  
23 point out the Walus case, this man had publicly stated he  
24 had been in the Gestapo and carried out brutalities  
25 against Jews. That is what got the case started, as I



1 corroborated by the fact that the German records in  
2 Germany had no record of Walus, and other things, that  
3 tended to show in my mind that there was not positive  
4 evidence he was a member of the Gestapo.

5 Q. What was your impression of the Polish Main  
6 Commission records on the Treblinka death camp?

7 A. They had no records on the Treblinka death camp  
8 nor anybody else informally, any record of the Treblinka  
9 death camp because all records of the Treblinka were  
10 destroyed, as I have been told many times, in 1943, when  
11 the camp was destroyed.

12 So any original documents in the sense of  
13 rosters of guards or pay records or things like that from  
14 Treblinka simply don't exist in the world. They don't  
15 exist in Poland, Germany, this country or anywhere else.

16 Nothing I learned in the last 10 years has  
17 changed my impression of that. If there had been records  
18 from Treblinka, believe me, a lot of questions would have  
19 been answered.

20 Q. Can you please turn to petitioner's exhibit 156  
21 which is the article from the Polish Main Commission that  
22 was forwarded by Dr. Pilichowski, and turn to page 154 of  
23 that exhibit. This would be in the petitioner's white  
24 book.

25 A. I have it.

1 Q. You are on page 154?

2 A. Yes, ma'am.

3 Q. At the bottom of the page do you see a list or a  
4 paragraph naming some Ukrainian guards or Soviet guards?

5 A. Well, it doesn't say what nationality. It says  
6 the following names are among those known from the  
7 approximate hundred guards and then a number of names  
8 there, not a hundred.

9 Q. Do you attach much significance to the fact that  
10 John Demjanjuk's name Ivan Demjanjuk is not on that list?

11 A. Do I attach much significance to it?

12 Q. Yes.

13 A. No, I don't.

14 Q. Why not?

15 A. Well, the short answer is you have no idea from  
16 looking at this how or what sources these names were  
17 compiled. Presumably they were compiled from a secondary  
18 source, peoples' recollections or whatever.

19 There is no indication here how reliable  
20 those sources are and there is no indication here on how  
21 complete the thing is. See the thing -- maybe I should  
22 put it in the perspective the way I looked at it at this  
23 time.

24 I didn't see this particular document to  
25 my knowledge at that time. If I had it would be the same

1 thing.

2 MR. TIGAR: Your Honor, if he didn't see  
3 it at that time I object to his characterization of what  
4 he thinks about it today. I don't think it is  
5 relevant.

6 A. I wasn't going to characterize it today. What I  
7 was doing was explaining my thought process on what the  
8 absence of a name means in terms of whether that is  
9 exculpatory.

10 THE COURT: Thought process at what  
11 time.

12 A. In 1980 and 1981.

13 THE COURT: You didn't see it in 1980 or  
14 '81?

15 A. To the best of my recollection, no, sir, I did  
16 not.

17 THE COURT: How could you have a thought  
18 process about something you didn't see?

19 A. My thought process was not about this document.  
20 It was about the exculpatory nature of names missing from  
21 a list.

22 THE COURT: For what it is worth, you may  
23 tell it. It is not worth much.

24 A. It seemed to me and seems to me now that before  
25 you can reach a decision as whether absence of a name of

1 a particular list is or is not exculpatory you have to  
2 know how complete and reliable the list is.

3           If the question is was Mr. X at camp Y and  
4 some list comes back from a foreign government that says,  
5 well, there were a hundred people at camp Y and we only  
6 have two names that we can say for sure and if the  
7 subject's name is not on that list of two, it seems to me  
8 insignificant.

9           If they come back of the hundred people we  
10 have 98 names of people, have names of people we know  
11 were there and if the subject's name is not on the list  
12 in 98 it seems quite significant it is not there.

13           So, my point is, you can't make these  
14 decisions in a vacuum. At least I didn't think so at the  
15 time.

16           You have to know how reliable and complete  
17 and authoritative the underlying source is before you can  
18 make any decision whether the absence of a name is  
19 significant or exculpatory, if you will.

20           THE COURT: Did I understand you to say a  
21 moment ago you considered the absence of Walus' name from  
22 a list significant in your decision in the Walus-case?

23 A. I did, sir, yes. Because the list was complete  
24 enough so that someone's name who was not on it would be  
25 significant.

1 Q. Were these official records in the Walus case,  
2 some official documents, to your knowledge?

3 A. I didn't see them myself. As it was reported to  
4 me these were reliable and fairly complete files in the  
5 Polish Main Commission.

6 Q. And to your knowledge is there any official list  
7 from Treblinka, contemporaneous list made by the Germans  
8 at the time the Treblinka camp operated?

9 A. To my knowledge there is not.

10 Q. And so any list such as the one in the Polish Main  
11 Commission would simply be on the basis of interviews  
12 with perhaps survivors or people that lived in the area,  
13 is that correct?

14 A. Well, I suppose it could come from any number of  
15 sources. The point is that it would not be an original  
16 or complete list. I think that would affect its  
17 significance.

18 Q. Now, this morning you were referred to a letter  
19 indicating that in 1982 Mr. Moscovitz forwarded the  
20 Polish Main Commission materials to John Martin.

21 Do you know whether or not John Martin in  
22 turn moved to re-open the denaturalization proceedings on  
23 the basis of the Polish Main Commission article?

24 A. He did not do so.

25 Q. You were also referred this morning to another

1 letter in 1982 by John Martin and that would be  
2 petitioner's Exhibit 40. Turn to that, now. That is in  
3 the first volume which is black for Judge Wiseman but  
4 white for you.

5 A. This is a letter of October 25, '82?

6 Q. That's right. In this letter John Martin asks you  
7 for any and all material you received from foreign  
8 governments that pertain to the defendant or any local  
9 the defendant was in including any materials from the  
10 Soviet Union, West Germany, Israel and Poland.

11 While the denaturalization case was  
12 pending, did Mr. Martin ever make a request but prior to  
13 the trial?

14 Did he ever make such a request of you?

15 A. Not of me. I don't know what requests along this  
16 line he made in the course of discovery.

17 Q. If you could please turn to petitioner's Exhibit  
18 29 which should be in the same book.

19 A. Yes.

20 Q. Please, what is this document?

21 A. Well, it is captioned motion to extend time for  
22 discovery.

23 Q. What is the date on it?

24 A. I don't see a date.

25 Q. Is there a file stamp there?

1 A. I am sorry?

2 Q. March 21?

3 A. March 21, 1980.

4 Q. And this is long before 1982, correct?

5 A. It seems to be, yes.

6 Q. Will you please read paragraph five.

7 A. The Union of Soviet Socialists Republics has  
8 supplied the United States embassy in Moscow, pursuant to  
9 its request, investigative material relating to this  
10 case. The Office of Special Investigations, Department  
11 of Justice, received these materials on or about January  
12 25, 1980.

13 Q. Within the period after this motion, after the  
14 Department informed Demjanjuk and his attorneys that they  
15 had materials from the Soviet Union, did you receive a  
16 request from John Martin asking to see those materials?

17 A. Did I receive a request?

18 Q. Did you receive a request?

19 A. Again, I did not personally.

20 Q. You don't know?

21 A. What happened in discovery, I do not know.

22 Q. But the document shows that notice was given that  
23 Soviet materials existed.

24 MR. TIGAR: I object to the conclusion.

25 He could have no personal knowledge of that.

1 THE COURT: The document speaks for  
2 itself. Go ahead.

3 Q. Fine. If you could move on in the same book,  
4 Exhibit 35.

5 A. Yes.

6 Q. And if you could read or summarize, either way,  
7 the answers to questions nine, 10 and 11.

8 First of all, if you can identify the  
9 document for the record. What does it purport to be?

10 A. Government's second supplemental answers to  
11 defendant's fourth set of interrogatories.

12 Q. And in the next answer does it list various Soviet  
13 witnesses who were shown photo spreads of Demjanjuk?

14 A. It appears to be what it does.

15 Q. Is the name Danylchenko listed under number nine?

16 A. Yes.

17 Q. If you turn to page -- question 11, is the name  
18 Malagon listed under question 11?

19 A. It is.

20 Q. And what is the date of this pleading?

21 A. Norman signed this on September 5, 1980, it says.

22 Q. After the names Malagon and Danylchenko were  
23 disclosed in September, 1980, did at that time John  
24 Martin come to you with a request to see any materials  
25 concerning either Malagon or Danylchenko?

1 A. John Martin never game to me for anything.

2 THE COURT: Ms. Stemler, let me interrupt  
3 you just a moment, please.

4 Tell me how long you anticipate your  
5 examination to continue. I am beginning to think about  
6 lunch plans.

7 MS. STEMLER: I would say I am not good  
8 estimating this. About 40 minutes.

9 THE COURT: Then will you have redirect,  
10 Mr. Tigar?

11 MR. TIGAR: Yes, Your Honor. By letter to  
12 the Court I said I was reserving 45 minutes for redirect.  
13 I will take about the same proportion of that that it  
14 took for the three hours. I only have about 15 minutes  
15 worth of notes now.

16 THE COURT: All right. Well, let's break  
17 for lunch.

18 You all advice me, how much time does it  
19 take for everybody in this part of downtown Boston to get  
20 fed?

21 MR. TIGAR: Where we live we don't think  
22 the food is worth more than an hour's worth.

23 MR. GLOVSKY: There is a cafeteria on the  
24 third floor. I wouldn't recommend it.

25 THE COURT: It is like Chief Fed in our

1 building?

2 Let's take an hour and a half. Come back  
3 at 1:15.

4 (Whereupon, the hearing was in recess.)

5 THE COURT: Come around, Mr. Ryan.

6 Ms. Stemler, you may continue.

7 BY MS. STEMLER: (continuing)

8 Q. Mr. Ryan, I would like you first to turn to  
9 petitioner's exhibit 235 which is in the red book.

10 Mr. Ryan, what is this exhibit?

11 A. This is a letter I wrote to Robert Mueller,  
12 Assistant Attorney General, Criminal Division on June 15,  
13 1992.

14 Q. In this letter could you please read the second  
15 pull paragraph or as much as the letter as would you like  
16 and then explain to us what you meant by it?

17 A. I would be happy to go anyway you want to.

18 THE COURT: I have read it all, Ms.

19 Stemler. Go from there if you would like.

20 A. It would be easier if I explain what led me to  
21 write this letter.

22 Q. Fine. What led you to write the letter? ..

23 A. The Boston Globe on June 14th, which was a Sunday,  
24 had a story which suggested that the Assistant Attorney  
25 General, Mr. Mueller, was agreeing that the 28 or 25 or

1 whatever statements naming Marczenko as being Ivan the  
2 Terrible had in fact been in Justice Department files  
3 since 1978 and that they were in the Fedorenko file.

4 At least that is the way I read the story  
5 as reported in the Boston Globe, which is my local  
6 newspaper here.

7 I was very upset at that suggestion  
8 because I knew not only of my own experience that I had  
9 never been aware of any such stunning thing back then and  
10 from talking to Norman Moscowitz and Ely Rosenbaum in  
11 December, '91, that that was not true.

12 I felt that the way Mr. Mueller had been  
13 quoted lent support to people like Sheftel in Israel that  
14 was trying to cast dispersions on my integrity.

15 I wrote to Mr. Mueller to say that I  
16 didn't feel it was appropriate pending a full  
17 investigation for him to be making any such statements  
18 and I could tell him in fact he was wrong, i.e., that the  
19 28 statements were not in Justice Department files.

20 I look at the letter now, frankly, and see  
21 it is ambiguous. If I waited a couple days and let the  
22 steam blowup and edit it and rewritten it, I might have  
23 sent it differently.

24 It could be read now saying I was aware in  
25 June, 1992 what in fact was in the file in 1978. In fact

1 that is not. I was basing it on what I was told since  
2 then.

3 That does not come through very well in  
4 the letter as I drafted it.

5 Q. When did you first read the Fedorenko protocols  
6 after this letter?

7 A. It was after this letter because if by the  
8 Fedorenko protocols, the Leleko statement and Malagon  
9 statement, Mr. Meuller's office responded to my letter a  
10 few weeks later simply by sending me, as I recall, the  
11 transcript of his press release and the two statements.

12 I read the two statements, Malagon and  
13 Leleko statements, at that time in response to this  
14 letter.

15 THE COURT: Did he answer your letter?

16 A. I don't believe he did himself, sir. Someone in  
17 his office sent me sort of a form -- just a form letter  
18 saying enclosed is the press release and the statements  
19 he was talking about.

20 Q. Can you turn, please, to the preceding exhibit,  
21 234.

22 A. Yes.

23 THE COURT: Which exhibit are you  
24 referring to.

25 MS. STEMLER: 234, the red book.

1 Q. There is a Boston Globe article dated June 15,  
2 1992?

3 A. Yes.

4 Q. If I can refer you to the sentence that would  
5 begin in the bottom of the third column. It says: Ryan  
6 said yesterday that what he received in 1978 were only  
7 snippets and short summaries of the guard statements, not  
8 full text. Is that what you told the Boston Globe  
9 reporter?

10 A. No, not that way, no, I didn't.

11 What happened, when the story was printed  
12 in the Boston Globe, the Sun Globe on June 14th, it was  
13 under the byline of Ethan Bronner who is a reporter for  
14 the Globe I know. And I called him and I said to him  
15 that I wanted to make clear that if Mueller was saying  
16 these statements were in our files in 1978, Mueller was  
17 wrong.

18 And I explained to Bronner in the course  
19 of the telephone conversation the sequence of events as I  
20 understand them from Norman and Ely, from my conversation  
21 of December, '91, about what had come to the office and  
22 when.

23 And I assume that what Bronner writes,  
24 Ryan said yesterday what he received in '78 to be  
25 accurate, what Ryan said is ISO --

1 Q. Or SLU?

2 A. Right, Special Litigation Unit in '78.

3 MR. TIGAR: Your Honor, in light of his  
4 recollection, I believe they opened the door now. I  
5 offer it for the truth.

6 THE COURT: It won't be received for the  
7 truth asserted in it but it will be received for whatever  
8 it is worth.

9 Q. I would like you to turn to petitioner's Exhibit  
10 72 which is in a black volume. It is in the white volume  
11 up there.

12 What is this exhibit, for the record?

13 A. Well, for the record it's two pieces of paper  
14 dated February 28, 1980, saying from George Parker  
15 addressed to Norman Rockler and myself. Walter Rockler  
16 and myself.

17 Q. Have you seen that memo up until the last couple  
18 months?

19 A. I first saw this memo in October of 1992.

20 Q. How do you know you didn't see it in February or  
21 March of 1980?

22 A. Because there are many things said in this memo  
23 and many assumptions made that are so contrary to what I  
24 would accept or inconsistent with my understanding at the  
25 time that I certainly would have followed it up in

1 several ways.

2 If you want me to explain?

3 Q. Yes, please explain.

4 A. First of all, there are a number of assumptions in  
5 here that Parker -- and I assume Parker wrote this.

6 My point is that he never sent it to me.

7 But there are several assumptions in here  
8 he appears to be making I find not only acceptable but  
9 offensive.

10 Had he written them in a memo to me, I  
11 would have set him straight at my first opportunity.

12 For example, he says on one of these pages  
13 that we might be comforted -- on page -- these are not  
14 numbered -- I guess page four of this exhibit he says in  
15 the paragraph that starts strategic options, ethical  
16 responsibilities, even if we may be comforted that we  
17 have the right man for the wrong act.

18 I find that suggestion offensive and I  
19 would not have let it pass. He in another --

20 Q. Why do you find it offensive?

21 A. Because there is no such thing as have the right  
22 man for the wrong act or wrong man for the right act.

23 You have the right man for the right act  
24 or nothing.

25 That I would have noticed. I would have

1 reacted to that.

2                   There is another statement in here where  
3 he says or makes some reference doing something for  
4 political reasons.

5                   I would have set him straight on that. In  
6 my office while I was making the decisions, we weren't  
7 going to do anything for political reasons.

8                   There are a number of other assumptions  
9 that he makes like that and if you would like me to, I  
10 will go through the memo and pick them all out.

11                   I use those as assumptions he made that I  
12 found when I read this in October to be simply wrong and  
13 things I would have reacted strongly to had I seen this  
14 memo in February, 1980.

15                   In addition to that, he makes a number of  
16 statements or assumptions about we know this and we know  
17 that which as far as I can tell in February or March of  
18 1980 I knew no such thing and would have been quite in  
19 disagreement with what he says.

20                   For example, he says in here that even  
21 though we doubt that Ivan was the man at the gas  
22 chambers.

23                   My response to that would have been what  
24 do you mean if we doubt that. If we doubt that, tell me  
25 on what basis we doubt that.

1                   In February, March, 1980, although the  
2 evidence was still developing I think from my point of  
3 view anyone that said we doubt Ivan was at the gas  
4 chambers would have had my undivided attention.

5                   There are a number of statements in here  
6 about the state of the evidence that I would have  
7 disagreed with based on everything that I knew, I  
8 believe, at that period of time.

9                   Third, he seems to think here -- and this  
10 is something that made a very strong impression -- he  
11 seems to think that when you start talking about new  
12 evidence as it is coming in and inconsistencies it may  
13 create --

14                   MS. VALENTINO: Objection. What he  
15 conceives I find that --

16                   THE COURT: Identify yourself.

17                   MS. VALENTINO: I am Geraldine Valentino  
18 here on behalf of George Parker.

19                   THE COURT: Your objection is noted.  
20 Thank you very much.

21                   Go ahead, Mr. Ryan.

22 A.           The impression conveyed to me by the memo is  
23 whenever you say there is evidence here conflicting with  
24 the evidence over here, that you are immediately talking  
25 in an ethical plane.

1                   There seems to be no awareness in here  
2 that the process of investigation is a constant process  
3 of raising doubts, of pointing to inconsistencies, to  
4 pursue those inconsistencies to see if they can be  
5 resolved and if not to see what follows upon that.

6                   It is a trial attorney's obligation as far  
7 as I am concerned in preparing for trial to raise doubts  
8 and say, look, witness a doesn't quite agree with witness  
9 b. What is the significance of that.

10                   Can it be reconciled or is it a serious  
11 problem or where should we pursue it? That is part of  
12 normal process of investigation in preparing for trial.

13                   George's memo, as I read it here, seems to  
14 go immediately to an ethical plane and say wait a minute,  
15 we just got in evidence witness a is inconsistent with  
16 witness b, canons of ethics require us not to go forward  
17 with a case we don't believe in.

18                   I found that totally inappropriate.

19                   To express doubts is a beginning of an  
20 inquiry, not the end of an inquiry. Where those doubts  
21 might lead is something to be pursued. So that I would  
22 have reacted strongly to.

23                   Having said all that, this memo raises  
24 within its four corners serious questions I on February  
25 28, 1980 was in no position to dismiss out of hand.

1                   Despite everything else, I would have  
2 said, George, let's sit down and get everyone together on  
3 this case and go through and talk about these questions  
4 or doubts or whatever it is that seems to concern you. I  
5 would not have tossed this memo away saying, well, Parker  
6 doesn't understand what is going on or anything like  
7 that.

8                   So, for those reasons, I can testify with  
9 some degree of confidence, although it was 13 years ago,  
10 I did not receive this memo because things would have  
11 happened if I had received this memo.

12                   I don't know in the end what might or  
13 might not have been done differently. Perhaps at the end  
14 nothing would have been done. That is why I feel I did  
15 not.

16                   The other thing, too is that I looked at  
17 my appointment book for that period of time which I have  
18 turned over. I have no entry in there for any meeting  
19 with George Parker after February 28, 1980. In fact for  
20 some time before that.

21                   I have no recollection of any meeting with  
22 George Parker except -- I should say I have no particular  
23 memory of any meeting with George Parker.

24                   The only meeting I have in my appointment  
25 book is January 16, 1980, about nine days after I arrived

1 at OSI.

2 So if there was a meeting to discuss this,  
3 I think I would remember it and I would have had some  
4 notation of it.

5 So, plus I might point out the memo is not  
6 signed. It is my understanding that the memo was not in  
7 OSI files.

8 But the main reason I can testify is what  
9 I said before, I would have had certain responses and  
10 reactions to this memo had I read it at the time it was  
11 written.

12 Q. Were the attorneys in your office free to come to  
13 you to discuss weaknesses in their cases?

14 A. Everybody was free in my office to come and  
15 discuss anything with me.

16 Q. Did you have -- routinely have meetings to discuss  
17 whether a case was strong enough to proceed, file a  
18 complaint or proceed with trial?

19 Did you review evidence in cases?

20 A. Well, I don't know that we had meetings routinely  
21 to do that in sense of a regular meeting. Obviously as  
22 preparation for trial in given cases went along, I tried  
23 to meet either myself or through my deputy Neal Sher with  
24 the trial attorneys from time to time to keep myself  
25 abreast how things were going and how things looked.

1                    Obviously if there -- at that time or any  
2 other time if any questions come up about the integrity  
3 of the evidence or adequacy of the evidence or anything  
4 else about the evidence or the witnesses or the trial,  
5 anyone could have brought it to my attention and I would  
6 have acted appropriately, I guess.

7 Q.            While at OSI did anybody suggest to you that  
8 Treblinka charges be dismissed, dismissal of the  
9 Treblinka allegations?

10 A.            No.

11 Q.            Now, in the period surrounding the memo, the memo  
12 I think reflects that this memo was written but the cover  
13 memo states Norman, John are in Europe at that time.

14                    Do you recall whether or not the case was  
15 strengthened by that trip to Europe where they conducted  
16 the Horn deposition and Shaffer deposition and  
17 interviewed some witnesses?

18                    Did the case get stronger at that time?

19 A.            Yes. As I look back at it now and put the pieces  
20 together, I think that is a fair statement. I am not  
21 sure of the extent I was aware of it, when George wrote  
22 this memo had I seen it at that point, if that is your  
23 question.

24 Q.            If you can turn to petitioner's Exhibit 215 which  
25 is in the white volume, volume 5?

1 A. Yes.

2 Q. Can you just for the record read -- what is this  
3 memo, heading of the memo?

4 A. Heading is a memo on from George Parker to Norman  
5 Moscovitz and John Horrigan and the subject is replied in  
6 Norman's memo of May 16, 1980.

7 If I could just -- this reminds me of one  
8 thing I want to add. When George Parker left the office  
9 in June of 1980, I asked him before he left if he would  
10 write me a memo on the Demjanjuk case, where it had come  
11 from and going and what his recommendations would be for  
12 trying it, et cetera. I just wanted George's parting  
13 thoughts, if you will, on the case in June of 1980.

14 He did write me that memo and it is in one  
15 of the books, I think. It is a three page single spaced  
16 memo on the case that raises not the slightest doubt  
17 about the identity of the defendant or any other aspect  
18 of the case.

19 It is a very positive memo that discusses  
20 various things that have to be done to get ready for  
21 trial.

22 There is nothing in there that expresses  
23 any doubt on the case.

24 That is an additional reason why I would  
25 have remembered receiving the earlier memo because there

1 is such a discrepancy between the two.

2 Q. For the record that is located at respondents'  
3 Exhibit 33.

4 Have you had occasion to read this memo  
5 which was apparently written sometime after May 16,  
6 1980?

7 A. This memo I believe I saw for the first time  
8 on -- only very recently, in the last week or two if I am  
9 correct.

10 Q. In looking at it recently does it express any  
11 doubts about the strength of the Treblinka evidence?

12 A. To the contrary. It expresses what I take to be  
13 great confidence in the evidence of the case.

14 MR. TIGAR: Your Honor, I object to him  
15 characterizing the memo he hasn't seen until recently,  
16 relevance and personal knowledge.

17 THE COURT: Oh, he is expressing an  
18 opinion, Mr. Tigar. I will let him do that.

19 Q. Mr. Ryan, in your mind was there a reconcilable  
20 conflict between the Treblinka evidence and the Sobibor  
21 evidence in the Demjanjuk case?

22 A. Well, let me answer it this way. In my mind based  
23 upon what I had learned from historians and others who  
24 had studied the situation, there was certainly no  
25 inconsistency between someone being at Treblinka and

1 someone being at Sobibor in the same period of time.

2 Treblinka and Sobibor were two death camps  
3 that were relatively close to each other, within a  
4 hundred miles. They both drew guards from Trawniki, they  
5 both had the same purpose which was to kill the Jews of  
6 Europe and that there were transfers known to exist  
7 between the two camps at various times.

8 So if there was evidence that Mr. A was at  
9 Sobibor in the spring of 1943 that would not to my mind,  
10 based upon what I knew from the historians, preclude his  
11 being at Treblinka at around the same period of time.

12 Q. Do you know whether or not the government obtained  
13 evidence showing transfers, or introduced evidence at the  
14 trial showing there were transfers between the camps?

15 A. There was evidence of that in 1943 that there were  
16 particular transfers of guards from Sobibor -- Treblinka  
17 to Sobibor through Trawniki, I believe was the evidence.

18 Q. And the Trawniki card itself states, does it not,  
19 reflects a posting to Sobibor, does it not?

20 A. It says on the back Sobibor. Frankly, I have  
21 never myself been able to determine exactly what the  
22 significance of the word Sobibor is there. It definitely  
23 contains that word.

24 Q. Card was introduced in evidence in the  
25 denaturalization trial?

1 A. Certainly was, yes.

2 Q. To the extent there was this between the survivors  
3 and posting on the Trawniki card, that was made known,  
4 was fully disclosed at the trial?

5 A. The Trawniki card, if I may say so, is the most  
6 analyzed document in the 20th century. I mean that in a  
7 literal way, between here in the trial and Israel. It  
8 has been examined so many different ways by so many  
9 scientific tests that I can't imagine what possibly more  
10 could be disclosed from the Trawniki card that hasn't  
11 been.

12 Q. Earlier today you discussed somewhat your own  
13 views on discovery.

14 Did you have faith in Mr. Moscovitz and  
15 Mr. Horrigan's commitment to fulfill their discovery  
16 obligations in this case?

17 Did you believe they would comply with the  
18 Federal Rules of Civil Procedure?

19 A. Norman Moscovitz was one of the most  
20 conscientious, one of the most capable, one of the most  
21 honest attorneys I have ever worked with then or since.  
22 There is no question in my mind that he would carry out  
23 his obligations fully and without equivocation, that he  
24 would turn square corners.

25 Jack Horrigan I knew less well, because he

1 was in Cleveland. But nothing I ever saw from Jack would  
2 cause me to have any different opinion. And I remember  
3 on a couple occasions sitting down with Norman and  
4 saying, look, Jack Horrigan is an assistant United States  
5 Attorney. If you have any doubt that he is absolutely  
6 the best person for this job just say so and we will put  
7 somebody from this office with you.

8 Norman said he worked well with Jack and  
9 Jack was hard working and as good as the lawyers in our  
10 office and on that basis I kept Jack on the case.

11 There is no doubt in my mind these are not  
12 lawyers -- these absolutely, absolutely are not lawyers  
13 who are going to cover up evidence that goes to the  
14 question of an innocent man. They are not going to do  
15 that, no.

16 Q. Can you please turn to respondents' Exhibit 56  
17 which should be in a white book. For the record this was  
18 an exhibit introduced at the last hearing to the  
19 testimony of Norman Moscovitz.

20 You have petitioner's. It should be  
21 respondents' Exhibit 56.

22 Do you have the red book?

23 A. Which book should I have?

24 Q. Mr. Wilson says it is to your right.

25 Q. It's in the white volume, first respondents' --

1 second volume of respondents' exhibit books.

2 A. I don't know what I have here. Is this the one?

3 Q. Do you have in front of you a summary of  
4 government summaries --

5 A. Yes.

6 Q. I know you, yourself, you testified that you were  
7 not familiar with individual discovery responses. I am  
8 not going to ask you to verify this list.

9 However, I am going to ask you since it is  
10 an exhibit to look at it for a minute and first can you  
11 tell me how many updates to interrogatories and document  
12 requests were there between entry number four --

13 THE COURT: Sustained. I can count.

14 MS. STEMLER: Sustained?

15 THE COURT: Sustained.

16 Mr. Tigar was about to stand up. He  
17 didn't quite get there. Anyway, the objection is  
18 sustained.

19 Q. Let me ask you more generally, was it your  
20 impression that they were turning over to him names of  
21 witnesses and that they were filing continuously  
22 interrogatory updates and complying in a conscientious  
23 manner?

24 A. Yes, that certainly was. It was not something  
25 that you say I went into but from time to time --

1 THE COURT: Do you know what a leading  
2 question is, Mr. Tigar?

3 MR. TIGAR: I do, Your Honor. But --

4 THE COURT: That is all right. Go ahead.  
5 Let's move along.

6 MS. STEMLER: As they say, the exhibit  
7 speaks for itself and I think we will move on.

8 Q. While at OSI did you ever hear any attorneys on  
9 the Demjanjuk case discuss the need to conceal evidence  
10 or discuss concealing or keeping something from the  
11 defense?

12 A. Do you mean attorneys in my office, OSI?

13 Q. Yes, while in OSI? About concealing stuff?

14 A. No, I did not.

15 Q. Did you ever authorize anybody to conceal  
16 evidence?

17 A. No, ma'am.

18 Q. Was it important to you at OSI to investigate  
19 these cases vigorously?

20 A. Vigorously and fairly within the bounds of the  
21 law, yes, ma'am.

22 Q. Did you have faith in Norman Moscowitz to perform  
23 that function as well as his discovery obligations?

24 A. I certainly did.

25 Q. Do you feel that as director of OSI you did

1 anything that would have misled the Court in the  
2 denaturalization proceedings or defrauded the Court in  
3 any way?

4 A. No, ma'am.

5 Q. Earlier today Mr. Tigar referred to you a  
6 memorandum in which you probed the possibility of  
7 extraditing OSI subjects, is that correct?

8 A. A memorandum that I wrote?

9 Q. That you were exploring the possibility of seeking  
10 extradition of OSI subjects to hasten or to accelerate  
11 the process of dealing with these Nazi war criminals, is  
12 that correct?

13 A. I was exploring that subject, yes.

14 Q. In this case did Mr. Demjanjuk receive a full  
15 denaturalization trial?

16 A. Yes, he did.

17 Q. Was he able to carry that all the way to the  
18 Supreme Court?

19 A. He did.

20 Q. Did he receive a full deportation hearing?

21 A. Certainly, as far as I am aware of it was a full  
22 hearing.

23 Q. And extradition as well?

24 A. That was not on my watch but my impression it  
25 certainly was a full extradition hearing.

1 Q. In Israel did he again receive a full trial on the  
2 allegations regarding Treblinka?

3 A. From everything I saw he certainly did.

4 Q. Was that from everything you saw a fair trial?

5 A. From what I saw it was a fair trial, yes, ma'am.

6 Q. And currently has he had an opportunity to appeal  
7 his conviction to the Israeli Supreme Court?

8 A. Based on everything I have seen, yes.

9 Q. And do you know whether or not he has been  
10 attempting to introduce new Soviet evidence into the  
11 proceedings in Israel at this stage?

12 A. That is what I -- that is my impression, that he  
13 has.

14 Q. Mr. Ryan, do you think that at any time in the  
15 proceedings in the United States that you deprived John  
16 Demjanjuk of due process?

17 A. Let me answer that. The government has a higher  
18 obligation than other litigants, especially in these  
19 cases where citizenship is at stake. The government has  
20 got to turn square corners. It has to do things that  
21 ordinarily litigants don't have to do.

22 We are the United States Government,  
23 Department of Justice. Nothing that I saw in my office  
24 then and if I may say so now leads me to think in any way  
25 we did anything that was not worthy of the Department of

1 Justice. That is my answer.

2 MS. STEMLER: Judge Wiseman, I have no  
3 further questions. I would like a moment to consult with  
4 counsel because there may be some?

5 THE COURT: Certainly, you may.

6 MS. STEMLER: Judge Wiseman, there are no  
7 further questions.

8 THE COURT: All right. Thank you.

9 THE COURT: You may conduct redirect.

10 MR. TIGAR: May I move the lectern, Your  
11 Honor?

12 THE COURT: Yes, sir.

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1 EXAMINATION OF ALLAN A. RYAN, JR.

2 BY MR. TIGAR:

3 Q. Mr. Ryan, how did you find out that Mr. Demjanjuk  
4 had said in his deposition he had a tattoo on his arm?

5 A. I am sorry, Mr. Tigar, I didn't hear the question.

6 Q. How did you find out Mr. Demjanjuk said in his  
7 deposition he had a tattoo on his arm?

8 A. How did I find out he had an tattoo on his arm?

9 Q. Yes.

10 A. I found that out, as far as I know, last week. I  
11 didn't realize it came from his deposition before.

12 Q. When you testified on direct examination or  
13 cross-examination earlier about the evidence that the  
14 government had in trial in Cleveland and you listed the  
15 tattoo point, you didn't know anything about the tattoo  
16 until two weeks ago, right?

17 A. No. It's not that I didn't know anything about  
18 the tattoo until two weeks ago. It is just I don't  
19 know -- I can't say for sure that I learned until two  
20 weeks ago that came from the deposition.

21 If it is something I knew before the trial  
22 obviously I must have known it then came from the  
23 deposition because there would be no other place to have  
24 it come from.

25 I am just trying to answer your questions

1 as precisely as I can.

2 Q. Let me help you. Do you know when Mr. Demjanjuk  
3 was deposed?

4 A. He was deposed, as I recall, at some point very  
5 early in the case, 1976 or 1977.

6 Q. Do you remember when Mr. Parker took Mr.  
7 Demjanjuk's deposition?

8 A. I don't remember it. I have seen from the papers  
9 that I have looked at recently it was in February of  
10 1980.

11 Q. February, 1980. And did you know before two weeks  
12 ago it was Mr. Parker that asked Mr. Demjanjuk at the  
13 deposition about the tattoo and got that answer?

14 A. I don't recall. I must have.

15 Q. Do you think that the tattoo is significant?

16 A. I think it is part of the evidence in the case and  
17 is significant, yes, sir, I do.

18 Q. Did Mr. Parker ever come to you after that  
19 deposition in Cleveland and around February, March, 1980  
20 and say I took Mr. Demjanjuk's deposition and this is  
21 what I found out?

22 A. I don't have any recollection that he did. But he  
23 may have. I just don't know.

24 Q. You don't remember whether that piece of evidence  
25 was discussed, is that right?

1 A. The tattoo?

2 Q. Yes.

3 A. I don't recall discussing it with George Parker.

4 I may have. I don't have any recollection.

5 Q. Will you turn in petitioner's exhibit volume 1 to  
6 Exhibit 40, please, the black volume. I think it is that  
7 one there.

8 I am sorry. It is white on yours, the  
9 large one.

10 A. Number 40?

11 Q. Yes, 40.

12 Is that your handwritten note at the top?

13 A. Yes, it is.

14 Q. What does it say?

15 A. It says what is this all about, question mark.

16 Q. When did you write that?

17 A. When?

18 Q. Yes.

19 A. I don't know when. I assume I wrote it shortly  
20 after the letter came to me from Mr. Martin.

21 Q. After you had read the letter?

22 A. Well, maybe after I read it or maybe after I read  
23 only the first two sentences because the first two  
24 sentences are so confusing I might have stopped right  
25 there and said what is this all about, or I might have

1 read the whole thing.

2 THE COURT: Wait a minute. Is that the  
3 deposition of John Demjanjuk?

4 MR. TIGAR: No, Your Honor. Petitioner's  
5 Exhibit 40, Your Honor, is the letter to Mr. Ryan from  
6 Mr. John Martin. I have another copy of it here.

7 THE COURT: No, I am just in the wrong  
8 book. The white book.

9 Go ahead.

10 Q. I want, please, your best recollection.

11 How many sentences of that letter do you  
12 remember reading when you saw it in 1980?

13 A. I have no recollection -- you mean 1982.

14 Q. '82, excuse me.

15 A. I have no recollection of getting this letter but  
16 I obviously did since I wrote a note on the top saying  
17 what is this all about.

18 I don't know what I read before I wrote  
19 the note. The reason I read the first two sentences, it  
20 starts off, Dear Mr. Ryan. Your response to my letter  
21 dated August 5, 1982, is acknowledged. I have had an  
22 opportunity to read it, digest and compare the documents  
23 you forwarded.

24 I knew I had never written John Martin a  
25 letter in my life. When I read that that is when my

1 confusion began and I -- I don't know if I read the rest  
2 of the letter. I may have.

3 I sent it off saying, what is this all  
4 about?

5 Q. Would you read the third sentence there out loud?

6 A. The third sentence said, in so doing, it is  
7 apparent that this information should have been turned  
8 over to the defense pursuant to discovery and/or  
9 production of documents.

10 Q. That is an unambiguous sentence, is it not, sir?

11 A. Taken by itself it's unambiguous. It is clear  
12 what it says.

13 Q. You have a lawyer in the case that is now in the  
14 Supreme Court involving a man accused of being Ivan the  
15 Terrible that is accusing you of things -- of not turning  
16 over documents.

17 Isn't that what that says?

18 A. If he says it is apparent that the information  
19 should have been turned over to the defense, yes.

20 Q. All right. And as you sit there today can you  
21 recall what if any investigation was conducted at your  
22 request and what report if any was made to you? --

23 A. Well, I sent it off -- it's not clear from my copy  
24 who I sent this to although I assume it would be Bruce  
25 Einhorn, since he was the trial attorney on the case at

1 that time.

2 I sent it off to him saying, what is this  
3 all about?

4 Q. My question is, do you remember -- look, please,  
5 at petitioner's 202, white volume, volume 5?

6 A. Yes.

7 Q. I asked you about that this morning and was going  
8 to ask you again, sir.

9 Having looked at the handwritten note I  
10 just showed you, do you remember what was attached if  
11 anything to 202?

12 A. I don't remember receiving 202 although I presume  
13 in the ordinary course I did receive it. I have no  
14 recollection at all of what, if anything, was attached to  
15 it.

16 Q. Would you turn, please, to petitioner's Exhibit  
17 195 which is also in volume 5, new subject.

18 A. 195?

19 Q. Yes, sir.

20 A. The supplemental brief?

21 Q. Yes.

22 Turn to the second to the last page of the  
23 exhibit, please, the signature page.

24 A. Yes.

25 Q. Now, your name there has been signed by someone

1 else, correct?

2 A. Correct.

3 Q. Did you read this document before it was filed  
4 with the Court?

5 A. I don't remember, Mr. Tigar.

6 Q. Would you read footnote 11 in which the government  
7 takes the position it will not pay for defense counsel to  
8 attend depositions abroad and tell me whether that states  
9 a policy of the OSI as you understand it to be at that  
10 time?

11 195, footnote 11, next to the last  
12 page.

13 A. That footnote raises an interesting point. I  
14 don't think I have seen it before. But I think I  
15 probably agree with it.

16 What it is saying is, look, the government  
17 pays the defense counsel expenses when we, the  
18 government, OSI, take depositions abroad.

19 That doesn't necessarily mean we are going  
20 to give defense counsel plane tickets to take his own  
21 depositions abroad anywhere he wants to go.

22 In this case in particular what this  
23 footnote says, this does not seem to us to be a proper  
24 case where we would pay expenses for defendant to take  
25 his own depositions abroad.

1 Q. In making the answer you just made, have you  
2 considered the language accordingly, the government  
3 should not bear the expense of defendant pursuing these  
4 or any other witnesses?

5 A. No, I didn't pay particular attention to that.

6 Q. Does that change your answer?

7 A. Well, given the context, I think it means just  
8 what I take it to mean. Certainly it does not represent  
9 any change of the policy I described this morning which  
10 is that although we were not required to do so and  
11 although we could have obtained perfectly good  
12 depositions abroad if we only gave notice, I think it was  
13 appropriate to pay expenses of defense counsel as well.  
14 This would not have changed that.

15 If I read this at that time and came to a  
16 different conclusion, I would have changed the language  
17 before it went to the Court.

18 Q. When you went to Moscow in '80 you didn't believe  
19 depositions in the Soviet Union would be necessary in the  
20 Demjanjuk case, did you?

21 A. I believe that is correct, yes, sir.

22 Q. You knew in the Fedorenko case that Mr. Fedorenko  
23 said there should be depositions in the Soviet Union  
24 because things were exculpatory, is that correct?

25 A. No, I wasn't aware of that. If I had been aware I

1 would have said it wouldn't exculpate you because the  
2 reason your citizenship was taken away, you were at  
3 Treblinka as you admitted.

4 Q. As you sit there today you don't remember if there  
5 is a reference to Fedorenko's request to take depositions  
6 in the USSR?

7 Is that your testimony?

8 A. As I sit here today, I don't remember that in  
9 particular, no. If it is there it is there. My point  
10 is --

11 MS. STEMLER: Objection. I think he is  
12 mischaracterizing that exhibit.

13 Q. As you sit there today -- I will rephrase the  
14 question.

15 As you sit there today, do you remember  
16 any reference in the published Federal Supplement opinion  
17 to depositions in the Soviet Union in the Fedorenko  
18 case?

19 A. Well, I read that opinion recently in the last two  
20 weeks just to get prepared on everything that you might  
21 want to ask me about.

22 There was -- now that I see that or when I  
23 saw that opinion there was an allegation made by  
24 Fedorenko there ought to be testimony taken from people  
25 in the Soviet Union who would say I think that he had not

1 committed any atrocities -- well, what I remember is that  
2 he wanted evidence put in the record or witnesses  
3 interrogated in his trial in the district court.

4                   That wasn't an important point on the  
5 appeal and I don't think I paid much attention to it from  
6 that day until about a week ago.

7 Q.       You did read the trial transcript in the Fedorenko  
8 case in the course of preparing your appeal in the Fifth  
9 Circuit, correct?

10 A.       I did, yes, sir.

11 Q.       Now, in the Soviet Union in January of 1980, you  
12 asked for the information about the Trawniki card,  
13 correct?

14 A.       Yes.

15 Q.       You have a clear recollection of that, correct?

16 A.       I have a clear recollection of asking the Soviets  
17 for everything that they might have on Treblinka.

18                   I am sure that the Trawniki card was  
19 included in that cable that no doubt prompted my request.

20 Q.       That cable from Mr. Moscovitz, the one that you  
21 remember seeing, is that correct?

22 A.       I am sorry?

23 Q.       The cable from Mr. Moscovitz that you remember  
24 seeing, right?

25 A.       I don't remember seeing it but I am sure I must

1 have seen it.

2 Q. Now, with respect to the Walus case, W-a-l-u-s,  
3 you had an investigator go to Europe, is that what you  
4 did?

5 A. Yes.

6 Q. And did the investigator interview people there in  
7 Europe?

8 A. He did. That is what he told me. I am sure he  
9 did.

10 Q. The purpose was to see if anybody then living  
11 would remember Mr. Walus, correct?

12 A. In the town where he claimed to be, correct.

13 Q. Yes. Did you send -- Mr. Walus was someone who  
14 admitted beating up Jews as a Gestapo agent, correct?

15 A. That was his boast, if you want to put it that  
16 way.

17 Q. He admitted it?

18 A. Well, my conclusion was that he was strutting upon  
19 the stage and saying things that in the end proved not to  
20 be true.

21 Q. And did you ever consider sending an investigator  
22 to the Treblinka area to see if there was anyone living  
23 there who might remember Ivan the Terrible?

24 A. I personally did not. And if the suggestion was  
25 made to me my answer would be, what would people in town

1 know what was going on in camp two?

2                   If there was any reason to think that  
3 people in the town might have helpful information one way  
4 or the other, I wouldn't have hesitated to send an  
5 investigator.

6                   The point is, Mr. Tigar, no investigation  
7 had been done in the Walus case because the Immigration  
8 Service was not up to doing investigations. They simply  
9 took what they had and went to Court.

10                   The investigation that I ordered in the  
11 Walus case was, to my knowledge, the first time that  
12 those allegations had been thoroughly looked into with  
13 the advantage that OSI had of government to government  
14 contacts.

15                   The Demjanjuk case, since we were  
16 continuing to carry on investigations throughout 1980 and  
17 1981, it was not necessary for me to make any order of a  
18 special investigation. It was a constant process already  
19 going on.

20                   If INS had done that in the Walus case  
21 they may not have ever brought the case.

22 Q.           The Demjanjuk case was pending for a long time  
23 when you got to OSI?

24 A.           Correct.

25 Q.           It was tried in the early part of 1981, correct?

1 A. I believe the trial began in February, 1981.

2 Q. It was in 1980 that you decided that the Demjanjuk  
3 case should go ahead on the allegations he was Ivan the  
4 Terrible, correct?

5 A. As I said this morning, that was a constant  
6 process of decision on my part in the sense that at any  
7 point I could have called a halt to the prosecution as I  
8 did in other cases but I did not.

9 Q. But there came a time in 1980, didn't there, sir,  
10 when you had eyewitnesses from Treblinka and you had the  
11 Trawniki card and you sat in your office and said --  
12 referring to Mr. Demjanjuk -- you son-of-a-bitch, we have  
13 got you?

14 A. Yes, sir.

15 Q. When was that?

16 A. I don't recall the exact date. It was over the  
17 course of the investigation in 1980.

18 Q. And at the date you said, you son-of-a-bitch, we  
19 have got you, had you read the Leleko or Malagon  
20 statements?

21 A. I have not read those statements until 1992. If  
22 you are quoting from my book, you will see on the next  
23 page after I refer to that episode I say we were  
24 constantly on the alert at any time for any note that  
25 might not ring true, any piece of evidence that might

1 cast doubt on what had come before, any gnarring  
2 suspicion we might have the wrong man and in this case  
3 those doubts did not come.

4 I would not want to leave the impression I  
5 made up my mind once and for all a man in this case or  
6 any other case was guilty and my mind was thereafter  
7 closed to any contrary suggestion.

8 Q. Sir, would you take a look again very briefly,  
9 please, at petitioner's Exhibit Number 156 that is in  
10 volume 3 -- 4, excuse me, of the white book.

11 One question. Do you know of your own  
12 knowledge --

13 A. 156?

14 Q. Take your time to get to it. Yes, sir?

15 A. All right, sir.

16 Q. Do you know, sir, of your own knowledge whether  
17 Exhibit 156 was turned over to defense counsel in the  
18 Kairys' case?

19 A. I do not know, sir.

20 Q. The government's burden of proof in a  
21 denaturalization case is clear and convincing, is that  
22 right?

23 A. Clear and convincing evidence that there is --  
24 does not leave the issue in doubt, I believe is the  
25 holding of Sniderman versus United States which was the

1 '43 United States Supreme Court case that established  
2 that proposition in denaturalization cases, yes, sir.

3 Q. If preponderance of the evidence is 50 percent  
4 plus a little bit, correct?

5 A. That is usually the way it is expressed, yes, sir.

6 Q. Do you have in your mind a numerical value you can  
7 put on clear and convincing? Something more than 50  
8 percent?

9 A. I always considered it was proof beyond a  
10 reasonable doubt and let it go at that, Mr. Tigar. That  
11 was my view.

12 Q. So something like 80 out of a 100, 90 out of a  
13 100?

14 A. Whatever number you want to place on it, sir.

15 Q. There are a hundred guards at Treblinka, right?

16 A. I don't know of my personal knowledge. The  
17 reading I have done in Hilburg (phonetic) who I think is  
18 the leading historian of the holocaust says 700.

19 Q. Do you know how many -- this morning you were  
20 asked on your cross-examination whether the Polish Main  
21 Commission list at Treblinka guards was complete.

22 Do you remember that, sir?

23 A. I was asked if it was complete.

24 Q. You were asked about that list and you looked at  
25 some names.

1 Do you remember that?

2 A. I don't remember being asked just that.

3 Q. Do you remember how many names of guards there  
4 were there?

5 A. On that list I looked at this morning?

6 Q. Yes.

7 A. No, I don't. I didn't count them.

8 Q. When is the the last time you spoke with Walter  
9 Rockler?

10 A. It's been many years since I have spoken to  
11 Walter. I don't think I have spoken to him since I left  
12 Washington in 1985.

13 Q. When is the last time you spoke to Arthur Sinai?

14 A. Even longer.

15 Q. When Ms. Stemler was asking about the government's  
16 obligation in cases, you told her that it is the  
17 obligation of every trial lawyer to constantly evaluate  
18 discrepancies in the case.

19 Is that correct, sir?

20 A. Yes, I believe it is.

21 Q. And as the government lawyer in addition to  
22 evaluating discrepancies in the case, there is a--  
23 disclosure obligation in addition, correct?

24 A. For a government lawyer?

25 Q. Yes.

1 A. Which disclosure obligation are you referring  
2 to?

3 Q. Any at all, sir.

4 A. Certainly there are many disclosure obligations.

5 Q. The ethical rules speak of the disclosure  
6 obligations of government lawyers, correct?

7 A. Well, there are disclosure obligations that are  
8 set forth in the Federal Rules of Civil Procedure. Those  
9 are the rules we were governed by.

10 To my knowledge there is also one of the  
11 canons of ethics that states that in a criminal case a  
12 government attorney must disclose evidence that is  
13 exculpatory, if that is the one you are referring to.

14 Q. You testified at some length, sir, about Mr.  
15 Parker's memorandum of February 28th.

16 You saw in there he referred to some  
17 canons of ethics, correct?

18 A. He did, yes.

19 Q. Did you happen to look those up? Did you happen  
20 to look up the canons of ethics he cited in there as you  
21 are preparing for your testimony today?

22 A. I did. If it is 107, I read that one.

23 Q. Seven dash 103, did you read that?

24 A. I couldn't tell you by number which ones I looked  
25 at, Mr. Tigar.

1 Q. But you do acknowledge, sir, that the lawyer's  
2 obligation to reconcile discrepancies is a separate  
3 matter from the lawyer's obligation to disclose  
4 discrepancies to the other side in criminal litigation,  
5 correct?

6 A. Perhaps I am not making myself clear. I believe  
7 the canons of ethics speak only to the government's  
8 obligation in a criminal case because, as you know, there  
9 is no discovery, generally speaking, in a criminal case.

10 If the government is not obliged to turn  
11 it over it may never get done.

12 In civil cases, even denaturalization  
13 cases, the full realm of discovery -- because the Federal  
14 Rules of Civil Procedure apply. So there is quite full  
15 disclosure during a discovery process if the plaintiff is  
16 requesting it.

17 My feeling was over and above that, that  
18 OSI ought to turn over exculpatory evidence even if it  
19 was for some reason not asked for in the discovery  
20 process. That was my view of that little subject.

21 When I said a minute ago -- I think a good  
22 trial lawyer, a conscientious, concerned, hard working  
23 trial lawyer ought to be concerned in the course of  
24 preparing his or her case with doubts that arise,  
25 discrepancies between the evidence, et cetera.

1                   Whether it ever leads or doesn't lead to  
2 disclosure obligations is not the point. The fact is, if  
3 five witnesses say that the bank robber was six feet tall  
4 and five witnesses say the bank robber was six feet one,  
5 that is a discrepancy situation. Maybe not. It is  
6 significant, one, in the end but it is a discrepancy.

7                   You have to be aware of all these things.  
8 That is the the distinction I was trying to draw.

9 Q.           Now, finally, your last responses with Ms. Stemler  
10 near the last, you were talking about the proceeding on  
11 appeal in Israel.

12                   Do you remember that?

13 A.           She asked about them. I don't have firsthand  
14 knowledge of them.

15 Q.           You are aware not from firsthand knowledge but you  
16 are aware that exculpatory evidence has been admitted by  
17 Mr. Demjanjuk's lawyers in the Israeli Supreme Court,  
18 right?

19 A.           I don't know that of my personal knowledge.

20 Q.           I understand. From having heard about it and read  
21 it you know that, right?

22 A.           I am aware that evidence has been admitted on  
23 appeal to the Supreme Court of Israel. To the extent it  
24 is exculpatory, I am not permitted to say. I haven't  
25 read it.

1 Q. Your understanding is that evidence suggesting  
2 Ivan Marczenko was Ivan the Terrible has been offered in  
3 Israel?

4 A. That is my understanding, yes.

5 Q. Is it your belief, sir, that the lawyer who is  
6 defending a client who is charged with conduct that may  
7 result in the death penalty or serious prison sentence  
8 has the right to try to convince a Court to receive  
9 exculpatory evidence even if the evidence is hearsay?

10 A. I believe that a defense attorney has the right to  
11 convince the Court to do just about anything, frankly.

12 Q. My specific question, do you --

13 A. Yes, that included.

14 MR. TIGAR: No further questions.

15 THE COURT: Anyone else have any questions  
16 of this witness?

17 THE COURT: Yes, sir, who are you?

18 MR. MAUSNER: I just wanted to talk to Ms.  
19 Stemler.

20 MR. TIGAR: This is Mr. Einhorn's lawyer.

21 THE COURT: All right. Judge Einhorn.

22 MR. TIGAR: Pardon me. Yes. Thank you.

23 MS. STEMLER: Just asking one question for  
24 Mr. Mausner.

25 Q. You have testified in the Walus case you sent out

1 an investigator with respect to verifying the Walus  
2 alibi.

3 Why did you send him out to check on his  
4 alibi?

5 A. Check on all evidence that was known and to find  
6 out anything that wasn't known. I wanted him to come  
7 back with -- I wanted him to know more about Frank Walus  
8 than Frank Walus did.

9 Q. In the Demjanjuk case was there an effort there to  
10 ascertain whether or not Demjanjuk's alibi he had spent  
11 time, spent the period in question as a prisoner of war,  
12 whether or not that was accurate?

13 A. Absolutely it was.

14 Q. What was that?

15 A. Well, his alibi by the time -- his original  
16 alibi --

17 MR. TIGAR: Excuse me. My objection is  
18 that we find out how much is personal knowledge and how  
19 much is not.

20 Q. Did you attend the trial in the Demjanjuk case?

21 A. I attended part. In Cleveland in '81?

22 Q. Yes.

23 A. Part of it, yes, sir.

24 Q. Do you have personal knowledge how the government  
25 rebutted the alibi in the Demjanjuk case?

1 A. Yes, I do.

2 Q. How was that rebutted?

3 A. His alibi at trial was that he had been in the POW  
4 camp at Helm until late 1944 and at trial because of the  
5 preparation that had been done by Norman Moscowitz and  
6 Jack Horrigan, the government called in rebuttal,  
7 Professor Earl Simski, who was from the University of  
8 Georgia, if I am correct, that testified that the POW  
9 camp at Helm had been abandoned by the Germans no later  
10 than the summer of 1944 and in fact probably even by  
11 January, '44 when it had been sucked into the Russian  
12 theater of operations as the Red Army was pushing back  
13 westwards and, therefore, it was Professor Simski's  
14 conclusion as an expert witness that no Soviet POW from  
15 the Red Army could have been held at Helm beyond the  
16 spring or summer of 1944 and probably not even beyond  
17 January of '44.

18 And the Court in the case found that that  
19 was persuasive evidence, that the defendant's alibi he  
20 had been in the POW camp until October of '44 was not  
21 well founded, that it was not true.

22 MS. STEMLER: No further questions.

23 THE COURT: Mr. Ryan, if I remember  
24 correctly the testimony of Mr. Parker, I think he  
25 testified he had a meeting with Mr. Rockler after his

1 February memo, that you were present -- although you did  
2 not say anything -- you were present at the meeting and  
3 perhaps as the memo itself was not discussed but his  
4 concerns were discussed about whether or not this -- the  
5 proof was adequate to go to trial and whether or not  
6 Marczenko was Ivan Grozny.

7                   You don't recall such a meeting?

8                   MR. MAREK: Your Honor --

9 A.           No, sir, certainly not of the 28th of February.  
10 Not even in this memo dated February 28th does he mention  
11 Marczenko or anything along those lines.

12                   His concerns seem quite directly along  
13 other lines.

14                   If I can say this, Your Honor, after the  
15 28th of February I had been at OSI almost two months and  
16 I was within a few weeks of becoming director of the  
17 office. I would not have been reticent about saying  
18 anything, I would not have been unfamiliar enough so I  
19 would feel unqualified to speak.

20                   THE COURT: Are you simply saying that  
21 meeting did not happen?

22 A.           What I am saying, on the 16th of January,--  
23 according to the appointment book, nine days after I got  
24 to OSI, I met with George Parker. There may be others  
25 there. I don't have an independent recollection of the

1 meeting now.

2                   What I am saying, it may be at that  
3 meeting that I might not have said much because I was  
4 getting my feet on the ground. But the meeting of  
5 January 16th obviously won't be any memo he wrote in  
6 February.

7                   I have no memory of George Parker  
8 expressing in any way doubts about the evidence in the  
9 case.

10                   THE COURT: Okay. I guess we have a  
11 credibility issue.

12                   MS. STEMLER: Your Honor, may I say one  
13 thing for the record, because I think it is an important  
14 misunderstanding?

15                   I don't believe that George Parker  
16 testified that he had any doubts about Marczenko. I  
17 think he said quite to the contrary. He had not raised  
18 Marczenko and it was of no concern to him.

19                   I know the testimony speaks for itself but  
20 I think it is a critical issue. I didn't -- I did want  
21 to point that out.

22                   THE COURT: All right. Thank you--  
23 Anything else that we can do here today?

24                   All right. Thank you very much.

25                   MR. BIEHL: No, Your Honor.

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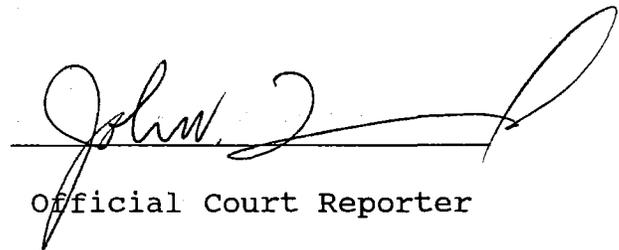
THE COURT: Thank you very much.

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REPORTER'S CERTIFICATE

I, John W. Tummel, Official Court Reporter for the United States District Court, Middle District of Tennessee, with office at Nashville, hereby certify that I recorded on the Stenograph Shorthand Machine the proceedings held in open court on January 29, 1993, in the matter of: JOHN DEMJANJUK VS. JOSEPH PETROVSKY, ET AL; Case No. 85-3435; and that the proceedings in connection with this hearing were reduced to typewriting under my supervision; and that the foregoing is a true and correct transcript of the same.

This the 18<sup>th</sup> day of February 1993.

  
Official Court Reporter