

OSI and ADL hate-mongers under assault in courts

by Jeffrey Steinberg

The Anti-Defamation League of B'nai B'rith (ADL) and its Department of Justice (DOJ) cronies in the "Nazi-hunting" Office of Special Investigations (OSI) are finding themselves under escalating attack in a number of state and federal courts around the country. If the momentum continues, the OSI may soon find itself out of business and the ADL's decade-long campaign to impose Orwellian "hate crimes laws" upon the United States may be smashed once and for all.

On Aug. 26, the Ohio State Supreme Court declared an ADL-authored hate crime statute to be unconstitutional. The 1986 law, which was based on an ADL model statute, mandated increased jail time and larger fines in cases where individuals convicted of crimes were found to have targeted their victims on the basis of religious, racial, or other biases. The Ohio court, in a consolidated ruling on four separate cases, found that "enhancing a penalty because of motive therefore punishes the person's thought, rather than the person's act or criminal intent." This, the court ruled, amounts to the creation of a "thought crime," in violation of state and federal constitutions.

The Ohio Supreme Court ruling, which mirrored an earlier ruling by a Wisconsin court, was particularly significant in that the original author and sponsor of the bill, former State Sen. Lee Fisher, is now the Ohio State Attorney General. A darling of the ADL, Fisher was a keynote speaker last year at the founding conference of the National Jewish Democratic Council (NJDC), an ADL-dominated political action group which seeks to spread Zionist lobby influence inside the Democratic Party and among Democratic elected officials. Fisher has been a staunch supporter of the death penalty, going so far as to attempt to overturn a series of clemency orders by former Gov. Richard Celeste that preempted a number of scheduled executions in Ohio. Interviewed by the Jewish Telegraph Agency following the court decision, Fisher said bitterly that he thought the Ohio Supreme Court is "just plain wrong," and indicated that he planned to take the case up to the U.S. Supreme Court.

Demjanjuk case setback for OSI

On Sept. 4, U.S. District Court Judge Thomas Wiseman, acting in his capacity as special master for the Sixth Circuit Court of Appeals, held a meeting with attorneys representing

the OSI and John Demjanjuk, the Ukrainian-American retired auto worker who was extradited to Israel in 1986 on charges that he was the Treblinka concentration camp mass-murderer known as "Ivan the Terrible." In August, following oral argument, the Sixth Circuit named Judge Wiseman as special master charged with gathering evidence of possible government fraud on the court in the Demjanjuk case. Attorneys for Demjanjuk had successfully argued at the Aug. 11 hearing that the Sixth Circuit had the authority to probe whether DOJ attorneys had withheld exculpatory evidence proving that Demjanjuk was not the infamous "Ivan," resulting in his unlawful denaturalization, deportation, and extradition to Israel, where he was convicted and sentenced to death by hanging.

On Sept. 4, Judge Wiseman convened a meeting in his courtroom in Nashville, Tennessee to set a calendar for evidentiary hearings. Among the witnesses already slated to be questioned are three OSI attorneys, including the unit's former chief Allan Ryan. Prior to the meeting, the OSI had filed a lengthy statement arguing that Judge Wiseman's mandate was extremely narrow. Incredibly, the DOJ brief had argued that in an extradition proceeding, the government is only obliged to present selective evidence establishing probable cause, and that the defendant has no right to present arguments in his or her own defense:

"The court's reference to the special master encompasses a single issue: whether government attorneys fraudulently failed to disclose material evidence that would have changed the result of the extradition proceeding. Because an extradition hearing is limited to a showing of probable cause and because a defendant in an extradition hearing has no right to introduce evidence contradicting the government's showing of probable cause, that reference permits inquiry only into whether, prior to the extradition proceeding, the government had evidence in its possession that would have completely obliterated the government's showing of probable cause. Demjanjuk bears the burden of proof in resolving that question."

Judge Wiseman, at the Sept. 4 meeting, rejected the underlying premise of the Justice Department memorandum. According to Debra Nagle, the public information officer for the Sixth Circuit, Wiseman, speaking from the bench, asserted that "any allegation of attorney misconduct in any

proceeding which may have affected the outcome of that or any other proceeding may be explored." Wiseman characterized the government memo as "too narrowly construed." Questioning of the witnesses will probably begin before the end of September.

A broadside against the OSI

Even as the Demjanjuk case was unearthing a wealth of evidence of fraud upon the court by the self-described "Nazi hunters," the OSI was being hit on another flank that threatens to permanently shut down the unit. In July, attorneys representing a Ukrainian-American organization, its president, and three eastern Europeans who were all victims of the OSI, filed a civil suit in U.S. District Court for the District of Columbia demanding that the "Holtzman Amendment" be declared unconstitutional.

According to William Nezowy, the president of the American Ukrainian Political Action Council of the United States (Aupacus), the Holtzman Amendment, which authorized the Attorney General of the United States to denaturalize and deport any individual who "participated in the persecution of any persons" in conjunction with the Nazis between 1933-45, is both unconstitutional on its face and prejudicial against Americans of eastern European descent in its implementation. "It is a detour around the U.S. Constitution," depriving naturalized eastern Europeans of their rights under the First, Fifth, Sixth, Eighth, and Fourteenth Amendments, Nezowy recently told *EIR*.

The plaintiffs in the lawsuit were Aupacus, Nezowy, Frank Walus, Radoslav Artukovic, and Anu Linnas. Walus, a Polish-American, was targeted by the OSI as an alleged Nazi concentration camp officer. Although a dozen witnesses came forward swearing that they could identify Walus, his attorneys subsequently obtained incontrovertible proof that he was innocent. The Walus case underscored the unreliability of so-called eyewitness testimony in such emotionally charged cases (the Sixth Circuit raised the Walus precedent in the Aug. 11 Demjanjuk hearing). Artukovic and Linnas are both the children of victims of OSI prosecutions who were deported to Yugoslavia and the Soviet Union, respectively, and died in prison while awaiting execution.

The lawsuit charges that the revisions of the criminal code Title 8, known as the Holtzman Amendment, "are unconstitutional in that they are enforced in a discriminatory fashion against individuals of selected ethnic background, in violation of the protections of due process and equal protection of the United States Constitution, and that they violate on their face the protections of the First, Fifth, Sixth, Eighth and Fourteenth Amendments of the United States Constitution." The suit charges that of the more than 40 cases brought to trial under the Holtzman Amendment, the overwhelming majority have been against eastern Europeans or citizens of the former "Captive Nations" of the Baltics or Ukraine. "As such, these prosecutions were initiated or assisted by those

governments under the control of the former Soviet Union for distinctively political and ideological purposes, in which the formalities of genuine judicial procedure were of little or no consideration, and the Office of Special Investigations, by such a policy has become an instrument of the same political and ideological considerations, in violation of the true legislative intent of Congress in enacting those provisions and in violation of the Constitution of the United States."

The suit additionally charges that Order No. 851-79, signed by then-Attorney General Benjamin Civiletti on Sept. 4, 1979, which created the OSI inside the Criminal Division of the Department of Justice, is a further violation of the Constitution. Under the Holtzman Amendment, naturalized American citizens charged with wartime crimes are deprived of the right to a jury trial, the right to an attorney, and other constitutional provisions required in a criminal proceeding. All of the victims of OSI prosecutions are subjected to criminal prosecutions following their denaturalizations and extraditions; and in most cases, the prosecutions are for capital crimes.

"We are concerned first and foremost about the treatment of human beings," Nezowy told *EIR* on Sept. 2. "It may very well be that there are other concerns here as well, such as the misappropriation of government funds for the spreading of false allegations, but first of all, our concern is to restore the full rights under the Constitution to the former eastern European and Captive Nation citizens who have been singled out by OSI."

Nezowy believes that the court must declare the Holtzman Amendment unconstitutional. "In violation of all the immigration laws of the United States, this amendment provides for automatic denaturalization—with no due process. What is worse, most of these cases were developed on the basis of evidence received from the Soviet Union or their satellite states—no questions asked. With the collapse of the Soviet Union, the KGB is in a temporary state of limbo. They are still around and active, but for the time being, some documents are finding their way into the United States. We are now getting proof that the Soviets forged evidence and peddled it to the OSI, as in the Demjanjuk case. Nicholas Daniloff, the former *U.S. News & World Report* magazine correspondent in Moscow, said that the KGB had the capacity to forge any document overnight if necessary. It appears that Daniloff was right."

Nezowy's anger is directed at others in the government, outside of just the OSI. He believes that former Attorney General Richard Thornburgh created "a new constitution—his constitution. Things have not improved under William Barr." He is also angry at the failure of the Congress to take on the OSI and other cases of clear Department of Justice politically motivated prosecutions. He cites the case of Lyndon LaRouche as another example of this kind of political targeting. "Congress is too wishy-washy. Most of them should be replaced. They are gutless," he said.