

Declaration of Michael E. Tigar

I, Michael E. Tigar, do hereby declared under penalty of perjury the following is true and correct to the best of my knowledge.

1. I am a licensed attorney in the District of Columbia and the state of New York. I am Emeritus Professor of Law at Washington College of Law and Emeritus Professor of the Practice of Law at Duke University.
2. I was counsel of record for John Demjanjuk in the following proceedings:
  - a. *Demjanjuk v. Petrovsky*, Case No. 85-3435, Sixth Circuit Court of Appeals, fraud on the court proceedings;
  - b. *U.S. v. Demjanjuk*, Case No. 99-CV-1193, United States District Court, denaturalization proceedings.
3. I provided my legal services *pro bono* to Mr. Demjanjuk. During the denaturalization proceedings from 1999 to 2002, I requested judicial appointment and financial assistance from the district court, but was denied. John Broadley was co-counsel with me on the case.
4. The amount of records involved in this case was voluminous. A great deal of my time was sorting through the documents and prior proceedings. The previous attorneys provided to me all of the records and documents they had received during the prior proceedings.
5. It became clear to me though from the beginning that the United States Government, through the Office of Special Investigations, had withheld critical documents from Mr. Demjanjuk and his defense team. The Sixth Circuit agreed with our contention that duties on the government under *Brady v. Maryland* applied to these proceedings, and that the government had

6. As a result, the Sixth Circuit vacated its earlier decisions upholding Mr. Demjanjuk's extradition to Germany. It also issued an order permitting Mr. Demjanjuk to return home from Israel after his acquittal there. Thereafter, the district court vacated the first denaturalization judgment, and reinstated Mr. Demjanjuk's United States citizenship. However, the district judge – relying on the government's assertion that key evidence against Mr. Demjanjuk was authentic, held that the vacatur would be without prejudice.

7. Then the government refiled denaturalization proceedings against Mr. Demjanjuk in 1999, again representing that the evidence against him was authentic. During those proceedings, we requested again all documentation concerning the case. The government reported that they had indeed turned over to us all documentation.

8. While the documents were voluminous, I became very familiar with them during the litigation.

9. I learned recently from an AP newspaper article and from current records at the National Archives (NARA) of a March 4, 1985, report from the FBI office in Cleveland, Ohio. See Attachment 1 (Memo re: John Demjanjuk, Foreign Intelligence - Russia). I also have been made aware of another similar report dated the same. See Attachment 2 (Memo to FBI director from SAC, Cleveland).

10. To the best of my knowledge and belief, I never received these documents during my representation of Mr. Demjanjuk.

11. defense at the second denaturalization proceeding was that the principal documents offered into evidence by the government to establish Mr. Demjanjuk was a German guard at

after World War II by the KGB of the Soviet government to implicate former Soviet citizens. We showed that if the so-called Trawniki card was not authentic and did not refer to Mr. Demjanjuk, that the other documents containing variations on the name Demjanjuk did not refer to him either. We were also aware that there as at least one other person with the same or a similar last name who may well have served as a camp guard, and there was evidence to that effect in the trial. We also showed discrepancies in various of the documents that were consistent with Mr. Demjanjuk not being someone who served as a camp guard.

12. These two reports, which appear to be based on similar intel, would have supported our defense at the denaturalization hearing, and would have prompted further requests for discovery from the government, such as the name of the agent who authored the report, the basis of the intel reflected in that report, and request to see the redacted sections of the report. These two documents would have also been exceedingly valuable to the defense team in its cross-examination of government witnesses, especially since the information contained in the recent disclosed reports appears to have been received by both FBI agents and prosecutors in Washington who were involved with the case against Mr. Demjanjuk. I vigorously cross-examined government forensic witnesses on the issue of the reliability of the key documents, and these withheld reports would have been invaluable in that endeavor. I used the phrase "trial by archive" to describe the government's tactics against Mr. Demjanjuk, reflecting our view that the reliability of the documentary evidence was the single most important aspect of a case in which no live percipient witness of the actual alleged events was presented and subject to cross-examination.

13. I was never advised by the government that there were relevant documents concerning Mr. Demjanjuk were classified as secret or top secret. I also was never provided an opportunity to obtain a security clearance so that I could have access to any classified documents. I would have sought such a security clearance had I been aware, and moved for the use of appropriate procedures to have the relevant material made available.

14. To the best of my knowledge and belief, my co-counsel, John Broadley was not provided this information as well.

A handwritten signature in dark ink, appearing to read 'ME Tigar', written over a horizontal line.

Michael E. Tigar  
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(202) 549-4229

July 13, 2011

Date

## WITHDRAWAL NOTICE

RG: 65

Box: 00133 Folder: 0001 Document: 1

Series:

Copies: 0 Pages: 3

### ACCESS RESTRICTED

The item identified below has been withdrawn from this file:

Folder Title: 105-335639

Document Date: 03-04-1985

Document Type: Report

Special Media:

From: FBI, Cleveland, Ohio

To:

Subject: John Demjanjuk, also known as Ivan Demjanjuk; Foreign Counterintelligence - Russia

In the review of this file this item was removed because access to it is restricted. Restrictions on records in the National Archives are stated in general and specific record group restriction statements which are available for examination.

NND: 55643

Withdrawn: 01-21-2010 by: NWD

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System DocID: 31306640





U.S. Department of Justice

Federal Bureau of Investigation

SECRET

In Reply, Please Refer to  
File No.

Cleveland, Ohio

March 4, 1985

JOHN DEMJANJUK,  
also known as,  
Ivan Demjanjuk;

[ FOREIGN COUNTERINTELLIGENCE - RUSSIA ] (S) u

This communication is classified "SECRET" in its entirety.

JOHN DEMJANJUK, also known as IVAN DEMJANJUK, born [redacted], immigrated to the United States after World War II, under provisions of the Displaced Persons Act. He established residence in the Cleveland, Ohio area and settled there. In 1978, inquiries were undertaken concerning possible false statements on his immigration papers. Certain allegations had been made that DEMJANJUK had been a Nazi prison camp guard at Treblinka in Poland and had been the notorious guard known as "IVAN the Terrible" who had been responsible for the death of numerous prisoners under torture conditions.

DEMJANJUK has a reputation for being anti-Soviet and an outspoken dissident in that regard, well respected in the large Ukrainian community, where he lives. Following annexation of the Ukraine by the USSR, many Ukrainians have opposed the Soviet regime openly and during World War II, an entire army of Ukrainians defected to the Germans, fighting against the Soviet Union. [redacted]

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[ 105-338639-12 ] (S) u

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the FBI. It is the property of  
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A long series of court actions have been taken against DEMJANJUK during the past several years, including deportation hearings and recent requests from the nation of Israel to extradite DEMJANJUK to Israel to stand trial for "war crimes".

Part of these proceedings involved the presentation by a KGB officer from the Soviet Embassy of a document purporting to be an identification card issued by the Nazi SS depicting DEMJANJUK as a prison guard at Treblinka.

Production of this document at a deportation and denaturalization hearing, was a part of an ongoing cooperation with the USSR. The USSR has since the Nuremberg War Crime Trials in 1945-46, provided documentary evidence in United States courts in denaturalization and deportation proceedings for persons accused of falsifying information to hide previous collaboration with the enemy either to gain admittance or citizenship in the U.S. Rule 901(A) of the Federal Rules of Evidence provides that the "requirement of authentication or identification as a condition precedent to admissibility" is satisfied by evidence to support a finding that the matter in question is what its proponent claims.

Rule 902(1)-(5) permits the admissibility of a whole range of public or official documents and records without extrinsic evidence to establish authenticity and specifically sets forth the requirements for admissibility of foreign public documents. Other provisions of federal law pertaining to authentication of public documents are contained in 28 U.S.C. 1741 and 18 U.S.C. 3491-96.

Investigation at Cleveland, [REDACTED]

[REDACTED] has strongly indicated the following scenario, involving Soviet utilization of the USDJ Office of Special Investigation(OSI) to effect Soviet purposes.


1. [Through its spotter service within the Soviet emigre community in the United States,] the KGB learns of prominent emigre dissidents speaking out publicly and/or leading emigre groups in opposition to the Soviet leadership in the USSR.
2. The KGB, in continuation of internal security measures extended into the United States, initiates an anonymous letter to USDJ/OSI, accusing the emigre dissident of being a former war criminal, guilty of atrocities during World War II.
3. USDJ/OSI initiates an investigation into background of the accused emigre. Lacking evidence of the allegation's veracity, USDJ/OSI, thereupon sends results of their investigation to KGB/Moscow, requesting review of records seized from Nazi Prison Camps in the

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aftermath of World War II for evidence which might substantiate the accusation.

4. The KGB then produces a record purporting to tie the accused with the commission of Nazi atrocities, which record may be falsified for the express purpose of discrediting the accused.
  5. The KGB then makes the questioned records "available" to USDJ for action against the accused in immigration court. A KGB officer is dispatched from a Soviet embassy or consulate in the United States, to "present" the questioned records in court, but not to permit its examination by document experts.
  6. In court, the KGB officer thereupon "shows" the documents to the judge, but does not permit the documents to be presented in evidence or to be otherwise copied; thus barring United States authorities or the court from examining the the authenticity of the records.
  7. The end result is that justice is ill-served in the prosecution of an American citizen on evidence which is not only normally inadmissible, in a court of law, but based on evidence and allegations quite likely fabricated by the KGB,
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FD-36 (Rev. 8-26-82)

FBI

## TRANSMIT VIA:

☐ Teletype  
☐ Facsimile  
☐ AIRTEL

## PRECEDENCE:

☐ Immediate  
☐ Priority  
☐ Routine

## CLASSIFICATION:

☐ TOP SECRET  
☐ SECRET  
☐ CONFIDENTIAL  
☐ UNCLAS E F T O  
☐ UNCLAS

Date 3/4/85

SECRET MATERIAL ATTACHED

SECRET

TO: DIRECTOR, FBI (105C-335939) (X) u  
 ATTN: EXECUTIVE AGENCIES UNIT  
 (EAU) RECORDS MANagements DIVISION  
 UNIT CHIEF STORM WATKINS

FROM: SAC, CLEVELAND (105C-22005) (X) u

RE: JOHN DEMJANJUK;  
 FCI - R; (X) u  
 OO: CLEVELAND

This communication is classified "SECRET" in its entirety.

Reference FBIHQ airtel 1/8/85 (per 10)

Pursuant to instructions of FBIHQ in referenced airtel, Cleveland is enclosing five(5) copies of an LHM captioned as above, to be discussed with USDJ, Office of Special Investigations, in coordination with INTD/CI-1A, and Executive Agencies Unit(EAU).

Cleveland opines that the captioned matter, like other similar matters, could easily have been initiated and controlled by the Soviet Intelligence Service KGB as a means of intimidating Soviet emigres by effectively silencing Soviet emigre dissidents who speak out against the Soviet regime, and to demonstrate to those emigres, what many of them are told upon exiting the USSR that the KGB is in close cooperation with the intelligence services of all countries, including the FBI in the U.S. and that any sign of dissident activity will result in harsh measures being brought to bear against them, even though they are in the U.S. (X) u

3 - Bureau (Enc. 5)  
 1 - Cleveland  
 TCM:lc  
 (4)

ENCLOSURE

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7-29-89/  
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DECLASSIFIED  
 Nazi War Crimes Disclosure Act  
 PL105-246

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 WHERE SHOWN OTHERWISE

U.S. GOVERNMENT PRINTING OFFICE: 1974 O-244-465

ATTACHMENT 2



CV [105C-22005] (X)u

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REQUEST OF THE BUREAU:

Cleveland recommends that representatives of EAU and INTD [CI-1A] effect a liaison with USDJ Office of Special Investigations in an effort to determine the origin of accusatory letters forwarded to USDJ identifying certain emigres as having been Nazi war criminals. Such liaison should include efforts to compare handwriting and fingerprints on "anonymous" letters and to obtain either originals or copies of Soviet documents introduced as "evidence" of such allegations and at least to broach this possibility in an attempt to prevent the USDJ from becoming a tool of the KGB. (X)u

It should be noted that one Federal Judge in New Jersey threw a similar case out of court when the Soviet KGB officer presenting his documentary evidence refused to allow the document to be introduced into evidence.

No further investigation of this matter is anticipated at Cleveland, UACB.

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