

Memorandum



COPY

Subject Release of Material From Our Files on John Demjanjuk	Date
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To Martin H. Sachs Trial Attorney	From Bruce J. Einhorn Trial Attorney
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This will confirm our discussion regarding your request for information concerning what the effect would be if we were to agree to the release of our Demjanjuk files pursuant to several pending FOIA requests.

I am familiar with the facts of the Dejmanjuk case because I was the lead attorney on it. I am also familiar with the fact that we are currently providing judicial assistance to the State of Israel in their investigation and prosecution of Demjanjuk, who was extradited there this past February.

I can state unequivocally that we should oppose release of our files for the following reasons:

1. Concern over the integrity of the Israeli prosecution and of fairness to the defendant -- release of our material now would, in all probability, reveal (and could easily undermine and prejudice) the Israeli prosecution strategy.

2. Conversely, there is the expected publicity that would naturally attend the release of certain (and oftentimes dramatic) material. The release of such material could well be expected to infringe upon and prejudice the defendant's right to a fair trial by inflaming public opinion and outrage.

3. We have a lot of "background" material in the files which has been supplied to us either by individuals whose identities we would want to protect or which was prepared by OSI (or AUSA) attorneys. OSI investigators and historians also prepared at the direction of the case attorneys, much material including investigative reports, that appears in the case files.

4. There is no way we can determine at this time what material, if any, could be called from the files and/or sanitized for release to the public.

If you need additional information, please call me.

EXHIBIT I



COPY

Subject FOIA Requests: John Demjanjuk

Date June 3, 1986

To Neal M. Sher  
Director

From Martin H. Sachs  
Trial Attorney

ISSUE: Whether or not we reveal our aid to Israel and protect these files or release the documents and conceal our aid.

INTRODUCTION

I have been notified by the FOI/PA office that they are not ready to start processing all of the material we have <sup>1</sup>on John Demjanjuk pursuant to several pending FOIA requests.

I discussed this with Mike and he suggested that I prepare a memo to you briefly setting forth his concern at releasing this material.

DISCUSSION

Mike -- for a very good, but not publicized, reason -- does not want to allow the files sent over. <sup>2</sup> The bind this position puts us in is that, for all outward purposes, our involvement with this case is over and the FOIA office is therefore entitled to the files. To prevent release of those files to them, we must give them a valid reason. That presents no problem -- obviously, we can tell them what the situation is with respect to the case. What does present a problem is that the FOIA office must then notify the various requestors as to why the requested material cannot be released. The notification must compact to one or more of the specific statutory exceptions.

1/ Requests have been received from Warren Rechie (860278), DENYS Blaheway (860296), Saulius Simoliunas (860419), a Mr. or Ms. Kingston (9320) (who appears to have withdrawn Ms./ request), and alcron Beacon Journal/Funk (no FOIA number assigned as of this date).

2/ I refer here specifically to our office's aid to Israel as well as the possibility of Demjanjuk's possible subsequent  
(Footnote Continued)

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Unfortunately, there are no exceptions that would cover all of our files in their present, apparently closed status. Stated in the converse, the statutory exceptions which would provide sufficiently broad coverage to deny release here only apply to active cases -- the very opposite of the image that office is publicly seeking to portray.

Where does this leave us?/First, we cannot ignore the requests, or we will surely be sued. Second, to assert (directly or by inference) that the case is closed means we must rely upon exemptions that do not afford adequate or relevant coverage, leaving the file vulnerable to significant portions having to be released.

I have researched this issue and there are really only two avenues to follow: (1) protect the documents by admitting our help to the foreign government (this allows us to rely upon the active case exemption), or (2) release the documents and thereby conceal our help. <sup>3/</sup> In all fairness, the decision should also be based upon input from Israel.

Recommendation: The important thing here is protection of the documents, not our aid to Israel (which is probably assumed by anyone following this matter anyway, or the fact that we might acquire custody of Demjanjuk again at some point in the future (which would obviously generate immense publicity if it happens, and for which we would need all of files -- free of public invasion). Accordingly, I recommend that we advise Israel of the situation, and, upon their concurrence, advise the FOIA office that this is still an active case, based upon aid to a foreign government, and thus be able to protect our files under the relevant exemptions.

Because FOIA wants this material now, would you please advise me at your earliest convenience what I should tell the FOIA office.

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(Footnote Continued)

deportation to the Soviet Union should he not be convicted in Israel and then returned to the United States.

3/ This presupposes that there is no record in the file memorializing a request for, or offer of, our help.

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Date 6/9

**ROOTING AND TRANSMITTAL SLIP**

TO: (Name, office symbol, room number, building, Agency/Post)	Initials	Date
1. <u>Deaf</u>		
2.		
3.		
4.		
5.		

Action	File	Note and Return
Approval	For Clearance	Per Conversation
As Requested	For Correction	Prepare Reply
Circulate	For Your Information	See Me
Comment	Investigate	Signature
Coordination	Justify	

**REMARKS**

I think we should claim the exemption based on cooperation w/ Israel (if necessary) and the potential for future action of D is acquitted. Release of the files will hurt us and Israel.

DO NOT use this form as a RECORD of approvals, concurrences, disposals, clearances, and similar actions

FROM: (Name, org. symbol, Agency/Post)	Room No.—Bldg.
<u>Mike</u>	Phone No.



Release of Material From Our Files  
on John Demjanjuk

Date

JUL 10 1986

**FILES**  
To Martin H. Sachs  
Trial Attorney

From ~~Bruce S. Binkhorn~~  
Trial Attorney

~~This discussion~~ <sup>my</sup> discussion regarding your request for information concerning what the effect would be if we were to agree to the release of our Demjanjuk files pursuant to several pending FOIA requests.

~~I am~~ familiar with the facts of the Demjanjuk case; ~~because~~ <sup>as the lead</sup> was the lead attorney on it. I am also familiar with the fact that we are currently providing judicial assistance to the State of Israel in their investigation and prosecution of Demjanjuk, who was extradited there this past February.

~~I can state unequivocally that we should oppose release of our files for the following reasons:~~

*Handwritten notes:*  
WITH MIRE WOLF AND BAILE EINHORN  
EINHORN AT THE TRIAL LEVEL AND WOLF AS DEPUTY DNR FOR THE OFFICE AS WELL AS HIS COORDINATION OUR ASSISTANCE TO ISRAEL

1. Concern over the integrity of the Israeli prosecution and of fairness to the defendant -- release of our material now would, in all probability, reveal (and could easily undermine and prejudice) the Israeli prosecution strategy.
2. Conversely, there is the expected publicity that would naturally attend the release of certain (and oftentimes dramatic) material. The release of such material could well be expected to infringe upon and prejudice the defendant's right to a fair trial by inflaming public opinion and outrage.
3. We have a lot of "background" material in the files which has been supplied to us either by individuals whose identities we would want to protect or which was prepared by OSI (or ~~USA~~ <sup>OSIA</sup> attorneys). OSI investigators and historians also prepared at the direction of the case attorneys, much material including investigative reports, that appears in the case files.
4. There is no way we can determine at this time what material, if any, could be culled from the files and/or sanitized for release to the public.

~~If you need additional information, please call me.~~

*Handwritten note:* It must be remembered that Demjanjuk was an operator of one of the gas chambers at Treblinka... This makes of him one of this century's most notorious mass murderers.