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Steven Lubet

*Essay*

# That's Funny, You Don't Look Like You Control the Government: The Sixth Circuit's Narrative on Jewish Power

*by*
STEVEN LUBET*

Legal scholars have come to understand the importance of narratives in influencing our understanding of the forces that shape our lives. Personal accounts can illuminate corners of the world where legal analysis provides little or no help.[1] The stories that individuals choose to tell can also reveal their deeper motives and beliefs. Consider what the three following narratives tell us about the speakers:

> Brother, I don't care who sits in the seat at the White House. You can believe that the Jews control that seat that they sit in from behind the scenes. They control the finance, and not only that, they influence the policy-making.
>
> But [Jews] are also most influential in newspaper, magazine, print media and electronic media.
>
> It is obvious . . . that the prevailing mindset at [a division of the United States Justice Department] was that the office must try to please and maintain very close relationships with various [Jewish] interest groups because their continued existence depended upon it.

* Professor of Law, Northwestern University. I am grateful to my research assistant, Beth Anisman, and my student editor, Marc Rubinstein, for their thoughful assistance. I am also grateful for support from the Chester and Edna M. Gould Fund of the Northwestern University School of Law.

1. *See, e.g.,* PATRICIA J. WILLIAMS, THE ALCHEMY OF RACE AND RIGHTS 44-51 (1991); Richard Delgado, *Storytelling for Oppositionists and Others: A Plea for Narrative*, 87 MICH. L. REV. 2411 (1989); Peter Margulies, *The Mother with Poor Judgment and Other Tales of the Unexpected: A Civic Republican View of Difference and Clinical Legal Education*, 88 N.W. U. L. REV. 695 (1993); Mari J. Matsuda, *Public Response to Racist Speech: Considering the Victim's Story*, 87 MICH. L. REV. 2320 (1989). *But see* Daniel A. Farber & Suzanna Sherry, *Telling Stories Out of School: An Essay on Legal Narratives*, 45 STAN. L. REV. 807 (1993)(questioning the value of storytelling as legal scholarship).

The language of these narratives embodies the venerable myth of surreptitious Jewish control over government.[2] The message conveyed by these contemporary quotations should make us realize, in a way that reasoned argument may not, that the idea of a secret Jewish ruling cabal, so popular in Tsarist Russia and Weimar Germany, has not disappeared. Confronted by the actual narrative, we cannot ignore the fact that the damaging fiction of Jewish control lives on in the minds of a surprising number of Americans. Of course, it is no revelation to hear these beliefs expressed by someone with known anti-Jewish sentiments. And, indeed, the first two quotations come from a recent speech by Khalid Abdul Mohammad, a spokesman for Louis Farrakhan's Nation of Islam.[3]

It should shock us, however, to realize that the third comment is taken from an opinion of the United States Sixth Circuit Court of Appeals.[4]

While the court's story of covert Jewish influence is more restrained than Mr. Mohammad's, the charges are uncomfortably similar. Mr. Mohammad makes the sweeping claim that Jews control finance, the media, and even the White House. The Sixth Circuit's point is merely that Jewish groups were able to dictate the "mindset" of certain federal prosecutors. Differentiated by tone and scope, but similar in implication, both assertions ultimately rest on the notion that Jews are able, through stealth or pressure, to exert unjustified sway over governmental bodies.

It is, after all, not a particularly far distance from "Jews control the Federal Reserve"[5] to "Jewish interest groups dominated an arm of the Justice Department." The three-judge panel may not have intended to broadcast an ethnic slur, but their opinion inescapably gives

2. *See, e.g.,* GERALD REILLINGER, THE FINAL SOLUTION 3 (1987) (explaining Hitler's fixation on the power of an imagined "conspiracy of world Jewry" capable of harming Germany through its control of international finance and domination of governments). Perhaps the most famous American exponent of the Jewish power theory was Father Charles Coughlin, whose radio programs in the 1930s regularly denounced "international Jewry" as responsible for events ranging from the Bolshevik revolution to the American Civil War. *See* NATHAN BELTH, A PROMISE TO KEEP 130-39 (1979).

3. The quoted remarks come from a speech given by Mr. Mohammad at Kean College in Union, New Jersey on November 29, 1993. Excerpts from that speech were printed in a full page advertisement in the *New York Times* paid for by the Anti-Defamation League. N.Y. TIMES, Jan. 16, 1994, at A27. For a news story reporting details of Mr. Mohammad's speech and reactions to it, see Jon Nordheimer, *Divided by a Diatribe; College Speech Ignites Furor Over Race*, N.Y. TIMES, Dec. 29, 1993, at B1.

4. Demjanjuk v. Petrovsky, 10 F.3d 338, 355 (6th Cir. 1993).

5. Another theory of Mr. Mohammad's. *See supra* note 3.

official recognition to anti-Jewish stereotypes in a way that has probably not been seen in this country since the last century.[6]

## The Demjanjuk Case

The appearance of an anti-Jewish stereotype would be unfortunate in any judicial opinion. But it is most distressing, indeed almost alarming, that the Sixth Circuit utilized this narrative of Jewish power as part of its justification for the order vacating the extradition of John Demjanjuk following his acquittal in Israel on charges that he was "Ivan the Terrible," chief executioner at the Treblinka death camp.[7]

The legal basis for the vacatur of Demjanjuk's extradition order was prosecutorial misconduct. The court found that the Justice Department's Office of Special Investigations (OSI) had wrongly withheld certain evidence from the defense.[8] My purpose here is not to criticize this decision on the merits, although it *is* highly suspect on purely legal grounds.[9] Perhaps the Sixth Circuit added a page or two

6. On December 17, 1862, General Ulysses S. Grant issued the infamous General Order Number 11, expelling all Jews from the military department comprising parts of Kentucky, Tennessee, and Mississippi then under the control of the Union Army:

> The Jews, as a class violating every regulation of trade established by the Treasury Department and also Department orders, are hereby expelled from the Department . . . [w]ithin twenty-four hours from the receipt of this order.

Paul Finkelman, *Civil Liberties and Civil War: The Great Emancipator as Civil Libertarian*, 91 MICH. L. REV. 1353, 1357 n.35 (1993) (quoting from 7 THE PAPERS OF ULYSSES S. GRANT, DECEMBER 9, 1862 - MARCH 31, 1863, at 50 (John Simon ed., 1979)).

Grant explained his order to an assistant secretary of war by using a variant on the Jewish power story: "The Jews seem to be a privileged class that can travel everywhere . . . ." The order was subsequently revoked at the insistence of President Lincoln. Grant himself made a partial retraction during the presidential campaign of 1868. *Grant, Ulysses Simpson*, 7 ENCYCLOPEDIA JUDAICA 855 (1972).

Regarding anti-Jewish pronouncements, it has been said that "[n]o single act or word, let alone edict, of another president or federal official, in all of American history, compares with the Grant order for rank generalization, harshness, or physical consequences." *Id.*

Although the Sixth Circuit's *Demjanjuk* opinion led to no harsh physical consequences, it does compete with General Order Number 11 in the category of rank generalization.

7. *Demjanjuk*, 10 F.3d at 342.

8. *Id.* at 352.

9. Those who are interested in the legal aspects of the decision might note that the withheld evidence was largely insubstantial and mostly inadmissible; nearly all of it, and more, was eventually supplied to Demjanjuk's lawyers in Israel; the prosecutors clearly complied with what they believed to be the standard for the production of evidence in extradition cases; the court imposed a new rule for the provision of evidence that, if followed, will severely burden future extradition cases involving terrorists and ordinary criminals; the opinion redefined "fraud on the court" to include unintentional conduct; and all of this was done in order to reach a decision that was moot by any criterion. *See* Demjanjuk v. Petrovsky, Report of Special Master Thomas A. Wiseman, Jr. (June 30,

of gratuitous criticism, directed at what they characterized as pressure from Jewish groups on the OSI, in order to bolster an otherwise questionable legal opinion. In any event, this Essay will examine only the particular section of the opinion that deals with claims of Jewish influence on the OSI.[10]

The issue of Jewish influence was first raised by Demjanjuk's lawyers, who claimed that exculpatory evidence was ignored and concealed by prosecutors in response to pressure from members of Congress, the State of Israel, and various Jewish influence groups. In other words, Jewish leverage led the OSI to blindside the Demjanjuk defense. The Special Master appointed to investigate the case, federal Judge Thomas A. Wiseman of Nashville, categorically rejected these charges. Specifically, Judge Wiseman found that there was "no substantial evidence that [pressure] played any role in the decisions whether, and how, to prosecute Mr. Demjanjuk."[11]

Sadly, the Sixth Circuit disregarded the findings of its own Special Master and proceeded to dignify this charge of furtive Jewish control. In what can at best be described as a naive affirmation of a classically

1993) [hereinafter Report of Special Master]. Regarding mootness, see Steven Lubet, *Disturbing Echoes in U.S. Court Opinions*, NAT'L L.J., Jan. 10, 1994, at 17.

10. That section reads:

> Although the Special Master found that pressures from outside OSI did not influence the respondents' failure to disclose required information, the presence of such pressure cannot be gainsaid. In August of 1978 Congressman Eilberg, the Chairman of an important committee, wrote then Attorney General Bell a letter insisting that Demjanjuk be prosecuted hard because "we cannot afford the risk of losing" the case. The trial attorney then in charge of the case, Mr. Parker, wrote in his 1980 memorandum that the denaturalization case could not be dismissed because of factors "largely political and obviously considerable." Other lawyers in OSI wrote memos discussing this case as a political "hot potato" that if lost "will raise political problems for us all including the Attorney General." Mr. Ryan, Director of the office, wrote the Assistant Attorney General of the Criminal Division in 1980 that OSI had "secured the support in Congress, Jewish community organizations, public at large for OSI—press coverage has been substantially favorable and support from Jewish organizations is now secure," but he went on to say that "this support can't be taken for granted and must be reinforced at every opportunity." Mr. Ryan also testified that "in 1986, which was the year before the [Israeli] trial [of Demjanjuk], I went to Israel for about 10 days on a lecture tour that was sponsored by the Anti-Defamation League . . . ." It is obvious from the record that the prevailing mindset at OSI was that the office must try to please and maintain very close relationships with various interest groups because their continued existence depended upon it.

*Demjanjuk*, 10 F.3d at 354-55 (citations omitted).

11. Report of Special Master, *supra* note 9, at 27-28.

anti-Semitic theory, the court commented dryly that the existence of such pressure could not be "gainsaid."[12]

The opinion then gathered and listed scattered references to Jewish organizations that were culled from OSI files, even though only a few of these files made direct reference to Demjanjuk.[13] Following this catalogue, the court concluded that the Demjanjuk prosecutors (including Allan Ryan, then the director of the OSI) had been affected by their determination "to please and maintain very close relationships with various interest groups . . . ."[14] It takes no great act of deduction to determine which interest groups the court had in mind, since the same paragraph of the opinion makes repeated mention of "Jewish organizations," including the Anti-Defamation League.

The logical retort, one supposes, would be to let the shoe fit. There were indeed contacts between Jewish organizations and the OSI, and some information was not provided to Demjanjuk. The court drew its conclusions; you can draw yours. The logic of the retort falls apart, however, when one carefully examines the three types of pressure identified by the court.

## Tales of Jewish Pressure

The *Demjanjuk* court first quoted a letter from Congressman Joshua Eilberg, referred to as the "Chairman of an important committee," to the then Attorney General Griffin Bell.[15] The court characterized this letter as insisting "that Demjanjuk be prosecuted hard" and cited it as evidence that the OSI had been pressured into a "win at any cost" posture.[16]

In fact, Eilberg's letter said nothing of the sort. Rather, the congressman expressed his concern that the Demjanjuk case was not being prepared properly and that it might be lost due to inadequate prosecution.[17] He urged the Attorney General to place it in the hands of the "Special Litigation Unit (the predecessor of the OSI), so as not to risk losing the case."[18] Eilberg, at the time of his letter to Bell, was the chair of the House Subcommittee on Immigration.[19] His letter

12. *Demjanjuk*, 10 F.3d at 354.
13. *Id.* at 354-55.
14. *Id.* at 355.
15. *Id.* at 354.
16. Id. at 355.
17. *Id.* at 354 & n.4.
18. *Id.* at 354 n.4.
19. Eilberg was not the Chair of the House Committee on the Judiciary. Whether his Subcommittee on Immigration was "important" is a matter of interpretation; it would be

concerned nothing more than the resolution of a turf battle between the Immigration and Naturalization Service and the United States Attorney's Office in Cleveland, a matter that was squarely within his subcommittee's purview. There is no objective way to read this letter and conclude, as the court did, that it might possibly affect the motives of Demjanjuk's prosecutors, although that implication certainly lends more credence to a theory of pressure-induced misconduct.

In addition, Eilberg was defeated for reelection in 1978 and was out of Congress by the time the alleged misconduct occurred.[20] It strains credulity to think that the misconduct referred to by the court could have been in reaction to pressure from a person who no longer had any power to affect the prosecutors in any conceivable way. Given the court's ominous understanding of Eilberg's letter, we can only wonder how many communications the Attorney General receives each week from members of Congress which amount to pressure that "cannot be gainsaid."

It is noteworthy that Demjanjuk also had his champions in the House of Representatives. For example, Ohio Congressman James Traficant accompanied Demjanjuk on the airplane that brought him back from Israel to Cleveland.[21] Traficant repeatedly petitioned the Justice Department on Demjanjuk's behalf, and he recently called on Attorney General Janet Reno to appoint a special prosecutor to investigate the Justice Department and the OSI.[22] Following the Sixth Circuit's reasoning in *Demjanjuk*, one would have to conclude that Traficant exerted improper pressure. The more reasonable judgment, however, is that the congressman was only doing his job as he saw fit. The Sixth Circuit's selective criticism of contact between members of Congress and governmental agencies demonstrates the flaw in the court's reasoning. There must be a single rule for all Representatives, whether their names are Traficant or Eilberg.

It should be obvious that "calls" from congressional members are a routine part of the Attorney General's life. Most are no doubt made

equally fair to refer to it as a minor subcommittee, and some might even call it obscure. The Sixth Circuit's choice to emphasize the subcommittee's significance is a good example of the way that the opinion repeatedly plays on the theme of Jewish power to support its conclusions.

20. Richard L. Lyons, *Democrats Retain the House, but GOP Begins a Comeback*, WASH. POST, Nov. 9, 1978, at A15.

21. Edward Walsh, *Protests Greet Demjanjuk's Return After Seven Years*, WASH. POST, Sept. 23, 1993, at A3.

22. Michael Isikoff, *Appellate Panel Rebukes Justice Dept. on Demjanjuk*, WASH. POST, Nov. 18, 1993, at A1, A37; Bill Sloat, *Demjanjuk Remains Subject to Expulsion*, CLEV. PLAIN DEALER, Nov. 18, 1993, at 1A.

more for constituent value than in any hope of actually influencing the Department of Justice. And if such calls do have a marginal impact on official decision making, does that really matter? Elected officials are supposed to represent the views of their constituents and communicate them to the executive.

For example, following the acquittal in California state court of the Los Angeles police officers charged with beating Rodney King, the Congressional Black Caucus joined in the demand for a federal civil rights prosecution.[23] Eventually, such a case was brought, and officers Koon and Powell were convicted.[24] Their conviction was reviewed and affirmed by the Ninth Circuit Court of Appeals.[25] The court considered the defendants' double jeopardy claims, but rejected them with no mention of the calls for federal prosecution from Representatives Waxman and Waters.[26] In other words, the Ninth Circuit decided the case on its merits; "power stories" were irrelevant.

The letter from Joshua Eilberg, then, would ordinarily be viewed as mundane, signifying nothing more than the congressman's interest in the progress of the case. It takes on a more sinister cast only if one is bent on telling a tale about the presumed sway of interest groups.

The same can be said of the second type of pressure that the Sixth Circuit noted as affecting the prosecution of Demjanjuk. The court assembled five or six allusions to "political problems" and "Jewish organizations" that were found in various OSI files. Though presented

23. Bob Dart, *Dormant Civil Rights Probe Reopened, Federal Agents Pursue Criminal Investigation*, ATLANTA CONST., May 1, 1992, at B3 ("Meanwhile, members of the Congressional Black Caucus urged the Justice Department to quickly put the four Los Angeles policemen on trial. 'We're not asking for an assessment; we're asking them to prosecute,' said Rep. Maxine Waters (D-Calif).").

President Bush also let his views be known. Elizabeth Neuffer, *Bush Calls for Calm; Rights Case Weighed*, BOSTON GLOBE, May 1, 1992, at 1 ("Deploring the violence searing Los Angeles, President Bush . . . pledged that the Justice Department will expedite its investigation into possible civil rights violations in the beating of black motorist Rodney King by white police officers.").

Following the convictions of Officers Koon and Powell, the Congressional Black Caucus successfully urged the Justice Department to appeal the relatively lenient sentences. Henry Weinstein, *Justice Department to Appeal Powell, Koon Sentences*, L.A. TIMES, Aug. 28, 1993, at A1 ("But the Justice Department's action was lauded by Rep. Maxine Waters (D-Calif.), who along with two dozen other members of the Congressional Black Caucus publicly urged Atty. Gen. Janet Reno to appeal the sentences to the U.S. 9th Circuit Court of Appeals.").

24. Don Lee and David Ferrell, *2 Officers Guilty, 2 Acquitted: Guarded Calm Follows Verdicts in King Case*, L.A. TIMES, Apr. 18, 1993, at A1.

25. United States v. Koon, 1994 U.S. App. LEXIS 22588, at *140-41 (9th Cir. May 2, 1994).

26. *Id.*

in a single paragraph, the references actually occurred over a number of years and in differing contexts.[27] These references and allusions can be made to seem meaningful only by virtue of ethnic innuendo.

The court's first set of quoted comments mentions the potential "political problems" that would be raised if the Justice Department were to lose the Demjanjuk case.[28] The opinion's next sentence refers to the importance of support from Jewish organizations,[29] as though there were a connection between the two observations, when in fact there was none. The latter quote is lifted from a "management review" memorandum listing the significant accomplishments of the OSI; it had no relation to the handling of the Demjanjuk case.[30] By stacking these otherwise unconnected comments, the court makes it appear that the appeasement of Jewish organizations played a portentous role in the Justice Department's approach to the prosecution of Demjanjuk.

Perhaps most troubling of all is the court's third narrative of Jewish influence, a visit to Israel by OSI director Allan Ryan. The court observed that, in 1986, Ryan "went to Israel for about 10 days on a lecture tour that was sponsored by the Antidefamation [sic] League . . . ."[31] It is clear that Ryan's Israel trip is intended as an example of illegitimate Jewish leverage, especially since it was used as the lead-in to the court's observation that the OSI was motivated by its reliance on interest groups.[32]

What the court omitted was the fact that Ryan's lecture tour occurred more than three years *after* he left the Justice Department.[33] In fact, Ryan arrived in Israel more than five years after the alleged withholding of evidence and a year after the initial order of extradition. The Anti-Defamation League's sponsorship of Ryan's tour could not have influenced the Justice Department's prosecution of the Demjanjuk case since it occurred long after that prosecution was complete. The only true significance of Ryan's trip is that it provided the *Demjanjuk* court with another Jewish angle in support of the decision to vacate the extradition.

27. *Demjanjuk*, 10 F.3d at 354-355.
28. *Id.* at 354.
29. *Id.* at 354-55.
30. Report of Special Master, *supra* note 9, at 38.
31. *Demjanjuk*, 10 F.3d at 355.
32. *Id.*
33. *See* Allan Ryan, *The Defense of a Prosecutor*, HARV. CRIMSON, Dec. 6, 1993, at 2. *See also* Abraham H. Foxman, *Ruling on Demjanjuk Errs in Assumptions*, N.Y. TIMES, Nov. 24, 1993, at A24 (letter to editor).

So there it is, a letter from a defeated congressman, some contacts with Jewish organizations, and a post-resignation trip to Israel sponsored by the Anti-Defamation League: pressure so irresistible, so *un-gainsayable*, that it contributed to misconduct by federal prosecutors. These incidents can only be united by their Jewish theme, as it is palpably absurd to suggest that they had any true potential to thwart the course of justice. The federal prosecutors deny that they improperly withheld evidence from the Demjanjuk defense; but it would have been wrong if they did, without regard to whether Ryan went on a lecture tour of Israel. But the real point is this: Who cares if Jewish groups expressed their interest in the progress of a war crimes prosecution? That was democracy, not misconduct.

The *Demjanjuk* case is the only time that the Sixth Circuit has ever reversed a judgment, criminal or civil, even partially on the basis of interest group influence. In fact, over the years the Sixth Circuit's opinions have made a number of references to the significance of interest group involvement in public life.[34] In a school desegregation case, for example, the court noted with approval that a special master had received input from "legitimately affected interest groups."[35] Surely the Jewish interest groups mentioned in the *Demjanjuk* opinion had a valid concern with the conduct of war crimes prosecutions. It is hard to understand how the court could be so shocked (*shocked!*) to discover that prosecutors had communicated with community organizations. Nonetheless, the Sixth Circuit compiled a list of ordinary events and exaggerated their gravity in a way that demonstrates, at the very least, an unconscious receptiveness to age-old images of clandestine Jewish influence and control. I have no reason to think that the three judges consciously intended their opinion to be read this way, but its implications are unmistakable. And that is how subtle prejudice is often revealed. Innocent, everyday conduct is suddenly given a foreboding interpretation when the actors involved are minorities.

34. *See, e.g.*, Kelly v. Pittsburgh & Conneaut Dock Co., 900 F.2d 89, 93 (6th Cir. 1989) (shipowners were among interest groups accommodated by Congress); Mathis v. Eli Lilly & Co., 719 F.2d 134 (8th Cir. 1983) (interest groups prompted adoption of varying statutes of limitations); Michigan Envtl. Resources Assoc. v. County of Macomb, 1989 WL 54116 (6th Cir. May 23, 1989) (unpublished) (environmental interest group participation in Michigan's Solid Waste Management Committee). *But see* United States v. Michigan, 940 F.2d 143, 164 (6th Cir. 1991) (disapproving intervention of interest groups as "litigating amicus curiae").

35. Reed v. Cleveland Bd. of Educ., 607 F.2d 737, 740 (6th Cir. 1979). Interestingly, the *Reed* opinion was written by the same judge who wrote the *Demjanjuk* decision.

## Confronting Stereotypes

The *Demjanjuk* court's discussion of Jewish influence comprised little more than a page of a much longer opinion. The body of the decision was devoted to far more technical issues, such as the discoverability and materiality of evidence. Why make a tsimmis out of a few throwaway references that are not even integral to the holding of the case? Might it not do more harm than good to look for trouble where no offense was meant? With all of the rabid anti-Semites in the world, why seize on the words of a few well-meaning judges?

There is often a reluctance to confront certain ethnic stereotypes. If the story avoids coarse language, it can seem hypersensitive, even impolite, to point out low-grade affronts. In this case, the Sixth Circuit's "Jewish power" narrative not only refrains from crudity, it overlaps considerably with simple recognition that American Jews have achieved much affluence and prominence. On the other hand, even innocuous forms of a myth can lead incrementally to more pernicious versions: Jews are "overrepresented" in the media, Jews dominate banking, Jews run the international monetary system. These statements are, of course, demonstrably untrue, but they are constructed from bits and pieces of reality. Individual Jewish success stories are embellished and expanded until they are eventually used as evidence of pervasive, and usually negative, ethnic characteristics.

This phenomenon is well known, and it is hardly applied only to Jews. Many white people, for example, often thoughtlessly refer to African-Americans as natural athletes. That observation, of course, is based on the real-life achievements of gifted men and women. But even when intended as complimentary, such comments tend to belittle the accomplishments of African-Americans in fields such as science, commerce, law, and the arts.

Group characterization often devolves into slurs and worse. Stories that take form from mere indignities have a way of leading to rank discrimination. For example, it was offensive when Jimmy "The Greek" Snyder said, on national television, that Blacks make outstanding athletes because they were bred for strength during slavery.[36] But, at least in the professional sports world, the story was not limited to demeaning cliches. Earlier, Al Campanis, a vice-president of the Los Angeles Dodgers, revealed the level of bias faced by African-American candidates for front office jobs in sports when he voiced the

36. *'Greek' Fired Over Racial Slurs*, CHI. TRIB., Jan. 18, 1988, (Sports), at 8.

theory that Blacks "lack the necessities" to be named to managerial positions.[37] Insults thus become inseparable from their consequences.

Federal courts have the power to turn stereotypes into national policies. Perhaps the most well-known example was the case of Myra Bradwell,[38] in which the United States Supreme Court held that Illinois could prohibit women from practicing law, owing to their "peculiar characteristics, destiny and mission . . . ."[39] In the words of Justice Bradley, in concurrence, "[t]he natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life."[40] The widespread acceptance of this story of feminine weakness helped create many enduring legal disabilities, some now abolished, some persisting.

The story of Jewish power in the *Demjanjuk* opinion is not part of the court's holding, so it does not have any direct legal consequences. It does, however, cast a pall on Jewish participation in public life, at least within the Sixth Circuit. What is the lesson when government officials are chastised for their contacts with Jewish organizations? How will future prosecutors react when they are approached with concerns over war crimes or anti-Semitic violence in the United States? The rummaging through lawyers' files for evidence of minority group influence suggests that all prosecutors should be wary of community outreach, lest some court find that their "mind-sets" were corrupted by pressure.

Thus, the *Demjanjuk* opinion takes us down a familiar road. Blacks are physical, women are soft, and Jews are devious. In each case, and in many more, it is a predictable, albeit irrational, step from tacit acceptance of the stereotype to overt prejudice and intolerance.

Resentment of imagined "Jewish power" has fueled all manner of truly anti-Semitic incidents, from the lynching of Leo Frank[41] to the German atrocities on Kristallnacht.[42] In the contemporary United

37. Leonard Koppett, *Baseball's Racial Hypocrisy*, N.Y. TIMES, Apr. 14, 1987, at A31.

38. Bradwell v. State, 83 U.S. 130 (1872).

39. *Id.* at 142.

40. *Id.* at 141.

41. In 1915 Leo Frank was lynched in Cobb County, Georgia. His murder by an angry mob was one of the most overt displays of anti-semitic violence in the history of the United States. *See Leo Frank's Belated Pardon*, U.S. NEWS & WORLD REP., Mar. 24, 1986, at 7.

42. On the night of November 9, 1938, the Nazis set in motion their first nationwide assault on Jewish lives and property in Germany. The "night of the broken glass" resulted in dozens of murders and the imprisonment of tens of thousands of Jews in concentration camps. *See* SIMON WIESENTHAL, EVERYDAY REMEMBRANCE DAY 250 (1987).

States we see its reflection in the conspiracy theories of Khalid Abdul Mohammad and David Duke. If Jews are reputed to have too much power, disproportionate power, or special influence, it becomes that much easier to fault them for economic collapse or whatever other social ills that are at the top of one's own agenda.

Unlike the vicious language used by Mr. Mohammad, the Sixth Circuit's opinion in the *Demjanjuk* case would probably not hit the top on any scale of disparaging characterizations of Jews. The opinion, however, is more significant for its source than for its choice of language. Polite stereotypes can be as damaging as rude ones. Federal judges speak with well-deserved authority, and, in this case, they have added an unfortunate measure of credibility to an ethnic story—a dishonorable myth—that has no business in any judicial opinion, much less one that deals so intimately with the Holocaust.