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‘Dispute Incarnate’:

Philip Roth’s Operation Shylock, the Demjanjuk Trial and Eyewitness Testimony

Things, events, that occupy space yet come to an end when someone dies may make us stop in wonder – and yet one thing, or an infinite number of things, dies with every man or woman’s death, unless the universe itself has a memory. (Borges, ‘The Witness’, 1960)

‘I don’t know how to go about explaining these things logically,’ Holocaust survivor Pinhas Epstein told the court in the trial of the State of Israel vs. John Demjanjuk¹ (quoted in Teicholz 137). Epstein’s logical predicament was created by the fact that human beings committed inhuman acts against each other. Logical predicament forms the aesthetic, and the ethos, of Philip Roth’s Operation Shylock (1993), an implausible novel (the implausibility is explicitly insisted upon)² in which the two central incompatibilities are that two people can be the same person and that a person can be both dead and alive. In the face of this pair of outrageous suggestions, this article seeks not so much to square the impossible circles as to suggest that mutual incompatibilities *are* the basis of Holocaust fiction and historiography. Special attention is paid to the case of John Demjanjuk³ because it is in manipulating the events of this trial that Roth brings logical impasse into the spotlight.

Operation Shylock, an ‘explainer’s paradise’ (Shechner 140), sets out two truth systems early: fiction and reality. The Preface claims:

I’ve drawn *Operation Shylock* from notebook journals. The book is as accurate an account as I am able to give of actual occurrences that I lived through in my middle fifties. (13)

The Note to the Reader claims the exact opposite – ‘this book is a work of fiction’ (399) – although this is undermined by the fact that this is what the character Smilesburger has advised Philip to include (“‘call it fiction. Append a note: ‘I made this up.’” (387)) and by the Note’s immediate counter-claim that the interview with Aharon Appelfeld and the account of the morning session of 27 January 1988 of the Demjanjuk trial are real. The confusion is not confined to the pages of the novel: in his piece for the New York Times Book Review, ‘A

Piece of Jewish Mischief', which accompanied a review of the book by D. M. Thomas, Roth wrote:

In January 1989 [sic] I was caught up in a Middle East crisis all my own, a personal upheaval that had the unmistakable signposts of the impossible, as opposed to those of the predictable, plausible reality to which I am as hopelessly addicted as any other human being [...] a satirizing of me so bizarre and unrealistic as to exceed by far the boundaries of amusing mischief I may myself have playfully perpetrated. (1)

Fact or fiction? All 'A Bit of Jewish Mischief' really establishes is that the former is stranger – less 'plausible' – than the latter. In the confusion, the reader's impulse is to turn to biographies and other contemporary records in an attempt to discover what really happened, unable to entertain the proposal that something may be simultaneously true and untrue.

This troubling fiction / reality opposition is further perpetuated in the novel through series of problematic, unstable identities. 'Multiple selves had been on my mind for months now,' confides Philip (152) following his personality breakdown brought on by the drug Halcion, an episode described as a 'transformation' and a 'deformation' (27). In addition to this experience, the novel includes personages with real-life referents – among them Appelfeld, Demjanjuk, Klinghoffer; survivors of 'the unthinkable metamorphoses perpetrated by the Third Reich' (29); a telephone conversation conducted by Philip under the assumed name Pierre Roget (and a reference to his convincing impersonations of Philippe Sollers); an adopted Parisian lawyer who has made up her own history; tourists to the Holy Land who believe themselves to be the Messiah; Jinx Possesski ('if this is an act, then she's Sarah Bernhardt' (92)) and her resemblance to Philip's (and Roth's) first wife; George Ziad's incarnation in Chicago (a 'persuasively debonair disguise' (140)); the Islamic concept of *taqiya* or dissimulation (145); an Israeli soldier with a conscience ("what they see is an Israeli monster in sunglasses and boots" (169)); Pipik's missing persons agency ("missing persons is what Philip Roth is known for throughout the Midwest" (192)); Philip's being compared with Sammy Davis Jr.; the possibly real / possibly fake Klinghoffer diaries; and a Lee Harvey Oswald double – all manifestations of 'the universal urge to be otherwise' (180), the 'altogether human desire to be convinced by lies' (364). At their most extreme, these

doublings-up result in such situations as Philip pretending not to be himself while talking on the phone to Pipik who is pretending to be him, and, beyond that, Philip pretending not to be himself but to be Pipik, who is pretending to be him, so that Philip is both pretending to be and not to be himself ('usurping the identity of the usurper who had usurped mine' (156)). "I assure you," says the beleaguered Philip at one point, "that I am no more myself than anyone else around here" (148). 'Error, misprision, fakery, fantasy, ignorance, falsification and mischief' (209) reign.

At the heart of this confusion are two pairings, two sets of twins (with the implication that it is The Comedy of Errors, as much as The Merchant of Venice, that is the novel's tutelary spirit): Philip / Pipik and John Demjanjuk / Ivan the Terrible. That the second is at least as important as the first is emphasised: the trial and the look-alike are the first things mentioned (17) and Pipik underscores the point – "Demjanjuk in that courtroom has *everything* to do with us" (82). In a series of parallels, Demjanjuk claims to be Demjanjuk as Philip and Pipik claim to be Philip Roth; and Demjanjuk claims not to be Ivan as Pipik and (sometimes) Philip claim not to be Pipik. It is difficult to believe that the 'big cheerful palooka' (61) Demjanjuk is Ivan because Ivan would surely look more terrible; on the other hand, it may be when he looks least like Ivan that he is most like Ivan because it is unlikely that Ivan would look Ivan-ish. The same circular logic underpins Philip's reflection that 'maybe that was how he [Pipik] thought somebody who had published sixteen books would talk on the phone to an interviewer, while the fact is that if I talked like that I might not have had to write sixteen books' (41). In other words, Pipik sounds more like than Philip than Philip does, except that if Philip were more Philippian, he wouldn't be Philip. But the Demjanjuk / Ivan pairing is more than the 'metonymy for the question of identity posed by Philip's "double"' proposed by Debra Shostak (2004 184). Rather, it constitutes the logical predicament that the novel suggests to be its poesis and of which the crucial, central conundrum is that established by the testimony of Treblinka survivor, Eliahu Rosenberg, that Ivan the Terrible is both dead and alive – testimony which is so stunning in its implications that Roth contorts the events of the Demjanjuk trial to give it precedence and which

recapitulates the Philip / Pipik paradox, namely ‘a man cannot be in two places at one time’ (269). Much has been written on the relationship between Philip and Pipik and so the intention here is not to explore further the idea of multiple or projected selves.⁴ Rather, it is to concentrate on the Demjanjuk / Ivan twinning and the consequences of the ‘dead and alive’ testimony for understanding the Holocaust, historiography and eyewitness evidence.

Three trials are referred to in Operation Shylock: the Demjanjuk trial, the trial of Zee’s friend Kamil’s younger brother in ‘the occupier’s travesty of a courtroom’ (128) and the trial of Shylock in The Merchant of Venice (‘this modern trial of the Jew, this trial which never ends’ (274)). The tenor of the novel, moreover, is juridical. The subtitle ‘A Confession’ suggests a penal discourse and the opening words of the Preface are ‘For legal reasons’ (17). The judicial process is foregrounded for, arguably, three reasons: to establish competing truth systems; to spotlight the process of determining identity and to make the book’s central point about plausibility, that truth is stranger than fiction.

The State of Israel vs. John Demjanjuk was only the latest stage in a (still-ongoing) judicial series. Demjanjuk had first been identified by Michael Hanusiak, editor of the Ukrainian Daily News, as someone who had trained at the Trawniki camp in Poland, acted as watchman with an SS unit at the Sobibor death camp and as a guardsman at the Flossenburg concentration camp, and participated in the mass extermination of Jews in Sobibor. It was for these acts that he was under investigation by the United States Office of Special Investigations (OSI), a unit within the Justice Department (Teicholz 31). In 1976, however, a Treblinka survivor, Eugen Turovsky, identified a photograph of Demjanjuk as that of Ivan the Terrible, a particularly sadistic guard at Treblinka who had committed atrocities on people as they entered the gas chambers. The same identification was made by other Treblinka survivors, Avraham Goldfarb, Yossef Czarny, Gustav Boraks and Avraham Lindvasser (Teicholz 34 39 41 42). All based their recognition on distinctive facial physiognomy. ‘It is the same facial build, the same nose, the same eyes, the same forehead,’ said Yossef Czarny (quoted in Teicholz 39). ‘I recognise him from his facial features,’ declared Gustav Boraks

(quoted in Teicholz 41). ‘That is his nose, his eyes and his mouth,’ insisted Avraham Lindwasser (quoted in Teicholz 42). But another survivor, Shlomo Hellman, failed to make the identification, and when the photograph was shown to Eliahu Rosenberg, he was ‘not willing to identify him with certainty. But he was struck by the likeness [...] [and] believed that should he see Ivan, alive, before him now – he would recognise him’ (Teicholz 40 35). Tom Teicholz, New York lawyer and son of Holocaust survivors, who watched the proceedings, comments on this process:

The question was: Did the survivors remember what they did not forget? Did they really know this Ivan? [...] And why, after 40 years, would they remember him? [...] When they looked at the photospread [...] why did they pick Demjanjuk? On what was their identification based? Were there reservations, and if so, what were they? (133)

Here Teicholz conflates what were really two distinct questions – a conflation also performed by the trial and (for other reasons) Operation Shylock. In a Rothean way, the questions ‘who is he?’ and ‘what did he do?’ become merged in the query: ‘is Demjanjuk Ivan the Terrible?’

There is, legally speaking, no crime of ‘being Ivan the Terrible’. The charges against John Demjanjuk were made under the Nazis and Nazi Collaborators (Punishment) Law 1950, an act which was passed by the Knesset on 1 August 1950 and which incorporated the complete text of the charter of the Nuremberg Trials, as emended and ratified by the United Nations General Assembly (Teicholz 120). Demjanjuk was charged under section 1 of the Law for having ‘done, during the period of the Nazi regime, in an enemy country, an act constituting a crime against the Jewish people; an act constituting a crime against humanity; and an act constituting a war crime.’ He was not, in other words, strictly on trial for being Ivan the Terrible, although if the identification could be made with Ivan, and the acts he committed proved, this would, of course, substantiate the charges. But the charges could also have been substantiated by Demjanjuk’s having been active in the Flossenburg and Sobibor camps – and, indeed, in May 2004 the United States Circuit Court of Appeals ruled that, as this activity had been proved, Demjanjuk could be stripped of his American citizenship (this ruling is currently under appeal) (http://en.wikipedia.org/wiki/John_Demjanjuk).

Nonetheless, the Jerusalem hearing proceeded as ‘the trial of Ivan the Terrible’. Yonah Blatman, the Israeli State Attorney, opened the prosecution’s case with the words, “‘Before us stands an accused by the name of John Demjanjuk. He is the Demjanjuk who has been known as ‘Ivan the Terrible’” (quoted in Teicholz 116). Yoram Sheftel, the lead defence lawyer (after Mark O’Connor’s dismissal), characterised the whole proceedings as an attempt ‘to convict John Demjanjuk as ‘Ivan the Terrible’ (book title). In delivering the verdict, the principal judge, Dov Levin, commented that “‘the description of these facts [about Treblinka] in their entirety, on the historical plain [sic], as well as with regard to the identity of the accused, is, in fact, part of the same entity [...] one matter depends on the other’” (quoted in Teicholz 337). If the crimes have been committed, runs this logic, Demjanjuk is Ivan. “‘I believe the atrocities took place,” Levin declared, adding as the necessary corollary, “and Ivan existed’” (quoted in Teicholz 350). The New York Times reported that Demjanjuk himself told the court before sentencing, “‘I am not Ivan the Terrible, and to that God is the most just witness’” (Kifner 11). Teicholz records a more intriguingly ambivalent statement: “‘It was not the prisoners who gave me the name Ivan Grozny, that human was not I, Ivan Demjanjuk’” (352) – words which simultaneously suggest that Grozny was a name given to him by someone (if not the prisoners), yet that he was not Grozny. The flavour is very much that of Shakespeare’s trial, which seems to accuse Shylock simply of being Shylock: Portia’s first question is ‘Is your name Shylock?’ and his answer, ‘Shylock is my name’ (IV.i.171).

Operation Shylock exploits the ambiguities thrown up by the subsumption of the question ‘did Demjanjuk commit war crimes?’ under the query ‘is Demjanjuk Ivan the Terrible?’, defining the latter as ‘the identity issue at the heart of the case’ (52). In the Jerusalem courtroom, eyewitness survivor Pinhas Epstein brought off a *coup de théâtre* by pointing at the accused and crying, ‘Yes, he’s sitting *there*. *There he is!*’ (quoted in Teicholz 149). Indisputably ‘he’ was sitting there, but what was meant by ‘he’? The novel perpetuates the dilemma. ‘There he was,’ thinks Philip four times (60 62 65), adding twice, ‘or wasn’t’ (62 65). Pipik joins in: “‘is he or isn’t he, was he or wasn’t he?’” (77). The confusion serves

to problematise the very concept of identity: is it a matter of name, or of deed, or of irreducible substance? Is whether Demjanjuk committed war crimes less important than whether he is (or was) Ivan the Terrible? The question ‘who are you?’ (most often asked by Philip in relation to Pipik or Jinx) recurs like a leitmotif throughout the novel (107 190 191 226 339). Much less frequent is the question, ‘what are you?’ (107 191). Seeming to give precedence to name over substance, Philip is open to Jinx’s accusation, “do you ever, ever, ever think of anything other than your fucking name!” (99). But the novel also points in the opposite direction, for example, when Philip finds Pipik in his hotel bedroom: “You,” he said. That was all. But for him that was the accusation: I who was I’ (179). When Demjanjuk protests “I am not that awful man to whom you refer. I am innocent’ (49), he crucially, if unwittingly, answers both questions.

In making the Demjanjuk / Ivan identification issue central to the process, the Jerusalem trial rendered the eyewitness testimony of Treblinka survivors crucial. This produced other incompatibilities: the impossibility of remembering and the impossibility of forgetting; the inconceivability that such acts were committed and the fact that they were. Giving the verdict, Levin posed a series of questions:

Can one remember and describe faithfully things that happened so very long ago? [...] How can an individual [...] recall precisely events to which he was witness or which he experienced [...] How can a person remember people whom he knew closely, or more superficially, in those horrible and unforgettable days? One might ask, is it possible to forget? [...] Is it possible for an individual [...] to remember the deeds while forgetting the perpetrators? One might also ask, is it conceivable, can one possibly grasp, that a mortal human being, would be capable of [...] as satanical and diabolical a plan as the one designed to annihilate a whole people? [...] Is it possible for everything described in the indictment to have happened? Did it, in fact, happen? (quoted in Teicholz 335-6)

It is worth noting the apparent contradiction implied here in the difficulty of remembering ‘unforgettable days’. Levin did not underestimate the inherent difficulties in Holocaust testimony, noting that in “gaining an impression of their [the eyewitnesses’] reliability [...] we must also pay heed to a memory that may have betrayed them,” despite the fact that the events in question are “etched in their very flesh” (quoted in Teicholz 337).

The implied contract between eyewitness and audience ('you can believe it because I saw it happen') is one of enormous potency. As a consequence, the eyewitness bears an awesome responsibility to not only to, but on behalf of, others (Felman and Laub 3). The term 'witness' itself is fruitfully polysemic. The OED gives various definitions: 'attestation'; 'the action or condition of being an observer of an event'; 'testimony'; 'evidential mark or sign, a token'; 'a manuscript or early version which is regarded as evidence of authority for the text'; 'one who testifies for Christ [...] esp[ecially] by death, a martyr'; 'to be present as an observer at; to see with one's own eyes' (as noun: 2a, 2b, 2d, 7, 7c, 8a; as verb: 4). The multiplying implications are of authenticity, presence, truth, proof, verification. The religious connotations of witnessing underline the fact that the *ethos*⁵ of the speaker / writer (named by Aristotle in 'The Art of Rhetoric' as the first 'proof' by which speech may be guaranteed (I.II.3)) assumes tremendous importance. In the Demjanjuk case, this was compounded by the fact that, as the lead prosecutor, Michael Shaked, said, "this may be the one of the last trials where it is possible to bring to the stand witnesses who can say, 'We were there'" (quoted in Teicholz 122).

The figure of the eyewitness, then, is key. This article now concentrates, as does Operation Shylock, on one eyewitness survivor of the Treblinka death camp, Eliahu Rosenberg. On 11 May 1976, the OSI had shown Rosenberg an album containing 17 photographs, including one of Demjanjuk. He had seen a resemblance to Ivan the Terrible but declined to identify him as such with certainty. In 1978, Rosenberg failed to pick out the same picture of Demjanjuk. On 25 December 1979, he had been shown, amongst others, the Trawniki pass which, it was claimed, belonged to Ivan and Demjanjuk. The photo on this, Rosenberg said, reminded him very much of Ivan (Wagenaar 124-5). Yet more devastating to the prosecution than this somewhat tentative and inconsistent identification was information revealed to the court in the course of Rosenberg's appearance on the witness-stand on 25 and 26 February and 2 March 1987. A trial held of former Treblinka SS men in Dusseldorf from October 1964 to August 1965 had shocked survivors by revealing that Germans they had believed killed in the Treblinka Uprising on 2 August 1943 were in fact still alive (Teichold

25-6). The point was raised by Yonah Blatman as he opened the case for the prosecution: “the rumour has circulated that Ivan had been killed at the time of the revolt. This court is going to show how false that rumour was” (quoted in Teicholz 117). But in Rosenberg’s case, there was particularly damning evidence. In 1947 he had been working in Vienna for the Bricha (the underground movement to Palestine). When people heard that he had survived Treblinka, he was urged to speak to Tadik Friedman, a Polish Jew who worked at the Jewish Agency trying to track down Nazis. In two sessions, Rosenberg spoke to Friedman in Yiddish, which Friedman translated into German for a typist to record. Describing the uprising in the camp, Rosenberg said that “some prisoners stormed the barracks of the Ukrainians, where Ivan slept, and beat them to death with shovels” (quoted in Teicholz 151). Blatman placed this account, now a ‘crumbling, yellow typescript’ (Teicholz 151) before the Jerusalem court and in response, Rosenberg explained that he’d found out later that what his friends had told him in the forest was “a story – fiction – a mere boast [...] even those who had told the tale hadn’t seen it for themselves” (quoted in Teicholz 151). Rosenberg, of course, was now saying that Ivan was alive.

Next, Rosenberg was asked to identify Ivan in the courtroom. He asked Demjanjuk to take off his glasses. According to Teicholz, Demjanjuk then said, “I want that he come close to me – right here,” pointing to the edge of his booth (152). As Rosenberg approached, Demjanjuk ‘suddenly stuck out his hand, and said, “*Shalom*” with childish glee’ (Teicholz 152). Rosenberg recoiled and when prompted by Judge Levin declared, “This is Ivan. I say so unhesitatingly and without the slightest doubt. Ivan from Treblinka – from the gas chambers. The man I am looking at now. I saw those eyes, those murderous eyes” (quoted in Teicholz 153). This is not how defence lawyer, Yoram Sheftel, remembers these moments. According to Sheftel, it was Rosenberg who said, “may I get a little closer?” and Demjanjuk’s attorney, O’Connor, who replied, “Mr. Rosenberg, would you please approach?” (46). The accused responded ‘by holding out his hand and saying “*Shalom*” (in Operation Shylock, Roth describes the moment as ‘one in which a friendly, grinning Demjanjuk is warmly offering Rosenberg his hand to shake’ (284)). Removing the glasses

was, for Sheftel, ‘obviously an attempt to create an unnecessary dramatic effect typical of show trials’ and Rosenberg’s mention of ‘murderous eyes’ was nothing more than the typical Yiddish expression, *merderische oygen*, used of Ukrainians by Polish Jews (46-7).

These competing versions provide an apt context for Rosenberg’s contradictory testimonies: his 1947 assertion that Ivan was dead and his 1987 assertion in the trial that Ivan was alive. Yet the picture is more complicated even than this. On 27 January 1988, as the defence were summing up, Rosenberg was recalled to the witness stand. In his earlier testimony, he had revealed that in 1945, before the war was over, he had written an account of Treblinka in Yiddish and given it to a representative of the Polish Government (Teicholz 154). By January 1988, Demjanjuk’s defence team had located this 1945 statement in the archives of Warsaw’s Jewish Historical Society. In this document, which Rosenberg confirmed as his, he had written, ‘after this we broke into the engine room toward Ivan, he was asleep then. Gustav, [who] was the first, hit him on the head with a spade. Thus he was left lying there forever’ (quoted in Teicholz 319). Defence lawyer Paul Chumak asked whether this was correct. “‘What I said there I didn’t see. I heard,” Rosenberg said. “There is a very big difference”” (quoted in Teicholz 320). The ensuing exchange, as recorded by Teicholz, is worth setting out:

Judge Tal: Why didn’t you point out what you did write and what you saw?

Rosenberg: Perhaps it was a mistake [...] I wanted to believe it and I did believe. It was a symbol for us.

[...]

Chumak: But why believe he was dead [...] and repeat the story?

Rosenberg: It was my fondest wish. (320)

The document was not meant as his personal memoir, Rosenberg continued: he had told what he believed to have happened chronologically, first inside the camp, then outside, regardless of what he personally saw and when he learned it. The proof that he didn’t see Ivan’s death himself was that his 1945 account of it differed from his 1947 version. He had not corrected any of them because, until 1976, he had believed Ivan dead. ‘But *there* he was. Now, sitting

across from him, alive!' (Teicholz 320-1). At this point, Demjanjuk shouted in Hebrew, '*atah shakran, shakran, shakran*' – 'You are a liar, liar, liar' (Teicholz 321). In Sheftel's account of Rosenberg's re-examination, the witness is 'feigning innocence', looks 'like someone who has been caught out in a lie', is 'obviously lying', his 'ridiculous explanations' 'pathetic and false' (180 181).

In Operation Shylock, an extraordinary thing happens in the representation of this part of the Demjanjuk trial. Philip attends the hearing on 26 and 27 January 1988 (that he attends the morning session on the 27th is stated in the Note to the Reader (399) and he also goes on the previous day). 27 January is, of course, the day of Rosenberg's re-examination. By this time, the Jerusalem court was well aware of his 1945 and 1947 testimonies recording the death of Ivan and, indeed, they had been reported in the New York Times on 26 February and 31 March 1987. But Roth presents the information as a total surprise:

The death of Ivan? At the sound of those four words coming through the earphones in English translation, young Demjanjuk, seated directly in front of me, began to nod his head vigorously, but otherwise there wasn't a movement to be discerned in the courtroom, not a sound was to be heard until Chumak, with his confident matter-of-factness, set out in his Canadian-accented English to review with Rosenberg the relevant pages of this memoir, in which, apparently just months after the end of the European war, Rosenberg had written of the death of the very man into whose 'murderous eyes' he had gazed with such horror and revulsion back on the seventh day of the trial. (291)

For a reader not conversant with all the details of a trial conducted five years before the novel's publication, the news that Rosenberg previously declared Ivan to be dead is dumbfounding. Why does Roth stage the revelation in this way, giving it maximum impact by failing to disclose the fact that Rosenberg's 1947 statement was already before the court or to mention the statements by other survivors attesting to Ivan's death?

Arguably, it is to make this paradox central: that Ivan the Terrible can be both dead and living. This incompatibility trumps even the proposal that Demjanjuk can both be and not be Ivan, for this is at base logically possible, if humanly hard to understand: 'your appearance proves only that to be both a loving grandfather and a mass murderer is not all that difficult' (63). Roth stresses the point. Again and again, Rosenberg is asked by defence

counsel and judges whether what he wrote is correct – and Rosenberg agrees that it *is* correct (294) but that it is not the truth. This is the point at which the poesis of Operation Shylock – and Roth’s suggested Holocaust historiography – begins to become clear. To escape the logical predicament of Ivan’s being both alive and dead requires a new kind of logic, or even a suspension of logic.

This epistemological point was debated in the Demjanjuk trial itself. The defence, particularly Mark O’Connor, proceeded as though if a single detail in the survivors’ testimonies could be proved factually wrong, their entire evidence would be discredited and the accused’s innocence established. This resulted in what the New York Times described as ‘one of the saddest moments in the trial’ (Friedman 8) when an 86-year-old survivor, Gustav Boraks, was asked the name of his youngest son, Yosef, who had been killed by the Nazis. Poignantly, Boraks hesitated, but the name came back to him: “I didn’t forget!” he defiantly told the judge’ (Friedman 8). In this epistemology – also espoused by Patrick Buchanan, former special advisor to Nixon and Communications Director for Reagan, who defended Demjanjuk on the basis that ‘crucial “eyewitnesses” [sic] against him have contradicted themselves and each other under oath’ – Rosenberg’s dead-and-alive testimony is simply inconsistency on a grand scale. It is this kind of truth-seeking which Tamas Dobozy describes as ‘juridical legitimacy’ or ‘juridical credibility’ (38 39) and against which, again in his words, may be pitted ‘the illogic evident in the elisions of story-telling’ (38). In Operation Shylock, Roth gives a version of the latter to a character other than a Holocaust survivor. George Ziad mentions that his father used to weep nostalgically about the hills outside Ramallah, saying that every spring he could smell the almond blossoms. But George, O’Connor-like, knowing that the trees bloomed in February, would always ‘correct his father’s hyperbole’ (152).

To exploit these inconsistencies in the survivors’ evidence, Demjanjuk’s defence team called on an expert on eyewitness testimony, the psychologist Elizabeth F. Loftus. In a 1979 book, Eyewitness Testimony, Loftus had set out the factors which can affect and impair the accurate acquisition, retention and retrieval of events in the memory: exposure time;

frequency; detail salience; type of fact; violence of event; stress; expectations; perceptual activity; post-event information; guesswork; identification taking place in a new environment; the wording of questions; and the type of interrogation (passim).⁶ An article by Wells and Murray in a volume Loftus edited commented specifically on the relation between eyewitness confidence and convincingness. Confidence is marked by a ‘self-persuasion effect’ (‘I chose this person under conditions where I wasn’t forced to choose [such as a line-up or photospread] [...] therefore, I must be fairly confident that he is the culprit’ (167)) and, though its relation with accuracy is weak, it remains ‘an intuitively appealing heuristic for ascribing accuracy to the witness’ (168). In other words, the circumstances of identification can increase confidence, which itself makes a witness more convincing. The implications for Rosenberg’s and others’ identification of Demjanjuk as Ivan are obvious.

These implications were not lost on Demjanjuk’s defence team and Loftus was invited to provide expert testimony on Demjanjuk’s behalf. But, in a Rothean twist, the Jewish Loftus declined to appear after her uncle, the victim of anti-Semitic treatment in Russia early in the 20th century, pleaded with her not to touch the case. She remarked:

My discomfort is especially great. In the eyes of many it would be seen as an attack on the handful of people who miraculously survived Treblinka and now wish to be believed. They would never understand that a questioning of one part of memory does not necessarily mean a denial of all memory. Thus such a testimony would be seen as an unmitigated assault on the only memories we have of Treblinka. (<http://www.historiography-project.org/admissions/19870629Loftus.html>)⁷

Her place was taken by Willem Wagenaar, a like-minded expert on eyewitnessing. But Wagenaar, as Teicholz comments (305) and as his book, *Identifying Ivan*, also suggests, did not concentrate on the problems of elderly survivors’ testimony but rather on the pitfalls of identification from photospreads. Nonetheless, the Loftus-Wagenaar approach sums up the ‘juridical legitimacy’ school of thought.

For Dobozy, this epistemology, ‘a view in which a modality of language is equivalent to truth’ ‘raises the specter of Nazism’ (47). This, surely, does a disservice to ordinary justice, which must, of necessity, find a single version of events to be true⁸ – and to those who, to refute absolutely the deniers and revisers of the Holocaust, try to confine themselves

to ‘the specificity of the violence’ (Friedman 8). There *is* such a thing as judicial truth (the court of first instance decided that Demjanjuk was Ivan; in 1993 the Israeli Supreme Court decided that he wasn’t: in the interval, he could be described as such with impunity from the libel laws) but, crucially, the Jerusalem District Court was sensitive to what the New York Times later described as ‘the interaction of truth and memory’ (Herzstein). Finding Rosenberg a “reliable witness who had a long-ranging memory for everything that went on in Treblinka,” the judges stated explicitly that “it is not, after all, technical details that will seal the fate of the accused but rather the testimony of survivors, which is etched in their memories” (quoted in Teicholz 347 344). (Even Sheftel concurred, noting that O’Connor had ‘stooped so low’ as to ask the colour of the flames given off by burning bodies: ‘every lawyer knows very well that one should not base a cross-examination on contradictions or inaccuracies of the testimony if many years (in this case forty-five) have passed since the events in question took place’ (45 43).) The court was, moreover, sympathetic to a different notion of time existing in “that different planet Treblinka”: “when survivors say they saw Ivan throughout the period, it means he was there and involved in the work of extermination” (quoted in Teicholz 349). In respect of acts which, in Shaked’s words, “could simply not be grasped” (quoted in Teicholz 121), the judges therefore found strict chronology and logical consistency ultimately less persuasive than ‘mis-remembered’ details and subjective impressions of time. Significantly, this was foreseen by the Nazis and Nazi Collaborators (Punishment) Law 1950 itself, section 15(a) of which provides that ‘in an action for an offence under this Law, the court may deviate from the rules of evidence if it is satisfied that this will promote the ascertainment of the truth and the just handling of the case’.

In the Jerusalem District Court, at least, what triumphed was not ‘juridical credibility’ but a different kind of truth system. This latter epistemology has long been recognised by Holocaust scholars, who nevertheless continue to refine and redefine its nuances, particularly in the ongoing debate about whether it is possible, or proper, to represent the Shoah at all. Thirty years ago, Lawrence Langer wrote:

To establish an order of reality in which the unimaginable becomes imaginatively acceptable exceeds the capacities of an art devoted entirely to verisimilitude; some quality of the fantastic, whether stylistic or descriptive, becomes an essential ingredient of *l'univers concentrationnaire*. Indeed, those who recorded details painstakingly in an attempt to omit none of the horror may have been unwittingly guilty of ignoring precisely the chief source of that horror – existence in a middle realm between life and death with its ambiguous and inconsistent appeals to survival and extinction, which continuously undermined the logic of experience without offering any satisfactory alternative. (43)⁹

In 2001, Bernard-Donals and Glejzer, invoking Kant and mystical Judaism, named this ‘quality of the fantastic’ the ‘sublime’ (xi). Contrasting ‘witnessing’ (the moment of seeing the trauma) and ‘testimony’ (the compulsion and attempt to speak about it), they located the ‘feeling of the sublimity’ at ‘the limit of testimony’ (xii, xi). Gaps, the inability to speak, hesitations in recountings are all points at which ‘the act of witnessing makes itself fully apparent to the witness himself, but which can only be glimpsed, through those gaps, by the interviewer or reader’: ‘witness can only be accessible to the extent that it is not fully perceived or experienced as it occurs, and it can only be grasped in the very inaccessibility of its occurrence’ (58). This metaphysical understanding matches what others have argued to be the psychological verity of uttering memories of the Shoah. Shoshana Felman and Dori Laub (a psychiatrist) propose that testimony is not so much a statement of, but access to, truth (16): the ‘emergence of narrative is a process wherein the “knowing” of [an] event is given birth to’ (57). The sublime is ineffable but, as Bernard-Donals and Glejzer argue, it is also the only way in which the ineffable can be glimpsed. ‘Sublimity is the means by which the *presentation (Darstellung)* of the trace of the event of the Shoah itself is accomplished by a failure inherent in *representation (Vorstellung)*’ (11), they write. It is in gap, inconsistency, hesitation, that the possibility of fleetingly accessing the original trauma resides. The point is not quite the same as the old cliché that truth is stranger than fiction, but rather that strangeness is the only way in to some truths.

Those who read or listen to Holocaust testimonies will recognise this description of pauses, fragmentations and aporia. But in Operation Shylock, Roth offers particularly flagrant examples of the epistemology: the propositions that Demjanjuk both is and isn’t Ivan,

and that Ivan is both dead and alive. The reason why the novel distorts the events of the Demjanjuk trial in such a theatrical way is to give precedence to Rosenberg's self-contradictory testimony and make this point plain. The result is to emphasise as much the unhearability / incomprehensibility of the Shoah as its unspeakability, because the necessary corollary of inconsistency (or, in Bernard-Donals' and Glejzer's terms, sublimity) is confusion and disbelief on the part of those who hear it.

The disbelieving listener is, literally, the stuff of the survivor's nightmares. Most famously, perhaps, Primo Levi dreamed in Auschwitz of telling his story to an 'indifferent' audience: his sister even gets up and goes away. Levi feels 'a desolating grief [...] pain in its pure state [...] a pain like that which makes children cry' (66). When Jinx reacts angrily to Philip's insistence that all she and Pipik say is a lie, she simultaneously shows understanding of such a listener's motive:

"Everything can't be a lie. Stop saying that. It doesn't help anyone. You protect yourself from the truth by calling everything you won't believe a lie. Everything's that's too much for you, you say, 'That's a lie'. But that's denial, Mr. Roth, of what living is! (223)

Denial, or disbelief, is also the response of those who find the truth of the Holocaust 'too much'. But Roth's tactic is only to increase the preposterousness, as though, paradoxically, it is only in the face of particularly blatant breaches of consistency and verisimilitude that belief has a chance.

Mutual incompatibility is, then, the poesis of Operation Shylock, a novel which makes irreconcilable claims to fact and fiction. This poesis is also an ethos and a historiography: the former a way of understanding the Holocaust, the latter a way of representing it without reducing it either to fiction ("please, no metaphors where there is recorded history!") (Operation Shylock 142)) or to silence. 'The Germans have proved definitively to all the world that to maintain two radically divergent personalities, one very nice and one not so nice, is no longer the prerogative of psychopaths,' thinks Philip. Demjanjuk's challenge, 'How could I be both that and this?' (63), consequently founders: a mutually exclusive pair of opposites is no grounds for disbelief. "There are meaningful

arrangements that defy causal explanation and they are happening *all the time*,” explains Pipik elsewhere (79). That the truth will be less plausible than fiction is reiterated at length.¹⁰

Appelfeld tells Philip:

“My real world [of the camps and forest] was far beyond the power of imagination, and my task as an artist was not to develop my imagination but to restrain it, and even then it seemed impossible to me, because everything was so unbelievable that one seemed oneself to be fictional.” (56)

Philip himself concludes that ‘when life looks least what it’s supposed to look like, it may then be most like whatever it is’ (252-3).

“‘The reality of the Holocaust surpassed any imagination,’ Appelfeld tells Philip (as Aharon Appelfeld told Philip Roth (1988 29)). “‘If I remained true to the facts, no one would believe me’” (86). The reverse logic is also true and the reason why Demjanjuk, in a way emulative of Appelfeld’s immortal Bartfuss, who lives a life of agonising triviality, must entertain a dream of ordinariness, for (in Philip’s projection) ‘all this innocuousness disproves a thousand times over these crazy accusations’ (63). The Shoah was, and remains, a logical predicament – humans committing inhuman acts – and, for Roth, what is important is to keep the impossibilities, not to try to resolve the incompatibilities but to perpetuate them, to maintain ‘the dispute incarnate’ (334). By the time of his abduction, Philip is in a position to say to his double, “‘I am Philip Roth and you are Philip Roth,’” and mean it (320). ‘Better,’ he thinks, ‘for real things to be uncontrollable, better for one’s life to be indecipherable and intellectually impenetrable than to attempt to make causal sense of what is unknown’ (290).

¹ References to the Demjanjuk trial are to the hearing that took place in the Jerusalem District Court from 16 February 1987 to 18 April 1988 (rather than to prior or subsequent hearings), unless otherwise stated.

² ‘The implausibility of so much that is happening even cause him [Philip], in an extreme moment of disorientation, to ask himself if any of it *is* happening’ (Operation Shylock 242).

³ This article follows Debra Shostak in referring to the ‘socially and legally recognized entity who published Operation Shylock’ as ‘Roth’; to the writer in the text as ‘Philip’ and to the counter-self-in-the-flesh as ‘Pipik’ (1987 727 n.3). Several characters in the novel have real-life referents – John Demjanjuk, Aharon Appelfeld, Eliahu Rosenberg: rather than complicate the issue with inverted commas, it is assumed that which is being referred to will be self-evident.

⁴ See Safer, Shostak 1997 and 2004, Parrish. Roth, through Philip, goes to some lengths to decline this interpretation: ‘Registered in suite 511 at the King David Hotel was not the other me, the second me, the irresponsible me, the deviant me, the opposing me, the delinquent, turpitudinous me embodying my evil fantasies of myself – I was being confounded by somebody who, very simply, was not me’ (115).

⁵ From the Greek *ἦθος* (character, a person’s (moral) nature or disposition).

⁶ See also Hall, Loftus and Tousignant. Loftus nevertheless wrote of eyewitness testimony that ‘despite its vagaries and unreliability, it is a proved formula for conviction’ (279).

⁷ The piece from which this quotation is taken is titled ‘Trials of an Expert Witness’ and is generally reported as appearing on pp. 10-11 of Newsweek on 29 June 1987 in the column ‘My Turn’. The present author did not find the piece on that page or in that edition of Newsweek, and so an electronic source is given.

⁸ Furthermore, *pace* Dobozy, the approach of ‘juridical legitimacy’ was not confined to the defence team. The prosecution made much of *Demjanjuk’s* inconsistencies to discredit his story. Roth points out the paradox in Operation Shylock, as Philip wonders whether Demjanjuk’s ‘muddled’, ‘contradictory’ stories ‘somehow pointed not to his guilt but to his innocence’ (65).

⁹ The reference to an existence ‘between life and death’ is particularly apposite here, given the troublesome ontological status of Demjanjuk / Ivan. (The dead-and-alive trope, indeed, recurs in representations of death camp experiences: when the narrator of Elie Wiesel’s Night, for example, looks into the mirror, a corpse gazes back (116).)

¹⁰ Roth has, of course, noted this elsewhere, for example in The Facts, in describing his first wife’s behaviour: ‘why should I have tried to make up anything better? How could I?’ (111).

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