

<http://www.shamash.org/holocaust/denial/mervsIHR.txt>

These are the facts concerning the Mermelstein vs. the IHR (Institute for Historical Review) trial. Holocaust deniers often claim that "no one was able to prove the existence of gas chambers for killing people in Auschwitz" and say that a \$50,000 reward will be given to a person who will supply the proof. Note that they *never* mention the name of the person or institute offering this reward - they know very well the money will be claimed, as it was in this case.

After this trial, both Mermelstein and the IHR sued each other for libel, but both decided not to go to court. Holocaust deniers claim this is a "stunning victory" which "nullifies the result of the first trial". Complete nonsense: the two are unrelated, and the second trial had nothing to do with the gas chambers of Auschwitz.

This file was prepared by Ed Overman.

Here is a short history of the court proceedings, followed by the court transcripts:

- 1) Mr. Mermelstein wrote a letter to the Jerusalem Post;
- 2) the IHR wrote him a letter offering him \$50,000 for proof "that Jews were gassed in gas-chambers at Auschwitz";
- 3) he provided proof;
- 4) the IHR refused to pay;
- 5) he sued them;
- 6) the court said that he had provided proof;
- 7) the IHR et al paid him \$90,000 and apologized.

The judgment of the court is below (exhibit A).

Below that is the Stipulation for Entry of Judgment (i.e., exactly what the two parties agreed to - as opposed to the judgment of the court). This is exhibit B. Note the judge's ruling:

"WHEREAS, on October 9, 1981, the parties in dispute in the litigation filed cross-motions for summary judgment resulting in the court, per the Honorable Thomas T. Johnson, taking judicial notice as follows:

"Under Evidence Code Section 452(h), this court does take judicial notice of the fact that Jews were gassed to death at the Auschwitz Concentration Camp in Poland during the summer of 1944" and "It just simply is a fact that falls within the definition of Evidence Code Section 452(h). It is not reasonably subject to dispute. And it is capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy. It is simply a fact."

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(Also contained below is the letter which Mel Mermelstein wrote to the

Jerusalem Post (exhibit C) and the letter of reply from the IHR stating the \$50,000 award and the conditions for being awarded the money (exhibit D).)

And the IHR tried to weasel out of it again in 1991, and again the judge, the Hon. Stephen O'Neil this time, affirmed the judicial notice with the statement that "it is just not disputable." (The transcript of the discussion of this point is also below (exhibit E).)

In closing, Mel Mermelstein has written a book about the Holocaust. The title is "By Bread Alone, The Story of A-4685" (ISBN 0-9606534-0-6) and it can be ordered from:

Auschwitz Study Foundation, Inc.
7422 Cedar Street, P.O. Box 2232
Huntington Beach, CA 92647
(213)592-5558 or (714)848-1101 .

***** A *****

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

MEL MERMELSTEIN.) No. C 356 542
Plaintiff,)
vs.) JUDGMENT
)
INSTITUTE FOR HISTORICAL)
REVIEW, et al.)
Defendants.)

Pursuant to the Stipulation for Entry of Judgment executed on July 22, 1985, the Court renders the following judgment:

1. Defendants LIBERTY LOBBY, WILLIS CARTO, ELISABETH CARTO, LEGION FOR SURVIVAL OF FREEDOM, INSTITUTE FOR HISTORICAL REVIEW, and NOONTIDE PRESS, and each of them, are jointly and severally liable to plaintiff MEL MERMELSTEIN for the sum of One Hundred Fifty Thousand Dollars (\$150,000.00), reduced to the sum of Ninety Thousand Dollars (\$90,000.00) payable as follows:

- (a) Fifty Thousand Dollars (\$50,000.00) on August 1, 1985, and delivered to the law offices of ALLRED, MAROKO, GOLDBERG & RIBAKOFF;
- (b) Twenty Thousand Dollars (\$20,000.00) on September 1, 1985;
- (c) Twenty Thousand Dollars (\$20,000.00) on October 1, 1985.

2. Should any of the installments not be made by the defendants against whom judgment herein is entered within the time period provided, plaintiff, at his sole option and discretion, shall have the following options:

- (a) To rescind the Stipulation for Entry of Judgment and proceed to trial and any payments received by plaintiff to that date from defendants shall not be returned to said defendants; or

(b) Plaintiff may request entry of Judgment against each of said defendants, jointly or severally, in the sum of One Hundred Fifty Thousand Dollars (\$150,000.00).

3. Defendants LIBERTY LOBBY, WILLIS CARTO, ELISABETH CARTO, LEGION FOR SURVIVAL OF FREEDOM, INSTITUTE FOR HISTORICAL REVIEW, and NOONTIDE PRESS, shall issue and execute, by a duly authorized representative, a Letter of Apology to Mel Mermelstein, as follows:

"Each of the answering defendants do hereby officially and formally apologize to Mr. Mel Mermelstein, a survivor of Auschwitz-Birkenau and Buchenwald, and all other survivors of Auschwitz for the pain, anguish and suffering he and all other Auschwitz survivors have sustained relating to the \$50,000 reward offer for proof that "Jews were gassed in gas chambers at Auschwitz".

DATED: AUG 5, 1985

ROBERT A. WENKE, JUDGE
SUPERIOR COURT

APPROVED AS TO FORM AND CONTENT:

G. G. BAUMEN
Attorney for Defendants
INSTITUTE FOR HISTORICAL REVIEW,
LEGION FOR SURVIVAL OF FREEDOM,
ELISABETH CARTO and NOONTIDE PRESS

VON ESCH & ASSOCIATES
Attorneys for Defendants
LIBERTY LOBBY and WILLIS CARTO

***** B *****

STATEMENT OF RECORD
AND
LETTER OF APOLOGY TO MEL MERMELSTEIN

"WHEREAS, the Legion for Survival of Freedom, and the Institute for Historical Review, sent by letter dated November 20, 1980, directly to Mel Mermelstein, a survivor of Auschwitz-Birkenau and Buchenwald, an exclusive reward offer in a letter marked "personal" dated November 20, 1980, offering Mr. Mermelstein a \$50,000 exclusive reward for "proof that Jews were gassed in gas chambers at Auschwitz" "and further stating that if Mr. Mermelstein did not respond to the reward offer "very soon", "the Institute for Historical Review would ' publicize that fact to the mass media' ..."

"WHEREAS, Mr. Mermelstein formally applied for said \$50,000 reward on December 18, 1980; and

"WHEREAS, Mr. Mermelstein now contends that the Institute for

Historical Review knew, or should have known, from Mr. Mermelstein's letter to the editor of the Jerusalem Post dated August 17, 1980, that Mr. Mermelstein contended he was a survivor of Auschwitz-Birkenau and Buchenwald; knew, or should have known, that Mr. Mermelstein contended that his mother and two sisters were gassed to death at Auschwitz; and knew, or should have known, of his contention that at dawn on May 22, 1944, he observed his mother and two sisters, among other women and children, being lured and driven into the gas chambers at Auschwitz-Birkenau, which he later discovered to be Gas Chamber No. 5; and

"WHEREAS, on October 9, 1981, the parties in dispute in the litigation filed cross-motions for summary judgment resulting in the court, per the Honorable Thomas T. Johnson, taking judicial notice as follows:

"Under Evidence Code Section 452(h), this court does take judicial notice of the fact that Jews were gassed to death at the Auschwitz Concentration Camp in Poland during the summer of 1944" and "It just simply is a fact that falls within the definition of Evidence Code Section 452(h). It is not reasonably subject to dispute. And it is capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy. It is simply a fact."

"WHEREAS, Mr. Mermelstein and other survivors of Auschwitz contend that they suffered severe emotional distress resulting from said reward offer and subsequent conduct of the Institute of Historical Review; and

"WHEREAS, the Institute for Historical Review and Legion for Survival of Freedom now contend that in offering such reward there was no intent to offend, embarrass or cause emotional strain to anyone, including Mr. Mermelstein, a survivor of Auschwitz-Birkenau and Buchenwald Concentration Camps of World War II, and a person who lost his father, mother and two sisters who also were inmates of Auschwitz;

"WHEREAS, the Institute for Historical Review and Legion for Survival of Freedom should have been aware that the reward offer would cause Mr. Mermelstein and other survivors of Auschwitz to suffer severe emotional distress which the Institute for Historical Review and Legion for Survival of Freedom, now recognize is regrettable and abusive to survivors of Auschwitz.

LETTER OF APOLOGY TO MEL MERMELSTEIN

"Each of the answering defendants do hereby officially and formally apologize to Mr. Mel Mermelstein, a survivor of Auschwitz-Birkenau and Buchenwald, and all other survivors of Auschwitz for the pain, anguish and suffering he and all other Auschwitz survivors have sustained relating to the \$50,000 reward offer for proof that "Jews were gassed in gas chambers at Auschwitz".

DATED: 7/24/85 G. G. Baumen
 Attorney for Defendants
 Legion For Survival of Freedom,
 Institute for Historical Review,
 Noontide Press, and Elisabeth Carto

DATED: 7/24/85 MARK F. VON ESCH

Attorneys for Defendants
Liberty Lobby and Willis Carto

***** C *****

THE JERUSALEM POST (INTERNATIONAL EDITION), 24-30 AUGUST 1980

Sir, - By now you may have heard of the so-called "prestigious" names:

1. Dr. Austin J. App (retired) La Salle College, Philadelphia
2. John Bennett, Victoria Council for Civil Liberties, Australia
3. Dr. Reinhard K. Buchner, California State University, Long Beach
4. Dr. Arthur R. Butz, Northwestern University, Illinois
5. James E. Egolf, Duquesne University, Pennsylvania
6. Dr. Robert Faurisson, University of Lyon-2, France
7. Ditlieb Felderer, Bible Researcher, Sweden
8. Dr. James J. Martin, Institute of Historical Review
9. Udo Walendy, Varlag Fur Volkstrum & Zeitgeschichtsforschung.

You may have also read about a recent publication of the so-called "Journal of Historical Review" which originated in Torrance, California. If by chance you have not heard of these gentlemen, nor read about the so-called "Journal of Historical Review," allow me to inform you that these university professors, some of them former Nazis of the old Hitlerite regime, have taken upon themselves to use and abuse our colleges and universities throughout the western world, in particular the United States, to spread lies, hatred and bigotry vis-a-vis the subject known as the "Holocaust." They even invented new titles to distort these awesome historical events. "The Hoax of the 20th Century," "The Myth of the Six Million," etc., etc.

What can one say, when once again we sit idly by as these highly acclaimed professors, in highly accredited universities are "at it again." They are teaching our new generation that the chimneys of Auschwitz were only those of the bakeries. That there were no gas chambers at Auschwitz-Birkenau. That Dachau was a peaceful town within Nazi Germany and that the "six million" European Jews fled Nazism and have been living peacefully in Israel ever since.

As one who survived the infernos of Auschwitz-Birkenau and Buchenwald, my eyes are still blurring from the vision of that nightmare and my ears are still ringing with the agonizing sounds of men, women and little children who were lured and driven into the gas chambers disguised as shower rooms, solely and exclusively because they were Jewish. These "prestigious" gentlemen mentioned above, as well as the bigoted organizations they represent, have the gall to offer any survivor of the Holocaust a \$50,000, and possibly \$100,000 award if he or she can prove that indeed gassings of men, women and little children had actually taken place during that awesome period known as the "Holocaust."

I shall be leaving for the 10th time to a survivors' conference in October to be held at Auschwitz. Perhaps some of these "prestigious" gentlemen would like to accompany me, at which time, I could physically point out the places from where I saw the actual gassings of men, women and

little children in gas chambers disguised as shower rooms.

MELVIN MERMELSTEIN
Huntington Beach, California

***** D *****

INSTITUTE FOR HISTORICAL REVIEW
20 November 1980

Dear Mr. Mermelstein (sic):

Your recent letter in the Jerusalem Post indicates that you can prove that Jews were gassed in gas-chambers at Auschwitz.

At our 1979 Revisionist Convention we announced a \$50,000 reward for proof of this allegation. To date, no one has stepped forward, and at the 1980 Revisionist Convention we suspended the reward and replaced it with a \$25,000 reward for proof that The Diary of Anne Frank is authentic, and another \$25,000 reward for proof that Jews were turned into bars of soap by the Nazis.

In the circumstances, we will re-open the \$50,000 reward so that you can apply. I enclose the necessary application forms. Please note that the evidence will be judged along the same standards as evidence in a U.S. criminal court; not the standards of the Nuremberg Trials.

If we do not hear from you, we will be obliged to draw our own conclusions, and publicize this fact to the mass media, including the Jerusalem Post.

I look forward to hearing from you very soon.

Sincerely,
Lew Brandon
Director

***** E *****

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

DEPARTMENT NO. 82

HON. STEPHEN O'NEIL, JUDGE

MEL MERMELSTEIN.)
PLAINTIFF,)
VS.) NO. C 629224
) Consolidated with
LEGION FOR THE SURVIVAL OF FREEDOM) NO. SOC 95211
etc., et al.,)
Defendant.)

TRANSCRIPT OF PROCEEDINGS

January 10, 1991

.....
THE COURT:

All right?

Now, let's handle the judicial notice matter.

MR. HULSY (lawyer for defendant/responding party):

All right.

The judicial notice matter, your Honor - perhaps the court could give me a little guidance on its thinking on how it arrived it, because there were three or four different theories proffered..

THE COURT:

Certainly. And that's why I wrote down all four sections of the Evidence Code and have it right in front of me; because in essence, if you will, it was on two theories: One, the previous matter, I believe it was Judge Johnson.

So under Evidence Code sections 452(c) and (d), that alone permits this court to take judicial notice under those sections of the Evidence Code I just cited. But I'm taking it a step further; and I'm adding, in addition, as a reason Evidence Code sections 452(g) and (h), that - and if you'd like me, I'll quote (h) in particular:

"Facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy."

So for all of those reasons, the request for judicial notice is granted.

MR. HULSY:

Okay. Well, in other words, you're deciding it anew, as well as holding that you're collaterally estopped to raise it.

THE COURT:

For all of the above.

MR. HULSY:

All right.

Well, I don't suppose I'm going to change the court's mind; but when you look at things like the number of moons around Jupiter, we pull out an old Encyclopedia Britannica, and they'll have a statement, very factual, about what they knew at that time. This is - there's been developments in the last ten years, since this was last looked at by the court; and the historians are still pondering over this area.

It was our - my feeling is that it's too controversial - it's a jury matter, but I really don't have any new case.

THE COURT:

Well -

MR. HULSY:

- I thought that the -

THE COURT:

- more important than a new case, how about a new fact?

MR. HULSY:

Well, I'm - I'm not -

THE COURT:

Because, again, I emphasize the language, "reasonably indisputable

accuracy."

MR. HULSY:

Well, it takes away a major area from the role of the jury, and this -

THE COURT:

Well, there's also a society in England, I believe, called the Flat Earth Society.

MR. HULSY:

True.

THE COURT:

So, I mean, some people may not want to take Caribbean cruises for fear of falling off the end of the earth - you know. But reasonably indisputably accurate, I'd say the earth is a sphere. I mean - you know - how far are we going to carry this?

MR. HULSY:

My thought is, your Honor, that's a spurious analogy. I've tried to use the moons of Jupiter where, it's a continue- - we're discovering now, we've got twenty -

THE COURT:

Well, you're entitled to your opinion -

MR. HULSY:

Right.

THE COURT:

- as it being spurious, sir. I - you know -

MR. HULSY:

I don't mean to be disrespectful.

THE COURT:

- I'm just citing that as a - I mean, there are all sorts of societies out there, and there are all sorts of groups and organizations.

But as far as this issue and this request for this statement of judicial notice, this court again, in its opinion, feels that for all of the reasons that I cited, not only the prior ruling but also because it is just not disputable.

MR. HULSY:

The - I can't offer anything to quarrel - you know - factually, a new fact on the deciding it anew, other than the facts that have been submitted. On the collateral estoppel issue, I thought that the - that the case that was appended from the Lexis was very interesting and it showed the court's logic; and I thought that it would be useful to go back to the letter of apology and see that the thrust of that was the emotional distress rather than any sort of a concession as to the facts.

And that's why I thought on the collateral estoppel that if the court was thinking exclusively on that, that it ought not be followed.

THE COURT:

Interesting, not persuasive.

MR. HULSY:

All right.

I submit.