Deputy Inspector General for Investigations

Read Ahead on Case of David Aaron Tenenbaum (Intell Project No. D2006-DTN01-0107)
Agenda

Legal Sufficiency
Project
Our Effort
Background
Finding

Topics to Be Covered
Finding

security clearance.

submit him for an increase in his
significant factor in the decision to
Judaism was weighed as a
religious discrimination when his

Mr. Tennenbaum experienced
Title 5 is the body of law governing the employment of appropriated fund employees. Rights and responsibilities of federal civilian employees. Title 5 joint effort by DOD-INTL and DOD-INV.

The courts of law. Making between OIC DOD and other entities such as information and prevention of duplication decisional standard. Title 5 allows for both review of classified civilian employee law. Peter Levine briefed on August 1, 2006. Title 5 (Federal Committee (SASC)).

To becoming Chairman, Senate Armed Services Committee requested by Senator Levin on March 14, 2006, prior.

Background
which employees may go to court.

"Title 7" is the body of law protecting civil rights.

Testify without revealing state secrets.

Lawsuit dismissed because the defendants could not
discriminate under Title 7 (civil rights), not Title 5.

Tenenbaum filed lawsuit in 1998, alleging


Armsments Command (TACOM).

Employed by the Army Tank-Automotive and

Mr. Tenenbaum
religion? was he discriminated against because of his making to determine that clearance, security clearance and, in the decision procedures in revoking Mr. Tennenbaum's reasonable basis for and follow proper a, did department of defense have a
Cases in which Junior's found discrimination. Opportunity, this quote was found to be similar to quotes in
written by Colonel DOD's Director of Employment & Equal
Opportunity. This statement is one example of the religious bias that
existed as officials were deciding whether to request a
polygraph:

"When, in the course of the security clearance upgrade and the resulting
request for the security clearance upgrade, I was told that he had natural
religious and ethnic (sic) sympathies which the Israelis could
try to exploit."

8 Counterintelligence
Affidavit of Director, Intelligence

8 Counterintelligence
Affidavit of Director, Intelligence
counterintelligence investigation.
Simoni's for guidance in the prosecution of the
Tennebaum's first line supervisor relieved on LOC.

conducted on June 13, 2007.
Jack Parks, former first line supervisor to T, interview

A: Yes, I would go to people like Simoni.

Dan Meyer, Director CRI
question, you would go to your office of security?
"Okay. So if you had a counter-intelligence

use of the religious factor, and Parks actions:
Establishing the connection between Simoni's

Line Supervisor
Advice to Tennebaum's First
Security investigation, contrary to DOD regulations.

Espionage allegations through the use of a personal
line supervisor of Tenenbaum, acting to clear T of
first

Jack Parks, Civilian Deposition at 52-53 (Nov. 9, 1999).

was time that he got on with his work at TACOM.

A: Well, in signing that I wanted him to be cleared . . . [it]

I was told that he was going to be cleared and that it

Mr. Juan Mateo, attorney for T.

Investigative Service.

within the Department of the Army, the Defense

Tenenbaum would then be investigated by another agency.

C: Did you know that by submitting that application Mr.

pretex for getting Tenenbaum to take a polygraph.

The request for a security clearance upgrade became the

Action on Advice
First Line Supervisor Takes
the acting official.

To Jack Parks,

Second line supervisor to T; first line supervisor

Civil deposition, Richard McGehee: at 34 (July 14; 2000)

I believe that John possibly others saw that as a risk.

- I believe that John possibly others saw that as a risk.

with Israeli citizens than anybody else. I know by far and

projects, people, and consequentially he spent more time

and the land, his dream to anything that involved Israeli

attorney to T

something improper with the Israelis? - Juan Mata, O.

investigating him and/or alleging that he was doing

factor in the thinking of the people who were

was a

C: Do you think that fact that [David] is Jewish... was a

After the suspension of the security clearance, T's second

Decisoin-making:

Jewish Status Factor in


A: If I am assuming that if he were not Jewish he would have done all the things that he does, you know relative to Israel, if being a Jew is a package deal because he's a Jew he wants to do all of these things and he does all of these things with his family and yeah I think that's good.

Q: Do you believe any of this would have happened to David, the investigation, the clandestine investigation, the investigation that started July 14, 2000, that played Richard McCelland, Civil Deposition at 57.

As a Jew, was a factor in the investigation.

Line Supervisor: And again, the Second
head of the Army's Litigation Division.

the deposition was a subordinate of COL Udiro Firo, then the
being questioned by Jeffrey Morganroth, attorney for T. Present at
John Simone, Civil Deposition at 127-28, 229 (Oct. 31, 2001).

"Religion. Other societies are a little bit different."

A Sure. . . . It's hard to separate Jewish history without their

Symphathies, correct?

Q And when you say symphathies, you're talking about Jewish

A Absolutely. Correct.

with a cultural aspect?

Conservative, wouldn't have mattered to you because it's linked

So because he was Jewish, whether he was Orthodox or

Religion from their heritage. It's a big element of their heritage.

"A it's very hard from the Jewish cultural perspective to separate

Flavored Combination

of Religion and Culture
Religious Connections
First Line Supervisor Still Recalls

(June 16, 2007)

-Jack Parks, CRI Testimony at 45

“Working on... and the importance of what he was
conectections, and the importance of what he was

Q: I think because of the individual’s religiour

- Dan Meyer, Director CRI

was unique, why was this case unique?”

Q: And when Mr. Barnard says that this case

[

A: Correct.

Israel were, number one, his religious beliefs, correct?

Q: And the indicators that he was doing something for

A: It was — it had an affect on the case, yes.

motive, as you put it, right?

Orthodox Jewish background is a factor or a

Q: You acknowledge at a minimum, Teuneham's

the Religious Connection

Even Special Agent Recognized

Group) being questioned by Juan Maito, attorney for T.

(March

— Steven P. Twynam, Civil Deposition at 20-23, 25
Difficulties in Obtaining Legal Sufficiency Review

- In responding to Senator Levin, the General Counsel (Fiore) wrote a draft reply based, in part, on his legal arguments used to brief the Secretary of the Army on aspects of Tenenbaum matter when the General Counsel (Fiore) was a litigator for the Army. He also called the U.S. Attorney who handled one of the Tenenbaum cases to update himself on this case. The Acting Inspector General was not made aware of this previous involvement;

- General Counsel (Fiore) was therefore potentially conflicted, and we did not uncover that fact out until our investigators were given the information by the Army Litigation Division;

- General Counsel (Fiore) then resisted recusal, only to be forced to do so by the Acting Principal Deputy Inspector General (Race);
Legal sufficiency of the report:

Legally, the sufficiency is over the weighing of evidence, not the
presentation or decision. Their objections
for documentation of their decision. Their objections

OGC, despite the repeated requests from Senior Staff

Took six (6) months to get a written legal opinion from

Witness without informing the investigation team:

Investigation, conducting at least one interview of a

Staff attorney (Yonis) then opened up his own

Case:

attorney (Yonis) then objected to the findings in the

Deputy General Counsel (Shelley) and an attorney

Their own investigation

OIG-DOD OGC Then Conducted
Equities of other agencies, notably FBI & CIA.

Of time available to review it, controversial report when they have the maximum amount has resulted in a timing concern, as we will now issue a.

30th was the due date, it is now late October. OGC's delay

Senate Armed Services Committee was told September

to disagree with their weighing of the evidence.

(Indirect) evidence. DCG-NY (Rage) adamantly continued presented above as either opinion or circumstantial

OGC objections centered on undermining evidence

Trial Judge.

Principal Deputy Inspector General effectively serving as

Evaluation then dissolved into a "in-house trial" with the

sufficiency, so there was no way to Respond to OGC.

No written standards exist for the conduct of legal

Trying to Break Impasse