

## “The Story of the Two Ivans: Portrait of a Government Conspiracy”

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Political scientists customarily bemoan the distrust of government exhibited by ordinary citizens in the United States (as well as by citizens in most of the democratic world). They view voter cynicism as misguided, an unfortunate barrier to the government’s ability to use its vast powers to do good. The purpose of this reading/lecture is to grapple with the most obvious possible answer to the question of why U.S. citizens do not trust those who lead them: the possibility that citizens shouldn’t trust their government, that the government may use its vast powers to do bad things rather than good ones, that their cynicism is not misguided at all. To illustrate how government institutions can abuse individual citizens, I will tell you the story of two men who never knew each other but who became inextricably linked by the machinations of authorities in at least five different countries. Both of the men were named “Ivan” so I will call the tale of this sordid and horrifying government conspiracy “The Story of the Two Ivans.”

One, Ivan Marchenko, was a human cockroach. He fought briefly with the Red Army during World War II, but the Germans captured him in 1941. They sent him to a training camp for SS guards, located in the Polish town of Travniki, then posted him to a Nazi extermination camp after he completed his training. Marchenko’s brutal treatment of the Treblinka camp’s Jewish inmates quickly earned him the moniker Ivan the Terrible. His primary duty was to kill people efficiently. Marchenko assisted the German soldiers as they herded men, women and children into a closed compartment. He then operated an engine rigged so that its fumes would spill into the chamber, eventually asphyxiating all those inside. By all reports, Ivan carried out his task enthusiastically, sadistically beating the camp’s inmates with whatever sort of weapon he could find handy as he marched them to the slaughter. It is estimated that Ivan the Terrible took 870,000 lives.

The other man, John Ivan Demjanjuk, grew up a peasant with little more than a fourth-grade education. Demjanjuk’s wartime experience apparently involved neither heroism nor villainy. He was a tiny pawn in a great war, one who focused on adapting and surviving. According to Demjanjuk, the Red Army conscripted him in 1941 to fight the Nazis. He suffered a wound to his back but returned to the field in time to be captured by German forces in 1942. The Germans initially settled Demjanjuk in a POW camp, where he performed manual labor, but eventually assigned him to a German outfit called the Vlasov Army. He may or may not have served as a guard at the Sobibor concentration camp, but if so he was not one of the many remarkable villains posted there. Shortly before the war’s end, Demjanjuk learned that American forces were nearby and deserted to the U.S.

Army. He worked as a driver for the Americans until 1947 and eventually emigrated to the United States. Demjanjuk became a citizen, moved to Cleveland, raised a family, and labored for the Ford Motor Company until his retirement. It seemed as though his fate would be to die in peace, loved and respected by his family, anonymous to everyone else.

Unfortunately for John Demjanjuk, he bore an unfortunate – if superficial – resemblance to Ivan Marchenko. Both were Ukrainian, although from different regions. Both were tall and broad-shouldered. Their youthful complexions and hair might have differed but both were balding and, given the passage of three decades, Demjanjuk's coloration could not rule out the possibility that he might be Ivan the Terrible. Of course, other personal traits distinguished the two men. Whereas the 30-year-old Marchenko had a wife and three kids when the Germans captured him, the 22-year-old Demjanjuk was single and childless when he became a prisoner of war a year later. Marchenko's cheek bore an unobtrusive scar. Demjanjuk suffered from a painful war wound, whereas colleagues reported that an "erect posture" distinguished Marchenko. It is doubtful that, without some kind of international government conspiracy, someone ever would have confused the two Ivans.

The USSR disrupted John Demjanjuk's tranquil retirement in 1976. It is impossible to say with certainty why the Soviet Empire turned its glare on this inconspicuous man and singled him out for destruction. One possibility is that Demjanjuk lied on a refugee form that he completed in 1948 as the first step toward getting his U.S. visa. Lying on these forms was common enough; people often did not admit having lived within Soviet borders before 1939 because they did not wish to be sent back across the Iron Curtain. But he had listed a city called Sobibor as his reported place of residence, the former location of a Nazi death camp. So perhaps that is why the Soviets chose him as a victim. One thing is certain, though. They did not pick Demjanjuk for his partial resemblance to Ivan the Terrible, because the Soviets never claimed that the two men were the same. Indeed, the KGB knew that Marchenko was Ivan the Terrible; their file on Ivan contained testimony from dozens of people attesting to this fact. Rather, a Soviet mouthpiece in the United States, the *Ukrainian Daily News*, accused Demjanjuk of having hunted down and executed Jews in Sobibor, far from Ivan's Treblinka slaughterhouse.

To assist with the investigation of Demjanjuk, the Soviet States Attorney assisted U.S. investigators by furnishing a document to establish that he had trained at the SS Travniki camp – possible evidence for their claims that Demjanjuk could have been a prison camp guard. Forensic experts later would dismiss the Travniki document as a crude forgery, signed by a hand other than Demjanjuk's and adorned with a photograph that had been extracted from some other form. But this amateurish document was enough to set off a 17-year-long nightmare for one retired Ohio autoworker.

The United States sent Demjanjuk's photo to Israel and asked that police show it to survivors of the Sobibor camp to see if they could confirm the Soviet claim and identify him as a war criminal. No one did so. But Demjanjuk's picture had been included in a collection of photos, called a "photo spread," that survivors from other death camps also would see. Tragically and unexpectedly, one survivor from Treblinka pointed at Demjanjuk and identified him as the dreaded Ivan the Terrible. This single witness, looking back through the mists of three decades and believing that he could see Ivan's evil in another man's eyes, unleashed a ferocious effort to railroad the Ukrainian immigrant to his death. The Soviets could not have anticipated this sudden and wholly unplanned development. Who would have supposed that a small-circulation communist newspaper and, later, a document forged by America's Cold War enemy could end the life of a U.S. citizen? But the USSR remained silent about Ivan the Terrible's true identity as they watched the Nazi-hunting machinery in Israel and the United States chew up John Demjanjuk.

Authorities in two other nations also did nothing to help Demjanjuk, despite knowing that he might pay with his life for another man's crimes. Germany's BKA laboratory, a police facility specializing in Third Reich document examination, quickly analyzed the Travniki document and declared it an amateur forgery. Such poor evidence could never establish that Demjanjuk had trained or served as an SS guard – at Sobibor, at Treblinka, or anywhere else. But authorities at the police lab kept this judgment to themselves until 1992, more than half a decade after reviewing the form. Polish authorities, meanwhile, knew of the Soviet evidence clearly establishing Marchenko's identity as Ivan the Terrible. They remained silent about this, and also kept quiet about eyewitness reports that Ivan the Terrible was already dead – that he had died during a camp revolt. When Demjanjuk's attorneys learned of this evidence, Poland refused their request for assistance.

The Soviets may have accidentally set off the Demjanjuk affair. German and Polish authorities may have done nothing to quash it. But it was the combined efforts of Israel and Demjanjuk's own government that marched him farthest along the path to the scaffold. In the United States, the chief instigator was a branch of the Justice Department called the Office of Special Investigations. Recently formed to hunt down Nazi war criminals, the OSI actively hid evidence that would have exonerated John Demjanjuk. The Soviets had communicated to them privately, as part of a separate investigation around 1978, that Ivan Marchenko was the Treblinka executioner. The OSI discussed the problem in internal memos but decided to keep their knowledge secret. The OSI also did not reveal to Demjanjuk's attorneys that they had shown the man's picture to 15 Treblinka survivors and not one had accused him of being Ivan the Terrible. Instead, U.S. officials falsified "identification reports" for two people, claiming that the witnesses had positively identified Demjanjuk as Ivan. One of the reports was a total fabrication, since the official who drew it up later

admitted that he had no recollection of what had actually happened when the witness viewed Demjanjuk's photograph. Based on a record of evidence distorted by this travesty of justice, the U.S. government revoked John Demjanjuk's citizenship in 1981 and extradited him to Israel in 1986 so that he could be tried for committing Ivan the Terrible's murders. When Israeli prosecutors switched the charge to genocide rather than murder, contrary to the terms under which the United States federal court agreed to extradite him, U.S. officials did not squawk.

John Demjanjuk spent almost the entirety of the next seven and a half years locked in a cage. Guards watched over him constantly and could see at least a portion of his flesh at all times, even when he used the restroom. Occasionally they let Demjanjuk out so that he could play a starring role in the monkey trial conducted to justify executing him. This is not the place to analyze the many hostile legal decisions rendered by Demjanjuk's three trial judges to ensure his death; defense attorney Yoram Sheftel admirably performs that service in his 1996 book *Defending Ivan the Terrible*, distributed by the conservative press Regnery Publishing. But I should emphasize that the U.S. government raised no protest even though the proceedings violated American standards of justice in innumerable ways.

Israeli officials rented a 400-person arena for the trial, which allowed hordes of Holocaust survivors, political activists, and ambitious politicians in the audience to place intense social pressure on the three judges. Although the defense did not contest Ivan's many horrible crimes and the details of those crimes did nothing to prove Demjanjuk's identity as Ivan, the prosecutors and the trial court nevertheless indulged in weeks of testimony outlining not only Ivan's doings but also the story of the Holocaust more broadly. This emotionally laden history lesson, so worthless for proving Demjanjuk's guilt, could have only one outcome: to whip the audience into a killing mood. One observer became so inspired that, after the trial ended, he tossed acid into the eyes of the accused man's chief defense attorney, nearly blinding him. Demjanjuk's other Israeli attorney, after receiving numerous threats, reportedly jumped to his death under mysterious circumstances.

Demjanjuk's trial was televised, an unprecedented decision that ensured a wide audience for the courtroom testimony – turning the proceedings into a nationwide Holocaust memorial. (Indeed, one section of the eventual court decision explicitly memorialized Ivan the Terrible's victims, an odd addition to a legal document.) Israeli news organizations, meanwhile, sustained a frenzied media lynching of Demjanjuk and his attorneys – and the trial court, which served as both judge and jury, paid a newspaper clipping service to collect this prejudicial material for them. (Sheftel reports that each judge filed these clippings into personal albums, as though putting together some kind of sick memory book as a souvenir from the hanging.) By American standards, the whole thing was not a

legitimate legal proceeding. It was a show trial, with rambunctious behavior between the acts and loud applause at the finale – when the three judges sentenced John Demjanjuk to die.

Throughout it all, the U.S. government uttered hardly a squeak about a former citizen being treated as though he were guilty until proven innocent. The worst part of it is, Israel's criminal-justice establishment almost certainly realized that Demjanjuk *was* innocent – if not of all war crimes, then certainly of those committed by Ivan the Terrible. This is apparent not only from the reports that eventually emerged about what they knew before the trial, but also from their unconscionable reaction after the evidence appeared clearly exonerating him.

The case against John Demjanjuk really amounted to only two kinds of evidence (although various secondary facts, related to problems with Demjanjuk's alibi, also came into play). The first was the Travniki document, already discussed, which allegedly established Demjanjuk's identity as an SS guard. The second was a handful of Treblinka survivors – five of whom actually testified during the trial – who reported that Demjanjuk was Ivan. In both cases, Israeli officials had every reason to suspect the evidence and very little reason (in the sense of drawing a conclusion based on logic) to trust it.

Take the Travniki document. Prosecutors knew that Germany's BKA lab had identified it as a forgery. Indeed, they were the ones who initially asked for an analysis, but changed their minds when they realized it would not corroborate Demjanjuk's guilt. At that point they yanked the document out of the lab and never informed the defense team of the BKA's preliminary judgment. Nor did they ask for additional analysis after a leading forensics expert testified that all they had to do to check for a forgery was peel off the photograph. They steadfastly demanded Demjanjuk's conviction as an SS concentration camp guard. A former German official, meanwhile, testified that the Travniki document could not have belonged to Ivan the Terrible. It did not indicate nor permit the subject to appear in the Treblinka area. Furthermore, the dates on the document were inconsistent with what prosecutors knew of Ivan's career. These facts did not dissuade the state from seeking Demjanjuk's conviction as Ivan the Terrible.

The testimony of the Treblinka survivors was equally suspect. Israeli police knowingly used a photo spread for the identifications that a U.S. court had already ruled "impermissibly suggestive." Demjanjuk's picture was larger and clearer than those around it, and he was the only heavy-set, balding person there – so the picture drew the eye of witnesses. Investigators possessed pictures of Demjanjuk from the 1940s, when Ivan committed his atrocities, but they used one from 1951 instead. Once the first Treblinka survivor mistakenly identified Demjanjuk as Ivan the Terrible, additional witnesses were encouraged to find Ivan the Terrible in the photo spread (rather than being warned that he might not appear among the photos at all). Despite all of these actions leading the witnesses,

and perhaps others that went unrecorded, only 20% of the 40 Treblinka survivors positively identified Demjanjuk as Ivan the Terrible. Of those, few gave consistent identifications.

The trial court expressed great respect for the five Treblinka survivors who appeared as witnesses, as befits elders who have suffered. But it also gave great deference to their accusations, and on that score it seems obvious that the witnesses lacked credibility. Sheftel walks through the flaws exhibited by each witness: One had also pointed to the picture of a second man and declared that he was Ivan's Treblinka assistant, when in fact the police knew he was someone else entirely. Another was asked during the trial how he migrated from Eastern Europe to Florida, which revealed his unreliability; he reported traveling the whole way by train and claimed to reside there at a time when everyone knew he lived in Europe. A third reported taking hours to convince himself that Demjanjuk was Ivan, in contrast to the identification falsified on his behalf by the Americans (which said he had not hesitated). The fourth admitted documenting in the 1940s that he had witnessed Ivan the Terrible's death, but repudiated his older testimony as a falsehood. And the fifth's reliability had already been challenged by a previous U.S. court decision related to a different suspect. In short, the evidence provided no foundation to declare Demjanjuk guilty beyond a reasonable doubt, either of Ivan's atrocities or of SS service more generally. He was a scapegoat in the classical sense of the word, a substitute defendant deliberately set up to carry the World War II sins of the Ukraine down into the valley of darkness. The prosecution had constructed nothing but a house of cards.

That house of cards began to topple during the course of John Demjanjuk's appeal to the Israeli Supreme Court. Ukrainian nationalists in the United States had discovered that the OSI deposited garbage across the street from its D.C. office, at the local McDonald's. They reportedly monitored these trash-can documents every day for two years. It was only because of the OSI's strange method of waste disposal, coupled with the diligence of Demjanjuk's Ukrainian sympathizers (who also paid for much of the defense team's expenses), that the U.S. government's deceptions came to light. In short, Demjanjuk's appeal won solid support only through a lucky coincidence. His attorneys, supported by U.S. Rep. James Traficant of Ohio, began filing requests under the Freedom of Information Act (FOIA) for OSI documents that the agency did not want to release. The German periodical *Stern*, meanwhile, reported the BKA's complicity in covering up that the Travniki document was forged. And while the appeal dragged on, the USSR was crumbling. Eastern Bloc authorities lost interest in supporting plots hatched by the Soviet regime. Polish agents apparently hinted to the defense that Soviet KGB files could identify the true Ivan the Terrible (although they did not turn over anything they possessed themselves), which eventually led to submission of the Soviet files as evidence for the appeal. It was now official and incontrovertible: Any execution of John

Demjanjuk for Ivan Marchenko's atrocities would be a gross miscarriage of justice and an embarrassment to the five governments who had allowed it to happen.

Demjanjuk's problems did not end there. Rather, Israeli officials clearly revealed that they were acting in bad faith. Despite the revelation that Demjanjuk had been singled out by a malicious collusion of Cold War superpowers, and despite their dwindling support from the Israeli media, prosecutors still did not retract the charges. They argued before the Israeli high court that even if he were not Ivan the Terrible, then Demjanjuk certainly must have been a war criminal in Sobibor or elsewhere (in essence conducting a rump appeals-level trial of Demjanjuk on unrelated charges). Other Israelis, including the man who almost blinded Sheftel, filed petitions to enjoin Demjanjuk's deportation so that he could be tried for other war crimes.

It is hard to explain this stubborn certainty of Demjanjuk's wickedness, even after events had exposed the initial accusations as a case of government-coordinated mistaken identity. At this point there was no more reason to suspect Demjanjuk of war crimes than there was to suspect any other Ukrainian immigrant of his generation. But the cloud of presumed guilt continued to hang over his head. The Israeli Supreme Court let Demjanjuk languish in his cage for another year after his appeals hearing, while the judges worked on their legal opinion (rather than letting him go once the decision was made and dragging out the process while he was a free man). At the end of this long year, the portion of the opinion justifying Demjanjuk's release reportedly took only 13 pages, roughly one page for each month of his post-hearing imprisonment. (The remaining hundreds of pages that were written on Demjanjuk's time, so to speak, focused on defending Israel and the Israeli district court for how they handled the initial trial.) The Supreme Court then held the man for weeks more while judges reviewed various petitions to suspend his deportation. Other nations also made it clear that Demjanjuk's impending freedom did not persuade them of his innocence. France threatened to arrest Demjanjuk if he entered the country. The U.S. Justice Department announced that Demjanjuk could not return to the United States even if he won an acquittal. The nightmare continued.

But now that the government conspiracy had been unearthed, political voices began speaking out on Demjanjuk's behalf. Ukraine's government opened its arms to the exile, agreeing to accept him as a resident. Then the 6<sup>th</sup> District Circuit Court of Appeals restored Demjanjuk's U.S. citizenship, rebuking the Justice Department. The Court ruled that Demjanjuk's ordeal had been brought about through "prosecutorial misconduct," a case of "fraud on the court." Renowned Nazi hunter Simon Wiesenthal issued a statement from his home in France that Israel should let Demjanjuk depart. Even the Israeli officials who initially planned Demjanjuk's show trial endorsed deporting him, admitting that any other legal case they might assemble against him would be unlikely to stand up in a court of law. The retired Ohio autoworker therefore finally received permission to return

home. The media quickly lost interest in Demjanjuk – leaving Americans with the dwindling memory of a man spared the hangman’s noose only because his supporters were willing to comb through the government’s trash in search of a conspiracy. It was the type of story on which widespread distrust of government bureaucracy is based.

Looking back, one can only speculate as to why authorities in several governments were willing to collude in an unjust execution. But it is striking that each government bureaucracy served to gain from Demjanjuk’s death. The KGB plot against Demjanjuk drove a wedge between America’s Ukrainian and Jewish communities, undercutting their mutual anti-Soviet activities – and also allowed the USSR to build an image of complying with U.S. and Israeli efforts to bring war criminals to justice. Poland, by remaining silent, was able to avoid antagonizing the Soviet Union at a time when tensions surrounding the collapse of communism had destabilized Eastern Bloc relations. Germany, laboring under the shadow of its Nazi past, could avoid appearing to shelter accused war criminals if it simply stayed out of the whole affair.

The Justice Department’s Office of Special Investigations also stood to gain from sending John Demjanjuk to the executioner. In their case, however, one need not speculate about the self-interested motives guiding their decision to commit “fraud on the court.” The reason is that, among the trash-can documents discovered by Demjanjuk’s supporters, memos appeared laying out how OSI attorneys viewed the case. For example, the head of the Subcommittee on Immigration wrote to OSI in 1978 to warn them against failing to prosecute Demjanjuk successfully. “We cannot afford the risk of losing another decision,” he wrote. Another failure “would nullify and gravely jeopardize the long and persistent efforts of this Subcommittee in ridding this country of these undesirable elements.” The man who headed OSI until 1981 seconded this opinion. “It was one of the first cases we tried, and we were very much on the line. If we had lost that case, we probably would have had a very short life span.” A memo by one OSI attorney during the judicial proceedings called for withholding the evidence in their possession because it would “undermine and prejudice” the Israel prosecution and might expose “individuals whose identities we would want to protect.” They set up Demjanjuk because it was in the clear interest of the bureaucracy to do so.

Which leaves Israel. Superficially, it may appear that the Israeli government abused Demjanjuk worse than any of the other conspirators in this story. Certainly the nation’s establishment was blinded by a desire for vengeance, embarrassing itself by conducting judicial proceedings that did not represent a fair procedure and did not even seem particularly judicial. Israel’s governmental representatives constructed a disingenuous case against Demjanjuk and then held him in prison for many months after defense attorneys exposed their flimsy deceptions. The high court moved with unconscionable sluggishness before releasing a man who had already spent a tenth of his life in a



dehumanizing prison – no doubt because, just years before, public opinion almost uniformly considered him a genocidal mass murderer. “Reasonable doubt” about his guilt did not overcome the reluctance to open his cage. And the many ambitious political figures who grandstanded during Demjanjuk’s ordeal obviously stood to gain from their visible stance against a widely reviled enemy of the state. In short, Israeli authorities also acted on selfish interests when choosing to cage a proxy for “Ivan the Terrible.”

That being said, revenge is sweet only when justice catches up with the right person. More than the authorities anywhere else, Israeli officials had something beyond mere bureaucratic survival motivating their aggressive actions. As residents of the world’s only Jewish state, seeking to avenge a continent-wide campaign of genocide conducted against 6 million of their coreligionists, many Israelis first and foremost sought justice. True, they initially rushed to judgment and stubbornly ignored the mounting evidence against their presuppositions. But keep in mind that Israel knew it was facing an international community that had often sheltered the Nazi war criminals living within their borders. They had every reason to be skeptical of foreign experts and foreign law-enforcement activities, knowing how many times government conspiracies had worked to protect the guilty rather than to frame the innocent. It was, perhaps, a natural human reaction to wait until the last minute to let this one go.

Sadly, though, the end of the story is that the U.S. government did not want to let this one go. Demjanjuk’s peace did not last long. Four years after restoring his citizenship, U.S. District Judge Paul Matia of Cleveland revoked it again based on new Justice Department claims. As the Associated Press casually describes the new position in April 2004: “Though it years ago abandoned a claim that he was the notorious Ivan the Terrible at Poland's Treblinka death camp, the Justice Department maintained that Demjanjuk had persecuted civilians during World War II at five Nazi concentration camps...” Oh, I see, they knew he was a war criminal before they had any idea which one. Sure sounds like a bureaucracy trying to recover from its embarrassment for attempting to hang a man for someone else’s crimes, doesn’t it? No wonder we are cynical.