

THE INTERNATIONALIZATION OF ATROCITY: JOHN DEMJANJUK AND THE POLITICS OF POST-WAR JUSTICE



Росія

Grösse: 175 cm
 Gesichtsform: **oval**
 Haarfarbe: **dkl blond**
 Augenfarbe: **grau**
 Besondere Merkmale: **Narbe auf dem Rücken**
ДЕМ'ЯНЮК

Familiennamen: **Demjanjuk**
 Vor- und Vatersname: **Iwan/Nikolai**
 geboren am: **3.4.20**
 geboren in: **Duboi machariwzi/Saporosche**
 Nationalität: **Ukrainer**
 Abkommandiert am **22.9.42** zu **2.9.43**
 Abkommandiert am **27.3.43** zu **1.6.43**

Empfangene Ausrüstungsgegenstände:

Mütze:	1	Koppel:	
Mantel:	1	Seitengewehr- tasche:	
Bluse:	1	Handschuhe:	
Hose:	1	Unterhemd:	1
Stiefel:		Unterhosen:	1
Schnurschuhe:	1	Wollweste:	
Socken:	1	Badehose	
Fusslappen:		Brille	1
Essgeschirr:			
Brotbeutel:			
Trinkbecher:			
Feldflasche:			
Wolldecken:	1		
Gewehr Nr.:			
Seitengewehr Nr.:			

Ausgegeben: Richtig empfangen:

Source: Yad Vashem Photographic Archives

AN UNDERGRADUATE HONORS THESIS PRESENTED TO THE
DEPARTMENTS OF INTERNATIONAL STUDIES AND RUSSIAN, EAST
EUROPEAN, AND EURASIAN STUDIES

BY
CLAIRE E. AUBIN

SPRING 2016

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Acknowledgments

There are a number of people who deserve far more gratitude than I can possibly offer them, but I will try my best to do so here. I am, first and foremost, thankful to my friends and family for their constant support and willingness to listen to even the most banal discussions of my writing and research processes. Special thanks go out to Michaela Giunchigliani for providing me with caffeine and motivation, Haley Rivet for the solidarity, and Lisa and Marie Aubin for encouraging me to write about the things that matter.

This project would not have been possible without the financial assistance of the Undergraduate Research Opportunities Program or the logistical help of the Oregon Consortium for International and Area Studies administrative staff. Archivists at the U.S. Holocaust Memorial Museum and the University of Colorado Boulder were indispensable to my research.

Finally, none of this thesis would have been written without the help of Dr. Julie Hessler, who has provided exceedingly useful advice for all of my projects over the last few years and this one in particular, and whose ineffable enthusiasm and genuine concern make her the best advisor a student could hope for. The University of Oregon is lucky to have her.

Abstract

In the years immediately following the Holocaust, the world attentively watched while infamous Nazis were tried at Nuremberg, some convicted of heinous crimes and some not. The world has, for the most part, not stopped watching since. Post-Holocaust war crimes trials have always been the subject of both political and legal controversies, and are often highly reflective of the changing nature of justice. One such set of trials, brought to near-immediate global attention in the 1980s, centered around the case of Ivan “John” Demjanjuk, a Ukrainian autoworker living in the suburbs of Cleveland, Ohio. Demjanjuk became the first naturalized U.S. citizen to be denaturalized twice, the first accused Nazi extradited from the U.S. to Israel, and the accidental poster boy for the didactic capacity of the international legal system. He was also the subject of one of the most publicly botched investigations in U.S. history.

The international character of the investigations, trials, and crimes of which Demjanjuk was accused were largely affected by post-war political climates, and are demonstrative of the complicated nature of war crimes trials. The Demjanjuk case calls into question the efficacy and redemptive abilities of a global legal system so tied to external political realities, as well as highlights the failures and strengths of that system as the arbiter of justice. These trials very clearly illustrate the difficulties faced by international legal bodies tasked with confronting the crimes of the Holocaust. This thesis examines the effects that political and social circumstances have on the development of a specific war crimes trial, while offering contextual information on the broader nature of post-war justice for the victims and perpetrators of atrocity. Primary and secondary source research were conducted for this project, through the use of both existing literature and archival documents.

Introduction and Historical Background

“The Israeli court psychiatrist who examined Eichmann found him a ‘completely normal man, more normal, at any rate, than I am after examining him,’ the implication being that the coexistence of normality and bottomless cruelty explodes our ordinary conceptions and presents the true enigma of the trial.”

– Amos Elon, introduction to *Eichmann in Jerusalem* by Hannah Arendt¹

As the international political landscape has transformed in the seven decades since the end of World War II, so too has the international legal landscape. The law as a conceptual body has been altered and amended to reflect changing political norms and social values. It has served as the source of new constitutions, the bane of globalization, and is one of the few things that unites most of the world. This is perhaps most true in the aftermath of atrocity. Following the Holocaust, an international community seeking solace for something almost too horrible to comprehend turned to the law as an extended coping mechanism. War crimes trials, though they have existed for nearly as long as warfare itself, breathed new life into the international legal system after WWII and redefined previously-held notions of justice.

Immediate post-war trials at Nuremberg established an international thirst for justice for both the victims of the Holocaust and the millions of soldiers who died fighting the Nazis. People the world over anxiously listened to their radios or watched newsreels in the hope of being a witness to a new kind of legal and political spectacle. As more Nazis were uncovered in the years after the war, interest in the outcomes of their trials never particularly waned. The wounds of the Holocaust were still fresh, and everyone wanted to observe the dispensation of justice to war criminals. Interest in finding Nazis to bring to trial in the first place, however, diminished substantially. Or at least, it did for a period of time. There were, of course, ongoing efforts to catch the ‘big fish’ – those who had real power in the Nazi Party – but the rank-and-file

¹ Amos Elon, "Introduction," in *Eichmann in Jerusalem: A Report on the Banality of Evil*, by Hannah Arendt (London: Penguin Books, 2006).

² In this thesis, I generally use the first name “John” when referring to Demjanjuk. This is partially

Nazi perpetrators not immediately prosecuted at Nuremberg or upon their return to the Soviet Union were, for the most part, left alone.

When Adolf Eichmann was captured by Mossad agents in Argentina and brought to Jerusalem for trial in the early 1960s, his trial re-contextualized the relationship of the Holocaust, and war crimes in general, to legality. All of a sudden, war crimes were global in nature; they weren't limited by time or geography and could be tried anywhere, by anyone. When Hannah Arendt covered the Eichmann trial for *The New Yorker*, subsequently transforming that coverage into a book titled *Eichmann in Jerusalem*, she famously introduced the world to the concept of the "banality of evil." However, she also spent much of the book discussing what life in Jerusalem was like during the trial, how it mattered to everyday Israelis and Holocaust survivors alike, expressing awe at the enormity of the fall-out of the Holocaust and at the unexpected smallness of the people guilty of its perpetration. Arendt's book was the first to truly touch on the international nature of the law in its navigation through new and treacherous waters. She gave us a new way to think about the Holocaust, one that was uniquely applicable to nearly all other war crimes trials that would follow in its wake. It was in this new global legal context that the trials of Ivan "John" Demjanjuk took place.²

In the late 1970s and early 1980s, accusations that a Ukrainian Nazi-turned-autoworker named John Demjanjuk had been found in a quiet Cleveland suburb exploded across the American consciousness. Working off tips given to them by a Ukrainian journalist, the U.S. Department of Justice had submitted a request for the revocation of Demjanjuk's citizenship on the grounds that he had lied on the immigration paperwork that had allowed him into the United

² In this thesis, I generally use the first name "John" when referring to Demjanjuk. This is partially because he formally Anglicized it in 1958, partially because that is how he is named in most other literature on his case, and partially because his relationship to the specter of 'Ivan the Terrible' is already fraught enough without my adding to it.

States. This would not normally have attracted national attention, except Demjanjuk's case was unique; the D.O.J. thought that he hadn't just lied on immigration paperwork to get a visa, he had also lied to avoid detection as a Nazi concentration camp guard. Demjanjuk would go on to become the first accused war criminal extradited to Israel, the first U.S. citizen to be denaturalized twice, the eye of an international media hurricane, the subject of two different trials for two different people accused of two different crimes, and a household name in much of the world. At the time that Demjanjuk first came to America's attention, no one could have predicted the series of events that made up one of the most controversial war crimes cases in international legal history.

Initially, when Demjanjuk gained recognition in the United States, it was simply as an accused Nazi. However, when allegations emerged that he was not just any Nazi, but rather one considered an extremely high-value target, the entire scope of the case against him shifted dramatically. "Ivan Grozny," which translates roughly to 'Ivan the Terrible,' was the nickname given by Jewish prisoners at the Treblinka extermination camp to a particularly sadistic Ukrainian guard in charge of running the diesel engine whose fumes were used to fill the gas chambers. Ivan the Terrible was no ordinary Nazi, but rather one possessed of inhuman cruelty and malice. Survivors of Treblinka said that Ivan, "holding a heavy lead pipe or a bayonet," would beat them "savagely as they moved into the [gas] chamber," and that he "often jabbed at them with his knife to hurry them along; amusing himself by slicing a breast or cutting an ear."³ He was, without a doubt, the most terrifying guard at Treblinka, the archetypal bloodthirsty Nazi whose raging sadism and anti-Semitism had blotted out any semblance of humanity he might've once possessed. It was for these crimes that Demjanjuk was sentenced to death in Jerusalem in

³ Tom Teicholz, *The Trial of Ivan the Terrible: State of Israel vs. John Demjanjuk* (New York: St. Martin's Press, 1990), 10.

April of 1988. To the amazement of his supporters and the horror of Holocaust victims, Demjanjuk's guilty verdict was overturned in 1993 based on new Soviet evidence.

After returning home to the United States following his release from Israeli prison, Demjanjuk was given a new set of charges, based on the same Soviet documents that had been used to free him from the guilt of having been Ivan the Terrible. The exculpatory information that had been found in newly-opened Soviet archives proved not that he hadn't been a Nazi concentration camp guard, but that he hadn't been one at Treblinka. Instead, he had likely been a guard at the Flossenbürg, Majdanek, and Sobibor concentration camps.⁴ Convincing evidence placed Demjanjuk at Sobibor during the exact same time period as Ivan the Terrible had been at Treblinka, and there was also evidence that the true last name of Ivan Grozny had been Marchenko. It was his time at Sobibor that would lead to a 2011 conviction in Munich, Germany, for 27,900 counts of acting as an accessory to murder. Following his conviction, Demjanjuk was sentenced to five years in prison, which were commuted for time served due to his old age and supposedly fragile physical state. He died in a nursing home in Bad Feilnbach, Germany in 2012. When Demjanjuk died, his appeals process remained incomplete, which according to German law means that he was still technically not guilty at the time of his death.

Now is perhaps the time to very briefly retrace some of the steps that would have led Demjanjuk to the gates of a concentration camp. Born in the small village of Dubovy Makharyntsy, Ukraine, in 1920, Demjanjuk worked on a farm until he was drafted into the Soviet Red Army in 1941.⁵ He was captured by the German Army in May 1942 during a battle in Eastern Crimea, and was then taken to a camp for Soviet prisoners of war (POWs) in Chełm, Poland. From there, he was brought to the Trawniki concentration camp outside Lublin, Poland.

⁴ Lawrence Douglas, *The Right Wrong Man: John Demjanjuk and the Last Great Nazi War Crimes Trial* (Princeton: Princeton University Press, 2016), 96.

⁵ "Anger Simmers in Demjanjuk's Home Village," *The Local*(Munich), December 20, 2009.

At Trawniki, Jews and other political prisoners were held or subjected to forced labor, while select Soviet POWs were transformed into Nazis tasked with carrying out *Operation Reinhard*, the campaign to exterminate Jews in the Polish Generalgouvernement.⁶ POWs selected to become *Trawnikimänner* (Trawniki men) would go on to be auxiliary policemen with SS units, conducting ghetto liquidations and mass deportations, or, as in Demjanjuk's case, guarding concentration camps. Though this particular section of Demjanjuk's history was never truly confirmed by Demjanjuk himself, the evidence used to convict him overwhelmingly points to its accuracy. Accounts collected during and after the war suggest that the POWs chosen for service as Trawniki men were those predisposed to violence, native anti-Semitism, anti-Soviet and anti-communist politics, and a desire to escape POW camps, in which millions of Soviet prisoners would die by the war's end.⁷ From Trawniki, Demjanjuk was sent to Majdanek, then Sobibor, then Flossenbürg. Demjanjuk's time at Trawniki produced the most controversial piece of physical evidence against him (an identification card called "the most exhaustively examined document in legal history" by author Lawrence Douglas) as well as forged friendships with the guards who would eventually provide the testimony that led investigators straight to him.⁸

With regard to the case of John Demjanjuk, the goal of this paper is not to prove or disprove his guilt or innocence, as so many other books and articles have already done. Demjanjuk lives now among the annals of history, occupying a tenuous position between certainty and a fractional amount of reasonable doubt that may never be fully clarified. Instead, through this paper, I have sought to discover how – by which legal and political mechanisms both domestic and international – he ended up in this position. Justice (like the laws that

⁶ P. Black, "Foot Soldiers of the Final Solution: The Trawniki Training Camp and Operation Reinhard," *Holocaust and Genocide Studies* 25, no. 1 (2011): 1-6.

⁷ David Alan Rich, "The Third Reich Enlists the New Soviet Man," *Russian History* 41, no. 2 (2014): 282.

⁸ Douglas, *The Right Wrong Man*, title page inverse.

facilitate it) is a complex and constantly evolving process, subject to historical interests and the motivations of the men, women, and state bodies who administer it. It is the goal of this paper to seek out and identify the inconsistencies that have allowed Nazi war criminals to escape justice in the first place, as well as to examine the efficacy and methods used by the international legal system when attempts at achieving post-war equilibrium are made long after the fact, using John Demjanjuk's experiences as a case study. The Demjanjuk trials provide a unique perspective on these issues, in that they can show how the intervention of individual, collective, and state politics can so obviously direct legal processes and outcomes.

I. Post-War Paths and Warpaths

“The Old World nightmares had been their past; the American Dream was their future.”
– Tom Teicholz, author of *The Trial of Ivan the Terrible*⁹

In the years immediately following World War II, a war-ravaged Europe was in both physical and political shambles, and millions of people – over 250,000 of which were Jews who had survived the genocidal intentions of the Nazis – were now living in Displaced Persons, or “DP,” Camps.¹⁰ The camps, intended simply as transitional housing for refugees before rapid repatriation, were expected to last around six months, at which time all displaced persons would have been returned to their home countries and the camps’ usefulness would have receded.¹¹ This did not take into account the overwhelming desire of many of the camps’ inhabitants to remain outside their home countries. These inhabitants saw the post-war DP system as an opportunity to emigrate away from the horrors of home, from political repression, and in many cases, from the reckoning they would undoubtedly face if sent back. As a result, the camps were filled with refugees who had nowhere to go.

After the expected six months came and went, those months stretched into years, and the repatriation process slowed to a crawl. More people wanted to start new lives in new countries than wanted to return home, and the organizational system in place to make this happen was sorely lacking. Some states – a newly-established Israel, for example – began to accept mass quantities of DPs, though in Israel’s case it was, naturally, with a preference towards Jews. In response to the huge number of DPs lining up to emigrate to the United States, President Harry Truman issued an executive order which applied extant immigration law and policies to

⁹ Teicholz, *The Trial of Ivan the Terrible*, 23.

¹⁰ "Displaced Persons," United States Holocaust Memorial Museum, January 29, 2016.

¹¹ "ORT and the Displaced Persons Camps," World ORT, 2010.

displaced persons in Europe. While the order served as an effective stopgap measure, it lacked the specificity desired by members of the American political elite.

Truman was pushed into eventually signing what author and former head of the U.S. Justice Department's Office of Special Investigations (OSI) Allan Ryan called the "brazenly discriminatory" Displaced Persons Act of 1948, which provided a more concrete outline of exactly who would be allowed into the U.S., and under which circumstances.¹² The DP Act came with very specific stipulations: fully one-quarter of the 200,000 available spots were reserved for *Volksdeutsche* (ethnic Germans living outside the Reich), 40 percent were for refugees from annexed Soviet territories, and 30 percent were for farmers. On top of this, the conditions of the act were restricted to persons who had entered a DP Camp after September 1, 1939 and on or before December 22, 1945, effectively excluding the 100,000 Jews who fled Poland in 1946. In other words, America would accept almost anyone but the Jews.¹³ Of the 200,000 DPs who were authorized to enter the U.S. through the DP Act, only 17,000 (around 8 percent) were Jewish.¹⁴

Only one in five DP camp residents was Jewish, the remainder of the inhabitants being those who fled their homes for reasons previously stated. As a result of this imbalance in numbers, Jews and other survivors of the terror of the Holocaust were forced to live side-by-side with native collaborators and perpetrators, "handmaidens of Nazism," who had willingly taken part in the killing of millions of their kin.¹⁵ While the majority of non-Jewish DPs were, of

¹² Allan A. Ryan, *Quiet Neighbors: Prosecuting Nazi War Criminals in America* (San Diego: Harcourt Brace Jovanovich, 1984), 16.

¹³ *Ibid.*

Douglas, *The Right Wrong Man*, 28.

¹⁴ "Displaced Persons: Administration," United States Holocaust Memorial Museum, January 29, 2016, under "Establishing a Jewish Society."

¹⁵ Ryan, *Quiet Neighbors*, 14.

course, not guilty of committing atrocity, the alarming percentage of perpetrators living in the camps was an open secret.¹⁶

When the Displaced Persons Act went into effect, due to its implicit bias against Jewish DPs, it was almost inevitable that at least some native collaborators would avoid detection and come to the United States. In fact, it was actually fairly simple to do so. If a collaborator indicated that they had “assisted the enemy in persecuting civil populations” or “voluntarily assisted the enemy forces,” the International Refugee Organization would not certify them as a displaced person, rendering them unable to emigrate.¹⁷ There were obvious flaws with this system. Firstly, a collaborator could simply invent a new personal history – one in which they had never worked at a concentration camp or as a ghetto liquidator or policeman – and either forge the documents to prove it or pretend they had been lost in the chaos of their flight from home. If the story was convincing enough, the IRO would be none the wiser. If the collaborator was a member of the Volksdeutsche, IRO screening could be circumvented altogether. Volksdeutsche were unable to truly be qualified by the IRO as “displaced persons” because they had voluntarily left their homelands without threat of persecution by the Nazis. When the DP Act authorized 50,000 visas for Volksdeutsche, it allowed them to move forward in immigration processes without even the vaguest screening by the IRO.

After IRO screenings (or not, in the case of Volksdeutsche), hopeful westward émigrés were investigated by the U.S. Army Counter Intelligence Corps (CIC), who had “no access to the records that would indicate that a Ukrainian, Baltic, or other Eastern European applicant had been a Nazi collaborator.”¹⁸ One key source used by the CIC to make a determination of war criminality was the U.S. State Department’s *List of Organizations Inimical to the United States*,

¹⁶ Ibid.

¹⁷ *Refugees and Displaced Persons*, December 15, 1946, IRO Constitution.

¹⁸ Ryan, *Quiet Neighbors*, 20.

published in 1951. Though this list included a number of Nazi divisions and subdivisions, as well as arms of the Soviet state, it was missing one crucially important organization: the Trawniki camp, at which many a Soviet POW-turned Nazi collaborator had been forged. In an article on Jack Reimer, a famous Soviet Volksdeutsche war criminal who had been trained at Trawniki and successfully immigrated to the U.S., Eric Steinhart says “by virtue of its unfamiliarity with Trawniki and of the inaccessibility of Soviet-held documents, the CIC incorrectly concluded that nothing in Reimer’s past categorically disqualified him.”¹⁹ Through a combination of “political plasticity, tenacity, and an acute perception of his ability to reinvent himself,” Reimer, like possibly tens of thousands of other Nazi war criminals, was able to fluidly slip through the multitudinous cracks of the post-war international immigration system, all the while exploiting its shortcomings for his benefit.²⁰

If Demjanjuk’s prosecution is to be believed, he also took advantage of both the immediate post-war chaos and the specific organization of the Displaced Persons Act in order to leave his DP camp behind and begin a farming job in rural Indiana for which he was supremely underqualified. Demjanjuk’s own testimony as to his whereabouts throughout the war regularly changed over the course of his trials – he usually agreed that he had been a POW, but that he had spent the majority of the war in a POW camp near Chełm, Poland. At one time, he said that he had joined the Russian Liberation Army, a group organized by the Nazis to fight the Red Army. At other times he asserted that he had never fought against the Soviets, or even that he simply couldn’t remember. On his DP forms, he said that he had spent the war as an independent farmer in Poland.²¹ In any case, the documents Demjanjuk submitted to the CIC made no indication of

¹⁹ E. C. Steinhart, "The Chameleon of Trawniki: Jack Reimer, Soviet Volksdeutsche, and the Holocaust," *Holocaust and Genocide Studies* 23, no. 2 (2009): 250.

²⁰ *Ibid*, 242.

²¹ Douglas, *The Right Wrong Man*, 29.

his having been anything other than a former German prisoner and Soviet citizen hoping for a chance at a new life. And with that, he, along with his young wife and daughter, boarded the U.S.S *General W. G. Haan* in January 1952 and set sail for New York City.²²

If his supporters, on the other hand, are to be believed, any lies told by Demjanjuk in his efforts to emigrate were either those of omission or simply intended to prevent his repatriation to the Soviet Union, where he believed he would be summarily executed, having been a former Red Army soldier who surrendered to the Germans.²³ For the most part, his defense did not deny his record falsification, they simply argued that it was justified. In both circumstances presented by lawyers on either side of the trials, it is clear that Demjanjuk's immigration to the United States was facilitated by an international system which lacked the proper safeguards against falsified documents, and which was far more concerned with keeping Jews and other political 'undesirables' out than it was with screening the ones who had found a way in.

While in America, Demjanjuk was for all intents and purposes a model citizen. After his brief stint in Indiana, he moved to Seven Hills, Ohio, where he spent decades as a diesel engine mechanic at the Ford auto plant. He and his family attended the local Ukrainian Orthodox church regularly, he had ties to the community, and he seemed to have finally been living the American Dream so many DPs hoped for. In an article for the *Public Administration Review*, Dr. Jerome Legge described the experiences of former DPs like Demjanjuk, saying "ironically, what the victims and perpetrators shared, in many instances, was a desire to leave the war years behind

²² Marcel Rosenbach and Jan Friedmann, "Delayed Justice: Sixty Years Later, Alleged Nazi Guard May Stand Trial," *Der Spiegel* (Hamburg), November 18, 2008.

²³ Douglas, *The Right Wrong Man*, 55.

and to begin a new life in America. More extensive discussion of accountability only began during the 1970s.”²⁴

And indeed, there was very little effort in the United States to seek out and prosecute former Nazis after the war. The ones who had found their way into the U.S. were simply accepted as having done so or ignored entirely, and as long as they didn't make waves, there was neither a desire to rehash the dramas of the Nuremberg trials nor the drive to establish the U.S. as 'tough on Nazis.' Even the 1962 Adolf Eichmann trial, the particulars of which would be re-played later in the Demjanjuk case, “had virtually no impact on prosecutions in the United States.”²⁵ However, the 1970s marked a sea change in the U.S.' attitude regarding the Holocaust; people wanted (and were finally ready) to talk about it again, and Holocaust remembrance efforts by both the general public and the government began to spring up throughout the country. It was during this time period that Demjanjuk was first named as a Nazi perpetrator.

In 1973, an ethnic Ukrainian journalist named Michael Hanusiak published a book entitled *Lest We Forget*, in which he argued against the West's continued protection of former Nazi war criminals, especially those from Ukraine. After visiting Western Ukraine two years later and allegedly gaining access to the closely guarded Soviet state archives, he published an extended second edition of the book, which specifically implicated a wide cross-section of Ukrainians in Holocaust perpetration.²⁶ Using that information, Hanusiak compiled a list of seventy Ukrainian war criminals and sent that list to a New York senator, who forwarded its

²⁴ Jerome S. Legge, "Prosecuting Nazi Collaborators and Terrorists: Eli Rosenbaum and Managing the Office of Special Investigations," ed. Norma Riccucci, *Public Administration Review*, March/April 2011, 277.

²⁵ Teicholz, *The Trial of Ivan the Terrible*, 24.

²⁶ Michael Hanusiak, *Lest We Forget* (Toronto: Progress Books, 1976).

contents to the Immigration and Naturalization Service's (INS) newly formed Nazi hunting unit.²⁷ Included on the list was one "Iwan Demjanjuk." An investigation commenced.

What is most troubling about this particular time period – the one in which Demjanjuk and possibly thousands of others like him were able to lie, or at least tell half-truths, on official documents, use those documents to emigrate and assimilate to a new society, and live happily for decades without a real threat of being caught – is not simply that the international legal and political system didn't care about possible Nazis in their midst, it's that it didn't even feign interest. Had Holocaust survivors not realized that their time was running out and began to urge immediate action, there might not have even been an effort on the part of the U.S. government at all, let alone a belated one. The one body theoretically equipped to deal with Nazis in the U.S., the INS, had almost no protocol in place for war criminals, aside from treating them similarly to all other cases of fraudulent immigration, "as if Nazis were no different than quislings or prostitutes who had falsely entered the country."²⁸

One of the most perplexing issues faced by the international justice system is its continued inability to foresee potential threats. The Demjanjuk case illustrates this quite clearly. Given the sheer quantity of immigrants that flooded into the U.S. from DP camps, it was only logical to assume that many of those DPs were participants in the atrocities of the war. Rather than attempt to prevent this, the U.S. government passed the buck until it became clear that action needed to be taken almost thirty years later. While the international legal system as it stood before the war could not possibly have prepared for the horrors of the Holocaust, the determinations made in its immediate aftermath fell woefully short of just.

²⁷ Richard L. Rashke, *Useful Enemies: America's Open-door Policy for Nazi War Criminals* (Harrison, NY: Delphinium Books, 2013), Ch 15.

²⁸ Teicholz, *The Trial of Ivan the Terrible*, 24.

II. Extradition and Jurisdiction

“Up until they really started deporting people, it was just a matter of ‘Well, let those guys [at the OSI] play around’”

– Michael Berenbaum, scholar and co-founder of the U.S.H.M.M.²⁹

When dealing with a supra-national crime, such as those of the Holocaust, the international legal system is faced with a series of complex choices, all of which determine the course of trial proceedings and may fundamentally alter trial outcomes. Often, the first question states must ask of themselves in mounting an investigation and prosecution of war crime sounds deceptively simple: Who has the right to pursue justice in the case?

By virtue of the very nature of the crimes of which he was accused, Demjanjuk’s alleged victims were, for the most part, dead. The survivors who remained were scattered throughout the globe. The United States could (and eventually did) denaturalize and deport him for having lied on his immigration papers, but there was at that time no real precedent for trying Nazi war criminals in the U.S. The crimes themselves had not taken place on U.S. soil, the U.S. had not perpetrated them, and the trial’s political and financial expenses were therefore unjustifiable. Thus, the twin issues of extradition and jurisdiction entered the Demjanjuk case.

Following Demjanjuk’s first set of denaturalization proceedings, the Israeli government requested that he be sent to Jerusalem to stand trial. The United States’ compliance with their request marked the first time that the U.S. willingly extradited an accused war criminal to Israel.³⁰ Extradition traditionally requires clear and logical reasoning, and is usually highly state-specific. Nearly all cases of extradition take place under the conditions of bilateral extradition treaties, with the occasional extradition outside of a treaty due to extraordinary or extenuating

²⁹ Aaron Freiwald, "Buchanan Fuels Anti-Nazi Unit Controversy," *Legal Times* (Washington, DC), October 6, 1986.

³⁰ Rena Hozore Reiss, "The Extradition of John Demjanjuk: War Crimes, Universality Jurisdiction, and the Political Offense Doctrine," *Cornell International Law Journal* 20, no. 2 (Summer 1987): 282.

circumstances. The U.S. had extradition treaties with both Israel and Germany at the times that Demjanjuk was extradited.

Similarly to the circumstances of the United States, the Holocaust was not perpetrated by Israelis or in Israel. However, the Israeli legal system had already anticipated these questions of jurisdiction when enacting the Nazis and Nazi Collaborators Punishment Law on August 1st, 1950. It was on the basis of this law, “enacted expressly for the purpose of providing Israel with the legal framework to punish those responsible for the Nazi persecution of the Jewish people,” that Israel planned to try Demjanjuk.³¹ Israeli law specifically provides for the ability of courts to try all accused Nazis for their crimes, because at the time of the state’s founding, it was understood that there were still a number of Nazi war criminals at large globally, and that Israel as a Jewish state had a special interest in seeking justice for those crimes. This special interest was accepted by nearly all Western states, with “international customary law recogniz[ing] Israel’s right to try Nazi crimes [...] in light of the international character of these crimes and the nexus between the State of Israel and the events of the Holocaust.”³²

In *The Extradition of John Demjanjuk*, lawyer Rena Hozore Reiss posits that the Demjanjuk case “turns on the [...] difficult issues regarding the legal competence of a state to try a person for crimes committed outside its territory under legislation passed after the crimes were committed.”³³ In order for Israel to establish its legal competence to try Demjanjuk in Jerusalem and for the United States to justify his extradition, the two states needed to rely on the legal principle of universality. The universality principle offers jurisdiction to any state irrespective of the nationality of the accused or their victim and of the location the offense was committed. It is

³¹ United States Holocaust Memorial Museum, Anti-defamation League Memo prepared by Evan Chaim Goldman, 20 February 1987, Record Group 06, Sub-group 18, Folder 01, Fiche 01, 2.

³² *Ibid.*, 6.

³³ Reiss, “The Extradition of John Demjanjuk,” 283.

limited almost solely to issues relating to mass atrocity and war crime, and is “premised on the notion that certain offenses constitute crimes against all humanity.”³⁴ Had it wanted to, according to the principle of universality, the United States could potentially have tried Demjanjuk for war crimes in addition to revoking his citizenship. That being said, the Israeli state and its supporters believed that it had “a natural right to punish [Demjanjuk’s] crimes,” and the U.S. obliged them the opportunity.³⁵

Germany, on the other hand, did not need to rely on universality for its right to try Demjanjuk. A number of previous war crimes trials in Germany had established a precedent by which extradition could be justified, and Germany was rightly understood by the international community to be the instigator and overwhelming perpetrator of the Holocaust. Though the crimes Demjanjuk was being tried for in Munich had occurred in Poland, not Germany, they were committed while Poland was under the command of the German state, making Germany culpable for the injustices. Germany’s role as the aggressor in World War II and initiator of crimes of the Holocaust made it a highly appropriate place to hold the second set of Demjanjuk trials. It bears mentioning that Demjanjuk was also accused of guarding death camps at Flossenbürg and Majdanek, Flossenbürg being near the German-Czechoslovakian border at the time, but he was only tried in Germany for crimes committed at Sobibor.

The issue of retroactivity also frequently arises in discussions of universality and jurisdiction as they relate to war crime. Retroactivity, or the ability of the law to address or amend legal standards of the past, is especially relevant in cases regarding the Holocaust. No legal definition of genocide existed at the time of its perpetration, so no legal system was truly prepared to deal with its aftermath. Even though universality could have helped the United

³⁴ Other, less-controversial applications of the universality principle include piracy and maritime disputes. Ibid., 301.

³⁵ USHMM, Anti-defamation League Memo prepared by Evan Chaim Goldman, RG-06.018.01.01, 7.

States' ability to try Demjanjuk, the fact that he had not violated a single U.S. law at the time of his alleged collaboration would likely have prevented it.³⁶ The assumption made in many cases is that accused criminals will be tried according to the laws in place at the time their crime was committed, but this often means that the punishment is significantly less severe than the crime. Israel's Nazi Punishment Law was specifically designed with retroactive application of more modern legal models to past genocidal acts and other crimes against humanity, enabling accused Nazis like Demjanjuk to be tried for crimes beyond the comparatively mundane classification of 'murder.'

In direct contrast to Israel, Germany's legal system expressly bars retroactive laws, leading to a "legally compelled, unavoidable obstacle to trying former Nazis for genocide or crimes against humanity."³⁷ The vast majority of German war crimes trials which led to conviction on the basis of crimes against humanity occurred in the immediate postwar period and were held in courtrooms governed by Allied forces. Genocide has been in the German *Strafgesetzbuch* (Criminal Code) since 1954, but only in regards to future crimes against humanity.³⁸ Even though Germany was a relatively early adopter of laws against genocide, its strict prohibition against retroactive legislation prevented the German state from employing genocide as a charge against accused Nazi war criminals. Instead, Demjanjuk was tried for thousands of individual murders, though the crimes were presented as a collective.

In discussing the appropriateness of retroactive laws, lawyer and legal theorist J. T. Woodhouse says that "the test of retroactivity is not 'as from what date were the rules changed?'

³⁶ Douglas, *The Right Wrong Man*, 36.

³⁷ *Ibid.*, 163,

³⁸ "German Law Archive," Criminal Code (Strafgesetzbuch, StGB), November 13, 1998, Section 220a.

but ‘are existing rights altered?’”³⁹ In the case of retroactive laws dealing with genocide, it is fairly clear that the only rights which are amended are those of the victims. Whether codified or not, mass murder was never the right of Holocaust perpetrators, and retroactive laws against having done so assert this fact.

Throughout the entire process of jurisdiction determination and extradition, Demjanjuk’s legal team struggled mightily to find a reason compelling enough for Demjanjuk to be allowed to remain in the U.S. In one such instance of grasping at straws, the team filed an appeal against extradition to Israel by arguing that the U.S.’ recent ratification of the International Convention on the Prevention and Punishment of the Crime of Genocide (also known as the Genocide Convention) amended the U.S.’ extradition treaty with Israel, and “thereby voided the several decisions of the United States [...] which certified [Demjanjuk] as extraditable to Israel.”⁴⁰ The appeal had been a last-ditch effort to keep Demjanjuk from being deported, and it failed. Demjanjuk was deported the day after Circuit Judge Robert Bork roundly rejected the appeal, saying that the Genocide Convention was “not yet in effect in the United States” and that, “even if it were in effect, [he was] not being extradited for the crime of genocide.”⁴¹

Another argument made by Demjanjuk’s legal team, as well as Demjanjuk himself, was that if he had indeed committed these crimes, he had done so while a soldier-turned-POW and under wartime conditions, and could therefore only be extradited by a military tribunal. This reasoning was also dismissed, this time by District Judge Frank Battisti, who said that “prior

³⁹ J. T. Woodhouse, "The Principle of Retroactivity in International Law," *Transactions of the Grotius Society* 41, no. Problems of Public and Private International Law, Transactions for the Year 1955 (January 01, 1955): 78.

⁴⁰ United States Holocaust Memorial Museum, Slip of Opinion on Appeal to Extradition, 27 February 1986, Record Group 06, Sub-group 18, Folder 01, Fiche 03, 1.

⁴¹ *Ibid.*

judicial decisions [did] not support [Demjanjuk's] arguments."⁴² In any case, nearly all trials against Nazis in the decades after Nuremberg had occurred outside the context of a military tribunal, the trial of Adolf Eichmann being one, and there was no reason that Demjanjuk's case shouldn't have been treated like any other.

When the U.S. was deciding where exactly Demjanjuk would stand trial, there was also the question of whether or not the Soviet Union would be an appropriate destination. He would not have been the only accused Nazi to have been sent there – fellow Soviet citizens Karl Linnas and Feodor Federenko were forcibly repatriated to stand trial for Nazi war crimes. In fact, many blame the Federenko investigation for tying Demjanjuk to Treblinka in the first place, as Federenko was a confirmed Treblinka guard, and witnesses who recognized Demjanjuk's photo in an array with Federenko significantly influenced the course of the Demjanjuk investigation.⁴³ However, Linnas and Federenko were not being aggressively sought for extradition by anyone other than the Soviets, whereas Demjanjuk was. Demjanjuk's status as a relatively higher-value target due to his alleged monstrosity made him far more important to the Israeli state, and the U.S. had no reason to cooperate with the Soviets when Israel so deeply desired to try him. The Munich trial took place well after the fall of the Soviet Union, and neither Russia nor Ukraine were particularly eager to try him. Both Federenko and Linnas died in the Soviet Union – Linnas while awaiting trial and Federenko by execution for treason – while Demjanjuk died in Germany, technically free.

The seemingly everlasting sagas of Demjanjuk's extraditions and deportations were very nearly lengthened following his German trial, when Spain requested that he be extradited from

⁴² Frank, Battisti, "MATTER OF DEMJANJUK (N.D.OHIO 1985)," Casetext, November 18, 1983

⁴³ Douglas, *The Right Wrong Man*, 37.

Munich in order to be tried for crimes against the 60 Spanish Jews murdered at Flossenbürg. To this, Germany replied, in so many words, 'enough is enough.'⁴⁴

⁴⁴ Maureen Cosgrove, "Germany Court Rejects Spain Demjanjuk Extradition Request," *Jurist*, June 9, 2011.

III. The Law as Political Theater

“I mean, you don’t hire a theater hall and invite television in order to show Demjanjuk will be acquitted.”

– Yoram Sheftel, Israeli defense attorney⁴⁵

The ‘Demjanjuk Affair,’ as some called Demjanjuk’s trials in Israel, referencing the Dreyfus Affair – a famous French scandal in which a gross miscarriage of justice was done on the basis of anti-Semitism – was as much a series of political gestures as it was legal ones.⁴⁶ There was, of course, no avoiding the politicization of the trials; in many ways, Demjanjuk represented the realization of new political end-goals for the international legal system. If the system could satisfactorily perform its intended function, meaning properly and efficiently convicting war criminals, Demjanjuk would serve as irrefutable proof of its ability to administer justice and bring peace of mind to the survivors of unspeakable atrocity. His trials were the culmination of decades of work on the part of his investigators at home and abroad, as well as major steps in the logical progression of international war crimes trials since 1945. There was far more at stake for international law than simple pronouncements of guilt or innocence.

The political dimensions of Demjanjuk’s trial in Israel were manifold, and all representative of the struggles faced by the international legal community in attempting to dispense some measure of justice to accused war criminals. The trial, “staged to serve the ends of both justice and didactic legality,” offered an opportunity for Israel to express and re-frame its policy towards Holocaust perpetrators in the post-Eichmann world, as well as to use the law as a tool for the development of the historical record.⁴⁷ Where the Eichmann trial had served to establish the Israeli state as one that was uncompromising in its pursuit and condemnation of

⁴⁵ Roma Hadzewycz, "INTERVIEW: Yoram Sheftel, Israeli Defender of John Demjanjuk," *Ukrainian Weekly* (Parsippany), July 14, 1996.

⁴⁶ Douglas, *The Right Wrong Man*, 84.

⁴⁷ Lawrence Douglas, *The Memory of Judgment: Making Law and History in the Trials of the Holocaust* (New Haven: Yale University Press, 2001), 186.

perpetrators of genocide, the Demjanjuk trial was an emphatic re-establishment of that fact. However, rather than being “bundled into a car on his way home from work by a team of Mossad agents,” as Eichmann had, Demjanjuk’s adopted government had willingly sent him to Israel for trial.⁴⁸ Demjanjuk’s trial presented a chance to regain the legal and political legitimacy of Israeli courts as arbiters of justice, which had been called into question during discussions of Eichmann’s capture. The courts’ relatively young age was repeatedly emphasized in criticisms of Eichmann trial proceedings, the implications of which Israel needed to actively fight against.

The metaphorical theater of politics in the Israeli Demjanjuk trials took place, rather fittingly, on a literal stage. The Binyanei Hauma (Building of the Nation) is an international convention center in Jerusalem, containing concert halls, meeting spaces, and auditoriums in which war crimes trials both fictional and literal have been held.⁴⁹ It was here that Demjanjuk’s trial occurred over the course of a year and a half, in a converted auditorium with room for three hundred spectators and live television broadcasters.⁵⁰ Legitimate legal trappings and procedures aside, the trial appeared in many ways to have held a loudspeaker to the mouth of the Israeli state, into which the state reaffirmed its position on the Holocaust and those who willingly and enthusiastically participated in it. Through the trial, Israel conveyed its message: We are not cowed by the temporal distance of the Holocaust, by the disinterest of so many of the world’s citizens, or by the question of who deserves the right to prosecute the past. We have teeth.

In fact, at the end of the trial, the verdict included sections intended specifically to underline the role of the proceedings as commemorative in addition to other, more routine, legal functions. Lawrence Douglas describes this in his book *The Memory of Judgment*, saying:

⁴⁸ Harriet Sherwood, "Adolf Eichmann's Capture, as Told by the Mossad, in Israel Exhibition," *The Guardian*, February 15, 2012

⁴⁹ Robert J. Sawyer, *Frameshift* (New York: Tor, 1997), 46-51.

⁵⁰ Douglas, *The Memory of Judgment*, 186.

In an extraordinary gesture, the trial court that condemned Demjanjuk to death entitled a section of its judgment, “A Monument”: “We shall erect in our judgment, according to the totality of the evidence before us, a monument to their [the victims’] souls, to the holy congregations that were lost and are no more...”⁵¹

In this case, the role of the court as a contributor to collective memory was an inherently political one, in that it used trial outcomes to reflect the power of the Israeli state and legal system as enforcers of historicity. Demjanjuk’s time in Israel was not just as an individual, but also as the embodiment of Nazi evil, who, while playing by the global legal system’s accepted rules this time, Israel would finally vanquish once and for all.

The German trial provided a similar opportunity for the German state to reassert itself in the international legal system. While the trial in Israel had been concerned with demonstrating its ability to prosecute Holocaust perpetrators as a measure of consolidating and validating state power, as well as the role of the state as an intermediary for collective memory, the trial in Munich was a chance for the German state to atone, once again, for the sins of its past. It gave Germany the chance to do this on a global stage. The level of theatrics which had been employed at the Israeli trial were missing from the proceedings in Munich, taking the wind out of the sails of some members of the audience who had hoped to witness a legal spectacle similar to the one that had occurred in Jerusalem. The German court seemed to want to simply get down to the business of justice, absent the addition of the grand memorialistic narrative present in Israel.⁵²

This may well have been a matter of what each state had at stake in their respective trials. Israel needed to prove that it could abide by the rest of the world’s accepted legal standards while simultaneously claiming its reputation as the new legal authority on Nazi war crimes. Germany did not have such an enormous self-imposed burden. In the first place, they did not

⁵¹ Ibid., 187.

⁵² Douglas, *The Right Wrong Man*, 137-148.

need to establish that Demjanjuk was a singularly cruel camp guard, that he was the Nazi bogeyman incarnate, or that he deserved to be held on a pedestal above all other perpetrators and collaborators and bear the overwhelming weight of collective guilt for Holocaust complicity. Instead, Germany just needed to prove he was there. Seemingly simple dichotomies such as this one are actually quite illustrative of the major differences between the two trials.

Where Israel used trials like Eichmann's and Demjanjuk's to test the abilities of its comparatively recently inaugurated justice system, Germany used the Demjanjuk trial to underscore the efficacy of its much more longstanding justice system. During the Third Reich, German courts were fundamentally complicit in the persecution of minorities and were used as an arm of the Nazi state to legitimize fascist genocidal actions.⁵³ The task of repairing this reputation was unquestionably a facet of nearly all post-Holocaust atrocity trials held in Germany, extending far past the days of Nuremberg and into the present. While Israel sought to legitimize itself as a state, Germany remained concerned with re-legitimizing a legal system that had proven so wildly unreliable and unjust in decades past. The political implications of Demjanjuk's trial in Munich had less to do with receiving international applause for a conviction, as they perhaps had in Israel, and more to do with making further amends for wrongs that had been committed on a staggering scale during the Nazi period. The best way for the German state to do this was by abandoning theatrical posturing and pretense – not to mention obvious prejudice – thereby avoiding the allegations of impropriety that Israel had faced.

While traditional forms of domestic and international politics colored nearly every aspect of the Demjanjuk trials, the early years of the investigation and trials were constantly overshadowed by a much larger conflict. The discovery and initial accusation of Demjanjuk

⁵³ "Law and Justice in the Third Reich," United States Holocaust Memorial Museum, January 29, 2016.

occurred in the midst of the Cold War, as did the evidence-gathering process, his first round of denaturalization and deportation, and the Israeli trial. As an ethnic Ukrainian and former soldier for the Soviet Red Army, the heightened level of suspicion placed on Demjanjuk's trial proceedings (to say little of Demjanjuk himself) was tenuously linked to the United States' adversarial relationship with the Soviet Union. Demjanjuk's personal and symbolic relationship with the U.S.' many members of the Ukrainian diaspora, and, in turn, their relationship with the Soviet Union – while a contributing factor to the political nature of his trials – will be discussed in a later chapter.

In *Quiet Neighbors*, Allan Ryan hypothesizes that American anti-Soviet sentiment was a major contributing factor in the decades-long delay between the immigration and prosecution of war criminals:

What on earth had happened to Nazis? Who knew? Who cared? In Germany, the Nazis were cured. Nazism was dead [...] If we wanted criminals, we had only to look around us for members of the "secret battalion." [...] And so, once in this country, the Nazi war criminals who had been laundered through the Displaced Persons Act found that they were, literally, home free. They arrived in an America whose enemies had been their enemies, an America that no longer feared – or even much thought about – Nazis.⁵⁴

American political priorities with regards to the looming threat of Communism had stymied the course of war crimes investigations from the start, preventing collaboration which would eventually prove vital in Demjanjuk's, as well as many others', trials.

Demjanjuk's Israeli defense played directly into Western biases against Soviet practices, and especially Stalin-era legal practices. Yoram Sheftel, the Israeli attorney who eventually became the head of Demjanjuk's defense team, framed the proceedings as being remarkably similar to Stalinist political show trials, given their location, press coverage, and generally grandiose nature. Like the Communists, Sheftel insinuated, Israel wanted to frame an innocent

⁵⁴ Ryan, *Quiet Neighbors*, 30.

man for a collective crime in order to assert its own power. And everyone knew what sort of legacy Stalin had left behind. While this defense proved ultimately ineffective, it is notable in its attempt to pit states against each other in a case which was intended to examine international bodies' relationships to an individual.⁵⁵

Evidence gathering was especially difficult in light of American-Soviet relations, as officials in the Soviet Union and the U.S. nearly refused to cooperate with each other. Soviet archives, which contained a bulk of the information necessary to convict Demjanjuk on the basis of his wartime activities, were hidden securely behind the Iron Curtain. The U.S. was also reticent to use the information that the Soviet Union did provide, fearing that it may have been falsified, or even part of an elaborate pro-Communist propaganda campaign.⁵⁶

Much of Demjanjuk's prosecution centered on the existence of a document called the 'Trawniki card,' which located him as having been at the Trawniki camp for Nazi guard training, and that Trawniki card was possessed by the Soviets. Requests made by OSI for the original copy of the Trawniki card had long been met with silence, until the Soviet Embassy finally decided – mid-trial in Cleveland – that experts chosen by both the prosecution and defense would be allowed to examine the document.⁵⁷ However, even after the prosecution's expert found that the card was unaltered, the card's foundational authenticity was still questioned largely on the basis of its ownership. It reappeared in Munich, with another expert declaring its authenticity after comparing it to three more original Trawniki cards, only to be met with derision from Ulrich Busch, Demjanjuk's German lawyer. Busch played once again off of Cold

⁵⁵ Douglas, *The Right Wrong Man*, 83-84.

⁵⁶ *Ibid.*, 42.

⁵⁷ Teicholz, *The Trial of Ivan the Terrible*, 67.

War sentiments, declaring that rather than Demjanjuk's card being authentic in relation to the other three, they were instead all KGB fakes, and should thusly all be ignored as evidence.⁵⁸

The opening of Soviet archives in the 90s would eventually serve as the basis for overturning Israel's conviction of Demjanjuk, but the exculpatory documents (with regards to Demjanjuk's having been at Sobibor, rather than Treblinka) uncovered after the fall of the Soviet Union were still met with intense suspicion. Even in Germany, even so many years after the fall of the Soviet Union, and even with increasingly precise technology and expertise, Soviet intentions and evidence were as much on trial as Demjanjuk himself.

⁵⁸ Douglas, *The Right Wrong Man*, 240.

IV. How Not to Conduct an International Investigation

“Ivan’s case is better suited for a demonstration of the many problems of identification by eyewitnesses than any in my experience. I know of no other case in which so many deviations from procedures internationally accepted as desirable occurred.”

– Willem Wagenaar, expert witness for the defense in Israel⁵⁹

While it is undoubtedly clear at this point that there were no uncomplicated aspects of the Demjanjuk case, there is perhaps no murkier feature than the investigation itself. The investigation was at all stages a controversial one, met with opposition from all sides and subject to an immense amount of political pressure, both domestically and from an international community recently awakened to the possibility of war criminals in their midst. It was under these conditions that the previously-mentioned U.S. Department of Justice’s Office of Special Investigations was formed. The OSI, established in 1979 in response to a failed government working group meant to deal with accused Nazis, had a fairly simple mission. Its sole purpose was to seek out, investigate, and bring litigation against Nazi war criminals, a task that was often more easily said than done. In an internal history of the OSI, Judy Feigin calls their usual processes “dramatic, tedious, and difficult,” all adjectives which can also be used to describe the tactics employed by OSI in their investigation of Demjanjuk.⁶⁰ OSI contributions to the Demjanjuk case chiefly shaped the Israeli trial, though a small amount of the evidence they gathered was also used in the German trial.

Feigin says that “the greatest media attention the office ever received involved the greatest mistake it ever made: prosecuting John Demjanjuk as ‘Ivan the Terrible.’”⁶¹ In fact, even the title of the report’s section dealing with Demjanjuk acknowledges the frustrating inaccuracy

⁵⁹ Willem Albert Wagenaar, *Identifying Ivan: A Case Study in Legal Psychology* (Cambridge, MA: Harvard University Press, 1988), ix.

⁶⁰ Judy Feigin, *The Office of Special Investigations: Striving for Accountability in the Aftermath of the Holocaust*, report, ed. Mark M. Richards (United States Department of Justice, 2006), vi.

⁶¹ *Ibid.*, 150.

with which OSI investigated him – ‘An Appropriate Prosecution Initially Brought, in Part, Under the Wrong Factual Predicate.’⁶² This ‘wrong factual predicate’ was fairly simple; Demjanjuk was almost definitely not Ivan the Terrible, and OSI conducted their investigation of him while operating under the absolute certainty that he was. This biased perspective infiltrated nearly all of their investigation, and was only complicated by the need to collaborate with Israeli investigators operating half a world away.

A number of exceedingly improbable coincidences intervened in the investigation, all of which led investigators toward Demjanjuk’s having been at Treblinka, while other evidence to the contrary was largely disregarded. The first coincidence occurred during the original Federenko photo array discussed earlier, wherein Demjanjuk – who investigators had been told was at Sobibor – was included as a foil to ensure the accuracy of Federenko’s identification. However, it was not Federenko who was recognized. When Demjanjuk was identified by Treblinka survivors as the Ivan the Terrible who had tormented them, the OSI was left somewhat baffled. The Ivan the Terrible that the OSI was able to identify had most likely been named Ivan Marchenko, not Demjanjuk, and that was not even what Demjanjuk had originally been accused of. And herein was the intervention of a second coincidence – on his visa application, Demjanjuk had said that his mother’s maiden name was Marchenko. The assumed connection between these two unrelated facts was enough for the OSI to feel at least somewhat confident in their accidental discovery of an exceptionally heinous Holocaust perpetrator.⁶³

One OSI attorney, George Parker, was skeptical of the direction of the investigation. What small amount of concrete evidence OSI did possess (including the aforementioned Trawniki card) placed Demjanjuk at Sobibor at the exact same time as eyewitnesses said he had

⁶² Ibid.

⁶³ Ibid., 151-154.

been at Treblinka, and Parker was hesitant to give either accusation more weight than the other. He recommended suspending the case entirely, based on the level of incongruity it presented. Despite Parker's issuance of a memorandum to other members of OSI saying as much, the case proceeded with Treblinka as its focus.⁶⁴

It is entirely possible that the chance that OSI had caught Ivan the Terrible was too tempting for the agency to ignore. At the time of the Israeli trial, OSI's work to convict Demjanjuk was considered a massive triumph. Their investigation had uncovered a villain who embodied every terrifying Nazi camp guard archetype, and, in doing so, had shored up OSI's Nazi-hunting reputation beyond a shadow of a doubt. They had caught one of the criminals that politicians like Congresswoman Elizabeth Holtzman had urged the American public to find, and they had been able to convict him of the crime they had worked so hard to prove he had committed.⁶⁵ That is, until all of the evidence they had ignored was combined with new evidence available from Soviet archives and the entire case was turned on its head.

But how had the case gotten that far at all? Much of the Israeli trial's major problems actually stemmed from discrepancies in investigatory standards. For the most part, case evidence was being compiled in the United States, but the actual day-to-day investigatory operations were being conducted in Israel. Because Israel had been such a hub for post-Holocaust Jewish immigration, it was only logical that the United States would search for survivor witnesses there, rather than at home. Though the international nature of the investigation may seem to be of little consequence, as all methods of inquiry were carefully documented, procedural standards at the time of the investigation looked very different in Israel than they did in the U.S. The entire time evidence was being gathered in Israel – mainly through interviews with survivors of Treblinka –

⁶⁴ Ibid., 154.

⁶⁵ Eli Lederhendler, "Elizabeth Holtzman," Jewish Women's Archive, March 20, 2009.

it was not subjected to a similar level of scrutiny as it would have been had the investigation been conducted in the United States.

While the examples of these discrepancies are numerous, there are a few which drastically altered the course of the case, and which can help us to truly see how complicated an internationally-conducted investigation can be. One such example begins with the photo array (also called an identification parade or photospread) that led investigators to believe that perhaps Demjanjuk had been at Treblinka, rather than Sobibor. In an attempt to find witnesses who could tie Federenko to Treblinka and Demjanjuk to Sobibor, Israeli police – and specifically Miriam Radiwker, the Polish lawyer handling the case – placed an ad in local papers. The ad asked for the assistance of survivors of Treblinka and Sobibor for “an investigation against the Ukrainians Iwan Demjanjuk and Feodor Federenko,” never stating which Ukrainian was suspected of being at which camp.⁶⁶ Of this, Lawrence Douglas says:

It’s hard to imagine a more colossal mistake. Treblinka survivors obviously had no way of knowing they were being sought solely for the purposes of identifying Fedorenko and not Demjanjuk. [...] The ad’s naming of Ivan would naturally have triggered associations with the one Ivan whom all Treblinka survivors would have known, Ivan Grozny. It seems fair, then, to assume that the Treblinka survivors arrived at their interviews anticipating that the photo array might well present a picture of Ivan Grozny.⁶⁷

The identification parades themselves were also problematic for an array of reasons, the first being that Radiwker had been trained in Poland and the Soviet Union, and was apparently unfamiliar with the Israeli standard of 8-picture photospreads, featuring pictures taken using uniform photographic styles.⁶⁸ The photo array shown to witnesses contained 17 photos, all of different sizes and clarity. Another particularly troubling issue with the arrays was their lack of innocent fillers or foils, meaning people who either look similar to the suspect or simply fill

⁶⁶ Wagenaar, *Identifying Ivan*, 96.

⁶⁷ Douglas, *The Right Wrong Man*, 101-102.

⁶⁸ Wagenaar, *Identifying Ivan*, 129.

spaces in the lineup. Following the initial round of interviews, wherein survivors had first identified Demjanjuk as Ivan the Terrible, the lineup was not amended to include anyone who looked similar to Demjanjuk's visa photo. His photo was also the largest, which may have biased witnesses towards its examination.⁶⁹ While the photospread was compiled in Israel using materials provided by the INS, it is somewhat puzzling that neither state recognized and corrected their mistakes.

Theoretically, criminal photospreads should absolutely not consist solely of suspected criminals, and especially not those suspected of the exact crimes being investigated. In the photospreads shown by Radiwker and her colleague, Czechoslovakian lawyer Martin Kolar, to witnesses, all photos were of Ukrainians living in the U.S. and suspected of being Nazis. In a book dedicated to misconduct in the Demjanjuk investigations, psychologist and expert on memory (and expert witness for Demjanjuk's defense in Israel) Willem Wagenaar comments on this major misstep, saying "the witnesses could not be caught out making an error. Each response would have initiated further investigations."⁷⁰ Had witnesses recognized someone other than Demjanjuk, it is entirely possible that that person would have been in his Binyanei Hauma seat.

Another key difference between U.S. procedural standards and Israeli standards at the time of the investigation is the recording of interviews. In the U.S., the vast majority of major criminal cases like Demjanjuk's required tape- or video-recorded interviews, in order to ensure that no potentially case-altering information was discarded or distorted. This was not so in the parts of the Demjanjuk investigation that were handled abroad. Witness statements were either hand-written by interviewers during the interview, or, even more worryingly, at the end of the

⁶⁹ Ibid., 133.

⁷⁰ Ibid., 131.

interview from the interviewer's memory.⁷¹ In Wagenaar's book, he accuses Radiwker of asking leading questions to cue witness responses and of only writing their answers, rather than her commentary, down.⁷² This would have been improper by nearly any legal standard in the world. Even pre-trial phase interviews held between Demjanjuk and German-speaking Israeli policeman lacked a verbatim record, and were conducted in a bizarre mix of languages, which could certainly have obfuscated the intention of both participants.⁷³ During the trial in Israel, when Demjanjuk's defense team questioned investigators as to their choice not to use recording devices, the questions were waved off by chief judge Dov Levin, who blamed nationwide budgetary concerns for the lack of technical equipment.

While it is impossible to say whether these mistakes would have happened had the witness interviews been conducted on U.S. soil, they do illustrate the immense difficulty of orchestrating investigations on a global scale. INS and OSI investigators could hardly have checked on every single detail of the Israeli investigation from across the globe, and the Israeli investigators had no reason to believe that anything they were doing would damage the strength and credibility of the case against Demjanjuk. War crimes cases brought against relatively low-level members of genocidal states are historically almost never cut-and-dry, and they are only further complicated when the investigation is splintered between groups located thousands of miles away from each other. This makes both communication and oversight exponentially more difficult and calls into question the reliability of the investigation itself.

In addition to all of the complications caused by investigators, there is also reason to believe that survivors of Treblinka who had been interviewed by Radiwker likely shared their experiences with other Treblinka survivors during their annual reunion, and those survivors who

⁷¹ Ibid., 96.

⁷² Ibid., 100-101.

⁷³ Ruth Morris, *Eichmann vs. Demjanjuk*, The Hague, AIIC Court Interpreting Seminar, July 6, 2001, 5.

had not previously been interviewed were therefore more likely to ‘recognize’ Demjanjuk in the identification parades with which they were presented.

The almost exclusive use of eyewitness testimony to make such an enormously important case is in and of itself highly controversial. In order to draw the connection between Demjanjuk and Ivan the Terrible, the prosecution necessarily disregarded all evidence placing him at Sobibor, instead arguing for the reliability of survivors’ memory as evidentiary. This is contrary to the findings of numerous psychological and legal studies – many of which were already available during the period of the Israeli trial – which have determined that memory is malleable and easily influenced by factors such as time, how often a story is repeated, preconceptions, and methods of questioning.⁷⁴ To guard against the use of inaccurate testimony in major cases, Wagenaar offers a set of rules for conduct in identity tests, many of which the prosecution failed to follow. This puts the credibility of their investigation into question. One of Wagenaar’s rules most relevant to the case is that “identification by an eyewitness should not be accepted as evidence, if there is no further evidence of guilt.”⁷⁵ Essentially, eyewitness testimony is only useful if it corroborates or is corroborated by other, more reliable and concrete forms of evidence. Nearly all of the evidence possessed by the OSI pointed to Demjanjuk’s presence at Sobibor, but the eyewitness testimony was treated as more ‘true’ than any physical proof. This was the exact opposite of the recommendations of legal and psychological experts, both now and at the time of the trial.

Of course, this is all complicated by the atrocious nature of the crimes Demjanjuk was accused of in Israel. Believing and supporting the stories of survivors is an important part of the

⁷⁴ Elizabeth F. Loftus, "Eyewitness Testimony: Psychological Research and Legal Thought," *Crime and Justice* 3 (January 01, 1981).

Frederic C. Bartlett, *Remembering: A Study in Experimental and Social Psychology* (London: Cambridge University Press, 1967).

⁷⁵ Wagenaar, *Identifying Ivan*, 70.

healing process on both an individual and cultural level. International legal systems are designed to facilitate this healing process, to offer reliable state-sponsored routes toward justice for the victims of war crimes. However, the abandonment of legal standards and practices in favor of validating stories which are unprovable does nothing for processes of post-war justice. Rightly or wrongly, it is the role of legal systems to untangle the objective truth from subjective realities, which enables the law to reflect an accurate history. Investigatory standards exist to ensure the accuracy of the historical record, and they cannot do so when they are manipulated or discarded to suit the investigation being conducted. Victims may receive comfort from convicting a war criminal for the wrong set of crimes, but that is not the same thing as justice.

Germany's task, two decades after all of this, was to conduct a trial that was not prone to the same sort of missteps that the Israeli trial had succumbed to. Eyewitnesses in the German trial were used mainly give historical context to Sobibor, not to identify Demjanjuk specifically.⁷⁶ Even if the German prosecution had wanted survivor testimony linking Demjanjuk to Sobibor, they wouldn't have been able to find it – none of the survivors remembered Demjanjuk, and many survivors had long since died. At Sobibor, he was not Ivan Grozny, the murderous, sadistic gas chamber mechanic. At Sobibor, he was likely just another *Wachmann* committing crimes no more heinous (that is to say, not heinous in a particularly distinguishing way) than the rest.

The testimonial statements used by the German prosecution to locate Demjanjuk at Sobibor were the ones upon which OSI had initiated their investigation in the first place. In 1976, Ignat Danilchenko, a former Trawniki man and guard at both Flossenbürg and Sobibor, was quoted in a Soviet publication claiming that he had served with Demjanjuk, kick-starting the

⁷⁶ Douglas, *The Right Wrong Man*, 217-218.

entire investigation, along with Hanusiak's allegations.⁷⁷ In Germany, the attempt to move away from survivor testimony as the chief evidentiary basis for the trial meant that only testimonies by people like Danilchenko and another guard, Alex Nagorny, who were not Jewish survivors and who had freely offered information on Demjanjuk linking him to Sobibor, were considered fit to be entered into evidence.⁷⁸ German trial preparers made a concerted effort to separate the early stages of the OSI investigation, in which they were actively pursuing Demjanjuk for being at Sobibor, from the later stages of the investigation, which lacked the accuracy and impartiality necessary for ensuring proper legal procedure. The OSI-gathered evidence introduced in Germany was almost exclusively from those early stages, representing a genuine attempt to separate themselves from the politically-fraught mistakes of the past. Where the investigation had failed so spectacularly and publicly before, Germany was determined to prevent that from happening again.

The investigatory misconduct that so characterized Demjanjuk's trial in Israel was almost certainly rooted in the perceived importance of the investigation, in the fervent desire of both OSI and Israeli investigators to convict Ivan the Terrible and restore a small amount of balance to the scales of justice. It was this desire that ultimately caused the investigation to fall short of justice. In Germany, however, the desire was to prove that the trial could be conducted in a way that met international legal standards. Demjanjuk's trial in Munich was not treated with the same amount of spectacle and grandeur as it had been in Jerusalem, most likely because that treatment might have been prohibitive to Germany's ability to finally offer a legally satisfactory verdict.

⁷⁷ Feigin, *The Office of Special Investigations*, 150.

⁷⁸ Douglas, *The Right Wrong Man*, 143.

While this effort to “treat the Demjanjuk proceeding like any other criminal case” created confusion at times, it was undoubtedly the reason for Germany’s eventual success.⁷⁹

⁷⁹ Ibid., 137.

V. Interlopers

“God help us. We are the Salem judges of our own time.”

– Patrick Buchanan, columnist for the New York Post⁸⁰

The role of outsiders – here meaning people who were neither victims, nor accused or implicated, nor members of the investigative or legal teams in either trial – in the Demjanjuk case cannot be overstated. While it is clear that the case was subject to state-level political prerogatives, it was also affected by the individual opinions of the many people throughout the world who felt some sort of ideological, ethnic, or political kinship to Demjanjuk or his victims. In some cases, these individuals made up larger groups, like the Ukrainian-Americans who rallied around Demjanjuk, or the victims groups who came to the courtroom in Jerusalem every day, barely concealing their contempt for the accused. In other instances, they were simply the lone voice in a community willing to speak out either against or in favor of Demjanjuk, and do so publically for the world to see.

Major atrocity trials attract international attention for obvious reasons. They represent the justice system’s attempt to reckon with the greatest horrors of humanity, and are for that reason a source of global fascination. From the moment the Demjanjuk investigation first entered the radar of media outlets in the U.S., it was a topic of intense debate. The press, whether intentionally or not, became a major contributing force in the political pressures that drove the Demjanjuk investigations and trials. Op-eds were penned by motivated Americans, Israelis, and Ukrainians from nearly all segments of society and parts of the globe, and all arguing at cross-purposes. The U.S. government faced intense criticism for having let an accused Nazi into the country at all, let alone for allowing him to spend thirty years in the U.S. without detection, and

⁸⁰ Patrick Buchanan, "'Ivan the Terrible' - More Doubts," *New York Post*, March 17, 1990.

many of these arguments were staged within magazines, on televisions, and in newspaper columns. It should also not go without mentioning that Demjanjuk would never have been discovered at all, had a journalist – Michael Hanusiak – not been the first person to implicate him.⁸¹ A proper examination of the Demjanjuk case is incomplete without discussion of the press.

The trial in Jerusalem was a continuation of the attention that had plagued Demjanjuk before his deportation. It was the source of an international media frenzy, with almost every day of the trial covered by major news outlets in most parts of the world. During the lead-up to the trial, as well as during the trial itself, Demjanjuk had near-celebrity status in both Israel and the U.S., along with a significant number of devoted supporters, though his detractors astronomically outnumbered them.

In Israel, schoolchildren of all ages listened to trial radio broadcasts or watched proceedings live on television in their classrooms, while reporters waited outside the doors of the Binyanei Hauma hoping for career-making photographs or quotes from Demjanjuk, his legal team, or anyone else involved in the trial. It was the source of a variety of emotionally-charged headlines like “‘Ivan’ in Battle Over Death Camp ID Card,” “Punishment Will Come,” “Defense Ridicules Israeli Trial” and “By the Sword,” some of which focused on actual trial proceedings and outcomes, while others centered around public perception and responses to the case itself.⁸²

⁸¹ Hanusiak, *Lest We Forget*.

⁸² Francis X. Clines, "Defense Ridicules Israeli Trial," *The New York Times*, February 17, 1987.

"Headliners; By the Sword," *The New York Times*, April 30, 1988.

United States Holocaust Memorial Museum, July 1987 New York Post Clipping, Record Group 06, Sub-group 18, Folder 02, Fiche 20.

United States Holocaust Memorial Museum, September 1977 Newspaper Clipping, Record Group 06, Sub-group 18, Folder 02, Fiche 05.

In one such instance, trial attendees and everyday Germans, Americans, and Israelis, were asked in July 1987 by a *New York Post* courtroom reporter whether Demjanjuk was Ivan the Terrible. Responses included “It’s hard to say that any non-Jew who was in Germany or Poland then wasn’t guilty,” “I don’t believe he’s innocent, because there are so many who escaped to testify against him,” “He’s 100 percent guilty,” and “He is Ivan. The small stones all fit together. As Jews, we couldn’t try him otherwise.”⁸³ Public speculation about cases is almost totally inextricable from case outcomes when trials are the subject of such intense media scrutiny. In Israel there was no impartial, secluded jury with no knowledge of the social or political implications of their decision, so the power of the media was enormous.

In the time leading up to and during the Israeli trial, there was also a knock-down drag-out fight occurring in the pages of newspapers and journals throughout the U.S. with two somewhat unexpected opponents: Pat Buchanan and the OSI. Pat Buchanan, a conservative Republican writer for a number of national news publications and the White House Communications Director for the Reagan Administration, was probably Demjanjuk’s most fervent defender in the press. Buchanan, who was described in 2012 as “dabbling in Holocaust denial” was so vehemently opposed to the OSI and their investigation of Demjanjuk that he took it upon himself to launch a media smear campaign against them.⁸⁴ At various points in time, Buchanan called the OSI “hairy-chested Nazi hunters,” “zealots,” and KGB puppets, all while characterizing their investigation as “the American Dreyfus case.”⁸⁵

⁸³ USHMM, July 1987 New York Post Clipping, RG-06.018.02.20.

⁸⁴ Adam Peck, "Why MSNBC Dumped Pat Buchanan," ThinkProgress, February 17, 2012. Freiwald, "Buchanan Fuels Anti-Nazi Unit Controversy."

⁸⁵ United States Holocaust Memorial Museum, February 1984 Washington Times Clipping, Record Group 06, Sub-group 18, Folder 01, Fiche 12. United States Holocaust Memorial Museum, 1986 Jewish Week Clipping, Record Group 06, Sub-group 18, Folder 02, Fiche 12.

The OSI, naturally, was forced to defend itself against attack, with members and allies writing their own letters to news editors and pleading their case. In his capacity as an OSI prosecutor in the Demjanjuk investigation, Allan Ryan said that Buchanan was “in love” with Nazis, and that he did “not want the United States to search for Nazi war criminals if the war criminals committed their crimes in the territory of the Eastern bloc.”⁸⁶ In a response to one of Buchanan’s columns, Eli Rosenbaum, the World Jewish Congress’ General Counsel and Principal Deputy Director of the OSI, characterized his attacks as “hyperbolic,” “appalling,” and “very, very bizarre.”⁸⁷ These exchanges served as a very public reminder of the politically charged nature of the case. The OSI was portrayed by Buchanan as liberal communist sympathizers being fooled by the Soviets, while Buchanan’s claims of investigatory misconduct by the OSI were dismissed as figments of his anti-Semitic imagination. Rather than questioning the mechanics of the case, the public was dragged into a series of self-serving arguments that achieved very little other than to draw attention to American political divides.

It was not the first time that Buchanan had defended Nazis, and it also wasn’t the last. In fact, Buchanan built a career out of public historical revisionist defenses of Nazi war criminals, including Klaus “The Butcher of Lyon” Barbie, scientist Arthur Rudolph, and Karl Linnaeus.⁸⁸ What makes Buchanan’s role in the Demjanjuk trial so interesting is that it presents a logical and ethical quandary. On one hand, he was, after all, right. The OSI’s methods of investigation were questionable at best, and Demjanjuk was not Ivan the Terrible. On the other hand, Buchanan made his argument by characterizing a department of his own government – while he was still serving at the White House – as bumbling and inept, as well as engaging in blatant Nazi

⁸⁶ United States Holocaust Memorial Museum, February 1987 Newspaper Clipping, Record Group 06, Sub-group 18, Folder 02, Fiche 15.

⁸⁷ United States Holocaust Memorial Museum, February 1987 Washington Times Clipping, Record Group 06, Sub-group 18, Folder 02, Fiche 15.

⁸⁸ Newsweek Staff, "Is Pat Buchanan Anti-Semitic?," *Newsweek*, December 22, 1991.

apologism. It would have been nearly impossible for the public to entirely disentangle Buchanan's beliefs from those of the administration by which he was employed, but it also would have been inconceivable for the majority of the American population to believe that the Reagan White House openly embraced accused Nazis. More likely than not, his contributions to Demjanjuk's case served mostly to detract from public perceptions of the OSI's ability to effectively prosecute war criminals. Pat Buchanan's political voice and influence were far from small, and while it is difficult to determine exactly the effect he had on the Demjanjuk trials, it is certain that he had one.

Media coverage of the German trial, while far less sensationalist than coverage of the Israeli trial had been, still in many ways picked up where the press had left off in Jerusalem. The German trial was framed as a continuation of, rather than as a separate issue from, the Israeli trial. During his second round of denaturalization, deportation, and trials, Demjanjuk's charges were treated by the press as though they were just simple downgrades from his earlier case, as if he hadn't truly been cleared of being Ivan the Terrible, but had rather morphed into a marginally more sympathetic version of him. In an op-ed for the Richmond Times-Dispatch, titled "Ivan the Slightly Less Terrible," Nazi historian Charles Sydnor called the Israeli Supreme Court's decision to vacate Demjanjuk's sentence "unsettling," saying the "only possible difference in the two facilities [Sobibor and Treblinka] would be like hypothetical distinctions drawn between the sixth and seventh circles of Hell."⁸⁹

The problem with this sort of categorization is that there was absolutely a difference between the sort of atrocity with which he was accused of being complicit in the two cases. Ivan the Terrible was the cartoonish archetype of Nazi evil, while Demjanjuk at Sobibor was the more

⁸⁹ Draft newspaper article by Charles Sydnor in the collection of the Post Holocaust American Judaism Archive, University of Colorado, Boulder.

quotidian reality of it. Press treatment of the issue only barely reflected that. It was as though, in the eyes of the press, Demjanjuk was incapable of escaping the death sentence handed down by the court in Jerusalem, and that it was simply the role of German courts to make it stick.

It is impossible to estimate the level of effect the press had on trial outcomes, but it was certainly more than negligible. The legal system is by no means immune to the pressures of the media, and especially not when the system is tasked with reasserting the political initiatives of the state in its application of justice. The press and politics are so inextricably linked that the relationship between the two fairly regularly spills over into the courts, as well as into our collective perceptions of justice. Hannah Arendt's *Eichmann in Jerusalem*, originally written as a reporting piece for *The New Yorker* before being published in book form, has in the years since its printing transformed the way the world looks at post-Holocaust Nazi trials. It is unlikely that it would have done so had it not started as a piece of journalistic speculation. This ability of the media to alter the discourse surrounding genocide is often extremely helpful in making way for progressive thought, as in Arendt's case, but it can also be destructive, as it was to Demjanjuk's trial in Jerusalem.

The argument that may be the most compelling in examining the media surrounding war crimes trials in general (and Demjanjuk's in particular) is that the press both shapes and is shaped by our perceptions of justice after atrocity. This runs the risk of creating a sort of media echo chamber in which the press feeds off both itself and the public, while the public feeds off the press, allowing the press to make determinations of guilt and innocence based on its own assertions, as well as the assertions of people whose only access to war crimes trials comes through the media they are informing. If this sounds convoluted, that's because it is.

Demjanjuk's trial in Jerusalem was at the center of exactly this type of echo chamber, very likely

contributing to the ultimately incorrect conclusions that were drawn by the court. Press coverage of Demjanjuk's second set of charges was only very slightly removed from a similar condition.

The Demjanjuk trials, like nearly all post-Holocaust war crimes trials, also revolved around questions of nationality, citizenship, and ethnicity. Unlike many other trials, however, Demjanjuk had the collective political and cultural power of nearly 40,000 Ukrainians in Cleveland alone, not to mention the larger Ukrainian (and other Soviet territories) diaspora throughout the United States.⁹⁰ The ethnic Ukrainian community, of which Demjanjuk and his family were an active part, saw his investigation as a miscarriage of justice not solely against him, but also against the Ukrainian diaspora as a whole. In an article examining the reaction of Ukrainians in America to the Demjanjuk trials, history professor Glenn Sharfman says of his defenders:

[They saw] this case not so much as an example of mistaken identity but as a machination not only to indict one innocent man, but also to incriminate a whole nation. For them, Ukrainian history and Ukrainian pride were also at stake.⁹¹

Sharfman also says that many members of the Ukrainian community "resented the notion of collective guilt and referred to the countless times that the media semantically linked Demjanjuk with Ukrainian murderers."⁹² It seems that Ukrainians in the U.S. defended Demjanjuk not solely because they didn't believe that he had committed the crimes of which he was accused, but also because they perceived that his alleged crimes had been conflated with the actions and beliefs of Ukrainian-Americans writ large. If he was found guilty, they would be forced to bear the burden of not having recognized a war criminal among them.

⁹⁰ Michael DeCourcy Hinds, "2 Views of Demjanjuk, But Similar Frustrations," *The New York Times*, August 22, 1993.

⁹¹ Glenn Sharfman, "The Quest for Justice: The Reaction of the Ukrainian-American Community to the John Demjanjuk Trials," *Journal of Genocide Research* 2, no. 1 (2000): 67.

⁹² *Ibid.*, 76.

Much of this groundswell of support from the U.S.' ethnic Ukrainian community also appears to have risen from the particularly tense relationship between Ukraine and the Soviet Union. Similarly to Buchanan, the Ukrainian-American community framed the investigation as being a part of a larger Soviet conspiracy, especially given Demjanjuk's own assertion that the only reason he had lied on his immigration papers was to avoid repatriation to the USSR. As a nation, Ukraine had endured a great deal of suffering at the hands of the Soviet Union. The Holodomor, a man-made famine in Ukraine occurring between 1932 and 1933 with a death toll in the millions, was in many ways the issue that lay at the heart of the anger directed by ethnic Ukrainians towards the Soviet Union during the Demjanjuk trials. The majority of Ukrainians – and this is still the subject of heated debate – believe that the Holodomor was a plot orchestrated by the Soviet Union to end Ukrainian nationalism, and that the Soviet Union's (and now former Soviet Union's) continued exertion of power over Ukraine represents further attempts to suppress Ukrainian independence. Ukrainians view the Holodomor as a genocide perpetrated by the Soviet Union against citizens of one its own member states.

The intersection of Ukrainian perceptions of the Holodomor and the Demjanjuk trial are particularly important to the Ukrainian community's support of Demjanjuk, especially since he was a Holodomor survivor, in that they felt that his trial was simply another example of Soviet-facilitated persecution of Ukrainians. The common belief, as expressed to Sharfman, was that the Soviet Union "began this conspiracy to separate its two troublesome critics of the system: Ukrainians and Jews."⁹³ Ukrainians in America used their protests of the Demjanjuk trials to draw public attention to the Holodomor with signs bearing messages like "the Whole Ukrainian history is Holocaust," illustrating their belief that the targeted prosecution of Demjanjuk as a

⁹³ Ibid., 77.

Ukrainian was unjust, given the dearth of attention paid to Ukrainian suffering.⁹⁴ There was also the issue of Michael Hanusiak, whose relatively obscure newspaper was the first to alert the U.S. to Demjanjuk's presence in America. Hanusiak was a pro-Soviet Ukrainian, possessed of "virulent antipathy toward Ukrainian nationalists."⁹⁵ From the very beginning, it was difficult for the Ukrainian community both in America and in Eastern Europe to disentangle their adversarial relationship with the Soviet Union from the facts being presented in the Demjanjuk case.

In 2012, the debate of KGB evidence forgery was still prevalent, with Russian and Ukrainian news outlets linking Demjanjuk to a Ukrainian nationalist movement that the Soviet Union sought to suppress.⁹⁶ On Ukrainian- and Russian-language nationalist forums in the time period between the Israeli and German trials, there was discussion of Demjanjuk as a "hero of Ukraine" who had managed to outsmart a Soviet plot.⁹⁷ The consensus view among Ukrainians both at home and in America seems to have been that the Soviet Union's involvement in the case was more than a little bit suspicious, and even indicative of a major conspiracy to repatriate unruly Ukrainians to the Soviet Union under the guise of atrocity. While the political sway of ethnic Ukrainians in America is not particularly profound, in this case, their overwhelmingly unwavering support of Demjanjuk added fuel to the fire of his defense team, both in his actual trials and in the press. Prominent defenders like Pat Buchanan were guaranteed an immediately receptive audience, who felt their own sense of identity was at stake in Demjanjuk's trials. There were at least 40,000 voices in Cleveland alone willing to attest to Demjanjuk's good moral character, serving to further complicate a case that argued the exact opposite.

⁹⁴ Ibid., 69.

⁹⁵ Ibid, 67.

⁹⁶ Aleksandr Gorobets, "Кто он, неизвестный украинец Иван Демьянюк?," *Ехо Москбы*, March 24, 2012.

Vadim Trukhachev, "Процесс Демьянюка - Мюнхен Судит, Львов защищает, Киев Молчит," *Pravda*, November 30, 2009.

⁹⁷ "Иван Демьянюк - новый герой Украины!," *Politforum UA*, December 2009.

There were also supporters from Soviet territories outside of Ukraine, most notably from Baltic and Yugoslavian states – both regions with their own oppositional relationship to the Soviet Union. After arranging for OSI garbage to be delivered to them from 1985 to 1987, Latvian émigrés provided Demjanjuk’s defense team with damning evidence that had been discarded by the OSI, proving that they had purposefully misdirected their investigation away from Sobibor and towards Treblinka.⁹⁸ Another factor in the trial was the constant financial and political support of wealthy Croatian businessman Jerome Brentar, who bankrolled much of Demjanjuk’s defense and spoke out against the OSI and Soviet Union throughout the trial process. Brentar, who famously said “the Soviets are dead afraid of the Ukrainians,” and that “they want to show that they can use the Justice Department of [the United States] to do their dirty work,” echoed sentiments felt throughout the anti-Soviet Eastern European community in America.⁹⁹ Brentar, so sure of Demjanjuk’s innocence, conducted his own fact-finding missions to Poland and Ukraine, testified in multiple phases of Demjanjuk’s trials, and spoke openly to the press of his contempt for Soviet-American collaboration in the case.

Demjanjuk’s family were his greatest champions, in constant contact with his defense team as well as the prosecution and the press, seemingly consumed by their mission to clear his name. Lydia Demjanjuk, his oldest daughter, and Ed Nichnic, his son-in-law, served as Demjanjuk’s chief fundraisers and public spokespeople. Members of both his immediate and extended family organized rallies, letter-writing campaigns, and careful collection of evidence that might exonerate Demjanjuk, drawing on the support of the Ukrainian community to aid their efforts. Lydia Demjanjuk did extensive research on past Nazi war criminals discovered in the

⁹⁸ Sharon LaFraniere, "Oversights in Nazi Probe," *The Washington Post*, July 28, 1992.
Eric Lichtblau, "Nazis Were Given ‘Safe Haven’ in U.S., Report Says," *The New York Times*, November 10, 2010.

Feigin, *The Office of Special Investigations*, 156.

⁹⁹ Teicholz, *The Trial of Ivan the Terrible*, 63.

U.S. and penned long, manifesto-like refutations of the OSI's evidence against her father. She compiled articles from all over the world to reinforce her point and sent their contents to newspaper editors and legal experts in the hope that they would join her family's crusade, or at least publicize it.¹⁰⁰

As with nearly all other aspects of the Demjanjuk trials, his support systems were often politically-motivated. Anti-Soviet sentiments were mixed with indignation on the part of Ukrainians who felt that they had been implicated alongside Demjanjuk, and members of his family utilized those sympathies to gain their support and draw attention to Demjanjuk's cause. This had not necessarily been seen in other war crimes trials, possibly because other war crimes trials had far fewer grey areas than Demjanjuk's. The inherently political nature of his trials shed new light on Ukrainian-Soviet relations and opened old wounds formed by deserved mistrust on the part of former Soviet citizens. Demjanjuk's investigation and prosecution was, in the eyes of his supporters, worrisome in its perceived ignorance of state-level offenses for which the Soviet Union would never have to pay. As an individual, Demjanjuk served as a figurehead for Soviet persecution of Ukrainians, rather than being seen as an actual human who had potentially committed atrocity and was on that basis being prosecuted.

¹⁰⁰ United States Holocaust Memorial Museum, Materials relating to "Nazi War Criminals in America" by Lydia Demjanjuk ca. 1984, Record Group 06, Sub-group 18, Folder 01, Fiche 12.

Conclusion

“For the things we have to learn before we can do them, we learn by doing them.”

- Aristotle, the *Nicomachean Ethics*, Book II.

If there is any single thing that the Demjanjuk trials can teach us about war crimes, it is that war crimes trials and investigations contain multitudes. Accused war criminals are not only tried in the courtroom, but also in the press, on the floors of parliamentary buildings, in the minds of schoolchildren and survivors alike, in books and film and letters to congresspeople. War crimes investigations are carried out not only in police stations, but also in refugee camps, auto plants, back alleys, hotel rooms, embassies, newspapers, and the occasional garbage bin. States who try war criminals can be loud and self-assured – even brash and over-confident – but they can also be quietly determined and unobtrusive. Demjanjuk’s experiences with the international justice system illustrate one very crucial legal truth: war crimes trials are complex. They are full of intersecting political and legal objectives, subject to individual and collective goals on the part of both the accused and the accusers, and tasked with rectifying the unrectifiable.

The Demjanjuk trials brought the Holocaust to the United States’ doorstep nearly forty years after its perpetration, reminding Americans that though they were not complicit in the Holocaust, commitments to global justice do not end when weapons are laid down and everyday life is resumed. Demjanjuk’s investigation placed what author Richard Rashke calls “America’s open-door policy for Nazi war criminals” under a very public microscope, forcing the U.S. to confront one of the most shameful parts of its history. The first set of investigations and trials allowed the U.S. Department of Justice to hold up incontrovertible proof of its dedication to Nazi hunting, while the second set offered a chance to remedy the errors made in the first. Demjanjuk’s trials were, like all war crimes trials, plagued with controversies and

confrontations. However, unlike most other war crimes trials, they were also the source of triumph and failure in equal parts.

The role of the law in all of this was as the intermediary through which these confrontations were made possible. The international nature of the crimes Demjanjuk was accused of committing, from those as seemingly mundane as lying on immigration papers to those as horrific as mutilating women and children on their way into the gas chambers, was possibly the trials' largest complicating factor. It was also the birthplace of the trials' biggest victories. Had Demjanjuk been tried in America, the course of the trials and investigation would undoubtedly have looked very different. The same can be said of any location other than Israel and Germany. Through international collaboration, though often flawed and inefficient, unimaginable atrocity was almost made small enough to comprehend, an impressive feat in and of itself. The international legal system was given the opportunity to prove itself capable of facing "humanity at its lowest ebb" and winning.¹⁰¹

This is what the law does for war crimes. It provides a framework for understanding, confronting, and ultimately defeating Hannah Arendt's banal evil. The law offers humanity some small measure of consolation after atrocity, a feeling of lessons learned and perpetrators punished. International law, with all of its complicated mechanisms and consequences, does this on a grander scale, allowing the quietest of voices to be heard from the furthest of distances. International law also provides states with the ability to serve as both teacher and student, as well as shapers of global collective memory and writers of the historical record.

In terms of possible further investigation of this topic, I believe that it would be interesting to compare and contrast the stories of Demjanjuk, Karl Linnas, and Feodor

¹⁰¹ 1945 Press Association pamphlet titled "Hitler and His Henchmen After Death" in the collection of the Post Holocaust American Judaism Archive, University of Colorado, Boulder.

Federenko. The three men's stories intersect and diverge in a number of ways, all of which would provide even further insight into the working of the international legal system after the Holocaust. It may also be useful to research the ways in which post-Holocaust war crimes trials differ from and are similar to other war crimes trials, such as those held after Rwanda and the wars in the former Yugoslavia. Demjanjuk's trials are particularly interesting because of all of the questions they both raise and answer about war crimes trials in general, and pursuing those lines of inquiry in comparison to other genocide and mass atrocity trials would absolutely be worthwhile.

While there are, of course, many more undiscussed facets to the Demjanjuk case (which would have turned this project from a thesis into a dissertation) all of them serve to further illustrate the incredibly difficult undertaking that is seeking justice for atrocity. Crimes against humanity are by their very nature impossible to fully grapple with on an individual level, and that difficulty does not decrease when they are tried on an international scale; if anything, it is increased. Trials of any type are subject to political pressure, but it is doubly so when states' reputations and legacies are at stake. The legal system evolves as the nature of crime evolves, and it often does so at an untenable pace – sometimes too fast, sometimes too slow – but it is this ability of the law to shift and accommodate new realities that makes it so necessary, especially after genocide.

What we do know for certain about Ivan “John” Demjanjuk is that he was present for the Holocaust. We don't know whether he was forced to participate, whether he was truly afraid of the Soviet Union or simply seeking a life outside of Europe, whether anything he said was true or false, or whether he really did just want to move past it for the sake of his family rather than for nefarious purposes. Incomplete appeals process aside, Demjanjuk died in Bad Feilnbach,

Germany, convicted of participating in a genocide. The eventual outcome of the Demjanjuk case constitutes a triumph, at least on the part of the justice system. After all of the political intrigue, public shaming, investigatory misconduct, outcry for and against Demjanjuk, ugly press and uglier backlash, the law did what it was theoretically intended to do: create a historical record that accurately represents a collective experience of the past without foregoing factual realities. That is, for now, truly all we can ask of it.

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Appendix: Chronology of Relevant Events

1942

May – Demjanjuk is captured by German troops in Eastern Crimea

July – Demjanjuk is brought to a POW camp in Chełm, then sent to the Trawniki camp

November – Demjanjuk is stationed at Majdanek

1943

March 26 – Demjanjuk is stationed at Sobibor

October 1 – Demjanjuk is stationed at Flossenbürg

1948

March 3 – Demjanjuk registers as a displaced person

June 25– U.S. Congress passes the Displaced Persons Act

1949

Former Wachmann Ignat Danilchenko identifies a Demjanjuk at Sobibor

1951

December 27 – Demjanjuk applies for a visa to the United States

1952

February 9 – Demjanjuk and his family arrive in New York City

1958

November 14 – Demjanjuk is granted U.S. citizenship, formally Anglicizes name to ‘John’

1975

Michael Hanusiak circulates list of suspected ethnic Ukrainian Holocaust collaborators

1976

August – Danilchenko’s statement is published in Ukrainian newspapers

1977

Immigration and Naturalization Services begin Demjanjuk investigation

August – U.S. Department of Justice submits request to have Demjanjuk’s citizenship revoked

1979

The Office of Special Investigations is founded

Danilchenko makes additional statement saying that Demjanjuk had been at Sobibor in 1943

1983

October – Israel issues extradition request under Nazi Punishment Law

1984

Demjanjuk ordered deported

1985

July 8 – Demjanjuk’s deportation appeal is heard

October 31 – Deportation appeal is dismissed

1986

February 28 – Demjanjuk is deported to Israel

November 26 – Trial begins at Jerusalem District Court, Binyanei Hauma

1987

January 23 – Original Trawniki card provided for examination

July – Demjanjuk fires chief lawyer Mark O’Connor, replaces him with Yoram Sheftel

1988

April 18 – Trial ends, Demjanjuk is found guilty of being Ivan Grozy at Treblinka

- April 25 – Demjanjuk is sentenced to death by hanging
- 1992**
March 5 – A claim is published that Israeli prosecution concealed information
Soviet archives are opened to the public
- 1993**
July 29 – Guilty verdict overturned by Israeli Supreme Court due to reasonable doubt
September – Demjanjuk returns to Ohio
- 1998**
February 20 – Demjanjuk’s U.S. citizenship is restored
- 1999**
May 19 – U.S. Department of Justice files new civil complaint against Demjanjuk
- 2002**
February 21 – Demjanjuk’s U.S. citizenship is revoked for a second time
- 2005**
December 28 – Immigration judge orders Demjanjuk deported to Germany, Poland, or
Ukraine, appeals process begins
- 2006**
December 22 – Board of Immigration Appeals upholds deportation order
- 2008**
June 19 – Germany announces that it will seek extradition
- 2009**
May 11 – Demjanjuk is deported from Cleveland to Munich, sent to Stadelheim prison
July 13 – Demjanjuk is formally charged with 27,900 counts of acting as an accessory to
murder
November 30 – German trial begins
- 2010**
OSI merges with the Domestic Security Section to form the Human Rights and Special
Prosecutions Section
- 2011**
January 15 – Spain requests European arrest warrant against Demjanjuk
May 12 – Demjanjuk is convicted pending appeal, sentenced to five years in prison
May 31 – Germany denies Spain’s extradition request
- 2012**
March 17 – Demjanjuk dies at a home for the elderly in Bad Feilnbach, age 91

Note: specific dates have been provided where possible, entries without dates remain unclear or unable to be verified.