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# THE 'IVAN' CASE: COLD WAR INJUSTICE

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By **Ruti Teitel** December 10, 1992

The case of John Demjanjuk, the retired auto worker who was extradited from Cleveland in 1981 to Israel and convicted in 1987 for crimes against humanity attributed to "Ivan the Terrible" at the Treblinka death camp in Poland, is one whose telling and retelling in the past 11 years have missed its most salient feature: of justice thwarted by Cold War politics.

Almost all of the facts in the case against Demjanjuk were beyond dispute: Ivan's sadism as a brutal guard who tormented his victims into the gas chambers, the atrocity of crimes against humanity, the massive numbers of victims, including thousands of children. Almost 1 million Jews were murdered in the year 1942-43 at Treblinka.

One question dominated Demjanjuk's trial: Was he or wasn't he "Ivan the Terrible"?

The problem of proving identity after time is emblematic of wartime justice. Following the Nuremberg trials and the advent of the Cold War, the German enemy became a new ally, and the Soviet ally, a new enemy. All over the world, war-crimes prosecutions came to a virtual halt.

About four decades were to pass before the revelations of the thousands of wartime collaborators living in this country, prompting laws enabling the deportation of those who had persecuted because of "race, religion, national origins or political opinion." Even in 1978, American-Soviet cooperation in deportation was a fragile matter.

Proof of identity in the case against Demjanjuk would never escape its Cold War roots. In Poland at the end of the war, any evidence not destroyed by the Germans fell into Soviet hands. Proving identity would depend on survivor testimony and identification. The survivor testimony was notable for the bare fact of survival. Treblinka was a death camp from which only 50 survivors emerged; five identified Demjanjuk as Ivan spontaneously from a photo lineup.

That was the posture of the case until glasnost and the opening of KGB files containing former camp guards' statements about Ivan's identity. Once again, the search for truth and justice turned with political winds. An irony in the case is that those who had previously most opposed relying on Soviet evidence argue just as vigorously today for reliance on the KGB files.

Despite the claims about the new evidence, it is hardly exculpatory. It simply places Demjanjuk at another death camp near Treblinka, where a quarter of a million Jews were murdered. The new evidence makes very clear that in his U.S. immigration

application, Demjanjuk lied about how he spent the war. John Demjanjuk still does not deserve his ill-gotten American citizenship.

And what of the man new files indicate was the real Ivan -- "Ivan Marchenko"? There are claims he was killed during an uprising at Treblinka; others say that in 1943 he joined the partisans.

But this is only one of many World War II cases where there has been no accountability. What of those who abducted Raoul Wallenberg, who was under Roosevelt's employ to save Jews in Hungary and who disappeared into the gulag at the end of the war? Once again the answers lie in KGB files; and it is the successor states that must now account for Wallenberg's fate.

The story is similar in other countries. This year the French government attempted to drop the last of its cases against leading collaborators: the case of Paul Touvier, who was head of the pro-Nazi militia in occupied Lyon and was responsible for the deportation of thousands. Several months ago, Australia closed its Nazi-hunting unit. In Canada, the unit stays open in name but fails to prosecute.

Is half a century too late? Perhaps, but the message of the Demjanjuk case is that there never was a right time for justice.

In the backdrop of the killing fields of Cambodia, Iraqi Kurdistan and Bosnia-Herzegovina, the "what ifs" abound. What if the most heinous crimes were punished, might there be another moral order? What if Hermann Goering had not evaded war-crimes prosecution at the end of World War I, preventing his later service as Hitler's henchman? What if after World War II culpable Croats had been punished for their war crimes, cutting off later Serbian claims? And what if in 1988 Saddam Hussein had been punished following his genocide attempts on Iraqi Kurds? Might the consistent application of sanctions against perpetrators of crimes against humanity present an effective deterrence? An understanding of an enforceable morality? The failed case against Ivan is terrible but all too familiar.

The writer, an associate professor of law at New York Law School, attended the Demjanjuk trial in Jerusalem in 1987.

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