

## John Demjanjuk Convicted Of “Accessory To Murder” Based On Novel Legal Theory And A Key Document The FBI Believes Was Fabricated

John Demjanjuk emigrated to the United States from Europe in 1952 when he was 32-years-old. The Ukrainian born Demjanjuk was a retired Ford auto worker living in Cleveland, Ohio when accusations surfaced that he was “Ivan the Terrible” — a brutal prison guard at Nazi Germany’s Treblinka death camp in Poland. Demjanjuk was subsequently denaturalized as a citizen in 1977 based on alleged falsehoods in his immigration documents and he was ordered deported to the Soviet Ukraine. Israel opposed that order and sought his extradition to Israel to stand trial for crimes against humanity. Proclaiming his innocence that he wasn’t “Ivan the Terrible,” Demjanjuk opposed his extradition, but in 1986 he was transported to Israel. His trial began in February 1987, and in 1988 he was convicted of crimes against humanity and sentenced to death.

However, during his appeal it was discovered that the U.S. Justice Department’s Office of Special Investigations concealed documents during Demjanjuk’s extradition proceedings that identified another man was “Ivan the Terrible.” Based on the new evidence substantiating Demjanjuk’s trial defense that he was the victim of a mistaken identification, Israeli’s Supreme Court acquitted him in 1992. He was freed and allowed to return to the U.S. in 1993.

Germany then sought Demjanjuk for prosecution based on their contention he was a guard at the Sobibor death camp in Poland.

After years of opposing his deportation, Demjanjuk was deported to Germany in May 2009 and upon his arrival in Munich he was arrested. He was charged with being an accessory to murder at Sobibor, based on the novel legal argument that he was criminally responsible even though the prosecution only alleged he was a guard and didn’t harm anyone.

Demjanjuk’s trial began in November 2009. Key prosecution evidence was an identity card that indicated he was posted at Sobibor.

Demjanjuk’s defense was he was the victim of mistaken identity: He fought in the Soviet Army and was captured by the Germans in



May 1942. He contended the identity card was a fake manufactured by Russia’s KGB. Then in April 2011 the Associated Press examined newly declassified documents about Demjanjuk’s case at the National Archives and discovered an FBI report written in 1985 about the ID card. The report stated: “Justice is ill-served in the prosecution of an American citizen on evidence which is not only normally inadmissible in a court of law, but based on evidence and allegations quite likely fabricated by the KGB.” The report that supported Demjanjuk’s claim the ID card was a fake had never been disclosed to Demjanjuk’s lawyers in the U.S., Israeli, or Germany.

The authenticity of the ID card was not determined during Demjanjuk’s trial — with prosecution experts testifying it “could” be authentic and the defense contending it was a fake.

The 91-year-old wheelchair bound Demjanjuk was convicted on May 12, 2011 of 28,060 counts of accessory to murder and sentenced to five years in prison. Although held in custody throughout the trial, the judge ordered him released pending the outcome of his appeal.

Demjanjuk’s conviction raised a legal issue that caused significant debate among legal scholars during the Nuremberg trials after WWII: the ex-Nazi’s and Nazi sympathizers charged with “crimes against humanity” were prosecuted for that “crime” even though it didn’t exist at the time the defendant’s allegedly violated it — so it was an *ex post facto* law retroactively applied to them. The same thing is true of Demjanjuk — 66 years after the end of WWII he is the first person prosecuted for being an accessory to murder for possibly being present at a prison camp when murders occurred somewhere at that camp.

*Esquire* magazine published an extensive article in its August 11, 2010 issue about Demjanjuk’s case that questioned the legal basis of his prosecution:

“Demjanjuk is essentially on trial not for anything he did, but simply for being at Sobibor. No specific criminal acts need be alleged, much less proved. Page through transcripts of previous Nazi trials and you’ll find a rigorous focus on particulars, because that is what should be required to convict a defendant. No one in any such trial ever was convicted simply on the basis of being present at the scene.”

Demjanjuk’s appeal was pending when he died on March 17, 2012. Since he was presumed innocent through the conclusion of his appeal, his conviction was invalidated.

Demjanjuk’s death left open the possibility that other aged people could be prosecuted as an “accessory to murder” in Nazi occupied countries — including the many civilians who lived near camps such as Sobibor and visited them regularly to provide essential goods and services without which the camps could not have operated.

Sources:

“[John Demjanjuk](#): The Last Nazi,” *Esquire Magazine*, August 11, 2010.

“[FBI thought Soviet Union’s](#) John Demjanjuk evidence was faked,” *Cleveland Plain-Dealer*, April 12, 2011.

[Convicted Nazi criminal](#) Demjanjuk deemed innocent in Germany over technicality, *HAARETZ.com*, March 23, 2012.

## California Bars Admissibility Of Uncorroborated Jailhouse Snitch Testimony

California Governor Jerry Brown signed Senate Bill 687 into law on August 1, 2011. The bill bars the admissibility of testimony by a jailhouse informant that a defendant confessed without independent forensic evidence or uncompromised testimony by another person that corroborates a defendant’s guilt.

California is the 18th state to bar the admissibility of uncorroborated jailhouse informant testimony. Similar legislation was twice vetoed by former Gov. Arnold Schwarzenegger.

Although the bill was vigorously opposed by the California District Attorneys Association, it was supported by San Francisco District Attorney George Gascón and Los Angeles County District Attorney Steve Cooley.

In response to a number of convictions in LA County that were overturned by state and federal appeals courts based on the unreliability of uncorroborated jailhouse snitch testimony, the DA’s Office instituted a policy of not pursuing cases without independent corroborating evidence. DA Cooley supported SB687 because LA’s policy has made testimony more reliable and hasn’t prevented convictions. [He said](#), “When the wrong person is prosecuted, the guilty go free.”

Source:

[Gov. Brown signs](#) law weakening testimony of jailhouse snitches, *Los Angeles Times*, August 1, 2011.