

Watching Ukraine Vote Orange

EYEWITNESS TO

In December 2004 John M. Smith, '01, traveled to Ukraine as an official international observer for its presidential election. John practices international, white collar, and food and drug law at Covington & Burling in Washington, D.C. Since graduation he has been serving as an Alumni Fellow of the J. Reuben Clark Law School's International Center for Law and Religion Studies, with a special focus on Ukraine and Russia. cm inquired about his experience.



Q How and why did you get involved in observing the election in Ukraine?

My wife, Hannah, '01, and I were enjoying time with family during Thanksgiving when we first saw images of Ukraine's Orange Revolution on TV. In an inspired moment characteristic of my wife, she urged me to go witness history.

Born of a Ukrainian mother, my love for the Ukrainian people has grown during eight sojourns there since 1992. My various roles there—humanitarian aid worker, thesis researcher, LDS missionary, Army reservist on a NATO Partnerships-for-Peace mission, and three-time law symposium participant—were all related, to varying degrees, to bringing the blessings of liberty and the rule of law to Ukraine. When the Ukrainian people seemed poised to seize those blessings last November, it was time to go again.

To help monitor the December revote, I joined a non-partisan delegation of U.S. and European observers as an adviser. The U.S.–Ukraine Foundation (a nonprofit NGO based in Washington, D.C.) organized the mission, with funding from the U.S. Agency for International Development. My law firm has

long championed pro bono service, so it agreed to cover my travel expenses. Our delegation included 30 former members of the U.S. Congress and the European Parliament.

Q What happened in this disputed election, and why does it matter?

A pro-Western challenger, Viktor Yushchenko (YOO-shen-ko), eventually prevailed over the incumbent prime minister, Viktor Yanukovich, after a near-fatal poisoning, a peaceful "Orange Revolution," and three rounds of high-turnout voting.

Ukraine has been a strategic place for a thousand years. Its name fittingly means "borderland," as fault lines of three civilizations run through the country: European Catholicism, Slavic Orthodox Christianity, and Ottoman Islam. European empires have fought the Russian/Soviet empire for control of Ukraine, tugging it in opposite directions for four centuries. The Soviet Union's collapse in 1991 reopened the question of Ukraine's orientation. Would Ukraine retain its Soviet legacy: authoritarian rule, a state economy, media suppression, and fealty toward Moscow? Or would it turn toward the West: rule of law, open markets,

individual rights and property, and self-government? Its 2004 election confronted Ukraine with this fundamental choice as Russia seems to be slipping back into authoritarian habits.

This election's two main candidates generally embodied that divergence—Yushchenko as the pro-Western reformer and Yanukovich as the pro-Moscow strongman. The outgoing president, Leonid Kuchma, chose Yanukovich to continue his legacy, which was marred by corruption and brutality. (For example, journalists routinely received *temnyky*, state instructions on how to report the news; dozens died suspiciously during Kuchma's decade in office.) Overwhelming evidence from the November round of voting indicated that Kuchma's government participated heavily in rigging the outcome and declaring Yanukovich the official winner. This fraud provoked the mass demonstrations known as the Orange Revolution. Ukraine's supreme court then ordered an electoral do-over. After Parliament adopted electoral and constitutional reforms, a third, relatively clean round of voting occurred on December 26, which Yushchenko won convincingly.

Q Who poisoned Yushchenko?

The case is still under investigation. Suspicion has swirled around Kuchma's former regime, which included Yanukovich, and its Russian allies. For a fascinating theory, read Tom Mangold's "The Man Who Survived Russia's Poison Chalice," *The Age* (January 23, 2005).

Dramatic before-and-after photos of Yushchenko's scarred face caused a media sensation in the West. I sensed that Ukrainians viewed the poisoning in its grim, less sensational context. It capped a year of active bullying against Yushchenko's campaign. In Ukraine's sad political history, it was yet another lethal attempt against yet another voice daring to oppose an authoritarian regime.

Q How did the Orange Revolution remain peaceful?

Only by a miracle. Peace and the constitutional order hung by a thread at several points. The moment of truth occurred in Kiev, Ukraine's capital, on the night of November 28. After Kuchma's government watched the prodemocracy demonstrations gather strength for a week—in Kiev and other key cities—"the Empire struck back," according to U.S. Ambassador John Herbst, who briefed our delegation before the revote. A top official in Kuchma's government ordered soldiers to smash the main demonstration in Kiev's Independence Square. Thousands of soldiers received weapons and live ammunition, climbed into trucks, and rumbled toward the Square.

A renegade group of top Ukrainian intelligence officers tipped off Ambassador Herbst that a bloody government crackdown was imminent. Secretary Colin Powell struggled in vain to reach Kuchma by phone.

Suddenly the trucks stopped, then turned around, and finally returned to base. Our ambassador later learned that a top Ukrainian general had called Kuchma's top official with this (paraphrased) ultimatum: "If your boys don't stand down, my boys are going in" to defend the demonstrators. That did it. For a fuller account of this extraordinary test of wills, I highly recommend C. J. Chivers, "How Ukraine's Top Spies Changed the Nation's Path," *New York Times* (January 17, 2005).

a Why did the prodemocracy forces succeed?

Among several key factors, Ambassador Herbst singled out one factor that stunned everyone—even the opposition itself—and may have been decisive: the pure determination of the Orange demonstrators. The government hurled threats, the weather turned frigid and wet, and still those demonstrators stood their ground, swelling in numbers to half a million strong in Kiev, with proportionally large crowds in other cities.

The chair of Ukraine's Parliament, Volodymyr Lytvyn, met with our delegation and shared his view of what motivated the Orange Revolution: "We want to live in a civilized, democratic country." He explained that Ukrainians were so used to being lied to that "when truth began to be spoken, people awoke."

a What was it like among the demonstrators on Kiev's Independence Square?

Exhilarating. I attended rallies before and after the revote. For a nation stereotyped as passive, the enthusiasm of these Ukrainians, young and old, was irrepressible. The demonstrators sang hymns about God's mercy and Ukraine's beauty. Their leaders spoke of

Ukraine as "the center of Europe," of restoring personal dignity, and of throwing off prior governments' disgrace: Chernobyl, corruption, and crackdowns. My extremities were soon numb with cold, yet the demonstrators imperviously chanted their slogans for hours: "Freedom cannot be stopped!" and "We are many, and we will overcome!" When a trio of supportive officials from Western Europe took the stage, the crowd erupted with "Ev-ro-pa! Ev-ro-pa!" Another chant, "East and West—together," responded to threats that democracy in Ukraine would split the country or reignite the Cold War. (Then Minister of Foreign Affairs Konstantyn Gryshenko met with our delegation and expressed a similar sentiment toward Europe and Russia: "We don't want to get into a good family and forget about our brothers.")

To me the Orange demonstrators seemed very aware that their victory would impact the region geopolitically, and they reveled in it. Among the forest of Ukrainian and orange flags, the crowd waved the flags of other post-Communist countries that likewise recently embraced democracy: Poland, Georgia, and the Baltics—and one flag from the state of California. I also spotted flags from neighboring Belarus, Europe's only remaining dictatorship. One Orange entertainer half-jokingly proposed that they all go on a world tour. "We'll call it the 'Square Tour.' First to Belarus, then on to Russia." The crowd roared its approval.

As a missionary in Ukraine a decade ago, I had looked into the eyes of thousands of its citizens. For many, despair and powerlessness had dimmed their spirits. But on the Square in 2004 I saw bright eyes radiating hope and strength. For perhaps the first

time as a people, they had discovered the liberating power of taking *personal* action to shape their future—and succeeding. Many parents brought to the Square their young children, who were quick to flash a smile and a V-for-victory hand sign. They wanted their children to absorb and remember this moment.

As an aside, I don't pretend to understand exactly how divine will manifests itself in the sequencing of historical events. But it's worth noting two religious milestones that had already occurred near Kiev's Independence Square. In May 2004 in a palace that overlooks the Square (and formerly was a KGB torture facility), an LDS Apostle created the Church's first stake in the entire former Communist bloc. Six months later, the Orange Revolution swept Ukraine, and the new stake president and several bishops stood among the Saints gathered on the Square. In the fall of 1991, at a spot near the Square that overlooks the Dnipro River, another LDS Apostle dedicated Ukraine for the proclaiming of the restored gospel. Three months later the Soviet Union collapsed, and missionaries poured in.

a Describe the Orange Revolution's "tent city" in Kiev.

The tent city was the heart of the mass demonstrations in Kiev. When the fraud of the November round became obvious, well-organized teams of young men cordoned off a half mile of Kiev's main street in front of city hall (and a block downhill from the LDS mission office). Scores of large tents became home to hordes of students who converged on the capital from around the country. Protruding from every tent were signs proclaiming the occupants' hometown.

Before the revote I engaged several tent city inhabitants. One group from Ivano-Frankivsk, home of my maternal ancestors, were chopping wood and warming themselves by a barrel fire. How long had they lived in these tents? "Since November 22," the day after the November round. How long did they plan to stay? Their answers were all the same: "Until Yushchenko is president."

The high degree of discipline and planning in the tent city was like nothing I'd ever seen after a dozen years in post-Soviet countries. A barricade guarded the entire perimeter, which was patrolled by uniformed, unarmed soldiers wearing orange armbands. The main gate boasted a sign: "Entering Orange Revolution Country." Heat came from generators inside the tents. Food came from grateful Kievans and was cooked in two white trailers parked alongside the barricade. Portable toilets lined the tent city's southern boundary. Showers were available by rotation in the homes of Kiev's residents. A radio station broadcast music and messages from inside the defended perimeter.

a What did election monitors do?

Over 12,500 official international election monitors—reportedly the largest such body ever—poured into Ukraine and spread across its 33,000 local polling stations to observe the December 26 revote. My observer badge labeled me No. 8,870. Our neutral delegation split into teams for 10 different cities. My team traveled to Cherkassy, a heartland city along the Dnipro River, Ukraine's Mississippi. On Christmas Day we watched local officials set up polling stations, verify the voter registration lists, and review requests for absentee ballots.

On election day itself, our 20-hour effort began at Polling Station No. 7 in Cherkassy's "Friendship of Nations Palace of Culture." We watched ballots being removed from the sealed safe, counted, and issued to voters on the rolls. During the day we inspected the voting at a dozen other polling stations selected because of reported fraud or violence there last time. We presented our credentials, interviewed officials and judges, and took photographs. We checked the process we observed in each station against a protocol that incorporated the election laws, noting any discrepancies. After the polls closed we watched the ballots tallied, recorded the totals, and then traveled in parallel with local officials to the regional HQ, to ensure that these same totals were properly reported up the chain.

Q Did you observe any election fraud in the December revote?

Our team in Cherkassy did not. Although we noted minor technical deviations from election rules, we saw nothing that prevented voters from expressing their will at the polls. Our team's experience was consistent with the generally positive conclusions of the OSCE and other Western observer delegations about the fairness and transparency of the December revote.

The locals we encountered in Cherkassy related their accounts of fraud and violence during the prior round. One woman described to us violations from November and then concluded: "But not this time. They are afraid and ashamed to strike again, because you are here." This comment epitomized how warmly Cherkassy received us. When we entered one polling station, its matronly chairwoman gushed: "We feel

toward you like we feel toward our mother and father." A radio journalist confided his initial dismay when the revote was scheduled for the day after Christmas, thinking would-be Western observers would stay home; but his sorrow turned to joy when so many observers came.

In Kiev, Anatoliy Tkachuk, a drafter of Parliament's swift electoral reforms, described to our delegation 13 types of major violations that occurred during the November vote, including the finishing touch: hacking into the Central Election Commission's computer system to manipulate the official vote tally. Although irregularities occurred throughout the country in November, in general, ballot boxes had been stuffed in regions controlled by Yanukovich. In one method his supporters were routinely bused from one polling station to another, voting "absentee" at each one. In regions favoring Yushchenko, thugs destroyed ballot boxes (smashing, burning, or pouring acid or ink into them) and killed or brutalized local poll officials and police officers. The Yushchenko-friendly province of Cherkassy suffered several such hits in November. A regional official, Evhen Heroshchenko, explained to us how syringes had been rigged as explosive devices and tossed into full ballot boxes.

Q How did results differ between the November vote and the December revote?

In the Cherkassy province, Yushchenko's margin of victory increased by 10 percent. This difference mirrored the national trend. Overall, Yushchenko went from 3 percent *behind* Yanukovich in November to 8 percent *ahead* in December's final results. Overall voter turnout in December was 77 percent.

Ukraine's most famous patriot is Taras Shevchenko, a 19th-century poet and prophet of national rebirth and liberation, who was born and buried in Cherkassy province. He spent most of his short life as a serf and a political prisoner to foreign masters. In one stirring poem he yearns for a leader who can secure for oppressed Ukraine the freedoms that America has won: "When will we have our [George] Washington?" The day for which the poet prayed may finally have dawned. For some Ukrainians that yearning was fulfilled at last. The morning after election day, an exuberant Volodymyr Kolodochka, head of a civic organization in Cherkassy, found our team and rushed young TV and radio journalists to interview the Westerners. As we parted for Kiev, he heartily clasped our hands and said, "Thank you for supporting us as we choose our Washington."

Q What are the implications now for religious liberty in Ukraine?

Positive, although Ukraine has already become a leader among post-Soviet countries for its relatively progressive religious freedoms. Blessed with a pluralist history—multiple traditional churches, supplemented since 1991 by many more new ones—Ukraine's religiously tolerant leaders have allowed a renaissance of faith there.

This positive trend promises to accelerate in the wake of the Orange Revolution, considering the centrality of faith and morality to the popular movement as a conscious reaction against entrenched depravity. Yushchenko, a devout Orthodox believer, promoted religious freedom and pluralism in his campaign. The demonstrations on Independence Square opened



Polling commission members of Station No. 7 in Cherkassy count the ballots after the polls close. Final count: Yushchenko 832, Yanukovich 297 (report of previous round's results: 857 to 462, and 126 ballots missing).

daily with a prayer, pronounced in turn by clergy from various churches. My LDS Kievan friends called the Square the "Mormon Zone," because organizers banned drinking, foul language, and rowdiness to keep the demonstrations beyond reproach. A ubiquitous Yushchenko campaign poster depicted him extending a scriptural greeting: "Peace be unto you." Participants in the Orange Revolution frequently described the catharsis as a spiritual experience. At our meeting with the National Reform Press Club in Kiev after the revote, its director, Sierhiy Hubin, told us that he left the Square "feeling as if I was coming out of church—cleansed."

After the results of the revote became official, I witnessed Yushchenko's victory speech on Independence Square. He acknowledged the dreams of many past generations of Ukrainians who had worked and waited for this day of freedom but had not lived to see it. Before joining the crowd in singing the hymn "Great God," Yushchenko concluded with his trademark invocation of Providence: "Glory be to Ukraine, glory be to the Ukrainian people, and glory be to the Lord God."