

“Gateway to Hell”: A Nazi Mass Grave, Forensic Scientists, and an Australian War Crimes Trial

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In June 1990 a team of Australian forensic scientists arrived in Soviet Ukraine to exhume a half-century-old grave of Jewish Holocaust victims. Some three thousand miles away in Adelaide, Australia a committal hearing was about to determine whether a Ukrainian-born but naturalized Australian citizen named Ivan Polyukhovich would stand trial for their murders. This article tells the story of how the forensic scientists ended up in Serniki and what they found. It considers the importance of this exhumation both for the past—as an episode of the Holocaust—and for the future use of forensic science in reconstructing acts of mass killing.

“It was a pit, a grave. Well, it was a pit, which, because it’s got bodies in it, archaeologically becomes a grave.”¹

—Richard Wright, Professor of Forensic Anthropology, University of Sydney

Around 7:30 p.m. on July 29, 1990, on a dark footpath in a suburb of Adelaide, South Australia, a teenage boy found an elderly Ukrainian man lying in a pool of blood, with a bullet lodged in his chest.² The man’s name was Ivan Timofeyevich Polyukhovich, and, although the skateboarding teen did not know it when he flagged down a passing motorist, he was on trial for murder—for a lot of murders.³ And that evening Ivan Polyukhovich⁴ had tried to kill himself.

Ivan Polyukhovich was born in 1916 in Serniki (Uk. Sernyky), a village north of Rovno (Uk. Rivne; Pol. Równe; Germ. Rowno), today in western Ukraine. He lived for the early part of his life in the village of Alexandrove (Uk. Oleksandrove), about three miles south of Serniki.⁵ When German forces occupied the region during the Second World War, Ivanechko, as friends knew him, was working as a forest warden. After the war, in 1949, Ivan Polyukhovich and his second wife, Maryia, along with her two daughters Anna and Luba, received Australian visas and immigrated to the suburban sprawl of Adelaide, the capital of South Australia. Mild mannered and well-liked by their neighbors, the Polyukhovich family purchased a small bungalow on a quiet street and settled into their new life. On February 25, 1958 Ivan Polyukhovich became an Australian citizen. He worked as a farm laborer and eventually as a public servant. In his retirement, he tended bees in his backyard, and shared the honey with his neighbors.⁶ Outwardly, Ivan Polyukhovich seemed to be an example of modest success and contentment in the country that granted him refuge from the ashes of Europe.

It was the collision of his two worlds—the Australian present and the Ukrainian past—that would lead Ivan Polyukhovich to hold a .22 caliber Beretta to his chest and pull the trigger.⁷ Earlier that year, in January 1990, the High Court of Australia had charged him with nine offenses, including the murder of twenty-four Jews and complicity in the murder of 850 others in September 1942 in German-occupied Ukraine.⁸ His committal hearing was scheduled to start July 30, 1990;

instead, Ivan Polyukhovich spent the morning in Queen Elizabeth Hospital in Adelaide undergoing emergency surgery to remove the bullet from his chest.⁹

Serniki, Ukraine

Nearly nine thousand miles away in Soviet Ukraine a team of six Australian forensic experts and police investigators had recently spent a month investigating gunshot wounds of a different kind. The team had arrived in Rovno on June 11, 1990.¹⁰ There they met the procurator for the western half of the Soviet Union, a woman the team formally called “Madam Koleznikova.”¹¹ Joining her were three local Rovno procurators and an enthusiastic team of Soviet forensic experts led by Dr. Eduard Sharayev.¹² The merging of these two teams was an unusual moment of East-West forensic collaboration.

The morning after their arrival, the team drove just over one hundred miles north from Rovno to the village of Serniki, where they were joined by a detail of boyish-looking Soviet soldiers sent to provide the manual labor opening a grave requires. There also was a thin, dark-haired local man named Fyodor Grigoryevich Polyukhovich (no relation to Ivan), who, despite the oppressive summer heat, wore a three-piece black suit and brimmed cap. Fyodor Polyukhovich told the Australians through an interpreter that he had lived the entirety of his sixty-four years in Serniki, in a house less than five hundred meters from the area of the forest where they would find a mass grave. Fyodor Polyukhovich had been sixteen in September 1942 when, he said, local men forced the town’s Jews from the ghetto recently created by the occupiers, marched them to a prepared pit in the woods, and executed them with a bullet to the back of their skulls.¹³ He would later tell an Australian courtroom that Ivanekho (Ivan Polyukhovich) was one of three men holding guns and leading Jews to the pit. “We heard the shots,” he remembered.¹⁴ Fyodor Polyukhovich remembered that the Germans had forced him, along with several other local young men, to fill in the grave after the murders.¹⁵

Fyodor Polyukhovich led the Australian forensic team—headed by University of Sydney professor Richard Wright—into the woods. “There was no grave showing, in fact quite the contrary,” Wright remembered, and “it was impossible to see any traces using the ordinary archaeological techniques.” There was none of the usual kind of vegetation that indicates the presence of decaying organic matter and typically grows abundantly in the nutrient-rich soil that covers mass graves.¹⁶ Yet Fyodor Polyukhovich insisted they were standing on a large burial site, approximately fifty to sixty meters long by five meters across.¹⁷

The area was swept for unexploded mines, and then digging began. Video filmed by one of the Australian police investigators, Detective Sergeant David Hughes, shows the young soldiers digging into the sandy ground with shovels. Once the hole reached about chest deep, Professor Wright hopped in, and, crouching low, smoothed the wall with his trowel. Indeed, he found that Fyodor Polyukhovich had been right. They were able to determine that, indeed, a hole had been dug into the earth, by observing that the filling of the grave contrasted with the surrounding soil. “The natural soils consist of sands with some clay, and bands of orange iron which had been precipitated possibly since the end of the last ice age,” Wright testified. “When a hole is dug into these banded sands, and the hole is refilled, all the bands are broken up so you get lumps of coloured clay material in the filling of the hole.”¹⁸ The line between the disturbed and undisturbed soil marked the boundary of the grave.

There is a saying among forensic scientists: if you want to leave a mark on the world, dig a hole. Through the act of digging, the natural layering of the soil will be changed forever. In

Serniki, the hole had been dug nearly fifty years earlier, but the mark it had made on the world was unmistakable.

Australia

The path that would ultimately lead Australian investigators to exhume a fifty-year-old mass grave in Soviet Ukraine began unfolding shortly after the Second World War, when millions of dislocated people filled Europe, some with no ability or desire to return home, others with no home to return to. During the war, Australia had experienced a net migration loss, and members of the government felt acutely that the war had highlighted Australia's weakness: a large country with such a small population, officials thought, could not be defended. Europe's refugees thus offered the opportunity to boost Australia's population. In 1945, Australia launched an immigration program aimed at increasing the country's population by one percent annually. By 1950 almost 200,000 European immigrants—"reffos" in Australian slang—had arrived.¹⁹ Ivan and his family were four of them.

The victorious Allied powers, including Australia, established a complex vetting process to prevent "Nazi elements" from hiding among the refugees. But the focus on Germans allowed Nazi collaborators from countries such as Yugoslavia, Hungary, Poland, and Ukraine to enter Australia.²⁰ The prosecution's case against Ivan Polyukhovich alleged that he was one of them; his was an instance in which the vetting process had failed. The Polyukhovich family had left Serniki with the retreating Germans in 1943, and moved to Pinsk and then ultimately to Germany, where they were issued work permits. Upon Germany's surrender in 1945, the Polyukhovich family landed in a Displaced Persons (DP) camp in Fallingbomel, outside Hamburg. It was there that Australian officers interviewed them. Ivan Polyukhovich passed the interview, completed the requisite paperwork, and in 1949 along with his family received Australian visas.²¹

Reports of former Nazis arriving in Australia, "infiltrating" DP camps in Australia, and "boasting of their former Nazi activities" surfaced almost immediately following the refugees' arrival, and sprang up sporadically over the decades that followed.²² Australia also received several requests for extradition of accused war criminals from Yugoslavia, Czechoslovakia, the Soviet Union, and the Federal Republic of Germany. In 1961, the Soviet Union requested the extradition of Ervin Viks, accused of killing 12,000 people at the Tartu concentration camp in Estonia. Sir Garfield Barwick QC MP, the Attorney General and Acting Minister for External Affairs, told the Parliament that it must weigh Australians' abhorrence of war crimes against the right of the state to welcome migrants and give them the opportunity "to turn their backs on past bitternesses and to make a new life for themselves and their families in a happier community." The latter, he said, should win out; in Australia, "the time had come to close the chapter" of postwar suspicion and blame.²³ And, for the most part, close the chapter Australia did. None of the extradition requests was granted, and the official policy of inaction dominated Australian reaction to the allegations for decades.²⁴

It took a series of radio broadcasts in April 1986 to garner the necessary public and political will to reopen the question of war criminals living as Australian citizens or residents. In the mid-1980s, a Jewish Australian journalist named Mark Aarons visited archives in the western republics of the Soviet Union, including Ukraine, to investigate allegations that war criminals had immigrated to Australia after the war.²⁵ Based on Aarons' research and interviews, the Australian Broadcasting Company's radio program *Background Briefing* ran a series called "Nazis in Australia." Aarons'

report concluded “that between 150 and 200 ex-Nazis illegally entered Australia under our postwar immigration schemes,” some with the knowing consent of the Australian government.²⁶

Aarons’ broadcasts aired at a fertile moment for galvanizing public awareness and political will to reopen this chapter of Australia’s history. Canada and the United Kingdom had begun inquiries into their own immigration histories around the same time, and, as an Australian investigator said decades later, in the mid-1980s in Australia “there was a brief moment where accountability was taken seriously.”²⁷ Additionally, the Executive Council of Australian Jewry made lobbying the federal government to deal with the Nazi war criminals issue its top priority, galvanizing the interest of the Australian Jewish community.²⁸

In response to growing public interest, on June 25, 1986 the Australian Parliament appointed a politician and lawyer named Andrew Menzies to investigate whether war criminals had entered Australia and, if so, whether further investigation into their presence or their past crimes was necessary. Menzies was instructed to report to the Special Minister of State on four matters: whether war criminals were resident in Australia; if so, when and how they had gained entry; whether any breach of law or of duty had allowed them to gain entry or whether there was any policy of government that had allowed or assisted their entry; and whether further investigation was required.²⁹

In his final report, presented to Parliament on November 28, 1986, Menzies stated that it was likely that a significant number of war criminals had entered Australia. The numbers were even greater, the report posited, than the one or two hundred the ABC Radio broadcasts had initially surmised. The report recommended that a dedicated unit be established to investigate and prosecute Australia’s suspected war criminals. In order to allow Australian courts to pursue such prosecutions, it noted, Parliament would have to amend the Australian War Crimes Act, which had been passed on October 11, 1945 “to make provisions for the trial and punishment of violations of the laws and usages of war committed during any war in which His Majesty has been engaged since the second day of September, One thousand nine hundred and thirty-nine.” It was, however, limited to offenses “against any persons who were at any time resident in Australia” and only “certain other persons.”³⁰ This ruled out anyone who had committed a crime against non-Australians—including the Jews of Serniki.

The Menzies Report recommended expanding the Act to allow prosecution in Australia if a person had committed serious crimes in Europe during the Second World War and then subsequently become a citizen or resident of Australia. In a speech to Parliament on October 28, 1987, Attorney General and Deputy Prime Minister Lionel Bowen said that the recommended amendment “was designed to ensure that any serious criminal activities committed in the course of World War II, the commission of which is established beyond a reasonable doubt, by persons who are now residents or citizens of Australia, will not go unpunished.”³¹ In January 1989 the Australian Parliament passed an amendment to the War Crimes Act. “Whereas concern has arisen that a significant number of persons who committed serious war crimes in Europe during World War II may have since entered Australia and become Australian citizens or residents,” the amendment read, “it is appropriate that persons accused of such war crimes be brought to trial in the ordinary criminal courts of Australia [and] be given a fair trial.”³²

By the time this War Crimes Amendment passed, the first of Menzies’ recommendations had already been implemented. Almost a year earlier, Parliament had appointed a well-known lawyer named Robert F. Greenwood to head a Special Investigations Unit (SIU), tasked with investigating the report’s allegations against specific Australian citizens and residents.³³ In 1987

Greenwood hired two investigators from the Australian Federal Police, three investigators from local police forces, two historians, a part-time investigator, and a translator. At its peak in 1991 the unit consisted of fifty-two professionals, including nine American, British, Israeli, and West German historians, who conducted archival research on the unit's behalf and made themselves available as potential expert witnesses. Among them was Raul Hilberg, who provided a historical report for Ivan Polyukhovich's committal hearing about the situation in German-occupied Ukraine, and testified at his trial. The SIU also came to employ forensic experts, including archaeologists, anthropologists, doctors, and experts in skeletal remains and ballistics.³⁴ SIU exhumations began in June 1990 with the Serniki grave, the largest of the three the SIU would ultimately exhume.

Serniki, Ukraine

Pre-WWII Serniki was a farming village of about 5,000 people, surrounded by marshland and forest, and located on the Stubla River in the eastern part of what was Poland in the interwar years. Most Ukrainian residents farmed small plots of land, while the town's Jewish population (987 in 1921)³⁵ worked as artisans, traders, and farmers. According to the witnesses from Serniki who testified at Ivan Polyukhovich's trial, relations between the Jews and Ukrainians in the village had been good prior to the war, even close.³⁶ One woman testified that Moyshe Kriniuk, a Jewish resident who ran the town's wholesale grocery store, regularly extended credit to his cash-strapped Ukrainian customers, and was well-liked and respected for his kindness.³⁷

In September 1939 Nazi Germany and the Soviet Union divided Poland between them in accordance with the Molotov-Ribbentrop Pact. Serniki fell to the USSR until the German invasion in June 1941. The largest nearby city, Pinsk, about nineteen miles north, was taken by the German 45th Division on July 4, 1941. By July 8, Serniki was well behind German lines.³⁸ For most of the war, Serniki was under civilian administration as part of the Reichskommissariat Ukraine. Behind German front lines, Einsatzgruppen (mobile killing units), police battalions, and other SS, military, and police units executed "political and racial enemies," especially Jews.³⁹ But these units did not wield sufficient manpower and required cooperation from locals to identify the Jews, to dig graves, and to guard sites during and after killing operations.⁴⁰

Ivan Polyukhovich was a forest warden—*Heger*, in German—a position he kept under the occupation. Forests were of particular interest to the occupiers, providing wood for the carts that transported German ammunition and supplies, and for heating German homes and buildings. For the SS and the military, forests represented a political and security liability, sheltering partisans and Jews. The German administration lacked the manpower and experience to control the forests, and retained both Polish and Ukrainian foresters. Australia's Crown prosecutors estimated that for every German forest warden, there were ten or twelve locals; the natives even occupied supervisory roles and were issued weapons.⁴¹ Their duties included enforcing German law and searching for fugitives.⁴² Ivan Polyukhovich was one of these wardens.

The Nazi persecution of the Jews of Serniki began in 1941. In August a group of Jewish men were shot and sometime before April 1942 a ghetto was established on the edge of town.⁴³ In the second half of 1942, a series of "ghetto liquidations" began in the Volhynia region, which included Serniki.⁴⁴ In early September 1942, the huge pit was dug in the woods. Close to three hundred Jews escaped into the forests, but the vast majority did not or could not. Between September 9 and 29, Ukrainian policemen and German gendarmes rounded up the Jews in the ghetto, led them to the prepared grave, ordered them to undress, and shot them.⁴⁵ During operations such as this

one, German forces sometimes shot their victims using a technique the Germans called the *Genickschuss*. The victim was made to stand and bow his head while the executioner fired at point blank range through the nape of the neck, into the soft cavity at the base of the skull, where the spine ends. The bullet passed through the brain, and exited the forehead near the hairline. Done correctly, this shot is fatal almost instantly. According to the Crown's case, Ivan Polyukhovich and other collaborators largely employed this close-range, intimate execution style in the killing of Serniki's Jews.⁴⁶ To prove Polyukhovich's guilt in court, however—that is, to not only prove that he was present at the grave, but to place a gun in his hands—the Australian prosecutors had their work cut out for them.

Australia

In Australia, Ivan Polyukhovich was one of just three citizens the government charged with Nazi war crimes, and the only one who went to trial. But outside of Australia, Polyukhovich's case was one of many in a sporadic, uneven, and often delayed pursuit of justice against people—by then elderly—who allegedly had committed crimes during the Holocaust. Post-Holocaust and other post-genocide prosecutions have shown that proving the actions of any one individual in a large-scale crime is a tall order—and that the challenge only increases as the years pass.

The case against Ivan Polyukhovich proceeded under the shadow of one of the more morally complicated Holocaust trials: Israel's bungled prosecution of John Demjanjuk, still working its way through that country's appellate court system when the Australian forensic team arrived in Serniki in June 1990. Demjanjuk, a naturalized American citizen, was extradited to Israel and convicted in 1988 of being the notorious guard "Ivan the Terrible" at the Nazi death camp Treblinka. The conviction rested almost entirely on survivors' testimonies, recollections, and identifications of a man they had not seen in nearly half a century. What documentary evidence there was—his immigration paperwork into the United States, and an identification card from an SS training facility that had been found in a Soviet archive—placed him at a different death camp: Sobibor.⁴⁷ By the end of his trial, there was enough confusion to make some suspect that Demjanjuk was not Ivan the Terrible, but that he had participated in terrible crimes during the Holocaust nonetheless. The Israeli prosecution and the court's judges—and, vicariously, the global public—were confronted with a dilemma: should they acquit Demjanjuk and retry him for his crimes at Sobibor? Or, should they convict a man for having done *something* terrible, just not the thing they had charged him with? In the end, the latter option won out: the Israeli judges convicted Demjanjuk as Ivan the Terrible; convicting, as it would turn out, the right man for the wrong crime.⁴⁸

Demjanjuk's appellate trial was just opening in Jerusalem when the Australian crown sent the SIU forensic team to Serniki seeking precisely what the Israeli prosecutors lacked: strong evidence to corroborate the testimony of witnesses and to link Ivan Polyukhovich to specific crimes. The Australian prosecutors faced the same problem as the Israelis, one that other Holocaust-related prosecutions have grappled with since the International Military Tribunal at Nuremberg: what kind of evidence best proves an unimaginable crime?

Holocaust-related trials attempted to answer that question in various ways. In 1946, Allied prosecutors at Nuremberg made a conscious decision to rely almost entirely on documentary evidence, utilizing the mountains of paper on which the Nazis had recorded their own crimes. They used virtually no forensic evidence and saw few witnesses. The lead American Prosecutor, Robert H. Jackson, told the press prior to the trial that witnesses would not be called to provide

“repetition” on a point that had already been proved through documents or film.⁴⁹ Critics called the resulting trial clinical, divorced from the human suffering. Nuremberg failed, in the words of Gideon Hausner, Israel’s Attorney General during the trial of Adolf Eichmann, “to reach the hearts of men.”⁵⁰ As journalist Rebecca West put it in *The New Yorker*, the Nuremberg courtroom was “a citadel of boredom.”⁵¹

When Mossad agents captured Eichmann in Argentina in 1960 and smuggled him back to Jerusalem to stand trial, Hausner tried to correct course by introducing survivor and witness testimony. The Israeli Attorney General recognized the value of documents for establishing facts, and he believed that the documentary evidence could convict Eichmann “ten times over.”⁵² Yet Hausner wanted the trial to serve as a pedagogical device aimed at young Israelis: “It is imperative for the stability of our nation’s youth that they should learn the full truth of what happened.”⁵³ In Hausner’s estimation, the documented facts of Eichmann’s actions did not add up to the truth of his crime. Instead, witnesses and survivors spoke at length about the lived experiences that came as a consequence of Eichmann’s scheduling and logistical planning, moving beyond what Eichmann had done and into the broader consequences of the Holocaust.⁵⁴

Not everyone approved. In her famous account of the Eichmann trial, Hannah Arendt wrote that the witnesses’ emotional testimonies had so little to do with the charges that the court had put the Holocaust itself on trial.⁵⁵ Critics have pointed to emotional testimony as a weakness in the Demjanjuk trial as well. And since it took place more than a quarter century later, the problems with testimony were compounded: all of the witnesses were elderly, some with demonstrated memory problems—including Gustav Boraks, who told investigators that he had recently taken the train from Israel to Florida to testify against another suspected Nazi collaborator.⁵⁶ Indeed, several of them had previously testified in other late-breaking Holocaust trials, where they had also told their stories. The very act of repeating their stories may have made them less reliable: cognitive science research considers repetition a risk factor for inaccurate memories.⁵⁷ Yet as in the Eichmann trial, witnesses’ testimonies were admitted without challenge.⁵⁸

The trials of Eichmann and Demjanjuk raise questions that are as legal as they are philosophical: how do you suggest that a Holocaust survivor’s memory of the facts might be wrong? How do you cross-examine them? And what kind of legally solid case can be constructed from their testimony alone?⁵⁹ There is a space between the kind of truth a survivor’s experience and memory provides, and the kind of fact a court requires. As Lawrence Douglas writes, the relevant question is “not whether the survivors had forgotten their tormentor but whether they could identify him accurately.”⁶⁰

The Demjanjuk case was highly publicized, was televised live in Israel, and drew journalistic attention around the world,⁶¹ comparable to the O.J. Simpson case in terms of its obsessive and constant media coverage.⁶² It is hard to imagine that the lawyers, politicians, and investigators who set up Australia’s war crimes trials in the years after Demjanjuk’s conviction and leading up to his appeal did not consider the mistakes of that trial. Perhaps it motivated them to search for additional, and more solid and seemingly more objective forms of evidence—such as the kind found in a grave.

THE VALUE OF FORENSIC or archaeological evidence for the Holocaust has been the subject of some debate. The wealth of historical sources that document its events—and the extensive treatment of the subject by seven decades of historians—have seemingly discouraged the search for physical and material evidence of the Nazis’ crimes in commemorative, academic, and legal work.⁶³

Exhumations of Holocaust victims also raise religious questions: Jewish law prohibits disturbing graves. After the Polish archaeologist Andrzej Kola took core samples at Bełżec to prepare for the construction of a memorial, Orthodox Jews reacted with alarm at what they understood to be the desecration of the dead.⁶⁴ Rabbi Avi Weiss wrote of the “monumental failure” to protect the human remains buried there.⁶⁵ Yet in recent years scholars have called for archaeological work—be it invasive, such as full-scale exhumation, or less so, such as remote sensing or topographical assessments—and cited the possibility for physical evidence to make a significant “humanitarian, scientific, academic and commemorative contribution” to the understanding of the Holocaust.⁶⁶

Physical evidence can also make a legal contribution. That the Australian prosecution would turn to graves for additional evidence makes sense: in all three cases that went to trial witnesses made very specific statements about the mechanics and location of the killing that could be verified forensically. It was also a decision that sprang out of concerns about the availability of other forms of evidence, and how they would play to an Australian jury. Though investigators did find witnesses, they were elderly and many had never left their village, let alone the Soviet Union. The yawning gap between the culture and experience of the witnesses and the context of the Adelaide courtroom presented a profound challenge for the Australian prosecution, judges, and jury in assessing their testimony.⁶⁷ In addition, Crown investigators and prosecutors worried that the geopolitical climate would predispose juries to mistrust witnesses and documentary evidence. As an SIU investigator explained, “this was still the tail end of the Cold War, and there was a lot of distrust of anything coming out of the Soviet Union.” In order for the cases to stand up in front of a jury, the Australians needed to have independent evidence. “So,” he said, “they came up with an idea that ‘sounded fantastical’: send people into the Soviet Union to exhume graves.”⁶⁸

Since 1984, American forensic scientists had been working with states and state actors in Argentina, Chile, Guatemala, and Iraqi Kurdistan to investigate graves resulting from acts of large-scale political or ethnic violence.⁶⁹ The notion that mass graves might produce objective forensic evidence of state-sponsored ethnic violence was circulating. Even more relevant may have been the 1985 investigation into a skeleton found outside of Sao Paulo, Brazil that authorities suspected belonged to Dr. Josef Mengele, Auschwitz’s notorious “Angel of Death.” Forensic scientists from the United States, West Germany, and Brazil, and representatives from Israel, carefully examined the skeleton, comparing the bones to Mengele’s known history of injuries, age, stature, and bone structure.⁷⁰ Their conclusion that the skeleton was Mengele’s deeply disappointed Nazi hunters around the world; they wanted Mengele to face justice as Eichmann had.⁷¹

The discovery that Mengele had died a free man redoubled Nazi hunters’ efforts to find Nazi war criminals and to hold them accountable before it was too late.⁷² Moreover, the Mengele investigation was a landmark moment in the integration of forensic science into the Holocaust context—and into war crimes prosecutions more generally—because it exposed the international public to forensic techniques and set a precedent for cooperation among national governments and their scientists in forensic investigations of international importance.⁷³ Forensic science seemed to offer an evidentiary happy medium: objective and reliable like documentary evidence, but also emotional—what better than the bones of the dead to reach “the hearts of men”?

The human remains the Australian forensic scientists found in the grave in Serniki were more than capable of reaching men’s hearts. They also provided Australian prosecutors with what seemed like much more solid evidence than what the Israeli prosecutors had had against Demjanjuk. Along with the skeletons, they found Jewish religious items, as well as German-made

ammunition stamped with dates from the early 1940s. But it could go no further towards proving Ivan Polyukhovich's involvement in the grave's creation.

Prosecution teams, survivor groups, and the general public alike put high expectations on forensic evidence, thanks in part to the television show *Crime Scene Investigation*, which portrays forensic evidence as a crime-solving magic bullet. Legal scholars have argued that the show has produced the so-called "CSI effect": the expectation on the part of jurors that science will be able to definitively solve any crime—and their reluctance to return a guilty verdict if it does not.⁷⁴ Human rights practitioners and tribunals are no less guilty of placing lofty expectations on physical evidence. More than a decade ago, sociologist Eric Klinenberg wrote of an "axiomatic principle of human rights workers and truth commissions throughout the world" to view human remains as "the site and surface of essential but otherwise obscured social truths."⁷⁵

Whether or not human remains actually can reveal those truths has been the subject of significant debate. Scholars have observed that the recovery of human remains can have considerable value from the perspective of families and survivor groups,⁷⁶ and can contribute significantly to historical memory.⁷⁷ Yet in efforts towards post-conflict reconciliation—like truth commissions,⁷⁸ or judicial proceedings such as tribunals—forensic evidence has no more innate truth-telling power than any other form. Like documents, photographs, surveillance videos, or the myriad other forms of evidence, forensic evidence does not reveal truth—"observed social truths" or any other kind. It can only reveal facts. This seemingly semantic difference is crucially important in practical terms. The distinction is evident in all western legal processes: the question facing juries is "do the facts indict the defendant 'beyond a reasonable doubt,'" not "is it *true* the defendant committed the crime?" The former is an answerable question through investigation and argumentation; the latter is between the defendant and his God. In other words, forensic evidence can only help to assemble facts: age, gender, race, manner and cause of death, and approximate time of death. In many cases, the facts available from forensic evidence alone are not enough to reconstruct what happened.

Yet perhaps because forensic evidence is so tangible and feels so personal, the disappointment—should that evidence prove insufficient to substantiate a charge—can also be heightened. In Argentina, many human rights groups and survivors viewed exhumations of *desaparecidos*, those "disappeared" by that country's military government during the 1970s and early 1980s, as "disappointing and flawed."⁷⁹ Some opposed exhumations altogether; others supported them only for humanitarian reasons, not prosecutorial ones.

Serniki, Ukraine

The Australians had anticipated a six-week stay in Serniki. To their dismay, upon their arrival Soviet officials insisted that the presence of a grave could be established in the span of a few days. Wright hypothesized in his testimony, "We were taking up a lot of their time."⁸⁰ But, with the support of Dr. Sharayev, the leader of the Soviet team, Wright later told the court, "we stuck to our guns, and we stayed the time allotted.... If we had [the Soviet forensic team] on our side, the procurator's office would not interfere and throw us out."⁸¹

When planning their investigation, the Australians had "thought we would be digging our own hole"⁸² to "sample various areas of the grave site to obtain an estimate as to the number of victims."⁸³ Yet the enthusiasm of the Soviet forensic team prevailed: Sharayev insisted that they open the entire grave—perhaps understanding the historical significance of Australian-Soviet cooperation in exhuming a Holocaust grave. In the end, it was a good thing; not only were the Australians

saved backbreaking labor, but the unstable, “sandy soil would have prohibited us sampling,” Wright testified. “I think we might have been buried alive”—the walls of the pit would have crumbled around them.⁸⁴

Soviet soldiers provided the muscle, using shovels to scoop loose, dry, sandy soil onto four-handled sleds that, once full, were carried between two of them into the forest and tipped over.⁸⁵ Then they were ready for heavy equipment. Two Soviet bulldozers and a backhoe started moving the topsoil, known as the overburden, from the surface of the grave. Detective Sergeant Hughes, a crime scene expert from the New South Wales Police Department, filmed with a handheld video camera as a dusty green backhoe started its engine and began to push the top layer of dirt from the grave.⁸⁶ (Although hardly delicate tools, bulldozers and backhoes are often used even in the most carefully archaeological of mass grave exhumations.⁸⁷) By 5:30 p.m. on the first day of digging, the Soviet soldiers, who had by this time largely jettisoned their uniform shirts, stood neck deep in the hole dug by the backhoe. As the soldiers worked to widen the pit, the Australian team took to their knees, brushing dirt away from the bones with trowels and their hands. Soon the tops of three skulls were visible.⁸⁸

Within a week of the Australians’ arrival in Serniki, they had created a pit 37.5 meters long, 3.6 meters wide, and 3 meters deep—very close to the size Fyodor Polyukhovich had remembered.⁸⁹ The walls of the pit sloped outward at a 10-degree angle.⁹⁰ The two long sides of the grave were very close to being parallel, with corners at almost right angles, looking “more like a designed rectangle rather than a casually dug hole.”⁹¹ By observing the same characteristics of disturbed and undisturbed soil that had allowed them to find the boundaries of the grave, the team found an entry ramp “cut like a slice out of the eastern side of the grave.” The ramp—presumably designed so victims could walk into the grave before they were shot—was approximately a meter wide, almost three meters in length, and steep—nearly 45 degrees.⁹²

Hughes’ camera captured the Australian scientists as they worked in the grave, delicately brushing dirt away from the human remains found the previous afternoon. One skeleton, a woman whose long, braided hair was still intact on her skull, held the bones of an infant in her arms.⁹³ This woman and child, along with the remains of a twelve- or thirteen-year-old child, lay at a higher elevation than the rest of the skeletons, a fact that—along with the existence of the ramp into the grave—corroborated eyewitness accounts. After the killings and after the grave had been partly filled, witnesses said that Ivan Polyukhovich and two other, unidentified men had taken a woman and two children down a ramp into the grave. Nobody remembered seeing Ivan Polyukhovich shoot the three victims, but the witnesses said that only he and the two other men returned.⁹⁴

WHEN THE FORENSIC TEAMS finished removing soil from the final top layer skeletons, Hughes’ video camera captured the effect of having the entire grave exposed: blackened skeletons covered an area fifty meters long by ten meters wide. At each end, the bodies lay more densely pressed together, some still covered in soft tissue.⁹⁵ Behind his camera, Hughes walked around the pit, slowly panning across the remains and zooming in close. Hughes, who had maintained some levity in the video’s narration up to that point, was subdued. “The remaining flesh is decaying,” he said. “It’s been wet. It’s not a pleasant smell.” He walked further. “Row upon row of skulls and bones, rib cages, tibias. Rotting flesh.”⁹⁶

With the bodies exposed, the forensic scientists could begin examining the remains for evidence. Initially, the Australian team’s forensic pathologist, a veteran of the Coroner’s Office in

New South Wales named Dr. Godfrey Oettle, planned to conduct full post-mortem examinations on each set of remains. He built a work area on the side of the grave, complete with makeshift waist-high tables made of planks resting on saw horses, covered with a jumble of books, papers, cleaning implements, and cameras. Burt Bailey, a forensic assistant who appeared on Hughes' camera as a white-haired, bespectacled man in a blue painter's jumpsuit, was tasked with cleaning, organizing, and reconstructing and gluing bone fragments back together. Once the first layer of bodies was exposed, however, it became clear that there were simply too many individuals in the grave to remove and examine full skeletons. The team then resorted to simply lifting each skull from the grave.⁹⁷

The scientists laid white tape at one-meter intervals along the width and length of the grave, dividing it into meter square sectors to help them track their work, and to ensure an accurate count of the number of corpses. As the video camera rolled, members of the Australian and Soviet forensic teams started working at opposite ends of the grave. They picked up each skull on the top layer of bodies, cleaned it, examined it to determine age, sex, and cause of death, and then replaced it.⁹⁸ All told, the forensic teams examined 553 sets of remains. They did not attempt to dig below the top layer of bodies, although it was clear to Wright and Oettle that more lay underneath. It was feasible, they concluded, that the grave contained the 850 victims cited in the charges against Polyukhovich. In particular, at the southern end of the grave, where the Australian team was working, it appeared that there were at least two layers.⁹⁹ Wright later testified that he believed there were more bodies, "particularly at the southern end, [but] the density of bones, fat, and other soft tissues made it, in my opinion, too unpleasant to remove the bodies."¹⁰⁰ In an interview years later, one of the Australian scientists recalled that the team was able to find enough of the required information for trial simply by analyzing the top layer: "It is not always necessary to exhume but it is often ruthlessly carried out when it needn't be."¹⁰¹

In more than half of the victims, Oettle found a bullet wound in the back of the head, in the style of the *Genickschuss*. But it was sloppy. Some had gaping exit wounds, while in others "you would find that the face was missing because ... with a high velocity bullet you get a disintegration of the lighter bone in the front of the face."¹⁰² Some of the remaining skulls showed shots in the side of the head, while others had "random" bullet wound patterns. Other victims had bullet wounds elsewhere on the body. Oettle also found some skeletons that lacked any bullet wound at all, but instead showed a depression and fracturing in the skull consistent with rifle butt blows to the head.¹⁰³ In contrast, when mass graves were opened in the Katyn Forest, the site of an NKVD massacre in 1940, all of the bodies were found with one expertly placed bullet at the base of the skull.¹⁰⁴ Serniki looked very different. The forensic evidence suggested Serniki's Jews had been victims of a disorganized, unsystematic massacre—often by shots fired in the style of the *Genickschuss* but by untrained, unpracticed, and unsteady hands. This, the forensic scientists thought, suggested those hands might belong to local collaborators such as Ivan Polyukhovich.

The grave also contained ballistic evidence, including cartridge casings and bullets. "At first we didn't realize that we were looking at cartridge cases," Professor Wright testified, "because the interaction between the metal and the sand had caused a dense crust around [them] and [they] looked like a lump of natural iron stone of the sort ... that was in the natural soil. Some of them however were suspiciously heavy, and when we opened them we realized that we were finding cartridge cases and bullets."¹⁰⁵ Detective Sergeant Hughes took photographs of each sand-encrusted metal object; oxidized to shades of orange if they were above the bodies, and green if they were

below the bodies, where they had been saturated with bodily fluid that affected oxidization. They were transferred to the “radiology department,” as Hughes half-jokingly termed it in the video: a metal x-ray device the size of a shoebox that sat on the dry grass under a tree. X-rays taken with this contraption allowed Dr. Oettle to identify the caliber and make of the ammunition. The large hunks, crusted with sand and corrosion to about the size of an adult’s thumb, were 7.62-millimeter rounds, while the smaller lumps, the size of a pinky, were rounds from 9-millimeter ammunition.¹⁰⁶

Subsequent cleaning crumbled some of the samples. The ones that survived, though, provided useful evidence: engravings indicating caliber, year of manufacture, and name of manufacturer.¹⁰⁷ This evidence offered clues about who fired the shots. The 9-millimeter were German-made Parabellum ammunition, standard-issue to German forces during the Second World War. The 7.62 caliber were Soviet-made; ballistics experts from Britain and Australia testified in court that these were the ammunition most commonly issued to local militias in the Ukraine during the Second World War.¹⁰⁸

All of the casings were dated between 1938 and 1941, which meant that 1941 was the earliest possible date of execution. To determine the age of the grave more precisely, the SIU investigators relied, in part, on dendrochronology—the use of tree rings. Wright analyzed cross-sections of pine trees from the top of the Serniki grave and concluded that they were no less than thirty years old.¹⁰⁹ This, combined with the date stamps on the bullets, placed the date of execution between 1941 and 1960.

Wright also collected hair for a third method of determining the age of the grave: artificial radiocarbon dating.¹¹⁰ This can determine whether the person lived after 1950, when atmospheric radiocarbon levels began to rise significantly as a result of aboveground thermonuclear tests. Levels reached a peak in 1963, and have declined in the years since, though they still remain higher than they were before 1950. This increase in carbon-14 levels is detectable in humans and other organisms. By comparing the carbon-14 levels found in human remains with known atmospheric levels, it is possible for scientists to determine whether the individual died before 1950.¹¹¹ This, as Wright said in court, is “perhaps the only advantage of letting off hydrogen bombs.”¹¹² He cut braids off of two skulls, and sent one to a private lab in the United States and the other to the Radiocarbon Dating Research Unit at the Australian National University in Canberra. Reports from both concurred: the braids came from individuals who died before 1950. Thus, the forensic scientists concluded that the victims were executed between 1941 and 1950. Combined with prayer shawls and yarmulkes found in the grave—evidence that those buried were Jewish—and the striking resemblance between the position of the bodies and their manner of death with eyewitness testimony, members of the forensic team therefore could confidently conclude that the grave was created during the German occupation of Serniki.¹¹³

Australia

Meanwhile, preparations for Ivan Polyukhovich’s trial continued. The charges stated, “between the first day of September 1942 and about the thirtieth day of September 1942 near the village of Serniki in the Rovno District in the Ukraine, Europe, [Ivan Polyukhovich] was knowingly concerned in the murder of eight hundred and fifty persons, whose names are not known but who are described as the Jews from the Serniki Ghetto, such killings being willful killings, and did thereby commit a war crime contrary to Section 9 of the War Crimes Act of 1945.”¹¹⁴

The first steps of Ivan Polyukhovich's legal proceedings were the same as they would have been for any accused under the Australian legal system. In cases involving a serious crime, such as murder or rape, the evidence is first presented before a magistrate in a preliminary examination, known as a committal hearing. Much like a grand jury proceeding in the United States, this requires the prosecutor to convince the magistrate that the case against the defendant is strong enough to justify a jury trial. The evidence presented by the prosecution is held to a high standard of proof: Australian law stipulates that "evidence will be regarded as sufficient to put the defendant on trial for an offence if, in the opinion of the Court, the evidence, if accepted, would prove every element of the offence."¹¹⁵

Proceedings against Ivan Polyukhovich were scheduled to begin that summer, but his suicide attempt in July and the three months in the hospital delayed their start. Doctors advised waiting for an additional year, worrying that his health was still too fragile.¹¹⁶ Finally, on October 28, 1991, almost fifteen months after his suicide attempt, Polyukhovich's committal hearing opened.

The Crown prosecution called several witnesses to speak to both the historical and the forensic aspects of the case. Wright, Oettle, and Hughes all testified, respectively walking the courtroom through the exhumation, the examination of the skeletal remains, and the care taken with the physical evidence once it was removed from the grave. Historians served as expert witnesses, providing context for the prosecution's case. Raul Hilberg submitted a written historical overview of the German occupation of the area around Serniki, and Konrad Kwiet, an expert on Holocaust history at Macquarie University appeared at the hearing to comment further on Hilberg's historical narrative.

The Crown also submitted authenticated copies of archival documents from West Germany, Czechoslovakia, Russia, Belorussia, and Ukraine. Establishing the historical context was critical to the Crown's case. Under the amendment to the War Crimes Act, crimes, such as murder, became war crimes only when committed "in pursuing a policy associated with the conduct of a war or with an occupation; or on behalf of, or in the interests of, a power conducting a war or engaged in an occupation."¹¹⁷ Thus, in order for any murders to be subject to Australian jurisdiction, the prosecution needed to prove they occurred as a result of the occupation and in pursuit of Nazi policies. Moreover, because the occupying German forces had made it illegal in late 1941 for locals to kill Jews without authorization, the prosecution needed to prove not only that Ivan Polyukhovich had participated in the killing of Serniki's Jews, but also that he had done so on German orders. If he had killed Jews on his own volition, he might have been liable in Ukraine for the murders, but not in Australia.

The committal hearing lasted from late October 1991 until June 5, 1992, when Magistrate Kevin Prescott delivered his decision. Despite the wealth of forensic evidence the Crown prosecution was able to marshal—and the time, money, and effort expended—in the end it failed to satisfy Prescott that the case met the necessary standard of proof in six of the eight charges against him.¹¹⁸ These six counts were dismissed, including the charge of mass murder in Serniki.¹¹⁹ Prescott's ruling reduced a case that had originally involved nearly nine hundred deaths to just six individual killings. And it rendered all of the forensic findings in Serniki worthless, legally speaking.¹²⁰

That afternoon—as they recovered from the shock—the Crown prosecutors decided to take the forensic evidence to Australia's Supreme Court.¹²¹ Just before Christmas 1992, the Supreme Court reversed the committal hearing's decision: the charge involving Serniki's mass grave was

restored, and would go before a jury. Yet the comparatively short trial that began on March 18, 1993 went little better for the prosecution. Bullets and spent cartridge casings can serve as critical evidence from a mass grave. In the Serniki grave, the 7.62 caliber (Soviet) Mosin carbine rounds suggested that the prosecution's case about Ukrainian collaborators held some water. But defense attorney Lindy Powell spent hours grilling Wright, Oettle, and Hughes about whether they could prove that the bullets found in the grave had come from the collaborators' guns, or even that those particular bullets caused the bullet wounds found in the victims.¹²² Caliper measurements of holes in the victims' skulls showed that a 7.62 caliber round could have caused the wounds, but they could not show whether the wound could *only* be caused by a 7.62 caliber round. Powell argued that ammunition fired from at least three weapons of German manufacture could have created a similar hole.¹²³ The defense challenge had one major hole, of course: ammunition from those weapons was not found in the grave.

But Powell's questioning exposed the critical weakness in the prosecution's case, and indeed, the weak spot in using forensic evidence more generally: linkage. The prosecution needed to link Ivan Polyukhovich to the grave, to prove that he had fired the bullets that *were* found. But the material evidence recovered from the grave could not place a gun in Ivan Polyukhovich's hands. Even though the forensic teams had uncovered an enormous grave filled with bodies; even though the location, dimensions, and content of the grave closely matched Fyodor Polyukhovich's testimony; and even though three bodies were found at the base of a ramp just as other eyewitnesses had remembered, the jury found the case so weak that they needed only an hour's deliberation.

Three months after the trial began, the twelve-person jury found Ivan Polyukhovich not guilty of all charges. The Canberra newspaper *The Advertiser* reported that the defendant red-dened, and began to cry. His lawyers, Lindy Powell and Michael David, ushered Ivan Polyukhovich and his wife out of the courtroom and into a red Mitsubishi Lancer that whisked them away. "One of Australia's most monumental legal exercises," read the article in *The Advertiser*, "ended with a whimper."¹²⁴

The two other war crimes cases taken on by the Australians, both of which also involved forensic investigations of mass graves in Ukraine, ended similarly—casting doubt on the utility of such evidence in analogous cases. Just as Ivan Polyukhovich's trial was starting, an Adelaide magistrate dismissed charges against Mikolay Berezowsky, the second man charged under the War Crimes Amendment Act. In Berezowsky's case, forensic evidence had confirmed the statements of witnesses, but the case had fallen apart in part because the witnesses had refused to travel to Australia to tell their stories—stories which were necessary to link Berezowsky to the grave.¹²⁵ And in December 1993, charges were dropped against the third and final defendant, seventy-year-old Heinrich Wagner, when he was deemed too ill to stand trial. In Wagner's case, a witness claimed that after executing Jewish adults the defendant threw children in the air above the grave, and shot them "like clay pigeons." The exhumation found, indeed, that the children were lying on top of the adults in the grave, as Professor Wright said in court, "in all directions," just as the eyewitness said they would be. The ending of Wagner's trial remained a sore spot for years in Australia; in 1999 an ABC journalist visited his home and found him gardening, carrying bags of groceries, and doing chores.¹²⁶

Yet in this case, as in Ivan Polyukhovich's, the problem was one that continues to bedevil prosecutions of large-scale crimes: linkage evidence. As historian David Fraser observes, "The story of science confirms the eyewitness accounts of the pit shootings....[But] none of these findings

puts [the defendant] at the pit, with a pistol or with a rifle.”¹²⁷ Seven Australian experts and a team of Soviets had spent six weeks moving tons of soil and meticulously cataloging gunshot wounds and rifle butt blows. Their work proved without a shadow of a doubt that something terrible had happened in the forest in Serniki between 1941 and 1950. What it could not show was who did it, or why.

In the yawning gulf between truth and fact, between historically-established truth and the legal standard of “beyond reasonable doubt,” history and the law lie as uncomfortable bedfellows. The 1994 conviction of Paul Touvier, a French Nazi collaborator, for crimes against humanity in Vichy France, was a moment many saw as one of catharsis and national acceptance—after decades of denials, the French were finally owning up to crimes of their own nationals under the Vichy state.¹²⁸ Critics, though, such as the historian Henry Rousso, questioned the wisdom of using the historical record and historians—for indeed, historians took the witness stand during Tuvier’s trial—in the service of legal justice. Historical truth and legal truth, Rousso warned, were different beasts, with different methods and divergent goals. Historians—and perhaps, in the present case, forensic practitioners—are limited by the sources available, be they documents or bones, and cannot claim to establish an airtight, factual record of events. Their real work is in connecting “islands of established truths in an ocean of uncertainty.”¹²⁹ But justice has no such patience for uncertainty.

This problem—that the evidence available cannot prove a case in a court of law, even if it can in the court of historical judgment—is certainly not unique to the Australian war crimes cases. Any prosecutor, from the county to the international level, knows that even a body does not make a case, and that forensic evidence alone often cannot link the accused with the crime. A body simply proves that someone died, and sometimes, how and when they died. Yet other forms of evidence somewhat more easily demonstrate that link, even when taken in isolation. In particular, this can be true of documentary evidence. The trial of John (Ivan) Kalymon in United States federal court suggests how differently the prosecution of Ivan Polyukhovich might have ended had such documents existed. Kalymon was born in Ukraine and immigrated to the United States after the Second World War, becoming a citizen in 1955. In 2006, he was charged with having participated in the Nazi roundup and deportation of Jews from the Lwów ghetto, killing at least one person, and having concealed that information when he applied for an immigrant visa to the United States.

In an opening statement, Kalymon’s defense team expressed doubt that it was possible for the government to prove Kalymon “committed a murder or an assault with a deadly weapon” more than sixty years earlier. “They have no body, no weapon, no crime scene, no eyewitnesses, no motive. They have what they contend is a document that records his activities on a particular day.”¹³⁰ That document, though, would prove to be damning: dated August 14, 1942, during the Nazi liquidation of the Lwów ghetto, it read, “I, Police Private Ivan Kalymon of the Fifth Commissariat of the Ukrainian Police, fired four shots at 7:00 p.m. on 14 August 1942 while serving in the Jewish operation. One person was wounded and one was killed.”¹³¹ The federal judge found the document convincing, and ordered that Kalymon’s citizenship be revoked.¹³² The ruling was upheld on appeal,¹³³ and in 2011 an immigration judge ordered Kalymon deported “to Germany, Ukraine, Poland, or any other country that will take him.”¹³⁴

According to a 1981 U.S. Supreme Court ruling, in order to revoke the citizenship of a naturalized citizen, “the evidence justifying revocation of citizenship must be clear, unequivocal, and convincing and not leave the issue in doubt.”¹³⁵ Even without a body, a weapon, a crime scene,

eyewitnesses, or a motive—as Kalymon’s defense team pointed out—the document provided enough proof to uphold the ruling through an appeal, an Immigration Court decision, and an Immigration Appeals verdict. The Australian case, in contrast, had bodies, shell casings associated with the murder weapon, a crime scene in the form of a mass grave, eyewitnesses, and a motive, but could not convince twelve Australian citizens on a jury that Ivan Polyukhovich was guilty beyond reasonable doubt.

Another factor complicating Ivan Polyukhovich’s case was that the prosecution had to prove him guilty not just of murder, but of murder as a war crime. “Regular” murder becomes a war crime only in specific contexts. Civilians often die or are killed in war, even in large numbers, but their deaths do not always constitute war crimes. Digging up their bodies does not necessarily reveal the complex circumstances surrounding their deaths.

Command responsibility is also hard to prove with bodies. In order to meet the conditions of the War Crimes Amendment Act, Australia’s Crown prosecution had to show that Ivan Polyukhovich had not only committed the murders, but that he had committed them on German orders or as part of German occupation policy. In the case against Radislav Krstić at the International Criminal Tribunal for the former Yugoslavia, the problem was reversed: prosecutors knew that Krstić had not personally shot the 7,000 Bosnian Muslim men and boys; rather, they had to show that he had given the orders for others to do so. In the Krstić case, radio intercepts provided the critical linkage.¹³⁶ But it is difficult to discern from human remains who ordered the execution. In Serniki, Fyodor Polyukhovich’s testimony became all the more believable when he was able to identify the location of the grave and predict correctly what would be found in it. But because the other evidence was subject to doubt, such as witness testimony regarding an event that took place half a century earlier, forensic evidence could not close the gap. For historians as much as forensic archaeologists and anthropologists, this begs the question: why dig up mass graves at all?

Professor Wright contends that exhuming graves is important for evidentiary, humanitarian, and historical reasons. Recovering bodies is recovering history, because “bodies present a danger to those who would revise the past.”¹³⁷ Hundreds of bodies, most of them women and children with bullet wounds and or blows to the head, a traditional hairpiece worn by a rabbi, and Polish coins and German bullet casings dating to the late 1930s and early 1940s are all powerful pieces of physical, tangible evidence. “Of course historical scholarship and memories are critical,” Wright explained, “but the powerful evidence of the bodies themselves, especially in conjunction with documentary evidence and witness memory, is difficult to contest. If bodies with gunshots are there in the ground, then somebody shot them. The bodies demand an explanation.”¹³⁸ Yet such explanations often prove elusive.

Serniki, Ukraine

On the Australian team’s final day at the gravesite in July 1990, the effect of the previous six weeks was weighing on Hughes, the seasoned detective sergeant. “I’ve lost all track of what the date is. I think it’s about the fifteenth.” Hughes’s voice sounded flat as he narrated to the video camera. He paused, and pointed at a makeshift memorial in the grave. “[There are] some flowers that we’ve picked and placed in [the southern end] of the grave. The whole morning there’s been a large number of locals coming here and having a look. They’ve just been coming and going.”

Old men in jeans and collared shirts and women in brightly colored coats and scarves tied under their chins, mixed with men in dark suits and elderly women in black skirts and sweaters, alternately looking ready for a picnic or a funeral. The locals also vacillated between solemnity and excitement at the unusual attention paid to their small town. All looked curious. One woman stood closer than the others to the edge of the grave, in a maroon skirt and black cardigan, a dark scarf tied under her chin. Her arms crossed across her chest, and she bowed her head. Others walked around the grave, peering at the exposed human remains within it. One man in a red tie held a handkerchief over his face, as if to block the smell, as he bent over the skeletons. Others stuffed their hands in their pockets, staring down at the mass of humanity before them.¹³⁹

Detective Sergeant Hughes, in the same flat, tired voice, pointed to the steep entrance ramp that cut into the wall of the grave and that had matched witness statements so precisely: “As was aptly put by one of the soldiers, [that is the] gateway to hell.”

Australia

All three unsuccessful prosecutions left a bad taste in the mouth of the Australian public. The cost, an estimated 29 million dollars, seemed excessive. But for Jeremy Jones, executive vice president of the Executive Council of Australian Jewry, the costs were justified. “I don’t think if we were talking about [a mass grave of] 850 Australian victims that people would even talk about money,” he told *The Australian* in the wake of Ivan Polyukhovich’s acquittal.¹⁴⁰ It was simply the cost of accountability. The problem for many Australians, though, was that the war crimes trials did not produce any accountability.

The SIU was officially disbanded in early 1993. Some of the investigators, including Professor Wright, went to work for the International Criminal Tribunal for the Former Yugoslavia. At that time, the tribunal was just beginning to build an internal forensic investigation division to investigate massive crimes that had left the former Yugoslavia dotted with mass graves. The Australians, with their recent exhumation experience, were well placed to move to these other graves in Europe. The ICTY also offered an opportunity to pursue similar work in an environment where it might be better received. But the work the forensic team did for the SIU in 1990 and 1991 remained a point of pride. When I met with a former investigator, on the eve of his appearance as an expert witness before the International Criminal Tribunal for the former Yugoslavia, he wanted to talk to me only about the Serniki exhumation and how forensic evidence had helped to write the definitive history of the Holocaust in a small town in Ukraine.

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Notes

This article is deeply indebted to David Fraser, whose book, *Daviborshch’s Cart: Narrating the Holocaust in Australian War Crimes Trials* (University of Nebraska Press, 2011), is the definitive scholarly work. The kindness and generosity he showed me—then a young graduate student, unknown to him and with barely

half-formed ideas—allowed me to access sources I otherwise would not have had. They were also formative for my own understanding of collegiality and how one might interact with and mentor junior scholars.

1. Testimony of Richard Wright, *Robert William Reid v. Ivan Timofeyevich Polyukhovich*, Adelaide Magistrates Court, Committal Proceedings, (Committal Proceedings), 254.
2. “War Crimes Defendant Shot on Eve of Trial,” *Los Angeles Times*, July 30, 1990; “War crimes hearing man shot,” *The Australian*, July 30, 1990.
3. Bernard Humphreys, “Polyukhovich Shot,” *The Advertiser*, July 30, 1990.
4. Because more than one historical actor in this article has the surname Polyukhovich, first names are used consistently throughout so as to avoid confusion.
5. Crown Opening, Committal Proceedings, 7, 13; “Trial opens for pensioner accused of war crimes,” *The Australian*, March 19, 1993.
6. Humphreys, “Polyukhovich Shot.”
7. “Pistol and Cartridge Cases Near Shot Man,” *The Canberra Times*, July 31, 1990.
8. David Fraser, *Daviborshch’s Cart: Narrating the Holocaust in Australian War Crimes Trials* (Lincoln: University of Nebraska Press, 2011), 5.
9. Humphreys, “Polyukhovich Shot.”
10. Testimony of David Hughes, Committal Proceedings, 99.
11. Spelled Kolesnikova in the Committal Proceeding transcripts, and variously as Koleznikova and Koleznikova in published material.
12. Testimony of David Hughes, 100.
13. “The Charges Against Him,” *The Advertiser*, July 30, 1990.
14. David Bevan, *A Case to Answer: The Story of Australia’s First European War Crimes Prosecution* (Kent Town, South Australia: Wakefield Press, 1994), 132.
15. Richard Wright, “Where are the bodies? In the Ground,” *The Public Historian* 32, no. 1 (2010): 98.
16. Richard Wright, Ian Hanson, and Jon Sterenberg, “The Archaeology of Mass Graves,” in *Forensic Archaeology: Advances in Theory and Practice*, ed. John Hunter and Margaret Cox (New York: Routledge, 2005), 143.
17. Testimony of Richard Wright, 226.
18. *Ibid.*, 218.
19. Commonwealth of Australia, Department of Immigration and Citizenship, “Fact Sheet—More than 65 Years of Post-war Migration”: <https://www.homeaffairs.gov.au/about/corporate/information/fact-sheets/04fifty> (accessed June 26, 2018).
20. Fraser, *Daviborshch’s Cart*, 52.
21. Crown Opening, 8.
22. “Migrants Tell Startling Stories to Police of Ex-Nazis Here; Admissions Alleged in Statements,” *The Sunday Herald*, December 18, 1949; see also Australia, Attorney General’s Department Special Investigations Unit, *Report of Investigations of War Criminals in Australia* (Canberra: Australian Government Publication Service, 1994), 173.
23. *Report of Investigations of War Criminals in Australia*, 14.

24. Ibid., 12.
25. See Mark Aarons, *War Criminals Welcome: Australia, A Sanctuary for Fugitive War Criminals since 1945* (Melbourne: Black, Inc., 2001), 283–389.
26. Mark Aarons, *Sanctuary: Nazi Fugitives in Australia* (Melbourne: W. Heinemann Australia, 1989), xxix.
27. Former Special Investigations Unit investigator, in conversation with author, July 2013.
28. See Leslie Caplan, *The Road to the Menzies Inquiry: Suspected War Criminals in Australia* (Darlington, New South Wales: Australian Jewish Historical Society, 2012).
29. A.C. Menzies, *Review of Material Relating to the Entry of Suspected War Criminals into Australia* (Canberra: Australian Government Publication Service, 1987).
30. Australian War Crimes Act, 1945, preamble.
31. Jonathan Brown, ed., “Australian Practice in International Law 1988 and 1989,” *Australian Year Book of International Law* 12 (1988–1989): 654; *Report of Investigations of War Criminals in Australia*, 29–32.
32. Australian War Crimes Amendment Act, 1988, sect. 3.
33. *Report of Investigations of War Criminals in Australia*, 20.
34. Ibid.
35. Stephen Pallavicini and Martin Dean, “Serniki,” *Encyclopedia of Camps and Ghettos 1933–1945, Volume II Ghettos in German-Occupied Eastern Europe, Part B*, ed. Geoffrey P. Megargee and Martin Dean (Bloomington: Indiana University Press in association with the United States Holocaust Memorial Museum, 2012), 1465–66.
36. Crown Opening, 14.
37. Bevan, *A Case to Answer*, 3–4.
38. Crown Opening, 16; Testimony of Raul Hilberg, *Director of Public Prosecutions v. Ivan Timofeyevich Polyukhovich*, Supreme Court of South Australia, 1993 (Polyukhovich Trial), 73.
39. Christopher R. Browning, *Ordinary Men: Reserve Police Battalion 101 and the Final Solution in Poland* (New York: Harper Collins, 1992), 9–25.
40. Wendy Lower, *Nazi Empire Building and the Holocaust in Ukraine* (Chapel Hill: University of North Carolina Press, 2005), 49–50; Martin Dean, *Collaboration in the Holocaust: Crimes of the Local Police in Belorussia and Ukraine, 1941–44* (New York: St. Martin’s Press, 2000), 60–77.
41. Crown Opening, 29; testimony of Raul Hilberg, 88–92.
42. Wendy Lower notes that the functions of the local foresters were not unlike those of members of the U.S. Park Service, who can enforce laws regarding “poaching, vandalism, and the search for missing persons or suspects on their grounds.” Lower, *Nazi Empire Building and the Holocaust in Ukraine*, 139.
43. Pallavicini and Dean, “Serniki,” 1466.
44. Martin Dean, “Vollhynia and Podolia Region (Generalkommissariat Wollhynien und Podolien),” in *Encyclopedia of Camps and Ghettos 1933–1945: Volume II*, 1316.
45. Crown Opening, 38.
46. Bevan, *A Case to Answer*, 212–13.
47. Stephen Landsman, *Crimes of the Holocaust: The Law Confronts Hard Cases* (Philadelphia: University of Pennsylvania Press, 2005), 118.

48. This apt turn of phrase relates to the title of Lawrence Douglas's recent book on the Demjanjuk trial, which examines the ethical and practical implications of trying men like Demjanjuk decades after their crimes: *The Right Wrong Man: John Demjanjuk and the Last Great Nazi War Crimes Trial* (Princeton, NJ: Princeton University Press, 2016).
49. Kathleen McClaughlan, "2 German Leaders Retain Attorneys," *The New York Times*, October 30, 1945.
50. Annette Wieviorka, *The Era of the Witness* (Ithaca, NY: Cornell University Press, 2006), 68.
51. Rebecca West, "Extraordinary Exile," *The New Yorker*, September 7, 1946.
52. Wieviorka, *The Era of the Witness*, 68.
53. Ibid.
54. As Hannah Arendt put it in her famous reports to *The New Yorker*, "The prosecution went as far afield as to put witness after witness on the stand who testified to things that, while gruesome and true enough, had only the slightest connection, or none, with the deeds of the accused." Hannah Arendt, "Eichmann in Jerusalem," *The New Yorker*, February 16, 1963.
55. Arendt cites Israeli Prime Minister David Ben-Gurion, who went even one step further about the intentionally broad purpose of the trial: "It is not an individual that is in the dock at this historic trial, and not the Nazi regime alone, but anti-Semitism throughout history"; *ibid.*
56. Landsman, *Crimes of the Holocaust*, 147.
57. Elizabeth Loftus, *Eyewitness Testimony* (Cambridge, MA: Harvard University Press, 1979), 86.
58. Douglas, *The Right Wrong Man*, 90.
59. Legal scholar Nancy A. Combs argues, quite simply, that one cannot construct a legally solid case; international courtrooms that rely heavily on evidence from witness testimony purport to have a fact-finding ability that, at least for the legal standards required by a courtroom, they do not possess: see *Fact-Finding Without Facts: The Uncertain Evidentiary Foundations of International Criminal Convictions* (New York: Cambridge University Press, 2010), 188.
60. Douglas, *The Right Wrong Man*, 106.
61. Ibid., 69.
62. Landsman, *Crimes of the Holocaust*, 172.
63. Caroline Sturdy Colls, "Holocaust Archaeology: Archaeological Approaches to Landscapes of Nazi Genocide and Persecution," *Journal of Conflict Archaeology* 7, no. 2 (2012): 83.
64. Isaac Gilead, Yoram Haimi, and Wojciech Mazurek, "Excavating Nazi Extermination Centres," *Present Pasts* 1, no. 1 (2009): 13.
65. Avi Weiss, "A Monumental Failure at Belzec," *Forward*, April 11, 2003.
66. Sturdy Colls, "Holocaust Archaeology," 80.
67. Bevan, *A Case to Answer*, 184.
68. Former Special Investigations Unit investigator in conversation with the author, July 2013.
69. For an excellent overview of the spread of forensic science during the last two decades of the twentieth century, see Adam Rosenblatt, *Digging for the Disappeared: Forensic Science after Atrocity* (Stanford, CA: Stanford University Press, 2015).
70. Christopher Joyce and Eric Stover, *Witnesses from the Grave: The Stories Bones Tell* (Boston: Little, Brown, 1990), 173–75, 178–83.

71. Ibid., 203.

72. Eric Stover, Victor Peskin, and Alexa Koenig, *Hiding in Plain Sight: The Pursuit of War Criminals from Nuremberg to the War on Terror* (Oakland: University of California Press, 2016), 97–98.

73. Thomas Keenan and Eyal Weizman have argued that the international examination of Mengele's skeleton marked a turning point in the evidentiary foundations of international criminal and human rights investigations: "the birth of a *forensic* approach to understanding war crimes and crimes against humanity." Thomas Keenan and Eyal Weizman, *Mengele's Skull: The Advent of a Forensic Aesthetics* (Berlin: Sternberg Press, 2012), 12–13.

74. See Simon A. Cole and Rachel Dioso-Villa, "Investigating the 'CSI Effect' Effect: Media and Litigation Crisis in Criminal Law," *Stanford Law Review* 61, no. 6 (2009): 1355–73.

75. Eric Klinenberg, *Heat Wave: A Social Autopsy of Disaster in Chicago* (Chicago: University of Chicago Press, 2002), 121.

76. Eric Stover and Rachel Shigekane, "The Missing in the Aftermath of War: When do the Needs of Victims' Families and International War Crimes Tribunals Clash?," *International Committee of the Red Cross* 84, no. 848 (2002): 845–66.

77. In his work on exhumations of the remains of missing Cypriots following hostilities between Greek and Turkish Cypriots in the 1960s and 1970s, anthropologist Paul Sant Cassia addresses the relationship between the material culture a person leaves behind—mementos, photographs, letters—and the human remains after exhumation: the former shape how the latter will be understood: *Bodies of Evidence: Burial, Memory, and the Recovery of Missing Persons in Cyprus* (New York: Berghahn, 2005). In examining the role of excavated objects and human remains in breaking Spain's "pact of silence" surrounding the Civil War, Layla Renshaw argues that the exposure of graves afforded Spanish society new avenues to understand and talk about their country's traumatic past: *Exhuming Loss: Memory, Materiality, and Mass Graves of the Spanish Civil War* (New York: Routledge, 2011).

78. Anthropologist Richard A. Wilson writes about the inability of forensic evidence to reveal the "experiential dimensions of violence," that is, its emotional toll in addition to its physical one on survivors and communities. Much like critiques of the Auschwitz Trial that argue the sum of individual acts of violence do not and cannot amount to the whole truth of that camp's horror, Wilson points out that a focus on forensic investigation and scientific facts can distract from the experiential truth of systemic violence. This, he argues, happened in post-Apartheid South Africa. "Human Rights methods of investigation," such as mass grave exhumations, "if not accompanied by more historical forms of documentation and analysis, can be a poor avenue for accessing experiential dimensions of violence" and can even be used to downplay the suffering of people who were not killed but who still experienced violence, oppression, or loss. Richard A. Wilson, *The Politics of Truth and Reconciliation in South Africa: Legitimizing the Post-Apartheid State* (New York: Cambridge University Press, 2001), 33–34.

79. Rosenblatt, *Digging for the Disappeared*, 90.

80. Testimony of Richard Wright, 248.

81. Ibid., 248–49.

82. Ibid., 215.

83. Testimony of David Hughes, 167.

84. Testimony of Richard Wright, 254.

85. Video recording of Serniki exhumation, in possession of the author.

86. Ibid.

87. Wright, Hanson, and Sterenberg, "The Archaeology of Mass Graves," 143.
88. Video recording of Serniki exhumation.
89. Testimony of David Hughes, 107, 184.
90. Testimony of Richard Wright, 221.
91. *Ibid.*, 222.
92. *Ibid.*, 223.
93. Video recording of Serniki exhumation.
94. "War Crimes: the search for justice," *The Advertiser*, May 9, 1993.
95. Testimony of Richard Wright, 273.
96. Video recording of Serniki exhumation.
97. Testimony of David Hughes, 168.
98. *Ibid.*, 171.
99. *Ibid.*, 108.
100. Testimony of Richard Wright, 246.
101. Former Special Investigations Unit investigator in conversation with the author, July 2013.
102. Testimony of Richard Wright, 274.
103. *Ibid.*; see also Bevan, *A Case to Answer*, 57.
104. "Committee of Inquiry into the Question of the Polish Prisoners of War from 1939 Campaign missing in the USSR, London, January 25, 1950," National Archives and Records Administration, College Park, Maryland, Record Group 59: General Records of the Department of State, Central Decimal File 1950–54 646C.002/10-652 to 648.6126/8-2550, p. 29; *Amtliches Material zum Massenmord von Katyn* (Berlin: Zentralverl. d. NSDAP, 1943), 56–57.
105. Testimony of Richard Wright, 231.
106. Video recording of Serniki exhumation.
107. Testimony of David Hughes, 128.
108. *Ibid.*, 126; video recording of Serniki exhumation.
109. Testimony of Richard Wright, 232–34.
110. Artificial radiocarbon dating—detection of elevated levels of carbon-14 due to thermonuclear device testing—is different from radiocarbon dating, which measures the extent of decay of naturally-occurring carbon-14 in organic material from the late Pleistocene and Holocene, around the end of the last ice age. R. E. Taylor and Ofer Bar-Yosef, *Radiocarbon Dating: An Archaeological Perspective*, 2nd Ed. (Walnut Creek, CA: Left Coast Press, 2014), 19.
111. Douglas H. Ubelaker, Bruce A. Buchholz, and John E.B. Stewart, "Analysis of Artificial Radiocarbon in Different Skeletal and Dental Tissue Types to Evaluate Date of Death," *Journal of Forensic Sciences* 51, no. 3 (2006): 484–88.
112. Testimony of Richard Wright, 239.
113. Bevan, *A Case to Answer*, 85.

114. Fraser, *Daviborshch's Cart*, 5.
115. See Australian Summary Procedure Act, 1921, sect. 104–106.
116. “Fading Memories after 50 Years Hurt the Prosecution,” *The Australian*, May 19, 1993.
117. Australian War Crimes Amendment Act, 1989, sect. 7.
118. Bevan, *A Case to Answer*, 180.
119. “War Crimes: The search for justice.”
120. Bevan, *A Case to Answer*, 181.
121. *Ibid.*, 183, 196.
122. Testimony of David Hughes, 115, 170, 212.
123. *Ibid.*, 189.
124. “Into the Sunshine of Freedom,” *The Advertiser*, May 19, 1993.
125. Former Special Investigations Unit investigator in conversation with the author, July 2013.
126. Max Uechtritz, “US Report says Australia a war criminal’s haven,” *20/20*, Australian Broadcasting Corporation, June 12, 1999.
127. Fraser, *Daviborshch's Cart*, 240.
128. Nancy Wood, “Memory on Trial in Contemporary France: The Case of Maurice Papon,” *History and Memory* 11, no. 1 (1999): 43.
129. Nancy Wood, “The Papon Trial in an ‘Era of Testimony,’” in *The Papon Affair: Memory and Justice on Trial*, ed. Richard J. Golsan, (New York: Routledge, 2000), 106.
130. *United States v. Kalymon*, Trial Transcript, September 15, 2006, p. 24.
131. *Ibid.*, 18.
132. *United States v. Kalymon*, Judgment, March 29, 2007.
133. *United States v. Kalymon*, Appellate Ruling, September 4, 2008, p. 11.
134. United States Department of Justice Office of Public Affairs, “Deportation Order Upheld Against Detroit-Area Man Who Shot Jews as Nazi Policeman During World War II,” September 20, 2011. No country would take him and he died in Michigan in 2014.
135. *Fedorenko v. United States*, 449 U.S. 491 (1981).
136. *Prosecutor v. Radislav Krstic* (Trial Judgement), August 2, 2001, International Criminal Tribunal for the former Yugoslavia (ICTY), 630.
137. Wright, “Where are the bodies? In the Ground,” 103.
138. *Ibid.*, 103.
139. Video recording of Serniki exhumation.
140. Fiona Harari, “Crime without Punishment,” *The Australian*, May 23, 1993.