

A CASE TO ANSWER: THE STORY OF AUSTRALIA'S
FIRST EUROPEAN WAR CRIMES PROSECUTION by
David Bevan, Kent Town, South Australia, Wakefield
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The International War Crimes Tribunal in The Hague, established by the UN Security Council in 1993 to deal with the atrocities occurring in the former Yugoslavia, is ready to commence operating. The Deputy Chief Prosecutor is Australia's Graham Blewitt, who headed the Special Investigations Unit in this country from 1991 until the Unit ceased operations in June 1992, and then continued as Director of the renamed Unit until December 1993.

Much of Graham Blewitt's experience in this area was gained during Australia's brief foray into war crimes prosecutions. The first and only case to continue to a jury verdict is the subject of David Bevan's book. One other case was dismissed by a magistrate after a five-week committal hearing, and a third case was terminated by the Director of Public Prosecutions during the trial on the basis of the accused's ill health.

A Case to Answer is a clear and comprehensive account of Australia's first European war crimes prosecution. The author is a journalist who reported on this case for Adelaide's *The Advertiser*, and presents an unbiased insight into the multifarious nature of a complex criminal prosecution. In addition to presenting a detailed account of the evidence, it also traces the historical antecedents of the events in question, including events which occurred in Europe over 50 years ago, as well as the political problems surrounding the enactment of amending legislation.

In view of the current significance of war crimes prosecutions in various jurisdictions around the world, David Bevan's book makes a valuable contribution to the literature in this area.

Bevan's account is based on direct observation, court transcripts and personal interviews. The book comprises five chapters and an epilogue. Each chapter highlights the role of some of the key players involved in the proceedings. The book is aimed less at an academic audience, than at one interested in the complexities of a difficult criminal prosecution. The author does not suggest any preferred theoretical models regarding the nature of such prosecutions; nor does he adopt a partial stance. Rather, he presents the story as an observer. The journalist's style is evident in this tightly written and very readable book. It offers an insight into a world often hidden from public scrutiny. The Polyukhovich case offers an excellent example for study. Rarely does a case encompass the full gamut of legal processes, involving the enactment of legislation, a fitness to plead hearing, a High Court challenge, a self inflicted shooting by the accused and finally a jury verdict. David Bevan has chosen a case replete with all the minutiae of the complex web which makes up our political and legal systems.

Chapter One provides the contextual background for the case. The reader is taken to Serniki, in the Ukraine, in 1941, where the events in question took place. The accused was alleged to have been a member of the local police who assisted the German army in the murder of Jewish citizens.

Chapter Two, titled "Reporters, Politicians and Investigators", traces the involvement of those mentioned in the heading. Bevan describes the difficult

path of the *War Crimes Amendment Act 1988* (Cth), from its initial bipartisan support in the Lower House, to the bitter and vitriolic debate in the Senate, through to its final and somewhat truncated form. This episode in Australia's history invites its own close analysis to appreciate the delicate balance between political expediency and legislative muscle. A book of this size does not allow scope for such an analysis. It is not a criticism of Bevan's book that this is not covered in more detail, for clearly the focus of the book is an overview of the events as they unfolded, with particular emphasis on the role played by the participants. The emphasis on the investigators is most interesting, as rarely is the public privy to events occurring behind the scenes of a prosecution. The reader is made aware of the many difficulties encountered along the way, such as the harsh conditions and the cultural and language problems which served to impede the investigative process.

While the politicians' role is one of complex strategy and deal-making, the investigators' role is often tedious, mundane and frustrating. Each plays a vital part in the final outcome but the reader is left feeling that the investigators' are more intimately connected to the proceedings, as it is they who are charged with the responsibility of assisting old and frightened people in reliving the traumatic events of the past.

Chapter Three introduces the lawyers, magistrates and judges. The complex nature of the prosecution case is illustrated by the many concurrent events taking place. While the accused, Ivan Timofeyevich Polyukhovich, was appearing in the Adelaide Magistrate's Court, the investigators were flying to Israel and back to the Ukraine to interview more witnesses. One incident widely reported in Australia was the exhumation of the mass grave in Serniki containing 850 Jewish bodies. A number of setbacks served to frustrate each of the protagonists. The defence team revoked its consent to take evidence on-commission in Europe from elderly witnesses, the accused was shot the night before the committal was due to commence, further delays were caused by illness, by a fitness to plead hearing in the Supreme Court and by a lengthy delay while the High Court ruled on the constitutional validity of the legislation. Bevan has combined all these events in one chapter, emphasising the bumpy journey of a legal prosecution.

Chapters Four and Five deal with the committal proceedings and the trial. Bevan provides a clear and incisive analysis of the difficulties associated with eyewitness testimony by witnesses in foreign surroundings giving evidence about events that occurred 50 years earlier. He details the evidence of each witness in turn, allowing the reader to observe the process as if he or she were sitting in the courtroom. The description of Jack Kriniuk who starts to cry when he recounts how the Ukrainian police came to his home and raped his 21 year old sister, while he as a 13 year old was forced to watch, is very powerful. Bevan remains at all times objective and rarely adds personal comment to the proceedings. The reader is left to draw his own conclusions. There can be no clear demarcation of duties in a prosecution of this nature, and Bevan has captured the spirit of this complexity. These were people who suffered extreme trauma, necessitating delicate handling. The picture painted by Bevan of the investigative team is one of compassion and sensitivity. Their objectivity in relation to the courtroom evidence is contrasted to their gentle approach to their charges.

In the courtroom scenes Bevan builds up momentum and tension as each of the witnesses is examined and cross-examined. The two chapters covering the trial, through to the final not guilty verdict complete the story of a long and

difficult journey for all those involved. The only participant who remains silent throughout is the accused, who did not give evidence and declined to be interviewed for the book.

Bevan's book is a fascinating, easy to read account of a significant Australian case. The factual testimony from court transcripts highlight some of the difficulties in a multilingual prosecution. By focusing in such depth on the intricacies of the evidence, the reader shares some of the frustration which the prosecutors felt when at each stage in the legal process another vital piece of their case was removed. The biggest blow came when the Judge ruled that the photo board evidence which identified the accused as the "Ivanechko" of 50 years ago was to be excluded. The significance of this piece of evidence illustrates the delicate and complex nature of a war crimes prosecution, dealing as it does with the constant sifting of evidence. Problems of consistency are also well documented by the example of witnesses who are hampered by language and cultural problems and who must give evidence at both the committal stage and the subsequent trial, separated by 12 months duration.

A welcome feature of Bevan's book is that in addition to the comprehensive treatment given to evidentiary matters, the human side of this unusual case is not overlooked. Many people were deeply involved in the outcome of the case, apart from the accused. Included in this group was the Prime Minister, Bob Hawke, who had the political will to tread where his predecessors would not; Mark Aarons, whose meticulous research into the entry of Nazi war criminals into Australia gave the impetus for further action by the Government; the investigators and prosecutors whose deep commitment to the case had such a strong impact on their lives; and the frail witnesses from Israel, the USA and the Ukraine who decided to make the arduous journey, despite ill health and at great personal cost.

A Case to Answer is a well researched book which presents more than just an account of a murder trial. Behind this story lie a number of significant issues, not only legal but moral ones: the extent of the Australian Government's constitutional powers, issues of justice and morality, issues of pragmatism and political expediency. The complexity involved in this prosecution is illustrated by the diversity of people involved. Bevan's selection of chapter headings illustrates the influence of the various elements involved. This book would appeal to anyone interested in war crimes prosecutions as well as to those interested in the events occurring outside the courtroom in criminal trials generally. Bevan has given a fair and objective account of a case which was always going to be difficult. If there is anything missing, it is an analysis of the wider issues surrounding war crimes prosecutions. However, as the author himself has remarked in the preface, he has deliberately tried to keep himself out of the narrative. *A Case to Answer* will certainly inform its audience about this case, and hopefully also encourage it to think about the broader theoretical and political issues which this case raises.

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