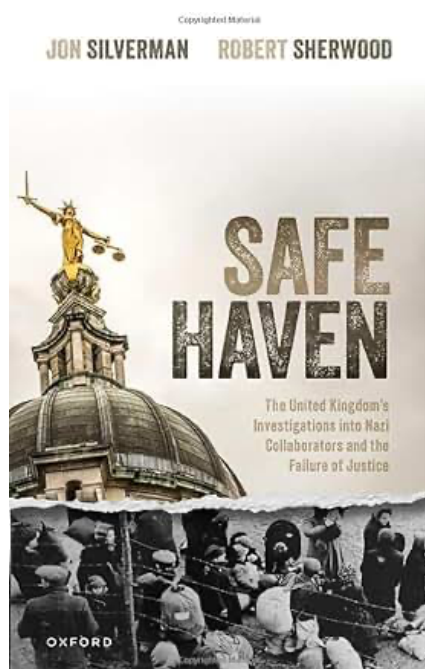


## A conversation with Jon Silverman regarding the UK, justice and war criminals.

Jon Silverman was BBC (Home and legal) correspondent during the 1980s and 1990s, when he covered extensively the public debates surrounding suspected Nazi war criminals living in the UK. He is the author of the excellent, recently published book, co-authored with Robert Sherwood, *'Safe Haven: the United Kingdom's investigations into Nazi collaborators and the Failure of justice'*, OUP, 2023.

Jon is Emeritus Professor of Media and Criminal Justice at the University of Bedfordshire



### **RJ4G: Jon, could you tell us what made you write this book and why now?**

JS: When I was at the BBC in the 1990s, I became the go-to person investigating war crimes stories and I travelled to Eastern Europe quite a lot to find evidence. I developed contacts with the police war crimes unit. It was very difficult to get much information out of them because it was all *sub judice* - but I always felt there was a bigger story to tell.

I remember when I confronted Antony Sawoniuk on television and he tried to bash me with his walking stick. At that time the Attorney General had been quite heavily lobbied by Sawoniuk's lawyer that he was unfit to stand trial due to his 'poor health' and had various medical conditions. When he saw the piece on the 9 o'clock news he decided if he could wield a walking stick and chase me so proactively, he was clearly fit to stand trial! [the elderly Belarusian war criminal who came to live and work in the UK after the war, stood trial in 1999 for his crimes and is still today the only person convicted of war crimes in the UK]

After that case finished, and when all the war crimes trials and investigations came to an end around 2000, the lawyer who represented Szymon Serafinowicz (a suspected war criminal whose trial was abandoned due to his poor health) told me he had a mass of information which was disclosed to him by the prosecution - dozens of boxes of papers in fact. His legal firm had wound up, and he offered me these boxes, because otherwise they would have just ended up on landfill. The boxes sat in my garage for two years, then David Cesarani [Holocaust historian] suggested they be given to the Parkes Centre (now Institute) at Southampton University – a repository of Jewish-related material.

In around 2019, my co-author, Bob Sherwood, a former Met policeman, who had been researching into war crimes, had just finished his Ph.d and his supervisor, the Holocaust historian, Dan Stone, suggested that we collaborate to write a book on the subject that was long overdue and could be of great interest.

**RJ4G: Is this subject of war criminals and genocide suspects living in the UK more topical now and more in the public consciousness or is it merely something that the Daily Mail writes an article about once a year?**

JS: Yes, and no. It's certainly not constantly in public consciousness or media, but it has never gone away either. Two things, for example, have made it more relevant recently: the Russian-Ukrainian conflict - with Russia declaring that Ukraine is 'full of Nazis' and more recently with Israel – Gaza, the Hamas massacres on October 7 and the footage that emerged of the riot at Dagestan airport in Russia, which has also been described as a pogrom. Both events are very clear reminders, if any are needed, and with a large upsurge in antisemitic attacks in places like France and London, that such issues from the past continue to be very relevant. Next year, 2024, the UK takes over the presidency of the International Holocaust Remembrance Alliance, [<https://www.holocaustremembrance.com>] so there will be a number of events that will focus on issues around the Holocaust, memory and genocide denial.

But the issue is very relevant of itself in telling us about how we, as a country and our system of justice, deal with war criminals. I refer in the book to David Blunkett when he was Home Secretary [2001-04] after taking over from Jack Straw. Blunkett was aware that individuals had come to the UK under false pretences. As a result, it was written into the 2002 Nationality Act that those who lied about their backgrounds when they entered the UK could have their British citizenship or residency status later revoked. So it has been possible to take action where criminal trials are not possible or determined on by the Attorney General, but I'm not aware, apart from in one or two terrorism cases recently, of this having taken place – I don't think it has been properly applied. It angers me that you get these commitments, these 'paper commitments' by politicians, which actually don't translate into reality.

**RJ4G: In the period just after the war around 1947-48, as the Nuremberg trials of the 'leading' Nazi perpetrators were closing, and you're just starting to get the first individuals coming to the UK and the mid 1980s, it was discovered the UK had for decades no legislation that could be used to put Nazi war criminals on trial - that is foreign nationals who had committed their crimes in foreign countries. In these four decades not only was there no legal standard to hold such individuals to account in UK courts but there seemed to be no public or media awareness that Nazi war criminals could be living comfortable lives up and down the country.**

JS: Every now and then there was a reminder that we had let people in who in retrospect we would rather not have done due to them being 'morally dubious'. Why? The short answer is the Cold War and Second World War weariness. If you look at the debates in the House of Commons at the time, Churchill made a famous remark in 1948 that we should 'draw a sponge across the past.' In the immediate post war period there was quite active discussion about war crimes trials continuing in the British zone in Germany, and whether they should be abandoned, and interestingly I discovered that the Treasury counsel John Nutting, who later prosecuted the UK's only two war crimes cases in the late 1990s (Serafinowicz and Sawoniuk) was himself heavily influenced by this remark; that is, they should only be looking to prosecute people who had some sort of command role. However, looking at Churchill's remark in context, he was only talking about war crimes trials that were taking place in Germany, though his remarks were seized upon by those in the UK Parliament, 40 years later, as meaning war crimes trials should no longer take place at all.

The names of war crimes suspects did come up periodically in this period. The first one was a man called Ain Edwin Mere in 1960. He had been the commandant of Jagala concentration camp in Estonia, where about 125,000 people died. Mere was living in Leicester and the Soviets applied for his extradition but we didn't have an extradition treaty with them so the request was rejected. Another suspected war criminal, Anton Husak – not his real name which was Avtandil Parzdzhadnadze – had been a member of the Caucasian Company attached to Einsatzgruppen D death squad who the Soviet also wanted sent back in the late 1960s, along with another individual who had also taken part in the Holocaust in the Caucasus. Parzdzhadnadze/Husak had made his home in the pleasant Welsh seaside town of Aberporth. It seems likely that post war they had arrived in the UK with the support of MI6 which made use of their anti-Soviet knowledge and was unconcerned by the bloody past work with the Nazis. For the UK government, it was convenient to fall back on the regular position that there was no extradition treaty with the Soviets and there would not be a fair trial if they were sent back.

**RJ4G: Why did the refusal to extradite these Holocaust perpetrators not trigger any question about them standing trial for their horrific crimes in this country?**

JS: None of these cases really captured the public attention. The Soviets would make a request, and regional newspapers picked up a few of the stories, but little else. David Cesarani argued that these requests by the Soviets were just routinely dismissed by the UK government on the grounds that there was no extradition treaty and they couldn't get a fair trial. However, in the case of one individual, Kirill Zvarich – who was living in Bolton under the name of Stanislav Petrovsky, when the Soviets asked for his return in 1971, instead of just automatically dismissing the request, there does seem to have been some discussion at the foreign office behind the scenes about whether, given the terrible crimes that Zvarich/Petrovsky was alleged to have committed, there should be an investigation, and whether it could be morally right just to allow him to remain without any recourse to justice. However, in most of these cases, there was no investigation, the police and Government just did not want to know what these people had done. In the case of Kirill Zvarich, a second attempt to have him extradited in 1983 was also refused and he died in Bolton in January 1984 without ever having to answer for his crimes. Incidentally, he was known by the Soviet as the 'butcher of Borisov' - a thoroughly evil man who according to witnesses murdered children in front of their mothers and buried people alive.

**RJ4G: Was a lack of public education about the Holocaust in the 1950s, 60s and 70s a reason why there was little interest in the media and then in government for any action? It was not part of any school curriculum then and there seemed to be little public knowledge or interest in the subject.**

JS: I was at primary school in the 50s and secondary school in the 60s and there was no education about the Holocaust. But the very term 'Holocaust' did not come into circulation really until probably the late 1960s. It's also true that the 'official' narrative of the war was that Britain were the good guys, and defeated the 'bad guys', the Nazis. And anything that would have tarnished such an image such as the knowledge that the UK let in Nazi war criminals and collaborators would have been out of the question. There was a very simplistic and binary narrative history.

**RJ4G: Heading into the late 1980s and 1990s why do you think Margaret Thatcher's government at the time decided to push through the War Crimes Act, despite the protracted opposition, especially in the House of Lords, and when there was no clear public interest in the issue?**

JS: It's a very interesting and pertinent question. With hindsight, it does seem remarkable that the UK government persisted with pushing this controversial legislation despite the bill to make it law twice being kicked out by the House of Lords. I think a number of issues are responsible for it being passed - and you shouldn't discount the personal efforts by Thatcher herself - as she almost bullied the Cabinet into support for it. There were certainly members of her cabinet who did not think the War Crimes Act was a great idea, but she drove it forward. Second, by the time you get into the mid 80s, there was a much wider recognition of Second World War and debate about it. I mention in the book the episode when US President Ronald Reagan was heavily criticised on an official trip to Germany in 1985 for going to Bitburg cemetery where members of the Waffen-SS were buried. That controversy got a lot of media coverage.

The other Commonwealth jurisdictions Australia and Canada had already begun to go through the same process, had changed their laws and were already investigating Nazis. There was also the protracted case of John (Ivan) Demjanjuk [A Sobibor death camp guard deported to Israel in 1986] which got a lot of headlines. I was based in Paris from 1987, when Klaus Barbie [the head of the Gestapo in Lyon during the war and later extradited from the US to France in 1987] was on trial, and I covered the case for the BBC.

All these events gave these issues more salience than they had had in the 30 or 40 years previously. Plus, of course, the list of names of alleged Nazi war criminals in the UK made public by the Los Angeles Simon Wiesenthal Centre in 1986 produced great media interest, though apart from Anton Gecas none had any subsequent action taken against them. In essence, I think, the list was just put together as an act of provocation; but if nothing else, it did kick start an active debate about Nazis the UK had allowed in.

**RJ4G: The Wiesenthal Centre release of a list of Nazi suspects living in the UK did seem to get the media involved and governments do tend to act when there are headlines involved.**

JS: Oh yes, it did get the press involved, and the Anton Gecas case was investigated by both Tom Bowers, who investigated Nazis and their current whereabouts, The Times and by Scottish television, so it was much harder to ignore these cases, then it would've been 30 or 40 years before. [Gecas, a Lithuanian who fought for the Germans and was involved in large-

scale massacres of Jews, entered the UK after the war, setting up a new life in Edinburgh. In 1987 was tracked down and named by a Scottish TV documentary, later losing a civil case for damages in 1992 when the judge held him accountable for killing thousands of Jews. Mysteriously he was never subject to a criminal prosecution.]

**RJ4G: Do you think the government felt the legislation would open the floodgates to possibly dozens of prosecutions of Nazi Holocaust perpetrators or did they suspect that really only one or two individuals would ever face justice due to the length of time since the crime [50 years+], the difficulty of finding witnesses a court would find credible, and the high burden of proof to even get a prosecution sanctioned by the Attorney General?**

JS: My feeling was at the time that the government and politicians felt they had done their part by getting the legislation on the books, and it could be handed over now to the police and the Crown Prosecution Service (CPS) and 'what would be would be'; probably there wasn't any expectation there would be a large number of cases – and a realism that frankly it would be very hard to prosecute, and this feeling did get transmitted to the police and the lawyers. The police did as good a job as they could, but the really important decision-making came from the Treasury Council and the CPS, how they really restricted the criteria applied to these cases, which certainly predetermined there would not be many, or even just a handful of prosecutions; and frankly, if there were one or two successful convictions, we could then say we are the only Commonwealth state to do that.

They would not admit such an attitude - even now they would not admit it, because of the way justice works in this country. The CPS is independent, but the Attorney General has the final say on whether there should be prosecutions, and the Attorney General is a political appointment. I think myself that the Attorney General up until around 1997, Nicolas Lyell [1992-97] when the Conservatives were in power, was not very enthusiastic about trying war crimes cases and it's probably no accident that John Morris, the new Attorney General in 1997 with the change of government that year, was more sympathetic.

**RJ4G: The UK now seems to have regressed back to the early 1990s, where we had no skilled lawyers in prosecuting war, crimes or genocide. If a case began tomorrow, we have no prosecutors who have prosecuted such crimes before also, and we don't have police either with much experience to investigate – SO 15, the anti-terrorism unit, is also the unit that investigates genocide and war crimes and yet the two are totally separate.**

**Investigating Islamist or far right terrorism is completely different from investigating war crimes that may have taken place in Africa or Afghanistan or the Ukraine.**

JS: Well, we have some lawyers who have prosecuted – and defended – at international tribunals but it's true that domestically we don't have the skill set now, but then again, they did not have that in the 1990s when they prosecuted the two cases. One theme of the book is that the first police war crimes unit of the early 1990s was put together in a very serendipitous way. None of the people selected for it had any experience of those sort of cases - they worked on regional murder squad cases and serious crimes, but it was a completely new thing for them. Lawyers also had no experience of those cases and had to learn quickly. I think the key fact, in setting up a standalone unit or with the lawyers is not so much having an initial the skill-set as having access to the expertise of people who understand the crimes that have been committed in Rwanda etc. One of the handicaps the initial war crimes investigations suffered from in 1991 when it was set up was that a key historian was attached to the Australian war crimes until late 1992 and so, for 18 months,

and it was a critical 18 months, they had no historical input. Most of the police and possibly lawyers had not even read, David Cesarani's book [*Justice Delayed: How Britain became a refuge for Nazi War Criminals*] – so they were coming in cold to the subject. If there was a war crimes unit now, I would say the critical thing is having people who really understand the context of how these crimes were committed in Rwanda.

**RJ4G: What do you think where David says the van is still with us make of the progress since the someone that case back in 1999. His book justice delayed was very much of the opinion that there had been enormous missed opportunities to prosecute war crimes suspects in the UK. What do you think he would have made of the past 20 years?**

JS: I wouldn't presume to get inside David's mind, even if he was still alive! With hindsight, which is a great thing, a major issue is how circumscribed the CPS has been with its very narrow definition of what - and who - can be prosecuted. As a viable alternative, we could have gone down the 'Blunkett' route and strip people of their citizenship and then deported them. The Americans have been the most successful nation in terms of addressing this issue for this very reason. They have denaturalized through their courts at least 150 people who came to the USA having lied on their immigration forms. The UK could have done the same. And I think that could have even been possible before the War Crimes Act was passed in 1991. It was one of the options considered by the Hetherington and Chalmers report in 1989, but they rejected it on the grounds that they didn't think it would be a serious enough punishment. We argue in the book that depriving someone of their citizenship, or even if they weren't citizens, kicking them out of a country where they had lived for 40 or 50 years, would be to my mind a pretty serious punishment - and if you can't convict them in a criminal court of law, it's the second best solution but it would be effective. That's why I mention the Nationalities Act of 2002 because that did seem to open the possibility that people could be kicked out and yet it hasn't really been used at all widely.

**RJ4G: Is one of the reasons for that, apart from judicial apathy, the question where do you kick them out to? - the US have been very successful in sending Rwandan genocide suspects who have lied on the US immigration forms back to Kigali where they have then been put on trial. The UK seems to have decided that we can't do that - we can't send them back home for the same reason we can't extradite them because they will probably be picked up and put on trial. So it seems you have a perfect loop of impunity. If you're not going to extradite or deport and you're not going to put them on trial for whatever reason, maybe it's resources maybe it's politics, maybe apathy, maybe it is these very restrictive CPS guidelines you referred to – the question is how do you break out of the loop of impunity?**

JS: That is right. I recognise from my own investigations that there is no enthusiasm for either diluting some of the criteria for making it easier to prosecute people in this country or trying to turn the UK courts into forums for trying international crimes. My personal view is it's not something the UK judiciary and courts are particularly comfortable with.

**RJ4G: The UK judicial system and Crown seem quite happy to send someone to the Hague, but when it comes to doing something at home, there is a solid block.**

JS: There was always the fear in the 1990s, when considering the prosecution of Nazi Holocaust perpetrators that the defence lawyers would be able to claim an abuse of process and get the trials halted – that Judges would be more open to an abuse of process argument

in these sort of cases, than say, the average murder case, so it was a somewhat Sisyphean task to get cases taken on with this threat of abandonment for 'abuse of process' hanging over them. What I mean by that is the defence would mount an argument that the prosecution hadn't provided enough solid *prima facie* evidence for the case to even get to trial. Judges were - and are - very circumspect, in making sure the evidence was up for a legal trial and that hung over the cases. The older the witnesses get, and longer period from the events become, then the more chance a defence can be made that they have misremembered – especially if that witness is the only one and their account is uncorroborated. In some of European jurisdictions, the courts are more receptive to these arguments. It's no accident that neither the other common-law jurisdictions Australia and Canada got a conviction either. There is an interesting difference between the Roman law approach in some European countries such as France, where judges may have an academic rather than a criminal justice background. In the UK you cannot become a judge unless you have worked as a barrister, so the whole approach is different in this country.

**RJ4G: Certainly in the French trials of the Rwandan genocide suspects there has been a lot of circumstantial evidence around the crime and the history of the crime that around politics of all sorts of experts that carry a lot of weight whereas in this country it would have been ruled out by the judge as unproven or hearsay.**

JS: Indeed, in some of the cases, such as Gecas the circumstantial evidence was overwhelming, but again, the lawyers couldn't work with that because they knew it wouldn't get through the court process. Hence there was no criminal trial only a civil case.

A final thought. In this country until recently CPS decision-making has not been part of public or major debate. That has changed particularly with rape cases in the last few years. There has been a huge amount of media discussion about why rape convictions have been so low, and for the first time really, the CPS has been forced to open up and discuss how they approach rape cases – how decisions are made which cases will be prosecuted and what evidence is required. War crimes cases have never been in that category. And the one argument I would make very strongly – and I'm not downplaying rape cases - but that there is no more serious crime than crimes against humanity, war, crimes, and genocide. Yet they have never been the focus of that kind of public debate, and the CPS and the legal establishment has never been required to come out and be transparent about how they approach these cases, and they should be.

It is a chicken and egg conundrum. If the public don't push it, the CPS and the legal establishment don't feel the need to go on the record to discuss their motivation and actions, but obviously if the public do not know about it, they are unable to push for that transparency and debate.

*Jon Silverman and Robert Sherwood's book was published by Oxford University Press in October 2023.*

*See his opinion piece in the **Guardian**: 'Britain likes to think it 'stood alone' against the Nazis. So why did it convict so few for war crimes? 13 September 2023*

<https://www.theguardian.com/commentisfree/2023/sep/13/britain-nazis-war-crimes-conviction>

*and in the **Daily Telegraph**: 'How the British justice system allowed Nazi war criminals to live undetected.' 29 September 2023.*

<https://www.telegraph.co.uk/books/non-fiction/the-nazis-next-door-how-british-justice-failed-their-victim/>