



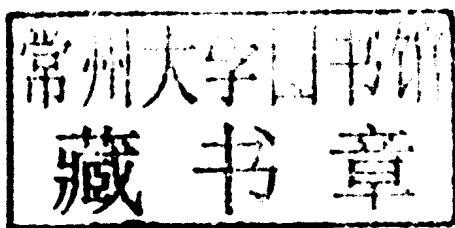
DEBORAH E.
LIPSTADT

THE
EICHMANN
TRIAL



DEBORAH E. LIPSTADT

THE EICHMANN
TRIAL



NEXTBOOK · SCHOCKEN · NEW YORK

Copyright © 2011 by Deborah E. Lipstadt

All rights reserved. Published in the United States by Schocken Books, a division of Random House, Inc., New York, and in Canada by Random House of Canada Limited, Toronto.

Schocken Books and colophon are registered trademarks of Random House, Inc.

Library of Congress Cataloging-in-Publication Data
Lipstadt, Deborah E.

The Eichmann trial / Deborah E. Lipstadt.

p. cm.

Includes bibliographical references.

ISBN 978-0-8052-4260-7

1. Eichmann, Adolf, 1906–1962—Trials, litigation, etc.

2. War crime trials—Jerusalem 3. Holocaust, Jewish (1939–1945) I. Title.

KMK44.E33L57 2010 345.5694'420238—dc22 2010028620

www.schocken.com

Jacket illustration by Shannon Freshwater

Jacket images of the Eichmann Trial © Government Press
Office, State of Israel; Hannah Arendt © from the Jewish
Chronicle Archive / Heritage-Images / Imagestate

Jacket design by Barbara de Wilde

Printed in the United States of America

First Edition

4 6 8 9 7 5 3

DEDICATION

Much of the work on this book was done while I was the Judith B. and Burton P. Resnick Invitational Scholar at the Center for Advanced Holocaust Studies of the United States Holocaust Memorial Museum. My stay had all the ingredients scholars savor: outstanding colleagues, extensive scholarly resources, and the freedom to do one's own work. Then tragedy struck. At noon June 10, 2009, Special Officer Stephen Tyrone Johns, a long-term guard at the USHMM and a man beloved by the museum staff, saw an elderly man approaching the museum. Eager to be of help—this was his hallmark—Special Officer Johns reached out and pushed open the heavy glass door. Instead of entering, the man, an eighty-eight-year old racist, anti-Semite, and Holocaust denier, raised a rifle from beneath his coat and shot Stephen Tyrone Johns. He was murdered trying to do a kindness. Most mornings, including that day, when I arrived at the museum Special Officer Johns would be there. Often he would kid me about the piles of books I always had in tow. He seemed to have a friendly word for everyone. I had passed his station on my way to give a lecture a few moments before this incident and saw him at the door welcoming people to the museum.

The USHMM reopened two days later. The staff was

Dedication

unsure if people would be too frightened to return. Shortly before the opening, I went outside to see if anyone was there. I fought back the tears when I saw the crowd. The line stretched around the block and down the street. It was significantly longer than for a normal June day. I heard people say that they were there in order to demonstrate that the bigots could not frighten them away. They had come precisely because the shooter wanted to keep them away. Visiting an institution dedicated to teaching about the Holocaust and fighting genocide had become an act of defiance.

It is with deep gratitude and sadness that I dedicate this book to the memory of Special Officer Johns and to the two officers whose quick response prevented this tragedy from assuming far greater proportions. Special Officer Johns's kindness and Special Officers Harry Weeks's and Jason "Mac" McCuiston's sheer professionalism are the hallmarks of this institution. We who were there, the thousands of people who visit on a daily basis, and the multitudes who benefit from its myriad of activities owe them and the USHMM's entire staff more than can be imagined. This is a very small token of that gratitude.

Deborah E. Lipstadt
June 10, 2010
Emory University
Atlanta, Georgia

INTRODUCTION

In the early 1990s, when serving as a consultant to the team planning the United States Holocaust Memorial Museum, I attended a meeting of the Content Committee, the group of laypeople who reviewed the plans for the museum's permanent exhibition. It promised to be a spirited gathering. At issue was the question of displaying hair that the Germans had "harvested" from Jewish women at Auschwitz and sold to factories that produced blankets and water-absorbent socks for U-boat crews. When the Soviets liberated the camps, they found storehouses filled with hair. The Auschwitz Museum had given the USHMM a number of kilos of it. The museum designers planned to display it near a pile of victims' shoes, which also came from the camps. When the plan was first proposed, some staff members objected, arguing that it degraded and objectified the women. Although it was appropriate to display hair at Auschwitz, they did not think it should be displayed a continent away from there. Some feared that teenagers would find it, given the particular world that this age cohort often inhabits, ghoulishly amusing. Their opposition notwithstanding, the committee voted nine to four to display it. Then a number of survivors grew wary and asked that the matter be reconsidered; hence this meeting. The project

Introduction

director had come equipped with scholarly, psychological, and even rabbinic arguments to counter the opponents. Scholars, including one of the most eminent Holocaust historians—committee member Raul Hilberg—argued that the hair should be displayed because it demonstrated the Final Solution’s “ultimate rationality.” The Germans considered a body part something to be transformed into an “industrial object” and a salable commodity. Psychologists believed that the display of the hair would be no more disconcerting than many other aspects of the exhibit. Leading Orthodox rabbis determined that displaying it did not constitute a *nivul hamet*, desecration of the dead, and transgressed no religious rulings. In an attempt to allay some of the objections, the designers proposed that a wall be built in front of the exhibit case. Visitors would have to choose to see the display and not just happen upon it.

But then two committee members, both of whom were survivors, rose. One argued that this would be a “violation of feminine identity.” A second spoke more personally. “That could have been my mother’s hair. She never gave you permission to display it.” When she sat down she said, in an aside, “It could have been *my* hair.” The conversation soon ended. There was no vote, but all those present knew that the decision had been made. As we left, a committee member mused to no one in particular: “I don’t object to the hair. But who am I to challenge survivors?” Shortly thereafter, the chair of the Content Committee announced that the hair would not be included in the permanent exhibition. Today it sits in a storehouse outside of Washington. It has

never been displayed. Survivors, speaking in the first person singular, had a semantic, historical, and moral authority that trumped the psychologists, designers, historians, and other experts.¹

But for the Eichmann trial, this might never have happened.

This trial, whose main objective was bringing a Nazi who helped organize and carry out genocide to justice, transformed Jewish life and society as much as it passed judgment on a murderer. In the general world it changed our perception of the victims of genocide.

On April 11, 1961, the theater of Beit Ha'am, Jerusalem's brand-new cultural center, was packed. Over seven hundred people filled the room for the trial of a man accused of being the chief operational officer of the Final Solution. Newspapers worldwide carried news of this event. American television networks broadcast special telecasts. This was not the first Nazi war-crimes trial. Yet there were more reporters in Jerusalem than had gone to Nuremberg. Why was this trial, coming just after the conclusion of Passover, different from the Nuremberg tribunals, where far more prominent figures in the Nazi hierarchy had been tried? Some of the differences were connected to the *when* of these two events. Nuremberg occurred in the immediate aftermath of the war, when many people wanted a mental respite from the horrors of the preceding five years. At Nuremberg multiple defendants had stood together in the dock. Now

Introduction

one man stood alone. The drama of this proceeding was further intensified by the way Eichmann had been brought to trial. Captured in Argentina, he had been spirited out of the country to Israel. Even then, a full year after his capture, there was still some mystery about precisely how he had been found. But the *when* and the *how* of his capture were eclipsed by the *who*: who found him and, more important, who would try him. At Nuremberg victors had sat in judgment. Now the victims' representative would sit in judgment. Immediately after the war, most Jewish Displaced Persons, as Holocaust survivors were once known, were focused on trying to piece together a new life, not on seeking punishment. Even if they had wanted to bring those who had destroyed their world to justice, they had no mechanism to do so. In contrast, by 1961 the immediacy of the war and its consequences had passed. The survivors, whose wounds had begun to be bound up by the passage of time, now had more physical and emotional stamina to demand justice. Most significant, however, now there was a sovereign entity to deliver it. The State of Israel, which was then entering its Bar Mitzvah year, exemplified the victims' emergence from the very powerlessness that had helped make the Final Solution possible.

The excitement and interest surrounding the trial had little to do with questions about its outcome. Most people, both those in the courtroom and those beyond, expected Eichmann to be found guilty. What was unknown was what would happen when history, memory, and the law met in this Jerusalem theater. Would the law prove adequate to adjudicate such an unprecedented event? Would the proceedings

deliver retribution or genuine justice? Would Eichmann's defense strategy of obedience to orders hold sway? Would he try to justify the genocide? And what, if anything, would be the lesson for the future?

As I complete this book, the fiftieth anniversary of the Eichmann trial nears. It is an event that is a vivid part of my childhood memories. During that period, dinner in our home was timed so that we could watch the televised news clips from Jerusalem. I remember the picture of Eichmann in the glass booth that appeared on the front page of *The New York Times* on the opening day. On the second day of the trial, if the Soviets had not launched Yuri Gagarin into space and safely retrieved him, the news of the trial would have been *the* lead story. As a thirteen-year-old, I was intrigued that something so profoundly connected with Jews had been featured so prominently. At this point in time, my world was pretty much divided into Jews and non-Jews. Virtually everyone in my immediate circle—classmates, neighbors, and friends—was Jewish. If you had asked me to recall those years, I would have told you about the thriving Jewish community in which I lived. And I would have insisted that I never encountered even a hint of anti-Semitism. I would have said so despite knowing that there were neighborhoods in which Jews could not live and firms that would not employ Jews. I had heard my friends' older siblings say that, despite their outstanding grades and academic records, they would not get into a particular Ivy League school because its

Introduction

Jewish quota was filled. Already in the eighth grade we knew not to consider certain colleges because it was exceptionally difficult for a Jewish student who lived in a Jewish neighborhood and attended a Jewish school to gain admittance. Rather than being shocked by this, we accepted it, I am embarrassed to say, as a fact of life. This was how things were. In 1961, John Kennedy had just become president. I remember how perplexed I was during his fight for the Democratic presidential nomination by the media debate over whether a Catholic “could” be president. My twelve-year-old reasoning was straightforward: Everyone in America was either Christian or Jewish. It was a given that the presidency was off limits to Jews. White Christians, particularly those of privilege such as Kennedy, faced no such barriers. Why, then, should there be any question about his nomination? As I look back on those years, I am bemused, not by my failure to understand the difference between Protestantism and Catholicism, but by my acceptance that certain avenues were closed off to Jews. (My parents were far more incensed about it than I. In contrast, I was well aware and deeply troubled by the fact that African Americans faced terrible and violent discrimination.)

Into this simplistic and rather naïve world came the Eichmann trial and the Holocaust. It would take me a number of years to understand fully that the horrors for which Eichmann was being tried had sprung from the selfsame anti-Semitic soil that kept Jewish kids from top-notch schools, and Jewish graduates from jobs in many prestigious firms. Eventually I came to understand the interconnectivity of

these phenomena. However, I never dreamed that from this soil would also come a movement that would have a dramatic impact on the course of my own life and would entrap me in a complex legal battle. My personal encounter with the Jew hatred which is at the root of Holocaust denial began with a few pages in my book *Denying the Holocaust: The Growing Assault on Truth and Memory*. I described David Irving, a British writer, as the world's leading Holocaust denier. Irving was a prolific author whose books were reviewed in *The New York Times*, *Times Literary Supplement*, and other prestigious publications. One of his books contended that Hitler did not know of the Holocaust and when he learned of it tried to stop it. After hovering at the edges of the denial movement for over a decade, Irving testified in 1988 at the trial of denier Ernst Zündel and declared that there was no "overall Reich policy to kill the Jews," that "no documents whatsoever show that a Holocaust had ever happened," and that gas chambers were "an impossibility."² He subsequently continued on that path in an unequivocal fashion. Explaining to a reporter why he had eliminated all references to the Holocaust from a new edition of his book on Hitler, he said: "If something didn't happen, then you don't even dignify it with a footnote." He denied the use of gas chambers to kill Jews systematically, argued that there was no officially sanctioned Third Reich plan to annihilate European Jewry, and contended that Hitler was "probably the biggest friend the Jews had in the Third Reich. He was the one doing everything he could to prevent nasty things happening to them."³ Given his comments, I never imagined that I was doing any-

Introduction

thing potentially controversial when I described him in my book as a “Hitler partisan wearing blinkers” who “has been accused of skewing documents and misrepresenting data in order to reach historically untenable conclusions.” I wrote that “on some level Irving seems to conceive himself as carrying on Hitler’s legacy.”⁴ My comments were harsh but, given what he said, seemed quite legitimate.

In 1995, my book was bought by Penguin UK and published in the United Kingdom. Not long thereafter, I received a letter from Penguin’s lawyers informing me that David Irving intended to bring a libel suit against me. I initially dismissed this as a groundless threat designed to frighten me. Even if his suit made it to court, which I doubted it ever would, I was certain the British justice system would see the absurdity of Irving’s claims and dismiss the matter. I did not then realize that the United Kingdom’s libel laws, which were the mirror image of American law, favored the claimant/plaintiff by putting the burden of proof on the defendant. The onus was on me to prove the truth of what I wrote, rather than on Irving to prove the falsehood. Another unique American safeguard was denied me. The public-figure defense is rooted in a United States Supreme Court ruling that a public figure, such as an author or a politician, can sue for libel only if he or she can prove malicious intent—i.e., that the author of the words knew or had good reason to know that they were false but wrote them anyway. This, too, would have prevented Irving from taking action against me in the United States. No such protections existed in the United Kingdom, and the matter

came to court in 2000. After a trial lasting twelve weeks, the judge issued a three-hundred-page judgment which excoriated Irving and validated my defense team's claim that he was an unrepentant denier, falsifier of history, and someone who expressed overt racist and anti-Semitic views. Among the hundreds of people who made contact with me during this period were many survivors, who said that not since the Eichmann trial had they been so tied to a court proceeding. One older woman said: "I was shocked during the Eichmann proceedings by 'seeing' a mass murder. Now I am shocked, not just by the absurdity of a man with such a record dragging an established historian into court, but that the British courts are taking his claims seriously."

The British press paid careful attention to the case and the verdict. A number drew parallels with the Eichmann trial. *The Daily Telegraph* declared in its lead editorial, "This trial has done for the new century what the Nuremberg tribunals or the Eichmann trial did for earlier generations." Newspaper hyperbole aside, there was something else binding the two events. A few weeks earlier, the trials had been linked in a more overt fashion. During his trial, Eichmann wrote a memoir. After Eichmann's execution, Prime Minister David Ben-Gurion agreed, at the suggestion of prosecutor Gideon Hausner, to seal the manuscript in Israel's National Archives. Hausner contended that Eichmann had been given extensive opportunity to present his case, and therefore Israel had no further obligation to publicize his version of events. In the late 1990s, one of Eichmann's sons requested the release of the manuscript. A debate ensued as

Introduction

to what should be done. Some Israeli historians wanted a German research institute to annotate Eichmann's false assertions prior to publication. Other historians contended that Israel should just release the manuscript and allow the normal scholarly process to take its course. In the spirit of much else in the Middle East, nothing happened. During my trial, one of my former students suggested I look at the manuscript to determine if it contained anything that might be useful to my defense team. Our objective was to prove that Irving's claims about the Holocaust were lies. It was *not* to prove that the Holocaust happened. However, we thought that a direct statement from Eichmann's manuscript about the mass murders would, at the least, demonstrate that Irving denied the very things that those who had engaged in the killings freely admitted. Though it was a long shot, I asked my lawyer to request that Israel release the memoir. A few weeks later, I received a call from retired Israeli High Court Justice Gabriel Bach, who had served as Hausner's first assistant during the Eichmann trial. Bach told me that the current attorney general had consulted with a high-ranking group of jurists and historians and they had unanimously agreed that my request be honored. Even the prime minister had weighed in on the matter. The next day, my barrister, Richard Rampton, arrived in court carrying a small yellow computer disk with an electronic version of Eichmann's manuscript, which had just been downloaded to him. When Rampton, who as barrister had the task of pleading or litigating the case in court, introduced the contents of

the disk as evidence, it was the first time the memoir was in the public's hand since Eichmann wrote it.

When I returned to my hotel that night, a hard copy of the manuscript was waiting for me. As I looked through it, I found myself comparing what I was experiencing to what had happened in Jerusalem in 1961. The importance of the Eichmann trial dwarfed mine. Irving cannot be compared to Eichmann in terms of either historical significance or the damage he caused to the Jewish people. Yet there were certain parallels between the two events. One of these men helped wiped out one-third of world Jewry. The second had dedicated himself to denying the truth of this. Neither man started his career expressing overt anti-Semitism. Both men seemed to me to have either conveniently adopted that ignominious mantle or let it emerge from where it had always been when it served their purposes. In the newly released memoir, Eichmann expressed himself as an inveterate Nazi and anti-Semite. In contrast to claims that would be made by Hannah Arendt that he did not really understand the enterprise in which he was involved, the memoir reveals a man who considered his Nazi leaders to be his "idols" and who was fully committed to their goals.

Most important, both *The State of Israel v. Adolf Eichmann* and *David Irving v. Penguin UK and Deborah Lipstadt* addressed phenomena that had a common source: anti-Semitism. Without centuries of this persistent hatred, the Third Reich would have found it impossible to mobilize hundreds of thousands of people to despise, scapegoat, and ultimately

Introduction

participate in the murder of European Jewry. (Could they have convinced countless people to take similar action against bicycle riders or redheads?) Holocaust denial would be impossible but for centuries of anti-Semitism. Deniers build their pseudo-arguments on traditional anti-Semitic stereotypes and imagery. They contend that Jews created the myth of the Holocaust in order to bilk the Germans out of billions of dollars and ensure the establishment of Israel. Once again the devious Jews have harmed innocent multitudes—Germans and Palestinians in particular—for the sake of their own financial and political ends. To someone nurtured by the soil of anti-Semitism, this makes perfect sense.

Yet, in a number of important ways, these two trials were diametric opposites. The most obvious contrast, of course, is that in Jerusalem the Nazi was the defendant. In London it was the Holocaust historian who was on trial. There is, however, an even more striking contrast. In Jerusalem testimony by the victims constituted the central element of the prosecution's case. Attorney General Hausner was determined that their voices should be heard in all their intensity. It was this decision by him, however questionable from a legal perspective, that gave survivors, such as the women I encountered at the meeting about displaying the hair in the Holocaust Museum, an iconic, almost mythic authority. In contrast, at my trial, we did not use survivors as witnesses. Though they inundated us with offers to testify, we eschewed their testimony for strategic reasons. Survivors would have constituted "witnesses of fact," attesting to the