



Voices from the Rwanda Tribunal

Official Transcript: Avi Singh (Full Interview)



Role:	Legal Assistant
Country of Origin:	India
Interview Date:	24 October 2008
Location:	Arusha, Tanzania
Interviewers:	Batya Friedman John McKay
Videographer:	Max Andrews
Interpreter:	None

Interview Summary

Avi Singh speaks about his experiences defending Jerome Bicomumpaka, posing the question: Are all government members responsible if genocide occurs in their country? In other remarks, he critiques the legal aid structure at the ICTR, claiming the United Nations is plagued by inefficiency. He stresses the importance of high quality defense to avoid political prosecutions, and discusses the problem of hearsay in witness testimonies. Singh comments that alleged perpetrators of genocide typically view themselves as victims of an international conspiracy.

The transcript of the interview begins on the following page.

Part 1

- 00:00 **Batya Friedman: So I'm Batya Friedman, professor at the University of Washington and it is October 24th, 2008 and I'm here with John McKay, a professor from Seattle University Law School, and our cameraperson is Max Andrews. And we're here today speaking with Avi, and Avi could you say your name, your role here at the ICTR and your nationality.**
- 00:25 Sure, my name is Avi Singh, my role here is a legal assistant in the defense team for Jerome Bicomumpaka, which is one of the four co-accused, in what's called the "Government 2" case here, and my nationality is Indian.
- 00:40 **BF: Okay, great. Can you tell U.S. just a little bit more about your role on this case? What the case is about and just your role, some general things.**
- 00:50 It's bizarre – the, the case is about basically, it is a very wide case. It's been going on for five years, so we're still trying to figure that out. In terms of what is actually being plead against it.
- 01:02 But it's, if I can distill it down, if you can strip off sort of the factual allegations which we of course contest, I think this case really comes down to, if you're a government, or a member of the government, a minister in the government and a genocide or a major war crime event happens in your country, are you responsible?
- 01:23 I mean there's a lot of allegations about specificity et cetera which are really – but tha-, I think that's really what this case is always been about for me. And that's really what, if I could distill through a lot of the, you know, extra stuff that the prosecution throws, that's really what this case is about.
- 01:40 The role of a legal assistant is a – that's a harder question to answer because I don't know whether you want a de jure answer or a de facto answer.
- 01:49 **BF: So really what have your activities been? For this case?**
- 01:53 I mean, I-, you know, Philip and I are both legal assistants 'til our lead counsel passed on just last year. So, but basically, beyond actually speaking in court, we've actually run the case. So you, you have this situation here where you need, used to need, 'til last year, ten years bar, call at the bar to actually be a counsel.
- 02:20 And, and this varies from team to team but more so, because I worked at other international tribunals too, more so here than other places, very often the legal assistants are running the cases to a large extent. And, which could sound like well, you know, we just think we're doing it, but it has, it has been the case.

- 02:39 You know (___), I mean I remember, I really don't think that people actually read what they've signed in terms of pleadings, in terms of the paper, you know, actually getting up and arguing and, and cross-examining witnesses.
- 02:50 We haven't actually been allowed to do and we actually fought that battle and lost it. Because they said, "No, no that's the conditions of legal," because we're on legal aid, we're funded through the legal aid system.
- 03:02 So beyond that, legal assistants basically, at least in our case has been, you know, we're done all the writing, done all, between us all the witness preparation, the strategy of the case.
- 03:16 BF: Mm-hmm. Great. So I want to take you back for just a moment to the spring of 1994.**
- 03:26 Spring 1994?
- 03:27 BF: Yeah. What were you doing? Where were you and what were you doing?**
- 03:31 I was an undergraduate in 1994 spring. I was in – God that's a good question. I was – no, no I remember this. I was at the London School of Economics, I was in my third year and I graduated in '95. Yeah, I was in my third year. I'd gone there from the U.S.; I was an undergraduate in the U.S.
- 03:50 I had gone there to the LSE for a year. And I'm not sure particularly what I was doing, probably, but it was, yeah, April, so exams were in May, no, June. So wasn't studying. Yeah.
- 04:05 BF: And . . .**
- 04:06 (___), World, World Cup was later too, no so I wasn't watching the World Cup either. But yeah.
- 04:10 BF: So and what were you studying at the London School?**
- 04:14 International Relations.
- 04:16 BF: Mm-hmm. And at what point did you become aware of the genocide in Rwanda?**
- 04:23 When it was happening, yeah.
- 04:24 BF: So . . .**
- 04:24 When it was happening.

04:26 BF: How did you learn about it?

04:28 Well, I mean I, I'm a little strange in the sense that you know, I, I read about five newspapers a day. And so you know, I, I, I like to know what's happening in the world, I've – and especially ethnic conflict. You know I grew up with ethnic conflict, my parents, my family have been refugees from ethnic conflict.

04:48 So for me ethnic conflict is sort of – you know, that's what brought me to ICTR in the first place. But you know, going back now I remember. The one thing that really, really peeved me off about the coverage about Rwanda then was the fact that every, th-, there was this – now I know an academic term for it.

05:12 The new barbarian theory, you know, something barbarian theory, by a writer called, I'm forgetting his name, English writer who writes about this. But it was like, "They've been fighting each other for hundreds of years. This is," you know, "usual ethnic conflict."

05:26 I remember reading that and thinking yeah, this is, you know, yes, that's what people do out there, you know, out there in the other world. So people – and I remember being very angry about the sort of, the coverage of it then.

05:39 BF: So you mean that – so just, that this barbarian theory is the theory that people are just fighting each other all the time and there's nothing new here?

05:48 It's what they – you know, my expertise, if, if you want to, I didn't know much about Rwanda then . . .

05:53 BF: Mm-hmm.

05:53 . . . but I was actually – I did my, it's an undergraduate thesis so it was only that limited. But I did my thesis on, on Yugoslavia. And they're the same thing. You know, the Balkans, "They've been at each other for hundreds of years," which basically removes any, any amount of sort of politics from it, agency from it.

06:11 You know you take away all, you know, political, what happened 20 years, the history itself is informed by things. You just say, this is the way things are. So then there's no reason to change anything, it's just how people will be. The Balkans will always periodically go at each other with guns and countries in Africa will periodically go at each other with machetes.

06:30 BF: And what's your view on that theory?

06:33 Oh, it's crap.

06:34 BF: And, and why?

- 06:36 Why? Why is it . . . ? Hard question to answer. Why is it crap? Because all ethnic conflicts are political, right? And you and I are of different ethnicity, we're on video so people can see that, right? And people living in the same place are of different ethnicity and you can create the political conflict quite easily over time as a political project, through narratives of history.
- 07:03 And there are narratives of history which have terrible in Rwanda. But that doesn't mean, even – so that's itself political, but that doesn't mean that ethnic conflict will result, either by people acting badly or people not caring enough, or people letting people who have ulterior motives – it gets to a situation and even when it gets to a situation it can be contained.
- 07:24 So there's, there's specific political events that happen which lead to it. And they're avoidable at every stage of it, right? I mean Rwanda was avoidable, and the blame frankly is shared by the defendants here. The people in power in Rwanda, first, because in the end it's their country and they let it happen to themselves.
- 07:46 And secondly by the international community who played variously malicious roles in it. You know, we're all to blame to some extent – I mean, you know, you can always say we weren't in power and didn't have anything to do with it, or didn't even know about it when it started, but in terms of international community, yeah.

Part 2

- 00:00 **BF: So, going back just to your own personal history, w- what's the ethnic conflict that you said you grew up in and . . . ?**
- 00:07 Well, I mean, I grew up in Punjab, which is a region in India, which when I grew up, and now it's ended and people hardly remember it, and we, we never write about anything, is it was basically there was a movement then to have a separate Sikh state, called the Khalistan movement and, which was fairly violent.
- 00:27 You know, it was, led to about, I don't know, how many wars, but, you know, definitely fairly violent. So through the 80s, so I was 18 in '91. So through the 80s was at its peak and I lived in Punjab so it was, you know, it's what you grew up with. And, and, I'm Sikh, but I'm not an orthodox Sikh. So you grew up in that context of, you know, it's your community in one way and not your community and having to take sides in political situation and it was ethnic.
- 01:00 I mean there were actually moments where, you know of course the state which also had a ma-, majority Sikh police force, but there was still discrimination against Sikhs. There was a, sort of a major program you could call it, in Delhi 1984. There

was, you know, Sikh, and this is a – it was a very political thing what people call them. You know, people who oppose them, like me call them terrorists.

01:24 People who support them call them – or, or most sympathetic call them militants. A bit like Iraq now, you know, the terrorists or militants. But they would actually pull out people from buses and, and, you know, sort of, kill them if they weren't wearing a turban.

01:42 BF: And you said you grew up in a refugee camp? (____) you (__) . . .

01:44 No, I didn't grow up in a refugee camp. My families are refugees from Pakistan. Both sides of my family in '47 . . .

01:49 BF: Okay.

01:50 . . . Sikhs had to move from Pakistan. And then we may have had to move out of Punjab if there had been a separate Sikh state, as not very orthodox Sikhs. So you know there's sort of, you know, (____) . . .

02:01 BF: Mm-hmm.

02:01 . . . this ethnic conflict, if you want to call it that, has in a sense, informed my personal history.

02:07 BF: Mm-hmm. So what is it that made you decide to get involved with the ICTR? I mean, what, what, what specific things happened that, you know, at some point you said, "Okay, I'm going to go and get to know what this is about in a really personal way"?

02:25 It's, it's bizarre. It was very accidental. I mean, now I've always kept an interest. But you know, seven years I worked in corporate America you know, as business development. So from '95 to 2002 . . .

02:41 BF: Mm-hmm.

02:42 . . . and I went back to get a JD in 2002, and I really, you know, never thought I would do criminal defense; furthest thing from my mind.

02:56 My first summer I was at the ACLU, you know, in San Francisco, very human rights. I applied to be an intern here, and I came out here in 2004 for six months, basically my fourth semester in JD. And, you know, very, very idealistic UN court.

03:23 I didn't want to go to a . . . and I knew more about Yugoslavia but I thought Rwanda court is in Africa and it's (__) be a more interesting experience. So that was it, it was not really well thought out, why I came out here.

- 03:36** **BF: Mm-hmm.**
- 03:37 That's what brought me here first.
- 03:39** **BF: So, before we carry on with the conversation around specific questions, you've been involved with this particular trial for four or five years now . . .**
- 03:50 Yeah.
- 03:50** **BF: . . . is there anything, any reflections about your experience with that, that you'd like to share with us?**
- 03:57 You know, it's hard to be, you know, I'm () 35 now, so it's not that much of my life. I'm not in my twenties, but still five years is significant part of your life. It's, it's been really a interesting experience but that's, that's a fairly banal statement actually.
- 04:12 It's . . . how sh-, how do I put it? It's, I don't think – you know, it's not just being in the trial, it's like being here, it's, it's sort of this intensity, you know. You don't go home when you're working in Arusha, because home is bunch of other lawyers.
- 04:32 You're talk-, you're living these cases. And, and I, I'm not even equating it to that but it's like working, you know, the closest thing – I remember thinking about it because I read this quote from Charlie Chaplin. He said, "When, when you're working on a movie set, it's like, you know, you die from normal life." That's what it's like, there's, you know, you never get a bill here.
- 04:52 You, you know, none of your normal lives we've all – you know our normal lives have kind of, you know, our friendships, we've maintained some of them but it's really hard. They've really taken course which are very, very different.
- 05:06 And, and it happens to all of us, I mean it's happened to us to a large extent. We're not here all the time but still it's happened to us, a lot of things.
- 05:12 So, so, it, it – there's a big effect of being in this, because it's very intense. You're, you're removing yourself to another juris-, place to work just on a trial. Everybody else that mostly you know is also working in one way or the other with the court.
- 05:27** **BF: Mm-hmm.**
- 05:28 So just from a social aspect, you know, it's, it's a, it's a bit like going to camp or going to a boarding school or going to, you know, going on a movie set I guess, from the Charlie Chaplin analogy.
- 05:38 You know, it's sort of, it's very, very intense.

05:42 **BF: Mm-hmm.**

05:43 And I'm realizing this again because I've s-, I've restarted a, a private practice now in India, and you know there's normality. You know, you don't go out every e-, evening with a bunch of lawyers and discuss what you worked on during the day, which is good and bad. Because nobody cares what you've done during the day, the bad part, but yeah, but it's, it's that aspect of it.

Part 3

00:00 **BF: Since you came here as an intern, you could have worked on any number of aspects of the court. How is it that – you know, was there a point where you made a decision if you wanted to work on the defense or you wanted to work on prosecution or were you just assigned somewhere? How, how did that come about?**

00:18 You know, I'd love say it was a really conscious well thought out decision, but it's probably just you know, that's what I was offered and I wasn't even thinking of coming back that quickly, so I did come back.

00:30 But, I mean, to be fair, I had lots of opportunity to apply for – I, I liked being on the advocacy side. So I worked in chambers, you know, which is for six months, I worked almost six months in chambers, which is fine, but I liked the advocacy side.

00:46 So I like – and then, so the, the choice is really between joining a bureaucracy, which is the prosecution, or being fairly independent you know.

00:57 **BF: Mm-hmm.**

00:58 I mean I, I really don't – haven't had a boss in years. Not just here but in other (___), which is why it's hard to go back to firms and things like that. So it, it's about, it's really a choice of, you know, I'd love to say it was because I believed in one side or the other, I have no problems on the prosecution or the defense.

01:15 The only thing is in prosecution I think they have, they have a more difficult task, doing – even if they want to do it, and I can't speak for them – a more difficult task doing what they think is right, because of the political imperatives of their function within.

01:30 **BF: So when you think about the things you've done as a, as a defense lawyer here, what, what are the things that have facilitated you, say, doing your job really well and what are some of the things that have been barriers? Or made it harder to do what you would have wanted to do?**

- 01:51 God, I mean the structure's, is mad. You know, the, the legal aid structure here is just, is really badly put together.
- 02:01 BF: In, in what ways?**
- 02:02 In every way. The way, I mean, it basically encourages you to be, you know, encourages and wants you to be inefficient. We're only supposed to work a 100 hours a month. Which in – that's all that we're paid for and that's changed slightly now, but that's what the bulk of the case has been. Which is ridiculous in some – you know, most months it's a ridiculous thing.
- 02:24 So the, the whole billing, we have to bill every time. Each member of the team bills separately. You know, there's a whole sort of . . . the amount of time it takes just to get paid months afterwards, to try and actually (_____) the witness. You know, the bureaucracy, they're like seven, eight people sitting there. You should interview one of them really and find out what they do for a living.
- 02:45 But which has been basically designed to stop us from, you know, and I'm sure there is abuse, but the, the system the way it's designed is, is not preventing abuse it's just increasing paperwork.
- 02:56 So it's, it's the economics are really bad, and you can really get away by doing very little but playing the paperwork game really well. So, so sort of the bureaucracy of it, you know, is, is terrible. It really hinders you from, from doing it.
- 03:11 I think definitely, you know, I'll speak personally, for my team, I can't speak for other teams is, you know we could have had a full team working on things and we've effectively had two legal assistants who eventually became co-counsel working on the bulk of the case so that and we did a, I think, you know, a decent job, but . . .
- 03:33 You know, it's, it's been everybody's pulling their weight. There is a difference and I've seen it in other places. What else? I think it would have been far better to have this case go at, at more concentrated clip.
- 03:50 BF: What would you have done to have, have speeded it up?**
- 03:53 Well, we, we shouldn't have had long adjournments. You know, it's, it's hard to maintain, sustain. You know, you go off for four months, you come back and having to turn on everything again. You know, you're going, you get a momentum going, and then you stop, you go away then you come back, you have four months off, three months off. So it gets really, really difficult to sustain everything.

- 04:13 You know, you go off and you've got to do other things, because, you're not, you know, if, if you're billing fairly you can't always just be working on a case remotely. So, so it's hard you know, (____) now they're doing that, they're doing that a lot more, is trying to have things more concentrated.
- 04:28 But still the multi-accused cases I think would have been far better frankly, and I was just saying this, is, is for the judges to exercise control. You come from a U.S. jurisdiction. You know what this is about. Don't put in stuff irrelevant. The number of times I've heard this, "We are professional judges; we can figure it out later."
- 04:45 You know, juries need exclusion of evidence. We don't. The fact is we end up with a case with, I don't know, a thousand exhibits, running in some exhibits, in hundreds of pages, 350 some days of trial. It's humanly impossible to actually go through that evidence.
- 05:06 It's impossible, and, and they should have, you know, been putting blocks around, you know, what comes in, what's relevant, what's not. You know, we've had people testifying for days and a month sometimes. One of the cases went for a month.
- 05:22 You know, no limits on cross-examination, so carry on. Nobody gets limited. Repeat, ev-, everybody is going to get up and speak, for co-accused, for counsel, prosecution, really, really. I mean, sometimes you know, just want to be a judge just for management of the case, so really bad management of cases, from my perspective.
- 05:39 **BF: And do y-, do you think that affects the defense differently than the prosecution or are both sides sort of equally impacted by this . . . ?**
- 05:46 It d-, I think it affects every team differently, yeah. Some people, you know, do it. But frankly, you know, one of the things that it's, it's, it's hard not to do is get cynical here, because you can really flow through and I have seen teams flow through five years of it with just being completely incompetent. And I just, you know, I don't have that many years in the bar, but sometimes you just think of it, oh, and (___), the prosecutor in our case and many cases here, entirely incompetent.
- 06:25 I know that the prosecution closing brief is confidential, but there's nothing confidential about the fact that most of their references to their own evidence – and I've just wasted five days doing this, just, I mean it doesn't help us in the closing brief, but it's just to give it a little, you know, sling at them in the closing brief – are wrong. They just plain don't – either the witness didn't say what they thought they (___) they said, or they've just cited it wrong, or they've actually just made up dates which nobody testified on.

- 06:57 So forget like their – the power of legal reasoning. Just purely from high school editing standards, and they have resources. Really, really you know, sort of their, their batting order goes way down. B5's and B4's and, you know, so I'm not even talking about the strength of the legal argument which is atrocious, but I'm just talking about simple editing.
- 07:23 So when you have got to respond to this, you know, you just don't know whether to laugh. You know, how do, how do you take something like that seriously? This is the case which has, you know, after Nuremberg the first time that cabinet members are being charged for respons-, or Tokyo tribunal, and this is the standard of advocacy?
- 07:41 There was a time when there was a – one of the prosecutors who tried to – I think it took him like, I remember because I've always laughed about this, it took him literally ten minutes and he just (___) ask a non-leading question. He couldn't succeed. And finally one of the defense counsels suggested it to him. So that's prosecutor.
- 08:04 Lot – there's some very good exception. Ex-, excellent exception, privileged to be in the court with them. Lot of defense counsel are just – maybe not as bad, but also not good. Some of them are actually as bad, but . . .

Part 4

- 00:00 **John McKay: I'm John McKay, a professor at Seattle University Law School. I guess I should say I'm a former prosecutor. I, I don't feel you're going to hold that against me.**
- 00:07 No, no, no.
- 00:08 **JM: So, so we're going to proceed as friends here, and you know how, how independent we are here, we're not connected to the ICTR and we are independently funded. And so, you know, we're just very interested in your, in your views on this. I, I wanted to kind of go back to your view, the quality of what's happening in the court room . . .**
- 00:28 Mm-hmm . . . yeah.
- 00:30 **JM: . . . and y-, y-, you spoke about prosecution, you spoke about defense counsel. Tell me about your impression of the judges with ICTR.**
- 00:42 I mean, I, I, frankly I've only had the opportunity to, to really closely observe the three judges in my courtroom, and the three judges I was before when I was in

chambers. I mean, it's, it varies, it, it varies. But I think consistently nobody controls their courtroom well.

01:08 There are good judges here, there are good judges and some of them, they know the law. Not all of them. Some of them don't know the law; but some of them still have a sense of fairness. But in the end – how do I say this? When I look at how a judgment might go, I'll go first speak to their legal officers.

01:30 JM: Do you feel there's a shortcoming in the, in the rules of procedure or is it a question of judges who aren't adequately managing the court within their, within the powers that they have?

01:43 They have the powers, all judges have the power. Okay, yeah you could say that the rules of procedure should – for example cross-examination. Let's take one instance right. The rules of procedures don't limit cross-examination to what came up in examination chief or direct as you call in the US, but that doesn't limit the judges from exercising that control.

02:03 Sure, you know, evidence is three lines, but relevance? You know, that, that can be a bridgehead for a whole host of stuff. Prima facie reliability and probative value – that can be another bridgehead. You can build, you know, on those.

02:18 And we've had judges. We had a judge in the beginning called Gunawardena, who died during the course of the trial, who was from Sri Lanka and he was an old crusty high court judge and he'd done this long time, you know.

02:30 And he, he got it, you know, and he was, he really limited stuff in the beginning, this – if he had remained and he hadn't passed on, and you know, yeah, we disagreed with him on a lot of things, you do, with the judge. But you can still walk away with respect, on how they're running their courtroom.

02:48 So, so it's possible, using the existing rules of procedure and evidence and using the statute, to run it. But, yeah, I mean I haven't seen that. There is – it's happening a little bit more, people say for ulterior versions in, in a court case called Karemera right now. I mean I j-, only can observe it from the perspective of, you know, the decisions that come out and not in a day to day, but it's happening a little bit more.

03:18 One thing I've got to say in their favor though. I really, you know, used to be more cynical about the judges here, 'til I went to the special court for Sierra Leone. And you know, I was looking forward to appearing again here, and arguing, not arguing but writing motions here, because, you kn-, it can get worse.

03:36 JM: Sort of a backhanded compliment.

- 03:37 Yeah, it can get far worse.
- 03:41 JM: You, you mentioned the legal aid structure. Filled with bureaucracy as you testified earlier, you said in your interview earlier.**
- 03:51 But not under oath, John.
- 03:53 JM: No, I said testified didn't I, sorry, it's hard to, it's, it's hard to lose these things, I, and because you aren't under oath.**
- 04:00 (_____) . . .
- 04:01 JM: (____), that could be arranged.**
- 04:03 Could be arranged . . .
- 04:03 JM: We could arranged that. But I've had some experience in, in legal aid in the United States and it's my observation that the last thing that court systems fund are legal representation programs for those people who can't afford it.**
- 04:17 Mm-hmm . . . yeah . . . yeah.
- 04:18 JM: Whether it's in criminal law in the United States or other countries that have similar systems, Canada, legal aid plans tend to be exhausted because they also include criminal defense and when it comes to civil legal aid they're gone. So in, in general, justice systems don't do a good job and I think that's true in many places around the world, even Great Britain where . . .**
- 04:40 Yeah.
- 04:40 JM: . . . now there's quite bit of criticism being leveled that way. Can we think in your, in your estimation of ICTR as, as, as a, as a mini version of, of its own court system and how would you relate the funding of legal representation? And I really am talking about defense here, because the Office of the Prosecutor is really a part of the . . .**
- 04:59 Yeah.
- 04:59 JM: . . . of the court in the UN administration. But, but you are dependent on the same funding sources. If you can relate them to the other functions that are required of, of expenditures, how would you rate ICTR as a judicial system in its funding of legal aid plans for the defense?**
- 05:17 Well, I think if, if your counsel is decent it's not that, you know, they're, they're not paying you, it's the bureaucracy really, you know, of it. It is far worse for legal

assistants but you know, that, that's a dichotomy that I think, you know, is more of a union issue than anything else . . . yeah.

- 05:34 JM: Let me interrupt you here because our viewers won't know the difference between . . .**
- 05:37 Okay, so . . .
- 05:38 JM: . . . legal counsel, co-counsel, legal assistants. A-, and you don't really have to explain that . . .**
- 05:43 Sure . . .
- 05:44 JM: . . . but to talk about support for the team, whether the team is, is adequate or not. I don't want to put any words in your mouth . . .**
- 05:47 Yeah . . .
- 05:48 JM: . . . but they won't understand those differences so if you could . . .**
- 05:50 Right . . . they, they formalize it a lot more than other systems but here basically what happens is there's a list. If you have ten years on the court, court in your local jurisdiction; don't need any requirement in international law or international criminal law. You can get on that list and then from that list an accused is allowed to select lead counsel.
- 06:09 The lead counsel can usu-, build a team, which usually consists of a co-counsel which is also a member of that list and then legal assistants, one or two, and one investigator. So it's fairly lean teams compared to what I've seen in ICTY so that's the comparison on special court. And ICTR came up with this system of sort of, you know, managing each individual within a team through the bureaucracy.
- 06:38 So you could have your lead counsel saying, "do this", but then have to bill it and justify it at the end of the month to somebody who'd not been party to that conversation or those instructions at all. It's, it's, so it's, even they have moved on from that system but we lived underneath it through this trial, right.
- 06:59 So they're trying to move on to the – so everybody decided that this is not the, the (___) system and even ICTR had decided so it's sort of flogging a dead horse to really criticize that. But it hasn't worked because it, it concentrates salaries on lead counsels, which, which is great for lead counsels.
- 07:16 So I think it works very well from a financial – but in terms of, you know, really managing the, the case and making sure you have enough funds to do

investigations, et cetera, you still have to go back to the bureaucracy to get that out.

07:30 So it's very easy to get paid for your hours if you're lead counsel. It's not so easy to get, you know, all the investigation and that's really where I think, you know, nobody's going to deny you, you were in court, you were paid, you know, those things happen.

07:45 But sort of the investigation part of it and spending time and making sure the case is built in, that's where things are. And then the sheer wastage of not having and they've tried it and it hasn't worked and somehow this is a bureau-, bureaucratic issue that has to work. But you've got a public defender office and you've got cases which have basically the same fact pattern.

08:06 It's going to happen; they are going to establish five guys who have all the documents, all the databases and then, you know, you can, you don't have to repeat that every single time.

08:15 But here, I mean we guys do this. We have this informal exchange with other legal assistants or, you know, "What happened in your case?" Or, you know, "Did you have that document?" It works sometimes, doesn't work, things slip through the crack. But very often they're funding the same thing being done by a new team.

Part 5

00:00 **JM: L-, let me ask about that issue which is – there really are no templates for some of the work that you've been doing here because there are new legal theories**

00:08 Yeah . . . yeah . . . yeah . . .

00:09 **JM: . . . in international law happening, international criminal law happening here. Tell me about the experience of that, I mean, to me it's a fascinating thing.**

00:17 **JM: One, one perhaps almost certainly trepidation for your client but, because these are new and, and there seems to be a, a great force behind them, but, but it also must be exciting for you to look at the differences in the war crimes cases, the genocide cases, rape as genocide, media law. Can you, can you talk about what that means to you as a lawyer to be working on, on those issues?**

00:41 I mean, you've been a lawyer and you know that – how do, how do you say this? You know, you don't trivialize the, what happened but I mean it's a very, very meaty case. And, and, you know, that's the kind of case that you live to work on.

And it's why, you know, if you become this – you know, even criminal cases, domestic jurisdiction very rarely match.

01:02 You know, you, you're basically talking about not Bagosora, but interim government case where you're really talking about what happened in a country over a period of months, or a period of years. Which may, somebody may not read but, you know, if you can – you know, as lawyers we always think we're the center of the universe.

01:19 You know, we're, we're writing, somebody will, eventually will read the judgment which comes out and you would have contributed to it. So, you know, from combating the prosecution's, of course, novel theories which are entirely baseless law, it's fun and it's, it's absolutely, you know, what keeps, you know, keeps one here. I mean it's a . . .

01:39 JM: There are people who may view this in different places around the world today or . . .

01:46 Mm-hmm.

01:46 JM: . . . or many years in the future, who may not appreciate the value of, of an adversarial system where we purposefully believe that a, a justice system can't be a justice system unless there's advocacy for the accused.

02:01 Yeah, yeah.

02:02 JM: How would you explain the importance of your role, even understanding the enormity of genocide, why is it important that there be defense counsel for those accused of even the worst crimes the world can even imagine?

02:15 So, if I had you know, to use an American, what's it, adage – If I had a penny for every time I've been asked how can you do this? It's kind of the same question to some extent.

02:28 It's sort of interesting from one perspective that, you know, if you, if you have people, and I've never thought I was an anti-human rights person, but sometimes (___), you know, I could say I have a difference of opinion on some issues with the human rights community.

02:40 But in domestic jurisdictions the first thing human rights community's goal, they would say, "We are going to keep a careful watch on every government action including prosecution and make sure that all the rights of all accused people are respected."

- 02:57 And then you get here to this situation where we have decided that X, Y, and Z are guilty people and procedural safeguards is interfering with international justice. Well, how . . .
- 03:20 And, and we've had human rights campaigners come and testify. Not just once but actually what I call you know the sort of frequent experts, which have been used to set the context – it's very hard to use them for the substance – set the context of guilty verdicts. So it's, it's a really dangerous role because, you know, what, what's the standard?
- 03:39 I, if I was a human rights rapporteur – I don't think anybody would hire me after – I've actually written about this in papers, but – you know, where would I go? I would go and my job would be – and I would say my job would be to interview victims and really fight for their stories to be known to everybody and make sure that people listen to their stories.
- 03:59 But I wouldn't be judging them, or making sure that they're credible, or making sure that their stories can, are verifiable, that's the (___) what happens in (_____).
- 04:08 So we don't know that these people are guilty or not guilty, so, and especially in a situation of chaos and war. I think the standards are much higher, that it must be that we get through all of the sort of procedure safeguards, if you want to use that phrase, or constitutional safeguards of those of us who come from countries with constitution.
- 04:32 And it is very hard for countries to, some people from countries which don't have the adversarial system where, you know, where there's civil law or not so strong adversarial. But you know, I've grown up in two countries.
- 04:45 I've studied in one country, grown up in one country where it's very important, these ideas. You know, hearsay is excluded. It's not here but you know, there's a reason behind it. And you can see the reason sometimes here.
- 04:56 You know for example we have an expert in our case, who is quoted widely in the (___); she is a lynchpin of the prosecution case, the one who connects the dots together.
- 05:07 She relies – this is getting very technical so tell me if I need to go – she relies on a fact witness in our case, who has since been discredited because he was actually a recall and asked to, you know, explain why he had lied earlier. So we think he's been discredited, maybe he'll come in, who knows.

- 05:28 Now, so you have the prosecution closing brief saying, repeating the evidence and relying on the r-, evidence of this fact witness, which is then corroborated by the expert. Now the expert's source for this information is the fact witness.
- 05:50 So you get sort of amplification of the same story again and again. So you can see why hearsay is problematic in jurisdictions. But okay, we need hearsay, here it's very hard to get evidence, et cetera.
- 06:00 So a lot of what's happened is that people are trying to move the, where the line is on criminal law because they feel these are bad people who did bad, very bad things, we say the enormity which we must then, you know, make sure that international criminal law and the mechanics of international criminal law are sufficiently flexible if you want to call it, or sufficiently broad, to make sure that these people are indicted.

Part 6

- 00:00 **JM: Let me ask you about the clients themselves. And I, I know you haven't had a lot of clients here, who has? I mean the cases . . .**
- 00:05 Yeah.
- 00:05 **JM: . . . take a long time, but, you know, in some proceedings, I could choose Guantanamo Bay for example, the, the, the clients there, the accused often reject their counsel, because they reject the system.**
- 00:20 Yeah.
- 00:20 **JM: Can you talk a little bit about, ju-, y-, within your own experience and what you perceive to be the case of other defense counsel, what are the relationships like between the accused and their, and their counsel?**
- 00:30 Yeah, I mean, you know, that's also the case in the Yugoslav very often. Not here, it is actually opposite problem. I think a lot of clients are very poorly served because their client – their counsel identify too closely with their clients, because in the end a lot of these clients are, are to some extent charming politicians. You know, people who are – how do you say, you know, people you could invite for dinner one day, right?
- 00:56 I mean it's, it's people who you would, may have met in, in your jobs, they are, they are sort of socially of a certain class, they're . . . you know, without sounding really terrible but there is a certain . . . you know, you can get really close to people and it's a real danger because you end up not just fighting a criminal case but fighting a

political case. Because remember the clients are fighting for their freedom and for their political history.

01:19 JM: You realize that many people who would hear this, considering the enormity of what happened in 1994 would just think that lawyers who could get that close to people accused of these crimes, must lack all judgment.

01:33 Yeah, but it's, it's, it's hard, I mean I think anybody listening to this, you know, and, and this is, this was done with Yugoslavia, you know, "We are here to fight impunity (____) the truth," but if you look at the majority of the population in Rwanda, the truth that is the, the truth out there, the narrative of what happened in genocide, that these people are bad, is not their narrative.

01:54 They . . . the perpetrator community, to use an academic term, views themselves as victims and that's the case, the Berkeley War Crime Center did a, a study of the Yugoslav, and you know, it's not after innumerable verdicts, it wasn't that the Serbian community in Bosnia said, "You know what, you're right, we had terrible people in our midst. Oh, gosh, we shouldn't have done that."

02:15 No, what, "We are victims of an international conspiracy."

02:19 JM: What do you . . .

02:20 And that's exactly what the Hutus community within and outside Rwanda believe.

02:25 JM: That's exactly my, my next question . . .

02:27 Yeah, sorry, sorry (____) . . .

02:28 JM: . . . is how would you, how would you expect Rwandans to look at the experience of the ICTR? Many have been very dismissive really of the IT-, ICTR, because one, it's in Arusha; two, it seems to take the senior planners and put them in nice prisons with lots of food and televisions and access to computers, good lawyers.

02:52 JM: Whereas those who are in the traditional Rwandan system get, you know, they may get lawyers, if, if that, but, but if they're moved to the Gacaca courts . . .

03:02 Yeah.

03:03 JM: . . . not going to happen at all.

03:04 Nothing.

- 03:05 JM: Well, h-, how, how should they view the ICTR attempts to, at, at, at accountability?**
- 03:13 You know I had to go to Rwanda recently, and I, I – so I decided to have a cup of coffee with the Rwandan Ambassador in Delhi, who’s not just the Rwandan Ambassador, he’s indicted in Spain and France and the Bruguière report. He was the ex-commander in chief of the RPF, who’s now the ambassador to Delhi, (___).
- 03:35 So it’s always an interesting perspective to get, and h-, “How do you view us,” you know, “defense counsel?” I tried to subpoena him in front of the counsel so formed a relationship after that. “Colossal waste of money.”
- 03:52 JM: What should have happened to the planners, and the alleged planners and, and government leaders who are alleged to participated in planning and, and carrying out the genocide?**
- 04:02 I mean I think this goes way beyond the ICTR. Firstly, I mean, just from (_____), this, this tribunal should have been in Rwanda. There was no reason not to put it there. It would have, it would have firstly – it should have still been an international system but it would have basically put it within, in the middle of things, made it not just accessible but it would have had an affect on the local system.
- 04:26 You know, I, I think they, they really lost – it creates a level of abstraction, and I think this is a problem, one of the biggest problems with the ICC. It creates, it takes the level of abstraction to a new level. Imagine flying 50 witnesses a year to The Hague, it’s a ridiculous idea. So but keeping it to the ICTR . . .
- 04:44 JM: What else . . .**
- 04:44 Sorry (___) your next question . . .
- 04:45 JM: . . . what else? No, it's the same thing, you said the first thing would be put it in . . . put it in, in, in Rwanda, but, but what else would you expect to be a, a, a fair system of, of justice? Because I, I'm assuming you quote, quote the Delhi ambassador with some approval in saying it's been a colossal waste of money. What, what, what should have happened? Would you have left them to the Rwanda authorities?**
- 05:04 (___) . . . What do you do, in the end, you know, you have the UN system and the UN system is an unaccountable system which does everything by wasting a lot of money. So either you get somebody else to do it, or if you're going to have a UN court, you're going to end up with, you know, people, expat salaries, and you know it's just, it's, it's – I don't think it's the ICTR; it's the UN system, you know.

05:25 It, it ends up – you know, “we’ve got to buy 15 Nissan Patrols before we can move,” kind of thing. There, there's a culture of administrative inefficiencies in the UN. And you, you can't expect the ICTR to function any different. It's not ICTR is isolated case of administrative inefficiency. You know, look at, look at the UN everywhere in Africa; it functions exactly the same way.

Part 7

00:01 **JM: So I want to take you – just give, give you an opportunity to, to talk a little bit more. We’ve talked about your view of prosecutors. We haven’t talked about you know, the daily grind of being in a case . . .**

00:12 Mm-hmm.

00:13 **JM: . . . discovery disputes, about documents that should be disclosed to the defense. E-, exculpatory evidence, I just . . .**

00:19 I was warned about this, yeah . . . yeah . . . yeah.

00:21 **JM: Well no, I, I give them, I give them to you just as an opportunity to comment because, because we would all hope that there would be improved and better systems in the – we never want another, we never want another tribunal, but, but if there is one, you know, ar-, do you have impressions that you would want to, to, to tell us now that might be accessible to researchers in the future?**

00:42 Yeah, I mean, okay, so ideal case, and let’s not even talk about whether the case is good or not, but ideal management of the case. It’s a well pleaded indictment, which actually tells you what evidence is going to be brought. Not one which is written before any of the witnesses are interviewed. There's timely disclosure of that evidence on which the indictment was based – this is stuff that’s basic right? But none of this has happened.

01:12 I mean this is stuff you would think is 101, none of this has happened. There would be timely disclosure of the witnesses on which the indictment was based. Those witnesses would then be brought. There would be, actually be a coherence to the prosecution case where you won’t have their own witnesses contradicting each other.

01:27 So they would think about that before they wrote the indictment. They would disclose that, they would continue to disclose if a-, if any new material came up, rather than bringing the same witness to another case and not telling the defense in the bizarre hope that they won’t find out, despite the specific rule innumerable

jurisprudence that says you have a continuous duty to disclose all exculpatory materials.

01:51 They would you know, put that case, then we would put our case, and they would cross examine without trying to bring in new material to expand their case and we'd be finished and hopefully there'd be a reasonable judgment and I'd be happy whether – you know, I'd be much happier if I won . . .

02:09 . . . but, you know, that would actually be something so you don't end up fighting ridiculous battles which you don't even know how to, you know, you know, how do you say for example a motion filed this week? Prosecution closing brief is over, we find out that a very important witness came in another case.

02:30 Here's a witness, which another witness which was recalled who said he had lied on behalf of the prosecution, said that, "This chap lied, actually we conspired together to lie." The prosecution then opposed a wide investigation into this conspiracy to perjure, basically as I call it, saying that, "No, no, no, only one witness has lied, the one who has come back so we should limit the investigation."

02:57 While they were in possession of this material. Now the grind is you know, it may . . . now we have to fight for something right? So it creates a lot of paperwork, and it's not battles which are, you know, you're right, it's just paperwork, you've just got to go through the whole process, you know.

03:15 JM: Is, is there anything else that, you know, now that you, you have an opportunity to, to, to speak your mind on . . .

03:21 Yeah.

03:21 JM: . . . on what's happened here, either in your own experience or how you might, you might say to someone who would sit in the same chair as you in a, in another, in another tribunal.

03:29 Yeah.

03:31 JM: What should they prepare for? What, what should be the mindset that they would have in going about their work and trying to represent their client fairly and zealously?

03:39 I mean, to really, there's a – Peter, who you'll interview I think perhaps, Peter Robinson, I call his approach the, you know, "Burn every bridge while you retreat." I don't know whether that's necessarily the best approach but sometimes you have to. Because the – don't assume that the other side is going to play, play it straight. You know, you just got to really be wary of every single thing, and don't, don't

assume that even though the rules say something is going to happen, it's going to happen.

- 04:11 So, so everything has to be sort of fought on, every single thing. Which is, is not just, you know, entering court, looking at the witness statements and cross examining them and having regular – you've got to sort of really look at, not that you should look for conspiracies, but you have evidence of conspiracies hatched in prisons to, you know, with the connivance of Rwandan authorities . . .
- 04:34 . . . to actually bring false evidence. And you know, that's the level of – there was an interview sometime, I think it was Peter again, which basically said that nobody is telling the truth, neither the prosecution witnesses nor the defense witnesses.
- 04:48 Which is very cynical, but to some extent you have to be wary of the fact that a lot of the evidence we've had after a long time, I'm talking about oral evidence, is very, very problematic. So how do you build truth in that perspective?
- 05:03 JM: (_____), that's what we, that's what we all seek, isn't it?**
- 05:06 Yeah.
- 05:07 JM: But let me just, just ask you as a, as a final question – you're a young guy, you, you've been here . . .**
- 05:13 Not so (___) young.
- 05:14 JM: You . . . you're a young guy; you, you worked in, you worked as a business development person in the corporate world in the U.S., yeah?**
- 05:19 Yeah, Germany, U.S.
- 05:22 JM: Yeah that's great. But you came here really right after law school.**
- 05:25 Yeah . . . yeah . . . yeah, yeah, yeah.
- 05:26 JM: You really did, because you did your internship and you came here and this is your work as a lawyer, you, you know, when . . .**
- 05:30 I had a, another case while I was doing this too so it was two cases, this, the, the Sierra Leone one.
- 05:36 JM: Yes right, but your, your world from having been in the corporate world has become an international . . .**
- 05:42 Mm-hmm . . . Yeah, yeah.

- 05:42 **JM: . . . you're an international lawyer, international criminal defense lawyer, this is an amazing thing. And your career may change. Ho-, how . . . it probably will, who knows, we all do, right?**
- 05:51 **JM: But, but if you look back on this time here . . .**
- 05:53 Yeah.
- 05:54 **JM: . . . and let's say you went back to the corporate world and you were in-house counsel for, you know, Volkswagen and you really, really liked it, but every once in a while as you sat at your desk, your pen tapped and your mind went back to Arusha. What will you think about and, and what does it mean in your life, personally and as a lawyer?**
- 06:14 You know, this is the hard question. I mean to be honest, I mean Arusha is, you know, they're very good, good memories, in terms of work and otherwise, you know. It is, it is something – and again you know, as you said, people looking at this are going to be like, you know, “How could you say this?” You know, “It's a tragedy of, of immense magnitude,” but, you know, this is, this is really what, what one wants to work on, i-, is fighting that.
- 06:44 Now, so that's sort of the positive. You know, the negative, the amount of time done, time spent sorry, on this, the . . . I just want to make sure . . . I would really have liked the prosecutor and other people – I'm not saying I'm that competent – but to be competent, so they could raise my game too.
- 07:07 You know, because that would have made it I think, would have made me less cynical, would have made the process less cynical, because then you know, alright, yes it is, it is something which is interesting. It is something which is of, of a magnitude that requires respect and respect comes from competence, people doing their jobs properly. But you know, it's very hard to maintain that.
- 07:34 When there's just things let, being let go all the time. So, you know, tha-, tha-, that's the sort of, you know – I always feel, you know, in the back of my mind that we've, you know, you're going to get associated with, with saying something which was, in the end people going to say, “Yeah, but the quality of jurisprudence at that tribunal. You know, this was just terrible,” or something like that. You know that's, that's because one has spent five years, one seventh of my life here . . .
- 08:03 **JM: Thank you very much. No, it was, well I . . .**
- 08:05 I hope it was helpful. Thank you.