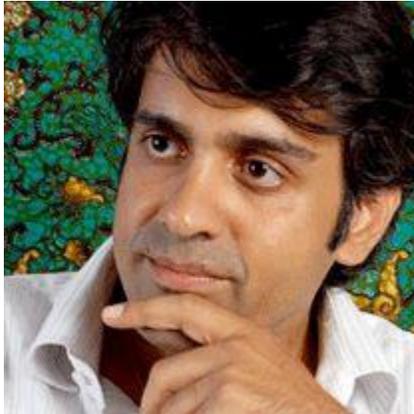


Voices from the Rwanda Tribunal

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.

1 **Part 1**

- 2 **00:00** **Batya Friedman: So I'm Batya Friedman, a professor at the University of**
3 **Washington and it is October 24th, 2008 and I'm here with John McKay, a**
4 **professor from Seattle University Law School, and our cameraperson is Max**
5 **Andrews. And we're here today speaking with Avi, and Avi could you say your**
6 **name, your role here at the ICTR and your nationality.**
- 7 00:25 Sure, my name is Avi Singh, my role here is a legal assistant in the defense team for
8 Jerome Bicomumpaka, which is one of the four co-accused, in what's called the
9 "Government 2" case here, and my nationality is Indian.
- 10 **00:40** **BF: Okay, great. Can you tell us just a little bit more about your role on this case?**
11 **What the case is about and just your role, some general things.**
- 12 00:50 It's bizarre – the, the case is about basically, it is a very wide case. It's been going
13 on for five years, so we're still trying to figure that out. In terms of what is actually
14 being plead against it.
- 15 01:02 But it's, if I can distill it down, if you can strip off sort of the factual allegations
16 which we of course contest, I think this case really comes down to, if you're a
17 government, or a member of the government, a minister in the government and a
18 genocide or a major war crime event happens in your country, are you
19 responsible?
- 20 01:23 I mean there's a lot of allegations about specificity et cetera which are really – but
21 tha-, I think that's really what this case is always been about for me. And that's
22 really what, if I could distill through a lot of the, you know, extra stuff that the
23 prosecution throws, that's really what this case is about.
- 24 01:40 The role of a legal assistant is a – that's a harder question to answer because I don't
25 know whether you want a de jure answer or a de facto answer.
- 26 **01:49** **BF: So really what have your activities been? For this case?**
- 27 01:53 I mean, I-, you know, Philip and I are both legal assistants 'til our lead counsel
28 passed on just last year. So, but basically, beyond actually speaking in court, we've
29 actually run the case. So you, you have this situation here where you need, used to
30 need, 'til last year, ten years bar, call at the bar to actually be a counsel.
- 31 02:20 And, and this varies from team to team but more so, because I worked at other
32 international tribunals too, more so here than other places, very often the legal
33 assistants are running the cases to a large extent. And, which could sound like well,
34 you know, we just think we're doing it, but it has, it has been the case.

- 35 02:39 You know (___), I mean I remember, I really don't think that people actually read
36 what they've signed in terms of pleadings, in terms of the paper, you know,
37 actually getting up and arguing and, and cross-examining witnesses.
- 38 02:50 We haven't actually been allowed to do and we actually fought that battle and lost
39 it. Because they said, "No, no that's the conditions of legal," because we're on legal
40 aid, we're funded through the legal aid system.
- 41 03:02 So beyond that, legal assistants basically, at least in our case has been, you know,
42 we've done all the writing, we've done all, between us all the witness preparation,
43 the strategy of the case.
- 44 **03:16 BF: Mm-hmm. Great. So I want to take you back for just a moment to the spring
45 of 1994.**
- 46 03:26 Spring 1994?
- 47 **03:27 BF: Yeah. What were you doing? Where were you and what were you doing?**
- 48 03:31 I was an undergraduate in 1994 spring. I was in – God that's a good question. I was
49 – no, no I remember this. I was at the London School of Economics, I was in my
50 third year; I graduated in '95 . . . Yeah, I was in my third year. I'd gone there from
51 the U.S.; I was an undergraduate in the U.S.
- 52 03:50 I had gone there to the LSE for a year. And I'm not sure particularly what I was
53 doing, probably, but it was, yeah, April, so exams were in May, no, June. So wasn't
54 studying. Yeah.
- 55 **04:05 BF: And . . .**
- 56 04:06 (___), World, World Cup was later too, no so I wasn't watching the World Cup
57 either. But yeah.
- 58 **04:10 BF: So and what were you studying at the London School?**
- 59 04:14 International Relations.
- 60 **04:16 BF: Mm-hmm. And at what point did you become aware of the genocide in
61 Rwanda?**
- 62 04:23 When it was happening, yeah.
- 63 **04:24 BF: So . . .**
- 64 04:24 When it was happening.

- 65 **04:26** **BF: How did you learn about it?**
- 66 04:28 Well, I mean I, I'm a little strange in the sense that you know, I, I read about five
67 newspapers a day. And so you know, I, I, I like to know what's happening in the
68 world, I've – and especially ethnic conflict. You know I grew up with ethnic conflict,
69 my parents, my family have been refugees from ethnic conflict.
- 70 04:48 So for me ethnic conflict is sort of – you know, that's what brought me to ICTR in
71 the first place. But you know, going back now I remember. The one thing that
72 really, really peeved me off about the coverage about Rwanda then was the fact
73 that every, th-, there was this – now I know an academic term for it.
- 74 05:12 The new barbarian theory, you know, something barbarian theory, there's a writer
75 called, I'm forgetting his name, English writer who writes about this. But it was like,
76 "They've been fighting each other for hundreds of years. This is," you know, "usual
77 ethnic conflict."
- 78 05:26 I remember reading that and thinking yeah, this is, you know, yes, that's what
79 people do out there, you know, out there in the other world. So people – and I
80 remember being very angry about the sort of, the coverage of it then.
- 81 **05:39** **BF: So you mean that – so just, that this barbarian theory is the theory that**
82 **people are just fighting each other all the time and there's nothing new here?**
- 83 05:48 It's what they – you know, my expertise, if, if you want to, I didn't know much
84 about Rwanda then . . .
- 85 **05:53** **BF: Mm-hmm.**
- 86 05:53 . . . but I was actually – I did my, it's an undergraduate thesis so it was only that
87 limited. But I did my thesis on, on Yugoslavia. And they're the same thing. You
88 know, the Balkans, "They've been at each other for hundreds of years," which
89 basically removes any, any amount of sort of politics from it, agency from it.
- 90 06:11 You know you take away all, you know, political, what happened 20 years, the
91 history itself is informed by things, and you just say, this is the way things are. So
92 then there's no reason to change anything, it's just how people will be. The Balkans
93 will always periodically go at each other with guns and countries in Africa will
94 periodically go at each other with machetes.
- 95 **06:30** **BF: And what's your view on that theory?**
- 96 06:33 Oh, it's crap.
- 97 **06:34** **BF: And, and why?**

98 06:36 Why? Why is it . . . ? Hard question to answer. Why is it crap? Because all ethnic
99 conflicts are political, right? And you and I are of different ethnicity, we're on video
100 so people can see that, right? And people living in the same place are of different
101 ethnicity and you can create the political conflict quite easily over time as a
102 political project, through narratives of history.

103 07:03 And there are narratives of history which have terrible in Rwanda. But that doesn't
104 mean, even – so that's itself political, but that doesn't mean that ethnic conflict will
105 result, either by people acting badly or people not caring enough, or people letting
106 people who have ulterior motives – it gets to a situation and even when it gets to a
107 situation it can be contained.

108 07:24 So there's, there's specific political events that happen which lead to it. And they're
109 avoidable at every stage of it, right? I mean Rwanda was avoidable, and the blame
110 frankly is shared by the defendants here. The people in power in Rwanda, first,
111 because in the end it's their country and they let it happen to themselves.

112 07:46 And secondly by the international community who played variously malicious roles
113 in it. You know, we're all to blame to some extent – I mean, you know, you can
114 always say we weren't in power and didn't have anything to do with it, or didn't
115 even know about it when it started, but in terms of international community, yeah.

116 Part 2

117 00:00 **BF: So, going back just to your own personal history, w- what's the ethnic conflict**
118 **that you said you grew up in and . . . ?**

119 00:07 Well, I mean, I grew up in Punjab, which is a region in India, which when I grew up,
120 and now it's ended and people hardly remember it, and we, we never write about
121 anything, is it was basically there was a movement then to have a separate Sikh
122 state, called the Khalistan movement and, which was fairly violent.

123 00:27 You know, it was, led to about, I don't know, how many wars, but, you know,
124 definitely fairly violent. So through the '80s, so I was 18 in '91. So through the '80s
125 was at its peak and I lived in Punjab so it was, you know, it's what you grew up
126 with. And, and, I'm Sikh, but I'm not a orthodox Sikh. So you grew up in that
127 context of, you know, it's your community in one way and not your community and
128 having to take sides in political situation and it was ethnic.

129 01:00 I mean there were actually moments where, you know of course the state which
130 also had a ma-, majority Sikh police force, but there was still discrimination against
131 Sikhs. There was a, sort of a, a major program you could call it, in Delhi in 1984.

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

134 01:24 People who support them call them – or, or more sympathetic call them militants.
135 A bit like Iraq now, you know, the terrorists or militants. But they would actually
136 pull out people from buses and, and, you know, sort of, kill them if they weren't
137 wearing a turban.

138 **01:42 BF: And you said you grew up in a refugee camp? (____) you (____) . . .**

139 01:44 No, I didn't grow up in a refugee camp. My families are refugees from Pakistan.
140 Both sides of my family in '47 . . .

141 **01:49 BF: Okay.**

142 01:50 . . . as Sikhs had to move from Pakistan. And then we may have had to move out of
143 Punjab if there had been a separate Sikh state, as not very orthodox Sikhs. So you
144 know there's sort of, you know, (____) . . .

145 **02:01 BF: Mm-hmm.**

146 02:01 . . . this ethnic conflict, if you want to call it that, has in a sense, informed my
147 personal history.

148 **02:07 BF: Mm-hmm. So what is it that made you decide to get involved with the ICTR? I**
149 **mean, what, what, what specific things happened that, you know, at some point**
150 **you said, "Okay, I'm going to go and get to know what this is about in a really**
151 **personal way"?**

152 02:25 It's, it's bizarre. It was very accidental. I mean, now I've always kept an interest. But
153 you know, for seven years I worked in corporate America you know, as business
154 development. So from '95 to 2002 . . .

155 **02:41 BF: Mm-hmm.**

156 02:42 . . . and I went back to get a JD in 2002, and I really, you know, never thought I
157 would do criminal defense; furthest thing from my mind.

158 02:56 My first summer I was at the ACLU, you know, in San Francisco, very human rights.
159 I applied to be an intern here, and I came out here in 2004 for six months, basically
160 my fourth semester in JD. And, you know, very, very idealistic UN court.

161 03:23 I didn't want to go to a . . . and I knew more about Yugoslavia but I thought Rwanda
162 court is in Africa and it's (____) be a more interesting experience. So that was it, it
163 was not really well thought out, why I came out here.

164 03:36 BF: Mm-hmm.

165 03:37 That's what brought me here first.

166 03:39 BF: So, before we carry on with the conversation around specific questions,
167 you've been involved with this particular trial for four or five years now . . .

168 03:50 Yeah.

169 03:50 BF: . . . is there anything, any reflections about your experience with that, that
170 you'd like to share with us?

171 03:57 You know, it's hard to be, you know, I'm () 35 now, so it's not that much of my
172 life. I'm not in my twenties, but still five years is significant part of your life. It's, it's
173 been really a interesting experience but that's, that's a fairly banal statement
174 actually.

175 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
176 the trial, it's like being here, it's, it's sort of this intensity, you know. You don't go
177 home when you're working in Arusha, because home is bunch of other lawyers.

178 04:32 You're talk-, you're living these cases. And, and I, I'm not even equating it to that
179 but it's like working, you know, the closest thing – I remember thinking about it
180 because I read this quote from Charlie Chaplin. He said, "When, when you're
181 working on a movie set, it's like, you know, you die from normal life." That's what
182 it's like, there's, you know, you never get a bill here.

183 04:52 You, you know, none of your normal lives we've all – you know our normal lives
184 have kind of, you know, our friendships, we've maintained some of them but it's
185 really hard. They've really taken course which are very, very different.

186 05:06 And, and it happens to all of us, I mean it's happened to us to a large extent. We're
187 not here all the time but still it's happened to us, a lot of things.

188 05:12 So, so, it, it – there's a big effect of being in this, because it's very intense. You're,
189 you're removing yourself to another juris-, place to work just on a trial. And
190 everybody else that mostly you know is also working in one way or the other with
191 the court.

192 05:27 BF: Mm-hmm.

193 05:28 So just from a social aspect, you know, it's, it's a, it's a bit like going to camp or
194 going to a boarding school or going to, you know, going on a movie set I guess,
195 from the Charlie Chaplin analogy.

196 05:38 You know, it's sort of, it's very, very intense.

197 **05:42 BF: Mm-hmm.**

198 05:43 And I'm realizing this again because I've s-, I've restarted a, a private practice now
199 in India, and you know there's normality. You know, you don't go out every e-,
200 evening with a bunch of lawyers and discuss what you worked on during the day,
201 which is good and bad. Because nobody cares what you've done during the day,
202 the bad part, but yeah, but it's, it's that aspect of it.

203 **Part 3**

204 **00:00 BF: Since you came here as an intern, you could have worked on any number of**
205 **aspects of the court. How is it that – you know, was there a point where you**
206 **made a decision if you wanted to work on the defense or you wanted to work on**
207 **prosecution or were you just assigned somewhere? How, how did that come**
208 **about?**

209 00:18 You know, I'd love say it was a really conscious well thought out decision, but it's
210 probably just you know, that's what I was offered and I wasn't even thinking of
211 coming back that quickly, so I did come back.

212 00:30 But, I mean, to be fair, I had lots of opportunity to apply for – I, I liked being on the
213 advocacy side. So I worked in chambers, you know, which is for six months, I
214 worked almost six months in chambers, which is fine, but I liked the advocacy side.

215 00:46 So I like – and then, so the, the choice is really between joining a bureaucracy,
216 which is the prosecution, or being fairly independent you know.

217 **00:57 BF: Mm-hmm.**

218 00:58 I mean I, I really don't – haven't had a boss in years. Not just here but in other
219 (___), which is why it's hard to go back to firms and things like that. So it, it's about,
220 it's really a choice of, you know, I'd love to say it was because I believed in one side
221 or the other, I have, I have no problems on the prosecution or the defense.

222 01:15 The only thing is in prosecution I think they have, they have a more difficult task,
223 doing – even if they want to do it, and I can't speak for them – a more difficult task
224 doing what they think is right, because of the political imperatives of their function
225 within.

226 **01:30 BF: So when you think about the things you've done as a, as a defense lawyer**
227 **here, what, what are the things that have facilitated you, say, doing your job**

- 228 **really well and what are some of the things that have been barriers? Or made it**
229 **harder to do what you would have wanted to do?**
- 230 01:51 God, I mean the structure's, is mad. You know, the, the legal aid structure here is
231 just, is really badly put together.
- 232 **02:01 BF: In, in what ways?**
- 233 02:02 In every way. The way, I mean, it basically encourages you to be, you know,
234 encourages and wants you to be inefficient. We're only supposed to work a
235 hundred hours a month. Which in – that's all that we're paid for and that's changed
236 slightly now, but that's what the bulk of the case has been. Which is ridiculous in
237 some – you know, most months it's a ridiculous thing.
- 238 02:24 So the, the whole billing, we have to bill every time. Each member of the team bills
239 separately. You know, there's a whole sort of . . . the amount of time it takes just to
240 get paid months afterwards, to try and actually (_____) the witness. You know, the
241 bureaucracy, they're like seven, eight people sitting there. You should interview
242 one of them really and find out what they do for a living.
- 243 02:45 But which has been basically designed to stop us from, you know, and I'm sure
244 there is abuse, but the, the system the way it's designed is, is not preventing abuse
245 it's just increasing paperwork.
- 246 02:56 So it's, it's the economics are really bad, and you can really get away by doing very
247 little but playing the paperwork game really well. So, so sort of the bureaucracy of
248 it, you know, is, is terrible. It really hinders you from, from doing it.
- 249 03:11 I think definitely, you know, I'll speak personally, for my team, I can't speak for
250 other teams is, you know we could have had a full team working on things and
251 we've effectively had two legal assistants who eventually became co-counsel
252 working on the bulk of the case so that and we did a, I think, you know, a decent
253 job, but . . .
- 254 03:33 You know, it's, it's been everybody's pulling their weight. There is a difference and
255 I've seen it in other places. What else? I think it would have been far better to have
256 this case go at, at more concentrated clip.
- 257 **03:50 BF: What would you have done to have, have speeded it up?**
- 258 03:53 Well, we, we shouldn't have had long adjournments. You know, it's, it's hard to ma-
259 , sustain. You know, you go off for four months, you come back and having to t-,
260 turn on everything again. You know, you're going, you get a momentum going, and

261 then you stop, you go away then you come back, you have four months off, three
262 months off. So it gets really, really difficult to sustain everything.

263 04:13 You know, you go off and you've got to do other things, because, you're not, you
264 know, if, if you're billing fairly you can't always just be working on a case remotely.
265 So, so it's hard you know, (____) now they're doing that, they're doing that a lot
266 more, is trying to have things more concentrated.

267 04:28 But still the multi-accused cases I think would have been far better frankly, and I
268 was just saying this, is, is for the judges to exercise control. You come from a U.S.
269 jurisdiction. You know what this is about. Don't put in stuff irrelevant. The number
270 of times I've heard this, "We are professional judges; we can figure it out later."

271 04:45 You know, juries need exclusion of evidence. We don't. The fact is we end up with
272 a case with, I don't know, a thousand exhibits, running in some exhibits, in
273 hundreds of pages, 350 some days of trial. It's humanly impossible to actually go
274 through that evidence.

275 05:06 It's impossible, and, and they should have, you know, been putting blocks around,
276 you know, what comes in, what's relevant, what's not. You know, we've had people
277 testifying for days and a month sometimes. One of the cases went for a month.

278 05:22 You know, no limits on cross-examination, so carry on. Nobody gets limited.
279 Repeat, ev-, everybody's got to get up and speak, for co-accused, for counsel,
280 prosecution, really, really. I mean, sometimes you know, just want to be a judge
281 just for management of the case, so really bad management of cases, from my
282 perspective.

283 **05:39 BF: And do y-, do you think that affects the defense differently than the**
284 **prosecution or are both sides sort of equally impacted by this . . . ?**

285 05:46 It d-, I think it affects every team differently, yeah. Some people, you know, do it.
286 But frankly, you know, one of the things that it's, it's, it's hard not to do is get
287 cynical here, because you can really flow through and I have seen teams flow
288 through five years of it with just being completely incompetent. And I just, you
289 know, I don't have that many years in the bar, but sometimes you just think of it,
290 oh, and (___), the prosecutor in our case and many cases here, entirely
291 incompetent.

292 06:25 I know that the prosecution closing brief is confidential, but there's nothing
293 confidential about the fact that most of their references to their own evidence –
294 and I've just wasted five days doing this, just, I mean it doesn't help us in the
295 closing brief, but it's just to give it a little, you know, sling at them in the closing

296 brief – are wrong. They just plain don't – either the witness didn't say what they
297 thought – they say they said, or they've just cited it wrong, or they've actually just
298 made up dates which nobody testified on.

299 06:57 So forget like their – the power of legal reasoning. Just purely from high school
300 editing standards, and they have resources. Really, really you know, sort of their,
301 their batting order goes way down. B5's and B4's and, you know, so I'm not even
302 talking about the strength of the legal argument which is atrocious, but I'm just
303 talking about simple editing.

304 07:23 So when you have got to respond to this, you know, you just don't know whether
305 to laugh. You know, how do, how do you take something like that seriously? This is
306 the case which has, you know, after Nuremberg the first time that cabinet
307 members are being charged for respons-, or Tokyo tribunal, and this is the standard
308 of advocacy?

309 07:41 There was a time when there was a – one of the prosecutors who tried to – I think
310 it took him like, I remember because I've always laughed about this, it took him
311 literally ten minutes and he just (___) ask a non-leading question. He couldn't
312 succeed. And finally one of the defense counsels suggested it to him. So that's
313 prosecutor.

314 08:04 Lot – there's some very good exception. Ex-, excellent exception, privileged to be in
315 the court with them. Lot of defense counsel are just – maybe not as bad, but also
316 not good. Some of them are actually as bad, but . . .

317 Part 4

318 00:00 **John McKay: I'm, I'm John McKay, a professor at Seattle University Law School. I**
319 **guess I should say I'm a former prosecutor. I, I don't feel you're going to hold that**
320 **against me.**

321 00:07 No, no, no.

322 00:08 **JM: So, so we're going to proceed as friends here, and you know how, how**
323 **independent we are here, we're not connected to the ICTR and we are**
324 **independently funded. And so, you know, we're just very interested in your, in**
325 **your views on this. I, I wanted to kind of go back to your view of the quality of**
326 **what's happening in the court room . . .**

327 00:28 Mm-hmm . . . yeah.

328 00:30 **JM: . . . and y-, y-, you spoke about prosecution, you spoke about defense**
329 **counsel. Tell me about your impression of the judges with ICTR.**

330 00:42 I mean, I, I, frankly I've only had the opportunity to, to really closely observe the
331 three judges in my courtroom, and the three judges I was before when I was in
332 chambers. I mean, it's, it varies, it, it varies. But I think consistently nobody controls
333 their courtroom well.

334 01:08 There are good judges here, there are good judges and some of them, they know
335 the law. Not all of them. Some of them don't know the law; but some of them still
336 have a sense of fairness. But in the end – how do I say this? When I look at how a
337 judgment might go, I'll go first speak to their legal officers.

338 **01:30 JM: Do you feel there's a shortcoming in the, in the rules of procedure or is it a**
339 **question of judges who aren't adequately managing the court within their, within**
340 **the powers that they have?**

341 01:43 They have the powers, all judges have the power. Okay, yeah you could say that
342 the rules of procedure should – for example cross-examination. Let's take one
343 instance right. The rules of procedures don't limit cross-examination to what came
344 up in examination chief or direct as you call in the US, but that doesn't limit the
345 judges from exercising that control.

346 02:03 Sure, you know, evidence is three lines, but relevance? You know, that, that can be
347 a bridgehead for a whole host of stuff. Prima facie reliability and probative value –
348 that can be another bridgehead. You can build, you know, on those.

349 02:18 And we've had judges. We had a judge in the beginning called Gunawardena, who
350 died during the course of the trial, who was from Sri Lanka and he was an old
351 crusty high court judge and he'd done this long time, you know.

352 02:30 And he, he got it, you know, and he was, he really limited stuff in the beginning,
353 this – if he had remained and he hadn't passed on, and you know, yeah, we
354 disagreed with him on a lot of things, you do, with the judge. But you can still walk
355 away with respect, on how they're running their courtroom.

356 02:48 So, so it's possible, using the existing rules of procedure and evidence and using the
357 statute, to run it. But, yeah, I mean I haven't seen that. There is – it's happening a
358 little bit more, people say for ulterior versions in, in a court case called Karemera
359 right now. I mean I j-, only can observe it from the perspective of, you know, the
360 decisions that come out and not in a day to day, but it's happening a little bit more.

361 03:18 One thing I've got to say in their favor though. I really, you know, used to be more
362 cynical about the judges here, 'til I went to the special court for Sierra Leone. And
363 you know, I was looking forward to appearing again here, and arguing, not arguing
364 but writing motions here, because, you kn-, it can get worse.

365 **03:36** **JM: Sort of a backhanded compliment.**

366 03:37 Yeah, it can get far worse.

367 **03:41** **JM: You, you mentioned the legal aid structure. Filled with bureaucracy as you**
368 **testified earlier, you said in your interview earlier.**

369 03:51 But not under oath, John.

370 **03:53** **JM: No, I said testified didn't I, sorry, it's hard to, it's, it's hard to lose these**
371 **things, I, and because you aren't under oath.**

372 04:00 (_____) . . .

373 **04:01** **JM: (____), that could be arranged.**

374 04:03 Could be arranged . . .

375 **04:03** **JM: We could arrange that. But I've had some experience in, in legal aid in the**
376 **United States and it's my observation that the last thing that court systems fund**
377 **are legal representation programs for those people who can't afford it.**

378 04:17 Mm-hmm . . . yeah . . . yeah.

379 **04:18** **JM: Whether it's in criminal law in the United States or other countries that have**
380 **similar systems, Canada, legal aid plans tend to be exhausted because they also**
381 **include criminal defense and when it comes to civil legal aid they're gone. So in,**
382 **in general, justice systems don't do a good job and I think that's true many places**
383 **around the world, even Great Britain where . . .**

384 04:40 Yeah.

385 **04:40** **JM: . . . now there's quite bit of criticism being leveled that way. Can we think in**
386 **your, in your estimation of ICTR as, as, as a, as a mini version of, of its own court**
387 **system and how would you relate the funding of legal representation? And I**
388 **really am talking about defense here, because the Office of the Prosecutor is**
389 **really a part of the . . .**

390 04:59 Yeah.

391 **04:59** **JM: . . . of the court in the UN administration. But, but you are dependent on the**
392 **same funding sources. If you can relate them to the other functions that are**
393 **required of, of expenditures, how would you rate ICTR as a judicial system in its**
394 **funding of legal aid plans for the defense?**

395 05:17 Well, I think if, if your counsel is decent it's not that, you know, they're, they're not
396 paying you, it's the bureaucracy really, you know, of it. It is far worse for legal
397 assistants but you know, that, that's a dichotomy that I think, you know, is more of
398 a union issue than anything else . . . yeah.

399 **05:34 JM: Let me interrupt you here because our viewers won't know the difference**
400 **between . . .**

401 05:37 Okay, so . . .

402 **05:38 JM: . . . legal counsel, co-counsel, legal assistants. A-, and you don't really have**
403 **to explain that . . .**

404 05:43 Sure . . .

405 **05:44 JM: . . . but to talk about support for the team, whether the team is, is adequate**
406 **or not. I don't want to put any words in your mouth . . .**

407 05:47 Yeah . . .

408 **05:48 JM: . . . but they won't understand those differences so if you could . . .**

409 05:50 Right . . . they, they formalize it a lot more than other systems but here basically
410 what happens is there's a list. If you have ten years on the court, court in your local
411 jurisdiction, you don't need any requirement in international law or international
412 criminal law. You can get on that list and then from that list an accused is allowed
413 to select lead counsel.

414 06:09 The lead counsel can usu-, build a team, which usually consists of a co-counsel
415 which is also a member of that list and then legal assistants, one or two, and one
416 investigator. So it's fairly lean teams compared to what I've seen in ICTY so that's
417 the comparison on special court. And ICTR came up with this system of sort of, you
418 know, managing each individual within a team through the bureaucracy.

419 06:38 So you could have your lead counsel saying, "do this," but then have to bill it and
420 justify it at the end of the month to somebody who'd not been party to that
421 conversation or those instructions at all. It's, it's, so it's, even they have moved on
422 from that system but we lived underneath it through this trial, right.

423 06:59 So they're trying to move on to the – so everybody's decided that this is not the,
424 the right system and even ICTR has decided so it's sort of flogging a dead horse to
425 really criticize that. But it hasn't worked because it, it concentrates salaries on lead
426 counsels, which, which is great for lead counsels.

- 427 07:16 So I think it works very well from a financial – but in terms of, you know, really
428 managing the, the case and making sure you have enough funds to do
429 investigations, et cetera, you still have to go back to the bureaucracy to get that
430 out.
- 431 07:30 So it's very easy to get paid for your hours if you're lead counsel. It's not so easy to
432 get, you know, all the investigation and that's really where I think, you know,
433 nobody's going to deny you, you were in court, you were paid, you know, those
434 things happen.
- 435 07:45 But sort of the investigation part of it and spending time and making sure the case
436 is built in, that's where things are. And then the sheer wastage of not having and
437 they've tried it and it hasn't worked and somehow this is a bureau-, bureaucratic
438 issue that has to work. But you've got a public defender office and you've got cases
439 which have basically the same fact pattern.
- 440 08:06 It's going to happen; they are going to establish five guys who have all the
441 documents, all the databases and then, you know, you can, you don't have to
442 repeat that every single time.
- 443 08:15 But here, I mean we guys do this. We have this informal exchange with other legal
444 assistants or, you know, "What happened in your case?" Or, you know, "Did you
445 have that document?" It works sometimes, doesn't work, things slip through the
446 crack. But very often they're funding the same thing being done by a new team.

447 Part 5

- 448 **00:00 JM: L-, let me ask about that issue which is – there really are no templates for**
449 **some of the work that you've been doing here because there are new legal**
450 **theories . . .**
- 451 00:08 Yeah . . . yeah . . . yeah . . .
- 452 **00:09 JM: . . . in international law happening, international criminal law happening**
453 **here. Tell me about the experience of that, I mean, to me it's a fascinating thing.**
- 454 **00:17 JM: One, one perhaps almost certainly trepidation for your client but, because**
455 **these are new and, and there seems to be a, a great force behind them, but, but**
456 **it also must be exciting for you to look at the differences in the war crimes cases,**
457 **the genocide cases, rape as genocide, media law. Can you, can you talk about**
458 **what that means to you as a lawyer to be working on, on those issues?**
- 459 00:41 I mean, you've been a lawyer and you know that – how do, how do you say this?
460 You know, you don't trivialize the, what happened but I mean it's a very, very

461 meaty case. And, and, you know, that's the kind of case that you live to work on.
462 And it's why, you know, if you become this – you know, even criminal cases,
463 domestic jurisdictions very rarely match.

464 01:02 You know, you, you're basically talking about not Bagosora, but interim
465 government case where you're really talking about what happened in a country
466 over a period of months, or a period of years. Which may, somebody may not read
467 but, you know, if you can – you know, as lawyers we always think we're the center
468 of the universe.

469 01:19 You know, we're, we're writing, somebody will, eventually will read the judgment
470 which comes out and you would have contributed to it. So, you know, from
471 combating the prosecution's, of course, novel theories which are entirely baseless
472 law, it's fun and it's, it's absolutely, you know, what keeps, you know, keeps one
473 here. I mean it's a . . .

474 **01:39 JM: There are people who may view this in different places around the world**
475 **today or . . .**

476 01:46 Mm-hmm.

477 **01:46 JM: . . . or many years in the future, who may not appreciate the value of, of an**
478 **adversarial system where we purposefully believe that a, a justice system can't**
479 **be a justice system unless there's advocacy for the accused.**

480 02:01 Yeah, yeah.

481 **02:02 JM: How would you explain the importance of your role, even understanding the**
482 **enormity of genocide, why is it important that there be defense counsel for those**
483 **accused of even the worst crimes the world can even imagine?**

484 02:15 So, if I had you know, to use an American, what's it, adage – If I had a penny for
485 every time I've been asked how can you do this? It's kind of the same question to
486 some extent.

487 02:28 It's sort of interesting from one perspective that, you know, if you, if you have
488 people, and I've never thought I was an anti-human rights person, but sometimes
489 (____), you know, I could say I have a difference of opinion on some issues with the
490 human rights community.

491 02:40 But in domestic jurisdictions the first thing human rights community's goal, they
492 would say, "We are going to keep a careful watch on every government action
493 including prosecution and make sure that all the rights of all accused people are
494 respected."

495 02:57 And then you get here to this situation where we have decided that X, Y, and Z are
496 guilty people and procedural safeguards is interfering with international justice.
497 Well, how . . .

498 03:20 And, and we've had human rights campaigners come and testify. Not just once but
499 actually what I call you know the sort of frequent experts, which have been used to
500 set the context – it's very hard to use them for the substance – set the context of
501 guilty verdicts. So it's, it's a really dangerous role because, you know, what, what's
502 the standard?

503 03:39 I, if I was a human rights rapporteur – I don't think anybody would hire me after –
504 I've actually written about this in papers, but – you know, where would I go? I
505 would go and my job would be – and I would say my job would be to interview
506 victims and really fight for their stories to be known to everybody and make sure
507 that people listen to their stories.
508

509 03:59 But I wouldn't be judging them, or making sure that they're credible, or making
510 sure that their stories can, are verifiable, that's the () what happens in ().

511 04:08 So we don't know that these people are guilty or not guilty, so, and especially in a
512 situation of chaos and war. I think the standards are much higher, that it must be
513 that we get through all of the sort of procedure safeguards, if you want to use that
514 phrase, or constitutional safeguards of those of us who come from countries with
515 constitution.

516 04:32 And it is very hard for countries to, some people from countries which don't have
517 the adversarial system where, you know, where there's civil law or not so strong
518 adversarial. But you know, I've grown up in two countries.

519 04:45 I've studied in one country, grown up in one country where it's very important,
520 these ideas. You know, hearsay is excluded. It's not here but you know, there's a
521 reason behind it. And you can see the reason sometimes here.

522 04:56 You know for example we have an expert in our case, who is quoted widely in the
523 (); she is a lynchpin of the prosecution case, the one who connects the dots
524 together.

525 05:07 She relies – this is getting very technical so tell me if I need to go – she relies on a
526 fact witness in our case, who has since been discredited because he was actually a
527 recall and asked to, you know, explain why he had lied earlier. So we think he's
528 been discredited, maybe he'll come in, who knows.

529 05:28 Now, so you have the prosecution closing brief saying, repeating the evidence and
530 relying on the r-, evidence of this fact witness, which is then corroborated by the
531 expert. Now the expert's source for this information is the fact witness.

532 05:50 So you get sort of amplification of the same story again and again. So you can see
533 why hearsay is problematic in jurisdictions. But okay, we need hearsay, here it's
534 very hard to get evidence, et cetera.

535 06:00 So a lot of what's happened is that people are trying to move the, where the line is
536 on criminal law because they feel these are bad people who did bad, very bad
537 things, we say the enormity which we must then, you know, make sure that
538 international criminal law and the mechanics of international criminal law are
539 sufficiently flexible if you want to call it, or sufficiently broad, to make sure that
540 these people are indicted.

541 Part 6

542 00:00 **JM: Let me ask you about the clients themselves. And I, I know you haven't had a**
543 **lot of clients here, who has? I mean the cases . . .**

544 00:05 Yeah.

545 00:05 **JM: . . . take a long time, but, you know, in some proceedings, I could choose**
546 **Guantanamo Bay for example, the, the, the clients there, the accused often reject**
547 **their counsel, because they reject the system.**

548 00:20 Yeah.

549 00:20 **JM: Can you talk a little bit about, ju-, y-, within your own experience and, and**
550 **what you perceive to be the case of other defense counsel, what are the**
551 **relationships like between the accused and their, and their counsel?**

552 00:30 Yeah, I mean, you know, that's also the case in the Yugoslav very often. Not here, it
553 is actually opposite problem. I think a lot of clients are very poorly served because
554 their client – their counsel identify too closely with their clients, because in the end
555 a lot of these clients are, are to some extent charming politicians. You know,
556 people who are – how do you say, you know, people you could invite for dinner
557 one day, right?

558 00:56 I mean it's, it's people who you would, may have met in, in your jobs, they are, they
559 are sort of socially of a certain class, they're . . . you know, without sounding really
560 terrible but there is a certain . . . you know, you can get really close to people and
561 it's a real danger because you end up not just fighting a criminal case but fighting a

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

564 **01:19 JM: You realize that many people who would hear this, considering the enormity**
565 **of what happened in 1994 would just think that lawyers who could get that close**
566 **to people accused of these crimes, must lack all judgment.**

567 01:33 Yeah, but it's, it's, it's hard, I mean I think anybody listening to this, you know, and,
568 and this is, this was done with Yugoslavia, you know, "We are here to fight
569 impunity (____) the truth," but if you look at the majority of the population in
570 Rwanda, the truth that is the, the truth out there, the narrative of what happened
571 in genocide, that these people are bad, is not their narrative.

572 01:54 They . . . the perpetrator community, to use an academic term, views themselves
573 as victims and that's the case, the Berkeley War Crime Center did a, a study of the
574 Yugoslav, and you know, it's not after innumerable verdicts, it wasn't that the
575 Serbian community in Bosnia said, "You know what, you're right, we had terrible
576 people in our midst. Oh, gosh, we shouldn't have done that."

577 02:15 No, what, "We are victims of an international conspiracy."

578 **02:19 JM: What do you . . .**

579 02:20 And that's exactly what the Hutus community within and outside Rwanda believe.

580 **02:25 JM: That's exactly my, my next question . . .**

581 02:27 Yeah, sorry, sorry (____) . . .

582 **02:28 JM: . . . is how would you, how would you expect Rwandans to look at the**
583 **experience of the ICTR? Many have been very dismissive really of the IT-, ICTR,**
584 **because one, it's in Arusha; two, it seems to take the senior planners and put**
585 **them in nice prisons with lots of food and televisions and access to computers,**
586 **good lawyers.**

587 **02:52 JM: Whereas those who are in the traditional Rwandan system get, you know,**
588 **they may get lawyers, if, if that, but, but if they're moved to the Gacaca courts . .**
589 **.**

590 03:02 Yeah.

591 **03:03 JM: . . . not going to happen at all.**

592 03:04 Nothing.

- 593 **03:05 JM: Well, h-, how, how should they view the ICTR attempts to, at, at, at**
594 **accountability?**
- 595 03:13 You know I had to go to Rwanda recently, and I, I – so I decided to have a cup of
596 coffee with the Rwandan Ambassador in Delhi, who’s not just the Rwandan
597 Ambassador, he’s indicted in Spain and France and the Bruguière report. He was
598 the ex-commander in chief of the RPF, who’s now the ambassador to Delhi, (___).
599
- 600 03:35 So it’s always an interesting perspective to get, and h-, “How do you view us,” you
601 know, “defense counsel?” I tried to subpoena him for another counsel so formed a
602 relationship after that. “Colossal waste of money.”
- 603 **03:52 JM: What should have happened to the planners, and the alleged planners and,**
604 **and government leaders who are alleged to have participated in planning and,**
605 **and carrying out the genocide?**
- 606 04:02 I mean I think this goes way beyond the ICTR or anything like that. Firstly, I mean,
607 just from (_____), this, this tribunal should have been in Rwanda. There was no
608 reason not to put it there. It would have, it would have firstly – it should have still
609 been an international system but it would have basically put it within, in the middle
610 of things, made it not just accessible but it would have had an effect on the local
611 system.
- 612 04:26 You know, I, I think they, they really lost – it creates a level of abstraction, and I
613 think this is a problem, one of the biggest problems with the ICC. It creates, it takes
614 the level of abstraction to a new level. Imagine flying 50 witnesses a year to The
615 Hague, it’s a ridiculous idea. So but keeping it to the ICTR
- 616 **04:44 JM: What else . . .**
- 617 04:44 Sorry (___) your next question . . .
- 618 **04:45 JM: . . . what else? No, it's the same thing, you said the first thing would be put it**
619 **in . . . put it in, in, in Rwanda, but, but what else would you expect to be a, a,**
620 **fair system of, of justice? Because I, I'm assuming that you quote, quote the Delhi**
621 **ambassador with some approval in saying it's been a colossal waste of money.**
622 **What, what, what should have happened? Would you have left them to the**
623 **Rwanda authorities?**
- 624 05:04 (___) . . . What do you do, in the end, you know, you have the UN system and
625 the UN system is an unaccountable system which does everything by wasting a lot
626 of money. So either you get somebody else to do it, or if you're going to have a UN
627 court, you're going to end up with, you know, people, expat salaries, and you know
628 it's just, it's, it's – I don't think it's the ICTR; it's the UN system, you know.

629 05:25 It, it ends up – you know, “we’ve got to buy 15 Nissan Patrols before we can
630 move,” kind of thing. There, there's a culture of administrative inefficiencies in the
631 UN. And you, you can't expect the ICTR to function any different. It's not ICTR is an
632 isolated case of administrative inefficiency. You know, look at, look at the UN
633 everywhere in Africa; it functions exactly the same way.

634 Part 7

635 00:01 **JM: So I want to take you – just give, give you an opportunity to, to talk a little bit**
636 **more. We’ve talked about your view of prosecutors. We haven’t talked about**
637 **you know, the daily grind of being in a case . . .**

638 00:12 Mm-hmm.

639 00:13 **JM: . . . discovery disputes, about documents that should be disclosed to the**
640 **defense. E-, exculpatory evidence, I just . . .**

641 00:19 I was warned about this, yeah . . . yeah . . . yeah.

642 00:21 **JM: Well no, I, I give them, I give them to you just as an opportunity to comment**
643 **because, because we would all hope that there would be improved and better**
644 **systems in the – we never want another, we never want another tribunal, but,**
645 **but if there is one, you know, ar-, do you have impressions that you would want**
646 **to, to, to tell us now that might be accessible to researchers in the future?**

647 00:42 Yeah, I mean, okay, so ideal case, and let’s not even talk about whether the case is
648 good or not, but ideal management of the case. It’s a well pleaded indictment,
649 which actually tells you what evidence is going to be brought. Not one which is
650 written before any of the witnesses are interviewed. There's timely disclosure of
651 that evidence on which the indictment was based – this is stuff that’s basic right?
652 But none of this has happened.

653 01:12 I mean this is stuff you would think is 101, none of this has happened. There would
654 be timely disclosure of the witnesses on which the indictment was based. Those
655 witnesses would then be brought. There would be, actually be a coherence to the
656 prosecution case where you won’t have their own witnesses contradicting each
657 other.

658 01:27 So they would think about that before they wrote the indictment. They would
659 disclose that, they would continue to disclose if a-, if any new material came up,
660 rather than bringing the same witness to another case and not telling the defense
661 in the bizarre hope that they won’t find out, despite the specific rule in numerable

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

664 01:51 They would you know, put that case, then we would put our case, and they would
665 cross examine without trying to bring in new material to expand their case and
666 we'd be finished and hopefully there'd be a reasonable judgment and I'd be happy
667 whether – you know, I'd be much happier if I won . . .

668 02:09 . . . but, you know, that would actually be something so you don't end up fighting
669 ridiculous battles which you don't even know how to, you know, you know, how do
670 you say for example a motion filed this week? Prosecution closing brief is over, we
671 find out that a very important witness came in another case.

672 02:30 Here's a witness, which another witness which was recalled who said he had lied
673 on behalf of the prosecution, said that, "This chap lied, actually we conspired
674 together to lie." The prosecution then opposed a wide investigation into this
675 conspiracy to perjure, basically as I call it, saying that, "No, no, no, only one witness
676 has lied, the one who has come back so we should limit the investigation."

677 02:57 While they were in possession of this material. Now the grind is you know, it may . .
678 . now we have to fight for something right? So it creates a lot of paperwork, and it's
679 not battles which are, you know, you're right, it's just paperwork, you've just got to
680 go through the whole process, you know.

681 **03:15 JM: Is, is there anything else that, you know, now that you, you have an**
682 **opportunity to, to, to speak your mind on . . .**

683 03:21 Yeah.

684 **03:21 JM: . . . on what's happened here, either in your own experience or how you**
685 **might, you might say to someone who would sit in the same chair as you in a, in**
686 **another, in another tribunal.**

687 03:29 Yeah.

688 **03:31 JM: What should they prepare for? What, what should be the mindset that they**
689 **would have in going about their work and trying to represent their client fairly**
690 **and zealously?**

691 03:39 I mean, to really, there's a – Peter, who you'll interview I think perhaps, Peter
692 Robinson, and I call his approach the, you know, "Burn every bridge while you
693 retreat." I don't know whether that's necessarily the best approach but sometimes
694 you have to. Because the – don't assume that the other side is going to play, play it
695 straight. You know, you just got to really be wary of every single thing, and don't,

696 don't assume that even though the rules say something is going to happen, it's
697 going to happen.

698 04:11 So, so everything has to be sort of fought on, every single thing. Which is, is not
699 just, you know, entering court, looking at the witness statements and cross
700 examining them and having regular – you've got to sort of really look at, not that
701 you should look for conspiracies, but you have evidence of conspiracies hatched in
702 prisons to, you know, with the connivance of Rwandan authorities . . .

703 04:34 . . . to actually bring false evidence. And you know, that's the level of – there was
704 an interview sometime, I think it was Peter again, which basically said that nobody
705 is telling the truth, neither the prosecution witnesses nor the defense witnesses.

706 04:48 Which is very cynical, but to some extent you have to be wary of the fact that a lot
707 of the evidence we've had after a long time, I'm talking about oral evidence, is
708 very, very problematic. So how do you build truth in that perspective?

709 **05:03 JM: (_____), that's what we, that's what we all seek, isn't it?**

710 05:06 Yeah.

711 **05:07 JM: But let me just, just ask you as a, as a final question – you're a young guy,
712 you, you've been here . . .**

713 05:13 Not so (___) young.

714 **05:14 JM: You . . . you're a young guy; you, you worked in, you worked as a business
715 development person in the corporate world in the U.S., yeah?**

716 05:19 Yeah, Germany, U.S.

717 **05:22 JM: Yeah that's great. But you came here really right after law school.**

718 05:25 Yeah . . . yeah . . . yeah, yeah, yeah.

719 **05:26 JM: You really did, because you did your internship and you came here and this is
720 your work as a lawyer, you, you know, when . . .**

721 05:30 I had a, another case while I was doing this too so I was on two cases, this, the, the
722 Sierra Leone one.

723 **05:36 JM: Yes right, but your, your world from having been in the corporate world has
724 become an international . . .**

725 05:42 Mm-hmm . . . Yeah, yeah.

- 726 **05:42** **JM: . . . you're an international lawyer, international criminal defense lawyer,**
727 **this is an amazing thing. And your career may change. Ho-, how . . . it probably**
728 **will, who knows, we all do, right?**
- 729 **05:51** **JM: But, but if you look back on this time here . . .**
- 730 05:53 Yeah.
- 731 **05:54** **JM: . . . and let's say you went back to the corporate world and you were in-**
732 **house counsel for, you know, Volkswagen and you really, really liked it, but every**
733 **once in a while as you sat at your desk, your pen tapped and your mind went**
734 **back to Arusha. What will you think about and, and what does it mean in your**
735 **life, personally and as a lawyer?**
- 736 06:14 You know, this is the hard question. I mean to be honest, I mean Arusha is, you
737 know, they're very good, good memories, in terms of work and otherwise, you
738 know. It is, it is something – and again you know, as you said, people looking at this
739 are going to be like, you know, “How can you say this?” You know, “It's a tragedy
740 of, of immense magnitude,” but, you know, this is, this is really what, what one
741 wants to work on, i-, is fighting that.
- 742 06:44 Now, so that's sort of the positive. You know, the negative, the amount of time
743 done, time spent sorry, on this, the . . . I just want to make sure . . . I would really
744 have liked the prosecutor and other people – I'm not saying I'm that competent –
745 but to be competent, so they could raise my game too.
- 746 07:07 You know, because that would have made it I think, would have made me less
747 cynical, would have made the process less cynical, because then you know, alright,
748 yes it is, it is something which is interesting. It is something which is of, of a
749 magnitude that requires respect and respect comes from competence, people
750 doing their jobs properly. But you know, it's very hard to maintain that.
- 751 07:34 When there's just things let, being let go all the time. So, you know, tha-, tha-,
752 that's the sort of, you know – I always feel, you know, in the back of my mind that
753 we've, you know, you're going to get associated with, with saying something which
754 was, in the end people going to say, “Yeah, but the quality of jurisprudence at that
755 tribunal. You know, this was just terrible,” or something like that. You know that's,
756 that's because one has spent five years, one seventh of my life here . . .
- 757 **08:03** **JM: Thank you very much. No, it was, well I . . .**
- 758 08:05 I hope it was helpful. Thank you.