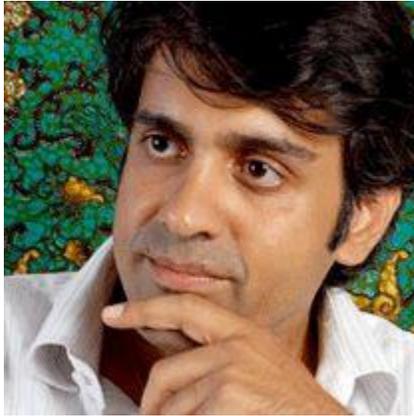


Voices from the Rwanda Tribunal

Official Transcript: Avi Singh (Part 5 of 7)



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| 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 Part 5 begins on the following page.

Part 5

- 00:00** John McKay: 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 jurisdictions 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.