Interviewee: Beth S. Lyons
Location: New Jersey, USA

Interviewers: David P. Briand (Q1) and Leigh Swigart (Q2)
Date: 19 February 2015

Q1: This is an interview with Beth S. Lyons for the Ad Hoc Tribunals Oral History Project at Brandeis University's International Center for Ethics, Justice and Public Life. The interview takes place in New Jersey on February 19, 2015. The interviewers are Leigh Swigart and David Briand.

Q2: It's clear from your CV [curriculum vitae] and things you've written about that you worked in Legal Aid in New York. Maybe you could tell us how you made this transition to the ICTR [International Criminal Tribunal for Rwanda].

Lyons: Okay. Legal Aid was my second career; I went to law school when I was thirty-five. Prior to that I was involved in the student movement and trade union movement in the 1960s and 1970s and early 1980s, both in plants and also union staff. When I decided to go to law school I wanted to have a job where I could talk to juries because I was an organizer. Little did I know that at Legal Aid in New York City it's "plea bargain city," so there are very few trials. Anyway, I went to Legal Aid because I wanted to do trial work, I wanted to talk to juries.

I worked at Legal Aid for too long. It was a place where, despite our huge case loads—there were over a hundred cases on our individual dockets. I know that's changed, but the factory processing of people continues in New York City. I basically learned the
skills of how to try a case, how to do a hearing, how to read an indictment, how to deal
with clients. There are particular problems about how Legal Aid in the U.S., and
generally, in the world, works. Poor people don't get the kind of access to justice and
representation they deserve; it's the best money can buy, right? In the U.S. it's
compounded by problems of race and class. You go sit in an arraignment in New York
City and almost every person who's arraigned is black or Latino, many people from
countries outside the U.S. who've been waiting in pens for hours for the Wolof interpreter
to come, or the particular Chinese—

Q2: I've done that.

Lyons: Right, the particular Chinese dialect interpreter to come, etc. But needless to say, I
got burnt out. I did trial work, I did appeals work. And, I was always interested in
international issues.

Q1: You were there for twenty years, right?

Lyons: Yes. I started out of law school in 1987 and I was there until 2007, but in that
period of time I had a forced medical leave due to a very bad accident. I ended up suing
the Legal Aid Society under the ADA [Americans with Disabilities Act] for parking. We
made good law but we settled. The Second Circuit held that reasonable accommodation
does not only apply to "on the job" but also applies to "getting to the job."
Q1: Right, that's a part of the job.

Lyons: Right, so that was a benefit both for me, but hopefully for the countless people who need that. So that was a real advance. The second thing—I'm losing track.

Q2: You're talking about you're there from 1987 to 2007.

Lyons: Right. The other thing was I took two leaves. In 1997 I took a leave to volunteer for the Truth and Reconciliation Commission [TRC] in Cape Town. I worked in the research department, did some work for the legal department, got a chance to read about—look at the issues of amnesties as well as the apartheid government's destruction of state documents, and spent months going to hearings. I was at the opening hearings of the TRC in East London in 1994, and then in 1997 I took a leave to volunteer for the TRC.

Q2: If I can just break in, what was it like for you to do research on a situation that was so far from your native country?

Q1: Yes, and what was your interest in South Africa at that point?

Lyons: My interest was very specific in South Africa. I had been a supporter of the ANC [African National Congress] when it was a liberation movement. I understand that there's a transition from liberation movement to state power, etc., and I'm not going to make any
comments now in terms of this—it's too complex, the issue of what happens in the state power situation twenty years later. I had worked on the health section of the conference in support of the ANC [in New York] in 1993. I went to the first conference that was held on South African soil for supporters of the ANC in 1993. [Nelson] Mandela was released in 1990. I also had worked as an intern for the attorney Lennox [S.] Hinds, who represented the ANC when it was a liberation movement, represented Mandela, and now represents the government of South Africa in the U.S.

Q2: Oh, is that right? Interesting.

Lyons: Yes, and he's a person with whom you should do an oral history.

Q2: I've seen his name—

Lyons: He's terrific. He's definitely somebody who should be interviewed in this project. So that was why I went to South Africa. Honestly, I was involved in politics and interested in politics, social movements, justice movements, and economic justice since 1968. So I was not radicalized by the law. What I learned in the law is that it is a specific discipline, in a specific venue, with rules that you have to use to try to fight for certain things. There are limits to it. But I had all these international interests. I was and am still part of an international lawyers group, the International Association of Democratic Lawyers [IADL], which was founded in 1946, before I was born. IADL has consultative status II with ECOSOC [United Nations Economic and Social Council], and is

Q2: Yes, I wanted to ask you about that because it seems like you've traveled all over the place for them.

Q1: You've been all over the place with that.

Q2: What is this organization?

Lyons: Let me give the website. It's www.iadllaw.org. It was founded by anti-fascist lawyers, lawyers in the Resistance during World War II, and has been supportive of the goals of the UN Charter—the objectives, particularly the equality between nations and the right of self-determination. It's taken very strong positions on a number of issues. For example, in the 1950s, it was part of a delegation that went to North Korea to look at U.S. war crimes against the Korean people.

Q2: Okay, we saw that in your CV.

Lyons: Right. For the fiftieth anniversary of that—a few years give or take—our Korean affiliate wanted to have a war crimes tribunal. I was asked to be the prosecutor. Basically they had some people who still were victims of war crimes. They had some chemical
biological experts, etc. It was a kind of a reenactment of what happened; it was a people's tribunals. So I was in Pyongyang in 2003.

Q2: Does the IADL have members from all over the world?

Lyons: Yes, it has affiliates in ninety countries—mostly national associations, as well as some individual members. In the U.S., IADL's national associations are the National Lawyers Guild and the National Conference of Black Lawyers. There are very active national associations in other countries; the Japanese for example have been leaders in anti-nuclear work and in fighting the repeal of Article 9, which is the part of the Japanese Constitution that says, "We will not send people to war." There's a huge internal struggle there. There are activists in groups in South Africa that were involved in liberation movements there. There are individuals and national associations in other parts of Africa, in Europe, in Asia. There is a Latin American affiliate, American Association of Jurors, which is part of IADL.

Q2: In what languages do you people have conferences in and what not?

Lyons: At the bureau meetings, which I attended—that's on my CV—we also had conferences on international legal issues with them. They were conducted in French and English—two languages. I actually did a few weekends during this period of time to brush up on my high school French. Now I work with French-speaking clients, but that's out of court. Anyway, this organization really opened up for me the opportunity to go to
meetings and to see what was going on in European, African and Asian countries. As I said, Lennox Hinds—IADL's permanent representative to the UN in New York—organized IADL's 1996 congress in South Africa. Nelson Mandela was named the president emeritus and addressed that Congress. So that's IADL.

Q1: I'm so curious about your time in, well, many different places, but North Korea sticks out especially. What do you recall about that experience?

Lyons: I was struck by the suffering of the people during the Korean War. We'd go to places with museums which showed where people were burnt out, that kind of thing. I only spent a few days there. I met with some of the organizers of the tribunal from my organization. I have to say one thing that impressed me—they took us to a number of events. We went to the circus. This is something I didn't know—the North Koreans train acrobats from all over the Asian countries. There was someone in our delegation from Cambodia, I think, who talked about how people get the best kind of training in North Korea. So we went to a circus. The circus was an indoor event. There's not a lot of wealth in North Korea. The young woman was doing an acrobatic whatever—

Q1: A routine.

Lyons: A routine, right, and she missed. She tried three or four times until she got it right. It just sort of impressed me; it was kind of a work ethic towards your sport or towards your excellence.
Q2: Did they have a net?

Lyons: I don't remember. I can't remember what happened.

Q1: If she tried three or four times she probably had a net.

Lyons: Right, they probably had a net. But there was just something about it. We didn't do a lot of touring the country. I didn't get on a bus and go travel; it wasn't that kind of a trip. I know there's a lot of information out about North Korea, and I know that some of it's true, some of it's not true, but I would really need to go see more before I would feel comfortable talking about it on tape.

Q1: Right, of course. So it's a couple of days in Pyongyang, and a couple of days in Havana, a couple of days in—

Lyons: I went to Havana in 1990. I was representing IADL at a UN meeting—it was the Congress on Treatment of Offenders, Criminal Justice. I don't remember which number Congress it was, but that was 1990. Then in 2001, IADL had its congress in Havana.

Q2: What do you think about the latest developments with Cuba? Cuba-U.S. relations?

Lyons: They are definitely long overdue.
Q1: Yes.

Lyons: No question in my mind. I think that it's long overdue. I'm not living in Cuba so I can't comment on what some of the ramifications may be. My view is very simple, that I think it's really criminal that the U.S. has been one of the only, if not the only country, who's imposed the embargo that the rest of the world has opposed for decades. The other thing is that I notice there's a double standard because when I was there at the UN Congress in 1990, at the convention center there were booths—the U.S. is represented through business interests. It's a myth to say that U.S. business interests haven't been represented and dealing with Cuba in some way, shape or form for decades. Let's not kid ourselves.

Q1: Sure.

Lyons: I think that definitely the embargo has to be completely removed and there should be no restrictions.

Q2: I was in Cuba last year for the first time.

Lyons: Oh, really? With whom?

Q2: I went with a group from a university and it was just—
Lyons: Oh, interesting. What was it like?

Q2: It was the most fascinating trip I ever took. I was really struck by a billboard when you're leaving the airport—and of course in Spanish they don't call it embargo, they call it the blockade, which suggests a much more systematic kind of obstacle to trade. So there's this billboard, and since then I've seen it referenced. There must be several of them that say, "El bloqueo, el genocidio más largo de la historia." The blockade, the longest genocide in history.

Lyons: Wow. Oh, that's interesting.

Q2: I was like, "Whoa, whoa, stop." Because it was a fascinating bringing together of a blockade with a genocide.

Lyons: That's right. Oh, that's fascinating. I don't know when it went up but I don't remember seeing it. Wow.

Q1: That was in Havana proper?

Lyons: On the way to José Martí Airport?
Q2: Exactly. It's just the most amazing place. It is interesting that there can be so many Cuban-Americans who are convinced that this is the worst policy move they ever heard of, and you're thinking, how do they reason that out?

Lyons: Well, yes, but the one thing I've realized is the Cuban community is not a monolithic community.

Q2: Oh, no.

Lyons: The timing of the "easing of the embargo" definitely reflects that. Because I think the younger generation is definitely more open, and more objective, if you can say that. I think that makes a difference. In the 1970s, I recall reading an article in New York magazine about a Cuban social worker who was gunned down and killed in the street by a right wing Cuban group in northern New Jersey for advocating reunification of families. I don't remember which one. But today, in 2015, reunification is not an issue that the Right can own.

Q1: You were at Stevens Hinds & White [SH&W]?

Lyons: Right.

Q1: That was 1990 to 1992, so you were still at Legal Aid at that point?
Lyons: Yes, I was on medical leave. My accident was in 1989. What were my SH&W dates, 1990 to 1992?


Lyons: I was still dealing with surgeries. I had a total of dozen between—

Q2: Oh, my goodness!


Anyhow, Legal Aid—I was still at the Criminal Defense Division in Manhattan. They wouldn't take me part-time. I was aghast and angry because I wanted to go back. In between surgery I was able to do work and I was able to do things, and they wouldn't take me. They only had part-time work for people on maternity leave. Nothing against mothers, I'm just saying they wouldn't do it. So I did volunteer work on a case at Lennox Hinds' office. I can't even remember the name of the case, but it was a federal case that he was trying. I worked with another associate there. Again, it was on a volunteer basis, and we did a trial. The trial was in West Virginia in federal court; it was a criminal case. I also worked on a Section 1983 case—those are the police brutality, the police misconduct cases. His firm had a community-based practice for more than twenty-five years at that time. Its founder, attorney [Hope] Stevens, who had passed away, was a legal icon within the Harlem community, so that the firm has a long history.
Q1: And you ended up working for them again in 2013?

Lyons: Yes, this time it was different. I worked on a UN employee matter. The UN staff have a staff association; it's not a union but it's similar to a union. The UN has a whole plethora of rules.

Q2: Right. This is the case that was before the UN Dispute Tribunal.

Lyons: Exactly. I worked for Stevens Hinds & White on that case as a contract attorney.

Q2: So you were the defending—you were counsel for the plaintiff.

Lyons: Right, the plaintiffs, who were security officers, were challenging the classification of their jobs and the work they were doing at their classifications, saying that they were doing the same work as a higher classification but paid less. They wanted equal pay for equal work and a higher job classification to accurately reflect the work they were doing. Stevens Hinds & White had a prepaid legal services plan and they represented a number of units in various litigation before the UN Dispute Tribunal. They represented people in the publishing unit, other people in security. I wasn't involved in that, I just did one case.

Q2: That's so interesting because I know that—and you would be so much more aware of this than me—but people in the UN structure are so aware of where they are in that hierarchy—
Lyons: Oh, yes.

Q2: —of payment that they're like P-1 to P—the highest is the 1 or the 5?

Lyons: The highest is a 5.

Q2: The P-5, so that's like the secretary general. It means their salary, their conditions, do they get to go business class when they fly, all kinds of stuff. Someone will say, "I have a legal assistant but they're only coming in as a P-2 or a P-3," and everyone's always jockeying like, "So and so is higher." They say this like everybody knows what this means.

Lyons: Absolutely, and it's all on paper. I've never seen so much paper. It's all there on paper. There's the professionals, and then the general staff and services who have a separate classification. The security officers and other people, I mean. I don't know the ins and outs of all of that, but there has developed a whole body of law, which is available on the internet from the UN Dispute Tribunals. There's one in New York, one in Geneva, and one in Nairobi.

Q2: I know of someone who just—it's a judge from the Cambodian tribunal, Rowan Downing, who's Australian, who just now is going to be doing some of that. He was just with our latest judges institute [Brandeis Institute for International Judges] in Geneva.
Lyons: Oh, okay. Do you know Judge Weinberg [Ines Monica Weinberg de Roca] from—?

Q2: I do, yes.

Lyons: I saw her name on pleadings for the UN Appeals Chamber.

Q2: Yes.

Lyons: The other thing is that it's kind of like a track. Once judges get into an international court or tribunal, then there are other tracks that open up to them—potentially at least.

Q2: I know we haven't gotten up to the ICTR yet, but were you as defense counsel in that UN structure or were you completely outside of it?

Lyons: The short answer is that defense counsel at the ICTR are essentially individual contractors; we were paid by the UN, but were not considered to be UN staff. So, we were outside the UN structure, but the defense unit in the Registry regulated everything—it reviewed our billings, it approved requests for work missions, etc.
But, going back a bit, the Stevens Hinds & White prepaid legal services plan was outside the UN structure. Within the UN structure, there is a legal services unit called OSLA [Office of Staff Legal Assistance]. OSLA is "in-house" counsel, which is supposed to provide legal services to UN employees who believe that their rights were violated. OSLA staff attorneys are paid by the UN, and are UN staff. I have not dealt with them.

I have to say though that some people kind of look at in-house counsel as inherently untrustworthy. That's how some clients looked at Legal Aid. I would stand up in an arraignment and the client next to me would say to the judge, "I want a lawyer. I don't want Legal Aid." I'd say, "Fine with me." It's a prejudice, which is generally unfounded, but probably in principle you understand because you're looked at as part of the system. You may be the best lawyer, the most independent, the most zealous, the most whatever in defending your client on a criminal case or in pursuing the interest of the plaintiff in a civil matter, but you're still looked at as part of the system.

This [independence of counsel] has been a huge fight at the International Criminal Court [ICC] and elsewhere. I really believe that the counsel, certainly for the defense and plaintiff, need to be independent. I have to say, though, that there was a point in my career where I wanted to work for the UN. I no longer feel that way, based on what I have experienced—how the UN is run, the question of an uneven quality of work, the patronage system, etc. But the bottom line is that the principle is independence, and frankly if you don't get your paycheck from the institution that you're suing or is
prosecuting your client, I think that it removes one of the indicia that people use when they determine, is this counsel really independent?

Q2: So the prosecutor should also be independent, is that what you're saying?

Lyons: I'm talking about the defense. But I also believe the prosecutor should be independent. The Office of the Prosecution at the ICC is not, to my mind, independent. Or, to put it another way, it is a major struggle for an individual prosecutor to exercise independence. That's a battle that the prosecutors have to fight. I do recognize that there are individuals who are more professional, and that's all I ask for—professional and independent—in all of these tribunals as well. But the general pattern that I've observed, whether at the ICTR, even in my limited dealings in terms of a Dispute Tribunal scenario, is that the people—their job is to represent the interest of their client. That's his or her job, with all that that entails, so by definition one can't be independent; it's not an act of volition.

Q2: You don't think that [if] the ICC had a defense organ that was funded out of the budget just like the prosecutors' one, and there were staff defense lawyers—you don't think that could work?

Lyons: No. Two points on the ICC, and let me just write this down because I'm going to forget the revision point. This issue has come up. During the preparatory committees in the pre-Rome Statute period, there was a big debate and heated discussion about the
independence of the defense. Should there be a defense unit in the ICC, as there is in the ICTR and the ICTY [International Criminal Tribunal for the former Yugoslavia]? And please ask me about the ICTR defense unit. I'll talk about that in a second.

Q2: Yes.

Lyons: Okay, the Registry. So that was a debate. Many defense associations including the International Criminal Defense attorneys in Canada, led by a woman named Elise Groulx, took the position that the defense has to be independent; it should not be a fourth pillar of the ICC. You have Prosecution and have—

Q2: Chambers, Registry—

Lyons: Yes, the three pillars are Prosecution, Chambers, Registry, but the Defense is outside. So that was a position. Human Rights Watch [HRW], and everybody else was fighting for an independent prosecutor. Whether that can be or not is a political issue, okay, but the independence of the defense is a fundamental principle. What happened was that the ICC has an international legal aid program. At the ICC it's administered by the Office of Public Counsel for the Defense [OPCD].

Q2: Yes.
Lyons: Okay. It's an independent office. Whether it functions that way, whether there are problems, etc., is a separate issue, but that's what it is on paper. Now, in the last six months, the registrar of the ICC has presented a proposal called the Revision Proposal, which was a proposal discussed at the last ICC Assembly of States Parties [ASP] in December 2014 to basically control the OPCD. The proposal merged the functions of the OPCD with the CSS [Counsel Support Section, a unit which deals with administrative issues re: counsel].

Q2: Is this Herman von Hebel?

Lyons: Oh, yes. It's called the Revision Proposal. I don't know where it stands now, but the structural proposals threatened the independence of the defender office.

Q2: And what was the justification for that revision?

Lyons: Ask me after lunch, because I have it upstairs and I can tell you.

Q2: I had not heard that particular thing that came out of the last meeting, so that's interesting.

Lyons: The revision—I think that the theory had to do with wasted services.

Q2: So it was a budgetary issue.
Lyons: Well, it's a budgetary issue, but also it ended up being that the issue of counsel for the defense was under the control of the registry, which is a conflict of interest. That's what it ended up.

Q2: Interesting.

Lyons: A number of people have opposed—

[Interruption]

Q2: We were talking about such interesting things, but just to get back to where you were and how you heard about the Rwandan tribunal, how you decided to put your services out there, or whatever the process was for you to be certified or qualified or whatever it is they—

Lyons: Okay. A colleague of mine, Lennox Hinds, in 2001 suggested that I apply to the list counsel for the ICTR. Hinds had a case at the tribunal representing [Juvénal] Kajelijeli. Actually he was one of the first defense attorneys to go to Rwanda also.

Q2: Wait a minute, before that they didn't go to Rwanda?
Lyons: There were a lot of defense attorneys who didn't go, and there are still defense attorneys who don't go to Rwanda.

Q2: Who are not allowed, who were not given permission to—?

Lyons: There are different reasons and circumstances pertaining to each individual attorney. Within institutions, whether it's in Rwanda, in the U.S., if you want to see people in prisons, you need permission. As a defense attorney, you need to go to the site of where the crime, the events took place, that your client is charged with. I don't know how you try a case without taking a look at the site.

Q1: Sure.

Lyons: Okay. Then there's a question of witnesses, etc. I don't know whether it was *de jure* or *de facto* not allowed. I can't remember at this moment, but I do know he's [Hinds] one of the first persons to go there and to go into the prisons. People started to go but there were still attorneys that didn't. I know that some people didn't go or wouldn't go. There were some people that didn't do that for good reason because they didn't feel that they would be safe or they had been threatened or other kinds of situations, so it wasn't simply whether you wanted to go or not. Anyway, he suggested that I get on the list, so in 2001 I did the UN paperwork to get on the list. I think at that time I was accepted to the ICTY list also. ICTY did not require a number of years of prior practice; ICTR did—ten years.
Q2: That's interesting. What is that all about?

Lyons: What I'm told is that it had to do with making a requirement so that—there was a case of a person or persons who the administration didn't want on the list, but I can't verify all of that. But let's put it this way—it was a subjective issue, clearly subjective issue. There is a point that you need experienced counsel, there's no question about that, but the way that the rules work and the whole assignment of counsel and who gets picked, etc., is a big problem.

Q2: Were there requirements that you knew anything about? I know international criminal law was nascent, but did you need to have any international experience or have some exposure to—?

Lyons: I think the form asked for international experience. They asked for it but they took both professors and litigators. What struck me most was that you could be a professor of international criminal law and be accepted to the list. In other words, you didn't have to have courtroom experience. You didn't have to know how to do direct and cross [examination]. Some of that has to do with the different common law training and civil law training.

Anyway, so I got on the list and I was recommended by Hinds for my first case. The way it works is that clients ask other lawyers who they recommend when they need to name a
co-counsel and a lead counsel. It's word of mouth. That's for the first rung. He recommended me to a client who was looking for co-counsel. The client already had a lead counsel—Sadikou Ayo Alao from Benin—and he was looking for co-counsel. In those days in 2004, you could only get appointed as co-counsel three months before the trial started, which is not much time.

In the year prior to my appointment—it took almost a year to get appointed. I was working at Legal Aid. I was doing *pro-bono* work—not getting paid—on the ICTR case. I was dealing with the indictment, dealing with a few other issues. For example, joint criminal enterprise was an issue in that case and I, at that point, knew nothing about it. I was rushing around asking people. Now I've written about it, and know about, and litigated it, but in any case—

[INTERUPTION]

Q1: So you knew that you were going to the ICTR at that point? The ICTY was not a possibility anymore?

Lyons: I was accepted to both panels, both lists at the same time, more or less. Look, the way it goes is I knew that I didn't know anybody at the ICTY—I knew nothing about Bosnia or Herzegovina. I didn't know anything about the conflict, I never worked in the region, I had no contacts, and I didn't speak the languages. The fact is that, again, it is
word of mouth; nobody was going to recommend me based on paper. I reasoned that there was no way that I would ever get a job there; in fact, I've never had a job there. My network really is ICTR. During my first case I started to meet other attorneys, so my work spoke for itself. But it's that initial getting in for which I'm thankful to Lennox Hinds, because he opened that up.

Q1: Were you following the work of the ICTR before you applied?

Lyons: I'm trying to remember. You're talking way back before, like 1994?

Q1: Yes, I mean when it was established.

Q2: Like in the late 1990s, once it was established—

Lyons: I don't recall that I was. In the late 1990s I was following the ICC because I represented IADL at the preparatory committees in New York, and I'm an alternate delegate to the UN for IADL in New York and have been since 1997. So I'd been doing that work and then some of the ASP work. So I'm not sure that I had really followed the ICTR. I think that once I got on the list [in 2001] I started to follow it and some of the issues.

Q1: But you had been following the events in Rwanda, of course.
Lyons: What's the Latin for "I confess"? *Mea culpa*—that's an admission of fault. But in 1994 I hadn't followed the events that carefully. This is in the University of Washington interview. I was recovering from a really bad accident so I was not paying too much attention in 1994 to other events.

Q2: I think I hear that a lot. I did not—and I was living in Africa right after that.

Lyons: What years were you in Africa, in Senegal?

Q2: I was in Senegal from 1986 to 1989 and then from 1994 to 1997.

Lyons: Okay.

Q2: In 1994 when that happened I had a two-month-old baby and after that we went to Senegal. You did not hear in Senegal what was happening in Rwanda, or in DRC [Democratic People's Republic of the Congo]. It was still Zaire at that time. That doesn't surprise me because I actually don't think it was prominent in the news.

Q1: I have no frame of reference because I was seven.

Q2: Exactly, you were seven, so you—
Lyons: Yes, and I think that that was intentional. That's my view. In the news here [in the U.S.]—and I'm not a conspiracy theorist but I do know that access to information was limited here.

Q2: And at that time it was so different.

Lyons: If you read only English you only get one view of the Rwandan situation. If you read French, which I started to do, it's a whole different ballgame. So it took me some time to get my first case. It's 2001 to 2004, really.

Q1: Were you doing pro bono work for that case that whole time?

Lyons: No, it's probably a year of pro bono. I don't think I was doing three years of pro bono. I really doubt it.

Q2: When you finally got officially taken on as co-counsel, did you move to Arusha? Or were you doing it remotely?

Lyons: I had contact with the legal assistant and the lead counsel on the case before by phone, and, in those days fax. You remember fax?

Q2: David doesn't. [Joking]
Q1: I've used fax before, come on.

Lyons: And then it was—I may be wrong—February, March? We were supposed to start trial in May 2004 but we didn't for some reason. I was appointed in February so I took a leave of absence from Legal Aid and I went to Arusha. Then we were dealing with a number of pretrial issues including trying to get Alison Des Forges excluded as an expert witness for the prosecution in our case. It was still pretrial; we started the trial in August 2004.

Q2: On what basis did you ask for her to be excluded?

Lyons: Well, at that time—

Q1: Can you explain who she is?

Lyons: Oh, absolutely. Alison Des Forges, who's passed away, was in the leadership of Human Rights Watch for decades. Her expertise was in the area of Rwanda.

Q2: She's an anthropologist, right?

Lyons: She may have been, I don't—

Q2: Or maybe she wasn't.
Lyons: I don't know, I can't remember. I think that in the 1960s Alison Des Forges spent some time in Rwanda also, that I had heard. Alison Des Forges wrote a book, which I did read between 2001 and 2002, called *Leave None To Tell The Story*. What it is is interviews with Tutsi survivors about what happened in 1994. It's interviews; that's all it is. Her thesis was that the Rwandan government under [Juvenal] Habyarimana, who was killed when his plane was shot down—in my view, by the RPF [Rwandan Patriotic Front] on April 6, 1994, setting off the events—that the state apparati were turned into killing machines. That's basically what she says. Then in her book, she includes allegations against a number of people who were on trial in Arusha.

Q2: At the ICTR?

Lyons: At the ICTR, right. Then there's a very small section on the crimes of the Revolutionary Patriotic Front led by [Paul] Kagame against the Hutus—a very small section. My first client was mentioned in this book, and in these events, and I thought, what is going on here? Then when I got to the ICTR and started meeting witnesses in Rwanda, I'm hearing a different side. What Alison Des Forges' book does is this—it basically takes "he said-she said" and presents it as if it is the facts. "He said-she said" is not evidence; it's not the truth about an event. What the prosecution did was it seized upon Des Forges and her book as kind of its Bible for the prosecution. In fact, in my first case, in the *Simba* indictment [Aloys Simba] there were sections that were taken out of the book and I could see it—a paragraph here, a paragraph there. She subsequently
testified as their historical expert—or something else, cultural, I don't know, but
definitely a—

Q2: Yes, she might have been a historian.

Lyons: Yes, she was a witness in all the cases until her death in an airplane accident in
Buffalo. And she really provided the structure for the prosecution's theory in its
indictments.

Q2: Did they acknowledge that?

Lyons: I don't know. You need to ask the prosecution. But that's what we saw. What
happened was that early—it was 2003 and 2004. There was a case—the Mugesera
case—in Canada. It was an immigration decision from a lower court, which we used in
our motion to disqualify Des Forges as an expert and to exclude the admission of Des
Forges' transcripts and exhibits of her testimony in the Akayesu case, which the
prosecution wanted to admit in the Simba case. In the last couple of years, [Leon]
Mugesera was extradited to Rwanda.

The lower court immigration case in Canada said that Des Forges was not an expert
because she was an activist and wasn't objective. Eventually that case was overturned, but
while that was the state of the law, we all used that, so that's the basis on which I wrote
the disqualification motion. Of course she didn't get disqualified. For some reason—I don't remember why at the moment—she never testified in person in the *Simba* case.

Q2: Yes, I was wondering when she was killed in that accident did that change how the prosecution—?

Lyons: No, because they're all old cases. I have to say, the other piece of it is, Human Rights Watch has argued for the prosecution of both sides in this victor's tribunal consistently, and Alison Des Forges' section on the RPF caused them some problems in Rwanda in later years. At some point later, also, she couldn't go into Rwanda.

Q2: You mean just that little section?

Lyons: Yes, and some of the work HRW has done in regards to Rwanda. But that was much later, and I'm talking now about an earlier period. All this does not change the fact that the use of Des Forges' book by the prosecution was never renounced by Human Rights Watch. In terms of its use, her book really was the seminal work for the prosecution. The prosecution, however, ignored information in the book about findings in UN reports, including the Gersony Report [which was suppressed in late 1994], of the systematic killing of Hutus. So it's problematic. I think I may have met her once. It's not a personal issue; it's how her book was used and the role that she played in the tribunal.

Q1: Okay.
Q2: So when you were doing the first case, that was the *Simba* case?

Lyons: Yes.

Q2: At what point did you actually go to Arusha?

Lyons: I went to Arusha when I was first assigned in February 2004 because that's when I was appointed as co-counsel, and I was able to bill for my travel and legal fees. It was three months before trial was supposed to start, in May of 2004.

Q2: So the defense had done investigations, and it had already talked to witnesses, and had figured out who they were going to call?

Lyons: When I entered the *Simba* case—that's ten years ago—I think the defense had already dealt with some possible witnesses and investigations, but that work continued. In fact, with the *Simba* case, I went into the Rwandan prisons and interviewed potential witnesses with our investigator.

Q2: You were given permission to go to Rwanda and do that.

Lyons: Yes. But in 2004 and 2005, however, the prisoner witnesses who we called at trial had been questioned before and after the defense visit by the local Rwandan prosecutor
and the director of the Gikongoro prison. This is found in the *Simba* judgment [*The Prosecutor v. Simba*, Case No. ICTR-2001-76-T] at paragraphs 43 and 49.

Q2: Meaning they sort of took over your witnesses?

Lyons. No, not exactly. What happens is that to go into the institutions, such as a prison, in any country, you have to tell the prison officials who you're going to see. You can't just walk into a prison. I remember that we had to give a list of prisoners we wanted to see to the Rwandan Ministry of Justice.

Of course, we got to the prison in the *Simba* case and the local prison official claimed he did not know anything about my visit [which had been pre-arranged with and pre-approved by the Ministry of Justice] and tried to give me a runaround. I tried to explain in French and the prison official did not know what I was talking about. In those days, the prison officials were Ugandan-trained. They all spoke English. This took place in a small office on the prison grounds, before you actually enter the prison. Many of these prisons are like plantations almost. This was at Gikongoro. You also have to go first to the local prosecutor who already has been informed about who you're going to see in the prison. So there is no confidentiality about who the defense attorney wants to talk to in the prison.

You walk into the prison—I remember in Gikongoro they put us in this big barn. Gikongoro had both men and women prisoners, and there were children on the prison
grounds who were the children of male guards and women prisoners. Every time I'd walk from the administrator's office to this huge barn, the young children would yell, "Mzungu, mzungu," which means "white." The prisoners were taking care of the children. I felt perfectly safe; I had no problem with the prisoners, but the prison management was a problem. We'd get there very early in the morning each day and then we'd have to wait; I'd have to call the prison warden to get everything in order to start our work. The prisoners we wanted to see were called by other prisoners to go talk with me. There was a whole structure inside the prison. And, each day, the prison officials had someone set up a table and three chairs for us in this huge barn.

Q2: Could you record the interaction?

Lyons: No, we didn't do recordings. I don't remember asking to do that.

Q2: So you had a field interpreter?

Lyons: No, I had an investigator from my defense team, who also served as an interpreter. The working conditions were very difficult for us. But the risks taken by any prisoner who came to talk with me were especially great. What's interesting is that the first time—we were there about two weeks—before our initial interviews the local prosecutor in the region where the prison is located [who I had met prior to going into the prison] wanted us to interview our witnesses in the local prosecution office. In other
words, before you even get to the prison, you're fighting with the prosecution to try to keep your witnesses within your control as much as possible.

Q2: The ICTR prosecutor?

Lyons: No, the prosecutor in Rwanda.

Q2: The Rwanda prosecutor, okay.

Lyons: Yes. The ICTR has an office in Kigali, and we had to deal with their personnel because they provided transportation for the mission to the prisons and they provided security. In fact, our security guard on that trip wanted us to stay at a—it was a motel with a large house on its premises—and wanted us to stay together in the house. I said, "Hell, no."

He said, "I went with the last defense team and we all stayed together."

I said, "Well, I'm not staying with anybody. You stay in your own room." These were bare bones motels. Somebody brought you hot water in the morning, and the electricity was erratic. The problem about where you stayed in Gikongoro, for example, which was forty minutes from the prison in the southern part of the country, was that some of those places had prosecution people in them. Some of them were places where the prosecution had done its interviews. Some of them were places where NGOs [nongovernmental
organizations] were. You really needed a place that had a little bit of privacy just for your sanity but also for the security of your work with your investigator. Also you really couldn't trust the UN personnel.

Q2: So what was it like? You go into these prisons, you've identified—is it your client who said you should talk to such and such a person?

Lyons: Basically the client gives you the leads. Let me just go back though. We were interviewing a number of prisoner witnesses and we had alleged that there was witness intimidation of some of these prisoner witnesses.

Q1: Are these all Hutu prisoners? It was a prison specifically set up for them?

Lyons: Yes.

Q2: In their pale pink uniforms?

Lyons: Oh, yes.

Q2: They wore these pale pink uniforms.

Lyons: Yes, to emasculate them. As I was saying earlier, the Simba judgment recounts the testimony of prisoner defense witnesses who described the Rwandan authorities'
interference with the defense witnesses. At footnote 54, it says "…witnesses also stated…immediately after meeting with Simba's defense team a member of the Rwandan prosecutor's office in Gikongoro convened those prisoners and instructed them to write down what had been discussed during their individual interviews with the defense. [They] also testified that a total of five potential [defense] witnesses were moved from Gikongoro to Mpanga prison, and that upon arrival, they were placed in isolation cells. At Mpanga prison, officials informed them that they were undisciplined and were isolated upon the orders of the prosecutor's office." At that time, Mpanga was a new prison that was built supposedly to comply with international standards.

The Simba defense alleged witness intimidation of its potential witnesses by the local prosecutor and authorities. But, there was no finding of witness intimidation by the court. It takes a huge amount of courage for prisoner witnesses for the defense to come to Rwanda, be transported there and then go back into a Rwandan prison. Last night I was just doing a search on Google of witness intimidation and the Simba case is one of the examples that a lot of researchers have used to illustrate witness intimidation of defense witnesses by Rwandan authorities.

Q2: Did the potential witnesses that you wanted to interview have to give their permission? Could they decline?

Lyons: Oh, of course. Absolutely.
Q2: Did they ever decline?

Lyons: I can't remember anybody declining.

Q2: Did they ever just not cooperate or not give you anything that—?

Lyons: Look, the way you deal with the potential witnesses—they're under no obligation to talk to you. In fact, if somebody talks to you, besides the fact that everybody knows they're coming to see you, there's no privacy. They've already subjected themselves potentially to great risk and adverse consequences.

Q2: Yes, that's what I wondered, the danger from—

Lyons: I have been involved in other cases where a prisoner has refused to talk to me, which is his or her right. But, in the Simba example, when a potential prisoner witness came in, the first thing that I said, which was translated either into Kinyarwanda or into French by the investigator-translator, was an introduction—who I was what I was doing and how I had gotten the person's name, the object of the discussion, etc. I always said, "You don't have to talk to me" and that "I will do my best to keep everything confidential."

Q2: Some of these prisoners I imagine were waiting to come before a Gacaca proceeding?
Lyons: Exactly.

Q2: Did that complicate their appearance before the Gacaca tribunal?

Lyons: That I don't know. Some were there because they'd been to the Gacaca tribunal and others because they were going. What I do know in terms of that issue is that we had—and it's also in the Simba case—there was a prisoner named "YH," a prosecution prisoner witness who had been promised, as other prosecution prisoner witnesses who were charged under Rwandan law are promised, that he would move from category one to category two.

Q2: The less serious category.

Lyons: Less serious category, and not be subject to the death penalty. Somehow we were able to pull that admission from him in cross-examination. Usually you can't.

Q2: What was the response then by the prosecution?

Lyons: They don't respond. But the court then tries to rehabilitate the witness, so it doesn't really matter. We argued that this witness was going to get a benefit because he had been promised a reduced sentence and that should affect the—
Q2: Credibility.

Lyons: —the credibility and reliability, the veracity of his testimony. I have to look again at the YH section in the judgment, but the court is not bound to accept the whole testimony of a witness. Under ICTR law the court can accept some pieces of it and not accept other pieces.

Q2: That's what [Nancy] Combs writes about.

Lyons: Right, exactly, Nancy Combs in her book [Fact-Finding without Facts: The Uncertain Evidentiary Foundations of International Criminal Convictions]. So that's what happens. That's the way that it works. You can sometimes elicit testimony from a witness; you get a basic information sheet about the prosecution witnesses right before they testify. You see the words IBUKA or AVEGA [Association des Veuves du Genocide, Association of the Widows of Genocide], which are basically state run victims' organizations and you can ask about these groups.

Q2: Right, Ibuka. Yes, I remember that one.

Lyons: Yes, and there are more of them now. But in any case you ask the witness, "Did anybody from that organization talk to you? Did anybody talk to you about going to Arusha? Did anybody suggest to you what might happen here?" You try to get an admission that the witness was pre-trained about what to say in Arusha. It's very difficult
to get but we know from out-of-court information that they're all trained, and they're all trained in the prison about what to say in Arusha, if they testify.

Q2: You mean trained in they're being prepped, they're being directed?

Lyons: They're being directed, right.

Q2: I see, but is some of that under the guise of explaining to them and describing what this judicial process is going to be like?

Lyons: I would like to say "yes" and that's the role of the Victim and Witness Protection Unit in the ICTR to explain the judicial system to all witnesses. But that is not the answer vis-à-vis the role of the Rwandan government. We know that prisoner prosecution witnesses who are going to testify in Arusha are "prepared" in the prisons, and also that similar preparation is organized for civilian prosecution witnesses. Obviously, I've never been at any of those sessions, but I've read and listened to accounts. I know about how the prisons operate and the kind of indoctrination that goes on, and the "re-education" that goes on in Rwanda. Professor Susan Thomson—the professor from western Massachusetts—has written about this. My views are supported by the fact that Rwanda is totally invested in its narrative of what happened in 1994. That's the reason they were so upset about the acquittals in my case and a number of other cases. I don't know if you saw that in March 2014, a number of Rwandan civil society groups circulated a petition to the Security Council asking for an investigation of Presiding Judge [Theodor] Meron.
Q2: Oh, yes, of course. Right.

Lyons: You saw the petition against Judge Meron?

Q2: I don't know if I saw it. I heard that it went around, and this was because of this acquittal and they said that he was—

Lyons: He was being biased. The petition alleged that he "may be pursuing a hidden agenda," which was contrary to the interests of justice. Let me get it. It's just interesting for you to read this.

Q2: I think he also was accused around this—there was an acquittal at the ICTY that had to do with pressure from Israel and the U.S. Larry Johnson was sort of referring to some of the things that came out about him, to discredit him.

Lyons: Okay, here's the Meron petition. If you look on the second page it says, "Based on the above, it is disquieting to note that in all cases it has handled, all those known and accused of planning the genocide against Tutsi, no one has been convicted of this act of planning. Can genocide happen unplanned?" That's the crux of the matter. The Rwanda government's official story is that the genocide against Tutsis was pre-planned, that there was a conspiracy to commit genocide. This is the theory developed in Des Forges's book—a pre-planned genocide.
The indictments charge conspiracy to commit genocide, to support the theory of a pre-planned genocide. For example, the *Military II* indictment at paragraph 22 alleges that four co-defendants "…executed a common scheme with President Habyarimana, [Théodore] Sindikubwabo, [Jean] Kambanda, [Augustin] Bizimana, [Jean-Damascene] Bizimana"—it names about eighteen people—"who espoused their cause to destroy in whole or in part the Tutsi ethnic group." But there are no convictions standing for this crime of conspiracy to commit genocide. Now if there had been a conviction at the trial level [as in the "Media" case], the conviction was overturned on appeal. Most of the trial chambers are not convicting; our trial chamber in *Military II* in fact acquitted everyone of this conspiracy to commit genocide charge.

Q2: Convicting of genocide or convicting of anything?

Lyons: No, conspiracy to commit genocide.

Q2: Oh, conspiracy.

Lyons: Right. This is the heart of the matter of Rwanda's official story, that it was a preplanned genocide. This is the kind of official narrative that drives the preparation, the training of prosecution witnesses who testify in Arusha. This is what's at stake. It's signed by a number of Rwandan civil society groups including Ibuka, others. But it shows the main point in the Rwandan government's official story. In almost every ICTR case, if not
all the cases, there are charges of conspiracy to commit genocide. Yet, the crime never "sticks."

Q2: But how many actual defendants actually were convicted of that?

Lyons: None.

Q2: There's none?

Lyons: None. Nobody was convicted of that. That's the point—no one has been convicted of that.

Q2: Or they might have been, but then it was overturned?

Lyons: Yes. Where a trial chamber convicted of this charge, as in the "Media" case, the appeals chamber reversed the conviction

Q2: So they originally were—so none have.

Lyons: No one has been convicted—

Q2: What about incitement though? That's another thing.
Lyons: Well, incitement is a different charge. That's the "Media" case.

Q2: Right, so some were incitement to genocide but not conspiracy to commit genocide.

Lyons: Right, yes, because conspiracy connoted this idea of agreement, of a plan, which never existed. The prosecution comes into the courtroom and claims, "There's a plan to commit genocide. There are lists of people to be executed." But they never produced the alleged lists. I've never seen a list. Yes, I've seen State Department lists from 1994 of people including my first client who were charged and clearly were *persona non grata*. This myth that the U.S. didn't know what was happening is totally nonsense. That's another piece of the official story on the U.S. side. They knew exactly what was happening.

Q1: So this idea of planning—you mentioned this list that you never saw. Do the ID [identification] cards or anything like that factor into this planning argument?

Lyons: No, I think the ID cards are separate from the planning argument—the ID cards which were initiated by the Belgians in the 1930s. In the indictments there would be allegations of lists of people and the prosecution witnesses would testify to seeing a list of people to be killed, but such a list was never produced as evidence. Going back to the ID card, clearly they're colonial—

Q1: Holdovers?
Lyons: Holdovers, dividing up the people.

Q2: Did children from mixed marriages take their father's identity?

Lyons: They took their father's, that's right. I think it's the father. I'll check that. That was what I was going to say—there are a lot of mixed marriages. That's exactly the point.

Q2: I don't know if in any other African country there's people of different ethnic groups who have the same language. That's a very strange ethno-linguistic landscape to see.

Lyons: Chief [Charles A.] Taku knows about this. I don't know the whole history of where people come from and the language.

[INTERRUPTION]

Q2: To get back to the Simba case, you talked about going to the prisons and interviewing witnesses. I'm just curious—this was your first case there. You arrive in Arusha. What happens? How do you meet your team? Where do you stay? How do you get to know how the tribunal works? What were your reactions to being there? Because you'd never been to Arusha before, had you?

Q1: What was the learning curve of this?
Q2: Yes, what was the learning curve?

Lyons: I had been to Arusha in 2001. Once I was accepted on the counsel list, at my own expense, I went to Arusha because I wanted to see how the tribunal functioned, what it was like. I went to Arusha for a couple of days. It was right after 9/11. I went to the court. I watched some of the [Laurent] Semanza case. The issue came up of when the defendant would testify. Now in the United States, a criminal defendant always testifies last. It's not even a question, and it's under common law systems, I thought.

Q2: I didn't know that.

Lyons: I think—I mean, I've only practiced in New York. From the defense point of view, you really want your defendant to illuminate any issues or explain things. There's clearly an advantage to testifying last—you've listened to the judge's questions, you've already heard the prosecution case, so from a tactical point of view it makes sense. Maybe at the end the client won't testify. I do want to talk about the presumption of innocence too and how it doesn't work at the tribunal. But he's presumed innocent, so maybe at the very end you'll decide he doesn't testify, but you really can't make that kind of decision until you're at the very end of your case.

So I watched and there was this whole debate about it. I sent a note to the lawyers whom I found after court in the defense section [lead counsel was Chief Charles Taku, with
whom I worked on the *Military II* case; co-counsel was Sadikou Ayo Alao, who was lead counsel in the *Simba* case, my first ICTR case]—"What's going on here?" Chief Taku, who is a chief in English-speaking Cameroon, still keeps the note that I sent him. I was shocked when I went to their little office, which was barely big enough to hold two people.

Q2: Their closet?

Lyons: Their closet, right. So I went in 2001. Then I was assigned a case—I was still at Legal Aid, and I was assigned a case in 2004. It started in 2004. I took a leave of absence to which I was entitled under our contract at Legal Aid; we had a union contract. I was only entitled to it for a year, and then Legal Aid graciously renewed it for another year—probably for budgetary reasons, but it doesn't matter. They said "yes," and I had a job when I came back. When I went to Arusha, I was there for a couple of months at a time, and I ended up staying at a hotel.

Q2: And what they paid you could cover that?

Lyons: No, not exactly. In those days, we were paid legal fees of $80 an hour. You could only bill so many hours per month, even if you worked more hours per month [which was the norm]. I probably made in terms of legal hours what I was making at Legal Aid, but there were the hidden costs. You had to pay your transport to Arusha, and in 2004-2005 it
would take months to get reimbursed. You were basically lending the UN money. That's how it worked. It's gotten better, but it took years and years.

Q1: Did the prosecution have to go through this?

Lyons: No, because they're on staff. Of course not. Then excess baggage—if you wanted to schlep your books, you wanted to take your papers, you paid for everything. You did get what was called DSA, daily supplemental allowance, for Arusha. When I started out it was maybe $110 a day. That was 2004. Then when I left in 2013, it had gone up to $120 or $129 per day, I don't remember exactly. But the last time I was in Arusha [February 2014] for the Appeal Judgment, I wasn't paid—that was at my own cost. I was paid for my work on the appeal, including oral arguments. But the per diem was to cover your hotel, your taxi, your incidentals, including office supplies.

The defense had to buy its own paper. There was a printer in the hall. Literally, you talked about closets—for four or five people on a team. There was lead counsel, co-counsel, one or two legal assistants, an investigator—everybody couldn't be there at once; it was impossible. I stayed in the hotel because it offered a little more space, but I spent all my DSA on a hotel. It offered most importantly a place that had a generator when there were electricity problems. I learned that you can't count on electricity in some places. That was the first issue, and I needed to have a place so I could work properly.

Q2: What hotel were you in?
Lyons: I was in the New Arusha for years.

Q2: The New Arusha, is that—?

Lyons: It's the one in the center of town.

Q2: Is that the one where our conference was?

Lyons: Yes.

Q2: It's a beautiful place.

Lyons: Yes. They had UN rates, and they had a pool, because I needed to exercise. For a brief time I stayed at another place, a two-room suite with a kitchen. Then after their electrical problems blew my computer and I had to buy a new computer, I decided it wasn't worth it. Back to a hotel.

The Canadians tend to rent houses or apartments—not all of them, but many of them. But for me, the hotel was centrally located, the electrical stuff was working, there was an IT [information technology] person, I could get internet. Those were the kinds of things that mattered—it was really a work decision. I wasn't going to get rich on this case, but I needed to be able to get the job done.
The *Simba* team at that time included people who spoke English, but we really operated very much in French. There was more French than English generally in the *Simba* team. It was hard for me; my French was good but not that good. It's better now, but it's exhausting to have to listen, process and speak only in French.

Q2: So Taku, he was obviously bilingual.

Lyons: Yes, and the *Military II* team was a more English-speaking team. Tharcisse Gatarama, the legal assistant, was trilingual; other people were bilingual. In the *Military II* case the client was very bright and his reading comprehension in English was good, but he did not speak in English with me. We communicated in French.

I always pleaded [orally and in writing] in English. That's not a problem at the ICTR; working languages are French and English and there are English and French court reporters. Testimony is translated into Kinyarwanda, English and French in the courtroom. The problem is, though, that the translations are not always accurate. I could detect in French when the French interpreter was not necessarily translating something accurately from the English to the French. In these cases you have to pay attention to everything because the judges depend on the transcripts in their judgments, and to deal with motions during trial.
For the *Military II* appeal, we argued [four defense teams] over four or five days in May 2013. I looked at the transcripts of the arguments, and some of mine was wrong. I was aghast and horrified. It was finally fixed, but it took a lot of time and energy to correct the transcripts.

But it was important to not be misrepresented, and to have an accurate transcript of the arguments. The appeals hearings are part of history and part of the archive. I don't blame the transcriber; mistakes happen. But there was no supervision for the final transcript. Clearly what happens is that court transcribers have a phonetical system, so I could see where a word might have a certain sound in it but it was the wrong word. So another person has to read the transcript to see if it makes sense. That wasn't done. It could not have been done.

Q2: So you were able to catch that on your own, but then you think what about everything else that is going in transcript all the time from Kinyarwanda? That's not even taken down in a written form. It's kind of terrifying how things could go awry.

Lyons: Oh, absolutely. It's a real problem. You just have to check everything. You have to check the English stuff too. I was looking at the Asser Instituut in the Netherlands and I was looking at their summary of my case because I wanted to see how they characterized the issues, etc., and they're saying my client was convicted of genocide. I said, "He wasn't even charged in this indictment with genocide." I just wrote to them last night. To their credit Asser Instituut immediately made the correction and apologized.
Now, it was by accident that I happened to look at that. But it's an indicator of how—and this is not a language issue—attention to details and checking for accuracy has to be done. So I'm thankful they did it and it's no problem.

Q2: Do you think that some of it is that people think of the ICTR as a genocide court, so they think everybody's actually be charged with genocide?

Lyons: I don't know. I don't know is the answer. In my case there were four indictments, and at one point, early on, there was a genocide charge against my client [Major Nzuwonemeye], which was withdrawn by the prosecution. But the trial was based on the fourth amended indictment, that was the indictment attached to the trial judgment, and, if you look at the verdict, there's no conviction for genocide. Asser Instituut made the correction. It was an easy correction and it was done overnight. Errors like this happen.

But I would hope that there is not a different standard, which is what you're alluding to—is there a different standard of work or a different checking, or a laxness? Maybe that's it—is there a laxness towards things when we're dealing with genocide, war crimes?

Q2: That's such an interesting thing what you're saying. I did know some people had been convicted of conspiracy to commit genocide and I hadn't realized that on appeal they had been overturned. It's such an interesting idea that everybody has in their mind, "the Rwandan genocide," and yet no one's been convicted of this crime. Does the tribunal itself have any motivation to correct this notion?
Lyons: People have been convicted of genocide but not the conspiracy charge. For example, in our trial, General Ndindiliyimana was convicted of genocide but acquitted of conspiracy to commit genocide—these are two different charges. But the conspiracy charge, that's the issue.

Q2: Conspiracy—does that just mean conspiracy among in a multi-accused case? Is that what that means?

Lyons: In the Military II indictment, paragraph 22, the indictment alleges conspiracy among the accused in the case and also with the persons [named and unnamed as "numerous others"].

Q2: Okay, so it's the "common scheme." So the people who were convicted of genocide, what was proven was their intent to—?

Lyons: To convict for genocide, the prosecution must prove the special intent required for this crime and the result—the killings that constitute genocide. But conspiracy is different—the crime is in the agreement to have this criminal objective. That's what the crime is. Conspiracy—it's almost like a thought crime; you don't have to actually do it.

Q2: What's its connection to the joint criminal enterprise?
Lyons: Oh, that's a very good question, because I'm still trying to figure this out. Joint criminal enterprise was started at the ICTY and the legal cases basically say that it's part of individual criminal responsibility in that you're part of a joint scheme. It sounds like conspiracy but it's not a conspiracy crime, because in joint criminal enterprise you have to have a result. Something has to happen; it's not just the agreement. But it's confusing the way ICTY does it. ICTR didn't have joint criminal enterprise until in the early 2000s; they imported it from ICTY to fit their theory about the crimes.

Q2: So the people who were convicted of genocide, and then there's conspiracy, and then there's joint criminal enterprise—how much does any of this have to do with the actual fact of killing? The person who has been indicted, the defendant?

Lyons: What do you mean by facts of—?

Q2: Are any of these people actually accused of picking up a machete and killing anybody?

Lyons: There may be examples—I don't know—in some of the indictments where people are accused of doing that but most of these—for the government and for the military—it's command responsibility. That applies under the jurisprudence of the Tokyo tribunal [International Military Tribunal for the Far East]. Also to civilians—somebody's a mayor, somebody's a high level civil official. It's command responsibility. My client in the Military II case is not charged with pulling the trigger to kill Prime Minister Agathe
Uwilingiyimana but is charged as a superior. The allegation is that somebody from his unit killed her. He was acquitted of the conviction on appeal. You don't have to pull the trigger for command responsibility. But command responsibility has three elements—a subordinate-superior relationship; knowledge that a crime occurred or is about to be committed; and failure to prevent or punish the criminal act.

Q2: Was anybody at the ICTR so highly placed that they did not physically kill anybody?

Lyons: I don’t know all of the cases and all the clients, but the answer is probably yes. I do know that some people were government and military, then there were the bourgmestres [who were similar to mayors] in the communes, and there are a number of convictions at that level as well. But generally the ICTR did not investigate, prosecute or convict foot soldiers. Those are the people who have been charged in Rwanda under its laws. But the ICTR really was created for the top levels of leadership, both civil and military.

I wanted to talk about the presumption of guilt. I think there is a presumption of guilt that attaches to anyone who's charged with genocide at these tribunals. Let me say at the outset, ICTY and ICTR are different. There have been no convictions for genocide at ICTY because they plead down.

Q2: For genocide, you mean?
Lyons: Oh, yes.

Q2: What do you mean, they plead down? I don't know what that means.

Lyons: In other words, even if there were a charge of genocide initially, the defendant could plead to a crime against humanity—to a lower charge. They don't plead to genocide. You're not going to find genocide convictions there. There is also disparate sentencing for convictions for the same crimes at the ICTR and ICTY. This is because sentencing structure for each tribunal is alleged to have been in line with the country where the incident occurred. We all know Rwanda executed people for the crime of genocide; in Bosnia and Herzegovina that didn't happen. There is a differential, which I think is based on race. There have been some law review articles on the disparate sentencing [see, for example, 44 Stan. J. Int'l L. 1 (2008) Sentencing and Incarceration in the Ad Hoc Tribunals; Weinberg De Roca, Ines Monica; Rassi, Christopher M.].

Q2: So at the ICTR there was plea-bargaining?

Lyons: Oh, yes.

Q2: That's not a civil law—

Lyons: At the ICTR there were a few plea-bargains, but not many. I think [Georges] Ruggiu's case was a plea bargain.
Q2: That must have been a very foreign concept that had to be explained to the accused, right?

Lyons: The big plea-bargain case was Jean Kambanda. I don't know who represented him or what happened but Kambanda got life; that is not a plea-bargain.

Q2: This is the prime minister of—

Lyons: Right, of the interim government. Jean Kambanda got nothing. I don't remember now whether he was promised less, and probably I assume he was promised less to begin with, but he got life. There's no incentive. Where's the plea-bargaining?

Q2: Life without any possibility of early release?

Lyons: That's another question. Jean Kambanda is in Mali, in prison, but he got life. You don't have provisional release on a life sentence because it's a life sentence. In most countries you do two-thirds of your sentence and then you're out. My client, for example, [Nzuwonemeye]—at the time that we won the appeal, he had already done two-thirds of his sentence. In fact he served his sentence for a crime for which he was acquitted and is now living in a safe house in Arusha as of last year. We're trying to get compensation for him for all those years that he was deprived of his human rights.
Q2: I'm a little bit surprised that some countries won't take people who were acquitted of these. What's to stop another African country from—the person would be practically anonymous, would they not?

Q1: Yes, I'm curious about that and how the safe houses work, and the structure within the countries.

Lyons: I don't know the policies of all the countries, but I know that in some countries, for example in the U.S., if you're charged with genocide, it's an immigration problem. Immigration is a state prerogative—it's up to the state, the country involved. That's a problem of what a country's immigration law says. For example, if you are convicted of certain crimes, you cannot immigrate. But in some places if you've been acquitted, it's a change of circumstance and you can reapply. Each country is different. The safe houses were set up because the only country that wants to take these people is Rwanda and it's not safe for them to go back, obviously. The UN has placed them under UN care and custody.

Q2: Can they work? Can they do anything?

Lyons: They have no papers so they can't—they really can't—

Q2: They're stateless, kind of.
Lyons: They're stateless, and their families are in Europe or Scandinavia, maybe other African countries, some in the U.S. They're scattered and the UN is not paying for your family to come and visit with you.

Q1: So what can they do in the safe house?

Lyons: Well, I hope that these people are writing books. That's something they can do and need to do, to tell their story of what happened.

Q2: I think I read in one of your articles that the ICTR made no provision for this because they did not expect there to be acquittals.

Lyons: Right, exactly. That was a point that Everard O'Donnell [a former deputy registrar at the ICTR] made. There was a conference in Geneva. It was organized by the tribunal and the defense [to my knowledge] was not invited, and he said, "The simple fact is, and there is some truth to this particular fact, that no proper provision was made for the acquitted at the beginning of the setting up of the tribunal. That much is a fact, and it's one that we've been struggling with in the registry ever since. There was no budget for dealing with acquitted persons."

To me this is an admission that there is no presumption of innocence. There is a presumption of guilt, which starts from the beginning and it goes through the safe house. My client is still not at liberty, in violation of his rights under the ICTR statute and the
ICCPR [International Covenant on Civil and Political Rights]. The presumption of guilt operates from the very beginning through the acquittal. To me that's one of the most significant travesties of justice of this international tribunal.

Q2: Is it really different from the Legal Aid cases that you had in New York?

Lyons: In Legal Aid cases there were politics operating there and also there was absolutely a presumption of guilt there. That remained the same. But what's different about the ICTR cases is the level of politics involved. That's what's different—and the length of time. Although we struggled with, and sometimes won, sometimes lost, undue delay of a trial, in state court in my New York Legal Aid cases, we've never had a situation [as I have now at the ICTR] where my client was arrested in 2000, gets acquitted in 2014, and he's still not free. It just doesn't happen.

I meet attorneys from the [Nyiramahuka] Butare case, which is going to be dealt with on appeal in the middle of June-July this year I think—they've been on the case since the late 1990s. Then there's Dr. [André] Ntagerura, who was one of the ministers of the interim government. In Ntagerura's case with his co-defendants, he was acquitted in 2004. He's been living in a safe house since 2004.

Q2: Is he the one you saw in the library?

Lyons: Yes. His acquittal was affirmed by the appeals chamber two years later in 2006.
Q2: Is there anything comparable—at the ICTY was he acquitted, that you know of? Because I wonder where they end up relocating. Do they go home, do they—?

Lyons: My sense is it's different because the transfer issue is different. One of the differences is the transfer issue. We [the defense] opposed transfer of ICTR cases to Rwanda—and the appeals chamber for many years agreed with us and then they changed their position—based on the fact that there is no guarantee of a fair trial in Rwanda. The appeals chamber's position was, "We're not transferring cases there." Then Rwanda says, "Okay, there's no more *de jure* death penalty." So the international community says, "Oh, it's fine," and the ICTR appeals chamber says it's okay to transfer cases to Rwanda, and we'll set up some monitoring. The appeals chamber reversed the [Yussuf] *Munyakazi* decision. So this is what happened in ICTR. At the ICTY, the issue of transfer was handled differently because there were local courts set up in—

Q2: They have Bosnia War Crimes Chamber and—

Lyons: Right, so that's the reason. That would lead me to believe that the acquittal situation is a little bit different. I just don't know enough about it.

Q2: Do you know Phil Weiner?

Lyons: No.
Q2: Phil Weiner's a Boston area prosecutor who became a prosecutor at the ICTY for [Slobodan] Milošević and then he became a judge at the Bosnia War Crimes Chamber. Now he's at the Cambodian tribunal, but he might have something to say. I'm talking about people who weren't transferred but were actually acquitted at the level of the ICTY. Where do they go?

Lyons: They probably go home. I don't know. I've never heard of them in safe houses in The Hague.

Q2: Me neither.

Q1: It makes you wonder if there—in a similar way that there weren't any budgetary provisions made in the anticipation of acquittals for the ICTR, whether that was a similar case in the ICTY too.

Lyons: Probably. I don't know.

Q2: That's something for us to think about when we interview other people.

Lyons: Yes, that's good. To me it raises a whole question of what was the purpose of this tribunal? Was it really to stop genocide? I think absolutely not because they've only prosecuted one side for the crimes—the Hutus, not the RPF. Secondly, it raises for me
also the question of what is the focus of these judgments? Is it really a legal judgment or is the judgment about rewriting history? I just want to do one more quote that comes from a former prosecutor because I think it points out really what's at stake in these judgments. His name is Geoffrey Nice and he was a former ICTY prosecutor.

Q2: Geoffrey Nice just was made a judge or something very important. I had it in my International Justice in the News. I can't remember now what it was.

Lyons: Okay, he said, "The struggle for the interpretation of historical events through the trial record might be as important in the long run as the determination of guilt or innocence of the individual tried." Richard Ashby Wilson has written a book on this.

Q2: I've read it. It's a fantastic book.

Lyons: Yes, absolutely. We've met, and he interviewed me for that book. I think that it's really true. Look, no one is contesting that people were killed and crimes happened. Crimes happened against the Hutus and against the Tutsis. Of course I would parenthetically say that Victoire Ingabire [Umuloza] is still serving her sentence in Rwanda for daring to be an opposition candidate two elections ago to Kagame and for saying that there was also a genocide against the Hutus.

This is the question—did the genocide target just the Tutsis? The Hutus and Tutsis, and I assume the Twa, a smaller group, were decimated in the violence that happened. The
question still remains—who did it and are they being held accountable? The experience of the ICTR is that its failure to investigate and to prosecute the other side in violation of the Security Council resolution that set them up [Security Council Resolution 955] says, "No, they're not being held accountable." Carla Del Ponte lost her job for her special investigations of criminal allegations against the Rwandan Patriotic Front, so one cannot say that some prosecutors haven't tried to investigate both sides. But the problem is the "victor's justice" of the ICTR, and the impunity which protects the RPF. I did not understand this when I started to work at the ICTR in my first Simba case, but I began to understand what happened in Rwanda, particularly in the Military II case.

Q1: Do you know what the death toll was for the Twa and the Hutus? I'm just wondering about the scale of it.

Lyons: I used to know the number of Hutus killed. I have to check that.

Q2: When they say eight or nine hundred thousand, they say "Tutsi and Hutu moderates," so they're already putting in the Hutus, so it's kind of fuzzy.

Lyons: First of all, "Hutu moderates" is an invention of the prosecution in the indictments. I've never seen, heard, met, read about— I have no idea what a Hutu moderate is.

Q2: Yes, that is kind of funny.
Q1: Can you explain what they mean when they say that?

Lyons: Okay, what I think they mean by Hutu moderates is that they mean Hutus who may have worked with the Tutsis in some official capacity. There were Hutus [a very small number] who were members of the RPF. But they're doing that to avoid discussing the systematic killings of the Hutu population by the RPF. The Arusha Accords were signed in August 1993; then in October 1993, [Melchior] Ndadaye, the first Hutu president of Burundi, was assassinated by Tutsi extremists. In April 1994 the Rwandan Hutu president [Juvenal Habyarimana] and the new Burundian Hutu president [Cyprien Ntaryamira] were both killed when the RPF shot down their plane, which triggered the events of 1994.

Let me just say that I'm not adverse to using the word "genocide" but I understand it has a specific legal meaning, so I generally talk about the "events of 1994" and the "crimes of 1994." Although the court has ruled differently, I still think it's up to the prosecution to meet its legal burden to prove each and every element of genocide beyond a reasonable doubt. All of the international crimes essentially are ordinary crimes—there's murder, there's rape, there's incitement, etc. What makes them international crimes is the context. So as a prosecutor you're under an obligation to prove, for example, for crime against humanity [murder] that the alleged crime was committed "as part of a widespread or systematic attack against a civilian population, on national, political, ethnic, racial or religious grounds." So, each and every element of the definition of crime against
humanity must be proved beyond a reasonable doubt, in addition to the separate elements for the crime of murder. As a defense attorney, you have to defend against each and every element. It's kind of fundamental, but it doesn't happen.

That's another point. You asked about Legal Aid too. It's not just the difference of the politics of the crimes, but at the ICTR, these are ordinary crimes which, because of their context, were just at a different—

Q2: Level.

Lyons: —a different level. That's basically what I think about in terms of some of the differences.

[INTERRUPTION]

Q2: So you had had some experience in South Africa.

Lyons: Right.

Q2: So what was it like then to go to Tanzania?

Lyons: Well, in some ways I would describe it for me personally as culture shock. South Africa is not monolithic, but clearly it's different than Tanzania. I was there in 1993 and a
couple of times later. When I was in South Africa I was volunteering for the TRC, hearing about the TRC every day on the radio, in the newspaper, etc., there was a sense of political, intellectual, personal excitement of people. Whichever position they took, it was there. The country was alive. There's a high level of—and you could feel it—a high level of political awareness. I went to Cape Town, Johannesburg. There were things that I liked—the bookstores, you can buy foreign newspapers, whatever.

I get to East Africa and I'm in Arusha, which is a tourist center essentially. In some ways I had culture shock because I wrongly thought every country in Africa is like South Africa. In Tanzania the people are absolutely terrific but I realize that the country as a country is a lot poorer than South Africa is as a country—and that affects things. For example, in Arusha there was one store that sells schoolbooks. There's a stall on the street which sells used books. There really wasn't a book store, and maybe it's not an indicia of anything in some countries, but my sense was that it was—it said something about the level of the struggles, what was going on, what the people's needs were, where things were at there. Places in South Africa are still struggling with getting clean water, getting sanitary facilities, so maybe it was just where I'd gone in South Africa—to certain cities—so I don't want to make too much of it. There was one movie theater in Arusha that shut down, there's another movie theater that opened. It was not South Africa, which was the barometer or standard I was using.

On the other hand, if you dug a little bit deeper you would find a lot of things. People were very active, there were groupings of people, there were discussions, there was
debate, there was a different form of the same kind of interest in politics, intellectual stimulation, but I wasn't really part of the community. I was working ten, twelve hours a day on my case, and that was it. I also wasn't in Dar [Dar es Salaam]. Dar is a place historically which has given an incredible amount of support to the South African liberation movement. The leadership was educated in the universities there. So it's not all of Tanzania, all of East Africa; Kenya's very different. But I began to appreciate for the first time what I had read—there are fifty-eight or perhaps more countries in Africa. Each one is different; you can't generalize. I said to my friends in the U.S. that I was going to Africa, and complained that it was cold in Arusha in June. They responded, "But it's Africa. Isn't it always hot there?" I said, "No."

Q2: And there's snow, at least for the time being, on Mount Kilimanjaro.

Lyons: That's right. The point is that people understand what they experience, and have some difficulties appreciating and understanding experiences they have not had. Because I travelled a lot, I began to understand and appreciate that each country is specific and you have to look at the specific context.

Q2: I was only in Arusha a couple of times and you could see that there was a sort of UN presence, people going around with UN four wheel drive vehicles, and people who had drivers, and people who had a lot of money by local standards. Could you get a read on the attitude of the Tanzanian population toward the whole UN structure and what was going on?
Lyons: I really can't answer that in any kind of coherent way and I would be remiss if I said that I could get a read on the attitude of the Tanzanians, in general, on this. Let me make it clear that a number of the people I spoke to, the people that owned shops or where I got my clothes made, other people would talk about how the UN has really created a class of people there, which is true. At one point—the figure six hundred comes to mind—there were six hundred people working at the ICTR, in some capacity. Some of them worked directly at the ICTR and others had some kind of ancillary employment—in the restaurants, the hotels. It sort of filtered out.

What's interesting and important is that at the ICTR, the UN did not pay locals or nationals at the same rate as the internationals. That's what's important about all this. If you were a UN employee who lived in Tanzania but you're Nairobi by birth, or Zambian by birth, or Senegalese by birth, you were considered an international and you made more money for the same work. To me that's the issue in all of this. The UN fostered the inequality by this obviously false division between international and national, and it was absolutely outrageous. Yet within this they created a class, really a group of people. The problem with shutting down the tribunal was that so many people lost their jobs; now the MICT [Mechanism for International Criminal Tribunals] is building a new building, but I doubt the MICT is employing the same numbers of persons as the ICTR did.

Q2: Is it? In Arusha?
Lyons: Yes, they're building a new building. I ran into Mr. [John] Hocking, the registrar from ICTY and MICT. I was getting my UN badge renewed and he and a young woman from the MICT were right in front of me. I heard them talking about the MICT and introduced myself. He said, "Yes, we're building a new building."

Q2: Is that because they needed to have the archive or something?

Lyons: I don't know why.

Q2: I know they were in that Tanzania or Arusha conference center which probably was—

Lyons: I don't know why, and I haven't really followed it.

Q2: Huh, that's funny. Okay.

Lyons: They are housing the archives, which is good because Rwanda wanted those archives and we fought against that—not just defense but other ICTR staff people as well. Because as somebody from the Registry said, confidentiality extends forever, and that's the problem, both for the defense witnesses and the prosecution witnesses—for anybody. There's a real chance of confidentiality being violated in Rwanda. That's my position.
Q2: I have heard a lot of people say that Rwanda wanted that and they said that that just can't happen.

Lyons: Right. So I don't know what the building is going to house. But it shows what happens when the UN comes to town—there's an economic benefit to particularly people already in a commercial class, and then to the ancillary people—the taxi drivers, the women who take care of the kids, and who cook and clean the houses, and the guys who worked as the askaris with the security people, all that kind of stuff. But the problem with the differential, that's what concerns me—the differential in payment.

Q2: So if you had let's say a secretary, a clerical worker who was from Zambia, and one who lived in Arusha, they would make different salaries?

Lyons: That's my understanding. Now whether their title, their job description and their actual work is exactly the same I don't know; I'm not a UN staffer, so I think it's clearly a question that needs to be asked of somebody at the UN. I hope that I'm wrong. My understanding is based on what I heard and what people told me.

Q2: I've sort of heard that too, actually.

Lyons: I think that that is the question of how that's done. A company can finesse inequality of payment through all sorts of means, so it's not an administrative argument about classification with the UN, although they'll probably make it that. But the reality is
that side-by-side, the same labor is not being compensated at equal pay for equal work, which is the issue. It happens a lot at the UN. So that's definitely the problem.

Q1: We haven't talked as much about the Military II case—we talked a lot about Simba so far—but can you explain what that case was all about? Just to get that on record.

Lyons: Sure, let me take my indictment back because to this date I don't remember stuff by heart.

Q1: Okay, and your personal experience working on the case. We're interested to know how that case came together and how the defense team put together a defense through trial and appeal.

Lyons: Okay, the Military II case was part of the high level cases prosecuted at the ICTR. One of the judges [not on my case] said to me, "Really the cases at the tribunal are one big case." This is so true. What they've done is they've divided this one big case into smaller cases. In some, it's by region, it's by area, your status, what you are in government, military. But the cases are joined sometimes with no rhyme or reason. It's always a question of whether in a multi-defendant case—or in the language of the tribunal, a co-accused case—it's to the benefit or detriment of one of the persons accused to be on trial with the others. I don't know what the answer is; it depends on the circumstances. There is a rule [Rule 82A] in the Rules of Procedure and Evidence that states essentially that a defendant in a multi-defendant case has the same rights as if
singly tried. But I can tell you in the *Military II* judgment, in the trial judgment, they [the trial chamber] mixed up the evidence.

Q2: "They" being—?

Lyons: The judges in the trial judgment. One example was that a few witnesses who testified for one co-accused were attributed to be witnesses for another co-accused.

Q2: So when they worked at judgment you could see that they had made errors. I see what you're saying.

Lyons: Oh, absolutely.

Q2: Who were the judges on the *Military II* case?


Q2: Wait, who was the first judge?

Lyons: The presiding judge was Judge de Silva, and Judge Hikmet from Jordan.

Q2: Oh, okay. Right.
Lyons: And Judge Park from South Korea. There were errors in the transcripts. We submitted a whole annex of what the factual errors were, and this was a 569 page judgment, not all of which concerned our client but which had to be studied because some of the sections concerning other co-accused impacted on our client.

Q2: So in a multi-accused case, every accused has his—I know it's almost all men—his own defense team?

Lyons: Absolutely. So we had four defense teams.

Q2: Did you speak to each other?

Q1: Yes, what was the coordination of that?

Lyons: Let me just say who the defendants were and I'll get into that. General [Augustin] Bizimungu, who assumed the leadership as head of the army April 16, which was almost two weeks after the plane was shot down by the RPF; General Ndindiliyimana, who was the head of the gendarmerie, which was the Rwandan national police; my client, Major [François-Xavier] Nzuwonemeye, who was head of the reconnaissance Battalion [RECCE], which was a military intelligence unit and had three companies; and Captain [Innocent] Sagahutu, who was the commander of one of the RECCE companies.
In the indictment, which is twenty-eight pages, there were eight counts. Not everybody is charged with everything, but in some counts, people are charged all together. For example, all the co-accused were charged with the conspiracy count—conspiracy to commit genocide. My client was also charged with crime against humanity for two events—one was the killing of the Belgian peacekeepers and the other was the killing of the former prime minister of Rwanda, Agathe Uwilingiyimana. He was also charged in this indictment with rape, which allegedly occurred at a hospital near Camp Kigali.

At trial he was acquitted of the conspiracy charge and acquitted of the rape charge and rape as a violation of Article 3 Common to the Geneva Conventions and Additional Protocol II, which protects civilians.

My client was convicted at trial of crime against humanity for the murder of the Belgian soldiers [or, as the appeal judgment refers to them, Belgian peacekeepers] and Prime Minister Agathe Uwilingiyimana and of violation of Common Article 3, based on these crimes. He was convicted as a commander, for liability under the ICTR Statute, Section 6(3) for the Belgians and the prime minister and in his individual capacity [Section 6(1)] for the prime minister.

The prosecution's claim was that somebody from the RECCE unit fired an MGL—multiple grenade launcher—at the Belgian soldiers who were taking refuge in the UNAMIR [United Nations Assistance Mission for Rwanda] building in Camp Kigali, and they were killed. The prosecution alleged that my client did not prevent or punish this
crime. For the prime minister he was charged with individual criminal responsibility for ordering and aiding and abetting her murder [ICTR Statute, Section 6(1)]. The prosecution's claim was that my client ordered, and assisted in the prime minister's murder, and that a soldier from the RECCE unit pulled the trigger of the weapon which killed the prime minister, and that my client failed to prevent or punish anyone for this crime.

The appeals chamber reversed all the trial chamber's convictions for my client, and acquitted him of all charges.

Q2: Wait, what does 6-3 mean?

Lyons: 6(3) refers to the section of the ICTR Statute, Article 6(3) which enumerates the elements of command, or superior responsibility.

Q2: Can I just ask one clarification? You have these four co-accused. Are they grouped because they actually interacted with one another, or not necessarily?

Lyons: Not necessarily. My client and the person under his command, Sagahutu, are charged for the same events. But there were different events in the charges for Ndindiliyimana and for Bizimungu, which had nothing to do with my client. A lot of the indictment didn't apply to my client. Really it was the focus on the prime minister and the
Belgians. What happens in these co-defendant cases is—it's exactly what you said.

Sometimes there's nothing—

Q2: Nothing that connects them?

Lyons: Nothing that connects them. And, sometimes if there is something that connects them, one person may have a defense that is antagonistic to another one, which is one of the reasons why you make a motion to sever. I believe in this case, before I got into the case, that Sagahutu's attorney made a motion to sever, which he lost.

Q2: To sever—just to take him and make him a single accused case?

Lyons: Yes, right. Exactly. Really these cases are joined together for judicial convenience.

Q2: Yes, that's what I figured, and then budgetary reasons.

Lyons: Exactly. It has nothing to do with the law. But to answer the question, putting the case together and your team, before you even get to the position of relations with other co-defendants, the issue is, what is it in the indictment that's important for the prosecution to prove [and the defense to defend] in your case? What's being charged? These indictments are really convoluted. Some of the paragraphs charge criminal conduct; others have no allegations of criminal conduct. They just lay out the prosecution's view of
the events of 1994. These are political cases. That's what political indictments do—they may charge a criminal act in one paragraph but it's really about the whole political context. That's what this is about. It's about writing the history. It's what Wilson talks about in his book [*Writing History in International Criminal Trials*] and what Nice talked about. It's about writing the history. That's what this is about.

As we always say to juries here, an indictment is not evidence. But it does count for the prosecution's framework. You have judges who look at these defendants day in and day out. From September 2004 to 2009 there were 365 court dates, and in between we would be on mission, or the team would be working on pleadings. That's a lot of time, and they're looking at this stuff. It's very difficult because these are not the best-drafted indictments either, so you spend a lot of time focusing on the indictment. According to the law, indictments are supposed to provide notice; under the fair trial rules, the indictment is supposed to inform an accused in detail of what he or she is charged with. Sometimes you just can't figure it out; indictments are impermissibly vague and general. Some things are where they belong, and some things are where they don't belong.

Take the conspiracy allegation—the indictment will name a number of people allegedly involved in a conspiracy and then include the words, "and others." Let's see if they did that here. Yes, here, the paragraph on conspiracy, they list a number of names of officials, "and numerous other administrators, soldiers and civilians who espoused their cause." How do you defend against something that is infinite? We as defense attorneys spent a lot of time litigating the defects in the indictment.
Q2: The whole fair trial right to be informed of the charges against the accused in language he or she understands—was this long full indictment read out in court to those four?

Lyons: I don't know because I wasn't there then.

Q2: Oh.

Q1: How did you get brought on?

Lyons: Okay, I came in—this is the fourth amendment indictment. This is what we went to trial on. I was the fourth co-counsel in the case, and I came in February 2007. The prosecution had already finished its case.

Q2: Why did they feel they needed another co-counsel at that point?

Lyons: What happened was that there were three co-counsels before me, and for one reason or another co-counsels left the case. Chief Taku was the third lead counsel. These are very long cases, so what happens is that it is sometimes very difficult for counsel to complete the case. People give up their practices in their home countries. I'm not in private practice, so this was not an issue for me. Sometimes, there are personal reasons. Sometimes there are antagonistic differences between a client and the attorney and the
clients have no recourse but to say, "I can't work with this attorney. Let me go to the court and see if they will appoint somebody else." The way that you get appointed, certainly at least for lead counsel, is that the client suggests three names. He doesn't decide; the Registry, which is a separate unit within the ICTR, decides. For co-counsel, a similar process happens.

What happens is that, given the length of the trials and depending on whether the relations are good or bad with counsel, it's not uncommon for the first attorney on the case to not be the attorney at the final argument. It happens.

Q2: So if they weren't getting legal aid, let's say that they had their own funds then they could choose whoever they wanted.

Lyons: Absolutely. There's no right to choice here.

Q2: But nobody probably did pay for their own defense, did they? At the ICTR?

Lyons: I don't think so. I know of nobody. It's theoretically possible, but I don't think anybody did. If any of these people had any means such as property in Rwanda, it is no longer under their control. Their families are in exile, people are not hoarding their wealth some place. They were public servants. This was a military trial; these were guys in the military. They could not be members of any political party because they were in the military.
Q1: Were you back at Legal Aid between Simba and Military II, just briefly?

Lyons: Yes, I was back from 2006 to 2007. I was at Legal Aid Criminal Appeals.

Q1: And then you just got this opportunity to do the Military II case.

Lyons: Right, and I resigned from Legal Aid.

Q1: Jumped back on it.

Lyons: I didn't think twice. Legal Aid would not give me a leave of absence, and I thought, you know, these are the best cases I've ever done. I liked the cases. The Military case especially was terrific from a professional point of view, and personally the working relationships in the team were excellent.

Q1: You said it was an excellent working environment, so I was wondering if you could explain what you mean.

Lyons: The trade of the criminal defense lawyer, the stock and trade, it's drugs, it's assault, it's violence. Not that these are not serious things, but it's kind of all the same; the elements are all the same from a technical point of view. What makes these ICTR cases interesting is that the political context and the reasons behind it, and you really begin to
understand the history. The skills that I developed at Legal Aid—the trial skills and the hearing skills—stood me in excellent course. It was super, I realized later. Then applying them was a whole different ballgame here.

Q2: You mentioned over lunch that before the ICTR, you'd never litigated a murder case even.

Lyons: No, I'd done misdemeanors. If I did a dozen trials, that was a lot. It might be a dozen. I don't remember now exactly, but mostly misdemeanors, one or two felonies, robberies, but no murder case. This is my first murder case. Although at criminal appeals—although I hadn't litigated them, I had dealt with these more serious cases—murders and other similar crimes. I understood what had to be done from reading other people's transcripts. At Legal Aid I had lots and lots of hearing experience.

A lot of what happens in Manhattan is that you gain a lot of experience in pre-trial preparation, but the case may never reach the trial stage. You go out and investigate, you prepare for trial, you do a pretrial hearing on a suppression motion for physical evidence or statements or identification, and then your client decides not to go to trial. At the end of the day, it's not for me to decide if a case should go to trial. Sometimes the offer is so good that the client really wants to take it and not go to trial. It's not up for me to decide that we should actually try the case. I'm not doing the time. I don't sleep at Riker's [Island]; I don't sleep in the prisons in upstate New York.
I should also have mentioned that these ICTR trials are like a bench trial here in the U.S. There is no jury. There are three judges. I realized you really have to talk to judges as if they're a jury because the judges come from different backgrounds. Some have had courtroom experience, some have had none.

Q2: What does it mean to talk to them like they're a jury?

Lyons: You really have to make the strongest possible arguments that tie together the facts and the law. The ICTR judges are finders of fact, finders of law, and they decide the sentence. They're doing everything. If you're just talking about the facts, without the law, it's not going to work. It's really important not to recite general legal principles alone, because you have to assume they know the legal principles. They've been able to practice them in a courtroom or they've dealt with them as diplomats or as professors. They know the basic principles, but you have to show specifically why in this case, this particular piece of evidence is not reliable. As a defense attorney, you have to address what are the holes in the prosecution's case? Where is the reasonable doubt?

Q2: So you just have to lay it out as if they were a lay jury.

Lyons: Absolutely. You have to go step by step. I talk very fast, which is a problem for the interpreters. That was the main problem in the courtroom. You have to go slowly and you have to deal with the basic concepts. The judges understand complexities, obviously,
but you have to really boil it down to something which can be handled. You can imagine that in a case that has a 569 page judgment, just even dealing with the facts is a huge task.

Q2: Remind me—the judges can stop the proceedings and ask questions or for clarification?

Lyons: Absolutely, yes.

Q2: Unlike a judge here.

Lyons: They can do it here.

Q2: Oh, they can do it if it's a bench trial?

Lyons: Yes, but this also applies to jury trials. It has been a long time since I have done a jury trial in New York. But a judge controls the proceedings in his or her courtroom. As a defense counsel, I remember sometimes asking a judge—when I was cross-examining a recalcitrant prosecution witness—to direct the witness to answer the question [if the witness was evading the question or was somehow non-responsive]. The point is that the judge can play an active role in the proceedings, if there are difficulties or problems during a witness's testimony.
Q2: I just remember reading something by Patricia Wald who was at the ICTY. She said she found it so refreshing to actually be able to ask questions from the bench, that it was a very different kind of experience.

Lyons: I would defer to Judge Wald on this point. She presided over, and wrote absolutely excellent judgments. She was a presiding judge in Kupreškić, which has excellent holdings on fair trial. I have used her work and her judgments now for a decade.

Q2: David interviewed her.

Q1: Yes, down in [Washington] D.C.

Lyons: Oh, how lucky!

Q1: It was a real honor. So many years in the Circuit Court too. Particularly eventful years of confirmation hearings and politicking.

Lyons: She's absolutely excellent.

Q1: Getting back to Military II, was there a gap in your work at all between trial and appeal? How did that progress?

Lyons: We got the Trial Judgment in May 2011, and then—
Q1: Four years after the trial was initiated?

Lyons: No, the trial started in late August in 2004.

Q1: So seven years.

Lyons: The judgment came seven years after, which in the ECHR—the European Court of Human Rights—is a violation of the right to be tried without undue delay or, in other words, the right to a speedy trial. We are arguing this point now in the context of a fair trial violation, and the right of the client to an effective remedy—in this case, financial compensation. We have argued this point below, as well.

Q2: The ECHR violates its own principles on that sometimes.

Lyons: Then I was briefly on another case just for the pretrial matter, and then I was reappointed to the Military II appeal. I couldn't be appointed as co-counsel on the appeal immediately. That was the problem.

Q2: Because you had been—?
Lyons: Why did I have to wait? Because of the rules—co-counsel cannot be appointed immediately after the trial judgment. Lead counsel is appointed, then there's a waiting period for the appointment of co-counsel.

Q2: So was there some time limit within which an appeal has to be—?

Lyons: Perfected? Yes. We filed the initial pleading—the appellant's brief—in January 2012. We subsequently filed additional pleadings, including a response to the prosecution's appeal. In the ICTR system, the prosecution has the right to appeal a trial judgment.

Q2: Of course, yes.

Lyons: In our case the prosecution appealed the sentence of Nzuwonemeye and Sagahatu.

Q2: So you appealed on certain kind of substantive procedural—

Lyons: We appealed the trial judgment on procedural issues, substantive legal issues and evidentiary issues. We had several grounds of appeal. The first was fair trial violations; followed by legal errors related to the burden of proof; legal and factual errors in the count of crimes against humanity, for which the client was convicted; legal errors in the findings of guilt and convictions and errors in sentencing. There was a plethora of legal and factual errors, as well as internal inconsistencies in the judgment.
Q2: And the prosecutors thought that the sentence was too short.

Lyons: Right. The trial chamber had sentenced Nzuwonemeye to twenty years. The prosecution asked for a life sentence. The prosecution did not appeal the acquittals—Nzuwonemeye's acquittals for conspiracy to commit genocide, for rape and for rape as a violation of Common Article 3. We also had to respond to the prosecution's appeal, so there were pleadings back and forth.

Q2: At this time were you going back and forth between Arusha and here?

Lyons: During the appeal phase, it was much less than at the trial phase. We usually had team meetings around the times of the filings.

Q2: Did Skype make a difference when people started using Skype?

Lyons: We never used Skype. You really had to be next to somebody with the documents to get the actual work done. Between the trial and appeal stages, there were also additional legal issues which arose, based on previous litigation.

We had a huge problem, for example, in this case with the prosecution's violation of Rule 68, which is the obligation of the prosecution to disclose exculpatory and relevant
material which "may suggest the innocence or mitigate the guilt of the accused or affect the credibility of the prosecution evidence." It's a very broad rule.

The prosecution had finished its case in December 2006. In April 2007 the defense case began. The first defendant to present a defense was General Bizimungu. It wasn't until probably 2008 after the defense had been demanding exculpatory material on the record in motions, both written and oral, that the court finally ordered the prosecution to disclose any exculpatory material. There were three thousand pages of material we got at the end of February or in early March 2008. We had a month to look at it. The material was for all four defendants in the case and there was no index. Then we litigated for six months, and sought remedies, including the right to recall certain prosecution witnesses, for cross-examination.

Q2: What was the nature of this material? Was it a whole range of things?

Lyons: A whole range of things.

[INTERRUPTION]

Lyons: The material had to do with who was responsible for some criminal acts that had been charged to some of the clients in the case. It also had to do with the information that would lead to a conclusion of incredibility and unreliability of prosecution witnesses who testified. By the way, the court decided that the fair trial rights of the clients had been
violated. However, the court did not recall all the prosecution witnesses who needed to be recalled, and did not admit all of the evidence that should have been admitted. There was a big struggle over that.

The prosecution only has to disclose material within its possession under Rule 68. But what was interesting to me was that some of the material that was held to be exculpatory by the court for my client included witness statements from 1997. At the time in 2008 that the material was finally disclosed by the prosecution, one has to assume it had been in its care and custody for eleven years because it was their material. That's a little bit outrageous when you just look at the dates. The prosecution had the material for eleven years, all the way through the trial. Maybe the material was "lost" or "went missing." But whether they could find it or not is their problem. I don't know what their problem was. I'm not saying that they intentionally hid it, but they objectively did not produce that material.

Whatever the reason was, it doesn't matter; that was an objective violation of my client's right. Those are the kinds of examples of fair trial violations that happened despite Article 20 of the Rights of the Accused [in the ICTR Statute] and all the other rights that an accused is supposed to have. The process issues—the fair trial issues—and these are procedural issues—become probably as important as all of the substantive issues related to the elements of the crimes charged. [Note: I've written about these violations of Rule 68 in a chapter in Justice Belied, the Unbalanced Scales of International Criminal Justice, edited by Chartrand and Philpot, Baraka Books (2014)]
The other thing interesting about our case was, in terms of the Belgians, is the issue of cause of death. The prosecution claimed that a weapon—a multiple grenade launcher—which it alleged was part of our client's unit, was used to kill the Belgians. We had an expert witness testify, Dr. Thomas Kubic, who is a ballistics expert, a forensic expert. He and his assistant inspected the UNAMIR building where the Belgians were seeking refuge in Camp Kigali. He demonstrated scientifically that this MGL—if there had been an MGL there—had struck the outside of the building. But based on the evidence that he had seen inside, the MGL grenades could not have entered inside and killed the Belgians.

We also had an autopsy report which reached the same conclusion—grenades launched from an MGL were not the cause of death of the Belgians. The autopsies were performed a couple of days after 7 April 1994, when the Belgians were killed. They were performed by Dr. Roman of the Military Hospital, Belgium in Nairobi. None of his findings were that the cause of death of the Belgians was from a multiple grenade launcher. But the trial chamber said, "Well, we care less about the minute details of how they got killed than who the perpetrators are." It's in one of the paragraphs in their judgment [paragraph 1862]. They really didn't care about how they died, but cause of death is a fundamental issue in this case.

Q2: So how did they die?
Lyons: According to the autopsy, the cause of death was injuries from a heavy cutting object [for example, a machete] or projectiles from a weapon. The Belgian soldiers had taken refuge in a building in Camp Kigali. Outside, there were mutinous Rwandan soldiers, who were handicapped. The soldiers thought that the Belgians had been responsible for shooting down the president's [Habyarimana] plane the night before [6 April 1994]. These soldiers attacked the Belgians. That's my sense of what happened, based on the evidence. In fact, prosecution witness General [Roméo Antonius] Dallaire testified about the mutinous soldiers. He testified for the prosecution. It really threw a wrench into the prosecution's theory. But I think that the expert's testimony really wiped out the prosecution's theory.

Q2: How did the multi-accused—both I guess for the prosecution's case and the defense—did you take it in turns to defend your client, or—?

Lyons: It goes by defendant. In other words, Bizimungu was the first one, and he presented his defense starting in April 2007; then Ndindiliyimana, the second defendant and we started our defense case in June 2008.

Q2: You mean all the prosecution cases come in and then all the defense cases?

Lyons: Right. I wasn't there for the prosecution case so I think they probably—I don't know if they did everybody at once. I'm trying to think if they had separate teams or did everybody. I don't remember, but I suspect they had different teams of prosecutors for
each defendant. I read all the transcripts but I've honestly forgotten that. But there were different prosecutors for each appellant at the appeals arguments. Okay, for the defense it's first the Bizimungu team, then the Ndindiliyimana team, then the Nzuwonemeye team and then the Sagahutu team, so that's how it goes. But there were shared witnesses, so—

Q2: Oh, so that's where the sort of judicial convenience and cost saving comes in, because there's shared witnesses?

Lyons: Some of Bizimungu's witnesses were our witnesses. I had been there three weeks in the case and I did the direct of a major witness for Nzuwonemeye, who was also a witness for Bizimungu. So, yes, it's to the tribunal's benefit because the court is not going to call the witness back twice.

Q2: It's sort of interesting, you were saying how the judgment—everything was all confused, but it sounds like it would be very hard to keep straight.

Lyons: Definitely. But we, as the defense, manage to keep everything straight. In my view, it was also the obligation of chambers and the ALOs [assistant legal officers] to keep track of witnesses and evidence for each of the defendants. It goes without saying that this was in the interest of justice.

Q2: The ALO is assistant legal officer?
Lyons: Right, yes. By the time the appeal took place, only one assistant legal officer who was on the appeal had been involved in the trial.

Q2: Oh, wow.

Lyons: You had all these new people, some of whom had been in a courtroom previously and some of whom had never been in a courtroom. The sections for each of the defendants in the trial judgment were written by different people. My understanding is one ALO or team worked on one section, while another team worked on a different section. They were all "signed off" by the judges who are ultimately responsible, but it is clear each section for each defendant was written by a different person or team. Judge [Dennis C. M.] Byron, by now, in 2009-2010 [the period between the end of the trial in June 2009 and the rendering of the trial judgment in May 2011] he was the—

Q2: Judge Byron?

Lyons: Yes, right, he was now going to the Security Council twice a year to report on the Completion Strategy, and each time requesting additional time. He was saying, "We have these complex trials. We need more time. We have to finish."

Q2: At the time that you were in the Military II trial there were two other major cases going on, is that correct?
Lyons: Two other—?

Q2: Two other completely separate trials and cases.

Lyons: Oh, yes. There's probably more.

Q2: Probably more than that?

Lyons: Well, there were three, or actually there were four trial chambers.

Q2: There were four trial chambers, okay.

Lyons: I just want to read the numbers which J. Byron presented to the Security Council because it gives you a sense of the magnitude of the case. In June 2009, we'd finished the Military II trial. He went to the Security Council in 2010 and he was talking about the military case—he meant our case—to explain why the tribunal could not meet its scheduled deadline to complete its work. Using the Military II case, he explained that there had been 365 court days, 965 admitted exhibits, 216 witnesses, and that the ICTR had lost the judgment coordinator before the judgment date.

Q2: Oh, wow.
Lyons: We [the Nzuwomemeye defense] had maybe thirty witnesses, I can't remember exactly—but all 216 weren't ours. This number included the total number of witnesses for the four teams and the prosecution. But that's a lot of evidence, and it's a huge amount of testimony [with details] to keep straight. During this period, you have people going back and forth in chambers, whether associate legal officers or interns. There is little or no continuity of personnel. It's unfathomable.

Q1: Based on your experience, how do you respond to one of the principle criticisms of the ad hoc— that they just take so long, they're being dragged out, they're too expensive, they're not efficient?

Lyons: Let's talk about why they take so long. First, there are problems with Rwanda's co-operation. For example, in 2003, as recorded in the U.S. State Department report on Rwanda, Rwanda held ICTR witnesses "hostage"—it refused to send witnesses to the ICTR to testify. This was "payback" for the [Jean-Bosco] Barayagwiza appeal decision, where the appeals chamber at first, said, "Release Barayagwiza because he was illegally held and it was an egregious violation of his rights." When Rwanda raised hell, the appeals chamber looked at an alleged new fact presented by the prosecution, and reversed its decision. But in this period of time Rwanda made it difficult for the trials to be held, without the witnesses from Rwanda. So the delay is attributable, in the first instance to the conduct of Rwanda.
Secondly, there was also delay, for example in Simba, because there were threats against the defense witnesses coming from Rwanda. They could not safely come and testify—at least one key witness ended up not coming in the Simba case. The one alibi witness who had been with Simba through the whole period of time discussed in the indictment, wouldn't come, because they couldn't safely come to testify. This delay, also, in my view is attributable to Rwanda's lack of political will vis-à-vis the ICTR. Thirdly, there is a question of language. And fourthly, everything just takes a lot more time when you're dealing with the kind of bureaucracy, which is not the most efficient, in the UN system. I don't attribute delays to the defense. Especially when you have a prosecution which has been investigating many of these cases since the mid-later 1990s and not disclosing its exculpatory material—as in our case—from 1997. These prosecution failures cause delay.

Q2: When you say that there's a language problem, was that in the translation of exhibits? Was it because of just the interpretation?

Lyons: Both things. Some of it's interpretation. When I do an interview with somebody when I'm in the field and we have to go from Kinyarwanda to French to English, it takes a long time to do the interview. The same thing happens when testimony in the courtroom must be interpreted into two languages.

Then there's the problem of translation of documents, including exhibits and pleadings and judgments. There are often delays because a pleading or judgment needs to be
translated into the language of a client or counsel. But not everything which needs to be translated is, in fact, translated. In the "Media" case, for example, John Floyd, who represented [Hassan] Ngeze, could not get the chambers to translate issues of the Kangura newspaper, although his client was charged with incitement and being the editor of the newspaper. John wrote a book called *International Injustice*, which talks about some of this.

Also the tribunal works four and a half days a week, due to religious observance and it is basically closed on the weekends.

Q2: Did they have Friday afternoons free for prayer?

Lyons: Yes. The court was in session from Monday through Friday morning. It was rare to find many of the sections in the tribunal open on the weekends. Even the library closed at 5:00 PM; if you were on trial and needed to go to the library, it was not possible.

Generally, I think that if the prosecution were doing what it should be doing, a lot of delay in the pre-trial period would not take place. But, because the indictments were defective, there was a lot of pre-trial litigation; there was a lot of time spent on procedural issues. I don't point the finger for delay at the defense.

Q2: I've never heard anyone suggest it's the defense, actually. It's more the whole package.
Q1: Yes, it's just lobbed at the tribunals in general.

Lyons: The whole tribunal, yes. The other thing is that these are very complex cases. The investigations are tough. There are times you can actually go to Rwanda and investigate; sometimes you can't because it's the rainy season, or you get to a prison and there are all sorts of delays.

I don't know how to, or even if you can, streamline the UN bureaucracy. If I could answer that I'd be in a different profession. It's clear to me that the UN has its own bureaucracy which obstructs efficiency. When we were doing our defense billing, why it took so long to get paid, I have no idea. But I do know that when we first started in 2004-2005, we had to write down the number of pages of each case we read. We were only allowed to bill for reading a case once, and could only spend a minute per page.

Q1 and Q2: Wow.

Lyons: Obviously it's infantilizing, but worse, the whole idea is anathema to the profession.

Q2: Weren't there some accusations that there were in particular defense lawyers who were from Rwanda who were kind of milking the system for payments? Do you think those are entirely foundless?
Lyons: Actually, I did not hear this, so I don't know and can't comment on it.

Unfortunately, there have not been very many Rwandan defense attorneys. A number of Rwandan attorneys have worked on teams in other capacities as legal assistants, but I only know of the existence of only two Rwandese defense attorneys. In general, I would say that if the tribunal had a "checks and balances" system, it seemed as if only the defense was "checked" and the prosecution was not subject to the same scrutiny.

Q2: Maybe this is more of a prosecution issue, but I have heard people speak about the lack of familiarity that a lot of Rwandan witnesses had with the whole adversarial process in cross-examination, and the questions that were supposed to be kind of impugning their veracity and some of them would reactive very negatively to that. I just wondered if you ever had an experience like that.

Lyons: In the cases I've done where Rwandan prosecution witnesses argue with the defense a lot, for whatever reason—whether they've been told to or they spontaneously do that, I don't know—or there are prosecution witnesses from other places and they do that too—I'm just saying it's not unusual. What's unusual is that here it's rare that the judge at the ICTR directs a witness to answer the question. You have to say, "Judge, please direct the witness to answer the question." You can get hostility as a defense attorney from the prosecution witnesses in New York City, but the question is, does the judge control his or her courtroom? Some do better than others.
Q1: I think we're getting pretty close to an hour here.

Lyons: Yes, 3:25.

Q2: I just wanted to throw something out that kind of goes back to this whole experience of Nuremberg and how the ad hoc tribunals were the first international criminal proceedings since then. Did you operate with any kind of sense of that first experience, or was it a meaningful kind of model to look at?

Lyons: I certainly operated, keeping in mind Justice [Robert H.] Jackson's, who was chief of prosecution, point about the importance of defendant's rights, when he said, "Do not pass us a poisoned chalice." Although Nuremberg was a victor's tribunal also, I think that Jackson made the point that fairness was a positive attribute of the tribunal and that history would judge the proceedings. I really think that that is a lesson that applies to the ICTR as a victor's tribunal.

I do not think that on the basis of fair trial, and what I've observed and heard about and been involved in directly in the violations of fair trial, that the Rwanda tribunal will be remembered in a positive light. It can't. I think it will be remembered for the kinds of things that Professor Combs talks about in Fact-Finding without Facts, the deficiencies of the prosecution evidence—not every piece of evidence, not every case, but generally. I think that the deficiencies in prosecutorial evidence are a hazard. The failure of the
prosecution to prove its cases beyond a reasonable doubt, in my view, and the violations of fair trial have really made a mockery of international justice.

That's not to say there aren't some excellent judgments, rendered by independent and fair judges. That's also not to say that there are no independent and fair members of the prosecution teams. But I am talking about the kind of role the prosecution has allowed itself to play. The prosecution has let itself, or has chosen to be—I don't know which—a surrogate of Rwanda's policies and Rwanda's views. Perhaps "surrogate" is maybe too strong a word, but it makes the point. I think that this position does not just result in violations of fair trial, but I really believe it impinges on and negates the legitimacy of this tribunal, and it is disrespectful to and violates the rights of the victims, the Hutus and Tutsis, who were killed in 1994, and who are still being chased down by Rwanda today in other countries. To me, that's the problem. It's not a question of individual criticisms of individual people. I don't want to make *ad hominem, ad feminam* attacks; that's not what it's about. It's about the function of the Office of the Prosecution, and to me, that's the travesty.

I really do think that Nice's comment—it's really about the writing of history more than the guilt or innocence—identifies the tragedy of the ICTR. The tribunal was established to find out the truth about what happened in 1994. Look, there are multiple truths in any situation, but it's clear that the truth that comes out in the judgments mostly is not exactly the complete or even partial truth. I think with violations of fair trial—the objective withholding of material that should be disclosed, etc.—you can't get at the truth when
you know "X" percent [and it is a high percentage] of it is just not revealed. Who knows what's in the prosecution's databases? It's a wealth of material. Who really knows what was the role of the current Rwandan government in this? Who knows who's really responsible for the crimes committed in 1994? No one's contesting that there were horrible crimes committed, but I am not sure that the tribunal has brought us closer to the truths about the perpetrators.

Q2: Did you feel somewhat vindicated by the acquittal of your Military II client?

Lyons: I've thought about that a lot, because I thought to myself, does that change my view of the tribunal? I have to say that in general, overall, it doesn't. I felt vindicated because the judges in the appeals chamber, to their credit, rendered a judgment based on the law. I felt they did their jobs. I have the utmost respect for the judges on the appeals bench, led by Judge Meron, the presiding judge in our case. The appeals judgment is based on the law. There were a number of evidentiary issues which the appeals chamber chose to look at because there was no reasoned opinion given in the trial judgment, so they could open up the door and look at some of these evidentiary issues, which they rarely do on appeal. They did that in Muvunyi as well.

Q2: Right.

Lyons: This case, Military II, was another case where they did it. Really the judges emphasized fair trial in their holdings—first, finding that there was no notice given in
respect to aiding and abetting, for example. Similarly, there was no notice given about the command responsibility theory—the prosecution's theory of the case. They also talked about how the prosecution changed its theory of the case in the *Military II* without giving notice of that change to the defendant so that he could defend himself throughout the trial.

Q2: So is that a re-characterization of the facts issue?

Lyons: No, I don't think it's a re-characterization of the facts issue. But I do think it's the change of theory by the prosecution. The appeal judgment noted that the prosecution emphasized that my client failed to stop the attacks on the Belgian peacekeepers, but the trial chamber convicted on different grounds. The appeals judgment also held that the indictment was defective because it failed to plead any conduct which showed that my client knew that a crime was about to be committed—knowledge is one of the elements of command responsibility—or showed that he had failed to prevent or punish the crime. The appeals chamber reversed the conviction for 6(3) in respect to the Belgians for this lack of notice.

What was interesting was the reversal of 6(1)—aiding and abetting. The appeal chamber held that the prosecution had not provided any notice to my client—there were no facts alleged in the indictment to support "aiding and abetting" and, as the appeals judgment says [at paragraph 189], "...up until the end of the proceedings, the prosecution did not unequivocally indicate that its theory of the case against Nzuwonemeye was that he aided
and abetted the killing of the prime minister." The conviction for 6(1) was also reversed based on lack of notice.

The *Military II* decision is a tough decision to analyze, but it shows that the prosecution can't just throw one theory out in the indictment and then try to argue a different case. It's a complex decision, but what's important is that it upheld the right to a fair trial, which is a human right under all of the international doctrines.

There were some issues we argued that the appeals chamber didn't support, and we didn't win everything. You don't have to win everything; you just have to win on fundamental issues. But winning on the law and winning particularly on the fair trial issue and the notice issue to me was certainly gratifying, considering that I've never won an appeal except on a very small matter in a lower court in New York City. So this was great for our client and I'm glad that we were successful.

Q2: You must have been thrilled when the news came.

Lyons: We were thrilled. It was almost a year ago last week.

Q2: And you were there?

Lyons: Yes, I was there. Chief Taku and I were there. It was just terrific. You had asked earlier about team relations; this was a terrific working relationship within our team. We
didn't have much to do with the other teams necessarily. But, if issues came up we would talk about them, or, in court, if one team raised an evidentiary objection and your team had the case law on it, we'd just add it on. There's a lot of support among the criminal bar and this case was a good example of that. In some cases, this is not the situation, for example when there are antagonistic defenses among defendants in a multi-defendant case, it's not such an amicable relationship. We had a few problems, as well, in this trial, but they were very minor, given the length of the trial and what happened. So we were very, very lucky.

Q1: Alright.

Q2: Would you like to close by saying anything else or adding anything?

Lyons: No, I don't think there's anything.

Q2: Alright.

Q1: Well thank you very much for giving us all this time today.

Lyons: Oh, thank you.

Q2: It was just fantastic. Really fantastic.
Lyons: I apologize because I don't have—these cases are really complicated and I haven't quite mastered how to explain them in three succinct sentences. I appreciate your understanding.

Q1: Well, this is long-form history.

Lyons: Both of you have a lot of experience in this area, although you come from different disciplines, and for me, it's interesting the kinds of questions that you have and some of your insights. I wish that I didn't hog the interview and each of you could have talked about some of the—

Q1: We're here for you, Beth.

Q1: Okay.

Q2: Great, well thank you.

Q1: Yes, thank you very much.

Lyons: Okay, good. I hope you got what you wanted or needed.

Q1: Definitely.
[END OF INTERVIEW]
<table>
<thead>
<tr>
<th>Name</th>
<th>Page Numbers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Akayesu, Jean-Paul</td>
<td>29</td>
</tr>
<tr>
<td>Alao, Sadikou Ayo</td>
<td>23, 47</td>
</tr>
<tr>
<td>Barayagwiza, Jean-Bosco</td>
<td>96</td>
</tr>
<tr>
<td>Bizimana, Augustin</td>
<td>42</td>
</tr>
<tr>
<td>Bizimana, Jean-Damascene</td>
<td>42</td>
</tr>
<tr>
<td>Bizimungu, Augustin</td>
<td>74, 76, 89, 92, 93</td>
</tr>
<tr>
<td>Butare, Nyiramahuko</td>
<td>60</td>
</tr>
<tr>
<td>Byron, Dennis C. M.</td>
<td>94, 95</td>
</tr>
<tr>
<td>Chartrand, Sébastien</td>
<td>90</td>
</tr>
<tr>
<td>Combs, Nancy</td>
<td>39, 101</td>
</tr>
<tr>
<td>Dallaire, Roméo Antonius</td>
<td>92</td>
</tr>
<tr>
<td>de Silva, Asoka</td>
<td>73</td>
</tr>
<tr>
<td>Del Ponte, Carla</td>
<td>64</td>
</tr>
<tr>
<td>Des Forges, Alison L.</td>
<td>27, 28, 29, 30, 41</td>
</tr>
<tr>
<td>Downing, Rowan</td>
<td>15</td>
</tr>
<tr>
<td>Floyd, John</td>
<td>98</td>
</tr>
</tbody>
</table>
Gatarama, Tharcisse 50

Groulx, Elise 18

Habyarimana, Juvenal 28, 42, 65, 92

Hikmet, Taghrid 73

Hinds, Lennox S. 4, 7, 11, 12, 13, 16, 20, 21, 23, 24

Hocking, John 70

Jackson, Robert H. 101

Johnson, Larry 41

Kagame, Paul 28, 63

Kajelijeli, Juvenal 20

Kambanda, Jean 42, 57

Kubic, Thomas 91

Kupreškić, Zoran 85

Mandela, Nelson 4, 7

Meron, Theodor 40, 41, 103

Milošević, Slobodan 62
<table>
<thead>
<tr>
<th>Name</th>
<th>Page(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mugesera, Leon</td>
<td>29</td>
</tr>
<tr>
<td>Munyakazi, Yussuf</td>
<td>61</td>
</tr>
<tr>
<td>Muvunyi, Tharcisse</td>
<td>103</td>
</tr>
<tr>
<td>Ndadaye, Melchior</td>
<td>65</td>
</tr>
<tr>
<td>Ndindiliyimana, Augustin</td>
<td>53, 74, 76, 92, 93</td>
</tr>
<tr>
<td>Ngeze, Hassan</td>
<td>98</td>
</tr>
<tr>
<td>Nice, Geoffrey</td>
<td>63, 78, 102</td>
</tr>
<tr>
<td>Ntagerura, André</td>
<td>60, 61</td>
</tr>
<tr>
<td>Ntaryamira, Cyprien</td>
<td>65</td>
</tr>
<tr>
<td>Nzuwonomemeye, François-Xavier</td>
<td>52, 54, 55, 57, 74, 75, 76, 87, 88, 92, 93, 96, 103, 104, 105</td>
</tr>
<tr>
<td>O'Donnell, Everard</td>
<td>59</td>
</tr>
<tr>
<td>Park, Seon Ki</td>
<td>73, 74</td>
</tr>
<tr>
<td>Philpot, John</td>
<td>90</td>
</tr>
<tr>
<td>Ruggiu, Georges</td>
<td>56</td>
</tr>
<tr>
<td>Sagahatu, Innocent</td>
<td>87</td>
</tr>
</tbody>
</table>
Sagahutu, Innocent 74, 76, 77, 93

Semanza, Laurent 46

Simba, Aloys 28, 29, 30, 31, 32, 35, 36, 37, 38, 45, 47, 50, 64, 72, 81, 97

Sindikubwabo, Théodore 42

Stevens, Hope 11, 13, 16

Taku, Charles A. 45, 46, 47, 50, 79, 105

Thomson, Susan 40

Umuhoza, Victoire Ingabire 63

Uwilingiyimana, Agathe 55, 75, 105

von Hebel, Herman 19

Wald, Patricia 85

Weinberg de Roca, Ines Monica 15, 56

Weiner, Phil 61, 62

Wilson, Richard Ashby 63, 78