THE AD HOC TRIBUNALS ORAL HISTORY PROJECT

An Interview with

Stephen Rapp

International Center for Ethics, Justice, and Public Life

Brandeis University

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Q1: We are here with Stephen Rapp, and Stephen we are so delighted that you are going to talk with us about this project. The Ad Hoc Tribunals Oral History Project is designed to try to capture the memories, impressions, and thoughts of those who were there at the beginning of the ICTY and ICTR. We have a number of questions ourselves, but the idea of this is to let you talk about whatever you would like to talk about in connection with this. We have found that rather than being legalistic, it's nice to have people talk about their experiences. So we were thinking loosely of five areas. The first one was your journey to the ICTR; how did you get from Iowa to the ICTR? Second, what were your initial impressions on arrival; what did you find there? Third, what was it like to work in an international environment? Fourth, what were your major cases, like the Media Case? And the fifth question relates to a category of thinking from Nuremberg through the ICTR to the Special Court for Sierra Leone, and into the future. What are your thoughts about that connection, the relationship, where things are going? And we can do this in any order.

Rapp: Well that's a fine order, there's no problem with that.
**Q2:** On that last question, I think one of the really interesting aspects is how your experience of the ICTR may have informed your approach in the Special Court, and then more recently as Ambassador [US Ambassador-at-Large for War Crimes Issues]. You mentioned earlier that you have travelled 1200 days during your tenure. How did the work at the ICTR inform your wanting to be in the field connected to victims, survivors, governments, advocates, etc.?

**Rapp:** Okay, fantastic. But do you want to ask me some questions in this narrative, or do you want me to launch into it?

**Q2:** We will jump in at various points, but otherwise we would love to just have you start talking about your journey to the ICTR.

**Rapp:** People often ask me how I moved from Cedar Rapids, Iowa, from being a federal prosecutor in rural Iowa to East Africa with my family to begin prosecuting at the International Criminal Tribunal for Rwanda. And I always say, "Well, I put in an application, I got an interview and I was hired." [Laughter] My advice to young people is, "You don't get a job if you don't apply and you don't work very hard to land it." I was fascinated by the international tribunals. I grew up reading about Nuremberg, and thought that what the United States had done there in holding the Nazi war criminals to account, and doing it in a fair process, was, as Justice Jackson, said a great “tribute that power paid to reason.” It had involved gathering and presenting strong evidence, and resulted in a judgment that didn't convict on every count — and
didn't even convict all of the accused. It was a great innovation of the post-war system, and I was disappointed that such trials had not been possible during the Cold War.

But when these new international tribunals were established in '93 and '94, the ICTY and ICTR, I was at that time a United States Attorney with offices in Cedar Rapids, Iowa, and Sioux City, Iowa, quite active in national efforts to prevent violent crime, further victims' rights, and prosecute crimes committed against women and on similar issues. I was often going to Washington, but certainly also following the international situation. And my wife was a Professor of African History, and we had traveled together in Africa — her specialty is actually West Africa — and we'd been to Arusha together, although not to Rwanda. During the Rwanda genocide, we were listening before sleep each night to the shortwave broadcasts of the BBC World Service, and heard the reports on was happening. And frankly, from what we heard at the time, we knew it was coming. I remember commenting, "Look, the Westerners are all leaving, so who's going to protect those that remain?"

So I was passionate about justice in that particular situation, as I was in the former Yugoslavia. As a U.S. Attorney at that time, the boss of about two dozen attorneys, I would get periodic emails from Washington asking for me to send one of people on a particular assignment. “Can you release someone to go to the Palestinian territories to work on implementation of the Rule of Law post-Oslo? Can you send one to Colombia? Do you have a volunteer for Central America?" But then the requests started coming in, "Can you send somebody to the Yugoslavia Tribunal?" And I remember writing back and saying, "None of my people want to go, but I'm happy to go.
Could you send me?" To which the response would be, "No, you're the boss, you have to stay.
Don't you have anybody else?" And this was disappointing from my point of view, even though
there was a lot for me to do in the Northern District of Iowa.

I remember, particularly, in 1999 when the ethnic cleansing commenced in Kosovo and the
United States and NATO intervened militarily to stop it. I was traveling back and forth from
Washington, and I became very, very interested in figuring out how I could actually be hired to
prosecute the war crimes. I reached out to people in the US Department of Justice who had gone
to the Yugoslavia Tribunal and had returned to the US. I remember speaking with Al
Moskowitz, Minna Schrag, and others who had been at the international tribunals in that time
period, and also to a friend of mine, Bonnie Campbell who had been State Attorney General of
Iowa and was part of the U.S. delegation to the Rome conference that produced the ICC statute.
I asked how one could become an international prosecutor. One of them responded, “There's no
more of this detailing or secondment, they've eliminated that. You have to go through a formal
application process. But why don't you go visit Ambassador [David] Scheffer at the State
Department?"

So, on one of my visits to Washington I went to the Office of War Crimes Issues in the US State
Department. He wasn't there that day, but I saw Pierre Prosper. Pierre had been a state and
federal prosecutor in California and had gone to the Rwanda Tribunal where he had been part of
the team that prosecuted [Jean-Paul] Akayesu. By the end of the trial he was leading the team,
and he took the first judgment in the history of the world for the crime of genocide in September
of 1998. They still wouldn't promote him above a P-3 Assistant Trial Attorney position because he was an American, [laughs] and so he'd gone back to Washington and was then detailed by the Department of Justice over to the State Department.

So I asked Pierre about what the chances were as an American in this new process, and he said, "Not very good at The Hague because they think we have too many people there already. But don't think about The Hague, go to Arusha." And he suggested that next time I had an opportunity to go to Europe, that I visit Prosecutor Del Ponte at the ICTY — who was then the Prosecutor of both the ICTY and ICTR — and in particular reach out to James Stewart, who had been in Arusha in the early days. He prosecuted the Rutaganda case, the second or third trial, and in 2000 was the Chief of Prosecutions of the ICTY. And so I went to The Hague in early September of 2000, and talked to James, and talked to a woman named Catherine Cissé [Van den Muijsenbergh], who was then leaving, but was the Prosecutor’s coordinator for the Arusha work. Carla [Del Ponte] was not in that day, but James and Catherine certainly encouraged me to apply for a position at the ICTR. They said the Chief of Prosecutions position might be advertised soon, because the Chief of Prosecutions Mohammed Othman had gone off to East Timor. But there was a Senior Trial Attorney position that they'd been able to advertise, for which applications were due by September 10th, which was about a day later.

So I went ahead and applied, then called my wife afterwards and said, "You don't have any problem with this?" And she said, "No, Arusha would be great, we'll take the kids." They were eleven and thirteen. So I applied for that position, and then was in touch with Prosper to ask that
Ambassador Scheffer put in a good word. I was fortunate to be called for an interview in The Hague in January of 2001, on the very weekend that George Bush became president. I was U.S. Attorney at the time — and while U.S. Attorneys operate outside of politics, the appointments arise out of politics, and the expectation was that three months after Bush took over I'd be asked to resign together with the other Clinton appointees. Any extension was in the hands of my former opponent, Charles Grassley — against whom I'd run as a very young man for a House seat and lost with 49.2% of the vote. But I'd had good relations with him over the years and had worked with him while I was U.S. Attorney on crime issues. Even before I asked, he was quoted in the press as saying "Steve Rapp can stay in this position till we find a good Republican." But I was not anxious to continue for a long period of time under Attorney General Ashcroft, and in April, I was thrilled to receive fax from the Office of Personnel at the ICTR offering me the position of Senior Trial Attorney, P-5, conditional on passing a medical examination. So as soon as I cleared the medical, I resigned as US Attorney on the 18th of May, and arrived in Arusha on the 22nd of May 2001.

I was told a few days later that I would be the new lead prosecutor in the Media trial (Prosecutor v. Jean-Bosco Barayagwiza, Ferdinand Nahimana and Hassan Ngeze). This reminds that I forgot to mention that I had made a trip to Arusha in March. Before taking on a position, I have always tried to go to the workplace to “see what's actually going on.” So, after my interview in January, I used some frequent flier miles and flew out to Arusha during the last week of March, during which I went into the court gallery and watched the Media trial. I stayed with Ken
Fleming, an Australian barrister who was then acting Chief of Prosecutions, and was able to
meet several of the prosecution attorneys. I saw that they all were facing very challenging
situations in their cases. But I remember sitting in the Via Via restaurant at lunch under the palm
fronds, with tribunal people who talked about heading over to Zanzibar for the Easter weekend,
while another mentioned her plans to go Lamu on the Kenya coast. I thought, "This sounds like a
great place to be," despite all the challenges that they were talking about.

And it was very challenging. Prosecutor Del Ponte was very disappointed that it looked like one
of the trials was heading toward an acquittal and was also worried about the preparation of other
cases. She had announced early in 2001 that she was not planning to renew the contracts of
seven of the prosecution attorneys, six of them African, one of them Indian, because they were
not sufficiently competent. And that had created an enormous battle within the Tribunal, where
she was perceived as doing this on a racial basis. In effect, they took away her power to name
their replacements. So it was clear that prosecution would be stressed, in the sense that we
would be losing working attorneys and not be able to replace them. So certainly I knew that it
was going to be a tough job. But the March trip was very useful in moving my application
forward as I was able to meet with some of the persons involved in the selection process. I
understood that it came down to choice between myself and a British barrister, Douglas Marks
Moore, who was hired about three or four month later. I was fortunate to get the first offer and
arrive on the 22nd of May in time to take over the leadership of the Media trial.
Q1: Wow, that was quite a journey, and you had already seen the Tribunal when you got there. So in terms of your initial impressions, you had some when you went in March, but when you actually arrived in May, there you were; you were going to be in the Office of the Prosecutor at the ICTR. What comes to mind?

Rapp: Well, getting involved in that situation, and looking particularly at the Media trial which had then been going on for seven months. It had been opened by Deputy Prosecutor, who was essentially the full-time supervisor of the Office of Prosecutor at the ICTR. This is because from 1995 until September of 2003, both the Yugoslavian and Rwanda Tribunal had the same Prosecutor, Goldstone, and then Arbour, and at that point, Del Ponte, all of whom lived in The Hague. An ICTR Deputy Prosecutor was appointed as essentially the person in charge down in Africa for the Rwanda work. But in fact he was headquartered in Kigali, Rwanda, 500 miles from Arusha, Tanzania where the trials were conducted. This was where our investigation division and our legal advisory division were located. As Prosper had told me, Arusha was all judges and registry, and the prosecution attorneys just came over as visitors in the early days. By 2000, the decision had been made to move the trial attorneys of the Office of the Prosecutor to Arusha, and that was ongoing when I arrived. As I said, the Deputy Prosecutor, Bernard Muna of Cameroon, had opened the Media trial. I heard that he gave a very emotional speech and presented a video showing bodies going down the Akagera River.

But Carla made the decision not to renew Muna as Deputy, and he departed the weekend before I arrived. And as I said, the Chief of Prosecutions, Mohammed Othman of Tanzania, now the
Chief Justice of Tanzania, had left to go to the East Timor Special Panels that had been established by the UN peacekeeping mission there. So my team had really no effective leader at the time that I arrived. There were some hardworking young people, and very energetic defense attorneys. As I saw when I visited it at the end of March, the defense was appearing to score points against the prosecution, and I also saw that the judges were very negative about some of what the prosecution was arguing at that time. So there was a big challenge in terms of figuring out how to get this trial on the road. As soon as I arrived in court, the Presiding Judge, Navi Pillay, asked me directly, "When are you going to close your case, prosecutor?" So I met with the team and went through the witnesses to see when we might be able to close the case."

This *Media* case involved the famous RTLM [Radio Télévision Libre des Mille Collines]. But how did it involve RTLM? We didn't prosecute the corporation. The founder of RTLM was Ferdinand Nahimana, who had been essentially the head of the government’s information office until mid-1992. He was there responsible for the state radio, Radio Rwanda, and he'd been dismissed from the job after Radio Rwanda ran an editorial that many thought had incited a massacre of about 300 Tutsis in Southern Rwanda, at Bugesera in March 1992. Nahimana was a professor at the national university and had a doctoral degree in African history with great distinction from the University of Paris. But under our case theory, we cast him essentially as Goebbels, the propaganda minister, of the Rwanda genocide.

RTLM was not a public radio station; it was a private radio station that had been founded in July 1993 by Nahimana in order to give the president's party — which was the extremist party, the
MRND [Mouvement Républicain National pour le Développement et la Démocratie] — and its ally, the CDR, the Committee for the Defense of the Republic, a voice against the political line being presented in state media that had passed to the control of a more moderate Hutu party under a coalition government formed in mid-1992.

Money for RTLM had then been raised from all the people who we generally view as the Hutu extremists during the genocide. Jean-Bosco Barayagwiza was RTLM’s legal advisor, though his full-time job was Director General of the Foreign Ministry. He was also busy as the founder and head of this CDR Party, a party that was more extreme than the MRND. But the positions of Nahimana and Barayagwiza in the hierarchy of RTLM was never formalized. The corporation hadn't, in fact, come into formal existence, and the board of directors was only an initiative committee, a Comité d’Initiative. The best proof that we had that Nahimana and Barayagwiza had been in charge of RTLM was a videotape of an interview of the station’s manager, done by a famous journalist who had been the second witness in the trial, Philippe Dahinden [co-founder of the Fondation Hirondelle which does journalistic coverage of crisis zones]. He had come to Rwanda in late 1993 on a mission for Reporters Sans Frontières and taped station manager Phocas Habimana describing them as “Number One and Number Two” at RTLM. But that was in 1993. Proving that they remained in charge of the station during the genocide was going to turn out to be the biggest challenge.

The third accused was a fellow by the name of Hassan Ngeze, who ran a newspaper, a sort of a tabloid magazine. He published 59 issues between July 1990 and March 1994, right up to the eve
of the genocide. He had earlier run a tabloid, called *Kanguka* in the 1980's that was full of gossip news, which had been quite popular at the time. We had a theory that this is what made his extremist backers support him when he decided to bring out *Kangura*, with its similar-sounding name but also meaning "Wake Up" in the native Kinyarwanda language. From the beginning, it campaigned for the Hutu majority of Rwanda to have all power. In the issue of December 1990, it published the infamous "Hutu Ten Commandments" — that Hutus should never treat a Tutsi with any respect, Hutus should have no pity on them, Hutus shouldn't marry them, Hutus shouldn't have them as an employee, Hutus shouldn't have them as a mistress, Hutus shouldn't have them in any role whatsoever.

The best characterization of *Kangura* was given by the former Prime Minister of Rwanda, Jean Kambanda, in the lengthy interviews with prosecution investigators that led to his historic guilty plea to genocide. We were not generally able to use these interviews because Kambanda was very unhappy that he received a life sentence despite his cooperation and thereafter refused to be a witness. Ngeze actually introduced the part of the interviews where Kambanda had discussed Ngeze. This hurt his own case, but Ngeze loved it that he was being talked about by a Prime Minister. Specifically, Kambanda had said, “There was incitement on every page of *Kangura*. There was even incitement in the advertisements.” [Laughs]

So there wasn't much question that *Kangura* took this extreme view, and that Ngeze was in charge of it. We had all 59 issues, but they were in Kinyarwanda, with only a few translated into English or French. The defense had tried to get it translated as a matter of priority, and the
translation section had finally agreed that they would translate five of them [laughter] out of the 59, can you imagine that? So, John Floyd, who represented Ngeze, was constantly up on his feet saying, "How can you try him when you've only got five of our newspapers translated?" Of course, Ngeze could read them and identify any excerpts that would help his defense.

But the major challenge for the prosecution was that Kangura didn't publish during the genocide, and as Rwandans say, there was no work done other killing during the days of the genocide. Of course, RTLM did broadcast; that doesn't require paper, ink, and a printing press. It just required some electrical power. But the crime for which Ngeze was charged was “direct and public incitement to commit genocide.” So was it direct, what Kangura had published? And what about all of the words published in '90, '91, '92 and '93, that had laid the foundation for the genocide? We had a temporal jurisdiction of only 1994. Fortunately, Kangura published six issues in '94, but even the last one was put out two weeks before the genocide. Is that direct incitement to what happened on April 6th, or was what happened before April 6th also genocide?

So that was the challenge on Ngeze.

Back to RTLM. Aside from the issue that Nahimana and Barayagwiza didn't have formal positions, they hadn't been on the radio or even physically present at the radio station during almost all of the period of the genocide. We had an insider witness, Georges Ruggiu, who had pleaded guilty the previous year, and who had been one of the broadcasters. He said Nahimana had visited the station about four times in early April but not thereafter. Nahimana contested that, and said he'd only been there once. He also asserted that he was not in charge after April 6 because unnamed others had taken over. "I'm not responsible for what happened during that
time period." Barayagwiza wasn't active during the genocidal period with the radio station, but more at an earlier date when its broadcasts were unlikely to be found by the judges to have been inciting. But he refused to participate in the trial because he was unhappy that he had earlier won a dismissal of his case by the Appeals Chambers because of pretrial delay, only to see it reinstated by another panels of appeals judges and joined with the Media trial. It could've been joined with other trials because he was engaged in other things beyond the media. But it was in the Media case that he was tried. He boycotted every session and refused to have anything to do with his court-appointed counsel. The first set of attorneys who had begun the trial resigned, saying that they weren't instructed, and a new team had been appointed. And with the rare exception that they received communication from his family, they had to do their best without him.

The other challenge was proving what had actually been broadcast on RTLM. One of our experts — somebody who worked in the interpretation section of the court, a professor from the University of Rwanda [Dr. Mathias Ruzindana] — worked on analyzing 345 cassette tapes of purported broadcasts that prosecution investigators had obtained from sixteen different sources. The radio had never taped its own broadcasts; these were all from people who had been listening to it and were taping it on a cassette, sometimes with imperfect quality. Ruzindana eventually determined there were 273 original tapes, each of about one-hour duration. Of those, when I arrived, only about 50 had been translated into either English or French; the rest had only been transcribed in the original Kinyarwanda language.
The interpreters hated translating these transcripts because they were about 30 pages each, and they would be full of proverbs and raise difficult questions of interpretation; they would rather translate a witness statement. So we were having a horrible time knowing what our evidence was. I should note that of the 50 that were supposedly translated, in either English or French, only 12 were translated into both languages. And then, at one point, we thought we'd have the benefit of the team of Jean Pierre Chrétien, who had written a book called *Les Médias du Génocide*. He'd actually been a professor of Nahimana's at The University of Paris. This was a 1995 book, available in French, a really excellent analysis of the media. Chrétien and a team of three others, two of them Rwandan, had been originally retained as experts, but they had had horrible disputes with Muna and they had left in a huff and said they'd never have anything to do with the place.

So we didn't even have expert witnesses listed on our witness list. And going into trial, the first two witnesses that I listened to, who were being led by my team, offered practically nothing of relevance on this case. Observers told me that many witnesses of similar marginal value had testified during the first seven months of the trial before I arrived. They told me that after Dahinden, who had been the second witness, only a few had testified about the messages delivered through the media. Many others had testified to what an accused had on the "side" to more directly participate in the violence. And that was not atypical of the Rwanda Tribunal, where proving complicated things was challenging in terms showing the roles that people played in organizations. There was a tendency to bring in witnesses who said "so and so" was on a roadblock, "so and so" was handing out machetes on a particular day, and encouraging them to
be used against the Tutsis. And there were certainly some Rwandan leaders, and Ministers of State even, who went out and did those kind of things. But not every one of them.

I often found, and even in testimony later in the trial, examples of people saying that the accused were physically present at a location directly inciting the killing — for instance, that Nahimana on April 12th was handing out machetes in his home town of Gatonde in Ruhengeri prefecture, encouraging the killing of the Tutsis. Well, one, he would have had to cross the enemy lines of the RPF to get there and, two, on that specific date he was evacuated in Operation Amaryllis by the French, and was flown into Bujumbura where he had a confrontation with a former Burundian Ambassador of Rwanda, who shouted at him, "Your RTLM is exploding the country." Observers said that Nahimana had defended RTLM, and when he testified he had to admit the confrontation. And I said, "Well, that's what happened, and that's awfully relevant. Why the heck did we run some witness who said he was up in Gatonde that day?" And then my people went to work trying to figure out how he could be in both places on the same date, but there was no way under those circumstances. There was other testimony like that in Media and other trials.

There were young people in my team — particularly Simone Monasebian, who was an Iranian American, and Charity Kagwi, a Kenyan, who had been pressing for a change in the witness list. I adopted their effort and moved to throw out about 65 or 70 witnesses that we were anticipating, and to add 21 new witnesses. But this required a formal motion and the defense just went absolutely crazy, saying, "We were preparing for this trial for three years, and what do we have
now, a third prosecution leader who comes in on the seventh month and tells us that he has a new game plan?" I made a passionate speech before the judges in support of the motion, saying, "We know what the UN sometimes does in the world. We know what it did with General [Romeo] Dallaire. It put him out there to do a job and then didn't provide him the means to do it. Give me the means to do this, Your Honors." And, so they approved 17 of the 21 witnesses that we wanted.

That was the first motion that I filed, and I remember that the judges announced the favorable decision on the 26th of June of 2001. Carla had insisted that I be in The Hague the next day to present her the Bikindi indictment for approval, and I said, "Why do I have to be there on that day? We got another week left of the trial session." And she said because she was leaving for Belgrade by mid-morning on the 27th to press for the transfer of Milošević. [Laughs] And there was a conference scheduled in Belgrade on the 29th of western countries to announce donations for the reconstruction of Serbia. So she insisted that I come to The Hague with the Bikindi indictment before she left for Belgrade. After we won our new witnesses motion I raced to Kilimanjaro airport, jumped on the KLM plane that goes down to Dar es Salaam before turning back north for the long overnight flight to Amsterdam. When the flight landed, I quickly shaved at the airport and raced the 45 minutes to the ICTY in The Hague. I came running into Carla’s office with the Bikindi indictment that I'd also been working on. He was the rock star of the genocide, who composed and performed music for groups of Interahamwe [Hutu paramilitary organization] — “music to kill by,” one might say, though proving that was challenging. But he was eventually convicted. I presented her with the indictment and I said,
"Well, thank goodness I arrived before you left for Belgrade." To which she responded, "I do not go to Belgrade." [Laughs] "I do not go to Milošević; Milošević comes to me." And the next day while I was still there, the helicopter was overhead, bringing him to the detention facility at Scheveningen to face trial. It was the 28th of June, St. Vitus Day, the day that everything happens in Serbian history.

Then I went from there to Paris to convince Chrétien and his team to sign up again as expert witnesses for the trial, and we were able to get them on board. So by the time we were back in trial, in August, we were beginning to move the case forward. But throughout the about 14 months that I was in charge of finishing the prosecution case — which the judges finally directed we finish by the 12th of July, 2002 — there were no end of enormous challenges bringing it in. I don't recall ever in my life working so hard, and so often one would not have toner for the copier, or the paper, and you'd be running down to the local copy shops and paying for it yourself, and running the copies back. The challenges of proving the case and putting it on were immense. But the positive thing is that we did finish the prosecution case in a trial that went relatively more quickly than others. The defense case began that fall of 2002, and we'd concluded the case in August of 2003, and won the historic judgment in December of 2003 — the first in history for principals of the mass media for direct and public incitement to genocide. But I could go on talking about how we overcame some of those challenges, particularly on Nahimana, but I'll answer your next question.
Q2: It seems to me this is one of the most complex cases, early complex cases, in the Tribunals. You had come from your position in Iowa, and with your docket in Iowa, and so how did this compare to your work in Iowa? And how did you feel upon facing this enormous set of challenges as you hit the ground? I mean, you knew some of what was happening from your earlier visit to Arusha, but we're interested in how you made that transition. How did you feel you were able to overcome some of those challenges?

Rapp: Well, there certainly were differences, and there were similarities. I came to this without having taken an international law course in law school, but this was criminal law, and this involved criminal responsibility, which is something with which I was familiar. For instance, we had a conspiracy charge, because that crime had been included in the Genocide Convention and the Security Council had included it in the ICTR Statute. Americans have a lot more experience dealing with the crime of conspiracy than lawyers in other countries. We won a conviction for Conspiracy to Commit Genocide at the trial level in Media, but the judges of the Appeals Chamber, who had a European continental antipathy to the crime, reversed this conviction with barely a sentence of explanation. But even leaving aside the question of whether there was a conspiracy, there was no question that the genocide involved organized criminal activity. Getting investigators, prosecutors, and judges to think in those terms was not easy. Their instinct is to think in retail terms, to look for evidence of direct perpetration, and to go easy on those who were not at the scene of the crime. In the U.S., particularly at the federal level, we are much more attuned to pursuing criminal organizations and to prosecuting the masterminds, the "Mr. Bigs," the "big fish" who were behind the scenes. And one doesn't want to waste time on the
"small fish," other than to the extent that you can turn them or flip them, and have them go after the "big fish." So in that sense, my prior experience was very relevant.

But building the case against the masterminds is difficult, because you need insider witnesses. That was and remains a challenge in the International Tribunals — how you get cooperation, how you do plea agreements. There had been one done for the Media trial before I arrived, negotiated with Georges Ruggiu, an Italian-Belgian who had gone to work at RTLM in early 1994 and had joined the others in making inciting broadcasts. He had received a 12-year sentence in return for pleading guilty to Direct and Public Incitement to Commit Genocide and also to Persecution as a Crime Against Humanity; this was our lesser charge for hate speech that instigated violence that was not necessarily genocidal. He had given weeks of interviews with several investigators. The French transcripts of the interviews filled 17 “lever-arch” binders. And there were conservatively about five different stories, [laughter] as you read through this, so it was obviously done by people who had not oriented themselves by reading his prior interviews, or who understood that an insider is naturally going to minimize his own conduct. They were certainly going to minimize their own conduct in a place where 800,000 people were murdered in 100 days. If someone told you the actual truth of what he had experienced and done, you would think him a fiend. Chrétien referred to it as a “Culture of Violence.” It was like a “Day of the Dead,” when death replaced life, or when evil replaced good. Everything was inverted. People who were normally “buttoned down,” were out there doing horrendous things. I know it from the admissions of a banker whom I convinced to turn and become a prosecution witness.
So that was very similar. On the other hand, we were dealing with an area of the law that was different from that which I had prosecuted before. And the idea of incitement to genocide — in fact, when the United States finally ratified the Genocide Convention in 1988, after the 40-year struggle of Senator [William] Proxmire, it didn't in fact ratify incitement to genocide. We don't have that under the U.S. genocide law; we left it out because that was viewed as potentially in violation of the First Amendment. I became quite enamored, and I still am, with the crime of persecution as a crime against humanity, a sort of calling for violence against a group through inciting speech.

Now, of course, it's a crime against humanity, it's not incitement. Incitement is an inchoate crime; you don't actually prove that a genocide resulted, only the strong potential that it would happen. But persecution — if you give a hateful speech, and it results in violence against members of a minority group, which can include even a political group — it can be the crime of persecution. Whether that could be a crime under the United States Constitution, I don't know. Judge [Theodor] Meron, our U.S. judge on the ICTY/ICTR Appeals Chamber, actually dissented in the appeal of the judgment on the persecution count. He asked me a few months later if I had read his dissent. I said yes, but then thought it wise not to argue with him about it. But I wanted to tell him, "If you were right, Judge, you wouldn’t have been able to convict Julius Streicher at Nuremberg." Because, in fact, he was only convicted on Count IV based on articles that instigated violent persecutions that constituted crimes against humanity, the crime of genocide not having been available.
So we were facing legal standards that were different. We were talking about speech that was directly tied to horrendous conduct, and as I would tell American audiences, if I had to convict these guys in a U.S. court, we would have found a way to convict them there. But we would have had to, perhaps, go over higher hurdles than we did at the ICTR. We were very much helped by the Chrétien team that did an analysis of key inciting speeches on RTLM radio. In July of 2002, I led Chrétien's testimony and asked him about excerpts of broadcasts that I called "RTLM's 30 Greatest Hits." In fact, in none of these excerpts did the broadcasters call explicitly for the killing of Tutsis. Their words always required interpretation. Certainly, Ngeze was more explicit in Kangura, and RTLM did tell the listeners to target the "cockroaches." But whether cockroaches meant Tutsi, or whether it meant RPF soldiers who would've been combatants, who would've been legitimate targets, was something that was disputed. So everything had to be contextualized. But we were able, with 30 of these excerpts of a paragraph or two, to get a very clear understanding of the messages.

For instance, the one broadcast that I was the happiest with — and this shows that I'm a prosecutor at heart when I say I'm happy when something is bad — was one by the broadcaster Kantano Habimana in early June of 1994, where he said, "We know the enemy. It's easy to identify the enemy because of his small nose." Tutsis are thought to have the stereotypical physiognomy of being tall, with thin noses. So Kantano said, "We know him by that narrow nose, break that nose." You know it's hard to break the nose of a soldier — you're identifying the Tutsi people as the enemy, and you should break their noses and destroy them. By decoding
such language, we were able to eventually show that the radio had done incitement. The big challenge became proving the responsibility of the accused persons for that, and on that we benefited, in the end, from command responsibility in a civilian sense. At Nuremberg and all of the tribunals we have had the law of command responsibility. We don't have it explicitly in U.S. criminal law, although we do have it in places like the military commissions in Guantanamo. But we don't have it in our military or civilian courts. So this was something else that I had to learn about.

I remember the first time the judges asked me, “Counsel, “Was that 6(1) responsibility or 6(3) responsibility?” I had to open the ICTR Statute quickly to remember that 6(1) was direct responsibility and 6(3) was command responsibility. [Laughter] It was a little embarrassing, given the importance of command responsibility to our case. Young people who want to apply for a job in international criminal justice often ask me, “What's the best thing I can do to prepare myself?” And I answer, "Try cases in a national system. That's where you're going to gain the best experience. You can be given a new statute; you can be given a case different from any that you've ever had in your life, and quickly study it and fit it in to what you have learned in other trials. If you become practiced at the business of putting on evidence and leading witnesses and presenting documents, etc., you'll find that you're way ahead of those who have thought about it only academically."

Q1: Stephen, if I could follow up on that a little bit. You've mentioned a number of things — one being the hate speech versus incitement to genocide, that there are differences around these
in systems around the world; another being plea bargaining, "negotiated justice," very common in the United States, but not very common in other parts of the world; and of course theories such as command responsibility or joint criminal enterprise that may exist in one system and not in another. What is your memory of walking into an environment where there were lawyers and judges coming from civil law as well as common law systems?

**Rapp:** Well, there are sometimes people who, the first time they confront the civil law system, say, "What is this?" And this last summer, preparing for the commemoration that I organized at the State Department of the London Agreement that provided the statute for Nuremberg, I was reading the accounts of the negotiations. The Americans, even Justice Jackson, were just shocked when they first heard how cases were prosecuted in civil law systems. "It's preposterous, this system where you have to have all the proof before you prepare the indictment. How can we do this? This doesn’t make sense." And there are, of course, ways in which the civil law system operates that we really scratch our heads about, among them the fact that there are no pleas of guilty, certainly in serious cases. How could they ever have time to try every case? And usually, what you find about it, in practice, is that there are ways that all systems compromise in practice, so that the results you gain at the end of the day are not a whole lot different.

I actually was fascinated by the synergies, by the ways in which one could try to figure out how to gain from mixing one system with the other. I often worked with Gavin Ruxton, a Scots lawyer who succeeded [Catherine] Cissé as the Prosecutor’s Hague-based coordinator for
Arusha. Gavin had come up with a proposal at the ICTY to allow some written statements to be admitted in lieu of oral testimony. This would become ICTY Rule 92bis, and I worked with Gavin on a version for Arusha that would eventually be adopted by a plenary of the judges as ICTR Rule 92bis. It permitted written testimony to be admitted if it didn't go to the acts and conduct of the accused, essentially adopting a more “civil law” approach to trials.

We were always looking for ways to speed up the trials.

I remember discussions with other common law lawyers, from the UK and Australia, like Ken Fleming who had been a Queen’s Counsel in Brisbane, trying dozens of cases a year. He would say, “These joint cases with these four accused, like the military cases and the government cases, these are disastrous; they require so much testimony, they're unwieldy.” And this was, in fact, true. They took a very, very long time to try. Ken pushed for narrower trials, where you'd have a guy who may be responsible for hundreds of things, but you really would have some solid evidence of his engagement on one day, in one massacre, etc. So you would focus on it exclusively and make it a direct responsibility case. Of course, the danger of that is that you could be dealing with testimony where people may have honestly thought that he was the perpetrator, but the perpetrator was in Burundi that day, [laughs] and that happened.

Sometimes you just had to get into the big picture, but then you were dealing with political events or political speeches that could be interpreted two ways, and you needed a lot of them in order to show the pattern, and that made for very complicated cases. But you were always trying to figure out how to keep it simple, [laughs] but at the same time present the whole picture. And
when you dealt with the media, or when you dealt with government or military leaders, you had to tell a more complete story. Then, if you were going to do that solely through oral testimony, you would suddenly find yourself stymied completely. I've watched witnesses come forward who described massacres that without question happened. These were “crime-base” witnesses, not the ones who would point to a particular accused. They could talk about what happened in the Church of Nyamata in the middle of April of 1994, and there was no question there were ten thousand corpses there, and only half a dozen survivors. But by the time the defense finished with this witness, people could legitimately doubt whether it had even happened at all, because the witnesses confused the time of day, or couldn't understand the map because the map was the world from above, and they would know the surface, and didn't have north, south, east and west as their orientation. So you have a very hard time even proving what was completely true.

So the idea that in civil law, at least theoretically, where you have a dossier in which an examining judge or sometimes a prosecutor is pledged to do une enquête à charge et à décharge, an investigation both for guilt and for innocence, and doing it independently he or she builds up a file and eventually says, "Well this is pretty solid, we know this is true," and asks that the case be set for trial. Of course, the parties may want to call some witnesses about the issues that really are at stake. So if you could come to trial and have that dossier in evidence, and then be fighting over where the accused was and what he was doing on those days, and these are the linkage issues, you could a simpler kind of trial. But Gavin, who came from a Scots system — which is a Dutch Roman law, not quite common law, more of a civil law-centered kind of system, where written testimony is more possible — pushed for, and we eventually adopted, these rules that
allowed written testimony to come in. Even then they could cross-examine the witnesses, which seemed almost like nonsense to me. In the Milošević case, they gave Milošević a half hour to chew into the witnesses who were presenting very solid crime-base evidence.

But the point was being able to present more in written form on matters that were basically undisputable. But in the end this was of limited value, because our cases were really about linking the crime base to a distant perpetrator. For that we relied very often on expert witnesses.

We used these experts in ways that many pure common law people would say, "This is outrageous." We had the famous Alison Des Forges, a wonderful woman, a great friend who tragically died in a plane crash between Newark and Buffalo on February 12, 2009. She came as a witness in 11 of our trials, in all of our major trials, and was very fair, and of course, as we know, she was also passionate about prosecuting the “other side,” specifically the officers of the Tutsi-led RPF for war crimes committed against Hutu victims in Rwanda in 1994. That certainly helped her credibility. She had been coming to Rwanda since the 1960s and had known most of the leaders. She was the investigator for Africa Watch (which eventually merged into Human Rights Watch) before, during and after the genocide. Right up to the hour of her testimony, she would be constantly talking to people, evaluating things, and she would actually bring in a lot of accumulated evidence gained through what was basically hearsay, but very carefully-weighed hearsay. But with the all of her experience, and her knowledge of the documents and all of her discussions with eyewitnesses, she could lay out exactly what happened and why it happened. This is very different than the expert witness who answers the hypothetical question, “presuming
that there's a wound here and a wound there [laughs], what was the cause of that, doctor?"

[Laughter] That was not our kind of expert witness.

Of course, the defense attorneys went after her very hard. I remember when she testified in the Karemera et al. case, Peter Robinson, an American lawyer who was representing Nzorera, cross-examined her for at about six weeks. She held up rather well, actually; she did. And frankly the ICTR would not have succeeded to any extent without the benefit of her testimony and work.

Q1: Stephen, in addition to the civil law/common law system differences, some of what I think you're also mentioning here are cultural and linguistic differences. And of course, Alison Des Forges was, I believe, an anthropologist. So, in addition to introducing experts from other fields, in terms of working at the ICTR and interacting with people in Rwanda, you mentioned that there were a lot of proverbs, and there are a lot of metaphors, I know, in Kinyarwanda. Just as an example of something that's a little different, could you comment on the cultural/linguistic setting and differences?

Rapp: Yeah. First of all, I don't want to miss the cultural/linguistic aspect of the Tribunal itself, which had people from a hundred different countries who spoke multiple languages. There was a large group of them from Francophone countries. One of the things I did when I got there was to go to a French class every morning at eight o'clock, full of secretaries— in particular Tanzanian secretaries — who, if they could get pass a foreign language proficiency test could very much improve their compensation and increase their chances of being recruited by the UN outside
Tanzania. So they stayed, and all of my other legal friends left but I stayed and really tried to learn French. But it was not just the French language; I spent a lot of time trying to better understand the civil law systems used in France and other countries, particularly because we were working closely with European war crimes units that were prosecuting Rwandans present in their countries for involvement in the genocide.

I developed a new approach to plea-bargaining because we found it very difficult to negotiate agreements where suspects were to plead guilty at the ICTR and cooperate after what happened to former Prime Minister Jean Kambanda. He had agreed to plead guilty and testify and gave ninety hours of informative interviews; and even though he was kind of a Johnny-Come-Lately to the genocide, the then-Prosecutor, Louise Arbour, recommended a life sentence which the judges then pronounced. I went to see him twice in Bamako [Mali], where the ICTR convicts were then imprisoned, but we couldn't work it out to bring him in to testify. So after that, if I had a suspect in Europe, we would try and negotiate to say, "Look, just stay here and be prosecuted in the war crimes unit in this country. They may not have plea bargaining here, but if they throw the book at you, you'll get out in at most twenty years, and you won't be in the same jail as the guys against whom you will testify. So we found another way.

I spent a lot of time trying to understand other legal systems, and also the culture of the Tribunal itself. I came to recognize that people approached working in international organizations differently. Among my fellow westerners, there was a lot of frustration in dealing with people who weren't that experienced, or who came from criminal law systems where there's never really
a contested trial. The variation in experiences, and even in capacities, was very wide. I think that Americans were able to deal with this better than those from some other countries. It may come from lessons learned in working within a more diverse environment than exists in the workplaces of these countries. I managed to get along, and worked very hard to get along, with people from everywhere. And if people were differently able, we'd find them something they could do. I wouldn't spend a lot of energy trying to dismiss people, to be frank; it just wasn't worth the effort. So I took an approach that made me avoid racial, geographical, or linguistic conflicts, like Carla had walked into when she fired six people, all but one of whom were eventually reinstated. The price of her approach had been the loss of the power to recommend new hires that resulted in the Registry naming people who were not going to be effective courtroom advocates.

The ICTR had also difficulties with the Rwandan government. At the very beginning, the post-genocide government led by Paul Kagame cast its UN Security Council vote against the establishment of the ICTR because he really wanted it in Kigali instead of Arusha, and wanted the death penalty, at least in that time period. The Prosecutors, particularly Del Ponte, had very challenging relations with Kagame, and there were very few Rwandans hired at the court, hardly any at the professional level, perhaps for security issues it was thought initially. I was there when we finally hired five Rwandan P-2's; we called them "associate investigators," though many of them were competent lawyers. They included Francois-XavierNsanzuwera, who had been deputy prosecutor of Rwanda before the genocide and had tried to prosecute the leaders of RTLM and the Interahamwe. He had a machete scar to show for his efforts. The five were great. And so we began to have a better understanding, and developed good relations with the
Rwandan prosecutor and others. This improvement in relations was reinforced when Hassan Jallow became the Chief Prosecutor in September of 2003.

Just in terms of understanding the language, and the incitement, and understanding Rwanda, I spent a lot of time with the broadcasts, and with Rwandans, and particularly with Mathias Ruzindana, trying to understand what was being said. I remember when I was looking for some of the horrible words that had been broadcast that have been recounted in books with names like “The Graves Are Half Full,” which was purportedly said on the radio followed by the question, "Who will fill them?" It implied, "We've killed half the Tutsis, let's kill the other half." Of course, we couldn't find that; but we had perhaps 10% of the hours of RTLM Radio, so we didn't have it all. It could have been out there, but Mathias basically said, "No, no, I heard something like this broadcast." He was in Rwanda at the time, and recalled the message to have been, "They've half-filled the graves with us, with us Hutus, and if we don't stop them, they will fill them to the top with us.” That made more sense, and was more inciting of violence against Tutsis. One always has to guard against evidence that is too good to be true. When there is a conflict, and particularly when there are mass atrocities, there is a tendency to want to believe that other side was pure evil and that the leaders were devils. Of course, people can do devilish and evil things. But you really have to understand why. That was my approach, gained particularly from my discussions with insiders. One needed the "why," the awful "why" of the genocide, and to look for evidence of conduct that was consistent with it.
But on the proverb question, I'm reminded of an interesting discussion we had in court one day regarding a headline, and an expression, and what it meant. It was on the cover of Ngeze’s Kangura, Issue No. 46, published in July of 1993. It reported on the mass meeting held by the founders of RTLM where they urged their fellow Hutu extremists to buy shares. This was actually held in the rotunda of the Amahoro hotel, which was later General Dallaire's headquarters, and later to be the ICTR's headquarters near the stadium in Kigali. But on a day in July of 1993, it was the birthplace of RTLM. Well Ngeze, who was an extremist, was just thrilled about this radio station being created and if he could have run it himself, he would have. Nahimana and Barayagwiza tended to view him as a street kid and somebody they really didn't want to be involved with. But he came to meeting at the Amahoro and bought his shares and he made himself very much part of its birth on the cover of Kangura Number 46, published right afterwards. The issue was about the creation of RTLM, and had a cartoon on the front that showed Nahimana on one side, and Ngeze on the other, in front of television cameras, speaking on microphones.

Of course, Rádio Television Libre des Mille Collines never was televised. It stopped at being a radio, an FM radio station; theoretically it could have been on television someday. But anyway, the headline above the cartoon had been translated to say, “RTLM: No Hope for the Tutsis.” One of our witnesses had said that these words were spoken by one of the organizers of the meeting. This is in July of 1993. The idea that this radio was being formed with the explicit desire to create a "no hope" situation for the Tutsis, and that this was said at this meeting, would have been highly relevant. Of course, it was in Ngeze’s paper, which had already been
delivering messages that were consistently anti-Tutsi, pro-Hutu majority, pro-1959 Revolution, and pro-Hutu power. But if these ideas animated the creation of RTLM by more respectable people, that would have been very significant.

So when this was being discussed in court, and I can't remember who was presented with the newspaper, they read it in Kinyarwanda, and the interpreter translated, "No hope for the Tutsis." And the defense stands up and says, "Well, that doesn't look like that. That doesn't look like that. What are they really saying? What does it mean literally?" And so the judges called on all of the interpreters, one by one, and asked, "Okay, what's it say?" And they said, "No hope for the Tutsis." "No hope for the Tutsis." "No hope for the Tutsis." But when pressed, they admitted it was based on a famous old Rwandan proverb, and the word "Tutsi" has replaced a word meaning "poor man." The proverb specifically says, “The sun does not shine where the poor man sets his clothes out to dry.” In effect, the poor man never can succeed at anything, he can't even get his clothes dry. Of course the defense is saying, "This is about laundry! [Laughter] This is not about no hope.” But it's an expression like we might use in English: “he has about the chance of an ice cube in Hell.” So the judges accepted the translation. But it was quite typical in a lot of anti-Tutsi rhetoric to take famous poems, famous expressions, etc., and substitute "Tutsi" for something else. But when you understood the proverb, you grasped the clear meaning, which was that this particular group was doomed, and that's what it was all about.

Q1: That's a wonderful example, and it shows how difficult interpreting and translating is in the courts.
Rapp: And do keep in mind, we had to deal with interpretation. I mean, we didn't know who our investigators were, and who may have come for a few months in '95-'96, in the early days in Kigali, and they relied on interpretation. So the written statement was in French or English, but the witness had spoken Kinyarwanda, so you weren't exactly sure what he or she had said. I remember in one of our trials a Kinyarwanda-speaking witness had said a particular massacre had begun on “le lendemain de l’attentat sur l’avion,” which in English is “the day after the attack on the plane.” But in Kinyarwanda the word that was translated into the French lendemain actually meant “on one of the days thereafter.” The problem was that the statement-taker had then proceeded to use that date as the basis for the other dates in the witness’s statement regarding the participation of the accused in the massacre. And this walked right into the rock-solid alibi evidence that the defense would present showing that the accused was elsewhere on these early days. It was a witness statement taken by a long-gone investigator about eight years earlier, but in the end the case was lost.

Q1: This is really interesting, thank you.

Q2: Yes, it's fascinating, and we wish we had two days with you rather than two hours.

Q1: Both Susana and I, we want to jump in, and we want to hear more about this, this and this, and we're really restraining ourselves. It's great to have your thoughts about these cases.
**Rapp**: Anyway, let's get back to it. I don't know how much more you want to do on the chief prosecution phase or whether —

**Q2**: Maybe we should go to that last set of questions.

**Q1**: That's right, and we'd love to talk more. This is really fascinating; thank you so much for all of your comments. We now we have a really broad general question. You have so much experience: you were the U.S. Attorney in Iowa, and you were at the ICTR, and the Special Court for Sierra Leone — which we have yet to talk about in terms of being prosecutor there — then you were Ambassador-at-Large for War Crimes in the State Department. So with all of your experience, when you think about moving from Nuremberg and into the future, what are your thoughts about international criminal justice?

**Rapp**: Well, I'm a believer in the International Justice Project, and am obviously proud of the work we did on the Rwanda Tribunal. If one had to do it over again, there would have been things done differently, and perhaps some of the cases that failed might have succeeded. But that said, justice was possible for the Rwanda genocide that wouldn't have occurred otherwise. I mean, there was no way that the governments of the world, including the United States, would have arrested people like Reverend Elizaphan Ntakirutimana, who was living in Texas, or others who were found in Europe or Africa ever would have been sent to Rwanda to face trial. And to a large extent the military leaders, the political leaders, the media leaders, clergymen, the business
leaders, the territorial administrators and others whom we brought to trial in Arusha, about 85 of them, would have escaped justice. But it was possible there to present testimony of hundreds of witnesses, and have it fairly evaluated, and for about 80% of them to be convicted, and about 20% to be acquitted. It was extremely important.

And also the law that was developed, the actual application of “the crime of crimes,” of genocide. Every case that we had, except for a couple of plea agreements, resulted in a conviction that included genocide, or incitement to genocide as a count of conviction. It was extremely important then, together with the Yugoslavian Tribunal, in laying the foundation for the enforcement of international criminal law, and leading on to the hybrid and mixed courts where the same law was then applied, based upon a treaty agreement between an international organization and the country. And of course, it led also to the Rome Statute, and the explicit ratification of the same body of laws by 124 countries, and its application by a permanent International Criminal Court.

I was involved in the effort to strengthen its enforcement during my service between 2009 and 2015 as Ambassador-at-Large for War Crimes Issues, heading an office that the State Department in 2012 renamed as Global Criminal Justice. I traveled a great deal, as I'm always talking about: a total of almost 1260 days during those almost six years, almost 1.6 million miles, to eighty-seven countries — though not necessarily to the garden spots. But I went 15 times to the Democratic Republic of Congo, and 11 times to Cambodia, and many times to a variety of
other places where there is not yet the kind of justice that we were able to achieve for the former Yugoslavia, or Rwanda, as in the case of Syria for instance.

And I found that everywhere I went, people were expecting that the international community would work to achieve this similar justice for them, including places where one knows how difficult it would be to have an international court. The UNSC was blocked by a Russian (and Chinese) veto on the proposal to send Syria to the ICC. Similarly, the creation of a hybrid or mixed court would be blocked because it requires the support of the government in place, which is impossible to envision while a government responsible for about 80% of the crimes is in power. They're not going to agree to try themselves in an independent process. So you have these challenges, but you have the expectation that the day of justice will arrive. Certainly we've seen situations in Latin America and elsewhere where it was impossible to think about justice at the national level when the crimes were committed, but it is happening now 30-40 years later.

This has led me in part to push very hard for documentation at the time these crimes are committed, with physical documents and media documents, videos with the proper metadata that can verify them, but also preservation of information can lead you back to the important witnesses to get those accounts when you have a trial. It is important, because it does happen sometimes that when you finally hold trials, as they are now doing in Bangladesh for atrocities of 1971, the available evidence does not quite add up. There is not enough to convict or to justify the death sentences that have been rendered. But I think you definitely need justice for the mass crimes committed during that time period.
But as I say, it's not just in places where a court could be created or one could see a reasonable prospect that one could be created; we need to do all we can to protect people from mass atrocities. When I was a United States Attorney, I worked in a system where the victims were not formally represented. But I nonetheless saw it as my primary responsibility to protect their interests. I may have been formally the representative of the state, but I was in fact fulfilling the state's responsibility to protect people from crimes, just as these international courts can be viewed as a manifestation of the Responsibility to Protect, unanimously adopted by the General Assembly in 2005. The global community has a responsibility to protect people from genocide or crimes against humanity, through prevention and other methods. But one of the ways that we prevent crime in our societies is to develop a legal process whereby those who are responsible for those crimes are pursued and arrested and charged if there's solid evidence. And if there's evidence beyond a reasonable doubt, they are convicted and punished. And the expectation that prosecutions will occur creates norms that people don't violate, which is even more durable than the general deterrent effect of specific convictions. I think it is manifest in a number of situations, or in countries that have done the right thing in terms of these violations, that they end up as more peaceful and less violent societies than those that cut corners and do not pursue justice. I think that this project remains a viable one, and it is certainly the most important thing that I've done in my life. It is something I continue to work on in the period after my tenure as a public official.
Q2: Stephen, you've talked a lot about, and we've talked here about, the travel that you've engaged in. And then you talked more recently about your perception of your role in Iowa as representing victims, and justice for victims. Were you always a "field guy"? Were you already a field guy in Iowa? Because that seems to distinguish your role at the ICTR, and then more in the subsequent positions you've held, perhaps from that of some of your colleagues. So I'm wondering where this came from. Were you a field guy in Iowa in a different setting, and did that carry over into your work with the international tribunals?

Rapp: Well, I would say that when I was in Iowa — and Iowa is not a place known for a lot of violent crime. You certainly do have some horrible crime; once I had the murder of five people that I managed after a long period of time to break, and my successor was able to get convictions of the responsible individuals. But as learned from participation in Attorney General Reno’s Anti-Violent Crime Initiative, it involves more than prosecutions in court. I was always very close to community associations, such as neighborhood watch organizations or other groups that come together to “take back the night.” And I thought it was so critical to ally with the communities, and many times it was minority communities that were facing these crimes, and as a result of them all the businesses were boarded up and they couldn’t even buy food for a reasonable price in their neighborhood; they had to buy it in overpriced convenience stores, or take a bus somewhere to buy their groceries, etc. Then, of course, there's the violence that was killing children in the minorities' communities and destroying the whole physical environment as well, with crack houses and abandoned building. This also happened in poorer white areas, which were similarly affected by methamphetamine. For me to work along with those
communities on protecting them and to build bridges between citizens and law enforcement was the way to be effective. I credit that effort, even more than longer sentences or fixing “broken windows” as responsible for the amazing drop in violent crime that we have experienced in America since the early 1990s. It is still working in areas where law enforcement is genuinely partnering with communities. In other places, where there are constant confrontations and where law enforcement is viewed as an occupying army, crime has begun to go up.

In terms of the kind of crimes that I would take on in Northern Iowa, I pursued the nation’s first violence-against-women case, a women shot within a quarter inch of her aorta by her husband. There were bullet holes all over the walls, but she was scared to death of him and would not testify. We were able to use the fact that he'd purchased a gun, after having had a domestic violence conviction for previously assaulting her, in order to convict him in federal court for illegal possession of a firearm. Then we were able to bring in evidence of his relevant conduct at the sentencing hearing, leading the judge to send him to prison for five years. Otherwise he would have been let off with a fine at the state level for firing a gun in the city limits. She and her family were just thrilled that this horrible threat, that had come so close to taking her life, had been removed. She went on to lead a different and safer life.

I really enjoyed working with such victims. I also met regularly with an organization of parents of children who had been murdered. Before I could not have imagined their pain but I drew strength from our engagement. They would often ask me to recount my own experience as a crime victim when I was younger, and I imagined the impact that would have had on my family
had I died as my perpetrators had intended, when I was kidnapped in Washington in 1970. In a way they saw me as their children’s surviving representative.

So, it's that sort of relationship with the victims that I think has been very useful. And whenever I go anywhere, I meet with victims' groups, even those that my colleagues had described as antagonistic. My colleagues might have come back from a meeting saying, "Boy, they were tough on me," or, "Oh, we had a horrible confrontation," or, "Oh, they were angry, I'm glad I'm out of there." But that is not how my meetings would end. Even though I might not be able to promise them very much, we would really end up with a bond. So that's a key part of how I have been able to do these jobs.

And importantly, that said, you know the challenge that we have at the international criminal level is difficult, even when we have a court to fulfill the promise that we may have to victims. In a case at the ICC, I've often visited with the Darfur victims, who are unhappy that no one has been brought to trial because of the absence of state cooperation. I have to explain, "We're trying and we're not getting there.” Yet they are happy that there is someone on their side who is continuing to push every day for justice, and that's not nothing. But it's not as much as I want it to be.

We also recognize that there's not enough for the victims in terms of reparations. Internationally, the Ad Hoc Tribunals had no authority to order reparations; restitution, potentially, but we're not talking about the kinds of property crimes for which restitution would really be practical. In
Sierra Leone, I was quite close to the amputees group, who were good friends, and I sponsored the local amputees’ football team. I remember the team’s manager, Jabati Mombu, whom you have seen the documentary *War Don Don*. In it, he says “when the prosecutor wins, we win.” He was a great supporter and a great help in a lot of ways. But you know, in terms of what I've been able to do for him, he still doesn't have a prosthetic hand, or even a hook. Hardly anybody does; the resources have simply not been there to do an adequate job. And our efforts to chase up Charles Taylor's money did not succeed, in part because we didn't have the resources or the cooperation to get that done. But the victims see the judgments as having made them stronger. The world has made a determination that a horrible wrong has been done to an individual or a group of individual victims of these crimes, and has punished leaders, men who were formerly all-powerful. It is extremely meaningful. That’s what the victims and survivors of these crimes always tell me.

**Q2:** I want to kind of leave open the last question, maybe to follow on this thread of the future of international justice. You raised issues around expectations of victims, and the difficulty in delivering on some of those expectations. You mentioned reparations and challenges with reparations. Where is this field going? What's the future of international justice? What are the key lessons learned, perhaps from your experience at the ICTR?

**Rapp:** And that raises the question of where it goes. You know, we have the Ad Hoc Tribunals basically closing, if not already closed, but with some residual work to complete. And the ICC in permanent premises, and now on the scene but having had difficulty with several cases. You
have the challenges of financing and establishing mixed courts or hybrid courts, institutions that I strongly support and can be valuable. And then, of course, there are situations where no independent court has jurisdiction at all, like a Syria. So with all of the difficulties, many people find that the environment, and certainly the prognosis, for international justice today is much bleaker than one might have predicted even a decade ago.

However, I think that the expectations for justice have been firmly established, and it is being demanded in situation after situation, even where there are active peace processes. If you're in Colombia, it's impossible to sell a peace process to the public, and to ratify an agreement, let alone avoid the ICC, [laughs] if you don't have justice as part of it. Maybe there are alternative sentences and other approaches, but still you couldn't sell peace without justice.

In South Sudan, which remains [sighs] very challenged, and where hundreds of thousands of IDPs [internally displaced persons] are still afraid to go home because of what happened to them, and with violence that became very ethnic in the wake of this political dispute between Salva Kiir and Riek Machar, it was at the insistence of at least one party to the agreement, and the civil society representatives, that there had to be a hybrid court as part of the peace agreement.

And you know, we have crimes against minorities, religious minorities in Northern Iraq. I was just in the Kurdish Region two weeks ago, interviewing victims, including sexual violence victims of ISIS — which US Secretary of State John Kerry and the British Parliament has labeled as genocide — and I found a strong interest in proceeding with prosecutions where ISIS leaders
would be tried for genocide and other atrocities. The victims are looking to the international community and saying, “Okay, now that you have determined this is genocide, what are you going to do about it?”

When President Obama intervened and bombed ISIS near Sinjar in August 2014, he said it was in part because of the potential of genocide. We have already done so much more militarily than anyone ever did in Rwanda. But justice is not just dropping a bomb on somebody; justice is bringing those that you can into custody if they're responsible for these massive crimes; it is bringing them to face their victims, bringing them into a court process. So when I see these things happening, my response is to help organize the process that will get us a court and the resources and personnel to deliver independent justice.

I'll be in the Central African Republic in a couple of months, working with former President Catherine Samba-Panza and others, and through the United Nations on the creation of a special penal court there, under a law that their parliament adopted several months ago, and that is going to operate in conjunction with an ICC referral. The ICC may charge a couple of war lords — maybe three, maybe four — but there are scores of others who would otherwise need to be prosecuted in a national system which, for five years before the conflict broke out in 2013, had not had a trial in the high court of the capital. Nobody was convicted of anything, and even before the Seleka [alliance of rebel militia factions that overthrew the Central African Republic government] took power in 2013. This special penal court will be a mixed court with fourteen
national judges, thirteen international judges, an international prosecutor, presumably an African, maybe some from French-speaking countries in Europe or in French Canada. But that is going to happen, and gradually the resources are coming forward. The UN General Assembly and its budget committees have approved funding for about 60% of budget, as authorized by the mandate of the peacekeeping force. So I see those opportunities continuing to be there, the demand continues to be there, but it's necessary to overcome [laughs] some obstacles. I don't think it's impossible. So I'm cautiously optimistic, as long as we continue to push for justice, from below, from above, from the middle and from everywhere else.

**Q2:** I just want one follow-up question, and then maybe Linda has more. With respect to funding, it seems one of the huge frustrations is going after and getting access to funds hidden by the accused, especially when we're talking about higher-level accused. Should there be some more thought and emphasis on developing a sort of ancillary or side process on following the money? And in view of how difficult funding is for hybrids in particular — but maybe even domestic processes with international support — shouldn’t we really focus more of our energy on trying to follow and get access to that money while doing the main cases?

**Rapp:** Oh, no question that this is needed, and do keep in mind there is money gained from corruption and other things that's out there. There had been a few cases like that of Sani Abacha, the dictator of Nigeria, who died suddenly in 1998. He had perhaps stolen twenty billion dollars, and they were quickly able to freeze some accounts in the UK, and get about two billion of it
back, 10%. I guess that's better than nothing, though he didn't expect to die [laughs]. I mean, if he had had more time, he would've protected all of those funds, moved them into hands of the nominees, and into banking havens. And there’s the whole question of havens, which are getting exposure in the context of corruption shown by the Panama Papers. There is a demand for greater transparency, which I think needs to be met, no matter what the crimes. I would expect that such global efforts could result in recoveries in cases of mass atrocities from former leaders who have stolen a great deal of their countries' wealth. One also needs to look for recoveries from the companies that have been benefited from the privileged access to raw materials that has been provided by leaders, often in return for assistance that contributed to the commission of the atrocities. So there are resources to be found, but it will take a major effort.

Of course, the ICC is very interested in recoveries for its victims. It has a Victims Trust Fund, but so far it has received all of its funding from voluntary state contributions. Though, now in the Bemba case [The Prosecutor v. Jean-Pierre Bemba Gombo], it has been possible to freeze some assets, so they will have a situation where some the convicted individual’s wealth could go to his victims. But the new mixed and hybrid courts need to pursue financial remedies, and that requires the right language in the statutes and sufficient investigative resources to track the funds. Then you need cooperation of other states. As we discovered at the SCSL, no country, other than Sierra Leone, was required to respond to our requests for information. Even where we did receive assistance from one, we discovered that the money had been moved two or three years earlier. We needed to make a request to another state. The money could move instantly and we were limited to procedures that moved very slowly.
And so you find yourself, at best, months behind the money in terms of the kind of legal tools that are available. So there really needs to be a greater effort, and there's, of course, great demand in the global south to recover resources that has been stolen from their countries. I'm hopeful with the global concern about corruption and theft of public resources, and pressures to reach assets hidden in banking havens by corrupt individuals or criminal organizations, we will make some progress.

Q1: And I have one very final question, and that, in a way, takes us back to the beginning. Do you see all the efforts today as a strong legacy of Nuremberg?

Rapp: I definitely see this as a legacy of Nuremberg. When the ICTY was established by the Security Council, Madeleine Albright famously said, "I hear the echoes of Nuremberg today in the chamber." The convictions for war crimes and crimes against humanity at Nuremberg helped define the crimes we prosecute today, and the crime of genocide grew out of the need to prevent and punish the gravest wrongs committed during World War II. Of course, we are now trying to provide justice in courts that rely on state cooperation and not on the armies of the occupying states. But we are still asking, as Jackson said, for “power to pay tribute to reason” and to stay the “hand of vengeance” and submit the defendants to the “judgment of the law.” I know myself, whenever I was called upon to open or close one of these cases, I'd always go again to Jackson's addresses [laughs] and look for the right words—
Q2: [Laughs] They were very powerful.

Rapp: My favorite, which comes in a second paragraph of the opening address is this line: "The common sense of Mankind requires that the law shall not stop with the commission of petty crimes by little people, but must reach men who've possessed themselves of great power and made deliberate and considered use of that power to set in motion evils that touch every home.” That idea of high-level individual responsibility and of the necessity of putting the evidence before independent judges, I think is the legacy of Nuremberg. And that has been greatly fulfilled by the Ad Hoc Tribunals and hybrid courts but it still needs to be projected across the globe.

Q1: Thank you very much.

Rapp: Great, sure thing.

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