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Transcribed Remarks from Loyola Lemkin Award Q&A

Ben Ferencz

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LOYOLA LAW SCHOOL
LOYOLA MARYMOUNT UNIVERSITY
CENTER FOR THE STUDY OF LAW &
GENOCIDE

The Last Prosecutor:
The Remarkable Life of Benjamin B. Ferencz

INTERVIEWER:
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Professor Goldman: Hi, I'm Stan Goldman from Loyola Law School in Los Angeles, and I'm here in Del Rey Beach, Florida, at the home of Ben Ferencz, who's graciously allowed us to come in and ask him a few questions today, and also, discuss with him the Rafael Lemkin Award of which he is this year's recipient.

Ben, how are you today?

Ben Ferencz: Fine. The trick to that is if you want to be always fine, think of the alternatives; when I do that I have every reason to be content every day.

Mr. Goldman: Speaking of the alternatives, when you were in the American Army during the waning days of the war, you were at a concentration camp when it was being liberated. Could you discuss that for a moment?

Mr. Ferencz: Well, it wasn't a casual visit. I had graduated from the Harvard Law School. I had done the research for a professor there, Sheldon Glueck, on a book of war crimes. The Army had immediately recognized that talent and so they made me a private in the artillery, typical Army. But toward the end of the war, we began running into the

German concentration camps. The president of the United States, and Churchill and Stalin as well, had promised that there would be war crimes trials, and so I was reassigned from the artillery to the Judge Advocate section of General Patton's Army. I had met a colonel there who said, "What's a war crime?" I believe I was the first man in the United States Army to deal with war crimes.

One of the assignments, in addition to digging up American fliers who had been shot down and beaten by the mob, was to go into the concentration camps as they were being liberated and collect evidence of the crimes so that we could have trials against the mass murderers who were responsible for all the dead bodies who were lying on the ground, and still burning when I came into the crematorium. So it wasn't just a casual visit. I was there on business of the United States, which led to the subsequent war crimes trials.

Mr. Goldman: Were you able to document these in a way that was eventually used at the trials?

Mr. Ferencz: Some of the documentation was incredible and very fortunate. For example, I seized immediately everything in the the office, which were registers of the people who were in the camp, or transports who had arrived, how many people had died, by nationality and number. The numbers having been assigned in Auschwitz with a tattoo on their arm.

But we had something of the following, which I think is worth noting. One of the inmates was responsible for issuing new cards to an SS club which existed at the camp. And when the club members had used up the thing, they had to issue a new card. He had kept the cards, which he was expected and ordered to destroy, and saved them in a box, which he had buried near the electrified fence. When I came into his office in the camp, he said, "I've been waiting for you. Come with me." He took me to the electrified fence, dug up a wooden box, took it out, and there he handed over to me the portrait of every SS guard who had been in that camp. Gave me name, place of birth, address and so on.

Every time he saved that card, he took his life into his own hands. And he did it deliberately, knowing and feeling that one day there would be a day of reckoning, and that was the day. So that was a priceless piece of evidence, as well as a beautiful illustration of human courage in the face of adversity, and willingness to run risks in order to do the right thing and to bring to justice the criminals.

Mr. Goldman: Where were you born?

Mr. Ferencz: I was born in a little village in Transylvania—there is such a place—as was my wife, to whom I've been happily wed for

seventy years. My parents immigrated to the United States when I was an infant. They were two young immigrant people. My sister was born a year and a half before me; she's Hungarian. I was born in the same bed, a year and a half later; I'm Romanian. An indication that the borders are not so significant. It's how you treat the people that's significant, not the name of the place. My father had no skills which could be translated here, and we lived in poverty most of our lives in the United States.

Mr. Goldman: How old were you when you came?

Mr. Ferencz: I was nine months old. My father had no employment. He had been trained to do handmade shoes, which they didn't need. My mother had two little infants to—they were lucky to get a job as a janitor in a house we could sleep in the cellar. My earliest memories began in Hell's Kitchen in a cellar.

Mr. Goldman: Did you learn any foreign languages when you were younger?

Mr. Ferencz: When I was a boy I cried with a Hungarian accent. The other languages that developed, I learned to speak French, I learned to speak German eventually, but it's not the language that you speak but what you say that's more important.

Mr. Goldman: What were you speaking in the camp?

Mr. Ferencz: Well, to the prisoners, I spoke German. I was an American soldier, but I could speak German to them, but there was a varied nationality in the camps. There were a lot of Hungarians in the camps too, and there were mixed nationalities. The language of choice was English. I wore the uniform of the United States. I was then a sergeant of infantry working in the Judge Advocate section.

Mr. Goldman: And is that how you ended up at Nuremberg as an assistant?

Mr. Ferencz: I stayed on in Germany for a brief time until they could get me out. I was eager to go home as soon as the war was over. I had joined the Army in order to help win the war. We won the war. I said, I'm going home. I did go home, but then. . .

I received a telegram from the Pentagon: "Dear Sir." They had never called me "Sir" in three years. I had been doing the research for the subsequent military commission trials, which were set up in the Dachau concentration camps; trials about which very little is known. I was hired by the Pentagon to go back for the trials which were planned after the International Military Tribunal case. That was the big international Nuremberg trial. The United States had decided that we ought to have additional trials because that small sampling of just a few leaders didn't

tell the whole story.

Mr. Goldman: The famous one which had included Goering, for example.

Mr. Ferencz: Well, Goering was a big name, yes. But we still had to understand how it was that an educated country like Germany could tolerate all these crimes. We wanted the doctors to explain why they performed medical experiments on innocent victims. We wanted the judges to explain why they perverted the law for political purposes. We wanted the SS to explain why they murdered millions of people, including hundreds of thousands of children. We wanted the industrialists to explain how come they worked people to death in their various factories like IG Farben and the Siemens and AEG and other famous German names. We gave them an opportunity to state their case; and if found guilty of crime, to be dealt with accordingly.

Mr. Goldman: What was your position at the beginning when you went to Nuremberg?

Mr. Ferencz: When I came back to Nuremberg I was assigned by General Telford Taylor, who was appointed by the President, President Truman at the time, to head all these subsequent trials. He sent me to Berlin. He said, "Look, Ben, you know all about investigations. You've been doing it during the war. Set up a group, which I did, of about fifty people, to go through all the German archives in Berlin." Berlin had been largely destroyed. But they had so many copies of different things, that we could find it, if not in one office, (the Gestapo building, for example, had been destroyed) but the Foreign Ministry had not, and the Air Force was not. We were able to dig into the archives with a trained group of former German refugees mostly, and Jewish refugees, victims of persecution, and collect the evidence, which we sent down to Nuremberg for the trials which were in preparation.

One of my researchers found special reports of extermination squads. No one could either pronounce it or translate it: "Einsatzgruppen." Literally, it meant "action groups." And there we had daily reports from the field of these troops which came [in] behind the German lines, and as they would put it, they "made the area secure," which meant you murder in cold blood every single Jewish man, woman and child you can lay your hands on. You do the same to the gypsies. You do the same to any communist—all the people that might threaten you. And these reports, daily from the front, top secret, were combined in big, big folders. I had all the folders and all the reports.

Mr. Goldman: How many total when you got to the bottom?

Mr. Ferencz: I had a little adding machine and I began to add

them on my machine. When I reached a million I stopped. I took a sampling. I flew down from Berlin to Nuremberg. I said, "General Taylor, we have to put on a new trial. Here I have here clear-cut, documentary, contemporaneous documents proving murder of over a million people, and I know the names of the commanders, I know the time, I know the place. I have the documents here. You've got to put on a new trial." He said, "We can't put on a new trial because the Pentagon has already approved only twelve trials and we don't have budget and all the lawyers have already been assigned. The trials are beginning. We can't do it."

I said, "You can't let these guys go!" And I was rather insistent. Taylor, who was a very fine gentleman, also a Harvard lawyer, later my law partner, he said, "Can you do it in addition to your other work?" I said, "Sure." So he said, "Okay. You're it." So I became the Chief Prosecutor.

Mr. Goldman: What was your rank, by the way, at this point?

Mr. Ferencz: Well, at that point, when I got out of the Army I was a sergeant of infantry. They gave me five battle stars for not having been killed in the landings at Normandy and the final Battle of the Bulge and so on, but I was still a sergeant of infantry, honorable discharge with five battle stars. That was also very rare to have survived that much. So, at first I wouldn't go back into the Army; I didn't trust them. So, to get me back they gave me the simulated rank of colonel, and when I got this assignment I was promoted to general. So I went from sergeant to general in about four months' time.

Mr. Goldman: How old were you when you became—

Mr. Ferencz: Well, by that time, I was already an old man. I was twenty-seven, twenty-eight, you know.

Mr. Goldman: How old were you when you graduated law school, by the way?

Mr. Ferencz: I was twenty-three. I graduated in 1943. And when I was, how old, let's see, I'm now ninety-five. When I was ninety-five, the Dean of the Harvard Law School gave me their highest medal. I was delighted because the predecessor had been Nelson Mandela. And so I had moved during that brief interval of seventy-two years from having gotten a degree from Harvard Law School to being given their highest honor.

So, that was my first case, and it was the biggest murder trial in human history.

Mr. Goldman: So your first case; you never actually tried a case before?

Mr. Ferencz: I never tried a case in my life. I had gotten out of law school. Of course, I was interested in crime prevention as a career. So I knew all about crime, I knew all about war crimes, having done the research at the library and so on. So my first case was the biggest murder trial in human history.

With no experience whatsoever. I was so inexperienced that I rested my case after two days. I didn't call a single witness. I said, "Why do I need a witness?" Witnesses contradict themselves. Witnesses are confused on cross-examination. I had a thousand potential witnesses who would swear that this particular defendant killed his mother. I said, "I'm not getting into that." I don't need it. I have the contemporaneous document, I know enough about law, and I know enough about evidence. I said, "This is sufficient evidence!"

Mr. Goldman: And under international law, the law that the tribunal at Nuremberg used, evidence which the rules on hearsay might have thrown out in America, were kept in.

Mr. Ferencz: Well, it wasn't hearsay. This was documentary proof, contemporaneous documents certified as top secret, with official stamps on it; that's not hearsay. That's the best evidence you can get.

I wanted to avoid hearsay by not calling a witness.

Mr. Goldman: No contradictions. Nobody misremembering.

Mr. Ferencz: The trial itself lasted about five months, while they came with their phony alibis, and I tore them to shreds.

Mr. Goldman: So two-day prosecution—

Mr. Ferencz: Yes.

Mr. Goldman: —and basically a five-month defense—

Mr. Ferencz: Yes.

They were all convicted. Thirteen of them were sentenced to death. They had never matched that record again.

I wanted to make it clear what the purpose of the trial was because these twenty-two defendants were responsible for murdering over a million people. And I couldn't think of any punishment which would be a balance for that kind of a crime. And my feeling was, rather than asking that these twenty-two people be hanged or shot, which would be insignificant, given the fact that there were thousands of the Einsatzgruppen group, who every day went out and shot Jewish men, women and children. But I thought if I could establish a principle of law, that would protect human beings everywhere.

And I put into that, the philosophy that I have: The right of all

human beings to live in peace and human dignity, regardless of their race or creed. And it was my plea of humanity to accept law as the way of settling their disputes. And I've been working on it ever since. And it hasn't changed.

"The men in the dock proximately were the cruel executioners whose terror wrote the blackest page in human history. Life was their toy and death was their tool. If these men be immune, then law has lost its meaning and man must live in fear." I think that was my last word. And that was quoted just about fifty years almost to the day by Judge Antonio Cassese when he was president of the International Criminal Tribunal for Yugoslavia and Rwanda. He quoted that in his address—his report to the Security Council of the General Assembly of the United Nations. I hadn't met him then. Later, we shared the very prestigious Erasmus Prize given by the queen of Holland.

So the words lived on, fifty years later, and he quoted just that sentence.

I did not ask any sentence at Nuremberg. And that was a surprise. As a matter of fact, the French newspaper quoted me as saying, "*je vous demand la tête*" (I had to ask for their heads), which I never said, and would never say.

I didn't ask for any sentence because there was no sentence that would be appropriate to inflict on these people which would say, Well, justice was done. No justice was done. It was a sampling of justice. There were three thousand members of the Einsatzgruppen who went out every day with the assignment, which they carried out gladly, because they bragged about the body count, murdered Jewish men, women and children, including children shot one shot at a time, including children with their heads bashed against a tree in order to save ammunition.

I had prepared a sheet, which the United States Holocaust Memorial Museum has, and they show it, a yellow pad on which I had the name of the defendants. On the left-hand side I wrote down what I thought the sentence would be. I came to the courtroom early on April 10, 1948. I was the only one in the courtroom when it opened in the morning, and I sat by myself at the prosecutor's table. I put the pad in front of me and I waited for the proceedings to begin. I was not waiting with glee: "Now I'm gonna get 'em," or anything of that kind. It was a somber experience. The whole trial was a somber experience. And then the defendants came in.

The first one was Otto Ohlendorf. The courtroom is so structured that it's on top of the prison, which is right down below the court, and

the prisoners are brought from the prison below in a lift, which sort of goes up and around. It goes round constantly and it stops at the floor. The doors into the courtroom, you can't know that it's a door to a lift or anything. It looks like an ordinary door. The door slides open, the defendants stepped forward, about two steps, put on the earphones, and nod to the judges that they have their earphones on. Then Chief Judge Michael Musmanno, Superior Court of Pennsylvania, says: "Otto Ohlendorf, for the crimes of which you have been convicted, this tribunal sentences you to death by hanging." Ohlendorf takes the earphones off, puts it on the side, nods, steps backward, the door closes and, zoom, he disappears. Next defendant: "For the crimes of which you have been convicted, this court sentences you to death by hanging" —down. Next one, "death by hanging" —down.

And I'm writing: Hanging, hanging, hanging, hanging. I think I felt that some of them would be hanged. I don't remember anymore which ones were which, but my head began throbbing. "Death by hanging." It was a hammer hitting me in the head. I had a splitting headache when it was over.

It was customary at Nuremberg, that the Chief Prosecutor celebrate the end of a trial, regardless of the outcome by inviting his whole staff, the secretary, translators, investigators, typists, to come to his home for a celebration that the trial was over. And I had such a party planned in my house in Nuremberg. I had such a headache—I never had a headache like that before or after—that I went and said, "I'm sorry. I cannot join you." I went up and went to bed. So the analysis of that, I leave to psychiatrists. But that is a clear description of my very clear memory of that day.

The defense raised by some of the top Einsatzgruppen commanders, for example, my number one defendant, Dr. Otto Ohlendorf, who killed over ninety thousand Jews, according to his own report (ninety thousand, including thousands of children shot one shot at a time), he said, "We had to do it in self-defense." That was another argument, self-defense. Nobody attacked Germany, yet, they nonetheless argued, "Yeah, but we knew that the Bolsheviks, the Russians, they planned—the Soviets, they planned to attack us. Therefore, it was necessary in self-defense to preempt that by using all necessary means."

"Why did you kill all the Jews?"

"Well, because everybody knew the Jewish were in favor of the Bolsheviks, in the First World War." "Well, why did you kill their children?"

"If they grew up and they saw that their parents had been eliminat-

ed, they would be enemies of Germany, so we have to kill them too. It's natural, isn't it?"

"Well, why did you kill all the gypsies?"

"Well, nobody trusts the gypsies. They play both sides of the street, so we have to kill them too."

That's Dr. Otto Ohlendorf. Most of my defendants were generals. I picked them according to their rank and their education, they had doctor's PhD degrees. This was his excuse, which he never regretted and never changed. I visited him in the death house, the only defendant I would talk to personally, man to man, and he repeated the same arguments after he was sentenced to death. And we knew—both knew he was gonna hang. So this was the most serious argument. And it's dangerous because the argument that you have a legal right to preempt somebody whom you think is going to attack you, that's very dangerous. But according to the U.S. Military Code, that's permissible.

Three American judges in the Einsatzgruppen trial said, that if everybody who was entitled to assume his neighbor is going to attack him, and then he goes across the street and kills his neighbor and his wife and his children and his grandchildren and his mother, what kind of a world would we have? So the preemptive right to attack, particularly in a nuclear age, is very dangerous to the safety of anybody who lives after I go. So I'd like to warn them that the world is getting to be a very, very dangerous place, much more so as time goes by, and we have to develop new techniques and new ways of settling our disputes without the illegal use of armed force.

Mr. Goldman: How long did you stay at Nuremberg?

Mr. Ferencz: Well, winning the war, which was my first obligation, and then holding accountable the criminals, which was my second, left me with a third obligation: What about the victims? The world is inclined to say, "Well, forget about the victims; it's not our business." No, that was not my position. So, at the urging of some leading Jewish organizations, I agreed to stay on in Germany, which I didn't want to do. My wife was with me. She wanted to go home too, to New York. I set up all the restitution programs in Germany; a treaty between Germany and Israel and the Claims Conference, which I represented at those meetings. It was also unique in history, a treaty between a state which didn't exist at the time the crime is committed, and a private organization. And then I set up a legal aid society to help the victims with the claims. The claims were very complicated. There were a million claims. You could claim various things. And it covered Jews as well as non-Jews. It was open to all claimants. So I set up those three things.

That was taking care of the victims.

That still leaves me with the most important thing: And that is preventing it from happening again. And that's why I'm still here, and that's why I'm still alive.

Mr. Goldman: Well, let me ask you one question before we get on to this concept of prevention and the reason why you're still, luckily, with us, not wanting to give up the fight.

In the late 1990s, there were a number of lawsuits filed against slave labor and Swiss banking; attempts to get restitution. Let's just talk about the slave labor for a moment. People think of this as something which took place in 1999, 2000. But you actually were the pathfinder for this way back in the 1950s. You went to some of the companies that had employed slave labor in Germany and you got them to at least provide some compensation to those who were still alive, who had labored for them during the war. Can you describe how that happened?

Mr. Ferencz: Well, it's best described in a book I wrote called, "Less Than Slaves."¹ They were less than slaves because a slave is someone you try to preserve to continue working for you. The concentration camp inmates employed by non-German industries were being literally worked to death. The Germans planned "*vernichtung durch arbeit*," which means "destruction through work." And if they couldn't work, they were sent directly to the gas chamber, in Auschwitz, for example. And if they were working, and they were unable to continue through exhaustion or whatever, they then sent them also. So this was a program designed, not to just kill people as the Einsatzgruppen were doing in the field, but saying, "Hey, we'll work them to death. It's more efficient." That's what they did.

"Less Than Slaves," a Harvard University publication, which won the prize as the best book on the Holocaust when it came out, has the details of the positions taken by all of these companies, without exception: IG Farben, makers of Bayer aspirin, AEG, Siemens, Rymental, a few of the biggest German names took the same position: First of all, "We didn't do it" — a lie. Second, "they were treated well" — a lie. Third, "they were treated the same as German workers" — a lie. Fourth, "we owe them nothing. After all, if it hadn't been for us, they would have been killed. That's why we kept them alive." They wanted them to be grateful for being worked to death instead of being shot immediately. It was contemptible, the position that they took.

Mr. Goldman: And didn't some of them also argue: "We didn't

1. BENJAMIN B. FERENCZ, LESS THAN SLAVES: JEWISH FORCED LABOR AND THE QUEST FOR COMPENSATION (Indiana Univ. Press 2002) (first published Harvard Univ. Press 1979).

do it, but, okay, since you found out that we did do it, we only did it because they made us do it.”

Mr. Ferencz: Well, that was also an argument. And I went over that with Albert Speer, who was Hitler’s Armaments Minister.

Mr. Goldman: The German armaments—

Mr. Ferencz: The German armaments—yes, under Hitler. He was a friend of Hitler’s too. He spent twenty years in Spandau Prison. I visited there. Big fortress in the middle of Berlin. Now it’s been destroyed.

Well, when he came out—it’s the only time I talked to any of those defendants, I asked him that question. I said, “How is it that I have your reports saying you have to request the inmates, you have to prove that you are able to prevent them from escaping by putting barbed wire, making a concentration camp, you have to make sure you don’t feed them too much”, you know, and so on. “How is it, I have all your reports saying what has to be done and they say, “We were only forced to do it.” So he gave me a very simple answer: He said, “They’re lying.” And I said, “I’m going to write a book on this.” I was in the process of doing it, and I want to be absolutely correct. “Can I send you the manuscript of the book? And I will recount what you’ve told me. If there’s any error, please correct it.” He said, “I will do that.” He had written a best-selling book while he was in twenty years in jail.²

And I gave him my manuscript and on these points he wrote on every page: “*Ich ishtagen*; agree, agree, agree.” He didn’t change a word.

Mr. Goldman: And this was Albert Speer, Nazi—

Mr. Ferencz: This was Albert Speer, convicted Nazi war criminal, sentenced to twenty years in prison. His deputy was sentenced to death and executed. And how come the Germans resented the fact—

Mr. Goldman: He was a very close adviser to Hitler.

Mr. Ferencz: He was a very close adviser and friend to Hitler. Because Hitler wanted to be an architect too, and this Speer was an architect. So they were very—but his position was, “Look, I knew what was happening and I didn’t do anything to try to stop it. And so, I feel in a sense also responsible for Auschwitz.” He wrote that in his book. And that’s why I went to talk to him; otherwise, I wouldn’t have talked to him at all.

Mr. Goldman: So, the argument made by some defense lawyers at Nuremberg, for example, was, “If we hadn’t used slave labor as the

2. ALBERT SPEER, *INSIDE THE THIRD REICH: MEMOIRS* (Simon & Schuster 1970).

Nazi government required us to do, we ourselves would have been sent to concentration camps.” Any record of that?

Mr. Ferencz: Absolutely false. I don't know of a single case of anybody who was sent to a concentration camp because they refused to employ slave labor; doesn't exist. But they had a different argument, they said not only superior orders, which was a phony argument because under German law, the German military law does not require you obey an order which was a crime. And in the case of the industrialists, nobody was ordering them to do anything.

First, it should be clear, the laws which were enacted for compensation and restitution were not limited to Jewish claimants. There was a very nice lady by the name of Caroline Faraday, a devout Catholic lady, who had somehow learned about the Polish Catholic women in the Ravensbruck concentration camp who had been used as guinea pigs by the Nazis as part of their medical experiments program. At Nuremberg, we had had a trial against the Nazi doctors for just those activities. She came to see me in my New York office and said she'd heard that I was getting compensation for the victims and could I do anything for these women.

I had told her that there was a provision in the law, the German compensation law, which I had been involved in negotiating for, and there was no provision made for compensating people who were not in Germany and who were residents in territory of which Germany had no diplomatic relations, which meant the communist countries were out. I told her I would argue the case because I was known as a specialist in hopeless cases, which have a moral content, on a contingent fee. In a case like this, there was no fee at all, contingent or not.

However, to make a long story short, eventually we did succeed in persuading the Germans to enact this special cabinet decision, which became part of the law, providing compensation to victims of medical experiments, even though they had no diplomatic relations with Germany; and the Polish women were, of course, the first beneficiaries of that. The way that worked out was the—I persuaded the International Committee of the Red Cross to take on the responsibility. The Germans refused to deal with me. The German cabinet took a dim view of my putting the heat on them. And they did accept a program to do that finally. And not only the Polish women but any of the women in occupied—in territories which there was no diplomatic relations, could file a claim, and did file a claim, and get compensation.

And I tell the story on my—one of my many stories—on my website, which is www.benferencz.org. It's all there. The details are there.

And it was a very touching scene for me. Our plane was late. It was a Polish airline, and there were about fifty women waiting at the airport, in the rain, all carrying flowers which were wilted, and waiting to say thank you. And I was very moved by that. The Polish government gave me a car, and they said, “You’re our guest. Whatever you want to do.” And I said, “I just want to see Auschwitz.” And so they took me to Auschwitz. I met with the commandant of Auschwitz. I wrote about that too. I had other business with him, connection with the IG Farben claims. It was all very gratifying from my point of view, and from the point of view of the women, because they got compensation. That set precedent for women from Hungary and from Romania and other countries to come file claims, which they did. It cost the German government very much more than they could’ve settled with me if they been so inclined, but they had refused. It was a historical precedent in that we got a special law to that effect.

Mr. Goldman: One very quick question, and I just want to see you answer it. And that is: You took almost all of these cases pro bono. You didn’t get a dime out of it yourself.

Mr. Ferencz: That’s correct.

Mr. Goldman: And that would surprise a lot of lawyers today, that you were able to do that. You know, how were you able to—

Mr. Ferencz: How did I survive as a lawyer?

Mr. Goldman: Yeah.

Mr. Ferencz: Well, that’s a good question. I bought some real estate, I invested in stocks and bonds, I bought municipal bonds, New York . . . Not that I’m recommending what a lawyer should do. I lived very modestly all my life; still do. And I saved money, but I save it for noble causes. I have my old shoes and my old coats and my car. I hope to ride you in it soon. It’s only about nineteen-years-old. Most of the parts work. It’s not a way to fame—it’s not a way to fame and fortune, really, not fortune really, but I get fame—

Mr. Goldman: I’m getting the impression that more of your parts work than your car.

Mr. Ferencz: My parts are still working. (Chuckles.)

Mr. Goldman: In the early 1950s, based on a vote that had taken place in the United Nations in 1948, there was finally in place, at least for signatories, an anti-genocide rule of law, turning genocide at least for signator nations, into an international crime that could be tried. And that was authored by a fella named Raphael Lemkin, who I understand you had occasion to meet.

Mr. Ferencz: I knew Raphael Lemkin. He was at Nuremberg.

He was hanging around with the Polish delegation usually.

Mr. Goldman: He was a Polish Jew who had escaped at the beginning of the war.

Mr. Ferencz: He was a Polish Jewish lawyer. He was a very competent lawyer. He gave me a copy of his book, *Axis Rule in Occupied Europe*.³ He was a fanatic, and determined, since his entire family had been murdered by the Nazis, that we don't just treat it as ordinary murder. This was murder of a special group for a special reason and that should have a special name. After much effort in trying to find the right name, he concluded that "genocide" was a good name because genocide kills the *genus*, the whole group in Latin; and that should be condemned.

Mr. Goldman: And he just created that word. It didn't just exist before.

Mr. Ferencz: He created the word. On his tombstone in Long Island, New York, my son went out and took pictures, it says "Dr. Raphael Lemkin (1900 – 1959) Father of the Genocide Convention." It was a word which would attract attention and which people would remember, rather than mass murder or annihilation or anything like that. The presence of a new word describing the—not that it's a new crime, murder is a crime, but something directed at a specific group in its totality. It had to approach that kind of action in a different way. Give it a different title. I agreed with him.

So the answer—the short answer to your question is because I respected Lemkin and wanted to further his objective. The Genocide Convention is just a special kind of murder; it gets a special name. And it took the United States took forty years to ratify the Genocide Convention indicates the unfortunate truth that not everybody in the world, not in the United States either, shares the same point of view. And we have to take into account that there is a sizable minority which may be able to block, as they blocked the Genocide Convention for forty years, the development of the rule of law. It's up to the young people to recognize that law is much more important than war, and it is the only thing that will protect them against this type of genocide which Lemkin tried to avoid, and which I am trying to avoid. Because the next war is surely going to be genocidal.

Mr. Goldman: But Lemkin's rule, the one he managed to get passed by the United Nations, and which was eventually signed by the

3. RAPHAEL LEMKIN, *AXIS RULE IN OCCUPIED EUROPE: LAWS OF OCCUPATION, ANALYSIS OF GOVERNMENT PROPOSALS FOR REDRESS* (Carnegie Endowment for International Law 1944).

U.S., needed tribunals to implement it. Just at the turn of the new millennium, in Rome, there was a creation of the International Criminal Court. Can you describe what your memory of that was and how you got involved?

Mr. Ferencz: (Chuckling.) My memory of that is very clear. I've written a lot of books on it, called the "International Criminal Court" and hundreds of articles.⁴ I don't know how many millions of people have been killed, some say fifty million, but I know from my experience you never know how many people die in war. They die of heartache, they die of disease, they die – as I've seen them shoveled into a ditch. After fifty million or a hundred million people had been killed, Justice Robert Jackson, who was appointed by the President to be our Chief United States Prosecutor at Nuremberg, tried to lay down the rule that crime is committed by individuals. Law must apply equally to everyone.

The supreme international crime is the crime of aggression because it includes all the other crimes. And whether you call it "aggression" or you call it "crimes against humanity" or something else, there has never been a war without massive rape as part of the war. The Russians had it as part of their policy when they got into Berlin— "Teach them a lesson." No German woman, and no men either, were safe on the streets from being raped when the Russians came in against that "halo choir" which Hitler had built up trying to keep them out. I don't want to get carried away by emotion, it should be condemned, it must be condemned. We live in a very dangerous world where we rely on force to settle our disputes instead of peaceful means and I'm trying to change that.

Mr. Goldman: I've seen the – obviously, there's film of when the ICC, the International Criminal Court, was first created, and I do recall a round of applause for you, personally, at that event.

Mr. Ferencz: I never have had any official position anywhere and that gives me a big advantage because nobody can fire me, nobody hired me, and so I speak the truth as I see it. Many people stand up and applaud, then they go about their business because they have a job to keep and a policy to follow. And so it was in Rome when over a hundred nations agreed to the Rome Statute. The hall overwhelmingly voted in favor of accepting this statute, the Constitution for the Court. And it was an explosion of joy.

It was a great victory in my mind for the rule of law because it was

4. See *e.g.*, BENJAMIN B. FERENCZ, AN INTERNATIONAL CRIMINAL COURT, A STEP TOWARD PEACE (Oceana 1980).

the first time since Nuremberg—the first time in human history—that a truly international criminal court had been drafted and accepted overwhelmingly by the nations in that room.

I was honored the day before to make a presentation to the entire audience, which I did a short presentation in which I laid it down to them very clearly: Let the law take a step forward. Let us rely on law in order to settle our disputes instead of the current system where you send young people out to kill other young people they don't even know, who never did them any harm, and who never harmed anybody. And you kill them, as many as you can, until you get tired of killing them and then you say, "We won." That's a crazy system, and you have to have another element in there.

So you need not only laws condemning them, as Raphael Lemkin was pinpointing with respect to the most horrible of all crimes, but you need courts to carry it out. Rome took a step forward. We created that court, the International Criminal Court.

The element which is necessary is the element of enforcement which is still missing. And as long as we have no enforcement, you have no peace. You will have no peace in the world.

Mr. Goldman: Now, when you say "enforcement," describe what enforcement could look like.

Mr. Ferencz: The enforcement could look like what was originally planned after the hundred million, or fifty million were killed: You have universal disarmament, except for the purpose of national internal defense; you have to have an international military force; you have to have independent powers to approve it. That was the UN Security Council at the time of political necessity, otherwise the Russians, the Americans, would never have agreed. You need law and courts and you need the enforcement mechanisms of a judicial system with the usual enforcement of every judicial system, a police force or whatever you want to call them. We haven't begun to build that.

Mr. Goldman: So if someone is convicted today at the International Criminal Court, let's say of some crime against humanity, some sort of mass murder.

Mr. Ferencz: Right.

Mr. Goldman: What enforcement mechanism is there to, first of all, bring them to the court; second of all, if they are convicted, then to go out and gather other individuals who have been equally found to be guilty?

Mr. Ferencz: Essentially, we have none. They would say, Yes, we have some. Totally inadequate. In 2012, an appeal was sent out be-

cause there was an African leader, Joseph Kony, who was very brutal, killing his own people. The Prosecutor in the International Criminal Court, Luis Moreno Ocampo, was aware of it, but Kony was hiding in the woods, in the wilderness, and he still is hiding in the wilderness. The International Criminal Court depends completely on all of its members and other member states. If a man is hiding somewhere in a country, which was itself complicit in the crime, we have no police force that we can send in there. The blue helmets of the United Nations, they're not supposed to fire a shot unless it's self-defense.

So we lack the enforcement mechanism, and until we recognize that we wouldn't understand why we can have so-called terrorist groups going around and we can't stop them. There's nothing we can do about it because we may call him a terrorist because in our opinion he's a very bad guy, but he has a lot of followers who think he's a very good guy and we're the very bad guys. And when we send a drone and it drops a bomb on a house because there's a very bad guy living in that house, well, we also kill his wife and his two babies and a few of his neighbors. Assume we kill only ten additional people, how many are of the survivors or their family or friends will be determined for himself and for everybody he knows to try and kill every American he can ever catch.

That's the practice today! That's crazy! That's what we do! That doesn't eliminate crime, it encourages crime. We give immunity, impunity to the heads of state who who order these things to take place in the interest, of course, of their view of their country. But good intentions doesn't make something lawful which is criminal, and there are good intentions on all sides. So we have to eliminate the use of armed force as a technique for settling disputes. It's suicidal! It's genocidal!

Lemkin would have disapproved. There are crimes against humanity prohibited, but we have not listed explicitly the illegal use of armed force as a crime. The statute says, "and other inhumane acts are also punishable," and what could be more inhumane than contemporary methods of warfare? Sending in a drone, or worse.

Warning to the young people: We have the capacity today from cyberspace to cut off the electrical grid on Planet Earth. If we do that in any chosen city, everybody in that city is dead. I cannot tell you whether it will be within a day or a week or a month, but if the electrical grid is cut off, in a few days' time, everybody is dead! We have that capacity. The United States has the capacity. Russia has the capacity. China has the capacity. How do I know that? I got it when I was at a conference in St. Petersburg, Russia, and the American general and we were having breakfast. It was years ago. By now it has become public

knowledge so I'm not revealing any government secrets. It may not be knowledge to everybody, but everybody in the business knows it. So with this capacity, the ever increasing capacity to kill everybody on the Earth, we're going to have genocide of the human race if you don't wake up and turn to law, not war.

After Nuremberg, of course, I continued to be very active in trying to create an permanent International Criminal Court. And so, I was pretty well known to everybody in the business. I wrote articles, I lectured, I came to conferences, I set up conferences, etc., so they all knew me. I was actually in Germany at the time doing this kind of thing. I got a letter and a phone call from Luis Moreno Ocampo of Argentina, as to whether I would do the closing remarks for the prosecution in the Thomas Lubanga case, the first ICC case that went to trial. I said, "Of course I will" and so, I went. He had sent me a draft of something. I read the draft. I threw it in the garbage. I was going to recite the typical thing, that we proved that and we proved this, and we proved this and we proved this. I said, "I'll throw it away." I threw it away. He gave me a secretary and I dictated the closing statement.

He said, "Don't forget to put in that 'crime against humanity'—that it's a plea of humanity to law, plea of humanity to law." I said, "Luis, I don't want to be quoting myself. That's bad form. I don't want to be quoting myself." He said, "You gotta put it in. You gotta put it in." I said, "Okay." That was his contribution. (Laughing.) And I also added something, I said, I will not call him, whatever his name is, first name, I've forgotten, "Lubanga." I will call him "Mr. Lubanga." The man has not been convicted of anything yet. We owe him respect. Okay, okay.

But anyway, everybody was allowed only ten minutes. They had other prosecutors who went before me, and all kinds of—you know, lawyers presenting their segments of the trial. I had to read it because it had to be translated. Everything was translated. It had to be prepared. The technology was fantastic. Every judge has before him the whole statement. And if there is a judge who prefers another foreign language, they have it all in the foreign language at the same time, simultaneously. So it went over very well, I thought. And that was that.

Mr. Ferencz's closing argument before the ICC 2012 :

May it please your Honors. This is a historic moment in the evolution of international criminal law. For the first time, a permanent international criminal court will hear the closing statement for the prosecution as it concludes its first case against its first accused: Mr. Thomas Lubanga Dyilo. I witnessed such an evolution. As an American sol-

dier, I survived the indescribable horrors of World War II and served as a liberator of many concentration camps. Shortly thereafter, I was appointed a prosecutor of the Nuremberg war crimes trials which mapped new rules for the protection of humanity. I was twenty-seven years old then. I am now in my ninety-second year, having spent a lifetime striving for a more humane world governed by the rule of law. I am honored to represent the prosecutor and to share some personal observations regarding the significance of this trial.

Mr. Ferencz: And Lubanga was convicted, using child soldiers is a crime, but compared to my Einsatzgruppen, I would never have tried him. (Laughing.) But they had to get going with something. I said, “Can’t you find—can’t you find something better than child soldiers?” I got mass murderers going around, torture, rape and so on. They said, “Well, we don’t have the evidence.” For the reasons which Professor Goldman has pointed out, that we don’t have cooperation from the people in the field and they can go away and hide and what are you gonna do? We have no enforcement. So we take a guy who, by the Einsatzgruppen standards, does nothing. We didn’t prove that he personally killed anybody. But nevertheless, it’s a crime and it’s good to be condemned, and it should be condemned as a crime because people today are still seizing child soldiers. And I think there is some deterrent effect.

And since we’re talking about the deterrent, I’m going to intrude on your time with a question you didn’t ask me: How do I know that it will have any deterrent effect? Because it has already had a deterrent effect. When Tony Blair, the British Prime Minister, came back from a visit to Washington, he calls his cabinet together and said, “I had a meeting with the President of the United States, I was asked if we were with him or against him, and they have decided that in Iraq they’ve gotta change the government. And so, what could I tell them? I said, “Of course, England is with you.” He has all the cabinet there and the general in charge of sending the troops said, “Just a moment, Mr. Prime Minister” —I’m not giving you the verbatim, but that’s the sense of what it was—I have the text. It was published in *The Guardian*, so for those who want to check it. He said, “I spent a lot of time getting Mr. Milosevic in the dock for the International Tribunal for Yugoslavia. I don’t want to send my troops in to get killed without knowing that it’s legal.” Hoorah! Law steps in and a general says, “I won’t go unless it’s legal.” Right there made my efforts worthwhile.

And then what happened? Also informative. He said, “We’ll get a legal opinion. So they go for a legal opinion. And the great expert of

the British Foreign Service, foreign office, was a lady by the name of Elizabeth Wilmshurst, who I knew quite well because when I was at the UN presenting all these arguments and papers, in an unofficial capacity always. She would oppose my attempt to condemn aggression, saying, "It has to be a war, otherwise it's not aggression." And she took a very conservative position. We didn't get along very well. There was the American position, and she sat right next to Robert Rosensthal, the American representative.

Anyway, Elizabeth Wilmshurst writes a position. She says, "I cannot support a government that's engaged in the crime of the war—a war of aggression. I resign." She had been in the foreign service for thirty years. I saw that: "Bravo, Lizzie! You finally got the point." So the Prime Minister said, "What am I going to do? I told the President of the United States we were with him. We gotta do something." Goldsmith, I think his name was, the Attorney General, says, "We'll get another opinion." So they went to another opinion. And in the other opinion he wrote, the Attorney General said, "An argument could be made that it could be lawful." Of course an argument could be made, a kick in the head could be lawful.

He said, "An argument can be made." And with that the cabinet approved it and we went to war in Iraq; the United States committing aggression, in my opinion. We were not at war with Iraq before.

Mr. Goldman: Now, the United States is a signatory of the Genocide Convention, but not of the International Criminal Court. The Genocide Convention is, as I said, written by Raphael Lemkin and passed and finally accepted by the United States, does seem to have in it a certain requirement, an obligation imposed on every country that's signed on to it. How do you interpret that? For example, does something relatively contemporary—for example, ISIS going after the Azizi in Iraq, Syria. If it is concluded by all experts that this is an example of an attempted genocide, is there any obligation that falls on a signatory to the Genocide Convention like the United States to act or is it just that we go, Tut, tut, tut. Don't do that?

Mr. Ferencz: There certainly is a moral obligation, not only on the United States, but on everyone, to behave in a humane way. That goes back to the first Peace Conference in 1898 and before. People are supposed to behave like human beings and don't go around killing people just because you don't agree with them. Unfortunately, the Genocide Convention is full of loopholes. Read an article by Professor Louis Henkin of Columbia University analyzing it when it first came out.

All of these things have loopholes, saying, "Except if our national

interest is at stake” or “our honor is at stake.” You can’t have loopholes like that. And there is a moral obligation, but as long as there’s no legal obligation, you have no way of putting them in jail.

Now, certainly, the criminal law deters some crimes. It doesn’t eliminate all crime. We still have robbers and rapists and murderers. But if we didn’t have any criminal law, you can be sure that that rate would be very much higher than it is today. So it has some deterrent effect. But for the illegal war-making, nobody gets tried. The head of state, he’s immune, because he’s the head of state, a sovereign state; or he’s hiding in the woods and they won’t cooperate with you, even if he had been deposed.

So we have to change our way of thinking and recognize that the illegal use of armed force is a crime. It’s a crime against humanity because the interests of the whole world are involved, and it’s punishable. We need a court, and we need a prison, and we need soldiers to go in and catch him and put him in a jail if he’s found guilty. If he’s innocent, let him state his case.

Mr. Goldman: In 1959, after Farben, one of the companies you went to, to try to get some sort of reparations for slaves who toiled for them under horrific conditions during the war, was the Krupp Company. The Krupp Company continually denied any responsibility, and they finally agreed to send restitution checks only to the Jews, and they refused to send them to non-Jews. I always found their explanation, why they couldn’t give it to non-Jews, after they settled with you for the Jewish survivors, their explanation was, “Well, we gave so much money to the Jews we don’t have any left,” and it turned out it was one-fifth of one percent of the corporate value that was turned over in total reparations. So the idea they couldn’t then pay non-Jewish slave laborers was ridiculous.

Mr. Ferencz: Yes.

Mr. Goldman: I have here in my hand the annual Loyola Law School Center for the Study of Law and Genocide Raphael Lemkin Award, which we try to give out every year to someone whose achievements through life are exemplified—exemplify the man Raphael Lemkin and the goals of trying to, in some way, prevent future genocide as you so eloquently just said—

No laws can ever stop all killing, but laws have a certain effect. They can—

Mr. Ferencz: Deter.

Mr. Goldman: Yes, stay the hand of some killers just by fear that perhaps there will be consequences to it. Without consequences there

isn't nearly as much deterrence.

It is very significant for me personally to be able to give you this award. I would like you to know that when you successfully navigated that minefield that was the Krupp Company, that my mother was one of those slaves who had worked for the Krupp Corporation. When she received her check, I was her only son and she was a single mother, and although it wasn't a lot of money, it came in very handy. And so, I would like to thank you, in part, on behalf of my mother and myself, and the other, almost exclusively, women who were in forced labor in the plants of that particular German factory.

Mr. Ferencz: Yes, there were five hundred and fifty women.

Mr. Goldman: Yes. My mother was one of them. Krupp preferred women workers. I think he seems to have believed that they were less trouble, and they had better manual dexterity than men, so he used them in his factories. On behalf of all of them, departed and still with us, as well as Loyola Law School, I would like to present you, Ben Ferencz, with the 2015 Rafael Lemkin Award and with the \$5,000, if I might, honorarium that goes with it.

It is our great honor to be able to present this to you. I think you're doing us a great favor by agreeing to accept it. I just really want to thank you and I hope that I can give it to you again on another occasion so that you could be the only person to receive two of them. If I can do this again in ten years. We can meet here again and do it.

Mr. Ferencz: (Chuckling) Well, I am very touched by this award, and particularly by the story of your mother. My wife would have been one of those Hungarian girls because I knew the case very well and I knew some of the people who did survive. And it was quite outrageous for reasons which are detailed maybe in the book, but that a company like Krupp, rich, powerful, reneged and felt no moral obligation whatsoever to compensate them. They finally were browbeaten into it, and I'm sure they created a Jewish blackmail story rather than recognize their moral obligation to do something for these girls who were taken from their homes, forced to work, in corridors of a concentration camp, day and night, toiling without food, without adequate protection of any kind. Many of them died. Some survived and received this very meager thing which we were able to squeeze out of them.

So I'm delighted by the honor which Loyola University has paid to me to tribute my friend, Raphael Lemkin, who made a significant contribution to the thinking about international crimes and war. And I assure you that this money will be very well spent. Not for me, but for the cause. Thank you very much.

Mr. Goldman: Thank you so much, we really appreciate it.