



Voices from the Rwanda Tribunal

Official Transcript: Avi Singh (Part 4 of 7)



Role:	Legal Assistant
Country of Origin:	India
Interview Date:	24 October 2008
Location:	Arusha, Tanzania
Interviewers:	Batya Friedman John McKay
Videographer:	Max Andrews
Interpreter:	None

Interview Summary

Avi Singh speaks about his experiences defending Jerome Bicomumpaka, posing the question: Are all government members responsible if genocide occurs in their country? In other remarks, he critiques the legal aid structure at the ICTR, claiming the United Nations is plagued by inefficiency. He stresses the importance of high quality defense to avoid political prosecutions, and discusses the problem of hearsay in witness testimonies. Singh comments that alleged perpetrators of genocide typically view themselves as victims of an international conspiracy.

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Part 4

- 00:00 **John McKay: I'm, I'm John McKay, a professor at Seattle University Law School. I guess I should say I'm a former prosecutor. I, I don't feel you're going to hold that against me.**
- 00:07 No, no, no.
- 00:08 **JM: So, so we're going to proceed as friends here, and you know how, how independent we are here, we're not connected to the ICTR and we are independently funded. And so, you know, we're just very interested in your, in your views on this. I, I wanted to kind of go back to your view of the quality of what's happening in the court room . . .**
- 00:28 Mm-hmm . . . yeah.
- 00:30 **JM: . . . and y-, y-, you spoke about prosecution, you spoke about defense counsel. Tell me about your impression of the judges with ICTR.**
- 00:42 I mean, I, I, frankly I've only had the opportunity to, to really closely observe the three judges in my courtroom, and the three judges I was before when I was in chambers. I mean, it's, it varies, it, it varies. But I think consistently nobody controls their courtroom well.
- 01:08 There are good judges here, there are good judges and some of them, they know the law. Not all of them. Some of them don't know the law; but some of them still have a sense of fairness. But in the end – how do I say this? When I look at how a judgment might go, I'll go first speak to their legal officers.
- 01:30 **JM: Do you feel there's a shortcoming in the, in the rules of procedure or is it a question of judges who aren't adequately managing the court within their, within the powers that they have?**
- 01:43 They have the powers, all judges have the power. Okay, yeah you could say that the rules of procedure should – for example cross-examination. Let's take one instance right. The rules of procedures don't limit cross-examination to what came up in examination chief or direct as you call in the US, but that doesn't limit the judges from exercising that control.
- 02:03 Sure, you know, evidence is three lines, but relevance? You know, that, that can be a bridgehead for a whole host of stuff. Prima facie reliability and probative value – that can be another bridgehead. You can build, you know, on those.

- 02:18 And we've had judges. We had a judge in the beginning called Gunawardena, who died during the course of the trial, who was from Sri Lanka and he was an old crusty high court judge and he'd done this long time, you know.
- 02:30 And he, he got it, you know, and he was, he really limited stuff in the beginning, this – if he had remained and he hadn't passed on, and you know, yeah, we disagreed with him on a lot of things, you do, with the judge. But you can still walk away with respect, on how they're running their courtroom.
- 02:48 So, so it's possible, using the existing rules of procedure and evidence and using the statute, to run it. But, yeah, I mean I haven't seen that. There is – it's happening a little bit more, people say for ulterior versions in, in a court case called Karemera right now. I mean I j-, only can observe it from the perspective of, you know, the decisions that come out and not in a day to day, but it's happening a little bit more.
- 03:18 One thing I've got to say in their favor though. I really, you know, used to be more cynical about the judges here, 'til I went to the special court for Sierra Leone. And you know, I was looking forward to appearing again here, and arguing, not arguing but writing motions here, because, you kn-, it can get worse.
- 03:36 JM: Sort of a backhanded compliment.**
- 03:37 Yeah, it can get far worse.
- 03:41 JM: You, you mentioned the legal aid structure. Filled with bureaucracy as you testified earlier, you said in your interview earlier.**
- 03:51 But not under oath, John.
- 03:53 JM: No, I said testified didn't I, sorry, it's hard to, it's, it's hard to lose these things, I, and because you aren't under oath.**
- 04:00 (_____) . . .
- 04:01 JM: (____), that could be arranged.**
- 04:03 Could be arranged . . .
- 04:03 JM: We could arrange that. But I've had some experience in, in legal aid in the United States and it's my observation that the last thing that court systems fund are legal representation programs for those people who can't afford it.**
- 04:17 Mm-hmm . . . yeah . . . yeah.

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

04:40 Yeah.

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

04:59 Yeah.

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

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

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

05:37 Okay, so . . .

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

05:43 Sure . . .

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

05:47 Yeah . . .

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

05:50 Right . . . they, they formalize it a lot more than other systems but here basically what happens is there's a list. If you have ten years on the court, court in your local

jurisdiction, you don't need any requirement in international law or international criminal law. You can get on that list and then from that list an accused is allowed to select lead counsel.

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

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

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

07:16 So I think it works very well from a financial – but in terms of, you know, really managing the, the case and making sure you have enough funds to do investigations, et cetera, you still have to go back to the bureaucracy to get that out.

07:30 So it's very easy to get paid for your hours if you're lead counsel. It's not so easy to get, you know, all the investigation and that's really where I think, you know, nobody's going to deny you, you were in court, you were paid, you know, those things happen.

07:45 But sort of the investigation part of it and spending time and making sure the case is built in, that's where things are. And then the sheer wastage of not having and they've tried it and it hasn't worked and somehow this is a bureau-, bureaucratic issue that has to work. But you've got a public defender office and you've got cases which have basically the same fact pattern.

08:06 It's going to happen; they are going to establish five guys who have all the documents, all the databases and then, you know, you can, you don't have to repeat that every single time.

08:15 But here, I mean we guys do this. We have this informal exchange with other legal assistants or, you know, "What happened in your case?" Or, you know, "Did you

have that document?" It works sometimes, doesn't work, things slip through the crack. But very often they're funding the same thing being done by a new team.