

United States Holocaust Memorial Museum

Interview with Benjamin B. Ferencz August 26, 1994 and October 21, 1994 RG-50.030*0269

The following transcript is the result of a recorded interview. The recording is the primary source document, not this transcript. It has not been checked for spelling nor verified for accuracy. This document should not be quoted or used without first checking it against the interview.

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PREFACE

The following oral history testimony is the result of a videotaped interview with Benjamin B. Ferencz conducted by Joan Ringelheim on August 26, 1994 on behalf of the United States Holocaust Memorial Museum. The interview took place in New Rochelle, NY, and is part of the United States Holocaust Research Institute's collection of oral testimonies.

The reader should bear in mind that this is a verbatim transcript of spoken, rather than written prose. This transcript has been neither checked for spelling nor verified for accuracy, and therefore, it is possible that there are errors. As a result, nothing should be quoted or used from this transcript without first checking it against the taped interview.

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BENJAMIN B. FERENCZ

August 26, 1994

Q: Hello, Ben.

A: Hello, Joan.

Q: Can you tell me where you were born and when you were born?

A: Well, I can tell you where I was born. I was born in a little village which doesn't appear on any map in Transylvania. And I was born some times in March, but whether it was the 11th or the 13th or the 15th has been subject to serious debate, and that's simply because there were no records kept. Ah I would certainly have been an incubator baby but they never heard of an incubator. I would certainly have had a doctor there but they didn't have a doctor. I would have been sent to a hospital but there was no hospital. So it's a little difficult for me to be more precise.

Q: And what was your name at birth?

A: My name was Berell, and as a result of that I had to adopt a middle name at some time in my career, and I had known that I, knew I was known as Benny when we came to America.

Q: Uh tell me what your . . .name you were born with.

A: The name I was given as an infant was Berell, which was the Jewish name. But when we came to America they decided that was not a suitable name, and so I was called Benny. And ah, that time Benny Leonard was a big prizefighter name, and when I got on to school they decided to change that: Benny was abbreviated, so they called me Benjamin. And then when

I needed a middle initial and I had none, I took "B." and then they had to say what did that
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stand for, so I went back to Berell. So by the time I got out of law school I was Benjamin Berell, or Berell, Ferencz.

Q: And where were you educated prior to law school?

A: Well when we came as immigrants to the United States I was raised in New York. I went through the typical type of New York immigrant lower East Side beginning, and then my father got a job as a janitor -- they didn't call them "supers" in those days -- in an apartment house in Hell's Kitchen, over on 56th Street and Tenth Avenue. And there's where my earliest recollections begin. From there I went to the New York school system, the public schools. My parents were divorced when I was six, so I went out to live with an aunt who lived in Brooklyn and that's where I actually started school, because I was too small and I couldn't speak English, so they wouldn't take me at the school until I was seven. So I was off to a slow start, I was a slow starter. But my education was primarily in New York. I caught up with my education by going to Townsend Harris High School, which was a school for-- with accelerated curriculum. From there I went into City College in New York and from there to Harvard Law School.

Q: What did you major in at City College?

A: At City College I majored in sociology. And interestingly enough, I was always interested in crime prevention. Maybe that related to my early recollection in a highly dense crime area, Hell's Kitchen. If you look at a map of crimes in the U.S., that was black because there were more crimes committed there than in any place else and that may have stimulated my interest in crime prevention, because there but for the Grace of might have gone I.

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Q: Were you an only child?

A: No, I had a sister, an older sister who was eighteen months older than I.

Q: And did you both live with this aunt?

A: Yes. When the parents were divorced they had to find their own way and fortunately both remarried and they both lived happily ever after and we all lived happily ever after. My mother and father were related, they were cousins, second cousins who were assigned to marriage at birth and it didn't work out but their subsequent marriages worked out very well and then we all became good friends.

Q: What made you go to law school?

A: I always wanted to be a lawyer. I don't know where it came from, and I don't know why, because I didn't know any lawyers but somehow I always wanted to be a lawyer and that's why I went to law school.

Q: Was there any particular interest in the law?

A: Yes, I was interested in crime prevention and I had no interest whatsoever in taxation. I thought "I'm never going to have any money, and I'm not going to defend anybody on a tax matter, I have no interest in corporate law." And so I was immediately involved in criminal law, and did very well. I won a scholarship on that at my first exam at Harvard, and then I

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went to work under one of these student aid programs for a professor of criminal law and criminal administration, Professor Sheldon Glueck at Harvard, who was the leading authority in the field of juvenile crime. And that had an important influence on my later career.

Q: When you were in college, the War had started?

A: No, the War started when I was in law school. I recall the December 7th when Pearl Harbor I'm talking about the United States involvement in the War. The War was on in Europe, but the United States involvement began when I was at Harvard. And I remember the day when everybody went down to--to enlist.

Q: Were you conscious of National Socialism, what it was doing in Germany prior to going to Harvard while you in college?

A: Oh yes I was, very much so, but there was then a large movement to stay out of the War during the early years, an anti-War protest movement. And I think I was more inclined to be sympathetic to that movement than to anything else. There was a general awareness of the persecution of the Jews, for example, and I remember a protest rally which took place in Madison Square Garden -- I think my parents went down there -- to protest and call for a boycott against Germany for the persecution of the Jews, so we were aware of that. But it was only when I got into Harvard that this Professor Gluck began to receive reports of the atrocities in Poland, because he had been invited by what was then called the United Nations War Crimes Commission, had nothing to do with the United Nations as we know it today, to be the American member of that. And he funnelled all of those reports to me so I was very

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much aware of what had been happening to the Jews [in] Poland, beginning in 1939, because we got those reports in 1940-41.

Q: And these are very detailed reports?

A: They were quite detailed in terms of the size of the massacres. We didn't have, you know, such details as pulling out gold teeth and making mattresses out of the hair but we knew that the Jews were being rounded up and sent to camps where they were being exterminated.

Q: Were you an Einsatzgruppen reports?

A: No. I never heard the word "Einsatzgruppen" until many years later, so we didn't have the characterization of the nature or the specific units involved in the massacres.

Q: When did you enlist?

A: There's another story there. I assumed that I would go into the Army immediately when the War broke out, and I tried to get into different branches. I first applied for military intelligence, I knew French, and I thought I would be helpful and I knew other languages I knew some Hungarian and Yiddish. But my parents hadn't been citizens for 15 years, and so I was disqualified. And then I tried to get into the Air Force. First, I was too short to be a pilot, and then I tried to be a navigator and then they changed the rules they were altered a bit and then I reapplied and then I failed on my eyes -- missed two letters on the 20/20 line. And then I tried to take training exercises. And while all this was going on I was still in school. There's a very strange story; that my wife tells--there's somebody watching over me.

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To make a long story short, I tried to get in every branch of service without success, until I got out of law school. I then went back to my draft board and I was very concerned that something had happened. And the clerk of the draft board came up to see me and I told him I hadn't been called up. "What's going on here?" And he had received a letter from the Dean, I think it was Dean Landis, in the middle of my first year, saying that it would take another month or two before I finished the first year and they should give me deferment until the end of the year so I wouldn't have a complete disruption. They had granted that and I thought then I could then go in. But they ah this member of the draft board came up to me afterwards and said, "How did you do in law school?" and I was very puzzled by that question, and he told me he had been a student at the Yale Law School in the First World War. And he had been wounded and had never been able to go back to law school and his life had been ruined; and he just wanted to protect me from that kind of an experience. So it was a strange fluke -- I never saw the man before and never saw him again, but he reached his hand out.

Q: Why did you want to go. . .why did you want to enlist so badly when prior to this you --

A: Well, I thought -- I could have stayed out of the War. In fact, one of the first doctors who examined me, you know, I just about made the height requirement and I was having trouble with my stomach -- I always had a nervous stomach -- and he said, "Well, you won't qualify" and I said, "Why not?" and he said, "Because we can't meet your dietary needs" and so on. But I always felt that I didn't want to ask anybody else to go and die for me. So I was trying to get in.

Q: Where were you first assigned? Where did you first go?

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A: Well, the Army of course immediately recognized my talent. I was fresh out of the Harvard Law School so they made me a buck private in the artillery and I was in the supply room as a typist; I couldn't type, of course. And as a matter of fact, they really did recognize my talent: Within 30 days they made me a Private First Class. So I figured out at that rate in 18 months I'd be a General. Well, of course three years later I was still a corporal. Leave it to the Army. I didn't like the Army at all.

Q: Why?

A: I hated the regimentation always. I felt the Army, all armies, it was nothing particularly directed against the American, or the German Army for that matter. I think my hatred of the American Army may have equalled that of mine for the Germans. I didn't know the Germans. But it's the dehumanizing process that takes place in an Army where as part of the training the first thing you do is take human beings and make robots out of them. And I refused to become a robot and that caused me endless grief in the Army because I was always being reprimanded and sent on KP and I refused to march. And I said that was the dumbest thing I ever heard of. I explained to my first sergeant that the reason people march is that it went back to Roman times when the soldiers had to carry their shields on the right side or the left side or over their head and march in formation because they were being attacked by spears from the hills. And if they didn't move in formation the spears could penetrate, and kill them, and therefore it was very important that they moved as a unit, and I said that was very important. I said, "If we are going to attack any Romans with spears on a hill then that's the way we should march. But if we are facing a guy with a machine gun, and you march in formation, he'll kill you all. So what you have to do is not march in formation,

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you have to run, to dig a hole and run in opposite directions." "OK, wiseguy, in the kitchen."

So off I went to the slop pits and I cleaned more latrines and more slop pits than anybody else in the Army, which is very good training for later life.

Q: It didn't change you one bit.

A: No, it made my resentment greater. I think I hate all armies, and I am absolutely anti-militaristic, and I think the notion of training a human being to push a button which will result in killing a million people, or a hundred thousand people, and thinking nothing about it, is a horrendous thing to do, and incidentally that's exactly what the Germans did to the concentration camp inmates. The first thing they did was dehumanize them -- shave off their hair; give them a number on their arm; lose their identity as people, and that's how you break the human spirit, and it works. But it didn't work with me.

Q: How long did you stay in this...where were you assigned first?

A: Well, first we went to basic training in Carolina, which is great, you know, because you march around, march all day, march up and down again, and you do all those absolutely ridiculous things that you do. And I kept on saying "There's a war going on, don't you, is there nothing more important that I can do than just march up and down here, you know, clean out the slop pits?" "OK wise guy, back again into the kitchen", you know. So it was a form of torture (laughs) I felt the United States Army was directing its torture at me personally, and it was a terrible time, and I had applied for officers candidate school. The Major at that time, or Colonel, on the examining board had been my classmate at Harvard and sat next me, and he said "What are you doing here Benny?" and I said "I'm applying for

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officer's candidate school." And he said "Well, of course, of course." And I had no problem passing it, but I was never called. And when we were getting ready to go overseas my first sargent called me in and said "You want to be an officer, here's your application." He tore it up in my face and threw it in the trash can. And my commanding officers felt the same way. I tried every means to get out of that outfit. I applied for the infantry, for the paratroopers, for everybody. And they called me in and threatened to court-martial me for showing disrespect for the outfit I was in and warned me that I would only go out in a box. So, I was in the wrong outfit.

Q: What then happened?

A: Well, we went...we were being trained for the invasion of France and we didn't know then but for wherever the landing would take place. And there was 115th Triple A Gun Battalion of which I was a proud private or corporal at the time. Eventually they promoted me to corporal, and there was the 116th and again when...we weren't on the first wave, but were supposed to go in very soon to shoot down any of the high-flying aircraft. The barrage balloons would have taken care of the low flying aircraft, and when D-Day came around and I was at the Land's End in England waiting for the invasion, my outfit went over. It was a couple of days after D-Day when they had enough beach landed to justify it, and my Captain, who was a new captain on that job, came and he said "you stay here" and again it was one of those times when somebody reached out and I was left and off they went and it was several days later, or a week or so later, before I went across and rejoined my outfit. By that time the Germans had retreated from the beach, and I was perched on top of a hill and manning a machine gun to make sure we didn't get any attack from the rear, but from there on in it was just chasing the Germans all across Germany. General Patton was the

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commanding General, and his tactic was to pursue and chase and sometimes I felt it was a rather dangerous position. If the Germans had counter-attacked we had no way of repelling them, but they didn't, so off we went. And then of course I was with that outfit all across France and Luxembourg and Belgium and I found out when I was finally discharged I had been in five campaigns and it was every campaign in Europe. From the Battle of the Beaches of Normandy to the Battle of the Bulge. But it wasn't necessary for me to be shooting people through the head during that time.

Q: So you didn't shoot.

A: No. I mean the outfit was pursuing. We were fired upon. And I was under artillery fire very frequently and tank fire, but we did shoot down a lot of planes, usually American planes. We didn't call it friendly fire then, which was a nice euphemism we invented later. But the planes that were coming in, American planes, they had a gadget called identification friend or foe which was supposed to give off a signal telling us that they were American planes, and either they had forgotten the signal or the equipment was off or the plane had been damaged. In any case, we shot them down, and I had to go out on several occasions to pick up pieces of American flyers and hope that I could find a fingerprint or a bit of a finger to identify them, and the fireworks, of anti-aircraft fire, may look very nice on Fourth-of-July, but I don't go to Fourth-of-July celebrations. I don't like fireworks.

Q: I think we should stop.

A: Thank you.

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Tape #2

Q: Ben, did it make a difference that you were a Jewish soldier?

A: Certainly it made a difference. I was in an outfit which was commanded by antisemites. Most of the, or many of the people, let me say, in the Army were carryovers from the First World War, or people who couldn't get a job in civilian life, and a lot of rednecks, and very frequently I was referred to as "Jew Boy" and when I was given some of the dirtiest assignments I was told "You're a Harvard man, Jew Boy, do it again", you know, and they put me through it again and again sweeping the floor, and it was never clean enough, no matter what. And they just thought that was great, and they absolutely resented any effort of mine to get out of the outfit or to become an officer or anything of that kind. So there was a lot of antagonism between me and the military.

Q: Was this typical?

A: I think it was...well I can't really talk about typical of other outfits, it was very typical of this outfit, yes, for a long time. No, it didn't apply of course to all officers, but it certainly applied to my first sargeant, who they took out of the outfit when they got to the shooting because I am sure somebody would have shot him. I am not sure who it would have been.

Q: When did you get involved with the War Crimes teams? When was that?

A: I was in, I think it was before we reached Luxembourg, because I recall work on Adolf Hitlerstraße in _____, which is in Luxembourg. I was called out of the outfit one

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day and told "You're being transferred out," which was a great shock and a surprise to me because I had tried to get out in the worst way and I couldn't, and I had been warned, that you know, that I would be shipped out in a box, and they'd send me to front-line infantry and make sure I got killed, and so on. And then I arrived at 3rd Army Headquarters and the Judge Advocate section. I had never seen a Judge Advocate officer before, and I was told that I had been recommended for transfer from Washington, and that the unit had been instructed to set-up a War Crimes Branch in the U.S. Army. And the Colonel who told me that said "Your name has been given to us, and what's a war crime?" And that was literally true. He had no idea what was meant by a war crime. A nice enough Colonel, but he had no such experience, and I said, "Sit down Colonel, you're about to get an education." And he sat down and I explained to him, because by that time I was quite an authority on war crimes. I had done all the research for a book by this Harvard professor Gluck, and I had read everything that had been written about War Crimes, the First World War and way back, and my job was to make summaries of everything that had been written, all the articles, all the books, and I had a very retentive mind and I knew everything about war crimes. I was the only one who knew anything about it. So that's how that began.

Q: What was the next stage? What did that mean once you were assigned?

A: Well, they had five Colonels and I was the only enlisted man who was assigned to that outfit. The five Colonels were people who were shell-shocked, mostly tank officers. I don't recall at that time that any of them were lawyers. They certainly had no idea whatsoever about war crimes. Some of them I never saw sober. Some of them were obviously shell-shocked, and I said, you know, to the Colonel, "Look, we need help." You know, we . . . we were beginning to get reports of various crimes against American flyers who had been shot down, places that

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had been liberated, and mass graves in different places, and within a few days the first reinforcement arrived, and that was a fellow wasn't much bigger than me, and by the name of Jack Nowitz, and he was a Yale Law graduate and he was a buck private from an engineer battalion where he had been busy building a bridge when they pulled him out because of his knowledge of languages and being a lawyer, and he was covered with mud and he stood at attention and he saluted me, you know, and he said he was reporting for duty, and I said, "Get off it, soldier, I'm just a corporal," and that's how it began. And after a while we began to bring some more people in. But originally it was just the two of us with a few others added, a few enlisted men mostly.

Q: And then what did you do?

A: Well, the typical early investigation would be we had a report, for example, of American flyers, parachuters, who had come down and been killed by the populace down below. And we'd received such a report from some informer or somebody in the field and had come through military intelligence down to the War Crimes unit, and what I would do then was I'd get into a Jeep, and take off for the location, and very often by myself, or I'd have a Jeep driver and I'd arrive at the site and go to the nearest authority whether its a Bürgermeister¹ or a police chief or, and say that we have a report of war crimes being committed here, and "Do you know anything about this?" Of course, "I know nothing about it." "Sit down and write out an affidavit. And describe everything you know and if you lie you will be shot, and I want you to arrest everybody within the next, you know, the next 500 yards of this place, and bring them in here and sit down and have them write statements. Explain to them. I'd find somebody who spoke German, at that time I had never studied German, and I learned

¹**German:** mayor or other high municipal official.

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German, of course, after a while, but at that time my German was very broken, it was Yiddish mostly, but I managed to make myself understood enough to get the job done. I would say "Get somebody who knows English and German and you, you're the translator. You explain to these people, they would arrest maybe fifty or seventy-five people and say all of them sit-down and write out exactly what happened. Anybody who lies will be shot." And they would stand at attention and tremble and sit down and write. And separately, you know, keep them all apart. Then I'd collect the statement and say, "Now read 'em to me." And they would read them to me, and pretty soon if you read seventy-five statements you get forty of them telling you the same thing. The others saying "I wasn't there" "I never heard of anything" "I happened to be milking the cow at that moment," and so on. But with the forty statements you knew what had happened. So what I could write, you know, on this and this date an Allied plane was shot down, two American flyers were captured, brought to the middle of the town, there they were beaten by the populace or they were taken to the Gestapo headquarters and it varied, there were many such cases and then I would go to the Gestapo headquarters to see if I could catch the man that had invariably fled, but I'd capture the records and find out who was in charge. Then I would go try find the bodies, and dig them up, and sometimes I dug them up myself, sometimes I'd call the graves registration and have them send in a crew or sometimes I'd stop the Germans and say to start digging, and I'd unearth the bodies, call in a camera crew, the Signal Corps, take pictures, wash them down, try to identify them and then write a report and issue an arrest order to all units to arrest So-and-So and So-and-So. By that time prisoners of war were being captured and being identified and hold them for war crimes trials. So, that kind of an investigation I could do by myself. And I did. And eventually these people were caught, and by eventually I mean sometimes a matter of weeks, months and we did set-up war crimes trials in the Dachau concentration camp. And I hammered that sign up saying United States Army, 3rd Army,

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War Crimes Unit, Dachau, and that's where we began as an act of poetic justice. The first war crimes trials, long before Nuremberg, took place in the Dachau concentration camp, on the basis of the evidence collected by me and Nowitz and a few other guys like us who went out into the field and collected the evidence. That's before we ran into the concentration camps, of course, that was a bigger operation.

Q: How many trials did you have there prior to the Military Tribunals?

A: I don't know the exact number because I left. The trials were already on while I was there, but I left and they were still going on when I came back a long time later, a year or so later, and was prosecuting at Nuremberg. Those trials were still going on. To give you some idea of the flavor of those trials which I thought were terrible, I thought they were terrible: They bore very little resemblance to a normal due process of law and I must confess that I was partly guilty and responsible for that kind of behavior. I mean, I, if I had an SS man in my custody and he insisted upon lying that he wasn't even there when I had twenty witnesses saying he was there, he usually ended up with a confession. It was not that I had to shoot him through the head in order to get it, but he certainly was of the impression that if he continued lying I would. And under those circumstances I would always bring in an officer and tell him to go and get that confession again, because the one, the original one, would probably not stand up to close scrutiny. But the trials themselves at Dachau were, the judges were officers with no legal training, usually, who had no better assignment. The procedures were very informal. I'm not suggesting that we tried and punished innocent people: on the contrary, they were all guilty as hell, otherwise you wouldn't have tried them in the first place. You had too many guilty ones let loose, but, so I was not very impressed with the quality of the law work being done at Dachau, on the contrary, in some of my letters that I

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wrote home I said this is a disgrace, that, you know, we've forgotten our ideals and all that. So it was a difficult time and most of my more interesting times really were in apprehending the, some of these relatively minor criminals or collecting the evidence of these smaller crimes. There were also some massacres of civilians in different towns, mass graves, things of that kind. But nothing near like the concentration camps themselves.

Q: Before we get onto that, were you frightened when you went out out to investigate?

A: No.

Q: You weren't afraid?

A: No. I was mad. I don't recall ever having any sense of fear. There was some sense of outrage. It was not a sense of vengeance. That was not one of my emotions. But I was quite determined and it was a job that, you know, I realized had to be done and I was so engrossed in getting the job done that there was no time for fear nor was there any real fear. I mean, I, I don't know that emotion.

Q: Did you actually have authority to go into a place and say "I'm arresting you, you seventy-five" or was this something you made up on the spot so you could get what you wanted?

A: Well, according to my rank, I had no authority whatsoever, and I was aware of that, but I had more authority than anybody else because nobody else knew or cared what I was doing and in order to give myself that authority I had written out a an authorization request from the Commanding General who was Patton saying that all units are requested to give all

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assistance to T-5, that's Technician 5th Grade, otherwise known as Corporal, Ferencz, who is conducting War Crimes investigations on behalf of this headquarters and all assistance should be given to him. And using that I could go into a Colonel and say "Look here, I am here on a war crimes investigation and I want you to send me a company of troops to surround this area or to hold this area closed or sealed" or whatever, whatever it was I needed to do. Now sometimes the Colonel would say "Oh no --" I said "Listen, you want me to call up Patton directly? If you do, I will. And he'll straighten you out!" And I had no respect whatsoever for military authority. I had nothing but contempt. The higher the rank, the more contempt! And it invariably worked very well. So that I had no difficulty, in ah because I wore no insignia of any kind and I refused to wear insignia. When my Lieutenant Colonel was promoted to full Colonel in recognition of his splended work for war crimes, he called me in with great pride and he said "You know," he said, "I realize this is done, you know, as a result of your efforts and to show you my appreciation I want to give you these stripes" and he made me a sargeant. So I took the stripes and I threw them right into his trash can and I said "I am sorry, sir, but these stripes only interfere with my work. I cannot go around as a sargeant and do what I'm doing because I cannot command the authority that I need to do the job. So you'll excuse me if don't wear them." And he was of course very insulted by that and I think the final act that he did before he was transferred out before I think Colonel Bill Denson came in, was he left instructions to have me reduced to a private.

Q: You were a Colonel?

A: I was in a...that was my Colonel, he was going to make me a sargeant with three stripes, but I couldn't do my job as a sargeant either and so I refused to wear the stripes, and all of my war pictures you'll never find any insignia on me.

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Q: Was this, was this your real reason for not wanting the stripes because of the fact that you couldn't do your job?

A: Oh yes, absolutely, absolutely. I...It goes back to your first question: what authority did I have? A private, a corporal, a sargeant has no authority in the Army to do any of this, but the job had to be done and so I got the job done, and I didn't pay any attention to the absence of military rank about which I cared not one bit. You know, they were wanted to promote me to sargeant long before and I refused. I...somebody else who was a buddy of mine, and been waiting long, I said, "give it to him, I don't want it."

Q: When you left those Dachau trials, that's before the military tribunal came in for the Dachau camp trials.

A: Yes...yes.

Q: What was...where then did you go, you went to the concentration camps and...?

A: Well, I described to you the earliest war crimes investigations which were killing of hostages in France, in Belgium, Malmédy Massacre², for example, which is better known one...shooting down of Allied flyers, and then we ran into Buchenwald first. I had never heard the name Buchenwald. That was something just as I had never heard the word Einsatzgruppen or Babi Yar, which I was much involved with later. We didn't know those

² An incident during the Battle of the Bulge in which eighty-six members of the U.S. 285th Field Artillery Observation Battalion were captured, herded into an open field, and shot to death by members of the 1st SS Panzer Division on December 17, 1944.

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names. We knew there was a concentration camp. A report would come in to 3rd Army headquarters that so-and-so tank division is approaching an area in which they believe there is a concentration camp or has just overrun an area in which there is a concentration camp, and the conditions are horrible, et cetera, and that would come to me, the report would come to me, and I'd say I am going out into the field to investigate that. Later on we had others who would go out into the field, but I was very eager to go out, and because I was the most experienced man in the outfit and nobody else knew what to do, in fact, I would go out. And going out meant I'd get there as fast I possibly could, usually on a Jeep, find out which unit was going in or had just entered, and go on into the camp. And what I would do immediately would be to secure the records. There was in every camp a Schreibstube, or an office. I'd go into the Schreibstube and immediately beschlagnahm³ the Schreibstube which means you'd seize, I'd seize the Schreibstube and everything in it. Nobody could in, nobody out. All records are confiscated and secured. For example, in Buchenwald, I siezed the Totenbücher, the death books, which were the registries of the people killed in Buchenwald. There were long big black books, bound, there were not the loose leaf folders, but there they recorded the name of all the inmates as they were killed, and they would put down next to them the date, the name, the date of birth, usually, if they had it of the inmate, and his number, of course, then the reason for his death, and they were all so obviously fictitious. "Auf der Flucht erschossen" -- "shot while trying to escape" or "Typhus" -- "typhoid" or other diseases. Those books then became the basic evidence for what had happened in the camp and who was there. Then I would follow that up by bringing in witnesses from the survivors to take statements from them describing what had happened in the camp. And by the time I got through it usually took two or three days and not usually more I had a complete picture. On the basis of that I could go back to headquarters, write a report and issue arrest warrants

³**German:** "Beschlagnahmen": to seize or confiscate.

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for everybody connected with it.

Q: Okay. Let's stop.

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Tape 3

Q: Ben, let's talk again about Buchenwald. You said there was a prisoner there who had been burying some material that you wanted to talk about.

A: I'm not sure it was Buchenwald, in fact. I should perhaps mention that I was moving very quickly from one camp to the next. As soon as I secured the evidence in a camp and I heard there was another camp someplace else, I raced off to the other camp because if you didn't do that, everything was destroyed. The American Army, for one, would come in and destroy everything they could, and the inmates themselves tore everything apart. So I was moving from one camp to another -- Buchenwald: I didn't remember the name Buchenwald at the time. I remember Ohrdruf because we took pictures at Ohrdruf and these additional slave labor camps all around the main camps -- there were many of them. So I would go from one camp to the next -- Ebensee, Mauthausen, Flossenbürg, Ohrdruf, these are names that I recall and that come to mind. Sometimes I knew it at the time, usually I didn't, I just knew it was a concentration camp. And in one of those camps -- it may have been Buchenwald but I don't think so, it was probably Ebensee or Flossenbürg, or it wasn't Mauthausen, it was too big -- one of the inmates in the Schreibstube came to me as soon as I came in and he said, "I have been waiting for you" and I said, "What for?" He said, "Come with me" and he took a shovel and he took me out of the room, which was their office, and we walked away into the camp next to the electric fence which was part of the surrounding barbed wire, and there he dug a hole; I remember it was right near the post of the fence. And he dug a hole with the shovel and took out a bundle. It was a box wrapped in what looked like rags. And he said, "Let's go back to the office." I went back to the office and he opened this. Well, apparently in that particular camp, the SS had their own sort of social club where they went for drinking

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at night and membership in the club was evidenced by a little identity card, two sides folded together, inside was their photograph and a checkoff how many times they attended the club. And it had the name of the man and the date of birth, other identifying things as well as the membership. When the stamps were filled on that club, on that card, he got another card, and this inmate had to type up a new one and destroy the old one. Instead of destroying the old ones, he saved them. Now every time he did that he ran the risk of being killed for disobeying orders. But he saved them and he put them all together and he buried them, knowing that one day there would be a day of retribution. And for him to have risked his life every day and yet retained the hope that there would be freedom for him some day, I thought it was a marvelous thing, and it was tremendous piece of evidence, because I had the record and the photograph and identification of every SS man who'd gone through that camp in that period of time.

Q: What was it like for you to into these camps? What did you see?

A: Well, I'm sure that everybody by this time has seen the photographs of what the camp looked like and bodies lying in the dust, naked, a little item of clothing on, many of them not moving, some of them stirring, mostly bones; human beings, men weighing fifty, sixty pounds. The medical troops came in at the same time, people were being hosed down with the hose held up with one hand and I've done that too -- hose them with the hose held in one hand and hold up a man in the other hand who weighs about 40 or 50 pounds and is nothing but bones. And then of course the piles of bodies in front of the crematoria stacked up like cordwood, and on the on the carts that were dragging them to the crematoria, these open carts just loaded with bodies, hands and arms hanging out on all sides. I remember all of that very vividly, of course, but what struck me I think as most appalling of all were the human

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beings who had been so dehumanized that in their appearance they looked like rodents -- they would go on all fours, hands turned to claws, looking for some potato peel, scurrying in the garbage piles just like rats, you know grabbing, trying to find some bit of food, stuffing it into their mouths quickly and looking around you know furtively, just as you know you would expect any animal. And these were human beings who had been dehumanized by this terrible process to which they had been subjected. And I always marvelled in later years when I'd meet people whom I didn't recognize, of course, but I knew they'd been through that and they seemed to be quite normal. I knew that they couldn't be quite normal but if you touch some spark, you know some spot, the crack shows. But this whole process of what happened to human beings struck me as more terrible than people who were on the verge of death or who were dying out of starvation or disease and so on. In other camps like Mauthausen -- I remember Mauthausen very vividly, because it was a very big camp and I got in very early, and it was a terrible Vernichtungslager⁴, really, where they were killing people by throwing them off the cliff into the quarry down below. Gusen I and Gusen II⁵ and of course the mass graves everywhere. And I, there was typhus in the camp and I couldn't spend the night there, I had to get out of the camp as fast as I could, I did my work and got out, I wouldn't spend the night there; and dysentery, people lying around in their own filth and excrement; you know one on top of the other, in the bunks you know, one on top of the other -- three, four, five in a bunk, maybe somebody above, and everybody sick, you know throwing up, blowing at both ends; and the stench and the disease and the despair -- somebody holding up a hand for a glass of water or a drink, or something like that. So, it's really quite unimaginable to a normal mind. And that people could subject other people to that kind of treatment is something I will never recover from. Go on with your questions.

⁴**German:** Extermination camp.

⁵Subcamps of Mauthausen.

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Q: Did you have to leave, when you would go into a camp, for a little while and just get out --

A: Not to get away from the scene. The work was so overwhelming that I never faltered in the job, I never felt that I had to stop because I couldn't carry on. I carried on very well, and it was though I just built a wall to cut it out, you know, and just to go ahead and do what had to be done and don't let it impact on your emotional response to it. So I left the camps because conditions were such that it was dangerous to stay but only after I'd done what I had to do.

Q: Were these prisoners ever in any condition so they could be talked to? I mean, did you take names--

A: Oh yes, oh yes, there were many of them who were, and in fact that's where I used...those were ones from whom I collected statements immediately. You know, some of them were in fairly good shape and they were in such good shape that they went chasing after the SS. I described in one of my letters a scene of an SS man trying to escape being murdered by the prisoners who were chasing him, and he wanted me to take him prisoner. And he had a civilian jacket on, he put the civilian jacket on in an attempt to escape and he jumped on the jeep and said, "Please take me prisoner." I don't remember any more if he was speaking German or English, any more, probably German. I said, "Show me your papers," and he showed me his papers, and I could see he was an SS man. I said, "These are not your papers." They were not his; they were some other papers he'd picked up somewhere. I said, "I don't take civilian prisoners" and pushed him off. And at that point these two who looked like Russians, inmates, came across the hill on a bicycle and they had rifles strapped over their back and they took their rifle out and he saw them coming in and he ran in front of my

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Jeep. There were troops moving up to the front -- trucks and so on --and just as he ran in front of the Jeep, one of the men, the inmates shot him in the back and he fell in front of this truck, which hit him and sent him flying to the side of the road. And the truck driver, jumped out, a GI, and he said, "I don't know what happened, he jumped in front of the truck." And I just said, "Keep on moving soldier. Get on." You know, and I rolled him into the ditch. So there was an upsurge of the inmates themselves on a rampage. As soon as those gates were opened, they went on a rampage and any German who was within reach, rued the day, you know they stripped their homes, they raped their women, they burned the houses down you know. So there were many who were quite capable of still working and thinking and talking, and those who seemed to be knowledgeable and better educated, I tried to catch them immediately and have them give me a statement you know, what had happened, where they came from, describe who was in the camp, what the circumstances were, describing some of the torture mechanisms which existed in some of these camps -- chains, and walls against which they shot people, and people were thrown on the wires and all that. So there was an ample field for credible reliable testimony from the inmates themselves, and I collected those wherever I could.

Q: Was this revenge rather common? Because some people have said there was very little revenge, or no revenge, the Jews didn't go out --

A: Well, it depends on how weak they were. A person who could hardly lift their head had no feeling of revenge. These two -- I think they were Soviet POWs in the camp -- they were not that weak, they wanted to kill as many Germans as they could get a hold of, and they did. And I've seen them beating inmates to death, burning them alive -- well, you know, it was a very gory business.

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Q: You mean not beating inmates but beating SS--

A: No, beating guards. They caught the guards, they caught the camp commandant, beat them up not to kill them but because they wanted to burn them alive, and they did. I suppose as a soldier I might have tried to stop them but I was usually alone, and you know the troops and tanks had come and gone, passed on ahead, and those who had been able to flee, the SS officers, they fled as fast as they could, but the guards that got caught were seized by the inmates, and taken care of. Quick trial. Or some of the Russians said to me -- I'd met the Russians outside of Weimar, we came into Buchenwald on one side, the Russians were coming in from the other, I met with the Russian troops and we were sort of fraternizing, difficulty of communication but there were some with whom we could communicate. And one of them said to me, he said, "What's the matter with you Americans--what are you, crazy? You know what they did, why do you ask them what they did? You're crazy! Kill 'em, Kill 'em!" And they did. And they did! We had a different approach to it at the time, I'm not sure which was right in the long run but that was it.

Q: Do you know whether Americans-- were you ever there when American soldiers ever shot SS?

A: Whether Americans ever shot SS? I never saw that, no. No. I mean except perhaps in combat, I mean if they were fired at when entering a camp I'm sure they fired back, and I'm sure there were casualties in any such exchange. But just taking out SS men and saying for revenge "I'm going to kill you now," I, I never saw such an execution nor have I, or do I recall ever having heard of such an execution.

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Q: Were there women prisoners...were in these camps?

A: Oh yes. There were many women, and there were little children, which surprised me too. And there were young boys. The boys were usually abused by the SS guards, homosexuals and others, in exchange for favors in the camp. And there were little children who were born in the camp and were somehow concealed by the mothers in different places and, you know, in these slave labor camps surrounding -- there was a whole network right outside the main camp. Different distances, whatever they were able to do by way of work, and sometimes the very small children were put to work on doing things -- curling wires and doing and things where a little hand was better than a big one. So and it--remarkable that they survived. There were gypsies as well who survived and they were also marked for total extermination. But very soon you'd see a gypsy with a wagon and a horse, which of course he had requisitioned somewhere, "liberated" as they called it.

Q: So did you go into many camps and subcamps during this period prior to the trial?

A: Yes I did, I moved from one camp to the next as fast as I could to collect whatever evidence I could as quickly as I could. Because if you got there too late, it was too late. I recall going to Berchtesgaden, up to the Eagle's Nest. It was important to get into the camps as quickly as possible, otherwise the evidence was destroyed. The troops have a way of celebrating liberation of any place by smashing everything in sight. And that may be very good to relieve the tension but it's not very good for collecting war crimes evidence. So by the time I got up to the Eagle's Nest at Berchtesgaden, the main window looking out at this beautiful view looking down on the Alps and so on, there wasn't a splinter of glass left: that was gone.

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And every file cabinet and every bathtub had been filled by a GI leaving his best regards to Mr. Hitler; and the same thing appeared elsewhere. So there was nothing there which was no longer usable⁶-- not that there had been very much there in the first place, it was all in Berlin, what had been in the Bunker and elsewhere. But it was very important to preserve the evidence to move in quickly, and this is a problem which I'm sure war crimes investigators are having today.

Q: So what then happened? You were gathering all of this evidence -- and by the way, where is Jack Nowitz all this time?

A: Jack Nowitz is doing the same thing some place else, and we'd get home together and meet at the office and say, "Where have you been?" And he'd say, "Well, I've been down so-and-so, where have you been?" "I've been so-and-so." Occasionally we'd go out together, on a job you know of some kind, and "you cover this and I'll cover that." And then we'd come back to our office so-called. This was the Third Army Judge Advocate headquarters, which kept moving as this front kept moving up. It was either in Erlangen or it was in Munich or it was someplace else, and you know we usually took over a German Kasern⁷ and we had a room and a desk and a typewriter. So I would get back there with whatever notes I had, whatever documents I had, and write up a report. And the reports would say: "On certain date U.S. Army troops entered the camps of X" -- let's assume Mauthausen, for example. "There the troops encountered the following scene: There were originally 50,000 inmates in the camp, there were 12,000 still alive, 10,000 had been marched out the day before. The camp officers were so-and-so. The crematoria were still going, there were so many bodies

⁶**NB:** There was nothing there which was usable--PK.

⁷**German:** barracks.

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stacked in front of the crematoria. I took witness statements from ten witnesses, they are attached as Exhibits One to Ten. The suspected persons responsible for these crimes are so-and-so and so-and-so. Issue orders immediately to have them put on the CROWCASS list, the Central Registry of War Criminals and Security Suspects. Have them distributed to all members of the U.S. Army wherever any POWs are, compare them with this list, have them arrested, and report back to headquarters." So, the goal of my investigation was to describe what had happened, to collect credible evidence admissible in a court of law, which could be used to convict the persons responsible of a known crime under international law. That was the objective, and that's what we did. And there were very few of us doing that. Nowitz was one, I was one, and later we got a few more people in, but the total number was never more than half a dozen or a dozen, who were competent to know what represented a war crime and to prepare a report which would stand up in a court of law. That then became the basic materials for the prosecution to come in and say to the defendant, "Your name is listed in so-and-so, so-and-so said so-and-so, what do you have to say?" And that's the way it went.

Q: So you folks are the war crimes teams.

A: We're the war crimes team. We're the war crimes team. There were a few officers around as decoration, because only officers could take a sworn statement. So when you had the sworn statement you sent it to the officer and said "you sign there" and he said, "What's that for?" and you'd say, "That's an affidavit." "That's an affidavit? What's an affidavit?" "That's an affidavit, it's a sworn statement, you sign right here." "Yessir." "OK. "Lieutenant so-and so" or" Captain so-and-so." And that was it, and that was the evidence of war crimes. Isn't that funny?

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Q: OK, let's change tapes here.

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Tape #4

Q: Do you have any other memories about seeing the inmates in the camps that you'd like to talk about?

A: Well, there are so many memories it's hard to know where to begin, but one thing that comes to mind which struck me particularly at the time was the May First, the May Day celebration in one of the concentration camps, I think it was Ebensee⁸, where the inmates were celebrating their liberation and the May Day. It was organized by the Communists who were in charge of most of the camps immediately after liberation. They were the best organized. There was a big tribune with Roosevelt and Stalin and Churchill and there were going to be big speeches, but first there was going to be a parade of the inmates and they were broken down in national groups. The Russians marched with a red banner, and the French and the Italians and the Yugoslavs and the Romanians and the Hungarians. And then there was a group marching along, a bedraggled group, and they had no flag. And I asked one of the inmates, "Who are they?" And they said, "Oh, those are the Jews." I said, "Why don't they march with you?" And he said, "No, no, the Jews, they're separate, that's not us, those are the Jews." So there was the antisemitism still in the camp after liberation as a reflection, you know, of the ethnic hostility which we see today in many parts of the world still. And another event which strikes me as perhaps noteworthy is that as the camps were about to be liberated, the Germans tried to move the inmates out, those who were still able to walk or to work. They left those behind to be killed or to die who were too sick. But they marched them out, and they were marching I think it was from Flossenbürg to march to Dachau or one of the camps. They took them through the woods and they marched at night,

⁸ A subcamp of Mauthausen.

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and if anybody faltered on the way they were immediately shot; if anybody paused to try to pick up a potato or to eat a root or something they were shot. I was able to follow this trail through the woods of mass graves -- 10, 20, 30, 50 killed, you know. And I would get the nearest farmer to say, "Dig them up." They would say, "Oh yes, we heard firing there last night, there was shooting going on," "Where was it?" "Over there in the woods." And I would say, "Let's go" and we would go out into the woods and there would be a newly dug-up place and I'd say, "get some shovels" and I'd stop some Germans on the street, "take these shovels, dig 'em up" and we'd dig up the bodies of people who'd obviously been shot through the head; usually the top of the skull blown off, shot probably kneeling from the back, some of them were tied still; just lightly covered over with six inches of dirt, something like that. So I could follow the trail of crime being committed all along the way. There was nothing you could do, I mean we were trying to overtake the column; which by that time they'd already been liberated up ahead and some other unit had taken over. And one of the difficulties, I remember as an American soldier, to resist the temptation to try to feed some of these people. We all carried emergency rations of chocolate bars, which were like a brick: you know we carried it in our gunbelt, in case you got into a jam you could hit it with a bayonet and break off a piece and survive that way. But if we gave it to an inmate it was liable to kill them; and it happened, a lot of the GIs were giving away whatever they had. I once had a can, a case of sardines I'd liberated somewhere and gave it out to the inmates; that was my first reminder I mustn't do that because it would kill them, if they ate a can of sardines it would kill 'em. You had to begin by feeding them soup for a week, begin with a very light soup until their stomachs and systems were built up. So, you know, it's hard for me, where do I draw the line? I remember the Ebensee concentration camp, I'm quite sure it was Ebensee, too; there were mass bodies everywhere and we had to bury them right away because of the disease. And we buried them outside the camp in slit trenches. We had

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trenches, and we just, you know, you've seen people with bulldozers, I don't think we used bulldozers, we had the Germans pick them up and just carry them and throw them into this ditch. A few years later I came back with one of my employees, Dr. Katzerstein, who became a key man in one of the organizations set up to help Nazi victims. And his wife didn't know why we were in Germany and I said, "I'll show you why" and I took them on a tour of some of these camps. And we got to Ebensee and there they were all neatly marked graves with crosses on them, you know, and I said, "That's a lot of baloney because I know, I was here when they were being buried and have pictures of me walking past this so-called cemetery." Well, they found names of inmates who had died in the camp and just put a marker on, which I suppose is all they could do. But, it was a nightmarish world and there's something very surrealistic about it and bears very little reality to what the normal human being would understand, even.

Q: Do you consider the liberation of the camps really "liberation" or was this accidental coming upon what you were doing?

A: No, no, it was real liberation, that was not the primary goal. The troops were moving forward and they stumbled upon many of these camps, they didn't know they were there. In some cases the Intelligence had reports, and I had a map, a war map showing camps at different sites of the major camps, so they knew we were there and we would move for them and I could tell we were probably going to hit that camp in four or five days and get ready for it. But what we didn't know was all these subcamps that were scattered all around. There were hundreds of them! Everywhere! There were hundreds of them! I have a list here of over a thousand concentration camps run by Germans and German industry, and the Germans themselves didn't know! We added another three or four hundred later, I don't

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know how many thousand we have by now. So these so-called small camps which may have had a couple of hundred people in them, they existed everywhere, and they were all so similar. People were dying, they were killed, they were lying around, you couldn't tell the dead from the living.

Q: Did you, in terms of the feeding of the prisoners, were you told to not feed the prisoners or did you just learn this by --

A: We learned it, we learned it. I mean, there was no time to sit down and have big briefings. It was a very, very mobile and hectic atmosphere of you know tension and movement and drama. But you soon learned that if you gave somebody some food and you saw them choke on it and drop dead, you know, that you didn't do that again. So it was not -- I never recall anybody giving a lecture about that but it was pretty well known in the camps, the medical men that came in began with intravenous feeding with just water and tea and a little soup, and that was it. So we saw you know what was going on.

Q: How would you describe your mental state, going through these camps? You were blocking yourself to feeling anything?

A: It was very interesting as I look back upon it. I think the human body has a capacity for survival which enables it to build up insulation, insulating mechanisms to prevent yourself from going mad. And I do not recall feelings of rage. I do not recall feelings of fear. I do not recall feelings of hatred. I do recall the urgency of doing something and getting the job done before it's too late. So I went about my business as best I could -- and I did it, I think, very well -- by putting myself into a mental cocoon which was surrounded by an ice barrier

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which just enabled me to go on. And that little ice barrier lasted until it melted, you know, but as long as it was necessary to do the job it remained there, as a self-protective device, I think.

Q: Okay. Now you've gathered all of this material and the War Crimes teams have a lot of this evidence. Now what's going to happen?

A: Now the higher headquarters have got to decide what to do about war crimes trials. The President has declared we're going to have war crimes trials. Hitler and his henchmen had been put on notice that they'll be held accountable for the concentration camps and whatever else they did. The governments had to act. They were not yet ready to act, the War had just ended. The Army already had these records, we were all ready, we had the prisoners, we had to do something with them. And in 3rd Army...there was a 12th Army Corps group headquarters, in Wiesbaden I think, they wanted me to come and work with them, I remember that; I got a letter from the General asking me if I wanted to be transferred to his headquarters -- it may have been Colonel Denson⁹ who dealt with that, and I said, "Listen: I don't want to do his work any more than I want to do yours, I want to get out of the Army, that's all I want. I want to go home." But I recall, having nailed up the sign "Headquarters Third U.S. Army, War Crimes Dachau," we decided we were going to have the trials in Dachau. Now Dachau was liberated by the 7th, not the 3rd, Army, but we were occupying, General Patton was there, and that was the site where we were going to have trials. So we took these Army officers who'd been assigned to the Judge Advocate section not because they were lawyers but because they were at liberty and we needed staff and they had nobody

⁹ William Dowdell Denson, U.S. Army. Prosecutor of the War Crimes Trials at Dachau.

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else; and they were going to set up tribunals. These were in fact military tribunals. They're not to be confused with what happened later at the International Military Tribunal at Nuremberg, which was an international court. These were military-style tribunals which have existed under the laws of war for a very long time and they were staffed by military officers similar to a court martial, it followed the court martial procedure. So they would have three officers, a colonel, a major or a captain, whatever; the highest-ranking was the presiding officer, the prosecutors were selected by the Judge Advocate group and they may or may not have been lawyers, sometimes they were, sometimes they weren't, they were a lieutenant assigned to defend So-and-So or to prosecute So-and-So as they would a soldier who had gone AWOL. Then we had all these nice reports prepared by me, Nowitz, by a few other guys, Slotnick (ph) was another lawyer who came on board, and we had a fellow named Briggs who was a lawyer went up to Boston; these were enlisted men and they did all the work. And they had these reports, and based on those reports we would draw up the indictment. I would draw up the indictment. And the indictment would say that SS Major So-and-So is indicted for mass murder of so many concentration camp inmates at such-and-such camp during such-and-such period when he was in command. And the evidence is: photographs obtained by the Signal Corps, statements from the survivors, my own affidavit or other affidavits from witnesses who were there -- usually not my own, I would certify as to the procedures whereby these affidavits were obtained. And on the basis of that, the defendant would be asked, "How do you plead?" And they'd say "I plead not guilty;" all right, let's proceed with the trial. And they proceeded with the trial. And some of these were quite interesting. For example: if you're telling stories: I arrested a woman in the town of Grossgerau (ph) which is near Frankfurt. It was a typical Allied flyer case. The typical Allied flyer is that any Allied flyer coming down under orders from Hitler was to be killed as a war criminal; he was to be taken into custody and killed, that was the orders from Berlin.

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And so this Allied flyer came down in this town and the townspeople immediately set upon him and began to beat him up. Eventually he was taken by I think it was a fireman or an SS man and they split his head with a crowbar and killed him. I knew who that was and and I got a hold of him, too. But anyway, one of these women was beating this guy on the head with a shoe and I think it was her mother who testified against her. She said, "I told my daughter not to do that." I said, "What's your daughter's name?" "Her name is So-and-So." "Where is your daughter now?" "The daughter is So-and-So" and I got a hold of the daughter and I said, "You were beating those fliers with a shoe." "Who, me? Not me." "Don't tell me not you, Lady, because I know it was you. It was your red shoe -- you've got a red shoe? You beat him on the head with a red shoe, with the heel of the red shoe." "Yeah, well, that's true but you know, it had just been bombed, my town, I lost my children, my husband was killed" -- she gives me big sob story, some of which may have been true. And she was quite an attractive woman too, and a young woman, and I thought, well look, I got the guy who split his head and the whole mob was beating him up; I put her under house arrest, I didn't want to bother with, you know, interring her. When that trial came up at Dachau, I happened to be there, and one of the guys said, "You handled the Grossgerau case, didn't you." I said "Yes." "Well, we've got the trial on." "Well, I'll go over and take a look." And sure enough, I spot this lady there and I spot the guy who did the job. At a certain point in the trial-- this trial didn't last long, it lasted a day or two and that was it -- this woman fainted in the dock. A doctor went up and I said to the doctor, "I know that woman, what's wrong with her?" He said, "Nothing to worry about," he said, "She's just pregnant, with an American soldier, one of the prison guards." Now, there's the story. Was she trying to avoid the death penalty by getting herself impregnated? Was she in love with an American GI or with the GI attached to her? I think she got about 18 months prison sentence or something like that. The guy who split his head was sentenced to death. I don't know whether he was

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ever executed or not, maybe he was, they did execute some but not all. And those trials came to an end while we were at Nuremberg, because I kept an eye on them, sort of. I think there was a Col. Tomlinson who went down from Nuremberg to be one of the colonels in those trials, and they got orders from the Pentagon [that] we're ending War Crimes trials and so the presiding judge said "The War Crimes trials are over, everybody go home" and the trials were over and the criminals got up and walked out of the dock. And that was the end of that. So that's how you deal with war crimes.

Q: So there were thousands of indictments that you --

A: Well, we didn't draw up thousands of indictments; there were certainly many thousands of criminals; that there were. There were very few indictments, and fewer trials and few of which had any significance. These were based on military pattern of military trials against American soldiers for violating the rules of the military code in one way or another. That was the closest analogy to it. They had no significance in international law, they had no political significance, really. We had hopes, all of us who were involved in the early days, had hoped that it would be more than that, but by the time I left the Army, which was before I went back to Nuremberg, it was quite obvious to me that these trials were not to be given any historical significance at all; had best be forgotten. But they are an early record of what happened in the camps which were liberated by the Americans. Our goal there was to try only those commanding officers in the camps which had been liberated by the American Army or those who had committed crimes against American soldiers. And this is why we got into all these Allied flyer cases and things of that kind.

Q: Do you think it was a mistake to have these trials based on the military law and court martial law?

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A: No, it wasn't a mistake, because any time you bring anybody to justice even if it's an inadequate court, it's better than not bringing them to justice at all. Now, we could have followed the Russian pattern and just shot them. I never really favored that -- I may have felt that way but I never favored that as a principle, as a lawyer it seemed to me it's not something we ought to do. You may be interested to know the British favored that, and the Russians certainly not only favored it, they did it. And there was quick justice -- sometimes just, sometimes unjust, I'm sure they killed people who were undeserving, but if you adopt a theory that any person who sails on a pirate ship must expect to hang from the yardarm, there was a form of rough justice. And I'm not sure that the detailed justice in the so-called military commissions or courts or whatever we called them at the time, was any better in the long run than allowing a rampage, as the Russians did, and cutting it off.

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Tape #5

Q. What happened after that, then?

A: I got out of the Army. Great day of my life! I was so eager to get away from Germany I never wanted to hear the name "German" again or "Germany" again or "camps" again or "Army" of any kind again. And home I went. I was home for a few weeks and I got a telegram asking me to come to Washington. "Dear Sir: Please, at our expense, would you kindly come to Washington and we would like to talk to you." Signed by a Colonel Mickey Marcus. Mickey Marcus later became quite renowned as a Jewish general, a West Pointer, who went to fight in the Israeli Army, and unfortunately he was killed there, but he was recruiting for the War Crimes Trials, which were then being set up at Nuremberg. He had somehow gotten wind of what I had been doing at Dachau and I was one of the few people who was qualified by legal training to understand war crimes and by experience in the field as an active war crimes investigator who was also involved in setting up the trials. So his job --Colonel Marcus's job -- was to recruit staff for -- originally he wanted me to go back to Dachau trials but he was working out of the Pentagon and I went to see him. I had never met him before and he said, "Benny, we want you to go back to Germany." I said, "Sir, you want me to go back to Germany?" He said, "Yes! We need guys like you. You understand those bastards and, you know, you're going to go back there and, you know, we need you." I said, "In order to get me into the Army to go back to Germany, you have to declare war on Germany again and be losing." I said, "Otherwise, I don't go back into the Army no how." So he said, "Look, you can't do this, we need you now desperately." All these years they didn't need me at all. He said, "You know the field and, you know, you've got the right attitude, you've got the right experience and so on." And he said: "You name your terms.

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Any terms you want." I said, "Well, I won't go back into the Army no matter what, I don't trust the Army, I've seen them doublecrossing line people, they won't protect me." He said, "No, I'll let you go as a civilian and I will give you military rank." I said, "What rank?" "I'll make you a colonel." "Aha!" I said. "For three years the colonels have been sticking it to me in the Army. This is my chance!" I said, "I'll let you know." So I went out and I telephoned to the young lady, Gertrude, who'd been waiting patiently for ten years, and I said, "Gertrude, how would you like to go to Europe for a honeymoon?" She said, "Oh, this is so sudden." I explained the situation and she said it would be great. I said, "I'm going to take the job for six months. We're going to go back and we're going to have a honeymoon, and I'm just going to stick it to all these lieutenant colonels who've been sticking it to me all these years." So I go back to Marcus and say, "I'll take the job for six months as a civilian with the rank of a full colonel." He said, "You've got a deal." "OK, draw up the papers." Then I got intercepted by a call from -- also then a colonel -- Telford Taylor¹⁰, would I come and talk to him. He said, "Look: I'm going back to Nuremberg, I've been over there, the International Military Tribunal is already in process, Justice Jackson¹¹ is there, we're winding up that trial but I'm going to take over after him and we're going to set up a whole series of subsequent trials. I'm going to be in charge and I need staff and I've heard about you and I'd like you to come with me." And I say, "What have you heard about me?" and he said, "I've heard that you're occasionally insubordinate," and I said, "Not correct, I'm usually insubordinate because I will not follow orders I know are stupid." I said, "But I've also been checking up on you and I know you're a Harvard man, I know your background, and I don't think you're going to give me stupid orders. And if you don't, you couldn't get a better man."

¹⁰ General Telford Taylor, U.S. Army. Selected to succeed Justice Robert Jackson as Chief of Counsel for the Nuremberg Trials.

¹¹ Robert H. Jackson, Associate Justice, U.S. Supreme Court. Appointed by President Truman to be Chief of Prosecution Counsel for the United States for the International Military Tribunal.

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He said, "You come with me." So I said, "Fine." I called up Marcus. I said, "Marcus, I'm off that Army junket, I'm going out with Telford Taylor." And so I did -- still intending to have nothing but a good time and enjoy myself and get even with the U.S. Army. Well, it turned out that Telford was an excellent lawyer, and he was much engrossed in the whole problem of who do you try when you've tried these two leading Germans when you have the entire hierarchy of German life also responsible?? The ministries, the industrialists, the generals, the SS people, the doctors, the lawyers -- all of them conspired together to make it possible for Hitler to do what he was doing. And Telford's approach was we have to reach out into all these segments of German society in order to demonstrate how it really worked. And it was quite fascinating and I really took the work quite seriously, and I said, "All right." He said, "What do you want me to do? Where do I begin? Where do I go??" I said, "We've got to get the evidence." I said, "I'll go to Berlin, that's where all the evidence is." So he said, "You go to Berlin, set up an office in Berlin." So I went to Berlin; my wife I had to leave behind. There I set up the officer of Chief of Counsel for War Crimes, Berlin Branch. And to show you how things worked and how my Army training stood me in good stead: the first office to which they assigned me was in the cellar of a building -- it was Harnack Haus, a famous house in Berlin -- and on the floor I found a picture of President Truman, it was lying in the dirt, no frame. So I got somebody, I said, "Get me a picture frame." So I got it, I put the picture in, and I wrote on it, "To my friend Benny, from Harry" and I put it on the wall. Now, you know, I have a friend named Harry Friedman, he could have given me that picture. Then I called up the commanding colonel of Berlin and said, "I'd like to talk to you, Colonel, how soon can you get over here to my office?" He said, "Who is this calling?" I said, "This is Mr. Ferencz, I'm here on assignment from the President of the United States to carry on a war crimes commission on behalf of the United States Government and my office is in Harnack Haus, I want you to come over right away." "Yes, sir." OK, he came

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over. I said, "You don't expect me to carry on this job in this office? Look at this, we have five or six rotten rooms here, in a cellar, we need proper quarters. How are we going to get our job done?" He looks at the picture of Truman on the wall and says, "Yes sir, yes sir" and immediately got a whole building--a half of a building right next to General Clay's headquarters¹². And of course then we brought in staff, and we had a staff of about 50 people. What we did, we scoured all of the German archives. Most of the staff were German-speaking, former refugees, many of them Jewish who had fled Hitler, who knew the German scene, and we had the German Foreign Office archives, we had eight or nine million Nazi Party records in a bunker under a little chateau in Dahlem in the woods; and underneath were these tremendous Nazi Party files and the SS was there, the Gestapo was there, and so on. So we sent this crew out to scour these for incriminating evidence and outlined exactly what evidence we were looking for -- murder, crime, devastation without military necessity, rape, burning, destruction, racial; you know, we didn't use the word "genocide" in those days but, they were already trained. I was briefed and filled out a form which they had to fill out what all the documents what related to the crime we were trying to prove. Because two things were necessary -- and this is important, and the public doesn't know it: In order to have a successful war crimes prosecution, you need one, evidence beyond a reasonable doubt that specific known crimes have been committed; two, you need the defendants. If you haven't got both together at the same time, you've got nothing. And to bring the two together was was not easy. You had the evidence but you didn't have the man, he was in Argentina somewhere; you had the man, you didn't have the evidence. You knew he was guilty as hell but you didn't have the evidence; you knew it from his position, you didn't have it. But this crew, which my wife shortly joined -- she came over with the first shiplot of

¹² General Lucius Clay, U.S. Army. Deputy Military Governor for the United States Zone in Germany.

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wives allowed to come into Germany -- scoured the files and began, on the basis of what was coming in, to break down the type of cases we might conceivably put together in a short period of time. And we were under great time pressure, which is often forgotten -- we had to do this on a limited budget, with a fixed period of time, because the political scene was changing and we wanted to get these trials over with. The prosecutors were like me or even worse, because I knew very little about Germany, well, I didn't even know the language properly at the time. And the others who came in, from Mississippi, Arkansas, wherever, they had...some hadn't the foggiest idea where Germany was! They were sent because they had a Senator friend who wanted to get rid of him, or get him a job or whatever it was. So we had a very mixed crew of prosecutors to decide who was to be tried and on the basis of which evidence. So this process began between Berlin, primarily, and Nuremberg, of coordination between the two, and it was in that context that this plane was flying back and forth and we had to parachute out of one of them with Telford Taylor and his wife and so on -- but that's another story. And also we sent out crews to various parts of Vienna, wherever the Nazis were, and information came in; and Justice Jackson had collected a tremendous amount of information in Paris from captured Nazi archives. So our job was to sort out this tremendous...by tremendous, I mean all the German records -- and the Germans are terrific at records, they keep everything in a hundred copies, except the secret ones [which] they destroyed; the Einsatzgruppen reports, we only found one copy. And to put all this together, and understand them, and see how it fits in; and this to be done by a group of inexperienced young American lawyers who knew really very little of anything of what really happened. So that's the job that we had, and therefore we went about that.

Q: How many months did you have to do this?

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A: The time between -- we opened the Berlin branch and the time the first trial went on I don't remember specifically now but I would guess we had three months? Something like that before the first, the first was the Doctors Trial; three or four months, something like that. And ready to go to trial and submit all the evidence to the accused. Let me say a word about the fairness of the Nuremberg Trials, because there's been a lot of misunderstanding about that. Justice Jackson dealt with it, the International Military Tribunal, which was the court with the Russians, and the French, and the British and the Americans also dealt with it. It's true: it was a trial of the victors only against the vanquished only; we didn't try Americans at Nuremberg. And that has subjected us to, I think, justified criticism. But the reason for the criticism is that such trials are tainted and it's very difficult to have a fair trial. We tried very hard, and I think succeeded, in overcoming that taint by being very careful to make sure that the Trials were absolutely fair, and they were. Now, you've heard my criticism of the Army trials as a joke. The Nuremberg Trials were not a joke, nor were they "unfair trials." They were absolutely fair trials. I wrote an article in the American Journal of Criminal Law and Criminology on the fairness of the Nuremberg Trials. And as clear evidence that it was fair, we gave the defendants all the evidence which we intended to use against them at least 30 days before trial. The courtroom was open to the public, including the German public, everything was recorded in English and in German, the records were available to anybody who wanted to read them; the judgments were read in open court; the defendants were all represented by counsel of their own choice, which very often was excellent former Nazi lawyers. They had the kind of a trial which, as Jackson said, they in the days of their pomp and power never gave to any man. So although the Nuremberg Trial had to take a step forward in some directions to develop international criminal law, and although they were trials by the victors, and although some of the victors themselves came with dirty hands, nevertheless there was no excuse for the accused. The fact that a member of the jury was

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himself a murderer does not excuse the murderer who sits in the dock. So the trials were very fair trials, and my experience with those trials, as I think a person can be objective about it, is that they were the biggest advance in international criminal law that had ever been taken to that time.

Q: You sat and watched the Nuremberg Trials?

A: I sat...well, I was in Berlin working, collecting the evidence and running the office. It was a big office with a lot of things going on. There was...the Einsatzgruppen records, for example, were found in the burnt-out Gestapo headquarters in the basement. One copy out of a hundred mimeographed copies at that time were recounting chronologically the murders in all the towns by these special extermination squads -- you cannot even translate the words "Einsatzgruppen," you had to have staff to do that, to organize them and to and make sure we had a trial. In fact, we were not scheduling an Einsatzgruppen trial; we had trials against the high command, we had trials against some SS officers, the Reichssicherheitshauptamt but we hadn't planned an Einsatzgruppen trial. One of my researchers came in with these Leitz folders, three or four of them, with all these daily reports from the front: how many Jews they'd killed in which towns, and the reports would read, you know, "Today we entered the town of So-and-So. Within the first 24 hours we succeeded in eliminating" -- they never, always used euphemisms -- "in eliminating 14,312 Jews, 127 Communist officials, 816 Gypsies" and they would list them, you know. And they sent that off to Berlin. They were then consolidated from all these units in the field and issue, as a report, an issue to all the highest echelons of German government, those who said they'd never heard of it and didn't know -- the Foreign Office, the Finance Ministry, all the ministries were getting copies of these reports. Anyway, this researcher found this and he came in and gave it to me. I looked

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at it and said, "My God, we have here a chronological listing of mass murder." I got into the next plane and I flew down to Nuremberg and I presented this to Telford Taylor, who was the Chief of Counsel. He had to decide on what was going to be tried. And he said, "This is terrific, where can we use it?" I said, "Well, look, it's enough for a separate trial by itself. Look, here we've got the names of all the commanding officers. There were 3,000 men there, we have four big commandos, Einsatzgruppen A, B, C, D and each one with ten or twelve different units under them." He said, "We don't have staff any more for that." I said, "You've got to make staff." He said, "Well, maybe we can pull somebody off from somebody else." I said, "Well, whom have you got? Somebody's got to do it." He said, "Well, could you do it?" I said, "Sure I could do it. Why can't I do it?" "Well, you've got your other job, you've got to do it in addition to your other job." I said, "I'll do them, I've got it all lined up." He said, "If you want it you've got it." So I became then the chief prosecutor for the United States in what the United Press called "the biggest murder trial in history" -- 22 defendants convicted of murdering over a million people, mostly Jews. I was 27. So that's how the War Crimes trials were planned. Let me add another interesting point. There were 22 defendants. There were 3,000 German officers and men who were engaged for at least a period of two years in doing nothing else but killing Jews and others who were perceived to be enemies of the Reich. We tried 22. And the reason we tried 22 was because we only had 22 seats in the dock. If we'd had 21, we'd have tried 21. We knew it was only a small sampling of those responsible for mass murder on a daily basis. But that's all that we could do under the circumstances, and our option was to do nothing or to do that much. And we did, and we established the record. We did not punish all the guilty. Those 22 were convicted, 13 of them were sentenced to death by Judge Michael Musmanno¹³ of the

¹³Michael Musmanno was the Presiding Judge at the Nuremberg Trial of U.S. vs. Ohlendorf (The Einsatzgruppen Trial). He was, at the time, a member of the Naval Reserve and on leave from his bench as Judge in the Court of Common Pleas of Allegheny County, Pennsylvania. His two The following transcript is the result of a recorded interview. The recording is the primary source document, not this transcript. It has not been checked for spelling nor verified for accuracy. This document should not be quoted or used without first checking it against the interview.

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Superior Court of Pennsylvania. Only four were actually executed and some of them are practicing law in Germany today.

Q: Okay, why don't we stop.

associate judges were John Speight, a prominent member of the Alabama Bar, and Richard Dixon, a judge of the Superior Court of North Carolina.

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TAPE #6

Q: Ben, how did you prepare these cases, let's talk about it.

A: You know, I had a – a problem. I had the documentary evidence chronicling specifically which units killed how many people, what types of people, in which towns. I had very little staff. I was the chief prosecutor, I had three assistants. The defendants, 22 defendants were entitled to have one or two defense lawyers of their choice; the best Nazis money could buy, and they were very good. I decided that I was going to prosecute the case, without calling a single witness. And the reason I did that was because the documentary evidence spoke for itself; it was absolutely reliable. It was their reports from the front. At that time, I could have had available a thousand witnesses, any one of whom would have come in and sworn under oath that that particular defendant murdered his mother, his father, his children, and that he witnessed it. I would have no trouble whatsoever. Not that they would all be lying, but that's the way they felt. And the DP camps were all around me in Nuremberg, they were all – Munich, everywhere, there were DP camps. And I was in and out of the camps and – and I decided I wasn't going to do that, because they would not be telling the truth, they would not be credible witnesses. Their own emotions would be such that their memory would be distorted, and their testimony would be vulnerable. So I decided to go to trial on the documents alone. Never had happened at Nuremberg. And I gave the defendants all of my records, these hor – reports 30 days before trial, and I said, prepare your defense. When I opened the trial, immediately of course, they challenged the validity of the documents. Oh, they are fake, they are forgeries, the Russians have fabricated them. The usual, you know, kind of business. I'd been very meticulous with those files. They had immediately

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been taken into custody of an American colonel, no one had gotten near those files. He was put on the stand to testify that he'd been responsible, they'd been put in a sack, locked – put under lock and key and he'd guarded them all the time, and where they were found, and how they were found, identification so and so. Very soon it was clear they were not going to get away with that excuse. And after three days, I rested my case. These are the defendants, that's the man Ohlendorf, that's his report, dated such and such, which says we killed 90,000 Jews as of this time. There's the defendant, that's the charge. They killed 90,000 Jews, and so reported on this and this date. I don't need any more evidence, that's it. And I went down the list. In three days I rested the case. No trial at Nuremberg – anywhere, had been done with such speed, and such economy of means as General Clay or somebody else said to me. Then the fun began. You never saw such a pack of lies as these guys brought out. If the report said, on July 12th, 1941, Einsatzkommando 10-A, of which I was the commanding officer, killed 3,412 people – Jews, the commander said, well you know that's with my kommando, but on that day, I happened to be at my grandmother's funeral in Berlin. And I show you, here is a report from the funeral parlor, from 46 witnesses who saw me there, including the mayor, including the general, including so and so. And when I got back, what did I discover? I don't know what the yu – nobody would tell me what had happened. And here I hear for the first time that Jews were being killed. Can you imagine something like that? Jews were being killed by my outfit, when I wasn't there. I was appalled. You know, and they came with excuses. Guys who for years have been every day killing Jews had the gall to come and say I hear it for the first time, that Jews were killed, you know? And right down the list. Wherever they found a document which was – put the noose around their neck, they found some alibi, backed up by hundreds of affidavits, witnesses of all

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kinds. The defense lasted six or nine months. Nine months, they came in with all this baloney. And the judge, Michael Musmanno, much to my unhappiness, I would say, said, whatever evidence they want to submit in their defense is admissible. He passed what he called the penguin rule. Up to and including the sex life of a penguin, it's admissible. And I was furious because the rules of evidence, you know, these guys were lying. Well, I wasn't going to take that. So I called in our investigative division, as we were going along and I said, look, these are the defendants, this is their home address, this is what we know about them. I want you to go to their homes, begin on the roof, the chimney. Tear that house apart until you've dug up the floor of the basement, and bring me all the evidence that you have; every letter, everything that's been written. Another crew, you start screening all that information. I want to know what did he write home, where was he at the different times. And sure enough, I'd find letters. When he was supposed to be at his grandmother's funeral, he never had a grandmother, she died 50 years before, I checked that out, too. That he wrote home to his wife saying, oh Gerta, did we have a day today, I was swimming in Jewish blood, you know. And all the rest of it, all the rebuttal, and I had that for rebuttal. Then I went on with the rebuttal. You were at your grandmother's funeral? Well, here we are, what was the name of your grandmother. Grandmother so and so. When was she born? Well, I don't know exactly. When did she die? Well, she died on that day. I – she died on that day? That the same Gerta Koteso(ph) that died 12 years before? Said, do you have two grandmothers by that name, you know. And what about the let – this your handwriting? Did you write this letter to your wife, etcetera. So we went on with the rebuttal, and the rebuttal lasted six months, until we tore this apart. And when we got all through, they were all convicted beyond a reasonable doubt. And Judge Musmanno, devout Catholic, Superior Court of

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Pennsylvania judge, a respected judge, went off into a monastery for a week to commune with his conscience and with his God, and with his faith. And he came back, and he began reading the sentences. For the crimes of which you are convicted, this tribunal sentences you to death by hanging. Boom. And the Nuremberg courtroom, you've seen the pictures of it, the panel doors open, the prisoner steps back, the doors close, and he's dropped down into the prison on one of these rotating mariah(ph) elevators, and he would disappear. The next one come up. For the crimes of which you are convicted, this tribunal sentence you to death by hanging. One after the other, bang, bang, bang, 13 times in a row they chopped them down and sentenced them to death. A very dramatic, most dramatic day in my life, I must say.

Q: You interrogated these people.

A: Yes.

Q: What was that like?

A: I tried to avoid interrogating them before trial, because I had interrogators for that, and I didn't want to have any personal feelings interfere with my judgment of their acts. I wanted them to be tried for what they did. They could justify themselves on trial, and they did, they tried to. Explained this was necessary for the good of Germany, blah, blah, blah. And the lead defendant, Otto Ohlendorf, SS Brigadier General, father of five children, I went down to talk to him after he was sentenced to death, in the death house. And I thought well, maybe he wants me to take a message to his wife or his children or something like that. And I would have been glad to do that. He justified killing 90,000 Jews on the grounds that it was necessary for the good of Germany. And he explained that a – when he was asked, why did you kill the children? And he said, well, I was interested in the permanent security of Germany, and if the children grew up

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and they knew I'd killed their parents, they would be enemies of Germany. Therefore, it was necessary to kill them. But I always insisted that my men do it in a humane way. If I saw they were enjoying the work, I took them off the job. And I instructed them, if a woman had an infant child, let her keep the infant, because they could then fire into the child and kill the woman at the same time, which saved ammunition. That was a much easier way of dealing with it. So you see, he was really an idealist and a humanitarian. And I went down – in his way – and I went down to the death house and I said, al – Herr Ohlendorf – I didn't call him by his general rank – I said, is there anything you'd like to tell me? Anything you want to ask me? And he said, the Jews in America will suffer for what you have done to me. So there was no remorse, there was no regret. On the contrary, he died believing that he was right, and when he was buried – I have a picture of his burial in the town of Celle, in Germany, there was a crowd of Germans giving him the farewell salute, the Nazi salute. [phone ringing]

Q: Let's stop the tape. [break]

A: What can we do about that phone? [break] After the trial was over, and Otto Ohlendorf was sentenced to death, I wanted to talk to him. He was relatively honest, among the defendants, whereas most of them had denied that it ever happened, he admitted that his unit had killed 90,000 Jews. He did explain that he wasn't sure of the number, that occasionally the troops would be bragging, and exaggerating the body count. So it might have been less, but it might have been more. And he was the father of five children, well-educated, a doctorate. Most of my defendants had degrees of one kind or another. So I went down to the death house underneath the courthouse in Nuremberg, and he was brought by two big guards, American troops, into a small cell, and I could talk to him through a law – small opening. And I asked him whether there was

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anything he wanted to say to me, or anything he wanted me to do for him. And he said, the Jews in America will suffer for what you have done to me. So there was not the slightest sign of remorse. On the contrary, I'm sure he went to his death believing that what he did was right, that he would do it again. And I saw pictures of his burial, where his graveside was surrounded by a large group of Nazis giving the Hitler salute, the final greeting to their fallen comrade, SS general Otto Ohlendorf, murderer of 90,000 Jews.

Q: Then most of the Einsatzgruppen, not the order police that went along with them, but the Einsatzgruppen themselves, were educated?

A: Oh yes. The notion that these crimes were committed by sadistic beasts is a mistake. These crimes were led by very well-educated, distinguished, German cultured citizens. They were kind to their cats and dogs, they could quote Goethe, they all loved Wagner, and they killed human beings like they would be flies.

Q: How do you – how did you make sense of that?

A: Makes very good sense. If you begin with a certain premise, it follows quite logically. If you begin that, let us say lice, are unhealthy, then you exterminate the lice. If you begin with the premise that certain types of people, whether they be Jews, or they be Gypsies, or they be Poles, or whether they be Muslims, or whether they be Croats, or – or anything else, are parasites which represent a threat to a healthy body, then you exterminate them, and you exterminate them completely, if you can. So it follows logically. And the danger, of course, is the premise in which you begin. When you stop and fail to realize that all human beings should be entitled to a minimum standard of human dignity, and you begin to consider yourself the superior race, and the others are there to serve you, that's what follows logically. And so most of my life I'm

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spending now, trying to change that way of thinking, in order to recognize that all human beings should be treated as human beings.

Q: So education of a wide sort never made somebody rational, except in that logical way. It wasn't –

A: Well, education is – is a process which has many forms, many ways of educating people. Some people you can never educate. There was nothing I could have done to change Ohlendorf's way of thinking, nothing. And his – others were even worse, because they denied it, and they knew it was true.

Q: So people either denied it, and the few admitted it, and nobody was contrite.

A: No remorse. The – my biggest pain I think in – in this whole experience, was the absence of remorse. They were sorry for themselves. We also suffered. What else could you expect? The Jews brought it on themselves. This was necessary for the good of the world. This was the sort of sentiment, almost universal, not completely. And it would be unfair to those few people who felt otherwise, and who tried to do whatever they could to help. So I don't want to paint a whole nation, a whole people with one brush, but it was so widespread. And in my trial one of them had – one of the defendants, fellow by the name of Klingelhofer(ph), he had the decency to try to commit suicide – unsuccessfully, unfortunately. But – and he didn't ask for clemency at the end, they left him there til the end. And he was the only one who really showed any sense of contrition, for which I admired him, at least to that extent. But the others, I hear it for the first time, I don't believe it, just happened. You're persecuting me, what else could I do? You know? Superior orders. It was necessary for the good of the Fatherland, and all that. So it's not easy to educate people, but if you don't try, then we're all in danger, you know, everywhere. So I feel

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you've got to try, and that's what I'm trying to do.

Q: Let's go back to the fairness issue for a moment. Who paid for the defense attorneys?

A: The defense attorneys were paid for by the United States, out of occupation funds, I must admit. But it was all expenses were paid. The guest house, as we call the place where the defense council had their offices, and witnesses were kept, were excellent accommodations under the circumstances at the time. They were fed, they got cartons of cigarettes, which was in great demand at the time. All of this at no expense whatsoever to the defendants. The defendants were given every possible right of trial, and the presumption of complete innocence, and they had to be found guilty beyond a reasonable doubt. So they were absolutely fair trials. If I ever commit any crimes, I hope I get the same kind of fairness.

Q: So the subsequent trials were – were conducted under the same rules of procedure as the Nuremberg trials?

A: The Nuremberg judges had no rules of procedure when they began. The charter of the international military tribunal defined the crimes, and the jurisdiction of the court, but left it to the court themselves to lay down their rules. But since the judges were all distinguished jurists, the British presiding judge, for example, they knew the rules of evidence, they knew what was a fair trial. And they had to merge different judicial systems; the French system, for example, is quite different from the American and the British. The Russian is also quite different. So, it was necessary for them to come up with rules of fairness, which they did. They did very well. And at Nuremberg we had the benefit of their rulings to guide us, and in addition we developed our own rules as we went along, all of which were then si – published in a big volume, volume 15 of the green series, by the United States government. So that this information is available for use in

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Yugoslavia, or the courts in the future, if there are any such courts. And the fact that the rules didn't exist in advance, didn't mean that the decisions were unfair to the defendants. I felt they were unfair to the prosecution. But after all, the defendant is a guy on trial, so I didn't really mind it too much, although I was most annoyed. Would never have gotten away in a – in an American or a New York court with the things which were admitted in evidence in the Einsatzgruppen trial.

Q: Okay, let's stop this tape.

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TAPE #7

Q: Ben, I wanted to ask you something about what seems to be a controversy over the nature of the three indictment categories: Crimes Against Peace, War Crimes, and Crimes Against Humanity. Can you comment on what became emphasized and what became de-emphasized at these trials, and why?

A: It's not so much a matter of emphasizing one against the other. The first category that you mention, Crimes Against Peace, or otherwise known as Aggression, that has been perceived for a long time as being, as the Tribunal said in this case in the IMT¹⁴ trial, the greatest of all crimes because it encompasses all the other crimes. When you commit a Crime Against Peace, an act of aggression, the war that follows invariably involves killing large numbers of people and the rape and the devastation and the destruction and every crime that you can imagine take place in a war. So, committing a war of aggression is the most serious crime that any head of state can commit. This was known after the First World War. And efforts were made at that time to bring the Kaiser to trial for aggression against little Belgium, for example. And this was hotly debated by international lawyers. The Kaiser himself had fled to the town of Doorn in Holland where he was known as "the Woodchopper of Doorn" -- the Dutch refused to extradite him because there was no precedent for trying a head of state for the crime of aggression. And the international lawyers who were dealing with it, including the American and Japanese, who were then on our side, felt that -- well, all right, in order not to have retroactive justice, they will not try him for the crime of aggression, because it had never been declared to be an international crime. They would charge him, in the Treaty of Versailles, of "crimes against the dictates of human conscience," which had been referred to

¹⁴ The International Military Tribunal.

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in the Hague Agreements of 1899. But that wasn't good enough, because a head of state had never been tried. So the Dutch still refused to turn him over and he never was put on trial. However, when we got to Nuremberg, Justice Jackson, who was a first-class jurist, said, "Look, the time has come for the law to take a step forward." The principle of non-retroactive activity is a principle of equity, you don't charge a person of a crime when he didn't know it was a crime at the time it was committed. However, did not Hitler know that invading a state... a friendly neighboring state is a crime? Did not everybody in the world know that? So to declare that a crime does not violate any equitable principle, particularly in the light of all the precedents that we have. We had the Hague Agreements in 1898, of 1907, we had the Kellogg-Briand Pact in 1928 saying that war is outlawed. These pacts all had loopholes written into them, and then Jackson was certainly aware of that, but he said, "Look, the time has come and there's nothing unfair about trying these guys for the crime against peace, of committing aggressive war, even though 'aggression' was not defined." And Jackson dealt with that in his opening statement -- he said, Look: aggression has not yet been defined in legal terms but whatever it was, this is it, I know an elephant when I see one. So he was deliberately taking the law a step forward to do...to keep up with the common sense of mankind. And it was based upon the long tradition which had already been established that the medieval notion of warfare, where the king goes out and kills, doesn't apply in modern times. So that was the first and the most important principle out of the Nuremberg Charter. Incidentally, all of these principles were then affirmed unanimously by the United Nations General Assembly, and they were also affirmed by the Tribunal which examined the thing, and I will tell you in connection with the Crimes Against Humanity, they interpreted it in a very restricted way. The second one was the Crimes Against Humanity. That connotation had never existed before and the theory behind it was: when crimes reach a certain magnitude, they shock the conscience of humankind. They are crime

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not merely against the state, which happens if somebody murders somebody in New York, it's the State of New York against so-and-so defendant. But it's a crime against all of humanity, and therefore humanity as the injured party has the right to be the plaintiff and can bring the charges for that crime. That also was a step forward, but it was not an unfair step forward, it was a necessary step forward if you were going to have a civilized international society. And in medieval notions, which were perfectly okay perhaps when a king lived behind a castle wall, didn't apply. So Crimes Against Humanity was another step forward. The third category, War Crimes, that was a cinch: the Hague Agreements of 1899 had defined what's permissible in warfare, what's not, any violation and devastation beyond the needs of military necessity, rape, plunder, poison gas -- things of that kind -- these were well established crimes, they presented no problem. Now there was a restriction put on by the International Military Tribunal. The Tribunal itself, in reviewing its own jurisdiction, said, Look: we have the right as international lawyers of great repute -- they were key people from all the countries -- to examine the Charter and see whether the Charter is an exercise in creating new law or whether it is a legal instrument which we are bound by. They said it's a legal instrument we are bound by because it enunciates principles which would be binding, and which are, binding law. But, they said, because of the wording of the statute -- and it was an accident, really, for someone put a semicolon in, I won't go into the detail -- in order for there to be a Crime Against Humanity, it must also be linked with one of the other crimes, Crimes Against Peace. And that meant that the killing of large numbers of people without a war would not be a Crime Against Humanity, would not be within the jurisdiction of the Court. And that's what they held. Some of us who'd been involved were shocked at that interpretation. We said, "That's wrong! We didn't have that in mind. You mean to tell me that Hitler kills all his Jews and he's not at war with anybody else, that is not a punishable offense?" That's what the Tribunal said: under this Charter we cannot act. So we changed

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that. We changed that very specifically by a Control Council law -- the governing agency of all of Germany at that time was the Control Council consisting of the four Powers -- Soviet Union, France, the U.S., and the --which did I leave out? -- the U.K. And this Control Council enacted Control Council Law No. 10 which corrected that and said very specifically: Crimes Against Humanity are not linked to any other crimes, and that meant that if you killed your own nationals and the crimes were of such magnitude that they shocked the conscience -- that was not more clearly defined -- then it becomes a Crime Against Humanity, which is a different international criminal offense. And that was then confirmed in the Einsatzgruppen case while I was pushing on that one and in one other case in the subsequent trials. So that today, despite the confusion which exists among many international lawyers who write big books on the subject, the fact is that it is the legal right of nations to intervene to stop Crimes Against Humanity, and I think it is a legal duty on their part to intervene to stop Crimes Against Humanity. And that has tremendous consequence for the development of peaceful and law-abiding international society. Quick lecture. Sorry.

Q: Can you talk some about the review of all of these cases, and what happened to the sentences?

A: Yes. Let me again clarify what has been a frequent misunderstanding. I'm not talking now about the Army Trials at Dachau. When the Trials were declared to be over by the Pentagon because they didn't want to budget, everybody went home and all was forgiven, and that was the end of that. Those who were still in prison, I don't remember if they served; some of them did serve the sentence and some of them were hanged after that. But I mean the trials themselves ended. The subsequent proceedings, under the direction of General Telford Taylor, and there were 12 such trials, had to be reviewed, first by General Clay, who

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reviewed them and affirmed the sentences as being fair and correct, but the death sentences had to have a special order written out directing that the men be executed. There were about 15 or 16 death sentences pending; over 13 came out of my Einsatzgruppen Trial. When John McCloy came in as High Commissioner to replace General Clay, General Clay apologized to him for not having gotten rid of this nasty business, because there was an appeal pending before the Supreme Court, they couldn't act until that was settled. The appeal was rejected by the Supreme Court of the United States and the lot fell to McCloy. McCloy had been the Assistant Secretary of War during World War II. He was a very distinguished establishment lawyer from New York, originally been from Philadelphia, and he knew nothing, really, about the specifics of the trials or of those particular accused; he was familiar with the overall trials and in fact supported them in the Department of the Army when he was Assistant Secretary of War. So he had his legal department study all of these records. And he did something else: he appointed a three-member panel, a Clemency Board, to review the cases and make recommendations as to what should be done. The principal officer was Judge Peck of New York, who I think is Jewish. There was one man from the State Department, and there was one who was a professional penologist. their instructions were to go over these files. Their specific instructions, which is not generally known but which I dug out later -- they were secret at the time -- said: "You are not to review the correctness of the decisions in any case. That has already been determined and is binding. The only thing you are to reexamine are the personal circumstances of each defendant, such as his health, his family condition, or differences in the severity of sentences for the same crime. So that if one got off easy, one got 20 years, another got 10 years for the same crime, you would recognize that as being inequitable and make a recommendation to bring that one into line." It was not, I repeat not, a pardon committee, they had no jurisdiction whatsoever, on the contrary, to challenge the validity of any of the decisions of the Tribunals of Nuremberg in

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their work. Not generally known. The Peck Panels, as they came to be called, sat down and then had to go over some of these files. I happened to be in Nuremberg at the time, running the restitution programs, beginning to set them up. I wrote to the Peck panel, I wrote to Peck and the others, and I said, "Look, gentlemen, I know you're here with a very difficult job" -- I was executive counsel then for Telford Taylor for all the trials but there was another additional job I took on, and I said, "I'm thoroughly familiar with all of the trials and should you require any information or any assistance in any way, I'm at your service." They wrote back in a letter which will go to the National Archives, which I just recently uncovered, saying "Thank you very much but no thanks, we're only going to hear from the attorneys for the defendants. We don't want to hear from any attorneys for the prosecution."

Surprised me at the time, and annoyed me at the time I must say. And so the Peck Panel met, they had a few meetings together in Munich, a lovely city, they could travel all around southern Bavaria, to Austria from there, and they did, spent the summer that way, and then they made their recommendations to Mr. McCloy. And he then, together with General Handy¹⁵ who was dealing with the military -- some of the leftovers of the Dachau Trials -- they issued a Clemency Report which I will give to the Holocaust Museum, which I'm sure you'll find in the archives, in which they confirmed three or four of the death sentences, commuted the rest, usually to life imprisonment, lowered the sentences on some defendants.

The only defendant against whom there had been a judgment of forfeiture of all his assets was the multi-billionaire Alfred Krupp. They gave him back all of his assets; and that was that. That evoked a tremendous outcry of protest -- from the Nazi victims and from the Jewish organizations and from General Telford Taylor. As a result, Mr. McCloy has not been in the good graces of either the Nazi victims or the Jewish organizations. Now, I feel --

¹⁵ General Thomas Handy, U.S. Army. Deputy Chief of Staff and later Commander of U.S. Army European Command in charge of operations.

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I have given the documentation to the Holocaust Memorial Museum, or will -- that Mr. McCloy got a bum rap, that he was unfairly judged. He was criticized, including in a book by William Manchester called, The Arms of Krupp, which attacked Mr. McCloy in a very harsh way, I think, for having released Mr. Krupp from prison and having given him back his very sizable fortune. McCloy was condemned as having done this as an act of political expediency in order to woo the Germans back into the Allied camp so they could be rearmed and help fight against the Russians, the Soviets. I am absolutely convinced that was not Mr. McCloy's motive, and the reason I am convinced of that is simple. I'm a man who looks through the documents, and before I talked to McCloy about it I looked at the documents. I found his instructions to the Clemency Board and I found with great difficulty the Clemency Board's recommendations, which were secret. And in the instructions I have indicated the instructions were "You are not to challenge these verdicts, we are not reviewing the validity of these sentences or of these judgments. We are only taking into account humanitarian considerations which may be applicable." Then when the Clemency Board recommended reduction of sentences for various people, McCloy checked all those recommendations and in many cases McCloy was more harsh than the Clemency Board had been. I drew up a table, which I gave to my friend Telford Taylor, who was then my law partner, had been for many years, and I said, "Look here, if this man is trying to do something as an act of political expediency, all he has to do is to accept the Clemency Board's recommendations, they're independent people, or he can accept the German arguments that death penalties have been outlawed in Germany under the constitution and are no longer applicable, or accept the pleas of the various German peace groups and the religious groups and the anti-Nazi groups who were beseeching again, and Mrs. McCloy was, too: "Please don't hang these people." Instead of that, he ordered four of them to be hanged, which he didn't have to do, and he increased the sentences on several others. A man was determined to win the favor of

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Germany, either he's damn fool to do that, or he has other motives. And I am convinced that his motivation was humanitarian, it was sincere. I know, from having seen him very frequently during that period, that he was torn by emotion at having to go over this, he had never caused anybody to be hanged before, and it was not an easy thing for him. And so the harsh criticism that he was merely wooing the Germans at the expense of the Jews is a mistake. I know also the help he gave us in connection with Jewish restitution and the statements that he made to the Germans, and the pressure he put on the Germans to see that they paid more than they wanted to pay.

Q: Why do you think he received such a rap? Just because people have not investigated him?

A: Well, it's easy to criticize him, it fits into a pre-set pattern, you know -- that the Americans are wooing the Germans in order to get them to fight the Russians. That's the Manchester pattern and it should be examined in that light and many people share that view, but it's a political opinion not based on fact. And McCloy has also been criticized for not bombing the rail lines at Auschwitz, and I discussed that with him at some length long after the event. I did not intrude on him in what I recognized to be a personal decision that he alone had to make about the life and death of other people. I felt that was something which should not be the result of political pressure. And when I discussed with him the bombing of the rail lines, I said, "Look: you realize that the Jewish community is in an uproar because of your failure to do that. What was going through your mind?" He said, "It was very simple. First of all, the British, who are antisemitic, didn't want to, because they didn't want to divert their bombers from winning the war, which they perceived to be the primary goal. And we had to use British bombers for that kind of an operation because we divided our responsibilities into such-and-such-and-such. I had a long discussion with Ben Rosenman, who was President

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Roosevelt's Jewish advisor in the White House at that time, about this whole issue. And there were also strategic reasons. First of all, you'd have to bomb them from a height where it was almost inevitable you were going to hit the inmates. And if you start bombing barracks of inmates, what is going to be the response politically on "The United States bombs Jewish inmates and the other inmates in Auschwitz"? And he said there was another strategic consideration: bombing rail lines is a waste of time because they can be repaired immediately. You bomb a few miles of rail lines: so what? They come with a rail train, they put a few rails down, so you've delayed them for an hour or two. It isn't going to change anything. On the contrary, they'll start killing them faster. He said: "So in my judgment," he said, "and not only in my judgement, Ben Rosenman's." So we took things to the highest level. It was not the thing to do, it was not in the interests of Nazi victims to do it. If they want to give me the rap, let them give me the rap." I said, "Look: would you like to talk to them?" He said, "No." I had a long discussion later with him about the Krupp clemency action and the releasing of Krupp. I persuaded him that he'd made a mistake, and he sent me a note saying, "If I knew then what I know now, after I've written Less Than Slaves and I...all the material, I would probably have done it differently." I said, "Can I publish that?" He said, "Not as long as I'm alive." I will now give that information to the Holocaust Memorial Museum and you've got it on tape.

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BENJAMIN B. FERENCZ

October 21, 1994

Q: Ben, I wanted to go back a little bit to the beginning of your being put on the War Crimes team that were going and collecting evidence. Were there any rules in the beginning?

A: There were no rules whatsoever because the persons who were sending us out had not the foggiest idea of what we were supposed to do. We knew we were supposed to do something in connection with War Crimes trials, but as an attorney, I, of course, knew the rules of evidence and what was required. I had been interested in criminal law particularly, and of course, I knew what constitutes admissible evidence in a court of law, and we were trying, of course, to collect that kind of evidence in order to make the convictions hold up.

Q: So, how did you make up these things?

A: Well, we had to improvise, as we went along. We didn't have a regular court room where you call in a witness and examine him with a secretary present and somebody else cross examining or securing his rights. We were taking testimony from friendly witnesses. We were taking affidavits from them. They would swear to it before an officer. If it was from a hostile witness, we would interrogate him privately in order to see if we could ascertain the truth. When we reached the point where we felt we had ascertained the truth, we asked him to write it out in his own hand and subscribe to it being true, and usually brought in an officer to witness that or to take separate depositions under more favorable circumstances from the point of view of trial. That was the evidence that we then used.

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Q: What was the difference between you and Jack Nowitz in terms of technique or writing reports?

A: Well, Jack was a much more stable fellow, I would say. He was more cautious in his approaches, but he was more exuberant in his descriptions. And when he would come upon a typical concentration camp scene, and had to write a report. He would say, "These sadistic beasts, guards were murdering the people in cold blood, and it was outrageous and a violation of every act of human decency." And I would have to calm him down and say, "Look Jack, we're just preparing legal documents to draw up an indictment. You refer to them as the accused, you don't refer to them as the dirty bastards. You refer to them as the suspected war criminals and by name and rank and you don't describe anything in graphic terms which would prejudice the person reading that. Just describe the facts and the facts will speak for themselves." We had a lot of fun actually together on that. We were good friends, but we had a different approach in all our descriptions, and also in some of our interrogation methods.

Q: Now you were alone with him for the first few months. Were you reading each other's reports every day?

A: Yes, we would -- it wasn't every day. We didn't get back to report every day. We got back after we had been out in the field for bit, and we come back and we could compare and we would discuss it together. We were barrack mates, bunk mates. And you know, what did you do yesterday? Or oh boy I got this guy or I did that or that, and so of course we could compare them. The written reports themselves you have to prepare more carefully.

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Q: Was it always very somber between the two of you?

A: No, interestingly enough, it was not somber in the sense that we never laughed. It was not a laughing matter. We didn't take this lightly; neither of us. But, somehow, it was just getting the job done, and there were light moments as well.

Q: How did you prioritize the work, or was it--?

A: Haphazard, totally haphazard. If he was busy on something, I'd take the next case that came in and went out on that one. Three or four would come in, usually these were Allied flyer-type cases or atrocities of killing of hostages in different towns. A mass grave had been uncovered, and he would go out and take one case and I would take the other one, and we would come back when we were through and if we both happened to be in the office at the same time, we would compare notes, more or less. That was about it.

Q: You said earlier that you thought that the Military Tribunals at Dachau were insignificant, historically.

A: Well, yes because they were in the nature of military commissions. Based upon the Army Standards of Court Martial, which was the general guide there, because they didn't have any other standards. They were not trying to create new principals in international law like Crimes Against Humanity. They were dealing with war crimes. They understood war crimes, because war crimes were prohibited in the Manual of Military Conduct, and they knew that a war crime was devastation beyond military necessity. It was rape, pillage, plunder. These were things which had for many years been codified as the rules of warfare.

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But they didn't deal with the question like aggressive war being a crime. These were the things that came later with the International Military Tribunal and were generated by the fact that people like Justice Jackson, as well as some of the other British distinguished judges and lawyers who were represented on that. These were people who were familiar with the broader principles and concepts of international law and international justice. Whereas in the Army, it was just like, you know, another G.I. trial, where you bring in the accused, he's represented by another officer or another individual and the judges happen to be army officers who are available to hear the case.

Q: Could you describe an incident that happened to you at Mauthausen when you walked in to collect evidence?

A: Well, there were many incidents at Mauthausen and I suppose that you are referring to a particularly dramatic one which I've mentioned in other context. Coming into a camp was always chaotic. The bodies were strewn all around the place. The troops were chasing the Germans or the inmates had captured the Germans and were busy beating them or killing them, and you know people were dying all around. What I would do, as a matter of procedure, I would immediately try to seize the records of what happened in the camp. And every camp had an office, a Schreibstube, writing office. And what I would do, is I would immediately go to the Schreibstube and try to find out who was in charge there, what was there, and seize whatever would be relevant for wartime prosecution. And when I came to the Schreibstube in Mauthausen, there was a inmate there who was a Schreiber, as they called them, and that was a favored position in fact in the camp if you would be in the hospital or the Schreibstube or the kitchen. And he said, "Oh, I've been waiting for you." And he said: "Come with me." And I recall going out with him to the electrified fence and

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his digging up a box of records which he had kept. And those records were the records of all of the SS men, the identification cards who had entered that camp and who had left the camp, and had their photograph on it. It had their identifying numbers and addresses, date of birth, things of that kind. And he was supposed to destroy each one of those records before a new one was issued or when the man left the camp. He didn't do that, which meant that every time he saved one of those records, there were hundreds of them, he put his life in jeopardy. And he was ready to do that, hoping and knowing that one day there would be a day of retribution. And he saved those records for that day. So to me, it was a reflection of human hope and confidence and faith and courage which was very moving and dramatic for me. Now, there was some other incident which happened here a few weeks ago. I never knew who that man was. I admired his courage and his faith. And I never knew who he was and when I wrote about that in my book Less Than Slaves, I said he's a man whom I didn't know. And then a few weeks ago I received a letter from a professor at the University of Paris, the American University of Paris, Professor Pike who had written a book and in that book he had described, I think the book was called The Servants of Stalin or In the Service of Stalin. He had described how communists had gone to Spain and had fought on the side of liberating forces and when they were defeated by Franco they had fled into France. When the Germans occupied France, the Germans seized them and sent them to the Mauthausen concentration camp to be killed or worked to death. One of those persons was in the service of Stalin, according to the book, was the man who handed me those records. And Professor Pike identified him, and identified him by name, and identified another man in the camp who sends regards, who is now in Perpignon, in France, who had been also collecting and hiding the death books registering the exceptional deaths that took place in the camp, listing the names of all of the persons who had been killed by unusual means. And those files were also turned over to somebody who signed on behalf of the commanding general of Third U.S.

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Army, A.P.O.403, and that's the way I signed most of my receipts. I signed whatever was convenient. But, I asked him if he could get a copy of that record, which the man apparently had kept with him all these years. So, here, fifty years later, we have the coincidences coming out of the blue, the identification of the man who saved those records and one of his close buddies.

Q: Let's go to after the War Crimes Trial. Presumably you're going to come back home. What happened?

A: Well, as the Nuremberg Trials wound down, the Einsatzgruppen Trial was over, I was engaged in two activities. One was turning our records over to the Germans in the hope and expectation that they would continue War Crimes Trials. You'll remember that we only had a very small sampling. For example, in the Einsatzgruppen case, we had 3,000 men who were engaged in killing Jews for two years every day, and we only tried 22 of them, because of the number of seats we had in the court room. But what about the rest? We had records. We knew who they were. We knew where they had been, and there was material not only in that case, but all of the other 12 subsequent trials had many residual fall outs. So, we set up at Nuremberg what we called a Special Projects Division. My wife Gertrude was engaged in that activity as well, and the object was to turn those files over to the Germans, and we negotiated with the various German prosecuting agencies to see if they would take those files and act on them. In addition to that, we were trying to publish the records of the Nuremberg Trials, which subsequently came out as the "Green Series"¹⁶ of the 12 subsequent trials. And I was engaged in that as an editor right at the very beginning, and I think my wife was also working on that. We also, incidentally, had a complete German text which was never

¹⁶ So named for the green binding of the proceedings' printed transcripts.

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published, unfortunately, which may be around somewhere in the Pentagon, but the Army decided it would be too expensive and had no useful purpose, and so they nixed it at the last moment. It was never published. So, I was doing this wrapping up thing, and looking forward to going back and resuming a normal life and starting a law practice in New York. That was my intention. One day I had a visit from a man who was the General Counselor to the American Joint Distribution Committee. This is the Jewish organization which was the most active, and the leading one --the only one-- at the time in assisting the D.P.s in the camps, providing assistance to Jews, throughout the world, not in the United States, at that time it was all in Germany. And their headquarters were in Paris, and their director was a man by the name of Doctor Joseph Schwartz. And their counsel said, would I come to Paris. They would like to talk to me. And I came to Paris, and they said, "Look, we have a problem, and we'd like you to help us with that problem." And that problem is this: that the Jewish organization had succeeded in persuading the U.S. Government to enact a law providing for the restitution of property which had been stolen, confiscated, or taken by duress by the Jews or from others, because the restitutorial laws covered not only Jews. And one provision of that law was that the heirless property, or the unclaimed property which had been taken from those who were no longer there to file a claim should also be restored. Now, normally, if a person dies heirless in the state of New York or anyplace else, the property is escheat, they call it, or passes to the state. But there's a principal law which says that they may not be the beneficiary of any unlawful act. If you murder your wife, you cannot inherit her property. If you murder the Jews, the state which is responsible can hardly be the proper recipient of the heirless property. So, military government as a matter of military law, don't forget Germany surrendered unconditionally, and the only government there was the military government originally Quadrapartei, the four powers, later split up but each in their zone. The United States was responsible for the Military Government Law and the U.S.-occupied

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Zone of Germany. And the military government law number 59, said that a successor organization of the appointed to recover the heirless Jewish property. The Jewish Restitution Successor Organization. And the Jewish organization that succeeded into getting that into law didn't know where to begin. So, they inquired about and they said, "Benny, we would like you to be the guy who sets this up. You know your way around Germany. You know what happened to the Jews." I was then a high ranking muckey-muck with the U.S. Army, and this was all military occupation at the time. "We don't think anything will come of it," he said, "but we have a moral obligation to try. And of course we don't have any money to put into this, we need our money for relief of the survivors. We have enough to pay your salary for six months" which was I think six or seven thousand dollars all together, and would you undertake this for us. "Well," I said, "I'll have to talk to my wife." We were getting ready to go home, and we had been in Germany for about two years, and much longer than we had expected. So I came back to Nuremberg, and I discussed it with my good wife Gertrude and she said, "Look it's true you know this business better than anybody else. How long did they say it would take?" I said. "They said it might take two years." "Oh," she said, "I know you. It will only take one year. So, all right, so we'll stretch it a little bit longer." So, I agreed to stay, and I designated myself the Director General of the Jewish Restitution Successor Organization knowing that nothing would impress the Germans more than being a director and a general and so that's how it began.

Q: Okay, let's cut to the next tape.

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Tape #2

Q: What was the date that the Jewish Restitution Successor Organization started?

A: I was hired for that job in August 1948 and we had an immediate major crisis. The law required that all claims be submitted by the end of that year, the end of December '48. That was we had about three months, four months, in which to find staff, find funding, train staff, locate the property, submit the claims on long forms, because this was the first step in a long judicial process. Well, the first thing I did was to recognize that that was impossible. So, as soon as I agreed to undertake the job, I resigned from Nuremberg, and I went to see the Commanding General who was General Lucius Clay, who was the Commanding General for all U.S. Forces in Germany and stationed in Berlin. I had known General Clay from before because I had been head of the branch in Berlin that had been collecting the evidence for the trials, and I went up to see him and I said "I've got this problem and I need an extension of the law." I said, "I can't locate all the confiscated Jewish properties, hundreds of thousands of properties of all kinds all over Germany in three months time with no staff, no money, no nothing, and we discussed the problem and he said, "No, I don't want to extend the law, because the sooner we get this problem over with the better off we're going to be. This will be a thorn in Germany's side and I don't want to extend the restitution law." I said, "All right, I'll tell you what we'll do. I'll make a deal with you. I will try to get it done, and I will only come back to you if it's impossible, but I will try. But in order to get it done, I need money. First of all, I need staff." "Well," he said, "Didn't the organization know that when they wanted to get this written into the law that it would cost money to do that?" I said, "You can't ask the Jewish organization which are now spending every penny they can raise to save the lives of these D.P.s to move them out of here and to rescue them to put money

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into trying to get restitution of Jewish property. I said, "I think we can take the money out of occupation funds." The United States Army was running on occupation funds, which meant the German treasury printed the money, and we used the money to pay for whatever we needed. He said, "You know I can't get occupation funds because that requires Quadripartite approval. The Russians are going to have to agree. They'll never agree to using their money for private property claims. I don't think the French will agree and I don't think the British will even agree. And I can't do it on my own." So I said, "Well, I have another proposition. Let me borrow the money from the American segment of the occupation funds, and when I get restitution I'll repay the money." He said, "Can I do that legally?" I said, "I have a memorandum here which says you can." He said, "Well, okay, if you say it's legal and I can do it, go down and talk to my finance man and tell him that's it okay and that whatever money you need to get going, but get going because I want to get this program over with." So, I went down and I talked to a guy in charge of finance and I said, "I just came from the General and we're setting up a big restitution program here and we got a big rush job and I need enough funds to get this thing going," and he said "How much do you need?" And I said, "A million marks." "Okay, sign here." A million marks was a hell of a lot of money and I signed here. I was always ready to sign. I signed promising to repay. With that money I immediately went out and hired a tremendous staff of German investigators. I had requisitioned cars from the Army using my old Army authorizations as a war crimes investigator. I immediately seized every Jeep, every car I could grab from any motor pool and sent investigators into every real estate registry in Germany with instructions to copy down the names of any Jewish names that transferred property since 1933. Very often the Germans had been very helpful to us, and they had stamped a J on the property, meaning "Jude", so you could identify. But it was a Jewish name, including Alfred Rosenberg, and it's true, we claimed the property of the big Nazi leader, Alfred Rosenberg, and the

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instructions were, you bring it in, and we're going to rush to get these claims out on a big complicated form. So then I set up, in Nuremberg, there were a club that were occupied by Latvians, they were mostly drivers. I knew the Latvians. Many of them and the Estonians and were very busy killing Jews before they retreated with the Germans and were captured by the Americans and then used by the Americans. So, I said, "We'll throw them out of that building. I need it for restitution." And bango, I move them out. I move my furniture from the courthouse in Nuremberg as a prosecutor across the street to this Latvian club. And we set up there a big hall, a dance hall is what is really was, with tables right touching each other. Typewriter on every table, requisitioned or bought or seized from somewhere and 24 hours a day we filed claims. As they came in from the field, as the investigators came in, they brought the claims in. We had secretaries sitting there typing. I took an eight hours shift. Saul Kagan who was my Deputy and the first guy I hired took an eight hour shift. Another man by the name of George Weiss, Dr. George Weiss who came from the JDC in Paris and later headed the Austrian operations, he handled the third shift, and about the day of the filing deadline, we loaded all the claims into U.S. Army ambulance, which I had requisitioned somewhere, and there was a claims center where we had to file these claims. And we took this ambulance and drove it up the claims center and filed, I think it was 173,000 claims for 173,000 pieces of property in the American Zone of Germany. And I called up Lucius Clay and said, "We don't need an extension. We filed everything." So, that's how we submitted the claims, but of course that was only the beginning of the process. The system which was set up was that a person who felt that he had been forced to sell his property under duress or had it confiscated, was authorized to file a claim setting down all the facts. That then went to a restitution agency special judicial type agency, they weren't really courts, to deal only with these claims. And they would hear the counter claims. Because the person who bought it would say, "Hey, wait a minute, I paid fair value for it

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because my friend, Mr. Cohen, was the neighbor next door. I wanted to help him escape so I gave him 100,000 marks. The property wasn't even worth more than 80,000 and as a result of that he escaped. He sent me three letters when he was in Brooklyn. I don't where he is now but he pulled out the letters and so on. And he didn't file the claim because he felt fairly treated. Who are you to come here and claim the property?" Or, they claimed, they said, "Look, I bought the property. It was bombed out. It's only a room. I put on a new roof. The roof cost me more than the property was worth. Or there was a mortgage on the property. I paid off the mortgage. Who's going to give me back the mortgage money?" And then the process began. Or there were two or three claimants, some of the heirs claimed them. They claimed, some other person said they bought it in between it had passed through several hands. It was a complicated legal process which began. If any party was not satisfied with the decision of the restitution agency, they could go to the restitution court. That was part of the regular judicial system. From there they could file an appeal to the appellate branch of the judicial system in Germany, German courts. And then there was a final court of restitution appeals which was composed originally of Allied judges. Later, it was mixed American judges, who sat on the Court of Restitution Appeals, and they would hear the legal arguments and the factual arguments in all of these cases before rendering a final binding decision. Their decisions are all published and I have them, and I have given them to the Holocaust Memorial Museum. So, this long legal process began, and for that, we needed lawyers. When we got the property back, we needed people who would manage it. We needed people to repair it. We had businesses, hundreds of businesses of all kinds which had to be managed and run. And for all of this we had to train people. It never had happened before in history, and we couldn't trust the Germans. We had to be very careful. I had access to all the Nazi Party files. We hired nobody without a security check which meant you had a very limited selection because we had about nine million Nazi party files in Berlin

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to which I had free access. So, it began and it was a very interesting legal process from one point of view to try to create precedents if I give you a few legal questions which came up very early on. Let me just make two or three to show you how history might have been quite different with a few wrong decisions. The first key issue we had was at what rate of exchange do you have to repay. The principle of the law is simple. If a person enters into a contract under duress, when that duress is removed, he has the option of undoing the contract, but he has to give back what he got, and he gets back what he gave. These are the principles of law that I learned at Harvard. They are principles of equity and they're not something invented by military government. They should be applicable, and they are applicable in one way or another in all civilized societies. But what happened was, when the property was transferred in 1937 or '38, let's assume the Jewish owner received 100,000 Reichsmark coins, by 1949 or '50 the Reichsmark no longer existed. It was a Deutschmark. And the Deutschmark was converted at a ratio of ten to one. So he received a 100,000RM and he was giving back 10,000DM and the Germans said, Wait a minute. I gave you 100,000 marks. You're now giving me back 10,000 marks." If the Jewish owner had been required to give back 100,000 marks he would have said the property is not worth it. I'm not going to put money into Germany's beat up old building there which has been bombed most likely, pay back 100,000DM which was then, an awful lot of money. They didn't have the money for one thing. It would be completely different. I had a lot of problems with this. I took this case to the Court of Restitution Appeals for the first advisor opinion before we began the program. And the issue was who bears the burden of the loss? Is it the victim, the Jewish victim, it didn't have to be Jews, the victim of Nazi persecution, or is it the Nazi or the German, it didn't have to be a Nazi, who acquired the property. To my mind the risk of the currency devaluation should not rest with the victim who sold under duress. It should rest with the person who acquired the property just as if he kept his money in the bank, he

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would have had it devalued. And that opinion prevailed. If the opinion had gone the other way, there would have been no restitution program in Germany, practically none. I'll give you another case. A very dramatic case. The German Jews had mostly fled. They were organized in what's called *Gemeinden*; congregations. In Germany every town had their own *Gemeinde*, or congregation. These are legal entities in Germany. They asked anybody who was a member of a congregation had to pay taxes to the state, and the state then supports the congregation out of these funds. The German Jewish congregations had all been dissolved. Their property had been seized. Property consisted of old age homes, schools, cemeteries, buildings of various kinds, lodge buildings and the previous owners were scattered all over the world. They were in Israel, they were in the United States, they were in Chile, they were in Argentina, they were in Shanghai, wherever they could find refuge. But some small groups had reconstituted themselves. They came into Munich. Very few of them had been members of that congregation before. They came from Poland. They came from Russia. They came from other places, wherever they were. And they reestablished themselves, and said we are now the congregation. Some of them, having been forced to survive using all kinds of means were less than the most honorable or credible people. To put it bluntly, some of them were a bunch of crooks as confirmed by their being arrested from time to time on various charges. And they said, we are the owners. For example, in Munich, they said, look we have set up a new congregation. We are claiming restitution of the property. And I said "Hold on. You're not claiming restitution of property because I am the successor organization. The JRSO, Jewish Restitution Successor Organization as designated by Military Government law." They said, "No, this is our congregation." The synagogues, old age homes, the cemeteries, whatever it was, and some of them were very valuable properties. To make a long story short, I argued that case in the Court of Restitution Appeals, and I remember it quite dramatically, because I addressed the

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three American Judges whom I had known from before and I said, "May it please the Court," and I stood on this spot, it was literally the same spot, and argued against the Nazis -- the prosecution of the Nazis who had murdered the Jews. I never thought I would stand here and argue against the Jewish community, but I have to, because those who are entitled cannot speak for themselves. And I made the argument that those who are entitled are scattered everywhere and we couldn't give the assets to a small self-proclaimed group who were not subject to any kinds of controls, which we were of course as a charitable organization of the Military Government in the first place, under control of all the world's Jewish organization in the second place. And I won the case. It was known as the "Augsburg Case" because it was against the Augsburg community. Some of those who argued against me ended up in jail. But there again, if that case had gone the other way all the Jewish properties in Germany which had belonged to congregations, would have been dissipated and would have disappeared. So, we had several cases like that which were decisive on how this program was to be carried out and we had good luck, I think; well, more than good luck. I think we were on the right side, and being able to carry out that program for the recovery of thousands of pieces of heirless and unclaimed Jewish property. I don't want to run on too long, but if you would like me to give you some of the difficulties we encountered with that program, I think it may be of Jewish historical interest because in the end, we had to surrender. And we did it in an interesting way. What happened because of some of these problems of currency conversion and because of the Germans resented, understandably resented having to give up their homes which they had lived in. Or their businesses which they had acquired and changed over the years in many ways that they had invested all kinds of things. And there was no substitutes. I mean, housing was in great demand. So, there was fierce resentment against this strange organization which comes along and insists upon taking the property back and paying only a small fraction of what has

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been given for the property. Or in an outright confiscation paying nothing, because very often whatever the Jew got was taken from him by discriminatory taxes of various kinds. I said I'm sorry, you collect that from the German government. You don't collect it from me, because you never go it. So, it got to be a very, very bitter business, and it was generating anti-semitism in Germany which didn't need to have any anti-semitism generated in the immediate postwar or [post-] Hitler years. And I could see that it would take a long time. Meanwhile the Jews were being moved out of Germany from the D.P. camps to Israel, which itself was destitute, and it was at war, and there was no place to put them. They were in U.S. Army paramital tents which a tent the size of a room, which would have 15 Army cots in it. No water, put in open fields, and this was a situation that called for immediate action. And I had to generate money at once by every possible means. So, I had to devise new techniques which I'll tell you about in a moment.

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Tape #3

Let me give you a specific example of the type of problem. There was a case that I recall where a woman had acquired the home of a Jewish neighbor. I don't remember if it was 1937, '38 somewhere around there, maybe even earlier than that, and no claim had been filed except by the Jewish Restitution Successor Organization. We asserted the claim. She made the usual arguments. I was helping my Jewish neighbor, what do you want. Who are you? We said never mind, move. We're going to give you back one-tenth of what you paid. It so happened that she was the aunt of an American Army General, who not only was an American Army General, he happened to be the Commanding General of the District in Germany that was Baden-Württemberg in which she lived. And he called me up and he said, "What the hell do you think you're doing? My aunt was no Nazi. She helped her Jewish neighbor and they didn't file a claim because they were grateful to her, and how do you come off here filing a claim and demanding that she get out of her house and your big deal you're offering her one-tenth of what she paid for it." And I said, "Sir, I'm here to carry out the law. That's what's provided in the law, and I think the law is correct. I negotiate with your aunt. I negotiate with others. We try to reach a settlement. We try to be fair in our settlements and not adhere to the last drop of blood or the pound of flesh. We make the same offer to your aunt. If she refuses, I will simply carry out the law which is a Military Government law, which you may recall, and I'm director general of that organization appointed by Military Government to carry out that law, and that's what I intend to do. So please advise your aunt accordingly." He said, "Like hell I will. I'll show you." And he called Mr. McCloy, John McCloy who was the High Commissioner for Germany. Mr. McCloy got on the phone with me and said "You know, I just got a call from General So-and-So. I've forgotten his name actually, and he's raising holy hell. He says you're

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persecuting his aunt. You're doing much worse than the Nazis. You're trying to throw her out of her house, and all she did was help her Jewish friend. And he's very distressed." And I said, "Mr. McCloy, as a good lawyer, you know very well, that a transaction in 1938 was a duress transaction and it's voidable at the option of the person whose property was taken. I am in the shoes of that person, and I exercise that option as I must to require that the transaction be rescinded, which is what I've done and that is consistent with the law and consistent with my notions of equity and justice, and I'm sure it is with yours." And he said, "Yes, I guess it is. I'll call up the General and tell him." Well, that's what happened. Eventually, I think we settled with the aunt. But we had this problem thousands of times, again and again recurring. And it not only took time, but we were not getting the money we needed for these urgent tasks that I've described of saving lives and so I decided to take another approach. And that was to try to sell these claims to the German government, to each state government, global settlements. And I went to the Länderpresidenten, the Finance Ministries in the different German states in Bavaria, Baden-Württemberg, Berlin, and Hesse, and I said, "Look, we've got this problem. We are generating a lot of anti-semitism. You don't want anti-semitism." By that time the people who were in office were anti-Nazis, otherwise they couldn't have gotten into office, and we've got to solve this problem. "And the way I suggest I we solve it, I'll assign the claims to you so that you're not the beneficiary by way of this cheat but then you can settle them on whatever terms you feel are right. If you want to give them back the property, that's your business, but you can't ask the Jews to make that sacrifice in order to maintain peace in your Land." And the first such settlement we made was with the Land Hesse, Frankfurt is nearby, it was in Wiesbaden, a big palace in Wiesbaden. There are some funny stories connected with that but I won't have time to tell you, but that was the first settlement, for 25 million marks, that's a lot of money. Long before the Hague negotiations, I think it was 1950, 1951, it must have been, in which the

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state of Hesse agreed to take by assignment all the claims of properties in Hesse, the Land of Hesse; from the Jewish Restitution Successor Organization in exchange for 25 million marks down, now. And then we did this with the other Länder. We went on to Berlin. We had a very difficult problem in Baden-Württemberg. The man in charge of Baden-Württemberg is a man whose name you'll find in your Holocaust Archives, Otto Küster. Otto Küster was a very moral and righteous human being, a very strong sense of justice who was very helpful in connection with arguing the I.G. Farben appeal on behalf of slave laborers. And I knew him quite well and I had great respect for him. And he said "I will not accept the assignment of your claims." I said "Why not?" He said, "Because you will carry out the law as it is intended to be. I cannot. I am an official." He was then in charge of restitution of the state of Baden-Württemberg. I will not be able to carry out that for political reasons. And it's important that justice be done and therefore I will not accept your claims. You do it." I said, "Have pity. I can't do it. Look at the problems I'm having, the expense, the time, the aggravation, the anti-semitism that we're causing." "No," he said, "You do it." I never settled Baden-Württemberg. We settled every where else, but we fought those cases through, and that where this General's aunt was as well. So, this is an illustration of not only a specific problem but a difficult political problem which encountered and an economic problem as well. And we solved it legally by assigning our claims globally. Making global settlements with all the Länder. And then the states went on for many years some of them complained that they paid too much. Some of them recognized that they had made a gain, because as the years went by the prices went up and so on. But by and large, it was a fair and sensible arrangement as I look at it now in retrospect. And it was a way to get out. We had begun on a legal path which seemed right at the time, but found it to be insurmountable as it went along. So we had many such problems. If you have time let me tell you some more. Let me tell you another problem, which was a very fascinating problem in a way, too.

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The problem is what do you do about Jewish cemeteries. I know nothing about the Orthodox Jewish rituals, but I had enough common sense to realize that I wasn't going to touch that subject without strict control and guidance by those who knew more than I and were responsible. Under the restitution law the Jewish communities were gone. They all had their own cemeteries. Every congregation had a local cemetery. Sometimes it was significant plot of land, sometimes there were Jews buried in one portion and had not been used for the other portions. So, I set up a Rabbinical council, headed by Rabbi Herzog, the chief Rabbi of Israel at that time, Rabbi Leo Baeck, who was the chief German Rabbi when they were driven out, and there was another German Rabbi who represented the Jewish communities in Germany. And these three were to give me the guidelines of what could be done with the Jewish cemetery once it's been restituted. My instructions to the staff were we abide strictly by these rules, and the rules were: once a Jewish cemetery, always a Jewish cemetery. You cannot do anything with the land in which somebody is buried. Even if a tombstone falls down, you must not pick it up. You must leave it lying there, which was a surprise to me, of course, because all Jewish cemeteries had been desecrated. But if there is an area where there are no bodies, then it may be fenced off and it can be sold provided it's not sold for a profane purpose. What is a profane purpose? You have to go back and look in the Talmud. A hospital obviously is not a profane purpose. A dance hall probably is. A gambling casino certainly is, so we had to know what was being sold and for what purpose it was being sold. Let me just take a minute or two for a very amusing story, or it seems to me. We had a situation of a cemetery in the old town of Fulda. Fulda is in the north of Hesse, is famous for the Fulda Gap, where all the armies invade. It's an old Catholic town. Lots of churches, and there was a Jewish cemetery in Fulda, and it was a large area and the social democratic mayor wanted to use part of the cemetery, which was in the center of town, by the time the years had passed. Originally it was outside the town, but it may have been a

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hundred years ago when it was started, now was in the center of town and a quite valuable piece. He said he wanted to use it as a custom house. To build a custom house, it was right on the East German border. I inquired with Rabbinical Council, which I did very strictly on all such matters and they said custom house, yes, that's okay. I happened to be in New York when I was reporting to the Board of Directors, a very dramatic telegram. They're building the custom house and they're digging up bones. Well, the contract was very clear, there was a certain area [in] which Jewish graves were known to exist. That area was to be fenced off. They were going to have a little memorial park next to it. The cemetery itself had been desecrated completely, but we were going to have a little park there with a plaque and the custom house to be built in the area on the blueprint where there were no graves. Well, that created a major problem. And I rushed back, -- I sent a telegram, seek an immediate injunction. Stop all building, I'm on my way home. And when I got back to -- I think we were in Frankfurt at the time -- I said, how far has it come? Well, they already had about four stories on the building, big building. And one portion of it was seemed to me over the graveside. It was just a small area of maybe 10 by 15 feet and I said "Tear the building down." They said, "You can't do that. The Jewish community can't do that. We have to live in this town. You can't ask me to tear that building down." What the hell were they thinking, it's a breach of contract. Tear the building down. It's their problem. And they said we can't do that, their life will be unbearable. I said well, let me consult with the Rabbinical Council. And I consulted with the Council, and they went into a meeting and conference and they finally came up with a solution. And they said, "The Torah says that you may not have anything on the cemetery except a Jewish Prayer house. So, what you have to do is raise the building and it's not the cemetery." I said, "Raise a five story building. They may know more about the Torah, but they don't much about engineering. You can't raise a five story building." So, we went back to the rabbis and said you better look some more. And then

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some genius, I don't know which one it was, came up with the solution. If you can't raise the building, you have to build the prayer house under the building so that the building rests on top of the prayer house, and there is nothing that says you can't build a building on top of a prayer house. Only you can't build it on the cemetery. That's an idea. So what we did, and to anybody that ever views this tape, I recommend they go and check it out. In the corner of the customs house in the city of Fulda, there is a small room which is a prayer house built in accordance with specifications laid down in Israel, with inscriptions on the wall in Hebrew with stained glass windows and candelabra. There is room for a Torah, there's an ark, but there is no Torah there, and that was built in the basement, excavated under the customs house and it is the world's most unknown and unused, smallest synagogue that ever existed. And I went to check up on that ten years later, and I came to the customs house and I said to the concierge, I want to visit the synagogue. They said, "Well, you go outside and go down and turn down to the left, three blocks and then you turn to the right three blocks and there's the Jewish synagogue." I said, "No, no. I want to see the synagogue in this building." And he said, "This building is the custom house." I said, "There better be a synagogue in this building. Call somebody." So he called somebody upstairs and they came running down and said Oh, yes, yes, yes. They had a bunch of keys and took me down into the basement and kicked some boxes away from the front of the door and opened the door and said, "Is this what you're looking for?" And I said, Yes, that's it. I went in and I inspected it. It was still there and I said, "Does anybody ever use this?" He said "No, never." I said, "Has anybody ever been in here?" He said, "No, never." I said "Do you keep it clean?" He said, "We always keep it clean." I said, "Fine, thank you very much. Keep on doing it." So, go and visit the Customs House in Fulda and check up for me. They are bound to do that forever. Let me tell you another story about forever. This is a very serious matter. How long is a cemetery to be maintained? One of the things we worked out with the Germans

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was that they would be responsible for the maintenance of the Jewish cemeteries. Now, under German law, a cemetery is maintained for only twenty years. The system there is every town has their own cemetery, and everybody who is a resident of that town is entitled to be buried in that cemetery. And they go one after the other. As you die, you're put in the row in a small place, very orderly. The Germans are very orderly people. And after twenty years, you're required to take away the tombstone or they'll take it away for you, and they put somebody else in the same spot. Saves ground, saves money, and I guess it saves emotional sentiment, they say after twenty they say stop grieving. Well, they were quite prepared to do that, but as we were reaching the end of the twenty year period, they said "Now you take care of the cemeteries." I said "Wait a minute. Jewish law requires the cemetery to be maintained forever." The said, "Forever? It costs money. You have to cut the grass, have a fence around it. It costs money. We're not going to pay that. If you have a peculiar ritual, we're not bound by that. Why should we treat you better than we treat our own?" Well, it got to be a very emotional argument. A very dramatic argument. I had just come back from Auschwitz. Anyway, the Germans were finally persuaded to accept the Jewish ritual, and they do maintain the cemeteries in Germany in perpetuity. This was also part of the restitution program, things the public doesn't know anything about.

Q: How did you convince them?

A: I convinced them by slamming on the table the bones that I had brought with me from Auschwitz.

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Tape #4

Q: Ben, tell me something about the cultural restitution of cultural objects.

A: Since the Jewish Restitution Successor Organization, JRSO, or as the Germans called it, JRSO¹⁷, was authorized to claim all unclaimed or heirless Jewish property. It also recovered thousands, many thousands of Jewish cultural objects, which had been assembled by the Germans. For example, the Germans collected Torah scrolls. A warehouse full of Torah scrolls. Tons of Jewish ceremonial objects taken from all the occupied territories. It was in Einsatzstab Rosenberg Special Unit, Alfred Rosenberg was the Nazi ideologue and it was named in his honor which had that as their assignment to go and seize all Jewish cultural objects and hold them. The Nazis had various plans for them. These were eventually assembled in a big warehouse in Wiesbaden in the custody of the United States Army, and they in turn turned it over to the Jewish Restitution Successor Organization of which I was the director. Now, thereto, our first goal was to try to locate the owners if there was a Kiddush plate or something that had the name "This is the family of so-and-so of Warsaw" we tried to find out where the man was. If it came from the congregation that still existed we tried to send it there. We did the same incidentally with individual properties of restitution. If the owner showed up later and said, I didn't file a claim on time or it was too short, but I'm really the owner, I'm really the heir, we worked out what we called an equity procedure of giving the property back to the real owners, subject to a very modest 10 percent I think it was service charge for the expense in getting it back. So, here our first goal was to restore it to the rightful owners. But usually you couldn't tell. So, the next goal was try to distribute them wherever they were needed for Jewish reconstruction, the reconstruction of Jewish life.

¹⁷ Pronounced "Ear-so."

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And a separate entity was set up by the Jewish organizations to do that called Jewish cultural reconstruction. And Professor Salo Baron of Columbia University was a member of our board of directors was in charge of that and Hannah Arendt was one of the persons who first came to Germany to help guide us with what to do with these things. Because I really -- I was a young fellow, I didn't really know anything about Jewish cultural life in Germany and particularly the religious life. So, we set up this Jewish cultural reconstruction, and we had staff. We were still in Nuremberg. This was the very early days, to come in to help us with that. Hannah Arendt was one and then we brought in experts from Israel. There was a gentleman by the name Narcus, another Shanomi who came from the _____ Museum in Israel to help us with the Kiddush cups and with the pointers and the Torah crowns and all of the objects. We also had people restoring them. We had, for example, a school of scribes working in Paris, to restore Torah scrolls, and I learned that a scroll can be repaired except if the word "Shaddai," or God, is injured in which case you cannot -- if that's been damaged you cannot restore that. The Torah scroll has to be buried in Israel, following a certain religious ritual. All of which we followed very precisely. I was very insistent on that. I said "Look we take the law as laid down by the Rabbinical Council, and we don't vary that in any way and that is absolutely strictly to be observed." And it was. The School of Scribes sat in Paris under the control of the JDC and they repaired those Torahs that could be saved, and the Rabbinical Council would advise where they were needed. New congregations in Israel, big recipients. Congregations in other parts of the world where they needed some sent as remembrance scrolls to different communities throughout the world. And we did the same with the ceremonial objects. Where we could find the owner, we restored them. Where we couldn't, we returned them. Where it was damaged, we restored them, we then distributed wherever it was needed, and at the end we still had tons of broken silver. Knives, forks, dishes, plates. All kinds of little bits and scraps. And the question was what do we do with

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that. And I, being very careful, found a Jewish silversmith, Goldsmith Brothers in London, and I said, all right we'll send it to them. They cannot be repaired. We cannot trace the owners. They are just scraps. Nothing can be done with it. We'll smelt it down and we'll use the proceeds then for Jewish charity. I thought that was being very clever. And I went to the board of directors in New York, where we had our annual meetings and I reported on the great care that we exercised in disposing of all these things and I was feeling very cocky and very proud of myself and I said and now we have received \$50,000 for these silver scraps which we sent off to the silversmith Goldsmith Brothers in London, and they smelted them and they sent us the proceeds and this is now available for distribution by the charitable organizations. Whereupon the first person to raise his hand a member of the board of directors. A very distinguished elderly gentleman. He is now and was less elderly then, he is still living, Isaac Lewin who was the Chairman of Augudat Israel world organization, and he said "Mr. Ferencz, do my ears believe me? You took these holy objects and you sent them to a crematorium?" Boy, I knew from that question that I was cooked, and I tried to explain the best I could that it was not really a crematorium it was just our way of trying to carry out our assignment and realized that assets to the benefit of those who survived. I don't think he really ever forgave me for that. But we did become good friends in later years. But it's an illustration of some of the problems you know of dealing with this new area which had never been done before. We had paintings which we disposed of, and we had all kinds of things. It was another facet of the restitution program.

Q: What did Hannah Arendt do?

A: Hannah Arendt was there for a relatively short period of time, but she being very cultured, an educated lady knowing the Jewish communities of Germany very well, she was helpful to us

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in identifying various ceremonial objects. She knew what period they were from. Where they might have been from. Where there had been collections of it. Let me tell you another story of collections. Among the collections were, of course, many Jewish books, prayer books of various kinds, some incunabla.¹⁸ I'm not sure exactly what that is but old Jewish books of great value. The Germans had also collected such books, I mean the German Universities, German churches, part of their religious studies, and the Nazis had picked that up too. So, the previous owners had been institutions that had legitimately acquired those books. And they were quite valuable. One day a Jewish rabbi, a chaplain I think his name was Bernstein, pulled up with an ambulance to the back of one of these archives and selected some of the most valuable Jewish books, and filled up the ambulance and put them on a ship smuggling immigrants to Israel, Palestine, as it was then known. And so, these were books which had belonged to legitimate German institutions and had been lawfully acquired. So, it was a case of unlawful confiscation. And one day I got a call from General Clay, and he said "Benny, you better come up here. We got a problem." And he said, "I have this captain. I'm about to court martial him for stealing Jewish German property. And he said we have a restitution program here restoring property to those from whom it was unlawfully taken. That doesn't mean you can go out and steal property from the Germans, and I think I'm going to have to court martial him." I said, "Look, don't do that for God's sake. Is that really necessary? Mitigating circumstances, he thought it was Jewish property?" He didn't know, I didn't know. I said, "I'll get it back." He said, "All right, you go and get it back for me." I said "Okay, I'm going to go to Israel. I have to deliver a shipload of prefabricated houses bought from Austria with restitution money. I'll get it back. Give me a list." So he gave me a long list, I don't know ten, twelve pages of different books of which I didn't know nothing,

¹⁸ Incunabla generally refers to any broadsheet printed before 1500 with Gutenberg movable type.

In this instance, it likely refers to Torah scrolls and holy books.

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and I go to Israel and I meet with the government officials there of whom I was in contact with, the Finance Ministry mostly and I say, "Look, General Clay says I have to make restitution for this property. Where is it?" He said, "It's in Mount Scopus." I said, "Let's go up to Mount Scopus and get it. I got to bring it back. I promised him I'd bring it back and they're going to let this captain off the hook." Meanwhile they sent him home. They sent him right home, Philip Bernstein it was. I said well, Mount Scopus, and they said you can't go up there. The Arabs are up there, it's between us and the Arabs. It was the old city. So, you can't go up there. It's Hebrew, Mount Scopus, you can't get there. I said, "When can I get there?" He said, "When the war's over." Good, I'll tell that to Clay. So, I go back to Berlin, and I report to General Clay and I tell him, "Sorry, General, they're ready to make restitution, but the Arabs are there. If you send me some tanks, I'll go get it, but otherwise you'll have to wait until things quiet down and then we'll get restitution. And he accepted that. And then, of course, he left shortly thereafter, and Mr. McCloy came in, and to my knowledge, that has never been settled by way of restitution, although we did have such a problem in the Hague negotiations with the Germans, and I think the Templars, a German society, whose land was taken in Israel, they made some kind of a deal which may have incorporated some of these books. I really don't know. But it was a case of the Jewish organization being required to make restitution. Whether they did or not, I really cannot swear.

Q: You've been in Germany now more than a year, haven't you?

A: What do you mean?

Q: You said you were going to --?

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A: Oh, yes, well of course. We stayed in Germany -- we expected to stay for one year. After being there for ten years, we had four children, and I just didn't want them to be raised in Germany, and neither did my wife, so we decided to resign from these organizations and return to New York. But I did remain as an advisor to the organization for very many years after that.

Q: What was life like there for you and your family there?

A: It was a colonial, cloistered existence. Perhaps you could ask my wife to explain what it was from her point of view. We didn't fraternize. The first German I let into my house after living in Germany for seven years, as a guest, anyway, was Professor Franz Böhm, who had walked out of the German delegation in protest against the action of his government. But I may tell you about that when we talk about Hague negotiations. But it was a very colonial type existence. The Americans fraternized only with the Americans. Germans were used as servants. There was a time when cigarettes were the currency. Everything was very cheap. It was a comfortable life like the British living in India would be comparable. There were some tensions before the Einsatzgruppen defendants were executed. I received several death threats. I took the name off my door. We had death threats later in connection with the Hague negotiations with we may have a chance to go into. But it was comfortable in the sense that we could travel. It's nice county. Nothing wrong with the mountains. We could travel to Bavaria, we traveled to other parts of Europe. We were young, and but it was not a happy place to be. You always felt beleaguered sort of. You were surrounded by persons that regarded you as vermin the years before, and suddenly they never heard of such a thing, so you felt rather entrapped and besieged in a hostile sea. But, nevertheless, they were not

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unhappy years, but we were happy to be able to leave and we were determined to leave before the job was really done.

Q: Did you see black market activity being done?

A: Nobody could live in Germany without seeing black market activity. Germany was run on the black market. Everything was black market. There was nothing else outside the black market. There were rations, sure. I mean you could choose between bread or beer. There was an official black market in Berlin, for example, just set up by Mrs. Clay, where in order to attempt to curb the wild black market they could bring their stuff to this central black market -- it wasn't called that, it was trading post or something, and they would get coupons for so many pounds of coffee and so many coupons for a camera, Leica camera and then you can exchange one against the other. Cigarettes were the currency, literally. People would work for you for cigarettes. For cigarette butts, so it was very grim from that point of view.

Q: Was it helpful -- Black Market helpful or always harmful?

A: Well, it's hard to answer that question. I did have a discussion with this Doctor Schwartz in Paris about that. It's interesting that you should raise it. The Jews were receiving from the JDC equivalent of CARE parcels. They were parcels containing various things that they needed, sugar, coffee, clothing, material to make [clothing], and the JDC was sending in mostly cigarettes, because that was the most negotiable item. And I discussed that with Joe Schwartz from a moral point of view. I said, "Look, all the DP are now trading cigarettes, it's illegal, it's black market. Don't you think you are better off setting up soup kitchens rather than just sending in these things. They're all on their own." Which meant that they

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were all engaging in illegal activities. And he said, "No. I think that, first of all, we get much more bang for our buck this way." You know, this was the currency of trade. The cigarettes were cheap, and you can buy a lot for it, and we need -- we're short of funds," as they always were. "Secondly," he said, "it's an outlet for their emotions and they were returned to normal life once they are taken out of this atmosphere." So that my concern was that their moral standards would be destroyed by engaging in illegal activities. They would lose all respect for law. And I couldn't persuade him was the end of it, and in retrospect, he probably was right, because in order to survive, legality was rather irrelevant. They were living in an unlawful world, an unlawful state. And they did whatever they had to do in order to survive, and in that kind of atmosphere to come as I was inclined to do, being a lawyer, with notions of strict legality, was unrealistic and perhaps unfair. And I was overly concerned about that. Anyway, the black market did, in time, as the economy improved, disappeared. I'm not sure that it did any big harm anywhere. It exchanged goods; a lot of German goods were exchanged for a lot of cigarettes. But, another form of restitution, perhaps, but I don't think it had any permanent significance.

Q: Did you visit any DP camps during these years?

A: Yes, indeed, of course there were DP camps everywhere, and we had some relatives in DP camps, some cousins of my wife. I had no personal relatives of my own there, but some cousins of my wife were there and there also the conditions were of course very rough, but not as compared as to the concentration camps. But everyone was very eager to recreate their lives. They were remarrying any survivor, you know marrying and raising children as quickly as they could in defiance that Hitler was not going to succeed.

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Tape #5

Q: What was done to help the victims with their own injuries?

A: That seems to me to be perhaps the most important, or next to the most important phase of dealing with Holocaust problems. Holocaust begins with stopping the Holocaust. Wars are holocausts, worst forms of holocaust. The next phase is to hold accountable those who brought it on. These are the war crimes trials. The third phase is trying to restore what had been destroyed or taken during the war, that's the restitution program, and then the next phase is the victims. What about the victims? People tend to forget in the drama of the courtroom, they think ah, the criminals are punished; it's over. It's not over. The victims are more important than the criminals. Criminals can be punished or killed. It doesn't make a big difference unless it's a deterrent to the repetition of the crimes. But what do you do about those who survived? And this was a problem which was not addressed by military government except in the very crudest way of seeking compensation for time spent in a concentration camp, but it's much more complicated than that. The victims suffered all kinds of losses, and if you approach the problem legally, then it requires a completely different and much more expanded approach and that was the next thing that happened. If you want me to tell you about that now, I'll tell you how it began, and how it was approached. The notion that the individual survivors of Nazi persecution, Jewish or non-Jewish, should be compensated for their injuries is an old notion. It was quite obvious to anyone who was concerned with the subject, and people had begun to write about it in Israel, in the United States, about compensating victims of personal injuries. Germany was eager to reenter the family of nations. Konrad Adenauer was a devote Catholic, anti-Nazi who had been saved by the help of Jewish friends when the Nazis had been trying to drive him out as mayor of

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Cologne, and he was very eager in fact to find some way of reaching out to the Jewish community. He was able to that through a banker in London by the name of Noah Beru (ph) who established first contacts with the German government, this is the post Nazi government saying let us try to arrange something. Nahum Goldman was involved very early. Noah Beru was connected to the World Jewish Congress. Nahum Goldman was president of the World Jewish Congress, which he had created, and the very skillful negotiator and a very diplomatic person really, and the first question was: are the Germans serious? No one trusted the Germans, but the feeling was, look, what are the options? To let them get away with it and walk away and say nothing? There was a Biblical phrase that was used "Thou shalt not kill the victims and steal their property and get away with it." It was the same thing with compensation. It was behind the restitution programs. But compensation is something else. Compensation is payment for individual injuries sustained. And Adenauer, of course, had to clear with his government. He was conservative, CDU, Conservative Democratic Union¹⁹. The socialist were more inclined. They themselves had been Nazi victims, many of them. And so, the first thing that was necessary was to test their sincerity, and Goldman said look, I want to have a commitment of a minimum of a billion dollars, maybe it was a billion marks. Goldman never knew the difference between dollars and marks. It had to be a big figure. If it's a billion, that's a lot. The Germans didn't know what a billion was because they called it a Milliard, a thousand million. Anyway, Adenauer was able to give him assurances that after clearing with his Parliament that the negotiations would be serious and eventually the agreement was reached that we would enter into negotiations. But negotiations would have three parties. One the German government, by that I mean the West German government. The East German government never answered. Communications were sent to them. This only began after Germany was restored to it's

¹⁹ **Correction:** Christian Democratic Union.

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sovereignty around 1951, and before then there was no government to deal with. And the agreement was reached that negotiations would be entered into on neutral territory. No Jewish organization wanted to go into Germany. I started to say there were three parties. On one hand the Germany government, on the other hand, the state of Israel. The state of Israel at that time was a very new state. It had a lot of enemies. The whole Arab world was aligned against it, and they need someone to represent the Jews not in Israel, because Israel never purported to speak for Jews who were not in Israel. And who was to speak for them? Most of the Jews were not in Israel. They had fled. Polish Jews, Russian Jews, German Jews, so a third party was necessary, and Goldman had the genius to put it together in what he called The Conference on Jewish Material Claims Against Germany. It began as a Conference and then kept the name Conference. It should have been committee or something else, but it kept the name and it consisted of a collection of the leading Jewish organizations in the world, the World Jewish Congress, American Jewish Committee, The American JDC, Central British Fund, The Jews of Argentina, The Jews of France. They all came together and formed a New York corporation called The Conference on Jewish Material Claims Against Germany, and they were going to be the third negotiating party. So that the Germans would be negotiating with all the Jews of the world and the negotiations would take place at a secret destination in a neutral country. To give you some idea for the feel for it. There was a big outcry in the Jewish community, particularly in Israel: this is a betrayal of Jewish honor. You are selling my mother. You are trying to get money for blood. Those who do this will be betrayed by the Germans. The only good German is a dead German. We want nothing to do with them. We don't want their lousy money, have nothing to do with them. You are a betrayer of the Jewish people if you dare to sit with them. Menachem Begin was the leader of the Irgun at the time. They were busily engaged in smuggling Jews into Palestine for that.

The Jewish state had been created, and they felt very violent about that to such an extent that

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they did send a bomb in a Große Brockhaus, a German encyclopedia, addressed to Adenauer, which was intercepted by the police in Munich and when they opened this big encyclopedia and the bomb exploded, it killed two policemen. They had sent a letter bomb to the head of the German delegation. To give you a little closer feel of what this is like, the preparations for this meeting took place at the Grosvenor House in London for about a week before we were going to go in, and we were then trying to prepare the opening statement. I was there as counsel to the claims conference, because I was the director of the JRSO, so I knew about restitution. I knew what had happened more or less and so I was an expert, so called, in the field. There were other experts who were much more expert than I in the fields of reparations and so on. I think Hemmy Robinson (ph) and his brother Jacob Robinson were really very learned international lawyers coming out of Lithuania, but we had a crew working in the Grosvenor House in London trying to prepare the opening statement and decide on what theory and what are we asking for, and how do you justify it. Since my wife and I had parachuted out of plane over Berlin some recent time before, I was not eager to fly to wherever the meeting place was to be, and it was rumored that it was to be in Brussels. So, I said, "Look, tell me. I'll get there by train." And I was told when we left the Grosvenor House, you'll be given an envelope. Don't open until you get into the taxi and when you get there, then open it and follow the instructions. We were under the security guard of the Israeli Secret Service, and I opened it up and it said proceed to Hoek von Holland. I went to Hoek von Holland. I said it's a strange way to go to Brussels, but I figured as much that you know it's some other destination. And there I was checked out the customs. I came in and they looked at my passport, looked me over and Mr. Ferencz, yes, just a moment, and then they had some man come out of the back room and said come with me and I sat in a big black buick and off we drove into the night. After daylight began to break, I said to the man, "Excuse me, can you tell me who are you and where are you taking me.?" "Oh," he said,

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"I'm the Dutch Secret Police, and I'm taking you to a meeting site." Okay, fine. Dawn was breaking, we pull in to what looks to me like an old castle. It was _____. And it seemed to me I see SS men with police dogs there. And then my heart just sunk into my stomach. The Einsatzgruppen defendants had been executed not long before and I thought I had walked into a trap. There was a Nazi on the ground as well. But as I looked a little more closely, what I first glanced over SS were the Dutch Police. They wear the same type uniform. Black uniform without the death head and without the silver stripe on the pants. And when I noticed that very quickly and I realized it was not a trap. But I came in, I checked in at the desk; this castle had been converted to a hotel, a first-class hotel, and I was assigned a room. What I was told was open no drawers. Open no doors. There's a policeman stationed on every floor, and if there's anything suspicious, don't touch anything. Immediately alert the policemen on every floor. And the German delegation came in, headed by Professor Franz Böhm, and Otto Küster, whom I had mentioned and Böhm received a letter bomb envelope. A letter bomb envelope is an ordinary looking envelope which has a paper inside and at the bottom of it there is black powder and a detonator so when you pull it out the detonator explodes the powder and it will kill anybody who has it in their hands or anybody nearby. That was intercepted by the Israeli police and we were told, be careful, because we knew that a member of the Stern Gang and the Irgun had entered Brussels looking for us and was already in Holland. They had been tracking him. So, it was filled with a lot of apprehension. There was a plane coming in from Israel with two Israeli delegates, crashed over Frankfurt, crash landed and killed everybody on the plane. We don't know that there was any connection. We did not have any advance notice of that, and I don't know to this day. It may have been just an unfortunate coincidence. I hope it was. But it was an area of high tension. When Goldman appeared in Israel, the Knesset was stoned. When they debated this there was people marching in the streets against him trying to kill

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him, threatening to kill anybody who was connected with the negotiations. So, that was the way we began. And what we're trying to do is create a sense of justice for the injuries. The Germans coined the term "Wiedergutmachung," which literally means make good again. But you can't make good again, this kind of injury. All you can do is try to ameliorate it to some extent. And then I felt, and the others who were connected with it, was a moral obligation as well as a legal obligation. If you injure someone, you owe them the duty of trying to make recompense as best you can and to heal them as best you can. And that problem continues to this day: the Japanese use of comfort women and so on in other parts of the world. It's a continuing problem, but at that time it was new. No one had ever done this before. No one had ever sat down after a war to provide individual compensation to the victims of not only that war, but the persecutions related to it. And to work out the principles and to set up the machinery and to put it into legislative form so that it will be passed by a parliament and be enforced by a whole series of judicial instruments and courts and agencies on an enormous scale, I mean millions of claims, Jews and non-Jews. This was not strictly a Jewish program. No one should mistake that. The Jews were the primary targets and certainly the worst targets, -- although the gypsies were close behind of the Nazi extermination programs -- but there were very many other victims including German victims and it would be a mistake to disregard them. And we didn't disregard them in trying to work out the compensation laws to indemnify them for their injuries. We never made a distinction between Jews and non-Jews. They all had equal rights under the law.

Q: Then what happened?

A: Well, let me give you some ideas of the legal principals involved. First, what do you ask for? We had global sums in mind when we negotiated the Hague, and they were global

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sums agreed upon. Three billion marks was to go to Israel to help cover some of the costs that they had incurred in absorbing the immigrants of Nazi persecution, trying to rehabilitate them. It was a global sum, which at that time was vital for the salvation of Israel. Germany had no money. Germany was devastated. How do you pay it? It was repaid over a period of ten to twelve years. The first payments were oil shipments. Israel was at war. What were their primary needs? The Claims Conference was to get five hundred million dollars for compensation to the Jews outside of Israel. That was for organizational assistance. Then we had, from these payments incidentally, the Israeli railroads were built. The Israeli electrical system was built in Germany. If anybody's been in Israel they know that taxi cabs are all made by Mercedes. This was a great help, and it was rather ironic that the state which had set out to destroy the Jews was so helpful in fact in enabling the only Jewish state to survive. And it was so. And people like to forget it and say no, but it's an unfair thing to do. Then, what do you do for the individual? How do you measure? Well, we decided very early on, we were not going to ask anything for loss of life. You don't take six million dollars or six billion dollars for the loss of six million lives. But you do take the ordinary principles of law. If a child lost his father, who was his provider, and the provider was a high income, middle income or low income person he'd be entitled to compensation based upon that. But he had to prove that he had a father, and that his father was murdered by the Nazis, that the father had a certain income, that a certain portion of that income would have been used for that child, that it would have been for that child for a certain number of years, that the German government should pay for it, that they should pay for it for a limited or permanent period of time, they should pay in whole or in part or a percentage. How much can they afford to pay? The *Leistungsfähigkeit*, the ability to pay, was the theme song. We have other obligations to pay. So working out all these principles of law, how to measure the compensation, like an insurance company. All of these things were worked out and six

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months of detailed acrimonious negotiation to produce finally the German Bundesentschädigungsgesetz, the law for the compensation of the Nazi victims.

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Tape #6

Q: Ben, can we talk about what sort of problems you had in with the Claims Conference in terms of was it like what happened with restitution?

A: Well, the Claims Conference was the umbrella organization acting as the voice of the Jewish community. Nahum Goldman had obtained authorization, in fact, to speak for Israel, so we had one voice speaking for the Jewish community, which was important. The first thing I did was I set up an office in Bonn, to serve as a lobby to watch the Germans and see that they carried out the program. Nahum Goldman was very effective every time he came to Bonn, which was quite regularly, he would meet with the heads of the different political parties in order assure their support. The man that I sent to be in charge of the office in Bonn was a man who had worked for us in Nuremberg, a former Jewish Berlin lawyer by the name of Herbert Schoenfeld who was a bachelor and a very charming man. And he said, "What shall I do in Bonn?" I took him out, he was head of the JRSO Stuttgart office and I said "You make friends. All you have to do is make friends." And I gave him a big American car, which cost nothing because I got it from the Army and we had free gasoline and free logistic support, and I said, "I want to know what the Germans are thinking before they think it." And he was the man for that. He knew all the secretaries. He knew all the people in Bonn. He was very popular. The problem was to persuade the Germans to make the size of payments and category of payments that we wanted. And the Germans didn't want to. They had their own financial problems. The finance minister said, "Look, this will bankrupt Germany. We can't accept these unlimited liabilities." At one time we even talked about requiring every German to pay one mark a week or a month toward a fund so that they would realize that they were paying compensation for what had happened in their name, but

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that was not dealt with very seriously and it would not have been feasible. So, the Germans undertook, with great hesitation, different categories of payments. The German public was completely unaware. They felt no pain whatsoever as a result of these programs. Germany prospered and the losses were much greater than anyone had anticipated. We had made our appraisals beforehand and had estimated it would be six billion marks or nine billion marks and the Germans said oh no it's going to be 12 billion marks and we can't afford that. By the time this program is over, it will cost the Germans well over a 100 billion marks. They already passed the 100 billion mark figure. That, in today's dollar, at seventy cents a mark, a hundred billion marks would be about 70 billion dollars is what it would cost the west German government, now the reunited German government, to meet these claims. There were literally millions of claims filed. I think it was three or four million claims, Jews and non-Jews alike. Don't forget that these were not only Jewish claims. And the response we had, the claims had to be proved in every case the individual claimant had to prove that he was injured as a result, direct consequence of Nazi action. If he could prove that he was permanently disabled, he would get a lifelong pension, and they're paid now -- I don't how many are still alive, but the last time I looked at the count, a few years ago perhaps, there were over a hundred thousand Nazi victim survivors, Jewish Nazi victim survivors, who were getting life long pensions from the West German government. Most of these people are in Israel. The D-mark is very valuable currency. The Israel currency would fluctuate. This was a life saver for them. In order for them to get recognition, however, they had to persuade the German doctors that the disability was caused by the persecution. That was not easy because for years they denied that there could be any mental disability caused if it did not appear immediately on liberation. Many people, and anybody who was in the business who knew the people knew it was so, managed to hold themselves together for many years, and then maybe five, ten, twenty years later, suddenly they would break down. By that time,

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the filing deadlines had all expired; they may have been recognized for a small disability. They had to prove that their grandfather had not had a nervous breakdown at some point. And the German doctors were hostile. I must say they were hostile. And the German agencies that we had to deal with this were very often hostile. It depended upon the area. Berlin, for example, was known to be more liberal. There was a man in charge there named Lipschitz who was very kind and tried to be fair. In Bavaria, we had nothing but troubles, tough fighting all along the way. And this required legal services of all kinds to help the claimants. The claimants themselves never really understood. They said it's Wiedergutmachung, why didn't they get more? What they got seemed to them to be paltry, and it was in many respects. And they couldn't understand that every case was different. They'd say my sister got the same, and my friend, it was the exact, why did they get more than I did? Well, there was always a reason. Sometimes it wasn't a good reason, but to have them understand that was very difficult. So, this entire program, which expanded as we went along, it was originally intended to be over by ten years, I knew it would never be over in ten years, the laws had to be modified. They were expanded. Finally the Germans were getting tired of that and they called it the Schlußgesetz, the final law. Well after they got through with the Schlußgesetz, it wasn't Schluß. They had to come with the hardship fund. And then after the hardship fund they came with another hardship fund because every time you started to implement the program, you discovered the loss was much greater than you anticipated, than any of us anticipated. And since Germany was prospering, and many of these payments were linked to their own civil service, so that when their own civil servants got a raise in their pensions, the Jewish Nazi victims got not the same amount, they never got the same amount, but something lesser, but they also got some raise. And so over the years these payments were very significant. And as I look back on it in retrospect, the program is still going on, but it should be over within the next ten, twenty years, as the last victims die off, as

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I look back upon it, it was a unique historical achievement, and it was a great achievement. It was a great achievement from a moral point of view. The awareness and recognition that the wrongdoer has an obligation to his victim to try to help him; from a legal point of view, developing the principles of compensation, the principles of law which should bind people under similar circumstances. Which I hope are never repeated but which I fear are being repeated. So, when you look at it as I look back upon it, I think it was a very great thing. It was done in the name of all the Jewish organizations on behalf of the Nazi survivors. It was inadequate to make good again any of their suffering, but at least it was a gesture that somebody cared. They had not been forgotten.

Q: Did Jews and non-Jews make claims?

A: Yes.

Q: To the Claims Conference?

A: No, the Claims Conference didn't handle claims except the hardship claims which came later. But the claims had to be submitted to a German agency, and if you were not satisfied with that you had again to go through the German judicial system up to the German supreme court and German constitutional court and the United Restitution Organization which was another organization I was involved when it was set up and I was the director of that, we took many cases to the German Supreme Court and had to take them to constitutional court to assert our rights. Sometime we won, sometimes we didn't.

Q: Are there any particular stories involved in these claims that you might want to talk about?

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A: Well, I think the fundamental story which disturbed me for many years was the German failure to recognize the Spätschaden, the late claims. These ailments which would appear only years later, several years later, particularly mental illness, but it was not only mental. People would suddenly get heart trouble and other things. And the Germans refused to recognize that although medical science was beginning to recognize that people who had been subjected to trauma might have this late syndrome, which I may be a victim of myself, but they began to recognize it when the German troops began coming home from the Soviet Union. Suddenly they realized that these soldiers who had been subjected to the most difficult circumstances while in Soviet captivity were suffering from mental ailments of various kinds and other physical ailments and they began to compensate them. Incidentally, the payments made to German SS officers, their pension payments were vastly higher than any amounts given to Jewish survivors. Although they were important to the Jewish survivors, we don't want to exaggerate their importance in relationship to Germany's overall budget and how much they would spend on their own, their widows of their own fallen SS heroes as they considered them. And SS officers. And so this whole category of mental ailments was badly treated by the Germans, very badly treated for very many years, and many people died before they could get any compensation, and it had to be reversed by the Courts. And some court decisions were outrageously unfair to the claimants.

Q: So, Germany felt much more obligation to the perpetrators?

A: Oh yes. Well, they didn't call them perpetrators to their own fallen heroes. But that was a different category. This was something imposed upon them outside their normal judicial

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framework and they always regarded it as such. They always said this was "Besondere"²⁰ legislation. This was something special and ordinary principles of law didn't apply to these payments. This was an argument they frequently made saying look we're doing you a favor. Get off our back. Don't come to us with legal principle which should apply to us Germans when we have our own German law. This is a special law and it's limited, and there are limits to what we can pay. There was some truth in it, but and it's more than other governments have done, but this was the problems of those on the ground trying to get as much as we could for the victims. And we did that.

Q: Did you have help from the Jewish organizations?

A: Well, this was all done in the name of the Jewish organizations, fortunately for them for everybody I guess, they didn't have to put any money into this because we generated all the money on the ground, from the first payment that supported all the meetings and all the salaries and everything else. I also managed to get tax exemptions from Germany for many of these expenditures. And the organizations themselves they welcomed Germany paying of course, and were always prepared to go to Washington with the delegation and say "Pay more." Particularly if it got in the New York Times, or even in the Jewish Week or Jewish Telegraphic Agency, but in terms of making a sacrifice, it's fortunate for the victims that the Jewish Organizations were not called upon to make sacrifices.

Q: Can you tell about the establishment of the United Restitution Organization?

A: Yes. It was very obvious from the very beginning that if the Nazi victims were to assert their

²⁰ **German:** Special, extraordinary.

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claims effectively, pursuant to the German laws or the military government laws, they would need legal help. There was no member of the German bar who was not a Nazi. It was a requirement. If you were not a Nazi you couldn't be admitted to the bar. The prospect of Jewish Nazi victims going to German lawyers and paying them in an effort to get compensation, the nature of which was highly uncertain, and the value of which was highly uncertain was not something that they would do. If there were no agency to assist them with their claims, the whole legislative programs that we worked out would be meaningless. And so, we set up, by we, I mean again I was the director the JDC was the leading body, there had been a small organization of German Jewish lawyers who had fled from Germany and set themselves up in England and they were handling some restitution claims for the return of property. They were being supported by the JDC and the Central British Fund and I think the Jewish Agency. Very small payments and a very small program. And when I set up the program, I incorporated them. They were called the United Restitution Office. I called it the United Restitution Organization to retain the continuity. Their chairman was a very fine gentleman by the name of Professor Norman Bentwich, a distinguished Englishman, a dear friend, an outstanding citizen. And then I expanded it with money that the Germans had paid. I borrowed from the Claims Conference a few million dollars and expanded that operation. The Claims Conference got the money from the Germans. I repaid it to the Claims Conference later and expanded the organization so that when I left Germany in 1956, I had a staff of 250 German lawyers, 1,200 people, offices in 19 different countries. Offices in every major city in Germany, in Israel, wherever there was large concentrations of Jews who needed help with their claims, the United Restitution Office set up an office. In Israel we had one in Tel Aviv and Haifa and Jerusalem and in the United States we had one on the West Coast and in Los Angeles which still exists and in New York which still exists in Philadelphia. We had offices in Baltimore. We had offices in Stockholm which we closed,

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in Latin America, in Johannesburg. We had offices all around the world. And these offices were there to give assistance to claimants with no down payment a small contingent fee which enabled the organization to maintain itself funneling hundreds of thousands of claims through to the German agencies and in Germany we had offices in Frankfurt and Berlin and Stuttgart and Munich and Cologne, and Mannheim, all around the place where they were German agencies dealing with these claims, we set up an office with lawyers of our own choice. The heads of office were always Jewish lawyers. We didn't rely on German lawyers except as subsidiary staff and then we screened them. So, this was a very big operation, largely unheard of. It worked very well, I must say. I set it up around 1951 and I resigned from that in 1992 or 1993 after about 40 years. In all that time, we dealt with hundreds of millions of dollars and thousands and thousands of claims there was never a trace of any scandal of any kind. Not a single client was able to demonstrate -- a few did complain they didn't get enough, but malpractice. We had no malpractice insurance, and we never had any indication of anything other than a clean and upright organization which did not satisfy all the clients. Most of them felt they didn't get enough, but some of them did. They appreciated it. And it was also a very unique type of operation. There was no doubt the biggest legal aid society that ever existed. Now, they're down to maybe 100 people all together. Their headquarters are still in Frankfurt. Saul Kagan who was my original deputy from '48 is now chairman of the board. I resigned as chairman of the board as well and it still carries on and it tries to help as best it can.

Q: Are there any particular aspects that you want to go into in the establishment of this large legal aid society?

A: Well, the usual bureaucratic problems. There was initially some conflict, I would say

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conflict is perhaps too strong, some difference in emphasis on the German Jews and the non-German Jews. For a while the office in Israel was divided. The German Jews had their type of claim and the non-German Jews, Polish Jews primarily had their type of claim, and they tried to run them in separate departments. I refused that. I had the same in New York. They were on different floors of a building. I said no. It's one organization. They are all Nazi victims. They are all Jews. They'll be treated all the same. No segregation whatsoever. And that dichotomy didn't last long.

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Tape #7

Q: Ben, what happened to that original debt?

A: The million marks that I borrowed from the Occupation Funds on authorization of General Clay? Well, as I told you, I had signed a document promising to repay it out of restitutions monies when the monies came in. It seemed like a fair enough arrangement to avoid having to get consent from the Russians and the British and the French. When the money was gone, Mr. Clay was also gone, General Clay was also gone, and Mr. McCloy was in his place. So, I went to see High Commissioner John McCloy. I explained to him, being an honest man, that I had borrowed this million marks against occupation funds, and that I promised to repay, but I said, "Look, the money is just beginning to come in. There are other priorities. I'm trying to move the D.P.s out of the camps in Germany into Israel. In order to do that I need the money to buy prefabricated homes which can be shipped from, at that time everything was under strict control, export import controls and I said I need the funds to buy these prefabricated houses in Austria to ship them in Israel. Otherwise we're going to have the camps blocked and all the rest." He said, "All right, all right." "I need some more money." He said, "How much more do you need?" I said, "A million marks." He said, "Can I do that legally?" I said, "I happen to have memo here that says you can." And he said, "Okay, go ahead." So, I borrowed another million marks. To make a long a story short, when that million marks was gone, it didn't take too long, I came back to him again and I said, "Look, I know that I promised to repay, and that money is coming in, but there are other priorities. You shouldn't give priority to repay occupation funds. There are these other needs and I need another million marks and I'll pay them back later." And he said, "All right, okay." So I signed a third time. I had accumulated three million marks. Then one

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day, my time came. Mr. McCloy, in his infinite wisdom or folly, granted clemency to a lot of convicted war criminals including my Einsatzgruppen boys, including Alfred Krupp, who had been sentenced to seven years in prison as well as forfeiture of all of his billions of assets. I went to see Mr. McCloy. I said, "Mr. McCloy, I know that I have promised to pay. The debt is now three million marks. If you insist upon repaying it, I will repay it, but you have just given a convicted war criminal three billion marks in assets and I don't think it's fair to ask the victims to pay the expenses of recovering a small portion of what was stolen from them." He said, "What do you want me to do?" I said, "I want you to cancel the debt." He said, "Can I do it legally?" I said, "I have a memo here that says you can." He said, "The debt is canceled." That's something about Mr. McCloy the Jewish organizations don't know, some of them do, because I reported on it, of course. But it's not generally known. McCloy was a great friend to the Jews in the whole restitution program. He was very, very helpful in persuading Konrad Adenauer and the German government to be supportive of Jewish claims at a time when Germany was totally dependent, financially and militarily upon the United States and Mr. McCloy as former Assistant Secretary of War and High Commissioner of Germany, when he suggested the German leaders, whether it be Adenauer or whether it be some of the others that it would be in their interest to be more forthcoming in the dealing of Jewish claims, they listened. In one of his speeches he said this would be the test of Germany's morality and their readiness to be rejoined with the family of nations what they did for the Nazi victims. So, I think that Mr. McCloy deserves recognition for what he did for the Jews as well as less criticism for his failure to bomb the rail lines in Auschwitz, which he thought would not help the Jews, would kill them more likely than not. And for his judgment in that he was not alone in. He was backed by Ben Rosenman²¹, who

²¹ Samuel Rosenman was counsel to Presidents Franklin D. Roosevelt and Harry Truman. He was instrumental in assisting Truman in the preparations of postwar War Crimes Trials.

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was Roosevelt's Jewish adviser at the time. I think that McCloy has gotten a bum rap for some of his actions, as misguided as they were, and as detrimental as they were in fact in undermining the message of Nuremberg.

Q: Outside of the cases that you've been talking about, were there cases outside of your normal purview, like the Catholic women?

A: Yes, there were several. Two major ones come to mind. There were others. One is these Catholic women who are victims of medical experiments the other is slave laborers which we might want to spend another minute with. The Catholic women's story is fairly simple. The Germans in the Ravensbrück concentration camp, used young Catholic women, they didn't just select them because they were Catholic, it happened to be that they were Catholic, and used them for a variety of rather atrocious medical experiments such as cutting them open and throwing sand and glass at their wounds to see how they would heal and how long it would take them before they died. These were experiments designed to simulate the conditions which German soldiers might face in various traumatic situations. And Germany refused to pay them anything because there were no diplomatic relations between West Germany and the Polish government and one of the defects in the German compensation laws was that it excluded political persecutees, and they excluded anybody from a communist country. Well, there was a lady by the name of Caroline Faraday who had been very close to a French resistance group which was devout Catholic as well, and she came to see me one day and she said that she heard that I had been so helpful -- I was then practicing law in New York -- I had come back -- in helping the Jews, why couldn't I do something for the Catholics? And she explained that she had gone to Norman Cousins who was then the editor of the Saturday Review. Norman Cousins some years before had started an action to

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help what was called the Hiroshima Maidens. The women of Hiroshima who had been injured by American blasts, atomic weapons, and who had been disfigured and who were brought to New York where they were treated by Doctor Hitzik, a Jewish doctor, at Mt. Sinai Hospital and given all kinds of plastic surgery and restored as far as possible as a gesture of goodwill from the American public to the Japanese. That has been a very successful program in terms of generating goodwill and showing human compassion regardless of who the victims are. So, he was well known for that. He himself was a World Federalist, later president of the World Federalist Association, and he had important influence on my world thinking as well. Anyway, Caroline Faraday had gone to see him and he said, "Look, there is no legal basis for the claim. It's different. It's an involuntary action." And somehow she had found my name and she came to see me. And I agreed to help them. We set up a little committee, Norman was the chairman. We brought in some publicist, someone from Life magazine and I approached the German government through the Ambassador in Washington, and he said, "We can't pay, as you know. There's no provision in the law for it. We have no diplomatic relation with Poland. We're sorry, they have no claims." I said it has nothing to do with the law. You injured these people, you owe them. And you're going to pay them. "We can't, no basis." Well, we'll find a basis. So, we arranged a high pressure publicity campaign. Pan Am lent us an airplane and we filled it up with these women from Warsaw, young Polish women. We brought them to the United States. I drafted speeches. Norman drafted speeches. Cardinal Spellman greeted them on the steps of St. Patrick's Cathedral, the gist of which was "The women of Poland, we greet you. The Germans are not paying you? How can they do such a terrible thing. After all, look what they did to you." And then we took them to the Senate and we took them to the Congress, and every Senator who had a Polish voter and came up and made a speech on the floor, and he began, saying "Look what they did, these Germans, and they refuse to pay

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them." And they used legal technicalities, and so on. And I was on the phone every day with the German Ambassador. "Have you had enough?" And finally he said, "I have had enough. I'm sending a cable to Bonn. This is not a legal matter, it's a political matter, and they better settle with these women." And I proceeded then to Bonn. And the Cabinet was taking this up as a very special measure outside the law. The Cabinet by that time was very, very annoyed with me because I had offices in Germany. I had offices in Bonn. I knew what they were thinking and what they were doing. And the word that I got from the middle of the cabinet meeting was that they are ready to pay, but to pay to you, because they think you are a communist agent and you are just there to embarrass the German government. I said, "To whom are they willing to pay? I don't care to whom they pay, they have got to pay the girls. They said, "Well, I don't know but they're not going to pay to you." I said, "How about the Red Cross?" They said, "Oh, yes, the Red Cross they will pay." So, the International Committee of the Red Cross, and I said, "Fine, just have them pass a resolution. They'll make payment to the International Committee of the Red Cross. I will be in Geneva and I will take it up with the Red Cross." And they did. So, off I went to Geneva and there I met with a M. Momaunoir, the International Committee of the Red Cross and I explained the situation. The Germans are willing to pay, but they would only pay it through the Red Cross, and would the Red Cross be willing to accept this as an obligation. The Red Cross was much smarter than I was. I was ready to settle this with the Germans for I don't remember, five million dollars or something like that, because we only had a list that high, of maybe a 100 girls altogether. And in comparison to what the Jews were getting 5,000 marks a head, it was a symbolic payment. The Red Cross said no we can't accept limited liability. We can't accept a closed ended deal. We will accept the proposition that they will pay. We will certify that they were victims of medical experiments. We will classify them classification A,B,C depending on the gravity of the offense. They will set the amount of

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compensation, 5,000 marks, 10,000 marks, 25,000 marks, and we will then certify it and they will pay all the expenses of course and we will do it. Fine, I went back to Bonn, you got a deal, bang, and we made the deal. Special Cabinet resolution. The nice end of the story which delights me, proves that I was a total fool that I would be willing to accept a settlement for five million dollars. By the time that they got through paying that program, it must have cost them fifty times that much. I would go past a buddy of mine in the Finance Ministry and say how many claimants do you have now? We only knew about 100. A thousand, 1,200, 1,500 they came from Czechoslovakia, from Poland, from Austria, from Hungary. All the medical experiment victims came and the Red Cross said that was the deal, and they kept on approving them and they kept on getting paid. And the minimum payment, I figured out, I arranged that the payments would be made in Swiss franks as well, so it didn't get worthless zloty and the people could go abroad in order to get medical treatment. They could spend their money abroad. And the minimum payment was what a college professor in Poland would have earned in two years time. So, it was a great thing for these Polish women, and one of my most touching moments in my whole experience in this business was a group of them waiting at the airport in Poland to greet me when I came as a guest as the Polish government to express their appreciation for my effort. So, that was one of the categories of claims outside of the normal range, and there were many others. The slave labor claims I dealt with in detail in my book Less Than Slaves, which unfortunately is out of print now. I hope that Harvard University will be induced by the Holocaust Memorial Museum to print in paperback again, that book which has many useful lessons. It's been translated into German. It's been translated into Japanese. It's been the basis of a good television show, and I would hope that something could be done. There are many others if you shake my memory a little bit. And another one comes to mind as we talk. And that's payments for the rabbis. I see you raise your eyebrows. I see you never heard of this.

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Nobody every heard of it, but we asserted a claim, during the Hague negotiations for payment to all the officials of the Jewish congregations. As I indicated Jewish congregations were state organizations. They were entities of the state, and if a school teacher, an elementary school lost his job or stayed long enough, he got a pension. If he was a teacher in a Hebrew school, he should have been entitled to the same pension. But the Germans said, no, no, no we can't do that because we don't know who would have been entitled to a pension. How should we know now? All the schools were closing in 1933 and whether the Rabbi or the _____, or the moyl or the ritual all the people who are involved in Jewish congregation and religious life, whether they would be eligible for pension, we can't know that. So, I countered. I said, let's make a global settlement for I think it was 30 million marks and then we'll distribute. Oh no, we can't do that. I said, all right we'll make another deal. We will set up an advisory committee to check the claims first and only when we check it and say that it's okay will we pass it on to you, and you can check it again if you like and we will only approve those cases where we think the man would be entitled to a pension. They bought that, much to my relief, much to their regret. Because we then set up small advisory committee of former German Jews mostly, I was the Chairman of that committee, and we received of thousands and thousands of applications of people who would have been qualified or felt they would have been qualified for a pension from these Jewish congregations. And we approved those cases and we passed them on to the Germans and the Germans paid. It was not under the Finance Ministry but under their Social Ministry. The Ministry which deals with this type of problem. I say partly to our shame, there were many cases where we turned down the claim, and they could appeal to the Germans and the Germans approved it, so that although we were correct in our determination of eligibility, there were cases where the Germans felt well, we had turned it down, but the man would have been entitled. For example, a typical type of case would be a rabbi left Germany, fled

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in 1935, was able to get out. Somebody else took his position. He stayed until 1938 or '37, they closed it down. He worked for two years. Was he a career employee of the congregation so that he would have been entitled to the pension, or was he only a temporary employee? Some of the members of my advisory board said, no, no, under no circumstances he should never expected a pension. It was only a temporary thing. I always voted in favor of the claimant where the matter was in doubt. If it was a tie vote, I think we were five, if it was two and two, I always cast in favor of the Claimant. But many cases we turned down and the Germans said yes, we'll pay them. So that's an example of Jews being overly cautious and the Germans being a bit more generous in a completely different category of case outside the normal range of the law, and of course, it cost the Germans very much more than we had originally anticipated in the beginning.

Q: Had you met the Polish women individually prior to that visit to Poland?

A: No, I had not. They had been in the States and they had been paraded around, but I had not met them individually. They came then to the airport to greet me, and then we were supposed to go to the ballet and I didn't want to leave. It was pouring rain and they stayed there with their flowers, and they were all wilted and I said to my host, I don't want to leave these women. He said, "No, they're all coming." And we all went off to the ballet, but they weren't all there, but they came later and expressed their appreciation. It was a very touching experience. And I told them all I wanted to do in Poland is to visit Auschwitz, which I had never seen. So they gave me a guide for a week and he took me every place I wanted to go, and it was a very interesting visit, and they were pleased to have me there.

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Tape #8

Q: Ben, can you talk a little bit about the attitude of the German industrialists when you started making claims for slave laborers?

A: The German industrialists had a rather unique attitude. They began by denying that it ever happened. The attitude was "What? We employed concentration camp inmates?" Next, they denied that they were in any way responsible or connected with it. "Ah, perhaps they were assigned to us by the SS. It could have been, but the conditions were really very good." So they denied the conditions. Then when you pointed out the conditions were really very terrible. "Ah, we were not responsible for that. We did the best we could under difficult circumstances." Then the ultimate payoff was "Well, you know, if it hadn't been for us, they would have gone directly into the gas chamber. So, by our providing work, we saved their lives. Why are they complaining to us? They owe us." That essentially in summary was the attitude of all the industrialist without exception, despite all the denials since that time which have appeared on television and on radio shows and on all kinds of other shows and it was the universal response of all of them, without exception. Now, I had a little incident, my knowledge of what had happened came largely from the Nuremberg Trials against I.G. Farben which built Auschwitz, against Krupp, a big user of slave labor, against Flick, who was a big industrialist who had many companies using slave labor, armaments firms and everything else, automobile companies; and in Nuremberg we had collected the documentary evidence of this and the documentary evidence showed what the truth was. How many people they employed, where they employed them, what the conditions were, how much they paid the SS for the laborers, it was a few Pfennigs, and what they had to do in order to qualify to receive inmates. And they showed very clearly to me that you had to

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have good connections with the SS. You had to be engaged in industry which they considered important, you had to be sure to provide security either by sending your own people to be trained as SS guards, by the SS to put barbed wire all around the particular plant wherever they were working. Post the proper security guards and other security measures to be able to maintain them on the level which was tolerable to the SS, which means minimum consumption, maximum production. Failure to do that is the equivalent of being shot dead or treated as a saboteur. So, they had to comply with all that before they could even be considered for getting labor. I'm not talking about right after the beginning of the war and people were seized on the street and put to work on rubble. I'm talking about regular forced slave laborers. And I had all the documentary proof including the decrees from Albert Speer, who was the Minister responsible for the armaments industry and for the allocation of labor. And the industrialist with whom I had met -- I.G. Farben, Krupp, AEG, Siemens, Telefunken -- all of them took the other line. So when Krupp came out of Spandau Prison after twenty years, now Spandau Prison is in Berlin. It's an old big, it doesn't exist any more. They ripped down when Hess, who was the last prisoner who died there. This was a big fortress of a prison for these few Nuremberg defendants. And Speer spends twenty years there and every three months they rotate them. Russians the French, the British and the Americans, and the Russians were not kindly disposed to any of those prisoners. He came out and I arranged to meet him at the airport in Frankfurt secretly. And it was not easy for me to shake hands with Albert Speer. But he spent twenty years and in the interim he had written several books about his memoirs and in those books and at Nuremberg as well he had indicated remorse for what had happened and was prepared to assume responsibility to a certain extent for having been involved in supporting Hitler's programs knowing very well what was happening to the Jews and other forced laborers, and there were other forced laborers as well. So, I asked him, I said, "Look, I have a question. I come to see you with a

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question. I have all your documents, your decrees, I have the requisitions, I have the reports from the concentration camp commanders. I have reports from the SS people who are responsible for the allocation of labor, and they all tell me one thing, and one thing consistently and only, that all of these industrialists were fighting to get these inmates and the conditions were equivalent to death. They could only survive a given number of months in that kind of labor. And that this was known to all of them and yet they all deny it. How do you explain that?" He said, "They're lying." And I said, "Can I quote you?" And he said, "Yes, you may." And I wrote the story in the book Less Than Slaves and I sent him a draft of the manuscript beforehand. I said "Mr. Krupp²², is this a correct statement? If so, please inform me. If it's wrong, please correct it." And he wrote on the margin "Einverstanden"; agreed. He changed nothing. So, that was an interesting thing. And you know when some of these fine industrialists representatives of Mr. Krupp and the others were asked about this later, after we made these paltry settlements with them, which I described in the book: "Oh, everything was fine. You know, we had a moral obligation" and so on. But in truth, they paid as little as they could get away with. They didn't pay a penny more than they had to, and the real payoff and revealing their true attitude is what they did for the non-Jews. In connection with the I.G. Farben settlement, a certain point in the negotiations the question of non-Jews came up. A gentleman by the name of Langbein, had been a head of the group of Auschwitz non-Jewish survivors²³. He had been agitating for compensation for them too. And the I.G. Farben people said we only have a limited pot. We'll pay thirty million marks, we can't afford to pay more. You divide it. So they pitted the Jews against the non-Jews to divide it. And then the argument was what was the ratio in the camp at the time of liberation, and when I was in Poland as a guest of the Polish government in connection with

²² **Correction:** Mr. Speer.

²³ Hermann Langbein was the head of the International Auschwitz Committee.

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the visit to these Ravensbrück lapins, guinea pigs, I got access, which nobody else had to the Auschwitz archives, and the chief archivist there gave me a little bit of cigarette paper which the then Prime Minister Cryankiewicz²⁴ had smuggled out of the camp as the Russians came in listing the ratio of the different nationalities of the camp and it showed the 95 percent of them were Jews and it made it possible to cut off ten percent instead of five percent for the non-Jews and that brought them in. But when it came to the others, they refused to pay. AEG, the big electrical company, I met with their representatives in Munich. It's a big beautiful building and we finally reached agreement on a contract, and in the contract they said, without recognizing any legal or moral responsibility, and I said "What do you mean, 'no moral responsibility'? You don't want to recognize any legal responsibility, which is what they all wrote into the contract. If you don't have any moral responsibility, why are you doing it?" And he said, "Well, that's the way we want to put it." And I said "Why didn't you put down the truth? Why don't you put down that you're doing this because you feel you're being intimidated and blackmailed by the Jews? Write that into the contract and I'll buy that and I'll sign that agreement. But without recognizing any legal or moral responsibility, that's outrageous. Why do you pay then? It's a lie to begin with." And we got into quite a heated argument, and my colleague Dr. Ernst Katzenstein²⁵, who was more sober than I, a former German lawyer. an Israeli, a very kind an able man, he calmed me down and we finally signed the contract with that wording in there. Because it was very revealing. And when Mr. Berthold Beitz, the Generalbevollmächtiger, the general power of attorney of Mr. Krupp, was asked the question on German television why Krupp didn't pay non-Jews, his answer was "Well, you know, the Jewish lobby was very active, and the non-Jews didn't have that kind of a lobby." So, it was an honest statement, but it also revealed that the Germans paid

²⁴ Josef Cyrankiewicz was Chairman of the Council of Ministers in Poland from 1947-70.

²⁵ Dr. Ernst Katzenstein was Ferencz's successor as director of the JRSO.

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not because they had a sense of obligation to the Jews, it was because they felt they were being intimidated by the Jews. And for that reason they gave as little as possible. They were not concerned with helping the Jews. They were concerned with helping their companies and helping Germany. And they were not concerned with saving the Jews, they were concerned with saving Germany during the war. And the rest of it is boloney, pure and simple, and nobody should believe it.

[Tape break]

May I correct something? I inadvertently misspoke, it was Mr. Speer who was in Spandau prison for twenty years, not Mr. Krupp. Krupp was sentenced for seven years, got out in less time and was then allowed to go free with his fortune thanks to Mr. McCloy's generosity. I also made another reference somewhere where I mixed up the names of Speer and Krupp in connection --

Q: You said that Krupp had--

A: Oh, yes. It was Speer who had reviewed my manuscript before it was published and it was Speer who wrote on it "Einverstanden", agreed. So that here's this leading Nazi official confirming the accuracy of the statement that I put in my book and the proof that the German industrialists were lying and he was in the best position of all to know.

Q: Were there problems between the Jewish survivors who were getting some kind of compensation, however minimal it was, and the non-Jews and the International Auschwitz Committee headed by Langbein, because they were excluded?

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A: There were no real problems. We met with Langbein on occasion, but there was no massive movement, because the inmates themselves were unaware that these negotiations were taking place, and in fact when we later distributed these funds, we found very often the inmates came and filed claims when in fact they had not worked for that company or did work for that company but not in a plant which was authorized to receive compensation. And we had to engage on a voluntary basis, persons whom we knew had been there for a long time, and they would form a screening committee and invite the claimants in in doubtful cases and try to confirm that they had actually been there or not been there. And there were many cases where the inmate through error or a moral feeling of what difference does it make if I worked for Krupp or Schmidt it was the same kind of work in the same place in the same time and the same beatings and the same starvation, why should he get it and not I? And morally they were right, but we couldn't do anything about it. That was the terms of the contract, so we screened them out, always kindly. We never accused them of malice or theft or corruption. We said, we're sorry you're mistaken. You have not been able to establish to our satisfaction that you worked under the conditions specified in the contract and we're sorry we can't pay you. We wish it were otherwise. So, we had a lot of that.

Q: I wanted to go back for a second to the opening statement that you made at the Einsatzgruppen Trial when you were twenty-seven years old and then have you comment on it and talk about your work for world peace, because it seems to me that those statements are directly related to everything that you've been doing. You said: "Vengeance is not our goal, nor do we seek merely a just retribution. We ask the Court to affirm by international penal action man's right to live in peace and dignity regardless of his race or creed. The case we present is a plea of humanity to law." And toward the end of statement, you said: "We seek

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here a judgment expressing that conscience and reaffirming under law the basic rights of man."

A: My feelings expressed at that time have not changed. I am a lawyer. That is all I've ever wanted to be. I felt that Nuremberg trial and the Einsatzgruppen case in particular was an opportunity and an obligation to advance the rule of law that if it's going to have any significance, it has to have more than merely executing 22 people for murdering a million people. You cannot compare, there was nothing that could be done to these defendants that would expiate in any way the magnitude of a crime of that size and I struggled with that problem as a young man but at that time, because it was expected as the French headlines said that the prosecutor would come in and say "I demand their heads. Je vous demande les tetes" is what some French papers falsely stated as my opening statement. It was never my opening statement nor did I have such feelings. But it had to have some significance, some permanent significance otherwise they died for nothing. And the idea of creating a rule of law where all persons -- when I talk about mankind, I meant womankind as well, we weren't as sensitive then as we are now -- where all persons could live in peace and dignity regardless of whatever their race or creed might be and that idea remained with me and it remained with me until this day. I would say that most of my life, not all of it, was dedicated to trying to make that a reality. There's a certain bit of madness in that. One human being sets out and says "Look, let's see what we can do to make this a world in which those conditions exist. And when I was about 50 years of age, my kids were already grown, and I felt well, now I can dedicate myself full time because I didn't have to be so concerned about sending them off to college and meeting all their expenses and all the rest, and I thought I'll focus now on that. And I began to disassociate from my law practice and devote myself full time. By full time I mean only fifty, sixty hours a week to those goals. Now, as a practical

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matter, the way that worked was I thought, "Where do I begin?" And I realized that there was a need for an International Criminal Court to deal with crimes against humanity. That was my main pitch of my Nuremberg Trial. Crimes Against Humanity, that humankind has a right to be protected from this kind of slaughter and abuse simply because of your race or religion. And so crimes against humanity was the things that I was interested in and in a court to condemn such crimes. And there was no court. After Nuremberg and the subsequent trials, there was no such court. Crimes against humanity were committed in many places: in Biafra, in Vietnam and in all kinds of places. Nobody talked about a court. Nobody talked about punishing the most outrageous crimes. Millions of people were being killed and the international community was looking the other way, including the Jewish community, I'm ashamed to say. They didn't care. It was not them, it was somebody else. Very little Jewish concern. So I began to work on an International Criminal Court, and the United Nations was already working on that problem, ever since Nuremberg, but had made no progress. And they made no progress because the Nations didn't want it. And they said until they had a definition of Aggression there was no use in having a court because Aggression is the biggest of all crimes. And that they had been fooling around with the definition of aggression for 30 or 40 years with no progress so I decided to work on a definition of Aggression first to get that out of the way. Where we go from there is another story.

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Tape #9

A: It seemed to me to be a bit absurd that the International Legal community was unable to define Aggression. I began to work on that problem. When I work on any problem, I do it the same way. I begin from the beginning of time and read and study everything that has ever been written or said, and I began to lobby at the United Nations where there was a special committee appointed to define Aggression and was going nowhere, and I got access, I obtained a pass to the United Nations. I obtained several passes of various kinds and was able to go to all of the meetings. And I met with the delegates and I presented papers for them and I coached them and I spoke with them and I lobbied with them and I wrote articles in all law reviews and things of that kind. To make a long story short, they finally agreed on a consensus definition of Aggression. An interesting sidenote, I knew it was coming it was a Good Friday, it was 1974, I think, and I came home and I said to Gertrude, tomorrow you come with me to the United Nations. They're going to reach a consensus definition of Aggression for the first time in 50 years. It will be the legal committee, the Sixth Committee of the United Nations Special Committee on Aggression. And I took her there and sure enough a few minutes had come and it had already been prepared and we vote upon a consensus definition of Aggression. I said "Look around you." We're in one of these big hall of the United Nations. Nobody was there. It was in the evening. The two of us were sitting in the rear section of the hall, and I said, "You see, this entire hall the only two people who are not paid to be here are you and me", and it was a historic occasion. And I immediately a two volume book on the definition of Aggression which spelled out the background of all of this and this became a classic work on the definition of Aggression. Then I said, now we can go on to the International Criminal Court and that obstacle had been gotten out of the way and they began to work on a court and they were getting absolutely nowhere. And again, I

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did the same thing. I wrote a two-volume book on an international criminal court. This laid out the history, the documents, the background the argumentation for it, how you can create such a court and everything else. That book came out in 1975, right after the definition and nobody read the book. Nobody paid any attention to the book. Well, all right, I tell them how to do it they're not interested. How do you enforce international law? So, I wrote a two volume book on that and somebody said, "Why do you keep writing books in two volumes?" And I said, "Because my typewriter is so high I need something to sit on and I need two volumes." And of course that was only a joke. It was in fact all the documentation, all the history, everything was there. Going back to ancient days, and it was a very useful tool and that was what it was intended to be. It was my notebooks. And when I got through with that, still nobody was paying attention. I wrote another book Common Sense Guide to World Peace. I wrote Planethood. I wrote another book -- I called in the Russians and compared notes with some Russian experts and I kept writing books and articles and going to the United Nations and going to all these meetings, keeping abreast of what was going on, trying to influence it, and nothing much was happening. And crimes were being committed everywhere and sometimes I thought I had gotten the governments moving in Bangladesh when thousands of women were being raped, they said they were going to set up a court and I was advising them on that. They didn't pay me for it, but I was advising them for it, and then in the end they said let's have reconciliation and forget it. And of course the crimes continued. Then something very interesting happened. In Yugoslavia, there we had genocide all over again. Before that, we had Saddam Hussien, a clear case of aggression, a clear case of all kinds of war crimes, a clear case including rape, pillage, murder, environmental depredations, which had not been listed as a crime before, but all kinds of things and the international community did nothing. They chased him out but as far as Saddam Hussein was concerned, they allowed him to remain. And I was screaming bloody

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murder everywhere saying you are encouraging more criminality. You have betrayed half a million young American people who risked their lives to go out into that desert and then you didn't have the courage to follow through and do what was needed to be done in order to create a more peaceful world or order by punishing those who are responsible for the crimes. Instead you're punishing innocent civilian population. Your sanctions starve them. He doesn't go hungry. And I began to scream and television and radio and every place I could go. Not many, because most people are not interested. They're interested in scandal and things of that kind: rock stars, football players. They're not interested in scholars. However, along came Yugoslavia where genocide now called ethnic cleansing got very popular and mass rapes got very popular and the United States said we can't get involved. Our fingers were burned in Somalia. We don't want to do what we did in other places, in Lebanon. The United States government was opposed to an International Court was opposed to doing anything, but because of this medium because of television and the opportunity of the public to see people get on television and say as I heard one man say, a Serbian soldier, he said: "Yes, I've raped dozens of Muslim women, but then I cut their throats because that's what my commander told me to do." And the women of America, God bless them, began to scream "Do something." And the U.S. Government for the first time said we have to do something. What can we do? The Court, let's set up a court. We're not going to send troops. Let's set up a court. So they set up a court for Yugoslavia. All crimes in Yugoslavia, limited to Yugoslavia and limited to after 1991, which is of course preposterous. It so happened, that when the General Assembly approved the draft statute for that Court, I was in Geneva at a meeting of the International Law Commission. I'm not a member of that Commission. I was there doing my usual type of lobbying. But a proud moment was when the statute came through on the fax in their big things, one of the staff members brought it to me and said "Here, this is your work." So, there are times when there is progress made. It may take a

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long time and it may be slow progress, and it is slow progress, and it's ridiculous to have a court limited jurisdiction for a limited period of time. We need a permanent international criminal court, and I'm still working on that, because there's this big gap in the international legal order. My latest book, New Legal Foundations for Global Survival: Security Through the Security Council, is a comprehensive bringing together of twenty years of careful thought and I share that with the public. All of my royalties I have given away to peace groups. I will not make a penny on that book any more than we did with the book "Planethood" which was written with Ken Keyes, who incidentally is a quadriplegic and totally ignores it. No penny for him and not a penny for me. That book is out to educate the public on the need for planetary thinking, if we're going to have a peaceful world. There will be no peace for anyone, anywhere until there it peace everywhere and that is my conviction and in this last book I tried to lay out the blue print specifically including the security council resolutions that are needed in order to achieve that goal. And it is feasible. And it's feasible without amending the U.N. Charter, and I'm afraid to tear up the U.N. Charter and start again, because I see the anarchy that comes in places like the former Soviet Union and Yugoslavia, and it's too dangerous. Too many people will die before we can pull the thing together again. So, I'm ready to try to make it work within its existing framework by interpreting the laws and by laying out new rules to make the Security Council a more democratic and fairer institution than it is today, and that is the gist of my thinking and of my new book. And now that I am approaching the age of 75, I hope the time will come for me to close my book and say this is my effort to create a more humane and more peaceful world so all may live in peace and dignity.

Q: How do you have the patience?

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A: It's not a matter of patience. It's not a matter of patience. It's a drive. It's a calling. It's not a job. It's not something that I set out to do. It's something that happens, and it's not something which requires my patience. I have no patience for anything else. So, I can't explain that. I really can't explain that. It may be a trauma. It may be one of these delayed syndromes that they write about. But it's harmless, I hope; and I function quite well.

Q: Ben, I wonder if you could read a short excerpt from one of the letters that you wrote Gertrude, your wife, when you were on the War Crimes investigating teams.

A: I have one here. It's interesting that my wife Gertrude, who was then not my wife, she was only my can't say girlfriend, I don't know what the appropriate term. She was my sweetheart, my darling, it says here. She saved all the letters that I wrote from the front, including the scene in the concentration camps as I came in, many of the camps. And of all of these letters were saved, they're over 50 years old, in their original envelopes. At that time you were not allowed to write where you were. You were not allowed to describe, and I had smuggled these out by some means which I don't even remember anymore, but I was probably giving it to some officer who was going to another country to put it in a mailbox or something. So she has them with the envelopes with the stamps on them, and all of these that relate to the Holocaust have been given to the Holocaust Memorial Museum. They can be found there in more detail. But here's one which I think is reasonable typical. It's only the covering note of a very much longer report. I don't know how many pages the long report is, but more detail and I say here this is a case I wrote about long ago. This is dated June 14, 1945. I must have written about in May while the war was still on. "I was in the town of Stammsreid (ph), near Chom, Germany" -- I know that, near the Czech border -- "when liberated French P.W. told me about having to dig a hole by order of the SS. They

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pointed out the spot where the hole had been dug. When I saw it, it had already been covered over. The old lady at the nearby farmhouse told me about seeing the SS herding a group of weary men into the woods. They were part of the 15,000 who had been marched out of Flossenbürg concentration camp headed for Dachau as the Americans approached at the end of April. The farmers wife heard the shots as they rang out at brief intervals. The farmer and his sons made sworn statements about how they had covered the bodies with dirt in order to prevent disease." I took those affidavits from them. "I sent the photographer to the spot. And here you have the results." I must have enclosed pictures. I'm sure I did. I'm sure the Holocaust Memorial Museum has those pictures of the bodies that I helped uncover. "Hope they won't scare you, but the pictures can only give a small indication of what actually it was like. I just want to get the things off my hands. Use them in any way you like, dear, and I hope they won't keep you awake. Will write a decent letter later. P.S. Just in case you can't find that other more detailed letter, these murdered men were political prisoners of every nationality and were murdered simply because they appeared to be too tired to continue the march successfully. The SS beasts didn't even wait for these men to fall, they just marched them into the woods for slaughter." These were non-Jews, Jews of course were included as well. So, on that happy note, I thank you for the opportunity to record this piece of history and we hope the next world will be a better one. I thank you all.

End of Interview.

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