

Judge Dennis Davis | The Eichmann Trial The Charges, the Defense and the Implications for Human Rights

- Welcome back, it's great to see you, and we are looking forward to your presentation. Over to you, thank you, I can't hear you. Shawna would you be able, would you unmute Dennis?

- Well I'm trying, oh yes, I'm unmuted now, thank you.

- Oh there we go, great.

- Thank you very much. And firstly, thank you again for inviting me to lecture on this unbelievable series. It's always a privilege to be invited back, and it is a particular thrill for me to have worked this week with Trudy Gold and David Pima on this Eichmann series. David and I will be talking tomorrow about Hannah Arendt, and other matters relating thereto, but it's an absolute thrill to have worked with both of them. And I want to start perhaps with perhaps an autobiographical point.

The prosecutor for the Eichmann trial, who we will meet in a few minutes when I introduce the dramatis personae. Gideon Hausner came to Hertzler School, my school, when I was in high school, on a visit. That was a few years after the Eichmann trial, which of course as you learned last night, took place in April, 1961. And I remember then being hugely influenced by what he had to say, and the whole nature of the Eichmann trial and the implications that it had for us, even as a high school student. And I recall sitting next to my close school friend at the time, Peter Gross, who became Sir Peter Gross, a very distinguished, very distinguished judge at the Court of Appeal in England.

Who would've thought that there were the two of us sitting at Hertzler at the time in Cape Town, and he would land up as a very senior judge in London, and I would be one in South Africa. Of course, it just confirms to me that I could do a whole lecture on distinguished judges and lawyers who left South Africa and came to England. I'd mention Sir Jeffrey Jowell, a very distinguished academic lawyer, came from Cape Town. Well, and I spoke about the judge from Nuremberg. There's Leonard Hoffman that comes to mind. We could even do it on Jewish lawyers who made such a distinction in England, but that's another matter.

But anyway, the Eichmann trial had a real serious impact on me as a young person. And it's interesting, I was interested that Trudy had had a similar experience. And it was in fact a remarkable event. It took place 59 years ago, next year we are the 60th year. What is significant, as I'm going to show you, is it has very significant implications for human rights law, and has had for human rights law and international law the world over.

Although interestingly, when the 50th anniversary took place some nine years ago, there were many, many conferences. But I understand there was only one legal conference which dealt with it, which was surprising in the extreme. Now to foreground the trial, let me say immediately

that there was no doubt about it, that it was a political trial in this sense, that Ben-Gurion had clear political motives in mind when in fact he ordered the abduction of Adolf Eichmann. Don't get me wrong, I'm not suggesting for one moment that Eichmann shouldn't have in fact been brought before a court and dealt with properly, which he was.

What I'm suggesting is that Ben-Gurion had a particular set of motivations, and he regarded this particularly important, the Eichmann trial, particularly after the adverse consequences politically for him and others of the Kastner trial, which we discussed, or Trudy discussed, in a whole series of wonderful lectures on the Kastner trial some while back. And to prove that point, let me read to you what in fact Ben-Gurion had to say at the time. He said, "Here for the first time in Jewish history, historical justice is being done by the sovereign Jewish people. "For more generations," sorry. "For many generations it was we who suffered, who were tortured, who were killed, and we who were judged.

Our adversaries and our murderers were also our judges. For the first time, Israel is judging the killers of the Jewish people. It is not an individual that is in the dock at this historical trial, and the Nazi, and not the Nazi regime alone, but antisemitism throughout history. And let us bear in mind that only the independence of Israel could create the necessary conditions for this historic act of justice." And the information, and the library of information that one now has about the Eichmann trial shows that Ben-Gurion showed a considerable interest in it, certainly discussing the matter with Gideon Hausner, and with Salo Baron, who was an expert witness in the trial.

So the trial had a series of implications that Ben-Gurion foresaw, and as we shall see by the time I finish this hour, he was right about that. Now let's try to compress into an hour, or less than an hour, a whole range of interesting issues with regard to the trial. Let me start by making three points about why the Eichmann trial was so special and why it is still so special. Firstly, unlike the Nuremberg trials, which took place after '45, and which we discussed tangentially when I discussed with you "Judgement at Nuremberg", the famous Stanley Kramer movie, the reality was that Robert Jackson, who was the chief prosecutor, the American Supreme Court Justice who went over to become the chief prosecutor at Nuremberg, he prosecuted the case on the basis essentially of documentary evidence.

There were not many witnesses. He was particularly worried about the fact that witnesses may, as it were, get all over the show, and he wanted to keep the trial under strict reign. And as a result of which, his line was very much that thanks to the statutory framework established by the Nuremberg Charter, they had to focus on proving a large-scale conspiracy by the Nazis to commit a war of aggression, and tended to downplay the racist and genocidal character of the Nazi regime. As a result of which very few viva voce, as it were, oral evidence was given, and there was far less of the victims having a voice heard at Nuremberg.

So the first fundamental difference was that at the Eichmann trial, over 100 witnesses actually testified. I'm going to play you a little clip, a couple of clips, but one shortly. But it was particularly important to the prosecution in Israel that in fact the lived experience of victims

should in fact be articulated in court, because that was part of coming to terms with this extraordinary set of events, unprecedented in history, and which to this day, as Trudy mentioned yesterday, we grapple to understand. Perhaps tomorrow we can try to make some progress in that regard, but that's for tomorrow.

And Hausner himself set the scene when he said about what he was trying to do in the case, "In order to secure a conviction, it was obviously enough to let the archives speak," just like Jackson had done, I should add. But then Hausner went on, "But I knew we needed more than a conviction, we needed a living record of a gigantic human and national disaster. The only way to concretize it was to call surviving witnesses, as many as the framework of the trial would allow, to ask each of them to tell a tiny fragment of what he or she had seen and experienced." Now, that was the first fundamental difference between Nuremberg and Eichmann.

And by the way, it is an incredibly important point that Gideon Hausner has made. Those of you on this call who are South African, either live in South Africa or lived in South Africa at some point in your lives, will know that perhaps the most important single event of the Truth and Reconciliation Commission was the ability of victims to come to court and have a voice. So here were the survivors of the Holocaust, unlike Nuremberg, having a voice.

And that voice, that idea that a trial of this kind, which would hold accountable genocidal people like Adolf Eichmann, that the victims should be able to speak, that they should be able to confront their torturer in a way which Eichmann trial did, and in fact has been replicated to quite a considerable extent in international law subsequently, if you look at the ad hoc tribunals of Yugoslavia and Rwanda. So that was the first fundamental difference, importance of the Eichmann trial. The second important aspect of the Eichmann trial was this issue of jurisdiction. Now we are going to talk a little bit later on in this lecture, and we will talk tomorrow about the question of the way Hannah Arendt in fact is very critical about this.

But the point I think that I want to make is not so much about the idea of universal jurisdiction, that an Israeli court could in fact have jurisdiction conferred upon it by virtue of the nature of the crime, as opposed to where it was committed or the jurisdiction of the perpetrators, but much more that there's an organic link between, as it were, the trial and those who suffered the crimes of which the person had been charged. And there could be no doubt about it, that whatever one thought about the idea that the case should take place in Israel, there was an organic link between, a nexus if you wish, between what was going on in the trial and the accused and the nature of the case.

So Israel, as the jurisdictional hub of the case, was in a sense a new breakthrough. And of course it did, secondly, give rise to the broader question of universal jurisdiction. And what I mean by universal jurisdiction is the notion that you don't only have jurisdiction when the crime was committed in your territory, or the person was a resident of your territory, but you have jurisdiction where in fact the crime was such a universal phenomenon that in fact it affected you and it affected victims who are organically connected to your jurisdiction.

And one other point, which I'm sure David and I will debate more fully, but on the second big point of the Eichmann trial, it meant that contrary to Hannah Arendt, of whom more tomorrow, the idea in this case, and it's an important idea. The idea in this particular case was that the identity of people didn't matter, that there were universal crimes, that there were crimes committed against people of a particular identity, namely Jews, as a result of which the idea that the Jewish state, as Ben-Gurion had said, had a legitimacy for trying Eichmann was a new breakthrough.

The third point about the Eichmann trial was that whereas the Nuremberg trials had basically been about wars, aggressive wars of one nation to another, and crimes which were committed as a result of armed conflict. Here there were two other distinctions which I wanted to draw to your attention. The first of these distinctions was of course that they were trying Eichmann. It wasn't a case of, as it were, necessarily the Nazi regime as a whole.

It was Eichmann, and the crimes which Eichmann had committed were not committed from one nation to another, they transcended the national boundaries. In other words, Nuremberg was within the prism of Westphalian national sovereignty. Here the gaze had been lifted, to look at the notion of humankind. And secondly, whereas previously the idea was that the crimes could only be prosecuted after a war being committed, this particular case, it confirmed the proposition that in fact even crimes that had occurred before war commenced in September, 1939, could be prosecuted, including matters such as Kristallnacht, and all of the awful racist legislation passed, which ensured that many Jews were maimed, injured, tortured, and killed prior to 1939, could be subject matter of a case of this kind.

I should add however, that Eichmann was acquitted on that particular charge, on the basis that there had been no proof that he was really a key figure prior to September, 1939. But that's for another matter. So those three factors that I've just outlined for you, the idea of the survivor's voice, the idea of universal jurisdiction, and the idea that in fact this wasn't to be looked at through the prism of nation versus nation, were unique features of the Eichmann case. And they heralded a breakthrough, which as I will indicate at the end, has had implications for international law in our lifetime, in the last couple of decades as well.

But now before I get onto the details of the case, I want to show you a clip, just a five-minute clip, which will give you some idea both of what was going on because the trial could not take place in the ordinary District Court. So it took place in the newly installed, later on the big hall in which there were a very significant amount of survivors who were present. It was almost a theatrical scene, as it were.

And of course, Eichmann himself famously was in a glass booth. So what the clip is that you're going to see, is just giving you a five-minutes' insight into the trial, which we can pick up on. And then if I may, it also gives you a couple of insights of people who are at the trial. So Shawna, if we could have the first clip please.

Video clip plays.

- When you walked in the courtroom, you weren't sure what necessarily to expect.
- You know, he had a shrunken face. I was struck that this little squirming, little person could arrange this tremendous murder.
- [Interpreter] Do you admit the first count brought against you?
- [Interpreter] In the spirit of the indictment, not guilty.
- And it was amazing experience to see the great killer deferentially answering to the Jewish prosecutor. It was a great feeling.
- [Interpreter] I did it reluctantly, but I had to obey orders, I had to do it.
- He wanted desperately to portray himself as a traffic clerk, a transportation agent.
- [Interpreter] Those orders were thrust upon me.
- He was not a low-level menial cog, and the fact that he did not regret that which he had done is one that is difficult for me to wrap my head around.
- [Interpreter] I can only say that I've never killed anyone.
- That was not a valid defence. If you follow orders but for a murderous role, it's not acceptable.
- At what point do you cease being a moral person? At what point do you stop being human?
- No, no, no, absolutely not.
- I witnessed some of the survivors coming up and giving testimony. She was given soup, or you know water, in a tin can so hot that it burned and scalded her hands, and yet she couldn't let it go because she would have nothing to eat. And I looked at the face of Eichmann, he was totally expressionless, as if it was the most boring thing that he had ever heard in his life. It was blank, it was nothing.
- I saw something on television that was so riveting that my parents and grandmother shushed me and told me to leave the room in German, not for children, and I knew I should leave. They talked a lot in quiet voices, there was some crying. Other children of survivors and myself tried to unravel this mystery of what were they watching, and why was it so bothersome to them? We didn't have the answers to those questions.

- It was the right justice, that just like the Jews went up in smoke and in dust, he went up in dust.
- And his ashes were distributed in, you know, into the water, gone as if he never existed, I think is a statement to the world.
- And his dust was dispersed, never to be found. Justice was not served.
- Justice for him, yes perhaps, but injustice still remains.
- No matter how much you kill, or sentence to death or what, you cannot restore this tremendous number of murdered Jews that were wantonly, without any reason, killed.
- When I bring the kids through the museum, we go from the darkness into the light, one of the themes of the museum. And so I say, "You know, when you come into light it's painful, but you have to see and understand what goes on in order to kind of live and make the world a better place than what it was before the darkness."

Video clip ends.

Well now just, I wanted to play that because it showed you the venue of the court, Eichmann, the nature of the trial. And I think some very perceptive remarks by the two people who are interviewed, which we can come back to and debate.

And even if we don't debate it tonight, I'm sure you'll be debating it amongst yourselves, because of course, they raised profound questions. But now to get to the trial. In February 1961, Hausner had completed the indictment and the indictment consisted of 15 counts. And essentially there were crimes against humanity, war crimes, and memberships of hostile organisations.

That was the SS, the Security Service, and the Gestapo. And these were crimes, which is particularly interesting, if you read the 15 charges, you'll find that they didn't confine themselves to Eichmann's participation in crimes against the Jewish people. They included crimes against other people, such as the mass expulsions of Poles and Slovenians, Assyria. We've talked, deportation to extermination camps and murders of tens of thousands of gypsies, and the deportation and murder of some 100 children from the village of Lidice in Czechoslovakia, to which Trudy had made mention last night, which was done in reprisal for the murder of Heydrich.

Now if I can just, Shawna, if you could put up the attachment that I sent you, 'cause I'd just like to show everybody the Israeli law, which was a central law upon which these charges had been based, and which has some interest of its own. If we could have that up, yeah great.

Text is displayed.

If you look, the first paragraph, we'll take it down, 'cause the second two paragraphs are from the judge, and we'll come back there. But the first two paragraphs, "The law which confers on us jurisdiction to try the accused in this case is the Nazis and Nazi Collaboration Punishment Law of 1950." And the law passed shortly after the establishment of the state of Israel. And the relevant section provides, "A person who's committed one of the following offences, during the period of the Nazi regime in a hostile country, carried out an act constituting a crime against the Jewish people, during the period of the Nazi regime carrying out an act constituting a crime against humanity in a hostile country, and during the period of the Second World War, carried out an act constituting a war crime in a hostile country, is liable to the death penalty." Now those of you lawyers in the room might well recognise that passage, because it's very similar to the 1948 Convention on Genocide.

Save that in the first paragraph, when it talks about, "Carried on an act constituting a crime against the Jewish people." That was obviously not the Jewish people but humanity. So it was a broader concept, which the Israeli legislature took account of in passing this particular law. What's relevant about that law is that to a large degree, it was the very first case which then was going to really vindicate the 1948 Convention on Genocide in the way it did. And on that basis, Eichmann was charged, as I say, with 15 separate counts.

Now before we get to the trial, there are two aspects that I have to canvass with you. Firstly, who were the *dramatis personae*? So let's talk firstly about the prosecutor, Gideon Hausner, the man who came to my school when I was a very impressionable teenager. He interesting enough, had been born in Lviv. Those of you who have read that wonderful book by Phillippe Sands, "East West Street", will know that all these other people have come from Lviv, the international lawyers like Lauterpacht, Sands' own family and many others, and of course Anne Frank. And I was very pleased to know, that Trudy was talking about, that we should try to get Philippe Sands to come and talk to us.

I had the great privilege of interviewing on this book at the big book fair in Frankfurt, which was absolutely fantastic. It was just fantastic to interview him. But Hausner came from the same part of the world, from Lviv, and his family migrated to Palestine in 1927 when he was 12 years old. When he was preparing for the Eichmann trial in the winter of 1961, he found a sheath of Nazi documents and stopped abruptly, he said, when he came to a report by a German officer in Poland giving a name of four Jewish, quote bandits, unquote, who'd been caught and executed. He said, "I found myself in an extraordinary sense of anguish when I recognised the four as childhood friends of mine." So he was personally affected by this as well.

Hausner of course himself had had an interesting background, because at some point he had of course studied law, but he served as a special policeman for the British authorities at the country, under the League of Nations mandate at the same time that he was a member of the Haganah. He then, as I say, went into private practise. And in 1960, a year before the Eichmann

trial, he was appointed as the Attorney General.

I should say that what was particularly important about him was that he was a commercial lawyer, he was not a criminal lawyer. And to some extent that showed up for reasons I'll come to presently. The defence counsel, that was an interesting thing. Who is now going to defend Eichmann? Well, it was going to be tricky for Israeli lawyers to do so, but the problem was solved when the Eichmann family came upon Dr. Robert Servatius, who was a German lawyer who had defended Nazis during the Nuremberg trial.

Although he himself had not apparently been a member of the Nazi party, he had fought on the side of the Germans during the Second World War. So clearly Eichmann felt comfortable with him. He wasn't a particularly great lawyer, I should add, if one reads some of the record, but I suppose he did the best he could under the circumstances. And of course then the second question came, who was going to pay for him? The Eichmann family apparently didn't have money, whether they did or not, they weren't prepared to pay for him.

So the Israeli government paid for his services. Then the third interesting point is, who is the court? Now the court, those of you listening who are lawyers would've picked up that I've spoken already about the District Court. Well, who was the president of the District Court? Judge Halevi, who was Judge Halevi? Judge Halevi had been the presiding judge in the Kastner case, so that presented a bit of a problem because if those of you who listened to Trudy's extraordinarily interesting lecture about the Kastner case would've known, Judge Halevi had a lot of unkind things to say about both the Israeli government, and he had much to say about Eichmann. So the question was, how could you have him presiding over a case like this when he was a bit of a politically loose cannon?

And there may well have been certain problems in this regard. So now you had a problem, because the District Court's president was Halevi, and strictly it was his to choose who the court was going to comprise of. So the Chief Justice at that particular point in time, Yitzhak Olshan, came up with an ingenious idea, wonderful, wonderful piece of nimble legal footwork. What he did was, he said, "Look, Halevi is rejecting all his pleas to preside. He's not prepared to give up presiding, he wants to preside in this case." Ben-Gurion is clearly not happy about this, There are problems in relation to whether he preside because of what Olshan might say.

And so what did the Chief Justice Olshan do? He proposed an amendment to the applicable legislation, which stipulated that in trials for crimes punishable by death, which is of course pretty much, this was the only one, right? The presiding judge should be a Supreme Court Justice, and to be appointed by the Chief Justice himself, which was Olshan. And that's how Moshe Landau, who in fact was the middle judge in the three that we saw in the clip I showed, became the presiding judge in the case. Apparently Olshan phoned up Landau and said, "What are you doing in three weeks' time?"

And Landau said, "I'm not sure." He said, "Well now I'm afraid to say you are, you're presiding in

the District Court as the chief judge in the Eichmann trial," which of course, Landau regarded as an anxiety-provoking job, but he did it. And of course then the law did say that the other two judges would be District Court judges. Naturally Halevi himself appointed himself, and Judge Yitzhak Raveh of the Tel Aviv District Court was the third judge.

All of these judges' mother tongue was German, and of course therefore there was a sense, a link there as well. So those were the three judges that presided. Now we know who the *dramatis personae* are. Now I should then tell you that as soon as the case started, no surprise, Servatius rose to his feet to object to the indictment. And in a sense, this is the central legal action of the entire case, because he raised a series of objections to the indictment. One, there was reason to doubt whether the three judges who were Jews and citizens of the state of Israel were able to give Eichmann a fair trial.

Two, the trial must not be held because the accused had been kidnapped from his place of residence, Argentina, and he'd been illegally taken to Israel. We heard about that last night. Three, the law that I've put up there on the board for you, that law was a *post factum* law. It was therefore wrong and unjust because it was seeking, as it were, to punish Eichmann retrospectively, having been passed in 1950, made applicable to actions which took place before 1950. And finally, that the offences listed in the indictment had been committed outside of the borders of the state of Israel.

Now the court dismissed all of these particular points. If you read just the two passages that I've extracted from the lengthy judgement, which I should say is an extremely learned piece of work, having again reread it in preparation for this lecture. I had come across it previously when I'd lectured on Eichmann, but it's really interesting. So they say here, "We have said that the crimes dealt with in this case are not crimes against the Israeli law alone, but are in essence offences against the law of nations. Indeed the crimes in question are not a free creation of the legislator who enacted the law for the punishment of Nazis and Nazi collaborators, but have stated and defined in that law according to the precise pattern of international law and conventions which define crimes under the law of nations."

So you can't argue therefore, they said, that this was some kind of retrospectivity, and that in fact there was no basis to prosecute Eichmann. These weren't Israeli laws, these were laws grounded, as I've indicated, really in the Genocide Convention. Then they said, "The contention of learned counsel, that's not the accused but the state on whose behalf he had acted that is responsible for his criminal acts is only true in its second part. It is true that under international law, Germany bears not only moral but also legal responsibility for all the crimes that were committed as its own acts of state, including the crimes attributed to be accused.

But that responsibility does not detract one iota from the personal responsibility of the accused for these acts." They also said, and Shawna, we can take it off now, because I've finished with that attachment.

Text display ends.

They also said, and this is really interesting, in relation to the third point, that is what about, or the first point that I mentioned, what about the fact that judges are not going to be fair? This is what they said. "When a judge sits on a bench, he does not cease to be flesh and blood with human emotions, but he's bidden by the law to overcome these emotions. If this were not so, no judge would ever be qualified to sit in the judgement in a criminal case evoking strong disgust, such as a case of treason or murder or some other heinous offence."

And you know what? After 22 years on the bench, that particular provision that I've talked in all sorts of different ways in terms of jurisprudential theory is true. That, and what I wanted to say about this case, if you read the judgement, which I don't have time to take you through, and also the conduct of the case, and I will refer to one or two things, you will see that particularly Judge Moshe Landau was unbelievably scrupulous in the way he ran the trial, which clearly gave him a huge amount of anxiety and concern.

So once these preliminary points, all of which were very important, had been dismissed, the case could proceed on the merits of the trial. And I want to read to you, if I may, many of you probably know this already, but it's worth a reread, the opening of the address by Gideon Hausner, when he opened the case that is now on the merits. He said, "As I stand here before you, , Judges of Israel, to lead the prosecution of Adolf Eichmann, I do not stand alone.

With me in this place and at this hour stand six million accusers, but they cannot rise to their feet and point an accusing finger towards the man who sits in the glass dock, and cries, for their ashes were piled up in the hills of Auschwitz and in the fields of Treblinka, or washed away by the rivers of Poland. Their graves are scattered over the length and breadth of Europe. Their blood cries out, but their voices are not heard. Therefore, it falls to me to be their spokesman, and to unfold in their name the awesome indictment."

Almost as if he had borrowed from that extraordinary prayer that Hasan says on our behalf, when the Hasan actually says, "I will take my responsibility God, to plead on behalf of my sinful congregation." Here he was standing, Hausner, as a representative, as Ben-Gurion had pointed out at the beginning, a representative of the Jewish people, to present the case. Now the case consisted of 110, roughly 110 survivors, and about 1,670 documents. So unlike the Nuremberg trial, as I've indicated earlier, it had two aspects to it.

But some of the witnesses that testified basically provoked the ire of the court. And I want to, if I may, just refer to one such incident, because it's really interesting, and that is the evidence that was given by Abba Kovner. Now Abba Kovner, of course, was the leader of the Vilna resistance fighters. And in 1941 he had called for active resistance against the Nazis, which is probably the first call in all of Europe. And he actually then used the phrase, which was subsequently used colloquially as a means of denigration, oddly enough of victims, "Let us not go like sheep to the slaughter."

After leading the the Vilna uprising, he joined a Soviet resistance group, subsequently becoming a kibbutznik, and one of Israel's leading poets. A man of the land, arms and letters, he epitomised in many ways the new Jew, who is now a citizen of Israel. But his testimony was of course the awful pain that he still bore because of the Holocaust. He spoke to the Court of his student, Tzerna Morgenstern. "A tall, upstanding girl," he said, "with wonderful eyes, who has taken with the classmates to Panory. An SS officer ordered her to step forward," testified Kovner. "'Don't you want to live? You are so beautiful. It would be a pity to bury such beauty in the ground. Walk, but don't look backwards,' said the officer."

Kovner said as she walked away, her classmates watched with envy until the officer shot her in the back. Kovner told all of this, and he told more. At the end of his testimony, he turned to the judges and he said, "A question is hanging over us here in this courtroom. How was it that they did not revolt? As a fighting Jew," he said he would protest, "With all my strengths if someone asked that question with even a vestige of accusation.

In fact, rather than question why most Jews did not rise up," Kovner said, "people should recognise that not resisting was the rational thing to do. Resistance organisations were created by calls from a national authority. There was no Jewish authority to issue the call. There was no one to organise an uprising. Rather than demean the victims, contemporary generations," said Kovner, "should recognise how astonishing it was that under all of these circumstances, not withstanding all of these exigencies, there was indeed a revolt."

He said, "That was not at all rational." And when he left the witness stand, and this is the other interesting part. When he left the witness stand, Judge Moshe Landau, the presiding judge, gave Hausner what for. He was really very angry. He lectured Hausner, he said Kovner strayed far from the subject of the trial. Hausner must control these witnesses and eliminate the portions of the testimony that were clearly not relevant. He warned Hausner not to place the court in such a situation again.

Hausner protested, saying that when he summed up the case, it would show that Kovner's evidence was relevant, but in fact Landau would have none of this, and actually he told him any further such testimony would be ruled out. He said, "I'm not prepared to have that kind of testimony. Keep to the charges." So it's very interesting how careful the court was to, knowing that there was a political trial involved, to try to manage it in such a fashion that the case would in fact be organised on the basis of testimony which was targeted directly to the 15 indictments. Now thereafter of course, we had many other witnesses who came forward.

What was the defense's strategy? The defense's strategy to a large degree was to do as my little five-minute clip has shown you, is to say, "It wasn't me. I was a cog in the machine, I was merely a bureaucrat, and in fact I was following orders." And that was effectively the defence. There were long passages of evidence. To give you an example from the actual record, there were long passages of evidence where you'd have the following.

Eichmann insisted that on all of the letters that Hausner had produced, "The words , by order of, appeared on each of the letters, demonstrating," he said, "I received the order. I was acting on behalf of someone else who signed the letter." Hausner pointed out that Gestapo protocol stipulated all correspondence include the IA, the , a required formula, and it signified nothing. But this testimony went on for literally pages, in which Eichmann essentially said, "I was just taking orders." Hausner introduced a letter Heydrich had written shortly after Wannsee.

Quote, "Since happily now the basic design has been established with regard to the practical implementation, the Final Solution of the Jewish question, I would ask you Eichmann, to instruct your official in charge to contact my specialist officer." Sorry, "I would ask you write to all of," his underlings. "I would ask you to instruct your official in charge to contact my specialist officer responsible for this matter, SS Obersturmbannfuhrer Eichmann." Hausner, "Did this not demonstrate that Heydrich had given you a free hand to run Jewish affairs as you saw fit?" Eichmann, who was Heydrich's special officer and handled many aspects of the Final Solution but not all of them, said he did not run Jewish affairs as he saw fit.

In fact, he ran them under the orders of Heydrich and Himmler. And of course the court was having none of that, because there was far too much evidence to suggest that Eichmann had been responsible. But the fact of which is perhaps more important than that is, and I want to talk about this perhaps tomorrow night, and it's this, that that Hannah Arendt, I think, was over-persuaded by this kind of line of argument of Eichmann, and that he was just a clerk, as indeed the clip shows. Whereas there's a lot of evidence now to suggest that he was a seriously committed Nazi, who believed totally in the project, and was no cog at all, for all of the reasons that Trudy has advanced, and I'll cite some authority about that tomorrow night.

But anyway, the point about it was that Eichmann, the court found at the end of the day that Eichmann fully understood his task. The evidence which was presented included official documents from German sources, showed that in the final stages of the war, in fact, Eichmann's desire to come as close as possible to the complete and total destruction of the Jews had become an obsession. And what evidence was particularly crucial here, talked about that last night as well, was the, particularly in Hungary where Eichmann was sent by Heinrich Himmler in '44 to take personal charge of the deportation of the country's Jews to the extermination camps in Poland, and he had acted on his own accord.

And indeed the evidence did show that by early '45, Himmler by contrast to Eichmann was now trying to do a deal, bizarre as it may seem, with the Western forces, and therefore Eichmann was on a frolic of his own. This was no clerk, said the court. This was a man who was very conscious of what he was doing. But even if he wasn't, even if he wasn't, even if he was acting under orders, this would've been no avail to him from a legal standpoint, said the court, because of the fact that he had implemented orders in the most extreme and harsh a manner as possible, and therefore essentially, other than charges which had been predicated on pre-1939, Eichmann was convicted on all of the charges.

Now comes an interesting part, and the interesting part is what to do? Trudy rather provocatively spoke last night, from handing me what I suppose in rugby terms we called a hospital pass, which is you know, that maybe we need to have a session on the death penalty. But I did point out to her that I had been the honorary National Director for the Society of the Abolition of the Death Penalty in South Africa. And indeed one of my proudest moments is being one of the counsel in the very first constitutional court case in South Africa, in which the death penalty was actually rendered to be unconstitutional. I say this to you not to talk about me, but to say when it comes to Eichmann, it's such a hard question to answer, as to what should have happened.

And it's very interesting what the court said about that. If I can just tell you a little about the deliberation. Once that he had been convicted, of course the question arose as to sentence. Moshe Landau, the presiding judge, said that the Israeli penal code, including the law that I showed you, gave the courts an option, that is a discretion, to impose any penalty up to, but not exceeding the penalty prescribed by law. "And therefore," said the judge, "although Eichmann had been found guilty by the court, the court was not obligated to impose death, even though the law under which he was being tried, provided for capital punishment."

And then so Eichmann at that point, probably listening, must have thought that he had some hope that this was going to happen. And then the judge said, "With a deep feeling of the burden of responsibilities, we this court have chosen to impose the death penalty." He's one of the first judges in Israeli history to do that. But they chose to do so, and therefore the question rose that Eichmann was now faced with being executed. Of course the matter went on appeal to the Supreme Court, which dismissed the appeal completely, I think in a judgement that is not as particularly well-written as the district court judgement is.

I'm not going to, I invite anybody to read them if you wish. They amount to many, many pages. But be that as it may, I'm going to come to what then happened, but just one final point that I've forgotten to tell you. After the verdict and the sentence had been delivered, Eichmann was quoted as saying, "I never thought they wouldn't believe me." And so it's very interesting when you ponder that statement as to precisely what kind of mind Eichmann had. For sure, it wasn't this apparatchik that he portrayed himself as being, just the cog in the wheel, and we'll perhaps talk a lot more about that tomorrow. But then the question arose as to sentence.

And as I say, why did it still arise? Because the question came that Eichmann pleaded, or Eichmann's lawyer Servatius pleaded for clemency, and in order to do so, he had to approach the Israeli government. And it turns out that Hausner as the prosecutor felt because it was such a momentous moment, he didn't want simply to advise President Yitzhak Ben-Zvi alone about this, which he could have done. But he asked that in fact, the matter be decided by government.

And there have now been minutes of the government meeting, which were only declassified some years ago, and written up in an article in "Haaretz" by Joachim Weitz, who says that apparently finance minister Levi Eshkol, who a few years later had become Israel Prime

Minister, asked his colleagues to consider converting the sentence to life imprisonment. He said, "Keeping Eichmann alive with the mark of Cain on his forehead would be far more meaningful a punishment than the five minutes of the carrying out of the ruling."

When the Cabinet voted, only Yosuf Burg, those of you know Israeli politics will know that he was of the National Religious Party, who was the Welfare Minister, supported Eshkol's position. All of the other ministers voted for the immediate imposition of the sentence, and therefore the President rejected the sentence. A small but well-regarded group of intellectuals, including Martin Buber, Gershom Scholem, which more tomorrow when we talk about Hannah Arendt, and Lea Goldberg, drafted a letter to President Ben-Zvi, urging him to commute the sentence, "For the sake of our country, and for the sake of our people."

Buber then met with Ben-Gurion for two hours to actually persuade him not to have the sentence imposed, but it was carried out on May 31st, 1962 in Ramle Prison, and as we learned, he was then cremated. What do we then make of the Eichmann trial? I want to just give the second last word of this evening to Deborah Lipstadt, a little clip from Deborah Lipstadt. She wrote a book some years ago about the Eichmann trial. In a way she did so because the terrain had been so dominated by the 1961 reports to the "New Yorker", which became the book "Eichmann in Jerusalem" by Hannah Arendt, and the banality of evil, that we'll unpack tomorrow night became such the dominant framing, that she and others obviously struggled.

David Cesarani also wrote about this. But they all struggled, as it were, to break free of the shadow of the Arendt framing of the case. But Lipstadt's book is worth reading. It's not a legal text, but it's worth reading. But here she is, just two-minute clip, giving an idea of what she thought the significance of the trial was, and then I'll make one or two remarks before we finish. Shawna, the last clip.

Video clip plays.

- [Announcer] Is brought to you by Emory University.

- There were a number of things that were significant about the trial. First of all, the fact how Eichmann came into the Israelis' hands. He was kidnapped in Argentina. They kidnapped him, they brought him to Israel, which caused a great ruckus in the international community. Many people felt it was okay to do it. Many people criticised Israel very severely. The trial really galvanised the attention of the world. There were, according to reporters who were there and reports there, there were more reporters gathered for the opening of the Eichmann trial than had been at the Nuremberg trials right after the war.

This was the trial by the victims of one of the perpetrators, and that gave it a great deal of importance and gravitas in the eyes of the world. We knew about the nature of evil before the Eichmann trial, but the Eichmann trial also called it into the spotlight. Here was a man who didn't look very different from you or me. In fact, he looked sort of innocuous when they brought him

into the glass booth. And it caused people to sit up and take notice, and sort of see the perpetrator and understand that you can't say the perpetrator is other. The perpetrator could be us. Then you have to ask what makes it possible for a seemingly normal person to become the doer of such evil? According to Israeli law, judges are not, if they find someone guilty, are not obligated to give the maximum sentence.

They can give any sentence up to the maximum. So for a moment in the courtroom people thought, well, maybe he had escaped the death penalty. And the judges then said, "We therefore do not feel obligated to give you the death penalty. We choose to give you the death penalty." The enduring nature of antisemitism, it's an ancient hatred. And it let people in what was considered the most forward-thinking, the most accomplished, one of the most cultured countries in all of Europe, in the heart of Christian Europe, to do this kind of thing.

If that's possible, anything is possible. This is the 50th anniversary of the trial, and I think it's important to remember what happened in the trial, even if it wasn't the 50th anniversary. But this trial put the human face on the nature of suffering. This trial reminded us by virtue of Hausner's decision to put all those survivors on the stand, reminded us that the victim has a name and a face and a history, and this happened to people. It didn't happen to numbers, it didn't happen to just a large group, to large entities, but it happened to individuals.

- [Announcer] The proceeding programme is copyrighted by-

Video clips ends.

- Okay, I think that sort of to some extent summarises what I wanted to say, but I'm going to make three final points. I started off by telling you that the Eichmann trial at the beginning was a precursor to the development of international law. I really do think that if you study the ad hoc tribunals for Rwanda and Yugoslavia, some of what came out of the Eichmann trial was central to the way those cases were run. And in fact, the development of international law to hold people accountable for crimes against humanity and genocide. I think, and I should tell you that even in the famous Pinochet case, the Spanish prosecutor was invoking the principles of the Eichmann trial, and the jurisprudence developed there to try to hold Pinochet accountable to Spanish law.

So it had a massive international set of implications. Secondly, I think it had a very significant set of implications for Israel. You saw in the initial clip, you know, there was this massive group of people in the hall every single day, thousands or hundreds queuing outside, the whole thing was televised and watched anxiously by everybody who was in the state. Became a kind of national debate, and for the first time it peeled away layers of lack of knowledge, lack of understanding, of the horror of the whole business.

And I think, you know, the fact that Eichmann, as so many people remarked in the clips I've shown you, looked to be such a pathetic little character, in fact belies the, or in fact confirms in a

sense not the banality of evil of which Arendt was speaking, but just how it is that evil of the kind that he perpetrated is conducted by people who literally, you could walk past in the street without knowing, that it rarely says something profound about the condition of humanity. And I really do think that in some ways the trial was a tremendous lesson precisely about this, and far more than the Nuremberg trial, in fact exposed the sheer horror of the entire event. But whether it explained it is another matter. Whether it produced justice is, as our two individuals in the first clip said, "Is another matter open to debate."

But that it was a profound event, and it's coming up to the 60th year next year, is something we should reflect upon and which I've not, I've only been able to touch on the surface in one hour's presentation, should give us pause. And let me just make one final point from a position as a judge. You know, when people said he looked to be so pathetic, one of the things that has struck me so often when I've dealt with rape cases, horrendous rape cases, is just how pathetic the accused looked in the witness box, or in the actual dock. And I often wondered to myself, how is it possible that that person could perpetrate the kind of evil that they've done on victims of rape? Well they do, because the fact of the matter is, that there is no necessary coupling between the physical looks of the evil which is perpetrated and the conduct itself. And I'll leave it there.

- Dennis, thank you for the most outstanding and thought-provoking presentation.

- Pleasure, pleasure.

- We look forward to continuing tomorrow evening.

- Yes, David and I will pick up on many of these themes. I've kept away from Arendt, because I wanted to give David plenty of time to develop that tomorrow with me.

- Thank you, thank you very much.

- Thank you.

- On that note-

- Take care.

- I say to all of you-

- Take care, good night.

- Thank you.