I am sorry, but I have got to speak English now. You’ll pardon me for not getting behind the podium, but then you would only hear my voice. If I sat here it would be the same, so I have agreed with the photographers to stand right here. If I should fall off the platform would somebody pick me up? Well, as you see, I have no prepared text, but after talking to some members of the audience I think what I’ll try to do in the course of perhaps twenty minutes, half an hour or so, [is to] explain what have been my personal experiences on the subjects, which we have been discussing.

You have been very fortunate to have a large group of scholars giving you very interesting and exciting reports. Between my friend Whitney Harris’ very moving address yesterday giving you the feeling of a prosecutor at the International Military Trial and Professor Barrett’s report this morning about the inspiration which justice Jackson gave to all of us, I won’t have to go into the International Military Tribunal, but I will take it from there … and speak about my actual experiences, which falls into four different categories:

First, I had to stop the killing, which is my war-time experience and happened during the war. The next thing is the prosecution of criminals. Thirdly, what happened after the International Military Tribunal trial isn’t very well known and will be touched upon by Professor Harmon dealing with the Medical Case, in the afternoon, while I will talk to you about the “Einsatzgruppen”. And then came the most important problem of all – how do you prevent it from happening again? That’s the most difficult and the most important. First of all, no one can translate “Einsatzgruppen”. So for the benefit of the German audience “Einsatzgruppen” has been interpreted to mean killing squads. I will explain: how did I get that job? Because people always ask me that question, I will also explain where we did get the evidence. What did the evidence show? How did we pick the defendants? What arguments did we make as prosecutors? What arguments did they make as defence counsel? What was the decision of the judges? And what does it add up to? This will be the major focus of what I’ll have to say because that’s what it says in the programme I’m supposed to do. I try to be a good fellow. But there is more to it than that. We have to deal with what happened to the victims. It is always more dramatic to talk about the criminals, but what about the victims? I stayed on in Nuremberg to deal with that problem.

So I will touch on all of these, I hope within half an hour, and then I will open the floor to questions. You may ask me whatever you want, on any subject, and I promise to give you an answer. I don’t promise that it’ll be correct, but it’ll be an answer. So let me begin where I came in. I came into Germany via Normandy Beach. Sainte Mère Eglise. Someone had tipped off the Germans that I was coming, so they ran in the opposite direction. Fortunately, I had a fellow along by the name of General Patton, and about 10,000 tanks. I crossed the Rhine at Remagen on a pontoon, I went through the Siegfried line and the Maginot line, and was assisting in the liberation of the 101st Air-Borne Division surrounded in Bastogne by the last gasp of the German army. At that time I had the exalted rank of a sergeant of the infantry. They had recognised my talent in the army right away. Well, then an interesting thing happened. One day I was told to report to General Patton’s headquarters. There I met a colonel, and he said: “I have been instructed to set up a war crimes branch. And your name has been forwarded to me from Washington. What’s a war crime?” And that’s the truth. The Army had no idea of what a war crime was. And I have no time to go into the detail now, but I became the first investigator in the United States Army to investigate war crimes. At that time initially it meant dealing with the cases where Allied fliers had come down in some German towns and they were almost invariably murdered by the people on the ground. They came out, they beat them to death, sometimes they turned them over to the SS who shot them and threw the bodies in a river. My job was to go [and] find the bodies, dig them up, sometimes with my hands, because you can’t use a pick, then you don’t know a bullet wound [from] a bayonet wound, and then write up a report [about] what happened, who … [did it], and I would interrogate as many witnesses as I could from the town.
The standard routine was for me to find the "Bürgermeister" (mayor of the town) or the Chief of Police, and tell them to arrest everybody who was within a hundred yards of the event. He would bring them in; I would line them up against a wall, and tell them I want them to sit down and write an exact statement of what they saw and what they did and anybody who lies would be shot. This is no place for confessing war crimes, but that was standard routine. The German Bekanntmachung when they ordered people to appear somewhere always had on the bottom [of the notice] the threat of Todesstrafe, (death penalty). I thought there was nothing wrong with my having a little reciprocity. After reading about twenty statements, of course, I knew what happened exactly. I would then go out and try to catch the criminal, who had usually fled. Then I'd write up a report: This is what happened, these are the witnesses, and these are the bodies that I dug up at this and this place. Photographers would come in, photograph the bodies, I would make a report, and I was ready for trial. Murder would be the charge for killing prisoners of war. Then some even more interesting things happened: we began to run into concentration camps. I remember very well the first camp was Ordruff. It was an outer camp of Buchenwald. And I won't go into the details of the concentration camps because they are too well-known. But just of my personal experiences, and how I approached the problems. Buchenwald, for example, was next in line. The Russians were coming in from the other side. I met them at the Elbe. From Buchenwald, I went on to other camps, Ebensee, Mauthausen, and eventually everything in between down to Linz, Austria.

My goal was to obtain the evidence of the crimes that were committed there. The procedure was that I would go directly to the Schreibstube (the office), and seize all the records, for example the Totenbücher, (the death registries), in Buchenwald. They were big black ledgers, which showed exactly which transports arrived at which dates, how many people, very often their names, which people - I don't like to say "died", because they didn't die, they were murdered - which people were murdered through beatings or starvation, and the list of the dead people. Frequently with the help of some of the inmates - and I don't have time to go into the stories of some of the heroic inmates - I got the names, some of the names, sometimes photographs of all the SS officers who ran the camp. The objective was to get in and get out as fast as humanly possible, because that was no place to be: dysentery, lice, malaria. I don't know what other diseases they had there, typhus, the bodies were lying all over the ground, bones wrapped in skin, and rags, and occasionally they would move when you thought they were dead. Cords of bodies stacked in front of the crematoria. This was the scene. I have flashbacks from time to time, so I don't like to pause on this. And this was the basis for reports for war crimes trials. Very few people have heard of the war crimes trials that existed immediately after the war. The war was still on. I was in, I think, Ebensee, on May 1st, when they were having a big celebration of the liberation where incidentally the French marched, the Russians marched, and the Germans marched, but the Jews marched separately. They were not accepted by the other inmates to march with them. That made a big impression on me, too. That phase of my work ended, when we prepared these reports of the concentration camps as well. I had nailed up the first sign saying "US Third Army War Crimes Trials" in Dachau.

You [referring to the audience] are going to be in Dachau, I think there is a trip planned for perhaps this afternoon. I am not going, I have been there. You can ask about it. Also, Joshua Greene is here who wrote a book [titled] “Justice at Dachau”, which describes the work of one of the American prosecutors, Colonel Denson, who came in just as I was leaving, and how the US Army conducted those trials. There were about a thousand people tried at Dachau, the trials lasted a couple of minutes, the people were lined up, thirty, forty in a room, usually an old barrack, with a number on them - like this but bigger - , they were called upon to admit or deny being an accomplice to mass murder and other war crimes. They invariably said they were innocent, they were being acted under orders or whatever, some alibi, they were usually all convicted, they were usually all sentenced to death, and many of them were executed. Not all of them, but many of them. Those were the Dachau trials. I really didn't think much of the Dachau trials. I was then a sergeant of Infantry. I didn't think much of the Army. I didn't think much of my officers frankly, either. And I was very happy when the war was over. That was the reason I joined the Army to help them win. We won. I went home. I never wanted to come back to Germany again. Then a strange thing happened. I got a telegram from the Pentagon, saying "Dear Sir" - in three years they had
never called me Sir—would I please come to Washington, Sir, at their expense, Sir, they want to talk to me. And so I went and they said: “Look, we want you to go back to Germany. We’ll make you a full Colonel. From Sergeant.” I said: “I should go back in the Army?” I said: “First you have to declare war on Germany again. And you have to be losing.” So they said: “Well, look, we need you. We need you. We’ll give you a civilian rank. You don’t have to be in the army. We’ll make you a Colonel with all the rights and privileges, and you’ll be a civilian.” I said: “How long do you have in mind?” And they said: “You name it.” I said: “Now you’re talking my language. I’ll let you know right away.” I then called up what we used to call my fiancée, my girl-friend. Today they have other words. And she’d been waiting patiently while I went off to Law School and then went off to the Army to win the war. And I said: “How would you like to go to Europe for a brief honeymoon?” She said: “This is so sudden. Yes.” And so I accepted the job. I swear to you it was my serious intention to do absolutely nothing. But get even with all those Lieutenant-Colonels who had been sticking it to me for three years.

However, another strange thing happened. I was intercepted by then a Colonel by the name of Telford Taylor. And he said: “I want you to go with me, not back to Dachau. You go with me.” I said: “What for?” He said: “Well, I have been assigned by the President to take over the trials which Justice Jackson was just finishing. And we are going to conduct about a dozen trials, and I think you are the right guy. You have the experience. You were a war crimes investigator, you’ve seen what happened, you wrote the reports, and you prepared the materials for trials.” He said: “I’d like you to go with me.” I had checked up on him. Just as he had checked up on me, and he had discovered that I was occasionally insubordinate. I told him that was not true, I was usually insubordinate. So I went back with the best of intentions to have nothing but a brief honeymoon. Well, the first assignment he gave, he said: “Look, we have twelve planned trials, and we don’t have the evidence.” Now, as all the lawyers here will know, if you have the defendant and you have no evidence, you have nothing. And if you have the evidence and you don’t have the defendant, you’ve got almost nothing. So you had to put the two together. And, of course, most of the crew that Taylor was putting together were young fellows with no experience whatsoever in this field. Where should they get that experience? So he said: “You go to Berlin, set up an operation there, and find the evidence.” Okay, so I became chief of the Berlin branch with about 50 people. We had offices in Harnack House, for the Berliners, which was then all bombed out. And I said: “This won’t do.” And I called the first Lieutenant-Colonel, and I said: “I want better quarters than this.” So they moved us over next door to General Clay who lived in Clay-Allee, which used to be called Adolf-Hitler-Straße, I think. And there we began.

How do you begin to find the evidence of massive crimes? The theory was that the handful of defendants in the International Military Trial which was also partly at random, you put Streicher in the same shoes as Ribbentrop, and Göring and so on and Speer, for that matter. We wanted to get a broader picture. How was it possible that a civilised country like Germany can engage in this kind of criminality? They must have the help of the entire structure of social society. They must have help from the industrialists who built the concentration camps or the bankers who financed it, from the ministries of the Foreign Office, who were planning these aggressions, from the Justice Department, from the medical department, the doctors, who were performing medical experiments, and that was the function of what is here called “the later trials”. At that time it was called “the subsequent proceedings”. And I had to go find the evidence. Well, Germans, however, are gifted people. They keep records. That was very handy. The Berlin Document Center, for those of you who live in Berlin, take a walk through the park at Dahlem, and ask anybody on the road “Where is the Document Centre?” They won’t know, unless they are very old. There’s a little villa, from the air it looks like any other little villa in the park. Underneath that villa, there are subterranean chambers much bigger than this room, many of them. And there are stored all the Nazi Party files. Everybody who applied for a position, for membership in the Party, has a folder, an “Akte”, and we captured that. Very nice, thank you very much! Anybody who got a promotion in the SS or who wrote a letter, it’s in his file. In addition to that we had the archives in the buildings which were not destroyed. Most of [the buildings had been] destroyed. At Gestapo, we found some things in the basement, we found some records of the “Einsatzgruppen” in the basement, but only a few. As Whitney Harris pointed out, we had already Ohlendorf. He was already “in the can”,

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as we called it, in Nuremberg, and he had admitted his unit had killed 90,000 Jews. So we were looking for the rest of those reports.

One day, one of our researchers— we had about 50 of them working and you may want to know how they worked. They had to go through the files. If they found an interesting document, they prepared a one page sheet. These were people who knew German, mostly German American refugees, who came back to Germany to help with this process. They would find something of interest, they would summarise it, on what we call an S.E.A., Staff Evidence Analysis. Put the name of the document, where it was found, by whom, what it dealt with, a brief summary of what was in it. That was then shipped down from Berlin to Nuremberg where the lawyers who were preparing the industrialists' case against IG Farben, Krupp, Siemens etc. or the Justice Case received that. If their wanted additional information on that subject they would communicate with me in Berlin. I would pass it down to the analyst, make the more complete report or copy the whole document. And we sent the whole document down to Nuremberg. Wannsee Protocol was one of them. One of the problems there was: which lawyer grabs it? Some of you in Germany will remember the name of Robert Kempner who was very popular here, and he loved to collect documents. And he had the Wannsee-Konferenz document in his file. And he put it in his drawer and he locked it up! There was only one trouble: one of the persons named there—which was the conference, you'll recall, where they decided on the final solution of the Jewish question—and the final solution was that Eichmann lines them all up, ships them to the East and then they murder them all. There was another name of another defendant who was being worked on by one of our prosecutors, by the name of Charles Lorchalid [?]. I don't think I have ever told this story anywhere. One day, Charlie came rushing in. "I am going to kill Kempner!" I said: "Why are you going to kill Kempner?" He said: "He's got one of the documents which I need for my trial, and he's hiding it!"—"How did you know?" The researcher, who found it, blew the whistle and called the other lawyer who felt he needed it for his case; he also had a lead defendant.

So anyway, to make that story short, I said: "You can't kill Kempner." I went to Taylor who was my boss, later my law-partner, and I said: "Bob [ought to be Charlie?] wants to kill Kempner." Taylor said: "Why?" I said: "Well, he's hiding one of his documents." "Oh", he said, "do you think we should kill him?" I said: "No, no, we can't kill him. We need him; he is the only one who knows about the Ministries' Case." He'd been in a ministry before. I mention this en passant as the type of real problems that we had. We straightened it out. I talked to Kempner, I said: "Bob, come on, give me the document. Never mind this business." And so it went.

Now one day, I started to say, one of the researchers came in and said: "Look what I found." In the Foreign Office, the Foreign Ministry near the old Tempelhof Airport in Berlin, he'd found a complete set of what was called, for the German translators, Ereignismeldung aus der UdSSR, English translation "operational reports from the Soviet Union". And in those reports, the Einsatzgruppen described very precisely which unit had entered which town and bragged about how many people they had killed. And a typical report would say:

"We entered such and such town, in the first 24 hours, we succeeded in eliminating—they never said kill, they were too refined for that—eliminating 4327 Jews. (I am fabricating the figures now.) Or plus 882 gypsies. And 46 others."

I took those reports, I took a little hand adding machine and I began to add up how many people had been murdered by these units. Where we had the name of the unit, the name of the commander, the place and the time and the number, when it said the town was "cleansed" of Jews, I put [down] number one. I didn't know how many they were, could have been a thousand and I added it [up]. When I reached over a million I stopped. I said, that's enough for me. I grabbed copies of some of the files. I flew down to Nuremberg. And I said to then General Taylor: "Sir, we have to put on another trial." He said: "What for?" I said: "Look at this. I got proof here of over a million murders—Cold-blooded, calculated murders—and I can prove it." He said: "We don't have budget for any new cases. We have submitted our budgets. We don't have staff, we don't have people. We're not putting on any new trial now." IMT was already finished; he was beginning with the Medical Case which was going to be the first case. And I said: "You can't do this! This is mass murder. This is Holocaust on grand scale. Genocide." I knew Rafael Lemkin in Nuremberg, who had taught me the word genocide. So Taylor
said: “Can you do it in addition to your other work?” And I said: “Sure.” And he said: “You got it.” So there it came about that I became the Chief Prosecutor in what was certainly the biggest murder trial in human history. I came back to Nuremberg, I selected the defendants.

How do you select the defendants? Well, our intelligence services had indexed people according to their position. We sent notices around to the CIC, the intelligence service. “Please, anybody who is listed membership in an Einsatzgruppe or Einsatzkommando, send us the names, send us the ranks, and send us the position.” We got the lists, and I said okay. I went down the list and I selected them by rank and by education. I had six SS generals, the rest of them were all high-ranking officers, I have forgotten the number of colonels and majors, and the interesting thing, too, for me was, I picked them because they had a doctor title. I love that. Germans are so proud to be doctors. And one of them I was particularly happy to have, Dr. Dr. Rasch. R A S C H. Double doctor! I was an American, and we’re not used to that. I thought somebody was stuttering. But they explained to me: “No, he is a very learned fellow.” Okay, he murdered, according to his report, 33,771 Jews in two days, 29/30 September 1941, which happened to be the Jewish High Holidays. Imagine, a number like that! More than ten Trade Centers, more than all the other horrors that we’ve heard about. One unit. Dr. Dr. Rasch. A double doctor. One day, his defence counsel, before the trial started, came to see me. He said: “You got to drop the charges against Rasch.” I said: “What for?” He said: “He’s sick.” – “What’s he suffering from?” – “Parkinson’s disease.” – “What’s Parkinson’s disease?” – “He shakes.” I said: “If I had killed that many people, I’d shake too.” I said: “Is he breathing?” He said: “Yes, he is breathing.” I said, “if he is breathing, I am going to indict him.” And I have photographs of Dr. Dr. Rasch being carried in on a stretcher to the court room, to answer whether he understood the charges or whether he was able to reply, and he was. But then, there was an intervening event. He was judged by higher authority. He died before we could open the trial. So we dropped him. He was dead.

Now how do we pick the number of defendants? It’s also of interest. I ended up with 22 defendants. I started with 24. And the reason we had only 22 instead of 3,000, which were the units who for every day for two years their main job was to go out and commit mass murder. How did we pick 22? I told you I picked them by rank. Why only 22? That’s the only number of seats we had in the dock. We were sold out! Ridiculous? Sure, it’s ridiculous. But that’s the reality. That’s what it was. We never intended to try all those who were guilty of mass crimes. We only intended, at best, to have a meagre sampling of the different categories of people who made all of this possible. And that’s what we tried to do. What were the charges? The charges were very easy there. We charged them: crimes against humanity, genocide, and genocide was mentioned in my opening paragraph, in which I laid it out from courtroom 6[00] where we were yesterday, from the middle of the room, the judges standing on this side, the defence counsel on the other side. I accused them of committing these horrible crimes and made it clear that vengeance was not our role, that we are seeking merely a rule of international law, which will protect humanity against this type of crime. These people were murdered because they didn't share the race or the religion or the ideology of their executioners. And I thought then and I think now that it's a terrible reason to kill people, and we cannot tolerate a world in which we condone that kind of behaviour and grant immunity to those leaders who are responsible for it. So that was the gist of our approach.

Now what were the defendants' positions? What did they say? My time is limited and I will just focus on the one defendant who has already been mentioned by Whitney Harris, Otto Ohlendorf, who was the lead defendant. Incidentally, I never spoke to any of the defendants before they came into the courtroom. I never wanted to. I had interrogators who went down and interrogated them, I had affidavits, I knew their alibis, I knew their excuses, but I never personally confronted any of them. I didn’t want to be tainted with any feeling of sympathy towards a human being who was responsible for those terrible crimes. I wanted to judge them by their deeds. So I did not plan to call any witnesses, and I did not. The DP camps were full of survivors any one of whom would have come in gladly to testify that everyone of those defendants murdered his mother. No problem getting witnesses. But I was afraid that would happen to me what happened in Israel, when Ivan the Terrible was not the Ivan so Terrible, but Ivan not so terrible, from another camp. I said: “I don’t need them. I will hang them with their own documents.” When they were presented, Ohlendorf who was a father of five children, intelligent,
handsome man, he said: “Well, I can’t say for sure whether we killed 90,000, you know, sometimes the troops were bragging.” Talk about willing executioners. These were eager executioners; they were trying to show they killed more. I said: “But would you say there was ... eighty thousand? ...seventy thousand?” – “Yeah, could be.” – “Could it be more?” “Yeah, that’s also possible, but”, and he made the point, he never allowed his men to do what some other units did. They threw the babies up in the air; they used them for target practice. They smashed their heads against a tree. He said: “I never let them do that. I told them: If a mother is there with an infant child, you allow the mother to hold the child to her breast. Otherwise she starts screaming and she has a scene, and you aim for the child, and you shoot through both of them. You save ammunition. You quiet down your mother. That’s a more humane way to do it.” Ohlendorf was a gentleman. He also explained about the gas vans. You know they sometimes had to move the people out of town. Didn’t want to do it in the middle of a city. Well, the old people couldn’t run fast enough. And the young kids, they couldn’t run at all. So somebody got the good idea: we put them in a gas van. The gas van looked like a regular house trailer. They even disguised some of them by putting windows on the sides so it looked like a Wohnwagen, a house trailer to go on vacation with. They’d jam it full with thirty or forty people. It was so arranged that when the motor was started, carbon monoxide gas would flood into the van. And the theory was that within fifteen minutes or so they are already dead when you get to the burial side which the other inmates were busy digging, and you’d dump them into the site. Well, it didn’t quite work that way. Sometimes they didn’t die. Sometimes, the brakes would fail on the van. Instead of just dying quietly – which the advertisers was for the manufacturer who manufactured these nice vans, and we have his name – they would start clawing at each other trying to get out as soon as the gas came in. So when you opened it, it was full of excrement and vomit and blood and a mess, and these kids had to be separated from their parents and the old parents and the grandparents, and they had to do it by hand. And he said: “This was very tough on my men.” He said: “I didn’t like gas vans at all.” Sensitive fellow. Well, I don’t want to get too gory here. Ohlendorf was sentenced to death.

All of my defendants were convicted. Thirteen of them were sentenced to death. And Ohlendorf explained why he did this. It was very important. I said: “How do you explain this, a man of your intelligence, background, education, a family man? How do you explain it?” He said: “It’s easy, it’s self-defence.” – “Self-defence? Germany attacked France, Holland, Belgium, Poland, and Russia, all of a dozen countries. Nobody has attacked Germany, and you say it’s self-defence?” – “Oh yes, of course it’s self-defence. Because we knew that the Bolsheviks were planning to attack us. So we were going to have to, in self-defence, move against them first.” – “Well, why did you kill the Jews?” – “Well, we knew the Jews were sympathetic to the Bolsheviks. So you got to eliminate them, too. And the gypsies, well the gypsies, they played both sides of the street, so we can’t have them hanging around loose.” – “But why then did you kill the children, the little children?” – “Well”, he said, “they would grow up knowing that we had killed their parents, they would be enemies of Germany. And so we had to kill them, too. Because we were interested in the long-range plans.” – “And how do you justify this?” – “Well, Hitler had all the information. I was not in a position to judge that. I had to assume that he was more informed and he knew better what was in the interest of our country. And I accepted that. And that’s what I did.” And he brought in, as all the Germans did, Gutachten, expert opinions, we called them affidavits by the dozen, by the bushel, one was from a Professor Reinhart Maurach of Munich, a five hundred page Gutachten explaining that in order to commit a crime you must have a criminal intent. And if what you do, you believe, is in the interest of the government, and is self-defensive, then, of course, there is no criminal intent, and it is not a crime. And you cannot convict him. Professor Maurach, a very distinguished professor at the University of Munich, continued to preach and teach that doctrine for many years. So what it boiled down to, and that was the language that Maurach used, I hesitated to use it out of pity for our translators, but I will translate it – putativer Notstand in German literally means “presumed emergency” – as justification for the action. The modern terminology is “anticipatory self-defence”. Anybody heard that recently? Well, the tribunal consisting of three American judges led by Judge Michael Musmanno of Pennsylvania, a very competent man, found them all guilty. And then came the day of sentencing. “For the crimes of which you have been committed this Tribunal sentences you to death by hanging.” They’d stand to attention, take off the earphones, and step
back into that side door which many of you may have noticed in Room 600. The panel would open; they'd step into the Black Maria, the lift that went all around. They were dropped down; the door would close, as if they had dropped into Hell one after the other. Very, very dramatic.

Somebody asked me how did I feel about that, did I have jubilation? I had never asked for the death penalty. Not that I am opposed to it under certain circumstances. But I felt that there is no penalty, no penalty which could balance out the enormity of the crimes committed by these men. And so I left it to the judge to fix the sentences. And he did. And I had a score card, and he was rougher than I would have been. Had I imposed the sentences, they would have been more lenient. And there was no jubilation in my heart at all. It was the practice at Nuremberg in those days, Whitney will probably remember it, when a trial ended, the prosecutors, the chief prosecutor for that trial, served as host at a party at his house to celebrate the ending of a difficult trial. I couldn't go to my own party. I went to bed. Well, that gives you some idea of how it is that educated, intelligent men of families of their own, can go out and murder in cold blood hundreds of thousands of little children and seek to justify it on the spurious argument that our system is so corrupt that if you can use anticipatory self-defence as an argument you feel that gives you permission to engage in that type of monstrosity and atrocity. So much for the trial. The trial was over. I decided to stay on in Germany. I was approached by leading Jewish organisations that had an idea. The idea was to recover the property which had been taken from the Jews ... the heirless Jewish property. They didn't have any money, of course, but they thought I was the right man to do the job. Military government had passed a law calling for the restitution of property. And also a provision in case property was unclaimed, it was presumed heirless, it would go to a successor organisation instead of to the State, to be used for the benefit of survivors. I was named the Director General of that organisation. I gave myself that title, because I was the only employee at the time. And we began to work.

My time is running out on me, I'll be very brief. But I promised Dr. Kress, who is here in the audience somewhere. You're holding up your hand somewhere, where are you? Are you hidden away? Dr. Kress, are you here? Ah, wherever he is, he's over there, hiding over there. I promised, because he's an old-timer he and Ambassador Kaul now, Judge Kaul, and Zimmermann, they have been a powerful German force in the negotiating of the International Criminal Court. I promised to say something, which I said he probably doesn't know about the law, and that's hard to come by. What I am going to tell him is the main problems on the restitution programme. We had a Court of Restitution Appeals, Allied lawyers originally, later mixed, who decided difficult legal issues. The first legal issue was the repayment of the purchase price. The principle of law was one I had learnt in Law School: If a contract is entered into under duress, when the duress is gone, you can void the contract. You have an option: you give back what you got, you get back what you had to give up, and you give back what you got. For example, if Hans Kohn had to sell his house, because Hitler said under the Nuremberg Laws, which were explained to you this morning, that no Jew can own property, he sold it to his neighbour for a hundred thousand marks. It was Reichsmarks. By the time the war was over, the Reichsmark was worthless. The German law provided one Deutschmark equals ten Reichsmarks. So if he got a hundred thousand Reichsmarks when he was forced to give up his property, in order to get it back he would have to give back a hundred thousand marks of some kind. If he had to give back a hundred thousand Deutschmarks, nobody would have claimed restitution under those circumstances. Nobody. It would have made no sense whatsoever; because first of all the house wasn’t worth it, secondly we were afraid the Russians might come in the next day. We were always on the alert during those early years against the possibility of an invasion, as the Russians were sweeping to the West. And the needs were immediate. Advisory opinion number one issued by the Court of Restitution Appeals, and I wrote the brief and made the argument in the courthouse at Nuremberg, room number 600, was that ten to one applies. It applied to other cases. So it was possible to have that programme.

The second important decision in the Court of Restitution Appeals, and then I will fulfil my obligation to Dr. Kress, was a case I argued against the Jewish community of Augsburg. There was communal property - Jewish communal property - the Jews had their own schools, their own synagogues, their own hospitals and institutions of various kinds. It was a congregation, like other Christian, non-Jewish congregations, part of the German state mechanism. Americans don't understand
that here. That’s the way it worked in Germany. And what happened? The Jews were all driven out, new immigrants came in, they occupied the town, they started to build, and they took over the Jewish cemeteries. I am a great expert on hundreds of Jewish cemeteries. And they claimed all the assets. I said “I am sorry.” I appeared before the court, and I said: “You know, I stood on this spot and prosecuted the Einsatzgruppen”, I never thought I would see the day when I’d stay here and argue a case against the newly created Jewish community, the Gemeinde, which was the defendant in that case. I said: “But my duty under the law is to bring back the assets for the benefit of all the persecuted, and to distribute it where it’s most needed. And therefore I cannot agree that it should go to one small group.” And I won that case. If I had lost that case, there would have been no restitution programme. Anyway, let me move on, because I am already trespassing on the time of Louise Harmon, I apologize for that. The restitution programme consisted of other parts as well, not only the restitution of property, but the compensation laws, which have been forgotten. In 1951, as a result of an initiative announced by Chancellor Adenauer, a devout Catholic, Germany agreed to make amends, insofar as they could. Tremendous battles about how much should be paid for what. Impossible problems! How much do you pay for a human life? Six million people presumably were killed. How much do you ask for each one? Is grandma worth more than grandpa? Is he worth more than she? These were the problems. We decided, we ask for nothing for a human life, because we put no value on it. How much do you ask for fear? Every day they were afraid. They woke up; they didn’t know if they’d be dead the next day. They lived with constant fear in all the concentration camps and everywhere. We put no price on fear. We charged for things which were normally measurable. Haftenschädigung, false imprisonment, for time spent in Auschwitz, five marks a day, which was the equivalent then of one Dollar. And the Finance Minister said: “Ach, we're going to go bankrupt.” Fritz Schäffer was his name: “This programme will cost us a lot of money. Compensation for all the injuries that we imposed, disability, loss of economic rights, loss of positions, loss of jobs.” And we said: “He is an old Nazi, he is against restitution, he is exaggerating the claims.” In the end it cost them ten times more than any of us had ever dreamed of. The injuries were so great. I’ve tried and negotiated with the German companies, after Nuremberg, when they were released from prison. And I said: “Look, you have worked these people to death. Don’t you think you owe them something?” And they said: “We? We never worked anybody to death. We had nothing to do with it.” – “But I show you the proof that you have.” – “Oh, well, of course, we had to, we were under orders. We had to be loyal patriots.” – “But did you have to treat them like dying dogs?” – “Oh well, everybody was suffering. We treated them well.” And these were the arguments they made, and invariably, all of them, IG Farben, Krupp, Siemens, AEG, Telefunken, every company I approached, made the same arguments. And when Albert Speer came out of Spandau prison, which is no picnic, I have been in Spandau, after twenty years, I met him secretly in Frankfurt Airport, and I said: “Herr Speer, I have read all of your reports. You make it very clear that they cannot use labourers without a request to the SS. That they must have the best of connections, they must be able to show that they need it for their war production. Why do all of these people tell me they didn’t employ them, they didn’t request them, they treated them well, etc.?” And he said: “They’re lying.” I was afraid he was going to say: “Ey, Mr. Prosecutor, get lost. I served my time. Your case is over.” He said: “No, they’re lying.” I said: “Can I quote you?” He said: “Yes, you may.” And I quoted him in a book called “Less Than Slaves” which was published by Harvard University Press. It appeared in Germany under the title of Lohn des Grauens. It appeared as a documentary film by Lea Rosh, from Zweites Deutsche Fernsehen [ZDF] I think it was: Vernichtung durch Arbeit. The record was clear. I don’t sell books. My rights have been given away to the Holocaust Museum in Washington for everything that I have ever written. It was a courageous act on the part of Mr. Speer, after twenty years to come back. The arguments about his sincerity? I don’t believe. He could have told me to get lost.

Anyway, let me move on. So much for restitution. The most difficult problem of all, of course, is to prevent it from happening again. And that’s what I have been doing. How do you do that? Well, nobody pays me. Nobody hired me, so nobody can fire me. I have a big advantage. I go to the UN, I go to the meetings, I prepare memoranda, I prepare arguments, to create an International Criminal Court. I want to pay tribute to Germany on this occasion, too, because the German delegation led by Ambassador Kaul then, has been a strong advocate of the Court, and in their subsequent legislation with
Zimmermann and with Kress, trying to pass laws to implement that, they have been ahead of the rest of the world. Because they know better than everybody else what war means. Aggression is the supreme international crime, according to the IMT judgement. And we just barely got it into the Roman Statute with the proviso, however, that the court can’t act on it until there is agreement reached on a re-definition which is not necessary, and its relationship to the Security Council, which they’ll never get. And that’s been postponed. It’s too technical to go into here. I’ve written lots of articles, and I encourage you who are seriously interested to read my website which is benferencz.org for more information. So let me wrap it all up. What does it all add up to? Well, it’s a complicated world, and it’s very difficult. People say “How are you?” and I say “I am always fine.” – “How can you be always fine?” – “I am aware of the alternatives.” I have seen man’s degradation. I have experienced it. I have lived through it. And I have a strong conviction that we can make it a better world. I refuse to believe that a society which is capable of giving me a box which I can push a button and see when there was a train accident in Paris a week ago or a minute ago and in China; and which can repair satellite a million miles out into outer space; and which can give me a telephone that I carry in my pocket and call any place in the world; that they are incapable of divining a system where human beings can live in peace. I don’t believe that. The will is lacking because they don’t believe it can be done. There are those who believe not in the rule of law, which Whitney Harris also spoke about, who believe only in the rule of power. And that was mentioned also in connection with the Jackson speech. Reason versus power or I put it another way, some thought that law is better than war. If you believe that law is better than war, then what you have to do is work for law and work against war. You have to stop glorifying war. You have to stop treating it as a holy grail, a holy mission, where young people are encouraged to give their lives and take lives of innocent people in pursuit of their own particular goals whatever they [happen] to be. Is it possible to change the way people think? Sure, it is possible. I’ve seen it in my life time. In my lifetime we have eliminated colonialism, in my lifetime we have seen the beginning of the emancipation of the black man and of women in the United States. We have seen such radical changes in the way people think that I think it’s folly to assume that we can’t do it. And let me say what really drives me: I believe that we owe it to the memory of all those who died in wars, all of them in all countries, never to stop trying to make it a more humane and peaceful world. I think it can be done. Never lose hope that it can be done. And keep trying. Thank you very much.

I will take a couple of questions. I am sorry, I have already trespassed on Louise’s time and generosity. So let’s get a few questions. Whoever you are, wherever you are, if you have some questions, just take the microphone. My ears are now over 170 years old, combined, so speak up, and I’ll try to answer it.

**Question:** Sir, after the end of your short presentation, it is very difficult to come back to the beginning. But I still would like to do that. You were then talking about show down pilots who were killed in some German cities. We know about those cases. But do you agree that – I may add that I was in the anti-aircraft artillery for nineteen months myself, and I know what happened with shot down planes. We had to report to the Division, and immediately some officers went to the shot down planes and captured the pilots to prevent the killings you mentioned in the beginning. It happened immediately. So would you agree on this, because otherwise in my opinion it would not have been possible that thousands of pilots were prisoners of war?

**Answer:** I get your point. You’re quite right. Of course, there were cases where the pilots were rescued. We did have rescued pilots. And I didn’t go out and investigate the cases of rescued pilots. I only went out to investigate the cases where the pilots were murdered on the ground. And I can assure you from having dug up such bodies with my hands that those cases existed and they were crimes committed by the local ordinary house people, very often the housewives, who came out and beat them on the head with shoes if they did not have a shovel. And then the firemen would come out and use a crowbar, and split their head open. But, of course, some of them were rescued. If a flier came down somewhere near a farmhouse, and he was lucky, he met a decent person who was unaware of any orders from Berlin, he was saved, and I am grateful to all those who behaved in a humane manner, and I didn’t mean to imply that it happened to everyone. At Nuremberg, we were very particular. We wanted to hold accountable only those who could be proved guilty beyond a reasonable doubt. This was pointed out by
Professor Barrett in his talk about Jackson. There were some Americans who said: ‘‘No, we’ll turn all of Germany into a meadowland. Morgenthau was one such. That was not the policy of the US government; the policy was to hold accountable only those who are proved guilty after a fair trial. And that’s what they had. We never condemned all of the German people. If we had, we would not have needed the trials. We had the capacity to kill them all, if we wanted to. We didn’t want to. We stopped. And that was the end of the war. And I am grateful to those who then may have helped Americans, and I am certainly grateful to those who today realise how dangerous wars can be and how awful they can be and are working now so carefully to create an International Criminal Court as an important step in the direction of a more rational world of the law.

Question: I have another question.

Answer: Is there somebody else with another question to give somebody else a chance? There’s nobody else? Here’s a gentleman right here, he has a question.

Question: My question refers to your ‘‘putativer Notstand’’ or anticipatory self-defence. Would you say, that those terms describe the rationale for the invasion of Iraq by the American government?

Answer: The question relates to the American invasion of Iraq. In my judgement which is not shared by all lawyers, I want to draw your attention to that, it certainly is not shared by the government’s lawyers, the United Nations’ system that what set up after 40 million people were killed in World War II, provided that you are not allowed to use armed force, except under very restricted circumstances, if you are attacked, armed attack against you, or if you are directed by the Security Council to do so. The last resolution of the Security Council before the invasion of Iraq which had already been planned was ‘‘Come back to us with a report of the arms inspectors, and then we will decide what to do.’’ They did not authorise any invasion of Iraq by the use of armed force. Ten years before, they had resolutions which authorised all nations to use whatever means necessary to kick Iraq out of Kuwait and stop there. And Bush’s father stopped, I think from a political point of view unfortunately, without going into Baghdad to arrest a criminal. So the action by the United States in my judgement, and I repeat it is a judgement which is shared by many lawyers, but not by everyone, was an act of aggression, the supreme international crime, for which the leaders, I emphasise the point, because Judge Kaul was very strong in all the negotiations on making it a point that this is a leadership crime only, with no threat to an enlisted man, a sergeant or a corporal, it’s a threat to those who planned and perpetrated this act in violation of the UN Charter, which binds all nations, including the United States. I regret it very much, I am ashamed of it very much, I do whatever I can to change it, and I will continue to do whatever I can to change it. Sometimes I succeed, sometimes I don’t. That’s the world in which we live.

Any more questions? If not, I am very happy, with apologies to Louise …

Question: I have one here. Given your indication earlier that you had to be selective in your prosecution of the members of the Einsatzgruppen, can you tell us whether the individual leaders of Einsatzgruppen A, B, C and D were prosecuted? Two, was von dem Bach-Zelewski among those prosecuted? And three: did the Soviets conduct their own prosecutions?

Answer: The answer to your first question which was did we try the leaders of the other Einsatzgruppen and Kommandos. The answer was no. We were in a hurry, we had limited budget, we had to get going with the trial then and there, we had no time to go searching the world and send out arrest warrants to countries to cooperate. There was no co-operation, as there is no developing, thanks to Germany, I hope as well, with the International Criminal Court. We did not try Bach-Zelewski in the Einsatzgruppen Case, he was put on trial later on in another trial, but not in the Einsatzgruppen Case, and the result was: we turned the files over, I was responsible for that later, I was executive counsel, turning the files over in Bavaria, to the Ministry of Justice, I remember Camille Sachs who was liberated in a concentration camp, and SPD man who was minister of justice, his son, also named Sachs, Hans Sachs, for Nuremberg, who received the files, and later they set up the Zentralstelle in Ludwigsburg to try other members, and there were some trials, but so many years after the war, it was very difficult to find witnesses, it was very difficult to find witnesses who were willing to co-operate, and so most of them got away with murder. That’s another reality of the life in which we live. So, if you’ll allow me now, I turn over to Louise, again with my apologies, thank you very much.
Hier erzählt Ben Ferencz, der als Chefankläger im Verfahren gegen Hitlers mobile Tötungstrupp, genannt Einsatzgruppen, amtierte, eine eindrucksvolle Geschichte. Eines Tages während des Krieges wurde er aufgefordert, sich in General Pattons Hauptquartier zu melden. Dort erhielt er den Auftrag, eine Abteilung für die Untersuchung von Kriegsverbrechen aufzubauen, deren Aufgabe es sein sollte, Kriegsverbrechen an alliierten Flugzeugbesatzungen, die in einigen deutschen Städten heruntergekommen und von der Bevölkerung oder der SS erschossen worden waren, zu untersuchen.

