

**International Society  
of  
Barristers**

**Volume 51**

**Number 3**

**FROM LAWBREAKERS TO LAWMAKERS:  
MY ENGAGEMENTS WITH NELSON MANDELA  
AND OLIVER TAMBO**  
*Albie Sachs*

**RED NOTICE**  
*Bill Browder*

**THE FREEDOM BLUEPRINT:  
HOW WE END CONTEMPORARY SLAVERY**  
*Zoe Trodd*

**Quarterly**



## **Annual Meetings**

2019: March 24–30, Ritz-Carlton Dove Mountain Resort  
near Tucson, Arizona

2020: March 22–28, The Sanctuary at Kiawah Island,  
Kiawah Island, South Carolina



# International Society of Barristers Quarterly

---

Volume 51

2018

Number 3

---

## CONTENTS

From Lawbreakers to Lawmakers—My Engagements with Nelson Mandela and Oliver Tambo .....	1
	<i>Albie Sachs</i>
Red Notice .....	27
	<i>Bill Browder</i>
The Freedom Blueprint: How We End Contemporary Slavery .....	57
	<i>Zoe Trodd</i>

# International Society of Barristers Quarterly

## Editor

Donald H. Beskind

## Associate Editor

Joan Ames Magat

## Editorial Advisory Board

Daniel J. Kelly  
Thomas W. Cranmer, ex officio

## Editorial Office

Duke University School of Law  
Box 90360  
Durham, North Carolina 27708-0360  
Telephone (919) 613-7085  
Fax (919) 613-7231  
E-mail: [beskind@law.duke.edu](mailto:beskind@law.duke.edu)

Volume 51  
Issue Number 3  
2018

The INTERNATIONAL SOCIETY OF BARRISTERS QUARTERLY (USPS 0074-970) (ISSN 0020-8752) is published quarterly by the International Society of Barristers, Duke University School of Law, Box 90360, Durham, NC, 27708-0360. Periodicals postage is paid in Durham and additional mailing offices. Subscription rate: \$10 per year. Back issues and volumes through Volume 44 available from William S. Hein & Co., Inc., 1285 Main Street, Buffalo, NY, 14209-1911; subsequent back issues and volumes available from Joe Christensen, Inc., 1540 Adams Street, Lincoln, NE, 68521. POSTMASTER: Please send address changes to Professor Donald H. Beskind, Duke University School of Law, Box 90360, Durham, NC, 27708-0360.

© 2018 International Society of Barristers

# International Society of Barristers

## Board of Governors 2017–2018

Harry H. Schneider Jr., *Washington*, President  
Thomas W. Cranmer, *Michigan*, First Vice President  
J. Kenneth McEwan, *British Columbia*, Second Vice President  
W.R. (Ray) Persons, *Georgia*, Secretary–Treasurer  
Judy Y. Barrasso, *Louisiana*, Immediate Past President  
Donald H. Beskind, *North Carolina*,  
Administrative Secretary & Editor

## 2016–2019\*

James P. Frickleton <i>Kansas</i>	Stephen H. Kupperman <i>Louisiana</i>	Bruce A. Montoya <i>Colorado</i>
Kathleen Flynn Peterson <i>Minnesota</i>	David D. Powell Jr. <i>Colorado</i>	

## 2017–2020\*

R. Scott Costantino <i>Florida</i>	Maxon Davis <i>Montana</i>	Kevin Krist <i>Texas</i>
Kathleen Lang <i>Michigan</i>	Stephen Wade <i>Maine</i>	

## 2018–2021\*

LeeAnn Sanders <i>Nevada</i>	Christopher A. Seeger <i>New York</i>	Timothy S. Tomasik <i>Illinois</i>
Julie Vacura <i>Oregon</i>	Christopher Wesierski <i>California</i>	

\*Terms begin and end on the last day of annual meetings.

# International Society of Barristers

## Past Presidents

Craig Spangenberg, Cleveland, Ohio (1914–1998)	1966
Murray Sams Jr., Miami, Florida (1922–2011)	1967
Kelton S. Lynn, Rapid City, South Dakota (1916–1974)	1968
Arch K. Schoch, High Point, North Carolina (1909–1980)	1969
John H. Locke, Roanoke, Virginia (1920–2003)	1970
William H. Erickson, Denver, Colorado (1924–2010)	1971
Charles T. Hvass, Minneapolis, Minnesota (1922–2012)	1971
Robert T. Cunningham, Mobile, Alabama (1918–2001)	1972
William S. Frates, Miami, Florida (1917–1984)	1973
Phillip G. Peters, Manchester, New Hampshire (1922–2006)	1974
Richard R. Bostwick, Casper, Wyoming (1918–2013)	1975
Carlton R. Reiter, Portland, Oregon (1920–1980)	1976
Douglas W. Hillman, Grand Rapids, Michigan (1922–2007)	1977
Alex S. Keller, Denver, Colorado (1928–1996)	1978
Alex W. Newton, Birmingham, Alabama (1930–2015)	1979
Stan Siegel, Aberdeen, South Dakota (1928–2006)	1980
William D. Flaskamp, Minneapolis, Minnesota (1924–2000)	1981
Walter R. Byars, Montgomery, Alabama (1928–2014)	1982
John J. Greer, Spencer, Iowa (1920–2004)	1983
M.J. Bruckner, Lincoln, Nebraska	1984
Ray H. Pearson, Miami, Florida (1922–2004)	1985
Joel M. Boyden, Grand Rapids, Michigan (1937–1999)	1986
William T. Egan, Minneapolis, Minnesota (1925–2012)	1987
Carleton R. Hoy, Sioux Falls, South Dakota	1988
Mark P. Robinson, Los Angeles, California (1924–2001)	1989
Perry S. Bechtle, Philadelphia, Pennsylvania (1926–2010)	1990
William J. McDaniel, Birmingham, Alabama (1927–2003)	1991
Frederick H. Mayer, St. Louis, Missouri (1925–2018)	1992
Tom Alexander, Houston, Texas (1930–2008)	1993
Charles F. Blanchard, Raleigh, North Carolina	1994
Con M. Keating, Lincoln, Nebraska	1995

### Past Presidents

David L. Nixon, Manchester, New Hampshire (1932–2014)	1996
Richard E. Day, Casper, Wyoming (1933–2014)	1997
John G. Lancione, Cleveland, Ohio	1998
Frank J. Brixius, Minneapolis, Minnesota	1999
Myron J. Bromberg, Morristown, New Jersey (1925–2016)	2000
Joe McLeod, Fayetteville, North Carolina	2001
Gene Mac Winburn, Athens, Georgia (1937–2006)	2002
Daniel J. Kelly, San Francisco, California	2003
John D. Liber, Cleveland, Ohio (1938–2013)	2004
Edward J. Matonich, Hibbing, Minnesota	2005
Scott S. Powell, Birmingham, Alabama	2006
Edward J. Nevin, San Francisco, California	2007
William R. Gray, Boulder, Colorado	2008
William F. Martson Jr., Oregon	2009
Marietta S. Robinson, District of Columbia	2010
J. Graham Hill, Houston, Texas	2011
Michael A. Kelly, San Francisco, California	2012
Michael A. Worel, Salt Lake City, Utah	2013
James R. Bartimus, Leawood, Kansas	2014
Rutledge R. Liles, Jacksonville, Florida	2015
Daniel R. Baradat, Fresno, California	2016
Judy Y. Barrasso, New Orleans, Louisiana	2017

# International Society of Barristers

## U.S. Membership Chair

R. Scott Costantino

## State & International Membership Chairs

Australia and New Zealand	Molly Townes O'Brien
Canada	
Eastern	Chris G. Paliare
Central	Richard J. Wolson
Western	J. Kenneth McEwan
Europe	
England	Paul Sreenan
Ireland	Paul Sreenan
Northern Ireland	Paul Sreenan
Scotland	Paul Sreenan
Alabama	Toby D. Brown
Alaska	Robert P. Blasco
Arizona	Patrick J. McGroder
Arkansas	Kathryn A. Pryor
California	
Northern	Stewart M. Tabak
Southern	David S. Casey Jr.
Los Angeles	N. Denise Taylor
Orange County	Christopher P. Wesierski
Colorado	Lance M. Sears
Connecticut	Michael P. Koskoff
District of Columbia	Robert K. Jenner
Florida	R. Scott Costantino
Georgia	W. Ray Persons
Hawaii	Mark S. Davis
Illinois	Timothy S. Tomasik
Iowa	David L. Brown
Kansas	James P. Frickleton
Kentucky	Edward H. Stopher
Louisiana	H. Minor Pipes III
Maine	Stephen B. Wade



## State & International Membership Chairs

Maryland	Robert K. Jenner
Massachusetts	Christopher A. Duggan
Michigan	Kathleen A. Lang
Minnesota	Robert J. King Jr.
Mississippi	William R. Purdy
Missouri	Thomas Cartmell
Montana	Alexander Blewett III
Nebraska	Michael Coyle
Nevada	J. Bruce Alverson
New Hampshire	Robert A. Stein
New Jersey	Bruce H. Stern
New York	
City	Steven R. Pounian
Upstate	E. Stewart Jones
North Carolina	James K. Dorsett III
North Dakota	David S. Maring
Ohio	William Hawal
Oklahoma	Larry D. Ottaway
Oregon	Janet L. Hoffman
Pennsylvania	
Eastern	Arnold Levin
Western	Richard M. Golomb
Puerto Rico	Álvaro R. Calderón
Rhode Island	John A. Tarantino
South Carolina	T. Ryan Langley
South Dakota	Thomas G. Fritz
Tennessee	Sidney W. Gilreath
Texas	
Dallas	Matthew R. Stammel
Houston	Fields Alexander
Utah	Richard D. Burbidge
Vermont	Jerome F. O'Neill
Virgin Islands	Maria Tankenson Hodge
Virginia	Michelle Parfitt
Washington	Thomas V. Harris
Wisconsin	Robert L. Jaskulski
Wyoming	Judith A. Studer

**STATEMENT OF OWNERSHIP, MANAGEMENT,  
AND CIRCULATION  
(PS Form 3526)**

1. Title of publication: International Society of Barristers Quarterly
2. Publication no. 0074-970
3. Date of filing: 25 September 2018
4. Frequency of issues: quarterly
5. Number of issues published annually: four
6. Annual subscription price: \$10.00
7. Mailing address of known office of publication: 210 Science Drive, Durham, NC 27708-0360
8. Mailing address of headquarters or general business office of the publisher: International Society of Barristers, 210 Science Drive, Durham, NC 27708-0360
9. Names and addresses of publisher, editor, and managing editor: Donald H. Beskind, 210 Science Drive, Durham, NC 27708-0360
10. Owner: International Society of Barristers, a nonprofit corporation, 210 Science Drive, Durham, NC 27708-0360
11. Known bondholders, mortgagees, and other security holders owning or holding one percent or more of total amount of bonds, mortgages, or other securities: none
12. The purpose, function, and nonprofit status of this organization and the exempt status for federal income-tax purposes have not changed during the preceding 12 months.
13. Publication Title: International Society of Barristers Quarterly
14. Issue date for circulation data below: December 2018
15. Extent and nature of circulation:

	<i>Average no. copies each issue during preceding 12 months</i>	<i>Actual no. copies of single issue published nearest to filing date</i>
a. Total number of copies printed (net press run)	898	906
b. Legitimate paid/requested distribution		
1. Outside county paid/requested mail subscriptions	862	865
2. In-county paid/requested mail subscriptions	5	6
3. Sales through dealers and carriers, street vendors, counter sales	0	0
4. Requested copies distributed by other mail classes through the USPS	0	0
c. Total paid or requested circulation	866.5	871
d. Free or Nominal Rate Distribution		
1. Outside county	21	24
2. In-county	0	0
3. Distributed through USPS by other classes of mail	0	0
4. Outside the mail	0	0
e. Total free or nominal-rate distribution	24	27
f. Total distribution	890	898
g. Copies not distributed	8	8
h. Total	898	906
i. Percent paid and/or requested circulation	97	97

\*\*\*

16. Publication of this statement will be printed in the Vol. 51, No. 3 issue of this publication.
17. I certify that the statements made by me above are correct and complete.  
Donald H. Beskind, *Editor*

**FROM LAWBREAKERS TO LAWMAKERS—  
MY ENGAGEMENTS WITH NELSON MANDELA  
AND OLIVER TAMBO\***

**Albie Sachs\*\***

***ABOUT THE SPEAKER***

*Justice Albie Sachs is an advocate and jurist who has dedicated his life to the cause of freedom fighting, injustice, and social change. He's done so by engaging in the practices of restorative justice and focusing on diversity and inclusion because when diversity and inclusion are valued, the result is a more tolerant and peaceful society. Justice Sachs is a leading authority on the reconciliation of divided societies. He was part of one of the great liberation movements of the twentieth century in South Africa.*

*It must be remembered that for 300 years white settlers and their descendants in South Africa controlled the entire region, leaving blacks and other nonwhites with few work opportunities, and little chance for advancement. By the mid-twentieth century, all of that inequality was formalized into the laws creating apartheid. Blacks lost their schools, their hospitals, their way of life, and were resettled into shanty towns. Resistance against apartheid spread across the world. It was initiated, though, by a resistance group in South Africa, the African National Congress, led by Nelson Mandela. Members of resistance groups even within South Africa were not all black. One of them was Albie Sachs.*

---

\* Address delivered at the Annual Convention of the International Society of Barristers, London, England, 16 April 2018.

\*\* Activist and former judge on the Constitutional Court of South Africa; author of many books, including *The Strange Alchemy of Life and Law* (2009) and *The Soft Vengeance of a Freedom Fighter* (2d ed. 2000), both of which won the Alan Paton Award for nonfiction.

*Where did this passion for social justice and the movement towards a just society come from? Albie Sachs was born in Johannesburg at the height of apartheid, when that country was racially and culturally divided. His early upbringing was in a fervently political Jewish family. His father, who had immigrated to South Africa from Lithuania following World War I, was a well-known trade unionist who fought against racism in South Africa at a time when such conduct was neither appreciated nor tolerated by the government. So it seemed only natural that Albie would begin his career as a human-rights activist while a seventeen-year-old, second-year law student at the University of Cape Town. At twenty-one, after getting his law degree, he began practicing in Cape Town defending people charged under apartheid's racist statutes. Many were facing the death sentence.*

*Because of his efforts as a lawyer, Albie Sachs's office was raided by the security police and he was subjected to orders restricting his movements. He was imprisoned for ninety days in solitary confinement, then released and immediately remitted back to prison for another seventy-eight days. He was eventually exiled to England. He spent eleven years studying and teaching law at Sussex University, where he also received a PhD. He then returned to Africa, but this time to Mozambique to continue his career as a professor of law and his activity in the campaign against apartheid in South Africa.*

*While in exile in the 1980s, Justice Sachs worked closely with Oliver Tambo, the leader of the African National Congress, helping to draft the ANC's Code of Conduct and statutes. Notwithstanding his being in exile, Albie Sachs continued to be an enemy of the South African state. His influence over anti-apartheid matters in South Africa was still vocal, profound, and resented by the South African government.*

*Unable to imprison Justice Sachs while he lived in Mozambique, South African security agents placed a bomb in Albie's car while he was living in Maputo, the capital of Mozambique. That was April 7, 1988. The damage to Justice Sachs was extensive. Recovering in the hospital, he had moments of doubt—would he get through this? A fighter from an early age, Albie Sachs would now have to fight for his life. Fortunately, thanks to immediate medical attention, he survived, but he lost an arm and the sight of one eye.*

*After the bombing, he returned to England to convalesce. Once Nelson Mandela was released from prison, Mr. Sachs devoted himself to preparations for a new democratic constitution for South Africa. He returned to South Africa and served as a member of the Constitutional Committee and of the ANC's National Executive Committee. When apartheid was finally ended and Mr. Mandela was elected the President of South Africa, Mr. Mandela appointed Mr. Sachs to the Constitutional Court of South Africa, where he served for fifteen years.*

*Justice Sachs wrote many groundbreaking and precedential judgments, many of which were about issues related to discrimination and a more just society. One such decision established the connection between the right to equality and dignity. Another declared unconstitutional South Africa's statute defining marriage as being between a man and a woman.*

*Mr. Sachs has won many awards for both his writing and his life's work. He has received over fifteen honorary doctorates from various universities across the globe. Justice Sachs is one of the world's most renowned judges, whose depth of humanity and vision about injustice is found in few others. His commitment to a process of nation building and social healing using the principles of restorative justice, such as the Truth and Reconciliation Commission, has led the way to a more just South Africa.*

### **EDITOR'S PREAMBLE**

The Preface to Albie Sachs' book, *The Soft Vengeance of a Freedom Fighter*, quotes the Seamus Heaney poem, *The Cure at Troy: A Version of Sophocles' Philoctetes*. *Philoctetes*, Seamus Heaney explained, tells a tale "about how a marooned man comes back and helps the Greeks to win the city of Troy." He continued,

The play is really about someone who has been wounded and betrayed, and whether he can reintegrate with the betrayers or not. Human sympathy says yes, maybe political vengefulness says no, but the marooned man in Sophocles' play helps the Greeks who betrayed him to win Troy. It seemed to me to mesh beautifully with Mandela's return. The act of betrayal, and then the

generosity of his coming back and helping with the city—  
helping the polis to get together again.

“Of all the heroes,” Heaney said, “[Mandela’s] the great one. There’s a great transmission of grace there—and, of course, great stamina to go with it.”<sup>1</sup> The pertinence of this poem to the experiences Albie Sachs tells us about in this article, which follows, is wonderfully self-evident.

### THE CURE AT TROY: A VERSION OF SOPHOCLES’ *PHILOCTETES*

**Seamus Heaney**

Human beings suffer,  
They torture one another,  
They get hurt and get hard.  
No poem or play or song  
Can fully right a wrong  
Inflicted and endured.

The innocent in *gaols*  
Beat on their bars together.  
A hunger-striker’s father  
Stands in the graveyard dumb.  
The police widow in veils  
Faints at the funeral home.

History says, don’t hope  
On this side of the grave.  
But then, once in a lifetime  
The longed-for tidal wave  
Of justice can rise up,  
And hope and history rhyme.

So hope for a great sea-change  
On the far side of revenge.  
Believe that further shore  
Is reachable from here.

---

1. Interview with Seamus Heaney, INDEPENDENT (Oct. 31, 2002), <https://www.independent.co.uk/arts-entertainment/books/features/seamus-heaney-hope-is-something-that-is-there-to-be-worked-for-141727.html>.

Believe in miracle  
And cures and healing wells.

Call miracle self-healing:  
The utter, self-revealing  
Double-take of feeling.  
If there's fire on the mountain  
Or lightning and storm  
And a god speaks from the sky

That means someone is hearing  
The outcry and the birth-cry  
Of new life at its term.

## I

### THE FIRST CONSTITUTIONAL COURT OF SOUTH AFRICA

It was the 14<sup>th</sup> of April 1995 and there are twelve of us sitting on a platform in a very small room, going back maybe four rows, but jam-packed with people. We are excited to be sitting in our gowns. The ceiling is low; it's a temporary accommodation. And Nelson Mandela, president of South Africa begins to speak.

"The last time I was in court," he said, "was to find out if I was going to be sentenced to death. Today I'm here to inaugurate South Africa's first Constitutional Court." And we were the twelve judges about to sworn in. The Court itself consisted of eleven justices; but one of our colleagues, Richard Goldstone, had been asked by President Mandela to be the first prosecutor at the special war crimes tribunal for the former Yugoslavia at The Hague. So we had Sydney Kentridge, who had practiced as one of our greatest barristers in South Africa before moving to London, serving as an Acting Justice on our court. And we all felt it was particularly memorable and marvelous that this day, one that would be so important in our lives and the life of the nation, should be presided over by Nelson Mandela.

What a story! He'd spent twenty-seven years in jail completely silenced. Coming out of prison, he'd initiated the program of reconciliation in South Africa. We'd disproved to the world the racist

assumptions that black and white could never live together as equals in one country. With Mandela as leader, we showed that we could do so, if we had a Constitution, if we had systems in place, if we had values, if we had a supreme law that recognized the essential humanity of each and every South African. That had been his life's goal; that had been our life's dream.

And now we are at the moment where we would be sworn in as judges to defend that Constitution, which after a number of years of tense negotiations with breakdowns, with murders outside in the streets, with rolling mass action, with peace accords being necessary to calm the population, and finally we'd achieved our democratic elections. We'd achieved a united South Africa, a South Africa based on equality. And the person at the center symbolizing that whole process was Nelson Mandela.

Some of us had worked with him in the resistance, in the underground; another had defended him when on trial for his life. But all of us admired him, enormously. And how did the Constitutional Court of South Africa, inaugurated in his presence, sworn in in front of him, respond to this person we loved as a figure, we admired as a human being, we appreciated as a colleague? How did we respond? Six months later, we struck down important proclamations issued by Nelson Mandela. Now, that's gratitude for you.

## II

### HOW IT CAME TO PASS

*1952*

I'm going to tell you today a little bit about how that all came to pass, and how Mandela responded to the decision of our Court. I go back to 1952. I wonder how many of you in this room can remember where you were, if you were, in 1952. I remember very precisely where I was on the 6<sup>th</sup> of April 1952, an important date, because it was on the 6<sup>th</sup> of April 1652 that a certain Dutch commander named Jan van Riebeeck landed in what's now Cape Town, planted the Dutch East India Company flag, and began what we learned in our history book



was the beginning of what was called white civilization in darkest Africa, the southernmost part of darkest Africa.

It was the third centenary of that date, and the new Afrikaner Nationalist government, elected by white voters only on a policy of apartheid, a word which they'd introduced into the English language—"separate development," they called it—was growing. The armored cars rolled through the streets, the airplanes flew overhead, soldiers were marching to celebrate 300 years of white supremacy. And at that stage, there were about 200 of us in a small hall, maybe one quarter of the space of this room, in a working-class area of Cape Town—perhaps 195 black and five white. And we were singing. The songs in those days were sad, sad, sad, sad songs.

*Mayibuye, mayibuye, mayibuye iAfrika,*

*Come back, come back, come back Africa.*

*Senzenina, senzenina.*

*What have we done, what have we done?*

Sad, sad songs of the oppressed people. And suddenly,

*Dr Moroka, Dr Dadoo, JB Marks, Kotane le Bopape*

*Volunteers obey the orders, be ready for the action now,  
volunteers obey the orders.*

They're calling for volunteers because we were starting the Defiance of Unjust Laws Campaign.

How pathetic it must have seemed to the secret police sitting in our ranks, these 200 people thinking they dared challenge the might of racist South Africa. The platform was calling for volunteers to defy unjust laws: Black people out on the street after curfew hour at night, without a pass from their white madam or master; African men out in the streets without the pass that they had to produce to any policeman, even in their homes sleeping at night they had to produce their pass on demand, the document permitting them to be where they were, to work where they worked, to travel from one part of the country to the other; sitting on seats in the busses marked "Whites only," and all the public facilities marked "Whites only," sitting on those seats; going into areas reserved for one section of the black community when you didn't belong to that particular section. There were six sets of laws that had been separated out for defiance, and we

were being asked voluntarily and in a nonviolent way to defy those laws. And I'm sitting there, my heart on fire, I am stirred by the singing, and I say to my older comrade by the name of Wolfie Kodesh, who had been in World War II fighting against Hitler and racism in North Africa, now fighting against racism in South Africa.

"I want to join."

"You can't."

"Why?"

"Because you're white."

"But we're fighting racism."

"It's a black struggle led by black people," he tells me. "But I'll report to our leaders in Johannesburg."

I was a second-year law student then, and seven months later I'm leading a group of four young white people into the general post office in Cape Town to sit on benches marked "Non-whites Only." Now why do I tell you this story? I was volunteer number 8,942—something like that. Volunteer number one was a certain Nelson Mandela. He wasn't very well known in those days. He wasn't *Nelson Mandela*; he was just a certain attorney called Nelson Mandela, partner of Oliver Tambo. I sometimes ask the question, What is the one good thing that apartheid did? Answer: It created anti-apartheid. If it hadn't been for apartheid I would never have met Nelson Mandela. He grew up in a rural area, went to Johannesburg from a traditional rural family. I grew up in Cape Town in a very cosmopolitan family, internationalists. But we were brought together in that common struggle, a fight to rid our country of a system in which our people's futures were being determined, our destinies, our life systems, on the basis of the color of our skin and our race. That was 1952.

1963

I move forward to 1963. It had been a tumultuous decade. I'm now practicing as an advocate, that is, as a barrister at the Cape Town Bar. There had been a huge upsurge of anti-apartheid political activity in the 1950s. We had assembled in numbers to adopt a Freedom Charter, a vision of a new democratic and free South Africa. We'd been

surrounded by the police, our names had been taken, and the leaders put on trial for treason. The state argument was that, in South Africa, to demand equality when only whites had the vote, was inevitably to demand change through violence; therefore you're guilty of treason. The accused were locked up in the Old Fort Prison in Johannesburg. And the first thing Oliver Tambo did when he was locked up there was to set up a choir. So I'm not the only one who sings at public meetings. And in fact our Constitutional Court now stands in the heart of what was the Old Fort Prison.

The treason trial collapsed. But by 1963 our leaders are on trial for their lives in the famous Rivonia Trial. This was a period of terrible repression. Oliver Tambo has been sent out of the country to mobilize international support to get a big anti-apartheid campaign going for the release of Mandela and all political prisoners and for the ending of apartheid. And I'm in solitary confinement.

I'm locked up in a little cell. I tried to invent activity. There's nothing to do, no one to speak to, no contact. You stare at your toes, your feet, the wall, your toes, the feet, the wall, your toes, the feet, the wall, and a few minutes have passed, and you're there for 90 days and another 90 days and another 90 days. All done through the law. Lawlessness sanctioned by the law, rule *by* law, not rule *of* law.

I am trying to remember the states of the United States of America, starting with A. I used to say Arkansas, Alabama, Arizona. I'm counting—I had ten fingers then and I couldn't write anything down. I wasn't sure if you had fifty or fifty-two states. And I got up to about forty-seven, I think. I won't mention which of the states I couldn't remember. And then I would sing songs, just to hear my voice. And I'd begin, alphabetically, with *Always, Because, Charmaine, . . .* If anybody wants to know what the hit songs of 1963 were, they just had to read the list that I wrote down afterwards. I cheated a bit with the letter X—so, *Deep in the Heart of Texas*. And my favorite was *Always*. You know the Irving Berlin song?

*I'll be loving you . . . always*

*With a love that's true . . . always.*

The song was used by Noel Coward in a comedy of upper-class manners in England, and I'm singing,

*I'll be living here, always;  
 Year after year, always.  
 In this little cell that I know so well,  
 I'll be living swell,  
 Always, always.*

I'd sort of waltz around and feel amused that the spirit of this would-be revolutionary in South Africa was being kept alive by this Irving Berlin / Noel Coward song.

*I'll be living here always;  
 Year after year, always.  
 Not for better now,  
 Not for better week,  
 Not for ninety days,  
 But always.*

And go on then to *Because, Charmaine, . . .* But *Always* was my favorite.

And I sing it now with a kind of poignancy and I think of all the people in different parts of the world in solitary confinement for different reasons and the damage that's done to your soul, to your mind. You never, never, never get over solitary confinement. Eventually I'm released as abruptly as I was detained, and I run and run and run, further than I'd ever run before, and fling myself into the waves in the sea. I'm apparently joyous, but something inside me is crushed. So that's 1963.

I learned afterward the reason for my detention was probably the hope that I would be a witness against Nelson Mandela, Denis Goldberg, and others of the accused at the Rivonia Trial. It was there that Mandela made his extraordinary speech from the dock. Our criminal procedure has a provision that an accused person can remain silent or can go into the witness box and testify under oath without being cross-examined. This statement carries less weight than evidence given under oath, but gives you the advantage of being able to make your statement uninterrupted. Mandela did that, and he ended with the famous words, "I've spent my life fighting against white domination and black domination. I've lived for the ideals of an equal society with justice for all. These are the ideals for which I'm prepared to die." And his advocate, George Bizos, said, "Nelson you're

actually asking the judge to sentence you to death. Can't you say, '... if needs be?'" And now if you hear the recording, "These are the ideals which, if needs be, I'm prepared to die." Nineteen-sixty-three marked a period of terrible of oppression and depression in our country.

1988

I move forward to 1988. I'm living in exile in Mozambique. The great figure in our movement at this time (Mandela was silenced, though his silence spoke eloquently) is Oliver Tambo, Mandela's law partner. I don't think there's been a legal partnership in the world that can equal the partnership of Mandela and Tambo. They were clever, they were brilliant. But it was history that converted their partnership into an unparalleled symbol of the aspirations for freedom, democracy, and the rule of law throughout the world.

I'm in a room at the University of Zambia, with maybe seventy people there, overwhelmingly black. I've been asked by Oliver Tambo, on behalf of the Constitutional Committee of the ANC, which he had set up, to explain why we needed a Bill of Rights in South Africa. And I'm nervous. My heart's going boom, boom, boom. I began by saying, "There are three reasons why we need a Bill of Rights."

Now, imagine the people in the audience: many of them are young soldiers; they're planning to go back to South Africa to fight for the liberation of their country. Others are young diplomats, others are students, and they're waiting to hear about a Bill of Rights. We're fighting a revolutionary struggle; people use the term "seizure of power." That word *see-zhah* had a wonderful onomatopoeic quality to it—and now the Constitutional Committee is speaking about a Bill of Rights? What is this thing, a Bill of Rights? Why should we have one in South Africa?

"The first reason," I say, "is diplomatic: It makes us look good." The audience smiles. We're supposed to be these bloodthirsty terrorists wanting to take over the country and do to the whites what the whites have done to the blacks. And here we're speaking about a Bill of Rights.

"The second reason," I continue, "is strategic." It's to promote the Oliver Tambo vision of what our country should be like. At that

stage we were being urged, even by our greatest supporters, to go in for what was called power-sharing, that is, arrangements between racial groups to share power as such in South Africa. It would've been a total, total disaster. We would have Mandela as President on Monday, de Klerk as President on Tuesday, and Chief Buthelezi from the Zulu-speaking community as President on Wednesday. And they'd have to get consensus amongst themselves on all issues of government. Effectively, it would've given the whites, less than fifteen percent of the people, a minority veto. The Constitution would've been seen as the enemy of change, not the instrument for transformation.

Power-sharing is based on the assumption that people can think of themselves only in terms of their ethnic or racial groups and that they identify themselves as such and need protection for themselves as such. Oliver Tambo's vision was an emphatic *no* to power-sharing between racial groups as the foundation of a new South Africa. What South Africa needed, he believed, was democracy, majority rule, and protection for everybody through an entrenched Bill of Rights. The ANC had expressed support for a Bill of Rights the first time in 1923. Then, in 1944, when Churchill and Roosevelt articulated a post-Hitler world based on the principles of the Atlantic Charter, the ANC had come out with a document called African Claims, which included a Bill of Rights. Then, in 1955, the ANC had spearheaded the Congress of the People, at which the Freedom Charter had been adopted. We wanted a Bill of Rights, I explained, to protect people not because they were black, not because they were white, not because they were the majority, not because they were a minority, but because they were human beings. Only in that way can we get a country. That is the Oliver Tambo vision.

And I see people nodding in agreement. But that's not why my heart is racing. And I tell the audience, "There's a third reason why we need a Bill of Rights. We need a Bill of Rights," I say, with my heart racing, "against ourselves." We've lived in countries in Africa that have given us great support in our struggle, countries whose leaders had fought heroically for freedom, but they'd often gone on to become authoritarian, to grab land for themselves and their families and to throw their opponents into jail. And we'd had problems inside our

own organization, the ANC, where people had abused the authority given to them by the organization. That's why we had needed a code of conduct inside the ANC.

And now I'm nervous. My fear is that the attendees will think that it's easy for Albie, this bourgeois lawyer (the word *bourgeois* would be thrown out as explaining everything seen as standing in the way of the people's struggle); it's easy for him to come up with this bourgeois notion of a Bill of Rights. But in fact I see just the opposite: looks of delight in the eyes of those present. I sense that they were worried, concerned that one day when we ourselves were in power, could we ourselves abuse that power? We were asking ourselves that question in 1988, a few weeks before I was blown up, and twenty months before the Berlin Wall fell. Were we fighting just for power, or were we fighting for democracy?

1991

I go forward to 1991. I'm now back in South Africa. I've been invited by the University of Cape Town to be an honorary professor, and I'm giving my inaugural lecture. "The beautiful people are not yet born." That's my opening sentence. It was a phrase that had been used by a Ghanaian writer and then picked up by a Zimbabwean writer, to express their alarm and disappointment that the ushering in of freedom and independence, great though it had been, hadn't led to the full freedom that we've been hearing about from the previous speaker at this meeting.<sup>2</sup>

Having opened with those words, I added a statement from Ngugi wa Thiong'o, a great Kenyan writer, who'd been imprisoned by the President of Kenya for expressing critical views in sharp and evocative novels. And Ngugi had said, "A rich man's fart smells sweet." These are not normally the kinds of words used in an inaugural lecture. But I wanted to make the point that we were starting off our endeavor to get a new constitutional order with a double understanding. First, that we needed law—a Constitution and a Bill of

---

2. The speech of Dr. Zoe Trodd, *The Freedom Blueprint: How We End Contemporary Slavery*, *infra* p. 57.

Rights—to express our idealism, our commitment to the “never again” principle, to our belief in the possibilities of law; and second, that we needed a Bill of Rights and a Constitution to guard against corruption, to guard against ourselves. The lecture was called “Perfectibility and Corruptibility.” Its basic theme was that all constitutions are based on managing the tension between aiming for perfection, on the one hand, and guarding against corruption, on the other. That was 1991.

Why did I feel so strongly about that—and it wasn’t just me—why did our movement take a clear stand on a Bill of Rights? In 1988, after having given my presentation and having received support for rather than opposition to a Bill of Rights, I had explained further that a Bill of Rights could be a very conservative instrument that protected the just status quo against any change. But a Bill of Rights could also be emancipatory, it could include the right to be free from hunger, the right to education, the right to health; it could affirm rights for women, workers, children, and other vulnerable groups. Our task, then, I had added, had become one of finding manageable ways of making these social and economic rights justiciable as fundamental rights.

### III SOFT VENGEANCE

We leave that conference in Zambia, I go back to Mozambique, and—you have heard the story of what happened next. It wasn’t the 6<sup>th</sup> of April now; it was actually the 7<sup>th</sup> of April, 1988. I’m going to the beach, it’s a public holiday, the Day of the Mozambica Woman. I’m getting into my car, there are going to be meetings in the afternoon, and, BOOM, BOOM, I’m in total darkness. I just know something terrible has happened, and I faint into total obscurity.

Then I hear a voice saying in the darkness, “Albie, this is Ivo Garrido speaking. You’re in the Maputo Central Hospital. Your arm is in lamentable condition. You must face the future with courage.” And I ask, “What happened?” And a woman’s voice answers, “It was a car bomb.” I return to the obscurity but with a sense of joy because I know I’ve survived. That day that every freedom fighter’s waiting for—will they come for me, will they come for me today? If they come for me,



will I be brave, will I get through? And they'd come for me and they'd tried to kill me and I had survived! And I have a total, utter conviction that as I get better my country will get better. It isn't based on evidence; it's based just on total, total conviction.

That was 1988, just three weeks after we'd got agreement to have a Bill of Rights for our country.

Some months later, when I'm recovering in London, I get a beautiful note from Oliver Tambo speaking about "this dastardly deed." And then I get another note, it was in an envelope with a stamp on it. . . . Do you remember those things you used to lick? And I'm opening with my one hand, and I read, "Don't worry, Comrade Albie. We will avenge you." *Avenge* me? We're going to cut off the arms; we're going to blind in one eye. Is that the country we're fighting for? But if we get freedom, if we get democracy, *that* will be my soft vengeance. Roses and lilies will grow out of my arm.

The phrase "soft vengeance" came strongly to me. I heard a week or two later that in Mozambique they had captured one of the persons who had put the bomb in my car, and I said to myself, If he's put on trial and the evidence is insufficient to prove his guilt beyond reasonable doubt and he's acquitted, that will be my self-vengeance, because then we'll be living under the rule of law, and that's much more important, a much greater victory, than sending that one rascal to jail.

And this phrase "soft vengeance" kept popping into my head. It became, if you like, the theme of my life after that.

So now I'm back at the University of Cape Town, I'm giving the inaugural lecture and thinking that our triumph is not going to be to do to them what they had done to us. Our triumph is going to be the exact opposite: it's going to be the validation of our ideals, to have a great Constitution that will find space for everybody and recognize, on the basis of human dignity, the equal dignity and rights and freedom of everybody in our country.

#### IV A CONSTITUTIONAL DEMOCRACY

So that experience precedes the achievement of our Constitution and is the backdrop to Nelson Mandela, out of jail, now the President of the country, having appointed us and welcoming us at our swearing-in as Justices. It also is the setting in which we eleven judges sitting on the Court go on to invoke the Constitution to declare his Proclamations to be unconstitutional and of no force and effect.

We had no problem with the substance of the Proclamations. They actually provided for something very progressive. They were furnishing the legal structure for the first nonracial democratic local government elections in our country. We'd had national elections to create a new government for South Africa. Parliament had then chosen Mandela as President. Precisely because we had known that the beautiful people had not yet been born, when drafting our Constitution we had decided not to have a directly elected president, fearing that such a person could be too powerful. Instead we had opted for Parliament, acting as the repository of the people's will, to choose the President and then to hold him or her accountable. And now Nelson Mandela had been chosen by Parliament to be our country's first democratically elected President. He had in turn selected us from a list of names sent to him by the Judicial Services Commission to be the first Justices of the new Court, and then gone on to inaugurate the Court. And to complete the sequence, we are striking down his Proclamations, which are manifestly democratic in character.

What was going on? Why did we do that?

Parliament had noticed that it had a heavy legislative program with little time to pass a law creating conditions for the holding of South Africa's first democratic local government elections. It saw the task as being a rather simple technical one that it could entrust to the officials of the Presidency. So it duly adopted a short law authorizing the President to use his Proclamation-making powers to do the job. And President Mandela followed through. The Premier of the

Western Cape, however, who belonged to the main Opposition Party, challenged some of the details and took the matter on judicial review. The issue ended up in the Constitutional Court. As it turned out, we didn't accept the detailed arguments raised by the Premier.

But there was something else at stake that worried us. We felt that the case raised a profound separation-of-powers issue. Our Constitution declared that the legislative authority belonged to Parliament. Yet Parliament had entrusted this authority to the President. By a large majority our Court held that under our Constitution Parliament could not delegate its lawmaking authority to the President. We pointed out that Parliament could indeed pass a substantive law and then ask the President to dot the i's and cross the t's by means of detailed regulations. But Parliament could not entrust its primary legislative power to the President.

Some of us who had learnt about what had happened in Nazi Germany recalled that the law passed by the Reichstag to allow Hitler to rule by decree had been the first step to the establishment of total dictatorship in that country. It was not that we expected anything similar to happen in South Africa. But what was important was to uphold the profound constitutional principle at stake. And so we declared the Proclamations invalid, although they were eminently democratic and positive in content, because they had been adopted in a manner that violated our Constitution.

How would Mandela react?

To start with, his office announced that he was going on television to make a statement. I don't know if judges in other parts of the world watch TV to hear about how their decisions are being reported and commented on. But we watched, avidly. We saw a very grave and correct Mandela saying that when he had issued the two Proclamations, he had acted on legal advice which at the time he had thought was correct. "The Constitutional Court has decided otherwise and I as President must be the first to show respect for the Constitution as interpreted by the Constitutional Court." He added that Parliament would be convened specially to ensure that the necessary legislation would be adopted in quick time.

You can imagine our jubilation. We remembered the fantastic day when we had held the first democratic elections in South Africa, screened all over the world, black and white standing for hours in long voting lines. That had been the day when we had gotten democracy in a country where a racial bloodbath had been predicted; when democracy had triumphed, answering the question of how black and white could live together in one country; when it became clear to all that establishing majority rule, together with an entrenched Bill of Rights, would ensure the protection of everybody equally in our land. But this new day added something equally important. We were advancing from being a democracy to becoming a *constitutional* democracy. And that delirious moment for a constitutional lawyer was to become a harbinger of how the judiciary would fulfill its function of being the cornerstone of democratic life for our people.

A few months ago, I'm watching a live-streaming report on my computer of the handing down of a decision of the Constitutional Court of South Africa. Chief Justice Mogoeng Mogoeng is reading from the judgment. The case concerns a claim by an opposition party that the then-President Jacob Zuma had overspent public funds on security upgrades for his private home. The claim was based on a report to Parliament by the Public Protector to the effect that the President had to pay back the money spent on a swimming pool, a chicken run and a small amphitheater—items that could not be said to have been security-related. I should mention that the Public Protector (modelled largely on the Scandinavian Ombudsman) is an official belonging to what we call the Chapter 9 Institutions. This Chapter, unique to our Constitution, gives special constitutional protection to a select set of institutions designed to protect democracy. In addition to the Public Protector the cluster includes the Judicial Services Commission, the Independent Electoral Commission, the Auditor General, the Human Rights Commission and the Commission for Gender Equality. Their members are appointed directly by Parliament, and they can be removed only by special majorities in Parliament. The central legal issue was whether the Public Protector's Report was legally binding on Parliament or whether it had simply to be taken seriously into account. Parliament had opted for the latter approach, with the

Minister for the Police saying that the pool was necessary as a fire pool, though he couldn't quite explain why there should be blue tiles at the bottom of a fire pool. A chicken run, the humorists were saying, was clearly there as a burglar alarm—if a burglar hops over the wall the chickens go *ca ca ca ca ca* and alert the guards.

In any event, I'm watching the Chief Justice declaring that the President is not simply a functionary performing important institutional tasks. The President must embody the values of the Constitution, must be exemplary in everything that he does. It's well known that our Chief Justice is a lay preacher, so it was not surprising to hear him saying in well-modulated tones that the head of corruption must be chopped off at its stiff neck. He held that a close reading of the constitutional texts made it clear that the Public Protector's Report was binding on Parliament, unless it was set aside by means of judicial review, which had not been pursued in the matter. Accordingly, Parliament was not at liberty to disregard the Report. Just as the President had failed to conduct himself in a manner consistent with his responsibilities, so had Parliament failed to fulfil its duty to hold the President to account.

So with one blow the judiciary had castigated both of the other branches of government, declaring that they had failed to conduct themselves in a constitutional manner. President Jacob Zuma could not complain that the Court was picking on him personally. Though in a different context with different motivation, we had held both Nelson Mandela and Parliament to account for failure to respect the Constitution in terms of the local-government-elections matter. Nor could he criticize the Chief Justice personally for using such forceful language. After all, he had appointed the Chief Justice.

The net result of the Constitutional Court's rebuke to Parliament was not to disempower that body through judicial overreach, but rather to reinvigorate, reignite Parliament. From then onwards, the members began to do their work of oversight with much more zeal. Lackluster parliamentary proceedings were replaced by serious and intense investigations and debates which began to be watched avidly by the public. And equally important, there was a sense of jubilation

that spread through the whole country that the values of the Constitution were being upheld.

A week later, I was rushing to catch my plane at the airport, and big, burly, late-middle-aged African man stops me and he puts his arms around me and says, "Thank you, thank you, thank you." He doesn't even say why. I reply that it wasn't me; I've been off the Court for seven years. But he insists on hugging me and I almost miss my plane. This man was capturing a national mood. And in case after case after case, when our Parliament was failing, when our executive was failing to fulfill the promise of our Constitution, the judiciary upheld the integrity of the value system of our Constitution.

I see that your Society's motto is "Excellence with Integrity." I would like to reverse that sequence: Integrity with Excellence, because without integrity excellence can actually produce horrid results in a very sophisticated way. That moral integrity, that element, if you like, of judicial integrity, that constitutional integrity, integrity of the institutions, is absolutely vital.

I come to my last story. I was actually getting my twenty-third honorary degree in Lisbon a couple of weeks back. And there's great excitement in South Africa: there's about to be a motion in Parliament for President Jacob Zuma to stand down. And I'm going to miss it all. I'm watching again on my computer, it's live-streaming, and I see that he is making an announcement. He starts off by saying emphatically that as far as he was concerned he had done nothing wrong. But, he concludes, it seems the time has come for him to leave his position. He resigns, with immediate effect. And, again, there's jubilation in the country. He knew that the very next day there would be a vote in Parliament and a large number of members of his own party together with opposition groups would vote for him to leave. And as in the case of the British Prime Minister (and, I think, the Canadian Prime Minister), you leave if a vote of No Confidence in you is adopted by Parliament. Under our Constitution, fifty percent plus one of the members of Parliament is required. The writing was on the wall. And how did I feel, watching far away in my hotel room?

One part of me was filled with absolute elation. The Constitution is working, our institutions are working. All the complaints about the

corruption, the State Capture, the things that were bringing our country down after so much endeavor, were being responded to. Our democracy was working. At a purely personal level I recalled with joy how hard I and others had fought for having a President chosen by and answerable to Parliament and not one granted a fixed term by popular vote. But another part of me felt a deep, deep, deep sadness, a deep sadness.

After I've come out of hospital in 1988, I get a message that Oliver Tambo had sent two people from the National Executive of the ANC to check on how I'm getting on and to report back to him. One was John Nkadimeng, a trade-union leader whose son had been blown up and killed by a security-agent bomb. The other was Jacob Zuma, whom I had known well from the struggle days, when we had both been in exile in Mozambique, and he'd been most impressive. They both arrive with long faces, I'm determined to get them to lighten up, to laugh. I'm feeling joyous. I survived. I survived. I *survived*. I'm getting better; my country's going to get better. And I tell them a joke, a joke I'm about to tell you. It's a joke I told myself as I was recovering from what I learnt afterwards had been a seven-hour operation in which I had received seven liters of blood. And I'm lying on the bed, my eyes are covered, I'm feeling very light, with a kind of quiet elation inside me. And the joke is about Hymie Cohen—who, like me is a Jew. (Some of you will know this joke; it's an old one.) He falls off a bus, and he gets up and he does this [making the sign of the cross], and someone says, "Hymie, I didn't know you were Catholic." "What do you mean, Catholic?," he answers. "Spectacles, testicles, wallet, and watch."

I can't get John Nkadimeng to laugh. Yet Jacob Zuma is roaring. He was known for his laughter. He even told me once that a spy sent in to destroy the organization had confessed to him because the spy loved his laughter so much. And I felt at the time, as I wrote in my book *The Soft Vengeance of a Freedom Fighter*, that there was something special about the blending of my Jewish joke and his Zulu sense of humor, and of African storytelling, where you tell the story slowly, you get all the intricacies and peculiarities of human behavior and life out, you don't rush to get to the punch line, but savor the rich journey. This,

I felt, is how we're going to get our new South Africa: we will bring in what we've got, who we are. We don't erase who we are, we bring in what we've got.

And now that same Jacob Zuma, whose laughter had come to be derided when he'd been questioned in Parliament and had responded with a nervous chuckle: heh, heh, heh. So this very laughter that had been a source of vitality that we'd associated with gusto, comradeship, and emancipation was now linked with mockery, cynicism, now that he was going down. And I remember the themes of perfectibility and corruptibility. And the sadness that so many human beings can invest so much of their lives in doing good, and yet afterwards something happens—it can be access to power, it can be . . . who knows what it is? They go down. But overwhelmingly my feeling is one of elation, that our struggle had been for something, that the law is meaningful, that it can make a huge difference to societies. That Constitutions matter, institutions matter, civil society matters, the judiciary matters. We do, we do, we do make a difference. And, overwhelmingly, I feel elated.

### POSTSCRIPT

It's terrific being with yourselves. Canada gave us immense support in the anti-apartheid struggle, and in the United States in the end it was the Free South Africa movement and the anti-apartheid activities in Congress and the refusal of Chase Manhattan Bank to roll out further loans that became not the cause of change in our country, but the tipping point for change. But in addition, we all—the whole world—owe so much to the United States for the Constitution, the idea of separation of powers, even although there are many features of life in the United States that are strongly criticized by Americans themselves today, and I'm sure many of you are amongst the critics.

And Canada, your Bill of Rights came into force. It couldn't have been at a better time for us, ten years before ours: you had ten years of experience, of the marvelous Justices John Dixon and Bertha Wilson on the Canada Supreme Court, coming up with creative, contemporary, value-filled, and normatively based reasoning. These weren't



dry technical lawyers debating amongst themselves, but humane, thinking judges, viewing the actual contemporary world in a humane and thoughtful way. This was perfect for us. We drew very heavily on the Canadian Supreme Court.

Now it's marvelous to see our own Court's decisions being quoted all over the world. My own decision on the right of prisoners to vote was quoted in the Canadian Supreme Court. Judges of the world unite! It's a brilliant form of internationalism, of meaningful connection.

And just thinking back and comparing national experiences: in the United States you had your Revolution leading to independence, then you got a Constitution, and added on a Bill of Rights and fought a Civil War to get equality. In Canada you had the separate provinces coming together after the war between the British and the French, getting a Constitution, and long, long afterwards you get a Bill of Rights. We did all of this in *one*.

And our Constitution wasn't just an important stepping stone to national unity and democracy. It was our Declaration of Independence, our Peace Treaty, our coming together; it included the Bill of Rights. In fact, it started with the Bill of Rights. And for me, as for so many other South Africans of my generation, we can say we were there in the wrong place at the right time. And what a rich, extraordinary life it has been

So now our project relates to Constitution Hill—that's where we built our Constitutional Court. We built our Court in the heart of the Old Fort Prison where first Gandhi, and then afterwards Mandela and Tambo and Robert Sobukwe and Albert Luthuli and Winnie Mandela and many others had been locked up. That's where we built our Constitutional Court. And now right next to the Court we are going to build MARCH, the Museum and Archive of the Constitution on Constitution Hill.

We believe these stories of how our Constitution was made and is being implemented are important. They need to be recorded for our people, for our country, and for the world. So that's my big endeavor in the coming period of my life. And it's terrific to feel connected in this endeavor with so many of our friends from North America and

elsewhere, and to do so here in England where we also had a great anti-apartheid movement, and to be able to share these stories with you.

Thank you.

\* \* \*

### ***EDITOR'S AFTERWORD***

It's worth pointing out, I think, that one symbol of the reconciliation of which Albie Sachs' experience and his address here speak is the national anthem of South Africa. It is sung not just in English; it is sung not just in Zulu; it is sung not just in Xhosa, nor in Sesotho, nor in Afrikaans. It is sung in all five tongues of the people of South Africa.

Nkosi sikelel' iAfrika (*Xhosa*)

*Lord bless Africa*

Maluphakanyisw' uphondo lwayo, (*Xhosa*)

*May her glory be lifted*

Yizwa imithandazo yethu, (*Zulu*)

*Hear our prayers*

Nkosi sikelela, thina lusapho lwayo. (*Zulu*)

*Lord bless us, your children*

Morena boloka setjhaba sa heso,

*Lord, we ask you to protect our nation,*

O fedise dintwa le matshwenyeho,

*Intervene and end all conflicts,*

O se boloke, O se boloke setjhaba sa heso,

*Protect us, protect our nation,*

Setjhaba sa, South Afrika, South Afrika. (*all Sesotho*)

*The nation of South Africa, South Africa.*

Uit die blou van onse hemel,  
*Ringinɡ out from our blue heavens,*  
Uit die diepte van ons see,  
*From the depths of our seas,*  
Oor ons ewige gebergtes,  
*Over everlasting mountains,*  
Waar die kranse antwoord gee,  
*Where the echoing crags resound (all Afrikaans)*

Sounds the call to come together,  
And united we shall stand,  
Let us live and strive for freedom,  
In South Africa our land. (all *English*)<sup>3</sup>

---

3. Source of lyrics and official South African translation:  
<http://www.southafrica-newyork.net/consulate/anthem.html>. For a history of the composition of the anthem, see *id.* See also South African Music Rights Organization, *The National Anthem Is Owned by Everyone*, <https://web.archive.org/web/20130313093626/http://www.samro.org.za:80/node/298>.

\* \* \*

## **RED NOTICE\***

**Bill Browder\*\***

### ***ABOUT THE SPEAKER***

*Bill Browder started his professional life wanting to become an investment manager in Russia and was enormously successful in that quest. But since the tragic death of his Russian friend and tax lawyer, Sergei Magnitsky, at the hands of the Russian government, Bill Browder has become one of the most tenacious and effective human-rights activists of our time. His riveting, terrifying, exciting, depressing tale of how that happened is brilliantly presented in his book, Red Notice: The True Story of High Finance, Murder, and One Man's Quest for Justice. And as a result of all he has learned at the most intimate level about those in power in Russia, he is now at the center of some of the most crucial issues of our day. Senator Blumenthal recently said of Bill Browder, "He knows as well as any American how Putin acts."*

*Bill Browder's grandfather, Earl Browder, was the face of the Communist Party in the 1930s when the party was involved in some of the most critically important causes of that time, including the formation of worker's unions. Fresh out of Stanford's Graduate School of Business, Mr. Browder used his grandfather as inspiration in looking for a job with personal relevance. He first decided he wanted to spend time in Eastern Europe and came to London in August 1989 to do just that. He had decided that since his grandfather had been the biggest communist in the United States, he would be the biggest capitalist in Eastern Europe.*

---

\* Edited transcript of an address delivered at the Annual Convention of the International Society of Barristers, London, England, 18 April 2018.

\*\* Author of *Red Notice: The True Story of High Finance, Murder, and One Man's Quest for Justice* (2015).

*Three months later, in November of 1989, the Berlin Wall came down; a few weeks later the Velvet Revolution started in Czechoslovakia. Within a short time, Mr. Browder started seeing incredible investment opportunities that existed in the privatizations, first in Eastern Europe and then in Russia. At the age of twenty-nine he had turned \$25 million of his employer's money into \$125 million, and not surprisingly, shortly thereafter he started his own firm, Hermitage Capital Management, where he's still the CEO today.*

*Ten years after he started that firm, he was the largest foreign investor in the Russian markets. But as he examined the potential investments, Mr. Browder discovered massive corruption in many of the companies he was looking at. And he didn't just keep that to himself and make good investments; he shared his findings on the internet and in the national media. This, of course, upset those exposed—and finally Putin, himself. The saga that then unfolded led from corporate identity theft from Hermitage and companies with which it was affiliated to the theft of \$230 million.*

*Sergei Magnitsky was Mr. Browder's thirty-five-year-old Russian tax lawyer, who was hired to investigate this fraud. And after Hermitage filed a criminal complaint with Russian law enforcement, Magnitsky gave sworn testimony on the crime to the same officials who later came to his house and arrested him. He was imprisoned and tortured to get him to lie and implicate Mr. Browder, and he refused. After Sergei Magnitsky's eventual murder in prison, in November of 2009 at the age of thirty-seven, awards were given in Russia to those who were involved in his death. That's when Bill Browder became a human-rights activist. He's been absolutely relentless in pursuing those Russians whose actions led to his friend's death, including the judges who rubberstamped the sham legal proceedings.*

*Mr. Browder's Herculean efforts led to the passage of the Magnitsky Act, allowing the U.S. President to punish those Russians involved in his friend's death and other human-rights abuses. And as a result of Bill Browder's efforts, Canada and the U.K., among other countries, have also passed their own Magnitsky Acts.*

*Mr. Browder also pursued those who campaigned against the Magnitsky Act in the United States for failure to disclose that those*

*efforts were sponsored by the Russian government. Among those named in his complaint was the lawyer who met with representatives of the Trump campaign in June of 2016. In 2017, he testified before the U.S. Senate Judiciary Committee on Russia's interference in the 2016 U.S. presidential election. When Senator Feinstein asked Mr. Browder why the Magnitsky Act sticks in Putin's craw, he responded that as a result of the publication of the Panama Papers, Putin is now personally exposed.*

*So you can see that Bill Browder's efforts to obtain justice for his friend Sergei Magnitsky have put him in the center of the most compelling corruption and human-rights issues of our day. By all accounts, Bill Browder has certainly followed his grandfather in finding a course of personal relevance.*

## I

### HOW IT BEGAN—THE BROWDER LEGACY

When you hear my American accent, it all sounds a bit confusing how I ended up in such a mess. I'd like to go through that story in more detail, and then after I've told it, I'm sure you'll have a lot of questions about Russia and what's going on today.

The whole story starts with my grandfather, Earl Browder. Earl Browder was born in Wichita, Kansas, and he became a labor-union organizer in the 1920s. He was so good at organizing the union in Wichita that the union said, "Well, you should go to Kansas City." And he went to Kansas City and they said, "You're so good at organizing the union here, you should go to the National Office in New York City." And in New York City, at the time, there were a bunch of communists running around, and the communists said to my grandfather, "If you like labor unions, you're going to love communism. Why don't you come to Moscow and check it out?"

So my grandfather, Earl, went to Moscow in 1927 and he did what most young, single, red-blooded American men do when they get to Moscow: he found a Russian girl who became my grandmother. My father was born there. Five years later, my grandfather was tapped by the Communist International to go back to America and become head

of the American Communist Party. So he goes back to Yonkers, New York, and then he runs for President against Roosevelt in 1936 and runs for President again in 1940. And then, in 1941, Roosevelt has him imprisoned on a highly politically motivated charge.

My grandfather was the first American presidential candidate ever to have an African American running mate. African Americans all over America started to have strikes and protests in response to my grandfather's imprisonment. Mayor LaGuardia of New York called up Roosevelt and said, "This is really causing us too much trouble." My grandfather was pardoned in 1942. Then, at the end of the Second World War, Stalin decided to become fully Stalinist. My grandfather had this idea of a peaceful coexistence between communism and capitalism, something that came to be called Browderism. Stalin didn't like that at all, so they expelled my grandfather from the Communist Party, and they murdered all of his followers all over the world whom they could get to.

That was the end of my grandfather's political career until the 1950s, when the McCarthy era began. In the McCarthy era, it didn't matter if you were a good communist or a bad communist—you were still a communist. So my grandfather was persecuted viciously. The rest of the family suffered, too: my father, who was an academic, a Princeton PhD in math, couldn't get any job in academia, and it was all very unpleasant. In any case, that was all ancient history, but that is my family legacy.

## II

### A CAPITALIST AMONG COMMUNISTS

I was born in 1964—I'm fifty-three years old—and when I was going through my teenage rebellion in the 1970s, I was trying to figure out a great way of rebelling from this family of communists. At first, I grew my hair long, and you can't tell, but it grew into an afro. But, strangely, that didn't upset my family. I followed the Grateful Dead around for several months, and that also didn't upset my family. But then I came up with the absolute, perfect way of upsetting my family, which was to put on a suit and tie and become a capitalist. And that truly upset them.



So I became a capitalist, and I went to the Stanford Graduate School of Business in 1987. Like most other MBAs, I was trying to figure out what I was going to do after business school. All the normal career options being presented on campus somehow didn't resonate with me; I was searching and searching and searching, and nothing made any sense. And then one day I had this epiphany, which was that if my grandfather was the biggest communist in America, then I'm going to become the biggest capitalist in Eastern Europe. And it was a very useful time to come to that conclusion, because that was when the Berlin Wall came down.

*Boston Consulting Group and Poland*

There wasn't any business in Eastern Europe, so the best thing I could do at the time was to go to London. I got a job with the Boston Consulting Group (BCG), which is a big-strategy consulting firm. The reason I chose BCG is because they said to me, "If we ever have any work to do in Eastern Europe, you can be our guy." So I joined them, and about six months after I joined, the partner who had made that offer came and knocked on my door and said, "Bill you were the guy who wanted to do Eastern Europe, right?" And I said, "Yeah." And he said, "Well now's your time; you're going out to Poland. Pack your bags; you're going out there for six months."

BCG sent me out to a little town in Poland about six hours from Warsaw on the Ukrainian border, a town called Sanok. The town had one company, a bus-manufacturing company called Autosan. BCG had been hired by the World Bank to advise Autosan on how to avoid bankruptcy, because ninety percent of Autosan's sales had disappeared when the Polish government stopped buying their buses. It was a very low-paying assignment, so all they could afford to do was to send me, twenty-five years old, out to this bus factory.

So I go out to this little town in Poland. It was really stark. They had food shortages; there was no heating in the hotel; the telephones didn't work. It was a true deprivation situation. Basically, my job was to walk through the factory and figure out whom to fire. It was a very unpleasant assignment. I had this guy with me, Leschek. He was effectively my permanent translator; he went with me everywhere I

went. One day, when I was walking through the factory with him, I noticed that he was carrying a newspaper, and on the front page of the newspaper they had these financial figures. I asked Leschek, "What are these financial figures?" He said, "They are the very first privatizations in Poland, and these are the financial details of them." I said, "That's interesting. Can you explain it to me?" So we went to a conference room, and he laid the paper out across the table. And I said, "What is this number here?" He said, "That's the number of shares outstanding." And I said, "Okay, what's this number here?" He said, "The price per share, for which they're selling the company." And I did the math one time and got \$80 million. And I said, "What's this number down here?" And he said, "This is last year's profits." I said, "No, that couldn't be; just read it literally to me." He said, "Last year's profits." And that number was \$160 million.

You don't have to be a Stanford MBA to know that if a company has got a value of \$80 million and they made \$160 million in the previous year, basically you have to be in business for only six months and you make your money back. And I thought, Well, isn't this exactly what I went to business school for, to do this kind of stuff? And I got really excited and kind of anxious and agitated. I decided a couple of days later that I was going to go all in and invest my own money on this privatization. I had a total life savings at the time of \$2000, so I took my \$2000 and converted it to Polish *zloty*, and Leschek and I went down to the post office where you subscribe for the privatizations. I bought shares of the privatization, and a year later my \$2000 investment went up ten times—to \$20,000.

And in the world of investing, having a ten-bagger is really like this sort of nirvana of investing, and it releases a sort of chemical in your stomach, and you just really want to repeat that experience as often as you can. So I knew at that moment exactly what I wanted to do, which was become an investor in these privatizations in Eastern Europe.

#### *Solomon Brothers and Russia*

To fast-forward a few years, I couldn't quite become an investor, but I became an investment banker at Solomon Brothers on their East

European investment-banking team. Nobody was interested in Russia because there was no fee-paying work for investment bankers at the time. So I declared myself the investment banker in charge of Russia.

I got a very small assignment one day, which was to advise a fishing fleet in Murmansk, Russia—which is located a few hundred miles north of the Arctic Circle—on their privatization. I get on a plane to Murmansk, which requires going through St. Petersburg and then waiting overnight in the airport. I catch the connecting flight at 3:00 a.m. and get to Murmansk very tired in the early morning of the next day.

The head of the fishing fleet picks me up at the airport and says, “Before we go and talk business, I want to show you one of our boats.” We drive down to the docks, and before me is this enormous, enormous fishing vessel—300-, 400-foot long on five different stories. On the top story they have the nets that catch the fish, then they take the fish and put it into some funnels that go down to the next story, where they separate them. Then it all goes all the way down to the bottom story, where they actually have canning machines on the ship. It’s effectively a fully vertically integrated ocean-going factory. I was very impressed. I said, “How much does one of these cost?” He said, “They cost \$20 million, new, in East Germany.” I said, “How many do you have in your fleet?” And he said, “One hundred.” So I did the math—\$20 million times 100 gets you to \$2 billion. And then I said, “What’s the average age of your fleet?” And he said, “Seven years.” So I figure \$2 billion, and the fleet is maybe half depreciated at this point.

I had been hired by the management of the fishing fleet to advise them on whether to exercise their legitimate right under the Russian privatization program to buy 51 percent. So I said, “At what price is the government of Russia selling you 51 percent?” And he said, “Two and a half million.” Let me repeat the math: There’s \$1 billion worth of ships, and they can buy 51 percent at \$2.5 million. Well, this chemical in my stomach started up. Solomon Brothers paid me a total of \$50,000 for advisory mandate. I didn’t want to be advising on this stuff. Obviously, millions is going to be made on this. I couldn’t participate in the sale—it wasn’t ethical—but I thought, Is this

something going on just in this company or just in the fishing industry? Or is this something going on more broadly in Russia?

*Murmansk to Moscow*

I then decided, instead of going back to London, I would go to Moscow and figure out what's going with the privatization program. So I take a flight from Murmansk to Moscow. I should point out that I don't speak a word of Russian, and other than the head of the fishing fleet, I don't know any other people in Russia. So I get off the plane, and I'm walking through the Sheremetyevo Airport, and I notice in one of the kiosks that there is a very thin English-language Yellow-Pages Directory for sale. So I buy this English-language Yellow-Pages Directory. The next morning, I start cold-calling people listed in the English-language Yellow-Pages Directory, and I arrange meetings to figure out what's going on with the privatization program. I have about forty meetings over the course of a week, and by the end of the week I discover that the Russian privatization program was and always will be the single most compelling investment opportunity that's ever existed in the history of financial markets.

What I learned was that one of the main parts of the Russian privatization program was something called "voucher privatization." Basically, the idea was to transfer all state property from the government to citizens, to go from communism to capitalism. The government figured that if people own stuff, they would be capitalistic. The voucher-privatization program consisted of giving every person in the country a physical certificate called a voucher, and those physical certificates were like cash: you could buy them, you could sell them, you could give them, you could trade them, you could do anything you wanted with them. So a secondary market developed for these vouchers, and they traded for about \$20 each.

So, once again, I went through the simple math: \$20 times the population of Russia, which was \$150 million, got you to \$3 billion-worth of vouchers. And \$3 billion-worth of vouchers was exchangeable for a thirty percent share of the capital for all Russian companies, which meant that the market value of the entire country of Russia was \$10 billion. And this is a country with thirty-five percent

of the world's natural gas, ten percent of the world's oil, ten percent of the world's aluminum, and ten percent of the world's steel. There are fertilizer companies, timber companies, car companies, telephone companies, electricity companies, banks, et cetera. The entire country is valued, by its government, at \$10 billion. And that was the price of one mid-sized oil company in Oklahoma—the entire country of Russia, \$10 billion.

So, at this point, the chemicals were fully secreting in my stomach. It was obvious to me that there were absolutely gigantic fortunes to be made. I run back to Solomon Brothers, I corner the first person I can find in the office, and I say, "Listen: we've got to stop everything else we're doing. We have to invest in Russia. They're giving free money away on the streets." Can you imagine someone coming to your office, saying that? The moment I said "Russia," they shut down completely; I couldn't even get through with the math I had figured out.

I had no idea of how to operate inside a big organization; I figured, if one person says no, I'm just going to go to the next person. So I go to the next person, say the same thing, and get the same reaction. And by the time I'm done, I've fully discredited myself inside the entire firm of Solomon Brothers. I was in my late twenties at that time, and all the young guys I was hanging out with for lunches and drinks after work stopped inviting me to lunches and drinks.

I was now really worried about my career, because, for any of you who have ever read the book *Liar's Poker*, Solomon Brothers is a famously harsh firm. They don't take kindly to people who aren't making money, and I wasn't making a lot of money. And, even worse, they don't take kindly to people who are saying stupid things *and* not making money. I was going to be fired. I was getting more and more demoralized, trying to figure out what I was going to do with such rejection, because I also had figured out how I was going to make a fortune.

One day my phone rang on my desk, and it was a very senior partner in the New York office of Solomon Brothers. He said, "I hear you've got some career problems, but you might have something

interesting to say about Russia. Can you come to New York and explain to me what's going on?"

So I got all excited. I stayed up three nights in a row putting together the most persuasive PowerPoint presentation on how everything is being given away in Russia. I go to New York, I practice in my hotel room, I practice on the airplane, I practice my presentation over and over. I go in for the meeting, I sit down with my PowerPoint and I start going through it. And this guy I'm meeting with doesn't give me any type of reaction. There're no *uh-huhs*; there're no questions; there's no nodding. Nothing. He's just staring at me vacantly as I'm going through this presentation.

I get to about page twenty-one, and without saying a word, he just gets up and leaves the office. And I'm thinking to myself, This is such a clear story, I presented it perfectly, I rehearsed it. What did I do wrong? This is the thing I'm going to use to save my career. The guy is gone for ten minutes, and I'm thinking, When he comes back, I'm going to turn this thing around; I'm going to make this work.

He's gone for twenty minutes; I'm getting more and more agitated. Thirty minutes, forty minutes, fifty-two minutes later, he comes back in. I'm about to blurt out something to try to get the meeting on track, but before I have a chance to say a single word, he very calmly says, "Bill, I've just gone to see the risk-management committee of Solomon Brothers. Those pages you showed me are the single most compelling thing I've ever seen in my life." He said, "I've just got you \$25 million to invest in the Russian stock market. Stop everything else you're doing and get over there and get this money invested."

So, all of a sudden, every negative thing in my life had just been lifted off of my shoulders. I've got \$25 million to invest. I go and put that money to work, I get it invested. Then, seven months later, *The Economist* magazine writes an article called *Sale of the Century*, which describes the same math that I'd shared with this guy at Solomon Brothers. And as a result of this one *Economist* article, about twenty rich guys—hedge funds, investment banks in America—all decided they wanted to buy Russian stock. It was a very thinly, little-traded stock market. And all of a sudden these twenty clumsy investors all

show up at once; all start trying to buy in unison. As a result of that one article, the \$25 million portfolio that I had invested turned into \$125 million. Over one article: 500 percent. And I should point out that this is back in the days when making \$100 million was real money. As a result, all of sudden all those guys who weren't inviting me to lunches and drinks were all hanging around at my desk, eagerly trying to get tips on how to make money in the Russian stock market.

Then something very unusual happened: older fellows, older in the world of investment banking—forty years old, or so—started coming around my desk and saying, "Excuse me, Mr. Browder, you don't know me but I cover the George Soros account and I know you're very busy and you've got a lot of important things going on, but is there any way you can spare some time to meet with George Soros?" Then the guy who covered the Sir John Templeton account did the same thing. And basically every single person who was what I call royalty on Wall Street wanted to meet with me to figure out what was going on in Russia. And I was all of twenty-nine years old.

So I go on this world tour of the royalty of Wall Street. And they're much smarter than my Solomon Brothers colleagues: within minutes of my presentation, they say, "This unbelievable—can we give you some money to manage for us in Russia?" And I say, "Well, I don't know, we do this just for ourselves. But what I can do is ask the bosses and see."

So I go back to London, go to the head of the trading floor, and say, "I've just been with George Soros, he wants us to manage some of his money in Russia. What do you think?" And the head of the trading floor said, "Brilliant idea, Bill. Let's form a task force to study it."

So the next week, at the first task-force meeting, I walk into this room—a relatively small conference room—and there are forty-five people in the room, forty of whom I've never seen before in my life. There was the vice chairman of the firm; there were the senior managing directors, managing directors, senior directors, directors, senior vice presidents, vice presidents, and me. The meeting starts, and immediately a fight breaks out between two of the different groups inside Solomon Brothers, contending for the economic credit for the new Russian business. The one thing I've learned about

investment bankers is that they're incredibly articulate in fighting for money that they don't deserve. They would put the best trial lawyer to shame in terms of making arguments.

Then a third group got involved in this fight, and pretty soon it was a multidimensional game of tennis, and they're all so persuasive. I had absolutely no idea who was going to win the fight about who was going to get the economic credit for the business. But it was one hundred percent certain who *wasn't* going to get any economic credit for the business, and that was me. And I was angry about this, because I was the only person in the room who knew anything about the subject. And they were all fighting about it.

So I decided, after three days of not being able to sleep, that I was just not going to take it anymore. So I took my security pass, walked into the big boss's office, slapped it down on the table and said, "I'm quitting. I'm starting my own fund. Thank you very much."

### III

#### LAUNCHING HERMITAGE CAPITAL MANAGEMENT

So I left Solomon. And they said, "Oh, you'll never succeed." I went to one of the royalty guys on Wall Street who had asked me whether I managed money, and I said, "Would you give me money for my own fund instead of Solomon Brothers? He said, "Absolutely." It was a guy named Edmond Safra, who was the owner of Republic National Bank of New York. He gave me \$25 million [in return for a 50 percent share in the business]. I moved to Moscow and I set up shop in April of 1996. It was the most spectacular, successful launch of an investment fund in the history of investment funds.

#### *Gains*

Over the next eighteen months, we went up 865 percent. It was an open-ended fund. Everyone who heard about me wanted to invest. We ended up going from \$25 million to \$1 billion of assets under management. I was the best-performing fund manager in the world in 1997. I was featured in *The New York Times*, *The Wall Street Journal*, *Business Week*, and *Time Magazine* as some type of financial genius.



My clients were sending their private jets to take me to their yachts in the south of France to toast our joint financial success. And I was all of thirty-one years old.

Now, any of these things would be great accomplishments in their own right, but if you put them all together into the hands of a thirty-one-year-old, that is the biggest sell signal there ever was. But I was thirty-one years old and I had no idea. I thought the \$1 billion was going to turn into \$10 billion and it was all going to just go to the sky, and it was all going to be great.

#### *Losses*

But as many of you will remember, 1998 was not a great year for Russia. That was the year that—in August of 1998—the Russian government defaulted on their bonds. They devalued their currency by 75 percent. And my \$1 billion portfolio went down 90 percent. I lost \$900 million. And as you can imagine, there were no more invitations to anyone's yacht after that.

But more shockingly, and more importantly for me, I'd gone around the world telling everybody how great Russia was going to be and advocating for them to invest in my fund and how this was all going to work out so well. Many people did invest, and I'd lost them ninety percent of their money. That was a deep, deep humiliation for me. I was absolutely determined to do whatever I could to try to get them out of this hole. I had one very strong reason why I thought I could—which was that I owned mostly oil companies, and oil companies all sold their oil in dollars, and they all paid for their costs in rubles.

The dollar oil price was, if anything, going up a little bit, and the ruble costs had just gone down by seventy-five percent. When costs go down and revenues stay the same, in theory, profits should explode. In theory, they should've exploded, and I should've been able to get my money back. Stock *should've* gone up, except that I encountered something that completely prevented it from happening, which was that most of these companies were owned by people known as the Russian oligarchs. The Russian oligarchs were not nice people. The Russian oligarchs basically had this idea, which would've

been brought to them by a bunch of American investment bankers prior to this crash, that they could get free money on Wall Street if they behaved themselves. But these guys are what is called long-term greedy. They thought they could steal from their minority investors at some point in the future, but first get that free money from Wall Street.

So for a period of time up until the crash of 1998, they behaved themselves and didn't steal anything from minority investors. But after 1998, the window of opportunity on Wall Street completely shut. Nobody on Wall Street would ever invest a penny in Russia after that. As a result, the oligarchs said to themselves, Well, if there's no money on Wall Street as an incentive to behave ourselves, and in Russia there's no disincentive against misbehavior, why would we not steal everything from everybody? Because of this new set of incentives, the Russian oligarchs embarked on an orgy of stealing that has been unprecedented in the history of business. They were doing asset stripping, transfer pricing, embezzlements, dilutions. They refined every possible scheme for stealing to a fine art and implemented it on an industrial scale.

There I was with my last ten cents on the dollar, trying to go back to par, and they were going try to steal the last ten cents on the dollar. So I became an anti-corruption, shareholder-rights activist—not because it was a good investment strategy, but because it was the only survival strategy.

### *Surviving Theft*

The most famous case involved a company called Gazprom. Most of you have probably heard the name Gazprom. It's the largest gas company in the world. In 1999, Gazprom traded in at a 99.7 percent discount to Exxon and BP per barrel of hydrocarbon reserves. Why was it so cheap? It was so cheap because everybody assumed that every last cubic meter of gas had been stolen out of the company.

So in 1999, I decided to do something that had never been done before in Russia—a stealing analysis of Gazprom. I was going to figure out how much Gazprom's management had actually stolen. How do you do a stealing analysis of a Russian company? You can't go to the management and say, "Excuse me, sir, can you tell me how much

you're stealing?" because they're not going to tell you. Nor could you go to the investment banks that cover this company because they're too busy trying to get their noses up the backsides of management in hopes of some money falling off in their direction. The last thing they would do is ever say anything truthful or negative about the company.

I came up with this idea: to make a list of the forty people who knew about the stealing of Gazprom—ex-employees, customers, competitors, suppliers—and just ask them. I would ask them out for lunch or dinner or tea or coffee or dessert and just ask them. I wouldn't tell them in advance, when I made the invitation; I would just invite them to a meal. So I sent out forty meal invitations, and about thirty-five people decided to accept my invitation out of curiosity.

When I went for my first meeting, I discovered the most interesting thing about the Russian culture: During the Soviet times, the richest person in Russia was maybe six times richer than the poorest person. They might've had a dacha, a bigger apartment, maybe a car and driver, but that was it. By 1999, the richest person in Russia had become 250,000 times richer than the poorest person in Russia, and this happened over a ten-year period. This poisoned the psychology of the entire country. People were so furious that this small group had stolen everything and everyone else had gotten nothing. They wanted to do something to stop it, but they didn't know what to do. And here I was asking questions about it.

I sat down at my first meeting, at a lunch at an Italian restaurant, with a competitor of Gazprom. I said, "Could you tell me about the stealing at Gazprom? And he leaned forward and he started telling me the most unbelievable stories. I had a little notebook and was starting to take notes and flipping the page and taking more notes. This meeting went on for something like two hours. It could've gone on all afternoon; I had to stop it only because I had something else I needed to do.

The next meeting was exactly the same, and the next meeting after that was exactly the same. By the time I was done, I'd filled up two notebooks of the most unbelievable stories of graft and theft you could ever imagine. The only problem with it—and it was clear there was something gigantic there—the problem was that I couldn't prove

any of it. It was just a bunch of guys telling me stuff at lunch. I desperately wanted to do something with this, but how do I prove it? These were great anecdotes, but it could be exaggeration, misinformation—god knows what.

I was anxious and frustrated and excited, but nothing came to me. Then one day, we had the most unbelievably lucky break of all time. My head of research, a guy named Vadim, was driving his car through Moscow. There's a number of places where traffic grinds to a halt in Moscow, and he was coming up to one of those places called Pushkin Square. Traffic sometimes stops for five minutes, sometimes for an hour, at Pushkin Square. As a result, an outdoor market has emerged of street urchins who are selling stuff to the trapped motorists. They're selling all sorts of crazy stuff. They're selling pornographic DVDs and pirated cigarettes and lighters and pantyhose—all sorts of weird stuff. It's always interesting to see what they're selling, if you're stuck in traffic and you have nothing else to do. (This was before iPhones.)

So some kid comes up and knocks on Vadim's window. He pulls down the window and says to the kid, "What have you got? What are you selling?" And the kid says, "Databases." And Vadim says, "What do you mean, 'databases'?" The kid has this sort of dirty down parka, and he opens it up, and there are these translucent plastic folders with discs in them. Vadim says, "What's that one?" And the kid says, "That's the Moscow Registration Chamber database." This is something we had actually been looking for. This is the database that shows the beneficial ownership of all Moscow-based companies. So Vadim says, how much is that? And the kid says, "Five bucks." So Vadim gives the kid five bucks.

Vadim comes back to the office and says some kid just claims he sold me the Moscow Registration Chamber database for five bucks. And I said, "I'm one hundred percent certain you've been ripped off." He said, "Let's see." This is back before computer viruses, so we take the disc and stick it into the computer, and, sure enough, it's like all bells and whistles—the Moscow Registration Chamber database. The best part about it was that when we popped the disc out, on its front was a phone number to call to get other discs and other databases.

And indeed, Vadim did get ripped off, because the other databases cost only a dollar. We got the Federal Security Commission's database, we got the Custom's Committee database, we got all the databases of sale—basically all information was for sale in Russia at the time for virtually nothing.

So with all these databases, we could cross-reference all the allegations we had heard in those meetings. We discovered the most interesting thing, the most interesting economic statistic I've ever heard in my life: Between 1996 and 1999, the management of Gazprom—nine individuals—had stolen oil and gas reserves equal to the size of Kuwait out of the company. Now, just remember that there had been a war fought in Kuwait over oil and gas reserves the size of Kuwait—the first Gulf War. We've just discovered that the exact same magnitude of theft has happened, and nobody even knew it—or could prove it until we had those databases. That was the first, most-impressive economic statistic I'd ever seen in my life.

The second most-impressive economic statistic was that oil and gas reserves the size of Kuwait represented only 9.65 percent of Gazprom's total reserves. In other words, more than 90 percent of Gazprom's reserves had *not* been stolen. Now remember that Gazprom was trading at a 99.7 percent discount because everybody assumed every last cubic meter of gas had been stolen. And I'd just proven with data that almost all of it was still there.

Now, as an investor, when you discover that type of complete disparity between perception and reality, it's the nirvana of investing. It's what you desperately want to find. So we did what any rational person would do: we backed up the truck and bought as much Gazprom as we could possibly get and put it into our portfolio. That's normally where you stop in a situation like this: you make your investment, you come up with your thing, and you wait for the rest of the world to figure it out. But I decided I wasn't going to wait for the rest of the world to figure it out; I was going to help them figure it out.

So I shared my dossier with a number of western journalists, and they wrote about it. The Russian press then picked it up and wrote about it. The State Duma then began debating whether it was a good thing or a bad thing for these assets to have been stolen out of

Gazprom. More press writing about it. The management of Gazprom then hired PricewaterhouseCoopers to write a report, saying it was a good thing for the assets to be stolen. More stories.

Then the most amazing thing happened you could ever imagine: Vladimir Putin, who was the newly elected president of Russia, stepped in and fired the CEO of Gazprom and replaced him with a guy whose job it was not to steal *assets*. I stress the word “assets”; he’s allowed to steal other things. But just on that announcement, the share price of Gazprom went up 138 percent. It then doubled again after that; it then doubled again after that; it then doubled again after that; it then doubled again and again and then again; and then it doubled again; and then it doubled again. And again. The share price of Gazprom between 1999 when we started this project and 2005 went up 100 times; not 100 percent, 100 *times*. It was by far the single most spectacular investment I’ve ever made in my life.

As the fund was going up, I thought, This is pretty good; let’s do this at the electricity company. How about the National Savings Bank? How about the oil companies? So we started doing this over and over and over again, sometimes with the same success as Gazprom, sometimes with no success. But in the end, we went from \$100 million of assets under management to \$4.5 billion of assets under management. And I became the largest foreign investor in Russia.

### III EXILE

As you can imagine, the Russians weren’t all too happy with me anymore. In November of 2005, as I was flying back to Russia after a trip to London, I was stopped at Sheremetyevo Airport and arrested. I was detained for fifteen hours, then deported back to London. Now, as you can imagine, being kicked out of a country is terrible if you’re a specialist in that country’s securities, but it’s hardly a very severe sanction in the world of severe sanctions. At that point, though, I realized that I needed to get everybody else out. I had a team of people and I evacuated everybody—all of my team and their families. I then said to myself that the Russians could be going after our money. So we

liquidated all of our holdings. Amazingly, we were able to get our people and our money out of Russia clean. I kept an office in Moscow with one secretary, just in case the storm blew over. And I thought to myself, One day this is going to make a great book; time to move on to other things.

So I set up another investment fund to do something else, and all of my clients came with me. It was all great. Eighteen months after I was expelled, I was at a board meeting in Paris and got a call from my secretary in Moscow. I never talked to her because we had nothing going on in Moscow. But she said, “Bill, there are twenty-five police officers raiding the office in Moscow. What should I do?” I said, “I don’t know. Let me call my lawyer.” I had an American lawyer in Moscow—he ran a boutique law firm—and I called him up I said, “Jamie, there’re twenty-five officers raiding my office, what should I do?” He said, “I don’t know. There’re twenty-five officers raiding *my* office looking for your documents.”

They were looking specifically for the stamps, seals, or certificates for investment-holding companies, and they found them at our law firm’s office. They seized those documents. And the next thing we know, we no longer own our investment-holding companies. They have been fraudulently reregistered using the documents seized by the police.

#### IV SERGEI MAGNITSKY

At this point, I hire the smartest lawyer I know in Russia, a young man named Sergei Magnitsky, to help me figure out what’s going on. Sergei goes out and investigates and comes back and says, “I figured it out. The reason that they’ve seized your documents and stolen your companies was, first, to try to steal all of your money, but because you got it out before they did that, they couldn’t get your money. However, they did get something.” And he said, basically, that the year we were liquidating all of our holdings in Russia, after I had been kicked out, we’d had \$1 billion of profits and we paid \$230 million in capital-gains tax to the Russian government. What Sergei had figured out was that

this group of police officers and criminals working together with the tax authorities had taken our companies and gone back to the tax office and said there was a mistake made in the previous year's tax filing. They told the tax office that these companies hadn't made \$1 billion; they'd made zero. The \$230 million in taxes shouldn't have been paid; it had been paid in error. So they applied for a \$230-million tax refund, which is the largest tax refund in the history of Russia. They applied for it on the 23<sup>rd</sup> of December 2007, two days before Christmas, and it was approved and paid out the next day. The largest tax refund in the history of Russia, \$230 million, paid out in one day.

We were sure that this was a rogue operation, Sergei and I. We wrote criminal complaints to every branch of the criminal-justice system in Russia. I went to the newspapers, and then Sergei gave sworn testimony against the police officers who were involved. And we waited for the good guys to get the bad guys.

It turns out that, in Putin's Russia, there are no good guys. Instead of going after the people who stole the money, five weeks after Sergei testified—on the 24<sup>th</sup> of November 2008—the same people he testified against came to his home, arrested him, and put him in pretrial detention, where they then tortured him to get him to withdraw his testimony. They put him in a cell with fourteen inmates and eight beds and left the lights on twenty-four hours a day to impose sleep deprivation. It was December in Moscow, and they put him in cells with no heat and no window panes, so he nearly froze to death. They put him in cells with no toilet—just a hole in the floor where the sewage would bubble up. They moved him from cell to cell to cell in the middle of the night; they moved him twenty-eight times in his 358 days in detention. The purpose of all this was to get him to withdraw his testimony against the police officers and to sign a false confession to say that *he* had stolen the \$230 million and that he'd done so on my instruction.

They figured, Here's a guy who works in a fancy American law office, wears a red tie and a blue suit, buys his Starbucks in the morning—he'll buckle in a week. They had no idea who they were dealing with. Sergei Magnitsky, while he didn't look like a tough guy, had integrity like steel. And for him, the idea of perjuring himself and



bearing false witness was more horrific than any physical pain they were inflicting on him. So he refused. As a result, the pressure and the torture got worse and worse and worse.

After about six months of being imprisoned, his health started to break down. He developed terrible pains in his stomach and lost forty pounds and was diagnosed as having pancreatitis and gall stones and needing an operation, which was scheduled for the 1<sup>st</sup> of August 2009. About a week before the operation, they came to him again and said, “Here’s the false confession, please sign this.” Again, he refused. In retaliation, they moved him from the prison that had medical facilities to a maximum-security prison called Butyrka, which is considered to be one of the toughest prisons in Russia. Most significantly for Sergei, there were no medical facilities there. In Butyrka his health completely broke down. He went into a total downward spiral; he was in constant, agonizing, ear-piercing pain.

He and his lawyers wrote twenty different requests—desperate requests—to every different branch of the criminal-justice system, begging for medical attention. Every request was either ignored or, in some cases, denied in writing. Eventually, on the night of November 16<sup>th</sup>, his body could no longer tolerate this. He went into critical condition. On that night, the Butyrka authorities didn’t want to have responsibility for him, so they put him in an ambulance to a different prison facility. But when he arrived there, instead of putting him in the emergency room of their medical wing, they put him in an isolation cell, they chained him to a bed, and eight riot guards with rubber batons beat Sergei Magnitsky to death. He was thirty-seven years old. Sergei Magnitsky left a wife and two children.

I learned about his murder here in London the next morning at 7:25 a.m. It was the most shocking, horrific, heartbreaking, life-changing news I could ever have gotten. Sergei Magnitsky was murdered as my proxy, and he would still be alive today if he hadn’t been my lawyer. For me, that burden is just inconceivably great. When I was finally able to put aside my hysteria and think clearly, it was obvious I had only one choice, which was to put aside everything else that I had been doing—everything else—and go after the people

who'd killed Sergei Magnitsky and make sure they faced justice. And that's what I've done for the last eight-and-a-half years.

There's one unique thing about this case: Sergei Magnitsky wrote everything down. In his 358 days in detention, he wrote down 450 complaints about his mistreatment in detention and the abuse and who was doing what to him, where, how, when, and why. And he filed a big stack of these complaints. He gave them to his lawyer once a month. His lawyer would then file them, but the authorities would ignore and reject them. But we have copies of them, and this has to be the most well-documented case of human-rights abuse that's come out of Russia in the last thirty-five years. As a result of this, I figured they'd have to prosecute some of the people who killed Sergei.

But no, they circled the wagons. Putin got personally involved. They exonerated every single person who was involved in this terrible atrocity, and some they gave special promotions and state honors. And in the most shocking travesty of justice, three years after they murdered Sergei Magnitsky, they put him on trial in the first trial ever against a dead man in the history of Russia. They put me on trial as his codefendant and found us both guilty. They couldn't do anything more to Sergei, but they sentenced me to nine years in absentia in that trial.

### *The Magnitsky Acts*

It became obvious well before this trial that we weren't going to get any justice in Russia. So I asked myself, How do we get justice outside of Russia? I came up with this idea—to freeze their assets and ban their visas in the west. I took this idea to the United States, to Senator John McCain and Senator Benjamin Cardin, and they came up with this piece of legislation called the Magnitsky Act. The Act doesn't apply just to Sergei; it applies to all gross human-rights abusers in Russia. It passed 92 to 4 in the Senate, by 89 percent of the House of Representatives, and it became federal law on the 14<sup>th</sup> of December 2012.

The senators then asked themselves, Why is this limited just to bad guys in Russia? Why don't we have a Magnitsky Act for bad guys everywhere? And in December of 2016, a global Magnitsky Act passed the Senate and the House unanimously and became a federal law. It

became a federal law in Canada in October of last year. It became a law here in the U.K., in Estonia, Latvia, Lithuania, and in Gibraltar. The Magnitsky Act is now being proposed on the legislative books in Denmark, Sweden, the Netherlands, France, South Africa, Australia, Jersey. And I hope that one day it becomes an international standard named after Sergei Magnitsky.

We will never be able to bring Sergei Magnitsky back, and that's a burden I'm going to have to bear for the rest of my life. But his name, his sacrifice, has created a legacy. It has created, for the first time, a consequence against bad guys in terrible places with something they really care about, which is their money. And that is a legacy that will hopefully save other lives.

### QUESTIONS & ANSWERS

**Q:** Allow me to punctuate what you've just said. I've worked in Russia for thirty-five years and had a very close relationship with a courageous lawyer by the name of Mikhail Sergeyevich Gorbachev, and I saw his anguish at what communism had inflicted on his people. At risk of his life, he brought about changes, enormous changes, that did eventually end up with the demise of communism. Then came Yeltsin, the dipsomaniac president. He began with crony capitalism. He's the one that begat Putin and what Putin is doing. The harm inflicted on Russian people by the corruption is unimaginable. I speak now and again with Mikhail Gorbachev. His heart is broken. I don't know how many of you know, but Mikhail Gorbachev's a lawyer. He's a lawyer. And his heart's broken by all of it. And what this guy, this thug, Putin is doing, is trying to make Russia great again. It's the same theme. The ordinary people of Russia have been brutalized by this guy, this Putin.

**MODERATOR:** Do you have a question?

**Q:** No, I had to get that off my chest or I would have died.

**BILL BROWDER:** Thank you.

**Q:** My question is, What would you recommend that we do?

**BILL BROWDER:** There's only one thing we can do now: Russia is a criminal state run by a kleptocrat who wishes us all ill, and the only thing we can do is contain him. And that's what we should be doing.

**Q:** What fate was visited upon Magnitsky's wife and children? Where are they now?

**A:** Well, in this weird Kafkaesque trial of a dead man, since he couldn't represent himself, *they* were supposed to be the defendants in that trial. So we evacuated them from Russia. They're here in London, and they're safe. Sergei Magnitsky's wife works with us on the campaign for justice, and I look after her.

**Q:** So can you help us understand at all why [Sergei Skripal and his daughter were poisoned in Salisbury in March]?

**A:** The Salisbury incident is very clear to me, and very clear to other people who are engaged as I am with the Russians. This has nothing to do with Britain; it has nothing to do with Sergei Skripal. There is no ideology of the Putin regime. It's not a Communist Republic of Russia nor an Islamic Republic of Russia—there's no ideology. The only ideology to keep the people in his secret police, his interior ministry, and his generals motivated is money. It's kleptocracy. But the trouble is that the money is shrinking.

As money is shrinking, people have more of an incentive to be disloyal. So what they did with Sergei Skripal was basically that they picked some guy who had been disloyal, who was supposed to be safe in the west, looked after by the MI5 or MI6, and they sought him out. The message was to all the other possible disloyal people in the ranks: If you're disloyal, it doesn't matter—we're never going to forgive, we're never going to forget. It doesn't matter where you live; we're going to come after you and we're going to come after your family and we're going to kill you in the most horrific way. That was the message. And guess what? Everybody in his secret police—they're all feeling pretty loyal right now.

**Q:** Although Putin seems very solidly entrenched, I think your view is that actually his rule is a good deal more fragile and could

come crashing down, particularly now with the economic repercussions against his closest allies. Could you comment on where you see Putin going from here?

**A:** We're in 2018. Putin came into power in the year 2000. It doesn't matter whether you're the best guy in the world or the worst guy in the world; people kind of get tired of you after eighteen years. Just by inertia, you can't stay in power that long without people getting tired. On top of that, you also have an economic situation that hasn't been good in Russia; the economy has been stagnating for many years. The only thing they have is oil, and the oil prices are not as high as they need them to be. So people are suffering in Russia.

In order to keep people from being angry with *you*, as the president of a country you've been involved in for many, many years and people still don't have what they need, the only way you can stay in power is by doing two things. One is to create some kind of nationalist fervor by starting wars, which was the purpose of the Ukraine War—basically to create foreign enemies so people weren't mad at Putin. And that worked pretty well. And that mutated into what the Russians are doing in Syria. The second thing is repressing the hell out of people in your own country and not letting them have access to information and so know any alternative narratives, and putting people in jail, killing investigative journalists, killing opposition politicians—which they're doing on a much more regular basis inside of Russia.

Now, I don't know whether that's going to work or not, and I don't think Putin knows whether that's going to work or not. He can control a few thousand people or maybe a few tens of thousands of people, but he can't control millions of people. And if at any point the people get truly enraged, as they did in Ukraine, then the whole thing comes crashing down on him.

Russia used to be an authoritarian regime, but I would argue that Putin's running pretty much of a full-scale totalitarian regime right now. It's hard for revolutions to happen in a totalitarian regime, but this one is very brittle. People say, Oh, Putin's got an 88 percent approval rating. Well, that may be—but that's an approval rating based on a fraud. If people in Russia actually knew what he was up to,

he'd have a 1 percent approval rating. So it's not a comfortable situation for him. The truth is very scary. If it ever were to come out what he's doing, if the people got hold of that truth and equated it with their own bad standard of living, he'll be in trouble. But nobody has any idea of when that might come crashing down.

**Q:** So we have an Act that was very much supported in Congress. And we have meetings in 2016 with the Trump people and some of the people trying to fight the Magnitsky Act. And we know about the adoptions' being really about the Magnitsky Act.<sup>1</sup> My question is, if Putin had influence over our President, now, of the United States, what difference would that make in terms of what can be done under the Magnitsky Act?

**A:** I should point out that it was not easy getting the Magnitsky Act passed. Obama had a thing called the reset, the Russian reset, and he absolutely did not want to upset Russia. So he was against the Magnitsky Act, and he tried to stop it. Instead of getting the Magnitsky Act as an executive order, which he could've done, I had to go to

---

1. *E.g.*, "Natalia Veselnitskaya, the Russian lawyer who secured a meeting with Donald Trump Jr., Jared Kushner, and Paul Manafort, was engaged in a campaign for the repeal of the Magnitsky Act, and raised the subject of adoptions in that meeting." Rosie Gray, *Bill Browder's Testimony to the Senate Judiciary Committee*, ATLANTIC (July 25, 2017), <https://www.theatlantic.com/politics/archive/2017/07/bill-browders-testimony-to-the-senate-judiciary-committee/534864/>.

Adoptions and the Magnitsky Act are two sides of the same coin. Though about 1000 Russian children were adopted by American families in 2011, the year before the Act was passed, Russia froze the adoptions in retaliation for its passage. "The Russian government, sensing that those parents [whose pending adoptions were affected] would be a vocal pressure group, proposed a law known as the 'anti-Magnitsky law,' which would halt all adoptions of Russian children by Americans—including those that were already in process." Though the Russian government asserted that the freeze was because of the death of a Russian child who had been adopted by American parents, that was "pretext." "[T]he government also made clear that the new law would be retaliation for the Magnitsky Act." Amanda Taub, *When the Kremlin Says "Adoptions," It Means "Sanctions,"* N.Y. TIMES (July 10, 2017), <https://www.nytimes.com/2017/07/10/world/americas/kremlin-adoptions-sanctions-russia.html>.

Congress, and we had to make it an Act of Congress. And because it's an Act of Congress, to repeal the Magnitsky Act has to be an Act of Congress. And the likelihood that Congress is going to repeal the Magnitsky Act is zero. So I always said this law is greater than any man, because it's a federal law that would require Congress to repeal it.

So is Trump colluding or is he not colluding? We'll find out the answer to that in due course. If for some reason Putin was colluding with him, one thing Trump could do is not enforce the Magnitsky Act. But that hasn't happened. His administration has enforced the Magnitsky Act. They had the first opportunity in December of last year, and they put some very high-value targets on the Magnitsky list. So if it was Putin's goal to repeal the Magnitsky Act (which it was—we learned about that from that famous Trump Tower meeting in June 2016), he hasn't succeeded in any way, shape, or form, in any kind of legislative initiatives, to repeal it. Nor, more importantly, has he succeeded in instigating a lack of enforcement. Moreover, for all of you who were watching two weeks ago, the U.S. government's sanctioning of Russian oligarchs has been absolutely devastating. It was like a neutron bomb going off over Moscow. It was the most significant thing that anyone has ever done to Russia since the end of the Cold War, because Putin's money is tied up in that whole mess of oligarchs' money.

So whatever the collusion or lack of collusion is, it's a very confusing story, particularly when you read Trump's statements. In the last year, the United States government policy towards Russia is as tough as I've ever seen it.

\* \* \*

#### ***EDITOR'S AFTERWORD***

Putin's interest in pursuing Bill Browder persists. In July, at the press conference following the Helsinki summit between Presidents Trump and Putin, the latter proposed that Russian operatives be

allowed to interrogate Bill Browder, specifically, in exchange for U.S. investigators' going to Russia to interview the twelve Russian intelligence officers indicted following Robert Mueller's investigation into Russian hacking in the 2016 elections.<sup>2</sup> President Trump initially responded positively, calling it "an incredible offer."<sup>3</sup> Trump later back-tracked, but not before Congress on its own initiative passed a resolution 98-0, rejecting Putin's proposal.<sup>4</sup>

At the press conference, Putin accused Browder of having paid no taxes on his earnings of "over \$1.5 billion in Russia" and of sending "\$400 million as a contribution to the campaign of Hillary Clinton."<sup>5</sup> According to a reporter for the *Atlantic*, Putin's objective in bringing up Browder's name was "an apparent attempt to undermine Browder's credibility in the most highly visible forum he could ever hope for." The reporter opined that

Putin's decision to identify Browder on the world stage, standing next to the president of the United States at the end of a high-stakes summit, was either highly strategic or a crack in his ordinarily impenetrable facade. It reinforced Browder's status as one of Putin's top irritants, and it provided more evidence that a meeting at Trump Tower between Trump-campaign officials and a Russian lawyer—a key event in Mueller's Russia probe—was blessed by the Kremlin.<sup>6</sup>

---

2. Jenny Neufeld, *Read the Full Transcript of the Helsinki Press Conference*, Vox (July 17, 2018), <https://www.vox.com/2018/7/16/17576956/transcript-putin-trump-russia-helsinki-press-conference>.

3. *Id.*

4. "Expressing the sense of Congress against the making available of current and former diplomats, officials, and members of the Armed Forces of the United States for questioning by the government of Vladimir Putin." H.R.J. Res. \_\_\_, 115th Cong. (2d Session 2018), <https://www.democrats.senate.gov/imo/media/doc/ARM18F75.pdf>.

5. *Id.*

6. Natasha Bertrand, *Putin's Big Tell*, ATLANTIC (July 18, 2018), <https://www.theatlantic.com/politics/archive/2018/07/putins-big-tell/565460/>.



Whatever is revealed through the Mueller investigation into the Kremlin's involvement in the 2016 elections and that of the President with the Kremlin, the Magnitsky Act and Bill Browder himself are caught in the same orbit—not because Mr. Browder wishes it to be so, but because of the gravitational pull of the current Russian political ethos.

---

\* \* \*

## **THE FREEDOM BLUEPRINT: HOW WE END CONTEMPORARY SLAVERY\***

**Zoe Trodd\*\***

### ***ABOUT THE SPEAKER***

*Professor Trodd is director of the Rights Lab, a Beacon of Excellence at the University of Nottingham. Her scholarship focuses on modern-day slavery and what efforts we must undertake to eradicate it. Prof. Trodd is a graduate of Cambridge and earned her doctorate at Harvard University. Her interest in recognizing and eradicating slavery has roots in her scholarship on American culture—scholarship in the style of Alexis de Tocqueville insofar as it bespeaks an outsider’s acute observation of the American experience. She is a foremost scholar of Frederick Douglass—an eloquent and passionate abolitionist and human-rights leader, for which he is best known. But he was also, in fact, the most photographed person in the world in the nineteenth century.*

### **I**

#### **SLAVERY: STATISTICS AND DEFINITIONS**

About forty million women, men, and children are enslaved around the world today. Forty million is the figure released by the United Nations in September 2017.<sup>1</sup> But that estimate has been somewhere between 36 and 46 million for a number of years, now.

---

\* Address delivered at the Annual Convention of the International Society of Barristers, London, England, 16 April 2018.

\*\* Director, Rights Lab, University of Nottingham; most recently a coauthor of the second edition of *Picturing Frederick Douglass: An Illustrated Biography of the Nineteenth Century’s Most Photographed American* (2018).

1. International Labor Organization Report, [https://www.ilo.org/global/publications/books/WCMS\\_575479/lang--en/index.htm](https://www.ilo.org/global/publications/books/WCMS_575479/lang--en/index.htm).

It's larger than the population of Canada, than Iraq. This is a number bigger than the population of Malaysia or Australia.

As an industry, it's worth about \$150 billion a year. Globally, about seventy percent of this number are female; about twenty-five percent are children. Five countries account for over half of the enslaved people in the world. Those countries are India, China, Pakistan, Bangladesh, and Uzbekistan. But that figure also includes 60,000 enslaved people in the United States and 13,000 here in the U.K.; and those are official U.S. and U.K. government figures.

I would never talk to lawyers about something like this without talking about definitions. Especially when talking about numbers, you have to be careful with definitions. I do want to be clear that I'm not talking about extreme poverty or sweatshop labor or prostitution. Slaves today are paid nothing. They are forced to work against their will, so they cannot walk away. I recommend the definition from the Bellagio-Harvard guidelines on the legal parameters of slavery: "Slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised."<sup>2</sup> Both the European Parliament and the British government have taken up this definition. It actually began as the U.N.'s legal definition from the 1926 Slavery Convention, a treaty created under the aegis of the League of Nations and signed by ninety-nine countries by 2013.<sup>3</sup> But of course today slavery is illegal everywhere; there are no such things as "legal" ownership rights today. The guidelines that have adopted this 1926 definition go onto explain that we can understand those powers attaching to the rights of ownership today as "possession."<sup>4</sup> So this is control over another person, as you might control a thing. This is the condition of treating someone as if they are property, something that you can buy and sell and trade and even destroy.

---

2. Bellagio-Harvard Guidelines on the Legal Parameters of Slavery 1 (3 March 2012), <http://www.law.qub.ac.uk/schools/SchoolofLaw/FileStore/Fileupload,651854,en.pdf>.

3. [https://en.wikipedia.org/wiki/1926\\_Slavery\\_Convention](https://en.wikipedia.org/wiki/1926_Slavery_Convention).

4. See Bellagio-Harvard Guidelines, *supra* note 2. ("3. Possession is Foundational to Slavery").

Slaves today explain slavery themselves in this way—as being something that can be bought, sold, traded, or destroyed. The fact of slavery is clear from their narratives.

Salma was born into slavery in Mauritania. “I was born a slave. . . . Ever since I was old enough to walk I was forced to work for this family all day, every day.”

Ramphal was a slave in India, in a stone quarry. “When I say I was a slave, or that my parents were slaves, I want you to understand what I’m talking about. . . . At no time were we free to do what we wanted to do or to make our own choices. That’s when we realized we were slaves.”

Or Selekh’ha, also born into slavery in Mauritania, who explained, “I was a slave. . . . I have never been paid, but I had to do everything, and if I did not do things right, I was beaten.”

You can hear, I think, that definition of slavery in these stories: No payment, lack of free will, violence.

Globally, individuals are enslaved in a variety of forms, but a large number are in forced labor. So they’re in agriculture and industry, at carpet looms and in stone quarries, in fisheries and forestry and construction sites. Only twelve percent globally are in forced prostitution. Though it’s often sexual enslavement that we hear about the most in the media, that isn’t worldwide; it isn’t the predominant form of slavery that we’re dealing with. What we’re hearing about most today, I think, isn’t so much sex slavery as sex trafficking.

Human trafficking, which a lot of people have heard about, is not itself slavery; it is a process by which some people are brought into slavery. It’s definitely the case that trafficking is the third-largest criminal industry in the world today, after arms struggling and drug smuggling. It’s also the fastest growing criminal industry in the world. But it is simply a mechanism; it’s a conduit by which some people enter slavery. You can come into slavery by a lot of different paths, but the means of enslavement obviously do not determine the state of slavery. And trafficking is just a small part of the global picture. There are about 2.5 million people in the world who are in slavery after having been trafficked. That’s less than ten percent of the world’s

slaves. Most slaves today are sedentary: they haven't been moved from one place to another. Whole villages are enslaved right where they are—in India, for example. Again, trafficking, by contrast, is not slavery but a method by which a minority of the world's slaves are brought into slavery. We should really refocus our intention to ending slavery itself and formulating a more coherent strategy to do that.

Focusing on eliminating slavery itself is important because a new antislavery movement is showing us that a world without slavery is possible. It's about twenty years old as a movement, and it's achieved some successes. We've had new legislation. We've had a number of prosecutions. We've got increased public awareness. Here in the U.K., the Modern Slavery Act became law in 2015. It's an important law here; it created an independent antislavery commissioner, for example, to coordinate action at the national level. As for the global community, the new aim is to end slavery by 2030. This is now part of the United Nations' global Sustainable Development Goals, adopted by 193 countries in 2015.<sup>5</sup> The U.N.'s goals are a real tipping point for this movement, this twenty-year-old movement. Ending slavery is now squarely on the world agenda.

Nonetheless, the growth of this global antislavery movement over the last twenty years masks some pretty short-term thinking. The movement that began in the late 1990s achieved policy acceptance and was led by lawyers for a long time, refining legal definitions and then building itself around numerous anti-trafficking groups, but unguided by research. It has mostly been, at best, a bit of a protoscience. It's done a series of fairly unsophisticated analyses, and these haven't helped the goal of ending slavery. We still lack robust, long-term strategies of abolition.

Antislavery workers naturally tend to focus on urgent matters—liberations and then sometimes prosecutions. They're operating within short timeframes and they're often funded to do so. Programs for interventions in countries around the world are at a quite early stage of development. But intervenors have a role to play,

---

5. See <https://www.un.org/development/desa/disabilities/envision2030.html>.

as do researchers, in tackling slavery as a global challenge. Over the last two or three years at the University of Nottingham, we've been building the world's first large-scale platform for ending slavery by 2030 so that we can help underpin the global antislavery movement—and these programs for interventions—with an advanced research agenda for the first time.

I'm proud that we're home to the world's leading experts on modern slavery. We now have a team of 120 academics on campus fused into a range of large-scale, interrelated projects and programs. It's a team committed to delivering what we call a Freedom Blueprint—a global plan, to be developed over the next five years, for achieving that goal of ending slavery, the U.N.'s sustainable-development goal 8.7,<sup>6</sup> and to do that by 2030. It's a plan based on all of our research and pilots and discoveries and data and results—all of the testing that we do of different intervention techniques and all the evaluations we do of those—to achieve at all levels a plan for ending slavery, by individuals, through corporations, governments, inter-governmental organizations, communities—a plan for all those people to help end slavery by 2030.

### *The Rights Lab*

We're lucky that the University of Nottingham is supporting us in this work. It has invested in us as one of its six "Beacons of Excellence"—one of the areas that the university has identified as

---

6. Goal 8 is to "[p]romote sustained, inclusive[,] and sustainable economic growth, full and productive employment[,] and decent work for all." The seventh bulleted target under that goal is as follows: "Take immediate and effective measures to eradicate forced labour, end modern slavery and human trafficking[,] and secure the prohibition and elimination of the worst forms of child labour, including recruitment and use of child soldiers, and by 2025 end child labour in all its forms." U.N. Department of Economic and Social Affairs, Division for Inclusive Social Development, #Envision2030 Goal 8, <https://www.un.org/development/desa/disabilities/envision2030-goal8.html>.

having capacity to be truly world-leading. Our beacon, our team, is called the Rights Lab. We think of ourselves as a lab for a couple of reasons. First, it is a lab in that it is bringing any and all methods to bear on this problem. Often, academics are stuck in their particular disciplines, but we start out with trying to get the political scientists to talk to the lawyers and then talk to the engineers and then to the literary scholars. But this is not just about multidisciplinary research; it's something we call transdisciplinary research. So any and all theories and methods and techniques—from geospatial science, from computer science, mental health, corpus linguistics, any discipline that the university offers—are game. Nottingham is a huge, comprehensive research university—part of the Russell Group. We then mix all of those methods and techniques and data into the best possible combination to solve real-world problems. We draw from all five of the university's faculties: Social Sciences, Arts, Medicine, Engineering, and Science. At last count, academics will be using eighty different methods from seventeen different schools or departments. And that lets us start by working outwards from the problem rather than from different disciplines.

Second, our identity as a lab comes from the fact that *practical application* is our purpose. This is about applied research—research with practical application for governments, for NGOs, for business. It's something that one of our leading researchers has called “rigorous morality”—a fusion of rigorous research, empirical work, with advocacy. It is a values-based, problem-oriented approach to research, where we combine, all the time, our research expertise with the on-the-ground expertise of our partners—of NGOs, of businesses, and, critically, of survivors of slavery. Nothing we do, no research that we undertake, no work happens without the leadership and the input of survivor scholars. Everything we do is survivor engaged and survivor-led.

The process we engage in across all of our work is that we measure: we're measuring and monitoring the prevalence of slavery in countries and trying to analyze and build models that explain the causes and consequences of slavery. We're designing intervention strategies that we then implement with our NGO and policy partners.



Then we're evaluating, we're monitoring these strategies to see what works, and adapting and repeating this process throughout.

## II

### STUDYING SLAVERY FROM THE OUTSIDE

Academics will wander off and do their own thing if you don't keep them on track. Focusing on four big questions keeps us on track with what matters:

1. How many slaves are there in the world and where are they?
2. Why does slavery persist?
3. What works to end it?
4. What difference does freedom make to the world?

Everything we do tries to address these four questions collectively. Their answers will work together as a platform that we hope can be scaled up as the global community works toward ending slavery.

#### *How Many Slaves Are There in the World and Where Are They?*

In partnership with the Walk Free Foundation, we have built the only global index of slavery numbers, which estimates numbers of slaves, country by country. We develop new methods for particularly challenging countries, but we're also launching the first national slavery index, as well. So we're also measuring slavery here in the U.K., estimating prevalence county by county. This has been in response to a request from law enforcement to understand better where they should be focusing.

We have made the first attempt to map slavery from space. We've discovered that you can actually see a large proportion of the world's slave labor with satellites. So we've been mapping slavery recently across India, Bangladesh, and Brazil. We're moving into the Democratic Republic of the Congo next to look at the gold mines that you can see from space. And we're now applying machine-learning techniques to speed up that human observation.

*Why Does Slavery Persist and What Works to End It?*

Our economists are focused at the moment on an analysis of slavery's economics. They're trying to understand the supply and demand for slave labor, looking as well at slavery's impact on countries' economies. More importantly, they're modeling the impact of freedom—the freedom dividend—the economic benefits of ending slavery.

One of our largest programs is about supply chains, looking for slavery itself in supply chains and working with businesses to redesign their supply chains and so be slavery-free. It's a program, really, for business risk assessment—trying to work with corporations to abide by the U.K.'s Modern Slavery Act's requirement that anyone trading over £36 million a year must take action to ascertain the absence of slavery and human trafficking in their supply chains.

We have a study at the moment on the relation between slavery and the environment, calculating the slavery footprint—the damage that slaveholders are doing to our environment and therefore the environmental gains we may see if we ended slavery.

We are taking the first corpus linguistics approach to slavery language and slavery discourse—a big-data analysis of millions of words of slaves in stories, media discourse, the Modern Slavery Act's requisite business statements, and NGO discourse. We're looking to see if we can establish patterns to understand slavery and antislavery better through language patterns.

One new project is the first big study of forced marriage as a form of slavery. The new estimate is that there are more than fifteen million people in forced marriage today. We'd like to understand if this is a form of slavery, and if so, how it potentially changes the definitions we're using.

Another big study is about slavery in armed conflict: our scholars are focusing this year on ISIS enslavement in Iraq—the enslavement of women and children by ISIS.

Yet another project is about mental health: the first large-scale attempt to understand what survivors go through after liberation and

freedom. One objective is to design an excellent program of recovery for those survivors, people coming out of enslavement.

We have the first major program about slavery as a local issue. We've been working over the last two years to make Nottingham a slavery-free city and to identify what works locally: what are the most effective kinds of policy in different local contexts, and what is a transferable model for international settings. Our vision is that we might start to see cities becoming slavery free one by one on a sort of antislavery map.

Historians are also part of this work. They've been looking at lessons from the last 200 years of antislavery movements and campaigning, seeking a usable past, trying to understand what worked for past generations of abolitionists so we don't have to reinvent this movement from scratch.

The last two current projects I think of as wrapping around everything else: a large-scale monitoring and evaluation platform theorizing the antislavery process of intervention. This is about the direction of travel, the compass that we should be using to see where we should go and what works, developing ways to establish more evidence-based programs for effective antislavery work.

Together, these teams—about 120 people across these projects—are attempting to create a new science of antislavery. It's part of an effort to design a pathway to a slavery-free world by 2030. We know what slavery is and where it takes place and why it persists and how it takes root. But in line with that idea of rigorous morality, we know that approaches to stop slavery have to be not just technical and data-driven approaches for measuring and mapping and analyzing, but the very voices and the ideas and the agency of some of the world's most vulnerable people. This work needs to be as much about humanity as it is about technology and data. It's important that we draw from those voices and ideas of the survivors themselves. So we design and deliver antislavery-research programs that include survivors. We have committed funding for scholarships for survivors, including PhD scholarships. And that means we've been able to integrate survivor scholars into all of these projects.

### III SLAVERY FROM THE INSIDE

Finally, our team focuses on slavery survivors' own perspectives. It has collected about 5000 testimonies by survivors about their experiences. They then work to put these voices at the heart of this movement.



This and numerous other mural images were created by survivors of slavery. It's a bit of a counterpoint to other imagery you might've seen—some of the more exploitative, even if well-meaning, imagery of the contemporary movements.

#### *The Survivor's Point of View*

This particular project works with survivors and includes supporting a group called the Survivor Alliance. It's the first big survivor-led group by survivors, for survivors. For a while we've been hearing from that group's leadership about their frustrations with the current movement, in not having a place at the policy table, in often being invited to speak, but just to tell their very personal stories, not to give input on the definitional debate, not to propose new antislavery policies. So they were asking for that chance. They, too, want to monitor and evaluate antislavery programs. And we realized that although the media does often use short quotes from survivors

and NGOs, government bodies will tell other stories about enslaved people in their reports or in their awareness-rating campaigns. But the global movement is not yet trying to systematically design new strategies based on the ideas and the solutions of enslaved people, themselves.

To illustrate what I mean about this limitation, a recent media story about an enslaved Filipina domestic worker in Brazil was based on an interview, but the journalist choose to tell it in the third person, with a few quotes sprinkled throughout. This is common practice across all media outlets. I've yet to find a media outlet that consistently chooses to emphasize the first-person voice.

It's the same thing in government reports and guidelines. One recent set of Home Office guidance on victim identification, aimed at public-sector staff, had a range of case studies throughout, sometimes with quotes included. But it's all in the third person. A few quotes might be used, but it's usually unclear who's being quoted.

The situation is definitely a bit better with NGOs, charities in the third sector. They sometimes have first-person narratives on their websites; they then sometimes repeat them in full or excerpt them in their reports or in their training materials.

But it's still much more common, even with NGOs, to render these as third-person stories. You will often find a website area called "Stories," and you may have a sense of their presence because of their photographs and names, but when you click through, the narratives will be in the third person: they are accounts *about* someone, rather than their actual stories.

So that's the context for survivor voices in this public realm of the media, of government representations, and NGOs. Factoring that in, we started working with survivor scholars to examine an archive we had built of thousands of first-person stories—accounts by contemporary survivors of slavery very carefully transcribed and often translated—in order to give proper attention to every word, every detail. It's a counterpoint to the tendency of others to carve stories up stories into short quotes or to tell them in the third person.

We were able to do this in a sustained way, in part because members of my team, trained in cognitive interview techniques,

gathered many of the stories we're working with over a number of years. This long-form, free-telling style of interview tends to generate hours and hours of rich material through survivors' deep recall. Until that point, the majority of contemporary slave narratives had been gathered by NGOs or journalists or public bodies, or were actually often a record of witness testimony in criminal cases, in national inquiries. This meant that a lot of the narratives, even in those in first person, had been collected through a more traditional question-and-answer interview process, rather than a freer, fuller telling of stories. That traditional process can obviously redefine the telling; it can influence the language and the details and the overall narrative arc. In a lot of these other narratives, you can see that in the phrasing, in the lead-in to the story. There's often a sudden insertion of legal terminology where you know somebody's lawyer has inserted something after the fact.

By analyzing this first large collection of contemporary stories and looking for new antislavery ideas and solutions, we hope to put survivors' voices at the heart of antislavery strategy. We wanted to take seriously what one survivor explained as narrating in order to be the voice for the still-enslaved, the voice for those who perished while enslaved, and the voice for those who are free but don't have the courage to speak up.

For us, this involved looking for psychological insights through what is often *not* said in these stories, as well as what *is* said, looking for connectives and transitions in expression, engaging with survivors' uses of imagery and symbolism and using them, as well, to gather information about risk factors and cultural identities, about the efficacy of specific antislavery strategies, about procedural difficulties, about gaps in survivor support after liberation.

### *Looking at Language*

I want to flag four specific techniques we have been using, to give you an early sense of how this work is going. One approach I already mentioned is corpus linguistics, where our team has been analyzing over a million words of slave-narrative material, looking for patterns. This has generated some fascinating insights that our team

working on mental health and therapeutic techniques for slavery survivors has then been able to incorporate into their own work.

For example, disproportionate to the general benchmark language of autobiographical genres, survivor accounts never use the future tense. They never talk in any way about the future. Even on the rare occasions that survivors are perhaps asked to touch on the future when they're telling their story, it is immediately followed by a sudden use of the past tense. These are accounts by people who do not engage a vision of the future.

Another example the mental-health team was able to take up ways to recognize that, unlike general language users—and actually unlike even other groups that have experienced other trauma, survivors tend to use the word “me” rather than “I.” They are using the objective rather than the subjective case. These are people struggling to express subject-hood—perhaps unsurprisingly—in a context of having been held against their will as objects. So that analysis continues. The team is about three months into that work. These are just a couple of about fifteen different initial findings.

The team is turning at the moment to look at specific language used by women, by children, by people who experience labor slavery versus sex slavery. They're starting to differentiate now by country; they're starting to differentiate by the length of time someone was enslaved.

#### *Defining Slavery from the Inside*

Another approach, in addition to that corpus linguistic work, was to read the archive deeply with an eye to how slaves themselves are defining slavery. We started with the current legal debate around definitions—in particular, the Bellagio-Harvard guidelines that restated the 1926 League of Nations Convention definition, alongside this archive of narratives. Just to be clear, the debate continues in legal and social-science fields about the formal parameters of slavery, as distinguished from what the United Nations Office of the High

Commissioner for Human Rights 1956 Supplementary Convention terms “institutions and practices similar to slavery.”<sup>7</sup>

But all of the major contributions to this debate exclude a key set of insights, and that is slavery survivors’ own definitions. Even though the legal parameters for a definition of slavery shape all aspects of antislavery practice—everything from estimates of slavery numbers to decisions about resourcing for survivor recovery—we still don’t have a fully accepted working definition that reflects slavery as a continuum of practices. In spite of all of that, scholars and practitioners have not yet tried to integrate testimonies of contemporary slavery’s lived experience into this debate.

So we analyzed thousands of narratives and observed that many of them actually do echo and underscore the ideas and the consensus points of the last decade’s legal debates. One survivor explained, “A person is a slave when that person is under the control of other people, when a person is locked up, physically used and when a person gets beaten up sometimes and is sleep deprived[,] when people work for free and others take their money.” He laid out criteria for a slavery definition that is recognizable from the debates of the last decade: loss of free will, the “use” of a person, violence, and of course lack of payment.

Other narratives go even further. We realized that dozens of them explicitly explore the difficulty of projecting forward after slavery, moving past that static sense of self. They express slavery as

---

7. These include a woman’s being promised or given in marriage in exchange for payment or other consideration, her being transferred by her husband to another for consideration, or being inherited by another upon her husband’s death. Supplementary Convention of the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, Sec. I, Art. 1, [https://treaties.un.org/pages/ViewDetailsIII.aspx?src=TREATY&mtdsg\\_no=XVIII-4&chapter=18&Temp=mtdsg3&clang=\\_ensupplementaryconventionabolitionofslavery.aspx](https://treaties.un.org/pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XVIII-4&chapter=18&Temp=mtdsg3&clang=_ensupplementaryconventionabolitionofslavery.aspx).

Editor’s note: Coincidentally, Prince Zaid Ra’ad Al Hussein, who was the High Commissioner for Human Rights from his appointment in June 2014 until August 31<sup>st</sup> of this year, spoke to the Barristers at their annual meeting in Lanai in 2011. See Zeid Ra’ad Al-Hussein, *The International Criminal Court after the Kampala Review Conference: An Appraisal*, 46 INT’L SOC’TY OF BARRISTERS Q. 39 (2011).



a futureless state, an eternal present, as absolute stasis. This connects to the corpus linguistics work observing that people are not using the future tense. Slavery is this kind of suspended time where the future is inaccessible; you cannot hope or plan for the future; you can't decide or act because you have no expectation of change, of progress.

Others characterized slavery as simply a war; their time in slavery was one in battle. They saw themselves as survivors of a war waged by slaveholders upon slaves. Still others characterize slavery as purposeless action; others, as lack of privacy. This is from a narrative by a young Vietnamese man who was enslaved in the U.K. for six years:

I was a slave. To me, "slave" probably means being someone that had to do something that they are made to do without knowing the purpose of the action. Freedom, to me, is being allowed to do what I want to do. Or I'm allowed to have basic human rights, like being able to go to school. And freedom to me means I've got a private life. I can do what I want as long as it isn't illegal, and I can do what I want without being watched.

This theme of having no sense of purpose for his actions is one measure of slavery that recurs again and again in these stories; there's a disconnect between choice and action. Actions are at the will of the slaveholder and have no purpose that slaves can understand. The other theme that jumps out of this narrative is that lack of privacy, which also recurs again and again in these stories. Freedom is a life without being watched.

And you can start to see, I think, that if a survivor definition of slavery is loss of purpose, loss of privacy, then a sustainable freedom would enable the survivor to achieve purpose and privacy after enslavement.

### *Visual Expression*

A third approach, in addition to the corpus linguistics and attention to definitions, has been combining textual analysis with

visual narrative. During these cognitive interviewing sessions, we often ask survivors to make drawings.

One example of visual narrative created by an adult survivor in telling his story shows a box, a cloud, and a spinning top. He explained,

This box here, it has one side that you can't see underneath, which is the side that I hide. So, this box here represents me. But then this is where I want to be—this spinning top, spinning fast, and if I spin so fast I will probably fly. The cloud is scaring the birds away who want to settle down and peck. So this good cloud here is saying, "Go away."

He went on to explain the story for a long time, in a lot of detail. He talked about the box as a metaphor for presenting different personas while keeping his real self hidden. He talked at length about this spinning top as a kind of freedom symbol that's linked to the ability to move and to travel and to fly.

Another adult survivor chose to use just one dark pen. He was offered a choice of thirty-five different colors, but chose this pen to visualize the moment that represented to him both the height of his abuse and a turning point, the catalyst for his escape.

A third adult survivor drew a landscape. At the time of his interview he was waiting to see if he'd been granted asylum. He'd become frustrated by the delays. He had actually been forced into criminal activity. It was cannabis farming, where he was locked up in a home to watch the plants grow. He was worried that that criminal activity would go against him. He was worried that if he was returned to Vietnam, he was at risk of being trafficked again. He explained that this landscape, though, was actually just any landscape, not Vietnam. He explained that the river he'd drawn represents his journey, that boat on the river represents him. He said he didn't know where he was going or where he would land. At that point he said he had finished the drawing, and our team member came back in to discuss with him what it meant. Right at that moment when the team member sat down, he picked up a pen and carefully colored the inside of this boat with a bright red pen, watching the interviewer to see that the interviewer

was watching him do this. So, in that the boat represents him, it was pretty clear he wanted a witness to this very tightly contained, hot center that represented his feelings in this quite overwhelming landscape. The landscape he had drawn seemed to represent the asylum process and his facing an unknown future that filled him with anxiety.

He then went on to explain that freedom for him didn't mean the capture and the prosecution of his traffickers; freedom for him, he said, is rooted in the post-enslavement support available to him. Is there access to housing and food and dignity and asylum and legal representation? What does that landscape around him look like? Is it one where he might be treated as a victim or a survivor or a criminal? So, basically, we found that this approach of inviting drawings added insight to the textual narrative. It went beyond what we thought we could gather verbally.

#### *Mapping Inside to Outside*

And then, finally, a fourth approach we're about to start now is a mapping of all these thousands of stories against the 169 targets that sit behind the U.N.'s seventeen Sustainable Development Goals. So there's of course the target 8.7 about ending slavery. But beyond that, do these accounts, do these testimonies by survivors about their lives—how they became enslaved and how they came to freedom—suggest that antislavery people should actually be focused on target 4.1, free equitable schooling, or 8.6, reduced youth unemployment, or 10.7, improve migration policies, or just any number of targets around climate change and food security and gender equality and armed conflict? If we can figure out where other sustainable-development-goal targets have been underpinning enslavement from these stories, we can answer a key question from the point of view of slaves themselves. Which development-goal targets, if we achieved them, would prevent or would end slavery?

We could then uncover the reasons why slavery persists. It means we could shift the antislavery focus onto the socioeconomic and cultural and political drivers for slavery embodied here, rather than try to tackle target 8.7 in isolation. That is what's happening at

the moment: it's separated from that broader human-rights and development agenda.

We've coded about ten percent of these 5000 narratives so far against the targets of the Sustainable Development Goals, so it's too early to know for sure. But I do know that we have been coding 8.8, protected labor rights, more often than other targets. Likewise 5.1, ending discrimination against women.

### *Frederick Douglass's Definition of Slavery*

This work has made us each even more certain that how survivors understand and express slavery and freedom should be central to the antislavery agenda. If we listened, really listened, survivors' voices could help us develop more-effective law and policy and strategies against slavery.

We know, for example, that in the nineteenth century the leading black abolitionist Frederick Douglass, an ex-slave, would often repeat a pretty clear definition of slavery. He would say it was "[t]he granting of that power by which one man exercises and enforces a right of property in the body and soul of another."<sup>8</sup> This was his lecture-circuit definition; this was the sentence he would put quite near the beginning of his public talks throughout the 1840s and the 1850s. It was a way for him to introduce his argument.

But he then used autobiographical narrative—he wrote three autobiographies in his life—to add layers and nuances to his lecture-circuit definition, layers that suggested how you might recognize this right of property in practice. Central to Douglass's more-nuanced definition was slavery as a temporal fixity.

The thought of only being a creature of the present and the past, troubled me, and I longed to have a future—a future with hope in it. To be shut up entirely to the past and present, is abhorrent to the human mind; it is to the

---

8. Frederick Douglass, England Should Lead the Cause of Emancipation: An Address Delivered in Leeds, England, on December 22, 1846, *in* LEEDS TIMES (Dec. 26, 1846), <https://glc.yale.edu/england-should-lead-cause-emancipations>.

soul—whose life and happiness is unceasing progress—  
what the prison is to the body.<sup>9</sup>

That idea comes up over and over again in Frederick Douglass's writings—this idea of denied access to future time, to progress, to movement, the idea of being imprisoned in a space of suspended time.

This idea goes on to underpin the specifics of his action, the specifics of his support for the radical abolitionist John Brown's "Provisional Constitution" and his Harpers Ferry raid. It underpinned Frederick Douglass's call for black men to enlist as soldiers in the Civil War, his demand for voting rights during Reconstruction. All of this was expressed in writings and speeches that emphasized the importance of African Americans' creating their own futures through insurrection, through participation in armed conflict, through citizenship. Douglass's own definitions of slavery, expressed through his writings and his autobiographies, rather than in just his stump speeches, were important to how Douglass campaigned against slavery and to how he approached its abolition and African Americans' post-emancipation struggle for civil rights.

Perhaps a more effective national post-emancipation plan in the United States would have taken this up: the slavery definitions of other nineteenth-century survivors to shape a freedom around access to future time to free space: it would have offered land ownership for former slaves, not wage labor; it would have expanded the educational reach of the Freedman's Bureau; it would have prevented the South's new Black Codes that inhibited free movement of former slaves.

Although the United States did abolish slavery as defined by Douglass on his lecture circuit—it did remove the legal "power by which one man enforces a right of property in the body and soul of another"—survivor testimony could have helped guide what Douglass was still demanding in 1872, seven years after the end of the war and the end of legal slavery. He looked at conditions for African

---

9. FREDERICK DOUGLASS, *MY BONDAGE AND MY FREEDOM* 273 (1855).

Americans, he announced that “we are not free,” and he called for a “full freedom.”<sup>10</sup>

#### IV

#### WHAT DIFFERENCE DOES FREEDOM MAKE?

We need to take up the same challenge today. We cannot miss a key element of what would deliver an effective antislavery movement. We need to pay close attention to what survivors of slavery *themselves* suggest would enable that full freedom. In that way, we can tackle not just those important questions of how many, and where, and why, but also this last really important question: What *works* to end slavery? What difference does freedom make? We believe that slavery is exerting a disproportionate drag, inhibiting social and economic development for free people, as well as for the enslaved. Ending slavery would mean a better world for everyone. We’re working towards a series of global benefits from ending slavery across multiple Sustainable Development Goals: dividends to economic development, to gender equality, to peace, to health, to the environment. It is what we call the Freedom Dividend—multiple benefits for everyone in the world when slavery comes to an end, where the world is safer and greener and more prosperous and more equal as a result.

I do think it’s within our grasp to achieve this and to do it by 2030. I think that this is as realistic, as reachable, as it is morally critical, *if* we can deliver a new agenda for ending slavery that’s designed around rigorous research, cutting-edge methods, and the agency of survivors. And I also believe that if there was ever a tipping point when we could do this, when we could achieve an end to slavery, it is now.

I’m a professor, but I’m also a proud abolitionist. I believe that the obstacles our ancestors faced, the abolitionists of the eighteenth and nineteenth centuries have been torn down or blown away. They

---

10. Frederick Douglass, *Give Us the Freedom Intended for Us*, NEW NATIONAL ERA (Dec. 5, 1872).

won some battles for us. The moral argument has been won: every country condemns slavery. There is no ethnic majority or major powerful religious group that trying to argue that it is acceptable. There is no economic argument to win today: slave-based revenues flow to criminal networks; they're not flowing into national economies or transnational industries. And there is no legal argument to win any more. Most of the necessary national and international laws are on the books. Slavery is at least illegal everywhere.

In reality, slavery has been pushed to the shadowy edges of our global society. It is standing on the brink of its own extinction. This is a point in history where finally our economies and our laws and our moral beliefs are actually aligned in a constellation that might spell an end to slavery.

We have the chance, then, to work towards new breakthroughs, to scale them up, to bring research rigor to a global community that has awakened to the quite historic possibility of ending slavery in our lifetime. That would be a huge watershed moment for humanity. It would be the achievement of a slavery-free world after 4,000 years of slavery-tainted human history. It would be a moment when we actually finally reject *the* great lie of history that some people are subhuman. We would embrace, instead, that great antislavery truth that Douglass and Wilberforce and others tried to teach us—that labor must not be forced and that people are not for sale.

### QUESTIONS & ANSWERS

**Q:** If you were to ask the people in this room to do one thing to help in this movement, what would it be?

**A:** Must it be only one thing?

**Q:** No, two is fine.

**A:** Okay. Two things. And I kind of love these two things, because they go from the very, very global to the very local. We use citizen science to map slavery from space. We have a platform at our website<sup>11</sup> where we regularly put up high-resolution images of brick

---

11. <https://www.nottingham.ac.uk/world/beacons/rights-lab/>.

kilns in India or children in fishing cages around lakes in Ghana, and we ask volunteers to help us identify if this is slavery. It takes you just five minutes to do the visual training, to learn what a brick kiln or a fishing cage might look like. Once eight volunteers have identified something in this image as slavery, we take it forward to the machine learning. We've been able to map every brick kiln in India so far and have learned that there are 50,000 of them, which is twice the estimated number. So it's a kind of citizen science, it's like a crowd sourcing of knowledge. I find it quite addictive, the work, so I would really welcome your help doing that.

The second thing is to look at what's happening locally. We think that ending slavery locally is the best possible strategy. We've seen that it's the front-line people who can make a difference. In my city, for example, taxi drivers can't now get a renewal or a new license, which they have to do every couple of years, unless they've done a day of training on how to spot slavery and trafficking, and where to report it. We've trained the electric-meter and gas-meter inspectors: they might go into homes and see that there are twelve people locked in a basement who shouldn't be there. Now they know how to report it. This training goes all the way up to ambulance drivers and ER doctors and, of course, the police.

It's not just a U.K. thing. Some of our closest partners are in New Jersey and Orange County and Austin, Texas—all cities that are working to become slavery free. And I think most American states, at least, and certainly a lot of Canadian cities, have a slavery-free-community initiative. So volunteering locally, finding out what's happening, learning how to spot the signs in your own communities, and reporting to the different hotlines that exist is really important.

**Q:** You said that there are now, according to your estimates, roughly 60,000 slaves in the U.S. Is there a specific geographic area where it's more prevalent, and is there any particular industry or activity that's more closely associated with slavery?

**A:** That's a great question. The United States hasn't yet done a multiple-systems estimation of prevalence estimates state by state. After we've piloted that in the U.K., doing it county by county, that's



something we're going to work with our colleagues in the US to do. But in terms of just the number of people being reported, we've seen the largest numbers in Texas, California, Florida, and New York—so, obviously, states with large populations, often large immigrant populations. It's often very easy for slaveholders to disguise slave labor. Florida farms, for example, are also using a sort of low-wage labor. Low-wage labor and slavery will often look quite similar, but will have enslaved people separated out, at least as to where they sleep.

In the United States, the State Department estimates are that roughly half of the 60,000 people are in forced sexual exploitation, about twenty-five percent in forced domestic labor, and the rest in forced labor. It's the same rough breakdown in other western societies. In western Europe and in the U.K., it's, again, about half forced sexual exploitation. That's different from the global, the developing-nation situation, where it's much more about forced labor—the gold mines, the forests, the quarries. But I was in the United States for twelve years—it's where I became a modern abolitionist. The Victims of Trafficking and Violence Act, signed into law in the U.S. in 2000, is pioneering law. Successive presidents have made it a centerpiece of their agenda. There was a bit of a shift during President Obama's administration from talking about just trafficking to also talking about slavery. I think he did a quite brave thing by claiming the "s" word; other people might not have been able to do that.

Although I'm very proud of the British Modern Slavery Act of 2015, I'm also very proud of what the U.S. is doing—particularly the pioneering legal work that's come from the U.S. So we do look to the United States for modern antislavery leadership.

\* \* \*