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Film as Witness to the Holocaust

A Victims' Perspective

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[Holocaust Living History Workshop](#)

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Film as Witness to the Holocaust: A Victims' Perspective (2021)
Holocaust Living History Workshop

- Time Transcription
- 00:00 [Read Write Think Dream / The Library UC San Diego Channel /
www.uctv.tv/library-channel]
- 00:10 Susanne Hillman: Welcome to today's Holocaust Living History Workshop featuring Leora Bilsky. Due to the great time difference between San Diego and Tel Aviv, this is a pre-recorded event. In lieu of a Q&A session, the lecture will be followed by a 15-minute discussion with Deborah Hertz, professor of Modern Jewish Studies and one of the founders of the Holocaust Living History Workshop. I would like to thank the UC San Diego Library and Jewish Studies, the Jewish Studies Program for their continued funding of the workshop. Today's event was made possible by the generous support of Daniel and Phyllis Epstein. For years the Epstein's have sustained the workshop with their enthusiasm, their dedication for Holocaust education, and their practical support. Daniel and Phyllis, please accept our sincere gratitude for everything you do for our program. It will be so good to see you again on campus in person once a more regular schedule resumes.
- 01:10 Susanne Hillman: Today's program deals with film as witness at major war crimes trials. I am honored to welcome Leora Bilsky, a professor at the Tel Aviv University Faculty of Law, and the director of the Minerva Center for Human Rights at Tel Aviv University. Leora earned her LL.B. [Legum Baccalaureus] cum laude from Hebrew University and an LL.M. [Masters of Law] and the JSD [Doctor of Science of Law] from Yale Law School where she held a Fulbright Award. A visiting professor at Toronto University and Amherst College and the fellow in "Ethics and the Professions" at Harvard University, she has served as editor-in-chief of the political journal *Theory & Criticism*, and as editor of law journals *Mishpatim*, *Iyunei Mishpat* and *Theoretical Inquiries in Law*. She is the author of *Transformative Justice: Israeli Identity on Trial* and *The Holocaust, Corporations and the Law* both published by Michigan University Press. Please join me in greeting Leora Bilsky.
- 02:15 [Film as Witness to the Holocaust: reimagining the eye-witness] / Prof. Leora Bilsky]
- 02:16 Leora Bilsky: Hello everyone and thank you so much for inviting me to this lecture. I want to especially thank Daniel and Phyllis Epstein for the, their sponsorship and to the San Diego Library for their invitation. So today's lecture is called Film as Witness to the Holocaust: reimagining the eye-witness, and let me give a few words of introduction. The heroic attempt of the Allies to bring Nazi leaders to justice in Nuremberg in the wake of World War II has challenged the law and pushed the limits of liberal legal theory. One of the novelties of the Nuremberg trial was the admission of a new type of eyewitness, the camera. It was an attempt to adapt the trial to "crimes beyond imagination" but at the same time, it threatened to bring the trial closer to its feared other, the show trial. Several writers have noted this irony and told the story from the perspective of the trial's architects. Still missing is the perspective of the victims and how they viewed the new role of the camera in the

trial. In this lecture, I will try to open a window to this missing story by exploring the way in which two Holocaust survivors, Rachel Auerbach, and Henryk Ross, approached the dilemma.

- 03:46 Leora Bilsky: Auerbach, a journalist, historian, and survivor from the Warsaw Ghetto, had contributed to the opening of the [Adolf] Eichmann Trial in 1961, to the testimonies of around 100 Holocaust survivors. Henryk Ross, a photographer, and survivor from the Lodz Ghetto, secretly took illegal photos documenting life and death in the Ghetto. He was invited to present his photos in the Eichmann trial as well and to give testimony as an eyewitness. By interrogating the way in which both treated the role of the camera as a new eyewitness to the Holocaust and by going beyond the law to see how this dilemma has been treated by filmmakers, I hope to recover a new understanding of the role of the camera as an eyewitness to genocide. Let me begin however with uh, with the document. The research behind this lecture began accidentally; it began with a document I found in the Auerbach archive. It was a printed testimony she gave. It was printed in English and in the margins - you can see on the left - it was, she added in handwriting, in Yiddish the following which I translate. A copy of a testimony and I gave in 1945 in London to Jackson Committee for the Nuremberg trial. Translation to the English was done by Lemkin. End of quote. This document brought together the well-known father of the genocide con, convention, Raphael Lemkin, with the relatively unknown woman, Rachel Auerbach.
- 05:40 Leora Bilsky: It is this document that prompted the research that stands in there at the basis of my lecture today. The questions that I asked was, what was the vision of the Jewish victims for the Nuremberg trial and how did it differ from that of the American architect, and why was it excluded from the Nuremberg trial and later on was somehow included in the Eichmann trial? So we begin with Lemkin in the summer of 1945, London. Lemkin arrives in London to informally advise the team of the American prosecutor Robert Jackson about the approaching Nuremberg trial. He lobbies the prosecution to include in the indictment the new legal term genocide, a term he coined in his 1944 book *Axis Rule in Occupied Europe*. As part of his efforts, Lemkin takes the testimony of Rachel Auerbach.
- 06:45 Leora Bilsky: Rachel Auerbach, as I mentioned, was a Holocaust survivor who was a key participant in Onneg Shabbat which was a clandestine archive in the Warsaw Ghetto that was founded by Jewish historian Emanuel Ringelblum to record the lives of Jews in the Ghetto, and to document the German's crimes from the perspective of the victims. Lemkin, the Jewish Polish jurist needs no introduction as he is world-renowned for his tireless efforts to include the new crime of genocide in international law, efforts that culminated in the 1948 convention. Rachel Auerbach on the other hand has been forgotten for many years. In recent years, historians have turned their attention to her work, but only with the publication of Samuel D. Kassow's book *Who Will Write Our History?* and the film based on it, did Auerbach

come to the attention of the public at large. Still not much is known about her contribution to law and in particular to the victim's efforts to revolutionize international law and the role of victims in post-World War II trials.

- 07:59 Leora Bilsky: My lecture aims to expose one aspect of Auerbach's vision, how to rethink the role of the victim as eyewitness to unimaginable crimes. In particular, I will examine how Auerbach perceived the role of victims testimonies vis-a-vis the Nazi camera. So let me begin with a short bio. Auerbach was born in 1903 in Poland. She studied history and psychology at the University of Lviv and became a journalist, publishing in the Yiddish and Polish press on literal, literary, and educational topics before the war. During the war, she ran a soup kitchen in the Warsaw Ghetto as part of the Jewish self-help organization, and as a member of Onneg Shabbat, she wrote a monograph on this soup kitchen. While still in the Ghetto she began to collect testimonies, including that of Jacob Krzepicki, who managed to escape from Treblinka to the Warsaw Ghetto and was later killed during the uprising. In March 1943 Auerbach fled the Ghetto and survived on the Aryan side under a false identity. When the war ended, she was one of the only three contributors to the Ringelblum's archive who had survived. She was a founding member of the post-war Jewish Central Historical Commission in Poland and, after immigrating to Israel, she directed the Special Witness Collection unit in Yad Vashem. This background can explain why Lemkin turned to Auerbach as his potential Jewish victim-witness for the upcoming Nuremberg trial.
- 09:42 Leora Bilsky: Despite Lemkin's and other Jewish leader's efforts to put the Holocaust in the spotlight in Nuremberg, Robert Jackson, the American leader, lead prosecutor, eventually decided not to call Jewish witnesses to testify. He gives his reasons in a letter to Chaim Weizmann and he writes, we were eventually able to get such complete and damning documentation on the persecution of the Jews that it would have been an anti-climax to have had any Jew testify to it. The Nazi documents are so coldly cruel and so complete as to the purpose of the to exterminate the Jews that nothing could be added. End of quote. Jackson decided not only to exclude the Jewish victims from testifying, but also to frame the whole trial around the charges of waging a war of aggression, and war crimes. Thus the crime of genocide against the Jews, the one that Lemkin tried to put in the center of the trial, was relegated to the margins of the Nuremberg trial. The trial began on 20 November 1945. A week later the American prosecution presented a new type of evidence to the court, the documentary film *Nazi Concentration Camps* that had been shot by Allied forces during the liberation of the camps.
- 11:11 Leora Bilsky: Jackson already mentions the film in his opening speech on, of the trial where he said, we will show you these concentration camps in motion pictures just as the Allied armies found them when they arrived - Our proof will be disgusting and you will say I have robbed you of your sleep - but the proof here will be so overwhelming that I venture to predict not one word I have spoken will be denied.

This same sentiment is echoed in, by James Donovan, an assistant trial counsel who said, these motion pictures speak for themselves in evidencing life and death in Nazi concentration camps. So we see the American prosecution hoped that the introduction of the film would help overcome one of the most difficult challenges of the trial, how to establish incredible events by credible evidence. Jackson's decision to rely on incriminating documentation from the German archives was motivated by his desire for evidence that was incontestable and utterly convincing. For the most part, he used written documents from German archives but he decided to also use audio-visual materials carefully extracted from films the Germans themselves had made. Note however that the decision to present *Nazi Concentration Camps* was at odds with his general strategy to convict the defendants on the basis of records that they themselves had created.

12:56 Leora Bilsky: According to law professor Lawrence Douglas, the film's introduction into the trial was meant to offer a solution to a dilemma. Although in general the trial aimed to adapt the Nazi crimes to the conventional legal framework of war crimes and military aggression, the screening of the film *Nazi Concentration Camps* was intended to open a window onto the Holocaust's unprecedented atrocities. The decision to rely on film instead of victim testimony came however at a price. In the legal competition between Nazi documents and Jewish voices, the former won out. Although the film brought the victims back into the trial center and provided a glimpse of the horrors of the camps, it did so without allowing the individual voices of the victims to be heard. In the film the victims remain unidentified, present only as walking skeletons and piles of dead bodies. Let us return now to Rachel Auerbach. The testimony she gave to Lemkin asked to establish her credibility in ways recognized by law. The testimony opened with an oath. The witness gave her name, country, date, and place of birth and profession. She introduced herself as an eyewitness to Nazi crimes. She also pointed to her expertise, expertise. During the occupation, she said, I worked also on secret Jewish archives relating to the treatment of the Jewish population by the Germans, and have completed several studies on this subject. End of quote.

14:44 Leora Bilsky: Here we get a first hint to the radical reversal the victims asked to make, to write the history of their destruction and to shape the future trial of their murderers by way of collecting testimonies in real-time, and now, trying to enter the trial itself. Auerbach one of the three survivors of the archives group tries to introduce this legacy into the Nuremberg trial. In her testimony, she describes the new crime of genocide from the point of view of the Jewish victims. Lemkin, as I said, saw genocide has a systematic policy of social and cultural destruction that cannot be reduced to mass murder. Auerbach follows him in her testimony and she describes the starvation, disease, and mass death in the Warsaw Ghetto. And I quote, at that time the number of corpses was so high that it was impossible to conduct individual funerals, and very often the bodies were buried in mass graves. The sight of the streets was completely changed because of the prevailing hunger.

Faces and bodies were swollen and disfigured. Masses of hungry people, beggars were asking help by singing beggar's songs. The street looked like an infernal picture. End of quote. At this point in her testimony, as she describes the streets of Warsaw's Ghetto as a vision of hell, her testimony unexpectedly changes direction.

16:29 Leora Bilsky: Auerbach turns her attention to the German cameras that recorded life in the Ghetto. And she said German newspapermen used to come to the Ghetto and especially the cemetery and take photographs of the piles of corpses. At a given moment the Germans brought film apparatus and made movies of different scenes of of the life in the Ghetto. End of quote. What can account for this unexpected move? Why did Auerbach decide to shift from describing the atrocities to the Nazi filming of them, which is relatively innocent? This moment is important I think, because it demonstrates that Auerbach understood the power of the photographed image. That the Nazi camera erased the Jewish voice, and that this erasure enabled the distortion of the truth. Hence, in her testimony, she turned herself into an eyewitness to the German camera in order to reveal the hidden intention of the Nazi filmmakers. And she said, the movies evidently were intended to humiliate the Jewish population even more in the eyes of the people who would see the movies. She described several scenes and another scene she says, was especially organized with Jews keeping on their knees naked women, in order to show an alleged low morality of the Jewish population. I personally watched the taking of moving pictures as the car visited different sections of the Ghetto. End of quote.

18:14 Leora Bilsky: Auerbach is aware that in the competition between the German perpetrator and the Jewish victim, the murderer has the final word. Therefore she wants to give testimony from the point of view of the voiceless victims. However, on a deeper level, her move intends also to reveal something about the unique nature of the crime. The Nazis tried to achieve total control, not only over the victim's lives but also over the representation of the crime after their death. They attempted to control the historical narrative by erasing all traces of their own violence and by blaming the victims. By filming the Ghetto shortly before its destruction, the Nazis relied on the objectivity attributed to the photographic image, in order to present a distorted story of life inside it. Importantly, they use the victims themselves as actors in the hands of the hidden German director. After the dissolution of the Ghetto and the destruction of most of its population, Auerbach - the surviving witness - gives testimony that intends to expose the role of the film in the crime. The testimony Auerbach gave to Lemkin about the German film was not her first one on the subject. Her die, her diary entry of May 22nd, 1942 offers a further explanation of the filmmaker's aims, a deliberate attempt to blame the victims for their own destruction. And she writes, "n short: by the German definition it follows that without that ten - let's say even twenty percent of Jews, who held themselves, somehow, above the water - the remaining eighty percent could be saved. End of quote.

- 20:11 Leora Bilsky: However toward the end of her entry we witnessed another reversal in Auerbach's testimony. Auerbach seems to have changed her mind about the Nazi film and she wrote, let them film! Film as much as possible! Let there remain a filmic representation from the ruin they brought on a settlement of 400,000 Jews! Let there remain on film the many faces of Jewish passers-by in crowded streets! Clusters of faces, of eyes - many years later they will shout a silent scream and tell the truth. End of quote. The filmic image, according to Auerbach, has a surplus that can reveal something beyond the director's intention and become an objective witness to the crime after all. What can this silent scream of the photograph tell us about the way we should understand the new crime of genocide? I return now to the Nuremberg trial.
- 21:18 Leora Bilsky: The Nuremberg trial marks an important turning point in international law, a moment of self-confidence when there was an attempt to apply the rule of law to war itself by putting the architects of the war on trial. At this precedent-setting moment, the prosecution sought new procedures that would be appropriate for the magnitude of the crimes, and it was ready to break with tradition by bringing a camera into the courtroom, both to film the trial and to overcome the weaknesses of human eyewitnesses by relying on the camera as an objective eyewitness. The hero of the 2006 documentary film *Nuremberg: the Nazis Facing their Crimes* by the French director Christian Delage is the camera itself. He argues that the original aim of the American prosecution was to use the films the Germans made themselves as incriminating evidence against them. However, since most of the films made by the Nazis had been destroyed or lost before the Allies could find them, the prosecution decided to rely on the American camera and on footage of the liberation of the camps.
- 22:34 Leora Bilsky: However this explanation overlooks the fate of the Nazi film *Das Ghetto* that Auerbach mentioned in her testimony to Lemkin. Indeed the American film unit found the Nazi film and, in a memo written by General James Donovan one day before the trial began, he outlined his strategy of presenting films as evidence, including this SS [Schutzstaffel, or Protection Squads] film of the Warsaw Ghetto which he proposes to screen as evidence for the persecution of the Jews. And he writes, in the film are seen policemen, who administer a vicious beating. They wear a Star of David on their arms and the Nazis apparently wish, wished to give the impression of Jewish cruelty to Jews. In any event, the fact that they staged the whole thing is established by an affidavit of a Polish Jew who was there when the film was made, and just what explanation the defense council could make of their having photographed Jewish misery during German occupation of Warsaw is difficult to see. End of quote. We can speculate that the affidavit mentioned is the testimony Auerbach gave to Lemkin which was then passed on to Jackson's staff. So why wasn't the SS film on the Ghetto screened at Nuremberg? The archive is silent; perhaps the prosecution feared it would be forced to present the entire film

and that it might be used by the defense as propaganda blame, blaming the Jewish victims.

- 24:18 Leora Bilsky: To conclude this point Auerbach's driving move of turning herself into an eyewitness to the Nazi camera seems to have anticipated the future. Concerns about legal objectivity led the American prosecution to prefer German documents and films over the testimonies of Jewish survivors, and so ironically the Jewish voice was excluded not only by the perpetrators of the crimes but also by the American prosecution which sought to put Nazi crimes on trial. In both cases, the exclusion of the victim's voice was due to the objectivity accorded to the camera. It was erased first from the Nazi film about the Ghetto, intended to control and manipulate its representation to the world, and again in the Nuremberg trial. This time because of the requirements of criminal procedure to establish guilt with objective evidence. The American attempt to use film as witness to unprecedented crimes, argues Lawrence Douglas, eventually failed due to two factors. First, the image did not speak for itself but had to be adapted to the legal framework of war crimes. Thus it erased the uniqueness of the Holocaust, or genocide, as the victims wanted. Second, the desire to find the ultimate witness in the camera, one that will not succumb to the frailties of human eyewitnesses, raised the specter of a show trial.
- 25:58 Leora Bilsky: What happened to the film later on? The Nazi film *Das Ghetto* was rediscovered in 1954. It was an unfinished film without sound. It was shot during May 1942, shortly before the largest action began and the Jews of the Warsaw Ghetto were sent to their death. Since its rediscovery, images from this film have often been used as visual evidence of the life in the Ghetto in movies, museums, and exhibitions, often without mentioning of their Nazi origins. In her 2009 documentary film *A Film Unfinished*, Israeli film director Yael Hersonski presents the Nazi film in its entirety and discusses the context in which it was produced, a context that is missing from most of the film's post-war reproductions.
- 26:59 Leora Bilsky: In an interview she says, I realized that things were much more complex than what they ultimately show us. Through the details you become aware that what you perceived as history is being perceived through the eyes of Nazi cameramen, that the Holocaust as we visually perceived it, was designed through Nazi eyes. The footage had images which became the most accessible images, the predominant images of the Warsaw Ghetto. I felt as if something which is substantially important for my understanding was denied to me. End of quote. The way Hersonski chose to deal with the split created by the Nazi camera, between the gaze of the perpetrator and the words of the victim, was by recreating in retrospect an imaginary meeting point. For this purpose, she contrasts the camera images with readings from diaries of Jewish victims from the Warsaw Ghetto who, like Auerbach, documented the production of the Nazi film and were found in the

Ringelblum archive. In this way, she exposes the gap between what the Nazi camera shows and what the victims testified.

- 28:19 Leora Bilsky: Now let me turn to the Eichmann trial. The Eichmann trial that took place in 1961 signaled a reversal of the jurous prudential approach taken by the Nuremberg trial. In order to correct its exclusions, Gideon Hausner, the Israeli Attorney General, decided to put crimes against the Jewish people, or genocide, at the center of the trial. On the procedural level, he reversed the Nuremberg's trial hierarchy between written evidence and victim's testimony by summoning more than 100 Jewish survivors as eyewitnesses for the prosecution. Among the witnesses in the trial was Rachel Auerbach. However, lesser known is the fact that it was Auerbach who had an important role in shaping the jurisprudence of the trial by introducing her ideas about the central place that the law should give to victims' testimonies as eyewitnesses to the Holocaust. In his 1966 book on the trial, Hausner attributes the legal revolution in the victim's role in the trial to himself and dedicates only a few sentences to Auerbach. He wrote that she was most helpful in placing at our disposal her department's huge collection of statements and putting us in touch with prospective victim-witnesses. However, he paints her contribution to the trial as technical and logistical at best.
- 29:56 Leora Bilsky: New historical research reveals that in fact, it was Auerbach initiative to open the trial to the testimonies of Holocaust survivors. Indeed, already in the first document Auerbach prepared for the trial, dated November 23rd, 1960, she requested to base the trial on the testimonies of Jewish eyewitnesses. Bureau 06 of the Israeli police saw the victim's role through the logic of forensic evidence and therefore proposed only 20 potential eyewitnesses. In contrast, Auerbach suggested that the entire trial should be based on victims' testimonies. She called them a living archive and to this end, she composed lists of potential witnesses for the prosecution. Today the Eichmann trial is remembered through the testimonies given by Holocaust survivors. But there is an interesting continuity between the Eichmann trial and the Nuremberg trial. In addition to survivors' testimonies, the Israeli prosecution wanted to introduce photos and films as evidence, and even decided to screen the same film that was shown in Nuremberg - *Nazi Concentration Camps* - but this time without the soundtrack. Instead, Hausner took it upon himself to explain the film's images. You remember that the soundtrack explained the images as war crimes, but in the Eichmann trial, the pictures did not speak for themselves but were presented by the Israeli prosecution as proof of the new crimes, crimes against the Jewish people.
- 31:38 Leora Bilsky: Even more interesting is the innovative way that the Israeli prosecution found to establish the authenticity of Nazi films and photos presented in the trial. The defense attorney Dr. [Robert] Servatius had no objection in principle to presenting the films but he required to know where and when they were taken. In response, Hausner answered, we are unable to say when exactly. But we shall only

exhibit a film in a case where some witness or other will be able to appear and swear that what he saw with his own eyes at a particular place and at a particular time looked as the film shows. For example, we have a film which was apparently taken at the time of a deportation to Westerbork camp. We shall bring a witness who will swear that when people were deported, the scene looked like that, and this will illustrate the testimonies heard. End of quote. A comparison between Hausner's and Auerbach's approaches to the Nazi film is striking. While Hausner's summoned the Jewish survivors to testify to the authenticity of the Nazi films, Auerbach saw her role as eyewitness to the Nazi camera as disruptive, to warn against its pretense of objectivity, to expose the manipulation.

33:12 Leora Bilsky: The issue of how to understand the role of the camera is given another twist in the trial when we turn to the testimony of Henryk Ross. Henryk Ross had been a professional Jewish photographer before the war. In the Lodz Ghetto, he had been a photographer and a worker in the Judenrat's statistics department which had given him access to film and processing facilities in the Ghetto. However, he had also taken unofficial photos in secret documenting the conditions in the Ghetto, the suffering of the Jews, and the brutality of the Germans, thus risking his life. Like those involved in the Onneg Shabbat Archive in Warsaw, Ross had buried thousands of negatives in the ground of the Lodz Ghetto. He later explained, just before the closure of the Ghetto, I buried my negatives in the ground in order that there should be some record of our tragedy, namely the total elimination of the Jews from Lodz by the Nazi executioners. I was anticipating the total destruction of Polish Jewry. I wanted to leave a historical record of our martyrdom. End of quote. Ross's testimony in the Eichmann trial consisted of two parts. First, he was brought to testify as an ordinary eyewitness to the events in the Ghetto. Second, the prosecution submitted his photos as forensic exhibits to the court, and Ross was brought to testify to their authenticity. This attempt by the prosecution to adapt Ross's testimony and photos to the conventional procedures of an eyewitness seems to obscure the unique role of the victim as witness-photographer.

35:08 Leora Bilsky: Seventeen years later, David Perlov creates a documentary film, *Memories of the Eichmann Trial*. In the film, he interviews Henryk Ross about his clandestine photography in the Ghetto. In the most memorable scene, Perlov asked Ross to recreate the way he secretly took photos in the Ghetto. Ross wears a hat, scarf, and a coat that conceals the camera he is holding. He quickly pulls the camera out from beneath the coat, takes a picture, and just as quickly closes the coat. The recreation of the moment shows how Ross turns himself into the aperture of the camera. One photograph of particular interest is a photograph Ross took of the Lodz Jews being loaded onto a train destined for an extermination camp. It was a photograph taken against all odds as there was a curfew during the action and it was forbidden to leave the Ghetto for the train station, where the deportation took place. Ross's friends managed to smuggle him ahead of time into a cement

storeroom beside the train. There, he looked through the hole in the wall and took the photo.

36:26 Leora Bilsky: In the Eichmann trial Ross testified about it. I was there from six in the morning, until seven in the evening, until the Germans went away, and the transport departed. I watched as the transport left. I heard the shouts. I saw the beatings. I saw how they were shooting at them, how they were murdering them, those who refused. Through a hole in a board of the wall of the storeroom, I took several pictures. In the film, Ross tells Perlov of his fear of testifying at the Eichmann trial, as he knew that whoever sees Eichmann must die. And he said, I was scared because now it's my turn, as I saw him. End of quote. Ross says that during his entire testimony, Eichmann looked him directly in the eyes. All the time looking at me like something was eating him that I stayed alive.

37:25 Leora Bilsky: It is at this point that a transformation occurs in our understanding of the victim as eyewitness to Nazi crimes. We are reminded that in the case of an event without a witness, the very act of taking a photo becomes an act of defiance. We learn how the trial itself can recreate a meeting point where the victim returns the gaze of the perpetrator, a meeting point that was supposed to have become an impossibility. Ross reminds us of the essence of the crime, the very sight of which - like the gaze of Medusa - should have turned people to stone - a crime without a witness. Near the end of the film, it is noted that after his release from the Lodz Ghetto, Henryk Ross did not take a single photo.

38:12 Leora Bilsky: So I come here to my conclusion. In his book *Images in Spite of All* the philosopher, George Didi-Huberman, explores the controversy prompted by the exhibition of four photos secretly taken by Jewish prisoners in Auschwitz, the only photos that depict the actual process of mass killing perpetrated in the, in the gas chambers. Trying to explain the significant attributes to these photographic images, Huberman er, returns to the myth of Medusa. And he says we have learned in school the story of the Gorgon Medusa whose face, with its huge teeth and protruding tongue, was so horrible that the sheer sight of it turned men and beasts into stone. When Athena instigated Perseus to slay the monster, she, therefore, warned him never to look at the face itself but only at its mirror reflection in the polished shield she had given him. Following her advice, Perseus cut off Medusa's head with the sickle which Hermes had contributed to his equipment. End of quote.

39:26 Leora Bilsky: Contrary to the view that photographic images of the Holocaust may falsify the truth, Didi-Huberman uses this parable to point to an important aspect of the power of the image. Perseus does not flee the Medusa; he confronts her in spite of all, in spite of the fact that the face-to-face confrontation might have signified neither the gaze, nor knowledge, nor victory, but simply death. Perseus confronts the Gorgon in spite of all, and this in spite of all - this de facto possibility, despite a legitimate impossibility - is called image. End of quote. Didi-Huberman tries to create space for looking at the four photos taken by Jewish prisoners in Auschwitz

alongside victims testimonies, such as the Onneg Shabbat secret archive, as acts of defiance, as attempts by the victims to retain their agency, and humanity in face of a crime that aims to dehumanize them before killing them. The victim's insistence on preserving their testimonies, on recording the crimes, on taking photos, should all be understood as acts of resistance, attempt to remain human against all odds.

40:46 Leora Bilsky: At this point a common thread becomes apparent, it connects a surprising moment when Auerbach turns herself into a witness of the Nazi camera, the moment when Hersonski transforms in retrospect five survivors into witnesses to the silent Nazi film of the Ghetto, and the moment when Henryk Ross, the Jewish photographer who testified in the Eichmann trial, faces the perpetrator and returns his gaze. In each of these moments, there is a recreation of a meeting point that was intended to become an impossibility at the time of the crime. It seems that both Auerbach's attempt to become an eyewitness to the Nazi camera, and Henryk Ross's attempt to transform himself into a hidden camera, point to the need for a new understanding of the eyewitness, beyond the forensic model of law. If the crime is built on a structural split between perpetrator and victim, then the act of testifying must make this split present, but at the same time, endeavor to resist it through the very act of bearing witness. Thank you.

41:59 Deborah Hertz: Okay. Well, Professor Bilsky, thank you so much uh, for this really enlightening talk with the images. Um, and I really appreciated the articles uh, that you wrote and, you're just so much on the um, on the, you're so much focused on the topics uh, that we at the Holocaust Living History Workshop have been investigating for years um, of survivor testimony, eyewitness, the law. Um so, it was just a wonderful talk. So my first question has to do with a counterfactual about the Nuremberg tribunal. So if Lemkin and Rachel Auerbach had been more successful in convincing the Nuremberg officials of their approach, how would things have, be different? If, if Lemkin's definition of genocide had been applied rather than crimes against humanity? Um, if Jewish survivors had been allowed to testify rather than showing that movie? How do you think the legal outcome would have been different?

42:59 Leora Bilsky: Thank you, Deborah. It's uh, very nice to meet you and I'm looking forward to the discussion with you. So a counterfactual, yes. The Nuremberg trial actually um, we don't have to imagine too much because the, the idea that the Lemkin and Auerbach and other Jewish jurists like Jacob Robinson's and others pushed has become the dominant uh, understanding of international criminal law since the 1990s. And it, it replaced the paradigm of war crime trial with the paradigm of what we know today as the atrocity trials which put in the center crimes against humanity, and genocide, and opened the trial to a victim's testimonies, but not only to victims' testimonies, to their representation, making them call partners, parties to the trial. So this vision has become the dominant one while the conspiracy

and aggressive war was put to the margins of history. So um, we can imagine it backward from the trials of the 1990s.

- 44:16 Leora Bilsky: But I hope, I want to to correct something. The Americans indeed did not introduce any um, Jewish eyewitness but the Russians did. And one, a one of the most famous Jewish eyewitness, a survivor was Abraham Sutzkever, the the famous Yiddish poet. And we can glimpse of how things could have been changed by listening to his testimony, which he, indeed he discussed the the atrocities, the, the, the death, but he also put in the center what happened to the Jewish culture. And he tried to talk about the humiliation the, the, the deliberate humiliation of uh, Jewish rabbis. And he even tried to introduce uh, the Jewish um attempt to uh, to, to reconstruct the culture afterwards here, and to to actively uh, pursue the trial as not just as a passive victims, or, or witnesses to the prosecution but as co-prosecutors. They thought that they are on the same level. So we can get some glimpses of how it could have been different, and I think very much the Eichmann trial is trying to do the reversal. And that's what I want, I wanted to show in this in this talk. Although there is some continuity, if we focus on the camera, so.
- 45:58 Deborah Hertz: Yeah. Well, let me even turn to the Eichmann trial um, because I, as I understood your talk and you just repeated it - the Eichmann trial was a um, was an antidote to the errors of the Nuremberg tribunal - um, but let's talk about some uh, distinct differences between, between the two trials. So here are just a list of questions and you could choose - as my students hate this when I have like five questions and, you know, they don't know which ones to answer. Um so, the first one has to do with the audience for the uh Eichmann trial, whether the audience was the world, the audience was German prosecutors um, who might take up cases inside of Germany, um, whether the audience was more the Israeli public - to show them by the uh, survivor testimony that um, that their impressions uh, during the 1950s about survivors were harsh and wrong. Another interpretation, which was that this was to cement the idea in the world that the state of Israel and the Holocaust were inextricably uh, linked together. And then, of course, there's the issue of the [Hannah] Arendt critiques. Um, I've taught that book for so many years um, and a lot of my classes read Bettina Stangneth, which is an attempt to critique Eichmann's, uh Arendt's description of Eichmann. But the key uh, issue that um, that Arendt um, addresses in her, in her *New Yorker* articles on the trial uh, with her critique of the Israeli prosecutors um, and her critiques of the Jewish consuls uh, and her so-called defense of Eichmann. Um, I wondered if you could touch on any of those, in relationship to these big themes you've been talking about?
- 47:41 Leora Bilsky: Thank you. It's a long question. We can have a long conversation because because Arendt is one of my favorite in teaching. So uh, yes. We can begin with her because what she was criticizing in, in the trial is somewhere in between Nuremberg and Eichmann because she did not want to put the aggressive war or war crimes at the center - just like the other Jewish victims and critiques -

she wanted the atrocity to be at the center, crimes against humanity - which was her rendition of genocide actually. This is what she wanted at the center. So here, she is just like a Lemkin, even though in Israel they called it crimes against the Jewish people. And this is, a there was a legalistic explanation for this because the genocide convention was, had to be a prospective, and this was retrospective. So the, the Israeli legislator had to put crimes against the Jewish people, but of course the, there is an ah, a most um, a more significant uh, um, point here, which uh, the which is the question between how do we deal with the crime of the Holocaust? Do we universalize them as war crimes or crimes against humanity? Or do we actually put at the center the Jewish people who were persecuted there?

49:18 Leora Bilsky: So genocide was supposed to be something in between, not just like crimes against humanity, inhumane acts against individuals, but to put the the group in the center. And in this case, it was the Jewish group. So uh, so we can see that uh, that Arendt takes some of Lemkin, but she opposed to the, to the testimonies of, of Jewish victims - especially those who were not really eyewitnesses to what Eichmann was doing, but were witnesses to what was done to the Jews. And here you are right, that uh, the audience is different but the audience is the Israeli audience, and the Jewish world, but the Eichmann trial succeeded in actually changing what we think about forensic testimony. It created, what we call today, the ethical eye-witness. And also in international criminal law, some part of bringing witnesses is not just instrumental for their prosecution; it's to vindicate their dignity, their humanity. Because, if you are having a trial against such crimes and during it, you again repeat this dehumanization or this silencing of the victims, the trial itself continues the crime in some way.

50:45 Leora Bilsky: So this is the dilemma that was there. So Arendt was opposed to the victims and um, and I think she was wrong uh, but uh, but this is how the Eichmann trial a was created. Note that, though, that if you look at the languages to which it was simultaneously uh, translated it followed uh, it followed the Nuremberg in precedent. And what it didn't have, which the Jewish victims were very critical of, it didn't simultaneously translate the trial into Yiddish, which is a very important distinction to see who is the audience. The audience are Israelis - the trial is mostly in Hebrew - and the world at large. But the group that was completely devastated, the Yiddish as part of what Lemkin wanted to put in the center, was not part of the of the trial. And also Sutzkever was not invited to give testimony, even though he was in Israel at that time, and the most famous um, victim in Nuremberg.

52:01 Deborah Hertz: Yeah, thank you. Um okay, so my third question uh, focuses on two aspects of the Warsaw Ghetto which came up very briefly in your talk. Um, one of the are the cafes, and the other one are the, the other one is the Jewish police. So one of the complicated issues that comes out of course in the Arendt book and in everything that you read about the Holocaust was uh, that the, the system of of persecution and genocide was designed uh, to employ Jews at every level. Um,

and that inequality did not cease in 1939, or 1940, or 1941 inside of the Jewish world. So is there really a danger that, for instance, exposure of the film you discussed, the Gestapo film that Hersonski uses in her film uh, that if that's widely shown it will shift the discussion away from the perpetrators, toward the hierarchy of victims, or the response of victims? So is there a danger in, as it were, too much visualization?

53:07 Leora Bilsky: Interesting uh, look first of all to, to understand the uh, the film, the Nazi film *Das Ghetto*, freezes us in time before the destruction. And now in the, in Warsaw Ghetto it, you could see everything that you see in normal uh communities, but driven to the extreme, so also extremes of inequality, and so forth. And Auerbach was part of the the group of the uh, Ringelblum archive. They wanted to document everything, very objectively, all of it. Not to produce a heroic history, and not to show all the victims as saints, they wanted to to show both a side of it, in order to understand, really, people, victims at this extreme. How they react, and what was happening. And also I mentioned Henryk Ross. Also, he took photographs, secretly he took photographs, of both rich and poor. And he wanted to expose this part of their life in the Ghetto, in the Lodz Ghetto.

54:26 Leora Bilsky: And it's interesting to see that, in the Eichmann trial, they did not show these photos of him. They only showed the atrocities, and so forth. So you see that there uh, that there is a repetition of this dilemma, of whether we are able to show such photos without blaming the victims again. And I think that uh, this is a dilemma that Hersonski is doing a really a good job because she is trying to create what Saul Friedländer called integrative history - to bring together the camera and the victims, to show this silent movie uh, that was never finished. That's why she called the film unfinished, a film with the diaries of the Jewish victims, and to bring them them together in order to show uh, um, the differences, and the two points of views together. So I think this is important and I, and I think also for Lemkin it was very important to look at these cultural sites.

55:38 Deborah Hertz: Okay, so the last question I wanted to ask has to do with Lemkin himself, and his definition of genocide. Um, you suggest in his um, discussions with Rachel Auerbach that Lemkin thought that individual Jewish testimony would help prove the concept of genocide. If you contrast the so-called subjective, subjective evidence of genocide, and the objective evidence of genocide, I was under the impression - perhaps I'm wrong - that Lemkin's um, uh, definition rested on an analysis of, as it were, Nazi structures, Nazi intentions uh, documents like the Wannsee Conference testimony, and not so much individual experience. And I wondered um, as as Lemkin proceeded through his life, would he agree with you that Jewish testimony is evidence of genocide?

56:38 Leora Bilsky: Well this is a great question. Look, certainly, Lemkin looked for the intention, the intention, the special intention to eliminate the group is uh, is crucial to his definition of genocide. And this is why he, when he ran away, he took with him a

suitcase full of documents, and the documents were Nazi laws and, and rulings uh, trying uh, trying to eliminate the group. So he certainly had this objective side of how to prove genocide. On the other hand, this is why it was so um, such a surprise for me in the archive to find the testimony he took from Auerbach. Because there - I, I didn't have a chance to go into it - but my research in the last few years is about a cultural genocide that was cut out from the genocide definition that got into the convention, against uh, what Lemkins was was thinking about. And if you go back to the testimony, to the full testimony that Auerbach gave to Lemkin, you see there that she is discussing cultural genocide. And she's discussing genocide without this narrowing to mass murder, to discuss the economic, and political, and cultural, and religious aspects of it as a comprehensive crime. So she follows very much the abstract definition of Lemkin by discussing what happened to the victims. By the way, she also talks about the Polish people as victims of genocide, but not of mass murder. So it's a, I think it's very much gives us a very different understanding of genocide.

- 58:32 Leora Bilsky: Moreover there, there is now um, um historians who, who go back to the archives of uh, Lemkin and see how important for him was testimonies. However in, with regard to the Holocaust, he did take testimonies. He also wanted to broaden genocide to also what happened in Africa and so forth. And there he took very different view of the agency of the victims. So there is another part to it. But definitely, I think what we see is that he wanted the testimonies of victims. And just lately, together with Jim Loeffler, we we published in *The Atlantic* an article about a poem uh, uh that Lemkin himself composed in Hebrew, published in uh, in *Al ha-mishmar* in 1957, where he gave this exact testimony of himself through a poem, through a poem about cultural genocide - not just putting a mass murder, because mass murder is murder writ large, and he wanted to show us that there is something different in this crime that wants to eliminate a culture totally and through which, to eliminate a group. So this is, I think, very important for Lemkin. Unfortunately, it didn't become part of the Nuremberg trial for different reasons.
- 1:00:06 Deborah Hertz: Okay I think it's time to wrap up. So, thank you very, very much.
- 1:00:11 Leora Bilsky: Thank you very much. I wish you could come here and drink wine with me in a cafe in Tel Aviv, which is all open.
- 1:00:20 Deborah Hertz: I can see it just now. I know just where the law school is. That would be great.
- 1:00:24 Leora Bilsky: Goodbye and thank you so much for your -
- 1:00:27 Deborah Hertz: Bye-bye.
- 1:00:29 Susanne Hillman: Thank you very much Leora for joining us from Tel Aviv today, and for giving us a stimulating and enlightening, as Deborah said too, enlightening presentation. Thank you Deborah for conducting the Q&A session today. That

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certainly added a lot to our understanding of this important topic. Last but certainly not least, thank you, everyone, for attending today. Thank you and goodbye. Till next time, bye everybody.

- 1:01:00 [Read Write Think Dream / The Library UC San Diego Channel / www.uctv.tv/library-channel]
- 1:01:05 [Film as Witness to the Holocaust: A Victims' Perspective / Featuring / Leora Bilsky / Professor, The Buchmann Faculty of Law / Tel Aviv University / May 5, 2021]
- 1:01:09 [Presented by / The Holocaust Living History Workshop / Deborah Hertz, Director, The Jewish Studies Program, UC San Diego / Susanne Hillman, Program Coordinator, The Holocaust Living History Workshop / UC San Diego Library / Erik T. Mitchell, The Audrey Geisel University Librarian / Nikki Kolupailo, Director of Communications and Engagement]
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