

MAKING PEACE WITH YOUR ENEMY:
NELSON MANDELA AND HIS
CONTRIBUTIONS TO CONFLICT
RESOLUTION

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Saltman Center for Conflict Resolution

William S. Boyd School of Law

Thomas and Mack Moot Courtroom

TRANSCRIPTION

DANIEL HAMILTON: It's a wonderful day for the Law School and it's a wonderful day to commemorate, celebrate the tenth anniversary of the Saltman Center for Conflict Resolution. I want to thank our distinguished panelists and I, of course, want to thank Saltman Center's advisory board which just met and includes several of these panelists and also a guest we have here today—a man who is no guest—Dean Richard Morgan [*applause*], Judge Phil Pro [*applause*]. I want to recognize [Magistrate] Judge Cam Ferenbach who is with us today [*applause*] and also our Provost John White [*applause*]. I also want to recognize and welcome our wonderful new member, a year old at the Saltman Center, Professor Lydia Nussbaum [*applause*] and our first Saltman fellow, Jae Barrick [*applause*].

Ten years ago, Professor Jean Sternlight, who is of course a nationally recognized figure in the field of conflict resolution and law and psychology, formed an extraordinary partnership with Mike and Sonja Saltman and together, over a decade, they have made the Saltman Center for Conflict Resolution a national leader in the field. The Center has been one of the signature successes for the Law School and the University and promises great things going forward. There is no better way to commemorate this than by recognizing the extraordinary work of Nelson Mandela and the example he set for us all. I'm going to steal an anecdote from [former] Secretary Hillary Clinton, who was here a few weeks ago, and when asked who was the most important person she had met on her decades on the world stage, without missing a beat, she said Nelson Mandela. She said that, on the day of his inauguration as President of South Af-

rica, he had invited three of his jailers to the event and they took a prominent role. And that, of course, reflects the combination of idealism and political savvy and forgiveness that made moving forward possible. This panel will discuss this today and brings decades of achievement and innovation and extraordinary insight into both this unique transformative figure and what he can teach us about conflict resolution. To talk more about this central panel, please join me in welcoming someone who made all this possible, Professor Jean Sternlight [*applause*].

JEAN STERNLIGHT: I join the Dean in welcoming all of you to this event. As he mentioned, this is the tenth anniversary birthday party of the Saltman Center for Conflict Resolution. I know it doesn't look exactly like a birthday party but I think that's consistent with what we've tried to make the tradition of the Saltman Center over the years, which is to celebrate conflict resolution and make discussions of conflict resolution available to the public. We could have had a regular party with some balloons and cake and noisemakers, but what we wanted to do instead was host an event that we thought would be meaningful for all of you and for us. When we tried to think about what should be the focus of that event, I asked all of the panelists here, "what do you think?" It took them about one second to say, "let's honor the contributions of Nelson Mandela." President Mandela, of course had just recently passed away, but more important he is the personal hero of all the panelists, as well as the hero of probably everybody in this room.

The panel that we brought together is really exceptional. You can read a lot about all these people in the program, so I'll just give you a few highlights for each panelist. Richard Goldstone, a former member of the Constitutional Court of South Africa, has led investigations of alleged human rights abuses in South Africa, Yugoslavia, Rwanda, the Middle East, and elsewhere around the world. Penny Andrews, who grew up in Apartheid South Africa and became dean of Albany Law School, has written widely on race, gender, and human rights issues. Andrea Schneider, our moderator, is a leading faculty member from Marquette Law School who specializes in international conflict resolution. Carrie Menkel-Meadow, now a chaired professor at UC Irvine, is one of the most well-known, best scholars in the area of dispute resolution and negotiation in particular. Bob Mnookin, from Harvard, is an internationally renowned scholar of dispute resolution who, among many other books, has written one including a chapter discussing Nelson Mandela and his negotiations strategies. So we've got great, great panelists.

I'm going to cede the floor in a moment to Andrea Schneider, who is my good friend and co-author. She is going to be the moderator for today. But before I do that I just want to give a few words of happy birthday thanks to some of the people that are here, of course most specially Michael and Sonya Saltman, founders of the Saltman Center for Conflict Resolution [*applause*]. None of this could ever have been possible without them. I still remember the day, now a little bit more than ten years ago, when I interviewed for the job here. To

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be honest, I was a happy faculty member at University of Missouri and I really didn't think that I wanted to come to Nevada, but I met with Mike and Sonja Saltman and then I met with all the UNLV law faculty members and I met with then Dean Dick Morgan and they convinced me that this was a place to which I had to come. It was so exciting to think about forming this venture with the Saltmans at the Saltman Center and I've just been thrilled to do it every minute, so truly I thank you [*applause*].

The other folks that I wanted to specially thank of course include Dean Dan Hamilton, who just spoke. Dan has been an incredibly enthusiastic supporter of the Saltman Center since he came, a little bit more than a year ago, and he's made lots of things possible that wouldn't have otherwise been possible. We also have many other people here who have personally contributed so much to the Center. We have for example, Ray Patterson, who was the associate director for many years [*applause*]. We have Lydia Nussbaum, who is the current associate director [*applause*]. Peter Reilly, who was our director of Negotiation Training Program for a number of years [*applause*]. We have our board of advisors, many of whom are sitting up here, but also we have board of advisors members sitting in the audience like former dean Dick Morgan and Judge Phil Pro, who were already mentioned. We've got Sandra Rodriguez, who is hiding in the corner [*applause*]. Without her the work of the Saltman Center would be impossible because she does everything from room reservations to catering to budgets and power points. I mean, everything. And I also want to recognize our excellent Publications office; they provided a lot of the materials that you see now. We have wonderful IT people; some of who are sitting here, to ensure all will go smoothly. And we've got our students and our graduates.

I'm not going to take up any more time. Instead I am going to welcome our moderator, Andrea Scheider, as we prepare to hear from a wonderful panel. Thank you [*applause*].

I. OPENING REMARKS

ANDREA SCHNEIDER: I would like to start by thanking everybody as well for gathering us all together. It is a treat, as always, to come out here to UNLV. If for no other reason, there are many of us that are jealous to have such patrons here. If we could clone the Saltmans and place them at every law school around the country, we all at other law schools would be delighted. Thank you so much to the two of you and to Jean for having this kind of dream and making it come true. It really is a remarkable journey and it is wonderful to be here ten years on and moderating this wonderful panel.

We are going to be talking about Nelson Mandela. One of the key things that I've been asked to talk about, and I'll talk a little bit at the beginning and a little bit at the end, is really why he is relevant for today. We all know, being in classrooms or raising kids, that if you've talked about anything that happened

more than five years ago, they kind of glaze over it and have no idea. It's not on Facebook so it can't possibly be relevant.

So why is Mandela relevant for us today? I think that there are really two answers for us to think about. One is a model of how we can resolve an intractable conflict. For those of us teaching dispute resolution, South Africa is a beacon of how we hope all conflicts could be resolved, and we are disappointed time and again when that doesn't happen. In an ongoing series of conflicts around the world that are often frustrating and painful and filled with pessimism, I think we still look to South Africa and [Nelson Mandela's] leadership as a model of what we hope happens. So that is one reason. I think the other reason, and we'll hear from our panelists today who I know have personal stories to tell as well, he really is the model of leadership. In looking at his personal characteristics, the father of the South African democracy, by actually stepping down and not becoming president for life, held his country together.

I looked at some of the eulogies of Nelson Mandela as I was thinking about my remarks, and one political leader after another puts his humility, and his ability to reconcile, as we've already heard. One of my favorite quotes that our president [Obama] used, "I'm not a saint," Nelson Mandela said, "unless you think of a saint as a sinner who keeps on trying." I think that is a really good model for many of us. His awareness of personal flaws made him a stronger, not a weaker politician. And frankly, as many of us face Election Day in four days—that we would rather not wake up on Wednesday and see what's going on—again, Nelson Mandela is a model of humility, of someone who recognizes his personal flaws and continues to move from strength to strength, notwithstanding. He is an inspiration for many of us.

Our panelists today are a wonderful group of talent with different perspectives. You have their biographies in your program and I know they will also share their personal perspectives on what has either inspired them or their own interactions, so I will not go into their bios other than to encourage you to read those through. With no further ado, I'm going to turn it over to them so that we can get started. We have a video in between and then the lovely Professor Menkel-Meadow will get us started.

[Video plays]

II. PANEL REMARKS

CARRIE MENKEL-MEADOW: In the last decades of his life as President of South Africa, world statesman and father of his country, Nelson Mandela has been revered, rightly, as a hero, mentor and model of reconciliation, forgiveness and peace seeking, as well he should be.

But today I would like to focus on the early part of his career before he transitioned to the man we now remember—a man of fierce principles, commitment and devotion to his cause of first African nationalism, and anti-

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Apartheid freedom, and then later, commitment to a democratic multi-racial and just society.

His early years as a committed revolutionary were not peaceful, nor concessionary and his political commitments were models then and later for many generations of justice seekers, even as many of whom, like him, became mediators, conciliators and peace seekers later in life. In short, Nelson Mandela was the model of the familiar phrase, “Without justice there can be no peace, but without peace, there can be no justice.” Ultimately he was committed to both, but he put justice first. There are lessons in this for all of us in conflict resolution, as the challenge of seeking justice is sometimes not so peaceful.

Mandela’s many lessons come from his personal qualities of *strength* (including the physical as a boxer and ballroom dancer), *commitment and determination* (rejection of earlier efforts to free him because they were not on his terms, and aligning himself with some of the communists’ tactics), *resilience* (how many could endure twenty-seven years of wrenching, brutal and isolating imprisonment?), unwavering *righteousness* to his cause, but with *wily strategic ploys* and moves (dissembling to Oliver Tambo, the leader of the ANC in exile about his efforts at negotiation with Presidents Botha and de Klerk), human *dignity* (developing relationships not only with his enemies later in life, but also with his warders in prison), *identity* (always expressed himself as a “freedom fighter for his African (nationalist) people, not only his own Xhosa people), *persistence, patience*, and most importantly, *commitment to his principles*. As you might hear later, his negotiations with his enemies were always *principled*—he did not concede on many important points of ultimate justice for his people, (refusal to grant “group rights” or veto power to the white minority in negotiations for the new constitutional order), but he was thoughtful and, unlike many leaders, willing to *apologize, forgive, and later, change his mind*. As we all know him now, he refused to let his enemies control him when he left prison—he forgave them so they would not continue to inhabit his body and control him with continued anger.¹ His leadership was self-described as that of a *shepherd* who led his flock by following behind (working with his people) but gently guiding from behind and “under” (traveling underground throughout the country while formally “banned” and learning what his people needed and wanted from the freedom movement). He taught and explained his Freedom Charter principles that came from serious law study and continued admiration for the constitutional orders of the detested White oppressors.

We focus today on what *knowledge and experience, defiance and a heightened sense of justice, with courage*, seasoned with aging and longing for peace for himself and his people, did, when combined to make him a *leader*. A *leader* who took risks with his enemies, but also with his friends and colleagues, mak-

¹ Bill Clinton, *Introduction* to LONG WALK TO FREEDOM: THE AUTOBIOGRAPHY OF NELSON MANDELA (1st ed. 1994, 1995) (2013).

ing decisions behind the table (or cellblock) that were not necessarily consensually arrived at, but he deemed necessary for his cause to move forward so that Blacks, Whites, and Coloreds could attempt the experiment of living together more or less in a landmass claimed by all, even with their different stories of their different histories on that land.

But it was not all “peace and truth and reconciliation.” First there were boycotts, strikes, riots, protests, rolling actions, sabotage and yes, violence. Though Mandela was never directly implicated in a personal act of violence,² it was he who founded the violent arm of the African National Congress—the Umkhonto we Sizwe (abbreviated MK, Zulu for “Spear of the Nation”)—and he did receive guerilla training and sought arms from China, Russia and other sympathetic sources. As he traveled his country incognito, after banishment, he was always trying to figure out how to hide an army (like other revolutionaries) without the mountains, hills or forests of Cuba or China. Mandela was of his time—violent actions in the name of justice were used by the Baader-Meinhof gang in Germany, Fidel Castro and Che Guevara in Cuba, many of the African independence movements (Mau Mau Uprising in Kenya and the Algerian Independence War), Vietnam, and although the ANC preferred to sabotage buildings and spare life (as the IRA did in the beginning of the Northern Irish “troubles”), when the massacres of Sharpeville, Soweto, and the harsh Public Order laws of the 1950s, 60s and 70s increased repression and oppression, the conditions had changed enough for Mandela to want to separate the freedom “fighting” part of his movement from the political arm of the party. All of this spoke to many of us in the 1960s in Paris, in Czechoslovakia, Hungary, Berkeley, and for me, Columbia.³—If the (il)legitimate powers will not yield to argument, democracy, protests and mass actions, then other tactics must be chosen to meet the conditions. Mandela and the ANC taught ultimate commitment to the cause of justice—peace comes only after “rights” have been achieved.

² There were allegations of some domestic violence, and as with many great leaders, not a totally flawless personal life; with disloyalty to wives and children, sadly exposed in the end of life fights among his family members for his name, land, property and even his foundation—which at the end of his life focused on AIDS/HIV, poverty reduction and the issues he felt he had not done enough on while formal leader of his country.

³ I was a member of SDS at Columbia in 1968 where we thought we had started a revolution against the military industrial complex of the Viet Nam war, a racist gymnasium in Morningside Heights, and other injustices in our nation, the world and our own local community, by occupying buildings and closing the university down in what is now known as Columbia '68. I quit as SDS morphed into the more violent Weatherman and the Boudin household was bombed, in error, in Greenwich Village. Instead I became a mediating body sleeping on the ground of the University for days to prevent the police from coming in, but they were called in by the University's President Grayson Kirk, and the NYPD beat students bloody and many were arrested. The Columbia feminist and anti-racist movements were born out of this experience as injustice within the Left-Antiwar movement exposed other forms of injustice and American revolutionaries could not or would not escalate to the mass actions and more violent resistance used in other parts of the world.

Theoretically, the field of conflict resolution urges non-violent, dialogic communication for mutual understanding and reconciliation; it favors a focus on process, communicating needs and interests, listening, and finding common ground and human experience. Human rights and justice activists, as well as other political revolutionaries focus on outcomes, changes and amelioration of inequalities in social structure, and correction (using even violent methods, if necessary to balance power asymmetries).⁴ Conflict resolution is thought of as spiritual, emotional, psychological, and interpersonal. Justice is political, economic, and structural—these different goals can lead to different actions and conflicts of their own—as Nelson Mandela (Madiba)’s career tells us. He preferred non-violent protests at first, as founder of the Youth League of the African National Congress, but he later rejected the ways of another famous South African “Colored” (Indian Mahatma Gandhi) because non-violence was a “tactic”—a method to be used, depending on conditions⁵ and when the oppressors had the guns (and the force of the Apartheid law and legal system) the conditions required different tactics.

In his autobiography Mandela said that his experience as a lawyer (both as a representative of others, and later as a defendant) in South Africa taught him he could not expect justice of the legal system; he was surprised when occasionally it was delivered (his first treason trial was ultimately concluded with acquittal after six years of legal proceedings) but he did not expect it from an unjust legal system.⁶

So Mandela advocated sabotage, strikes, protests, and mass demonstrations of the oppressed races to make clear to the National Party and its white adherents that they could not maintain their unjust system. He was tried and ultimately convicted of treason for crimes against the state (and tainted with alleged membership in the Communist party, which he later attempted to disavow suggesting he was always a supporter of capitalism and a fan of British style Parliamentary government), demonstrating that the present often rewrites the past in current images and needs of pragmatic politics and solutions. Imprisoned for twenty-seven years, literally chopping rocks, then, in more peaceful days, serving as jailhouse lawyer, and political activist within prison, advocating successfully for long pants (Blacks were given only short pants) and bread (Coloreds and Indians were given bread, but blacks were not), Mandela lived his life as a

⁴ Maia Carter Hallward & Jennifer P. Berg, *The Olympia Food Co-op Boycott: Nonviolent Struggle Versus Conflict Resolution Process*, 32 CONFLICT RESOL. Q. 33, 34 (2014).

⁵ MANDELA, *supra* note 1, at 111–12.

⁶ This is what I felt as the child of holocaust survivors—Apartheid, slavery and the Nuremberg race laws of Nazi Germany were all legal and all were enforced by judges and lawyers of their “legal” regimes. *See generally* DAVID DYZENHAUS, *JUDGING THE JUDGES, JUDGING OURSELVES: TRUTH, RECONCILIATION AND THE APARTHEID LEGAL ORDER* (1998); RICHARD L. ABEL, *POLITICS BY OTHER MEANS: LAW IN THE STRUGGLE AGAINST APARTHEID* (1995). Mandela’s introduction to the latter, written in 1995 takes a more sanguine view of the rule of law than I believe he really had. MANDELA, *supra* note 1, at 226.

political activist even within prison, both befriending jailers (demonstrating his respect for the dignity of all humans) and fiercely fighting the prison administration and larger system with their own tools, legal petitions, and his firm advocacy. Mandela saw his prison life as the world he lived in and came to know it better than even his jailers, and found every place he inhabited as a political ground for struggle, respectful advocacy, and location for exposing injustice. Prison was the microcosm of the world and both needed serious change. His spirit and determination were not broken but “exercised”—his political muscle along with his physical muscles.

Though there are many versions of how the ultimate peace talks began⁷, Mandela claims he initiated them with President Botha when he sensed the time was right, as the larger world and the economic sanctions were taking their toll on white South Africa and the lives of thousands of murdered Blacks. He was ready to talk and hoped his enemies would too, not necessarily because they heard the justice of his claims, but now because the necessity of preserving both white and black lives and the nation they inhabited required it.

Mandela’s legacy as both political revolutionary and committed activist is no doubt informed by the different worlds he straddled. He was born and spent formative years in his small rural town in the Transkei as a Xhosa, observing rituals and ceremonies including the traditional circumcision ceremony commemorating his manhood. His father had roots in the Xhosa leadership royalty, yet Mandela was a baptized Methodist with a devoted Christian mother. He was raised in the “great place” of his tribe’s royalty, but he ran away with his adopted brother to avoid the traditional arranged marriages planned for them, and was educated in the then elite black African institutions. Mandela also completed BA studies at Fort Hare (University College) and correspondence courses in law, abandoning a formal LLB at Wits in 1949, but ultimately earning a law degree while in prison, after practicing law in the first all-black law office, following an apprenticeship with liberal white lawyers in Johannesburg. Over the years, his views on whether the ANC should be all-black nationalist Africans or work in concert with Coloreds, Indians, and white communists, changed, and were also affected by what the Pan African Congress (and Chief Buthelezi and the KwaZulus) did on the more violent and nationalist flank (while he believed the white National Party facilitated black on black violence to de-stabilize the movement and divide by fomenting conflict). Mandela was a lawyer, but more a skillful and pragmatic political strategist. The alignments, tactics, decisions, and choices he made were informed by a depth of personal experience and exposure to many different thought systems and inspirational friends and leaders.

⁷ See generally NANCY H. ROGERS ET AL., *DESIGNING SYSTEMS AND PROCESSES FOR MANAGING DISPUTES* (2013).

Importantly, the times alone in prison not only provided solitude for thinking away from the more volatile and violent and repressive world outside, and time and space for study,⁸ but also permitted, through smuggled communications and strategy sessions within, a complex and principled strategy to grow. Mandela, as any good mediator or conflict resolver, was able to talk to people on “all sides” in caucus and separate sessions, before he began the years long negotiations with his jailors and political enemies.⁹ His stubborn patience allowed him to negotiate from strength and principle as his so-called “weakness” (being inside a prison) also increased his strength, as he became an important symbol in the international struggle. Power is always variable and changeable in conflict, both for those inside the conflict and those trying to manage or move it in particular directions, and Mandela used the complexity of his power from within the weakness of a prison home to create strength in outside symbolism and organizing efforts.

Most remarkably, Mandela, though fearing he was getting out of touch with the more youthful parts of the movement, also managed to connect with the younger generation as new political prisoners were also incarcerated.¹⁰ As an African nationalist with a Christian faith, a British legal education, an unrelenting desire for Black national self-determination, and a continuing loyalty to his rural roots and his people, all while he dreamed of a national, not tribal or provincial, movement, while still looking to western democratic principles, Mandela was indeed a “man for all seasons,” waiting patiently to engage, confront, and then reconcile.

Though we remember him now for the relatively (10,000 people still died between his release in 1990 and the 1994 elections that brought him the Presidency in the first election in which blacks could vote) peaceful “transition” to democracy in South Africa, it should not be forgotten that the negotiations he began with President Botha and concluded with President (and fellow Nobel Prize winning) de Klerk occurred because he did not forswear violence (he “suspended” it for part of the negotiations and then announced the suspension was revoked¹¹). Instead he demonstrated, with his personal strength and his

⁸ With boxes of books eventually delivered to him—when he finally left prison he had cartloads of books to be moved. MANDELA, *supra* note 1, at 503.

⁹ The presence of the head of security forces and the prison administration of South Africa in the informal talks angered Mandela; he learned that they were there in part to spy, but also to provide “cover” to what the negotiations were about, modeling the gradualist and often “Janus-faced” nature of peace talks—the private actions and the public story are often different. Needs to educate move slowly and “reality test” the possibilities for change and new solutions.

¹⁰ Demonstrating the importance of John Paul Lederach’s message that we in peace and justice work must touch the hands of our grandparents and grandchildren, peace and justice may require the span of three generations or one hundred years to accomplish. *See generally* JOHN PAUL LEDERACH, *PREPARING FOR PEACE: CONFLICT TRANSFORMATION ACROSS CULTURES* (1995).

¹¹ MANDELA, *supra* note 1, at 619.

people's commitment, that no tactic for justice would be relinquished until his goal of freedom was in sight.

Mandela's legacy as a "peacemaker" is rooted in his principled belief in social justice and the use of *all tools* needed to accomplish that end. His ability to survive under inhumane conditions, and not be broken, demonstrates the persistence and patience required to see such intransigent and inhumane conflict through to its end, but this took decades, let us remember. His peaceful and respectful demeanor, a product of all he had learned and suffered in the struggle, his development with Desmond Tutu of the publically observed Truth and Reconciliation Commission, and his elder statesman work on a variety of social, legal, health, poverty amelioration, and global issues should not obscure that Mandela's stature in our pantheon of heroes comes from his commitment to his cause, and his willingness to see that at different times in a man's, country's and world's existences, different processes must be called on to do different things at different times.

Mandela is known now as a gentle elder statesman who presided over his country's first few years of attempting social justice, and the writing of a new social and legal order, still far from accomplished, but remember that he got to that place with the clenched fist of the ANC symbol. His lesson: peace—yes, eventually with hard work; unnecessary death—no; violence—hopefully not, but a principled justice first—and the principled being, understanding of many different human processes, and the strength and stamina to make that happen. Reconciliation comes after conflict; both are forms of human engagement, which bring us together after both changed person-to-person understandings, and structural change. Conflict resolution is not only about human understanding, but the ability to use that new recognition and understanding to alter more than the psyche—but the political order as well. Let us remember and honor Nelson Mandela's contributions to conflict resolution by remembering both the conflict and the "resolution."

ROBERT MNOOKIN: I'm going to sound some of the same themes. The name of this conference is Making Peace with your Enemy, Nelson Mandela and His Contributions to Conflict Resolution. Andrea Schneider asked me how I came to be interested in Nelson Mandela, and I really came to study Nelson Mandela when I began working on my last book, which really posed the question, which is implicit in the title of this conference—should you bargain with your enemy? I think that in fact, you all know that in our field, many believe that you should always be prepared to negotiate, after all, you can only make peace with your enemies, and who amongst us doesn't prefer diplomacy to warfare? Those of us who are lawyers, who among us doesn't generally prefer a negotiated resolution of a legal conflict rather than years of delays, thousands of dollars spent on depositions and interrogatories, and finally a trial? Before war or litigation, so we are often told, you should always try to resolve the problem through negotiation. There are of course those who make exactly the opposite point, and that is you should never bargain with the devil, and by devil

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here what I mean is an evil regime, an adversary you don't trust, someone who has hurt you in the past, or someone who you think is really prepared to hurt you again in the future. The notion basically is that the devil is probably at least as smart as you are, and no doubt more unscrupulous, and fundamentally if you negotiate with the devil what you end up often doing is soiling your own soul.

Now I, not surprisingly as a law professor, reject the categorical assertions and, in fact my book is all about how to think about the decision of when to negotiate and when not to negotiate, but I really was led into the issue by thinking about who were my two greatest political heroes of the twentieth century. They were first, Winston Churchill—there is a chapter about his refusal in 1940 to negotiate, through Mussolini, a possible end to World War II before the United States was involved and when the Soviet Union, by the way, had aligned itself with Nazi Germany. He refused, and he is my hero because he refused. And second, Nelson Mandela, because Mandela *chose* to negotiate. My elevator speech, in fact, in terms of the book, I can summarize it for you now in thirty seconds: should you bargain with the devil? My answer is “not always, but more often than you'll feel like it.”

And more often than you'll feel like it, for two sets of reasons: One is that there are strong emotions and negative traps that get in the way of people thinking clearly about the costs and benefits of entering into negotiations with an adversary who you do not trust and who you may even think is evil. Jean is doing important work relating to the new work in cognitive and social psychology, in fact I identified a bunch of traps in the book, none of which I am going to go over here, but let me say there are a bunch of them.

The second reason people are reluctant to negotiate is that negotiating a deal typically requires giving up the pursuit of perfect justice. A negotiated deal is future oriented. The pursuit of justice is backward looking. When you negotiate with an adversary and make a deal, presumably both you and your adversary prefer the outcome to your BATNA. Nelson Mandela's achievement was the creation of a democracy based on one person, one vote, with no group rights, no white veto. I assure you that the National Party, when it began negotiations, never conceived conceding that. But the quid pro quo for the core deal was that white South Africans were allowed keep their property and various economic benefits that they had acquired through decades of oppression. I assure you there were many members of the ANC who did not consider this dimension of the deal just.

Now, let me very briefly describe why he was my hero in choosing to negotiate under very challenging circumstances. In 1985 Mandela had already been imprisoned for twenty-three years. He was seventy-one [years old]. The ANC had stated publicly certain preconditions that had to be met before they would enter into negotiations, and in fact, the government had also suggested certain preconditions. The ANC's preconditions read that all political prisoners be released, that exiles be permitted to return, that the government lift the ban on the ANC and the Communist Party. In short, some of the preconditions of

the ANC were exactly the things one would have been negotiating about. On the government side, as Carrie mentioned, on January 31, 1985, President Botha made an offer, that was very explicit and public: Nelson Mandela would be released from prison with only one condition—that he renounce all use of violence. He refused. Indeed, he remained in prison for more than four additional years, and in fact, he would only leave when, he thought in terms of the negotiation strategy it was the best time to leave.

Mandela's public response is interesting. He snuck [a message] out through his daughter who read at a mass rally in the ANC: "Only free men can negotiate. I cannot and will not give any undertaking at a time when I and you, the people, are not free," implying of course, his continued refusal to negotiate. That was Mandela's public response—a steadfast refusal to negotiate. In fact, his behavior was different.

Privately he had concluded that he should initiate contact with the despised National Party that had erected the Apartheid regime. In deciding whether to do that, he knew that he should consult with his colleagues in the African National Congress. Although, today most of us don't remember it, Mandela was not the head of the African National Congress; the head of it was Oliver Tambo, an exile in Lusaka, Zambia. Now admittedly, it would have been hard for Mandela, it wouldn't have been done easily, to communicate with Tambo ahead of time and ask, is it okay if I contact an official in the National Party? In fact, he had often done that, because through his lawyers they had been able to sneak information in and out. Moreover, he had a much easier way to consult. He was not completely isolated when he initiated discussions. Indeed at the time, two stories up was his mentor, Walter Sisulu, who had been the first head of the ANC, and other members of the ANC.

In short, Mandela faced the question, should I consult with my colleagues here before I write to initiate discussions? He wrote in his memoir, "[M]y colleagues upstairs would condemn my proposal and that would kill my initiative even before it was born."¹² Indeed, what he ends up saying is, "I chose to tell no one of what I was about to do. Not my colleagues upstairs or those in Lusaka. . . . There are times when a leader must move out ahead of the flock, go off in a new direction, confident that he is leading his people the right way."¹³

He, of course, did initiate discussions with Kobie Coetsee, who was Minister of Justice. Over a period of four or five years he engaged in extensive discussions with Coetsee. Two years after the initial contact, his discussion was with a special committee, which included some very despised officials in the ANC. Once again, he really never disclosed completely to his own colleagues, including Tambo, all that he was doing for the reason that in fact his colleagues would have said no.

¹² *Id.* at 458.

¹³ *Id.* at 458–59.

Two negotiation lessons relate to this early phase: (1) initiating negotiations with an enemy is extremely challenging—leadership and courage are required, and (2) secrecy is often indispensable. We're all for transparency, but particularly where there are conflicts behind the table, doing things publicly can often make it impossible.

Mandela is also my hero because he combined in ways that are just extraordinary both empathy and assertiveness. In teaching about negotiation, I believe that the best negotiators both can demonstrate understanding of a perspective of people with whom they profoundly disagree, on the one hand, and on the other hand, assert their own interests effectively. He wrote in his memoir, "I know how to fight against these fellows. I know how they feint, I know how they move, and I feel confident in this arena." At the same time, during the years he was in prison, he and his fellow prisoners "adopted a policy of talking to the wardens and persuading them to treat us as human beings. And a lot of them did and there were lots of things we could talk about. And the lesson was that one of our strongest weapons is dialogue. Sit down with a man and if you have prepared your case very well, that man will never be the same again."

In my view Mandela really was the greatest negotiator of the twentieth century, because of his abilities not only to negotiate across the table but also because of his management of conflicts *behind* the table. The conflicts among blacks during his negotiations were intense, although these conflicts are not usually underscored in the standard narrative of the creation of the new South Africa. There were many more blacks killed by other blacks between 1990 and 1994 than there had been in the preceding years. Now part of it, as Richard Goldstone demonstrates, was because of the actions of agent provocateurs on the part of the government. That wasn't the whole story, but certainly an important part of it.

One of the great challenges Mandela faced is that behind the table, he had many within the ANC who really were not prepared to give up violence, and violence directed against other blacks as well as against the white establishment. In the summer of 1992, forty-six ANC followers—mostly women and children—were killed and the police made no arrests. It was a catastrophe and Mandela soon addressed a large meeting with thousands of ANC followers who had lost faith in the peace process. Indeed, one of them left a note for him on the podium, which said "No peace, do not talk to us about peace. We've had enough. Please, Mr. Mandela, no peace. Give us weapons. No peace." Mandela threw away his prepared text and exercised moral authority. Here is what he said, "We must accept that responsibility for ending the violence is not just the government's, the police's, the army's. It is also our responsibility. We must put our house in order. If you have no discipline you are not a freedom fighter. If you are going to kill innocent people, you don't belong to the ANC. Your task is reconciliation." It takes enormous courage to say that to an angry audience.

I've done lots of work relating to the Israeli-Palestinian conflict, indeed for an organization known as Peacehub. In June, I was asked to head an international delegation and to be the chief mediator for a group of Palestinians and Israelis, all of who had been involved previously in the negotiation process in talking about the final status issues. What was going to be different about this is that it was going to be webcast live both in the Palestinian territories and in Israel. It never came to be because of the kidnapping, but what I'm often asked by Israelis is, why can't we find our Mandela?

Now what Israelis mean by that is, the person who will do what I just described—restrain violence among his constituents that would be directed towards the other side. In my view though, what I'd really like to suggest to you, is that that was not Mandela's core greatness. That was valuable, but not the most important. The most important aspect of Mandela, and I said this to Israelis, is the need to have a leader to whom white South Africans could make concessions and maintain their self-respect. White South Africans, were, of course, deeply concerned—what is going to happen to me with this new Constitution regime? Does my adversary have a vision of a shared future that I will find unbearable? Not a shared future would be their first choice, and Mandela's greatness was both on a personal level and on intellectual level in terms of what he proposed, as [it] suggested that he in fact would help the nation find a shared future that whites would find bearable. Indeed, one of the most striking examples of this relates to Mandela's discussions with someone far to the right to de Klerk – the head of something known as the Volksfront: General Constand Viljoen. Mandela told him, "If you want to go to war, I must be honest and admit that we cannot stand up to you on the battlefield, but you cannot win because of our numbers, you cannot kill us all." Ultimately, this man and his party supported the interim constitution, and he described Mandela as someone he thought he could do business with.

In conclusion, I think that there are three critical questions in any kind of ethnic conflict of this size. One is, can there be a shared vision that the other side can find bearable? The other is whether the two sides can learn to trust each other enough to honor the commitments to make the intermediate steps necessary. And finally, there is a question of loss acceptance. Jean has studied this, and that is, in these kinds of protracted ethnic conflicts, each side is going to suffer losses through any resolution, and will they in fact be prepared to accept those losses? Mandela was someone with all these respects and helped make it happen. Thank you very much [*applause*].

[*Video playing*]

RICHARD GOLDSTONE: I'm going to begin differently but I must follow on what Bob Mnookin was talking about and that is the huge divide that there was between the white community and black community in South Africa in 1990. Put yourself in the position of minority whites, ten percent of the population in 1990. For 350 years they had repressed the black majority, cruelly, with racial oppression. And the majority of whites, for good reasons, if not all

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whites, feared revenge. They put themselves in the position of the black majority and said, how would *we* react if we had been treated that way? I think the greatest single achievement of Nelson Mandela was to convince the then white leaders that revenge wasn't on his agenda. It was his dignity, his personality, everything in him that persuaded first President Botha, and later President de Klerk that revenge wasn't on the agenda. It was their belief in him and in his renouncing of violence that made it possible for them to talk their people into following them in ending Apartheid.

Without question, the greatest privilege of my life was to get to know Nelson Mandela on a personal one-to-one basis. That came about as a result of my appointment, in fact by President de Klerk, but through the leadership of Kobie Coetsee, the then Apartheid Justice Minister, to investigate the causes of the violence that began almost immediately after Mandela was released from prison. It was anticipated by everybody that it would be a difficult and possibly protracted negotiation period leading to democracy in South Africa, but nobody anticipated that it would be accompanied by violence—political violence that ended in the deaths, as Carrie mentioned, of over ten thousand mainly black, but also white, South Africans during that period. Of course it was Nelson Mandela's theory that the cause of the violence was what he called a Third Force, that there were elements in the police and the army that were fomenting the violence in an effort to derail the peace process and to ensure the continuation of racial oppression and to avoid a black majority taking over in South Africa.

Together with four other South Africans, I was appointed to investigate the violence and particularly investigate Nelson Mandela's contention that this was not, as many whites alleged, violence between black supporters of his African National Congress and black supporters of Chief Buthelezi and the Inkatha Freedom Party, but that it was in fact, instigated by white right wing conservatives. Soon after we began our investigation, it became clear to me that it was necessary to meet and keep informed not only the then president de Klerk, but also the leader of the African National Congress, Nelson Mandela. De Klerk didn't think that was a good idea. He said "I don't think you have any reason to report to Mr. Mandela. He is not the president, I am." And I said, "Yes but Mr. President, he soon will be president" [*laughter*]. He could hardly argue about that [*laughter*].

It was in that atmosphere that Nelson Mandela frequently requested me to talk to him, on a Sunday evening in his house in Johannesburg. He was lonely; he was being looked after by one of his granddaughters and on a Sunday evening, he was alone and he thought that was a good time to have a visit. We spoke about many things, not only about the work of the commission, but many issues of the day that arose. The personality of the man was quite incredible. On one of those early visits he said, "Thanks for watching the eight o'clock news." In those days, the eight o'clock news was the main television news of the day. The first item was a visit paid by Nelson Mandela to one of the outlying areas of

South Africa and after the first item he switched off the television and he said, “I have to watch that, you know. I still enjoy seeing myself on television” [*laughter*]. Such a spontaneous act on his part.

The purpose of my talking to you this afternoon is really to reflect and to share with you some of the personal experiences I had with Nelson Mandela that help demonstrate what Carrie and Bob were talking about in their very eloquent presentations. I turn to an early problem that arose with Mandela. The commission that I headed was set up under South African legislation that provided for the government to appoint a commission to investigate the causes of the political violence and intimidation. It took months of negotiations before President de Klerk convinced Nelson Mandela, Buthelezi, and the other leaders on who should head the commission. Out of the blue, I received a call from Kobie Coetsee telling me that it had been agreed that I should head that commission. He said, “It will be a very difficult commission but I think it shouldn’t last long.” It was a difficult decision whether to take it because I had been a judge for a number of years and the Justice Minister said to me, “This commission may be the end of your days in the judiciary.” That was obviously something that might have happened. The commission began and it took months to really begin to unravel and collect evidence as to what was fomenting the violence. After some months, there was huge pressure, talk in the media, expectations. Expectations are terrible things. I think too many people fail because of huge expectations that they have to face. I can think of one not too far from where we are now.

In any event, because of the pressure, I decided to put out an interim report setting out in chronological sequence, and I stress that—chronological sequence—the causes of violence in South Africa. We then had no evidence of this Third Force. We talked about colonialism, we talked much about the Apartheid system, the cruel policing that went with Apartheid, and ending with the violence between black supporters of Nelson Mandela and black supporters of Buthelezi. The problem was, that under the legislation under which we operated, I was obliged to give my report first to President de Klerk and he could release it when he wished. And what he did with that report, as he had done with a couple of preceding, less important reports, was to release it together with a government spin. There was a government statement commenting on the report. On this occasion, the report was issued with a government media release stating that I had blamed the violence on black-on-black violence, supporters of Mandela and Buthelezi. This was a complete mis-description of the report. That is what grabbed the headlines in all of the South African newspapers. That was the headline—Goldstone blames violence on Inkatha/ANC politicians. Mandela flew in that day from abroad and was faced with these media reports. That day, he addressed the second annual meeting of the African National Congress after his release. He castigated the report. He was very nasty about it, he made a nasty remark about me, and I knew what had happened—that he relied on this media report. It would have been the end of the commission that he wanted and

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that de Klerk wanted because it was helping keep the nation keep calm in a very difficult situation of violence.

That day, I was in my chambers at the Court, the Supreme Court of Appeals, which was then our highest court, and my phone rang at three o'clock. It was Nelson Mandela, who incidentally always made his own telephone calls; it was never a secretary, it was always that familiar voice on the other side of the line, it always came as a shock hearing that voice. He said, "I'm calling you for two reasons." He said, "The first is to tell you that I did a terrible thing, I commented and I criticized your report without having read it. I relied on media reports." And I said, "Madiba, I realize that is what happened." He said, "Well, that's the first reason I'm calling is to apologize, I should have never relied on the media, I should have read your report. I have now read it and agree with most of it." He continued, "The second reason I'm calling is to let you know that I've called a press conference for an hour from now, at four o'clock, and I'm going to publicly apologize to you. My question to you is, may I say you have accepted my apology?" Undoubtedly, he did this for two reasons. Firstly, he felt he needed to apologize for what he did. But more importantly, he realized the importance of the commission in the context of reducing violence during the negotiation process. He realized too that if he didn't apologize publicly, it would have been the end of the commission. It would have been the early demise of that commission. There's no way I could have continued if I didn't have the support of the majority party in the country, the African National Congress; there would be no point. That was the reason, I have no doubt, that motivated his calling the press conference which received international attention. Here was the leader of the African National Congress making a public apology. How many leaders would have done that? It was his instinct, his political instinct that drove him to do it. It is a wonderful illustration of his character and of the canny political instinct that went with it.

He was an interesting negotiator. Another personal story: some two years later, I was again alone with him on a weekday afternoon, about three weeks before the first democratic election—this would have been in January of 1994. We were talking about the serious events that were going on at that time. While we were talking, his physician, Dr. Nthato Motlana came in. Mandela turned to me and said, "Here is my doctor, this is my monthly check up. I hate these doctors!" And I said, "Well Madiba it's a good time for me to leave." And he said "No, no, let's carry on and we'll pretend that Nthato is not here and you and I will go on talking" [*laughter*]. Dr. Motlana told him to take off his shirt, he wanted to take his blood pressure, and Mandela took off his shirt, and as Motlana was about to start pumping the blood pressure gauge, Mandela's granddaughter walked in and said, "Grandfather, President de Klerk is on the line." Mandela turned to the doctor and me and said, "I have to take this call, it is a very urgent matter relating to the forthcoming elections." He picks up his telephone, the call is put through, and he started off very politely, "Good afternoon Mr. President," he said to de Klerk. Very soon de Klerk said something or

asked him to do something that annoyed him and he said “Now, look here, de Klerk”—no longer Mr. President—“look here de Klerk, I won’t have that, I won’t do it, I will not agree to it.” And this went on for two or three minutes and while Mandela, very annoyed, was talking to de Klerk, the doctor was taking his blood pressure [*laughter*]. When the phone was eventually almost banged down by Mandela, I said “Nthato, what happened to Madiba’s blood pressure?” He said, “You won’t believe it, it didn’t budge [*laughter*]. And Mandela, laughing, said, “Of course not, it was a big act” [*laughter*]. But here was, in fact, exactly what Bob was talking about, it was again his resolve. There were issues on which he was not prepared to compromise and there were many issues on which he was prepared to compromise.

One of the issues on which he wasn’t prepared to compromise, was on a new constitutional court. It was the last thing de Klerk wanted. De Klerk wanted the new Constitution to be interpreted and applied by the judges who had been appointed during the Apartheid era and Mandela wouldn’t have that. He wanted judges to be appointed who would represent the whole community, and at that time, bear in mind, South Africa had what I always like calling a pale, male bench [*laughter*]. Of the two hundred Superior Court judges, all but two were white and all but three were men, and the bench had to be radically changed. It was that demand that he was absolutely not prepared to compromise.

De Klerk, undoubtedly—and I’m sure Bob would agree—de Klerk intended and had confident expectations that negotiations would last for ten, maybe fifteen years; for him, it was not urgent. It was Mandela’s political instinct and the way he conducted those negotiations that kept it to four years. It was the last thing on de Klerk’s agenda that within four years of 1990, from the release of Mandela, there would be a black majority government in South Africa.

One of Mandela’s other great successes in my view was that he respected his opponents, and this really fits in again with everything that Bob Mnookin was talking about. He believed that if you respect your opponent, your opponent is likely to respect you. If you look down at and demonize your opponent, then there’s really is no hope for a successful negotiation. His forgiveness, at times, upset me. When I saw his hand around the prosecutor who asked for the death sentence against Mandela—prosecutor Percy Yutar—when I saw Mandela’s hand around Yutar’s shoulder, I felt annoyed. But hey, he did it, and it was genuine. He went to visit, Mrs. Verwoerd, the widow of the former Prime Minister of South Africa, who was really responsible for Grand Apartheid. It was that forgiveness, his wearing of the Springbok jersey, which many of you would have seen in the wonderful film, *Invictus*. It was an instinctive personality trait that he was prepared to forgive people who had caused so much harm and pain to himself and to his people. So surely my own experience has been fully justified from afar by the outstanding remarks from Carrie and Bob. Thank you very much [*applause*].

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PENNY ANDREWS: Good afternoon. I would also like to start by thanking Professor Sternlight for inviting me and to acknowledge the Dean and other dignitaries in the room, and everybody here. In South Africa, we have this term, if you are addressing a crowd and you know there are many significant people in the crowd, it's likely that you'll miss somebody, you end your comments by saying "all protocol observed." [*laughter*]. Being the last speaker, of course on this really, very excellent panel, means that there is very little room for me to be original, to say anything you have not heard or the accolades being pronounced of this remarkable man and how he managed to unite South Africa and how he's become probably the most iconic figure of the twentieth century and early twenty first century.

I only met Nelson Mandela twice in my life and I was very fortunate in that after the Constitution was written, he agreed to write the foreword to a book that I co-authored with Professor Stephen Ellmann at New York Law School.¹⁴ I was very fortunate, because when I went to university in South Africa and I graduated from law school in the early 1980s, my first boss and someone who became a friend and mentor, Arthur Chaskalson, had been one of the young lawyers at the treason trial, which resulted in Nelson Mandela being sent to Robben Island.¹⁵ I was also mentored by people like, George Bizos and Ismail Mahomed, bright legal giants of South Africa; then Justice Goldstone was on the bench and he admitted me as an advocate in the late 1980s. I grew up in Cape Town and when I finished high school in the 1970s, a new wave of the black consciousness movement captured South Africa, with Steve Biko and a different and young generation of activists. This leads me to the three things that I want to say in the time allotted to me. I want to indulge a bit in commenting on Nelson Mandela, and my perspectives as somebody who was not close to him personally, but was certainly influenced by him in terms of the history of South Africa and my own political development. Second, I would like to highlight the question of forgiveness and the major vehicle of forgiveness in South Africa, namely the Truth and Reconciliation Commission, which, like Nelson Mandela, has become an iconic institution for those who are engaged in political transition and particularly in moving their societies from violence to democracy.¹⁶ The third thing I would like to do is explore the question about what that exercise in forgiveness through the TRC has meant for South Africa, looking back now that we've had twenty years of democracy and one year without the physical presence of Nelson Mandela, and ask what this has meant

¹⁴ See generally PENELOPE ANDREWS & STEPHEN ELLMANN, *THE POST-APARTHEID CONSTITUTIONS: PERSPECTIVES ON SOUTH AFRICA'S BASIC LAW* (2001).

¹⁵ See generally KENNETH S. BROUN, *SAVING NELSON MANDELA: THE RIVONIA TRIAL AND THE FATE OF SOUTH AFRICA* (2012); JOEL JOFFE, *THE STATE VS. NELSON MANDELA: THE TRIAL THAT CHANGED SOUTH AFRICA* (2007).

¹⁶ See DESMOND TUTU, *NO FUTURE WITHOUT FORGIVENESS* 260 (1999). See generally DEBORAH POSEL & GRAEME SIMPSON, *COMMISSIONING THE PAST: UNDERSTANDING SOUTH AFRICA'S TRUTH AND RECONCILIATION COMMISSION* (2002).

for South Africa. It is a really large question, and I only have about twelve minutes left so I'm just going to touch on some of these questions.

For me, the most intriguing question in the midst of many, many questions about Nelson Mandela is really how he was so successful in conscripting the international community into adopting the anti-Apartheid cause in South Africa, and how he became the most famous political prisoner, and later the most beloved president, in light of what was considered the violent start of his organization, the ANC. As Carrie pointed out, he was a man that led an organization that was labeled a terrorist organization in his country.¹⁷ Also, how did the African National Congress really become the midwives of the democratic movement of South Africa when it historically was an organization that operated in a clandestine way—for obvious reasons—and which gave birth to South African democracy, when the history preceding the elections in South Africa, one could say, was not typified by democracy.¹⁸

I also was struck by the universal outpourings of grief when Nelson Mandela died a year ago. I live in upstate New York, in Albany, and one of the things that I found remarkable was the outreach from media outlets in Syracuse and Rochester and parts of New York you probably haven't heard of beyond New York City, and just the idea that the world was once again ignited by interest in this man.¹⁹ It's also his capacity to really hold skepticism and cynicism at bay; nobody has said one thing of great criticism—maybe Justice Goldstone spoke about him getting angry at de Klerk—but there's very little that people say about Nelson Mandela that is critical. Yet when we look at leaders—you [Justice Goldstone] mentioned this question of expectations—revolutionary leaders are much admired and at some point, the gloss wears off; at some point there was, is, disillusionment. Recent examples include leaders like Lech Walesa, the great union leader of Poland, generated disappointment. So did Robert Mugabe in Zimbabwe. And there are many others; and yet Nelson Mandela—up until his death, there wasn't one thing said about him that was negative.²⁰ And yet, this was a man who had left a wife and four children for a young Winnie Mandela, who did lead an organization that sometimes displayed

¹⁷ See generally TOM LODGE, *MANDELA: A CRITICAL LIFE* (2006); DANNY SCHECHTER, *MADIBA A TO Z: THE MANY FACES OF NELSON MANDELA* (2013).

¹⁸ See generally NANCY L. CLARK & WILLIAM H. WORGER, *SOUTH AFRICA: THE RISE AND FALL OF APARTHEID* (2004).

¹⁹ See e.g., David Beresford, *Nelson Mandela Obituary*, THE GUARDIAN (Dec. 5, 2013, 5:12 PM), <http://www.theguardian.com/world/2013/dec/05/nelson-mandela-obituary>; Robert Mackey, *Updates: First Reactions to the Death of Nelson Mandela*, N.Y. TIMES (Dec. 5, 2013, 5:22 PM), http://thelede.blogs.nytimes.com/2013/12/05/latest-updates-on-global-reaction-to-the-death-of-nelson-mandela/?_r=0; *Nelson Mandela Death: Queen Leads Tributes*, BBC NEWS, (Dec. 6, 2013), <http://www.bbc.com/news/uk-25254578>.

²⁰ See e.g., *supra* note 19.

questionable principles.²¹ I think it was remarkable, and so there was something very, very unique about him. I think he had an extraordinary sense of his place in history. I've been watching the series on PBS on The Roosevelts,²² and one of the things that strike you is how people think about themselves in history. I think that comes from privilege. That sense didn't come from privilege for Nelson Mandela, but everything about him, his capacity to be a teacher, his capacity to be a mentor, his capacity to be charming, his love of children, all suggest his profound sense of himself as being able to make a difference. As rising above the rest and forging a moral path. There are currently many books being written about Nelson Mandela . . . I was just reading on my flight a book of personal stories from "ordinary South Africans." There is a recent book written about ordinary South Africans whom nobody has heard of, who met Nelson Mandela. This says almost everything about him—he was just this extraordinary individual who connected so fundamentally with ordinary people. So in many ways, I guess we are very lucky in South Africa, because South Africa could have just been a very ordinary country after a civil rights struggle. Nelson Mandela, I think made South Africa, in many ways, something bigger than what it was. I think the most extraordinary thing about the idea of Mandela as a world leader is how people in countries like the United States, all over Europe, Australia and so on, adopted the struggle of racial conflict in South Africa even when the conflict in their own societies, like in the United States, is still unfolding and unfinished.²³ I was constantly struck at how South Africa, and what Nelson Mandela has managed to do in South Africa, has somehow been celebrated at the same time that the struggle in this country with racism and the lingering effects of slavery and Jim Crow continues.²⁴

Yet, I think the most profound thing about Nelson Mandela was the concept of forgiveness that Justice Goldstone referred to. That question of forgiveness was key to taking South Africa from extraordinary violence and bitterness to a country in which we can say at least that people who at one stage hadn't known each other or hated each other terribly actually can live together, even though in a very imperfect way.²⁵ This concept of forgiveness, as articulated through the Truth and Reconciliation Commission is, in my view, the most powerful legacy of Mandela. Many African-American civil rights advo-

²¹ See *Nelson Mandela Death: The Women Who Loved Him*, BBC NEWS (Dec. 6, 2013), <http://www.bbc.com/news/world-africa-22114543>.

²² THE ROOSEVELTS: AN INTIMATE HISTORY, (PBS Sept. 14, 2014).

²³ See generally ROB SKINNER, THE FOUNDATIONS OF ANTI-APARTHEID: LIBERAL HUMANITARIANS AND TRANSNATIONAL ACTIVISTS IN BRITAIN AND THE UNITED STATES, C. 1919–64 (2010); HÅKAN THÖRN, ANTI-APARTHEID AND THE EMERGENCES OF A GLOBAL CIVIL SOCIETY (2009).

²⁴ See generally GEORGE M. FREDRICKSON, WHITE SUPREMACY: A COMPARATIVE STUDY IN AMERICAN AND SOUTH AFRICAN HISTORY (1981).

²⁵ See generally ANTJIE KROG, COUNTRY OF MY SKULL: GUILT, SORROW, AND THE LIMITS OF FORGIVENESS IN THE NEW SOUTH AFRICA (2000).

cates have started to call for a truth and reconciliation commission in the United States. For example, Bryan Stephenson, the leading civil rights lawyer who has focused much of his work on death row, during the course of his talk at the University of Wisconsin a week ago, spoke of the need in the United States for a Truth and Reconciliation Commission, because the problems of racism persist and racial healing has yet to happen in the United States.²⁶

I am so struck by the prominence that people have given to the Truth and Reconciliation Commission; and yet the TRC really was just a compromise, a very imperfect compromise.²⁷ The TRC was developed to center the idea of forgiveness with the knowledge that this was not a Nuremberg style tribunal where there were winners and losers.²⁸ Both parties had to compromise and come to some agreement in which a vehicle towards reconciliation was made possible. So this great compromise, I think, centered on forgiveness, which was so important. I was teaching in New York at the time of the TRC proceedings, and I had students who went to work at the TRC over the course of the two years. One of the most remarkable things that they shared with me was how during the public hearings, when the victims could come forward and face their perpetrators and find out the details of the tortures and disappearances and the deaths of their loved ones, how under the leadership of Archbishop Desmond Tutu, what could have turned into an extraordinary ritual of revenge and hatred became one of forgiveness.²⁹ The theater, the public theater of forgiveness and repentance, repentance from the perpetrators and forgiveness from the victims—these were very, very important rituals for South Africa centered on the notion of forgiveness.³⁰

The other thing about the TRC, which was important, was the idea of naming names.³¹ One of the things that Bryan Stevenson mentioned in his lecture was that Americans have not been given the names of many of the people who have committed the murders, the lynchings, and the “racial terror” during the

²⁶ This account was provided to me anecdotally by a colleague in Wisconsin; however, Bryan Stephenson has been public about the need for a truth and reconciliation. *See e.g.*, *The Daily Show* (Comedy Central television broadcast Oct. 16, 2014), thedailyshow.cc.com/videos/d9wrvk/bryan-stevenson.

²⁷ CLAIRE MOON, *NARRATING POLITICAL RECONCILIATION: SOUTH AFRICA'S TRUTH AND RECONCILIATION COMMISSION* 140–41 (2008).

²⁸ Penelope E. Andrews, *Reparations for Apartheid's Victims: The Path to Reconciliation?*, 53 *DEPAUL L. REV.* 1155, 1158 (2004).

²⁹ Antjie Krog explores this as well throughout her account of the TRC. *See* KROG, *supra* note 25, at 143; *see also* CATHERINE M. COLE, *PERFORMING SOUTH AFRICA'S TRUTH COMMISSION: STAGES OF TRANSITION* 124 (2010).

³⁰ *See generally* TUTU, *supra* note 16.

³¹ Promotion of National Unity and Reconciliation Act 34 of 1995 §§ 16–22 (S. Afr.) (established the TRC and provided, among others, that in order for perpetrators to obtain amnesty, they had to confess truthfully to their victims, the nature and purposes of their actions).

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post-Reconstruction era and beyond in America's South.³² The TRC named names which was important, but it also did something that Justice Goldstone referred to in his radio interview; the TRC created an official record for which there would never be denial.³³ No South African can say this did not happen; there was a record created. So the idea that you had to compromise, you had to center this institution and this mechanism in forgiveness was very, very important. The third thing I wanted to focus on was this idea of forgiveness, Nelson Mandela's extraordinary example, his leadership, and the moment in which we South Africans had to finally take responsibility for creating a new society and a democracy.

Looking back on what it means. I think there are two things that stand out to me as a critique, and which lingers on in the society. The first is that racism and the effects of racism were obviously the most important, the preeminent considerations in South Africa. But under that racist edifice were a patriarchy and sexism, and that is really where South Africa needed to ask the most prompting question. One sees this failure in the TRC in failing to do so. With the Truth and Reconciliation Commission, it became very, very clear that women were seen as secondary victims, they were the mothers, they were the daughters, they were the sisters.³⁴ They were not seen as people who had been detained, and were tortured, and who were victims in their own right. So that was missing in the TRC and eventually they did have three days of hearing on "gender crimes."³⁵ I think this question of gender equality is one of the most difficult questions that South Africa is dealing with. Then the second is this world beyond Mandela. I think that the foundation that he laid, the foundation of forgiveness, the foundation of love, and the capacity of South Africa to really empathize with the other has become strained, as the promise of democracy, particularly around economic equality, around some of the questions on violence and so on, have now become very tested. So one sees that the idea of being so fortunate to have an iconic person as a national leader, also now becomes one of the disadvantages in South Africa because of the focus on just one person, when South Africa was really more than just the influence and the actions of one individual. How do you go back to the creation of a shared ethos,

³² See generally EQUAL JUSTICE INITIATIVE, *LYNCHING IN AMERICA: CONFRONTING THE LEGACY OF RACIAL TERROR* (2015) (Bryan Stevenson is the Director of the Equal Justice Initiative).

³³ See generally TRUTH AND RECONCILIATION COMMISSION OF SOUTH AFRICA REPORT: FIVE VOLUME SET (2001).

³⁴ PUMLA GOBODO-MADIKIZELA, *A HUMAN BEING DIED THAT NIGHT: A SOUTH AFRICAN WOMAN CONFRONTS THE LEGACY OF APARTHEID* 55, 98, 160 (2003).

³⁵ See generally FIONA C. ROSS, *BEARING WITNESS: WOMEN AND THE TRUTH AND RECONCILIATION COMMISSION IN SOUTH AFRICA* (2003); Beth Goldblatt & Sheila Meintjes, *Gender and the Truth and Reconciliation Commission: A Submission to the Truth and Reconciliation Commission*, (May 1996), <http://www.justice.gov.za/trc/hrvtrans/submit/gender.htm>.

without this person? I constantly hear people talk about the Israeli-Palestinian conflict and ponder aloud that maybe the Palestinians need a Mandela, or in any other conflict people often comment, “Well, they don’t have a Mandela.” I think that, as much as it’s a compliment, in the final analysis something that is shared and an ethos that is transformative and really internalized is clearly the most lasting one. Yet we are very fortunate that in South Africa the legacy of Mandela and what he stood for will hopefully ensure that the promise of constitutional democracy continues. I’m going to end with an image from a cartoonist in South Africa, Jonathan Shapiro, who goes by the name Zapiro. I look at his cartoons regularly and compared a series of cartoons showing the life and the death of Nelson Mandela.

[*Cartoons on screen*]

Thank you so much [*applause*].

III. DISCUSSION

ANDREA SCHNEIDER: These [cartoons] are wonderful and with such an amazing panel. First I want to thank everyone for sticking with the schedule, we have a lot of time for questions. I’m going to make some overarching comments and then after we’ll moderate and leave the audience with time for plenty of questions. There were a number of interesting things that struck me. The first—and both Penny and Richard made this point—we only heard good things [about Mandela]. If there was anything that was a little snippet of perhaps a negative, was this idea that some deception, some secrecy was necessary. So, was the lie of “I have not negotiated,” or the deceptions and the secrecy necessary for good? And do we view that as a character flaw? A situational flaw? Might that have been the only flaw *ever*, is one question to hand back to you.

Second thought, can we take the personal qualities that we’ve all talked about from Nelson Mandela—and really what happened in South Africa was to institutionalize those into the TRC. Is that something that provides us a lesson in actually finding the fuel for the future? When you have this iconic leader you have to find a way of institutionalizing those very values because the leader is so iconic.

Another question, was the key achievement for Mandela persuading his enemies or his friends? Or is it a combination of both, as some of you, Bob in particular, argued. Is the problem that we face in the world that there are so few leaders who can do both? So you might be good at talking to your people, or you might be good at talking to the other side, but that we are still waiting for this icon, that it seems only once a century we come across a leader that was capable of doing both.

If you were to give advice to any of us who are involved in conflict, do we have to wait and look for a Mandela, as Penny so wisely put it, or can we create a Mandela, and how does one who is involved in conflict try to either find that person or create the situation in which someone could arise? If we are going to

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be hanging our hat on waiting for the next Mandela, many of us will continue to wait. So what do we need to build into our conflict situations where there is not a Mandela in order to try and move that forward?

So those were a few of my overarching questions, thoughts, comments, and I'll be happy to let our panelists take a nibble at that or Jean is going to happily pass the mic around and open it up to the audience. I don't know if there were any comments or thoughts. . . . Richard?

RICHARD GOLDSTONE: Andrea, thank you. I think those are some excellent questions and let me respond very briefly. The first is that [it] must be recognized that Mandela truly represented his people, maybe the best of his people. He didn't lead them in a direction they didn't want to go. During the darkest Apartheid years, there was frustration and anger in the black community, but as somebody who lived through that period, I never came across hatred. It may be that there was a black majority that had the confidence of being the majority. South Africa was perhaps unique in that regard that we had a majority that was oppressed, not a minority, and that made it easier. In that regard de Klerk faced a much more difficult situation; he was leading his people where they didn't want to go, and he had the leadership ability to convince them to abandon Apartheid, not for moral reasons but for pragmatic reasons. They were facing a bloodbath. That indeed frustrated Archbishop Tutu. When de Klerk apologized for Apartheid before the Truth and Reconciliation Commission, Tutu wept tears of frustration. He later confirmed to me he was indeed upset that De Klerk apologized for Apartheid because it didn't work [*laughter*]. During a five-day cricket match when I sat with Archbishop Tutu I said to him that we were fortunate that De Klerk did not abandon Apartheid for moral reasons. He asked "Why?" I said, "If he had gone to his people in 1990 and said, 'My dear people we must abandon Apartheid because it's immoral,' he wouldn't have lasted twenty-four hours. He went to his people and said, 'My dear people, we must abandon Apartheid because we are all going to get killed.' That they could understand." So Mandela and de Klerk came from two very different corners. And I know, not that I ever saw them together other than for official events, but I know from discussions with each, that they admired each other, that they trusted each other, and they knew—and this is crucial—they knew each could deliver what he undertook. I think that is a problem in some situations like the Middle East, where I don't believe there are leaders who can deliver. If they reached an agreement tomorrow, I'm not sure that they would carry out undertakings.

ANDREA SCHNEIDER: Penny?

PENNY ANDREWS: So I just want to make, I guess such an obvious point, the question that you raised about, how do we create a Mandela to sort of move a conflict? I am thinking of the situation that we find ourselves in today in this country and how we are educating and socializing young people just to be able to talk to people that they disagree with. It may be that I spent too much of my time in universities and particularly law faculties [*laughter*] where it's hard to

really engage with people that you disagree [with], and I worry that if we look at the extent of discourse in the media and elsewhere that we're losing the capacity to really sort of reach out. I think that's the Mandela, de Klerk. These stories are grand stories, but I think just on a very basic level for people to be able to disagree in a courteous way and be able to develop the *skills* to disagree, to move the discussion forward, I think that's the challenge for all of us who are educating the next few generations.

ROBERT MNOOKIN: I'll just underscore that last point. And I think it's a role that law schools can perform and to some degree do. It's a role that in terms of conflict resolution, places like the Saltman Center, especially, can help people learn to be better at it. As I indicated earlier, in my view, an absolutely indispensable negotiation skill, if you want to effectively represent your own client or your own people, is the capacity to demonstrate to the other side, in a non-judgmental way, [that] you understand their perspective. Now it turns out, this is a very challenging thing to do, and the reason it's a challenging thing to do is people confuse demonstrating understanding with sympathy or agreement. I think that in fact, [it takes] the capacity—and lawyers can do this often—to demonstrate an understanding of the other side's arguments and then disagree with them. The capacity of people in conflict to do this, this doesn't necessarily create forgiveness; it's the fear that I'm being asked to forgive, it's the fear that I'm being asked to characterize my own decision as immoral that often restrains it, but I think it's indispensable. I completely agree with you [Penny] about that and I guess I think it's a place where there can be a real role for education, including professional education.

CARRIE MENKEL-MEADOW: I was just going to respond a little bit to something I didn't have enough time to talk about, and that is partially what made Mandela great and what we could all learn from him. He grew up and taught himself in many different worlds. He began in his rural small town subjected to rituals of very painful adulthood circumcision ceremony. He ran away from that world because he was about to be put into an arranged marriage he didn't believe in and ran to Johannesburg, where he worked and lived with miners in South Africa at the same time that he was working as a law clerk in a liberal white law firm. The extraordinary man was made out of an unbelievable depth of many different experiences, and I think that's what allowed him to develop some of the empathy that Bob's talking about, because he didn't see the world only through the two eyes of the way in which he was brought up. He sought out different worlds to live in, to educate himself in, [and] to communicate with people. He felt empathy for the miners and the conditions they were living in. I didn't get to talk about it, but he worked a lot with trade unions and the miner movement without having necessarily been one himself. Winnie Mandela was a social worker. He worked with social workers, teachers. [He] was in the first black law firm in Johannesburg. So to the extent that we want to teach people to internalize some of Mandela, if there are any students in the audience, and even us grown-ups, we're still not beyond that, I think we learn to

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build that kind of empathy by getting outside of our own comfort zones, and living in different worlds. Then—this is the difference between sympathy and empathy—not seeing that world through our own eyes, through our own operating, and through the ways in which we’ve been taught, but trying to experience the world as the people who live in those worlds experience it. I think Mandela had an enormous gift and ability to do that, and as I said, I think part of being in prison for a long time also teaches you that. There’s quietness—he did literally chop rocks at one time, there’s labor in that—and he used it as an opportunity to discipline his physical muscle. I’d like to think he was working his physical muscles when at night, when he was alone, he was exercising both his heart muscles and his brain muscles, and he was able to do that by spending some quiet time. Except for those of you who are doing some, you know, mindfulness work, but that’s part of the work too. Mandela did internal work and external work, and I think that’s a very important part of how people can learn to be little bits of Mandela.

I also want to say, picking up on Penny’s comments—I struck out from my comments, it’s in the footnotes—the fact that almost every great leader these days, Gandhi, Mandela, and others, they did have flaws. Penny sort of alluded to it, but this is a man who left his first wife and there were accusations, although never proven, but accusations that there was domestic violence in that first marriage. And many knew, if you read the biographies of Gandhi and Martin Luther King—one of our great icons—these were great men and they were also flawed men. So that’s a downside, but I want to say that the other side of it is, for some of the truly great leaders, they do marry something else. They marry their cause and they marry justice, as I said earlier. And so we’re all human beings and it’s absolutely impossible to be totally good. So some of the greatest leaders demonstrate their commitment to these larger things—and for that we thank them—and some of us just try to be everyday ordinarily human. It’s very hard to do those two things together and I just want to say this is very difficult work.

ANDREA SCHNEIDER: With that, let me go ahead and open it up to the audience.

QUESTION: A simple question for anybody on the panel. Are there any Mandelas out there today in the world that we can talk about that are on the horizon coming or already existing?

PENNY ANDREWS: I’ve heard that Bryan Stevenson, he’s being referred to as an emerging Mandela. Bryan Stevenson is a civil rights lawyer who lives in Alabama, he does work on death row, he just published a book, extraordinary person . . . specifically in the United States.

ANDREA SCHNEIDER: Any other nominations? [*laughter*]
[*Mic. Malfunction*]

QUESTION: Mandela found it politically advantageous to avoid demonization and to develop trust, which was the exact opposite of many of our current political leaders around the world who favor demonization and distrust. What

was it about his circumstance that led to that and can we teach any of our current leaders to learn from his example?

ROBERT MNOOKIN: I think much is to be learned by really focusing on the terrible leadership dilemmas, particularly in international conflicts between the tension and the necessity of constantly being negotiating behind the table with your own constituents and across the table with the other side. Especially in a world where there's no acoustic separation, the other side is going to hear what you say to your own people. The dilemma is, in order to mobilize your own base, the tragedy is, demonization works. Because when people feel angry, when they feel hurt, you're demonstrating empathy to them by saying, "the bastards on the other side are what caused it and they deserve it." But this is the core challenge and in terms of the question about where are the Mandelas, I mean an indispensable feature of a great leader, if they are going to move towards some degree of peace and reconciliation, is they've got to have the skills, the political skills, to manage this very challenging task, both behind the table and across the table. I think that sometimes, there *are* such leaders, and sometimes external circumstances can create so much pain on both sides, [that] even without that kind of leadership people can muddle along and reach a better place, but it's not easy.

As I said, I've spent a long time working on the Israeli-Palestinian dispute, and you especially hear this from Israelis: where is our Mandela? Arafat was not Mandela, it's absolutely true by the way, but what I say is, where is the Mandela on *Israel's* side who is painting a picture of a shared future that the other side would at least find bearable? It's very easy to say, "I want the other side to have their Mandela." The dilemma of course, is that in fact, and part of my own view of the tragedy and current situation, within Israel, is probably a politician on the center-right that has a prayer of being able to achieve it, because there's such fractures among Jews within Israel. And the center-left or lefties, whom I might find more congenial in many other ways, they don't have a prayer of being able to manage the behind the table conflict. And the difficulty is [also] on the Palestinian side; I think Abu Mazen in many ways is an admirable man. However, his influence in Gaza: zip. To your question, about who's the next Mandela, I have no notion of whether he has the character or not, but when I introduced students at the university of Bethlehem, some few years ago, I said, who are your heroes? Arafat was still alive, and they said, Barghouti, Marwan Barghouti. There's a Palestinian, he's in Israeli prisons, was said to have blood on his hands who was part of Fatah, who probably would have the capacity to have a broad range of Palestinians support him, but what no one has much of a notion of is, does he have the depth? Would he want to and would he have the courage to? I have no idea [if] he would be able to paint a picture, but I think it's going to take people on both sides, in that conflict, who have the capacity to diminish the internal conflicts within each community.

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PENNY ANDREWS: Can I just say, I think it's an important question but I don't know if that's really the question. If you look at Mandela and the time in which he emerged, it was sort of pre-Google, pre-Facebook, pre-technology of hatred, and I think the moment, the historical moment, in which Mandela emerged and his capacity to make everybody love him—everybody, even his enemies—I don't think that moment of history can ever be captured again. Not with the technology and the ways we've [evolved], so maybe the question is not . . . I think it's an important question but I cannot see an individual emerging out of this morass of, as I said, technology of hate, to do what he did.

RICHARD GOLDSTONE: I have two very short comments about this. De Klerk came from the extreme right wing of his party, which is very important because his credentials couldn't be questioned by his followers. And Mandela, on the other side, I think was the only politician that I've ever heard of who didn't make a mistake in twenty seven years [*laughter*].

QUESTION: I wanted to just touch upon something both Justice Goldstone and Dean Andrews just mentioned: hate, the word hate. And you said something Richard, in your comments about not sensing, on the part of a long oppressed black majority, hate, similar to Nelson Mandela and overcoming that, with forgiveness. That seemed to be almost a societal part of the reconciliation process. How do you explain that? Maybe you could just touch upon also, because I think it is kind of a symbolic example—the constitutional court upon which you served and which president de Klerk was opposed to, sits in a, as I recall, a rather interesting location, site, that the selection of that, the symbolism of that, was that part of that process in the country of South Africa? And I guess actually what Penny said, the communication that we have now maybe makes it more difficult to have a population without so much hate with the instant communication we have, but I wonder if you can touch upon those, because I think that's something that seems to exist in a lot of other places in the world where there is conflict and that is a real sense of hate on the part of so many people that apparently was not as strong.

RICHARD GOLDSTONE: I don't know if Penny agrees with me about the absence of hate but it was certainly my life's experience, from my earliest days until the present day. As I indicated earlier, I think one possible explanation is the fact that it was an oppressed majority that hadn't lost its confidence and for the majority of black South Africans, it's fair to say that it was a question of when, not if, they achieved their freedom. They never conceived that it would not happen. It may have happened a lot quicker than many might have expected. The second is that it may well be that Africans have a forgiving nature. One sees it elsewhere in Africa, where the previous colonial regime was not hated and people could come to terms. I don't know, Penny?

PENNY ANDREWS: I don't know; the absence of hate or were the people forgiving and so on. I think I agree with you [Richard]. When I first came to New York as a graduate student in the 1980s after having grown up in South Africa in Cape Town, in a very different cultural ethos, I soon got to see in

New York City that what I regarded as natural courtesies, and then people saw me as a sucker and weak, and that for me was a lesson. I think that culturally, things happen in South Africa and many African countries, which no longer happen in the United States for whatever reason, and it's localized of course; this country is too large to make such a generalization. But daily acts of kindness and consideration are so absent from particularly large cities, and a certain cynicisms and suspicions have so gripped us. I think that's the difference; the capacity to hate is not something that you . . . well you don't pick it up. I certainly didn't pick it up, and even during the transition it was like that.

But I wanted to go back to an earlier point about Nelson Mandela and this whole idea of forgiveness and love. He was, I think, a master strategist, not in the cynical way, but he used symbolism very strongly to push forward this message of love. He knew exactly when in the press conference he was going to apologize to you [Richard]. He would make these stops and just talk to little children; he would just arrive at somebody's Bar Mitzvah, [*laughter*] and you know those kinds of [things], he was really masterful at that, but in our society it would be seen as cynical. So I think that's the difference. It's sort of hard to say something like, "Africans are more forgiving people," and all these things. You know the stereotypes, we don't like stereotypes, but I do think that acts of kindness and courtesy is . . . [absent] living in large cities here.

QUESTION: This question goes to anybody but I'll start with Carrie. In a world that is so violent today, and in a world where today we talk about Nelson Mandela and his effort as a freedom fighter, engaging in armed struggle, and even the day that he was released, part of his speech was talking about the continuation of that armed struggle. Carrie, to her credit, faced that question forthrightly and said well, yes, let's not forget that he too, engaged in armed struggle. And in a world today where we see this going on all throughout the globe, I'm wondering Carrie, what lessons do we learn from Nelson Mandela about the role of violence in reform and freedom struggles?

CARRIE MENKEL-MEADOW: Lesson number one, we will not eliminate it. When people use violence it's because they feel helpless, not heard, and I don't mean this in a personal way, I mean in a structural national group, religious, class, gender, any of that stuff. Violence is what you do when you've got no place else to go, and it is not going to stop until everybody feels like they have a place in the world. So, take whatever violence you think is the most illegitimate of the world at the moment, you know, the senseless beheadings, ISIS, just pick your favorite one. And while you're busy hating it or condemning it because you say, "we don't do any of that," I say, "look behind it, what does it mean?" Yes, there's true evil in the world, I don't disagree with Bob's first little slide. There is some true evil in the world, but a lot of the violence that you see existing, it may not be rational in the sense that it comes from the head; it is trying to tell us something. Whoever is doing it, is saying, "I got nothing else to do, I have no other tools." And that's why Mandela said to Gandhi, or to Gandhi's son, there was a different situation in India. The British—though I'm nev-

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er ever apologetic about what the British have done to the rest of the world—the British behaved differently in India, and so in some respects Gandhi could use nonviolence resistance in a different way in which it was not possible with different structural oppression. So, I say to you, that I take violence seriously when I see it. I mentioned briefly, I was in SDS in Columbia in 1968. I was there when, I mean I wasn't there in the house, but the Boudin house that was blown up in Greenwich Village because a bomb went off that wasn't supposed to go off—I was appalled. I come from a long line of pacifists in Europe, so I am not for violence, but I completely understand when it has to be used, and let me just say, for people that—all of us—who don't want people senselessly killed, the extent to which we overly condemn the violence, and say it's senseless and stupid and terrible and we have to do everything, including using more violence to combat it, it will increase unless people hear the messages behind the violence.

ROBERT MNOOKIN: I'll just add one short comment. I think that in terms of conflict resolution, the two emotions that make it most difficult in my view are fear and anger. And it's not so much—it's been talked about—the absence of the desire for revenge. I take Richard at his word, I mean he lived there, he knows, but there was a lot of fear and a lot of anger, even though the blacks were the majority, because what they thought they were up against. Moreover, I have to sort of add a modest question mark about the notion, and it may be culturally true, that somehow South Africans, in particular, and Africans in general, are different. One only has to look at the Tutsis and the Hutus; one has to look at Sudan and South Sudan. I mean there are so many examples in Africa of people who have lived together for decades successfully where through a combination of fear and anger they can be mobilized to do deeply inhumane things. So I just add that, as a cautionary note, about optimism because of how particular cultures operate. I think in terms of the human condition, I guess my own view is, we have to face ourselves, and being fearful enough or angry enough, we all have the capacity to do terrible things.

ANDREA SCHNEIDER: I'd like to end on a more positive note [*laughter*], that just makes you want to go outside and drink, so how about that as a connection. So please join me in thanking our wonderful panelists [*applause*]. Thank you again for coming.

