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The Search for Meaning: Survivors' Children and Their Choice of a Life in the Law

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The title of today's talk is "The Search for Meaning: Survivors' Children and Their Choice of a Life in the Law," even though the theme for this week's talks is "Personal Reflections on the Past."

So I need to come clean from the start. It is not *their* choice of law. It is also mine. I am one of "them." I used the third-person plural—over there, distanced. But no. It should have been the first-person plural—I together with other children of survivors. Me too.

I am the daughter of survivors. Both of my parents survived the War* in Poland, in Warsaw living as Christians on false papers. They met after the War. But false papers and a false identity is how each survived, living out in the open but carrying a secret, a fatal secret, their hidden Jewish selves, acting it out, crossing themselves when they passed a church. I have imagined them walking silently on Warsaw's streets, heads down to escape notice or recognition and the denunciation that would have followed, living every day trying to pass, living a lie in order to live. Remaining hidden while in plain sight.

And look at how I tried to conceal myself with my title. As if I could remove myself from this talk and pretend that it is about others and not about me too. Did I really think I could give this talk and not reveal my identity? Apparently so.

In the weeks and days leading up to this talk, I realized with some level of astonishment that I had reproduced the complicated dance that my parents lived, that the title was my version of false papers; it was my way of hiding by using the mask of objectivity, afraid that the personal would muddy the academic.

Hiding. Avoiding. There is such pain here in being a child of this experience, with this legacy. Secrets and silences, pain and loss create this dynamic of approach and avoidance, reveal and conceal. This is my constant inner struggle about the War.

I have shelves upon shelves of books in my personal library on the War. Not so much about the facts, but those too. I hate the facts. They scare me. My parents lived through them and I can barely tolerate seeing books about the reality of the War on my shelves. I have put those books out of my line of sight. Most of the books are accounts of individuals, memoirs or novels. Some of these novels are really memoirs that contain flights of imagination and conversations with relatives dead or never born. Many were written by survivor children like me. Even if I haven't read them all, when I look over my library, the titles on the spines of those books comfort me. I have woven some of those titles into this speech in tribute to the books that have shaped my losses.¹ I am an only child. My mother could have only one.

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* As I explain later, we, the children of survivors, refer to World War II as "the War," with a capital W.

I am the last Zoltek in my father's family. These books—I think of them as my siblings.

It is complicated to carry this legacy.

And it is complicated to be a lawyer, a student of the law, a lover of the law, to make the professional choice to be immersed in the law when law was the initial instrument of the disenfranchisement and dehumanization of my parents, our parents.

With law, too, there is this constant inner struggle for anyone who looks at it up close. Law is this double-edged sword. At the heart of the law, and for anyone who practices the law, is the dual consciousness of how law can be used for the light of justice and the darkness of injustice.

Many professions, perhaps all, have to face this dilemma. Their craft, their skill, their expertise can be used by human beings as an instrument for good or for evil. There were Nazi doctors, about whom Robert Jay Lifton has so powerfully written.² There were Nazi journalists and propagandists who twisted words and ideas and used the tools of the media as it then existed to spread their hate and their lies. Architects built Auschwitz. Engineers designed the delivery systems for Zyklon B, the gas used in the gas chambers. These plans, this construction of the machinery of death was at the heart of the libel trial involving David Irving and Deborah Lipstadt, portrayed in the recent film *Denial*.³

Every profession must face its moral neutrality. Law is mine.

And at the heart of my thoughts about choosing a life in the law is this same dynamic of approach and avoidance, love and fear.

So for me this topic is a double confrontation. My confrontation with the War. My confrontation with the law. Both are characterized by this push and pull, this attraction and this repulsion.

This struggle for the heart of the law is hardly unique to me or unique to the Nazis' use of the law as an instrument of oppression. Apartheid was built on law and Nelson Mandela was a lawyer. And this country is not exceptional. Our national wounds are founded in slavery embedded in the constitutional definition of who is a person, in Jim Crow laws, treaties with Native Americans, and laws that interned the Japanese during World War II.

In my life, my most personal struggle with the amorality of law has been with the rules and regulations, edicts and decrees written by Nazi lawyers. Laws that were the initial instrument of the state used against the Jewish people in the Nazi war against the Jews. Men like Hans Frank, Hitler's personal counsel, lawyer for the Nazi Party, appointed as the minister of justice in Bavaria shortly after Hitler took power, who wrote these laws and then administered them. Each law and administrative regulation was written by lawyers, one after another after another, each stripping away a different badge of citizenship and humanity.

The German Reichstag, the freely elected legislature, unanimously passed these laws. How that came to be is a question. How lawyers wrote and enforced these laws, that is my question.

When one now says the word "Nuremberg," one thinks of the trials by the four Allied prosecution teams after the war ended, one American, one British, one French, one Russian. One thinks particularly of the first trial, which began in November 1945, in which twenty-four individual Nazi defendants were tried for what happened during the war.

Among those defendants was Hans Frank. But what he was on trial for at Nuremberg was his role *in* the war. As the governor-general of Poland, he oversaw the killing of three million Polish Jews, 9 percent of its prewar Jewish population, and he offered up Poland as the place where the death camps should be built as part of the Final Solution, all under his jurisdiction and control.

But what the name Nuremberg should also evoke but no longer really does is the Nuremberg Rally of 1935, at which the Nazis announced the first laws that would institutionalize their racial

theories. There were three laws announced that day. These laws were quickly followed by two others.

1. German Jews lost their citizenship.
2. Jews were prohibited from marrying persons of German or related blood.
3. Jews were prohibited from having sexual relations with persons of German or related blood.
4. German women under the age of forty-five could not work in Jewish homes.
5. Jews could not fly the national flag.

And so it began.

The first set of laws was followed by regulations defining German blood, and who is a Jew. These legal regulations define a Jew as anyone having a single Jewish grandparent—one-eighth a Jew, a Jew under the law.

Other laws followed. Laws took away Jews' professions, their access to schools, their property. Laws put Jewish stars on their arms. Laws forbade them to own bicycles or walk on the sidewalk. Those were all laws.

It is impossible to face history squarely and not see that one Nuremberg led to the other. The necessary precursor for the crimes for which the Nuremberg defendants were convicted in 1946 began with the Nuremberg Laws of 1935.

The Nuremberg Laws represent the loss of the ability to see a fellow citizen as a fellow. First, there is the loss of fellowship among fellow citizens; then, the loss of humanity among human beings, leading ultimately but not inexorably to the death camps.

The defendants were on trial at the Nuremberg of 1945 and 1946 for their actions during the war that officially began in 1939. But the war against the Jews began with the Nuremberg Laws of 1935. Law was the Nazis' first instrument of war.

The Nuremberg Laws of 1935 exemplify the problem of being a lawyer.

Justice Robert Jackson, on leave from the United States Supreme Court to serve as the lead prosecution lawyer for the Americans at Nuremberg in 1946, alluded to this duality, this dilemma. In referring to Frank, the defendant in the dock, he identified him as "a lawyer, I say with shame."

Law is that double-edged sword. In 1935, it was a destroyer of human rights; in 1945, its protector.

I stand with Justice Jackson in his shame. All lawyers know this about law. Law is amoral. It is the ladder up and the ladder down. It can be the ladder in either direction. Law is an empty vessel into which both oppression and liberation can be poured. There is a core moral vacuum at the heart of the phrase the "rule of law."

So how could I become a lawyer? How do lawyers deal, personally deal, in their own lives with this moral vacuum at the heart of the law, of their profession? And how have lawyers, and in particular Jewish lawyers, dealt with their relationship with the laws promulgated by the Nazis? How do we, how do I, live out this life in the law, after such knowledge?⁴

These questions are the bridge between past presentations at Northeastern University and Philippe Sands's talk later this week as our Robert Salomon Morton Lecturer.

Those who have been part of Northeastern's long commitment to Holocaust awareness will recall that three years ago Helen Epstein gave the Morton Lecture on her seminal book *Children of the Holocaust*, published in 1979.⁵ Epstein coined the term "children of the Holocaust" and put a name to a phenomenon that had not yet been named, at least in popular or public consciousness—

that we, the second generation, are not just the biological children of our individual parents but the children of a historical event, our existence shaped by our parents' lived experience.

We are the "second hand smoke,"⁶ children of an event that we did not live through but that nevertheless unhappily but existentially marks and defines us. We carry our own tattoos but they are numbers on our psyches, the unconscious mirror of the numbers burned into some of our parents' arms. As individual as we may be, our parents' experience has seared us as one. We are a group, a numbered, finite generation bound together. We are all children of that calamity that we call the "War," capital W, and that the world calls the Shoah or the Holocaust.

Philippe Sands is one of the great barristers and legal scholars of our day in the area of international human rights. I want to tie my reflections about choosing law to what he says in his most recent book, *East West Street*.⁷

He interweaves the stories of four men. Three of them are lawyers, one is not. The first is the aforementioned Frank, our lawyer defendant at Nuremberg. The next two are legal scholars, Rafael Lemkin, who invented the concept of "genocide," and Hersh Lauterpacht, who saw the Nazi policy as a "crime against humanity." The book centers on the legal and intellectual face-off between these two men right after the War.

Both were Polish Jews; each was an adviser to a prosecution team at the Nuremberg trials—Lauterpacht to the British team (he had moved to England in the 1920s), and Lemkin to the American team (he luckily, extraordinarily, had been able to immigrate to the United States in 1941 because of the intervention of a colleague from Duke University, whose law faculty he then joined).

Each saw the Nazis' crimes differently. Lauterpacht saw the Nazis' actions as crimes against humanity, the Jews in their individual capacity as members of humanity. Lemkin's approach, genocide, emphasized that the war against the Jews was a war against them as a group.

Sands's focus is the contested space between the two conceptions.

My focus is different. I am identifying myself with their joint enterprise—with what united them, with their need as lawyers and legal scholars to make the Nazis' plans for the Jews be encompassed by law, be seen by their world, the world of law to which they were devoted.

I am identifying myself with them and with their quest to rescue law, much as I identify and align myself with Jackson's expression of shame that Frank was a lawyer.

How else could one choose to be a lawyer?

Lemkin's and Lauterpacht's legal scholarship was in the service of the same passion that animates me. They both wanted the law to be big enough, expansive enough, to let them in. They were invisible, denied, exiled from the countries of their birth and education. But my focus is on how the war exiled them from law itself and how determined they were, how passionate they were in their arguments to push their way in.

Amazingly, rather than running away from law, they ran toward it, seeking approval and acceptance, acknowledgment and recognition—as if they could purge law of the ugly stink of its having been used to deny and oppress. They both wanted to purify it in a rededication of it as an expression of morality.

They were on a quest to create a law that vindicated and avenged them, their families, and their people by recognizing what had happened as a crime. They were hammering against the door of the law that had a "Do Not Enter" sign to let them in, into a world of law that they loved. They were, I am suggesting, united in this same dance of love and loss, this two-step of ambivalence and pain in their relationship with the law. We lawyers want to love the law and we want the law to see us.

Interwoven in Sands's book is the story of Leon Bucholz, Sands's grandfather. In this book about lawyers and law are chapters upon chapters about Sands's search for the fuller story of his grandfather's past. Three lawyers and his grandfather.

So Sands's book is also about him. Not just by him but about him. Reveal and conceal.

Only once does Sands make his own connection to the law visible. On page 7, in the prologue to his book, in the middle of a paragraph, he writes: "Why had I chosen the path of the law? And why law of the kind that seemed to be connected to an unspoken family history?"

Is this a rhetorical question? Is Sands engaged in the same two-step of reveal and conceal with which I identify and that resonates with me, the topic title that I put out and the one behind which I hid? Reveal and conceal. Does the personal muddy or illuminate the academic enterprise? Does the personal muddy or illuminate the professional enterprise?

What we cannot see about ourselves or cannot reveal or pose as rhetorical questions or as titles to a talk with self-effacing titles others can see; they can see right through us. Our passion to explore these questions, our choices of what to study, what to write about, what to do as a profession is, I am suggesting, our desire to play a role in this redemption and protection of that generation, a conflicted set of choices in which giving voice to their lives, and as lawyers avenging them, gives meaning to ours.

We reveal and conceal. About the War. About the Law. About the Personal. We all do.

So with the rhetorical question Sands asks so obliquely, let me also ask and try to answer it about myself. Why did I choose the path of law? And why law of the kind that seemed connected to my family history? Why did I become a criminal lawyer, domestic, not international? Why did I choose to write about Post-Traumatic Stress Disorder? And about law and memory? And about statutes of limitation, which govern how long one can litigate a loss? And finally, why am I working now to build an archive of the untold stories of the murders of African Americans in the Jim Crow South at the Civil Rights and Restorative Justice Project so they will not be lost to history and forgotten? Life is lived forward, but perhaps understood only backwards, as Søren Kierkegaard famously remarked. Were any of these career choices of what to do or what to write about conscious on my part? Not the early choices, no. I look back at them now and I see a through-line. But not always. I did not even see myself clearly when I began the work on today's talk. Reveal and conceal.

The ideas I am exploring in this talk began when I picked up a psychology journal in a hospital outpatient waiting room. In it I read that second-generation children are "overrepresented" in the helping professions.⁸

That line stuck in my head.

I liked it. I held on to it. I liked it in part because it accentuated the positive. Quite the opposite of the Debbie Downer part of this talk so far, with its focus on death and destruction, amorality and avoidance. This positive spin was positive but not in a Pollyanna-ish way but rather in a way that is as true to my experience as are loss and despair.

Our parents were shaped by losses, to be sure, and so were we, but they coped and survived and generated new lives. And had kids. And Jewish kids, I might add, perhaps the most amazing fact of all, after what they had gone through. Not my subject, but a fact that I cannot leave unsaid.

How more life-affirming does it get than that?

Every aspect of our parents' life was an affirmation of life. Every time they ate, not just to fill their bellies but with pleasure and gusto, was an act of optimism and self-generation. I remember my parents and their survivor friends. How they dressed with care, how they dressed up for parties and drank and smoked and played cards and talked and talked. There was even laughter. Think

about the movie about the survivor colony in the Catskills that Phil Brown showed here during this commemorative week in 2015.⁹ They danced and sang. Not always. Not everyone. But how was any of that possible for anyone ever? I think about it and I am just in awe. *They* were the greatest generation.

And we, their heirs, had taken our received experience and turned it into something even more generative. We help. That line in that article, I felt that the author was giving a sort of tribute to us, their children.

Not only was our mere existence balm to their souls. We carry that. They were proud of us, invested in us; we were their greatest achievement and happiness.

But we, as a cohort, had taken the worst of the worst that history had to offer and had turned it in one generation into something affirming. We were going to help and heal the world.

But was that statement true?

I found that article from a decade earlier and looked at it, this time more closely. The line in that article that caught my eye, and my heart, was stated as a fact without supporting data, but with a citation to a book, *Memorial Candles*, by an Israeli psychotherapist, Dina Wardhi.¹⁰ It is an interesting book but it is a collection of anecdotes and interviews. It was a citation that did not really support the proposition.

So I began to think about it. Have a higher percentage of survivors' kids chosen careers that are in the "helping professions"? Is that a statement that can be supported? Who is the normative group? Jews of my generation who are *not* the children of survivors? And where would one look for data? It would have to be international. Remember, this cohort is scattered, living in whatever country our parents could get entry. And there are no data on professional choices that designate religion or ethnicity. And let's agree not to get into the question of what is a Jew or who is a Jew. Or who is a survivor's child. I briefly touched on that touchy question by alluding to the fact that Lemkin and Lauterpacht themselves lived out the War in England and the United States. Are they "survivors"?

You can see why data would be hard to come by. Nay, impossible.

But even if one cannot find quantitative data, I want nevertheless to stick by the truth, the deep and essential truth, of the qualitative insight contained in that article. It is not so much about the overrepresentation, about the numbers. It is about identifying us as "helping."

Calling us helpers, identifying our professional choices as being associated with helping, not hurting, is why I responded to it so powerfully. That feels to me to be profoundly true. But whom are we really trying to help? What drives us? And is that different than others?

All I have to go on is my personal experience and all those memoirs and essays by survivor children, those titles on my shelves, and my friendship circle of childhood playmates and high school friends, university and law school classmates, academic and lawyer colleagues who are survivors' children—we gravitate to each other—we have survivor children radar.

From that small and selective sample, I want to offer a friendly amendment, or perhaps a supplement to the initial proposition.

Many of us are in the helping professions but I prefer to call it the "meaning-making" professions, whether it be the arts or journalism, academics, medicine, therapy, rabbinics, or the law, all of which are designed to explain people and our world, help others through their struggles.

We are hardly alone in this search for meaning in the world. That too would be presumptuous. But what I think is true for many of us, for perhaps a disproportionate number of us, is that our professional lives are deeply tied to making meaning out of the particulars of our parents' lives.

We are struggling with the ghosts of the destroyed vibrant, deeply Jewish, deeply secular, and deeply European world in which they lived.

The assertion that I am making is rather that survivors' kids are not so much about meaning per se or social change per se or repairing the world in a general sense or giving back. Many people see their lives this way. What distinguishes us from all others who share this aim is how deeply our motivation is bound up with our parents.

Our focus is trying to make sense of a world that could do this to our parents and how we can live in this world. It is about us and them. This is deeply personal. Deeply bound to them. Forever tied. Our meaning-making is profoundly about them in particular.

We are working out our relationship to them and to the War in our work. Our work is the means by which we give no "posthumous victory"¹¹ to those who tried to murder our parents. We vindicate our parents' lives, symbolically protect and erase their vulnerabilities and show the world how generative and creative we are. We stand in for the cousins and siblings lost and never born. We will be powerful and ease our fears about our own vulnerabilities in the process.

My generation of survivor children understands that we carry our parents and their lost families and their world in us. We all bear the names of those who are dead, that is the Jewish way. But we bear the names of those murdered for having been Jewish, names that signify our parents' losses. They looked at us and they saw the lost. When we looked at them, we wanted to make it up to them, to make it right. What I have come to tentatively understand is that we sought to become our parents' parents, their protectors, their healers, their voice, and their avengers.

We, as a generation, are banging at the doors of a world that could have done this to them and saying, "See them. See us. See what you did. See what was lost when you murdered the poets and the artists and the lawyers and the scientists and the rabbis. See us and our achievements and see what the world lost. See our unborn cousins and weep."

Our lives are premised on a fact that we never take for granted—that we were lucky enough, and privileged enough, to live in freedom and able to choose a profession, a choice denied to many of our parents, who scraped by or made money in whatever way they could, after the war, defined by age and education before the war, and varying degrees of English literacy and the state of ruined health, mental and physical, and many other factors.

We at least, unlike our parents, had the security even to choose to have a profession. We were immigrants' children, to be sure, and shared many of the conditions of other immigrant groups' children, where roles are often reversed and children shepherd their parents through a world in which their elders are at a great cultural and linguistic disadvantage.

But our parents were a different sort of immigrant. They were immigrants plus. They had fled, but they fled a world they had not wanted to leave, a world from which they had been banished, dispossessed. They had survived, but the world they had known, and that many had loved, had not.

And let me add onto this dimension of our being the children of immigrants after the War and tie it back to the law.

Law as a profession is extremely unportable across borders. My own parents' circle had many survivors who had been lawyers before the War in Warsaw and in Krakow and even in Lvov. For every Lauterpacht and Lemkin who learned a new language and excelled in a new country, the survivors I knew, the survivors who came to Canada after the War, who had been lawyers before the War, scraped by as assembly-line workers and painters and a shoe-store owner. Barred in many countries from practicing law until they were citizens, they could not afford to wait. They had families to feed. Their English was flawed and accented; their fluency and erudition "lost in translation."¹²

You would think I would have known better, or at the very least, I would have been counseled or warned against the choice of law as a career. But I was not; quite the opposite. My mother encouraged me, telling me that law is good training for the mind no matter what I end up doing.

I was blind to the unspoken implications of that message. My brain was portable. Education was all that mattered, all that you could carry across life's travails. She never said, and I certainly did not internalize, any lessons about law's circumscribed reach across jurisdictions or across language.

And I have lived out that truth, though infinitely more gently. I am Canadian by birth and my first law degree was from Toronto and my first job as a lawyer was as counsel for the Crown. I have been here in the United States for thirty-five years. I have made my way. But not without some costs and bumps along the way. Of all careers, law with its inextricable link to a particular place and culture, was a rather peculiar, ahistorical choice; in yet another way, an odd choice for a survivor's kid.

So when all is said and done, what was it about law for me?

If law is an instrument of power, then I was going to go for it. I was a Crown prosecutor; it is simple. I wanted to put away the bad guys, the people who hurt others. I wanted to help victims get justice. Their crimes were an attack on society. I would represent a government that stood up for victims, that had their back. These victims were not alone and friendless. The harms done to them would be seen. They had me.

There is more than a little grandiosity that comes with this territory of being the only child of an entire family tree of Zolteks. It is the shadow side of the absolute vulnerability that you feel in being the only person who is alive on the planet who has your name. Having power and being part of a government and putting away criminals where they could not hurt anyone else was, I think, an intoxicating elixir for this survivors' kid.

There was in me, when all is said and done, a desire to tame law, to hold this instrument of power. To be in control. To use it for good. To put away the bad. To avenge my parents' losses. To calm my own fears about law, and about history.

It is with history that I wish to end. We are living in a moment where the fragility of democracy and the rule of law is very much in the air and on our minds. The threat comes from fanaticism that cannot tolerate difference and authoritarianism that cannot tolerate dissent. "Othering" in the form of demonizing groups and losing the sense of the humanity of one's fellow, individual by individual, is afoot in this world. Just as the generation of our parents is almost all gone, we are facing the question whether the world is beginning to go mad all over again.

For my generation of survivors' children, this moment has an added resonance, an extra frisson of danger. We know all too well not to take anything for granted. My family lived in Poland for hundreds of years. I am first generation, first in Canada, now here. Tenuous, this connection. More tenuous than one likes to admit.

Across the globe, we survivor children who live in the Diaspora are asking whether this is the moment that our parents failed to see. What are we seeing? What are we missing? This moment may not be that one. But we wonder with a worried eye born of great pain. They relied too much on the Enlightenment, which proved to be too weak for the center to hold. We wonder what is the same and what is different, and whether we will be able to discern the difference.

For us as Jews, our hearts skipped a beat when Jewish community centers in seventeen states were evacuated by bomb threats last week, one here in nearby Newton. And our hearts go out to others, who are now the targets. Will we stand with them as others did or did not stand with us?

And for those of us who are lawyers, and for whom fleeing across borders with our unportable profession is not an option we are currently exercising, our task is to make the empty vessel of the rule of law overflow with justice. This is our sacred task. Law is, we have learned, the place where hatred and “othering” gets actualized. Vigilance and a struggle for the soul of the law is the debt we owe to the countries in which we now live, and for the world; for the generation of survivors’ children and our descendants, it is the debt that we owe our parents.

Notes

¹ Julia Epstein and Lori Hope Lefkowitz, *Shaping Losses: Cultural Memory and the Holocaust* (Urbana: University of Illinois Press, 2001).

² Robert Jay Lifton, *Nazi Doctors: Medical Killing and the Psychology of Genocide* (New York: Basic Books, 2000).

³ *Denial*, directed by Mick Jackson (New York: Bleecker Street Media, 2016), DVD. For a detailed account of the documentary evidence establishing that the architects and engineers knew exactly what they were building, see Robert Jann Van Pelt, *The Case for Auschwitz: Evidence from the Irving Trial* (Bloomington: Indiana University Press, 2002).

⁴ Eva Hoffman, *After Such Knowledge: Memory, History, and the Legacy of the Holocaust* (New York: Public Affairs, 2004).

⁵ Helen Epstein, *Children of the Holocaust: Conversations with Sons and Daughters of Survivors* (New York: Penguin Books, 1979).

⁶ Thane Rosenbaum, *Second Hand Smoke: A Novel* (New York: St. Martin’s Press, 1999).

⁷ Philippe Sands, *East West Street: On the Origins of “Genocide” and “Crimes against Humanity”* (New York: Knopf, 2016).

⁸ Diane Harvey, “Intergenerational Transmission of Trauma from Holocaust Survivors to their Children,” *If Not Now e-Journal*, Winter 2007.

⁹ *Four Seasons Lodge*, directed by Andrew Jacobs (Four Seasons Project and Rainlake Productions, 2008).

¹⁰ Dina Wardhi, *Memorial Candles: Children of the Holocaust*, trans. Naomi Goldblum (New York: Routledge, 1992).

¹¹ Emil Fackenheim, *The Jewish Return into History: Reflections in the Age of Auschwitz and a New Jerusalem* (New York: Schocken Books, 1978), 23–24.

¹² Eva Hoffman, *Lost in Translation: A Life in a New Language* (New York: E. P. Dutton, 1989).