



Voices from the Rwanda Tribunal

Official Transcript: Christine Graham (Full Interview)



Role:	Senior Appeals Counsel
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Interviewers:	Robert Utter Donald J Horowitz
Videographer:	Max Andrews
Interpreter:	None

Interview Summary

Christine Graham discusses the considerable length of ICTR cases, due in part to the unusual nature of the crimes and to an initial lack of infrastructure. She reflects that judicial systems usually are built over hundreds of years, yet the ICTR was tasked with building a justice system in roughly a decade. She observes that while the Tribunal contributes to reconciliation by providing a judicial response to the genocide, the mandate for reconciliation had little influence on the judicial procedures.

The transcript of the interview begins on the following page.

Part 1

- 00:00 **Robert Utter: Let me introduce myself if I may. I'm Robert Utter. I'm here on behalf of the ICTR Information Heritage Program and I'm here as an interviewer and you are the interviewee today. We're honored to have you.**
- 00:16 Thank you.
- 00:17 **RU: Would you give us your name please?**
- 00:18 Christine Graham.
- 00:21 **RU: And you work with the ICTR.**
- 00:23 I work with the ICTR Office of the Prosecutor.
- 00:26 **RU: And how long have you been here?**
- 00:28 I came to the ICTR in February, 2002, so it's almost seven years or it's getting close to seven years.
- 00:37 **RU: And what is your current role with ICTR?**
- 00:41 My functional title is Senior Appeals Council which will lead you to think that I'm dealing with appeals but I'm not doing that yet. I'm still doing trial work.
- 00:52 **RU: Someday you'll do appeals . . .**
- 00:53 Yeah, I'm hoping next year.
- 00:55 **RU: Soon, soon.**
- 00:56 Yes, soon. I'm finishing off a smaller trial right now so once that is done, I'm supposed to go into appeals.
- 01:01 **RU: And how long had you done the trial work then?**
- 01:04 I started doing trial work straight when I came here and a couple . . . actually a couple of months after I arrived, it was the opening statement of what is called the Military One Trial which is one of the bigger trials we have had dealt with in this office and the opening statement was on 2nd April, 2002 and then I was engaged . . . I've been engaged in trial work ever since.
- 01:28 I finished . . . I was part of the team that finished that trial and the evidence in, in January of 2007, and then I was assigned a new, smaller trial. That is the one that I'm now dealing with.

- 01:42 **RU: And you mentioned team. Let me know what that is composed of.**
- 01:46 Yeah. When I came, I came from Chambers work at The Hague from the ICTY and I was recruited as the legal adviser; that was my title. However, I was doing trial work and in the team at the time when I arrived, it was headed by a person; Chile Eboe-Osuji who is now Chief of Chambers here. I don't know if you had an opportunity to talk to him.
- 02:15 And then there was one American lawyer, one Canadian lawyer, a Tanzanian lawyer. There was some shifting around in that team so the persons that went to trial on that case was, it was an American Lawyer, Barbara Mulvaney and then it was Drew White. He was her, her second senior lawyer. And then it was myself and a Tanzanian lawyer Rashid Washid.
- 02:47 And then we had a couple of other people who was there for shorter periods, including Patibon Suda who is now the deputy prosecutor of the ICC. So over the years, we have had a number of people on the team but there's also been a core of personnel that remained within the team and, and practically started the case and finished it.
- 03:07 **RU: When you say team, this is the group that presents the case for the prosecution?**
- 03:11 It is, yes and it's normally, it's several lawyers and then it's assisted but by a person that's called a case manager. Such person can be a lawyer but doesn't have to be and basically what that person does is a lot of different things but facilitates the process for the attorneys.
- 03:31 **RU: Given the scope of what you do, that's a big job.**
- 03:34 It's a big job. It's a big job.
- 03:36 **RU: And, and this as you point out is your second position with the International Criminal Tribunal.**
- 03:43 Yes.
- 03:44 **RU: But what was your work before you did the one on Yugoslavia?**
- 03:49 Yeah, I, I can hardly remember. I've been with the tribunals for ten y-, over ten years now, and, but I started out as a trainee judge in Sweden so when I was recruited to the ICTY I was, what we, what you may want to call a baby judge. We have a judge training system.
- 04:10 **RU: Yes.**
- 04:11 So normally once you leave law school you apply to clerk and you clerk for two years and then you apply to go to the, the appeals court and start your training as a judge. And that's where I was at when I left that career to go to The Hague.

- 04:33 **RU: And what attracted you to the work of The Hague?**
- 04:36 Sorry?
- 04:36 **RU: What attracted you to the work of The Hague?**
- 04:38 Several things. Obviously it was current affairs at the time. This was early 1990s and as I was finishing off my law degree, the war in Yugoslavia, I'm from Yugoslavia, broke out. It was very much part of what was going on. I did some international law courses in my first degree in Sweden. After having clerked for a year, I went abroad.
- 05:05 I went to London School of Economics to do a Master's degree in Public International Law and as I was there, the genocide broke out in Rwanda. So I came, n-, when I came back to Sweden to continue clerking, I was already very much interested in what was going on at, in former Yugoslavia and Rwanda.
- 05:27 And so was many fairly young lawyers at the time and I had a friend, it's really – I had a friend who I had clerked with at a district court who got – who started working on a secondment basis for the ICTY. And they were looking for staff and he picked up the phone and asked me, "We are looking for more personnel. Why don't you apply?"
- 05:50 Because he knew we shared a common interest. And he had also been a student at the, at the LSE. And of, so I did. I, I was intrigued, but of course you know it's always the situation of leaving a career that you already started. But I, I'm very glad that I did.
- 06:09 **RU: And so you were aware of the massacre and the difficulties in Rwanda while you were still with the tribunal in . . .**
- 06:19 I was.
- 06:20 **RU: . . . in The Hague?**
- 06:21 Yes, I was. I was, I was already involved in the field although not professionally, but yes I was already a-, aware. When the Yugoslav conflict broke out it was – in Sweden it was big news . . .
- 06:36 **RU: Yes.**
- 06:37 . . . and almost everyone knew someone who had a relative who was from the area because we have a large emigra- . . .
- 06:43 **RU: Yes.**

06:44 . . . group of emigrants from that area in Sweden so it felt pretty much like home and also having a war on European territory no one thought that would happen again after the Second World War.

Part 2

00:00 **RU: And what are your plans after you finish here?**

00:03 I don't know. I haven't really planned it and I, I can say, and this may sound callous, but I haven't really planned any of my career. That's how it feels. I've alwa-, always tried to do what I felt I wanted to do, where my heart was. And right now it's still here. I enjoy the work immensely. I'm looking forward to go on to do appeals work. And I have my children here, they're fine to go to school so I haven't really thought concretely what I'm going to do. Right now I'm still just doing what I am doing here. Yeah.

00:44 **RU: I, I understand every bit of that. That's the way my career went too. I was a Supreme Court Judge for 24 years in our country at Washington State.**

00:54 Yeah.

00:54 **RU: Where there are a lot of people from Sweden, and then a Trial Judge and a Court of Appeal Judge before that so – but at no time did I plan that this is what I'm going to do (_____) happened.**

01:06 Yeah.

01:07 **RU: I have no objection. It's been a great, great adventure . . .**

01:09 Thank you. Yeah.

01:10 RU: . . . as yours sounds as well. Tell me the type of cases you've, you've been involved with in the ICTR.

01:19 Mm-hmm. Because our cases are so large and they go on for so long, (___), there's not really that many cases. I have mainly just dealt with two. When I first came we ha-, the team handled some other cases as well. But I never really went to trial on those cases. So primarily the case, the cases that I've dealt with on the trial level is what we call the Military One case.

01:48 It has four accused, senior military officers and one of the main accused is Théoneste Bagosora; that the press often refers to as the mastermind of the genocide. We didn't represent him as such of course as prosecution but he's, (___) sort of become his nickname. But that is a case, it's very big and bulky case and he'd – it had a conspiracy charge which was, which is of course, you know, particularly challenging on the part of the prosecution.

- 02:27 And we had 82, we called 82 witnesses for the prosecution. I think 81 was heard and it was over 160 for the – over 200 for the de-, for the defense and with many thousands of exhibits and, and so forth. It was very interesting but extremely hard work and one of the hard things about it was that it was, it felt like it would never end.
- 02:54 **RU: Mm-hmm . . .**
- 02:55 Well, I mean, trial work is, normally you have finality. You, you expect that sooner or later will come to an end. But when the trial goes on for over five years, you tend to lose, you know, the conviction that this will actually end. And, and that's, psychologically that's difficult.
- 03:16 **RU: Has it ended now?**
- 03:17 It has ended now but we still (_____) judgment. We haven't had judgment yet. And of course in that sense it hasn't ended. We expect it later this year but of course that's in the hands of the chamber.
- 03:31 **RU: What were the most difficult issues in that trial?**
- 03:36 There are so many. There were many difficult legal issues. There are many difficult personnel issues. There are many difficult administrative issues. It's just, it's, I think one of the lessons that can be learned from this tribunal is that it's difficult to have criminal litigation that goes on over a number of years with several accused involved.
- 04:08 It's difficult to keep your staff that doing the work on both side, whether the prosecution or the defense. It's – you have to have judges that are fit and strong to sit long hours over many years. You have to have strategies that actually works over all these years. You can't change them from one day to another so you have to have a very long-term vision as a lawyer when you present your case.
- 04:37 You have to have a organization behind you that's willing to back you on all levels all, over all these years. You have, as a team you have to have extreme tolerance and acceptance of each other because you spend so much time together. And although you're really tired of the ones that you work the closest with, you, you, as much as you learn to love them over the years, you know, it, i-, that can be difficult too. So I can really not pinpoint one thing.
- 05:09 **RU: Not the most difficult, they're all difficult.**
- 05:10 It's very di-, it was, it, it has been very challenging but I don't think I have been bored one day. And one of the main points for me I think, or not main points, but one thing that I always find very rewarding and I feel like, it's a pri-, you know, I feel like I'm being privileged is the fact that I don't have to go to work and I, to be bored. There's always

something interesting and something challenging, although of course the, the challenge can be frustrating because you don't really know how to deal with it.

Part 3

- 00:00 **RU: From a legal standpoint, do you deal with a mixture of civil and common law concepts?**
- 00:06 We, we do. I'm myself is of course is from a civil law system. However, the Swedish system is very much like a hybrid system. It has similarities to what we do here in the sense that you have two independent parties litigating an issue-, two parties litigating an issue before an independent panel of judges.
- 00:32 And here, just like in Sweden, we are not too hung up on admissibility and so forth because we don't have to deal with a jury. So the transition from a Swedish Criminal System to the systems of the tribunal wasn't too difficult for me. However, I felt I have – I feel I have learned a lot in relation to – particularly common law, in terms of examination of witnesses.
- 01:01 We do it slightly different. The, I find the common law examination is much more structured, structured and more – we tend to focus our witnesses more, whereas, on specific questions and transition them from one area to another, whereas many times in Sweden, an examination would be much more of a narrative and it's supposed to be more of a narrative in the sense that the witness just tells the story freely.
- 01:28 Whereas if we do that here, we would probably hear one witness every three weeks and, you know, it can't be done like that . . .
- 01:34 **RU: Yes.**
- 01:34 . . . so we tend to structure the witness much more.
- 01:38 **RU: We had an interview about this time yesterday . . .**
- 01:40 Mm-hmm.
- 01:41 **RU: . . . with a defender who'd been on his case for eight years. Is this common in the cases with the ICTR?**
- 01:49 It is common. I would say it's common for the I-, the, the multi-accused cases because they got started early on. M-, many, well some of the indictment against several accused like Military One, Military Two, the Butare Case.
- 02:07 **RU: And that was his case.**

- 02:09 Yeah, Government One and Two; those indictments are fairly old so obviously then defense counsel was appointed, although it took various y-, several years before they went to trial. So that means that counsel for the de-, defendant has many times been on the case for a long time if, you know, providing their – the cooperation between them and (___) the work worked out, but certainly it's not uncommon. I know several of the defense counsel in Mil One has been on the brief or on, acted for that defendant for many years.
- 02:42 **RU: How many cases approximately have been tried to completion in this panel?**
- 02:48 I think we are somewhere reaching 40 now. Is it around 37 accused that has been, reached completion. They – we're waiting for a bulk. I mean obviously once the Mil One comes out it's four more and we have a number of single accused cases that are expected within the next couple of months. So it's in that region. I don't know. I don't have the statistics.
- 03:15 **RU: Of the approximately 37, do you, can you give a guess on how many have been reversed or overturned on conviction?**
- 03:24 Well you mean on appeal or on first instance?
- 03:26 **RU: First instance, to start with and then on appeal.**
- 03:29 I think we have four acquittals . . .
- 03:31 **RU: Mm-hmm.**
- 03:32 . . . Yeah. Yeah, it's n-, yeah – we have a few acqu-, acquittals. More than two, I think (___), there's four.
- 03:40 **RU: And then on appeal?**
- 03:42 Well, we haven't had – we had a recent judgment just the other month which wasn't a complete acquittal but it's, it was, a re-trial has been ordered. So that's a – we haven't had a reversal from a conviction to an acquittal on appeal. I have to think as I speak now. There was one – we had that situation in The Hague with the Kupreskic brothers, but don't think we have it here.
- 04:12 We have had acquittals confirmed on appeals as acquittals but we don't have – we haven't had a reverse, reversal from conviction to acquittal.
- 04:20 **RU: Do you have the ability as a prosecutor on appeal to appeal the acquittal at the lower level?**
- 04:26 Yes, we do and, and (_____) for some common law judges that, that must sound quite strange but we do.

04:34 **RU: The world is made up of different customs. We can understand that.**

04:37 Yeah, yeah.

Part 4

00:00 **RU: One of the common criticisms of the tribunal has been delay, the interview that we had last night with a defender highlighted that, he said that was his number one criticism of what had happened. He just said essentially justice delayed is justice denied. Given the complexity of the cases, what would you suggest that might perhaps bring them to conclusions sooner?**

00:30 It's, it's a ve-, it's a difficult question, it's a, and relevant question. And I can certainly understand the criticism. I think we do take too long. I don't think we take too long because – and when I say we, I mean the Office of the Prosecutor because many times we are the engine that drives the, the tribunal. I d-, don't think we do so because we don't want to work or because we-, we're lazy or because we don't know how to do it.

01:03 But – and it is very difficult to pinpoint what it is that is causes it given the complexity of the cases. I think there was an initial period of the life of this tribunal where people were more feeling their way and wasn't sure how to deal with this situation. Judicial systems are normally something that are built over many, at least hundreds of years, if not more.

01:29 **RU: Yes.**

01:30 It takes time. Here we were given a task to build a judicial system within a very short period of time, involving the lawyers from all the world and dealing with crimes that were unusual in and of themselves. I would say once the tribunal was up and running in the sense that we had the relevant number of courtrooms; initially there was just . . .

01:52 **RU: I see.**

01:53 . . . we didn't have courtrooms and even if the Office of the Prosecutor is extremely efficient, we ca-, we have to have a courtroom and we have to have judges. So once it was up and running, which I would say I, I certainly feel that that has been all the time that I have been here.

02:13 The delay, or that is, or the time that it has taken, for instance, like with the Military One, it can't really go any faster because, you know, if one look at the number of days we were sitting a year, the number of witnesses we would hear per year, the way the judges dealt with a case in pushing it forward, yet balancing the rights of the accused and listening to defense where they – what their feelings were, I, it, it has to take time.

- 02:46 I can't speak for the other cases to the same extent because I haven't been involved hands on . . .
- 02:50 **RU: Of course.**
- 02:52 . . . but I certainly don't feel that there has been any unjustified delays in the Military One case once that case got up and running from the open-, the day the opening statement were made. And at least for that case many times the delays were granted on the requests of the defense.
- 03:15 But of course the situation may be different but it's, it's a very difficult – it's a difficult problem and I'm not so sure how to solve it, but more judges, more courtrooms, maybe yeah, being stricter with the adjournments for whatever reason they are and just really pushing for just hearing the cases but . . .
- 03:43 **RU: The interviewee we had last night . . .**
- 03:45 Mm-hmm.
- 03:46 **RU: . . . suggested that perhaps by indicting a number of people at the same time . . .**
- 03:52 Mm-hmm.
- 03:52 RU: . . . in the same hearing, unduly complicated the case. Is there a merit to that suggestion?**
- 03:58 Could be, but you have to take into account that I think they arrested thirteen of the top people at the same time . . .
- 04:03 **RU: Mm-hmm.**
- 04:04 . . . so what would they do if they weren't to indict them?
- 04:06 RU: Mm-hmm.**
- 04:07 They couldn't just have them stand around and because there were some – there were several of the people, the suspects, in prominent positions. They were at the same place more or less and the intelligence that came out led to their arrest so there was a, you know, for instance Mil One and Butare, they, they, you know, their, their arrests weren't that far apart.
- 04:30 **RU: Yes. In the cases where an acquittal has been reached . . .**
- 04:35 Mm-hmm.
- 04:35 **RU: . . . has there been a common thread through those cases that resulted in acquittal?**

04:43 Well, I think it always goes back to the, the witnesses . . .

04:47 **RU: Credibility of the witnesses . . .**

04:48 . . . and the judges not believing them.

04:51 RU: Mm-hmm.

04:54 I can't – no-, not having dealt with those cases myself, I can't say for sure this is just a, you know, an assumption on my part based on what I know, what I know working in the office, but I haven't reviewed (___) specific- specifically for that reason but obviously, the one vulnerabl-, we, any prosecutor is vulnerable in terms of their evidence. I mean, you nev-, the case is never any better than the witnesses themselves.

05:25 **RU: I understand that.**

05:26 Yeah.

Part 5

00:00 **RU: I'm going to turn this over to my companion here very soon.**

00:03 Okay.

00:04 **RU: Two questions I'd like to end with at least in my part. What's been the most satisfying part of your work for you?**

00:14 Most satisfying part. Well I don't want to sound revengeful but it was actually having one victim witness identifying one of the accused in court in a very courageous way, having gone through what she had gone through. That was I think the most satisfying and one of the most, my proudest achievement, I think. Getting her as a witness was very hard. She was very resistant.

00:47 **RU: Of course.**

00:48 And she had suffered a lot of personal trauma. And there were very stupid little problems surrounding her. You know, she couldn't see very well because, and they couldn't get her glasses so she could see in the courtroom. So there was one thing after the other but eventually we managed to overcome all that. And I believe she made a very credible witness and she managed to identify one of the accused, in a, yeah, in a very special way, in a very courageous way.

01:24 **RU: And what's been the most disappointing part of your work?**

01:31 I think the most disappointing part is the fact that it's so hard to have, to get the logistical administrative support from, from the institution. And I am not, want to blame this

institution specifically. I think that is something – if you work within a court system that existed for several hundreds of years and you have a court that has been there for, you know, maybe in the same place with a, for 50 or a hundred years everything is much easier.

02:15 **RU: Of course.**

02:16 Here you spend a lot of time and effort on what you really don't feel that you sh-, should spend your time on as a, a lawyer.

02:27 **RU: Thank you very much.**

02:28 Thank you.

Part 6

00:00 **Donald J Horowitz: Okay. I am Judge Donald Horowitz and I'm happy to be interviewing you the second part of this interview. You, you have, the current trial that you are working on now, I recognize that Military One is over in terms of the evidence but you're waiting for the decision.**

00:20 Yes.

00:21 **DJH: And are, have you made the arguments, by the way, in Military One?**

00:25 We have.

00:25 **DJH: All the final arguments have been made?**

00:26 They were made pretty soon after the close of the evidence.

00:29 **DJH: Okay.**

00:30 Yeah.

00:30 **DJH: So now it's in the hands of the tribu-, of the tribunal, the judges.**

00:33 Yes.

00:34 **DJH: And their assistants.**

00:36 Yes.

00:36 **DJH: Yeah. Okay. And what is the current trial you're working on?**

00:43 Mm-hmm. The current work, trial that I'm working on, the accused person there is, his name is Callixte Kalimanzira and his position in April 1994 was that of Directeur du Cabinet or Secretary General.

- 01:01 **DJH: Of the cabinet of the . . . ?**
- 01:02 Minister of Interior.
- 01:04 **DJH: Okay.**
- 01:04 So as far – the, the ministry, the Rwandan ministry, they have a minister and then under them there is a, a, a civil servant that is called Directeur du Cabinet and he’s the head of the cabinet of that ministry. And . . .
- 01:18 **DJH: Is this is a single defendant trial?**
- 01:20 It’s a single defendant trial and it’s limited geographically to about five communes in Butare prefecture.
- 01:32 **DJH: Okay.**
- 01:33 So this person, he was, the accused was, hailed from Butare prefecture, from Muganza commune. And the indictment against him focuses on his acts and conducts in Butare prefecture. And it’s, what we called a 6-1 case which means that 6-1 refers as Article 6-1 of the statute . . .
- 01:57 **DJH: Mm-hmm.**
- 01:58 . . . which means that it is his personal act and conduc-, conduct that he’s being charged with. It is not a case of superior responsibility. So you could describe it as a fairly straight-forward case.
- 02:10 **DJH: You could?**
- 02:11 You could, yeah.
- 02:12 **DJH: Would you?**
- 02:13 I would. I would.
- 02:14 **DJH: Okay.**
- 02:14 You know, it’s been, I think it’s been, probably this may (_____) it in five years but no, i-, it has always been therapeutic for me to do a much smaller case, not to minimize it in any way but it’s a, an, you know, it’s smaller in time, in geographic, geographic-wise, you know, just one accused. We had – the prosecution’s case is done.
- 02:44 **DJH: How many witnesses?**
- 02:45 24 witnesses in 16 days, which I’m very proud of.

- 02:49 **DJH: (____), in 1-6 or 6-0 days?**
- 02:51 No, 1-6.
- 02:53 **DJH: Good, okay.**
- 02:54 So it, it was, I think, I, I f-, well, we felt that the ch-, the one ch-, this was a case that we could do-, do quickly. The ca-, the wi-, all witnesses we had except one came in and spoke, gave direct evidence on the acts and conducts of the accused, so it was pretty much swearing the witness in, putting them, asking them do you know this person? Who is he? How do you know him? Where did you see him? What did you see him do? And goodbye.
- 03:23 **DJH: 'Kay.**
- 03:24 So the evidence in chief of most of the prosecution witnesses were about an hour to two. The defense took a little, little longer in cross examination but we still managed to do 24 witnesses in 16 days.
- 03:37 **DJH: Okay. And when will the defense start their case?**
- 03:40 On 17th of November.
- 03:42 **DJH: Okay, so fairly soon.**
- 03:43 Fairly soon.
- 03:44 **DJH: Okay. Have there been any complaints about too short a time between prosecution and defense in this case?**
- 03:51 Well, the prosecution took the position that we should have started the case, the defense case, mid-October and finished it this year. The defense objected to that and the chamber ruled in their favor.
- 04:04 **DJH: Okay, so they start a month later than . . . you would have . . .**
- 04:07 Yes, and we will then spill over into 2009 with a couple of weeks. We don't know exactly when. We don't have a scheduling order for that.
- 04:14 **DJH: Okay. Do you know approximately how many witnesses they're expecting?**
- 04:17 They have listed 71 . . .
- 04:19 **DJH: Okay.**
- 04:19 . . . including the accused. They have also said that they don't intend to call 71 but haven't given us a definite number.

- 04:30 **DJH: Okay. With respect to the accused because I'm going to ask some what may seem to be dumb questions . . .**
- 04:37 Mm-hmm.
- 04:38 **DJH: . . . because there's a combination of common law and civil law. Does the accused, if you wanted to call the accused . . .**
- 04:45 Mm-hmm.
- 04:46 DJH: . . . would you be able to force that to c-, to happen?**
- 04:48 No.
- 04:49 **DJH: Okay. So it's like the common law in that respect.**
- 04:50 It is. Whereas where I am from, the first person to be heard whether he or she wants or not is the accused.
- 04:56 **DJH: Okay. So if, if the accused is going to testify it's going to be his own people who call him, unless they allow you to call him.**
- 05:02 Yes, exactly.
- 05:05 **DJH: Okay. And can you, and if you're not comfortable doing this, say so.**
- 05:14 Mm-hmm.
- 05:15 **DJH: What's the nature of the crimes that he was alleged to have personally committed?**
- 05:20 Many of, most of them are what you would call encouragement, instigation. It's ge-, he's charged with genocide.
- 05:29 **DJH: Yes.**
- 05:30 And direct and public incitement to commit genocide. Obviously we have what we call different forms of commission . . .
- 05:36 **DJH: Sure.**
- 05:36 . . . as you have in, in most common law jurisdictions and o-, other jurisdictions as well.
- 05:40 DJH: Okay.**
- 05:41 And he is charged with a whole spectrum of the, the various forms of commission that we have but most of the crimes or most of his acts and conducts can be qualified as ordering,

instigating. You could argue committing in the context of using other per-, pe-, persons as his instruments . . .

06:09 **DJH: Okay.**

06:10 . . . to commit the crime, but there are not – he doesn't go around shooting people or he doesn't go around, you know . . .

06:17 **DJH: Macheteing?**

06:18 No, none of that. () . . .

06:20 **DJH: () . . .**

06:20 Our accused . . . No. Our accused don't do that. They, they, the, the accused we're dealing with are the ki-, mo-, for the most part are the kind of people that will have someone else carrying the briefcase . . .

06:32 **DJH: Understood.**

06:32 . . . so by no way will they carry machete themselves.

06:35 **DJH: Mm-hmm. Okay. Ho-, how many – so, h-, how long has he, has the defendant in this case which is a single case . . .**

06:50 Mm-hmm.

06:51 **DJH: . . . been in custody?**

06:56 And you, now you have to forgive me if I don't get things right here, becau-, yeah.

06:59 **DJH: It doesn't need to be exact. () generally.**

07:01 Because, you know, I came into the case when he was getting ready for trial and as a trial lawyer you often don't deal with it before that. The indictment is from July, 2005. He was apprehended soon thereafter so he spent a couple of years in pre-trial detention.

07:17 **DJH: Okay. Which is less than a lot of them did, I gather.**

07:23 He was a late arrest, yeah.

07:24 **DJH: Yeah, okay. And how many total trials have you been in? You mentioned Military One and this one.**

07:31 Mm-hmm.

07:31 **DJH: Have you been in any others?**

- 07:33 Not on the floor. Not arguing. I've dealt with pre-trial work and motion work in relation to (___), the Samantha Trial, Military Two Trial initially.
- 07:42 **DJH: Okay.**
- 07:43 So, but I haven't been on my feet in any other trials than, than those two.
- 07:47 **DJH: Okay.**
- 07:49 Or I'm, I'm trying to think, think now but no, I don't. I haven't.
- 07:54 **DJH: Okay. Pardon me.**

Part 7

- 00:00 **DJH: You said that you were at the London School of Economics when you first heard about the Rwanda situa-, the Rwanda genocide, or . . .**
- 00:08 Yes.
- 00:10 **DJH: . . . what-, whatever you heard. Can you remember specifically when you first heard about it and what you heard?**
- 00:18 I remember seeing headlines in the newspaper but I also remember seeing television images of people floating down a river. I think that was probably in the – some student, you know, common area . . .
- 00:35 **DJH: Mm-hmm.**
- 00:35 . . . or if we were in a café or something with other students . . . I was not at home for those specific images but, but that is the first image I have of the, the genocide. Yeah.
- 00:52 **DJH: Okay, can you describe for us in a, you can do this narratively, what the next period of time was? In other words, what did you next learn over the course of the next few days and what was your re-, personal reaction? Was it a big thing for you in term . . .**
- 01:12 Yeah.
- 01:12 **DJH: . . . there were lots of things going on in Europe at that time . . . (___).**
- 01:14 It was a lot of things going on at the s-, at, at the same time. It was the release of Mandela's and, you know, that whole period was very lively in terms of news and events. But, you know, studying public international law and "UN law" as one of the subject, obvi-, obviously, we focused a lot of the actions, the debates in the UN and the actions of the Security Council so I can't, you know, my images are not as vivid as that first television screen but obv-, we spoke a lot about it.

- 01:53 But I would say we probably spoke more about the Yugoslavia conflict than the Rwandan one, because it was, it was closer geographically.
- 02:02 **DJH: Right, and that would be you and other students (_____).**
- 02:03 Yeah, sorry, yeah. Definitely.
- 02:05 **DJH: Okay, and so when, when was it you decided – that was 2004, when was it you decided . . .**
- 02:15 No, 1994.
- 02:15 **DJH: 1994, of course. I'm sorry. (_____)** . . .
- 02:17 Don't take, take away, ten years away from me now.
- 02:19 **DJH: No, no, no, that's exactly right. That, that was 1994.**
- 02:22 Yeah.
- 02:23 **DJH: And when was it – how long after that did you decide to go to work for ICTY, or, or, or the UN and . . .**
- 02:33 That . . . I, I . . . yeah, I started work at the ICTY 1st of July, 1998 and decision was probably made about a month before that so in between that, I had worked as a volunteer lawyer in London for a little bit, for Human Right.
- 02:49 **DJH: Volunteer, for Human Rights?**
- 02:51 Yeah, for Inter Rights, it's the organization called.
- 02:54 **DJH: What kind of work did you do?**
- 02:56 It's . . . Inter Rights in an organization that only deals with the legal aspect of human rights so it gives legal opinion to – many times other countries, other human rights organization, it was very vol-, very much involved in, you know, the former eastern bloc and they changed from going in to becoming democratic countries.
- 03:19 So it was a lot of legal research, constitution versus human rights law, et cetera. And that I did for six months. I forgot to say that when we spoke about what I had done before, after I had finished my Master's at London School of Economics. And then I returned home to continue to clerk.
- 03:39 **DJH: To continue to clerk?**
- 03:41 Or, yeah. I was still clerking at that, that point. (_____) . . .

- 03:44 **DJH: Okay. Still thinking of a judicial career?**
- 03:47 Yes, exactly, yes.
- 03:48 **DJH: Okay, and then you made the decision to change your career . . .**
- 03:53 Yes.
- 03:54 **DJH: . . . at least to some extent.**
- 03:56 Mm-hmm.
- 03:56 DJH: I s-, I guess you still have the option of going back.**
- 03:58 I don't think so. To be honest, I don't because I left so early into the judicial training and what had happened, I had – I finished clerking in, must have been 1995, th-, maybe June, 1995, then I started the Court of Appeal in later that year; December, something like that. Then I did that for about nine, eight, nine months.
- 04:32 Then I ha-, had a child, my first child. And I was on a maternity leave for a year. And wh-, (), I was supposed to go back to the Court of Appeal but the, The Hague, the ICTY came in between so I never went back. I went to The Hague.
- 04:45 **DJH: Okay. And you j-, you decided to – did they seek you out or did you seek them out?**
- 04:51 Well, I got a phone call saying, “We are looking for people and, and why don't you apply?” And I did apply.
- 04:54 **DJH: Okay. That was that friend of yours.**
- 04:58 Yeah, and that was an informal phone call.
- 05:00 **DJH: Yes.**
- 05:01 And so and I, and I, I a-, applied and I got interviewed.
- 05:06 **DJH: And you were, worked there for how long?**
- 05:08 Close to four years.
- 05:09 **DJH: Okay, and was, w-, was the work you did there any of the trial work? Or . . . okay.**
- 05:15 No, I was in chambers so basically I was – I had then been moved from being within the judiciary as a clerk or, or a baby judge or whatever you want to call it – to being a clerk on the international level.
- 05:28 **DJH: Okay.**

- 05:28 So I, I assisted, I worked initially as an assistant, legal assistant to a judge . . .
- 05:35 **DJH: Mm-hmm.**
- 05:35 . . . Judge Lal Chand Vohrah who was a Malaysian judge. And . . .
- 05:40 **DJH: Can you spell that name for us?**
- 05:42 Lal-, yeah, it's L-A-L C-H-A-N-D, and now he's going to kill me for V-H-O, no, V-O-R-A-H. It's always a problem if the H in Vohrah comes after V or after (____) or . . .
- 05:59 **DJH: At the end. Okay.**
- 06:00 At the end, yeah.
- 06:01 **DJH: All right. So you worked for Judge . . .**
- 06:03 Lal Chand Vorah. Mm-hmm.
- 06:05 **DJH: Lal Chand Vorah, yeah. And was that the, your whole time there pretty much or?**
- 06:10 For a couple of years, and then I worked more as a coordinator within the chamber.
- 06:15 **DJH: Okay. And what then took you to Rwanda, to the ICTR?**
- 06:20 Well, as, as you know, the Appeals Chamber for the ICTY and the ICTR is technically two but it's the same set of judges.
- 06:30 **DJH: Yes.**
- 06:31 And the judge that I worked for, he was on the Appeals Chamber so as his assistant, I dealt with cases from both the ICTY and the ICTR.
- 06:43 **DJH: Mm-hmm.**
- 06:44 And so I had a fair idea of the case, the cases at the ICTR and there was a colleague of mine who was employed by the ICTR who was in Registry but base-, he was based in The Hague.
- 06:59 And he was actually the one that became the first head of the Military One case so he said, "Christine, I'm going back to Arusha. I'm going to head the Military One trial. Why don't you try, why don't you go there as well? Why don't you, you know, try to get a job?"
- 07:20 And I had, I was pregnant at the time and I wasn't so keen to take a newborn to, to Arusha. I didn't know how things were here. So it took me about a year and then eventually I . . .
- 07:32 **DJH: Okay. (____) . . .**
- 07:32 . . . we decided to go here.

07:34 **DJH: Okay. And it's – that was in 2000 . . .**

07:37 And -2.

07:38 **DJH: -2, okay.**

Part 8

00:00 **DJH: I'm going to jump for a little bit to – you said the Military trial was big and bulky . . .**

00:08 Mm-hmm.

00:09 **DJH: . . . and had many, both legal, per-, personnel and administrative issues.**

00:13 Yes.

00:15 **DJH: And you talked about a few of them. I'd like to sort of – I'll leave the legal issues aside for a moment . . .**

00:20 Uh-huh

00:21 **DJH: . . . and I'd like to talk with you about personnel issues.**

00:23 Mm-hmm.

00:24 DJH: And then we'll talk about administrative issues as you see them.

00:27 Yes. Well, on the personnel issue the initial-, initial one was that only a couple of, I can't even remember the exact, how it all went, but we started the 2nd of April, 2002 with Chile Eboe-Osuji heading the team. We went on mission in July, it was June or Ju-, July, almost the whole team in Kigali to meet with witnesses because we had been adjourned after the opening for various reasons.

01:00 Once we w-, the whole team returned from mission, we were told that we had a new team leader and that caused a lot of surprise and discontent . . .

01:18 **DJH: Okay.**

01:19 . . . by many. So it then – the, the (___), the new team leader was Barbara Mulvaney. She came, eventually she ca-, came in and took the role and did a very enthusiastic job over all these years and we all, you know, we all became close friends so it wasn't a personal issue.

01:41 It was, it, it was the fact how it was done on the part of management. And of course it's very disruptive. So that was a major personnel issue. Then we had smaller personnel issue where we would have people on contract that would help us out on various things. For instance, we wanted to use Case Map who is case management software tool; I think we

were one of the first trial teams to, to use it, and (___) was actually, the idea initiative of Barbara Mulvaney, and it would turn out almost impossible to get someone to manage that tool for us.

02:23 And it was very helpful. Eventually, it was to the point where Barbara Mulvaney walked into HQ in New York and said, “Listen, we need this person. She has to be employed,” you know, to the – of course the dismay of OTP management, (___) “You can simply not do that,” but she, she sort of did that anyway.

02:42 And we managed to get someone, but it took, it took, it was, it was ridiculous. It took, you know, months and months and months for, to get someone to perform. You know, sm-, w-, it’s a small things but it shouldn’t be a major issue administratively. We had renewal of contracts where a Senior Attorney Drew White, I think he was in the middle of the cross examination of one of the accused, his contract expired.

03:11 They shut down his security badge so he couldn’t enter the building. So, you know, it’s like how is this possible? Meanwhile, you’re running like this because you know you’re in the middle of a trial and you think like, “Hey guys, you’re supposed to be with us, not shooting us in the back while, you know, we’re in the trenches here.”

03:33 And I don’t think it’s – we used to call it benign incompetence. I don’t think it’s malice. It’s just that this is difficult to deal with for some reason.

03:41 **DJH: Okay. No, I mean, you’re giving us some interesting examples.**

03:45 Yeah . . . I’ve almost forgotten about it and it’s better that way but . . .

03:50 **DJH: Yeah, at the, at the same time as I remember it, I mean I don’t remember when it exactly changed, as I understand it the Office of the Prosecutor was for both tribunals . . .**

04:03 Yes. Mm-hmm.

04:03 **DJH: . . . the ICTY and the ICTR. And at certain point, it changed and they were two separate offices.**

04:09 Yes.

04:10 **DJH: When was that change?**

04:12 I can’t remember the date but I remember the change and it’s definitely has been an improvement. And when we started the trial, we still had Carla del Ponte as the prosecutor over both tribunals.

04:25 **DJH: Okay. But it started in Military One.**

- 04:27 Well, we started in Military One. We didn't have a deputy prosecutor. We – the Chief of Prosecution was acting. So the – you know, it was not in a good state and it has improved enormously over these years with, you know, having our own prosecutor, having a deputy prosecutor here and present and having a, you know, chief of prosecution. Now we have an acting, but someone who's very experienced in the work of the tribunal.
- 04:51 **DJH: Has there been any training of the prosecutors' staff? I'm thinking the lawyers but perhaps others as well. I mean, you mentioned as an example . . .**
- 05:02 Mm-hmm.
- 05:02 **DJH: . . . that there are some people who are more con-, conversant with civil law, others more conversant with, with common law.**
- 05:10 Mm-hmm.
- 05:10 DJH: That's one area. There may be others depending on the level of experience and so forth. Has there, have there been training programs?**
- 05:18 There have been several. There haven't been so much focused on, you know, subject matter as common law or, or civil law. It has more been advocacy training programs.
- 05:28 **DJH: Mm-hmm.**
- 05:28 We have had Sherman Sterling come in and do a lot of work with us on a pro bono basis putting – having their attorneys coming to do advocacy training.
- 05:39 We have had – we have a joint appeal advocacy training program with the ICTY. You, I actually went to an advocacy training program at, program in Canada paid by the ICTY which was an intense course for one week when you have all the Canadian judges and, you know, senior prosecutors and defense counsel criticizing every bone in your body.
- 06:06 **DJH: Mm-hmm.**
- 06:08 And, but it was great. At Osgoode Hall. And so there's been several but there's al-, also managerial training provided for, you know, the ones in, who manages people.
- 06:21 **DJH: Okay. You mentioned administrative issues too.**
- 06:25 Mm-hmm.
- 06:25 **DJH: You covered all the (_____) but would you like to raise that?**
- 06:30 No, I think, I, you know, I it's, it's, the tribunal has several arms. It's the Pros-, Office of the Prosecutor, it's Chambers and it's the Registry. The Registry does many things but it's

basically facilitates the work of Chambers and the OTP, but it deals with a lot of administrative issues.

06:51 And it's probably a difficult task to perform. It's, you know, it's building a bureaucracy that is efficient and actually looks at the need of the people that they service. I think it has improved over the years but I think there's much to be decided.

07:09 **DJH: Yeah. I, the reason I ask is, is not to put blame on people.**

07:12 No.

07:13 **DJH: (___), it's really about how do we learn how to do it better.**

07:16 Yeah.

07:17 **DJH: Et cetera.**

Part 9

00:00 **DJH: Have you had experience with the Witness Protection Program as a prosecutor?**

00:04 The, the Witness Protection Section, the pe-, WVSS, the people that deal with the, the, our witnesses?

00:11 **DJH: Or the effectiveness of the program or, or issues and pro-, problems if any with the program.**

00:17 Yeah, I'm, you, we, we, as prosecutor you deal with it in the sense that this is the unit within the Registry that brings the witnesses to you in court.

00:28 **DJH: Mm-hmm.**

00:30 Yeah, sorry?

00:31 **DJH: Yeah, go ahead.**

00:31 Yeah. And of course there is – if there is a court order in place for their protection, certain measures apply but they're mainly done by the WVSS. Of course as a prosecutor, you have to be careful to follow the witness that are in place.

00:49 **DJH: WVSS stands for . . . witness?**

00:52 Witness and Victims Support Section.

00:55 **DJH: Okay, thank you. Now finally you said there were legal issues, and . . .**

00:59 Mm-hmm.

- 01:00 **DJH: . . . so I'd like to get at that.**
- 01:04 Okay. Well, can you hear an expert witness as the first witness in the prosecution case? Issue number one. Addition of new witnesses once the case started? An example of, another example of a legal issue. Request for severance mid-way. Accused falls sick, can you continue with or without him or can you continue without him for a shorter period of time?
- 01:33 Judges fall sick, how long can you go on without them, with one of them? Admissibility of evidence is constant although the standard says fairly clear on paper and the application may be a different issue.
- 01:51 **DJH: Standards are clear on paper, () . . .**
- 01:54 Well, the law is not, it's settled I would say but then when it comes to application on a day to day basis the question is, well should you let a whole book in on the record although the witness may hardly refer to it in his evidence or has nothing to do with the book. You know, the parties will disagree on that.
- 02:21 **DJH: What is the law that's settled, in 25 words or less?**
- 02:25 Oh the law that's settled that it's, basically it's not a question about the admi-, admissibility. It's a question of weight and it came through the Bradanin case, which is a case at The Hague.
- 02:46 **DJH: Okay. What are the – what is the duty of the prosecutor or the court to provide statements and potential exculpatory evidence to the defense?**
- 02:59 The duty is on the prosecutor to – we have to disclose any statement.
- 03:06 **DJH: Regardless of whether it's good, bad or indifferent.**
- 03:10 No. If it's bad or indifferent in terms of the accused, it, we don't have to disclose it unless it's the statement of a witness that we're calling or it's something we want to rely on in evidence.
- 03:24 **DJH: I'm not sure I get that.**
- 03:25 Well, it depends, okay. Let me put it like this. If we are in – if the prosecution are in possession of materials that may potentially mitigate the guilt of the accused . . .
- 03:34 **DJH: Yes.**
- 03:35 . . . or affect the credibility of prosecution witnesses, we have to disclose it. That duty is unequivocal.

- 03:39 **DJH: Okay, what don't you have to, or is it discretionary or what (_____)?**
- 03:47 Yeah, well let's say you have an investigator's report that say, "Well, I've interviewed ten witnesses in this and that commune. They all confirm the other evidence we have that Kalimanzira was seen on such and such a date, such and such a place doing this and that."
- 04:05 We don't have to disclose, disclose that. It's an internal memo. It's nothing. It doesn't contain any exculpatory information. The defense can't do anything with it.
- 04:15 **DJH: Mm-hmm. Okay, anything else about the providing of evidence or material to the defense?**
- 04:23 Well, let me just say that in terms of the witnesses that we're calling to, in the case against the accused, you have to disclose all their statements that we have in our possession whether those statements were given to ICTR, to the Rwandan authorities, to the Canadian authorities.
- 04:43 The, the key word is just, you know, it has to be a witness that you're relying on in trial and that you're in the, in possession of that statement. You're not obligated to run the world over to collect them but if we have it, we have to give it.
- 04:56 **DJH: Okay. And have there been times when the defense has claimed that you or your office have not provided appropriate material?**
- 05:09 Yes, that happens often.
- 05:11 **DJH: Of-, often. And what's the general claim?**
- 05:13 Well, th- I think there is a cloud of suspicion that we're sitting on all this information and we're not sharing it and somehow they will all become innocent if we did give them the documents. Often it's RPF related.
- 05:26 **DJH: Okay. And has that – have any of those challenges resulted in, how do we say this, negative – action by the court that would be against the position of the prosecutor?**
- 05:42 Not in the cases that I worked on.
- 05:44 **DJH: Okay, but are you aware of others (____)?**
- 05:47 Yeah, but I'm not going to talk about them.
- 05:49 **DJH: Okay, that's fair. Okay, I wasn't going to ask about it.**
- 05:51 No.
- 05:52 **DJH: Okay.**

Part 10

- 00:02 **DJH: The statute that sets up the court provides not only for a judicial process of guilt or innocence but says something about reconciliation and I am interested in your view of what that may mean and how it may affect what the prosecutor does.**
- 00:32 Well, (___), it's a difficult concept and I would say that all judicial system or all judicial criminal system has an element reconciliation in a sense that it would be difficult for any society to live peacefully if there wasn't a judicial, a judicial system that settled disagreement between parties because that's basically what it's about.
- 01:03 Of course in, at the statute, it's e-, it's explicit. I'm not so sure if as trial lawyers whether it affects us in – if we act differently than you would do in any other, acting in any other jurisdiction. You know, you have – the question is always, you know, do we – are we bringing in reconciliation? Is what we do on a day to day basis change things on the ground 'cause, because of the nature of the conflict, can any judicial measure overcome it or assist the reconciliation? I'm not so sure.
- 01:48 **DJH: Well, and, a very legitimate statement. I, what I was getting at as well was does it or has it affected the evidence you might want to present or the con-, or your conduct as a prosecutor this concept of reconciliation which is in the statute? And if it's no, it's no. And if it's yes, I'm interested in whether it might have . . .**
- 02:16 I can't say, I can't think of an example.
- 02:18 **DJH: Okay. Let me suggest something and see if you (___) . . .**
- 02:22 Yeah.
- 02:24 **DJH: . . . one of the people we interviewed said that perhaps, or he, he or she thought that it broadened the scope of evidence that was al-, that was allowed, that certain evi-, that. I'm going to need more . . .**
- 02:42 **Max Andrews: We have to take a little break now.**
- 02:44 **DJH: Okay.**
- 02:44 Mm-hmm.
- 02:45 **DJH: (___) I may need more. That in other words, that certain evidence might be allowed in, not that it necessarily leads to guilt or innocence but it may be somewhat relevant to the concept, or to reconciliation. Has that been an experience of yours?**
- 03:04 Maybe if he or she meant in, in the w-, in the sense that you're building on a historic record or that the judges may feel more generous in terms of admissibility because the evidence

needs to reflect not just the case against the accused but I, I don't really think that – I'm not so sure I believe that's a good practice. I mean, there's other ways I think you can do that. I, I'm not, I'm not convinced that the courtroom is the area for that.

03:39 **DJH: Okay, and my question, that you've given us a (_____) on that, but do you have any, any experience that that may have oc-, actually occurred, in other words the evidence has been around and – and, and I don't mean to push you (____) unduly.**

03:53 Yeah, no, no, no. No, no, not at all. I haven't really thought of it that way. I would say that at times evidence goes in that I can't see how it would assist the judges in, in, in determining the case. I would have thought that it's more – that's rather – the reason for that is more like it's easy to let it in and disregard it in the end of the day than having a big fight about it.

04:18 I'm not so sure they are motivated by reconciliation. I certainly as a prosecutor wouldn't seek to have other evidence admitted just because I want to show reconcil-, you know, because I think it goes to reconciliation, but maybe I'm narrow minded that way.

04:30 **DJH: I don't . . .**

04:31 Yeah, I don't know either.

04:32 **DJH: Are, are there, are, are there certain kinds of evidence that you find, your experience tells you are more compelling to the convincing of the court than others?**

04:46 I've seen so much more deliberation in my home jurisdiction than I have, obviously have here so I'm not – maybe I'm off in terms of what the judges here feel are compelling since we even don't have a judgment on my first trial . . .

05:01 **DJH: Right. (____).**

05:02 . . . but I would say that any direct evidence from victims is compelling.

05:10 **DJH: Okay. What kind of evidence do you find to be, or do you think (____), is least effective?**

05:17 Triple hearsay.

05:18 **DJH: Okay, even though hearsay itself is allowed. Okay. (____). Okay. (____).**

05:21 Yeah, but I don't think it's very good to spend much time with it.

05:25 **DJH: Now you've talked about expert witnesses.**

05:26 Yeah.

05:28 **DJH: What, what are expert witnesses used for in these cases?**

- 05:34 Well, when – for many years, the prosecutors sought to have judicial notice of the existence of the genocide. It was repeatedly denied by the chambers and many times, expert evidence, before we actually got a decision from chambers, the Appeals Chambers saying, “Yes, you can take judicial notice of the existence of the genocide against the Tutsi population in 1994.”
- 06:01 Before that, much of the expert evidence that was led concerned the fact that it was a genocide. For instance, when we started our trial in Military One for a couple of years we couldn’t even use the ‘genocide’ in court, the word ‘genocide’ in court, without the defense jumping up and screaming, “Oh, there has been no proof that there has been a genocide and blah blah blah.”
- 06:23 So I think it has, I think probably expert evidence is used less now once that decision has been taken by the Appeal Chambers because then you can focus on the acts and conducts of your accused. You don’t have to lead so much evidence to show that people were being killed all over Rwa-, Rwanda as from 7th April onwards.
- 06:47 **DJH: And I would think that that would make the case move a little more quickly.**
- 06:50 I would think so too.
- 06:52 **DJH: Yeah.**
- 06:52 Yeah.

Part 11

- 00:00 **DJH: What, what as you use expert wi-, witnesses now, what, what are the areas of (___) testimony?**
- 00:07 I haven’t used, yeah, in, in the trial that I’m doing now, I didn’t use an expert but I could s-, I’ve certainly considered using an expert in relation to a speech that was given and so you could use the expert evidence for context.
- 00:22 You could use it for interpretation becau-, what the speech meant at that particular point, how was it understood by the people that was i-, in attendance. Kinyarwanda is a very subtle language. There’s a lot of proverbs. I could see for those reasons.
- 00:45 **DJH: Okay. And what – was expert evidence used in the Military One trial other than for the proof of genocide? (___) . . .**
- 00:53 Yes, we had – what do you call?
- 00:56 **DJH: Handwriting experts**

- 00:57 Yes, we had a handwriting expert.
- 00:58 **DJH: So that to determine who wrote something.**
- 01:01 Yes. Yeah.
- 01:01 **DJH: Okay. Anything else? That's, that's pretty traditional . . .**
- 01:03 Did we have anything . . . ? We had many experts from the defense on all sorts of issues . . .
- 01:08 **DJH: Okay. (____).**
- 01:09 . . . but the prosecution . . . well, one was a linguist and that was what a specific saying meant. I can't, Arohande – I can't remember it now, Arohande something, and so he was called as a Rwandan ling-, linguist to say that there were no such word, and then on the cross examination we agreed, him and I, that it was actually a typo in the word that he had examined and it was actually meant, the real word was something else and they actually meant what the prosecution meant it said which means, "go and search for . . ."
- 01:46 **DJH: Okay. So, so you must have felt good about that.**
- 01:50 Yeah I did actually, but I, I felt very (____), because I had the assistance of Rwandese co-workers who knew this very well and without them you could not exist in this tribunal.
- 02:02 **DJH: That's interesting. What, what are your Rwandese co-, co-workers? Are they – other prosecutors or are they assistants or, or both?**
- 02:11 Both. We have had, well I had fantastic working relationship. One of our Military experts as we call him in, in, in Mil One was Shambatis Enzenzephora and he was the former seni-, he was a for-, well, in the gendarmerie which is the police in Rwanda, they have, the head of the gen-, gendarmerie and then they have four senior officers that are responsible for various areas and they're called G1, G2, G3 and G4. He was the G4 of the gendarmerie.
- 02:45 So, and he was fantastic. He knew everything and everyone and he still works within the office, but he was another of those issues that it took years to get him a proper contract and we worked so hard to, to get him on the payroll.
- 03:00 I had on this trial that I'm doing now, I had a former Rwandan prosecutor as a member of the trial team as a staff member here, Steven Agava, who's great. He's a young lawyer and fortunately, he did the prosecution case with us but he now moved on to greener pastures so he, he left the office.
- 03:20 **DJH: Where, where are the greener pastures?**
- 03:21 EAC, the East African Communities.

- 03:24 **DJH: Okay.**
- 03:25 So he's still around but he had – he got a long-term contract; five years as opposed to us, you know, shutting down.
- 03:31 **DJH: Do you work on, on sentenc-, of course you haven't had a, a re-, a result yet so you can't have worked on sentencing or perhaps you did.**
- 03:39 Well, you see there, there are no separate sentencing hearing . . .
- 03:42 **DJH: Yes.**
- 03:42 . . . so when we do the closing arguments in Military One, the idea is that if you want to address sentence, you do it there and then.
- 03:50 **DJH: Okay. And have you worked or been familiar with it when you were a clerk or whatever, on sentencing in your home country?**
- 04:00 Yes.
- 04:00 **DJH: Okay. Are there differences in how you approach sentencing ()?**
- 04:05 I think the difference is because in my home jurisdiction, it's much more regulated. It's much more tariffs. You carry, you know, two kilos cocaine, you're going to get X much of time. It's the mitigating circumstances, it's a provision in the penal, penal statute.
- 04:23 **DJH: Mm-hmm.**
- 04:25 Also of course you have a much broader array of crimes so I think the judges at home they feel that, you know, they, they can g-, sentence someone to six months one day and the next is six years.
- 04:35 Here, the judges are mu-, so much more confined because if they find someone guilty it is of a very serious crime and their discretion in the sentencing is confined in that way because at least in, you know, in my mind it seems kind of petty to say, "Well, you know, you committed genocide so you're going to have 21 years or you're going to have 35 or, you know, should you have life?"
- 05:00 I think that's a differences in terms of sentencing. And I think judges has an, they have an instinct to want to have discretion when it comes to sentencing.
- 05:10 **DJH: Mm-hmm.**
- 05:10 It's something that judges do and if you – we always make the argument that these are very serious crimes. They require or they deserve this, a very serious sentence.

05:23 And unless there are m-, very considerable mitigating circumstances, you should not move away from a life sentence but as y-, if you look at the sentencing practice that we have, it is a whole variety, and . . .

Part 12

00:00 **DJH: Is there anything that's happened that's s-, really surprised you?**

00:05 There's been many things that has happened that has surprised me. I think, depends on what level.

00:19 **DJH: You know, obviously we don't want you to, we don't want to learn any surprises.**

00:23 No, it's difficult to say. I mean both on a personal professional . . .

00:26 **DJH: Yes, yes, personal and professional, yeah.**

00:28 Definitely, definitely.

00:30 **DJH: What?**

00:33 Yeah, I don't think I should talk about that.

00:35 **DJH: Either personal or professional?**

00:36 Yeah.

00:37 **DJH: Okay. Are there any things that you're specifically really proud to have been involved with?**

00:44 Well I'm, I . . .

00:46 **DJH: You mentioned that one witness, the way she . . .**

00:46 Yes, I can say generally I'm very proud to be a, to have been a part of the Military One prosecution team.

00:54 **DJH: Yes.**

00:55 I felt that the whole team did extraordinary work, for most part tried to be very collegial with one an-, an-, another, maybe not always so. Well, we probably looked a little bit weird to the rest of the office just going back and forth, you know, to, from court over all those years but no, I'm very proud of that part of my work.

01:20 **DJH: Okay. Anything specifically that you're disappointed with or wish you'd done better or had happened better?**

- 01:29 You know I always feel that you can perform better in the courtroom.
- 01:33 **DJH: Sure, every one of us thinks that including the judges.**
- 01:36 Yeah, yeah. But I try to forgive myself for that and try to do better next time.
- 01:43 **DJH: Okay.**
- 01:46 No, and you know, we all act for different reasons and I wish (), well, I like not to judge others and I like not to judge myself too hard either. It's obviously more difficult not to judge yourself but I wouldn't say disappointed, no. You know it's part of life.
- 02:08 **DJH: Okay. There's been some criticism of the fact that this wasn't – the prosecutions weren't conducted in Rwanda or at least, at least partially so and, and that justice has thus not been quite as present . . .**
- 02:25 Mm-hmm.
- 02:25 **DJH: . . . for the Rwandan people. Do you have any thoughts on that?**
- 02:28 I think that's a va-, very valid criticism and if you're going to talk in terms of reconciliation, what we discussed before, and this tribunal actually being set up for Rwanda. I think perhaps more effort should have been made to ma-, ensure that there wasn't so much of a distance between Rwanda and the tribunal. I think in many ways there are close ties, definitely.
- 03:00 You know, but it's difficult also because Rwanda is a very poor country. It has, you know, certain level of illiteracy so the modern judicial system may be difficult to explain to someone who has little education and can't really read and write very well. And so there're obviously, you know, a lot of problems associated with making sure that Rwandese feels that this is actually something that is also for Rwanda.
- 03:37 And it is for Rwanda. It's not just for the "international community" feeling that, you know, we have to do something after it happened. But one of the, my pet projects that I haven't really been acting on, but it's been in my head for a while and I talk with people loosely about it from time to time is the fact that our judgment get translated into Kinyarwanda.
- 03:58 As it is now, I understand, it's not a matter of course which I think is not right. And i-, at The Hague, the judgment do get translated into I think they call it BC, BSC, Bosnian-Serbian-Croat which is, you know, the combined language that they like to call it now, because that is the language of the accused so they can read the judgment.
- 04:26 However, most of our accused speaks and reads French perfectly so the, a translation is not necessary. I think two judgment in terms of Semanza and Muhimana have been translated

so – for purposes of the accused, but I feel they should be translated for purposes of the witnesses, for purposes of, of the Rwandan population generally.

04:50 **DJH: And the victims.**

04:52 Of course, absolutely, yeah.

04:54 **DJH: Okay.**

Part 13

00:00 **DJH: When you, in fact when you talk about reconciliation, you talk also about this woman who was courageous in identifying . . .**

00:06 Yeah.

00:07 **DJH: . . . a person. One of the things that oc-, has occurred to me is reconciliation (____) with one’s own suffering; a personal reconciliation.**

00:14 Yes.

00:15 **DJH: And I was, and th-, and that’s, needs to come first before any other kind of reconciliation.**

00:21 I think so but it’s very difficult.

00:23 **DJH: Yes, and, and it leads me to the next question which is how do you deal with the content? You know, you’ve been around a while.**

00:29 Mm-hmm.

00:29 **DJH: You’ve been presenting a lot of very difficult content and I’m talking now about you as a person. (____) . . .**

00:36 Yeah, I don’t think we deal with it.

00:39 **DJH: Wh-, what do you mean?**

00:40 Well, not very well. It, it, it is maybe too much to expect that we can deal with it. You don’t. I mean you-, you’re limping ar-, around. It’s not that you can deal with it and say, “Okay, I’ve dealt with it. It’s fine. You know, I can handle this.” No one can handle it. You’re just trying to continue to function and we do that to – you know, some does it better than others.

01:05 But I think it’s the closeness to the, the witnesses and the closeness to the witnesses’ stories and of course the closeness to their trauma and the fact that you think, “How can

this man or woman go on?" You know, this person has seen their whole family being slaughtered right in front of them and he's, he or she is sitting here and can actually give me a fairly logical account of what happened with the little details of, you know, my kid was wearing a yellow t-shirt or . . .

01:36 You know, those things. And you go home and you feel like, "I can't handle this." But this person can handle it and he or she can get up the next day and continue. Not – I mean we drag them out of their own environment and say, "Come to Arusha. Tell your story (___), in front of a bunch of people you don't know because we, you know, we have a case against this person then you can go home and continue."

01:59 **DJH: Mm-hmm.**

01:59 And, you know, business as usual. But everyone that i-, is involved in this feels that on dif-, on different levels but obviously no one feels them like the victim does.

02:12 **DJH: Have you, have you sought some help from time to time just to deal with some of the issues?**

02:17 No, I haven't. I'm, you know, not professional help. I think it would probably be a good idea if there were such help on tap.

02:25 **DJH: Mm-hmm.**

02:26 We don't have that. I mean many prosecutors in, in other jurisdiction have 24-hours psychological service. You can pick up the phone and say, "Listen, I'm dealing with this, you know, rape case. It's getting at me, you know. Please, you know, help me. What can I do?"

02:42 We, that service is not provided by the tribunal. It's probably a good thing to think about for the future. Often you seek, you know, support from your colleagues and – but, and I think it's very hard for family and friends to understand what it is that you're doing and suddenly you're– you, you becoming . . . not strange, but you, you change. You, you do change. The work changes you.

03:09 **DJH: And you're different today than you were X years ago.**

03:13 Yeah, and I don't – I'm not saying that that . . .

03:15 **DJH: (_____), yeah.**

03:15 . . . is good or bad, exactly. It's just you, you are different.

03:20 **DJH: Well I guess, finally the question is if you were designing a tribunal in the future . . .**

03:26 Yeah.

03:28 **DJH: . . .some of the things that you had proposed that you think would be more helpful on the larger or smaller scale, you just mentioned one about having some – and you’re not the only staff person, I mean and the prosecutors, aren’t the only staff people.**

03:43 **DJH: The interpreters, or . . .**

03:44 Of course. Yes.

03:44 **DJH: You know, all of those people. (___), so what would you change to improve?**

03:51 It’s difficult for me to sa-, to say, you know, to mention concretely how you would do it, but I think it’s very important to create an organization where everyone feels that they’re involved and that they are stakeholders in this organization. Whether you are the assistant administrator that is dealing with someone’s pay or whether you are the person that goes to court and leave the evidence or whether you are the top boss that decides this, that or the other.

04:20 I mean, everyone has to feel that this tribunal is for a specific mandate and purpose and “I’m a part of achieving that.” It’s, this is, it’s not about a job opportunity only. Obviously, you know, it’s good that people get jobs and they get money. They can feed their families and all of that, but it also has to be a feeling of we’re all working for the same thing.

04:43 **DJH: And what is this same thing that you’re working for here?**

04:46 Reconciliation is a part of it whether you think that we actually got to succeed in that or not but it’s certainly a motivating factor. I would say that, you know, justice . . .

04:57 **DJH: I’m talking about you. I’m talking about you. J-, go ahead. I interrupted. You said justice?**

05:00 Yeah, no. I would say justice. I would say justice.

05:03 **DJH: Okay.**

05:05 It’s such a difficult charged concept but I would say justice.

05:06 **DJH: Yes. And I’m not going to ask you define it unless you want to.**

05:13 I just have a problem accepting that idea that you can have many thousands of people slaughtered within the period of three months and you, people are not going to be held accountable for that. I, I, you know, I like to think that we as a world and we as people cannot accept that and I feel strongly about it.

05:40 **DJH: And is that why you said, quote, “I’m very glad I left my, the career that I had started.”**

- 05:47 Did I say I'm very glad? Oh.
- 05:48 **DJH: (), I thought that was the word. Or I'm glad. Maybe I put the "very" on.**
- 05:53 Yeah.
- 05:53 **DJH: That you left that career that you'd started to do this kind of work.**
- 05:56 Yeah. I am, you know, it's – I wouldn't have done anythi-, I wouldn't, I wouldn't have done anything different in that respect.
- 06:07 **DJH: Thank you very much.**
- 06:08 Yeah, thank you.
- 06:08 **DJH: You have . . .**