



Voices from the Rwanda Tribunal

Official Transcript: Christine Graham (Part 9 of 13)



Role:	Senior Appeals Counsel
Country of Origin:	Sweden
Interview Date:	29 October 2008
Location:	Arusha, Tanzania
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.

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Part 9

- 00:00 **Donald J Horowitz: 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.**