

Project:

**ICTY ORAL History - Documented by SENSE**

An Interview with

Graham Thomas Blewitt

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Graham Blewitt, ICTY Deputy Chief Prosecutor (1994-2004), talks about the establishment of the Office of the Prosecutor, the first investigations, indictments, and arrests of indictees. He also reflects on the similarities and differences between the three chief prosecutors he was deputy.

GB: Well, basically, all my working life I've been involved in criminal prosecutions. And more recently, I was involved in investigating and prosecuting organized crime work and indirectly that led me to being involved in the prosecution of Nazi war criminals who were living in Australia.

These were low-level Nazi collaborators who migrated to Australia at the end of the Second World War and there had been allegations surfacing in Australia for many years that there were, in fact, mass murderers living there. And in 1985 or 1986 the government in Australia decided to do something about that. They changed the legislation making it possible for these people living in Australia to be prosecuted as if the crimes had been committed in Australia.

I joined the Nazi war crimes unit in Sydney in 1988. I started there as the deputy director, and I eventually became the director of that unit. We investigated over 840

separate cases and in about 40 of those we gathered enough evidence to establish that the allegations concerning the suspects were probably correct. But, because the cases were so old, it was 50 years since the crimes had been committed, it was only possible for us to gather sufficient evidence to launch prosecutions against four of those individuals. The last case that was due to go to trial collapsed when the accused had a heart attack before the trial. So, that was in December of 1993. And so, that was the end of the Nazi war crimes work in Australia when the last case didn't proceed to trial.

And it was shortly after that I put my name in the ring to work here, at the Tribunal in The Hague, and I started work here in February of 1994. And I found that the Nazi work was very important and very relevant for what we were going to do here after I joined.

### *Expectations and Surprises*

GB: I think the nature of the work that I'd been doing in Australia with the Nazi cases had prepared me for what the task was going to require. So, there was no real surprise there for that. I also knew that the United Nations was having some difficulty in getting the Tribunal started, so I knew nothing was set up. What did surprise me, however, was that the responsibility for setting it up was going to fall on my shoulders.

When I came to The Hague in January of 1994 to be interviewed for the job, it was for the job of deputy prosecutor, there was already at that stage a prosecutor elect. He interviewed me for the deputy's job and indicated that he was going to recommend my appointment. But, on doing that he then announced that he was going to resign. And it was only at that stage that I realized that the responsibility for setting up the Prosecutor's office would fall on my shoulders. So, I did not expect that.

So, when I returned in February of 1994, I knew that it was going to be a difficult job. I knew that there was hardly anybody here in this empty building, at least empty on this part of the building. The rest of the building was occupied by the Aegon Insurance Company. So, I was not surprised when I entered the building to find that the halls were empty, there were hardly any desks or chairs. But, you know, I expected that to be the case. But that was the starting point. And, as soon as I arrived, I set about setting up the office.

### *Creating the Office of the Prosecutor*

GB: Well, it had several aspects to it. The first one, of course, was recruiting the staff, because without staff it wasn't going to be possible to do anything. If you bear in mind that the Tribunal was created in May 1993, I arrived in February of 1994, many months had passed and in that intervening period a lot of people had submitted their resumes for jobs in the Tribunal.

And when I arrived in The Hague there were several binders, probably about a meter tall, of people sending their application. So, I started to go through those. I separated them into legal, investigators and analysts, and support staff. And then started to determine who I could recruit. I was very disappointed to see that there was only one investigator amongst all of those thousands of applications, and I recruited that man immediately.

There were many prosecutors, and I started the recruitment process. And included in that bunch, I'm pleased to say, that Mr. Mark Harmon was one of those persons that I initially recruited. But, I would say 90 percent of the applicants were people with diplomatic experience, with no real practical experience in the investigation or prosecution of war crimes.

So, it took me some weeks to go through all of the applications, but then I realized that I was going to have to do something fairly desperate if I was to get staff. So, I then took advantage of my experience in the war crimes work, because during the investigation of Nazi cases I had dealt very closely with other war crimes units throughout the world, including the United States, Canada, England, Scotland and I decided that I would see if any of those people that I knew, who had this experience, were interested in coming to The Hague. So, I made a series of telephone calls and these people indicated: Yes, they were interested. And I was able to gather together in the first six months about 24 people that I had known and who I respected for their work in the war crimes unit.

### *The First Investigation*

GB: Well, one of the other things I did when I first arrived was to review the material that was gathered in relation to the crimes that were being committed. And this also involved me dealing with the Bassiouni Commission in Geneva. And there we had a lot of assistance and guidance. So, it was becoming clear where our first investigations should be going.

I can say that the first investigation really commenced in June of 1994 when the first investigator walked in the door, and he was followed by several other investigators so that by July there were a handful of people here and we made the decision that we would continue the work that the Bassiouni Commission had done in the Prijedor area. We realized that if we were going to prosecute the leaders, and the leaders were always the original targets of our investigations and we understood that but realizing that it was going to be virtually impossible to start gathering evidence against those people in the leadership

positions without first establishing what we call the crime base, then we had to start working to establish and gather evidence about the crimes that were committed.

So, we selected Prijedor and we started sending investigators out to interview those witnesses who had already been identified by the Bassiouni Commission. And, once we started doing that, then the work just built upon that work and as more staff arrived more investigations were carried out and they started to broaden. And then we started to undertake investigations in other areas, other municipalities, like Foča, Bosanski Šamac, Brčko et cetera.

### *The First Indictment*

GB: Well, there was a lot of pressure on the OTP to come out with an indictment. The Tribunal had been set up for more than 12 months at this stage. The judges were all here and waiting for work to do. The international media was asking: When were you going to get started? And so, we really felt that pressure.

And then, I guess from about September 1994, we started to get evidence about Vlasenica and Nikolić's involvement in that camp and we realized that we had sufficient evidence to bring an indictment against Nikolić. And so, we worked very hard to complete that exercise and in November of 1994, the first indictment was issued against Nikolić. And that was a real sense of achievement. The judges were delighted that at last, they could see cases coming forward and that it was possible. Even with the war still going on in Bosnia and with our small level of resources, it still was possible to get enough evidence to bring an indictment.

The dilemma facing us, of course, was with our first indictment: What do you put in it? We had no real guidance as to what the judges would expect or what they would require by way of proof when the case went to trial. There were all sorts of legal questions that had never been determined, so we decided that the first indictment would contain all possibilities in the hope that, if the trial ever proceeded, we would get guidance from the trial chambers. So, our early indictments were in fact very broad. There were lots of charges, lots of issues and that was a deliberate policy to try and provide an opportunity for the trial chambers to start giving judgments and guidance as to where the law was going. And if you now compare our more recent indictments, there's a handful of charges and they're much narrower because the issues have already been determined by the trial chambers and the Appeals Chamber. So, we know what to expect, we know what is required and we can now adjust our indictments accordingly.

### *Troubling Absence*

GB: I don't know that that really affected us all of that much because we all, those of us who were working here, had the belief that it was going to succeed. We knew it would succeed because, with the experience with the Nazi cases, we knew you could do it and if we could bring cases to trial after 50 years then we knew it must be possible to do it when the crimes were still being committed as we were investigating. So, we had no doubt that it would succeed.

The lack of a prosecutor's presence in The Hague was troubling, but it was also important that the first prosecutor be the right choice because that person would set the credibility of the Tribunal, particularly as it was going to be the Prosecutor's office in the

early days, in the early years, that would be setting the pace of the work. So, it was important to have a prosecutor who had the standing and the credibility in the eyes of the international community, in the eyes of the judges. And when justice Richard Goldstone was appointed and then arrived here, we were all very relieved.

There were some legal debates in the office here as to whether, as the deputy prosecutor, I had the authority in the absence of there ever being a prosecutor to sign indictments. So, I just took the attitude: Well, we'll worry about that when we come to it. In the end, it was not an issue because when the first indictment was ready justice Goldstone was here already.

### *Three Chief Prosecutors: Similarities and Differences*

GB: Well, I think the similarities are in the fact that our mandate has remained constant, right from the very beginning, to investigate and prosecute those who are most responsible. The personalities were obviously quite different, but that was only because they all came from different backgrounds and with different experiences. But that has not interfered with the level of the work.

When justice Goldstone first arrived, he said he was delighted to see that there was a fully functioning prosecutor's office that had been set up and he was quite happy to continue with the structures and what had been set up before he arrived. So, it was just a continuation of the work that was already ongoing when he arrived and, of course, he provided more leadership and gave the whole process more authority.

When justice Arbour started, again, it was basically a continuation, although her

focus was not so much gaining credibility for the institution, because that had already started to be achieved. The problem that we were confronting when she arrived was the non-apprehension of fugitives.

Justice Goldstone, before he left, had set some work in motion to try and overcome that problem and Justice Arbour continued with that work. And as a result of her activities and work, we were able to see the first arrests by UNTAES and then SFOR in June and July of 1997. And that really broke what was becoming a major obstacle for the Tribunal because the whole institution was losing credibility. We were issuing indictments, which was fine, but without the arrests, people were beginning to wonder whether we were just a toothless tiger. So, when the first arrests started that's when real credibility started to be attributed to our work. And so, Louise Arbour was very instrumental in achieving that result and then continuing with it.

And, of course, as her period went on, we saw Kosovo erupting into all sorts of problems, but that provided us with the opportunity to investigate Milošević, because we knew that with his responsibility for Kosovo, as the president of Yugoslavia, he had direct de jure responsibility for those crimes. And we recognized that it would be easier to indict him for that than it would be for Bosnia and Croatia. So, her focus then shifted to investigating Milošević and you know the outcome of that. He was in fact indicted by her and he's now standing trial. So, I think that was probably one of the achievements of Louise Arbour.

The third prosecutor Carla Del Ponte came. Her attitude was different because she came from a civil law background. And with a civil law president, in President Jorda, their

attitude to the work of the Tribunal was somewhat different. And so, we saw a change in emphasis in some areas. But primarily, the work was still proceeding. We still had our original list of indictees to pursue and she continued with that work and those indictments are still being issued progressively as we gather the evidence and we're satisfied that the cases will stand up in court.

Her involvement in the courtroom has been a little bit more. I think Richard Goldstone and Louise Arbour were quite happy for the senior trial attorneys to appear in court and leaving it for them to take the responsibility for the cases. But Mrs. Del Ponte likes to be seen in court and we see her appearing in all the major cases. And I think that's important, but that's something that's different between the different prosecutors.

### *The Tribunal Fatigue*

GB: I think the completion strategy has been developed in recent times because the international community would like to see the Tribunal complete its work within a time frame that is both foreseeable and in a way that's not going to be a drain on the international purse because the international community will now be funding and supporting the ICC.

The Tribunal does cost a lot of money and I think there was an inquiry to see when is the work likely to finish. So, we examined the possibilities for this and we realized that the Tribunal could finish its work by about 2010 if we were able to send some of the cases back to the local courts in the former Yugoslavia.

We realized that this was also consistent with our mandate of bringing peace and

stability to the Balkans, because if the countries of the former Yugoslavia were prepared to seriously tackle the question of war crimes prosecutions and they were doing it in a fair and honest manner then the Tribunal was achieving what it was set up to do, namely establishing the rule of law. And all of that, by bringing war criminals to justice, would contribute to lasting peace. So, we saw the whole notion of reform of the judicial processes in the former Yugoslavia as being critically important.

And if the Tribunal could encourage that by saying it was prepared to hand some of its cases back to those local courts then that might speed up that process of reform which frankly was and still is looking rather dismal. But there's now dialogue about this. The international community is aware of the need to put more effort into judicial reform in the region and if that's the outcome of this effort then, I think, a lot would have been achieved. And if the Tribunal can, in fact, hand some of its cases back and at the same time exercising some supervisory role over that process, then it builds confidence in the process. And if the victims are able to accept the process then, I think, we've gone a long way.

So, that's what we're aiming at doing - completing those cases that are really quite serious and should be dealt with here in The Hague and at the same time handing cases back to the local courts under the supervision of the Tribunal.

#### *A Transition Strategy*

GB: We are in fact developing a strategy to provide a transition phase. You will see, when the Tribunal's budget document goes before the Budget Committee in New York, that it has already been contemplated that we will prepare dossiers in relation to every single individual who has ever been accused of a war crime. All of the material held in the OTP will

be scrutinized and we will put into one dossier all of the evidence we have against the thousands of people that would be suspects. And it's our intention to transmit these cases, to transfer the dossiers to the responsible courts in the former Yugoslavia with the intention of giving them the evidence that we've gathered in relation to these people. In some cases, it may consist of a mere allegation from one witness, for example, that a person of a particular name committed a particular crime. Without anything further, it would be just a mere allegation, plus a means of investigating it by following up that witness. Or it could go to a dossier where we've got statements from several witnesses and perhaps some forensic evidence. But it would then enable the local authorities to examine these dossiers and they can make the determination whether they will continue with them.

And it's for that reason that it's also important that the domestic courts in the former Yugoslavia adopt the capacity to be able to deal with these cases. Perhaps not all of them will be dealt with by way of prosecutions. It could well be that some truth and reconciliation process would be required. But, these dossiers would also be important to enable that process to proceed.

So, in other words, we recognize that the work we've done over the last nine years won't just be locked up and no one will benefit from it. We will put that material together and we will hand it back to the appropriate authorities for them to work on.

### *Excitement and Frustrations*

GB: I think the most exciting moment would have been when the first arrests by SFOR started. My entire period here has been full of excitement and wonderment and, you know, I've just enjoyed the entire experience. So, it's difficult to point to anything that really

stands out.

But, as we were going through the beginning of 1997 and we saw the obstacles that were starting to face the Tribunal, its very existence was being threatened, I believe. And as we were trying to get SFOR to start arresting people and they kept saying: No, no, no, it was becoming increasingly frustrating. So, when that event happened with the first SFOR arrest, which was then followed by a second and was then followed by a lot of voluntary surrenders, then I knew, at that moment, that there were going to be many trials and the work would just flow naturally, without all of these pressures being placed on the Tribunal.

So, for me, that was a turning point and it does stand out as being, you know, a major moment in the Tribunal's life and I felt very, very happy.

There are others, of course, with the indictment of president Milošević and the ending of the Kosovo war without much drama, because issuing that indictment when the war was still going on was a brave act. So, that was a moment of relief when that war stopped following the indictment of Milošević. And, of course, the day he was surrendered to the Tribunal was another high point.

So, I think those three moments stand out more than any others.

The biggest frustrations? I don't know. You face frustrations on a daily basis. And probably I've already mentioned the biggest frustration and that was the period leading up to the SFOR arrests, when we thought we were... the whole Tribunal could have failed at that point after all the work that had been done up to that point. And frustration because we realized the potential, we knew it would succeed, but unless we had people to prosecute

in the courtroom then it would fail. So, I think that was probably the biggest frustration in my time here, as well. And both of those events have now passed into history.

*Breakthrough in the SFOR Attitude*

GB: Well, I think the work of Louise Arbour and her staff were instrumental in providing the breakthrough in the SFOR arrests. We were increasingly frustrated that the position that SFOR was adopting was that they would only apprehend indicted accused if they encountered them in the course of their duty. And of course, that was the major obstacle because it never occurred that SFOR confronted these people in the course of their duty. The fact that they were sitting in the same restaurant, the explanation was that: Well, the SFOR soldiers were off duty and hence if an accused, indicted accused were sitting at the next table there was no encounter. So, that was increasingly difficult.

An event occurred in March of 1997 which provided us with a marvelous opportunity. And that was when one of our investigators was in Prijedor and he was talking to one of the local SFOR commanders who was expressing frustration at the constant obstacles that Drljača, the then local chief of police, was providing to the local SFOR people. And the comment was made by the SFOR commander that if we were able to indict Drljača, SFOR would arrest him. That SFOR commander didn't realize that we were on the verge of indicting Drljača in any event. So, within two days of that statement being made, we had an indictment prepared, submitted for confirmation and it was confirmed shortly after that and we got the arrest warrant and we kept it sealed. We then served that sealed arrest warrant on SFOR and we said: We know you are encountering Drljača in the course of your duties, so you now will have the obligation, when you next encounter him, to arrest him.

So, that indictment was delivered and I must say that that incident caused a great deal of contention within NATO and SFOR and there were a lot of dealings and a lot of negotiations between our office and NATO, and some of the member states of NATO. And Louise Arbour stood her ground and she insisted that she would publicly expose NATO if they refused to arrest Drljača.

At the same time, we had been working on the arrest of Dokmanović with UNTAES. We had already had positive indications from ambassador Klein that he would be prepared to arrest any war criminal in his area of responsibility. And so, we worked towards the apprehension of Dokmanović and, as you know, that preceded the SFOR arrest by some days. I think that the fact that the UNTEAS arrest took place encouraged SFOR to do it, but the planning of the operational planning by SFOR to arrest Drljača was taking place anyway. So, to some extent, it was a coincidence that Drljača's arrest followed only a few days after Dokmanović's arrest.

And so, that's how it happened, I think, the prosecutor realizing that an indicted war criminal was in fact being encountered by SFOR on a regular basis. We knew we were in a position of strength and we just pushed that issue until it happened. And when SFOR realized that World War Three wasn't going to start after they started to apprehend people and that it wasn't going to involve a lot of retaliations then SFOR's confidence to proceed with more arrests was just strengthened and that's what eventually happened.

*The Tribunal Will Not Close the Door without Karadžić and Mladić*

GB: I'm more confident that general Mladić will be here, assuming he can be found in Serbia. I think if he's located he would be surrendered. When you look at the problems

being confronted with the authorities in Republika Srpska and the level of support that they're giving to Karadžić then a lot of changes are going to have to occur, I think before anyone can get near Karadžić. But, mark my word, I think until both Karadžić and Mladić are here in The Hague the Tribunal is not going to close its doors.

We cannot walk away from prosecuting those two individuals. So, while ever they're still alive I believe the Tribunal is going to remain in existence because the whole process will fail unless those two people are apprehended, surrendered, and prosecuted before this Tribunal. So, the extent to which the international community can bring about and affect their arrests then it's obviously in their interests to do so because that means the Tribunal will then be able to eventually close its doors.

#### *Plea Agreements, Reconciliation, and Public Interest*

GB: As far as pleas of guilty are concerned, I think in many jurisdictions throughout the world where there's a heavy caseload the fact that accused persons and defendants are prepared to plead guilty enables cases to proceed more quickly. The same is now starting to be true of this Tribunal. There's a backlog of cases, people are waiting in custody, so the more pleas of guilty there are then the quicker the process will proceed.

Now, that's just an ancillary factor to what is more important and that is the acknowledgment by the accused that they were responsible for the crimes with which they have been charged. I think it's very important for the reconciliation process if it involves an acknowledgment of what they were responsible for and what they actually did. And if it's done with genuine remorse and if it's done in a spirit of cooperation where they can also assist others being convicted for their responsibility, then, I think, that's a goal that is in

everybody's interests.

However, when compromises are necessary, then you have to question whether it's in the public interest. The public interest is the public interest of the international community, as well as, of course, the most important part - the interest of the victims themselves. Because unless the process, whether it's by way of trial or by way of a plea of guilty unless the victims are truly satisfied that justice was done, then the case or the process could be said to have failed in one important aspect.

We're already seeing that even after trial when persons are convicted, some of the sentences are not very severe and could be accused of being lenient. So, that's the environment within which the Tribunal operates. So, accepting pleas of guilty and seeing sort of lower range sentences being passed is consistent with the sentencing practices of the Tribunal in any event.

What the prosecutor has to weigh up is whether or not accepting in an agreement for a plea of guilty to accept a low sentence. Then we have to calculate whether that's going to be acceptable to the victims and to the international community. This always involves a subjective judgment, and you can look at it from different points of view. And some will say that it's insufficient, it's too lenient and that makes the process unfair. And others would say: Well, it is fair when you look at what else is being achieved by way of acknowledgment of guilt and speeding up the process, and contributing to the reconciliation process.

Now, there have been plea negotiations taking place in some cases where the accused says they're prepared to plead guilty only if a sentence of, say, five years is imposed. And the prosecutor will reject that in those circumstances where we believe that such a

sentence would just be ridiculous. So, we would refuse to enter into any negotiations with the accused if we thought the sentence was too lenient.

So, some plea negotiations have failed because we have refused to accept the period of sentence that the accused wants to receive. So, in those cases, pleas of guilty don't proceed and we go to trial. Where plea agreements do involve a sentence it's you can accept that we have weighed up all of the different considerations and we believe we can defend or justify a sentence within the range that is in the plea agreement. We recognize that probably the victims will not be satisfied but we then have a responsibility to explain our actions to the victims and we attempt to do that.

Pleas of guilty in that sense are perhaps a compromise, but overall, if it means that the cases can proceed more quickly, that people can contribute to the reconciliation process by acknowledging their guilt and giving evidence against others, then we believe and accept that it's a worthwhile process to maintain.

### *Victims, Crime and Punishment*

GB: Well, I think you have to say that what goes with the sentence is a genuine expression of remorse and acknowledgment of guilt. And for a victim, I think, that's a primary factor - the fact that yes, this accused acknowledges that they hurt and harmed the victim, and the truth is effectively coming out as to what happened in the process so that it will enable eventually the victim to have finality to the process. They know who is responsible. That person has acknowledged that they've expressed sorrow for doing it and they've been punished for it.

The fact that the level of punishment may not satisfy the victim is a fact of life. I think any victim of any crime rarely feel satisfied that the person has been sufficiently punished for the harm and the anguish and the suffering that the perpetrator has committed. And, for example, whenever in most countries there's an atrocious crime against young children or something like that you often hear an outcry that they should bring back the death penalty. You know, this is a natural reaction on the part of victims and I think we can all see ourselves in that situation sometime or other. But, generally speaking, there's a realization on the part of victims that: Okay, the world is not perfect and this is just the way that that it is, but at least the victim can be consoled that, consoled rather in the sense that someone has been held accountable for the crime and the person has been punished and that person will carry forever the stigma of being convicted and punished for the crime against that particular victim.

This is the way we try and explain it to victims. Some victims accept it and some victims don't. And, under the circumstances, I don't know that we can do anymore. And, you know, the whole process of criminal justice is less than perfect and in that regard, this Tribunal is no different to any other criminal jurisdiction throughout the world.

### *The Next Ten Years*

GB: I think the next ten years will be relatively easier than the first ten years because, you know, the Tribunal has already built up its credibility. When the investigations finish at the end of 2004, that will shift the focus primarily to prosecution work, so that our attention will be focused then on just the courtroom activities and everything that goes along with that. So, in that sense, it will be easier. Of course, we will maintain our activities

to ensure that all of those who are indicted are in fact arrested so that we can lead to finishing our work.

One might say as the Tribunal enters its final days it will be difficult to maintain staff. I don't think that's going to be the case, because the Tribunal will still be seen as a stepping stone for those who want to go in their professional career to the ICC. So, by being involved in an institution that has credibility and is doing work that's acceptable and recognized in the international community, then any involvement in that process is going to enhance the career of people wanting to go further. So, I think we can still maintain professional high-level people to work here and, that being the case, yeah, I think it will just be a logical conclusion to our work. And when we finish the last appeal, I'm sure I won't be here, but those who are here then will leave the place knowing that we've left behind a legacy for the future and an example for others to follow. They can follow all of the mistakes we made, and we've made a lot and we'll continue to make them, but we've also done a lot of good work and that's a good foundation for others to follow.