

# A FRONTE PRAECIPITIUM A TERGO LUPI: TOWARDS AN ASSESSMENT OF THE TRIAL OF DUSKO TADIC BEFORE THE ICTY+

*Raymond M. Brown \**

*“What man has done to man in the former Yugoslavia strains the most agile capacities of human reason.”*

Prosecutor Grant Nieman's opening statement in the Tadic case.

*“My readers don't care about this stuff!”*

Parting comment of American reporter leaving the Tadic trial.

I.	THROUGH A GLASS DARKLY .....	598
II.	VOX POPULI .....	601
III.	THE TRIAL OF THE CENTURY .....	601
IV.	THE PROSECUTION PLODS ON .....	602
V.	THE LOST EYES OF OMARSKA .....	606
VI.	WITHER THE PROSECUTION? WHITHER TADIC? .....	608
VII.	WHO IS DAVID DUKE? .....	610

The voyage towards an evaluation of the first international war crimes trial in fifty years is perilous.

---

# “Between a rock and a hard place.”

+ This essay is based on two presentations made to ILA Fall Weekend '96. The author was originally asked to address “The trial of the Century? Assessing the Case of Dusko Tadic Before the International Criminal Tribunal for the Former Yugoslavia.” He also spoke about “Global Media: International Images from OJ to Dusko Tadic” as a substitute for Steven Brill, CourtTV's founder and architect of its coverage of the Tadic trial.

\* The author is a partner with the law firm of Brown and Brown, a Fellow of the American College of Trial Lawyers, and an anchor at the Courtroom Television Network. These presentations were based on observations made while participating in CourtTV's coverage of Tadic's trial. The author alone is responsible for any opinions although he is indebted to Peter Aronson, Dan Broden, Anne Dorman, Felice Conte, Alexis Claiborn, Michael Christian, Mary Jane Stephenson, Clara Tuma, Beth Karas, Dan Abrams, and many guest commentators for helpful discourse and debate.

Any legal journalist making this sojourn is buffeted by contradictory theories of the trial's significance. These treacherous currents are best navigated from a seat in the gallery of the International Criminal Tribunal for the former Yugoslavia (ICTY).

### I. THROUGH A GLASS DARKLY

For a portion of the trial of Dusko Tadic, I occupied a gallery seat at The Hague, separated from Tadic by a glass wall, 20 feet, a linguistic chasm, and war crimes charges.<sup>1</sup>

Tadic is a Bosnian Serb cafe owner from the town of Kozarac in the Prijedor District of northern Bosnia. He was charged<sup>2</sup> with beating and killing Muslims and Croats in Prijedor from May through December of 1992 during the Serb offensive in Bosnia. Prosecutors contend that he subsequently tortured and killed inmates in the Serb-run detention camps at Omarska, Trnoplje, and Keraterm.

In defense, Tadic's lawyers have offered an alibi. They say he was absent when crimes were committed in Kozarac and surrounding areas. They deny that Tadic was a Serb nationalist or affiliated with Serb paramilitary organizations.

Regardless of the trial's outcome,<sup>3</sup> it is obvious that Tadic was an insignificant personage in the war. Consequently, the principal dilemma confronting the legal journalist is to put the Tadic trial in context. What larger meaning can be attached to the trial of a minor figure in a war which destroyed a nation, produced 250,000 casualties, and disgorged millions of refugees?

In mute response the gallery seat almost compels its occupant to explore whether the Tadic trial is a harbinger of a system of *fair* trials for *all* accused perpetrators of war crimes and genocide. Certainly many in the human rights community have hailed the ICTY and the Rwanda

---

1. The Courtroom Television Network provided a figurative gallery seat through its "gavel to gavel" coverage of most of the prosecution phase of the trial. During the defense phase it created War Crimes on Trial to provide highlights and expert commentary. After the first month of the proceeding the author participated in CourtTV's coverage of the trial from New York.

2. Tadic was tried on superseding Indictment IT-94-1-T charging him with 34 counts of Crimes Against Humanity, Grave Breaches of the Geneva Convention of 1949, and Violations of Laws and Customs of War. The indictment alleged that Tadic engaged *inter alia* in "willful killing, torture or inhumane treatment, inhumane acts, etc.;" counts 2 - 4 charging Tadic with Forcible Sexual Intercourse against witness "F" were *withdrawn* on the first day of trial because of the unwillingness of the alleged victim to testify.

3. A verdict is expected in late March of 1997.

(ICTR) Tribunals as reincarnations of the spirit of Nuremberg and as catalysts for the creation of a permanent international criminal tribunal.<sup>4</sup>

Weighed against that optimistic view is a mountain of trenchant criticism hurled at The Hague and at the nations theoretically supporting the ICTY's mission. Most of this criticism reflects the Byzantine nexus between politics and international justice.<sup>5</sup> Some challenges are however, more cogent than others.

The most telling criticism of the early proceedings came from an unexpected source, the President of the Tribunal. While the Tadic trial was underway Antonio Cassese journeyed to America to address a gathering commemorating the Nuremberg trials. He told this group, which included representatives of the press that, "[i]f the major powers of the world are not consistent and don't make arrests in the next ten months, we are prepared to pack up and go home. We think our job is to try leaders, not small fry."

Cassese's comment touched upon the one point on which virtually all tribunal critics agree. Dusko Tadic is a *small fry*!

As the United States presidential election ended and the Tadic trial drew toward its close even spokesmen for the western alliance were hard pressed to justify the specter of a *small fry* like Tadic facing the consequences of Yugoslavia's bloody demise while more than three score Serbs and Croats indicted on more serious charges found refuge and employment<sup>7</sup> in Croatia, Serbia, and Republika Srpska.<sup>8</sup>

4. See generally LAWYERS COMMITTEE FOR HUMAN RIGHTS, IN THE NATIONAL INTEREST 1 (Quadrennial Report on Human Rights and U.S. Foreign Policy 1996). INT'L CRIM. CT. MONITOR (NGO Coalition for an INT'L CRIM. CT.), July/Aug. 1996, at 12. See also the presentation at ILA/95 of Evan T. Bloom, *Comments on the International Criminal Court*, 2 ILSA J. INT'L & COMP. L. 649 (1996). Although the proposal for a permanent court has long been moribund, there is now a draft statute for such a court (ICC) and a U.N. sanctioned diplomatic conference on the subject scheduled for the coming year.

5. Some critiques flow from the partisan divide over the causes of the Yugoslav conflict. See Syrdja Trifkovic, *The Hague Tribunal, Bad Justice, Worse Politics*, CHRON. Aug. 1996. Others stem from Parisian struggles outside of the Balkans. On the heels of the July hearing held pursuant to Rule 61 of ICTY Rules of Procedure & Evidence which resulted in the issuance of international warrants for Bosnian Serb leaders Radovan Karadzic and Ratko Mladic the Republican party issued its platform. The GOP called for "[b]ringing indicted war criminals to justice," (Restoring The American Dream: The Republican Platform 1996, Restoring American World Leadership "The Atlantic Alliance and Europe - Bosnia") but insisted that "we will not permit any international court to seize, try or punish any American citizen." (Restoring American World Leadership "Protecting American Interests"). These assertions express a hostile, but imprecise criticism of ICTY proceedings.

6. Robert Marquand, *Bosnia War Crimes Judge Talks of Quitting*, CHRISTIAN SCIENCE MONITOR, Nov. 1, 1996.

7. The Coalition for International Justice released a report indicating that many of the 67 Hague indictees not in custody *roam freely* and are gainfully employed in areas subject to Serb

The ICTY will not garner history's blessing if its primary legacy is the sacrifice of the Dusko Tadic's as propitiation for the sins of those indicted for war crimes but never tried. However, while the international community tries to unravel its geo-political Gordian knot, some defendants will continue to face trial and possible imprisonment before the ICTY. As long as these parallel processes continue, the proceedings of the Ad Hoc Tribunals constitute the most important legal story of the decade.

However, the legal journalist who reports on the tribunal's work or tries to translate the competing analyses offered by the cognoscenti must do so in the face of the blasé reactions of American citizens. The observer faced with this huge abyss between these historic events and the gaping American yawn which has greeted them must confront two questions: 1) Is the trial a huge leap forward or a huge fraud? and 2) Why don't Americans seem to care?

Together these questions reveal a gap in America's public discourse on an issue of critical importance. They raise serious doubts about the sacred mantra of America's criminal justice system, that *punishment* must be *swift* and *certain* to deter violence. The fact that Americans seem uninterested in violations of this sacred tenet in circumstances involving the deaths of hundreds of thousands is discouraging.

In the ordinary citizen's defense, it must be said that little effort has been expended by the American media to present the Tribunal's story. International justice like its domestic cousin is ultimately dependent on

---

and Croatian control. Steven Lee Myers, *Rights Group Says Bosnian Suspects flaunt Freedom*, N.Y. TIMES, Nov. 26, 1996, at 4. Ironically, it has long been known that many of these men remain part of the police apparatus in their refuges. In light of IFOR's refusal to make arrests, Lawrence Weschler, who occupied the seat next to mine at The Hague for a time, has posed an intriguing question: *Are they supposed to arrest themselves? The coming crunch in The Hague*, THE NEW YORKER, Dec. 12, 1996.

8. Anthony Lewis, writing for the *New York Times* in two recent columns (Oct. 28 and Nov. 11, 1996) cites the following: Former United States Ambassador and current head of Mission to the Organization for Security and Cooperation in Europe, Robert Frowick as saying "[t]he whole peace process rests on this issue, . . . going in there and arresting those wanted for war crimes." "There will not be a better moment than right now," Mr. Frowick said. "We have to have some mustering of a greater will." James D. Bevan, First Secretary of the British Embassy in Washington, for the proposition that "Bosnia won't be a normal country until war criminals are brought to justice" and Former US Assistant Secretary of State Richard Holbrooke as admitting, "[w]e face an unusual moment in history." "Not since the years 1945 to 1949 has the United States had such an opportunity to act in the world." Prof. Charles Ingrao of Purdue University, a political and diplomatic historian specializing in Central Europe observing Radovan Karadzic driving through the parking lot of the Pale headquarters of the International Police Task Force and being told by IFOR official that arresting him "is not in our mandate . . . . Our guys are afraid we're going to run into Karadzic."

political will. Popular perception and media coverage are crucial to the larger issues which surround the Ad Hoc Tribunals and the Tadic trial.

## II. VOX POPULI

The commencement of the Tadic trial in May saw the small staff of the ICTY overwhelmed with requests for media coverage. American television networks were joined by electronic colleagues from throughout the world. Print representatives were so numerous that the office of the Registrar resorted to a pass system to control access to the suddenly precious seats in the press gallery. Eventually, the overflow portion of the media was exiled to a tent on the courthouse lawn. An experienced colleague described the gathering as "a genteel media madhouse, O.J. with accents."<sup>9</sup>

The media frenzy would not last long. Within a week this torrent had dwindled to an intermittent stream leaving CourtTV, among a handful of American radio and print outlets. During the second week of the trial prosecutors called Muslims and Croats who had been tortured and who had witnessed rapes and murder in northern Bosnia. In the midst of their dramatic testimony an American reporter in a nearby gallery seat, one of the few from a major daily, appeared to stir impatiently. Finally he muttered, "my readers don't care about this stuff" and stalked off into the cloudy Dutch afternoon.

The elevation of hype and histrionics over historically sound interpretation is not restricted however, to daily newspapers and the electronic media.

## III. THE TRIAL OF THE CENTURY

The phrase *Trial of the Century* was posed as a general computer research query shortly before the of the Tadic trial. It yielded curious results. Most responses referenced the trial of *California v. O.J. Simpson*.<sup>10</sup> Numerically, the Nuremberg trials rated an honorable mention, as did the Rosenberg, Sacco and Vanzetti, Leopold and Loeb, and Charlie Chaplin's paternity proceedings. The search yielded only one reference to Dusko Tadic's upcoming trial.<sup>11</sup>

---

9. Terry Moran, anchor at CourtTV *Prime Time Justice*, was at the Hague for the opening week of the trial.

10. This included an exciting offer to purchase copies of the Simpson wedding video.

11. William Horne, *The Real Trial of the Century*, AM. LAW. (Published by American Media Lawyer). There were a number of subcategories uncovered by this query including *Trials of the Century that Never Were* (Tawana Brawley; the settled Westmoreland v. CBS); *Trials of the Century for other countries* (e.g. The People's Republic of China's trial of the 'Gang

Undeterred by this result, an Internet search was made at the end of the Tadic trial. (In fairness it should be noted that the closing arguments of the Tadic trial took place while O.J. Simpson was testifying in his civil case.) In a deliberate attempt to *fudge* the test, the names *O.J. Simpson* and *Tadic* were substituted for the phrase *Trial of the Century*. Despite this change in methodology the results were equally discouraging. Using several search engines the ration of *hits* overwhelmingly favored Simpson. More discouraging, many of the Tadic *hits* referred to a scientific treatise by a physicist named B. Tadic.<sup>12</sup>

It is too simple to dismiss this phenomenon as a uniquely American preference for the pornographic and the sensational. Even the fact that the competing affair Simpson has struck sensitive nerves along America's racial divide and at the synapses of its newfound focus on domestic violence is not sufficient explanation.

Perhaps closer to the mark is a concern that *ethnic strife* remains a frightening possibility in America and a detailed inquiry into its dynamics a painful exercise. Additionally, there is the fact that witness testimony through interpreters (and by court order, occasionally with their faces obscured) does not create a visually scintillating image for television.

A significant factor also is the apparent disregard shown by the prosecuting team for sustaining the world's interest and attention.

#### IV. THE PROSECUTION PLODS ON

"What man has done to man in the former Yugoslavia strains the most agile capacities of human reason."

Prosecutors commenced the Tadic trial with stirring rhetoric. However, their choice of a premier witness tossed a wet blanket over the electronic eye anxiously awaiting the fulfillment of their opening promises.

The prosecution summoned James Gow, a professor of War Studies from the University of London who offered an exhaustive history of the Balkans. Gow served important strategic purposes although there were times when he appeared to try the judges' patience.

Of primary importance was his opinion that Serbia, under the leadership of Slobodan Milosevic, formed an alliance with the Bosnian Serbs, to wage an *international conflict* and execute a policy of *ethnic*

---

of Four'); and a personal favorite of the author's, Nabisco v. Proctor & Gamble, *The Cookie Trial of the Century*.

12. S. Lübeck, B. Tadic et al., *Nonequilibrium Phase Transition and Self-Organized Criticality in a Sandpile Model with Stochastic Dynamics*, 53 PHYSICAL REV. 2182 (1996).

*cleansing*<sup>13</sup> against Muslims and Croats. This testimony and the subsequent factual support from other *policy* witnesses<sup>14</sup> permitted the prosecution to satisfy threshold jurisdictional requirements.<sup>15</sup>

Gow's views did not go unchallenged. Defense co-counsel, Alphonse Orié, made his first attempt at a common law style cross examination with Gow. His strongest attack was aimed at the most dramatic piece of demonstrative evidence offered through Gow, scenes from the BBC film, *The Death of Yugoslavia*, for which Gow served as a consultant.

Gow emphasized the film's depiction of Radovan Karadic's infamous speech to the Bosnian Parliament declaring that "[y]ou Muslims, will face extinction." Orié almost forced Gow to concede that certain nuances of timing, context, and linguistic interpretation (which the witness omitted on direct examination) constituted a *significant qualification* of the prosecution's view that the speech was a clarion call to genocide.<sup>16</sup>

Later in the trial, the defense called its own expert witness who testified that the conflict was a *civil war* which began with the decision of the Slovenes to withdraw from Yugoslavia.<sup>17</sup>

Tactically, the most interesting effect of Gow's testimony was on cross examination of alibi witnesses called five months later by the

13. In the Yugoslav context this term has been defined to mean "rendering an area ethnically homogenous by using force or intimidation to remove from a given area persons from another ethnic or religious group." FINAL REPORT OF THE UNITED NATIONS COMMISSION OF EXPERTS - ANNEX IV - THE POLICY OF ETHNIC CLEANSING.

14. During the trial prosecutors called 81 witnesses. Fifteen of the first 16 were expert or lay witnesses called to establish the dominance of the Yugoslav Army (JNA) and of Serbian paramilitary and police forces in the warfare in Northern Bosnia, as well as detail the existence of the Policy of *ethnic cleansing*. They came to be known as *policy witnesses*.

15. The jurisdictional requirements are: 1) To establish that this was an international conflict in order to prove Grave Breaches of the Geneva Convention of 1949 against Tadic and 2) To show that Tadic's alleged crimes were part of a "widespread and systematic" attack on a civilian population, thereby constituting Crimes Against Humanity.

16. After a lengthy contretemps during which Orié tried again to get Gow to concede that all of these variables constituted a *significant qualification* of Karadzic's *extinction* statement, Judge Ninian Stephen of Australia pounced as he had before (politely but firmly) saying, "[t]he witness has answered yes to a degree." Orié also confronted Gow about various Security Council resolutions and memoranda attempting to force him to concede that Slobodan Milosevic wanted to withdraw the JNA from Bosnia, but was prevented from doing so by Bosnian troops and by the refusal of General Ratko Mladic to cooperate. On these points Gow adamantly refused to concede ground offering his own interpretation of the U.N. documents.

17. Robert M. Hayden is an associate professor of anthropology at the University of Pittsburgh whose specialties include Yugoslavia and Eastern Europe. He placed less emphasis on Serbian responsibility for the Yugoslav conflict saying that civil war was inevitable after the 1991 Plebiscite and the Slovene decision to secede from Yugoslavia.

defense. Each witness<sup>18</sup> who testified on direct examination that the defendant never attacked Muslims and Croats in northern Bosnia, was hard pressed to explain where all of his former Muslim neighbors had gone. If the judges believe Gow and the other policy witnesses they must entertain serious doubts about the candor of these defense witnesses and perhaps even of Tadic himself.

Despite Gow's strategic importance his appearance as the first witness called by the prosecutors partially explains the flight of the media from the Hague. Gow testified with a dry, academic, almost patrician aloofness. Aficionados of international law and Yugoslav history would undoubtedly overlook his manner. To everyone else in the world he was a crashing bore.

This raises the question of whether prosecutors should have cared that they were driving off one of the largest television audiences in history. It can be argued that the prosecution's exclusive function is to try a case, without concern for public perception and response. However, Richard Goldstone, then Chief Prosecutor for both Ad Hoc Tribunals expressed a contrary view shortly before Tadic's trial began:

I have no doubt that in any country, no less in an international court, the media is a partner in the whole criminal justice system. If people in a country are not told what their criminal courts are doing, then the deterrent aspect of criminal justice is going to fail. Its just not going to be there.<sup>19</sup>

Any dispute over the prosecution's continued lack of concern for the dramatic structure of its case cannot be resolved until the current prosecutors are free to speak publicly. However, faced with the charge that they cheated history and failed *pedagogically*, they might cite in their own defense one powerful precedent. The proceedings a half century ago in Nuremberg apparently caused the world and many trial participants to

---

18. The defense called 40 witnesses, most of whom supported Tadic's alibi. Those testifying for the defense included the defendant's wife and brother.

19. CourtTV interview with Richard Goldstone, (Feb. 26, 1996) (discussing the role of courtroom cameras). In another interview Cherif Basiouni, Chairman of the U.N. Commission of Experts on Yugoslavia, Oct. 26, 1995, argued that trials like those before the ICTY serve multiple purposes. "When you have so many people who have been killed, who have been tortured, who have been raped, you've got to be able to at least say 'this is what happened.' Victims need to have a recognition of their victimization. That is the first step towards establishing peace." (Interviews by Terry Moran).



doze between Justice Robert H. Jackson's dramatic opening statement and the screening of shocking concentration camp footage.<sup>20</sup>

Whether justified or not the decision to start with James Gow meant that most cameras and much of the world's attention were absent during some of the most dramatic testimony ever offered in a modern courtroom.

Gow was followed by Bosnian Croats and Muslims who had served either in public office or in the Yugoslav military or security apparatus prior to the fall of 1991. They described the Serb military buildup and subsequent spring offensive in 1992. Their stories included harrowing tales of torture, brutality, friendship, heroism, and incredible *ethnic* animosities.

Men from Bosansi Samac,<sup>21</sup> Brcko,<sup>22</sup> Vlasenica,<sup>23</sup> Rogaltica,<sup>24</sup> and elsewhere described the carefully balanced power sharing arrangements between Serbs, Muslims, and Croats constructed after the election of April 1990. They told of how the SDS,<sup>25</sup> the JNA, and undisciplined paramilitary organizations<sup>26</sup> destabilizing these structures, disarmed the local militias, and began brutalizing Muslims and Croats.

These witnesses sometimes sought refuge in words like *indescribable*, *unspeakable*, or *unimaginable*. However, they ultimately recounted acts of torture in painful detail. They testified about being beaten until their urine ran red with blood, watching bulldozers dig holes so that meat wagons full of bodies could unload their grizzly cargo, and of helplessly observing the repeated rape of young Muslim women.

20. "During the opening weeks, the pace of the [Nuremberg] trial was slow . . . the documentary evidence - reams of it - at times had judges yawning and the defendants themselves nodding off." Robert Shnayerson, *Judgment at Nuremberg*, SMITHSONIAN, Oct. 1996, at 132. Also note that "[Nuremberg] got so repetitious," recalls Harold Burson, then radio correspondent for the Armed Forces Network, "[i]t was like the O.J. trial, where you got surfeited with DNA information you didn't really understand." Tom Post, *The Trial of the Century*, NEWSWEEK, Nov. 6, 1996, at 56.

21. Dragan Lukac and Suljman Tihic.

22. Ibro Osmonovic.

23. Ibro Osmonovic

24. Elvir Pasic.

25. Isak Gasi, a witness from Brcko, told of two appearances of Radovan Karadzic in his hometown where the Bosnian Serb leader made ethnically inflammatory speeches.

26. Witnesses described the activities of Captain Dragan's Red Berets and Arkan's Black Caps and paramilitary forces wearing Tiger Head patches, patches with Serbian slogans, the Cetnik "Eagle, Skull and Cross Bones," and the famous 4 S's, worn in the Brcko area by the Black Panthers. For more detail on this subject see Military Situation Section of the FINAL REPORT OF THE UNITED NATIONS COMMISSION OF EXPERTS - ANNEX IV - THE POLICY OF ETHNIC CLEANSING.

Their testimony was permeated with descriptions of efforts made to humiliate prisoners. Sulieman Tihic, a judge, told of being taken to Serbia where he and others were forced to kiss the picture of Draza Mihailovic, a World War II Serbian hero, or risk being beaten. He spoke of being forced to clean toilets with his hands, made to watch other detainees perform oral sex on each other, and of having an Arkan soldier stop torturing him long enough to call his girlfriend in Belgrade on the telephone so that she could listen. Isak Gasi told of watching a detention camp guard carving a cross into the forehead of a Muslim prisoner.<sup>27</sup>

## V. THE LOST EYES OF OMARSKA

The American media focused twice on the Yugoslav drama as if it were watching the opening and closing acts of a bizarre *tableau noire*. These fleeting moments of intense interest occurred during the discovery of the detention camps in August of 1992 and during the slaughter which followed the collapse of the United Nations *safe haven* at Srebrenica in July 1995.

Of the two events, the exposure of Omarska and other camps drew most attention. This was perhaps because unlike Srebrenica, for which the international community bears much responsibility, the outside world did not have to include itself in the cast of camp *villains*. Additionally, images from the camps caused many to cast eerie glances at Dachau and Auschwitz.<sup>28</sup>

At Tadic's trial the judges heard days of testimony about the Bosnia camps without ever hearing the defendant's name. Prosecutors introduced the subject by calling a second expert *policy witness* a stern Norwegian Judge named Hanna Sophie Greve.<sup>29</sup>

---

27. The defense spent little time cross-examining policy witnesses except to suggest that Muslims in Prijedor had more weapons than the hunting rifles and World War II pistols described by prosecution witnesses.

28. The first western reporter to alert the world to conditions in the camps was *Newsday's* Roy Gutman who earned a Pulitzer Prize in the process. Gutman says that he was inspired by *Nazi Hunter* Simon Wiesenthal to compile his dispatches in a book, *A WITNESS TO GENOCIDE* (1993).

29. Greve spent much of her career as an international consultant to the United Nations High Commission for Refugees and other international relief agencies including work in Thailand, Ethiopia, Angola, Romania, Latvia, and Cambodia. In October of 1993, she joined the U.N. commission of Experts (the Bassiouni Commission) and was assigned to investigate Prijedor. Her manner was so sober and uncompromising that CourtTV's Dutch crew referred to her simply as *Judge Norway*. The defense objected vigorously to her testimony on the grounds that her references to interviews conducted by others were *hearsay* and that she lacked any relevant specialized knowledge warranting her designation as an expert. The objections were overruled.

Although Judge Greve did not speak Serbo-Croatian she offered linguistic insights to the Tribunal. In response to Judge McDonald's<sup>30</sup> request for a definition of *ethnic cleansing*, Greve pronounced the term a *euphemism* for rounding up members of an ethnic group and taking them to detention for torture, murder or deportation.<sup>31</sup> She mocked the use by the Serb authorities of the terms *military investigation centers* for detention camps, and *informative talks* for torture.

Other policy witnesses offered numbing tales of torture and abuse in Trnoplje, Keraterm, and Omarska. Typical of these was Muharem Nezirevic, a journalist who spent time as a prisoner in Omarska.

On his first night in the *White House*<sup>32</sup> at Omarska, Nezerovic saw an elderly man throw his body across that of his young son to shield him from blows. Another man gave half of his ration (1/8 loaf of bread each twenty-four hours) to his son through an intermediary who was quartered near the son. One day, the intermediary approached Nezirevic and said he did not know how to tell the man that his son had been taken away and killed. His dilemma was short lived, the father himself was soon dead.

On another night in the *White House*, inmates heard a young woman's screams. When they looked in the corridor they saw an elderly Muslim doctor and a young girl forced to strip. The Serbs ordered the old man to rape the young woman. He refused, saying "she could be my child." The next day Nezirevic saw the doctor's body outside the *White House*.

At one point in his testimony Nezirevic paused and simply said of the inmates at Omarska, "Their eyes! That look! Their eyes were not on the outside, but somewhere deep, deep inside!"

The eyes of the tribunal were able to look directly into Omarska with the aid of the final prosecution *policy witness* Edward Vulliamy. Vulliamy followed Roy Gutman to Omarska and was the first non-Serb film journalist to film the camp.<sup>33</sup>

America's fleeting glimpse of the camps in August of 1992 was a snapshot compared to the detailed mural drawn early in Dusko Tadic's

---

30. The Presiding Judge for the Tadic trial chamber, Gabrielle Kirk McDonald, is a former Federal District Court Judge from Texas.

31. She placed the number of *missing* persons from Prijedor to include 43,000 Muslims and 3000 Croats. While on the stand, she has also explained the strategic significance of Prijedor to the Serbs in the Spring of 1992. It was a *corridor* which could link the Serb areas in Northeast Bosnia adjacent to Serbia with the Krajina Serbian sector in Northwest Bosnia and Croatia.

32. The indictment and witnesses claim that the White House at Omarska was "a small building where particularly severe beatings took place."

33. He also wrote a book about the experience called *Seasons in Hell*. EDWARD VULLIAMY, *SEASONS IN HELL* (1994).

trial. The lack of interest in this testimony is merely another piece in a curiously apathetic puzzle.

To Dusko Tadic, forced to sit in the dock of an alien tribunal and to listen to the detailing of horrors with which he was not charged, it must have been a tremendous enigma.

## VI. WITHER THE PROSECUTION? WHITHER TADIC?

"Dule,<sup>34</sup> brother, how have I wronged you? Why do you beat me?"

The most haunting words of the trial? Perhaps. They were uttered in despair by Mehmed Alic a Muslim from Prijedor, who had known the defendant's father. Alic, who lost one son, Ekrem, was an inmate at Omarska along with his remaining son Enver. He testified that he and Enver were beaten by guards including Tadic. During one beating he lost sight of his son only to hear him wail, "[f]ather, look after my children, take care of my children" followed by his unavailing plea for mercy to *Dule*. Alic testified that he never saw his son again.<sup>35</sup>

This dramatic testimony was buried in the middle of the prosecution's case as was that of Nihad Seferovic. Seferovic said that he saw Tadic slit the throats of two Muslim policemen. He was the only eyewitness to testify publicly that he saw the defendant commit murder.<sup>36</sup>

The prosecution moved rather mechanically through its witnesses with no sign of giving much thought to dramatic timing. Prosecutors may believe that with experienced judges timing is irrelevant, even offensive. This is clearly not true however, of the public at large.

Part of the problem of course is that prosecutors did not have many dramatic witnesses. Of the eighty-one prosecution witnesses more than twenty were called simply to counter the defendant's alibi and prove that Tadic was present at Omarska, Keratern Trnoplje, or near Kozarac between May and December of 1992. While the defense challenged this evidence, the testimony was not gripping.

Approximately half of the prosecution's witnesses testified to beatings (some quite severe) at the hands of Tadic or offered frequently

---

34. This is Dusko Tadic's nickname.

35. Counts 5 - 11 charge the defendant with Alic's death. Earlier in the trial, the witness' daughter Hasiha Klipic (sister of the deceased Evner Alic) also testified for the prosecution.

36. It appears that Seferovic's testimony was used in support of counts 24 through 28 although there is a variance between one of the victims named in the indictment and one named by the witness. The indictment also charges that the victims were shot.

oblique circumstantial evidence of murders.<sup>37</sup> Only Seferovic publicly<sup>38</sup> claimed to be an eye witness to a Tadic killing.

Prosecutors would like to have avoided much of the drama that did impact on the their case. Redacted transcripts of two in camera witnesses for whom prosecutors appeared to have high hopes were helpful to the defense. One, witness H, seems to have undermined the prosecutions' proof on its most dramatic allegation.

From the outset of the trial the most bone chilling charge was that Tadic had forced witness G to bite off one of Fikret Harambasic's testicles with the help of witness H and other prisoners at Omarska.<sup>39</sup>

Several witnesses testified to being at Omarska and hearing Harambasic's screams. Two indicated that they had seen Tadic near the location where the incident occurred.<sup>40</sup> One witness, Halid Mujkanovic, seemed on direct examination to connect Tadic to the incident.

However, near the end of Mujkavovic's testimony the following colloquy took place between the witness and Judge McDonald:

Q: Did you see Tadic himself involved at all in the incident, taking an active part.

A: I did not see those moments.

Q: So you did not see Tadic require G to commit the act you described.?

A: No I did not.

When the redacted transcript of witness H's testimony was released the mutilation allegation seemed finally to fade from view.<sup>41</sup>

Q: But one thing is sure, that the man with the beard giving you the orders was not Dusko Tadic?

A: I do not believe so.

Q: You never saw Dusko Tadic in Omarska, would that be right?

37. All of these witnesses if believed would support count 1, a general "persecution count" which encompasses virtually every substantive allegation against Tadic and could be used to embrace acts not specifically charged in the Indictment. The sheer number of persons whose testimony is arrayed against the defendant on this count appears overwhelming.

38. The following witnesses testified in camera: For the Prosecution - 'P,' 'Q,' Sulejman Besic (partially), 'H,' 'L,' 'AA' (rebuttal) and For the Defense - 'V,' 'W,' 'Z,' 'A,' 'B,' Pero Opacic, Janko Opacic. Other witnesses for both sides had their identities hidden or their faces hidden from the cameras.

39. Counts 5 - 11.

40. Ferid Mujcic and Muharem Besic said they saw Tadic nearby, but could not connect him to the incident. Armin Jujcic testified similarly on direct examination, but on cross-examination was unsure if he had ever seen Tadic at Omarska.

41. This excerpt is from cross-examination by defense counsel Stephen Kay. Note that there were still other allegations against Tadic in counts 5-11.

A: I did not see him.

The greatest fear of journalists covering Tadic's trial is that incredibly important testimony will be offered in camera. This fear proved to be well founded when, towards the end of the prosecution case, a redacted transcript of the testimony of witness L was released. It contained shocking eyewitness descriptions of Tadic's personal participation in murders, beatings, and rapes. It even contained the allegation that Tadic was actually the commandant of the Trnopolje camp.

However, on the day that Tadic himself took the stand prosecutors requested that the court disregard the testimony of witness L. Based on information supplied by two in camera defense witnesses prosecutors had interrogated Witness L and extracted from him the confession that he had lied in his testimony to the tribunal.

He claimed that he had been forced to lie to tribunal prosecutors by agents of the Bosnian intelligence services. He admitted that he had never seen Tadic at Trnopolje where he himself had once been a camp guard.

However, defense exultation at the disappointments in the prosecution's case may reflect false hope. As Dusko Tadic mounted his defense he faced significant challenges. As any trial lawyer knows, proving an alibi is a daunting task. Any small hole or imperfection in the *elsewhere* tapestry can prove fatal. To establish an alibi for a six month period, in a country at war, is especially difficult.

The particulars of Tadic's alibi were also worrisome. At no point does he place himself more than twenty-five kilometers from the camps and areas around Kozarac where he is alleged to have committed crimes.

Furthermore, Tadic is forced to rely heavily on the traditional alibi coterie of witnesses, friends, relatives, and co-workers. Two of the co-workers are part of the security apparatus although one, like Tadic, occupies the lowly status of a checkpoint guard. This means that he has been forced to call as witnesses police officers who had difficulty explaining on cross-examination how they could be totally unaware of the horrors of ethnic cleansing perpetrated on their beats.<sup>42</sup>

## VII. WHO IS DAVID DUKE?

The legal journalist assumes that the Fourth Estate will play a positive role in struggling to master the treacherous currents of debate

---

42. This problem presented special problems for Miroslav Brdar, who allegedly manned the checkpoint with Tadic, and for their superior, Duro Prpos, who came under particularly sharp attack on cross-examination and rebuttal (see the testimony of Fikret Kadiric).

swirling about the trial of Dusko Tadic. However, testimony at Tadic's trial exposed another kind of media activity.

Many witnesses testified about the destabilizing role played by Radio Belgrade and Radio and TV Pale, as well as newspapers, in northern Bosnia. They which spewed forth exhortations to *ethnic* intolerance and violence for at least a year before the war.<sup>43</sup> These organs served as fountains of hate and intolerance, not as the eyes and consciences of their communities.

Ironically, this testimony about the media's sordid role in the former Yugoslavia led to one of the few light moments of the trial. This occurred during the testimony of Judge Greve.

Greve testified that legitimate historical Serb grievances<sup>44</sup> were used by Serb leaders to frighten Serbs in northern Bosnia. She made particular reference to Noel Malcolm's *Bosnia, A Short History*, which offers the analogy articulated by a Bosnian journalist for this Serb television propaganda blitz.

The journalist compared the Serb broadcasts to David Duke producing a message that would be blasted throughout the United States by virtue of the Klu Klux Klan's seizure of United States television stations.

As the day's session ended Judge Lal Vorah of Maylasia asked prosecutor, Alan Tieger, "[w]ho is David Duke?"

This produced polite laughter among the Americans present. Ironically, David Duke's name is a metaphor for racial intolerance in the United States.

However, there is less reason for Judge Vorah to know of Duke than for Americans to know the details of the struggle to bring justice to

43. Disturbing parallels can be seen to the circumstances surrounding the 1994 genocide in Rwanda. Hutu controlled Radio Rwanda and its more virulent sister Radio-Television Libres Des Mille Collines (RTL) continually broadcast incendiary anti-Tutsi speeches before the genocide. "Individuals targeted in the radio broadcasts were among the first killed (along with their families) in April 1994." FINAL REPORT OF THE OF EXPERTS [Rwanda] par. 64. There is a shocking similarity between the 1992 speech of a Leon Mugusera, an accused Hutu *genocidaire* and that of Karadzic tot he Bosnian Parliament. "They belong in Ethiopia and we are going to find them a short cut to get there by throwing them into the Nyarabongo River. I must insist on this point. We have to act. We have to wipe them all out." Rwanda expert report para. 63. Text is from GERARD PUNIER, THE RWANDA CRISIS, HISTORY OF A GENOCIDE 172 (1995). Edward Vulliamy enhanced our comprehension of riparian imagery in this decade's genocides when he testified in the Tadic trial that the Serb engineer operating the damn on the Drina River complained that Muslim bodies were interfering with the operation of his plant.

44. The most recent, and most troublesome claim is that as many as 750,000 Serbs were exterminated by Croatian Ustashe forces in World War II without the redress sought or offered by the international community. FINAL REPORT OF THE UNITED NATIONS COMMISSION OF EXPERTS - ANNEX - THE POLICY OF ETHNIC CLEANSING, III, THE BALKAN WARS AND THE WORLD WARS.

the peoples of the former Yugoslavia. Until Americans become informed it is unlikely that western governments will exercise the political muscle required to bring powerful indictees to trial.

Of course this still leaves the legal journalist struggling with the question of why Americans should care. Perhaps that answer can be found most clearly in the words of an American who is a looming presence in the trial of Dusko Tadic, Judge Gabrielle Kirk McDonald.

We ourselves in the United states I think still have a problem dealing with ethnic differences and what has happened in the former Yugoslavia of course is nothing that we would ever expect to occur in the US but is an example of what can happen when you don't resolve your ethnic divisiveness. When you cannot come to respect people for their difference and accept the differences and yet live together and respect each other that is what happens.

So it seems to me that to the extent that we in America have not come to grips with our kind of aspirational assertions of equality and non-discrimination and with the reality of discrimination that there are some parallels and so perhaps we can learn something.<sup>45</sup>

Such knowledge will not come without struggle, without braving the dangerous waters between Scylla and Charbidis which can only be traversed seated in the galleries of the Hague or in Arusha. The voyages will be difficult but there are few issues more pressing for our species than finding just solutions to the problems of mass murder and genocide.

---

45. CourtTV interview with Terry Moran (May 3, 1996).