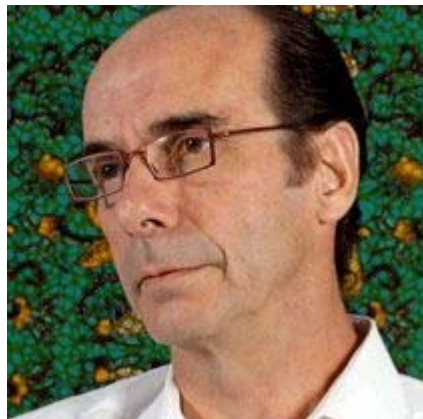




Voices from the Rwanda Tribunal

Official Transcript: Benoît Henry (Part 7 of 11)



Role:	Defense Counsel
Country of Origin:	Canada
Interview Date:	31 October 2008
Location:	Arusha, Tanzania
Interviewer:	Donald J Horowitz
Videographer:	Nell Carden Grey
Interpreter:	None

Interview Summary

Benoît Henry speaks about his first ICTR appointment defending Andre Ntagerura, who was accused and acquitted of genocide. Henry reflects on a major shortcoming of the Tribunal surfaced by Mr. Ntagerura's acquittal: the question of what happens to accused genocidaires after they are acquitted? Mr. Ntagerura remained in UN custody because no country, including Tanzania, was willing to accept him. Henry further suggests that to perform their role effectively, defense counsel must distance themselves from the events of the genocide.

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Part 7

- 00:00 Donald J Horowitz: Okay. Any other lessons to be learned, if you will, from trial number two for, for you? Special lessons.**
- 00:13 Well, I wouldn't say it, it's in relation with trial number two. I'd say that it's mainly with all the trials here.
- 00:22 DJH: Okay, go ahead.**
- 00:25 Well, I think there is also when, this is one of the points I wanted to, to, to raise with you.
- 00:30 DJH: Okay. Please do.**
- 00:33 It's, it's, it's a question of, of getting experience of a tribunal, of an international criminal tribunal. When I was first here at the beginning of the tribunal in 1998, I, I, I found that the principles, the way of deciding, the way of doing trials was not yet settled. People did not know exactly how to conduct trials, well, in, in my perception of course.
- 01:09 Judges were not – well, of course they're coming from different system. It's hard to, to, to decide in the same way, to think the same way. And there had to be experience to, to be taken and I think that now things are moving in a good way. But also there, there is a question of, of, of conducting trials of course and there is also a way of conducting prosecution; disclosure of material, for instance, disclosure of exculpatory material.
- 01:56 It is not in the mentality, it is not in, in, in the mentality of the prosecution to disclose what they have. They are trying to hide what they have in order to get a conviction. And that I can say because I lived it. I, I, I experienced it very closely.
- 02:17 DJH: Can you tell us, give us the example if you feel comfortable doing that?**
- 02:23 Yes, I, I have an example. In the first trial I made, I remember an occasion when I was (_____) a, a declaration made by a witness who was stating in his declaration, in his written declaration that a person, a certain person was assassinated by one of the three accused in our case. It was not my client who was involved but it was one of the three accused.
- 02:59 But he was also stating other things against my client and so I had to challenge his, his, his credibility when I crossed examined him. And I also had another declaration

made by an investigator who had interviewed this particular witness and who made a report saying things that the witness declared to him, told him. And . . .

03:26 DJH: And, and that investigator statement had been provided to you by the prosecution?

03:31 Yes, yes.

03:32 DJH: Okay.

03:34 And I, and I had it. So when I started cross-examining the witness, prosecution reacted in saying, "How, how come does the defense have this document?" They, they were – well, we could see the reaction. Of course they did not make, make it public but of course we could see the reaction but the document had been disclosed.

03:54 We had, we had the investigator's notes. So I started to cross-examine the witness and it was almost impossible just to have the witness admit that he had met this investigator on the second occasion. Well, first it was a question that the witness who didn't want to say, probably because he remember having said different things in that declaration and he never admitted having, having met with an investigators.

04:25 So I had to call, in defense, I had to call that investigator and I finalized my, my cross-examination with the witness by this simple question, "Did you or did you not meet with the investigator on such a date and made a declarations to hi-, and made a declaration to him?" He said, "No." So I had a defense to prove that he made another – how do you say that? How do you call that?

04:59 DJH: Statement?

05:01 Another prior inconsistent statement.

05:04 DJH: Oh okay, a prior inconsistent statement, sure.

05:04 Yes. So I had to prove that. I, I first had to prove that he made a statement and then I had to prove that he made an inconsistent statement.

05:13 DJH: Right.

05:15 So I called, I called the investigator as a defense, a defense witness. He testified to the effect that in fact, he met the witness on such date and that he, he got the declaration of the witness and that the, the, the witness said an inconsistent, gave an inconsistent statement with what he had said in court. So I had to that, but what

I want to make, the point I want to make is that the prosecution was never able to admit that this investigator met the witness.

05:58 It would have been very simple if they had an, an openness culture to say, “Well, of course we have an investigator who met the, the, and we admit that the, the, the investigator, the prosecution investigator met with this witness and, and had and took a declaration from him.” This would have been a very simple matter but they were never able to admit that, you see.

06:29 DJH: And, and presumably, what I'm hearing from you is that somehow you got this statement, the witness statement not through, or this investigator's statement, not through the prosecutor's office but some, some other way. And I won't ask you what that way was.

06:48 No, no, no, no. But I can, I can say (), I can say what I said in court. Of course it was public. If I remember well, this statement had been disclosed to another accused who was at the . . .

07:02 DJH: Same place.

07:04 Who was at the same place, who was at the UNDF.

07:06 DJH: Okay. Okay. But it was not disclosed in your case.

07:11 It was not disclosed in my case, okay. And finally I obtain that decl- my client in fact obtained the, the, the declaration from another colleague detained with him at, at the UNDF and this is how we finally obtained it.

07:25 DJH: Have there been other . . .