

CHAPTER FIVE

Arguments

Should Videos of Trees Have Standing? An Inquiry into the Legal Rites of Unnatural Objects at the ICTY

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Arguments, or the rhetorical construction of truth about historical events, have always lain at the heart of legal trials. In this sense, it is not bare facts in themselves but how they can be assembled into a coherent and convincing narrative that provides the foundation for law's findings on the truth. However, through the course of the twentieth century, the materials upon which arguments could be built have radically altered. This chapter sets out to explore mediated evidence, the role of scientific expertise, and the ways in which they combine to create new legal assemblages. More specifically, it considers how visual media, especially videos and photographs, are increasingly engaged in the construction of the arguments that legal practitioners deploy and that courts are called upon to adjudicate. As visual images proliferate in courts, visual rhetoric and visual argumentation unfold alongside the traditional rhetoric of words alone (Sherwin 2007). This broadening of the rhetorical spectrum within legal practice calls for new forms of expertise and eloquence based on an expanded capacity to decode, in order to meaningfully examine, visual evidence and visual advocacy.

The title of this chapter is both an invocation of and homage to a now landmark legal essay written in 1972: Christopher D. Stone's *Should Trees Have Standing?—Towards Legal Rights for Natural Objects* (Stone 1972). In adapting Stone's title and leading question, the chapter aims to unfold some of the ways in which the procedural arrangements of international criminal courts such as the International Tribunal for the former Yugoslavia (ICTY) manage, and are challenged by, the non-human witnesses or "unnatural objects" that enter into its vast legal machinery. Despite the primacy of human testimony within the majority of the war crimes allegations prosecuted by the tribunal, in a number of instances, non-human witnesses and media forensics have played a significant role in the argument and resolution of cases. Using the trial of Slavko Dokmanović as my primary case study (Figure 5.1) along with supplementary references to other ICTY prosecutions, this chapter considers the role of non-human witnesses in the production of contemporary legal truths.



FIGURE 5.1 IT-95-13a: Dokmanovic [JPG] Video still of Exhibit D2 at 15:42 Document Type: Exhibit 217 • Date: 17/06/1998 • By: Prosecution. Source: ICTY Court Records.

Witness Paul Tabbush examined by Mr. Clint Williamson¹

[International Tribunal for the former Yugoslavia, Thursday, 18th June 1998]:

Q. As you travelled this route, were you also able to recognize any of the trees which you believe might have been depicted in the video segment marked 15.42?

A. Yes.

Q. What kind of tree did you initially recognize there?

A. Well, the original one was a Lombardy poplar I had seen on the video still, segment 15.42, what appeared to be the outline of a Lombardy poplar or a tree of similar appearance.

Q. Is there something distinctive about this Lombardy poplar?

A. Yes. It's a very distinctive tree with upswept branches.

Q. I would like for you at this time to view Prosecutor's Exhibit 222, and if this can be displayed on the ELMO as well, and if you would point out the tree you're talking about?

A. I'm referring to the very upswept branches of this tree here with a very straight central stem and then upswept branches with a very tight angle between those branches and the main stem.

Q. Now, after spotting the Lombardy poplar, did you recognise another tree in that immediate area?

A. Yes, I did.

Q. How did you recognise this tree?

A. This tree bears a certain spatial relationship with the building behind it.

Q. Did you have an opportunity to examine the tree more closely?

A. Yes. In fact, I had a video still with me of the building and of this particular tree, and I examined the branch angles and the arrangement of the main branches of that tree in relation to the image on the video.

Q. What did you look for in trying to determine if this tree that you were examining was the same one depicted in the videotape at 15.42?

A. Firstly, there is the spatial relationship with the Lombardy poplar. It had to be some distance from it because of the way in which it appears in the video. Also, it bears a relationship with a building which has its gable close to and facing the road.

Q. At this time, I would like for you to look at Prosecutor's Exhibit 218.

Is this the tree that we're talking about?

A. Yes, indeed. This is the tree I inspected.

Q. What kind of tree is this?

A. It's a walnut tree.

Q. What was your conclusion after examining this tree as to whether it was the same one seen in the video segment at 15.42?

A. Yes, I recognised this tree immediately.

Q. Now, after you located these various trees from the videotape, did you document their locations on this map which we have marked as Prosecutor's Exhibit 241?

A. Yes, that's correct....

Q. Mr. Tabbush, are there certain characteristics unique and distinctive to a particular tree which would differentiate it from other trees and allow you to positively identify it?

A. Yes. The arrangement of the major branches on a tree are caused by a combination of genetic and environmental factors so that no two trees will be exactly the same.

Q. In this regard, trees are somewhat like people, are they not, except perhaps even more unique, since environment also affects their appearance?

A. That's right. Not only environment, of course, but they are—people are symmetrical about a central axis. Trees aren't symmetrical about any axis. So if two identical trees were rotated through ten degrees, you would see a different image of branching.

Q. If you have two trees that are genetically identical planted next to each other, would their appearance be the same?

A. It would be extremely unlikely. Even if there were no environmental factors, it would be extremely unlikely that

they were both planted in the same radial orientation. In other words, one is more likely to be rotated around its vertical axis with respect to the other one. It would be very unlikely that they would both be planted in the same orientation.

Q. Is there any doubt in your mind that this walnut tree that you examined and on which you have done these comparisons is the same one that is depicted in the videotape at 15.42?

A. None at all. (ICTY 1998c: Paras 3380-3397)

This exchange between expert witness Professor Paul Tabbush and Prosecutor Mr. Clint Williamson takes place during the war crimes prosecutions of the ICTY, specifically the trial of Slavko Dokmanović. The ICTY was established by United Nations Security Council Resolution 827 on May 25, 1993, in response to reports of grave wrongdoing in Bosnia as well as in reaction to mounting pressure from the international community.² As a temporary ad hoc institution, the ICTY was granted prosecutorial jurisdiction over allegations of crimes against humanity committed across the territories of the former Yugoslavia. From January 19 to June 25, 1998, the ICTY heard the trial against Dokmanović, who was charged with participating in the mass execution of more than 200 people at the Ovčara farm southeast of Vukovar, Croatia on November 20, 1991. What makes this exchange particularly noteworthy is that the videotape alibi provided by Dokmanović and his defense counsel (Toma Fila and Vladimir Petrović) was proven to be false, based upon a detailed media reconstruction documenting the route that Dokmanović claimed to have traveled and filmed on the day of the massacre.

Although this investigation was conducted in February 1998, more than six years later and at a different time of year, it allowed for a comparative mathematical analysis of various trees that appeared in the videotape alibi as well as in its subsequent reenactment. Dokmanović maintained that he could not have been at the Ovčara farm during the time of the massacre since he was travelling far south of Vukovar and had shot video footage with a time code and date stamp along the way that matched the exact date and time of the mass killings. His defense team duly entered this tape into evidence as defense Exhibit 2 (ICTY 1998b, Court Transcript 980617IT: Para 3768). However, the prosecution was skeptical, not least because two survivors, Berghofer and Čakalić, had provided eyewitness testimony placing Dokmanović at the scene. “Two witnesses confirmed that they personally saw Slavko Dokmanović for a short while two to five minutes in the hangar at the Ovčara farm in the interval between 2 and 4 p.m” (ICTY 1998a, Court Transcript 98041: Para 1878). Perhaps not surprisingly the fortuitous existence of the video alibi raised considerable doubts, prompting the prosecution to enlist the aid of one of the ICTY’s investigators—Vladimir Dzuro—in reconstructing Dokmanović’s movements on the afternoon in question. “With camera in hand, Dzuro hopped in a vehicle and retraced the route Dokmanović claimed he took on the afternoon of Nov. 20, 1991, recording the drive in the same way the Defence claimed Dokmanović had done” (Matheson 2015). Ultimately a Lombardy poplar, mulberry, and walnut tree would come to stand as crucial material witnesses in the prosecution of an alleged war criminal.

According to the indictment issued by the ICTY on April 3, 1996, and amended on December 2, 1997, Slavko Dokmanović “aided and abetted” JNA and Serbian paramilitary, under the command of Mile Mrkšić, Miroslav Radić, and Veselin Šljivančanin, in the forced removal and transport of approximately 260 non-Serbs who had taken refuge from the siege of Vukovar in the local hospital. “Among those removed in this way were wounded

patients, hospital staff, soldiers who had been defending the city, Croatian political activists, and other civilians. By the time the medical staff meeting with Major Šljivančanin concluded, the soldiers had removed almost all of the men who were at the hospital” (Goldstone 1995). From the Vukovar Hospital the captives were taken to a farm in Ovčara where they were beaten at great length and eventually moved to a location between the farm and Grabovo, where they were shot and killed. Dokmanović was charged with personal criminal responsibility for various events that took place that day, each of which was subject to areas of jurisdiction granted to the ICTY under Resolution 827: grave breaches of the Geneva Conventions, violations of the laws or customs of war, and crimes against humanity.³

A frame-by-frame video analysis conducted by British silviculturist and “tree expert” Paul Tabbush, detailing the unique growth pattern of several trees pictured along the route that Dokmanović had purportedly taken (Figures 5.2–5.3), overturned his alibi and confirmed that he had in fact made a U-turn returning back to the vicinity of the farm. When OTP Investigator Dzuro reconstructed and recorded the exact route taken by Dokmanović, according to specifications provided by his defense counsel as well in statements he gave when interviewed in Scheveningen prison, the well-established trees that appeared at the end of the alibi videotape, which also designated the endpoint of Dokmanović’s journey, were nowhere in sight. In their place grew an entirely different grouping of mature trees. Unfortunately, or perhaps deliberately, the original recording was shot out of a car window and all that is visible at the end of tape are buses, the roof gable of a house, and the tops of trees. While the architecture of buildings that were still standing years later would have provided easy points of cross-reference had they been filmed, in their absence the intricate lacework of branches growing over a period of six seasons required an unusual form of expertise for a war crimes tribunal: a specialist in the taxonomic classification and identification of wooded plants—a dendrologist. Dendrology is a specialized field of botany situated within the broader domain of silviculture, which is itself concerned with the growth, establishment, and managements of forests.

Since no two trees ever grow in a precisely identical manner, the complex geometry generated by their branch structure functions as a kind of arboreal signature that is considered more distinctive than the whorls of human fingerprints. Although the disputed video with its mute bystanders could not prove Dokmanović’s specific involvement in the perpetration of a war crime, it did offer corroborating evidence in support of testimony given by the two surviving eyewitnesses, who insisted that Dokmanović was indeed present at the time of the mass execution, something he had vehemently denied. The trial thus turned upon a remarkable conjunction between disparate forms of evidence and multiple modes of testimony, from eyewitness accounts, investigative reports, and media documentation, to the geometrical expression of natural objects and the analytic observations of an expert who could decode the fingerprints of trees. On June 29, 1998, Dokmanović committed suicide while in the ICTY Detention Unit. Consequently, the Trial Chamber terminated all proceedings against him two weeks later.

In his well-known text, Stone (1972) raised the provocation, by way of his title—*Should Trees Have Standing? Towards Legal Rights for Natural Objects*—as to whether nature should be entitled to a form of legal recognition independent of the humans who might make use of it for commerce or pleasure. He posed this question in order to advance the possibility that natural objects such as a forest be taken seriously as legal actors and thus accorded certain rights, privileges, and obligations under the law. To stand before the law means to be recognized and treated as an equal in the eyes of the judiciary regardless of one’s station in life or wealth. Historically, this condition of equal



FIGURES 5.2–5.3 IT-95-13a: Dokmanovic [MPG] Video segment of alleged locations depicted on exhibit D2 at 15:36 and 15:42 Document Type: Exhibit 231 • Date: 18/06/1998 • By: Prosecution. *Source:* ICTY Court Records.

legal recognition effectively designated white men and not women or slaves as the sole holders of rights, but the point was that “to stand before the law,” meant to be recognized by the judiciary as a rights-bearing agent. While a nature reserve may be a protected entity whose stewardship is governed and protected by environmental legislation and even enforced by law, such a natural object does not in and of itself have any recourse to the law except in so far as its destruction or misuse might impact upon the humans who avail themselves of it as a source of respite and space of leisure. The nature reserve, like forests, rivers or mountains are therefore legally “rightless,” that is to say, subject to the law but not the bearer of rights themselves.

Environmental policies may protect an old growth forest such as Cathedral Grove on Vancouver Island in so far as it is conserved for our continued enjoyment and use, but these regulatory controls have not been drafted with a view towards granting such ancient trees their own legal rights independent of their specific use-value to humans (Stone 1972: 463). There are few exceptions to this global legal framework, apart from the recent adoptions of the Pachamama Constitution or Law of Mother Earth in Bolivia and Ecuador (Tavares 2014: 553). These new legal arrangements have transformed nature into a subject and bearer of rights rather than a mere object upon which the actions of other rights-bearing agents are performed. Many of the entities long engaged in the willful destruction of nature are themselves non-human actors such as mining companies or oil and gas refineries, whose legal rights have been historically enshrined within the concept of corporate legal personhood (Dewey 1926). Indeed, Stone reminds us that the legal world has long been “peopled with in-animate rights-holders: trusts, corporations, joint ventures, municipalities, Subchapter R partnerships, and nations states, to mention just a few” (Stone 1972: 452). These lifeless rights-bearers do not necessarily have the capacity to speak directly to the court and must rely upon lawyers as mediators much like most people who find themselves subject to the law. Today the notion that non-human entities such as corporations can operate as fully recognized legal persons that can own property, sue for damages, or be found liable for their deeds may not seem as counter-intuitive as it once did.

Stone’s innovation was to propose a further extension of the concept of legal personhood to a new group of non-human agents, namely natural objects. The ontological condition of the human as *the* proper body that could stand before the law was replaced by the legal condition of personhood established in the late nineteenth century in which rights and obligations could accrue to non-humans. Trees are ontologically given as “standing” in terms of their vertical orientation towards the sun and soil from which they derive their nourishment and strength of purpose, but their capacity to stand legally before the law as rights-bearing and obliging agents does not proceed from any such a priori natural “bearing” or physiological comportment. The ironic demand invoked by Stone, that trees should have standing when they are obviously already literally standing, serves to highlight the degree to which the “laws of nature” and the “legal rights of nature” remain largely incommensurate categories of assembly despite their suggestive semantic borrowings.

I propose to continue his wordplay in this chapter in order to reflect upon the legal status of another group of non-human objects—namely media—specifically photographic and videotaped images of trees. But not with a view towards advancing their legal agency as rights-bearing entities, rather with the intention of asserting their considerable agency to bear witness to “legal rites,” specifically those evidentiary practices and protocols that governed the war crimes prosecutions of the International Criminal Tribunal for the former Yugoslavia (Figure 5.4), which are at the time of writing in their final stages with only the Trial of Ratko Mladić still in session. In doing so, I advance a notion of visual

evidence as constituting a new kind of witness that emerged already in the late nineteenth century when a US judge asked the rhetorical question “Can the sun lie?” in querying the veracity of photographs as they began to enter into legal proceedings (Thurston (online)). By assigning an animistic capacity for deception to the sun, he inferred that non-human entities (and by extension, perhaps even technical processes) could play a crucial role in the production of evidence. Namely that the mode of appearance of the media object—the technicity of the photograph put before a jury—was equal in consideration to the epistemic claims that could be made on behalf of its pictorial value. But when faced with the improbable prospect of cross-examining the sun directly, he also opened the proceedings of the court to the influence of specific forms of “expert” knowledge that would increasingly be called upon to ventriloquize the object-world. The judge continued: “Perhaps we may say that though the sun does not lie, the liar may use the sun as a tool. Let us, then, beware of the liar who lies in the name of the sun” (Thurston (online)).

As a quasi-historic body with its cases largely completed and sentencing rendered, thousands of ICTY Court Records have been made public and are accessible online or by written request. These artifacts represent a comprehensive legal record of the first international criminal law court—a process of war crimes prosecution and archival reckoning that began with the Nuremberg and Tokyo Trials in the 1940s, and continued with the creation of the International Criminal Tribunal for Rwanda (UNICTR) in 1994. These materials also provide extraordinary insight into the complex inner workings of an international court. In particular, they disclose the procedures and practices that convert testimony and artifacts into matters of legal evidence capable of presiding over questions of public truth.

Although the ICTY Court Records represent its unrestricted public offerings, they are but a small fraction of the actual materials gathered and records produced by the tribunal since its inception in 1993. Full disclosure of all its legal materials with provisions for protected witnesses remains one of the tribunal’s core ambitions, though there has been much dispute as to where and how such a permanent facility should be located and



FIGURE 5.4 Courtroom of the International Criminal Tribunal, during a swearing-in ceremony of judges. *Credit:* Photograph provided courtesy of the ICTY.

administered. The issue of future appeals and the late arrest of its final fugitive, Goran Hadžić on July 20, 2011, have also meant that its “Completion Strategy” will need to transfer cases to local judiciaries for prosecution. As a United Nations court, conventionally all materials from its tribunals return to UN Headquarters in New York, where they are sequestered away at some considerable distance from their primary stakeholders. However, the decision has now been made to keep the archives in The Hague as a legacy project, where access can be made more readily available to those directly affected by the Balkan Wars, or where they can be used as a tool for reconciliation and legal pedagogy.⁴ “By transferring evidentiary materials as well as making electronic databases and archives available to national institutions, the Tribunal will ensure an effective transition from an international court to domestic judiciaries.”⁵

Today the vast archival holdings of the ICTY’s Office of the Prosecutor (OTP) exceeds 9.3 million entries and includes photographs, diaries, maps, diagrams, exhumation records, X-rays, radio intercepts, audio recordings, and videotapes, as well as physical objects such as scale models, computer hard drives, personal effects, munitions, and even remnants of charred timber and stone (Figures 5.5–5.6). All is here, save bio-hazardous materials such as blood-soaked clothing, which would have been documented and then disposed of. By 2010, the ICTY Court Records required 3,704 meters of storage shelving alone. In addition to OTP exhibits, transcripts of the cases and procedural documents are also scanned and entered into the e-court database of the Records of the Trial and Appeals Chambers. Over the course of many years, I have been conducting research into the evidential holdings of the ICTY, focusing my examination upon the various issues that arise when media and other non-textual forms of evidence enter into legal proceedings as a “material witness” entrusted with the task of testifying before the tribunals of history. Through my creative practice as an artist and researcher, I have investigated the ways in which the injustices of war are being managed by judicial instruments through the presentation and production of evidence (Schuppli 2014). At every juncture in the administrative circuits of the tribunal and its prosecutions, there is much “evidence” to suggest that evidential materials are not only carrying information related to a potential war crime (photographs of destroyed buildings, videos of hate speech, maps of military strategy, models of concentration camps, X-rays of bullet-ravaged bodies), but are themselves also registering and aggregating the protocols of the court.

I have come across many examples where materials entered into one trial re-appear in another, but in a somewhat altered or modified form. While the vast majority of ICTY Court Records consist of paper documents (99 percent) followed in number by maps and then photographs, visual material is often duplicated and re-used in different cases. “Judges will accept copies in place of originals; if originals have been introduced, judges may decide that a copy can be substituted in the case file and the original returned to the evidence control office” (Peterson 2008: 18). It is important to bear in mind that in the ICTY, with its preponderance of paper records, all exhibits enter the court as digitized screen images through the e-court system and ELMO visualizer⁶ unless the judiciary requests that an original piece of evidence be sourced from the vault, which happens very infrequently.⁷ Indeed, throughout my years of research, during which time I followed hundreds of evidential objects through the various trials in which they appeared and re-appeared, I was rather surprised to note only one instance in which actual material evidence was requested by the prosecution, brought into Chambers, unsealed and re-examined by an expert witness. The incident concerned the remains of a destroyed structure during the cross-examination of fire inspector Benjamin Dimas on Tuesday



FIGURES 5.5–5.6 Evidence vault of the Office of the Prosecutor OTP. *Credit:* Reuters/Damir Sagolj.

March 24, 2009.⁸ Although the charred remains were initially presented inside their sealed evidence bag and placed on the ELMO so that they could be viewed on everyone's desktop monitor, it was determined that the dirty plastic didn't permit sufficient visual access to the material for purposes of reassessment, thus requiring the unsealing of the bag and removal of evidence (Figures 5.7–5.8).



FIGURES 5.7–5.8 IT-98–32/1: Lukic et al. [MPG] Expert Witness Fire Inspector Benjamin Dimas opening an examined sealed evidence bag. March 24, 2009. *Source:* ICTY Press Office.

Expert Witness Benjamin Dimas cross-examined by Mr. Dermot Groome
[International Tribunal for the former Yugoslavia, Tuesday, 24 March 2009]

Q. Okay. I'm going to ask that you—with the usher's assistance that you take a look at a bag. It's an evidence bag, and if it could be placed on the ELMO.

Mr. Alarid: And, Your Honour, we would object to this form of tendering the materials to the witness. One, the witness has been already accepted by the Court as an expert in fire investigation. I looked at the bag and Mr. Groome refused to open the bags for me. The reason being is—and the objection is that if you're going to put questions of this nature to this witness as an expert, he should be allowed to inspect the contents. The fact of the matter is that the bags from whatever dirt, they're almost opaque at this point in time, so it makes it very suggestive without a real opportunity to examine the contents of the bag. I would object to a simple ELMO presentation.

Mr. Groome: Your Honour, I fully agree with Mr. Alarid, so I'm going to ask the witness to open the bag, pour the contents on a tray, and examine it here before us ...

Q. I'm going to ask that you take a scissor, and I'm sure you're familiar with opening evidence bags, but I'm going to ask you to cut it at the bottom, not near seal, so we always have a record of the seal, and I'm going to ask you to pour the contents onto the white tray.

Judge Robinson: Mr. Groome, what's the provenance of this bag and its contents?

Mr. Groome: Your Honour, if Your Honours will recall from the video, this was the bag that was—and we can see the same writing on the bag. Again, I'm not tendering it at this time, but it's obvious from the video that this was the material taken out of the electric box and placed in the bag. I can call up that portion of the video if Your Honour wants to compare the writing on this bag with the writing on the video.

Trial Chamber confers]

Judge Robinson: No, that's not necessary.

Mr. Groome:

Q. Okay. Sir, can you please open the bag and just put the contents on the tray.

A. [Witness opens bag] (ICTY 2009: 6032-6034).

As the expert witness carefully cut open the plastic evidence bag and poured out its contents, a court camera zoomed in and began following an ant that had inadvertently been sealed inside the bag along with its charred debris. During the ensuing period of cross-examination the ant explores the material recovered from the scene, freed from its own incarceration from within the evidence bag. That a court camera lingers upon this diminutive intruder is perhaps not surprising given the general tedium that must surely

set in when documenting the proceedings of a tribunal that has now been running for over thirty years, in which personnel such as interpreters and technicians are specifically required to channel the events of the court without registering its horrific content. Failure to do so might result in staff supplementing the translation of its proceedings with their own affective residue, which would trouble the ideal of impartiality that governs its procedures and legacy.⁹

When I requested video footage of this particular cross-examination from the ICTY, I didn't realize that I would stumble upon this extra-diegetic event. One in which the intercession of an ant becomes a poignant reminder that even the strict guidelines for documenting and recording the high-stakes procedures of a war crimes tribunal can be momentarily subverted by the distractions induced by an unexpected agent, regardless of how legally insignificant. It is, after all, administrative personnel, such as this cameraman charged with documenting the historic proceedings of the ICTY, who are actively shaping its legal legacy and posthumous image. Both the Nuremberg and Eichmann trials were clearly undertaken with a well-defined sense of their mandate to produce an historical archive and an image of retributive justice. In this sense, these were not, strictly speaking, legal proceedings in which determinations of guilt and innocence were still to be settled. By contrast, the documentation of legal processes in the trial Chambers of the ICTY seems to be rather less stage-managed as a "legacy project," even though recording and transmission technologies are thoroughly integrated into the architecture of its three Trial Chambers and are central to their modes of operation.¹⁰

But what really astonished me throughout my explorations of the Court Records was the degree to which evidentiary materials carried the seemingly incongruous imprint of the tribunal, often being modified to accommodate their presentation in court (Figures 5.9–5.10). While originals are safeguarded within the relatively stable environmental conditions of the OTP evidence vault, when they interface with the court as digital displays they undergo all manner of adaptation. Color photographs are marked by witnesses, duplicated, cropped, and photocopied, oftentimes re-appearing as degraded B&W images in another prosecution. Lengthy videos might be edited and spliced with inter-titles to assist with prosecutorial narration, or to clarify a complex sequence of events for a witness. While such modifications do not necessarily impinge upon the probative value of evidentiary materials, they do function as a kind of palimpsest that allows me to read the history of their transit through the court.

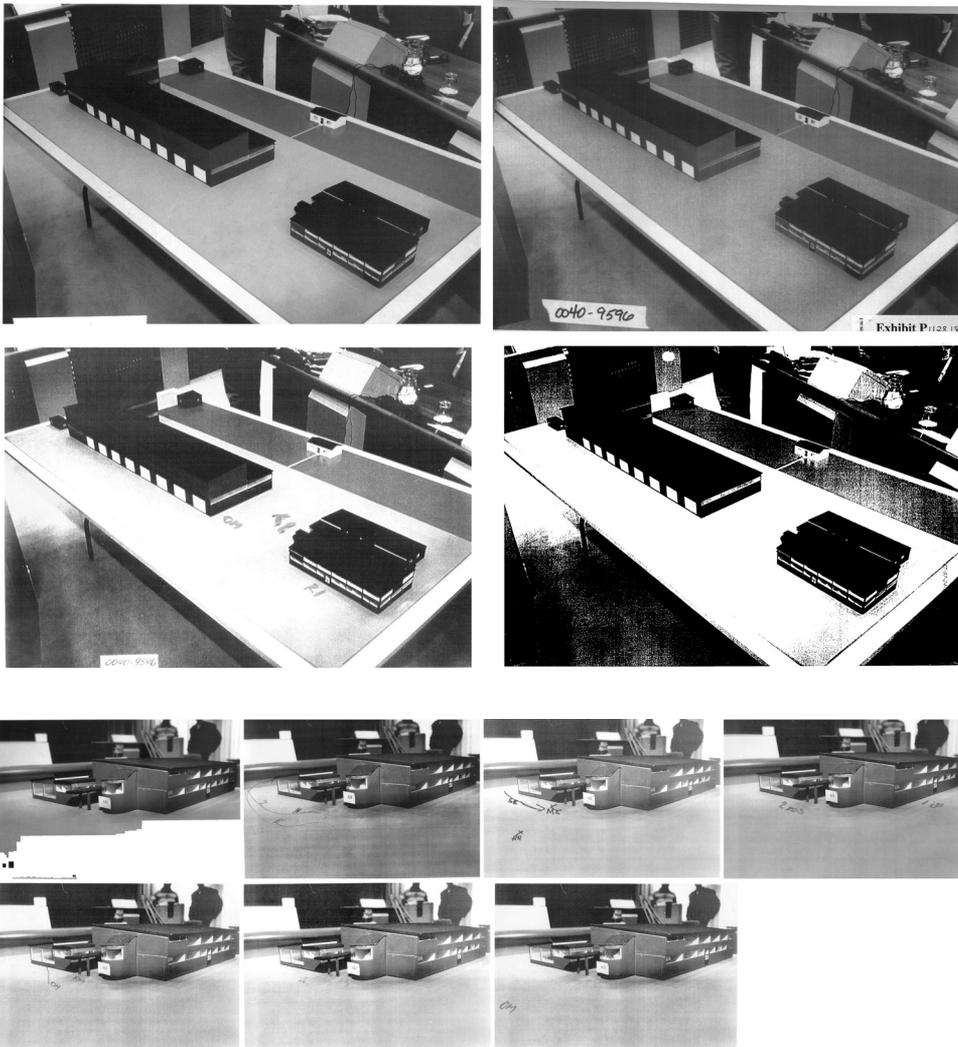
Moreover, I would argue that through such processes of modification, a kind of violence is also done to the evidential object or courtroom exhibit that is akin to the processes of cross-examination experienced by human witnesses when the force of their trauma is confronted by the blunt force bureaucracy of the law. While some jurists might disagree with this characterization, it is certainly not erroneous to suggest that the nature of legal dramaturgy within the criminal court produces highly unnatural and circumscribed encounters in which the affective dimensions of testimony are often disarticulated and flattened through repeated and at times intensely personal questioning and cross-examination, as well as by virtue of the selective presentation of exhibits. One of the most paradigmatic examples is certainly the now historic case of Rodney King, in which amateur camcorder footage documenting his roadside beating by the LAPD was re-edited when it was entered into court to downplay the racialized violence directed towards King, while intensifying the "black" menace of his body as a confrontational form in which violence was "naturally" inscribed. The vicious assault towards King, an African-American motorist stopped during a routine traffic check on March 3, 1991, by

one Hispanic and three white officers, was fortuitously captured on tape by local resident George Holliday, inaugurating what has since become known as citizen journalism. When the analogue footage was professionally digitized for its presentation in trial—the officers were accused of assault with a deadly weapon and use of excessive force—much of the ferocity directed towards King was selectively removed, thus shifting the affective



FIGURES 5.9–5.10 Audio-visual technology used in the Trial Chamber. *Credit:* Photographs provided courtesy of the ICTY.

narrative from a savage attack upon King to a perceived threat of violence towards the officers. By virtue of conducting a frame-by-frame analysis and stripping the video of sound, the jury was spared its visceral violence. An acquittal ensued and riots erupted throughout Los Angeles (Sherwin 2007). To undergo the proceedings of the court is, on some level, to endure a certain kind of socially acceptable violence, albeit one whose operations are in principle oriented towards the production of justice. The same can be said to hold true for material artifacts that enter into its prosecutorial machinery and are submitted to its legal rites of passage (Figures 5.11–5.21 and Figures 5.22–5.23).



FIGURES 5.11–5.21 IT-99-36: Brdjanin [JPG] Multiple versions of the same picture of the Omarska model, considered the most notorious concentration camp of the Bosnian war, that have been variously copied, cropped and/or marked by witnesses. Document Type: Exhibit P1128.18. Source: ICTY Court Records.



FIGURES 5.22–5.23 IT-95–14/2: Kordic and Cerkez [PPT] Set of 54 photographs of destroyed buildings in Han Ploca. Document Type: Exhibit 1837. *Source:* ICTY Court Records. Note also the increase in hole-punch marks. *Source:* ICTY Court Records.

These operations of registration designate a condition of “material witnessing” that I continue to elaborate upon in my wider practice as an artist-researcher. Within a legal context, the material witness is a person who is deemed to have information germane to the subject matter of a lawsuit or criminal prosecution that is significant enough to affect the outcome of the trial. In other words, the witness, by means of the information they may possess, is considered sufficiently *pertinent* to the legal proceedings such that every effort must be made to procure their testimony. Humans become witnesses when their knowledge or experience positions them as semantically “material” to a case. My particular usage, in contrast, takes the concept quite literally: material *as* witness, and refers to the double agency of matter as both harboring direct evidence of events as well as providing circumstantial evidence of the interlocutory methods and epistemic frameworks whereby such matter comes to be consequential. Material witness is, in effect, a Mobius-like concept that continually twists (as I have expressed elsewhere) between divulging “evidence of the event” and exposing “the event of evidence” (Schuppli forthcoming). In pursuing this research, I have examined a wide range of materials that archive their complex interactions with the world, producing ontological transformations and informatic dispositions that can be forensically decoded and reassembled back into an alternate or parallel history of an event.

The ICTY Court Records in particular have offered a significant opportunity for exploring the evidential role of matter as both registering external events, as well as exposing the partisan practices and procedures that enable such materials to publicly testify and bear witness. Because legal practices within a criminal case are heavily reliant upon the rhetorical potential of objects to assist the judiciary in making or disputing truth claims, it is easy to render transparent the very methods which enable such forms of narration to take place. In as much as witnesses and experts do play a central role in testifying to events, the power of objects to act as visual aids, to help shape testimony, to confer authority and substantiate the claims of specialists, in short to help build a case, is noteworthy and should be elaborated and reflected upon. For example, Robert H. Jackson, Chief US Prosecutor at Nuremberg (1945–1946), made the controversial decision to base the Trials entirely upon the administrative archive of the Nazi regime rather than upon the testimony of survivors, thus eschewing living witnesses in favor of the rhetorical capacity of documentary evidence. Jackson’s decision emphasized both the sober impartiality he attributed to such material artifacts—the paper trails that would corroborate the systematic planning and implementation that went into exterminating six million European Jews—but also the implicit belief that the sheer scale and transparent ambitions of the Third Reich evidenced in these records (Figure 5.24) would convert mute witnesses into fully realized agents of legal speech. Through the assumed transparency of the legal object-world of Nuremberg, the material record would be made to speak for itself.

While Nuremberg made enormous contributions to jurisprudence in “setting up a binding legal precedent of crimes against humanity,” it was the Eichmann Trial in Jerusalem (1961) that returned the living witness to the stands, inaugurating what Thomas Keenan and Eyal Weizman call the “era of the witness” (2012: 12) in deference to Shoshana Felman and Dori Laub’s claim that the twentieth century was the “era of testimony” (Felman 2002; Wieviorka 2006). Felman maintains that the two trials—Nuremberg and Eichmann—staged the fundamental differences between non-human and human forms of evidence (something I will return to shortly with respect to the Dokmanović trial). However, as Hannah Arendt has argued in her critique of the latter, the Eichmann Trial also shifted legal attention towards the victim and away from the perpetrator (Arendt 1963; Felman 2001: 244). Although legal forums, especially the ICTY, offer a useful



FIGURE 5.24 US Army staffers organize stacks of German documents collected by war crimes investigators as evidence for the International Military Tribunal. Nuremberg, Germany. November 20, 1945—October 1, 1946. *Credit:* National Archives and Records Administration.

context for working through the notion of the “material witness,” the concept is not pursued as an exclusively legal one, nor do I dwell upon questions of judgment in relationship to the injustices that they mediate. But I do examine the intertwined relations between human and non-human forms of testimony and the capacity of each to bear witness to powerful events as they enter into public discourse as agents of dispute.

As was the situation with many of the media artifacts that were entered into evidence during the prosecutions of the ICTY, the burden of evidential proof concerning allegations of serious crimes or evidence of tragic events fell, oftentimes, upon the documentary claims of poor images and defective media. That is to say, media shot or recorded under hazardous conditions or at great personal risk during times of war. In another project, I have reflected upon a videotape shot by Liri Loshi in the aftermath of the 1999 massacre at Izbica, a rural village in Kosovo. In that work, I argued that the material state of the videotape (Exhibit P232) also serves to diffract the violence done to the bodies he recorded on tape. Appearing initially as an energetic field of interference patterns, eventually they break apart to expose a pictorial field, a meadow, in which the mute horror of dead bodies begins to reveal itself. These visual artifacts further emphasize the material violations of the body-proper that would ultimately emerge out of the depths of the image (Schuppli 2015).

Such impoverished visuals can of course also refer to the “soft” or low-res images produced by security cameras and remote sensing systems whose outputs are disadvantaged by their own technical limitations or by restrictions put in place by state intelligence agencies

that downgrade commercial satellite resolution to maintain their military advantage. Nor are the shortcomings of visual media necessarily always a consequence of their diminished quality. Hi-res images that have been subject to various forms of post-production editing may also be considered poor because their probative value as unadulterated evidence is reduced. My usage of the terms “poor image” and “defective media” refers therefore not only to their aesthetic attributes and technical drawbacks, but also to their incapacitated juridical condition as convincing agents of truth, which in turn may necessitate further investigation on the part of the prosecutors and defense counsel.¹¹ It is also important to bear in mind that the diverse ways in which observers of media respond to and/or interpret the significance of particular images is itself conditioned by many external factors such as their social standing, political frameworks, formal education, cultural background and so on. The truth status of an image or video recording is thus not only a consequence of its formal attributes and material properties, but is arrived at through a complex series of negotiations between various forms of knowledge, technologies, and subjectivities (Kahan 2009).

In the case of the Dokmanović videotape, which required the wholesale reconstruction of the tendered evidence many years after the alleged time of the crime, its probative value was contingent upon a level of accuracy and clarity sufficient to allow Tabbush to conduct his comparative analysis and render his expert opinion. However, the numerous constraints encountered by Czech Investigator Dzuro in making a precise copy of the Dokmanović journey and his alleged alibi recording led, at times, to the production of a rather poor-quality videotape and substandard photographic images, as is revealed by his testimony in court.

Investigator Vladimir Dzuro examined by Mr. Clint Williamson

(International Tribunal for the former Yugoslavia, Thursday, 18th June 1998)

[Videotape played]:

A. Here I turn left towards Ovčara. It's very difficult to film it because the quality of the road is very bad.

Q. Has the condition of this road deteriorated since you have been travelling to Vukovar?

A. Yes. As I said yesterday, for the first time, it was August 1996 when we did the exhumation, and it's clear to see that the quality of the road is—there's no maintenance and the quality of the road is worse than it was in 1996.

Mr. Williamson:

Q. In viewing these videotapes, Mr. Dzuro, the times to go between the various locations are not identical to the travel times that you talked about a few moments ago when you went through your measurements to the court. Why is that?

A. Yes, you're right, the time is not the same. But for the purpose of making the video, I really had to drive very slow. You can see even with the slow driving, the quality of the video is not what I want it to be, but you just need more time to travel at a very slow speed; and the measurements I did for my report, there I was driving about 50 kilometres an hour. It was much, much faster than the one I did when I filmed the video.

A. Mr. Fila, we did our best to enhance the quality of this video as much as we could. But unfortunately, the tape itself doesn't give us any more option, yes. (ICTY 1998c: Paras 3806, 3817, 3849)

The contingency of image quality does at times seem to assume the character of a moral agent that is able to confer or withhold a determination of truth unless experts intervene to establish the status of images. While the presumed veracity of blurry, real-time footage functions convincingly within popular culture, in legal domains jurists cannot read such semiotics as a sufficient index of fact. In court, the truth claims of evidence must be produced. Dzuro's painstaking reconstruction, in which he measured distances between roof angles, roads, and trees in order to retrace Dokmanović's steps, combined with the detailed arboreal analysis of Professor Tabbush, were able to establish both the deceit of the original footage and the credibility of the investigative reproduction. The moral order of the image was, in this case, arrived at retroactively through the manufacture of *new* evidence. Dzuro's investigative media-work and especially the insights provided by Tabbush signal the expanding role that technical knowledge and scientific expertise will play in establishing where received knowledge about the truth in images resides.

Unlike the Balkan Wars, which ran during the transition from analogue to digital media and still generated substantial analogue materials as demonstrated by the ICTY's archival holdings, the preponderance of online media streaming out of conflict zones today requires juridical attention that is progressively directed towards the testimonials encoded in pixels and code. That is to say, the truth claims of metadata, which carries extraneous information about the image-event, such as date, time, and GPS coordinates. Together these are capable of substantiating, but also overturning, the self-evident claims of images as representations of events. Troubling the aesthetic fallacies of "naive realism" demands cross-examination not only of people—witnesses and experts—but also images themselves (Kahan 2009; Sherwin 2007).

Within legal proceedings such as those of the ICTY, evidential truths are generally corroborated by eyewitness testimony, expert reports, and reinforced by the broader context of the conflict, foregoing the need for scientific testing of evidence. However, the option remains for the judiciary, public prosecutors, and defense counsel to request further scientific analysis of evidence, and the Netherlands Forensic Institute was on standby to provide these services. Outside of the courtroom, within the domains of journalism and popular culture, degraded image quality has become a standard and widely used signifier of real-time, to the extent that the graininess of a surveillance image has attained an aesthetic value equivalent to that of indexical-truth. Not despite its visual deficiencies, but precisely because of them (Gates 2013; Scheeres 2002). Media theorist Thomas Y. Levin argues that the aesthetics of real-time image capture have reinvented the photographic index as a predominately temporal rather than spatial attribute. "By adopting the rhetorics of real-time broadcast so characteristic of television and a certain economy of CCTV—not to mention that of webcam culture—cinema has displaced an impoverished spatial rhetoric of photo-chemical indexicality with a thoroughly contemporary, and equally semiotically 'motivated' rhetoric of *temporal indexicality*" (Levin 2002: 592). Yet the visual poverty of media evidence presented during the war crimes prosecutions of the ICTY was more often than not a direct consequence of the limited availability of recording technology and haste with which footage was shot. In the case of Dzuro's reenactment video, its shortcomings are not an index of its having been obtained under perilous conditions of political duress, but rather a consequence of the passage of time in which some of the physical features of the landscape had changed. Transformations in the postwar landscape around Vukovar would ultimately require that videos of trees be called to the witness stand to testify before the judiciary as material witnesses to a crime.

The technical witnesses and media artifacts that result from times of war, too, can struggle to meet the court's demand for coherent accounts of history. Rather than reducing their capacity to stand convincingly before the tribunals of history as witnesses to a crime, the degraded quality of such evidential material should, in fact, enhance their capacity for testimony. This is because the epistemic demands for a stable and ordered image-field that can be called upon to account for historical violence through explicative narration is undone by a sensate field of magnetic defects, or is troubled by poorly recorded imagery that serves to register the radical incomprehensibility of what has taken place. History saturates objects with temporal information, but for the forensic investigator who must extrude legal and ideally empirical evidence out of the past, overcoming the transformations induced by time poses significant obstacles. Such obstacles cannot be met by aesthetic strategies of inference or the mnemonic techniques of recall. Throughout his extended testimony in court, Dzuro recounts the many difficulties he faced in his objective to produce an exact temporal and spatial replica of the journey as it was undertaken in 1991, including the position of a traffic sign which had long since disappeared, save its concrete base. Dzuro was attempting to recreate the video stills that the FBI laboratories at Quantico in Virginia had extracted from the Dokmanović alibi video. In the exchange that follows we are able to gain some insight into the methods employed by Dzuro (Figure 5.25) in his determination to produce video evidence with the highest possible probative value despite the passage of many years.



FIGURE 5.25 IT-95-13a: Dokmanovic [JPG] Photograph taken by witness on February 12, 1998, depicting house at the alleged location recorded on Exhibit D2 at 15:42 • Document Type: Exhibit 226 • Date: 18/06/1998 • By: Prosecution. *Source:* ICTY Court Records.

Witness Vladimir Dzuro examined by Mr. Williamson, Thursday, 18th June 1998
[International Tribunal for the former Yugoslavia, Thursday, 18th June 1998]:

Q. Mr. Dzuro, at the point where we left off yesterday, we were talking about this trip that you had gone on to Vukovar in February of this year to investigate scenes that were depicted in the videotape. When you were on this visit to Vukovar, did you take any photographs of locations that you visited?

A. Yes, I did.

Q. At this time, I would like for you to view the first photograph, which I will mark as Prosecutor's Exhibit 224, and if you can explain to us what is depicted in this photograph? I would ask you, Mr. Dzuro, if you could display this on the ELMO, please? Can you explain what is depicted in this photograph, please?

A. I photographed this area. This is the spot I depicted on the map as well, which I marked as the location at 15.42. This is the house with the gable facing the road, the tree in front of it, the branches. Also, the electric post, the grass area on the right side of the road, the shed, and then in the background here is this tree with the very specific top (indicated). I will talk about that later ...

This the area right here in front of the shed (indicated). If you look on this photograph and the still I took from the video, it is obvious there is something missing. There is a traffic sign in this area—there is a traffic sign in this area on the still which is not on this photograph, so I did an investigation into this, and I thoroughly walked in that area around, and I discovered the concrete base with the metal bar which is the same one which is used in that area for the traffic signs. So I took a photograph of that and the exact location where I discovered that, and this is the photograph.

Q. Now I am going to show you the next photograph which we will mark as Prosecutor's Exhibit 228, and if you can indicate what is depicted in this photograph, please?

A. So what I did afterwards, I—I wanted to reconstruct the scene. For that reason, first I took the picture of the scene the way it looked, which is the photograph—the first one I presented ...

Q. Which was marked as Prosecutor's Exhibit 224; correct?

A. That's correct. And then I went to the UNTAES and asked for their assistance because I needed to obtain a traffic sign, this traffic sign which shows to the drivers that you are driving on the main road. The UNTAES, they weren't able to provide me with that, but they were happy to assist, so we went to the local police and asked them to provide a traffic sign, but unfortunately, the conditions in Vukovar the way they are, they also were not able to assist us with the traffic sign. So I asked

for the police, traffic police car, the patrol car, and we went together back to the scene. What I didn't want to do, I didn't want to remove the traffic sign from the other direction because it could cause some traffic problems, so I asked the Croatian police for their assistance ... I wanted to have the traffic sign here. There is a particular reason for that. But if I can explain a little bit later?

Q. Perhaps that would make more sense, yes. Now, as I understand it, just to make this absolutely clear, this photograph is identical to the one that has been presented as Prosecutor's Exhibit 224 except for the fact that you have attempted to reconstruct what was seen in the videotape by putting the sign back in place; is that correct?

A. Yes, that's correct. I wouldn't call it identical because I'm not sure I managed to take the same angle because it is very difficult to find the same angle if you do two photographs. But this is the photograph of the same location. The only difference is that on this one, I put the traffic sign back. (ICTY 2009: Paras 3791-3797)

Pragmatically, the forensic investigator must “work” evidence in the pursuit of legal objectivity, whereas the task of the “material witness” is to unveil the production of objectivity as a techno-discursive set of operations involving agreed-upon methods and accepted rhetorical frameworks. With respect to the ICTY, its juridical structure and evidential protocols were determined through “Rules of Procedure and Evidence” adopted by the United Nations on February 11, 1994. This document, crafted by the first judges who arrived in The Hague, lays down the 125 rules that direct the tribunal, from its organizational structure, prosecutorial operations, witness management and evidentiary processes, to its technical and media requirements.¹² Despite the fact that it has been amended forty-nine times over the lifetime of the tribunal, its codes established the “legal rites” referred to in my title, that govern the conventions of legal speech and regulate the production of evidence according to existing networks of power and domains of knowledge.¹³

In bringing this chapter to a close, I would like to return to the scene of evidence-making with which I began, namely the examination and cross-examination of Professor Paul Tabbush around the growth pattern of trees featured in the Dokmanović videotape alibi, as well as in the investigative video and photos produced by Vladimir Dzuro some years later. In this final act of the trial proceeding, nature emerges as a bearer of legal truths, one whose testimony will repudiate even that of the human witness whose lies it unearths (Figures 5.26–5.29). Through Tabbush's detailed account of the cartographic constancy retained by the branch structure of trees as they mature and grow; the tree is transformed into an irreproachable and unbending material witness that can be mapped onto its erstwhile video doppelgänger. Its wooden features secure its singular identity and act as temporal indices that allow us to travel back in time to the day of the crime. “Q. Is there any doubt in your mind that this [mulberry] tree is the same one as depicted in the video segment marked 15.36? A. None at all” (ICTY 1998c: Para 3880). But what is fundamentally distinctive about these particular species of trees is that they are “unnatural” in the extreme. That is to say, they are vegetative-matter encoded within the image-matter of technical media. To gain access to the informational quotient that such mediated trees can yield requires not only expertise in the natural sciences,





FIGURE 5.26–5.29 IT-95-13a: Dokmanovic [MPG] Expert witness Paul Tabbush describing the manner in which trees grow and comparing a photograph of from February 12, 1998 and a video still of the same tree from November 20, 1991 on the ELMO Source: ICTY Press Office.

but also skills in media analysis and production. Together these competencies combine to create new categories of legal evidence in which unnatural objects—videos of trees—can bear upon questions of legal truth and even determinations of war crimes.

Q. Are you affiliated with any professional organisations?

A. I'm a member of the UK Institute of Chartered Foresters. I am also a member of the International Poplar Commission, which is a United Nations organisation. (ICTY 1998c: Paras 3874–3875)

At the time of the trial, Tabbush was himself a member of the International Poplar Commission, one of the oldest statutory bodies created by the Food and Agriculture Organisation of the United Nations. Founded in the ruinous wake of the war, it designated the cultivation, conservation, and utilization of poplar and willow trees as key factors in efforts to repair the countryside and rebuild the industrial economies of Europe.¹⁴ Thus, already in 1947, there was recognition that the environmental devastation wrought by the war would require the establishment of new legislative frameworks for ensuring the productive agency and protection of nature. In response, the fast-growing poplar was strategically enlisted by the UN to participate in the rehabilitation of Europe's degraded lands and diminished rural livelihoods. An entanglement between nature, military violence and an international body that prophetically gestures towards the very same tree that will make an appearance within the UN's prosecution of Slavko Dokmanović some fifty years later. While Christopher D. Stone's 1972 provocation that nature becomes a rights-bearing agent has yet to be fully realized, the crucial role that non-human forms of testimony and new forms of evidence, such as videos of trees, have played in resolving questions of legal truth does position them as active agents in the production of jurisprudence.

In the Dokmanović trial much was made by defense counsel as to the unreliability of eyewitness testimony advanced in support of his alibi. Two statements that placed him at the scene were refuted. This was done by way of reference to two entirely unrelated cases prosecuted by the ICTY, in which prior acts of witnessing were cited as representative of the vagaries of eyewitness testimony.¹⁵ Given criminal law's foundational reliance upon legal precedent, is it not possible that trees will also come to be regarded as much more than mere background features of crime scene imagery, but may serve as valuable "natural" resources for the production of new legal axioms? Since its establishment on May 25, 1993, the operations of the ICTY have generated millions of procedural records and processed a staggering number of exhibits. Out of this vast archive of evidential holdings, a videotape of a mulberry, walnut, and poplar tree have emerged to stand as steadfast material witnesses before the law.

Witness Paul Tabbush examined by Mr. Clint Williamson

[International Tribunal for the former Yugoslavia, Thursday, 18th June 1998]

Mr. Williamson:

Q. During the course of the initial consultation with the Prosecution in April, did you have an opportunity to view some photo stills which had been made from a videotape?

A. Yes, I did.

Q. Did you also have an opportunity to view portions of that videotape that had time displays of 15.36 and 15.42?

A. Yes, that's correct.

Q. Based on what you saw, did you feel that there was sufficient material available which would allow you to positively identify the trees which were depicted?

A. Yes. Some of the video stills were of sufficient quality to make out major branch angles and the positions of major branches.

Q. Now, subsequent to that time, in May of this year, did you have occasion to travel to the Vukovar area in order to personally examine the trees that were in question?

A. Yes. ...

Q. I would like for you at this time to view Prosecutor's Exhibit 215, and also I'll ask him to view 232 ...

Q. What is different, if anything, between the two photographs?

A. Based on the time line on the video, six growing seasons have passed between these two images, and therefore, the fine branch tracery has extended and become thicker ...

Q. Did you use these photographs to create a set of photographic overlays?

A. Yes, I did.

Q. How did you go about doing this?

A. I used imaging software and a flatbed scanner to scan the images and the photographs in such a way that I was able to scale them to the same scale. And then I cropped the image taken from the photograph so that it was small enough to fit over the video still image. This then, because it's at the same scale, allows you to see whether the branches coincide. [...

Mr. Tabbush

[Cross-examined by Mr. Fila]:

Q. But I want to ask: Professor, if I understood you correctly, you were in Vukovar at the time of full vegetation whereas your compilations and analysis were based on the photographs and the video stills made by Mr. Dzuro; did I understand that correctly?

A. Yes. Yes, that's correct.

Q. Then my second question would be: Does this tree which we see in front, Prosecutor's Exhibit 218, you said that after a certain time, it grows wider, not—it doesn't grow upwards. I mean the walnut.

A. Yes. Can I explain?

Q. Yes. That's what I would like you to explain.

A. Trees extend from their tips, they don't grow, as it were, in the middle of branches, so they leave behind them the major branch angles which represent where buds were set as the tree grew.

Q. Not there, on the other one. Please show that.

A. For instance, this major branch angle here would remain once it was formed by the terminal bud, as it grew upwards, it

would remain behind as a major branch position and would not change its height with time (indicated).

Q. Well, in which—so I understand you correctly, in which period of growth does the tree reach its maximum height above which it doesn't grow any longer? How many years does it take?

A. Yes. I'm sorry, I don't think I've made myself clear. The tree grows in height throughout its life, but as it grows, it leaves behind it the significant pattern of branching which doesn't change with time, but, of course, the height of the tree changes continuously throughout its life.

Q. So am I correct in my understanding that, for instance, relative to this roof or the bus, the widening of the angle is not the same, but in the course of growth, this changes?

A. The angles remain as they are. What changes as the tree grows is that the branches get fatter, they increase in girth, but the bud positions remain as they were when they were laid down throughout the life of the tree.

Q. But the height, but the height growths, so this bud is not always in the same position relative to a fixed point?

A. As this—if I may point at this branch here? At the end of a certain year, the tree was at this height. It then produced two buds. One bud produced a side branch and the other one produced a more vertical branch. At the end of the next year, this branch was here and this branch was somewhere around here (indicated). I can't see exactly. So the tip is extending, but the position left behind remains as it was at the time that this node, i.e. this branching position was formed during the development of the tree.

Q. I understand that. I understand that much, yes. But this part of the tree which you've just shown us, this branching position, does it grow relative to the ground? Do I make myself clear?

A. Yes.

Q. Does it grow in height like a person grows? A person, for instance, has a big nose, but he grows in height. Is it the same with trees?

A. No. No, it's not the same. It's not the same with trees. Trees—this point here does not progress up the tree as the tree grows; it's left behind. The bud then extends from here for a year, sets another bud, and then continues to extend, but this angle will always be at the same height above the ground as it was when it was formed (indicated).

Q. I see. Look, for instance, at the edge of the bus and then look at this lower part, the first branching position, above the bus. That's it. And a bit to the right. That's it. Up to which year did this grow and when did it stop growing relative to the roof? I don't know which way to explain it better. Does

it always have the same parallel or does it grow, because the house doesn't grow. At least that much we can assume.

A. I can't tell exactly in which year this fork formed, but let us say—

Q. That's exactly what I'm asking.

A. Yes. But when it was formed, which was several years ago, you can tell that from the growth rate of the tree, it formed in this exact position above the ground and then remained there as the tree grew above that point.

MR.FILA: I apologize, Your Honour. I feel a little stupid, like a parent explaining something to a child and then starting with butterflies, but I'll try to make myself as clear as possible.

Q. In the eight or seven years since the event and the pictures made by Mr. Dzuro, did this ratio change between the tree and the house, just in terms of height, not in terms of angles, not in terms of anything else?

A. The height—this is six—

Q. That's exactly this part which I'm interested in, relative to the house. Please draw a line to the house, to the left. Did that remain the same for the past seven or eight years, or is it lower or higher than it used to be at the time of the event?

A. The same.

Mr.Fila: It remained the same for the past seven years. That's what I wanted to know. Thank you. No more questions. (ICTY 1998c: Paras 3879-3901)



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Office of the
Prosecutor

Bureau du
Procureur

INTERNAL REPORT

Thursday, 11 June, 1998

I am Vladimir DZURO, I am an investigator for the Office of the Prosecutor (OTP) of the ICTY in The Hague.

On 26 and 27 November 1997, Investigator Dennis Milner and I interviewed Slavko Dokmanović in the Scheveningen prison in The Hague. During the course of the interview, Mr. Dokmanović mentioned that he was in possession of video recordings, which he intended to produce to support his alibi. This was the first indication that an alibi video existed.

On 19 January 1998, I was informed by Legal Advisor Clint Williamson that Mr. Fila had supplied the mentioned video tape to the Court and that the OTP would get access to it soon afterwards.

As soon as the OTP obtained a copy of the tape, my colleagues and I had the opportunity to view it. I was tasked by the Prosecutor to identify places shown on the video in Vukovar.

At that time, I began the process of attempting to determine various locations depicted on the videotape, particularly those in relative proximity to Ovcara.

I started my task at the ICTY Video Unit where I printed a number of stills out of the video tape. I also studied the city plan of Vukovar, a map of the Vukovar region, and the statement given to us by Mr. Dokmanović in the Scheveningen prison.

Relying on the above sources, I tentatively established the route that Mr. Dokmanović is alleged to have taken on 20 November 1991.

In February 1998, I travelled on a mission to Vukovar. My primary task at that time was to positively identify locations shown on the videotape and also to determine if the times displayed on the videotape were consistent with actual travel times between the apparent locations.

Based on my on-scene investigations, I was able to establish that at the indicated times the following actions were depicted on the videotape at the locations described below:

- 15.17 - The group with the cameraman appears to depart from Velepomet
- 15.26 - The group with the cameraman appears to arrive in the centre of Vukovar
- 15.30 - The vehicle passes through Sajmište Street travelling in the direction of the southern outskirts of Vukovar towards Negoslavci
- 15.36 - The vehicle passes the last houses on the southern side of Vukovar as it travels in a southerly direction (on the Vukovar-Negoslavci road).
- 15.42 - Buses travelling in a southerly direction are filmed at a location approximately 370 meters north of the scene depicted at 15.36 (i.e., approximately 370 meters back toward the centre of Vukovar.

Arguments

- 1 As they are being treated as artifacts in this chapter, the transcripts have been reproduced in their original form without correcting typographical or spelling errors. It is also noted that all transcripts are available on the public record.
- 2 “As conflict rages across the former Yugoslavia, the Security Council, spurred to action by reports of atrocities and pressure from international public opinion, unanimously adopts Resolution 827, formally establishing the International Criminal Tribunal for the former Yugoslavia.” 3217th meeting of the Security Council, May 25, 1993, New York. *Source*: ICTY.
- 3 Slavko Dokmanović was charged on the basis of his individual criminal responsibility (Article 7(1)) and, or alternatively, superior criminal responsibility (Article 7(3) of the Statute)) with: Wilfully causing great suffering; willful killing (Grave breaches of the Geneva Conventions, Article 2(c)); Murder; cruel treatment (violations of the laws or customs of war, Article 3); Murder; inhumane acts (crimes against humanity, Article 5 (a) and (i)). He pleaded “not guilty” to all charges on July 4, 1997.
- 4 For a discussion of the memorial function of the ICTY archive, see Campbell (2012: 22, 24).
- 5 ICTY, “Completion Strategy,” www.icty.org/en/about/tribunal/completion-strategy. Accessed 10.01.16.
- 6 ELMO visualizers have replaced the classic overhead projector and are used extensively in the ICTY. They allow in particular 3D objects that are brought into the court to be projected in real-time without the need for prior scanning and digitization. For example, a witness or expert may use the ELMO to point out features of a scale-model enabling all in the court to see this interaction on their own desktop monitors and screens.
- 7 Interview conducted with Bob Reid, ICTY Chief of Operations, in August 2013.
- 8 IT-98-32/1: Lukic et al. CD-ROM containing a video recording showing recovery of materials from the house in Pionirska street by an OTP investigator. Document Type: Exhibit P00307, Date: April 24, 2009, By: Prosecution.
- 9 Nuremberg translator Henry Lea explains the time lapse of speechlessness that passed until interpreters finally began to register and speak about what they had heard and translated. “It seems inscrutable that about eight years have passed, until the trials seemed to begin to have an decisive impact on Wolfgang Hildesheimer’s works. This delay can be explained through the method of interpretation. The work of the interpreters demands an extremely

intensified concentration—the highest grade that I have ever experienced ... the interpreter (has to) concentrate on syntax only and deactivate everything else. One gets so attached to the wording that one does not notice the content. Only years later one awakes gradually and realizes the content, that had been registered somewhere subconsciously” (Vismann 2004: 11).

- 10 However, the ICTY & ICC too have been accused of prosecutorial bias (Human rightsWatch 2004).
- 11 Two authors who address related aspects of degraded images are Steyerl (2009) and Takahashi (2006).
- 12 ICTY, Rules of Procedure and Evidence, UN Doc. IT/32/Rev.49 (May 22, 2013), *entered into force* March 14, 1994, www.icty.org/sid/136.
- 13 See N. Katherine Hayles’ discussion of the power of rhetorical frameworks (2004: 13).
- 14 “Poplars and willows are multipurpose species and form an important component of forestry and agricultural production systems worldwide, often owned by small-scale farmers. They provide a long list of wood and fibre products (sawn lumber, veneer, plywood, pulp and paper, packing crates, pallets, poles, furniture and small handicraft), non-wood products (animal fodder), environmental services (rehabilitation of degraded lands, forest landscape restoration, climate change mitigation) and are grown increasingly in bio-energy plantations for the production of biofuels. These attributes make poplars and willows ideally suited for supporting rural livelihoods, enhancing food security, alleviating poverty and contributing to sustainable land-use and rural development.” Food and Agriculture Organization of the United Nations, International Poplar Commission, <http://www.fao.org/forestry/ipc/en/> (accessed January 16, 2016).
- 15 In the Grabez case the court found that the testimony was likely arrived at through coercion and therefore perjurious, which served to confirm the Defendant’s alibi and in the other the capacity for recall on the part of the eyewitness was deemed to be diminished as a consequence of their harrowing experience, thus also producing a ruling in favor of the defendant (ICTY 1998c: Paras 1879–2880).