



Inside the International Criminal Court

Part 3

Narrator:

The lawyers who prosecute and defend in the complex cases that come before the International Criminal Court need a broad set of investigative skills and have to be prepared to dedicate themselves to a case that could take years to reach a conclusion.

Robert Cryer:

Cases before the International Criminal Court tend to be far more complex than those before domestic courts.

Some of the best people who work before the International Criminal Court, their expertise domestically has been complex fraud litigation.

Narrator:

London-based barrister David Hooper QC is the lead defence counsel for Germain Katanga, a Congolese suspect who is currently being tried at The Hague for war crimes and crimes against humanity.

David Hooper:

The trials themselves are long, typically five or six years. And you've got the fact that the case isn't happening down the road, as it were. That's not the crime scene. The crime scene is for example in Rwanda or in the Congo, 8,000 miles away. You have to go to the Congo, you have to go to Rwanda. And unlike here where I'm a barrister, I mean I'm not even allowed to speak to witnesses before they come into court. It's the solicitor who takes their proof, provides you with it and you call them blind.

Whereas in the international cases I've got the job of being not just the barrister, the advocate in court, but the solicitor, if you like, and the investigator sometimes.

I have to go out on mission and help find witnesses, I have to see witnesses, take statements from witnesses.

There is always a point in a case, particularly when you go out on mission, that you meet people who, one way or another, have been victims, for example, of crime and that can be very affecting, very affecting indeed.

You live and breathe these cases.

You get to know the accused very well, you become almost his link with life, you get to know his family. And then when you're on mission, you're meeting witnesses, you're meeting victims, and you are totally immersed in the case.

Narrator:

The prosecutor's job is to conduct investigations and present the evidence to the judges, who will decide if there are grounds to issue an arrest warrant.

The preparation of a prosecution case is far more complex than in a domestic court, due to the nature of the crimes which come under the ICC's remit.

Shamiso Mbizvo:

When you are talking about crimes against humanity, in addition to proving at court that the underlying crime of murder, forcible deportation, persecution took place you also have to prove that it took place in the context of widespread and systematic attacks. And proving this contextual element requires identifying a pattern of attacks across quite a large territory. That in and of itself requires what we call overview witnesses, people who saw a large number of things happening. It requires in some instances satellite imaging, many different ways of building a holistic picture of attacks that took place over a large area in a systematic way.

Narrator:

One of the innovations of the ICC is the rights granted to victims. In all trials the victims have the opportunity to be represented by a lawyer, through whom they can express their views and concerns. The role of the defence counsel is to prove that the evidence presented by the prosecution is untrue or unreliable.

David Hooper:

The first thing you do is look at the charges which are far more, rather more detailed than we get on our indictment document in the United Kingdom. The second thing is to read deeply about the surrounding history so you've got some context, you know the parameters within which whatever's complained about has occurred. Third thing is to get disclosure of the prosecution witnesses.

You see exactly what the evidence is against you, you make investigations of course into those who are making the allegations, so you're beginning to build up a case. To that extent you test the evidence that the prosecution are The gravity of the crimes which the International Criminal Court was set up to prosecute means that some suspects have had problems finding a lawyer who is prepared to defend them.

Robert Cryer:

A number of people are uncomfortable about defending people in these circumstances.

Narrator:

Lawyers who defend suspects who are accused of heinous crimes sometimes do so at a considerable risk to their personal safety.

Defence counsel Melinda Taylor was arrested and detained in a Libyan jail for 26 days

She was in Libya visiting Saif Al-Islam Gaddafi, son of the late Colonel Gaddafi, who she's defending on charges of crimes against humanity.

Melinda Taylor:

Defence counsel are targets. It doesn't necessarily depend on where you are defending the person, it depends on the person you are defending and the type of crime. I think there's lots of instances throughout the world of defence counsel being arrested or being threatened or having security risk to them because of the work they do because defendants are very rarely popular, particularly if they're being charged with what looks on paper to be horrendous crimes. Of course people aren't going to like you.

Narrator:

Ms Taylor was not mistreated by her captors, but her period in detention with three colleagues from the ICC was nonetheless a terrible ordeal.

Melinda Taylor:

The longer it drew on the more our disbelief increased. What are we still doing here? We have goods and immunities. On what legal basis are we being arrested? Because we were never given an arrest warrant. We were never given any document explaining what we were doing there, why or under what authority they took the measures they did.

You veer between optimism and extreme pessimism. Sometimes you think oh it will be tomorrow, surely it will be tomorrow. Then at some points you think they are never going to let us go.

I think it must very difficult for any defendant who is in those conditions to make rational choices.

Narrator:

The hardest thing for Ms Taylor was speaking to her young daughter on the phone from her Libyan prison.

You must think that no one believes in you any more. Because of course the only people you speak to are your guards and your guards aren't, certainly in this case, aren't neutral

Melinda Taylor:

It was incredibly difficult. It was lovely to hear her voice, but it just makes you miss things more.

Narrator:

David Hooper has had several experiences as a defence counsel where his clients were found not guilty of war crimes.

David Hooper:

I went to meet a client who I hadn't met before who was charged with genocide. He was a minister in the government in Rwanda in 1994, that was allegedly responsible for the genocide, and you're talking of 800,000 people being killed - and my hand went out and I shook his hand - see I'm shaking hands with a genocid here. Many years later the judges came into court and found him not guilty.

It's quite plain that the judges found all the prosecution witnesses in that case incredible, not to put a finer point on it - liars. So there was a man who'd been accused of the most terrible crime on evidence that was fabricated.