



# CONFESSIONS OF AN EXPERT WITNESS:

*RHETORIC, POLITICS, AND ETHICS  
AT THE INTERNATIONAL  
CRIMINAL TRIBUNAL FOR RWANDA*

MAGUIRE PUBLIC SCHOLAR LECTURE by  
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**Confessions of an Expert Witness:  
Rhetoric, Politics, and Ethics at the  
International Criminal Tribunal for Rwanda**

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*In March of 2008, I appeared as an expert witness before the United Nations International Criminal Tribunal for Rwanda (UNICTR). This presentation integrates personal reflections with critical inquiry to explore the complex and sometimes contradictory ethical issues that influence our understanding of the tragedy that took place in Rwanda in 1994, its political and moral legacies, and the implications it holds for international justice and reconciliation in the 21st century.*

“Anytime I saw a dead Bosnian Woman, a white woman, I thought, that could be my mom. Over here, they’re just dead Africans. What a thing to say. We’re all just selfish pieces of work in the end.”<sup>1</sup>

“And what is good Phaedrus, and what is not good? Need we ask anyone to tell us these things.” With this epigraph from the Platonic dialogue *Phaedrus*, Robert Pirsig begins his “inquiry into values,” a personal and intellectual journey into the contradictions and coalescences of human thought and action.<sup>2</sup> Pirsig’s book, *Zen and the Art of Motorcycle Maintenance*, had a profound impact on my own personal and intellectual inquiry into the politics of language and oppression, into the rhetorics of race and racism. That inquiry has led me to an attempt to understand what Ashley Montague over half a century ago described as “man’s greatest myth: the fallacy of race,”<sup>3</sup> in terms of something more than the black and white commonplaces of oppressor and oppressed, dominator and dominated, good and evil. I guess it is fitting, then, that my journey would eventually lead me to one of the most profoundly troubling crises of ethics and public policy of our time and perhaps any other: the tragedy that took place in the African nation of Rwanda at the end of the last century, the century that would be circumscribed by what the African American scholar William Edward Burghardt Du Bois presciently described as “the problem of the color line,” the problem of race.<sup>4</sup>

At first glance it might appear that the Rwandan genocide transcended race, crossed over the color line into the darkest territories of human nature. It was, after all, a story of Africans killing Africans, of black on black violence, as far removed from the Manichean characterizations of race as a problem of blackness and whiteness as it was from the nation in which we live. Beyond the surface manifestations of difference and identity discerned in first glances, however, the Rwandan genocide was less about human *nature* than it was about human *character*, a distinction that we must engage if we are to truly come to grips with the rhetoric and politics of race and their implications for our understanding and enactment of ethics and public policy. Having lived along the contours of the color line for almost half a century, and inquired into the complex connections between rhetoric and race for more than half that time, I am persuaded that the events that took place in Rwanda in 1994, the lessons of which we in the “civilized” West seem to have largely forgotten, are fundamentally about human character: if we are, as the fictional white female journalist in the film *Beyond the Gates* confesses, “all just selfish pieces of work in the end,” it is ultimately because of the choices that we make, choices that cannot be reduced to the biological instincts or cognitive predispositions of “nature.”

I must confess that my decision to serve as an expert witness for the defense in case ICTR-99-50-I, *Prosecutor against Bizimungu et al.*,<sup>5</sup> was more than a little selfish. I was, after all, being asked to assist in the defense of a member of the interim government charged with genocide and complicity to commit genocide, so it was difficult to convince myself that my motives were noble. I had seen the movies, like *Beyond the Gates* and *Hotel Rwanda*,<sup>6</sup> had heard the official story popularized most powerfully by the late Alison Des Forge’s Human Rights Watch report *Leave None to Tell the Story*,<sup>7</sup> and knew the names of books like *Shake Hands with the Devil*,<sup>8</sup> *The Graves Are Not Yet Full*,<sup>9</sup> and *We Wish to Inform you that Tomorrow We will be Killed with Our Families*.<sup>10</sup> So when Tom Moran, Esq., the attorney for defendant Prosper Mugiraneza asked me if I would be willing to write a report to support his case I was, to say the least, reluctant. “Before you say no,” he prompted, “just take a look at the other expert’s report and a few speeches. Then, if you decide not to do it, no problem. But think about it. It could be fun, and if nothing else, you get to go to Africa, and maybe even go on a safari.” While the idea of aiding in the defense of someone indicted for genocide did not particularly strike me as “fun,” the possibility of going to Africa certainly did.

So I agreed to look at some documents before deciding, to approach the situation with an open mind. An ultimately, I decided to go because I hoped to bring to the legal debates and

public discussions about the Rwanda tragedy a perspective that seemed to me to be missing: a consideration of how race history and racial reasoning were implicated in the events of April through July of 1994. Rwanda was an object lesson in the problems and possibilities of racial injustice and reconciliation, and while some of the public discourse about it touched on the role of the country's colonial legacy in the social and psychological circumstances that led to the genocide, the "official story" suggested that the Rwandan tragedy could be adequately understood in the black and white terms of good and evil. Yet, even before I began my investigation into that story, I realized that something was amiss, and knew intuitively what I would later discover in the works of Robin Philpot, the author of *Rwanda 1994: Colonialism Dies Hard*. "Right thinking people would have us blindly believe the Official Story that the Rwandan tragedy was simply the work of horrible Hutu *génocidaires* who planned and executed a satanic scheme to eliminate nearly a million Tutsis after a plane crashed in the heart of dark Africa on April 6, 1994," explains Philpot. "On the other hand, former UN Secretary General Boutros Boutros-Ghali declared to the author that the 'Rwandan genocide was 100 percent American responsibility.' How can such contradictory interpretations coexist?"<sup>11</sup> My search for the answer emerged in an expert report prepared for the ICTR that began with an exploration of communication in the shaping of attitudes, then examined the significance of race in Rwandan history, and finally responded to the expert reports of the prosecution's key witnesses. The experience of writing and defending that report brought me face to face with questions of character: my discipline's, my own, my nation's, and that of the very system of international justice I was about to encounter.

As a student and professor of rhetoric I was quite familiar with questions about the character of my discipline. According to the father of Western philosophy and the author of the epigraph with which I began this essay, Plato, rhetoric is, after all, "mere words," "trickery," "pandering," and (my favorite), the ability to make the weaker argument seem stronger. It is, for all intents and purposes, a discipline devoid of character. Having served as an expert witness before, I knew quite well that it was possible to present facts in such a way as to lead to a desired conclusion: when supporting a plaintiff who was alleging discrimination against a compassionless bureaucratic organization, this did not seem like such a bad thing. Aiding in the defense of someone accused of representing such an organization, one that the term "compassionless" could hardly even begin to describe, seemed much less noble. Also, I had made a conscious decision, early on in life, not to pursue the study of law precisely because its code of ethics seemed less about justice than about winning. The idea of

having to prosecute someone I believed was innocent, or defend someone I believed was guilty, just did not appeal to me. But I did believe in the presumption of innocence and the burden proof, principles I had learned in intercollegiate debate: and I did enjoy a good argument now and again; and I remained committed to the idea that there is value in looking beyond the surface of things; that much can be learned by questioning and interrogating any “official” story.

My research has explored the relationship between rhetoric, race, and epistemology with an emphasis on how traditional approaches to persuasion and argumentation fail to adequately account for the persistence and pervasiveness of racism. Rhetoric, in both its classical and contemporary guises, is concerned with the discovery of the available means of persuasion in a given situation. It thus has both a productive and a critical function: as a *productive* practice it is concerned with how writers and speakers construct messages used to persuade audiences; as a *critical* practice it focuses on the modes of proofs used in such arguments to describe, interpret, and evaluate them. In popular discourse and culture, the focus tends to rest on the former aspect of rhetoric, i.e. on how language is used to influence or induce others to action. Since such uses of language are not always logical, ethical, or emotionally neutral, rhetoric has been seen in a negative light and the term has taken on a largely pejorative meaning, such as when a speaker’s arguments are dismissed as “mere” rhetoric.

This is, essentially, the view inherited from Plato, the “official story” that I encountered in graduate school, and which I did not accept on face value. I found that rhetoric also had a much more noble lineage, that it is concerned with the ability of individuals to integrate diverse conceptions of reality and thus, to make better choices.<sup>12</sup> As such, I realized that an alternative reading of rhetoric could offer a powerful heuristic for understanding the ethical, political, and epistemological assumptions and implications of race and racism. Because racism is sustained and perpetuated through rhetorical or persuasive means, one would think that rhetorical scholars would be especially concerned with the phenomenon, yet this has hardly been the case. Indeed, prior to the middle of the twentieth century, very little research conducted by rhetorical scholars addressed the problem of racism, and it was not until the late 1950s and 1960s that racism received even modest attention in the field. The first major works on racism in the field of rhetoric, my book *The Rhetoric of Racism*,<sup>13</sup> published in 1994 (the year of the Rwandan Genocide), and my colleague Aaron David Gresson’s *The Recovery of Race in America*,<sup>14</sup> which appeared one year later. Since that time, however, rhetorical and communication scholars

have produced an extensive body of research that addresses the impact of racism on the production and consumption of messages by speakers and audiences. Much of this research has been of an interdisciplinary nature, drawing from fields such as psychology, sociology, theology, and philosophy, to explain the significant impact that racial reasoning continues to have on human social and symbolic interaction. My own work has directly addressed the ideological and ethical challenges that racism poses for established views of persuasion and argumentation, and has in its most recent incarnations focused on questions of character. This focus has offered unique insights into the underlying ethical assumptions of rhetorical theory, practice, and criticism, and the uses and abuses of language characterized by racial reasoning.

One of the most obvious aspects of such reasoning is its logical and moral incoherence. Racism violates many of the basic expectations of sound argument: it embodies the fallacy of special pleading, e.g. claiming that a specific case is an exception to a rule or principle based upon a characteristic that is irrelevant and not truly exceptional; it violates the rule of justice, i.e. the like application of like standards to similar subjects, objects or beings; and it is antithetical to the fundamental principles of Christianity, i.e. the golden rule, or doing unto others as we would have them do unto us. Since each of these expectations is expressed as fundamental commitments of Western moral, political, and spiritual philosophy, racism presents us with a particularly troubling manifestation of rhetorical incoherence. The most cogent explanation of this incoherence is offered by Charles M. Mills in his brilliant explication of "the Racial Contract."

Mills argues that the racial contract, and not the social contract, reflects the foundational system of beliefs that characterize Western thought and social practice. While ostensibly committed to abstract principles of freedom, equality, and fairness, Europeans and their descendants have persistently violated all of these principles in their interactions with people they have defined as non-white. This has especially been the case in their interactions with people of African descent, or other aboriginal peoples that they have characterized as "Negroid," a characterization which is itself a fictive construction of European "science." Mills argues that "the standard subject matter of political theory," the abstract social contract, has existed side by side with the invisible yet concrete reality of the Racial Contract, "an unnamed global political structure—*global white supremacy*."<sup>15</sup> It is this contract that has defined, and continues to define, the realities of national and international law and justice as these are practiced by peoples and nations who have historically defined themselves as "white."

Yet Mills suggests that race cannot be simply understood as it has been in Western thought, as a visible marker characteristic of an essential identity, e.g. white, black, brown, red, yellow, etc, but must be seen instead as a set of attitudinal and institutional practices. "In a sense, the Racial Contract decolorizes Whiteness by detaching it from whiteness," explains Mills. "Or alternately phrased, we could have had a yellow, red, brown, or black Whiteness. Whiteness is not really a color at all, but a set of power relations."<sup>16</sup> As such, Whiteness might best be described as a state of psychological and material relations that structure social and symbolic space in terms of inclusion and exclusion, human and less than human, citizen and alien. "All peoples can fall into Whiteness under the appropriate circumstances, as shown by the ('White') black Hutus' 1994 massacre of half a million to a million inferior black Tutsis in a few bloody weeks in Rwanda."<sup>17</sup> Mills points here to the concrete consequences of the Racial Contract, in terms of the social realities of racially inspired violence that cannot be explained or understood within the framework of an abstract social contract or the racially neutral rule of law.

One of the more pernicious consequences of the racial contract is its inculcation in people of color of its most basic belief: *that black lives are meaningless and worthless*.<sup>18</sup> This belief manifests itself in the behaviors of people of African descent across the Diaspora in the form of intra-racial violence: in the United States, for example, the majority of violent crimes committed by black people are against other black people; in South Africa, the legacy of "necklacing" revealed again the fruits of black self hatred cultivated by colonialism; and in Rwanda, people who shared a common history and language had been persuaded to believe that they belong to different races. This violence, often conceived of by people of European descent in term of the "savage nature" of African peoples, might be more fruitfully understood in terms of the character building processes of acculturation and assimilation embedded in what rhetorical scholar Richard Morris calls "transformational mimesis."<sup>19</sup>

Morris, in his provocative essay "Educating Savages," explores how acculturation and assimilation together constitute the symbolic process of "transformational mimesis," a process that places "someone's cultural identity under erasure involuntarily or without their informed consent in the moment of acculturation by denigrating and calling into question that identity and by insisting that a readily available, 'superior' alternative identity provided by the dominant society furnishes the only means of escape for those who are 'trapped' by their heritage."<sup>20</sup> Cultivated and inculcated by the institutions of colonial societies, "transformation mimesis" becomes one of the few psychological mechanisms through which the colonized can

rise above the inscribed status of “less than human” or “subhuman” and achieve agency and identity. The result is sense of identity marked by a traumatic psychological incoherence, characterized by an acceptance of basic beliefs and values of, and identification with, the colonizer.

One cannot adequately understand how this sense of identity is achieved in colonial societies without recognition of the normative character of racism in such societies. This is especially true in the case of Rwanda, where the rhetoric and politics of race defined the social construction of self and other. Racial reasoning played a critical role in how both Tutsis and Hutus defined themselves, each other, and their relationship to one another in colonial and post-colonial Rwandan society and culture. The acceptance of the status of “honorary” whites by the Tutsis, like the embrace of the Hamitic hypothesis by the Hutus, were both grounded in the racist theories and ideologies imported by Europeans.<sup>21</sup> In Rwanda, race instead of ethnicity became the essential marker of difference, and both Tutsis and Hutus subscribed to its fictions. Hutus, in the minds of Tutsis, became naturally inferior subordinates, destined to serve a superior race: Tutsis, in the minds of Hutus, became alien invaders, oppressors whose sole purpose was to dominate and ultimately destroy the “indigenous” people of Rwanda. As with all racial reasoning, these beliefs *existed in the minds of those who justified them as true*, and were as resistant to historical evidence as the “truths” to which the colonizers subscribed.

This racialization of Tutsis and Hutus became further entrenched during the “Social Revolution” of 1959 and in the Hutu dominated society that ensued. Just as the Tutsis had embraced the racist myths inherited from the European colonizers, so too did the Hutus, and the Belgians were quick to capitalize on this acceptance, supporting the Hutu “revolution” in order to sustain indirect colonial control of the country. Now elevated to the position of “honorary” whites that the Tutsis had enjoyed for generations, the Hutus embraced the same psychological and ideological assumptions inherent in the racist doctrines imported and supported by Europeans. These doctrines were instrumental in creating the cultural conditions that led to the tragic events that occurred between April and July of 1994, and must be taken into consideration in any account of the meaning of those events and how they will be reconciled in the future. Keith Harmon Snow offers this assessment of the role of racism in the Rwanda tragedy:

The racism and segregation that played out in the Rwanda cataclysm of 1994, where there were very different conditions and outcomes between whites and blacks,



continues to be played out today. The telling and re-telling of the Rwanda 'genocide' story by its very nature revolves around a system of institutionalized segregation. Powerful whites in powerful 'gatekeeper' positions in the West hold a virtual monopoly over the information. Alongside of them are the select voices of non-whites who validate the predominant discourse.<sup>22</sup>

This reading of the role of racism in the Rwanda tragedy, which I had intuited at the beginning of my research and fleshed out in my report, was never presented to the ICTR: Tom Moran, the defense attorney who commissioned my report offered this explanation for his decision to not include this analysis in the report he submitted to the ICTR: "I've been thinking about this for a couple of days and while I agree with the second part of your report 100 percent, I am afraid that the prosecutor will argue that you are a communications expert, not an expert on race relations in Rwanda. If the judges buy that, they probably would qualify you as an expert on the other areas but it would hurt your credibility."<sup>23</sup> I responded by explaining that my strongest expertise was in the area of race relations, and that the sources upon which I relied placed it in the specific context of Rwanda. His response: "These guys are squirrely."<sup>24</sup> Just how "squirrely" they were I would discover when I testified before the tribunal in April of 2008.

As the time for my travel to Africa and testimony before the ICTR grew near, I must again confess that I was having second thoughts about my decision. On the one hand these were pragmatic: I was in the first year of a new job, trying to manage an academic division and coordinate a major symposium on diversity, not to mention prepare faculty reviews and engage in countless other acts of *administrivia*. On the other hand, engaging in research about Rwanda was psychologically draining, even after two decades of race-relations research, and as I worked to finalize the report I was confronted by a crisis of conscience and character that gave rise to the following somewhat incoherent email to Tom Moran entitled "Insomnia."

It's 4:22 in the morning and I'm having a hard time sleeping. For the past several days I have been working on this report, and reading a number of books and essays on both sides of the Rwanda question, and to say the least I'm deeply saddened and troubled. On the one hand I can produce a report that, to a large degree, addresses the issues and concerns you've requested: the fact that people hear what they want to hear (this is called confirmation bias, by the way) and are inclined to see what they want to

see (which can be explained through social judgment theory) are well established positions, although they are technically grounded in the discipline of psychology as opposed to persuasion theory *per se*; [Professor Mbonyinkebe's] report lack's argumentative coherence, and draws conclusions that are either not based on the evidence presented or which ignore counterarguments presented by at least one of the sources on which he relies, e.g. Barrie Collins; Des Forges is somewhat sloppy in her scholarship, predisposed to accept the "bad Hutu/good Tutsi" view, and fails to consider the impact of European racism and colonialism which numerous writers acknowledge was central to the events of April-July 1994. On the other hand, there's only one aspect of the overall arguments of both reports that I think is truly questionable, and I suspect that this is a matter of law instead of communication: 1). Was what happened in Rwanda genocide? Based on what I've read on both sides of the issues I'm inclined to believe it was. 2). Was it planned and executed by the government? I think that a reasonable person would think this to be true? 3). Was [the defendant] involved? Here I could find no direct evidence of his personal involvement in anything I've read, so I think that it's reasonable to argue that the case against him as an individual is at best circumstantial: but this I suspect would be viewed as a matter of law outside the realm of my expertise. So I'm having a bit of a crisis of conscience here. If asked in cross examination either question 1 or 2 above, I would have to answer in the affirmative, and I can't imagine that would be in the best interests of your client. While I don't buy into the "good Tutsi/bad Hutu" characterization embraced by Des Forges and others, or the belief that the Rwandan Patriotic Front was completely innocent in all of this, or that the population at large was simply influenced by those "up above" (by all accounts they were clearly predisposed toward a view of the Tutsi as aliens and oppressors), I can't say with certainty that the government was not instrumental in facilitating and encouraging the violence. While intellectually I can make the case, emotionally and spiritually I'm not sure if it's the right thing. What should I do?<sup>25</sup>

As one might expect from an attorney, Moran's response was succinct, pragmatic, and to the point. "Don't make this more complicated than it needs to be."<sup>26</sup> He actually said more than this, offering suggestions and advice on the report, but ultimately he

was asking me to simply be “objective.” “One of your greatest strengths is that you are NOT a scholar on Rwanda but what you are talking about is hard core universally accepted scientific principles.”<sup>27</sup> To some extent, this was true of the first and final parts of my report, which ultimately he found acceptable and submitted to the Tribunal. The die was now cast. I was destined to return to the home of my ancestors.

When I arrived in Arusha I was welcomed by U.N. Security, whisked through customs, and taken to the hotel where I would stay for the week. I met with Tom Moran and his co-counsel, Cynthia Cline, and we discussed my testimony, though not in depth. (For some strange reason they did not feel that it was necessary to “prep” me for my testimony). I was informed that once I took the stand, we would not be able to communicate until the proceedings were complete, and that my testimony would likely begin in a couple of days. They explained the setup of the chambers to me: the defendants and their attorneys were at one end of the room, the prosecution team at the other, the tribunal judges at the center with their assistants in front of them, the witness stand on the other side of the room facing the Bench, and the translators at the far end of the room behind the prosecutors. I would stay in a waiting room until called to testify or when asked to leave the proceedings for any reason, and I would be taken to and from the hotel by U.N. Security in the morning and afternoon, and for lunch breaks. My testimony would probably take two, maybe three days, and they would have me back in the states by the weekend. It all seemed pretty straightforward and simple. It turned out to be, in a word: surreal.

To some extent, I suspect, this was drug and fatigue induced. On the first day of my testimony I sat in a very hot room, in a very dark suit, having jet-lag dreams laced with malaria medicine: at one point, I remember vaguely an ex-girl friend’s mother sitting beside me and asking how long I would be staying in Arusha? After waiting several hours I was shuttled back to the hotel for lunch, then returned to the witness room, where I waited again until the afternoon to be taken back to the hotel. The expert witness before me had taken longer than expected, but I was assured that I would testify on the following day. After a brief wait in the morning, I was taken into the chambers, sworn in, and seated in the witness booth facing the tribunal judges. To my right, three black men in white wigs and black robes sat at the prosecutor’s bench: to my left, sat four black defendants and six white attorneys, four male and two female. In front of me, three tribunal “lords,” one female and two male, sat elevated in judgment, their assistants perched behind desks at ground level.<sup>28</sup> Separated by glass at the far end of the room sat

the translators. Counselor Moran began the proceedings with a discussion of my qualifications.

Immediately, the lead prosecutor stood and made a motion challenging my standing as an expert. He spoke with a musical Anglicized African accent, and questioned not my credentials but the relevance of my report and testimony. The tribunal judges sustained the motion, at which point I was questioned by the defense attorneys, the members of the Bench, and finally the prosecutor. There were several interesting moments during this *voir dire*: a request from the Bench for a copy of an essay I'd written entitled "The Peace Warrior Project: A Dialogue," and an interesting exchange between myself, one of the two female attorneys, and the prosecutor. In her review of my CV, the attorney asked the following: "Witness, last question: At one point during your analysis you talked about misogyny in a book. Is it not correct that misogynists have a reaction because they like women a lot?" I was, as one can imagine, confused by the question, and one of the judges noted this confusing stating to the attorney: "You got the witness baffled." When I responded, "I think that's incorrect," the attorney looked directly at the prosecutor, smiled in a strange sort of way, then said "Thank you. I wish you a good day."<sup>29</sup> My expertise had not prepared me for what I thought I had just witnessed: a not so subtle indictment of the prosecutor's contempt for women: a contempt that he evidently had also directed at many an expert witness.

And I was no exception. In his cross-examination of me at the end of the first day, he challenged my expertise with one of the oldest criticisms of rhetoric available: its lack of a specific subject matter. He argued that since the focus of my academic study was argument, it was not a focus at all, since all manner of experts engage in argument. He also inferred that the study of argumentation was not important since it was not required of lawyers and judges, and he asked if any Supreme Court judges were themselves trained in argumentation? I told him that I was certain that many were, and later that night went on-line and compiled a list of lawyers, Supreme Court justices, and presidents who had been involved in intercollegiate debate. When I handed it to him the next day he looked at it and said, "why am I not listed here," to which I replied, "obviously biased toward Americans." He smiled, but lurking behind that smile was a fierceness, a competitiveness, that marked him as a formidable adversary. I would survive the *voir dire*, but I knew that I would need to be prepared for his cross-examination.

Ultimately, I think it was my training in rhetoric and argumentation that prepared me for what was to come. At the conclusion of the *voir dire*, the Prosecutor asked a series of questions that ultimately helped to establish my credibility as an

expert. He attempted to diminish my credibility with the following exchange taken directly from the trial transcripts:

- Q. Dr. McPhail, I want to put a few propositions to you so that you may react to them for the benefit of the Bench.  
Doctor, I respectfully put it to you that your qualifications, as impressive as they may be, are not sufficient to afford you the audience to substitute your opinion of the acceptability or rejection of the opinions of the two experts. What do you say to that?
- A. I disagree.
- Q. Indeed. Dr. McPhail, you would have to sit on that bench for you to make that ultimate determination. Do you agree?

While I had not been prepared for this particular question, I had in my research come across an urgent motion by the defense in which they had asked for the disqualification of the expert whose report I had been asked to evaluate. I had made a copy of the decision, and placed it in the pocket of my jacket. As I answered the question, I removed it, referenced it, and to the chagrin of the prosecutors stated:

- A. I do. And I believe that a very similar situation occurred with the decision of this body on 2 September 2005 concerning whether or not Professor Mbonyinkebe was acceptable as an expert. And I would think that the same standards would apply. I believe that, in that case, the Court acknowledged that Rule 89(C) gave them broad discretion, and that the evidence that he would present could assist the Chamber in understanding the case under consideration, and that the reliability of his report would be determined at a later date. And I believe that my testimony would give indication of that reliability.<sup>30</sup>

Attempting to recover from what was an obvious example of a failure to heed the well-known lawyer's dictum, "don't ask a question to which you don't know the answer," he continued: "And since, obviously, you are not a judge in this matter; you are not qualified to make that ultimate determination. Do you agree?" But it was too late: "I do," I said, "Yes, sir." There was only one response available. "No further cross-examination." The following morning, when I returned to chambers, I was informed by the President of the tribunal that I had been confirmed as an expert witness.<sup>31</sup>

I must confess that I was having fun. But I also recognized that the prosecutor would not make the same mistake again, and that his cross-examination of me that day would be unrelenting.

And, indeed, it was. Focusing on what was basically a parenthetical remark in my report, he pointed out some of its inconsistencies, engaging me in a chess-like game of argument and counterargument, and accusing me of the same types of bias that I had suggested were at work in the reports of the other experts. At one point, as we engaged in a heated discussion of the significance of the instructions I had received, one of the judges informed us that the French translator was having trouble keeping up with exchange, to which the prosecutor referring to me replied "OK, I believe it's a fish on my line, and its tugging, so I'll slow down."<sup>32</sup> I'd never before in a debate been referred to as a fish. Ultimately, however, I stood my ground, arguing that the reports were lacking in argumentative and methodological coherence, and concluding outright that the second of the two reports, Professor Mbonyinkebe's, was simply "bad science." Indeed, it was Mbonyinkebe's own testimony that indicated most clearly his lack of understanding of empirical methods and his ability to follow them, and after the prosecutor had me read transcripts of his testimony into evidence, we engaged in the concluding exchange, marked once again by another of the white wigged African's colorful figures of speech:

- A. Nothing that I have seen from what you have shown me or what I have seen in that report significantly changes my assessment. I would still say it is bad science. If you show me the questionnaire, I might be able to give you some feedback on whether or not it was constructed properly. But in the absence of that, I have no way of knowing how it was constructed, whether or not it was leading or biased.
- Q. But then, expert, the fault falls on you, because this is a fundamental hurdle that you should have seen and you go walking completely -- pass through it, breaking your legs in the process.
- A. I would argue that it falls on the professor for not being explicit. When he outlined methodology, he did it in such a way that was clearly not consistent with existing standards. He does not anywhere in his testimony explain in very clear ways how he developed the questionnaire, the questions that were used, any of the standard things. There's -- there's a proper way to do this kind of work, even for an expert witness report, and this is not it, sir, I'm sorry.
- Q. And that also applies to your report, as we saw earlier?
- A. That may be the case, yes, sir. My Lords, I have no further questions.<sup>33</sup>

Our debate was, at best, a draw, which in legal doctrine serves the interests of the defendant, who benefits from the presumption of innocence. But the transcripts of the trial tell another story which began with an exchange between myself and one of the defense attorneys that took place on the preceding day, and which offers a telling commentary on the ethics of international law as it was practiced by the ICTR.

During my examination by one of the defense lawyers, I was asked if a number of criticisms would influence my assessment of Alison Des Forges as an expert witness. In the course of his examination, the attorney alleged that the witness being defended by the prosecutor in our chamber was being attacked by the Tribunal's chief prosecutor in the next room over!

The criticisms that I have referred you to are criticisms that the Defense makes of Alison Des Forges. There are also criticisms that the prosecution here makes of Alison Des Forges, because each and every one of those passages has been read from a transcript of today's evidence in the case [in the next chamber] and they are the words of the Prosecutor, and this is from a transcript of what occurred this morning. We have already established the role that you say of peers and those in position of responsibility, those in a position to know what value their criticism has. Are the criticism made by senior Prosecutors of this Tribunal, of Alison Des Forges, relevant to your assessment of whether she is a credible witness?"<sup>34</sup>

Before I could answer the question the prosecutor objected, and the defense attorney was precluded from continuing the line of questioning. No one would be allowed to tell *this story*. Somehow, in the interests of "justice" the truth had been sacrificed. The contradictions and incoherence that some critics had alleged were at work in the Tribunal had been unearthed, and then quickly buried. As I sat in those chambers watching the exchange between the Bench and the defense before finally being asked to leave, I wondered if the last casualty of the Rwandan genocide might not be the truth?

My wonder did not cease when, at the conclusion of the day's testimony I was given the following admonition by the President of the Tribunal: "Doctor, it is the practice in this Court that when the Court adjourns and the witness is still in the witness box, he is directed not to discuss his or her evidence with anyone outside of the Court. Although you are an expert witness, nevertheless, it applies to you."<sup>35</sup> I was unsure what I had said, or to whom I had said it, and so apologized to the President, and returned to the witness room to await transport back to the hotel.

On the way back I was joined by a gentleman, whom I saw later that evening downstairs in the restaurant and asked if I might join him. He gestured for me to sit, and we proceeded to have a conversation of sorts, in two different languages, French and English, each trying his best to understand the other. Recalling some high school French, I was able to discern that he had worked in Rwanda, and had been called to testify before the Tribunal. He pointed to a massive expert's report sitting atop the table, and in the midst of his commentary I heard a name that I recognized:

*"Alison Des Forges."*

Here was the expert witness whose testimony had elicited the criticisms of the prosecutor that had been referred to earlier in the day, and with whom I had been admonished not to speak. I told him in my poorest French, complete with hand gestures, that we were not supposed to be speaking with each other: and he understood. He did offer, however, to send me his report after the trial, and I gratefully accepted. It remains on my computer, in its original language,<sup>36</sup> waiting to be someday unearthed and translated by someone who wishes to continue to explore the rhetoric, ethics, and politics of truth and justice at the ICTR, and dig even deeper beyond the surface of the "official story."

It is digging that, I believe, needs to be done, not only to understand the truth about what happened in Rwanda, but also about the injustices that allowed it to happen. The "official story" of the Rwandan genocide continues to shape our understanding of ethics and public responsibility in this country, in Rwanda, and throughout Central Africa. But the unofficial story that I uncovered in my experience as an expert witness, should give us all pause. It has been revealed, for example, that the current President of Rwanda, the man who "liberated" that nation from the evil Hutu government, not only sanctioned the assassination of the former president of Rwanda, but did so knowing that it would spark the genocide that engulfed the country.<sup>37</sup> More troubling is the allegation that he did this with the support of the British and U.S. Governments, both of which thwarted an attempt at intervention by the U.N. early in April so that the Rwandan Patriot Front could secure a military victory, and in doing so establish an Anglo-American presence in Central Africa that remains there even today.

Lead Defense Council for the ICTR Professor Peter Erlinder, in his 2008 essay "The Great Rwanda Cover-up," tells another part of this story that we cannot afford to leave unsaid:

As George Bush begins his much *bally-hooed* African safari, he has already begun to heap praise on Rwandan President Kagame as a 'model for Africa.' But, recently issued French and Spanish international 'war-crimes'



warrants and new evidence at the UN Rwanda Tribunal have exposed Kagame as the war-criminal who actually *touched-off* the 1994 'Rwanda Genocide' by assassinating the previous President and who is benefiting from a decades-long U.S.-sponsored 'cover-up' of Pentagon complicity in massacres committed by Kagame's regime, which even Britain's *Economist* has called 'the most repressive in Africa.'<sup>38</sup>

I suspect that my report was only one of many that uncovered these issues, but if they are indeed true, then the questions of character that infuse our choices, determine if we are, in the end, nothing more than "selfish pieces of work," continue to insinuate themselves into our language and our lives, and the ongoing story of race and rhetoric in America and Africa.

So what was good, and what was not good, about my exploration of the rhetoric, politics, and ethics of the International Criminal Tribunal for Rwanda? It's hard to say. To date, the case for which I testified has yet to be resolved, but more of the story has come to the surface, even as more unfilled graves are being dug in the Great Lakes Region of Central Africa, as wars waged for resources and geopolitical control by the Western powers and their African proxies continue to ravage the land. And the legacies of colonization and white supremacy remain deeply entrenched in African culture and consciousness. More than once I watched white men with guttural Afrikaner accents berate and belittle the black staff at the hotel where I stayed. The first time it happened I was simply taken aback: the second time, I glared at the man with what can only be described as a hate that hate produced, then went to roof of the hotel, sat alone, and wept. Shortly afterwards I wrote a poem titled "Kilimanjaro," that captured in verse the ambivalence and sorrow of my stay in Tanzania:

The men touch fists when they meet  
An age old greeting or  
Perhaps some new found  
Sense of self and other,  
A truck backs up  
Warns the unaware  
Screams *flee, flee, flee*,  
Retreats to the courtyard  
Hunting for hunters:  
Take only photos  
Leave nothing behind.

White clouds smother sun blue

African sky and I  
Wonder if I  
Will get to see  
Meru from my hotel.  
The hostess holds a  
Classic beauty I have  
Seen somewhere on  
Bright colored pages  
*Vogue or National Geographic.*

A white man warns me  
"Don't change money here.  
They trade you  
Shillings for dollars,"  
Tells me that here  
I am a *Masunga*,  
Shamed by association  
Not of my mother or  
Father's making.  
A heart hardens  
Two eyes slit  
Thin as jealous clouds  
Holding back the rain.

Old Mandela looking man  
Working the lobby,  
Greets me with a wipe  
Of the cheek, says,  
"Can you crumb here?"  
I flick the speck away  
Like a tear  
Ask if here I  
Really am *Masunga*  
He smiles a little laugh  
"Your speak funny"  
He offers:  
An ambivalent answer.

In the distance  
Kilimanjaro rises  
Ghost of a  
Grave history.  
Obscured by  
Clouds and rain,  
Hidden from hearts  
Of men from

Eyes of women  
Ambivalent  
About the past  
Retreating to a future.

The poem captures in the clarity and simplicity of verse feelings and emotions that, even in the most Zen-like state of detachment, did not feel very good.

What did feel good, I must selfishly confess: more than any of the fun I had debating and deliberating in an international forum; more than the photo safari I had the chance to enjoy before I left Tanzania; more than the possibility that I contributed something to public discourse and policy that may have been left unsaid had I not spoken; was a gift of the spirit given to me by the U.N. security guard who drove me to the airport for the flight back to the country of my birth.

As we passed by Mount Kilimanjaro, finally unfettered by clouds, he asked me if I had ever been to Africa before.

"No," I said, "This is my first time."

"Well, then" he said with a smile. "It certainly has taken you a long time to come home."

That was good. And I didn't need anyone to tell me so.

-Notes-

1. "A Light in the Darkness," *Beyond the Gates*, DVD, directed by Michael Caton-Jones. (2005; Beverly Hills, CA: Twentieth Century Fox Home Entertainment, 2007).
2. Robert Pirsig, *Zen and the Art of Motorcycle Maintenance: An Inquiry into Values*. (New York: Bantam Books, 1984).
3. Ashley Montague, *Man's Greatest Myth: The Fallacy of Race* (Cleveland: World Publishing Company, 1964).
4. William Edward Burghardt, Du Bois, *The Souls of Black Folk* (New York: New American Library, 1982), 54.
5. *Prosecutor v Casmir Bizimungu, Justin Mugenzi, Jérôme-Clément Bicamumpaka, Prosper Mugiraneza*, International Criminal Tribunal for Rwanda-99-50-T, Chamber II.
6. *Hotel Rwanda*, DVD, directed by Terry George (2004: Century City, CA: United Artists, 2005).
7. Des Forges, A. (1999). *Leave none to tell the story*. New York: Human Rights Watch. Retrieved from <http://hrw.org/1999/rwanda>.
8. Roméo Dallaire, *Shake Hands with the Devil: The Failure of Humanity in Rwanda* (New York: Carroll & Graf Publishers, 2003).
9. Bill Berkeley, *The Graves are Not Yet Full: Race, Tribe, and Power in the Heart of Africa* (New York: Basic Books, 2001).
10. Philip Gourevitch, *We Wish to Inform you that Tomorrow We will be Killed with Our Families: Stories from Rwanda* (New York: Farrar, Straus and Giroux, 1998).
11. Robin Philpot, *Rwanda 1994: Colonialism Dies Hard*. The Taylor Report. Retrieved from [http://www.taylor-report.com/Rwanda\\_1994](http://www.taylor-report.com/Rwanda_1994).
12. This is the definition of rhetoric that I offer in my research that focuses on its transformative and non-oppositional potential. See Mark Lawrence McPhail, *Zen in the Art of Rhetoric: An Inquiry into Coherence* (Albany: State University of New York Press, 1996).
13. Mark Lawrence McPhail, *The Rhetoric of Racism Revisited: Reparations or Separation?* (Lanham, MD: Rowman and Littlefield Publishers, 2002),
14. Aaron David Gresson. III. *The Recovery of Race in America* (Minneapolis: University of Minnesota Press, 1995).
15. Charles W. Mills, *The Racial Contract*, (Ithaca: Cornell University Press, 1997), 125
16. Mills, *The Racial Contract*, 127.
17. Mills, *The Racial Contract*, 129
18. Seneca Vaught offers an insightful analysis of the connection between the Rwandan Genocide and the meaninglessness of black lives in American culture and consciousness. She writes: "From the American perspective, the Rwandan genocide developed amidst a cultural and racial crisis of the 1990s. The American

attitude towards the crisis in Kigali provides a complex historical case study on how race and culture have profound and often-ignored policy implications. Specifically, the lack of American intervention in Rwanda reveals the complexity of race and policy in American history and the shared fates of Africans throughout the world. Taken as a whole, the domestic cultural background of the early 1990s, including the rise of gangsta rap, rioting, and the dilemma of "black-on-black crime," collectively influenced American policy towards Africa at a critical juncture in the continent's history." See her essay "Why the Rwandan Genocide Seemed Like a Drive by Shooting: The Crisis of Race, Culture, and Policy in the African Diaspora," *The Journal of Pan African Studies* 10 (2007): 113-134.

19. Richard Morris, "Educating Savages," *The Quarterly Journal of Speech* 83 (1997): 152-71.

20. Morris, "Educating Savages," 155.

21. Mahmood Mamdani, while a proponent of the "official story" who relies heavily on Des Forges analysis of the genocide, none-the-less offers a provocative reading of the role of racial reasoning in Rwandan Cultural history. "*In colonial Rwanda, there were no ethnic groups, only races.* The Belgian authority considered the Tutsi and Hutu as two distinct *races*, in the manner of direct rule, without deconstructing the Hutu into so many ethnicities in the manner of indirect rule." This tension between direct and indirect colonial rule, which Mamdani argues was unique to Rwandan colonialism, was instrumental in essentializing the differences between Tutsis and Hutus. "Even if the *petits* Tutsi were not clearly set apart from the Hutu poor by a higher standard of living, their racialized status entitled them to petty privilege, specifically Tutsi privilege." (100). See Mahmood Mamdani, *When Victims Become Killers: Colonialism, Nativism, and the Genocide in Rwanda*, (Princeton, NJ: Princeton University Press, 2001): 99-100.

22. Keith Harmon Snow, "*Hotel Rwanda: Hollywood and the Holocaust in Central Africa*," *Global Research: Centre for Research on Globalization* (2005). Retrieved from

<http://www.globalresearch.ca/index.php?context=va&aid=1096>.

23. "About your Report," Tom Moran, e-mail message to author, February 15, 2008. .

24. "Re: About Your Report," Tom Moran, e-mail message to author, February 15, 2008.

25. "Insomnia," Mark McPhail, e-mail message to Tom Moran, February 4, 2008.

26. "Re: Insomnia," Tom Moran, e-mail message to the author, February 4, 2008.

27. "Re: Insomnia," Tom Moran, e-mail message to the author, February 4, 2008.

28. The members of the court are listed in the trial documents as follows: Before the Judges: Khalida Rachid Khan, Presiding, Lee Gacuiga Muthoga, Emile Francis Short. For the Registry: Ms. Félicité Talon, Mr. John Tumati. For the Prosecution: Mr. Paul Ng'arua, Mr. Ibukunolu Babajide, Mr. Justus Bwonwonga, Mr. Elvis Bazawule, Mr. Shyamlal Rajapaksa, Mr. Olivier De Schutter. For the Accused Casimir Bizimungu: Ms. Michelyne C. St-Laurent, For the Accused Justin Mugenzi: Mr. Jonathan Kirk. For the Accused Jérôme-Clément Bicamumpaka: Mr. Michel Croteau, Mr. Phillippe Larochelle. For the Accused Prosper Mugiraneza: Mr. Tom Moran, Ms. Cynthia Cline. Court Reporters: Ms. Eleanor Bastian, Ms. Vicki Eastvold, Ms. Gifty C. Harding, Ms. Alannah Murray, Ms. Leslie Todd, Ms. Robyn Harrell. Judge Lee Gacuiga Muthoga attended only the first day of my testimony, and several of the prosecutors listed in the trial documents were not present in the tribunal at any time.

29. *Prosecutor v Casimir Bizimungu, Justin Mugenzi, Jérôme-Clément Bicamumpaka, Prosper Mugiraneza*, International Criminal Tribunal for Rwanda-99-50-T, Chamber II. Wednesday, 23 April 2008, 0909H, Continued Trial: M080423E.Trial.doc.

30. *Prosecutor v Casimir Bizimungu, Justin Mugenzi, Jérôme-Clément Bicamumpaka, Prosper Mugiraneza*, International Criminal Tribunal for Rwanda-99-50-T, Chamber II. Wednesday, 23 April 2008, 0909H, Continued Trial: M080423E.Trial.doc.

31. *Prosecutor v Casimir Bizimungu, Justin Mugenzi, Jérôme-Clément Bicamumpaka, Prosper Mugiraneza*, International Criminal Tribunal for Rwanda-99-50-T, Chamber II. Thursday, 24 April 2008, 0910H, Continued Trial: M080424E.Trial.doc.

32. *Prosecutor v Casimir Bizimungu, Justin Mugenzi, Jérôme-Clément Bicamumpaka, Prosper Mugiraneza*, International Criminal Tribunal for Rwanda-99-50-T, Chamber II. Wednesday, 25 April 2008, 0944H, Continued Trial: M080425E.Trial.doc.

33. *Prosecutor v Casimir Bizimungu, Justin Mugenzi, Jérôme-Clément Bicamumpaka, Prosper Mugiraneza*, International Criminal Tribunal for Rwanda-99-50-T, Chamber II. Wednesday, 25 April 2008, 0944H, Continued Trial: M080425E.Trial.doc.

34. *Prosecutor v Casimir Bizimungu, Justin Mugenzi, Jérôme-Clément Bicamumpaka, Prosper Mugiraneza*, International Criminal Tribunal for Rwanda-99-50-T, Chamber II. Thursday, 24 April 2008, 0910H, Continued Trial: M080424E.Trial.doc.

35. *Prosecutor v Casimir Bizimungu, Justin Mugenzi, Jérôme-Clément Bicamumpaka, Prosper Mugiraneza*, International Criminal Tribunal for Rwanda-99-50-T, Chamber II. Thursday, 24 April 2008, 0910H, Continued Trial: M080424E.Trial.doc.

36. Alain De Brouwer, Expert Witness Report. "Six Fiches S Généralés Visant une Meilleure Compréhension du Génocide au Rwanda en 1994." TPIR / Arusha, 03-2008, Procès du

gouvernement n°1 Témoignage de contexte d'Alain De Brouwer Licencié en criminologie (UCL), chef de division honoraire au Parlement européen, groupe PPE et ancien conseiller politique à l'IDC (Internationale Démocrate Chrétienne).

37. A compelling account of Kagame's complicity in the genocide is offered in this testimony by a former RPF 2<sup>nd</sup> Lt., Aloys Ruyenzi, given in July of 2004. Ruyenzi claims to have been present at a meeting on 31 March, 1994, when the plans to shoot down the plane were issued by Kagame. He further alleges that Kagame was not the "savior" of the Tutsis that the "official" story presents:

He [Kagame] ordered at numerous occasions to kill as many civilians as possible. This took place in many areas in Byumba, Ruhengeri and elsewhere, and long before the Tutsi genocide. *I say so because some people think the RPA killed in reprisal after the genocide. Even during the genocide, I saw and heard on several occasions major general Paul Kagame giving orders to kill civilians, especially in Mutara, Byumba and Kibungo. He would enjoy it like a football fan watching a football game and cheering his team.* At times, he even used his escort or selected DMI operatives to kill civilians.

Ruyenzi goes on to argue that a final assault on Kigali had been planned "whatever the outcome of the negotiations" in Arusha, and furthermore that Kagame actively refused to aid Tutsis during the massacres. "I cannot forget the pain that general Kagame inflicted to Rwandans of Tutsi ethnic group, his own tribe mates. Some were even killed on his orders. Others were deliberately left at the mercy of Interahamwe. He made sure that nobody comes to their rescue." Ruyenzi's testimony invariably changes the way in which the "official" version represents the role of the RPF and the lack of involvement of international actors in halting the genocide. See "The Iceberg of the Conflict in Africa of the Great Lakes Region: Lawsuit against those responsible for the concealed crimes against humanity." *International Forum for the Truth and Justice in Africa of the Great Lakes Region*. Retrieved from <http://www.veritasrwandaforum.org>.

38. Peter Erlinder, "The Great Rwanda 'Genocide Coverup,'" *Global Research: Centre for Research on Globalization*. Retrieved from <http://www.globalresearch.ca/index.php?context=va&aid=8137>.